

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

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Jun 23 2026

SC Court of Appeals

APPEAL FROM SOUTH CAROLINA

SC Workers' Compensation Commission

Appellate 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.

SC Workers' Compensation Commission, ..... Respondent.

REPLY TO RETURN TO PETITION FOR REHEARING  
AND REHEARING EN BANC

By way of Reply to the Return to the Petition for  
Rehearing:

I. THE PETITION DOES ADDRESS THE INDEPENDENT JURISDICTIONAL  
GROUNDS FOR DISMISSAL.

The Return, as did the Respondent's Brief, espouses and  
conveys an elementary and fundamental misunderstanding of the  
various and separate actions the Workers' Compensation

Commission handles administratively or judicially and the different parties to those different actions. That basic misunderstanding resulted in the Court's misapprehension of the appeal and the action and the parties to that action that were before the Commission that are now before the Court. Based on this, the Court misapprehended the appeal/action that is before it which is not the workers' compensation claim (SCWCC Reg. 67-206, 207) but is the separate Attorney's Fee Petition (SCWCC Reg. 67-1204, 1205) seeking the Commission's approval of their attorney's fees under Statute and Regulation.

The Appellants agree that the party appealing an administrative agency decision must file a copy of the Notice of Intent to Appeal:

"on the agency ... and all parties of Record within thirty days after receiving the Decision". (emp. add.)

Counsel for the Respondent's attempt has been and is to make the Court misapprehend that the parties to a workers' compensation claim, are the "parties of Record" to this appeal but they are not; the "parties of Record" to the action below, the Attorney's Fee Petition, are the "parties of Record" before the Court on appeal.

The Appellants also agree that the parties to a workers' compensation claim are the claimant, the employer, and if applicable, its insurance carrier; and under SC Code §42-3-20(C)

that "contested" matter disputes are handled by the Commission.

Whereas, it is under a totally separate statute, §42-15-90(A), that Attorney's Fees, Physician Fees and Hospital charges for services are subject to the approval of the Commission.

Appellants will not bore the Court by going again in detail into the history of the background of who the "parties of Record" are to the approval of attorney's fees other than to point out that the Legislature passed a specific Act, §42-3-185, which places special requirements on the Commission's authority and limits that authority to a review based on Regulations passed pursuant to that section to approve fees under §42-15-90. In response to that special Statute, the Commission in 1991 passed Regulations dealing with Attorney's Fees and particularly in reference to this case, SCWCC Reg. 67-1205. Bazzle v. Huff, 319 S.C. 443, 462 S.E.2d 273 (1995) then made it clear that the Commission's authority is limited specifically to its approval function under those Regulations; and has no authority outside of compliance with the Regulations.

Since the Respondent continues to try to make the Court misapprehend the "parties of Record" to that action and use that as a basis to not reach a decision on the Commission's failure to approve their Petition, SCWCC Reg. 67-1205(B)(1-3) sets out who the parties are concerning a contingency fee contract and, most importantly to this case, who they are where the attorneys

and their client both agree and sign a Petition to be filed with the Commission. Subsection (B) (2), provides that when the "client agrees to the fee by signing a completed Form 61"; in other words, the attorney and the client under their fee contract have agreed to and the client finds the fee is proper, the attorney(s) then submit(s) their agreed upon fee petition pursuant to Reg. 67-1204 to the Commission for review pursuant to the Regulations and the Commission's only authority is to determine whether the fee is in compliance with the Regulations. Just like SC Ambulatory Surgery Ctr. Assoc. v. SC Workers' Compensation Commission, 389 S.C. 380, 699 S.E.2d 146, reh. den. (2010), where the "parties of Record" were a doctors' group and the Commission concerning the interpretation and application of the Regulations implemented pursuant to SC Code §42-15-90, in this case the "parties of Record" to the fee petition are the Commission and the attorneys. The Commission is the "party of Record" under the Regulation and Statute, and they were properly served.

**II. THE COURT ERRED IN REJECTING THE APPELLANTS' ARGUMENT ABOUT THE PROPER PARTIES TO THIS APPEAL.**

The Appellant Preston F. McDaniel, who is the lead Appellant, has only been before this Court and the Supreme Court over 100 and approaching 200 times in his 50 years of practice, and so he probably misunderstood the Appellate Court Rule in

reference to a Petition for Rehearing which Respondent's Counsel appears to note. The last time the Appellants checked, the Rule provides that the Petition should be directed towards the points that the Court "overlooked or misapprehended" in its decision. SCACR, Rule 221(a).

The Respondent is exactly correct in that the Appellants verily believe that the Court misapprehended both the nature of the action that was before the Court and the parties that were before the Court as set forth in the Reply to Argument I. Without citation, the Appellants know the Court will agree that the Workers' Compensation Commission as an administrative agency is limited to its express statutory authority and that it cannot expand or take away from that authority by implementing a Regulation. So, without reiterating all the arguments Appellants would simply point out that SC Code §42-3-20(C) copiously sets out the Commission's "judicial" responsibility. If there is any question that the approval of attorney's fees is an administrative function, the Court need only look at one Statute and one case. SC Code §42-3-185 was passed specifically to require that Regulations be adopted, again Regulations, before the Commission could exercise any authority to regulate attorney's fees; and then look at the case where the judicial function argument was put to rest, Bazzle v. Huff, supra. In that case, the Supreme Court laid to rest the notion and stated

clearly that the Commission has no judicial discretion and no judicial authority, and held that this is an administrative function to only insure compliance with the Regulations; since the approval is an exception to freedom of contract. Appellants assume that Respondent's Counsel knows who Mr. Huff is but in case they do not, the Appellants welcome a review of that Record which Opinion has been cited copiously by both parties, which will establish that Mr. Huff is the Honorable Thomas E. Huff, a former Judge of this Court of Appeals. A review of the legislative history of the Statute and the Record in that case will establish how Mr. Huff and the Court made sure that attorneys were not at the mercy of the will and pleasure of the Commission and/or faced with judicial discretion and having to prove an abuse of that judicial discretion versus a simple review as a matter of law as to the interpretation of a Regulation.

