

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

RECEIVED

MAY 28 2026

APPEAL FROM SOUTH CAROLINA
SC Workers' Compensation Commission

SC Court of Appeals

Appellate Case No. 2023-000187

108282

Pamela Cartee, Claimant,

v.

SC Judicial Department, Employer,
and State Accident Fund, Carrier,

In Re:

Attorney's Fee Petition of Preston F. McDaniel,
Esquire, and John M. Milling, Esquire,Appellants,

v.

SC Workers' Compensation Commission, Respondent.

**PETITION FOR REHEARING
AND REHEARING EN BANC**

Pursuant to Rules 221(a), 240, SCACR, Appellants petition the Court for rehearing; and pursuant to 219(a)(b), SCACR, Appellants would suggest and request rehearing en banc. This is a case of first impression since the 1990 Regulations were adopted in reference to the Commission's authority under Regulation and an en banc hearing is needed to secure uniformity

of the Court's decisions concerning the Commission's statutory and regulatory authority and freedom of contract, attorney fee contracts; and because this case involves a question of exceptional importance, including the limit of the Commission's discretion over attorney's fees.

PREAMBLE

Article V, §9 of the South Carolina Constitution provides:

"The decisions of the Supreme Court shall bind the Court of Appeals as precedents."

In Bazzle v. Huff, 319 S.C. 443, 462 S.E.2d 273 (1995), the Supreme Court held that the Workers' Compensation Commission is the party charged with the responsibility of approval of attorney's fees. The Court also held it can do so under law only pursuant to Regulations adopted pursuant to SC Code §42-3-185. Under SC Code §42-3-30, the Commission shall implement Regulations "relating to the administration of the workers' compensation laws. Thus, this Court is bound by that precedent that the Commission is a party and can only administratively approve or disapprove attorney's fees within the confines and dictates of the Regulation as to the attorney's fees that are awardable. The Court also held the Commission has no "discretion" outside of the Regulations to effect the private contract rights between the attorney and client.

Appellants would respectfully submit the Panel overlooked or misapprehended the following points and with particularly that:

1. The Court in I. **BACKGROUND** in its review of the background overlooked several fundamental points in reference to the prior Order of this Court in reference to the parties to this ancillary action and the Commission being a proper party; and that the regulatory functions involved were administrative in nature and not judicial. Some of the points raised in this Petition will be out of order because of their appearance in the context of the decision made by the Court.

In the third paragraph of the Background, the Court addresses the captioning of this matter. The Court notes that the Appellants filed their appeal under a particular caption and that the Court then wrote a letter on February 9, 2023, revising the caption as it currently exists. While the Court in its revised caption does not list the claimant, employer, or insurance carrier as parties to the appeal and lists the Commission as Respondent, and while the Commission did not need to file a Motion to Dismiss, it did at this point. It is at this point that the Court's Background fails to include a substantial part of the background which Appellants would submit lead in major part to the points overlooked/misapprehended by the Court as to the parties and the nature and actual ancillary

action/decision involved in this appeal; which is not the underlying workers' compensation claim.

Left out is that subsequent to receiving the letter concerning the caption, the Appellants on March 15th filed a Motion to determine the correct caption of the case pursuant to Rules 240 and 267, SCACR, attached hereto as Exhibit A.

Very importantly, the Respondent, the SC Workers' Compensation Commission (SCWCC), first filed (3/21/23) a Motion to Dismiss Respondent SCWCC as a party and for Relief of Counsel, attached hereto as Exhibit B. On March 29, 2023, the Appellants filed a Return to the Motion to Dismiss Respondent SCWCC as a party and for Relief of Counsel, and filed an Affidavit of Preston F. McDaniel. First, that Affidavit sets out a further overlooked point and misapprehension of the Court in its decision to dismiss the appeal in reference to the Declaratory Judgment action and the entire background of this case. The Affidavit also addresses in part one key additional aspect, which is that the parties went to Mediation, and quoting from that Affidavit:

"That as part of the attempt to resolve the dispute over the fee as requested for approval by the Appellants, and the Respondent's refusal to approve part of the fee as requested, the Appellants filed a Declaratory Judgment action in the Darlington County Circuit Court with the caption of that document being as follows:

'Preston F. McDaniel and John Milling,
Plaintiffs, v. SC Workers' Compensation
Commission, Defendant'.

Subsequently, the parties to that action pursuant to the Circuit Court Rules, attended Mediation and as part of the Mediation Agreement, the Plaintiffs agreed to dismiss that Declaratory Judgment action and to proceed with the appeal process through the normal Appellate process in reference to that action and the dispute over the fee to be awarded to Appellants in the underlying workers' compensation case." (emp. add.)

Next, based on Respondent's Motion to Dismiss, the Return filed by the Appellants to the Respondent's Motion and the Respondent's Reply to the Appellants' Return to the Motion to Dismiss (attached hereto as Exhibits C, D and E), this Court issued an Order (filed 05/26/23) denying the Motion which the Appellants would submit is res judicata as to the Commission being the proper party in this matter. The Appellants had requested a hearing to determine the correct caption, and in Chief Judge Williams' Order the Court first denied the request for a hearing, and denied the Motion to determine the correct caption of the case. Particularly important to the Court's decision to dismiss this action now because Appellants did not serve certain parties, neither the Clerk nor the Court listed the claimant and/or the employer and its insurance carrier as parties to the appeal; and specifically denied the Appellants' request to amend the caption to reflect the one as set forth in

the Notice of Appeal. However, in addition the Court further amended the caption as set forth in the Order.

Very important to this current Order dismissing the Appellants' appeal on the basis set forth therein, the Order of the Court issued by the Honorable Chief Judge H. Bruce Williams ordered that the,

"Respondent's Motion to be dismissed as a party and Motion to Relieve Counsel is denied."

In addition to the approval of the Attorney Fee Petition being an ancillary, but separate, proceeding to the underlying workers' compensation claim in which neither the employer nor its insurance carrier are parties, other legal and privacy reasons were set out in the Motion to determine the correct caption as to why the claimant, employer, and insurance carrier should not be listed. The Court has misapprehended or overlooked those other reasons as to why the Appellants nor the Court listed them as parties in the caption; and to this day Appellants believe that the caption of the Court is improper and in violation of State law and goes to a fundamental misapprehension by the Panel of this Court of the Workers' Compensation Act and its privacy provisions. Under SC Code §42-19-30, the records of the Commission in large part are not public record. SC Code §42-3-210 provides that accident reports

and information concerning accidents shall be tabulated by the Commission but provides specifically that:

"The name of the employer or employee shall not appear in such publications and the employers' reports shall be private records of the Commission, which shall not be open to public inspection except for the inspection of the parties directly involved, and then only to the extent of such interests including third-party interests." (emp. add.)

SC Code §42-3-195 provides that the Commission shall cooperate with the Commissioner of Labor and OSHA in providing information concerning inspections and evaluations but such records are not subject to disclosure pursuant to the Freedom of Information Act, are "confidential" and shall contain "no identifying information"; it further provides that:

"upon trial of any action other than a workers' compensation claim, such information shall not be placed into evidence or be permitted to be argued to any court, jury, or other administrative body."

Thus, the records of the Commission are confidential and there are other references within the Act preserving the confidentiality of workers' compensation claims in reference to ("their") the claimant, employer, and its insurance carrier. Since this is an ancillary matter involving the approval function of the Commission under statute and mandated and legislatively approved Regulations, and is not a dispute between Appellants and Ms. Cartee, the Appellants verily believe that

it was and is a violation of "their" privacy which our Legislature has tried to preserve to include "their" names in this action. The same general legal principle applies here as applies to John Doe and Mary Roe causes of action and In Re: Anonymous, etc.

Further, in reference to Mediation and misapprehension or overlooking by the Court in the Background, in the Affidavit as part of the Motion to amend the caption and in general that the Commission is the proper party, and the claimant, employer and its insurance carrier are not parties, the Appellants' Return to the Motion to Dismiss the SCWCC as not being a party, after noting that the Commission's Motion did not contain an Affidavit but made numerous factual allegations, states that:

"In support of both the recaptioning of this matter before the Court and that the Commission is the party Respondent to this matter, as part of the Mediation Settlement Agreement, the Appellants agreed to dismiss their Declaratory Judgment action seeking the same relief as this appeal that they had filed with the Circuit Court and agreed to proceed with an appeal before the Commission and this Court on those issues."

In addition to filing the Motion to Dismiss which this Court denied, after Initial Briefs were filed in this Court, the Commission Respondent filed a Motion for Certification to the Supreme Court and regurgitated its argument that the Commission should be dismissed. That Motion for Certification was denied by

all five members of the Supreme Court. In the Return to the Motion for Certification which is attached hereto as Exhibit F, as part of that Return the Appellants pointed out that the Supreme Court would find no document requesting that the Commission be dismissed or alleging that the Commission was not a proper respondent to the original 2018 appeal. The Court would not find any document alleging or moving to dismiss the Commission from the Declaratory Judgment action on the basis the Commission was not a proper party defendant or adding any other party defendant to the dispute. The Motion also specifically pointed out as referenced in Appellants' Brief that the Appellants' Brief is limited per the Mediation Agreement to the singular issue of the dispute as a matter of law between the current Commission and the Appellants over the interpretation of the wording of R. 67-1205(C) (2) and the Appellants' entitlement to the disallowed fees under what they believe to be the correct and time-honored interpretation and application.

Finally, and this is pointed out in Appellants' Statement of the Case, only after an Order was entered granting the Appellants full discovery in their Declaratory Judgment action to include depositions and the production of all documentation from the Commission did the Commission want to enter into Mediation. As part of the Appellants' Statement of the Case, the Appellants went on to note that:

"As a result of the Mediation and based on Mr. Milling having not been served with the original Order on May 30, 2018, it was agreed that proper service of the May 30, 2018 Full Commission Order would be made and the Defendants, SC Workers' Compensation Commission, would accept a timely filed Motion for Rehearing pursuant to R. 67-215 for disposition en banc before the Commission and the parties agreed the issue on rehearing would be confined to the Plaintiffs' request for attorneys' fees. The Plaintiffs, Appellants in this Court, agreed to voluntarily dismiss the Circuit Court action with prejudice."

