

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM THE ADMINISTRATIVE LAW COURT
Ralph K. Anderson, III, Chief Administrative Law Judge

SC Court of Appeals

Dock. Nos. 25-ALJ-04-0371-AP, 25-ALJ-04-0468-AP, 25-ALJ-04-0372-AP,
25-ALJ-04-0373-AP, 25-ALJ-04-0469-AP, 25-ALJ-04-0323-AP,
25-ALJ-04-0324-AP, 25-ALJ-04-0374-AP, 25-ALJ-04-0326-AP,
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v.

South Carolina Department of Corrections, Respondent.

Appellate Case No. 2026-000437

INITIAL REPLY BRIEF OF APPELLANTS

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*Keith Brown, #295762 and Douglas Bude, #263537 were not appealed as they are presumed deceased and without personal representative to continue the claim.

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STATEMENT OF ISSUES ON APPEAL

The Department of Corrections (SCDC) modifies the Statement of Issues made by Appellants in their initial brief. This reply brief will address SCDC's points under the issue number and in the order presented in Appellants' brief.

STATEMENT OF THE CASE

On June 12, 2026, undersigned counsel received information that appellant John Wojcik has recently died, and a personal representative may be appointed to continue his claim.

ARGUMENT

1. Concerning the Ackerman 139 orders, and Brannon 26 orders, counsel had authorization to appeal to the ALC, and the ALC erred in failing to find authorization, or in finding there was no authorization, and this issue was not preserved for ALC review.

SCDC states the ALC correctly ruled that undersigned counsel did not have authorization to appeal SCDC final decisions in the 139 Ackerman appeals and the 26 Brannon appeals (SCDC brief, 16). First, SCDC mentions, but does not address, Appellants' primary contention of SCDC's failure to preserve this issue for ALC review (SCDC brief, 15).

Appellants contend the ALC did not rule correctly on authorization to appeal. SCDC states the "ALC provided the following critical finding in its October 13, 2025 order, that "...Mr. Westbrook has not provided sufficient evidence to establish that he has maintained proper communication with (Mr. Anderson) since that time". (SCDC brief, 17). The ALC based its ruling largely on a misreading of Preamble (4) to the Rules of Professional Conduct. In its January 23, 2026 order for the Ackerman 139 Appellants, the ALC stated:

..the evidence presented to this Court shows that Mr. Westbrook also failed to maintain an attorney-client relationship with Appellants throughout the years. Significantly, the preamble to the Rules of Professional Conduct specifically

requires that a "lawyer **shall** (emphasis in original) maintain communication with a client". Preamble (4), RPC, Rule 407, SCACR (emphasis added); See also Rule 68, SCALCR ("the South Carolina Rules of Civil Procedure and the South Carolina Appellate Court Rules, in contested cases and appeals respectively, may, in the discretion of the presiding administrative law judge, be applied to resolve questions not addressed by these rules" (ALC 1-23-26 Ackerman order, p. 10)).

Similar statements were made by the ALC in the orders of November 10, 2025 for Appellants Brannon, p. 4; Foye, p. 4-5; Gadsden, p. 4; C. Jackson, p. 4; Pannell, p. 4-5; H. Rivers, p. 4-5; and Samuel Simmons, p. 4 (ALC 7 orders).

However, the ALC incorrectly quoted Preamble (4). It does not state that a lawyer "shall" maintain communication, but that he "should" do so. In the SCACR Scope, it says:

(1) The Rules of Professional Conduct are rules of reason.. Some of the Rules are imperatives, cast in the terms "shall" or "shall not". These define proper conduct for purposes of professional discipline..Many of the comments use the term "should". Comments do not add obligations to the Rules but provide guidance for practicing in compliance with the Rules.

Thus, the ALC applied Preamble (4), incorrectly believing it to be a legal imperative, to resolve the issue of authorization to appeal. In short, the ALC relied on incorrect information in making its decision.

