

**AMENDED NOTICE OF APPEAL**

THE STATE OF SOUTH CAROLINA  
In The Court Of Appeals

APPEAL FROM COURT OF COMMON PLEAS

Honorable Doyet A Early

Case No. on appeal: 2013-CP-10-00417

Mr. Wesley Smith,

Appellant

v.

Pepsi Bottling Group, INC

Respondent

**RECEIVED**

MAY 22 2014

**SC Court of Appeals**

**AMENDED NOTICE OF APPEAL**

Mr. Wesley Edward Smith III appeals the order judgment of the Honorable Doyet A Early dated April 18 2014. Appellant received written notice of entry of this order judgment on about 24 April 2014.

Mr. Wesley Edward Smith III  
465. N. Nassau Street  
Charleston, S C. 29403  
Appellant PRO SE

cc: Counsel of Record For Pepsi Bottling Group (PBG)

Mr. Ashley B. Able, III  
One Liberty Square  
55 Beattie Place Suite 800  
Greenville, South Carolina 29601

**I. SUPPORTING THE INFORMAL BRIEF:  
INTRODUCTION**

I, Wesley Edward Smith III served notice to appeal the action that stems between, Myself, Mr. Wesley Edward Smith III against the Pepsi Bottling Group. Any and all other participants that are not privy to this suit are warned. This is duty and obligation of me to inform nuisances, perpetrators and posers who willingly act collectively of severally under the guise of color the of state laws

**II. BACKGROUND FACTS OF THIS CASE**

The appellant was terminated from employment on or about 28 march 2005 by PBG for an alleged just cause.

PBG owed and still owes the Appellant money.

But, If the appellant signed a wavier that was rigged, prefabricated, as proffered by PBG, then PBG might reconsider paying the appellant for performance already provided prior to that date.

The Appellant believe that based on PBG anti-biased (law) action gives reason to believe that PBG was discriminatory based on my race age, disability, religion, sex.

The Appellant believe that based on PBG ant- military (law) biased action gives reason to believe that PBG was discriminatory based on my military service to my citizens and countrymen and country women

The appellant believes that based on the respondent PBG acts, such action are retaliatory as previous done based on a cultural standard, cultural practice, a cultural ideology, a cult ritual and done as a compelling basis premised on previous forms of personal and private mercantileable servitude

The appellant was terminated by PBG without PBG providing substantive evidence or a legal conclusion of law nor with applicable enforcement agency memorandum of law to support such an implied act, which give reasons to believe that the termination process was unlawful in violation of state court rules, laws and regulation for which I, Mr. Wesley Edward Smith III opposed to the unlawful business employment practice displayed and illustrated by PBG.

The appellant did not have a hearing

The appellant was denied right to appeal

The appellant was denied his rights to be informed

The appellant was denied his right to cross examine any of the witnesses,

The appellant was denied his right to discovery to discover any truth not based on hearsay because of the circumstantial and evidenced allegedly produced by PBG not tampered with

The appellant was sanctioned in totally separate action (by use of name only, misidentified) without being served notice why or what civil wrong he personally committed and to who was aggrieved and adversely affected by such actions

The appellant was not afforded equal protection under the law nor the separation of power by PBG to this date relating to substantive due process of leveling the judicial process. PBG provides itself with the finest of attorneys for themselves but not lend aid to the party aggrieved and adverse conditions in employment that causing such the injury.

Due to the complexities and premature irregularity of this case, according with the facts as aforementioned, the memorandum given support serves a request to also proceed In forma Pauperis for the respondent acts I opposed and believe that a non-refundable filing of a \$100.00 at this stage of proceeding (for which I am responding to an act taken against me without due process) would be legally premature, highly offensive and a procedural due process injustice to a defenseless citizens who has been prematurely who is refuting being sanctioned and held in contempt by a lower court without the support of proper memorandum of law arguments or applicable enforcement agency proven by the respondents at this stage. Continued collateral attacks taken at Mr. Wesley Edward Smith III and against his family members should not be allowed and not warrant a preclusion of the facts that PBG has deprive my due process right and failed to comply with the set statutory requirements.

