

*Wesley E. Smith III*  
465 North Nassau Street  
Charleston, South Carolina 29403  
(843)723-8598

**LETTER OF NOTIFICATION TO CLERK OF LOWER COURT  
FOR THE FILING OF A NOTICE OF APPEAL WRIT**

May 12, 2014

CLERK OF COURT  
Honorable Daniel Shearouse  
1231 Gervais Street  
Columbia, S. C. 29201

**RECEIVED**

MAY 14 2014

**SC Court of Appeals**

RE: Mr. Wesley Edward Smith, III Appellant v. Charleston County School District et al Case  
2003-10-CP-4751

Dear Honorable Clerk Armstrong;

Enclosed for filing of the Appellant notice of appeal in the above captioned case.

Sincerely, Person of legal Interest in that case

Mr. Wesley Edward Smith III  
Wesley Edward Smith III  
465 N. Nassau Street  
Charleston, South Carolina 29403  
(843) 723-8598  
~~Respondent~~ Pro Se

cc: Counsel of Record For Charleston County School District (CCSD)  
Mr. Daniel F. Blanchard ESQ  
151 Meeting Street Suite 300  
Charleston, South Carolina 29403

(3) grant summary judgment if the motion and supporting materials — including the facts considered undisputed — show that the movant is entitled to it; or

(4) issue any other appropriate order.

(f) Judgment Independent of the Motion. After giving notice and a reasonable time to respond, the court may:

(1) grant summary judgment for a nonmovant;

(2) grant the motion on grounds not raised by a party; or

(3) consider summary judgment on its own after identifying for the parties material facts that may not be genuinely in dispute.

(g) Failing to Grant All the Requested Relief. If the court does not grant all the relief requested by the motion, it may enter an order stating any material fact — including an item of damages or other relief — that is not genuinely in dispute and treating the fact as established in the case.

(h) Affidavit or Declaration Submitted in Bad Faith. If satisfied that an affidavit or declaration under this rule is submitted in bad faith or solely for delay, the court — after notice and a reasonable time to respond — may order the submitting party to pay the other party the reasonable expenses, including attorney's fees, it incurred as a result. An offending party or attorney may also be held in contempt or subjected to other appropriate sanctions.

(As amended Dec. 27, 1946, eff. Mar. 19, 1948; Jan. 21, 1963, eff. July 1, 1963; Mar. 2, 1987, eff. Aug. 1, 1987; Apr. 30, 2007, eff. Dec. 1, 2007; Mar. 26, 2009, eff. Dec. 1, 2009; Apr. 28, 2010, eff. Dec. 1, 2010.)

*Wesley E. Smith J.J.F.*  
465 North Nassau Street  
Charleston, South Carolina 29403  
(843)723-8598

**LETTER TO CLERK OF LOWER COURT  
FILING NOTICE OF APPEAL**

May 12, 2014

RECEIVED  
MAY 14 2014  
SC COURT OF APPEALS

CLERK  
Honorable Jenny A. Kitchens  
South Carolina Court of Appeals  
1015 Sumter Street  
Columbia, South Carolina 29201

RE: Wesley Smith, Plaintiff v Charleston County School District, Defendant Case 2003-10-CP-4751

Dear Honorable Kitchens;

Enclosed for filing is the appellant notice of appeal in the above case.

Sincerely, Person of legal Interest in that case

Mr. Wesley Edward Smith III  
Wesley Edward Smith III  
465 N. Nassau Street  
Charleston, South Carolina 29403  
(843)723-8598  
Appellant Pro Se

cc: Mr. Daniel F. Blanchard, III  
134 Meeting Street Suite 200  
Charleston, South Carolina 29403  
Attorney for Respondent


**NOTICE OF APPEAL IN A CIVIL CASE**

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Doyet A. Early, Circuit Court Judge

Case No. 2003-CP-10-4751

 Mr. Wesley Smith,

Appellant

v.

Charleston County School District  
and Mr. Townsend,

Respondent

**RECEIVED**

MAY 14 2014

**SC Court of Appeals**

**NOTICE OF APPEAL**

I, Wesley Edward Smith III, (herein refer to as Appellant) submits this notice of appeal informing the Court, the State of South Carolina and State actors of this action as required by law. The Plaintiff dissents the Honorable State of South Carolina Supreme Court ruling on issue form the Court of Common Pleas Judgment entered November 29, 2007 opposing to this Honorable Judge Doyet A. Early Court's opinion. The issues here as reasons given to believe that an irregularly of law exist is translated according to the guideline that governs all citizen who actively take part in a governed society. The rules and all laws related to private citizens matters between opposing parties (herein Mr. Wesley Edward Smith III and Charleston County School District) are to be resolved. Now, in the mix-up of this melting pot,

there has been and injection of a third party legal entity hearsay (defense affirmatively asserted) based upon personal assessment of his or her purely speculative, mere conjecture of law and presumption of facts of things have broadened these issues which have made a simple open shut case to become inadvertently interwoven and consolidated under the guise of case number 2003-CP-10-4751. It is further believed that the state actors have interplayed criminal actions with civil proceedings. The uncontested challenges here have utilized the maximum of this Courts Judicial discretionary efficiency which borders along the personal realm in the decision making process vice how the rules and law were applied and the fact test were compliance for such actions followed. A motion for Summary Judgment and a overlay by sanctioning Mr. Wesley Edward Smith III in this action was prematurely granted in favor for CCSD. Mr. Wesley Edward Smith III seek to appeal the decisions dissenting under Rule 56, of which the conclusion is an irregularity according to the rule of said law and premises are faulty which showing leads to an absurdity or contradiction. A genuine issue of material fact must not exist and non-moving party must be provide every opportunity afforded to have a fair submission of the facts presented against him or her at trial. Now the genuine issue of material fact moves to the violation of due process of this afforded state constitutional legal right. A transfer of court may be in order. Reason a given a not clear or commonly known to a lawman who doesn't practices law every day but further seeks notification from this court as action may suggest, respectfully required here. This case is not a complicated case, just remove the entities who hide under the color of State law, always seeks favors and bailouts that are a nuisance without any legal standings in this court of law for this case to simplify the issues. Also it is my duty to warn all person not have an vested interested in this case to refrain from filing

any further notices, motion or court paperwork to continually waste the court time and precious jewels of resources as this relates to a private party affair as captioned above while serving notice to file a request for an injunction to any and all nuisances.

