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SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

Appeal from the Administrative Law Court  
Honorable Crystal Rookard, Administrative Law Judge

ALC Docket No. 24-ALJ-24-P0027

JOSEPH KELSEY, # 217218.....APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF  
PROBATION, PAROLE, AND PARDON SERVICES .....RESPONDENT.

**MOTION TO PROCEED *IN FORMA PAUPERIS***

Appellant, Joseph G. Kelsey, respectfully makes this motion for leave to proceed *in forma pauperis*. Appellant is presently incarcerated and does not have the funds available to pay the costs of filing and service in the present matter, and undersigned counsel represents Appellant in this matter *pro bono*. Appellant’s affidavit is attached and Appellant sets forth the following arguments in support of his request to proceed *in forma pauperis*.<sup>1</sup>

Indigent appellants are entitled to proceed *in forma pauperis* where “the cause of action concerns a fundamental right.” *Ex parte Martin*, 321 S.C. 533, 536, 471 S.E.2d 134, 135 (1995). The issues that Appellant intends to brief and argue in this Court include whether the ALC’s decision to dismiss his appeal based on “an unduly technical application of procedural rules” violated Appellant’s right to due process and right of access to the courts. *See* Motion to Reinstate

<sup>1</sup> Appellant’s motion for leave to proceed *in forma pauperis* was granted in a previous appeal before this Court. *Kelsey v. S.C. Dep’t of Prob., Parole & Pardon Servs.*, No. 24-ALJ-15-0002-AP. Appellant’s circumstances are unchanged since that motion was granted.

Appeal, *Kelsey v. SCDPPPS*, No. 24-ALJ-24-P0027 (Mar. 7, 2025) (quoting *Willis v. Donnelly*, 199 S.W.3d 262, 270 (Tex. 2006)). Multiple courts, including the United States and South Carolina Supreme Courts, have noted that technical defects in notices of appeal should not interfere with an appellant’s right to due process and access to the courts where the defect causes no prejudice to the opposing party. *See, e.g., Becker v. Montgomery*, 532 U.S. 757, 767 (2001); *see also Perkins v. Douglass*, 46 S.C. 6, 6, 24 S.E. 42, 43 (1896) (noting, in a case that was dismissed because proof of service of the notice of appeal had not been filed in the record, that the “appellate court shall give judgment according to the justice of the case, without regard to technical errors and defects which do not affect the merits” and remanding for a decision on the merits). Thus, such a cause of action “concerns a fundamental right.” *Martin, supra*.

For the foregoing reasons, this Court should grant Appellant’s motion for leave to proceed *in forma pauperis*.<sup>2</sup>

Respectfully submitted,

/s/ Allison Franz

Allison Franz

Justice 360

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John H. Blume

Cornell Law School

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<sup>2</sup> Further, SCRCP 3(b)(2) provides:

Where a party is represented in a civil action by an attorney working on behalf of or under the auspices of a legal aid society or a legal services or other nonprofit organization funded in whole or substantial part by funds appropriated by the United States Government or the General Assembly of the State of South Carolina, which has as its primary purpose the furnishing of legal services to indigent persons, or the South Carolina Bar Pro Bono Program, fees related to the filing of the action shall be waived without the necessity of a motion and court approval.

While the South Carolina Appellate Court Rules have no similar corollary, undersigned counsel represents Appellant through Justice 360, which qualifies for filing fee waivers for actions filed in the Court of Common Pleas.

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April 3, 2025.

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IN THE COURT OF APPEALS

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v.

SOUTH CAROLINA DEPARTMENT OF  
PROBATION, PAROLE, AND PARDON SERVICES .....RESPONDENT.

**APPLICATION TO PROCEED WITHOUT PAYMENT OF COSTS AND AFFIDAVIT  
IN SUPPORT THEREOF**

I, Joseph G. Kelsey, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

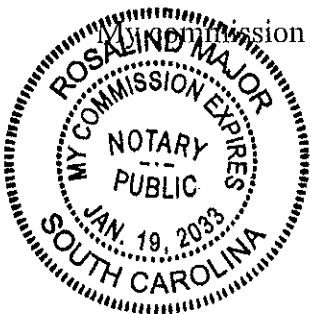
- (1) I am the appellant in this action, and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

*Joseph Kelsey*  
\_\_\_\_\_  
Joseph G. Kelsey, Appellant

Sworn or affirmed to and subscribed before me this  
3rd day of April, 2025.

*Rosalind Major*  
\_\_\_\_\_  
Notary Public for the State of South Carolina

My commission expires: January 19, 2033



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**CERTIFICATE OF SERVICE**

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The undersigned hereby certifies that a copy of Appellant’s Notice of Appeal and Motion to Proceed *In Forma Pauperis* were served on opposing counsel by first-class United States mail, postage prepaid, at the address provided in the Attorney Information System:

Matthew C. Buchanan  
S.C. Department of Probation, Parole and Pardon Services  
PO Box 207  
Columbia, SC 29202

Service was made on April 3, 2025.

/s/ Allison Franz  
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