

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
 COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT
) Trail Court Case No 2013-CP-10-00417
 Mr. Wesley Edward Smith III,)
)
) Petitioner.) Petition for continuance or for the Administrative
) Review or to Amend as Writ to Admit a
) relinquishment of vested authority, duty,
 v.) obligations and responsibility of statutory
) or constitutional requirements while
 Pepsi Bottling Group, INC,) operating under the color of State laws
 Respondent.)
)

QUESTION PRESENTED

1. With Mr. Wesley Edward Smith III ignorance of the laws and rules (as being practice upon daily) which total reliance on the written rules governing this courts actions, promotions, promises, equitable remedies and restoration judgment granting relief, where can I, Mr. Wesley Edward Smith III find in the text of any written rules, that adjudication is fairly administered and finalized to or against a party without regards of following the rules of procedural due process of which the right to be informed, cross examining witnesses and discovery are all encompasses ? Explain by providing substantive evidence as proof of written text.

2. With Mr. Wesley Edward Smith III ignorance of the laws and rules (as being practice upon daily) which total reliance on the written rules governing this courts actions, promotions, promises, equitable remedies and restoration judgment granting relief, where can I, Mr. Wesley Edward Smith III find in the text of any written rules, as related to sanctions of one case of a the adjudication process, even thought a perceived undiscovered error of law not allowed to be contested under the same set of rules, bars the exercise of speech or freedom of expression [First amendment right violation] of his entire existence or the afforded remedies for any and all other serpentine collateral attacks frivolous made up against him? Is this considered based on the rules that justice was truly and fairly administered as finalized to or against a party without regards of following the rules of procedural due process of which the right to be informed, cross examining witnesses and discovery are all encompasses ? Explain by providing substantive evidence as proof of written text.

3. Under the governance of the long standing court rule and state laws as established by a governing body of authority, duties, obligations and responsibility of this state organization, while operating under the color of State laws is this agency (action governed on reason to believe based on continual denial of motion or petitions) refusing to allow the administering of an impartial or fair liberal hearing to the injured party in this action between private citizen whose state statutory right, as reviewed and perceived have been violated by the respondents?

RECEIVED
 JUN 3 0 2014
 SC Court of Appeals

1. PURPOSE FOR ADMINISTRATIVE REVIEW OR WRIT TO ADMIT

All persons who enter in the courthouse or these halls of justice and ethics should feel assured based on customary tradition, that injustice will be serviced without fear of prejudices (based on posted memorandums) and all that work within the confines of the institutional organization knows or was sure to know the seriousness of risk associated or involved are also the subject to liability for lack of adherence. The understanding was by fully understanding the terms, policies, doctrines, regulations, state codes, state court rules and State laws involved in participating in this program and their personal responsibilities for adhering to the rules and regulations, and accepted all other acquaintances as participants.

Mr. Wesley Edward Smith III petitions this particular court for judicial discretion based on the fact that this court retains the right to personal jurisdiction over the parties and their separate claims. This petition for review is from an oversight of an implied act, carryout as legitimately done under the law, but is being perpetrated by posers as valid even though alleged facts and rumors are not substantially supported with evidence or with enforcement agency rule of law. PBG still refuses to pay the money owed under contract and has shown no concern at all for Mr. Wesley Edward Smith III. This discriminatory act which gives reason to believe in violation of my recognized statutory right under SC law 13-10-80 based on my race, an African American was violated by PBG. Such avoidance or compliance to the written regulation, rules and laws are perceived as an error of law based on the fact of the respondent's insufficiency of service of the process and my right to discovery to discover some, if not all truths or cross examine PGB testifying witnesses for accuracy on facts beyond that of any good faith reasoning's. The fact that Pepsi Bottling Group INC initiated a just cause reason under guise of a state law for termination of Mr. Wesley Edward Smith III from employment, PBG in its procedure forgot another important

element, which was to allow Mr. Wesley Edward Smith III his right to appeal PBG decision, or his right governing applicability of rules for procedural due process.

Mr. Wesley Edward Smith III and this court lacked legal familiarization to substantially concluded based on fact and not a presumption or speculation at law are reason for the oversight of law, or that the personal involved in the entire process, responsibly supervised the chain of custody to prevent bullying, spoofing of witnesses and the non-contamination of any crime scenes. Given reason these reason to believe, a miscarriage of justice, obstruction to justice, aiding and abetting, fraud upon the courts, fraud, collusion, conversion, and abuse of power has occurred (A process done without providing affordable judicial care concerning the civil rights of the citizen) is a forefront thought of additional claims.