SCDC states Appellants' contentions for "advance authorization to appeal" under rule 1.2, Comment 3, and "implied authorization" under rule 1.2(a), cite no precedent and are "unsupported" (SCDC brief, p. 14-15); citing Glascok, Inc. v. U.S. Fidelity and Guar. Co. 348 S.C. 76, 81, 557 S.E. 2d 689 (S.C. App., 2001). However, Glascok, Inc. stated, "South Carolina law clearly states that short, conclusory statements **made without supporting authority** are deemed abandoned on appeal and therefore not preserved for review". Here, rules 1.2, Comment 3, and 1.2(a) are cited, and thus the contention is not without supporting authority.

2. Concerning the Ackerman 139 orders, and Brannon 26 orders, because SCDC did not raise the issue of attorney-client relationship at the agency level, the ALC erred in failing to find that SCDC did not preserve the issue for review by the ALC, or in finding the attorney-client relationship was not maintained, or is questionable.

SCDC states the ALC correctly ruled in Ackerman and Brannon that undersigned counsel did not maintain and, possibly, never established an attorney-client relationship with the 165 Appellants in these matters (SCDC brief, 20). However, this argument does not address the issue Appellants raised, SCDC's failure to raise attorney-client at the agency level, and thus non-preservation for ALC review.

SCDC states undersigned counsel opened the door for SCDC, and then the ALC, to examine the relationship of attorney-client with all Appellants when undersigned filed 58 "problematic notices of appeal on June 12, 2025" (SCDC brief, 21). Appellants contend this misses the point, that when notices of appeal were filed, it was too late for SCDC to preserve the issue for ALC review. And further, the ALC could not "legitimately examine" attorney-client since it was not preserved by SCDC for review (Home Medical Systems, Inc. v. S.C. Dep't of Revenue 382 S.C. 556, 562, 677 S.E. 2d 582, 586 (S.C., 2007), and other cases cited in initial brief, 5).

SCDC states it had no grounds to examine viability of these relationships until undersigned filed the 58 "problematic" appeals on June 12, 2025 (SCDC brief, 21). The fact remains, the ALC ruled on the issue without SCDC having preserved it for ALC review. Appellants submit the ALC erred in raising and ruling on the issue sua sponte (State v. Austin 306 S.C. 9, 19, 409 S.E. 2d 811, 817 (S.C. App., 1991)).

Finally, in the Procedural History section of its brief, SCDC notes the ALC stated in its July 9, 2025 order (ALC July 9, 2025 order):

Because of the similarity in the evidence and issues in the appeal of these determinations, the Court held a conference call with the parties on June 17, 2025 to discuss the assignment of the appeals. The conversation with the parties raised several concerns **to the Court** (SCDC brief, 3).

Moreover, on December 4, 2025, the ALC sent counsel an email about the scope of the oral argument scheduled for December 17, 2025, in which the ALC advised as follows (ALC December 4, 2025 email):

In addition to the merits of the case, **the Court** seeks answers concerning whether a valid contractual relationship exists between Appellants and Mr. Westbrook.

Appellants submit that these messages indicate that the attorney-client "viability" issue originated with the ALC, after appeal to that Court, and not with SCDC before appeal.

3. Concerning the Ackerman 139 orders, and Brannon 26 orders, there was an attorney-client relationship between counsel and Appellants because of the September 14, 2004 fee agreement, and pending class action, and because there was an attorney-client relationship in fact, and the ALC erred in failing to make these findings.

SCDC states the ALC correctly ruled in Ackerman and Brannon that the September 2004 fee agreement and class action were not sufficient to establish attorney-client relationships between undersigned and the 165 Appellants (SCDC brief, 21). SCDC further states Appellants' primary argument focuses on the class action suit, and the 2004 fee agreement merely authorized counsel to file a grievance on behalf of the class (SCDC brief, 23).

Appellants respectfully disagree. In Casey Master v. KOL, Inc. 431 S.C. 28, 38, 846 S.E. 2d 893, 898 (S.C. App., 2020), the Court held that the purpose of contract construction is to determine the parties' intentions, and to give effect to those intentions, the Court will endeavor to determine the situation of the parties and their purposes at the time the contract was entered.