An unsupported ruling without affording a proper 'summarily dismissal" gives reason to believe discrimination still exist in the actions that draws question for the implementation of rule 11 that as a substantive due process issue (conflicting rules) Article I section 24 that has hindered the procedural vehicle that is denying procedural due processes, Yes as understood based on information and belief, the courts have been long aware of such contemplated violation of individual legal rights by actions that were systematically reliant from a symbolic hearsay testimony from astringent third parties process that has nor have not shown by discovery was made under that guided section, for which common act of respects quickly identifies and allows acceptance which provides that unquestionable proof , but denied here in this action of the honorable judge Doyet A., Early. By the third party showing a legal right to participate or intervene in this private matters related to the CCSD employment termination decision to terminate Mr. Wesley Edward Smith III and deny him of his afforded due process rights in the process was abhorrently disgusting. This action gives reason to believe that the negligence on behalf of the CCSD that was committed is due to recklessness (reckless behaviors) of some other abnormal behaviors, either collectively or severally.

**QUESTION PRESENTED (Absent the nuisances)**

1. Did Charleston County School District (CCSD) pay Mr. Wesley Edward Smith II all monies owed upon termination from employment, that were in compliance with statutory law S. C. Code 41-10-10 et seg payment of Wages? Proof required

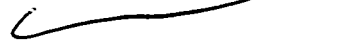
2. Did Charleston County School District (CCSD) reasons for terminating Mr. Wesley Edward Smith III have substantiated evidence or with the support of the applicable enforcements agency reason supporting the "just cause" termination from his employment or other good faith reasoning's necessary to deny his due process rights? Proof required

3. Who did Charleston County School District delegate, affirm, declare confirm, decreed, or by assumption of command letter in writing authorized such deprival of any afforded due process right while acting under the color of the State law? Proof required

4. Did the Charleston County School District provide all avenues of equal protection to the citizen before separating its powers in compliance with the state constitutional requirements due process? Proof required

May 12, 2014

Respectfully Submitted



Mr. Wesley Edward Smith III

**PROOF OF SERVICE**

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Doyet A. Early, Circuit Court Judge

Case No. 2003-CP-10-4751

**RECEIVED**

MAY 14 2014

Mr. Wesley Smith,

Appellant

v.

**SC Court of Appeals**

Charleston County School District  
and Mr. Townsend,

Respondent

**PROOF OF SERVICE**

I, Wesley Edward Smith III, certify that the I served a Notice of Appeal, Appellant informal Brief and this notice to the Court to proceed In Forma Paurperis without any prepayment of fees was sent by First Class Mail via United States Mail on all parties listed in this action to the following:

To: Mr. Daniel F. Blanchard, III  
151, Meeting Street Suite 300  
Charleston, South Carolina 29401

May 12, 2014 *per*

Respectfully Submitted

*[Signature]*

Wesley Edward Smith III

**SWORN TO BEFORE ME**

*Denise M Farmer*  
this 12 day of MAY 2014  
Notary Public for the State of

**SOUTH CAROLINA**

My Commission expires 6/7/22



**INFORMAL BRIEF OF APPELLANT**

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Doyet A. Early, Circuit Court Judge

---

Case No. 2003-CP-10-4751

Mr. Wesley Smith,

Appellant

v.

Charleston County School District  
and Mr. Townsend,

Respondent

---

**INFORMAL BRIEF OF APPELLANT**

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**STANDARD OF REVIEW**

Dependant upon which part of the consolidate case discretion is shown while remaining impartial to the actors, rule 203, that draws objectionable reasonable inferences, will be dependant upon the allowances for a longstanding but strategic defense (as asserted) from a casemated and inextricably interwoven process is being dissented to the lower court ruling as case is captioned above. Intervention has allowed the reasonable assurance to a civilized society, that based on previous cases which have been both expedient and hearing held without delay for convictions. The adjudication process for due process was the proper vehicle that has allowed previous actors such procedural or substantive review of a flawed issue, for which this review based on an objection in opposition to the ruling, as it sits here on the record books. While

being gagged by written orders, Mr. Wesley Edward Smith III who was without a competent counsel was not sent notification according to the rules. The lack of proper service in the case assigned process leaves reason to believe that legal issue of material fact remaining under the South Rule of Civil procedure rule 56 (Exhibit B" offered into evidence upon request).

## 2. SUMMARY FACTS OF THIS CASE

The ruling lacks the most important element necessary which both the respondent and adjudicator needed to be legal familiarized. The failure to inform the adjudicator and all respondents gives the respondent reasons to believe there is an inconsistent irregularity in granting this judgment which was prematurely granted Summary Judgment, to the Appellee before being Summarily Dismissed absent such fact with the supported of law. I Wesley Edward Smith III "is being continually denied with prejudice" as that mark in the order on page 6 para resonates this anti American remarks while acting under the color of of the State statutory laws. Anti bias action of discrimination is the resounding endnote attached. The Respondents was not allowed to objectively infer that reasons exist to believe that a genuine legal issue of material fact according to rule 56.