While this adjudication process entail all action affording a citizen procedural due process, at hand, this is the pivotal and central nerve of the civilized society (I attest as one civil) dependency for liberty, equality and administration of law that is needed for enforcement, by proper authorities. Under this true hand of justice, perceptions of violation of a private citizen personal rights should not be presumed. At anytime, procedures that governs a society is also governed by the same set of laws as applied and rendered under the same set of rules and state law. This tends to continually show consistency in the judicial system process, while deny or depriving any perpetrators acting under the guise or uniform of law from hindering or impeding upon any citizen a fundamental and legal right. For a judicial process to be unresolved, uncontested and not allowed to be afforded due process rights, equally to challenge a violation to the law, doesn't afford proper relief, breaches such written promises and guarantees of remedy, process of restoration, administrative redress and civil rest that is statutorily and personally

required. Such violated action may give reasons to believe such acts is collusion, which actor either decide to collectively or severally commit together. Other issues of general material fact is the allege commission of Fraud upon the courts, abuse of power, conversion and statutory repression.

The signing of the attached writ to admit will serves official notice to all other interested parties having a vested interest in the outcome of this state administrative agency decision, as herein or hereafter concerned, having apparent authority relinquishes any and all such legal authority, duties obligations and responsibility as promulgated or enumerated by the state court rules, statutory requirements, registered precedence's and constitutional laws or applicable articles. Based on information and belief, at some part the completion of all the state judicial process mechanism is to allows all vehicles all opportunities to preview any challenges or petitions offered as perceptions are perceived as an impartial hearing for which a genuine issue of material facts remain for which a right to discovery according to the state laws and court rules, requires procedural due process openly without prejudice, to become liberally construed with compassions and complaints or cross complaints considered on the face without any biases regardless to the citizen of private person previous form or personal servitude while acting or operating under the color of the State laws. The respondents PBG violated my rights afforded and such acts are perceives to be decimator in violation of statutory law 13-10-80 et seg while acting, benefiting and operation under the color of the same set of laws, as such termination action was initiated and applied upon Mr. Wesley Edward Smith III for which I terminated without PBG having substantiated evidence to support the termination act, but relies on the courts for bailout doctrines, internal conflicts and personnel spats of ideology controversy and

indifferences to slide under the legal course of action, but required within the language of the due process clause. I am still unemployed this date and suffer personally for PBG failure to comply to the established rules regulations and state laws

II. PROCEDURAL BACKGROUND FACTS

The action of Issue involve in this case, claims have not be heard before this honorable administrative agency review of law. Mr. Wesley Edward Smith III cross claims are purported from the South Carolina Code of laws Title 13 Chapter 10 Section 80 et seg alleging anti-biases based on a previous form or condition of personal servitude, race, religion, age and armed forces affiliation. My discrimination (retaliation) claims are for the deprival and denial of a fundamental right, a respect owed to all citizen regardless of class in a civilized society. The violation of this recognizable right involves procedural due process, which reasons as given to believe were violated by Pepsi Bottling Group in its termination process of Mr. Wesley Edward Smith III from his employment without Pepsi Bottling Group, INC providing the necessary elements required such as the substantive evidence related to a "just cause" acts prior during or after terminating an employee. Such a material fact remaining if allowed to point out in the record would show PBG has failed to comply with the implied or expressly written rules and failed inform all parties by services of such notice. Relying upon SCCRP Rule 56.

I've search this honorable court databases and found no resolution or presentation of my claims, by support of an formal investigation related to action adjudicated against me wareented, from any adversary or respondent of the docket listing roster. I have search all over and have not found any such support to justify personal subjective reasoning's (for which actions leads me to believe acts are unfair and denied prejudice while administering impartial justice , with written notice) to a person or citizen that doesn't practice at the written laws all day, find it an

unacceptable social standard, to intervene in private affairs and consolidate cases, or a surety that the end results are service for one's one compelling reasoning's, which obvious attacks are the results of state laws and regulation and the court rules violations, the collateral attacks into one, as a stand alone resolution to judicial problem, oversight and error of law, which such transgressions stains the very limited fabrics of the integral part of impartially administering justice to all.

In to accordance with the honorable Stephanie McDonald (order dated 18 April 2014) making reference to another case, that role players, actors, alleged crimes committed under the State enacted codes, locations, action locations, date and times raised herein in here arider are totally separate and prevalent. Such out of place acts, give reasons to believe, for which I personally consider it a moot issue, deny any and all alleged infractions and error of law sanctions alleged the same without proof. Judge McDonald order denying right me and afforded right due to not having the funds necessary to proceed is justified, first, by having go through personnel personal and legal struggles and secondly, having to face and continually having to endure a economic hardship, In forma pauperis denied by order dated 27 February 2014

In this letter of explanation (see attached) as consolidated, reason are given to believe this case as inextricable interwoven only draws questions of legal and personal inferences of moot and frivolous issues that are not relevant to one another and sheds no light on justice.

