

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 1101578

TRACKING NO. 2012209047

Clayton Keith Soules..... Respondent,

v.

Spartanburg Public Safety Dept., Employer,
and Companion PNC Group, Carrier Appellants.

APPELLANTS' MOTION TO AMEND
THEIR NOTICE OF APPEAL

Pursuant to Rule 240 of the South Carolina Rules of Appellate Practice, Appellants, Spartanburg Public Safety Department and Companion PNC Group, hereby make this Motion to Amend their Notice of Appeal. For the reasons set forth below, Appellants request that this Motion be granted.

This is an appeal of a decision from the South Carolina Workers' Compensation Commission. Appellants received a copy of the Commission's decision on February 8, 2012, and they filed a Notice of Appeal with this Honorable Court on March 2, 2012. Appellants

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attached a copy of the Appellate Panel decision they were appealing from the Commission. The Commission's legal conclusions on this denied claim were all based on the applicability of the going and coming rule. On April 9, 2012, Appellants requested an extension to file their initial brief and designation of matter. This motion was granted. Subsequently, Respondent, Clayton Soules, requested an extension for his Initial Brief. The Court granted Respondent's motion, as well.

Upon receipt of Respondent's Initial Brief on July 18, 2012, Appellants reviewed the brief and noted that Respondents took the position that Appellants' Notice of Appeal was deficient and that their appeal should therefore be dismissed. This was the first occasion Respondents had ever asserted such an argument, and Appellants' Notice of Appeal was filed more than four months ago. Nevertheless, Respondents based this argument on South Carolina Code Annotated § 42-17-60, which was revised in 2007, and which now creates a filing discrepancy with Appellate Court Rule 203. Prior to the amendment, the statute placed these filing requirements on appeals going to the courts of common pleas, which made sense because circuit courts do not have their own appellate court rules.

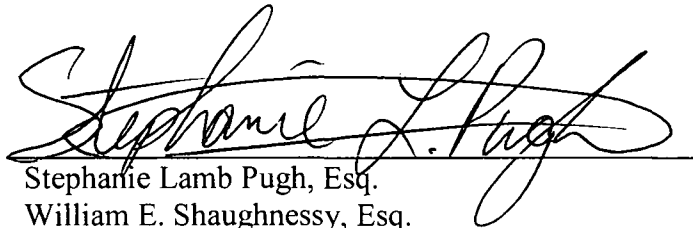
Appellate Court Rule 203 sets forth the requirements for a notice of appeal. The purpose of the rule is to place the opposing party, as well as the Court, on notice that an appeal has been filed. In the case at hand, Appellants have appealed the very same issues to the Court of Appeals that it appealed to the Commission's Appellate Panel. There is no lack of notice in this case. Respondents were fully aware of what issues were being appealed, because the compensability of this claim only focuses on one legal theory: the applicability of the going and coming rule. To the extent that there is a technical discrepancy between Appellate Court Rule and South Carolina

Code Annotated § 42-17-60, Appellants request that they be allowed to amend their Notice of Appeal, which is attached as Exhibit A.

Based on the foregoing arguments, Appellants respectfully request that this Honorable Court grant their Motion to Amend Their Notice of Appeal. There was no lack of notice of appeal in this case, and Respondents were fully aware of the issues being appealed. Further, Appellants submit that Respondent will not be prejudiced by the Court allowing Appellants to Amend their Notice of Appeal. Appellants are not presenting any new issues but merely seek to satisfy Appellate Court Rules 203, as well as the alleged requirements of § 42-17-60, by restating the issues on appeal, of which Respondent is fully aware.

Respectfully submitted,

July 20, 2012

A handwritten signature in black ink, appearing to read "Stephanie L. Pugh", written over a horizontal line.

Stephanie Lamb Pugh, Esq.

William E. Shaughnessy, Esq.

TURNER PADGET GRAHAM & LANEY P.A.

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ATTORNEYS FOR APPELLANTS

EXHIBIT A

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION

WCC FILE NO. 1101578

TRACKING NO. 2012209047

Clayton Keith Soules..... Respondent,

v.

