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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeal

APPEAL FROM Charleston COUNTY

Doyet A Early, Administrative Law Judge

Charleston County School District, et al.....Respondent,

v.

Mr. Wesley Edward Smith III,.....Appellant.

RECORD ON APPEAL

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INTRODUCTION

This appeal is taken from the Administrative Law Court Judge caption contains the names of the appellate court where the document is to be filed in the Court of Appeals as in compliance with rule 267. I : Mr. Wesley Edward Smith III submit its his appeal that was previously denied, now is exercising invoking privileges of legal rights of the accused of a crime and the subsequent actions that followed with loss of employment personal properties (inter alia) and all benefit associated, who seeking justice is merely claiming pursuant to SC Code of 15-1-10- et seg law claims against the Charleston County School District (CCSD) was wrongful as unlawful in the business practice. The violation of my recognizable right were committed by Charleston County School District and others. I have been legally injured from such deprivation of an entitled right Thus the 28 page CCSD order draws objectionable inference as perceived an error of statutory law and raise euthenics issues under 16-1-10 for which I respectfully demand the required relief

as afforded to all citizen regardless of socioeconomic statuses, race or any other reasonable anti-discriminative biases that may exist. Based upon these actions of CCSD and other persons, CCSD is believed to be ultimately liable and responsible for the overseeing actions of another, even as authority is delegated to act on its behalf of CCSD, CCSD the had a duty serve notices, a complaint with the identified action and relief sought, responsibility to perform such instructed mandated duties and a duty to show reasonable care to protect all from employee for reasonable of foreseeable injuries. Upon closer look of the recommendation for the termination of Mr. Wesley Edward Smith III (See attachment of CCSD 28 page order for termination) was not substantiated with proof, but from hearsay of another third party that story just doesn't seem to make any reasonable sense. The rumors and untruths told, caused a twenty-eight (28) letter to come to light, produced, passed to others, whether the construing of the contents were based on facts from the children's rumors validated with the substantive proof or construed as demonstrative by their nature with hateful intentions do to the ladder of command within CCSD without oversight, because Mr. Wesley Edward Smith III reported and opposed what was perceived as an unlawful business practice because CCSD refuses to pay him money owed, give him a copy of his performance evaluations, pay scale or allow him to review the unbiased assessment report and recommendations regarding of the review board committee hearing for the termination process from employment.

The subsequent of question for your review is the order that was supposed to be the direct claim of being denied procedural due process but the third [arty encroachers of justice change the format to meet is subjective action that resulted the unlawful action. CCSD allowed said information assed on to many others a credible, coming for an unsuspecting credible source.

CCSD allowed the 28 page production of unfounded lie after lie to be printed on its business letter head, by an unfathomable opponent. I believe this situation has cause the wrong persons to become terminated. But based on the circle of friends associations, partnerships and affiliates that were and are involved, Mr. Wesley Edward Smith III employment would not have a legal ground to stand upon The untruth of situation open up the termination process that was possible forge signatures that allow such lied to so far and cause many legal harms in employment.

Upon a closer look at CCSD 28 page letter (coversheet) from the alleged Superintendent. This was not his signature, but of another, construing from which seems to be a violation of said information, in violation to South Carolina Code 16-13-10. Forgery, as stated in relevant parts:
(A) It is unlawful for a person to:

- (1) falsely make, forge, or counterfeit; cause or procure to be falsely made, forged, or counterfeited; or wilfully act or assist in the false making, forging, or counterfeiting of any writing or instrument of writing;
- (2) utter or publish as true any false, forged, or counterfeited writing or instrument of writing;

This action sought on a level of unbiased grounds. This is in accordance with objective reliance the State Statutes afford a equitable remedy, relief and restoration from the legal attacks of predators and socio violent offenders. They may smile in your face but all the while seek to gain from you financially, destroying you legally, all awhile holding me accused of a crime without proving any hearing facts, even in the face of great adversity while operating under the State laws without allowing me a fair trial or a equal hearing by the law standards but based on personnel subjective beliefs of any event without providing the substantive proof required by law without having reasonable doubt existing.

PROCEDURAL BACKGROUND FACTS

It appears that civil judgments and criminal act have been interwoven with the criminal

acts being downplayed, which caused this judgement to be assessed prematurely. Conversely as Objectionable, not in accordance with the expressly written statutory law requirements. Reasons are given to believe that once a unlawful, illegal or wrongful action is filled against a person that believes has been arbitrarily targeted, instead of correcting the error all instant error that point to the violation of law, the victim is being pointed at, now having to be busted on a move without still being a hearing in which to be heard. The undisputed , unchallenged CCSD proceedings with the conjoining of the Honorable Doyet A. Early order, seems to allow eighty-seven (87%) percent of the ills in our American society but not curtailing the premature stereotyping others, by stopping the illegal mistreatment of citizens and the dehumanizing of another citizens in a set up mockery of an actual trial court process. I would be extremely appalled that someone would have the audacity to perpetrate my performance in my hardworking workspace that I take pride in. The other twelve percent (12%) is the reliance on uncontaminated evidence, unhampered courts and the non-desensitized jurors from any and all acts, that can easily taint the jurors perception, where the mistake of law was decided on a rumor and required acts were only to bamboozle and deceive another.

Based on information and belief , due to on my involvement with other like business associates and partners in this business, this action points to the directly or indirectly to the legal or statutory construing of the CCSD 28 Page negative references letter (yes again CCSD wrote 28 pages Order from a rumor and an circulated it as though was a factual events. See Attachment of CCSD Order termination my contract). This act is seemingly similar to the court order and still serves no real relevance to Mr. Wesley Edward Smith III claim for relief sought in this case for being overturned on appeal. I appear that the order perceived in

collaborative partnership of the Honorable R. Markley Dennis and Honorable Doyet A Early seems to serves the purpose, contributory to overlook (as perceived) CCSD negligently duty which was to disclose the pertinent information regarding the disclosure of substantive facts that needed to prove beyond any reasonable doubt Mr. Wesley Edward Smith III committed the alluded to crimes and that CCSD was the party that should have been awarded Summary Judgment. Disclosure of CCSD fact was would list the injured sustained as a direct or indirect cause, thus according to the rules that Mr. Wesley Edward Smith III violated a recognizable directive or policy while he was performing his job assignment in class according to CCSD directives and policies. CCSD took action against him without making him aware he was suspect in a crime investigation by having him read his right, the right remain silent, the right to be provided a competent counsel, as all are pertinent and involved in procedural due process.

While the court order silences the court process, (reasons to believe) the court is strategically holding itself, or the elected and other third party delegated has chosen this form of legal standoff, thus preventing self-incrimination, as to be used later against them for their blockade attempted for obstructing justice and aiding criminal combatants, all the while acts are shaded, holding itself in contempt of court by the placing of the said orders, are really relatively ingenious. These order do not allow "anyone" to speak, exercise free movement without a criminal charges violating said enforceable orders, without expressed permission from the bench. without presentation of facts for doing so. The assumption of risk are great, as ascertained by the elected and delegates of CCSD elected third party associates who continually encroaches upon my legal rights

SUPPORTING LAW ARGUMENT

Objectionable argument opposing the order of this court is was the required notice to appeal service in conjunction with a complaint and summons that entered this court file. All parties were not serviced in the required fashion, this the underlining reason this appeal is requested. A 28 page reference letter of the CCSD (See attachment enclosed) now couple with a court order that doesn't allow any person to speak or move about freely is a problem and legal nightmare. I was not afforded a bond hearing.

First issue concerning the order(s) CCSD or the court orders is Did the court error in judgment according to the supported in relevant parts under SC Code section 15-1-230. Bonds in judicial proceedings.

'In all judicial proceedings, whenever it may become necessary for any party thereto to give a bond for any purpose, the bond of such party having as surety thereon any surety company authorized to do business in this State may be accepted by any officer or court whose duty is to approve such bond, without other surety. The provisions of this section shall apply to bonds given in connection with any appellate proceeding for the purpose of obtaining supersedeas or for any other purpose. And in all actions or proceedings the party entitled to recover costs may include therein such reasonable sum as may have been paid such company executing or guaranteeing any bond or undertaking therein. No person having the approval of any such bond shall exact that it be furnished by a guaranty company or any particular guaranty company.'

Based on this information did CCSD allow release without subsequent attacks of being held based on a longstanding disabling devise and faulty product of which the ccsd process is premised. The knowing that such process is very time consuming and of which doesn't serve the business according ethically. I do not believe that the "presented" business barrier are legally wrong, but in view of the intent, only to serve one compelling purpose, which is to harass, delay justice and injure without affording all the legal remedies and protection in the State excepted process. This action can reek havoc upon a citizen legal rights, which prevents all avenues of due process even being release for the encroachers legal bonds which hold one legally kidnapped (contempt of Court) in violation of the criminal state laws

Secondly, concerning the orders, the Did the court error in judgment acts in accord with reason to believe a violation under SC Code section 15-1-300. Contributory negligence shall not bar recovery in any motor vehicle accident action (as this case herein is directly related to the judicial machinery for which separated vessels should coincide without colliding as to be encroached upon another legal rights [via other means from the ascertainment of conversion, abuse of process, abuse of power, derelictions of a legal duty fraud upon the court or fraud ca be easily assumed] for other than its intended purposes which affords equal treatment of the passengers and consumers of the state product that rely on such services and afforded treatments in the State process. As liability is stated for others as relevant in parts:

"In any motor vehicle accident, contributory negligence shall not bar recovery in any action by any person or legal representative to recover damages for negligence resulting in death or in injury to person or property, if such contributory negligence was equal to or less than the negligence which must be established in order to recover from the party against whom recovery is sought." (See attachment offered into evidence).

As presumed a 28 page negligent act couple with a order which primarily serves the same acts.

Thirdly concerning the orders, the Did the court error in judgment according as supported under section 15-1-290. Liability for injury to guests in car.
"No person transported [from a Home into a unsupervised house] by an owner or operator of a motor vehicle as his guest without payment for such transportation shall have a cause of action for damages against such motor vehicle or its owner or operator for injury, death or loss in case of an accident unless such accident shall have been intentional on the part of such owner or operator or caused by his heedlessness or his reckless disregard of the rights of others. This section shall not relieve a public carrier or any owner or operator of a motor vehicle which is being demonstrated to a prospective purchaser of responsibility for any injuries sustained by a passenger while being transported by such public carrier or while such motor vehicle is being so demonstrated."

Fourth, concerning the order(s), the Did the court error in judgment according under section 15-1-340. Right of service member to proceed in civil action; providing evidence by video-camera or other electronic means.

(B) The court must allow a party to proceed pursuant to this section unless an opposing party establishes a compelling reason not to proceed by clear and convincing evidence. The court must allow a party to present evidence pursuant to a method provided by this section unless an opposing party established that the method will cause a substantial injustice, deny effective cross examination, deny the right to confront the witness, or abridge another constitutional right."

While I, Wesley Edward Smith III was deployed on another assignment, the hearing that was granted a stay until my return with CCSD. The claims in the original hearing were changed to meet another agenda, were altered and changed without my authorization. Noting remarks made in the order of the date of change on 23 June 2004 by legal encroachers of this court who had a sworn duty not to meddle or interfere with private matter of another citizen legal rights without standing or probable cause.

Fifth, concerning the order(s), the Did the court error in judgment according to the general provision supported under section 15-3-20. General rule as to time for commencement.

"(A) Civil actions may only be commenced within the periods prescribed in this title after the cause of action has accrued, except when, in special cases, a different limitation is prescribed by statute.

(B) A civil action is commenced when the summons and complaint are filed with the clerk of court if actual service is accomplished within one hundred twenty days after filing."

Sixth concerning the orders, the Did the court error in judgment according under Pay and Wages owed due termination as afforded under by SC code pay and Wage 41-10-50 (et seg) affording Mr. Wesley Edward Smith III receive all money, funds and subsequent benefits due at the time of the termination as afforded by SC code pay and Wage 41-10-50 et seg

As Stated in relevant parts under section 41-10-50. Payment of wages due discharged employees.

When an employer separates an employee from the payroll for any reason, the employer shall pay all wages due to the employee within forty-eight hours of the time of separation or the next regular payday which may not exceed thirty days.

(C) In case of any failure to pay wages due to an employee as required by Section 41-10-40 or 41-10-50 the employee may recover in a civil action an amount equal to three times the full

amount of the unpaid wages, plus costs and reasonable attorney's fees as the court may allow. Any civil action for the recovery of wages must be commenced within three years after the wages become due.

The respondents CCSD and other refuses to provide Mr. Wesley Edward Smith III the money owed and the kept pay records and record of performance evaluation for the activities according the School District Policy that Mr. Wesley Edward Smith III failed to follow or accomplished in derelict in his duties as an employee during the time frame in question that resulted in his termination from employment. The lack of duty legally injures this party not in compliance with the mandates of the expressly written laws.

IN CLOSING

This action all point to the legitimacy of the court order for which all other acts are at its mercy. Even everything but finding out the truths for which it seems not to tackle the issue that solely surround a person rights to having due process. The order only seem to serve as that asserted defensive devise (associates in that business) only seems to serve assumed associated parties privy and immunity rights for the purpose of exploiting Mr. Wesley Edward Smith III and his business and only his close associates. In view of non truthful twenty-eight (28) page letter from CCSD my claims for being denied under legal rights under South Carolina Code I not here to contend with the truthfulness of the letter, but the fact that I was not allow procedural due process after being accused, convicted of said crime without being a fair hearing according to the expressly written laws, involving a private matter, prior to me loosing my job, all legal right and associated employment benefits. I was denied my legal right to be notified to appeal such a determination and premature Summary Judgment legal diagnosis that is undiagnosed without the require legal formalization and supporting legal memorandum of law argument.