## 3. ISSUES PRESENTED BY THIS CASE

Whether or not to allow this action to return to the original (transfer) court after the court sanctions have been imposed untimely and prematurely. Under rule 203 **(2) Appeals From the Court of General Sessions.** After a plea or trial resulting in conviction or a proceeding resulting in revocation of probation, a notice of appeal shall be served on all respondents within ten (10) days after the sentence is imposed. In all other cases, a notice of appeal shall be served on all respondents within ten (10) days after receipt of written notice of entry of the order or judgment. whether or not to allow this action to return to the lower court under rule 203 for civil **b) Time**

**for Service require (1) Appeals From the Court of Common Pleas.** A notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment. When a timely motion for judgment n.o.v. (Rule 50, SCRCP), motion to requirement of service of notice and to allow review, redress and declaratory relief based on the facts that such actions give reason to believe that failure to comply with the statutory law which also violated the statutes, by intentional act, recklessness or malicious reasons other than excusable neglectful reasons by decree, order, which issue as identified herein which gives reason to believe that the adjudication process was an irregularly for which a reversal is in order. Ruling dismiss with "with prejudice" under the color of law, while applying the element of rule 56, a showing of a more preferential ruling in favor of the appellee was awarded the judgment without having substantive evidence which is requirement in a employment termination process, without clear or convincing evidence nor the support of a preponderance of evidence required when discretionary ruling was made for which due process allow such inequality has not allowed the contesting the a reasonable reason to believe this was an irregularity to the judgment process. This case ruling is premature under rule 56 (c), which as stated irrelevant parts the non moving party must be afforded "all" opportunities to raise such objectionable inferences pointing to the lack of service, lack of substantiated evidence to support ruling and the denial of discoverable information which makes this rules legally unfamiliar to fair or impartially adjudicate. Not sure if the original court having jurisdiction to rule of the just cause action with the mark of the sanctions premature placed upon Mr. Wesley Edward Smith III without be lifted will allow a transfer of courts.

Question presented may be ask based on review of the lower court records: Did the adjudicators

allow the Mr. Wesley Edward Smith III to challenge the sanctions which is a gag order and the malfunction causes the mechanism of his judicial vehicle which deprive due process, to a misidentified, non-moving party in any action ruled upon, to raise any question of inquiry based on the rule of law or challenge the objectionable inference for which a reason to believe exist based on the court records?

### 3. LAW ANALYSIS

On the lower court records, a procedural err has been identified, for which substantial evidence is absent. As this rule of law explains, as expressly written (offered into evidence under exhibit A) which issue allow the review for the "just cause termination which criminally implicates Mr. Wesley Edward smith, which by the rule r (a) **Notice**. A party intending to appeal must serve and file a notice of appeal and otherwise comply with these Rules. Service and filing are defined by Rule 262.

#### **b) Time for Service.**

**(1) Appeals From the Court of Common Pleas.** A notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment. When a timely motion for judgment n.o.v. (Rule 50, SCRCP), motion to alter or amend the judgment (Rules 52 and 59, SCRCP), or a motion for a new trial (Rule 59, SCRCP) has been made, the time for appeal for all parties shall be stayed and shall run from receipt of written notice of entry of the order granting or denying such motion. When a form or other short order or judgment indicates that a more full and complete order or judgment is to follow, a party need not appeal until receipt of written notice of entry of the more complete order or judgment.

In all other cases, the notice of appeal shall be filed with the clerk of the lower court and the Clerk of the Court of Appeals.

**(B) When and What to File.** The notice of appeal shall be filed with the clerk of the lower court and the clerk of the appellate court within ten (10) days after the notice of appeal is served. The notice filed with the appellate court shall be accompanied by the following:

(i) Proof of service showing that the notice has been served on all respondents;

#### 4. SUMMARY OF THE COURTS REASONINGS

Based on the aforementioned reasoning's, a reversal is in order. I am still relying on the slanderous negative reference letter that is without substantive evidence to merit a termination for just cause that is without sensitive evidence for proof as needed or for which such non compliance of conformances for discovery that may have prevented causes of my personal injuries and for pay still owed under statutory law that has been violated, a reversal for such irregularities in legal proceedings are in order

May 12, 2014

Respectfully Submitted



Mr. Wesley Edward Smith, III

**Exhibit “A”**

**SCRCP rule 56**

**CN: 2003-CP-10-4751**  
Supporting Memorandum of law argument

# Rule 56. Summary Judgment

(a) Motion for Summary Judgment or Partial Summary Judgment. A party may move for summary judgment, identifying each claim or defense — or the part of each claim or defense — on which summary judgment is sought. The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law. The court should state on the record the reasons for granting or denying the motion.

(b) Time to File a Motion. Unless a different time is set by local rule or the court orders otherwise, a party may file a motion for summary judgment at any time until 30 days after the close of all discovery.

(c) Procedures.

(1) Supporting Factual Positions. A party asserting that a fact cannot be or is genuinely disputed must support the assertion by:

(A) citing to particular parts of materials in the record, including depositions, documents, electronically stored information, affidavits or declarations, stipulations (including those made for purposes of the motion only), admissions, interrogatory answers, or other materials; or

(B) showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact.

(2) *Objection That a Fact Is Not Supported by Admissible Evidence.* A party may object that the material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence.

(3) *Materials Not Cited.* The court need consider only the cited materials, but it may consider other materials in the record.

(4) *Affidavits or Declarations.* An affidavit or declaration used to support or oppose a motion must be made on personal knowledge, set out facts that would be admissible in evidence, and show that the affiant or declarant is competent to testify on the matters stated.

(d) When Facts Are Unavailable to the Nonmovant. If a nonmovant shows by affidavit or declaration that, for specified reasons, it cannot present facts essential to justify its opposition, the court may:

(1) defer considering the motion or deny it;

(2) allow time to obtain affidavits or declarations or to take discovery; or

(3) issue any other appropriate order.