While the Commission filed a Counter Statement of the Case, the Respondent Commission does not contest and did not contest in that Counter Statement of the Case the fact that the parties went to Mediation and that as part of the Mediation Agreement the Respondent agreed to re-serve their original Order, Appellants agreed to withdraw and dismiss their Declaratory Judgment action, Respondent agreed to accept a timely filed Motion for Rehearing, and most importantly, there is no disagreement nor counterstatement to the fact that the appeal would be limited to the Appellants versus the "current" Commission's interpretation of the Regulations in reference to the disputed attorneys' fees.

2. The Court misapprehended and overlooked the fact and the law as to the action which is before the Court on Appeal. This appeal does not involve the underlying workers' compensation claim Ms. Cartee filed with the Commission in which

the Judicial Department and the State Accident Fund were the parties defendant. Instead, it involves the ancillary proceeding to and after the Award in that claim under the statutory requirement of the Act that the Commission perform the administrative function of approving Attorney's Fees pursuant to Regulation. The misapprehension begins in the first paragraph wherein the Court frames the issue, that had been argued repeatedly to the Circuit Court, the Supreme Court, and this Court and rejected, that the Commission is not, "a party to the proceedings below, they acted solely in a judicial capacity ...". No one disagrees and no one, including Appellants, assert that the Commission is a party to the underlying workers' compensation claim filed by Ms. Cartee in which the Judicial Department and the State Accident Fund were the defendants as the employer and insurance carrier; but that is not the proceeding that is before this Court.

There is no reference under SC Code §42-3-20 to attorney's fee because it is not part of the judicial function. Under a totally separate statute, SC Code §42-15-90 and quoting from §42-15-90(A):

"Attorney's fees, physician's fees, and hospital charges for services under this Title are subject to the approval of the Commission ..."

That exact language has been in the Act since its inception in 1936 and can be found codified for the first time in the 1942 South Carolina Code of Laws as §7035-67. (Appellant McDaniel has a copy of that from his library readily available for the Court in case the Court does not have it in its library.)

Even though the Commission has been granted the authority to approve attorney's fees and is the party charged with that responsibility, in Bazzle v. Huff, supra, the Supreme Court held that because the Commission had not adopted regulations, they had no authority to regulate attorney's fees; and the Court noted that an administrative agency has only such powers as has been conferred by law and must act within the authority granted for that purpose. Mentioned throughout the various Motions and in the Briefs by the appellants, the Supreme Court also noted that except for that limited statutorily mandated regulatory authority, the Commission lacked jurisdiction to effect the "private contract rights between attorney and client". Thus, the Appellants believe that the Court will agree that the Commission cannot go outside of the Regulations and since Regulations have been adopted, again the Commission is the party charged with the singular responsibility of reviewing and determining whether or not the requested fee is in accordance with the Regulations. That is the issue that was agreed would be decided by the Court.

In the case of SC Ambulatory Surgery Ctr. Assoc. v. SC Workers' Compensation Commission, 389 S.C. 301, 698 S.E.2d 797 (2010), the Commission was the named party in that action over doctors' fees because the Commission is the party charged with the regulation of attorney's fees, and doctors and hospital fees under that statute. It is ironic that the Appellant John Milling was the trial judge in that case. Setting out the factual and procedural background, the Supreme Court noted that under the SC Workers' Compensation Act that the medical fees are subject to the submission and approval by the Commission under SC Code §42-15-90. In other words, the approval of attorney's fees under the Regulations and the approval of medical and doctor's fees under Regulation is the responsibility of the Commission under the Statute and the Commission is the party charged with that responsibility. Neither attorneys nor doctors nor hospitals are parties to the underlying workers' compensation claim.

In fact, another case involving the Commission as a party makes it perfectly clear that these actions are ancillary to the underlying workers' compensation claim. In Blue Cross and Blue Shield v. SC Industrial Commission, 274 S.C. 204, 262 S.E.2d 35 (1980), Blue Cross, a health insurance provider for the claimant, sought to obtain records and reimbursement for expenditures on behalf of the claimant which arose out of an underlying workers' compensation claim. The Commission was the

proper party since, as the Court stated, the Commission was the administrative body charged with the responsibility of administering the workers' compensation laws of our State. The Court found that Blue Cross and Blue Shield was not a party to the underlying action but also neither was the Commission. Here again, the Commission was the proper party because it is the party charged with administering the workers' compensation laws of our State and is the party charged with maintaining the records and all administrative functions, pursuant to Statute and Regulation which includes the approval or disapproval of attorney's fees pursuant to Regulation as the Supreme Court found in Bazzle. In addition, there is a Supreme Court decision, Board of Bank Control v. Thomason, 236 S.C. 158, 113 S.E.2d 544 (1960), not cited by the Court that is directly on point that the act of approval or disapproval pursuant to Statute and Regulation, is ministerial and administrative in nature and not judicial. In such matters, the Boards, in this case the Commission, act as factfinding bodies to ascertain only whether the applicant conforms to the dictates of the Statutes and Regulations and in this case are entitled to their fee under the dictates of the Regulation; interpretation not discretion.

Further, as for that part of the decision that this is a judicial (inferring discretion) versus an administrative function, the Court overlooked and misapprehended the statutory

law and also the Regulations and jumped over the first four sections of R. 67-1204, and refers only to subsection (E) of the Regulation that does not apply in this case.

Again, under SC Code §42-3-20 the approval of attorney's fees is not noted as a judicial function. The regulation of attorney's fees is found under §42-15-90 and the Regulations implementing that section must be specifically adopted in accordance with §42-3-195. SC Code §42-3-30 gives the Commission the authority to promulgate all Regulations relating to the administration of the workers' compensation laws. In Bazzle, again the Court held that because the Commission had not adopted Regulations pursuant to §42-3-185, the Commission had no authority to invade the contract rights of a claimant and their attorney in their fee contract. Since the Commission decision must be based on and limited to the Regulations, approval/disapproval only depends on compliance with the Regulation, the Commission approval is administrative or the issue is interpretation, not discretion. Board of Bank Control, supra.

Something else not looked at or cited by the Court is SC Code §42-3-90 which refers to the divisions of the "administrative" department of the Commission, which includes as a named Division "Claims and Statistics" which is where attorney fee petitions are filed: with the "Commission's Claims Department", SC Code Reg. 67-1204(C). So, hopefully the Court

will upon further review agree since under the statute the Supreme Court has found that the Commission has no authority outside of the Regulations; the Commission has no discretion to vary from the clear language requirements of the Regulation; its function is administrative; or the issue is interpretation.

Again, the issue that was agreed at Mediation to be presented to this Court was the Commission's versus Appellants' "interpretation" of the Regulations. Regardless, let us look at the requirements of the Regulations adopted by the Commission in reference to attorney's fees and specifically workers' compensation R. 67-1204 and 1205. In R. 67-1204 after subsections (A) and (B), subsection (C) is the applicable subsection for the submission and approval of a contingency fee. R. 67-1204(C) in pertinent part provides that:

"The attorney shall report the fee by filing the original and one copy of the Form 61, Attorney Fee Petition, and an Order, along with a stamped, self-addressed envelope with the Commission's Claims Department.

Subsection (D) then provides that,

"Upon receipt of the Form 61 and Order, the Order may be signed and a copy may be returned to the attorney when the fee calculation complies with R. 67-1205."

While not applicable under the facts but relied on by the Respondent and apparently the Court is the requirements of subsection (E) (which, again without citation, as the Court

knows an administrative agency cannot vary or change or add to or take away from its Regulations). Subsection (E) first requires that "the Commissioner may amend, sign, and return a copy of the Order". The Court will not find, the Court will not find, where the original Commissioner reviewing Appellants' fee signed an Amended Order or "returned" an Amended Order to the Appellants. Only, again only, in that case does the further requirements of subsection (E) kick in in reference to the attorney filing a Motion with the Commission's Judicial Department. Here the Commission did nothing!

The next actual pertinent subsection of R. 67-1204 is subsection (F). Quoting that subsection, it requires:

"If the Form 61 and Order do not comply with R. 67-1205, the Commissioner reviewing the Form 61 and Order shall immediately schedule a hearing to consider argument of Counsel and testimony, if any."

That was not done in this case; noncompliance.

Like Bazzle, and like SC Ambulatory Surgery Ctr. Assoc., there is no judicial discretion and as the Regulation states, the Commission's job, and again the Commission's job, is limited to the administrative function of reviewing the Form 61 (Attorney Fee Petition) to determine whether or not the Form 61 and Order "comply with R. 67-1205", R. 67-1204 (D) and (F).

3. The Court overlooked or misapprehended the fact and the law that the Commission was a party to the proceedings below

which is the Petition for approval of attorney's fees and were the proper party even assuming that they acted in a judicial capacity and regardless of whether they had no legally cognizable interest in the outcome.

As cited above, the Workers' Compensation Commission by statute is the agency charged with administering the Workers' Compensation Act. SC Code §42-3-20(C); §42-3-180; §42-1-80; and §42-1-90. Being the agency charged with the responsibility of administering the Workers' Compensation Act, the Commission has been a party to numerous cases in its capacity and its authority and responsibility to administer the Act. SC Industrial Commission v. Progressive Life Insurance Co., 242 S.C. 547, 131 S.E.2d 694 (1963); Blue Cross and Blue Shield v. SC Industrial Commission, *supra*; Lester v. SC Workers' Compensation Commission, 328 S.C. 535, 493 S.E.2d 103 (SC App. 1997), cert. granted; aff. in part, rev. in part, 334 S.C. 557, 514 S.E.2d 751 (1999) (in Lester, a workers' compensation claim was filed resulting in the action but the claimant was not a party to that action and appeal); SC Workers' Compensation Commission v. Ray Covington Realtors, Inc., 318 S.C. 546, 459 S.E.2d 302 (1995); SC Ambulatory Surgery Ctr. Assoc. v. SC Workers' Compensation Commission, *supra*. Just like the Commission is the party responsible to determine whether or not an employer is required to have workers' compensation insurance; whether or not an

employer's workers are independent contractors or employees; whether or not a third party like Blue Cross and Blue Shield is entitled to see the records of the Commission when the Commission is the record keeper; or where it is the responsibility of and the Commission is the party pursuant to Regulation to establish the Medical Fee Schedule and to regulate doctors and hospitals, the Commission is the party charged with the responsibility under the Act (having adopted Regulations as required by the law and Supreme Court) to approve attorney's fees.