Here, Appellants submit that the "situation of the parties and the purpose at the time the contract was entered" has been correctly stated by SCDC in its

briefs. In its 2014 Ackerman Court of Appeals brief, SCDC named all Appellants in the caption, and on page 3 stated:

Only after the release of Adkins and Wicker on August 23, 2004, did the Appellants' counsel, on September 22, 2004, file with SCDC officials at Lieber an initial set of grievances **on behalf of some of the appellants.**² The Appellants' counsel submitted this initial set of grievances as well as the remainder of the Appellants' grievances under the provisions of SCDC's Inmate Grievance System Policy..In accordance with the applicable provisions of the policy, SCDC officials began processing and adjudicating the claims presented with the first set of the Appellants' grievances. (SCDC 2014 brief caption, pg. 3)

Footnote 2 on page 3 of SCDC's 2014 brief stated:

As discussed further below in note 39, the Appellants' counsel has continuously represented the Appellants since approximately late 2002. As reflected by the Record, the **Appellants and their counsel** began filing the 197 grievances which comprise the instant matter on September 22, 2004, 30 days after our Supreme Court issued Adkins and Wicker. As also reflected by the Record, the **Appellants' counsel** filed approximately 90 inmate grievances on September 22, 2004, and **he** filed approximately 81 grievances on or about September 30, 2004. As further reflected by the Record, the **Appellants' counsel** filed the remaining grievances after September 30, 2004 (R. pp. 358-387 and 1295-4276). (SCDC 2014 brief caption, pg. 3)

Currently, SCDC stated in its November 3, 2025 ALC brief, page 2 in note 1:

Douglas Westbrook, Esquire **represented** the appellants in Williams, Ackerman, and Gatewood. As explained below, Mr. Westbrook **represents** the Appellants in the above-captioned consolidated matter, including Darrell Williams, Francis Ackerman, and Fred Gatewood. See this Court's July 7, 2025 Order, pp. 3, 5, and 9. (SCDC Nov. 3, 2025 ALC brief)

Finally, in SCDC's Certificate of Service for the November 3, 2025 ALC brief, SCDC refers to undersigned counsel as "counsel of record" (SCDC November 3, 2025 Certificate of Service).

Appellants submit that the above brief excerpts accurately describe the "situation of the parties and the purpose" of the 2004 fee contract when it was entered (Casey Master v. KOL, Inc., 846 S.E. 2d at 898). Moreover, the

brief excerpts constitute judicial admissions, which are a formal waiver of proof that releases Appellants from having to prove undersigned's representation and authority to file grievances on Appellants' behalf, and bars SCDC from disputing it (Black's Law Dictionary, 7th ed., p. 49; Hunter v. Hyder 236 S.C. 378, 387, 114 S.E. 2d 493, 497 (S.C., 1960) (Admissions by agents within scope of agency are admissible against their principals)).

SCDC's brief refers to ALC findings that undersigned declined a "settlement offer" without consulting Appellants (SCDC brief, 23). However, in 2020 undersigned obtained a S.C. Bar ethics opinion that undersigned could negotiate or mediate provisional settlement for all inmates, **subject to their final approval** (Letters of May 1, 2020 to Ethics Advisory Committee, S.C. Bar; July 3, 2020 to Ms. Nicole Davis, S.C. Bar; September 8, 2020 to Ms. Nicole Davis; and September 21, 2020 to Lake Summers, Esquire). At mediation, Appellants opened with an initial demand of over \$18 million, as counsel recalls. SCDC countered with \$1.25 million, and Appellants came down to \$17,084,800. SCDC never made another proposal. In short, Appellants submit that undersigned counsel did exactly what the Ethics Advisory Committee said to do, negotiate or mediate provisional settlement for all inmates, subject to their final approval. Obviously, SCDC never countered to Appellants' \$17,084,800 proposal, and the parties failed to conclude a provisional settlement to be submitted to Appellants for final approval.

Finally, Appellants note that SCDC's \$1.25 million mediation proposal, if it had resulted in settlement, would violate S.C. Code 11-1-45 unless SCDC had prior written approval from the State Fiscal Accountability Authority.

4. Concerning the Kelly and Wright orders, SCDC's final decisions violated Appellants' substantive due process rights under U.S. Constitution, Amendment 14, and S.C. Constitution, Article I, Section 3, and the ALC decisions erred in failing to make that finding.

