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Jun 19 2026

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA WORKERS' COMPENSATION COMMISSION

Case No. 2023-000187

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.

South Carolina Workers' Compensation Commission,

Respondent.

**RESPONDENT'S RETURN TO PETITION FOR REHEARING
AND REHEARING *EN BANC***

Pursuant to Rule 221(a), SCACR, and at the Court's request, Respondent South Carolina Workers' Compensation Commission ("the Commission") submits this Return to the Petition for Rehearing and Rehearing En Banc filed by Appellants. For the reasons set forth below, the Court should deny the Petition.

A petition for rehearing must "state with particularity the points supposed to have been overlooked or misapprehended by the court." Rule 221(a), SCACR. It is not an occasion to reargue matters the Court has already considered and decided. Here, the Petition identifies nothing the Court overlooked or misapprehended. Instead, it renews arguments the Court has already considered and rejected. And, critically, it does not address the independent, jurisdictional ground

on which the Court dismissed the appeal—Appellants’ failure to serve the S.C. Judicial Department (“Employer”) or the State Accident Fund (“Carrier”) with the notice of appeal.

I. The Petition Does Not Address the Independent Jurisdictional Ground for Dismissal.

The Court dismissed the appeal on two grounds: (1) the Commission is not a proper party to the action; and (2) the appeal was not perfected because the notice of appeal was never served on Employer or Carrier. Op. at 2–4. The second ground is jurisdictional and, standing alone, requires dismissal.

As the Court explained, a party appealing from an administrative tribunal must serve the notice of appeal “on the agency . . . and all parties of record within thirty (30) days after receipt of the decision.” Op. at 4 (quoting Rule 203(b)(6), SCACR); *see also* Rule 203(d)(2)(B)(i), SCACR (requiring Appellants to file in the appellate court “[p]roof of service showing that the notice [of appeal] has been served on the agency . . . and all parties of record”). Appellants served only the Commission; they did not serve the Employer or the Carrier. That omission cannot be cured. “The requirement of service of the notice of appeal is jurisdictional, *i.e.*, if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to ‘rescue’ the delinquent party by extending or ignoring the deadline for service of the notice.” *Elam v. S.C. Dep’t of Transp.*, 361 S.C. 9, 14–15, 602 S.E.2d 772, 775 (2004).

The Petition identifies nothing the Court overlooked or misapprehended as to this ground. Its only discussion touching the Employer and Carrier is the contention that, for privacy reasons, those parties should not be named in the caption. But that argument concerns *how* the case is captioned—not whether the notice of appeal was properly served. And, in any event, the Court already considered and rejected Appellants’ arguments related to the captioning of this case in the Court’s May 26, 2023 Order. At bottom, the Appellate Court Rules required Appellants to serve

the notice of appeal on Employer and Carrier. They did not do so, and that failure divested the Court of jurisdiction to hear the appeal.

II. The Court Properly Rejected Appellants' Arguments About the Proper Parties to this Appeal.

Appellants spend the bulk of the Petition rearguing the issue of whether the Commission is a proper party to the appeal. The Court squarely addressed—and rejected—Appellants' contention that the review of proposed attorney's fees is administrative rather than judicial. Applying *Forrester v. White*, 484 U.S. 219, 227 (1988), and *Faile v. S.C. Department of Juvenile Justice*, 350 S.C. 315, 324, 566 S.E.2d 536, 541 (2002), the Court examined the nature and function of the Commission's actions and found them to be “clearly judicial.” Op. at 3.

The cases Appellants rely on in the Petition do not undercut that conclusion. Each involved the Commission acting in its administrative or regulatory capacity—as the agency charged with regulating fees, maintaining records, or administering the Act—not the Commission defending its own adjudicative decision on appeal. *See, e.g., S.C. Ambulatory Surgery Ctr. Ass'n v. S.C. Workers' Comp. Comm'n*, 389 S.C. 380, 382–83, 699 S.E.2d 146, 148 (2010) (addressing a challenge—filed in circuit court pursuant to the Administrative Procedures Act—to the Commission's “revised schedule for maximum allowable payments to outpatient medical providers”); *Blue Cross & Blue Shield v. S.C. Indus. Comm'n*, 274 S.C. 204, 205, 262 S.E.2d 35, 36 (1980) (addressing a declaratory judgment action filed by a health insurer that sought a determination that it was “entitled (1) to participate in proceedings before the Commission when the employee-claimant holds one of its policies, and (2) that it has a right of access to records within the control of the Commission”). In contrast, the Commission in this case was the body that adjudicated Appellants' request for attorneys' fees pursuant to S.C. Code Ann. Regs. 67-1204 and 67-1205. That determination was necessarily judicial in nature. *See* S.C. Code Ann. Regs. 67-