WHEREAS, Mr. Wesley Edward Smith III is merely claiming pursuant to SC Code of 16-1-10- et seg law claims against the Charleston County School District (CCSD) was wrongful as unlawful in the business practice. The violation of my recognizable right were committed by Charleston County School District and others. I have been legally injured from such deprivation of an entitled right. Thus the order is perceived an error of law under 16-1-10 et seg

It seem that are the delegates and elected official the court that encroached upon these rights are liable and responsible for not allowing the procedural due process as written and not implied nor use in the standard of a rightly daily practice of business for personal invocations. Actions do tells allot of a person nature or persons intent that is shown beyond the reasons of belief.

Mr. Wesley Edward Smith III was accused of a crime under SC Code 1-3-651 (touching the breast and groins) a explicitly identified in CCSD 28 page letter issue to other whether the acts were false or not according to the State Statutes. The alleged action describes me with a student that attended the Military Magnet Middle (Military Magnet Academy) School on 2951 Carner Avenue N. Charleston SC 29407 with Jessica Freeman behind closed doors with the doors locked with several eye witness that could attest the same as Jessica Freeman was allegedly harmed and violated.

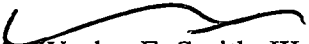
Question Presented

1. Did Jessica Freeman benefit or receive economical gains and fair treatment of awards asset as vindicated from CCSD or the court rulings, by the award of Summary Judgment in its court of law?
2. Did Jessica Freeman parents benefit or receive economical gains and fair treatment of awards assets as vindicated from CCSD or the court rulings that were award Summary Judgment in its court of law?
3. Was Wesley Edward Smith III allowed to confront his accusers, cross examine the State witnesses key evidence, question the witness to his defense of which a procedural due process hearing (due clause) supports the actual probable cause and discovery (Third party duty disclose) for finding of facts for a hearing even at the practice at law when Ms. Jessica said it was not Mr.

Wesley Edward Smith III in question that harmed her? What authorized CCSD to still contend that Mr. Wesley Edward Smith III was properly identified in the relationship after Jessica said it was not Mr. Smith who harmed or injured her? Where, When, time and date this this allege act occurred, because it is absent the court order and the CCSD 28 Page reference letter?

This appeal is submitted in good faith based on the fact that limited resources exist or readily made available me or the reasonable means in which to have such stated facts investigated, to contest CCSD or the court orders undisputed action. Mr. Wesley Edward Smith III respectfully demands that the Summary Judgment should be dismissed, reversed and remanded. All other information should be respectfully repealed or expunged from the State data bases known and unknown places where such defaming information is kept and stored from the public but a private party usage. Equity is a requisite that is deemed requested from the nuisance or other assailants of any similar attacks however similar nature, from a friend of the court or other relatives of the third party associated through affiliation or other bondage relationship.

May 12, 2015


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THE STATE OF SOUTH CAROLINA
In the Court of Appeal

APPEAL FROM CHARLESTON COUNTY

Doyet A Early, Administrative Law Judge

Case No. 2003-CP-10-4751

Order dated: 27 November 2007

Charleston County School District et al, Respondent,

v

Mr. Wesley Edward Smith III, Appellant.

BRIEF OF APPELLANT

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INTRODUCTION

An action is sought in this court, which my opinion based on information and belief with support of the expressly written appellate rules of which I, Mr. Wesley Edward Smith III the encumbrancer to all related legal action taken against me, for which I am aggrieved for not being allowed the procedural due process and the protection that afford equality is being denied by the placement of the his questionable court order. Below is a nonce list of violation that the aggrieved have been denied.

The captioned case is pending order and order of execution was determined without the appellant be served proper notice, the respondents actions. The perception at that level governs

the rules when fraud and mistake and error of law is being identified as herein explained, as detected. *"The complaint is controlled by the South Carolina rules of Civil Procedures. All pertinent information should have been set forth in the complaint such service and commencement actions are contained therein*

I am relying on the SC Codes and the court rules related to this appellate Court actions for the aggrieved rights governing constitutional protections, safeguards and fair treatment under the same set of laws as were applied against me. There are a plethora of SC code and Constitutional right I am entitled to by the expressly written American laws. These law affords protections all American regardless of color, race, age, gender, sex national origin that works hard for such possessions, to be comfortable in such humbling dwellings. As a hardworking American Citizen in the State of South Carolina, I am immune and legally shielded from predators who self claim to be private or public but still are considered to a reasonable person, nuisances. This is especially concerning when a business practice for which is now perceived as fraudulent based on unlawful order without the supporting memorandum of law argument of the complain t demanding such foreclosure prior to the signing of any orders, with any supporting affidavits and the order of the Honorable Judge Doyet A Early is currently under appeal. This which action gives reasons to believe is illegal, when it is not in compliance with the written laws or carried out in the prescribed manner as mandated. The State Statues or in compliances with the accused right to receive notice on a judgment action and this court appellate rules. I rely on for conformance as outline SC Code 15-11-10 et seg, as assigned to previous cases that were presented on a case by case basis. I am seeking remedy, relief, recovery, restoration and reinstatement to redress this State order which is supposed to govern the responsibly and accountability in the criminal an civil courts. My statutory legal rights serves and guides me as my legal shield. My objective stance for which I assert objections. is due to the reasonable inferences being drawn is from the account of Charleston county School District and other (et al) third party that have willingly chosen to encroach upon my afforded protection without providing the proper notices s but the order should be voided because it is without the legal memorandum of law argument (a criminal or civil complaint or warrant and indictment number) which are absent from the hearing and not served to Mr. Wesley Edward Smith III. I was unable to rely or answer the claims that were allegedly submitted as the Honorable Judge Doyet A Early

Reasons are believable but would speak volumes if the court order had all the supporting memorandum of legal law argument or allowed time for the parties to get its facts straight prior to executing his or her commands by the written order. The order would be more beneficial to all parties if action were not solely personnel subjective belief without providing all parties a copy of the required notices, and only the hearsay of the third party encroachers without firsthand knowledge of an event, especially without a criminal or civil complaint attached with a

warrant, indictment number or served summons with the Magistrate supporting law argument that grants particulars for such relief for his or her affirmations attesting a true statement and not the perception of an undisputed action by third party hearsay. I Wesley Edward Smith III have no idea who or what this person Charleston County School District outside employment dealings are with me. I do not know and have had no other dealing with said person addressed in the CCSD and court appointed Administrative orders. My contract arrangement, as clearly expressed, in our English language, as we American communicate effectively without deviation, prevents mistreatment, harassment, encroachment of legal right and the adverse private without being afforded procedural due process protections and legal rights. By providing such proof at the time of the hearing, it prevents the perception of wrongdoings, conspiracies, conversions, fraud upon the court, abuse of process, abuse of elected powers or any other commonly known illegal activity or and unlawful violations of the citizen legal rights

I further gather that do to the many collateral attacks that me and my family had and are having to endure, or do to similar act taken against us, CCSD, et al decided to stand on the shoulders of others as well, while deciding to piggy back and get a piece of pie such as property, equity on assets and other financial monies.

It did not take the person of "CCSD" in its travels this long for a adequate relief. The court order did not seem ponder circumventing a lengthy process. "CCSD" in somehow and in someway was able to point to me (Mr. Wesley Edward Smith III) as owning property, and based on my ignorance and the mistake of law knowledge for any person to be conformable in his or home without private nuisances lurking and stalking or for not having the legal entrepreneurial skills necessary to prevent the egregious behaviors of grand larceners (those that take home

without the home owner having ownership protection knowledge).

Based on information and belief, it was the court job (as I rely on the mandated rules which dictates) to Summarily dismissed the action to prevent the court limited integrity of the courts fabric from becoming a mockery of civilized society, as related to hostility exiting in our judicial process. This particular case and or parties involved are not about color, race, age disability, sex, gender, but about a denial of a private citizen right for which the constitutional rights, procedural protections, legal duties and safeguards went wrong based on the lack of supervision checks and balances.

PROCEDURAL DUE PROCESS VIOLATION AS ALLEGED

Regarding the statement:

- The aggrieved has a right to appeal and to serve notice of appeal as accompanied by order(s) and/or Judgment(s) of a undisputed action being challenged on appeal pursuant to rule 203(6)

Appellant Response if such issue arise, as a final disposed case consider all the protection the Administrative order and court, per written orders [leaves unchallenged and still undisputed objectionable questionable inferences to the states aforementioned statutes, which draws the attention from the issuing courts to forcibly have this court to issue a premature remittitur, which would not being in compliance with rule 207 when a final disposition remains]. For orders which do not allow procedural due process ,which process is to allow a impartial trial adjudicator to remain personally unattached throughout and given all parties a fair proceeding and equal administration under the state laws. Such action that was taken by prejudging an action, leaves a bountiful of questions involving the entitlement to exercise the practice of law, when legal right are adversely affected by persons who practices under the law are depriving the legal rights, and just totally disregarding the safeguards and not allowing the fair and equal protections the laws allows, as identified herein below The aggrieved citizen under the court judicial umbrella and shield seeks appellate court rules for guidance, as previously denied such actions in the lower court which includes (not and exhausting list) disclosure by proof required (previously denied as well)

- Denied the procedural rights affording a competent counsel with the ability to pay for the proper professional forensic specialist to collect DNA or other substantive in nature evidence

- Denied other legal entitlement such as the right to obtaining a competent defensive legal counsel (or be afforded one for my impoverish conditions due to financial hardships) or other matters with PBG involvement with fraudulent orders, Jury Tampering, Tax evasion, security exchange violation, and other act constituting fraud
- The right to all notifications of all court Writ of Attachment proceedings related to seizure or confiscation home, the means and grounds for which the action was required
- The right to be read rights (in set up cases related to possible entrapment) to remain silent in prevention of unnecessary self incrimination
- The right to be reasonably protected from the accused offender
- The right to have input as such sentencing and hearings, such as a victim impact statement
- The right to information about the conviction, sentencing, imprisonment and release of offender.
- The right to order restitution from the offender.
- The right to notice of these rights (as also to be afforded under appellate rules)
- The right to have these right enforce without the encroachment of personal barriers, use other conflicting or controversial doctrines that would undermine the constitution rights of citizen or the responsibilities and obligation of the appellate court and it supporting rules
- Notice of Right.** Any defendant charged with a crime not triable by a magistrate shall be brought before a magistrate and shall be given notice of his right to a preliminary hearing solely to determine whether sufficient evidence exists to warrant the defendant's detention and trial. In the case of bailable offenses, the notice shall be given at the bond hearing
- Time for Hearing.** If the defendant requests a preliminary hearing, the hearing shall be held within ten days following the request. The hearing shall not be held, however, if the defendant is indicted by a grand jury or waives indictment before the preliminary hearing is held. The defendant may appear by counsel or in person or both.
- Probable Cause.** If probable cause be found by the magistrate, the defendant shall be bound over to the Court of General Sessions. If there be a lack of probable cause, the defendant shall be discharged; but his discharge shall not prevent the State from instituting another prosecution for the same offense, and

- **Conclusion of Hearing.** After concluding the hearing the magistrate shall transmit forthwith to the Clerk of the Court his findings together with all papers in the hearing.

These legal right and more have been taken from me prior to having my legal constitutional rights protections in accordance with procedural due process and relief entitlements for which I am immunized from even the personal subjectivity action of individuals creating a Sham Processes under the State of South Carolina laws that give reasons to believe that the such false productions of documentations involves a Criminal Intentional (Tortuous) Supported Act. As criminal court entertains private wrongs. Criminal cases involving a private wrong, the State may bring a criminal action in a criminal court or take the alleged public wrong to a civil court (as herein denoted), or both, as is done occasionally in obscenity, antitrust or consumer fraud case. The citizen are under assumption that the State provides trust in procedural due process, produces doctrines that are fair and do not conflict with the state constitution and nor does the state make obscure cross complaints of alleged wrongful business practices (allowing third party encroachments or third party interveners hearsay) by personnel even acting under the guise of the government's name or organizations (as herein and hereafter complained of by appellant) without resolution and or respectable remedy granting such relief by court order(s).

- **Regarding the Court statement required filing fee has not been submitted. The correct filing fee is \$100.00.**

Appellant response draws to question the existence and causal production of the Honorable Patrick R. Watts fraudulent order under rule 60(b)(1)(2) or (3) (b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, etc. On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) mistake, inadvertence, surprise, or excusable neglect;
- (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);
- (3) fraud, misrepresentation, or other misconduct of an adverse party;

I am just a surprise as the judicial viewer of the document, not to see such required information (See Smith title and Contractual arrangement of the offer, acceptance and service of home with CCSD not being compliance with the written law.

If the rule were adherence to according to the mandated instructions, discovery was allowed compliance or another form of agreement between the parties as required under rule 26 for which the intervening Charleston County School District assigned itself or delegated a designated legal entities (Daniel F Blanchard in the court document acted) had to conspired with others (unnamed at this time See CCSD letter) to perform a legal Duty to disclose all valuable information to the opposing parties but in such underhanded dealing the third party failed to provide such elements such as the court warrant , the filed criminal complaint and the Magistrate affirmation of law argument to carry forth such judicial actions

CONCLUSION

WHEREAS I, Mr. Wesley Edward Smith III rely on the posted and expressly written appellant rules to support my objections and legal memorandum and due to the lack of duty for adherence to such mandates with reason given to believe the order and the action of Charleston County School District and its third party encroachment team of Daniel F. Blanchard, were out of order reason are given to believe has not standing in the mingling of these private affairs of Mr. Wesley Edward Smith III without the duty to disclose as required under rule 26 and the service of all notices complaint and summon at the lower court as much now gives rise to the same deprival or appellant right as perceived in violation under the rules and right to serve appellant(s) notices involving the subsequent right while being objectionable to such a act actors or actions are believe the result of conversion, fraud, abuse of elected and abuse of delegated power. Such

action or lack of adherence to the expressly written rule (see applicable rules enclosed as attached) mandated requirements has caused Mr. Wesley Edward Smith III legal injuries for denied procedural protection for which procedural due process affords such fairness equality and equity, and,

WHEREAS, Pursuant to appellate rule 266 seek proper relief or relief this court affords those persons recovery economically and retrieval property, as mandated and protected by longstanding recognizable rights from legally injuries, for a person that doesn't practice on the expressly written laws on a daily basis who could possibly understand the differences of the unknown, unannotated and unpublished (ex post facto) laws.