Since on or about 2005 ("Directly related to the assigned docketed case number on subject matter issue with the Pepsi Bottling Groups, INC") Mr. Wesley Edward Smith III (the citizen having a private personal interest and a vested legal standing in the outcome of the subject matter have been trying to quietly resolved these legal misinterpretations and misunderstandings of the

local agencies for perceived discriminatory acts for opposing and unlawful business practice between the parties, whereas as in interveners who are intentionally or unintentionally interfering, hindering and harassing private citizen right under a State contractual relationship is also procedurally unjust and unwarranted that raises a new bar for concerns, as cross claims are reintroduced in this administrative agency since June 2005.

In the action of PBG, I diametrically opposes, along with its conjoining of it legal team, the ex parties of Mr. Ashley B Able, Ms. Jody Smitherman and Mr. Scott Katrosh for intervening, interfering and imposing is personal will and not showing of legal expertise interest in matters. Mr. Ashley B. Able, Ms, Lynn S Holly. Ms. Jody Smitherman and Mr. Scott Katrosh and many others, while continuing to intervene, interfere, hinder justice and imposing is legal will have no shown having a legal or personal standing to the PGB and Mr. Wesley Edward Smith III private claims. These issue have been belay in the State halls of justice of this honorable court since on or before 1996. It is unfair to have any citizen harassed in the mannerism that I Mr. Wesley Edward Smith III has and having to continually endure. Personal injuries resulting for this action or the lack thereof, surpass the decencies of reasonable, prudent normal person standard, as related to Metal anguish or emotional distress, This type of personal injuries in the eyes of most, are probably laugh upon.

III. JUSTIFICATION TO SUPPORT OBJECTIVELY BY MEMORANDUM OF LAW ARGUMENT WITH WRITTEN EXHIBITS

Pursuant the provisions under Title 15 - Civil Remedies and Procedures
CHAPTER 36. SOUTH CAROLINA FRIVOLOUS CIVIL PROCEEDINGS SANCTIONS ACT
As stated in relevant parts;

2(D) A person is entitled to notice and an opportunity to respond before the imposition of sanctions pursuant to the provisions of this section. A court or party proposing a sanction pursuant to this section shall notify the court and all parties of the conduct constituting a violation of the provisions of this section and explain the basis for the potential sanction

imposed Upon notification, the attorney, party, or pro se litigant who allegedly violated subsection (A)(4) has thirty days to respond to the allegations as that person considers appropriate including, but not limited to, by filing a motion to withdraw the pleading, motion, document, or argument or by offering an explanation of mitigation.

Secondly, under a motion for SCRPC rule 12 Motion to Dismiss, as stated in relevant parts (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: (6) failure to state facts sufficient to constitute a cause of action.

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.

IV. CONCLUSION, there is sacred bond of trust that a civilized society holds a high esteem in equality of procedural due process justice fro which I am seeking the enforcement of my statutory and constructional rights afforded me .

WHEREAS under the written rules, this court lacks legal familiarization and oversight or personal supervision of case and actors, which gives reason to believe a miscarriage of justice, obstruction to justice, legal sabotage, kidnapping hostage taking, aiding and abetting, fraud upon the courts, conversion and abuse of power has occurred (A process done without the affordable care concerning the right of the citizen). While the adjudication procedural due process is at the pivotal and central nerve (most important part) of a civilized society dependency for liberty, equality and administration is needed for the enforcement of proper justice to violated of private citizen personal rights, as known at anytime procedures that governs a society is also governed by the same set of laws as applied and rendered under the same set of rules and state law that tend continually deny or deprive any citizen a fundamental right, in the judicial process to be unresolved, uncontested and or ill affords proper relief, breach the promise of restoration that is

statutorily, with human decency and as personally required.

This is without having to compromise who I am a person and Dad to posers of the law who forces it will for leisure in society . As a protected class citizen, my statutory right seeks relief for the person injuries sustained as a result of actions which gives reasons to believe a breach of duty and breach of a contractual relationship, whether done the intentionally or unintentional with interference with such breach was for this court to determine. This action draws national importance and in of extraordinary circumstance occurrence concerns of national security and a civilized society.