1204(E) (providing that an attorney who disagrees with the single commissioner’s amended order on an attorneys’ fee request “may file a motion according to R.67-1205 with the Commission’s Judicial Department”); *id.* 67-1205 (establishing the criteria by which the Commission must evaluate the reasonableness of a requested fee). In short, Appellants have not identified any points that were overlooked or misapprehended by the Court within the meaning of Rule 221(a).

III. The May 26, 2023 Order Has No Preclusive Effect.

Appellants also contend that this Court’s order of May 26, 2023—which denied the Commission’s earlier motion to be dismissed as a party—is *res judicata* on the issue of whether the Commission is a proper party to this appeal. It is not.

That order is a summary, interlocutory ruling. It provides no reasoning and makes no determination that the Commission *is* a proper party. Rather, the Court simply denied the Commission’s motion to be dismissed. An interlocutory order denying a motion to dismiss does not preclude the panel from deciding the issue on the merits in its opinion. And *res judicata* applies to a final judgment on the merits in a separate action—not to an interlocutory ruling entered within this same appeal. *See Plum Creek Dev. Co., Inc. v. City of Conway*, 334 S.C. 30, 34, 512 S.E.2d 106, 109 (1999) (“Res judicata bars subsequent actions by the same parties when the claims arise out of the same transaction or occurrence that was the subject of a *prior action* between those parties.” (emphasis added)).

IV. The Petition’s Remaining Arguments Concern Issues the Court Did Not Reach.

Much of the Petition reargues the merits of the underlying fee dispute, including the proper interpretation of S.C. Code Ann. Regs. 67-1204 and 67-1205 and whether the Commission exercised “discretion” or only “interpretation.” The Court did not reach those issues. It dismissed the appeal on threshold grounds without addressing the merits of the fee dispute. Therefore,

Appellants' arguments provide no basis for rehearing, as the Court cannot have overlooked or misapprehended an issue it did not decide.

V. Rehearing *En Banc* Is Not Warranted.

Appellants alternatively request rehearing *en banc*. The decision is unpublished and breaks no new ground. It applies settled jurisdictional requirements and the framework for distinguishing judicial from administrative acts. The dispositive jurisdictional holding presents no novel question and no conflict among this Court's decisions for the *en banc* Court to resolve. See Rule 219, SCACR.

CONCLUSION

For the foregoing reasons, the Commission respectfully requests that the Court deny the Petition for Rehearing and Rehearing *En Banc*.



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Commission

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PROOF OF SERVICE

The undersigned employee of Law Office of Bill Nettles, attorney for Respondent South Carolina Workers' Compensation Commission, does hereby certify that service of Respondent's Return to the Petition for Rehearing and Rehearing *En Banc* was made upon all counsel of record by electronic mail to:

- Preston F. McDaniel: preston@pfmcdlaw.com
- John M. Milling: johnmilling@bellsouth.net

By: _____


John L. Warren

June 19, 2026

From: John Warren jw@billnettlelaw.com 
Subject: Re: Cartee v. SCJD (Preston F. McDaniel)(2); Appellate Case No. 2023-000187
Date: June 19, 2026 at 12:13 PM
To: preston@pfmcdlaw.com, johnmilling@bellsouth.net
Cc: greg@harrisgasserlaw.com, kim@pfmcdlaw.com, Lindsay Willyerd lindsay@pfmcdlaw.com, Rose Thielke rose@pfmcdlaw.com

JW

Good Afternoon,

Please find attached and served upon you Respondent's Return to the Petition for Rehearing and Rehearing *En Banc* and the accompanying Proof of Service. These documents will be electronically filed this afternoon using the Court of Appeals' OneDrive.

Best,

-John Warren

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