The arguments being made considering the legislative history and all the efforts taken to insure injured workers and their attorneys were not subject to the discretion of the Commission are actually abhorrent to the Appellants and the Appellants find the statement on p. 3 of the Return is the key to what the Respondent really wants:

"In contrast, the Commission in this case was the body that adjudicated Appellants' request

of attorney's fees pursuant to SC Code Ann. R.  
67-1204 and 67-1205."

That is exactly, exactly, what the Regulations, the Statutes and the special Statutes were passed to try to stop.

### **III. THE MAY 26, 2023 ORDER HAS PRECLUSIVE EFFECT.**

The last time the Appellants checked a Motion to Dismiss is a request for a final Order dismissing the action and if granted is subject to immediate appeal. Appellants would only ask that the Court look at the issues raised at the time of and in that Motion to Dismiss and the concepts and purpose of res judicata, collateral estoppel, and law of the case. This is now at least the third time the Appellants have been called upon to defend the issue as to who the proper "parties of Record" are in this matter. The law-of-the-case doctrine provides that in the interest of finality, when a Court decides upon a rule of law, that decision should continue on and be applied to the same issues and assessments as stated in that decision throughout the same case. Carlson v. Boston Science Corp, 856 F.3d 320, (4<sup>th</sup> Cir. 2017); United States v. Aramony, 166 F.3d 655, (4<sup>th</sup> Cir. 1999) (quoting Christianson v. Colt Indus. Operating Corp., 486 U.S. 800, 815-16, 108 S.Ct. 2166, 100 L.Ed. 2d 811 (1988)).

### **IV. APPELLANTS AGREE THAT THE PETITION'S REMAINING ARGUMENTS CONCERN ISSUES THAT THE COURT DID NOT REACH.**

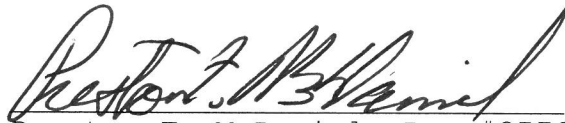
The whole purpose of all of the procedural arguments made by the Respondent is to avoid a decision on the simple issue

which the original Declaratory Judgment action was and on which this appeal is based; i.e., whose interpretation is correct under law.

### CONCLUSION

For all the foregoing reasons, the Court should grant the Petition for Rehearing and grant en banc hearing so that this Court may speak with "one voice" as to this important issue to the entire claimants' Bar and to all injured workers. Giving the Commission the authority to hide behind judicial discretion is exactly what the legislature was trying to prevent and what this appeal is all about.

Respectfully submitted,



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and

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Attorneys and Petitioners

June 23, 2026



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SC 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 **REPLY TO RETURN TO  
PETITION FOR REHEARING AND REHEARING EN BANC** on June 23, 2026  
addressed as follows:

**VIA EMAIL ONLY:**

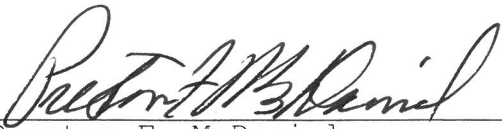
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Attorneys and Petitioners

June 23, 2026

Kim Hinkle

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SC Court of Appeals

**From:** Kim Hinkle  
**Sent:** Tuesday, June 23, 2026 4:27 PM  
**To:** jw@billnettlelaw.com; greg@harrisgasserlaw.com  
**Cc:** Lindsay Willyerd; Rose Thielke; John Milling (johnmilling@bellsouth.net)  
**Subject:** Pamela Cartee v. SCJD (Preston F. McDaniel)(2); Appellate Case No. 2023-000187  
**Attachments:** CARTEE REPLY TO RETURN TO PETITION FOR REHEARING 6-23-26.pdf

Good afternoon:

Attached please find our **REPLY TO RETURN TO PETITION FOR REHEARING AND REHEARING EN BANC** in the above-referenced matter which we hereby serve upon you.

Should you have any questions concerning this, please let me know immediately.

Thank you, Kim

**Kimberley T. Hinkle**

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*Please "reply to all" when responding.*

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Proudly representing injured workers  
for over 45 years

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**SC Court of Appeals**

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June 23, 2026

**VIA EMAIL ONLY: ctappfilings@sccourts.org**

Jenny Kitchings, Clerk of Court  
SC Court of Appeals  
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Columbia, South Carolina 29211

**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 **REPLY TO RETURN TO PETITION FOR REHEARING AND REHEARING EN BANC** in the above-referenced matter. By copy of this letter and enclosures, I am serving Counsel of Record with a copy of same. I would appreciate you returning a clocked copy to me via email.

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  
Enclosures

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