Pursuant to Bazzle v. Huff, supra, and the Regulations approved by the General Assembly pursuant to SC Code §42-3-185, under R. 67-1204 thru R. 67-1207, R. 67-1204(A) requires that an attorney shall report and obtain approval of any fee for services arising out of a workers' compensation claim. Where that attorney's fee arises out of a contingency fee contract, the attorney is required (shall) report the fee by filing a Form 61 Attorney Fee Petition and a proposed Order with the Commission's Claims Department. That Order which is found in the Workers' Compensation Manual provides that after having reviewed the Record and controlling, "legal standards for the award of attorney's fees and costs" in a workers' compensation proceeding under SC Reg. 1204-1207 and Rule 105(a) of the Code of Professional Conduct, a Commissioner approves the Attorney Fee

Petition. The Form 61 is signed by the attorney for the claimant and by the claimant and in that Form 61 the claimant states that,

"I agree to pay my attorney the fee and costs stated. I understand the fee and costs are paid out of my compensation and I understand how much money I will receive after I pay my attorney."

That WCC form entitled "Attorney Fee Petition" is submitted to the Commission for approval and a Commissioner reviews and approves it, according to that form, the Regulations, and the standard Order form based on "controlling legal standards" for the award of attorney's fees and costs in a workers' compensation proceeding; i.e., SC Regs. 1204-1207 and the Commission approves the fee. Importantly, Reg. 67-1204(B) makes it very clear that where the Form 61 and Order are submitted, the fee is to be approved "when the fee calculation complies with R. 67-1205." Thus, the Commission is the responsible party in the ancillary proceeding which is the approval of Attorney's Fee Petition and fees charged in a workers' compensation claim. Notably, there is no requirement that any party other than the Commission is provided with the original and one copy of the Attorney Fee Petition. The Regulation is actually even silent, as is the Form 61, as to whether or not the claimant gets a copy once having signed the Attorney Fee Petition confirming his agreement to the fee as charged is submitted. It is the

Commission's responsibility to confirm compliance. According to Bazzle v. Huff and the requirement that the Commission must adopt Regulations before it has any regulatory authority, the decision must be in accordance with those Regulations and where the Attorney Fee Petition is in compliance with the Regulations failure to approve the Attorney Fee Petition constitutes an abuse of discretion.

Finally, as to the Commission having no "legally cognizable interest in the outcome", the Commission has no more legally cognizable interest in the outcome of approval of attorney's fees than it does in the Blue Cross and Blue Shield case as to whether or not it had to release the records; or in the cases of whether or not the employer is subject to the Act and must have workers' compensation coverage; or whether or not a worker is an independent contractor or an employee; or whether or not a revised Fee Schedule affects the income and payments to Ambulatory Surgical Centers. Thus, the Commission has no legally cognizable interest in the outcome of those just like it does not in this situation involving approval of attorney's fees under Statute and mandatory Regulations to which it must adhere.

4. In its Decision the Court Panel misapprehends as a matter of law that "the Commission has the authority to approve Petitions for attorney's fees. SC Code Ann. §42-15-90 (A) (2015)". That is wrong. The Supreme Court in Bazzle v. Huff,

supra, found as a matter of law that the Commission does not have authority under that Code Section until it adopts Regulations in accordance with the Legislature's direction and approval. Only then does it have the authority to approve or disapprove attorney's fees pursuant to those Regulations. "When the fee calculation complies with R. 67-1205" our Supreme Court has frequently held that:

"An administrative agency has only such powers as have been conferred upon it by law and must act within the granted authority for an authorized purpose. It may not validly act in excess of its powers, nor has it any discretion as to the recognition of or obedience to a statute." SC Tax Commission v. SC Tax Board of Review, 378 S.C. 556, 299 S.E.2d 489 (1983); this Court, Trident Medical Centers, LLC v. SC Dept. of Health & Environmental Control, 438 S.C. 391, 882 S.E.2d 878 (SC App. 2022). (emp. add.)

Thus, the Commission's discretion in reference to approval or disapproval of attorney's fees is limited to interpreting any ambiguities in the Regulation, not as to the plain meaning.

CONCLUSION

In conclusion as set forth hereinabove, the Court in its Opinion dismissing the Appellants' appeal misapprehended fundamentally the very cause of action before the Court which is not the underlying workers' compensation claim but the ancillary separate approval of attorney's fees; that the Commission was acting in a judicial capacity and is somehow relevant as an

administrative body charged with the responsibility of administering the workers' compensation laws, that they had to have some "legally cognizable interest in the outcome". The Appellants veribly believes that the Court should grant rehearing en banc to ensure uniformity and because of the importance of this decision to the claimants and the workers' compensation Bar as to an injured worker's access to justice and whether or not the Commission has the discretion to limit access to legal counsel by restricting attorney's fees under the guise of discretion outside the dictates of the Regulations.

Respectfully submitted,



Preston F. McDaniel, Bar #3770
McDANIEL LAW FIRM
1315 Elmwood Avenue
Columbia, South Carolina 29201
(803) 771-7211

and

John M. Milling
MILLING LAW FIRM
Post Office Box 519
Darlington, South Carolina 29532
(843) 393-4083

Attorneys and Petitioners

May 28, 2026

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

MAR 15 2023

APPEAL FROM SOUTH CAROLINA
SC Workers' Compensation Commission
Appellate Panel

SC Court of Appeals

RECEIVED

MAY 28 2026

Appellate Case No. 2023-000187

SC Court of Appeals

Caption per Notice of Appeal:

Preston F. McDaniel, Esquire and
John M. Milling, Esquire,Appellants,

v.

South Carolina Workers
Compensation Commission,Respondent.

IN RE:

The Matter of the Fee Petition in
SCWCC File No. 1307922

As Re-Captioned by Court Administration:

Pamela Cartee, Claimant

v.

SC Judicial Department, Employer, and State Accident Fund,
Carrier, Defendants,

IN RE:

Preston F. McDaniel, Esquire, and
John M. Milling, Esquire,Appellants,

v.

SC Workers' Compensation Commission,Respondent.

NOTICE OF MOTION AND MOTION TO DETERMINE THE
CORRECT CAPTION OF THE CASE PURSUANT TO SCACR



You Will Please Take Notice that on the 10th day after service hereof or at such other time as designated by the Court, the Appellants will move for an Order of the Court to establish the caption of the case going forward in this matter pursuant to Rule 240, SCACR and the SC Appellate Court Rules. The Appellants would respectfully show unto the Court as follows:

1. That this appeal arises out of and is as a result of the separate and required Petition [SCWCC Reg. 67-1204(C)] filed by the Appellants as Petitioners with the SC Workers' Compensation Commission requesting approval of their attorneys' fees pursuant to Statute and Regulation in the matter of and ancillary to SCWCC File No. 1307922, Pamela Cartee, Claimant v. SC Judicial Department, Employer, and State Accident Fund, Carrier. As set forth hereinafter, this ancillary matter between the Appellants as Petitioners and the SC Workers' Compensation Commission is on appeal to this Court and not the aforementioned workers' compensation case and was properly captioned in the Notice of Appeal to this Court pursuant to the provisions of Rule 267(a), SCACR, "Captions".

2. That a copy of the Petition and the revised Petition filed with the Commission, the Respondent in this matter, by the Appellants is attached hereto and incorporated herein by

reference.

3. That by letter from the Clerk subsequent to the filing of the Notice of Appeal in this matter, which again Appellants believe was properly captioned in reference to this separate and distinct matter (SC Code §42-15-90; SCWCC Reg. 67-1204 and 1205) involving the Appellants as Petitioners and the Commission as the Respondent, Appellants were advised that Court Administration had revised the caption as set forth in the caption of this Motion. That letter is part of the Record of the Court.

4. That upon receipt of the Clerk's letter the Appellants filed a letter February 22nd setting forth the request that this matter be re-captioned and returned to the caption of the appeal as set out in the Notice of Appeal with the Court but also as important to the issue of the caption, setting forth the law in reference to the privacy of the parties and of claims before the Workers' Compensation Commission. The letter is attached to this Motion and is on file with the Court.

5. That this matter, again, results out of the Petition filed by the Appellants with the Commission requesting approval of attorneys' fees and the Commission's decision not to grant a portion of those attorneys' fees and concerns the disagreement as to the appropriate attorneys' fees to be awarded under the Act;

our Appellate Court decisions concerning the "Award" and when it attaches, and the Regulations in reference to the mandatory Petition and the "Award". The parties to the underlying workers' compensation action, the claimant, the employer, and the insurance carrier **have absolutely nothing** to do with this appeal and are not parties to the appeal. According to *Black's Law Dictionary*, Ex-Parte is to be applied to an application in a judicial proceeding by a person who is not a party to the proceeding but who has an interest in the matter which entitled him to make the application. "In Re" refers to "in the matter of" and is to be used where there are no adversary parties but some res (property) concerning which judicial action is to be taken. *Black's Law Dictionary*, 5th Edition, Revised. In this case, the Appellants filed their ancillary petition for approval of their attorneys' fees, thus their interest in the Petition, not as parties to (Ex-Parte) but in the matter of (In Re) Pamela Cartee v. SC Judicial Department and State Accident Fund; again, to which action they are not a party. Since the action concerns a disagreement over the attorneys' fees to be approved in which the Appellants have an interest but again in the matter of, (In Re), the workers' compensation claim, the appeal and the controversy arises out of the Petition, not the underlying workers' compensation claim.