June 26, 2014

Respectfully Submitted



Mr. Wesley Edward Smith III

STATE OF SOUTH CAROLINA) **IN THE COURT OF GENRAL SESSION**
COUNTY OF CHARLESTON) **NINTH JUDICIAL CIRCUIT**
) Trail Court Case No 2003-10-CP-4751
Mr. Wesley Edward Smith III,)
))
Petitioner.)
v.)
))
Pepsi Bottling Group , et al,)
Respondent.)
_____)


CERTIFICATE OF SERVICE

I, Wesley Edward Smith III certify that on June 26, 2014, Administrative Agency Writ to Admit relinquishment of duties and contractual obligations while petitioner dissents the unchallenged rulings of the previous irregular Judgment, cultural belief or ideology and speculation based on personal opinions involving the parties with attached copy of page 10, exhibits A,. B Cby depositing a copy of it in the United States first class mail:

TO: Mr. Ashley B Able
One Liberty Square
55 Beattie Place Suit 800
Greenville S. C. 29601

June 26, 2014

Respectfully Submitted



Mr. Wesley Edward Smith III

NOTICE TO PERSON OF INTEREST

Governor of estate of South Carolina
Governor Nikki Haley
1205 Pendleton Street
Columbia, S.C. 29201

**STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON**

) **IN THE COURT OF COMMON PLEAS**
) **NINTH JUDICIAL CIRCUIT**
) **IN THE CASE No 2013-CP-10-00417**

Mr. Wesley Edward Smith III,

)

Petitioner.

)

)

v.

) Writ to Admit relinquishing vested authority,
) duty, obligations and responsibility of statutory or
) constitutional requirements while operating under the
) color of State laws

Pepsi Bottling Group, INC,

)

Respondent.

)

)

Based on the fact found by this court in the petition attached letter, by the signing of such writ, concerning the right of a state citizen I refuse to afford the citizen of this or any State his or her afforded procedural and substantive due process rights

I _____ the undersigned, as also a citizen of this state, relinquishes
(Printed Name)

authority, duty, obligations and responsibility of statutory or constitutional requirements while operating under the color of state laws, BE IT KNOWN THIS DAY THAT IN THE CASE of referencing to Pepsi Bottling Group INC against Mr. Wesley Edward Smith III case number 2013-CP-10-00417.

Given under my direction by supporting authority of _____
(stating or citing such authority)

this _____ day of _____ 2014
by order, as decree and affirmed.

Signature

SWORN TO BEFORE ME

this _____ day of _____ 2014

Notary Public for the State of

SOUTH CAROLINA

EXHIBIT A

RULE 11

SIGNING OF PLEADINGS; ATTORNEYS

(a) Signature. Every pleading, motion or other paper of a party represented by an attorney shall be signed in his individual name by at least one attorney of record who is admitted to practice law in South Carolina, and whose address and telephone number shall be stated. A party who is not represented by an attorney shall sign his pleading, motion or other paper and state his address. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The written or electronic signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion or other paper; that to the best of his knowledge, information and belief there is good ground to support it; and that it is not interposed for delay.

All motions filed shall contain an affirmation that the movant's counsel prior to filing the motion has communicated, orally or in writing, with opposing counsel and has attempted in good faith to resolve the matter contained in the motion, unless the movant's counsel certifies that consultation would serve no useful purpose, or could not be timely held. There is no duty of consultation on motions to dismiss, for summary judgment, for new trial, or judgment NOV, or on motions in Family Court for temporary relief pursuant to Family Court Rule 21, or in real estate foreclosure cases, or with pro se litigants.

If a pleading, motion or other paper is not signed or does not comply with this Rule, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or other paper is signed in violation of this Rule, the court, upon motion or upon its own initiative, may impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion or other paper, including a reasonable attorney's fee.

Note:

This Rule 11(a) is substantially the Federal Rule, with one addition, that the pleadings must be signed by the party or, if he has an attorney, by an attorney who practices in the State. Important as this change is, it is not as significant as the Rule itself, which eliminates the verification of pleadings and places on the lawyer who signs a pleading the duty of good faith in preparing the pleading. The lawyer may be disciplined if he violates this duty. This version of Rule 11(a) is not nearly so stringent as the latest version of the Federal Rule which became effective August 1, 1983; but it represents a substantial forward step in lawyer responsibility.