The issues as herein complained of, are systemic from yy counter claim for which I was

deprived my due process rights by PBG, based on the reasons to believed that PBG failed to follow the law. My complaint was a discriminatory in nature under statute SC code 1-13-80 et seg. From the reason given to believed based on the written law, it was PBG obligation to provide such rights and not separated and unequal treatment of a private citizen legal rights while employed . I opposed to the adverse treatment and unlawful employment and business practice in hostile environment that was being taken against me based on my race (African American).

In this action, the Appellant court claims that the act was untimely, but I diametrically object to PBG non-compliance actions for failing to also follow the written rules when it clearly states written notification requirements under rule 203 (1)(B). This issue hereunto pertaining related to a presumption of untimely on its face. Upon closer review of all relevant docketed records this fact which reasons are give to believe negligence due to recklessness (claim cross complaint) exist.

The fact of this undisputed action relates to PBG whom initiated a "just cause" action by terminating Mr. Wesley Edward Smith III from his employment with the Corporations within the boundaries of this court and under the written laws. This court retains the jurisdictional rights over the parties. [The trial court found sustainability when granting the respondents motion for judgment against Mr. Wesley Edward Smith III on their pleadings]. The issue here start with the originality of this case of records. There are no notices that have been served to Mr. Wesley Edward Smith III, by any complaining party. This gives a reason to believe a violation of my recognizable legal rights have, in fact been violated by the respondent while acting either severally or collectively under the color of law which reason is discriminatory within itself based on race, disability age or the other. Rule 56 states in relevant parts that no genuine issue of



**NOTICE OF APPEAL IN A CIVIL CASE**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Doyet A. Early, Circuit Court Judge

Case No. 2013-CP-10-00417

Wesley Smith,

Respondent

v.

Pepsi Bottling Group, INC

Appellee

**NOTICE OF APPEAL**

Mr. Wesley Edward Smith III (a person now having a legal interest and standing as a ex parte) appeals the notice of entry of judgment of the Honorable court letter dated 27 February 2014. Mr. Wesley Edward Smith III based on the lack inactivity of this legal proceeding is justified. I have reason that the action that was imitated by Pepsi Bottling Group, INC should have been dismiss without prejudice pursuant the provision of the SCRCF under rule 12(5) due to the lack of service of process as law requires (proof needed). Subsequently, I am opposing objectively based on Pepsi Bottling Group, INC failures to comply to the rule of law and adverse action that statutorily violated a recognizable state statute as an unlawful employment practice . Such in adverted action gives reasons to believe a mistaken identity has been made for which I am

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**SC Court of Appeals**

FILED  
2014 APR 18 AM 9:55  
JULIE J. ARMSTRONG  
CLERK OF COURT  
BY \_\_\_\_\_

seeking to challenge Pepsi Bottling Group, INC procedural due process for the related court action. The test of whether substantive due process is met is whether a "Reasonable Person" could understand the law to be able to comply with it. laws that do not meet this test are declared *void for vagueness* (As defense is affirmatively asserted)

While I am not here to practice law, I am ignorant and incompetent to the entwining of the operation of any judicial practice, that is constantly under the construction and cause such procreating issues. Such legal recourse gives reason to believe legal rights are hindered by enacted doctrines which is depriving the substantive due process as well. This court integrity mechanisms for which all vehicle regardless of ant discriminatory action of a protected class in violation to S. C law 1-13-80 based on a persons race color, disability, age sex or former means of cultural belief or lifestyle was understood, are to operate legally within the confine of judicial proceeding and supported by the applicable enforcement of the law agency review without harassments or threatening mannerisms of things.