(e) Failing to Properly Support or Address a Fact. If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by Rule 56, the court may:

(1) give an opportunity to properly support or address the fact;

(2) consider the fact undisputed for purposes of the motion;

# Exhibit "B"

## SCRPC Rule 12

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SC Court of Appeals

CN: 2003-CP-10-4751

Supporting Memorandum of law argument

**RULE 12**  
**DEFENSES AND OBJECTIONS - WHEN AND HOW PRESENTED - BY PLEADING OR**  
**MOTION - MOTION FOR JUDGMENT ON PLEADINGS**

**(a) When Presented.** A defendant shall serve his answer within 30 days after the service of the complaint upon him, unless the Court directs otherwise when service of process is made pursuant to Rule 4(e), and provided further that the State of South Carolina shall answer or otherwise respond to an application for post-conviction relief within 60 days after service of the application, if it arises out of a guilty plea, and 90 days if it arises out of a trial. A party served with a pleading stating a cross-claim against him shall serve an answer thereto within 30 days after the service upon him. The plaintiff shall serve his reply to a counterclaim in the answer within 30 days after service of the answer or, if a reply is ordered by the court, within 30 days after service of the order, unless the order otherwise directs. The service of a motion permitted under this rule alters these periods of time as follows, unless a different time is fixed by order of the Court: (1) if the Court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within 15 days after notice of the Court's action; (2) if the Court grants a motion for a more definite statement the responsive pleading shall be served within 15 days after the service of the more definite statement, and a responsive pleading, if necessary, shall be served within 15 days after notice of the court's action on a motion to strike.

**Note:**

This Rule 12(a) is identical to the Federal Rule except that it changes the time to answer from 20 to 30 days, and the time to plead after motion denied from 10 to 15 days. No other changes in State practice are affected by the Rule.

**Note to 1986 Amendment:**

The amendment to Rule 12(a)(2) sets the time for response after a motion to strike at 15 days, which is the same time set for pleading after a successful motion for a more definite statement.

**Note to 1995 Amendment:**

Rule 12(a) is amended to provide special time periods for the State to respond to applications for post-conviction relief because the thirty day time period for civil litigation is often extended so that the State may obtain a transcript of the proceeding before responding.

**(b) How Presented.** Every defense, in law or fact, to a cause of action in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state facts sufficient to constitute a cause of action, (7) failure to join a party under Rule 19, (8) another action is pending between the same parties for the same claim. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a cause of action or defense to which an adverse party is not required to serve a responsive pleading, he may assert at the trial any defense in law or fact to that cause of action or defense. If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state facts sufficient to constitute a cause of action, matters outside the

pleading are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

**Note:**

This important Rule 12(b) enables a party to: (1) raise by motion or answer all of the defenses now raised by demurrer, and (2) eliminates the necessity of the awkward "special appearance to object to jurisdiction" under present State practice. The motion should be made before answer for early disposition of cases; but the defenses enumerated may be made in the responsive pleading and are not waived by being stated in a pleading rather than by motion. The last sentence eliminates the so-called "speaking demurrer" at trial, by treating such late motion as a motion for Summary Judgment under Rule 56.

**Note to 1986 Amendment:**

The amendment to the fourth sentence of Rule 12(b) clarifies the litigant's right to assert at trial any defenses as well as any claims he could have raised in a permissive pleading but chose not to do so. Consequently, the election not to reply to an affirmative defense does not waive the right to contest that affirmative defense.

**(c) Motion for Judgment on the Pleadings.** After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

**Note:**

This Rule 12(c) preserves the present common law practice in this State; and it is more important than the Federal Rule, because of the requirement for fact pleading. It may also be treated as a motion for summary judgment in proper circumstances.

**(d) Preliminary Hearings.** The defenses specifically enumerated (1)-(8) in subdivision (b) of this rule, whether made in a pleading or by motion, motions for judgment on the pleadings under subdivision (c) of this rule, and motions for summary judgment under Rule 56, shall be heard and determined before trial on application of any party, unless the Court orders that the hearing and determination thereof be deferred until the trial.

**Note:**

This Rule 12(d) is the same as the Federal Rule, and assures timely disposal of 12(b) and 12(c) motions to dismiss or for judgment prior to trial.

**(e) Motion for More Definite Statement.** If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, he may move for a more definite statement before interposing his responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the Court is not obeyed within 15 days after notice of the order or within such other time as the Court may fix, the Court may strike the pleading to which the motion was directed or make such order as it deems just.

**Note:**

This Rule 12(e) is the same as the Federal Rule and effects no change in present practice, except time for compliance is changed from 10 days to 15 days.

**(f) Motion to Strike.** Upon motion pointing out the defects complained of, and made by a party before responding to a pleading or, if no responsive pleading is required within 30 days after the service of the pleading upon him or upon the court's own initiative, at any time the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent or scandalous matter.

**Note:**

This Rule 12(f) preserves present State practice under Code § 15-13-60 and > § 15-13-440 verbatim.

**Note to 1986 Amendment:**

The amendment to Rule 12(f) makes clear that a motion to strike must point out the defects complained of, and is consistent with the language of Rule 12(e).

**(g) Consolidation of Defenses in Motion.** A party who makes a motion under this rule may join with it any other motions herein provided for and then available to him. If a party makes a motion under this rule but omits therefrom any defense or objection then available to him which this rule permits to be raised by motion, he shall not thereafter make a motion based on the defense or objection so omitted, except a motion as provided in subdivision (h)(2) hereof on any of the grounds there stated.

**Note:**

This Rule 12(g) is the same as the Federal Rule. It is new material to help prevent piecemeal presentation of defenses by separate motions.

**(h) Waiver or Preservation of Certain Defenses.**

**(1)** A defense of lack of jurisdiction over the person, improper venue, insufficiency of process, insufficiency of service of process, or that another action is pending between the same parties for the same claim is waived (A) if omitted from a motion in the circumstances described in subdivision (g) or (B) if it is neither made by motion under this rule nor included in a responsive pleading or an amendment thereof permitted by Rule 15(a) to be made as a matter of course.