Note to 1986 Amendment:

EXHIBIT B

DISCLAIMER

The South Carolina Legislative Council is offering access to the unannotated South Carolina Code of Laws on the Internet as a service to the public. The unannotated South Carolina Code on the General Assembly's website is now current through the 2013 session. The unannotated South Carolina Code, consisting only of Code 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 Code available on the South Carolina General Assembly's website, the unannotated South Carolina Code 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 Code of Laws 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 the Legislative Services Agency at LSA@scstatehouse.gov regarding any apparent errors or omissions in content of Code sections on this website, in which case LSA will relay the information to appropriate staff members of the South Carolina Legislative Council for investigation.

Title 15 - Civil Remedies and Procedures

CHAPTER 36.

SOUTH CAROLINA FRIVOLOUS

CIVIL PROCEEDINGS SANCTIONS

ACT

Title 15 - Civil Remedies and Procedures

CHAPTER 36.

SOUTH CAROLINA FRIVOLOUS CIVIL PROCEEDINGS SANCTIONS ACT

SECTION 15-36-10. Frivolous lawsuits; signing pleadings; imposition of sanctions; notice and opportunity to respond; reporting violations.

(A)(1) A pleading filed in a civil or administrative action on behalf of a party who is represented by an attorney must be signed by at least one attorney of record who is an active member of the South Carolina Bar or who is admitted to practice in the courts of this State and must include the address and telephone number of the attorney signing the document.

(2) A document filed in a civil or administrative action by a party who is not represented by an attorney must be signed by the party and must include the address and telephone number of the party.

(3) The signature of an attorney or a pro se litigant constitutes a certificate to the court that:

(a) the person has read the document;

(b) a reasonable attorney in the same circumstances would believe that under the facts his claim or defense may be warranted under the existing law or, if his claim or defense is not warranted under the existing law, a good faith argument exists for the extension, modification, or reversal of existing law;

(c) a reasonable attorney in the same circumstances would believe that his procurement, initiation, continuation, or defense of a civil cause is not intended merely to harass or injure the other party; and

(d) a reasonable attorney in the same circumstances would believe his claim or defense is not frivolous, interposed for delay, or brought for any purpose other than securing proper discovery, joinder of parties, or adjudication of the claim or defense upon which the proceedings are based.

(4) An attorney or pro se litigant participating in a civil or administrative action or defense may be sanctioned for:

(a) filing a frivolous pleading, motion, or document if:

(i) the person has not read the frivolous pleading, motion, or document;

(ii) a reasonable attorney in the same circumstances would believe that under the facts, his claim or defense was clearly not warranted under existing law and that a good faith or reasonable argument did not exist for the extension, modification, or reversal of existing law;

(iii) a reasonable attorney presented with the same circumstances would believe that the procurement, initiation, continuation, or defense of a civil cause was intended merely to harass or

injure the other party; or

(iv) a reasonable attorney presented with the same circumstances would believe the pleading, motion, or document is frivolous, interposed for merely delay, or merely brought for any purpose other than securing proper discovery, joinder of parties, or adjudication of the claim or defense upon which the proceedings are based;

(b) making frivolous arguments a reasonable attorney would believe were not reasonably supported by the facts; or

(c) making frivolous arguments that a reasonable attorney would believe were not warranted under the existing law or if there is no good faith argument that exists for the extension, modification, or reversal of existing law.

(B)(1) If a document is not signed or does not otherwise comply with this section, it must be stricken unless it is signed promptly or amended to comply with this section after the omission is called to the attention of the attorney or the party.

(2) If a document is signed in violation of this section, or an attorney or pro se litigant has violated subsection (A)(4), the court, upon its own motion or motion of a party, may impose upon the person in violation any sanction which the court considers just, equitable, and proper under the circumstances.

(C)(1) At the conclusion of a trial and after a verdict for or a verdict against damages has been rendered or a case has been dismissed by a directed verdict, summary judgment, or judgment notwithstanding the verdict, upon motion of the prevailing party, the court shall proceed to determine if the claim or defense was frivolous. An attorney, party, or pro se litigant shall be sanctioned for a frivolous claim or defense if the court finds the attorney, party, or pro se litigant failed to comply with one of the following conditions:

(a) a reasonable attorney in the same circumstances would believe that under the facts, his claim or defense was clearly not warranted under existing law and that a good faith or reasonable argument did not exist for the extension, modification, or reversal of existing law;

(b) a reasonable attorney in the same circumstances would believe that his procurement, initiation, continuation, or defense of the civil suit was intended merely to harass or injure the other party; or

(c) a reasonable attorney in the same circumstances would believe that the case or defense was frivolous as not reasonably founded in fact or was interposed merely for delay, or was merely brought for a purpose other than securing proper discovery, joinder of proposed parties, or adjudication of the claim or defense upon which the proceedings are based.