SCDC states it did not violate the substantive due process rights of Mr. Kelly or Mr. Richardson under U.S. Constitution, Amendment 14, and S.C. Constitution, Article I, Section 3, and the ALC did not err by failing to rule that SCDC did so (SCDC brief, 24).

In support, SCDC cites Harbit v. City of Charleston 382 S.C. 383, 394, 675 S.E. 2d 776, 782 (S.C., 2009) and Sunrise Corp. of Myrtle Beach 420 F3d 322, 328 (4 Cir., 2005). In Sunrise Corp., the Court did not find procedural or substantive due process violations because plaintiff had received the very remedy they sought, the permit to develop the property. Here, Appellants have not received the remedy they seek, their lawful wages.

Finally, the issue is not moot (SCDC brief, 25). This is not a case where judgment, if rendered, will have no practical legal effect on the existing controversy, and it is not impossible for this Court to grant effective relief (Curtis v. State 345 S.C. 557, 567-568, 549 S.E. 2d 591 (S.C., 2001)).

5. **Concerning the Kelly and Wright orders, SCDC's final decisions violated the mode of procedure clause in S.C. Constitution, Article I, Section 22, and the ALC erred in failing to make that finding.**

SCDC states it did not violate the mode of procedure clause in S.C. Constitution, Article I, Section 22, and the ALC did not err by failing to rule that SCDC did so. SCDC further states Appellants cited no court decisions or other precedent to support Appellants' "short conclusory statements", and the issue is abandoned under Glascock, Inc. (SCDC brief, 26).

Appellants respectfully disagree. Appellants submit that their factual grounds for this violation, with case decisions and specific statutes cited where appropriate, are definitely not "short, conclusory statements" envisioned by Glascock, Inc., which is concerned with "short, conclusory statements made without supporting authority" (348 S.C. at 81).

Appellants further note that they rely on the state's highest authority, the S.C. Constitution, the provisions of which are mandatory and prohibitory except when expressly made directory or permissive by its own terms (S.C. Constitution, Article I, Section 23).

Finally, Appellants note that SCDC's ALC brief admission of non-compliance with General Assembly procedure (SCDC Nov. 3, 2025 ALC brief, 21) is a judicial admission, which constitutes a formal waiver of proof that relieves Appellants from having to prove the admitted fact and bars SCDC from disputing it (Black's Law Dictionary, 7th ed., p. 49; Hunter v. Hyder, *supra*).

6. Concerning the Kelly and Wright orders, SCDC's final decisions violated the separation of powers provision in S.C. Constitution, Article I, Section 8, and the ALC erred in failing to make that finding.

SCDC states it did not violate the separation of powers provision in S.C. Constitution, Article I, Section 8, and the ALC did not err by failing to rule that SCDC did so. SCDC contends Appellants made only short conclusory statements to support their argument, and have abandoned this issue (Glascock, Inc.).

Appellants respectfully disagree. Appellants stated, under Layman, et al. v. State, separation of powers principles require agencies to comply with state statutes, and SCDC final decisions do not comply with or enforce §24-3-430(D) (prevailing wages required); §24-3-40 (allowed deductions from pay); §24-1-295 (negotiated wage allowed as of August 1, 2007); and §15-77-300 (attorney fees in state actions). Thus, the issue was not abandoned under Glascock, Inc. (Short, conclusory statements made without supporting authority are deemed abandoned).

Regarding attorney fees under §15-77-300, SCDC states the ALC ruled that **Appellants failed to show** that SCDC acted without substantial justification in pressing their claim (SCDC brief, 28). Appellants respectfully disagree,

as SCDC could not have been **reasonably** justified in paying Appellants \$.35 to \$.50 per hour, when the law required payment of the prevailing wage in the private sector, the proviso wage of \$4 per hour, or the negotiated wage of \$4 per hour, depending on when Appellants worked (initial brief, 8).

Finally, SCDC contends Appellants' argument for attorney fees under §15-77-300 is a solitary conclusory statement with no supporting authority (SCDC brief, 29). Appellants respectfully disagree, as §15-77-300 is the statutory authority for attorney fees in state actions. Further, Layman, et al. v. State is the precedent for enforcement of state statutes, like §15-77-300, until they are declared invalid. Thus, this issue is not abandoned under the Glascocock, Inc. decision.