May 12, 2015



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THE STATE OF SOUTH CAROLINA
In the Court of Appeal

APPEAL FROM CHARLESTON COUNTY

Doyet A Early, Administrative Law Judge

Case No. 2003-CP-10-4751

Order dated: 27 November 2007

Charleston County School District et al , Respondent,

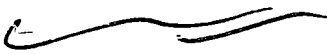
v

Mr. Wesley Edward Smith III, Appellant.

PROOF OF SERVICE

I, Wesley Edward Smith III, certify that on May 12, 2015, submits his notice of appeal, brief and a Notice to file a dismissal of the respondents reply and or response answer without the required providing the notices substantive proof or without the prior showing of cause the encroach upon the Statutory due process protections before the taking of employment and the appellant legal protection in the accusation of a crime, to the court of records Administrative Judge Law Courts by First Class Mail via United States Mail and on all parties listed below in this action to the following.

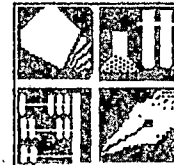
TO: Attorney for Appellant
Daniel Francis Blanchard, III, Esquire
151 Meeting Street 4th Floor
Charleston, SC 29403
(843) 737-6550
Attorney for Respondent


Mr. Wesley E. Smith, III Pro Se
465 N. Nassau Street
Charleston, SC 29403
(843)7238598
Attorney for Appellant

ATTACHMENT A

CHARLESTON COUNTY SCHOOL DISTRICT

75 CALHOUN STREET, CHARLESTON, SOUTH CAROLINA 29401 TELEPHONE 843/937-6319 FAX 843/937-6323
Ronald A. McWhirt, Ph. D., Superintendent of Schools



BOARD OF TRUSTEES

Oliver Addison, Chairperson

Liz Alston
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Nancy Cook
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Jackie Ketchen, Vice Chair
Theodore Lewis, Jr.
Gregg Meyers
Brian Moody

January 3, 2002


S/Sgt. Wesley E. Smith III
465 N. Nassau Street
Charleston, SC 29403

Dear S/Sgt. Smith:

I have reviewed the packet from your appeal hearing and the recommendation of the Review Committee. I am upholding the Associate Superintendent's decision to terminate your employment from the Charleston School District. You used unprofessional conduct and poor judgment in regards to Staff/Student Relations.

In conformance with Charleston County School District Personnel Policy #4219-2, copy attached, the decision of the Superintendent is final and concludes all due process available within the Charleston County School District.

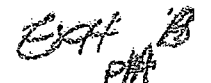
Sincerely,


Ronald A. McWhirt
Superintendent of Schools

RAM/igl

Attachment

Cc: Dr. Barbara Dilligard
Dr. Owen Bush
Mr. Anderson Townsend
Ms. Carolyn Brantley


Enter to Learn - Leave to Serve

APPEAL REVIEW
FOR
WESLEY SMITH III
December 20, 2001
10:00 AM
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Review Panel: Jane Bird
Michele English
Jon Ostendorf

Appeal Packet:

Attachment Packet A

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Attachment Packet B (Evidence Packet)

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Co-worker's Statement #1	Page 27
Co-worker's Statement #2	Page 28

P 1B

THE CHARGE

As a member of this Employee Appeal Panel, you are responsible to:

1. Review the documents provided.
2. Consider only the relevant evidence pertaining to the claim.
3. Ask questions to clarify statements made.
4. Discuss salient points and make recommendations to resolve the claim.
5. Assist in the preparation of the report.
6. Keep all matters confidential.

EPT(B)

P 10



PERSONNEL POLICIES

POLICY: 4219.2

CHARLESTON COUNTY SCHOOL DISTRICT

SEPARATION—DISMISSAL OR NON-RENEWAL
NON-CONTRACTUAL EMPLOYEES
(SCHOOL-BASED)

CCSD REF: 4219.22 (Central Staff)

Page 2 of 3

Failure on the part of the employee to appeal in a timely manner and at each opportunity provided, shall result in a final disposition of termination. The employee shall be notified of the final disposition by the Personnel Division within five workdays after the appeal period ends.

The decision of the Superintendent is final and concludes all due process available within the Charleston County School District.

REVIEW COMMITTEE - Annually, the Division of Personnel Services shall establish a cadre of 25 employees appointed to serve as the District Review Committee. This cadre, composed of six teachers, twelve classified employees representing various job types and seven administrators will receive training sufficient to conduct the business of the review committees. When a review committee is needed, a stratified random selection of three representatives from the District Review Committee: two administrators and one employee from the same employee class as the appellant, shall be selected to serve on the Review Committee. To meet the specified time schedule, release time may be awarded to members of this committee when called to serve.

The following, not intended as an all inclusive list, shall be considered grounds for dismissal or nonrenewal:

1. Violation of district and/or school rules and regulations;
2. Violation of State or Federal laws which substantially affect the school district;
3. Incompetence;
4. Excessive unauthorized absence or tardiness;
5. Failure to obey a legal district directive or order of a supervisor;
6. Making a false statement or report, written or oral;
7. Breach of conduct;

EPH (6)
P/F



PERSONNEL POLICIES

POLICY: 4219.2

SEPARATION—DISMISSAL OR NON-RENEWAL
NON-CONTRACTUAL EMPLOYEES
(SCHOOL-BASED)

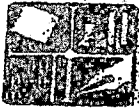
CCSD REF: 4219.22 (Central Staff)

Page 3 of 3

- 8. Drunkenness or drinking on school property or at a school function;
- 9. Persistent neglect of duty;
- 10. Gross immorality in violation of State law;
- 11. Evident unfitness for position in which employed;
- 12. Unprofessional conduct;
- 13. Dishonesty;
- 14. Illegal use, sale or possession of drugs or narcotics;
- 15. Any cause involving moral turpitude in violation of State law;
- 16. Failure to successfully complete the required evaluation as specified in CCSD Policies;
- 17. Insubordination;
- 18. Physical or mental incapacity;
- 19. Conduct which substantially interferes with the performance of duties;
- 20. Use of racist or ethnic slurs.

The provisions of this policy are limited to regular employees who are terminated as a disciplinary action. Temporary employees and employees terminated due to a reduction in force are not covered by this policy.

P 14



CHARLESTON COUNTY
SCHOOL DISTRICT

STUDENTS

STAFF/STUDENT RELATIONS
REGULATIONS

POLICY: 4134.1(R)

CCSD REF: 5144.9(R)
4234.2(R)

When possible unethical conduct by an employee has been reported, the immediate supervisor shall:

1. (a) Secure, if possible, statements from eye-witnesses and other people who have knowledge of the incident(s), including the alleged victim NOPE
- (b) Discuss the incident(s) with the employee ✓
- (c) Present the employee with any credible information that has been gathered about the incident(s), and not
- * (d) Request a written response from the employee NOPE
2. Emphasize the importance of maintaining a professional relationship with students if there is no factual basis to the incident(s); not
3. Consult the District's attorney and other appropriate personnel (principals discuss the matter with their area superintendents) for advice on consequences (especially if the employee requests an opportunity to confront his/her accusers).
4. Meet again with the employee and render a decision on consequences, if there is a factual basis to the incident(s); then facts ✓
5. Report the incident(s) to the police; and NOPE only after
6. Confirm the decision in writing to the employee with copies to his or her personnel file and the area superintendent. ✓

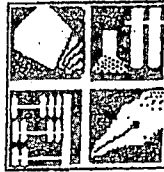
*Consequences may range from a reprimand to dismissal.

EM (B)
P 12

Ronald A. McWhirt, Ph. D.
Superintendent of Schools

Barbara D. Dilligard, Ed.D.
Deputy Superintendent for
School Accountability

75 Calhoun Street
Charleston, SC 29401



CHARLESTON COUNTY
SCHOOL DISTRICT

Carolyn V. Brantley
Executive Director of
Human Resources
75 Calhoun Street
Charleston, SC 29401

(843) 937-6402
Fax: (843) 720-3012

December 18, 2001

S/Sgt. Wesley E. Smith III
465 N. Nassau Street
Charleston, SC 29403

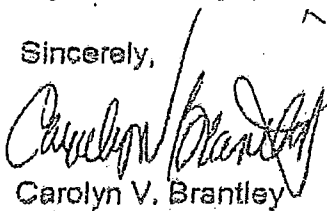
Dear S/Sgt. Smith:

Pursuant to our telephone conversation today in response to your termination appeal request, the appeal hearing of your termination from the Toole Military Magnet Middle School for unprofessional conduct and exercising poor judgment has been scheduled for Thursday, December 20, 2001 at 10:00 a.m. in the Human Resource Services Conference Room at 75 Calhoun Street.

At this hearing you will have ten minutes to present your case. If you wish to have additional witnesses testify, an additional five minutes for a total of fifteen minutes will be allotted. The Review Panel may ask you and/or your witnesses' questions; however, you will not be able to question the Review Panel nor is cross-examination permitted. If you desire to have an attorney present, please notify me in advance of the name of your counsel.

If you have any questions about this matter, please contact this office.

Sincerely,


Carolyn V. Brantley

CVB/jg

Attachment

Cc: Dr. Ronald McWhirt
Dr. Barbara Dilligard
Dr. Owen Bush

EV (B)
P (2)

Attachment Packet A
Personal Packet (1)

3:02pm

DEC 14 2001

12 Dec 01

Charleston County School District

To: Superintendent of Schools Charleston County School District #4
From: Wesley E. Smith III 465 N. Nassau st. Charleston S.C 29403

Subj: LETTER OF APPEAL

Ref: CCSD Policy 4219.2

Encl: (1) Forwarded Statement
(2) Copy of my termination papers received from Charleston County School District #4
ltr dtd 29 Nov 2001



1. This letter of appeal is being submitted on behalf of Mr Wesley E. Smith III for the termination received for allegedly trying to initiate a relationship with a female cadet, allowing the students to call him "Smitty" and for allowing the cadets to stay in his class during their assigned scheduled classes. Initially it started out with a suspension for allegedly calling a female cadet after school hours and asking her to accompany him to an Applebees Restauraunt. Upon Mr. Townsend's request, a termination was seeked for and carried out by the Charleston County School District in which he has all the right to do.
2. I would like to request the chance to be heard or request an appointment within 7(seven) days from the receipt of this letter about the aforementioned resolved termination received by the Charleston County School Board Committee or to the Superintendant of Charleston County School District.
3. I would like to request the representation of an Attorney of my choice to represent me in this matter. Its also understood by me that the Charleston County School District will pay all fees involving my rights for legal representaion.
4. I would like to thank you for investing your time concerning this matter.

Respectfully Submitted

Wesley E. Smith III
Wesley E. Smith III

ExH (B)

3

Superintendent of Schools

Dr. Owen C. Bush
Associate Superintendent

June Gideon Mullen, Ed.S.
Assistant Associate Superintendent



CHARLESTON COUNTY
SCHOOL DISTRICT

Cooper River Constituent District 4
4720 Jenkins Avenue
Charleston, SC 29405-4897
(843) 745-7150
Fax (843) 566-7799

CERTIFIED MAIL

November 29, 2001

SSG Wesley Smith
465 N. Nassau Street
Charleston, SC 29403

Dear SSG Smith:

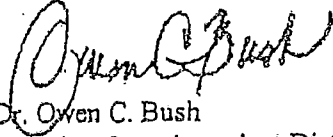
I have received and reviewed information from Mr. Anderson Townsend about your conduct as an employee at Toole Military Magnet Middle School. After investigation, Mr. Townsend has determined that you were unprofessional and exercised poor judgment when you tried to initiate a relationship with a female cadet. This is a violation of school district policy.

In addition, Mr. Townsend also states that you have allowed students to stay in your classroom to avoid attending assigned classes and that you have breached the student-teacher relationship by allowing students to call you, "Smitty." These actions also represent unprofessional conduct, which is also a violation of Charleston County School Board policy.

Your termination is effective November 29, 2001. You will not be allowed to return to the Toole Military Magnet campus without advanced permission from the principal.

The attached CCSD Policy 4219.2 explains your appeal rights. If you wish to appeal this decision, you must request an appeal from the Superintendent in writing addressed to the Dr. Ronald McWhirt, 75 Calhoun Street, Charleston, South Carolina 29401 within ten (10) workdays after the receipt of this letter.

Sincerely,

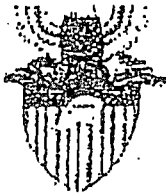

Dr. Owen C. Bush
Associate Superintendent District #4

cc: Anderson Townsend
Dr. Ronald McWhirt
Dr. Barbara Dilligard
Alice Paylor
Personnel File

EXT (B)

Enter to Learn—Leave to Serve

3



2950 Garner Street
North Charleston, South Carolina 29405
Phone: (843) 745-7102 Voice
(843) 566-7791 Fax

Mr. Anderson Townsend
Principal
Ms. Alice Montgomery
Assistant Principal

Capt. Joseph Dawson, Jr.
Commandant

To: SSG Wesley Smith

From: Anderson Wendell Townsend Sr. Principal, Military Magnet Middle School

A.W.T.

Subject: Suspension of SSG Wesley Smith for Allegations of Unauthorized Contact with a Female Student

Date: November 26, 2001

SSG Smith, it has been reported to me that you allegedly made unauthorized contact with a female student that attends this school by kissing and touching her on the breast in your classroom and calling her home and asking her to accompany you to a restaurant and a room.