(2) Unless the court finds by a preponderance of the evidence that an attorney, party, or pro se litigant engaged in advancing a frivolous claim or defense, the attorney, party, or pro se litigant

shall not be sanctioned.

(D) A person is entitled to notice and an opportunity to respond before the imposition of sanctions pursuant to the provisions of this section. A court or party proposing a sanction pursuant to this section shall notify the court and all parties of the conduct constituting a violation of the provisions of this section and explain the basis for the potential sanction imposed. Upon notification, the attorney, party, or pro se litigant who allegedly violated subsection (A)(4) has thirty days to respond to the allegations as that person considers appropriate including, but not limited to, by filing a motion to withdraw the pleading, motion, document, or argument or by offering an explanation of mitigation.

(E) In determining if an attorney, party, or a pro se litigant has violated the provisions of this section, the court shall take into account:

(1) the number of parties;

(2) the complexity of the claims and defenses;

(3) the length of time available to the attorney, party, or pro se litigant to investigate and conduct discovery for alleged violations of the provisions of subsection (A)(4);

(4) information disclosed or undisclosed to the attorney, party, or pro se litigant through discovery and adequate investigation;

(5) previous violations of the provisions of this section;

(6) the response, if any, of the attorney, party, or pro se litigant to the allegation that he violated the provisions of this section; and

(7) other factors the court considers just, equitable, or appropriate under the circumstances.

(F) In determining whether sanctions are appropriate or the severity of a sanction, the court shall consider previous violations of the provisions of this section.

(G) Sanctions may include:

(1) an order for the party represented by an attorney or pro se litigant to pay the reasonable costs and attorney's fees of the prevailing party under a motion pursuant to this section. Costs shall include, but not be limited to, the following: the time required of the prevailing party by the frivolous proceeding, and travel expenses, mileage, parking, costs of reports, and any additional reasonable consequential expenses of the prevailing party resulting from the frivolous proceeding;

(2) an order for the attorney to pay a reasonable fine to the court; or

(3) a directive of a nonmonetary nature, including injunctive relief, designed to deter a future frivolous action or an action in bad faith.

(H) If the court imposes a sanction on an attorney in violation of the provisions of this section, the court shall report its findings to the South Carolina Commission of Lawyer Conduct.

(I) This act shall not alter the South Carolina Rules of Civil Procedure or the South Carolina Appellate Court Rules.

(J) The provisions of this section shall not apply where an attorney or pro se litigant establishes a basis to proceed with litigation, or to assert or controvert an issue therein, that is not frivolous, which includes a good faith argument for an extension, modification, or reversal of the existing law.

(K) The provisions of this section apply in addition to all other remedies available at law or in equity.

(L) The amount requested for damages in a pleading may not be considered in a determination of a violation of the provisions of this section.

(M) All violations of the provisions of this section must be reported to the South Carolina Supreme Court and a public record must be maintained and reported annually to the Governor, Senate, and House of Representatives.

HISTORY: 1988 Act No. 432, Section 6; 2005 Act No. 27, Section 5, eff July 1, 2005, applicable to causes of action arising on or after that date.

SECTIONS 15-36-20 to 15-36-50. Repealed by 2005 Act No. 27, Section 12, eff July 1, 2005.

SECTIONS 15-36-20 to 15-36-50. Repealed by 2005 Act No. 27, Section 12, eff July 1, 2005.

SECTIONS 15-36-20 to 15-36-50. Repealed by 2005 Act No. 27, Section 12, eff July 1, 2005.

SECTIONS 15-36-20 to 15-36-50. Repealed by 2005 Act No. 27, Section 12, eff July 1, 2005.

SECTION 15-36-100. Complaint in actions for damages alleging professional negligence; contemporaneous affidavit of expert specifying negligent act or omission.

(A) As used in this section, "expert witness" means an expert who is qualified as to the acceptable conduct of the professional whose conduct is at issue and who:

(1) is licensed by an appropriate regulatory agency to practice his or her profession in the location in which the expert practices or teaches; and

(2)(a) is board certified by a national or international association or academy which administers

written and oral examinations for certification in the area of practice or specialty about which the opinion on the standard of care is offered; or

(b) has actual professional knowledge and experience in the area of practice or specialty in which the opinion is to be given as the result of having been regularly engaged in:

(i) the active practice of the area of specialty of his or her profession for at least three of the last five years immediately preceding the opinion;

(ii) the teaching of the area of practice or specialty of his or her profession for at least half of his or her professional time as an employed member of the faculty of an educational institution which is accredited in the teaching of his or her profession for at least three of the last five years immediately preceding the opinion; or