6. That as is set forth hereinabove, in addition to the fact that the controversy arises out of the actual Fee Petition filed by the Appellants, because of the privacy provisions of the Workers' Compensation Act, and since the parties to the underlying workers' compensation action are not parties to the action that is the subject of this appeal, at a minimum the parties to the workers' compensation claim should not be listed in the caption for those reasons; and only the SCWCC number should be listed.

7. That pursuant to Rule 240(h), SCACR, the Movant/Appellants would respectfully request a hearing before one of the Judges of this Court to decide the appropriate caption in this matter.

WHEREFORE, the Appellants would submit that the appropriate caption is as stated in the Notice of Appeal with the possible exception of the fact that "Ex-Parte" should be added to the caption In Re the Fee Petition in the Workers' Compensation Commission assigned number.

WE SO MOVE.

Respectfully submitted:



Preston F. McDaniel, Esquire
SC Bar #3770
McDaniel Law Firm
1315 Elmwood Avenue
Columbia, SC 29201
(803) 771-7211

and

John M. Milling, Esquire
MILLING LAW FIRM
Post Office Box 519
Darlington, SC 29532
(843) 393-4083

Attorneys and Appellants

March 13, 2023

D S B U S E M E N T S T A T E E N T

RE: Pamela Cartee v. SC Judicial Dept.
WCC File No. 1307922

I. Receipts:

Total Compensation Paid: \$339,771.44

Check # 1037482-Commuted Value 12/1/17 \$179,077.14

II. Attorney's fees, costs and disbursements:

Attorney's Fees: Preston F. McDaniel (\$73,094.45)
John Millings

[Fee Based on Award PTD/MMI Date 10/12/16]
[TTD paid from 10/12/16 to]
[12/1/17= Approx 59 weeks x \$698.41/CR=]
[\$41,206.19; Commuted Value(12/1)=]
[\$179,077.14 + \$41,206.19= \$220,283.33]
[Total Value of PTD Award=\$220,283.33]
[Actual Fees =\$73,427.78]
[Requested =\$73,094.45]

Advanced Costs: Preston F. McDaniel:

Previously Reimbursed/Approved from Lump Sum (Reimbursed)
Of TTD Underpayment


III. Net Proceeds to Client after disbursements: \$105,982.69

Reviewed and submitted by:

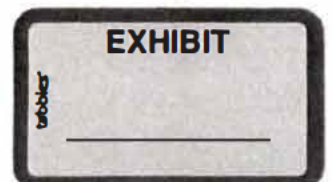

PRESTON F. MCDANIEL

Client certification and statement:

I hereby certify that I have received a copy of the Statement of Disbursements and that I have reviewed and understand the same. I further understand that any other outstanding costs and non-authorized medical expenses are my sole responsibility.


Pamela Cartee

Dated this 8th day of December, 2017



D I S B U R S E M E N T S T A T E M E N T

REVISED/CORRECTED AS TO FORMAT

RE: Pamela Cartee v. SC Judicial Dept.
WCC File No. 1307922

I. Receipts:

Total Compensation Paid: \$339,771.44

[Attorneys increased C/R from]
[\$514.39 to \$698.41=Diff. \$184.02]
[\$184.02x 500= \$92,010.00]

Final Award of Total and
Permanent Disability with Lifetime
Medical Care =

\$220,283.33

Check # 1037482- Residual Lump Sum
As of 12/1/17-\$179,077.14

II. Attorney's fees, costs and disbursements:

Attorney's Fees: Preston F. McDaniel (\$73,094.45)
John Millings

[Fee Based on Award PTD/MMI Date 10/12/16]
[paid weekly from 10/12/16 to 12/1/17,]
[Approx 59 weeks x \$698.41/CR=\$41,206.19;]
[Commutated Value(12/1) =]
[\$179,077.14 + \$41,206.19= \$220,283.33]
[Total Value of PTD Award=\$220,283.33]
[Actual Fees =\$73,427.78 Due (1/3 Award)]
[Requested =\$73,094.45]

Advanced Costs: Preston F. McDaniel:

Previously Reimbursed/Approved from Lump Sum
Of TTD Underpayment (Reimbursed)

III. Net Proceeds to Client after disbursements

From Final Award (41,206.19 + 105,982.69): \$147,188.88

Reviewed and submitted by:

PRESTON F. MCDANIEL

Client certification and statement:

I hereby certify that I have received a copy of the Statement of Disbursements and that I have reviewed and understand the same. I further understand that any other outstanding costs and non-authorized medical expenses are my sole responsibility.

Pamela Cartee

Dated this _____ day of _____, 2018.

EXHIBIT

RECEIVED

Mar 21 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE S.C. WORKERS' COMPENSATION COMMISSION

Case No: 2023-000187

RECEIVED

MAY 28 2026

SC Court of Appeals

Pamela Cartee, Claimant,

v.

SC Judicial Department, Employer, and State Accident Fund, Carrier, Defendants,

IN RE: Preston F. McDaniel, Esquire, and John M. Milling, Esquire, Appellants,

v.

South Carolina Workers' Compensation Commission, Respondent.

**MOTION TO DISMISS RESPONDENT SC WORKERS' COMPENSATION
COMMISSION AND MOTION FOR RELIEF OF COUNSEL**

Pursuant to Rules 202, 240, 264 and 265, SCACR, The South Carolina Workers' Compensation Commission ("the Commission") moves this Court to Dismiss the Commission as a party to this appeal and relieve J. Keith Roberts, Esquire, and Kristen S. McRee, Esquire, from being listed as counsel of record, based on the following grounds:

1. The Workers' Compensation Act gives the Commission the authority to determine all questions arising under the Act. S.C. Code Ann. § 42-3-180 (1976). The purpose of the Commission is to hear parties' disputes and decide them in a summary manner. S.C. Code Ann. § 42-17-40 (1976). The Commission is an "agency" authorized by law to determine



contested cases in accordance with the Administrative Procedures Act. S.C. Code Ann. § 1-23-310 (1976, as amended).

2. On March 6, 2018, the Single Commissioner issued an Order granting in part and denying in part Appellant's request for Attorney fees. On June 6, 2022, the Workers' Compensation Commission Appellate Panel majority affirmed the Single Commissioner's decision. On January 4th, 2023, the Commission issued an Order denying Appellants' Motion for Rehearing.
3. The Notice of Appeal Initial Letter dated February 9th, 2023, indicates that the Court of Appeals considers the S.C. Workers' Compensation Commission the Respondent and party to this appeal and lists the undersigned as counsel of record.
4. The Workers' Compensation Commission is not a party to this appeal. The Commission served in a judicial capacity as the Administrative Tribunal before whom a dispute was decided. The Commission issued its final order in accordance with § 1-23-380 and § 42-17-60. By law, the Commission's involvement in this matter has ended. It is judicially immune from suit. *See Plyler v. Burns*, 373 S.C. 637, 645 (2007) (Judges are immune from litigation unless: (1) they did not have jurisdiction to act; (2) the act did not serve a judicial function; or (3) the suit is for prospective, injunctive relief only."); *McEachern v. Black*, 329 S.C. 642, 661(citing *Bradley v. Fisher*, 80 U.S. 335, 348 (1871)) ("Without judicial immunity, losing parties would vent their ire on the presiding judge" and "the protection essential to judicial independence would be entirely swept away.").
5. Not only is the Commission, as the adjudicative body, not a party to this appeal, but Appellant's Notice of Appeal, filed February 3, 2023, improperly and unilaterally attempts to join the South Carolina Workers' Compensation Commission as a party Defendant. The

Commission is not the Respondent or otherwise involved in the above-referenced appeal. This is not an appropriate designation of parties in accordance with Rule 202, SCACR. The Commission was added by the Clerk of Court due to Appellants' Notice of Appeal. This had the practical effect of joining the Commission as a party.

6. There has been no court order adding the Commission to this claim. Therefore, the Commission seeks an order dismissing it and relieving its counsel from participation in this appeal for being improperly joined. *See* Rule 19(a), SCRCR (joinder is not mandatory as complete relief can be accorded among those already parties and the Commission claims no interest relating to the subject of the action); Rule 20, SCRCR (joinder of Defendant Commission is not permissive as no right to relief has been asserted against it).
7. Furthermore, joinder of the Commission as a party was not argued before the Appellate Panel and thus is not preserved on appeal. *See Pikaart v. A & A Taxi, Inc.*, 393 S.C. 312, 324 (2011) (“A matter may not be presented for the first time on appeal; rather, it must have been both raised to and ruled upon by the court below.”).
8. The law does not call upon the Commission to defend its final judicial decision on appeal to the courts. The Commission is the “Administrative Tribunal” as defined in Rule 202(b)(2), SCACR. Appeal from a final decision of the Commission should be taken to the Court of Appeals in the same manner as an appeal from a final decision from a lower court or any other administrative tribunal. The following authorities support this position:

It is plain from this section [Code 1962 § 72-356]¹ that it was the intention of the legislature to provide for the disposition of a claim made to the Industrial Commission by the orderly process of a hearing before a single Commissioner; a review, by the full Commission, of the single

¹ S.C. Code Ann. § 42-17-60 was amended in 2007 to allow appeals from final decisions of the Commission to be taken directly to the Court of Appeals, rather than the Court of Common Pleas. 2007 S.C. Act No. 111, Pt I, § 30, eff July 1, 2007, applicable to injuries that occur on or after that date.

Commissioner's award; an appeal from an award by the full Commission to the court of common pleas; and an appeal from that court to the Supreme Court.