**(2)** A defense of failure to state a cause of action upon which relief can be granted, a defense of failure to join a party indispensable under Rule 19, and an objection of failure to state a legal defense to a claim may be made in any pleading permitted or ordered under Rule 7(a), or by motion for judgment on the pleadings, or at the trial on the merits.

**(3)** Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.

**Note:**

This Rule 12(h) should be read together with Rule 12(g) in defining those defenses which are waived if not presented by pleading or motion.

# Exhibit "C"

## SCRAP Rule 203

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MAY 14 2014

SC Court of Appeals

CN: 2003-CP-10-4751

Supporting Memorandum of law argument

**RULE 203**  
**NOTICE OF APPEAL**

**(a) Notice.** A party intending to appeal must serve and file a notice of appeal and otherwise comply with these Rules. Service and filing are defined by Rule 262.

**(b) Time for Service.**

**(1) Appeals From the Court of Common Pleas.** A notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment. When a timely motion for judgment n.o.v. (Rule 50, SCRCP), motion to alter or amend the judgment (Rules 52 and 59, SCRCP), or a motion for a new trial (Rule 59, SCRCP) has been made, the time for appeal for all parties shall be stayed and shall run from receipt of written notice of entry of the order granting or denying such motion. When a form or other short order or judgment indicates that a more full and complete order or judgment is to follow, a party need not appeal until receipt of written notice of entry of the more complete order or judgment.

**(2) Appeals From the Court of General Sessions.** After a plea or trial resulting in conviction or a proceeding resulting in revocation of probation, a notice of appeal shall be served on all respondents within ten (10) days after the sentence is imposed. In all other cases, a notice of appeal shall be served on all respondents within ten (10) days after receipt of written notice of entry of the order or judgment. When a timely post-trial motion is made under Rule 29(a), SCR CrimP, the time to appeal shall be stayed and shall begin to run from receipt of written notice of entry of an order granting or denying such motion. In those cases in which the State is allowed to appeal a pre-trial order or ruling, the notice of appeal must be served within ten (10) days of receiving actual notice of the ruling or order; provided, however, that the notice of appeal must be served before the jury is sworn or, if tried without a jury, before the State begins the presentation of its case in chief.

**(3) Appeals From the Family Court.** A notice of appeal in a domestic relations action shall be served in the same manner provided by Rule 203(b)(1). A notice of appeal in a juvenile action shall be served in the same manner as provided by Rule 203(b)(2).

**(4) Appeals From Masters and Special Referees.** The notice of appeal from an order or judgment issued by a master or special referee shall be served in the same manner as provided by Rule 203(b)(1).

**(5) Appeals From Probate Court.** When a direct appeal is authorized by S.C. Code Ann. § 62-1-308(g), the notice of appeal shall be served in the same manner as provided by Rule 203(b)(1).

**(6) Appeals From Administrative Tribunals.** When a statute allows a decision of the administrative law court or agency (administrative tribunal) to be appealed directly to the Supreme Court or the Court of Appeals, the notice of appeal shall be served on the agency, the administrative law court (if it has been involved in the case) and all parties of record within thirty (30) days after receipt of the decision. If

a timely petition for rehearing is filed with the administrative tribunal, the time to appeal for all parties shall be stayed and shall run from receipt of the decision granting or denying that motion. If a decision indicates that a more full and complete decision is to follow, a party need not appeal until receipt of the more complete decision.

**(c) Cross-Appeals.** A respondent may institute a cross-appeal by serving a notice of appeal on all adverse parties, or in the case of an appeal from the administrative tribunal, by serving a notice of appeal on the agency, the administrative law court (if it has been involved in the case) and all parties of record, within five (5) days after receipt of appellant's notice of appeal, or within the time prescribed by Rule 203(b), whichever period last expires.

**(d) Filing.**

**(1) Appeals from the Circuit Court, Family Court and Probate Court.**

**(A) Where to File.** The notice of appeal shall be filed with the clerk of the lower court and with the Clerk of the Supreme Court in the following cases:

**(i)** Any final judgment from the circuit court which includes a sentence of death.

**(ii)** Any final judgment involving a challenge on state or federal grounds to the constitutionality of a state law or county or municipal ordinance where the principal issue is one of the constitutionality of the law or ordinance; provided, however, in any case where the Supreme Court finds that the constitutional issue raised is not a significant one, the Supreme Court may transfer the case to the Court of Appeals.

**(iii)** Any final judgment from the circuit court involving the authorization, issuance, or proposed issuance of general obligation debt, revenue, institutional, industrial, or hospital bonds of the State, its agencies, political subdivisions, public service districts, counties, and municipalities, or any other indebtedness now or hereafter authorized by Article X of the Constitution of this State.

**(iv)** Any final judgment from the circuit court pertaining to elections and election procedure.

**(v)** Any order limiting an investigation by a State Grand Jury under S.C. Code Ann. § 14-7-1630.

**(vi)** Any order of the family court relating to an abortion by a minor under S.C. Code Ann. § 44-41-33.

In all other cases, the notice of appeal shall be filed with the clerk of the lower court and the

Clerk of the Court of Appeals.

**(B) When and What to File.** The notice of appeal shall be filed with the clerk of the lower court and the clerk of the appellate court within ten (10) days after the notice of appeal is served. The notice filed with the appellate court shall be accompanied by the following:

(i) Proof of service showing that the notice has been served on all respondents;

(ii) A copy of the order(s) and judgment(s) to be challenged on appeal if they have been reduced to writing;

(iii) A filing fee as set by order of the Supreme Court; [1] this fee is not required for criminal appeals or appeals by the State of South Carolina or its departments or agencies;

(iv) If the appeal is from a guilty plea, an Alford[2] plea or a plea of nolo contendere, a written explanation showing that there is an issue which can be reviewed on appeal. This explanation should identify the issue(s) to be raised on appeal and the factual basis for the issue(s) including how the issue(s) was raised below and the ruling of the lower court on that issue(s). If an issue was not raised to and ruled on by the lower court, the explanation shall include argument and citation to legal authority showing how this issue can be reviewed on appeal. If the appellant fails to make a sufficient showing, the notice of appeal may be dismissed;