The female student initially stated you did not call her home, but recanted the statement when her mother asked her to tell the truth. The student stated, "Yes, he did call my house and asked to speak with me."

SSG Smith, you are officially placed on suspension with pay until further notice pending the outcome of my investigation.

EXH (B)



2950 Garner Abent
 North Charleston, South Carolina 29405
 Phone: (843) 745-7102 Voice
 (843) 566-7791 Fax

Mr. Anderson Townsend
 Principal
 Ms. Alice Montgomery
 Assistant Principal

CapL Joseph Dawson, Jr
 Commandant

To: Dr. Owen Bush, Associate Superintendent, District Four

From: Anderson W. Townsend Sr., Principal, Military Magnet Middle School

Subject: Request Termination of SSG Smith's contract for having unauthorized contact with a female cadet.

Date: November 26, 2001

The purpose of this letter is to request termination of SSG Smith's contract for having unauthorized contact with a female cadet.

On November 20, 2001, a very concerned and irate father came to my office and reported that he was concerned that SSG Smith, a tactical NCO at the Military Magnet Middle School, was trying to have an outside affair with his daughter. In his possession, he had his daughter's daily journal. The female's student's name is ~~Justin~~ ~~Ferrara~~, an eighth grader who has been at the Military Magnet Middle School for three years.

In the journal, ~~Justin~~ wrote, "SSG Smith called her house and invited her to Applebee's and then said, he wanted to get a room." As soon as I read this, I escorted the father to the guidance office, and called ~~Justin~~ to my office. Ms. Montgomery, the assistant principal, was in my office during all interviews. The father did not want ~~Justin~~ to know at the time he had read the journal. I asked ~~Justin~~ did any faculty member from the school personally call her at home. She stated, "no faculty member had called me personally at home nor have I called any faculty member on a personal nature." I sent ~~Justin~~ back to class and had SSG Smith report to my office. I asked SSG Smith had he contacted ~~Justin~~ at her home for any reason, and he said, "I have not called her house." I asked him what type contact did he have with ~~Justin~~ at school. He stated, "~~Justin~~ comes by my classroom from time to time for a friendly visit. I think she has a friendly crush on me."

After questioning SSG Smith and ~~Justin~~, I felt SSG Smith, nor ~~Justin~~ was telling the complete truth. In the journal, ~~Justin~~ tells SSG Smith, "I have to attend my uncle's funeral and I will call you later." The father confirmed that there was a funeral on the day in question.

EAH (2)

My next course of action was to explain to SSG Smith that an allegation of impropriety had been made against him for making unauthorized contact with a female cadet and that he would be suspended with pay until further notice. I called the assistant associate superintendent, June Mullen, and informed her of my actions. She concurred with the suspension.

After I suspended SSG Smith with pay pending an investigation, the father came back in my office and showed Ms. Montgomery and me several pages where ~~Jessica~~ describes how SSG Smith was kissing and fondling her in his classroom on two different (2) occasions. She also describes how she wanted to take pills and commit suicide because of the way she was treated at home.

Next, I informed the father I had to get the guidance counselor to talk with ~~Jessica~~ because she alluded that she wanted to kill herself. I also informed the father I had to talk with Jessica again and ask her if SSG Smith touched her. The father asked Mrs. Workman and me not to discuss the matter with his daughter until he returned with the mother. When the mother and father returned, I explained to the mother I had to talk with ~~Jessica~~ about the comments she made about SSG Smith touching her. The mother was devastated and said she wanted to talk with her daughter in private first. When the mother and daughter finished their private conversation, I reconvened the meeting in my office with ~~Jessica~~ present. I asked ~~Jessica~~ again if SSG Smith called her house to talk with her personally and she said, "Yes he did call to my house to talk with me." I asked her did he ask to talk with your parents and she said, "No, he wanted to talk with me." I asked ~~Jessica~~ did SSG Smith touch her at anytime or do the things she wrote about in her journal and she said no. Mrs. Workman asked ~~Jessica~~ if SSG Smith touched her on her breast and she said no. Mrs. Workman asked ~~Jessica~~ why did she write in her journal she wanted to take an overdose and kill herself. ~~Jessica~~ said, "I was upset with my parents when I wrote that." Mrs. Workman advised the mother and father to take ~~Jessica~~ to get some counseling. The father and mother agreed they would.

I asked SFC Peoples and SFC North, tactical noncommissioned officers, if they had noticed SSG Smith fraternizing or having unusual close relationships with female cadets. They both stated they had warned SSG Smith last school year about getting too close with female cadets.

On, Monday, November 26, 2001, I continued my investigation by talking with all students mentioned in the journal or students whose names were mentioned as I discussed the matter. I interviewed six female students. All students confirmed there was some form of impropriety on SSG Smith's part. Two students confirmed ~~Jessica~~ called SSG Smith on a personal nature. One student confirmed SSG Smith and ~~Jessica~~ were in his classroom with the door locked. The student said, "I heard something like ~~Jessica~~ telling SSG Smith not to touch her."

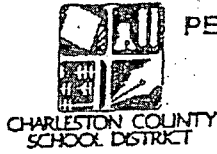
In conclusion, I think beyond a reasonable doubt, SSG Smith violated that sacred trust between student and teacher. Therefore, I recommend SSG Smith's contract be terminated, and he not allowed to be responsible for young impressionable children. SSG Smith made a false statement to me when he said, "I never called her and she has never

EXH(B)

6

called me." SSG Smith violated school policy and procedures by allowing female cadets to call him "Smitty", and to allow female students he does not instruct to enter his classroom to avoid attending assigned classes.

EYH (2)



PERSONNEL POLICIES

POLICY: 4219.2

SEPARATION—DISMISSAL OR NON-RENEWAL
NON-CONTRACTUAL EMPLOYEES
(SCHOOL-BASED)
Page 1 of 3

CCSD REF: 4219.22 (Central Staff)

When an administrator finds it necessary to admonish an employee for any reason(s) that he/she believes may lead to dismissal or may cause the employee not to be re-employed, the administrator shall counsel with the employee and make a reasonable effort to assist the employee in correcting whatever appears to be the cause of the potential dismissal or failure to be re-employed. Reasonable time for improvement may be granted, unless in the opinion of the Area Superintendent, immediate suspension of the employee is necessary, pending a review and final disposition of employment status. Suspension shall be without pay, unless otherwise specified.

When dismissal or nonrenewal is considered, the principal makes a recommendation to the Area Superintendent. After consideration of the recommendation, the Principal notifies the employee with a written explanation of appeal rights if the decision is to dismiss or not renew employment. The employee may appeal the area superintendent's decision to the Superintendent. Such appeal must be made in writing within ten workdays of receipt of the dismissal or non-renewal notice. The written notice shall clearly outline the reason for dismissal or non-renewal.

The Superintendent will review the appeal request, any pertinent information provided by the employee, and information provided by the deputy superintendent. The Superintendent may decide the issue based on the information presented or may request that the Personnel Division convene a Review Committee. If a Review Committee is requested, it shall be convened within ten workdays following the request for review. It shall submit a report to the Superintendent within five workdays following review completion.

The Superintendent shall render a decision which will be communicated to the employee in writing within five workdays of receiving the Review Committee's report.

The Superintendent may uphold the dismissal or non-renewal action or reinstate the employee, with or without consequence, e.g., suspension without pay, letter of reprimand, formal probation, etc. If the employee is reinstated, lost wages may be paid in whole or in part, retroactive to the date of termination.

(A) TERM: 10 JUNE 1999 - REHIRED MAR-APR 2001
(D) TERM: 29 NOV 01 - PRESENT

ADOPTED: May 10, 1973

REVISION HISTORY

December 8, 1975
May 25, 1987
May 24, 1993

ECF (3)

8



SEPARATION—DISMISSAL OR NON-RENEWAL
NON-CONTRACTUAL EMPLOYEES
(SCHOOL-BASED)

Page 2 of 3

CCSD REF: 4219.22 (Central Staff)

Failure on the part of the employee to appeal in a timely manner and at each opportunity provided, shall result in a final disposition of termination. The employee shall be notified of the final disposition by the Personnel Division within five workdays after the appeal period ends.

The decision of the Superintendent is final and concludes all due process available within the Charleston County School District.

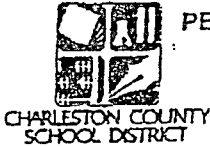
REVIEW COMMITTEE - Annually, the Division of Personnel Services shall establish a cadre of 25 employees appointed to serve as the District Review Committee. This cadre, composed of six teachers, twelve classified employees representing various job types and seven administrators will receive training sufficient to conduct the business of the review committees. When a review committee is needed, a stratified random selection of three representatives from the District Review Committee: two administrators and one employee from the same employee class as the appellant, shall be selected to serve on the Review Committee. To meet the specified time schedule, release time may be awarded to members of this committee when called to serve.

The following, not intended as an all inclusive list, shall be considered grounds for dismissal or nonrenewal:

1. Violation of district and/or school rules and regulations;
2. Violation of State or Federal laws which substantially affect the school district;
3. Incompetence;
4. Excessive unauthorized absence or tardiness;
5. Failure to obey a legal district directive or order of a supervisor;
6. Making a false statement or report, written or oral;
7. Breach of conduct;

EAT (B)

9



PERSONNEL POLICIES

POLICY: 4219.2

SEPARATION—DISMISSAL OR NON-RENEWAL
NON-CONTRACTUAL EMPLOYEES
(SCHOOL-BASED)
Page 3 of 3

CCSD REF: 4219.22 (Central Staff)

8. Drunkenness or drinking on school property or at a school function;
9. Persistent neglect of duty;
10. Gross immorality in violation of State law;
11. Evident unfitness for position in which employed;
12. Unprofessional conduct;
13. Dishonesty;
14. Illegal use, sale or possession of drugs or narcotics;
15. Any cause involving moral turpitude in violation of State law;
16. Failure to successfully complete the required evaluation as specified in CCSD Policies;
17. Insubordination;
18. Physical or mental incapacity;
19. Conduct which substantially interferes with the performance of duties;
20. Use of racist or ethnic slurs.

The provisions of this policy are limited to regular employees who are terminated as a disciplinary action. Temporary employees and employees terminated due to a reduction in force are not covered by this policy.

EXH (B)

10



CHARLESTON COUNTY
SCHOOL DISTRICT

STUDENTS

STAFF/STUDENT RELATIONS

POLICY: 4134.1

CCSD REF: 5144.9
4234.2

The primary focus of interactions between employees of the Charleston County School District and students is the furtherance of academic achievement and support of the educational mission of the District. The relationship should be one of mutual respect with employees acting as role models - fostering positive, cooperative associations - while conducting themselves appropriately. Taking a sincere interest in students' learning is commendable; however, special efforts should be made to avoid any semblance of impropriety.

When working with students after school hours or outside of school, employees should be attentive to maintain professional appearances and make every effort to inform parents and obtain parental approval.

Following are examples of situations that *may* give rise to charges of unethical conduct (This is not an exhaustive list):

- Consistently working with an individual student behind closed doors in a private, non-working setting
- Hugging, or touching a student in a private setting
- Kissing a student
- Leaving the school campus with a student without prior approval
- Tutoring a student at his/her home (except home school teachers) without parental knowledge or consent
- Using obscene or profane language with students
- Engaging in improper conversations with students
- Condoning a student calling teachers and administrators by their first name LAST NAME: Smith
- Dating a student currently enrolled in the District

The immediate supervisor shall promptly address an employee's behavior when questions are raised involving possible unethical conduct.

ADOPTED: March 11, 1996

EVH (A)

REVISION HISTORY:

OTHER REF:

11



CHARLESTON COUNTY
SCHOOL DISTRICT

STUDENTS

STAFF/STUDENT RELATIONS REGULATIONS

POLICY: 4134.1(R)

CCSD REF: 5144.9(R)
4234.2(R)

When possible unethical conduct by an employee has been reported, the immediate supervisor shall:

- NO (a) Secure, if possible, statements from eye witnesses and other people who have knowledge of the incident(s), including the alleged victim
- ✓ (b) Discuss the incident(s) with the employee
- NO (c) Present the employee with any credible information that has been gathered about the incident(s), and
- NO (d) Request a written response from the employee
- NO 2. Emphasize the importance of maintaining a professional relationship with students if there is no factual basis to the incident(s);
- NO 3. Consult the District's attorney and other appropriate personnel (principals discuss the matter with their area superintendent) for advice on consequences* (especially if the employee requests an opportunity to confront his/her accusers);
- NO 4. Meet again with the employee and render a decision on consequences, if there is a factual basis to the incidents;
- NO 5. Report the incident(s) to the police; and
- ✓ 6. Confirm the decision in writing to the employee with copies to his or her personnel file and the area superintendent.

*Consequences may range from a reprimand to dismissal.

EXH (A)

CN

12

Statement regarding Wesley Smith

Alice Montgomery

November 26, 2001

- On November 20, 2001, it was reported by J ~~Smith~~ F ~~Smith~~ father that in her journal she stated that Sgt. Smith had been calling her at home and making inappropriate suggestions. Mr. Rivers showed the journal to Mr. Townsend and me. In the journal J ~~Smith~~ had written that Sgt. Smith had called her at home and stated that he wanted to take her to Applebee's and get a room.
- Mr. Townsend and I questioned J ~~Smith~~ out of her father's presence. She stated that no faculty member has called her personally at home nor has she called any faculty member.
- Mr. Townsend and I questioned Sgt. Smith. Sgt. Smith stated that he has not called J ~~Smith~~ house nor does he have a reason to call. He stated that he does not teach J ~~Smith~~ however, she stops by his room from time to time for friendly visits. He stated that he believes she has a crush on him. Mr. Townsend then explained that due to an allegation and possible evidence, he had to suspend Sgt. Smith with pay until he further investigated the claims. Mr. Townsend then escorted Sgt. Smith to his car.
- Mr. Townsend and I brought the father back in for further discussion. We flipped through the journal and found written allegations of Sgt. Smith kissing J ~~Smith~~ and fondling her breasts on two separate occasions. We also found written evidence of her taking pills in an attempt to kill herself. At this time, we asked Ms. Workman, the guidance counselor, to come in. The father requested that we not talk to J ~~Smith~~ until we had the opportunity to discuss what was going on with J ~~Smith~~ mother. At this time Mr. R ~~Smith~~ left to get Mrs.