Upon entrance into this vessel under a faulty premise on behalf or the Pepsi Bottling Group. INC rendition of an alleged "just cause " subjective reasoning for my being terminated from employment, gives reasons to believe that such adverse treatment of similarity situated citizen were more righteous and expeditiously completed, with an irregularity an error of law, while on the other hand, the application under the color of law was applied to a protected person of race, the law applied is unfair, partially administered and applied unequally. I am aggrieve and identified and respectfully requesting to liberally exercise my fundamental legal right afforde men under state law, while proceeding In forma Pauperis. In forma Pauperis based on the fact that these actions have caused me to endure further unnecessary and undue hardships, the

inability to afford a competent legal counsel and based upon limited financial conditions due to impoverished conditions. This action gives reason to believe a mistake for inadvertently sanctioning Mr. Wesley Edward Smith III XXX-XX-3407 for using the inquisitional approach, so that an experience official professional of law or adjudicator could explain what constitutes an irregularity in procedural due process and does the assertion of the defense such as the "At-Will" doctrine creates that substantive due process issue that all is gagged from speech and uncontested this date due to the lack of actions or expedition of a neutral process which gives to believe that such a longstanding doctrine, erodes the rule of law and considered statutorily offensive to a law abiding citizen. There is a genuine issue of material fact that remains for which ruling is an irregularity not in conformance with the register of statutory requirements nor the precedence cases. A declaratory relief and affordable remedy, by order, decree or mandate is respectfully in order on this instant subject matter before this honorable court for redress or reconsideration without the required legal proof necessary in rulings or relief's afforded by law.

**All other rights afforded to me that are expressly written laws are preserved and reserved until further notified.**

**I declare that under the penalty of perjury this information is true and correct**

April 15, 2014

Respectfully Submitted



Mr. Wesley E. Smith, III  
465 N. Nassau Street  
Charleston, South Carolina 29403  
Respondent Pro Se

Counsel of Record For Pepsi Bottling Group INC (PBG)  
Mr. Ashley B. Able III ESQ  
One Liberty Square  
55 Beattie Street Suite 800  
Greenville, South Carolina 29601

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MAY 2 2 2014

SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Doyet A. Early, Circuit Court Judge

Case No. 2013-CP-10-00417

Mr. Wesley Edward Smith, III, Respondents

v.

Pepsi Bottling Group, INC. Appellant

FILED  
2014 APR 18 AM 9:50  
JULIE J. ARMSTRONG  
CLERK OF COURT

PROOF OF SERVICE

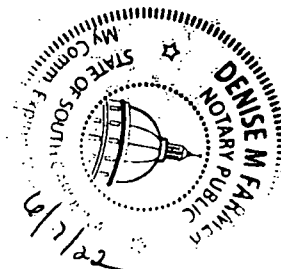
Mr. Wesley Edward Smith III (a person now having a legal interest and standing as a ex parte) on April 15 2014 certify that the denial of Motion to Proceed In forma pauperis and warning of contempt judgments of this Honorable Court dated on 27 February 2014 and the subsequent actions of the Honorable Doyet A. Early order dated 28 March 2014 which gags any of my afforde legal opportunities was sent to the parties addressed

To: Mr. Ashley B. Able III ESQ  
One Liberty Square  
55 Beattie Street Suite 800  
Greenville, South Carolina 29601  
Counsel for Appellee

~~March 25,~~  
April 15, 2014

Mr. Wesley E. Smith, III  
465 N. Nassau Street  
Charleston, South Carolina 29403  
Appellant Pro Se

SWORN TO BEFORE ME  
Denise M. Fakhren  
this 15 day of April 2014  
Notary Public for the State of  
**SOUTH CAROLINA**  
My Commission expires  
6/2/22



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

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

April 15, 2014

**RECEIVED**

MAY 22 2014

**SC Court of Appeals**

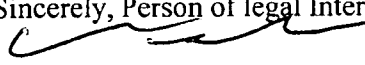
CLERK  
Honorable Julie J. Armstrong  
100 Broad Street Suite 106  
Charleston, South Carolina 29401

RE: Mr. Wesley Edward Smith, III Respondent v. Pepsi Bottling Group, INC Appellee RE: Case  
2013-10-CP-00417

Dear Honorable Clerk Armstrong;

Enclosed for filing is a 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  
Respondent Pro Se

cc: Counsel of Record For Pepsi Bottling Group INC (PBG)  
Mr. Ashley B. Able III ESQ  
One Liberty Square  
55 Beattie Street Suite 800  
Greenville, South Carolina 29601