7. Concerning the Kelly and Wright orders, SCDC's final decisions deprived Appellants of the opportunity to be heard at a meaningful time and in a meaningful manner, in violation of due process under U.S. Constitution, Amendment 14, and the ALC erred in failing to make that finding.

SCDC states it did not deprive Mr. Kelly or the late Mr. Richardson of the opportunity to be heard at a meaningful time and in a meaningful manner, in violation of U.S. Constitution, Amendment 14, and the ALC did not err by failing to rule that SCDC did so (SCDC brief, 29). SCDC discusses the ALC ruling that the delayed issuance of SCDC final decision was attributable to the "procedural history" of this case, referring to the class action; SCDC's delay in initial processing of the grievance; the parties' multiple legal disputes from 2017 to 2021; and mediation efforts from 2021 to 2023. However, even if 10 years are disregarded, which is probably generous, Appellants still had an 11 year wait before final decisions were issued by SCDC in 2025. Appellants submit the facts are clear that they have been denied hearing at a meaningful time under the U.S. Supreme Court decision in Logan v. Zimmerman Brush Company 455 U.S. 422, 437, 102 S. Ct. 1148, 1159 (1982).

As to hearing in a reasonable manner, Appellants covered this issue in their initial brief, pages 11-12.

SCDC states Appellants offered only short conclusory statements to support their argument, and have abandoned the issue under Glascocock, Inc. (SCDC brief, 30). Appellants respectfully disagree, as they state these supporting authorities on pages 11-12 of their initial brief: U.S. Constitution, Amendment 14; Logan v. Zimmerman Brush Company 455 U.S. 422, 437, 102 S. Ct. 1148, 1159 (1982); and South Carolina Department of Social Services v. Wilson 352 S.C. 445, 452, 574 S.E. 2d 730 (S.C., 2002).

8. Concerning the Kelly and Wright orders, the ALC erred in its calculations of amounts owed.

SCDC states the ALC, in its orders in Kelly and Wright, did not err in its calculations (SCDC brief, 31). In support, SCDC states: (1) Appellants' arguments for overtime and other wages due, consist of short conclusory statements, completely unsupported by any meaningful calculations, and the issue was abandoned (SCDC brief, 31); (2) Appellants labeled Mr. DuRant's calculations as the "more accurate amounts", and the issue was abandoned under Glascocock, Inc. (SCDC brief, 32); and (3) Appellants provided no substantive argument to support pre-judgment interest, and the issue was abandoned (SCDC brief, 32).

Appellants respectfully disagree. For overtime and other wages due, Appellants stated amounts calculated by the ALC, and **submitted the 2018 DuRant calculations** as the more accurate of the amounts due (Appellants' brief, 12-13). Appellants also stated the reasons for the differences in the two: the ALC applied a \$5.15 prevailing wage rate, not the prevailing wage in the private sector as required by §24-3-430(D) which Mr. DuRant applied; the ALC work hours did not agree with SCDC Exhibit F work hours, while Mr. DuRant's calculations did; ALC calculations did not pay overtime, as official SCDC

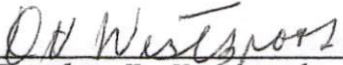
policy required, while Mr. DuRant's calculations did; and ALC calculations did not pay **pre-judgment interest under §11-9-360**, while Mr. DuRant's calculations did pay pre-judgment interest. These are the reasons why Appellants' brief described Mr. DuRant's calculations as the "more accurate" of the two (Appellants' brief, 13).

Appellants submit the above summary, and their initial brief discussion, pages 12-13: (1) are not short conclusory statements unsupported by meaningful calculations; (2) more than justify the conclusion that Mr. DuRant's calculations are the "more accurate amounts"; and (3) provide substantive argument supporting pre-judgment interest under §11-9-360.

CONCLUSION

Appellants respectfully request reversal of the ALC orders, and remand to the ALC and SCDC for the remedies summarized in Appellants' initial brief, on pages 13-14.

Respectfully submitted,


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