Spartanburg Public Safety Dept., Employer,
and Companion PNC Group, Carrier Appellants.

AMENDED NOTICE OF APPEAL

Pursuant to Rules 201 and 203 of the South Carolina Appellate Court Rules, Spartanburg Public Safety Department and Companion PNC Group (Appellants) hereby appeal the Order of the South Carolina Workers' Compensation Commission, dated February 8, 2012. Appellants received written notice of entry of the Order on February 8, 2012. Respondent is represented by Mr. Logan Rollins, of the Hawkins Law Firm, Post Office Box 5048, Spartanburg, SC 29304. He can be reached at 864-574-8801.

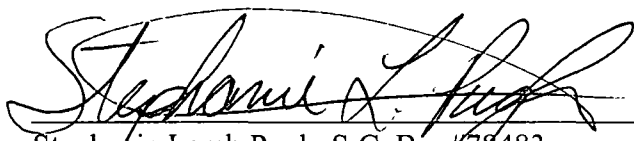
Respondents appeal the order of the Commission based on the following grounds:

1. The Commission erred in holding that Respondent sustained a compensable injury by accident and that Respondent's claim was not barred by the going and coming rule.

2. The Commission erred in holding that two exceptions to the going and coming rule were applicable to this claim, thereby resulting in the claim's compensability.

3. The Commission erred by creating a new exception to the going and coming rule and holding that the employer's policy brought this injury within the purview of the South Carolina Workers' Compensation Act

Respectfully submitted,



Stephanie Lamb Pugh, S.C. Bar #78483
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July 20, 2012

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v.

Spartanburg Public Safety Dept., Employer,
And Companion PNC Group, CarrierAppellants,

PROOF OF SERVICE

I certify that I have served the Appellants' Motion to Amend Their Notice of Appeal on Respondent Clayton Keith Soules, Jr., by depositing a copy of the same in the United States Mail, postage prepaid, on July 20, 2012, to his attorney of record and the following parties:

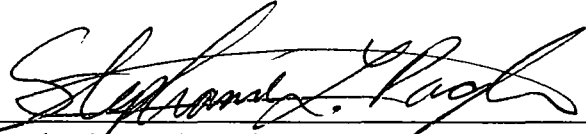
John Hawkins and Logan Rollins
The Hawkins Law Firm
P.O. Box 5048
Spartanburg, SC 29304

[SIGNATURE PAGE FOLLOWS]

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July 20, 2012

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64952

CHARLESTON
COLUMBIA
FLORENCE
GREENVILLE
MYRTLE BEACH

July 20, 2012

Stephanie Lamb Pugh
Attorney

SPugh@TurnerPadget.com
Direct Dial: (864) 552-4615

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

RE: Clayton Keith Soules, Jr. – Claimant/Respondent
vs.
City of Spartanburg, Employer and
South Carolina Municipal Insurance Trust Fund, Carrier – Appellants
Tracking No.: 2012209047
WCC File No.: 1101578
Our File No.: 05591.00269

Dear Ms. Kitchings:

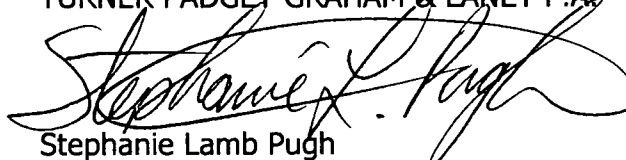
Please find enclosed the original and six copies of Appellants' Motion to Amend Their Notice of Appeal, along with Proof of Service, on the Respondent. Please return a filed and stamped copy to me in the self-addressed stamped envelope I have enclosed. I am also enclosing our check in the amount of \$25.00 to cover the cost of the filing fee.

By copy of this letter to John D. Hawkins and Logan Rollins, attorneys for respondent, we are advising them of our communication with the court and a copy of the Motion.

With kind regards, I remain

Very truly yours,

TURNER PADGET GRAHAM & LANEY P.A.



Stephanie Lamb Pugh

SLP/jsm

Enclosures

cc: John D. Hawkins and Logan Rollins, Esquire (w/enclosures)

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SC COURT OF APPEALS
JUL 24 2012
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