~~Smith~~

EYH (B)

Attachment Packet B

Evidence Packet 12

- Mr. and Mrs. Rivers returned to the school and met with Mr. Townsend and me. We filled Mrs. Rivers in on the earlier discussions and what we had found at this point. Mr. Townsend explained that he needed to talk to J. ~~Smith~~ about the touching. Ms. Workman explained that she needed to talk to J. ~~Smith~~ regarding the comments she made in the journal about suicide. Mr. and Mrs. Rivers requested to speak to J. ~~Smith~~ in private first. They met with J. ~~Smith~~ in the guidance office alone.
- Jessica, Mr. Rivers, Mrs. Rivers, Mr. Townsend, Ms. Montgomery and Ms. Workman reconvened. J. ~~Smith~~ admitted to Sgt. Smith calling her, but stated that the other events did not occur.
- Ms. Workman addressed the journal entry about the suicide. Mr. Rivers said that was something they would handle as a family and would get her counseling.
- Mr. Townsend let the parents know that this matter would be handed over to Dr. Bush. The parents agreed that this would be the right move. They also agreed to return on Monday or Tuesday for a follow-up on the progression of the investigation. They also stated that they would try to secure phone records to bring at this time.
- Mr. Townsend and Ms. Montgomery met with two colleagues of Sgt. Smith's. Sgt. Antionette Peoples stated that J. ~~Smith~~ Freeman and another student were in Sgt. Smith's room during lunch. Sgt. Smith was not in the classroom at this time. Sgt. Peoples then escorted the girls to the guidance counselor. She also stated that she has warned Sgt. Smith in the past about letting girls in his classroom. Sgt. North stated that last year she found girls changing clothes in his classroom. Sgt. Smith was not in the room. However, she warned him about letting females in his classroom to do such things.

EHC

Alice Montgomery 14

Exp (B)

Dear Journal

Whassup?

Well nothin here I'm just chillin
I was thinkin bout Sgt. Smith. Well
Yesterday I was in his class sittin at
his desk and I was lookin a little
down about somethin and then he
was like Jesska why you so sad
and I say aint nothin wrong with
me then he started feelin on one
of my breast and then the other then
he was like hey Jesska then he
left then he came back and
he closed his door and he started
feelin my breast again and he
said damn I like feelin you and
he hissed me and I had a big
smile and he said I knew I could
make you happy. Then today I went
to his class and I was in there
by myself and the second bell
rang already so I left and ~~he~~ went
to Mr. Kennedy class and he told
me to go get a pass so I went back
and all dem chirm was like oh
he changin and I been like so
I knocked on the door ~~and~~ and
he opened it (and yes he was
dressed.) then I told him to give
me a pass and he wrote

23

Student Statements regarding Wesley Smith
November 26, 2001

- Student 1:
 - She feels she knows Sgt. Smith fairly well.
 - States that ~~J. Smith~~ says she likes Sgt. Smith.
 - States that ~~J. Smith~~ in Sgt. Smith's classroom a lot.
 - She states that ~~J. Smith~~ has his phone number and has tried to call him once from the movie theatre and one other time. She states that she does not know anything about Sgt. Smith calling ~~J. Smith~~.
 - The student states that ~~J. Smith~~ told her that she wanted to fight another student because that student stated that Sgt. Smith was "her man".
 - States that there are rumors going around that ~~J. Smith~~ and Sgt. Smith were kissing, but ~~J. Smith~~ never confirmed this statement.
 - States that she knows ~~J. Smith~~ has been alone in the classroom with Sgt. Smith.

- Student 2:
 - States that she knows Sgt. Smith called ~~J. Smith~~ house to tell her not to fight another student. (The one mentioned above in student 1's statement.)
 - States that all of the girls go by his classroom to see him.
 - She referred to Sgt. Smith as "Smitty".
 - States that she told ~~J. Smith~~ that her relationship with Sgt. Smith was not right.

- Student 3:

EGH (6)

"KIOS"

- States that there are rumors that ~~Jessica~~ likes Sgt. Smith and because of this, other girls told Student 3 not to talk to him.
- States that Sgt. Smith left his keys and cell phone with her one time while he went down the hall. This started an altercation with ~~Jessica~~ when ~~Jessica~~ came by the room looking for him.
- States that she found a picture of ~~Jessica~~ in Sgt. Smith's desk drawer. On the back of the picture it said: "To: Sgt. Smith, From: One & Only Sexy Girl, Love you always, Jessica, Stay Sexy". Student 3 states that she cut it up.
- States that she heard ~~Jessica~~ tell Sgt. Smith that she would call him tonight as she was leaving his classroom on another occasion.
- States that Sgt. Smith makes sexual connotations in the classroom that made her and some of the other girls feel uncomfortable. She states that she did report this to the guidance counselor. On a separate occasion, after her report to the guidance counselor, she says that Sgt. Smith showed her and some other girls in the class some condoms and said he wanted to "chop", which is another word for have sex.

^ • Student 4: ^

- States that she has been in Sgt. Smith's classroom with ~~Jessica~~ and several other girls.
- States that she has heard rumors that Sgt. Smith and ~~Jessica~~ have a relationship.
- States that she and ~~Jessica~~ are like best friends.
- States that she knows ~~Jessica~~ has called Sgt. Smith at home.
- States that she knows ~~Jessica~~ has a crush on Sgt. Smith.

EPH (B)

- States that Sgt. Smith gave some of the 8th graders his phone number.
 - States that she knew something was going on between ~~_____~~ and Sgt. Smith.
 - States that she told J~~_____~~ to stop what was going on with Sgt. Smith before someone got in trouble.
- Student 5:
 - States that a lot of girls have a crush on Sgt. Smith.
 - States that J~~_____~~ has a crush on him and likes to be around him.
 - States that J~~_____~~ goes in his room a lot, but Sgt. Smith usually tells them to go on to class.
 - States that Sgt. Smith is easy to talk to, that he listens and offers advice without yelling. She states that he is more like a friend.
 - States that she did not see J~~_____~~ in his room by herself, but that he did allow her to come to his classroom a lot.
 - States that she knows nothing about the phone calls from Sgt. Smith, but she knows that J~~_____~~ has called him.
 - States that sometimes it seems that Jessica and Sgt. Smith have more than a friendship.
 - States that she tried to warn J~~_____~~ about her relationship with Sgt. Smith.
 - States that J~~_____~~ said that one afternoon, after school, that she and Sgt. Smith kissed and that he touched her.
 - Refers to Sgt. Smith as "Smitty".
 - Student 7:
 - States the she heard every period J~~_____~~ is in Sgt. Smith's classroom.
 - States that she heard noises when J~~_____~~ and Sgt. Smith were in Sgt. Smith's classroom alone. States that the

EYH (2)

noises sounded like J[redacted] was being touched by Sgt. Smith, but didn't want to be. She states that Jessica was "screaming" and desks were being moved around.

- States that J[redacted] is always around Sgt. Smith's room and at times gets angry if other girls look at him.
- States that she has heard rumors that Sgt. Smith called J[redacted] house and made prank calls, but that two boys admitted to making those calls. (1) C.G. (2) S.H.

EXH (B)

(A 8)

Dear Journal

Whassup?

Well, nothin' here, I was just thinkin
bout Sgt. Smith. Oh, I went in his
class and Byron just gave me this
note and he didn't see him give it
to me, but he saw it in my
hand and he was like oh dat 4
me and I said "no" so when I
left and went to my next class
I wrote him a note yellin him
how I missed him when he left
early yesterday and it also talked bout
Cora and how she always in
claimin him and alot then I told
Tiara I wanted to fight Cora because
she be claimin ~~him~~ him and Tiara
was like learn dat she always be
like leave my man alone, why
talk always in my man class and
all kinda things like dat. And when
I talked to him about it he was like
hell no. So when I see her around
him I know she got dat "Poppy love"
for him but he ain't got no kinda love
for her.

Guess what? Sgt Smith called me
yesterday like 12:30 in the afternoon and

2014 (B)

Oh let me tell you what he said,
He was like, "Hi is Jessica there and
I was like, "This her and he said, "Hi
how you doing and I was like, "Who is
dus and he said, "Sat Smith and I was
like, "Hey whassup? He was like, "You
sleepin' or somethin' and I said
no, but I'm out to go to a funeral
and he said, "Oh really who pass away
and I said, "My granddaddy's brother
who is my uncle and he said, "OK
give me a call later and I said, "OK
and he was like, "Aight baby. I
was overwhelm with joy I wish
I could have talk to him but had
to go to a funeral. Then, when I got
home I called him and I was so
scared to call but he called me first
so he should have somethin' to talk
bout. I called and he answered and
I said, "Hi and he was like, "Hey I
was just thinking bout you and I
was like, "I know this but I ain't gonna
call me back I was like, "No" was
gonna call back and he said, "How was
the funeral and I said, "Good it lasted
5 hours and he said, "Everybody OK and
I was like, "Yeah and it was a little
pause then he said, "I called cause I was

EXP 18)

said yeah one day that you ain't
 scared or nothing and I was like
 sheed next act and he said you are
 very courageous for a young lady and
 I said more than you think and he
 said I don't know but what. And I
 was like I ain't even suppose to be
 on da phone and he said oh really
 well I see you Monday and I was
 like no abed he said you ain't coming
 to school and I said yeah but I wanna
 talk to you and he said I don't wanna
 get you in trouble and I was like bruh
 these people and he was like ain't nobody
 there and I said yeah somebody here
 and I was like I can't talk because
 I curse my mother husband out and
 he said oh that's your step-daddy and
 I said no my mother's husband and
 he started laughing all hard then he said
 curl you something else. then it was
 a pause and he said you wanna go
 to apple bees or something and I was
 like when tonight and he said yeah
 and I was like oh no I don't go to my aunt's
 house to night matter of fact I waitin
 on her to come and get me now
 and he was like how old is your
 cousin and he was like you'll go
 to the skating rink or something and
 I said no she will need some...

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CAH(B)

and I told her I'll come and chill ther.
he was like you think you can call
me from over there and I said yeah
then he said you do that and Pulas
will ok. so we both hung up.
Wasnt able to talk to him but imma
call him today.

Ex 11 (2)

cadet and was like whats your
last name I look at him like
he was stupid. I said Freeman
and I said how da hell you
ask me that dumb ass question
and he say man I forget. And I
walkin out and he say I love you
I was like I love you too and he
say I aint get a kiss in a long
and I say you want one and he
yea and then I went and gave
him a kiss. Damn, that shit is
sweet his sexy lips. All deas
round here tryin to get wit him.
these bitches aint ~~gon~~ got s
on me. The nigga felt every da
of my body, kissed me and told
he loved me. Know nobody can
tell me that aint my man.
I tell dat bitches if they think
the got shit come try me.

EXH(B)

Dear Journal,

Whassup?

Well nothin here. I just took 4 pills & if I knew how to take pills better I would take more to give my self an overdose on purpose. I hate my life the people in this house gets me so mad and they wonder why young people doing drugs, dropping out of school and having sex. They don't get any love from the people in there homes. I wanna kill my self so badly. I wish I was never born. The people in this house treats me as if I'm a reject. I ~~sure~~ sure wish I knew how to take pills better because I would take 8 of them suckers. A young bitch scream in fuck the world and let them die.

Exit (2)

"Gurl you probably love him or some thing aint! I started smile at her an in my mind I was like you damn right I would die if he stop talking to me in anyway or time. And how bout to day he gonna say ok but me tell you. I was in his class and looked in his draw for some money there was none then Cav came in there and did the same thing. I say Sgt. Smith where is money at or he say do you need money so he digged in his pocket and got a dollar for me then Cav say Jessica give me a quarter about that and I say "NO" then he give her a quarter. Then he say man Courtney get out so I can give my girlfriend (keyword) a hug. Then she wouldn't go so he say "Oh" Courtney so I can give my girlfriend (once again keyword) a hug. So she gone and he to the door and he put his lips on me and gave me a kiss and hug. You dont know how good that thang felt. Oh it made me tingle inside. I enjoyed that so much and oh that just something I can't speak on. I'll holla back later. One "What?"

CPH(B)

On Wednesday 11/27/01

It came into my office to report that Mr. Smith makes comments of a sexual nature to them. He allegedly talks about how their bodies are developing and about how he has sex with other people. They said they wanted him to stop making these comments because it makes them feel uncomfortable.

I talked with Sgt. Smith who denied making sexual comments. He said he does say things to make his students laugh because he wants them to feel comfortable with him, but nothing out of the way. Said the girls are angry with him because he reprimanded them. He promised to stop making jokes.

In a follow-up meeting with I stated that Sgt. Smith did stop making the comments for about two weeks.

In a meeting with ~~J. F.~~ her parents, Mr. Townsend, and Ms. Montgomery, I asked ~~J. F.~~ if Sgt. Smith had ever called her house. She answered, "Yes, once. He didn't talk long because I was preparing to go to a funeral." I asked, "Did he ask to speak with your parents?" She answered, "No" I asked "What did he talk about?" She answered, "He just asked me who died and that was it."

Signature _____

11/26/01
Date

ATTACHMENT B

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

WESLEY SMITH,)
)
) Plaintiff,)
)
-vs)
)
CHARLESTON COUNTY SCHOOL)
DISTRICT and MR. TOWNSEND,)
)
) Defendants.)

THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO. 03-CP-10-4751

ORDER

FILED
2007 NOV 29 PM 3:39
JULIE J. ARMSTRONG
CLERK OF COURT

This matter came before this Court for a hearing on November 9, 2007, involving the Motion for Sanctions filed on October 10, 2007 by the Defendants Charleston County School District (hereinafter "CCSD") and Anderson Townsend (hereinafter "Townsend") pursuant to S.C. R. CIV. PRO. 11(a) and S.C. CODE ANN. §§ 15-36-10 *et seq.* (South Carolina Frivolous Civil Proceedings Sanctions Act).

Daniel F. Blanchard, III of Rosen, Rosen & Hagood, LLC appeared for the Defendants. Plaintiff Wesley Smith appeared *pro se*. After considering the arguments and submissions of the parties, this Court hereby makes the following findings of fact and/or conclusions of law:

PROCEDURAL & FACTUAL BACKGROUND

- 1. This lawsuit arises out of Plaintiff Wesley Smith's (hereinafter "Smith") termination from employment with the CCSD on November 29, 2001. The CCSD had hired Mr. Smith for the 2001-02 school year to work as a tactical officer at the Military Magnet School. Anderson Townsend was the principal at the school and was Mr. Smith's direct supervisor.
- 2. Following his termination, Mr. Smith initiated this lawsuit on November 14, 2003 through his legal counsel (Chalmers Johnson, Esquire and Bonnie Hunt, Esquire). His original

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Complaint against the CCSD¹ included, *inter alia*, claims for slander, intentional infliction of emotional distress, and punitive damages against the CCSD. The CCSD filed a Motion to Dismiss on December 15, 2003 asserting that the claims for slander, intentional infliction of emotional distress, and punitive damages against the CCSD are barred as a matter of law under the South Carolina Tort Claims Act, S.C. CODE ANN. §§ 15-78-110 *et seq.*

3. By Consent Order filed on June 14, 2004, Mr. Smith voluntarily withdrew his claims for slander, intentional infliction of emotional distress, and punitive damages against the CCSD and agreed to submit an Amended Complaint removing those claims. On June 23, 2004, Mr. Smith filed an Amended Complaint asserting four causes of action: (1) intentional infliction of emotional distress against Mr. Townsend; (2) breach of contract accompanied by fraudulent intent against the CCSD; (3) breach of contract against the CCSD; and (4) third party interference with a contract against Mr. Townsend.

4. By Order filed on March 20, 2006, Circuit Judge R. Markley Dennis, Jr. granted partial summary judgment in favor of the Defendants as to Mr. Smith's first, second, and fourth causes of action of the Amended Complaint. However, Judge Dennis denied the motion as to the third cause of action for breach of contract against the CCSD on the grounds that it would be premature to dismiss that claim at that point in time, but also granted the CCSD leave to refile the motion after additional discovery was conducted.

5. On May 3, 2006, after conducting additional discovery, the CCSD filed a Renewed Motion for Summary Judgment seeking dismissal of Mr. Smith's single remaining cause of action for breach of contract against the CCSD.

6. On July 19, 2006, without objection from Mr. Smith, Mr. Smith's legal counsel

¹ Although the caption of the original Complaint referred to "Mr. Townsend" as a named defendant, Mr. Smith never served Mr. Townsend with the original Complaint. Mr. Townsend did not answer or respond to the original Complaint.

DAE
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(Mr. Johnson and Ms. Hunt) were relieved from the case. Mr. Smith did not obtain new counsel, but continued *pro se*.

7. On January 10, 2007, without a hearing, Circuit Judge Perry Buckner granted Mr. Smith's *ex parte* Motion to Proceed *in forma pauperis*.

8. By Order filed on March 27, 2007, Circuit Judge Deadra L. Jefferson granted the CCSD's Renewed Motion for Summary Judgment and dismissed Mr. Smith's only remaining cause of action for breach of contract against the CCSD.

9. On April 11, 2007, Mr. Smith filed a Motion for Reconsideration involving Judge Jefferson's Order.

10. By Order filed on July 2, 2007, Judge Jefferson denied Mr. Smith's Motion for Reconsideration, thereby ending his claims in the Circuit Court.

11. On July 3, 2007, Mr. Smith filed a Motion to Proceed *in forma pauperis* and a Notice of Appeal with the South Carolina Court of Appeals.

12. On July 18, 2007, Judge Jasper Cureton of the South Carolina Court of Appeals filed an Order denying the Mr. Smith's Motion to Proceed *in forma pauperis*. Additionally, the Clerk of the Court of Appeals wrote Mr. Smith on July 18, 2007 advising him as follows: "The appellant is notified that he must provide an Amended Notice of Appeal, with Proof of Service on opposing counsel, and the One Hundred (\$100.00) dollar Notice of Appeal filing fee within ten (10) days of the date of this letter or it may result in the dismissal of your appeal." Mr. Smith thereafter failed to comply with the Clerk of Court's letter.

13. On August 2, 2007, the Court of Appeals filed an Order dismissing Mr. Smith's appeal. Mr. Smith did not appeal this Order or file a petition to reinstate his appeal.

14. On August 21, 2007, the Court of Appeals filed an Order of Remittitur stating in

part: "No Petition for Reinstatement having been filed in the above matter since issuance of this Court's Order dated August 2, 2007, IT IS SO ORDERED that the above appeal be and hereby is dismissed and REMITTED to the Clerk of Court for Charleston County." This Order was filed with the Circuit Court on August 23, 2007. Mr. Smith did not appeal this Order.

15. Following the dismissal of Mr. Smith's claims in the Circuit Court and the dismissal of his appeal in the Court of Appeals, Mr. Smith has filed numerous pleadings and documents in the Circuit Court in which he attempts to relitigate his same claims against the Defendants. These documents include, but are not limited to, a "Notice of Appeal," "Affidavit of Wesley Edward Smith III," and "Introduction and Plaintiff's Supporting Memorandum" filed on October 2, 2007; an "Amended Certificate of Service" and purported subpoenas *duces tecum* addressed to Mr. Townsend and Dr. Ronald McWhirt (Superintendent of the CCSD) filed on October 4, 2007; a "Motion for New Trial" filed on October 15, 2007; a "Plaintiff's Amended Certificate of Service (Modification)" filed on October 19, 2007; a "Plaintiff's Request: Motion for Subpoena Production of Documents (duces tecum) to Support Plaintiff's Motion for New Trial" filed on November 1, 2007; a "Plaintiff's Notice of Motion for Monetary Relief of Summary Judgment Order Against Defendant and Sanctions with Memorandum and Law Argument to Support Plaintiff's Motion for New Trial" dated November 5, 2007; and a "Plaintiff's Supporting Memorandum to the Record for Sanction Levied Against the Defense in this Action" dated November 8, 2007.

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16. In the above-referenced pleadings and documents, Mr. Smith attempts to relitigate claims based on the same facts and events at issue in his Amended Complaint, which was previously dismissed, and further attempts to assert multiple new causes of action or legal theories against the CCSD based on the same events and factual allegations at issue in Mr.

Smith's original claims. As examples, the pleadings entitled "Introduction and Plaintiff's Supporting Memorandum," "Motion for New Trial," and "Plaintiff's Amended Certificate of Service (Modification)" request a judgment against the CCSD for monetary damages in the amount of \$3.5 million for alleged defamation, damages in the amount of \$600,000.00 under the South Carolina Tort Claims Act, and punitive damages of \$3.5 million based on events surrounding his termination from the CCSD.

17. On October 10, 2007, the Defendants filed a Motion for Sanctions pursuant to S.C. R. CIV. PRO. 11(a) and S.C. CODE ANN. §§ 15-36-10 *et seq.* and also filed an Affidavit of Counsel in Support of Award of Sanctions.

18. As reflected above, Mr. Smith has continued to file pleadings attempting to relitigate his claims even after service of the Defendants' Motion for Sanctions.

LAW & ANALYSIS

19. "Where there has been an appeal, 'final disposition of the case' occurs when the remittitur is filed in the circuit court." McDowell v. S.C. Dept' of Soc. Serv., 300 S.C. 24, 386 S.E.2d 280 (Ct. App. 1989); see Christy v. Christy, 317 S.C. 145 452 S.E.2d 1 (Ct. App. 1994) ("The final disposition of a case occurs when the remittitur is returned by the clerk of the appellate court and filed in the lower court. Until that time, the case is pending on appeal.").

20. By virtue of the Court of Appeals's Order dismissing Mr. Smith's appeal and the remittitur sending the case back to the Circuit Court, the prior Circuit Court Orders granting summary judgment in favor of the Defendants as to all of Mr. Smith's causes of action are final and the case has been finally disposed of. Mr. Smith's claims against the Defendants have been ended and are final.

21. "Matters decided by the appellate court cannot be reheard, reconsidered, or

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relitigated in the trial court, even under the guise of a different form." Ackerman v. McMillan, 324 S.C. 440, 477 S.E.2d 267 (Ct. App. 1996). "The decision of the appellate court is final as to all questions decided" and "[i]t is the duty of the trial court to follow the decision of the appellate court." Id.

22. Although Mr. Smith is *pro se*, this is not an excuse for filing frivolous pleadings with the Court and continuing a frivolous action. Goodson v. American Bankers Ins. Co., 295 S.C. 400, 368 S.E.2d 687, 689 (Ct. App. 1988) ("Lack of familiarity with legal proceedings is unacceptable and the court will not hold a layman to any lesser standard than is applied to an attorney."); McCall v. A-T-O Inc., 276 S.C. 143, 276 S.E.2d 529, 530 (1981) (The South Carolina Supreme Court "has never held laymen to a lesser standard than attorneys.").

23. S.C. R. CIV. PRO. 11(a) provides that "[t]he signature of an attorney or party [on a pleading] 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." Rule 11(a) further states that "[i]f 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."

24. S.C. CODE ANN. § 15-36-10(A)(4) of the South Carolina Frivolous Civil Proceedings Sanctions Act also states as follows:

(A)(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.

25. S.C. CODE ANN. §§ 15-36-10(B) & (G) of the Act further state in relevant part:

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

(2) If . . . 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.

(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

DAE
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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.

26. This Court finds that, by virtue of Mr. Smith's filing of the above-referenced pleadings and documents with this Court following the dismissal of his appeal, Mr. Smith has improperly attempted to relitigate claims based on the same facts and events at issue in his Amended Complaint, which was previously dismissed, and has further attempted to assert multiple new causes of action or legal theories against the CCSD based on the same operative events and factual allegations that were raised in his previous claims.

27. Additionally, this Court finds that Mr. Smith has attempted to relitigate claims for slander, intentional infliction of emotional distress, and punitive damages against the CCSD in direction contravention of the Consent Order filed on June 14, 2004 (in which Mr. Smith withdrew the exact same claims from this case) and when such claims are clearly barred as a matter of law under the provisions of the South Carolina Tort Claims Act.

28. This Court further finds that Mr. Smith has asserted and continued to assert claims that are frivolous, baseless, and which are clearly barred under existing law, are not warranted under existing law, are not supported by the facts or the law, and are not supported by good grounds. This Court further finds that Mr. Smith has continued to pursue these baseless and frivolous claims against the Defendants without a good ground for doing so; for the purpose of harassing or injuring the Defendants; for the purpose of delay; and/or for a purpose other than that of securing proper discovery, joinder of parties, or adjudication of the claim.

29. This Court finds that, as a direct result of Mr. Smith's actions and these frivolous

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proceedings, the Defendants have incurred attorney's fees and litigation costs in defending against the claims. Defendants have submitted an affidavit of counsel supporting an award of \$1,480.00 in attorney's fees and \$25.00 in court costs, or a total of \$1,505.00.

30. Based on the factors enumerated in Baron Data Systems, Inc. v. Loter, 297 S.C. 382, 377 S.E.2d 296 (1989), and this Court's review of the file in this litigation, the difficulty of the services rendered, the time necessarily expended, the result accomplished, the professional standing of counsel, and fees customarily charged in this area for similar legal services, this Court finds that an award of \$1,505.00 in attorney's fees and costs is reasonable and appropriate.

31. As observed in the unpublished opinion in Gobbi v. SunTrust Mortgage, Op. No. 2006-UP-243 (S.C. Ct. App. filed May 16, 2006), and based on S.C. R. CIV. PRO. 63, this Court has jurisdiction to review and reverse Judge Buckner's prior Order filed on January 10, 2007 granting Mr. Smith's *ex parte* Motion to Proceed *in forma pauperis*. Judge Buckner is no longer assigned to this judicial circuit.

32. In Gobbi, the Court of Appeals held that a judge may deny a party *in forma pauperis* status based on a specific finding that the party has repeatedly filed abusive and frivolous pleadings. See also In re Maxton, 325 S.C. 3, 478 S.E.2d 679, 679 (1996). This Court finds that Mr. Smith has repeatedly filed pleadings and documents in this Court involving the same matters that are frivolous, non-meritorious, and abusive of the litigation process. Accordingly, this Court finds that Judge Buckner's prior Order granting *in forma pauperis* status to Mr. Smith should be reversed and rescinded because of Mr. Smith's repetitive filings that are frivolous, non-meritorious, and abusive.