(v) If the notice of appeal is from a post-conviction relief case and the lower court determined that the post-conviction relief action is barred as successive or being untimely under the statute of limitations, the written explanation required by Rule 243(c), SCACR; and,

(vi) If the notice of appeal is from a habeas corpus proceeding and the lower court determined that habeas corpus relief was improper because the issues could have been raised in a timely application under the Post-Conviction Relief Act (see Simpson v. State, 329 S.C. 43, 495 S.E.2d 429 (1998)), a written explanation as to why this determination was improper. This explanation must contain sufficient facts, argument and citation to legal authority to show that there is an arguable basis for asserting that the determination by the lower court was improper. If the appellant fails to make a sufficient showing, the notice of appeal may be dismissed.

## **(2) Appeals from Administrative Tribunals.**

**(A Where to File.** Appeals from a decision of the Public Service Commission setting public utility rates pursuant to Title 58 of the South Carolina Code of Laws shall be filed with the Clerk of the Supreme Court. Unless otherwise required by statute, all other appeals from administrative tribunals shall be filed with the Clerk of the Court of Appeals.

**(B) When and What to File.** The notice of appeal shall be filed with the clerk of the appellate court within the time required to serve the notice of appeal under Rule 203(b)(6). The notice filed with the appellate court shall be accompanied by the following:

(i) Proof of service showing that the notice has been served on the agency, the administrative law court (if it has been involved in the case), and all parties of record;

(ii) A copy of the decision(s) to be challenged on appeal; and

(iii) A filing fee as set by order of the Supreme Court;**[3]** this fee is not required for criminal appeals or appeals by the State of South Carolina or its departments or agencies.

**(3) Effect of Failure to Timely File.** If the notice of appeal is not timely filed or the filing fee is not paid in full, the appeal shall be dismissed, and shall not be reinstated except as provided by Rule 260.

**(e) Form and Content.** The notice of appeal shall be substantially in the form designated in the Appendix to these Rules.

**(1) Appeals from the Circuit Court, Family Court and Probate Court.** In appeals from lower courts, the notice of appeal shall contain the following information:

**(A)** The name of the court, judge, and county from which the appeal is taken.

**(B)** The docket number of the case in the lower court.

**(C)** The date of the order, judgment, or sentence from which the appeal is taken; and if appropriate for the determination of the timeliness of the appeal, a statement of when the appealing party received notice of the order or judgment from which the appeal is taken, or, if a cross-appeal, when the respondent received appellant's notice of appeal.

**(D)** The name of the party taking the appeal.

**(E)** The names, mailing addresses, and telephone numbers of all attorneys of record and the names of the party or parties represented by each.

**(2) Appeals from Administrative Tribunals.** In appeals from administrative tribunals, the notice of appeal shall contain the following information:

**(A)** The name of the agency and the name of the administrative law judge (if applicable).

**(B)** The docket number of the case before the administrative law court, or if the appeal is from an agency, the docket number before the agency.

**(C)** The date of the decision from which the appeal is taken; and if appropriate for the determination of the timeliness of the appeal, a statement of when the appealing party received the decision from which the appeal is taken, or, if a cross-appeal, when the respondent received appellant's notice of appeal.

**(D)** The name of the party taking the appeal.

**(E)** The names, mailing addresses, and telephone numbers of all attorneys of record and the names of the party or parties represented by each.

Last amended by Order dated January 29, 2009, effective April 29, 2009, by Order of the same date.

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[1] By order dated April 17, 1990, this filing fee was set at one hundred (\$100.00) dollars.

[2] North Carolina v. Alford, 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed.2d 162 (1970)

[3] By order dated April 17, 1990, this filing fee was set at one hundred (\$100.00) dollars.

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# Exhibit "D"

## SC CONSTITUTION

RECEIVED

MAY 14 2014

SC Court of Appeals

CN: 2003-CP-10-4751

Supporting Memorandum of law argument

## DISCLAIMER

The South Carolina Legislative Council is offering access to the unannotated South Carolina Constitution on the Internet as a service to the public. The unannotated South Carolina Constitution on the General Assembly's website is now current through the 2012 session. The unannotated South Carolina Constitution, consisting only of Constitution text, numbering, and history, may be copied from this website at the reader's expense and effort without need for permission.

The Legislative Council is unable to assist users of this service with legal questions. Also, legislative staff cannot respond to requests for legal advice or the application of the law to specific facts. Therefore, to understand and protect your legal rights, you should consult your own private lawyer regarding all legal questions.

While every effort was made to ensure the accuracy and completeness of the unannotated South Carolina Constitution available on the South Carolina General Assembly's website, the unannotated South Carolina Constitution is not official, and the state agencies preparing this website and the General Assembly are not responsible for any errors or omissions which may occur in these files. Only the current published volumes of the South Carolina Constitution Annotated and any pertinent acts and joint resolutions contain the official version.

Please note that the Legislative Council is not able to respond to individual inquiries regarding research or the features, format, or use of this website. However, you may notify Legislative Printing, Information and Technology Systems at [LPITS@scstatehouse.gov](mailto:LPITS@scstatehouse.gov) regarding any apparent errors or omissions in content of Constitution sections on this website, in which case LPITS will relay the information to appropriate staff members of the South Carolina Legislative Council for investigation.

## Introduction

### THE STATE OF SOUTH CAROLINA:

At a Convention of the People of the State of South Carolina begun and holden at Columbia on the Tenth day of September, in the year of our Lord One Thousand Eight hundred and Ninety-five, and thence continued by divers adjournments to the Fourth day of December in the year of our Lord One Thousand Eight hundred and Ninety-five.