(iii) any combination of the active practice or the teaching of his or her profession in a manner which meets the requirements of subitems (i) and (ii) for at least three of the last five years immediately preceding the opinion;

(3) is an individual not covered by subsections (A)(1) or (2), that has scientific, technical, or other specialized knowledge which may assist the trier of fact in understanding the evidence and determining a fact or issue in the case, by reason of the individual's study, experience, or both. However, an affidavit filed pursuant to subsection (B) by an expert qualified under this subsection must contain an explanation of the expert's credentials and why the expert is qualified to conduct the review required by subsection (B). The defendant is entitled to challenge the sufficiency of the expert's credentials pursuant to subsection (E).

(B) Except as provided in Section 15-79-125, in an action for damages alleging professional negligence against a professional licensed by or registered with the State of South Carolina and listed in subsection (G) or against any licensed health care facility alleged to be liable based upon the action or inaction of a health care professional licensed by the State of South Carolina and listed in subsection (G), the plaintiff must file as part of the complaint an affidavit of an expert witness which must specify at least one negligent act or omission claimed to exist and the factual basis for each claim based on the available evidence at the time of the filing of the affidavit.

(C)(1) The contemporaneous filing requirement of subsection (B) does not apply to any case in which the period of limitation will expire, or there is a good faith basis to believe it will expire on a claim stated in the complaint, within ten days of the date of filing and, because of the time constraints, the plaintiff alleges that an affidavit of an expert could not be prepared. In such a case, the plaintiff has forty-five days after the filing of the complaint to supplement the pleadings with the affidavit. Upon motion, the trial court, after hearing and for good cause, may extend the time as the court determines justice requires. If an affidavit is not filed within the period specified in this subsection or as extended by the trial court and the defendant against whom an affidavit should have been filed alleges, by motion to dismiss filed contemporaneously with its initial responsive pleading that the plaintiff has failed to file the requisite affidavit, the complaint is subject to dismissal for failure to state a claim. The filing of a motion to dismiss pursuant to this

section, shall alter the period for filing an answer to the complaint in accordance with Rule 12(a), South Carolina Rules of Civil Procedure.

(2) The contemporaneous filing requirement of subsection (B) is not required to support a pleaded specification of negligence involving subject matter that lies within the ambit of common knowledge and experience, so that no special learning is needed to evaluate the conduct of the defendant.

(D) This section does not extend an applicable period of limitation, except that, if the affidavit is filed within the period specified in this section, the filing of the affidavit after the expiration of the statute of limitations is considered timely and provides no basis for a statute of limitations defense.

(E) If a plaintiff files an affidavit which is allegedly defective, and the defendant to whom it pertains alleges, with specificity, by motion to dismiss filed contemporaneously with its initial responsive pleading, that the affidavit is defective, the plaintiff's complaint is subject to dismissal for failure to state a claim, except that the plaintiff may cure the alleged defect by amendment within thirty days of service of the motion alleging that the affidavit is defective. The trial court may, in the exercise of its discretion, extend the time for filing an amendment or response to the motion, or both, as the trial court determines justice requires. The filing of a motion to dismiss pursuant to this section shall alter the period for filing an answer to the complaint in accordance with Rule 12(a), South Carolina Rules of Civil Procedure.

(F) If a plaintiff fails to file an affidavit as required by this section, and the defendant raises the failure to file an affidavit by motion to dismiss filed contemporaneously with its initial responsive pleading, the complaint is not subject to renewal after the expiration of the applicable period of limitation unless a court determines that the plaintiff had the requisite affidavit within the time required pursuant to this section and the failure to file the affidavit is the result of a mistake. The filing of a motion to dismiss pursuant to this section shall alter the period for filing an answer to the complaint in accordance with Rule 12(a), South Carolina Rules of Civil Procedure.

(G) This section applies to the following professions:

(1) architects;

(2) attorneys at law;

(3) certified public accountants;

(4) chiropractors;

(5) dentists;

(6) land surveyors;

- (7) medical doctors;
- (8) marriage and family therapists;
- (9) nurses;
- (10) occupational therapists;
- (11) optometrists;
- (12) osteopathic physicians;
- (13) pharmacists;
- (14) physical therapists;
- (15) physicians' assistants;
- (16) professional counselors;
- (17) professional engineers;
- (18) podiatrists;
- (19) psychologists;
- (20) radiological technicians;
- (21) respiratory therapists; and
- (22) veterinarians.

HISTORY: 2005 Act No. 32, Section 4, eff July 1, 2005, for causes of action arising after that date.