33. Further, as held in Judge Cureton's Order filed on July 18, 2007, which denied Mr. Smith's motion to proceed *in forma pauperis* in the Court of Appeals, Mr. Smith has the

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~~burden of showing that his right to proceed in forma pauperis rests upon a statute or a fundamental constitutional right. No such right exists in this case. Therefore, this Court finds that Mr. Smith has failed to demonstrate the necessary prerequisites for proceeding in forma pauperis. See Ex parte: Martin v. State, 321 S.C. 533, 471 S.E.2d 134 (1995) (motions to proceed in forma pauperis may be granted only when specifically authorized by statute or required by constitutional provisions)~~

CONCLUSION

Based on the above findings of fact and/or conclusions of law, it is hereby

ORDERED, ADJUDGED, AND DECREED that the Defendants' Motion for Sanctions filed on October 10, 2007 is hereby GRANTED; and

FURTHER ORDERED, ADJUDGED, AND DECREED that Plaintiff Wesley Smith is hereby ordered to pay \$1,505.00 to the Defendant Charleston County School District as a monetary sanction for filing frivolous pleadings and documents with this Court; and

FURTHER ORDERED, ADJUDGED, AND DECREED that Plaintiff Wesley Smith's frivolous pleadings are hereby stricken and dismissed with prejudice, including the "Notice of Appeal," "Affidavit of Wesley Edward Smith III," and "Introduction and Plaintiff's Supporting Memorandum" filed on October 2, 2007; the "Amended Certificate of Service" and purported subpoenas *duces tecum* filed on October 4, 2007; the "Motion for New Trial" filed on October 15, 2007; the "Plaintiff's Amended Certificate of Service (Modification)" filed on October 19, 2007; the "Plaintiff's Request: Motion for Subpoena Production of Documents (*duces tecum*) to Support Plaintiff's Motion for New Trial" filed on November 1, 2007; the "Plaintiff's Notice of Motion for Monetary Relief of Summary Judgment Order Against Defendant and Sanctions with Memorandum and Law Argument to Support Plaintiff's Motion for New Trial" dated November

5, 2007; the "Plaintiff's Supporting Memorandum to the Record for Sanction Levied Against the Defense in this Action" dated November 8, 2007; and any other pleadings filed after the dismissal of the Plaintiff's claims that attempt to relitigate the same facts, events, or claims; and

FURTHER ORDERED, ADJUDGED, AND DECREED that the prior Order filed in this Court on January 10, 2007, which granted Plaintiff Wesley Smith's Motion to Proceed *in forma pauperis*, is hereby rescinded and canceled; and

FURTHER ORDERED, ADJUDGED, AND DECREED 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 money 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; and

FURTHER ORDERED, ADJUDGED, AND DECREED that the Clerk of Court shall serve a copy of this Order upon all parties to this action and shall note or record in the file of this case that Plaintiff Wesley Smith's claims have been disposed of and are final; and

FURTHER ORDERED, ADJUDGED, AND DECREED that willful disobedience of the non-monetary requirements of this Order by any party to this action shall constitute contempt of Court subjecting the offending party to an appropriate penalty or punishment; and

AND IT IS SO ORDERED!

The Honorable Doyet A. Early, III
Presiding Circuit Court Judge

Bamberg, South Carolina.

This 20th day of November, 2007.

ALISSA G. JONES
JULIE J. ARMSTRONG (SEAL)
CLERK, C.P., G.S. & F.C.
By
DEPUTY CLERK

ATTACHMENT C

RULE 101
SCOPE AND TITLE

(a) Scope. These Rules are divided into six parts.

Part I governs the applicability of these Rules and contains general provisions.

Part II governs practice and procedure in appeals, petitions, and motions in the Supreme Court and the Court of Appeals.

Part III is reserved for future use.

Part IV governs the admission to practice, conduct, discipline, continuing legal education, and other obligations and duties of attorneys in this State.

Part V governs the conduct, discipline, continuing legal education, and other obligations of judges in the courts of this State; and rules governing employees of the Judicial Department.

Part VI contains rules governing judicial administration.

(b) Title. These Rules shall be entitled South Carolina Appellate Court Rules, and may be cited by rule number and the letters SCACR, i.e., Rule ____, SCACR.

RULE 102
EFFECTIVE DATE AND REPEALER

(a) Effective Date. These Rules take effect on September 1, 1990. They govern all matters occurring after they take effect and also all further proceeding in matters then pending, except to the extent that in the opinion of the Court their application in a particular matter pending when these rules take effect would not be feasible or would work an injustice, in which event the former procedure applies. Part II, however, shall not apply in any appeal where a notice of intent to appeal was served prior to the effective date of these rules; if a notice was served before the effective date, the appeal shall proceed to conclusion under the Supreme Court Rules. Where the time to serve a notice of intent to appeal under Supreme Court Rules 1, § 1A, or 50 has expired before these Rules take effect, these Rules shall not revive the right to appeal or to petition for a writ of certiorari in a post-conviction relief case.

(b) Repealer. The Supreme Court Rules and the Miscellaneous Rules shall be repealed when these Rules become effective.

RULE 201
RIGHT TO APPEAL

(a) Judgments, Orders and Decisions Subject to Appeal. Appeal may be taken, as provided by law, from any final judgment, appealable order or decision. The procedure for petitioning for a writ of certiorari to review final judgments in post-conviction relief cases is provided by Rule 243. Further, the review of decisions of the State Board of Canvassers in election cases shall be by petition for a writ of certiorari under S.C. Code Ann. §§ 7-17-250 and 7-17-270.

(b) Who May Appeal. Only a party aggrieved by an order, judgment, sentence or decision may appeal. Last amended by Order dated January 29, 2009, effective April 29, 2009, by Order of the same date.

RULE 202.
DESIGNATION OF PARTIES AND DEFINITIONS

(a) Designation of Parties. The party appealing shall be known as the appellant and the adverse party as the respondent.

(b) Definitions. For the purpose of Part II of the South Carolina Appellate Court Rules, the following definitions

shall apply:

(1) Lower Court: the circuit court (including masters-in-equity), family court or probate court from which the appeal is taken.

(2) Administrative Tribunal: the administrative law court or agency from which the appeal is taken.

Last amended by Order dated May 3, 2007.

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), SCRCrimP, 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.

[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.

RULE 204

TRANSFER OF CASES

(a) Improperly Filed Cases. In the event that the notice of appeal is filed in the wrong appellate court, the appellate court in which the matter is filed shall issue an order transferring the case to the appropriate appellate court.

(b) Certification by Supreme Court. In any case which is pending before the Court of Appeals, the Supreme Court may, in its discretion, on motion of any party to the case, on request by the Court of Appeals, or on its own motion, certify the case for review by the Supreme Court before it has been determined by the Court of Appeals. Certification is normally appropriate where the case involves an issue of significant public interest or a legal principle of major importance. The effect of such certification shall be to transfer jurisdiction over the case to the Supreme Court for all purposes.

RULE 205

EFFECT OF APPEAL

Upon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal; the lower court or administrative tribunal shall have jurisdiction to entertain petitions for writs of supersedeas as provided by Rule 241. Nothing in these Rules shall prohibit the lower court, commission or tribunal from proceeding with matters not affected by the appeal.

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

RULE 206

CASES INVOLVING MULTIPLE NOTICES OF APPEAL

Where more than one party serves a notice of appeal, the party whose notice of appeal is first received by the appellate court shall be designated as the primary appellant and shall be responsible for performing all duties required of the appellant under Rules 207 and 210. Upon receipt of notification that the primary appellant has received the transcript of proceeding, the clerk of the appellate court shall establish a briefing schedule.

RULE 207

TRANSCRIPT OF PROCEEDING

(a) Appeals From a Lower Court.

(1) Ordering the Transcript. Where a transcript of the proceeding must be prepared by the court reporter, appellant shall, within the time provided for ordering the transcript, make satisfactory arrangements (including agreement regarding payment for the transcript), in writing with the court reporter for furnishing the transcript. In appeals from the court of common pleas, masters in equity, special referees or the family court in domestic actions, the transcript must be ordered within ten (10) days after the date of service of the notice of appeal. In appeals from the court of general sessions or the family court in juvenile actions, the transcript must be ordered within thirty (30) days of the date of service of the notice of appeal. Appellant shall contemporaneously furnish all counsel of record, the Office of Court Administration, and the clerk of the appellate court with copies of all correspondence with the court reporter. Unless the parties otherwise agree in writing, appellant must order a transcript of the entire proceedings below. If a party to the appeal unjustifiably refuses to agree to ordering less than the entire transcript, appellant may move to be awarded costs for having unnecessary portions transcribed; this motion must be made no later than the time the final briefs are due under Rule 211.

(2) Delivery of Transcript. The court reporter shall transcribe and deliver the transcript to appellant no later than sixty (60) days after the date of the request. Records shall be transcribed by the court reporter in the order in which the requests for transcripts are made.

(3) Extension for Court Reporter. If a court reporter anticipates continuous engagement in the performance of other official duties which make it impossible to prepare a transcript in compliance with this Rule, the reporter shall promptly notify the Office of Court Administration in writing of the fact, setting forth the caption of the case involved, the length of time required to complete the transcript, and the nature and probable duration of the conflicting official duties. The Office of Court Administration may grant an extension of up to ninety (90) days. An extension in excess of ninety (90) days shall not be allowed except by order of the Chief Justice.

(4) Notice of Extension. Upon the granting of any extension of time for delivery of the transcript, the Office of Court Administration shall notify all parties and the clerk of the appellate court.

(5) Failure to Receive Transcript. If appellant has not received the transcript within the allotted time nor received notification of an extension within ten (10) days after the allotted time, appellant shall notify the Office of Court Administration, the clerk of the appellate court, and the court reporter in writing.

(6) Failure to Comply. The willful failure of a court reporter to comply with the provisions of this Rule shall constitute contempt of court enforceable by order of the Supreme Court.

(b) Appeals From an Administrative Tribunal.

(1) Ordering the Transcript. Within ten (10) days after the date of service of the notice of appeal, appellant shall, in writing, make satisfactory arrangements with the administrative law court or the agency (administrative tribunal) to obtain a transcript of the proceeding before that body. Appellant shall contemporaneously furnish all counsel of record, and the clerk of the appellate court with copies of all correspondence with the administrative tribunal. Unless the parties otherwise agree in writing, appellant must order a transcript of the entire proceedings before the administrative tribunal. If a party to the appeal unjustifiably refuses to agree to order less than the entire transcript, appellant may move to be awarded costs for having unnecessary portions transcribed; this motion must be made no later than the time the final briefs are due under Rule 211. The administrative tribunal may establish reasonable rates for providing the transcript or a copy thereof.

(2) Delivery of Transcript. The administrative tribunal shall insure that the transcript is delivered to the appellant within (60) days after the date of the request.

(3) Extension. If the administrative tribunal cannot deliver the transcript in the time specified, it shall promptly seek an extension from the appellate court. The request for an extension shall be in writing and shall comply with Rule 240, SCACR.

(4) Failure to Receive Transcript. If appellant has not received the transcript within the allotted time nor received notification of an extension within ten (10) days after the allotted time, appellant shall notify the clerk of the appellate court, and the administrative tribunal in writing.

(c) Duty of Appellant. The transcript received from the court reporter or the administrative tribunal must be retained by appellant during the entire appeal and for a period of at least one (1) year after the remittitur (See Rule 221) is sent to the lower court or administrative tribunal.

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

RULE 208
INITIAL BRIEFS

(a) Time for Serving and Filing Initial Briefs.

(1) Brief of Appellant. Within thirty (30) days after receiving the transcript or, if no transcript is ordered, within thirty (30) days after serving the notice of appeal, appellant shall serve one copy of his brief on all parties to the appeal, and file with the clerk of the appellate court one copy of the brief with proof of service.

(2) Brief of Respondent. Within thirty (30) days after service of appellant's brief, respondent shall serve one copy of his brief on all parties to the appeal and file with the clerk of the appellate court one copy of the brief with proof of service.

(3) Reply Brief. An appellant may file and serve a brief in reply to the brief of respondent. If a reply brief is prepared, appellant shall, within ten (10) days after service of respondent's brief, serve one copy of the reply brief on all parties to the appeal and file with the clerk of the appellate court one copy of the reply brief with proof of service.

(4) Failure to File. Upon the failure of the appellant to file and serve his brief within the time prescribed, the clerk of the appellate court shall sign an order dismissing the appeal, and the appeal shall not be reinstated except as provided by Rule 260. Upon the failure of respondent to timely file a brief, the appellate court may take such action as it deems proper.

(b) Content. The initial briefs under this Rule and the final briefs under Rule 211 shall contain:

(1) Brief of Appellant. The brief of appellant shall contain under appropriate headings and in the order here indicated:

(A) Table of Contents and Cases. A table of contents, with page references, and a table of cases (alphabetically arranged), statutes, and other authorities cited, with references to the pages of the brief where they are cited.

(B) Statement of Issues on Appeal. A statement of each of the issues presented for review. The statement shall be concise and direct as to each issue, and may be stated in question form. Broad general statements may be disregarded by the appellate court. Ordinarily, no point will be considered which is not set forth in the statement of the issues on appeal.

(C) Statement of the Case. The statement shall contain a concise history of the proceedings, insofar as necessary to an understanding of the appeal. The statement shall not contain contested matters and shall contain, as a minimum, the following information: the date of the commencement of the action or matter; the nature of the action or matter; the nature of the defense or of the response; the action of the court, jury, master, or administrative tribunal; the date(s) of trial or hearing; the mode of trial; the amount involved on appeal; the date and nature of the order, judgment or decision appealed from; the date of the service of the notice of appeal; the date of and description of such orders, judgments, decisions and proceedings of the lower court or administrative tribunal that may have affected the appeal, or may throw light upon the questions involved in the appeal; and any changes made in the parties by death, substitution, or otherwise. Any matters stated or alleged in appellant's statement shall be binding on appellant.

(D) Argument. The brief shall be divided into as many parts as there are issues to be argued. At the head of each part, the particular issue to be addressed shall be set forth in distinctive type, followed by discussion and citations of authority. A party may also include a separate statement of facts relevant to the issues presented for review, with reference to the record on appeal, which may include contested matters and summarize the party's contentions.

(E) Conclusion. A short conclusion stating the precise relief requested.