Preamble

CONSTITUTION OF THE STATE OF SOUTH CAROLINA

We, the people of the State of South Carolina, in Convention assembled, grateful to God for our liberties, do ordain and establish this Constitution for the preservation and perpetuation of the same.

## ARTICLE I.

### DECLARATION OF RIGHTS

#### **SECTION 1.** Political power in people.

All political power is vested in and derived from the people only, therefore, they have the right at all times to modify their form of government. (1970 (56) 2684; 1971 (57) 315.)

#### **SECTION 2.** Religious freedom; freedom of speech; right of assembly and petition.

The General Assembly shall make no law respecting an establishment of religion or prohibiting the free exercise thereof, or abridging the freedom of speech or of the press; or the right of the people peaceably to assemble and to petition the government or any department thereof for a redress of grievances. (1970 (56) 2684; 1971 (57) 315.)

#### **SECTION 3.** Privileges and immunities; due process; equal protection of laws.

The privileges and immunities of citizens of this State and of the United States under this Constitution shall not be abridged, nor shall any person be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws. (1970 (56) 2684; 1971 (57) 315.)

#### **SECTION 4.** Attainder; ex post facto laws; impairment of contracts; titles; effect of conviction.

No bill of attainder, ex post facto law, law impairing the obligation of contracts, nor law granting any title of nobility or hereditary emolument, shall be passed, and no conviction shall work corruption of blood or forfeiture of estate. (1970 (56) 2684; 1971 (57) 315.)

#### **SECTION 5.** Elections, free and open.

All elections shall be free and open, and every inhabitant of this State possessing the qualifications provided for in this Constitution shall have an equal right to elect officers and be elected to fill public office. (1970 (56) 2684; 1971 (57) 315.)

#### **SECTION 6.** Residence.

Temporary absence from the State shall not forfeit a residence once obtained. (1970 (56) 2684; 1971 (57) 315.)

#### **SECTION 7.** Suspension of laws.

The power to suspend the laws shall be exercised only by the General Assembly or by its authority in particular cases expressly provided for by it. (1970 (56) 2684; 1971 (57) 315.)

#### **SECTION 8.** Separation of powers.

In the government of this State, the legislative, executive, and judicial powers of the government shall be forever separate and distinct from each other, and no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other. (1970 (56) 2684; 1971 (57) 315.)

#### **SECTION 9.** Courts; speedy remedy.

All courts shall be public, and every person shall have speedy remedy therein for wrongs sustained. (1970 (56) 2684; 1971 (57) 315.)

**SECTION 10.** Searches and seizures; invasions of privacy.

The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures and unreasonable invasions of privacy shall not be violated, and no warrants shall issue but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, the person or thing to be seized, and the information to be obtained. (1970 (56) 2684; 1971 (57) 315.)

**SECTION 11.** Presentment or indictment.

No person may be held to answer for any crime the jurisdiction over which is not within the magistrate's court, unless on a presentment or indictment of a grand jury of the county where the crime has been committed, except in cases arising in the land or naval forces or in the militia when in actual service in time of war or public danger. The General Assembly may provide for the waiver of an indictment by the accused. Nothing contained in this Constitution is deemed to limit or prohibit the establishment by the General Assembly of a state grand jury with the authority to return indictments irrespective of the county where the crime has been committed and that other authority, including procedure, as the General Assembly may provide. (1970 (56) 2684; 1971 (57) 315; 1989 Act No. 5; 1989 Act No. 8.)

**SECTION 12.** Double jeopardy; self-incrimination.

No person shall be subject for the same offense to be twice put in jeopardy of life or liberty, nor shall any person be compelled in any criminal case to be a witness against himself. (1970 (56) 2684; 1971 (57) 315.)

**SECTION 13.** Taking private property; economic development; remedy of blight.

(A) Except as otherwise provided in this Constitution, private property shall not be taken for private use without the consent of the owner, nor for public use without just compensation being first made for the property. Private property must not be condemned by eminent domain for any purpose or benefit including, but not limited to, the purpose or benefit of economic development, unless the condemnation is for public use.

(B) For the limited purpose of the remedy of blight, the General Assembly may provide by law that private property constituting a danger to the safety and health of the community by reason of lack of ventilation, light, and sanitary facilities, dilapidation, deleterious land use, or any combination of these factors may be condemned by eminent domain without the consent of the owner and put to a public use or private use if just compensation is first made for the property. (1970 (56) 2684; 1971 (57) 315; 2007 Act No. 15.)

**SECTION 14.** Trial by jury; witnesses; defense.

The right of trial by jury shall be preserved inviolate. Any person charged with an offense shall enjoy the right to a speedy and public trial by an impartial jury; to be fully informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to be fully heard in his defense by himself or by his counsel or by both. (1970 (56) 2684; 1971 (57) 315.)

**SECTION 15.** Right of bail; excessive bail; cruel or unusual or corporal punishment; detention of witnesses.

All persons shall be, before conviction, bailable by sufficient sureties, but bail may be denied to persons charged with capital offenses or offenses punishable by life imprisonment, or with violent offenses defined by the General Assembly, giving due weight to the evidence and to the nature and circumstances of the event. Excessive bail shall not be required, nor shall excessive fines be imposed, nor shall cruel, nor corporal, nor unusual punishment be inflicted, nor shall witnesses be unreasonably detained. (1970 (56) 2684; 1971 (57) 315; 1998 Act No. 259.)

**SECTION 16.** Libel.

In all indictments or prosecutions for libel, the truth of the alleged libel may be given in evidence, and the jury shall be the judges of the law and facts. (1970 (56) 2684; 1971 (57) 315.)

**SECTION 17.** Treason.

Treason against the State shall consist alone in levying war or in giving aid and comfort to enemies against the State. No person shall be held guilty of treason, except upon testimony of at least two witnesses to the same overt act, or upon confession in open court. (1970 (56) 2684; 1971 (57) 315; 2007 Act No. 15.)