Greer v. Greenville County, 245 S.C. 442, 141 S.E.2d 91 (1965). See also Riddle v. Fairforest Finishing Co., 198 SC 419, 18 SE2d 341 (1942); Walsh v. U. S. Rubber Co., 238 S.C. 411, 120 S.E.2d 685 (1961).

Where it was contended that an appeal from the Commission should be treated the same as if it had come from a lower court it was held that upon consideration of the whole Act and its drastic departures from the common law which it displaced, the answer is patent that the procedure upon appeal must not be permitted to conflict with the novel substantive law which the Act contains.

Schwartz v. Mount Vernon-Woodberry Mills, 206 S.C. 227, 33 S.E.2d 517(1945).

9. Furthermore, there is no relief which can be awarded to Appellants from the Commission.

Should Appellants prevail on having the judicial decision of the Commission overturned, they would be awarded \$13,461.76. This amount would be distributed to them from Appellants' trust account. Should the Court of Appeals uphold the decision of the Commission, that amount will be distributed from the Appellants' trust account to the injured worker, Pamela Cartee. There is no statutory authority entitling the Commission to the fees in question or requiring that the Commission itself hold and disburse the fees in question.² See S.C. Code Ann. § 42-15-90 (2012, as amended) ("Attorney fees, physician fees, and hospital charges for services under this title are subject to the approval of the Commission."); S.C. Code Regs. 67-1204A (2010, as amended) ("An attorney shall report and obtain approval of any fee for services rendered in a workers' compensation claim . . ."); Rule 1.5(a), RPC ("A lawyer shall hold property of clients . . . that is in a lawyer's possession in connection with a representation separate from the lawyer's own property.").

Therefore, there is no relief that the Commission itself may provide to the Appellants.

² Where a deceased employee leaves no dependents or partial dependents, S.C. Code Ann. § 42-9-140(D) permits the Commission to receive the commuted value of remaining benefits and expend them pursuant to § 42-9-400. However, this provision is inapplicable to these facts.

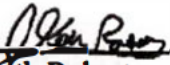
10. Additionally, the Court of Appeals lacks jurisdiction to adjudicate this appeal if the Commission is added as a party defendant. The Court of Appeals has such jurisdiction as the General Assembly prescribes by law. S.C. CONST. ART. V, § 9. The General Assembly vested the Court of Appeals with only appellate jurisdiction in appeals from a final decision of the Workers' Compensation Commission. S.C. Code Ann. § 14-8-200 (2007, as amended). The Commission takes no position on the Court's ability to hear the merits of this appeal. However, a ruling that binds the Commission as a party defendant under the facts of this case is an unconstitutional exercise of its authority as against the Commission.
11. Because there is no legal authority permitting a portion of a Claimant's recovery to be remitted to the Commission there is no life, liberty, or property interest of the Commission being considered by the Court of Appeals. The only legally cognizable interest being adjudicated by the Court of Appeals is the property interest in \$13,461.76 between Ms. Cartee and Appellants.
12. Given that there is an inherent conflict of interest between Ms. Cartee and her attorney, a Guardian ad Litem or independent attorney may be in the best position to represent the interests of this injured worker.
13. Further, Mr. Roberts and Mrs. McRee move that the South Carolina Workers' Compensation Commission be dismissed as a party to this action and that they be relieved as counsel of record in this matter. Mr. Roberts and Mrs. McRee did not notice the court of their appearance but were unilaterally named as counsel of record by Appellants. There is no legal authority that allows an Appellant to choose which attorneys must represent a named Respondent.

CONCLUSION

The Commission is not a proper Respondent to an appeal of its final judicial decision. The Commission moves to be removed as Respondent and the undersigned move to be relieved as counsel of record.

Respectfully submitted,

**THE SOUTH CAROLINA WORKERS' COMPENSATION
COMMISSION**



J. Keith Roberts
SC Bar No. 100735
Kristen S. McRee
SC Bar No. 74690
1333 Main Street, Suite 500,
P.O. Box 1715
Columbia, South Carolina 29202-1715
(803) 737-5701

March 21, 2023

DATE

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA
SC Workers' Compensation Commission
Appellate Panel

Appellate Case No. 2023-000187

RECEIVED

Mar 29 2023

SC Court of Appeals

RECEIVED

MAY 28 2026

SC Court of Appeals

Pamela Cartee, Claimant

v.

SC Judicial Department, Employer, and State Accident Fund,
Carrier, Defendants,

IN RE:

Preston F. McDaniel, Esquire, and
John M. Milling, Esquire,Appellants,

v.

SC Workers' Compensation Commission,Respondent.

**RETURN TO MOTION TO DISMISS RESPONDENT SC WORKERS' COMPENSATION
COMMISSION AND MOTION FOR RELIEF OF COUNSEL**

By way of reply to the Motion to Dismiss and to be relieved
as Counsel, the Appellants would submit to the Court that:

1. The caption of this matter as set out above is incorrect
and is currently under review pursuant to the Motion to change the



caption. This Motion points out again the reason that this matter needs to be recaptioned because this Motion and the appeal arise out of the Petition of the Appellants to the Commission requesting approval of their attorneys' fees by the Commission, **not the underlying workers' compensation case to which neither the Commission nor the Appellants were parties.** As set forth hereinafter, both are the appropriate parties to this appeal. The Commission is the party to whom the Appellants and all attorneys in any workers' compensation case are required to submit their separate Petition for approval; and who is the party under the Act charged with the responsibility for approving their fees in accordance with law; and thus is the party Respondent to this appeal as to whether their decision on the Fee Petition is in accordance with law and fact.

2. While the Appellants will set forth a substantive reply hereinafter, the Appellant Preston F. McDaniel, who is filing this Return for both Appellants, verily believes that this is probably the most frivolous pleading that he has ever seen in his 46 years of practicing law. Apparently Counsel for the Respondent is unaware of the multiple cases wherein the Commission has been before this Court as a party in reference to matters of fact and law in reference to its authority to administer the Workers'

Compensation Act. See for example, and almost identical and on all fours with this appeal, is the case and the decision of the Supreme Court in SC Ambulatory Surgery Center Assoc. v. SC Workers' Compensation Commission, Respondent, 389 S.C. 390 699, S.E.2d 146 (2010). (That decision involved questions of law under the Commission's authority granted to it by statute under SC Code §42-15-90 as the party charged with regulating the medical fees charged claimants by physicians and hospitals and their authority to approve those fees and charges. That decision interestingly cites as a basis for its decision in reference to the fact that the Commission may not exceed the authority granted to it by statute; the case of Bazzle v. Huff, 319 S.C. 443, 462 S.E.2d 273 (1995), holding an administrative agency has only such powers as has been conferred by law and must act within the authority granted for that purpose.)

By way of specific response to the Commission being a party and the party to this appeal, SC Code §42-15-90 specifically grants the Commission as noted above the authority to approve attorney's fees. Subsection (A) specifically provides and starts with, "Attorney's Fees ... under this Title are subject to the approval of the Commission" The General Assembly has further limited the Commission's authority to regulate fees by not only

requiring implementation of Regulations promulgated in accordance with the Administrative Procedure Act but also requiring that any proposed Regulations

"shall have before promulgation received approval of the Judiciary Committees of the Senate and House of Representatives and also by concurrent resolution of the General Assembly."

The Supreme Court after determining in Bazzle v. Huff, supra, that prior to the implementation of Regulations by the Commission in accordance with both of these sections, that the Commission had no statutory authority, even though they were requiring attorneys to seek approval of fees, to regulate the fees of attorneys; the Court noted that during the pendency of that appeal that the Commission had adopted Regulations in accordance with the statutes giving it the authority to regulate attorney's fees; i.e., the party responsible for approval.

3. Of course, the freedom of contract guaranteed by both the US Constitution and the SC Constitution is not unlimited and is generally subordinate to public policy. See for example: Nationwide Mutual Ins. Co. v. Rhoden, 398 S.C. 393, 728 S.E.2d 477 (2012). In reference to attorney fee contracts, they are further limited on an ethical basis and must be in compliance with the Supreme Court Rules in determining a reasonable fee, Rule 1.5, RPC, Rule 407, SCACR, and in the matter of attorneys fees in a

workers' compensation case that freedom is further limited by being subject to the approval of the SC Workers' Compensation Commission. Thus, the Commission is the party charged with the responsibility under Act for reviewing and approving attorney's fees. This appeal involves an issue of law and fact as to whether or not the fee requested was in accordance with law and whether or not the Commission erred by not approving the fee as submitted. Therefore, again and being intentionally redundant, the Commission is the party Respondent, and the Appellants are the party Appellants having filed the Attorney Fee Petition requesting approval of their fees in the underlying workers' compensation action to which neither they nor the Commission are a party.

4. The Commission was properly served with this appeal as the Respondent to the appeal, SCACR Rule 203(d)(2)(B)(i) and the two attorneys listed are the General Counsel and Staff Counsel for the Commission. General Counsel and Staff Counsel were Counsel for the Commission below and both wrote Orders for the Commission at its request that are the subject of this appeal. General Counsel and Staff Counsel must be unaware of SCACR Rule 264(a) which provides that the attorneys for the parties below, "shall be deemed" the attorneys of the same parties in the Appellate Court, "until removal is approved" and notice is given as provided for in

that Rule. While generally all appeals in agency matters are handled by the Counsel of the agency, whether or not the Commission seeks to employ outside Counsel in accordance with Regulations requiring approval by the SC Attorney General's Office where an agency has internal staff and whether or not Counsel is substituted is not an issue for the Court at this time.