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )  
 )  
 )  
 Wesley Edward Smith, III, )  
 Plaintiff )  
 )  
 vs. )  
 )  
 Pepsi Bottling Group, Inc., )  
 Defendant. )

IN THE COURT OF COMMON PLEAS  
 FOR THE NINTH JUDICIAL CIRCUIT

CASE NO.: 2013-CP-10-0417

FILED  
 2014 FEB 27 PM 4:09  
 JULIE J. ARMSTRONG  
 CLERK OF COURT

~~ORDER DENYING~~ PLAINTIFF'S  
 MOTION FOR AN ORDER TO  
 PROCEED *IN FORMA PAUPERIS*

THIS MATTER CAME before the Court on the *Pro Se* Plaintiff's Motion for an Order to Proceed *In Forma Pauperis* in order to have the required filing fee waived because of indigence.

*OPM*

\_\_\_\_\_  
 \_\_\_\_\_

The request is granted.

The request is denied because the Plaintiff have not shown proof of indigence.


\_\_\_\_\_

The request is denied because the Plaintiff's complaint is against a political subdivision or agency of the State of South Carolina and alleges a cause of action that occurred in a county other than Berkeley County/Charleston County (circle one). The South Carolina Tort Claims Act, S.C. Code § 15-78-100(b) provides that jurisdiction is in the county in which the act or omission occurred. Therefore, the Clerk of Court is directed to return the pleadings to the Plaintiff, and the Plaintiff may re-file in the proper county.

\_\_\_\_\_

Other: *See Attached*

AND IT IS SO ORDERED.

  
 \_\_\_\_\_  
 The Honorable Stephanie P. McDonald  
 Chief Administrative Judge, Ninth Judicial Circuit

Feb. 21, 2014  
 Charleston, South Carolina

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )  
 )  
 Wesley Edward Smith, III, a/k/a )  
 Wesley Smith, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 Pepsi Bottling Group, )  
 )  
 Defendant. )

IN THE COURT OF COMMONS PLEAS  
 CIVIL ACTION NO.: 2013-CP-10-0417

FILED  
 2014 FEB 27 PM 4:09  
 JULIE J. ARMSTRONG  
 CLERK OF COURT

**ORDER**

Plaintiff has filed a motion to proceed *in forma pauperis* in the current action. This motion is denied. In addition, the Court takes this opportunity to address the repetitive, frivolous, and abusive nature of plaintiff's filings in this Circuit. Just today, the undersigned denied plaintiff's request to proceed *in forma pauperis* in another matter, *Wesley Edward Smith, III, vs. Charleston County School District (CCSD)*. In the CCSD case, the Honorable Doyet A. Early, III, sanctioned Mr. Smith for the filing of frivolous pleadings and documents with this Court. (See Judge Early's November 20, 2007 Order, as well as Judge Roger Young's February 20, 2013 Order in Case No.: 03-CP-10-4751).


In addition to sanctioning the plaintiff, Judge Early Ordered that "Plaintiff Wesley Smith is hereby enjoined, restrained, and prohibited from filing any new or further lawsuits, complaints, pleadings, motions, petitions, writs, or other similar documents in this Court that seek damages or other legal or equitable relief arising from the same facts or events referenced in the Complaint filed in this case on November 14, 2003, or in the Amended Complaint filed in this case on June 23, 2004." (Early Order at Page 11). Despite this specific admonition from

Judge Early and Judge Young's more recent 2013 denial of *in forma pauperis* status to the plaintiff, Mr. Smith has again attempted to file suit against the CCSD.

The current attempted action against Pepsi Bottling Group is not subject to Judge Early's Order; however, this Court looks to Judge Early's prior admonition, as well as to the South Carolina Supreme Court's analysis in *Richardson v. Stewart*, 386 S.C. 282, 688 S.E.2d 124 (2010), for guidance. A similar admonition is now necessary to address the *pro se* plaintiff's current behavior of seeking to file two separate frivolous lawsuits (with accompanying requests for *in forma pauperis* status) in Charleston County during such a short period of time. Even a cursory review of plaintiff's pleading against Pepsi Bottling Group reveals it to be frivolous. Such behavior results in a waste of judicial time and resources and interferes with the administration of justice. Therefore, plaintiff's motion to proceed *in forma pauperis* is denied.