EXHIBIT "C"

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

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

ORDER

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

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).

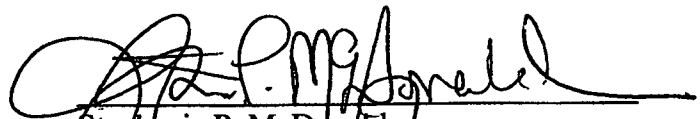
In addition to sanctioning the plaintiff, Judge Early Ordered that "Plaintiff Wesley Smith is hereby enjoined, restrained, and prohibited from filing any new or further lawsuits, complaints, pleadings, motions, petitions, writs, or other similar documents in this Court that seek damages or other legal 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



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

June 13, 2014

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

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

Dear Mr. Smith:

Within ten (10) days of the date of this letter, you are requested to supply a copy of the order of Judge Doyet A. Early dated April 18, 2014, as identified in your amended notice of appeal.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Ashley Bryan Abel, Esquire

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

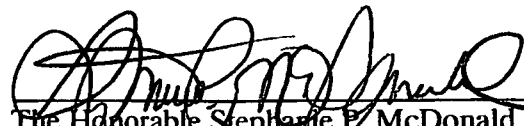
FILED
2014 FEB 27 PM 4:09
JULIE J. ARMSTRONG
CLERK OF COURT

~~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.

- 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

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

June 26, 2014

RECEIVED

JUN 30 2014

CLERK

Honorable Julie Armstrong
100 Broad Street Suite 106
Charleston, S.C. 20403

SC Court of Appeals

RE: Mr. Wesley Edward Smith, III Petitioner. v Pepsi Bottling Group, INC Respondent with the support of intervening ex parte action giving reasons to believe an unauthorized interaction with private citizens affairs while operating within the State of South Carolina territories and jurisdiction impedes, hinders and prejudices the procedural due process for administrative law review in this honorable court

Dear Honorable Julie Armstrong;

Enclosed for you immediate action is Mr. Wesley Edward Smith II reply to CLERK Honorable Jenny Abbott Kitchens State Court of Appeal requesting a copy of Judge Doyet Early Order dated 18 April 2014 order. This may have been a typographical error on my behalf due to the order in references as it relates to the Honorable Judge Stephanie McDonald order dated 27 February 2014 (making regards to Judge Early sanctioning order) reasoning for denying me from proceeding In forma Pauperis.

.If The Honorable Judge Doyet Eraly has an order dated 18 April 2014, I have petitioned this court for rehearing to review claims of a dissipative act of which the claim have not been heard in parts of this state territory, for which an unlawful employment business practice give reasons to believe based on the denial of procedural due process that a violation of a rules that encompasses my fundament and protected class citizens right, for action taken against me in an employment business practice for which I opposed and still opposing a complaining of being treated unfairly and not rightly receiving all the funds owed (pay) still to this current date.

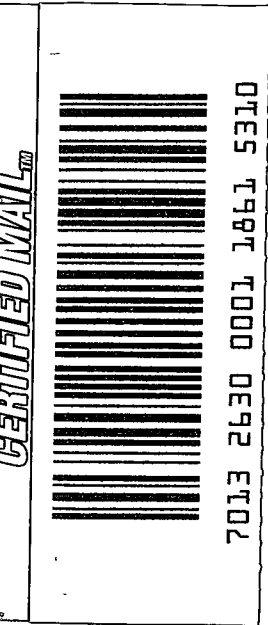
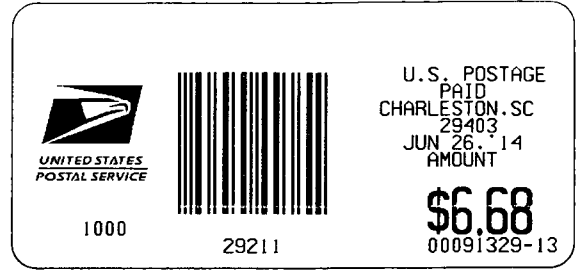
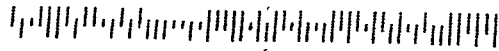
Thanking you in advance.

Sincerely,
Mr. Wesley Edward Smith III



COPY TO: CLERK
Honorable Jenny Abbott Kitchens
1015 Sumter Street
Columbia, South Carolina 29211

Mr. Wesley Ed
465 N. Nassau
Charleston, S. C 29403



CLERK
Honorable Jenny Abbott Kitchens
1015 Sumter Street
Columbia, South Carolina 29211

RECEIVED
JUN 30 2014
SC Court of Appeals