5. Generally, as to the allegations set forth in #4, #5, #6, #7, #9 and #9, first the Appellants would point out that there are numerous factual allegations contained in the Motion, but yet there is no Affidavit attached to the Motion to support those factual allegations as required by SCACR Rule 240(c)(3). Again, this matter is an appeal concerning the Appellants' Petition requesting approval of their attorney's fees, which they filed under law with the Commission as the party charged with the responsibility of approving attorney's fees under law in a workers' compensation matter in all underlying workers' compensation claims. More importantly and as Counsel knows the issue of the Commission being the Respondent has already been litigated in the dispute between the Appellants and the "current" Commission as the party charged under law with the responsibility of approving attorney's fees in a workers' compensation matter. Pursuant to the Affidavit attached to this Return concerning this

factual allegation in the matter of Preston F. McDaniel and John Milling, as Appellants in this matter and the Commission as the Respondent party in this matter was mediated under the Circuit Court Rules. In support of both the recaptioning of this matter before the Court and that the Commission is the party Respondent to this matter, as part of the Mediation Settlement Agreement, the Appellants agreed to dismiss their Declaratory Judgment Action seeking the same relief as this appeal that they had filed with the Circuit Court and agreed to proceed with an appeal before the Commission and this Court on those issues. The caption of that Declaratory Judgment Action was as follows:

"Preston F. McDaniel and John Milling, Plaintiffs v. SC Workers' Compensation Commission, Defendant."

The Motion is cavil and beyond belief.

WHEREFORE, the Appellants would ask that the Motion be dismissed; and

The Appellants would further ask that the Court to review and determine whether there is any substantive basis for the Motion, and if finding none, make a determination as to whether or not appropriate referral should be made under the Frivolous Proceedings Act and the Rules of this Court; and

Would request such further relief as the Court deems just and appropriate. Obviously from a review of the Record before the

Court and the amounts involved and the time expended by Appellants, this appeal by the Appellants involves more than money and involves a matter of principle to the Appellants.

Respectfully submitted:



Preston F. McDaniel
SC Bar #3770
McDaniel Law Firm
1315 Elmwood Avenue
Columbia, SC 29201
(803) 771-7211

ire

and

John M. Milling, Esquire
MILLING LAW FIRM
Post Office Box 519
Darlington, SC 29532
(843) 393-4083

Attorneys and Appellants

March 29, 2023

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED

Mar 29 2023

APPEAL FROM SOUTH CAROLINA
SC Workers' Compensation Commission
Appellate Panel

SC Court of Appeals

Appellate Case No. 2023-000187

Pamela Cartee, Claimant

v.

SC Judicial Department, Employer, and State Accident Fund,
Carrier, Defendants,

IN RE:

Preston F. McDaniel, Esquire, and
John M. Milling, Esquire,Appellants,

v.

SC Workers' Compensation Commission,Respondent.

AFFIDAVIT OF PRESTON F. McDANIEL

I, Preston F. McDaniel, having been DULY AND PROPERLY
SWORN, do depose and state the following:

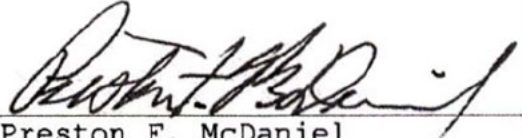
1. That he is one of the two Appellants in this matter
and was lead Counsel before the SC Workers' Compensation
Commission and submitted the Attorney Fee Petition that is the
basis for this appeal before the Court.

2. That as part of the attempt to resolve the dispute over the fee as requested for approval by the Appellants and the Respondent's refusal to approve part of the fee as requested, the Appellants filed a Declaratory Judgment Action in the Darlington County Circuit Court with the caption of that document being as follows:

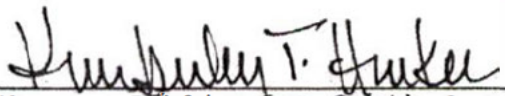
"Preston F. McDaniel and John M. Milling,
Plaintiffs, v. SC Workers' Compensation Commission,
Defendant.

3. That subsequently the parties to that action pursuant to the Circuit Court Rules attended mediation and as part of the mediation agreement, the Plaintiffs agreed to dismiss that declaratory judgment action and to proceed with the appeal process through the normal appellate process in reference to that action and the dispute over the fee to be awarded to the Appellants in the underlying workers' compensation case.

FURTHER THE AFFIANT SAYETH NOT.


Preston F. McDaniel

SWORN TO BEFORE ME this
29th day of March, 2023.


Notary Public for South Carolina L.S.
My Commission Expires: 6-19-30

RECEIVED

Apr 03 2023

SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

APPEAL FROM THE S.C. WORKERS' COMPENSATION COMMISSION

Case No: 2023-000187

RECEIVED

MAY 28 2026

SC Court of Appeals

Pamela Cartee, Claimant,

v.

SC Judicial Department, Employer, and State Accident Fund, Carrier, Defendants,

IN RE: Preston F. McDaniel, Esquire, and John M. Milling, Esquire, Appellants,

v.

South Carolina Workers' Compensation Commission, Respondent.

**SC WORKERS' COMPENSATION COMMISSION'S RETURN TO APPELLANTS'
NOTICE OF MOTION AND MOTION TO DETERMINE THE CORRECT CAPTION
OF THE CASE PURSUANT TO SCACR**

By way of return, the SC Workers' Compensation Commission asserts the following:

1. The Commission has filed a Motion to Dismiss the Commission as a party to this appeal. Pending the outcome of that Motion, the Commission takes no position on the correct captioning of this matter.
2. Respondents have plead no grounds which would justify the Court deviating from the default standard under Rule 240(h) SCACR to decide motions without oral argument.

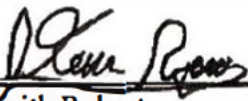


CONCLUSION

Appellants have not shown sufficient legal authority to deviate from the SC Appellate Court Rules. The caption should remain, pending the outcome of the Commission's Motion to Dismiss and Motion to be Relieved as Counsel, filed March 29th, 2023.

Respectfully submitted,

THE SOUTH CAROLINA WORKERS' COMPENSATION
COMMISSION



A. Keith Roberts
SC Bar No. 100735
Kristen S. McRee
SC Bar No. 74690
1333 Main Street, Suite 500,
P.O. Box 1715
Columbia, South Carolina 29202-1715
(803) 737-5701

April 3rd, 2023

DATE

RECEIVED

Apr 04 2023

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE S.C. WORKERS' COMPENSATION COMMISSION

Case No: 2023-000187

RECEIVED

MAY 28 2026

SC Court of Appeals

Pamela Cartee, Claimant,

v.

SC Judicial Department, Employer, and State Accident Fund, Carrier, Defendants,

IN RE: Preston F. McDaniel, Esquire, and John M. Milling, Esquire, Appellants,

v.

South Carolina Workers' Compensation Commission, Respondent.

**SC WORKERS' COMPENSATION COMMISSION'S REPLY TO APPELLANTS'
RETURN TO MOTION TO DISMISS RESPONDENT SC WORKERS'
COMPENSATION COMMISSION AND MOTION FOR RELIEF OF COUNSEL**

By way of brief reply, the SC Workers' Compensation Commission asserts the following:

1. The Workers' Compensation Commission cannot be a party to a case in which it renders a judicial decision. The Commission is statutorily required to approve attorney fees in workers' compensation cases before an attorney receives payment of their fee. S.C. Code Ann. § 42-15-90(A)(2012, as amended). While acting in a judicial capacity a commissioner¹ shall, inter alia, "hear and decide matters assigned to the judge except those in which disqualification is required." Rule 3B(1), CJC, Rule 501, SCACR. The Code of Judicial Conduct specifically requires a judge

¹ Commissioners, though they are not Article V judges, are nonetheless bound by the Code of Judicial Conduct. See S.C. Code Ann. § 42-3-250 (2005).



to disqualify him or herself when the judge is a party to the proceeding. Rule 3E(1)(d)(i), CJC, Rule 501, SCACR. If, as the appellant suggests, the Commission were a party to attorney fee petition hearings, the Commissioners would all be ethically disqualified from hearing these proceedings despite the clear legislative directive that the Commission approve fees as a discretionary decision following independent and impartial review. The Commission has no legally cognizable interest in the outcome of this appeal of an attorney fee petition award and is not a party.

2. Appellants cite S.C. Ambulatory Surgery Center Ass'n, et al. v. SC Workers' Compensation Commission as support for denying the Commission's Motion to be dismissed as a party. S.C. Ambulatory Surgery Center Ass'n, et al. v. SC Workers' Compensation Commission, 389 S.C. 380, 699 S.E.2d 146 (2010). ASC is distinguishable from the case on review. It is undisputed that the Commission may be sued as a party defendant for its administrative actions.² It is also undisputed that this court would properly have jurisdiction over such a claim. ASC involved the Commission acting in its administrative capacity and was not a review of an award or other judicial decision of the Commission.

3. As a corollary to Appellant's assertion that the Commission is a party to this claim, Appellants also assert that the undersigned attorneys, serving in a judicial law clerk capacity in this matter, represent the Commission as a party litigant pursuant to Rule 264(a), SCRCPP. That Rule provides "The attorneys and/or guardians ad litem of the respective parties in the court below shall be deemed the attorneys and guardians of the same parties in the appellate court until withdrawal is approved and notice is given as provided in this Rule."

² The South Carolina Workers' Compensation Commission is composed of a judicial department and an administrative department. S.C. Code Ann. § 42-3-10 (1986, as amended).

4. As previously alleged, the Commission was not a party litigant to its own Appellate Panel proceeding and, therefore, the undersigned were not attorneys in the court below under the rule. Neither Mr. Roberts nor Mrs. McRee made an appearance, filed letters of representation, or participated as litigants in the matter under review. The undersigned were merely court personnel as defined in the Terminology, CJC, Rule 501, SCACR, acting in accordance with Rule 3B(7)(c), CJC, Rule 501, SCACR. Therefore, they should be relieved as counsel.

5. Finally, at paragraph 5 of their Return, Appellants appear to confuse and attempt to combine this case under review with a separate and distinct lawsuit brought by Appellants against the State of South Carolina which is not under review.