In an effort to curb any further abusive filings, it is hereby Ordered that the Clerks of Court in the Ninth Judicial Circuit not accept any documents from this *pro se* plaintiff that require a filing fee unless accompanied by the filing fee **and** a properly notarized affidavit from Wesley Smith, III, stating that he in good faith believes that the document submitted is nonfrivolous and is proper for consideration by the Court. This order shall not apply to any matters in which the plaintiff has already been granted leave to proceed *in forma pauperis*. The Court takes this opportunity to warn the plaintiff that any attempt to file documents in the Ninth Judicial Circuit in violation of this order may result in him being held in contempt of this Court.

AND IT IS SO ORDERED.

  
Stephanie P. McDonald  
Chief Administrative Judge  
Ninth Judicial Circuit

Charleston, South Carolina  
February 21, 2014

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
 ) FOR THE NINTH JUDICIAL CIRCUIT  
 COUNTY OF CHARLESTON )  
 ) Case No 2013-CP-10 0417  
 MR. WESLEY EDWARD SMITH III, )  
 )  
 Plaintiff, ) MOTION AND AFFIDAVIT TO PROCEED  
 ) INFORMA PAUPERIS WITHOUT PRE-  
 v. ) PAYMENT OF FILIG FEES  
 )  
 PEPSI BOTTLING GROUP ESQ INC )  
 )  
 Defendant. )  
 ) FILE NO, \_\_\_\_\_

I, Wesley Edward Smith, III being duly sworn, state that I am the Plaintiff and that I do not have the funds available to pay the cost of filing and service in the present matter. I hereby request that the complaint be filed and service made without cost.

Sworn to and Subscribed before me )  
 this 17 day of Feb 2014 )  
 )  
Dennis M Farmer )  
 Notary Public for South Carolina )  
 My Commission expires 4/2/22 )

*[Signature]*  
 Signature of Plaintiff of )  
 Person Filing Complaint on Behalf of )  
 Plaintiff )

*[Notary Seal: DENNIS M. FARMER, NOTARY PUBLIC, STATE OF SOUTH CAROLINA, My Comm. Expires 4/2/22]*

2/27/14

FILED  
 2014 FEB 27 PM 4:10  
 JULIE J. ARMSTRONG  
 CLERK OF COURT

**ORDER**

- Leave is granted to proceed in forma pauperis without payment of the filing fee.
- Leave is granted to proceed in forma pauperis without payment of the service cost.
- Leave is denied to proceed in forma pauperis.

Dated Feb., 2014 *[Signature]*  
 Charleston, South Carolina JUDGE/CLERK OF COURT

NOTICE TO Plaintiff: The court may assess cost against either party at the hearing.



# The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

V. CLAIRE ALLEN  
DEPUTY CLERK

POST OFFICE BOX 11629  
COLUMBIA, SOUTH CAROLINA 29211  
1015 SUMTER STREET  
COLUMBIA, SOUTH CAROLINA 29201  
TELEPHONE: (803) 734-1890  
FAX: (803) 734-1839  
[www.sccourts.org](http://www.sccourts.org)

May 07, 2014

Wesley Edward Smith, III  
465 N. Nassau Street  
Charleston SC 29403

COPY

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MAY 22 2014

Re: Wesley Smith v. Pepsi Bottling Group  
Appellate Case No. 2014-000995

SC Court of Appeals

Dear Mr. Smith:

Upon reviewing your notice of appeal, the following deficiency or deficiencies have been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within ten (10) days of the date of this letter:

- The notice of appeal is not accompanied by the order(s) and/or judgment(s) challenged on appeal.
- The required filing fee has not been submitted. The correct filing fee is \$100.
- The proof of service does not indicate that the notice of appeal was served.
- You are requested to serve and file an amended notice of appeal. Please refer to Appendix C, Form 1, SCACR for guidance.

COPY

Very truly yours,

*V. Claire Allen, Deputy*

CLERK

cc: Ashley Bryan Abel, Esquire