**SECTION 18.** Suspension of habeas corpus.

The privilege of the writ of habeas corpus shall not be suspended unless when, in case of insurrection, rebellion or invasion, the public safety may require it. (1970 (56) 2684; 1971 (57) 315.)

**SECTION 19.** Imprisonment for debt.

No person shall be imprisoned for debt except in cases of fraud. (1970 (56) 2684; 1971 (57) 315.)

**SECTION 20.** Right to keep and bear arms; armies; military power subordinate to civil authority; how soldiers quartered.

A well regulated militia being necessary to the security of a free State, the right of the people to keep and bear arms shall not be infringed. As, in times of peace, armies are dangerous to liberty, they shall not be maintained without the consent of the General Assembly. The military power of the State shall always be held in subordination to the civil authority and be governed by it. No soldier shall in time of peace be quartered in any house without the consent of the owner nor in time of war but in the manner prescribed by law. (1970 (56) 2684; 1971 (57) 315.)

**SECTION 21.** Martial law.

No person shall in any case be subject to martial law or to any pains or penalties by virtue of that law, except those employed in the armed forces of the United States, and except the militia in actual service, but by the authority of the General Assembly. (1970 (56) 2684; 1971 (57) 315.)

**SECTION 22.** Procedure before administrative agencies; judicial review.

No person shall be finally bound by a judicial or quasi-judicial decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard; nor shall he be subject to the same person for both prosecution and adjudication; nor shall he be deprived of liberty or property unless

by a mode of procedure prescribed by the General Assembly, and he shall have in all such instances the right to judicial review. (1970 (56) 2684; 1971 (57) 315.)

**SECTION 23.** Provisions of Constitution mandatory.

The provisions of the Constitution shall be taken, deemed, and construed to be mandatory and prohibitory, and not merely directory, except where expressly made directory or permissive by its own terms. (1970 (56) 2684; 1971 (57) 315.)

**SECTION 24.** Victims' Bill of Rights.

(A) To preserve and protect victims' rights to justice and due process regardless of race, sex, age, religion, or economic status, victims of crime have the right to:

(1) be treated with fairness, respect, and dignity, and to be free from intimidation, harassment, or abuse, throughout the criminal and juvenile justice process, and informed of the victim's constitutional rights, provided by statute;

(2) be reasonably informed when the accused or convicted person is arrested, released from custody, or has escaped;

(3) be informed of and present at any criminal proceedings which are dispositive of the charges where the defendant has the right to be present;

(4) be reasonably informed of and be allowed to submit either a written or oral statement at all hearings affecting bond or bail;

(5) be heard at any proceeding involving a post-arrest release decision, a plea, or sentencing;

(6) be reasonably protected from the accused or persons acting on his behalf throughout the criminal justice process;

(7) confer with the prosecution, after the crime against the victim has been charged, before the trial or before any disposition and informed of the disposition;

(8) have reasonable access after the conclusion of the criminal investigation to all documents relating to the crime against the victim before trial;

(9) receive prompt and full restitution from the person or persons convicted of the criminal conduct that caused the victim's loss or injury, including both adult and juvenile offenders;

(10) be informed of any proceeding when any post-conviction action is being considered, and be present at any post-conviction hearing involving a post-conviction release decision;

(11) a reasonable disposition and prompt and final conclusion of the case;

(12) have all rules governing criminal procedure and the admissibility of evidence in all criminal proceedings protect victims' rights and have these rules subject to amendment or repeal by the legislature to ensure protection of these rights.

(B) Nothing in this section creates a civil cause of action on behalf of any person against any public employee, public agency, the State, or any agency responsible for the enforcement of rights and provision of services contained in this section. The rights created in this section may be subject to a writ of mandamus, to be issued by any justice of the Supreme Court or circuit court judge to require compliance by any public employee, public agency, the State, or any agency responsible for the enforcement of the rights and provisions of these services contained in this section, and a wilful failure to comply with a writ of mandamus is punishable as contempt.

(C) For purposes of this section:

(1) A victim's exercise of any right granted by this section is not grounds for dismissing any criminal proceeding or setting aside any conviction or sentence.

(2) "Victim" means a person who suffers direct or threatened physical, psychological, or financial harm as the result of the commission or attempted commission of a crime against him. The term "victim" also includes the person's spouse, parent, child, or lawful representative of a crime victim who is deceased, who

is a minor or who is incompetent or who was a homicide victim or who is physically or psychologically incapacitated.

(3) The General Assembly has the authority to enact substantive and procedural laws to define, implement, preserve, and protect the rights guaranteed to victims by this section, including the authority to extend any of these rights to juvenile proceedings.

(4) The enumeration in the Constitution of certain rights for victims shall not be construed to deny or disparage others granted by the General Assembly or retained by victims. (1998 Act No. 259.)

#### **SECTION 25 Hunting and fishing.**

The traditions of hunting and fishing are valuable parts of the state's heritage, important for conservation, and a protected means of managing nonthreatened wildlife. The citizens of this State have the right to hunt, fish, and harvest wildlife traditionally pursued, subject to laws and regulations promoting sound wildlife conservation and management as prescribed by the General Assembly. Nothing in this section shall be construed to abrogate any private property rights, existing state laws or regulations, or the state's sovereignty over its natural resources.

HISTORY: 2011 Act No. 20, Section 1, eff May 5, 2011.

Mr. Wesley Edward Smith III  
465 N. Nassau Street  
Charleston, South Carolina 29403



PLACE STICKER AT TOP OF ENVELOPE OR THE FRONT OF MAIL BOX  
CERTIFIED MAIL<sup>SM</sup>




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RETURN RECEIPT  
REQUESTED

Honorable Jenny A. Kitchens  
South Carolina Court of Appeals  
1015 Sumter Street  
Columbia, South Carolina 29201

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NORTH CHARLESTON, SC  
MAY 12, 14  
AMOUNT  
**\$8.24**  
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**SC Court of Appeals**

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