6. On or about April 19th, 2018, Preston F. McDaniel and John M. Milling, acting *pro se*, filed a Motion for Temporary Restraining Order and a Declaratory Judgement Action naming the Commission as Defendants, for which Civil Action Number 2018-CP-16-0034 was assigned. That matter concluded pursuant to a Mediation Agreement executed on April 22nd, 2022. That Mediation Agreement resolved Civil Action No. 2018-CP-16-0034 in its entirety. Further, the Mediation Agreement contained a confidentiality clause whereby the parties agreed to keep the terms of the agreement confidential. It has no applicability to the appeal from the Workers' Compensation Commission's award currently pending before the Court of Appeals. The only matter before the Court of Appeals is Appellant's appeal from the final award of the Commission in WCC File No. 1307922.

CONCLUSION

Respondent has shown no legal authority that requires the Commission, an Administrative Tribunal, to participate in an appeal to the courts of its final decision it made in its judicial capacity.

The Commission moves to be removed as Respondent and the undersigned move to be relieved as counsel of record.

Respectfully submitted,

THE SOUTH CAROLINA WORKERS' COMPENSATION
COMMISSION



J. Keith Roberts
SC Bar No. 100735
Kristen S. McRee
SC Bar No. 74690
1333 Main Street, Suite 500,
P.O. Box 1715
Columbia, South Carolina 29202-1715
(803) 737-5701

April 4th, 2023

DATE

THE STATE OF SOUTH CAROLINA
In the Supreme Court

RECEIVED

MAY 28 2026

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission

SC Court of Appeals

Appellate Case No. 2023-001373

Pamela Cartee, Claimant,

v.

SC Judicial Department, Employer,
and State Accident Fund, Carrier,

In Re:

Attorney's Fee Petition of Preston F. McDaniel,
Esquire, and John M. Milling, Esquire,Appellants,

v.

SC Workers' Compensation Commission,Respondent.

RETURN TO MOTION FOR CERTIFICATION

By way of Return to the Respondent's Motion filed pursuant to Rule 204(b) and 240, SCACR, the Court should deny the Motion because there is absolutely no reason for which Certification is normally granted involved in this appeal filed by the Appellants as will be further detailed in the Memorandum attached hereto and



incorporated herein by reference, and specifically there is no "issue of significant public interest", or "legal principle of major importance" involved in the appeal.

SYNOPSIS OF THE RETURN

The only issue before the Court of Appeals is whose interpretation of the wording of the Regulation is correct as a matter of law; see Initial Brief of Appellants. (Return, Exhibit 1).

As set out in the Appellants' Initial Brief filed with the Court of Appeals, attached hereto as Exhibit 1, pursuant to the Mediation Agreement reached in the Declaratory Judgment action, Preston F. McDaniel and John M. Milling, Plaintiffs v. SC Workers' Compensation Commission, Defendant, In Re: SCWCC File No. 1307922, Pamela Cartee, Employee-Claimant v. SC Judicial Dept., Employer and the State Accident Fund, Carrier, Defendants¹, which originally sought a declaration of whose interpretation was correct, the parties agreed that the Commission would serve its original May 30, 2018 Decision and would entertain a timely Motion for Rehearing; that the issue on Rehearing and appeal would be

¹ Respondent first abrogated the confidential ADR Agreement in the Motion filed with the Court of Appeals seeking to dismiss the Respondent as the Party Respondent to the appeal. Appellants referred to the general terms of the Agreement to which the Respondent was a party in their Return and in their Brief pursuant to Rule 8(c)(4), SCADR.

limited to the sole issue of Appellants' request for an Award of the portion of the original attorney's fees requested for approval that was not approved; and that in exchange the Plaintiffs would dismiss their Declaratory Judgment action with prejudice.

The original Declaratory Judgment action filed April 17th was amended on August 24, 2018 after the Remand to the Full Commission for review and decision which was entered May 30, 2018. The Amended Complaint added the Full Commission proceedings and sought a declaration on the attorney's fee issues and on numerous procedural and substantive violations of Regulations, Statutes and due process and equal protection. See for example: McCaskill Decision, Exhibit 10, 3/16/18 and the different Full Commission ("FC") Decision, Exhibit 14, 5/30/18 versus the Vote Sheets, Exhibit 16, and the dictates of SCWCC Reg. 67-709(E)(2) - four Commissioners voted simply to affirm the McCaskill 3/6/18 Decision; compliance with Regulation and why the new Decision?; an Agency must follow its Regulations. (Amended Complaint Return attached as Exhibit 2, not submitted by Respondent).

Also after the May 30th FC Order and a Motion for Rehearing was denied, the Appellants also appealed to the Court of Appeals captioned as: Preston F. McDaniel and John M. Milling, Appellants v. SC Workers' Compensation Commission, Respondent, In Re: the matter of the Fee Petition in SCWCC File No. 1307922 (captioned due to privacy concerns for the parties to the underlying Workers'

Compensation Commission case not parties to appeal; see §42-19-40; §42-3-195; §42-3-210), but was recaptioned by the Court of Appeals (Exhibit 19) to the current caption, which is the same caption as the original re-captioned appeal which was dismissed by the Court of Appeals based on the Motion to Withdraw the Appeal filed by the Appellants.

Now, for the first time the Commission in the present appeal filed a Motion to Dismiss the Commission as a party and for General Counsel to be relieved as Counsel on March 21, 2023, with a Return filed March 29, 2023 (Return Exhibits 3, 4) which was denied by Order of the Court of Appeals on May 26, 2023.

So, the Court will find:

1) no document requesting that the Commission be dismissed or alleging the Commission was not the proper Respondent to the original 2018 appeal filed in the Court of Appeals; and

2) no document alleging or moving to dismiss the Commission from the Declaratory Judgment action on the basis the Commission was not the party Defendant or adding any other party Defendant to the dispute; and

3) that Appellants' Brief filed in the Court of Appeals is limited per agreement to the singular issue of the dispute as a matter of law between the current Commission and Appellants over the interpretation of the wording of SC Code Ann. Reg. 67-1205(C)(2) and Appellants' entitlement to the disallowed fees

under what they believe to be the correct and time honored interpretation and application; and

4) that the bases for the Motion to Dismiss the Commission as a party which was denied by the Court of Appeals is mainly regurgitated in the Motion for Certification; and

5) that the Motion for Certification seeks to address many issues outside of the agreed upon issue of interpretation/ entitlement to attorney's fees, which is the sole subject of the appeal to the Court of Appeals. Many of the issues raised in the Motion for Certification address from the Respondent's perspective, the same issues raised in the Declaratory Judgment action filed by Appellants as violations of procedure, substantive law, due process, and equal protection. (See Return, Exhibit 2).

By way of Return to the numbered paragraphs of the Motion, and as more fully set forth in the Return Memorandum, the Appellants would respectfully show as follows:

1. As to paragraph 1, this is not an Attorney Fee Dispute but in fact is an appeal based on the withdrawn 2018 appeal (same parties to this appeal), the Declaratory Judgment action (same parties), and Mediated Settlement Agreement (same parties) wherein it was agreed that the appeal would be limited to a decision on the interpretation of the Regulation as to the Attorney's Fees to which the Appellants are entitled as a matter of law under the SCWCC attorney fee Regulations, the Statutes, and case law

decisions that have determined maximum medical improvement, temporary versus permanent "Award" and date of attachment, as applied to the words of the Regulation under the opinions of this Court and the Court of Appeals.

Under the administrative responsibilities of the SC Workers' Compensation Commission (SCWCC), the Commission under SC Code §42-15-90 is given the authority to regulate the fees charged by attorneys, and physicians and medical providers and is charged with the administrative responsibility to adopt Regulations in reference to those fees under SC Code §42-3-30 ("The Commission shall promulgate all Regulations relating to the administration of the workers' compensation laws of this State ..."); and based on the decision of this Honorable Court (holding no authority over attorney's fees without Regulations) and SC Code §42-3-185, the Commission is charged with the responsibility of promulgating specific policies and procedures to administer the provisions of SC Code §42-15-90 wherein §42-3-185 provides that those Regulations shall become effective only when such implementation is accomplished according to the special provisions of that section. In that regard, the SCWCC has adopted Regulations 67-1201 through 1207. Under its administrative responsibility pursuant to the Statute and Regulations adopted thereunder, and in accordance therewith, the dispute in this appeal is simply over the legal interpretation of the wording of one of the Regulations and the

fee to which the Appellants are entitled under that Regulation. Upon review of the Motion and this Return including the attached documents, the Court will find and deny the Motion because this is a very simple issue over a disagreement between the current Commission and the attorneys, Appellants, involving the interpretation of the language of a Regulation and the applicable Statutes and case law in reference to the SC Workers' Compensation's administrative responsibility to approve or disapprove physicians and medical providers fees, and attorney's fees pursuant to its Regulations. It is the Appellants' position that the Fee Petition submitted was identical to many others submitted in the past; was in accordance with law; and that the Appellants were entitled to the entire fee requested. The current Commission's interpretation is based on what the Appellants would submit is a new, unnoticed, unpublished, unadopted interpretation by the current Commission concerning the language of the Regulation and that under that interpretation the Appellants are not entitled to the portion of the fee that was not approved by the Commission. Again, under its administrative responsibility to administer the Act and under its authority to regulate attorney's fees pursuant to and under the specific requirements of the Regulations.

2. In response to paragraphs 2 and 3, the Appellants would submit the appeal was properly served on the Respondent and that the claimant, the employer, or the insurance carrier are not Respondents to this action. In fact, as will be set out in the Memorandum, the carrier and employer are never parties to the ancillary administrative proceeding involving the approval of Claimant's Counsel's attorney's fees under the administrative responsibility of the Commission to regulate all attorney's fees.

3. In reference to paragraphs 4, 5, 6 and 7, those are accurate statements by the Respondent but again there is no issue of significant public interest or legal principle of major importance that would allow for Certification or require Certification.

4. In reference to paragraph 8 under Summary and in reference to subparagraph (a), this is not an appeal from the Administrative Tribunal Judicial Decision. This is an appeal from an administrative decision under its authority to administer the Workers' Compensation Act and under that authority pursuant to Regulations to administratively approve or disapprove fees for physicians, surgeons, medical providers and attorney's fees pursuant to Regulation. The Commission is not called upon to, "defend its own Judicial Decision"; that is a fallacy as will be pointed out in the Memorandum. Counsel for the Respondent also tries to morph General Counsel and Staff Counsel into being,

"court personnel who acted as judicial law clerks for the Commission. The Commission is an Administrative Agency [see SC Code §1-23-310(2)] and has two (2) divisions; administrative and judicial as delineated under §42-3-95. The Commission's quasi-judicial responsibilities are set out under §42-3-20 which includes all contested cases, approval of settlements, and any matter that comes before the Department for "judicial disposition". General Counsel and Staff Counsel are General Counsel and Staff Counsel for the whole Commission and oversee all matters in reference to the administrative duties of the Commission. SC Code §42-3-90 entitled "Divisions of Administrative Department" includes in the divisions specifically delineated as administrative, the Division of Claims and Statistics. SCWCC Reg. 67-1204 in reference to attorney contingency fee petitions, as involved in this appeal, shall be submitted to the "Commission's Claims Department".

As to paragraph 8(b), the Movant/Respondent is correct, The Claimant, the Employer and the Carrier are not parties to this appeal. This Court has specifically held as will be set out in the Memorandum, that the Employer and Carrier are not parties to the submission of any fee requests as part of the Commission's administrative responsibilities to oversee, and pursuant to Regulation, to either approve or disapprove attorney's fees submitted for approval. As set out in the Exhibits and as the

Respondent well knows, Ms. Cartee, the Claimant in the underlying workers' compensation case, has waived appearance repeatedly and has asked the Commission to approve the disputed attorney's fees; and as the Respondent also knows, has been advised of and has been served with all Orders and knows that upon final determination of the underlying dispute over the interpretation of the Regulation and a final determination is reached on the fee to which the Appellants are entitled (while not necessary the Commission has ordered that the Appellants will disburse the balance of the attorney's fees), that the disputed fees are being held in Trust and will be disbursed pursuant to the final resolution Order.

(Return Exhibit 1).


As to paragraph 8(c), while the fallacy of this allegation or statement is patently apparent on its face since the Commission under its interpretation did not approve a portion of the attorney's fees and since by its own Exhibit as will be further set out in the Memorandum, knows that the disputed portion of the attorney's fees are being held in Appellants' Trust Account, the Respondent further knows that the Respondent has ordered that upon the final resolution Order that the Appellants are ordered to disburse the \$13,461.76 to the Claimant within thirty (30) days. While the Appellants cannot believe this argument or statement, the Commission decides what attorney's fees and in what amount,

again pursuant to Regulation, Statute, and case law to which the Appellants are entitled. The interpretation of the wording is the dispute as a matter of law.

As to paragraph 8(d), the Appellants totally disagree with the statement that there is an importance to these "threshold issues" because again, this is simply a matter of law as to a legal interpretation of the Regulation in accordance with Statute and case law decisions by this Honorable Court and the Court of Appeals. Either the Appellants are entitled to the disputed funds as a matter of law, or they are not, and those funds will be disbursed to the Claimant or the Attorneys upon final resolution of that issue. As to the extensive prior litigation and that being a reason for somebody appealing the Court of Appeals Decision, that is just an assumption. In fact, the Appellants would again offer as they have previously on numerous occasions, to agree to a remand of this matter to any Circuit Court Judge in the State, or retired Court of Appeals Judge or Supreme Court Justice that is sitting as a Judge, and the Appellants will abide by the legal opinion of that Judge or Justice.

The Appellants, Respondents to the Motion, would submit the following Memorandum in support of the Return.

Respectfully submitted:



Preston F. McDaniel, Esquire
SC Bar #3770
McDaniel Law Firm
1315 Elmwood Avenue
Columbia, SC 29201
(803) 771-7211

and

John M. Milling, Esquire
MILLING LAW FIRM
Post Office Box 519
Darlington, SC 29532
(843) 393-4083

Attorneys and Appellants/Respondents

September 28th, 2023

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission

Appellate Case No. 2023-001373

Pamela Cartee, Claimant,

v.

SC Judicial Department, Employer,
and State Accident Fund, Carrier,

In Re:

Attorney's Fee Petition of Preston F. McDaniel,
Esquire, and John M. Milling, Esquire,Appellants,

v.

SC Workers' Compensation Commission,Respondent.

**AFFIDAVIT OF
PRESTON F. MCDANIEL**

I, Preston F. McDaniel, having been duly and properly sworn
do depose and state:

1. That I am co-counsel with John M. Milling who associated
me to represent Ms. Pamela Cartee in her workers' compensation

claim as referenced above. At all times before the Commission and in all Courts I have been lead counsel on all actions involving in the underlying workers' compensation case, the Declaratory Judgment action, initial Appeal which was dismissed per our Motion to withdraw the Appeal and in the present Appeal filed with the SC Court of Appeals.

2. That the Exhibits Appellants have filed as part of this Return by necessity are in addition to those filed by the Respondent and all of the factual statements and/or procedural history referred to in this Return are contained either in the Exhibits filed by the Respondent with their Motions to Stay and for Certification, or in the Exhibits filed by the Appellants with the Return to the Motion.

3. That all of the Exhibits referred to in and attached to this Return are contained within the records maintained by my office as part of the workers' compensation claim file of Ms. Pamela Cartee.

4. That further, the vast majority of the statements and procedural history are contained within the Statement of the Case and Statement of Facts as set forth in the Initial Brief of Appellants, Preston F. McDaniel and John M. Milling, and the Designation of Matter that has been filed with the SC Court of Appeals attached as Exhibit 1 to the Return.

5. That Exhibit 2 is the Amended and Supplemental Complaint that was filed pursuant to the Order of the Circuit Court in the Declaratory Judgment action wherein Preston F. McDaniel and John M. Milling were Plaintiffs, and the SC Workers' Compensation Commission was the Defendant and was filed after the Temporary Restraining Order had been lifted allowing the Full Commission to enter its Order in reference to the original Hearing Commissioner's Decision. The Amended and Supplemental Complaint added allegations concerning procedural, substantive and factual violations that occurred during the Full Commission proceedings.

6. That Exhibit 3 is the Motion to Dismiss Respondent SC Workers' Compensation Commission and for the Relief of Counsel filed by the Commission's General Counsel, J. Keith Roberts and Staff Attorney Kristen S. McCrae on March 21, 2023 with the SC Court of Appeals.

7. That Exhibit 4 is the Return filed by the Appellants to the Motion to Dismiss Respondent SC Workers' Compensation Commission and Motion for Relief of Counsel and the Affidavit of Preston F. McDaniel filed along with and as part of that Return.

8. That Exhibit 5 is the Motion to Determine the Correct Caption of the Case pursuant to SCACR filed by the Appellants in reference to the original appeal filed with the SC Court of Appeals.

FURTHER, THE AFFIANT SAYETH NOT.

Preston F. McDaniel
Preston F. McDaniel

SWORN TO BEFORE ME this

24th day of September, 2023.

Hubert T. Hinkle L.S.
Notary Public for South Carolina

My Commission Expires: 6/19/2030

RECEIVED

MAY 28 2026

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA
SC Workers' Compensation Commission
Appellate Panel

Appellate Case No. 2023-000187

Pamela Cartee, Claimant,

v.

SC Judicial Department, Employer, and State Accident Fund,
Carrier, Defendants,

IN RE:

Preston F. McDaniel, Esquire, and John M.
Milling, Esquire,Appellants,

v.

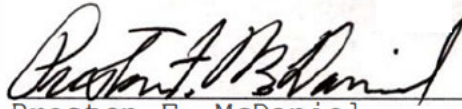
SC Workers' Compensation Commission,Respondent.

PROOF OF SERVICE

I certify that I have served the **PETITION FOR REHEARING AND REHEARING EN BANC** on May 28, 2026 addressed as follows:

VIA EMAIL ONLY:
JW@billnettlaw.com
John L. Warren, III, Esquire
Law Office of Bill Nettles
2008 Lincoln Street
Columbia, SC 29201

VIA EMAIL ONLY:
greg@harrisgasserlaw.com
Greg Harris, Esquire
Harris & Gasser, LLC
1529 Laurel Street
Columbia, SC 29201



Preston F. McDaniel
SC Bar #3770
MCDANIEL LAW FIRM
1315 Elmwood Avenue
Columbia, South Carolina 29201
(803) 771-7211

and

John M. Milling
MILLING LAW FIRM
Post Office Box 519
Darlington, South Carolina 29532
(843) 393-4083

Attorneys and Petitioners

May 28, 2026

McDANIEL LAW FIRM
ATTORNEYS AND COUNSELORS AT LAW
1315 ELMWOOD AVENUE
COLUMBIA, SOUTH CAROLINA 29201

**Proudly representing injured workers
for over 45 years**

Preston F. McDaniel

Telephone (803) 771-7211

Daniel E. Peagler

Facsimile (803) 252-0709

May 28, 2026

HAND DELIVERY

VIA ~~EMAIL: ctappfilings@sccourts.org~~
AND US MAIL

Jenny Kitchings, Clerk of Court
SC Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RECEIVED

MAY 28 2026

SC Court of Appeals

**RE: Pamela Cartee v. SCJD (Preston F. McDaniel) (2)
Appellate Case No. 2023-000187**

Dear Ms. Kitchings:

Enclosed please find for filing with the Court our **PETITION FOR REHEARING AND REHEARING EN BANC** in the above-referenced matter, along with the required filing fee. By copy of this letter, I am serving Counsel of Record with a copy of same.

I hope this is sufficient for filing but should you need any additional information, please let us know.

Sincerely yours,



Preston F. McDaniel

PFM/kth
Enclosure

cc: John M. Milling, Esquire (Via email only)
John L. Warren, III, Esquire (Via email only)
Greg Harris, Esquire (Via email only)