(2) Brief of Respondent. The brief of respondent shall conform to the requirements of Rule 208(b)(1)(A)-(E), except that a statement of the issues or of the case need not be made unless the respondent is dissatisfied with the statement of the issues or of the case by appellant. If a respondent does not include his own statement of the case, he shall be bound by the matters stated or alleged in appellant's statement of the case. If a respondent does include his own statement of the case, he shall be bound by the matters stated or alleged in his statement of the case. Respondent's brief may also contain argument asking the court to affirm for any ground appearing on the record as provided by Rule 220(c).

(3) Reply Brief. All reply briefs shall contain a table of contents, with page references, and a table of cases (alphabetically arranged), statutes, and other authorities cited, with references to the pages of the reply brief where they are cited.

(4) References to Record. The brief shall contain references to the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal [see Rule 210(c)] to support the salient facts alleged. References shall also be made to where relevant objections and rulings occurred in the transcript. In the initial briefs, these references should be to the page and line number of the transcript prepared by the court reporter or by the page of the material to be referenced; e.g., Answer p. 7, Motion for Judgment p. 2, Transcript p. 231. Intelligible abbreviations may be used. After the Record on Appeal is prepared, these references shall be revised as provided by Rule 211(b)(1).

(5) Length of Briefs. Except in cases in which a sentence of death has been imposed, principal briefs shall not exceed fifty (50) pages, and reply briefs shall not exceed twenty-five (25) pages. On motion, the appellate court may grant a party permission to exceed those limitations.

(6) Joining in Briefs. In cases involving more than one appellant or respondent, including cases consolidated for appeal, any number of parties may join in a single brief, and any party may adopt by reference all or any part of the brief of another.

(7) Supplemental Citations. When pertinent and significant authorities come to the attention of a party after his initial brief(s) has been served and filed, the party shall promptly advise the clerk of the appellate court, by letter, with a copy to all counsel, setting forth the citations. There shall be a reference either to the page of the brief or to an issue to which the citations pertain, but the letter shall, without argument, state the reasons for the supplemental citations. Any response shall be made promptly and shall be similarly limited.

(8) Form. All briefs shall comply with the requirements of Rule 267, except that the cover of initial briefs may be made of white paper of not less than twenty pound weight and the initial briefs shall not be bound but shall be securely stapled or fastened on the top left hand corner.

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

RULE 209

DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL

(a) Time to Serve and File. At the same time a party serves his initial brief(s) under Rule 208, to include a reply brief, he shall also serve on all parties to the appeal a Designation of Matter to be Included in the Record on Appeal which shall set forth with specificity those parts of the transcript, pleadings, orders, exhibits, or other materials which he proposes to include in the record on appeal. One copy of this Designation with proof of service shall immediately be filed with the clerk of the appellate court.

(b) Content. The Designation must clearly identify what the party desires to have included in the Record on Appeal, and the Designation may only propose to include portions of the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal [See Rule 210(c)]. A party shall not include any matter in his Designation which is not relevant to the appeal.

(c) Certification. The Designation shall be accompanied by a certificate signed by the party's counsel of record that

the Designation contains no matter which is irrelevant to the appeal.

RULE 210
RECORD ON APPEAL

(a) Time for Service. Within thirty (30) days after service of the last brief, the appellant shall serve a copy of the Record on Appeal on each party who has served a brief. Proof of service of the Record shall be immediately filed with the clerk of the appellate court.

(b) Time for Filing. The appellant must file with the clerk of the appellate court fifteen (15) copies of the Record on Appeal no later than the date his brief(s) are due under Rule 211. As provided by Rule 267(d), one copy filed with the appellate court shall be filed unbound. The appellate court may require an appellant to file additional copies of the Record on Appeal.

(c) Content. The Record on Appeal shall include all matter designated to be included by any party under Rule 209 and shall comply with the requirements of Rule 267. The Record shall not, however, include matter which was not presented to the lower court or tribunal. Matter contained in the Record on Appeal shall be arranged in the following order: the title page, index, orders, judgments, decrees, decisions, pleadings, transcript, charges, exhibits and other materials or documents, and a certificate by appellant. Each page of the Record on Appeal shall be numbered consecutively beginning with the index. Where a portion of a page of the trial transcript, or a page of an exhibit or document, is to be included in the Record on Appeal, the entire page shall be included. When a portion of an order, judgment, decision or pleading is to be included in the Record on Appeal, the entire order, judgment, decision or pleading shall be included in the Record, to include the caption and signature(s); provided, however, that the portion of a pleading showing verification or service shall not be included unless relevant to the appeal. If the original court reporter's numbering has been deleted, the Record on Appeal shall contain ellipses or other notation indicating when pages of the court reporter's transcript have been omitted.

Where witness testimony is included in the Record on Appeal, the first page of each witness's direct, cross, redirect and recross examination must show the name of the witness, the phase of examination and the name of the counsel conducting the examination. If this information is not already reflected on the page, the top of the page shall be annotated with the required information in the following form: John H. Doe--Direct (Cross) (Redirect) (Recross) Examination by Mr. Smith.

(d) Title. The title page shall contain the caption as set forth in Rule 267. Nothing shall be printed on the title page except the caption.

(e) Index. Every Record on Appeal shall contain an index to the principal matters therein to include orders, judgments, decisions, pleadings, pretrial matters, opening statements, testimony, motions, closing arguments, jury charges, post-trial motions and exhibits. For witness testimony, the index shall show the pages on which direct, cross, redirect and recross examination begins.

(f) Exhibits. Photographs, plats and diagrams, and other paper exhibits shall be inserted in the Record on Appeal where they can reasonably be reduced or drawn to a size which permits them to be printed and inserted in the Record on Appeal, without folding more than one time. Where they are larger, or do not reasonably lend themselves to accurate reproduction, they need not be included in the Record on Appeal, but shall be filed separately. All exhibits other than paper exhibits must be retained in the trial court and delivered to the appellate court only upon receipt of an order from the clerk of the appellate court.

(g) Certificate of Counsel. Appellant or his counsel shall certify that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

(h) Review Limited to Record on Appeal. Except as provided by Rule 212 and Rule 208(b)(1)(C) and (2), the appellate court will not consider any fact which does not appear in the Record on Appeal.

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

RULE 211
FINAL BRIEFS

(a) Time to Serve and File. Within twenty (20) days after the service of the Record on Appeal, each party shall serve a copy of his final brief(s) on every other party to the appeal, and file fifteen (15) copies of the final brief(s) with the clerk of the appellate court. As provided by Rule 267(d), one copy filed with the appellate court shall be filed unbound. The party must also file with the clerk proof that the final brief(s) has been served, and a certificate that his final brief(s) complies with Rule 211(b). The appellate court may require a party to file additional copies of its brief(s).

(b) Content. The final brief(s) shall be identical to the brief(s) previously served under Rule 208, except for the following:

(1) References to the Record. The references in the initial brief shall be revised to indicate where the material appears in the Record on Appeal. These revised references may be in place of or in addition to the initial references, and shall be in the form indicated by the following examples: (R. p. 15, line 4) (R. p. 75, lines 8-20) (R. p. 90, line 1-p. 101, line 14) (R. pp. 29-31).

(2) Correction of Typographical Errors and Misspellings. The party may correct obvious typographical errors and misspellings which were contained in the initial brief. No other changes may be made.

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

RULE 212
SUPPLEMENTAL RECORD

(a) By the Court. The appellate court may require copies of all or any part of the transcript of proceedings or other matter which was before the lower court or administrative tribunal to be sent up for its inspection and consideration. It may likewise require a report of the trial or hearing, or of any matter relative thereto, to be made by the trial judge or administrative tribunal. These matters shall become part of the Record on Appeal.

(b) By a Party. With the written consent of all attorneys of record, a party may supplement the Record on Appeal at any time before argument commences. Without such consent or after argument commences, a party desiring to supplement the Record on Appeal must move the appellate court for leave to do so. In response to that motion, the other party(s) shall designate any supplemental materials which that party desires to add if the Court grants the motion.

(c) Appendix. Supplemental materials filed under Rule 212(b) shall be included in an Appendix to the Record on Appeal. Unless otherwise agreed by the parties or ordered by the Court, the Appendix shall be compiled, served and filed by the party initially proposing it.

Last amended by Order dated May 3, 2007.

RULE 213
AMICUS CURIAE BRIEF

A brief of an amicus curiae may be filed only by leave of the appellate court granted on motion, or at the request of the appellate court. The brief may be conditionally filed with the motion for leave to file. A motion for leave shall identify the interest of the applicant and shall state the reasons why a brief of an amicus curiae is desirable. The brief shall be limited to argument of the issues on appeal as presented by the parties and shall comply with the requirements of Rules 208(b) and 211. If leave to file an amicus curiae brief is granted, the appellate court will specify the period in which a response to the brief may be filed.

RULE 214
CONSOLIDATION

Where there is more than one appeal from the same order, judgment, decision or decree, or where the same question is involved in two or more appeals in different cases, the appellate court may, in its discretion, order the appeal to be

consolidated.

Last amended by Order dated May 3, 2007.

RULE 215

SUBMISSION WITHOUT ORAL ARGUMENT

Unless otherwise ordered by the appellate court, all appeals in civil cases which do not involve a constitutional question and in which the amount involved is \$1000 or less, and all appeals in civil cases where there has been no final judgment, shall be submitted to the appellate court without oral argument. Further, the appellate court may decide any other case without oral argument if it determines that oral argument would not aid the court in resolving the issues.

RULE 216

NOTICE OF ORAL ARGUMENT

(a) Preliminary List.

(1) When Mailed. Not later than forty (40) days prior to the commencement of any term of court, the clerk of the appellate court shall mail to the parties or their counsel a list of all cases which may be reached for hearing at the term.

(2) Scheduling Conflicts. Upon receipt of the preliminary list, counsel shall immediately notify the clerk of the appellate court in writing of any anticipated conflict which may prevent his appearance, with copies to all parties on appeal.

(b) Roster.

(1) When Mailed. Not later than fifteen days prior to the commencement of any term of Court, the clerk of the appellate court shall mail to the parties or their counsel a roster showing the dates fixed for the hearing of the cases in which oral argument will be heard.

(2) Continuances. Once a case is placed on the roster, it shall not be continued except by order of the appellate court or the Chief Judge or Chief Justice thereof.

RULE 217

MOTION TO ARGUE AGAINST PRECEDENT

Permission of the appellate court shall not be required to argue against precedent in the brief. Oral argument against precedent shall not be permitted except upon leave of the appellate court in which the case is then pending, pursuant to motion in accordance with Rule 240 filed at least fifteen (15) days prior to oral argument.

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

RULE 218

ORAL ARGUMENT

(a) Conduct of Argument. The appellant shall open and close the argument. The opening argument shall include a statement of the relevant facts. Unless otherwise permitted by the court, counsel will not be permitted to read from books, briefs, records or authorities cited.

(b) Failure to Appear. If any party fails to appear, the court will hear argument on behalf of the parties present. If no party appears, the case will be decided on the briefs unless the court shall otherwise order.

(c) Length of Argument. The length of time allotted for oral argument shall be determined by the court. The clerk shall notify all parties of the time allotted.

RULE 219

HEARING OR REHEARING OF CASES BY THE COURT OF APPEALS EN BANC

(a) When Hearing or Rehearing En Banc Will Be Ordered. It shall require the affirmative vote of six (6) members of the Court of Appeals to hear or rehear an appeal or other proceeding en banc. A hearing or rehearing en banc is not

avored and ordinarily will not be ordered except (1) when consideration by the full court is necessary to secure or maintain uniformity of its decisions, or (2) when the proceeding involves a question of exceptional importance.

(b) Suggestion of a Party for Hearing or Rehearing En Banc. If a party desires to suggest that a matter be heard initially en banc, the suggestion shall be made in writing, and must be served and filed not later than twenty (20) days prior to the hearing date. If a suggestion for rehearing en banc is to be made, it shall be included in the petition for rehearing. No response shall be filed by other parties unless the Court shall so order. The Clerk of the Court of Appeals shall transmit the suggestion to all judges of the Court. A vote will not be taken to determine if the matter shall be heard or reheard en banc unless a member of the Court calls for a vote on the suggestion. If no vote is taken on the suggestion, the parties shall be advised that the suggestion has been rejected.

RULE 220

OPINIONS

(a) Opinions. The appellate court shall make its decisions in writing by published opinions or memorandum opinions, with any concurring or dissenting opinions attached. Published opinions shall appear in the Official Reports of the Supreme Court and the Court of Appeals; memorandum opinions shall not be published in the official reports and shall be of no precedential value. Published opinions shall be sent to the official reporter and other reporters or publishers when the time for rehearing has expired or, if a petition for rehearing has been filed, when the petition has been finally decided by the appellate court. The court may affirm, reverse, or modify the decision below or remand all or any issues for further proceedings.

(b) Decision by the Court. In every decision rendered by an appellate court, every point distinctly stated in the case which is necessary to the decision of the appeal and fairly arising upon the record of the court must be stated in writing and must, with the reason for the court's decision, be preserved in the record of the case. This rule does not apply to the following:

(1) The Supreme Court may file a memorandum opinion dismissing an appeal, affirming or reversing the judgment appealed from, or granting other appropriate relief when, in unanimous decision, the Supreme Court determines that a published opinion would have no precedential value and any one or more of the following circumstances exists and is dispositive of issues submitted to the Court for decision: (A) that a judgment of the trial court is based on findings of fact which are or are not clearly erroneous; (B) that the evidence to support a jury verdict is or is not insufficient; (C) that the order of an administrative agency is or is not supported by such quantum of evidence as prescribed by the statute or law under which judicial review is permitted; or (D) that no error of law appears.

(2) The Court of Appeals need not address a point which is manifestly without merit.

(c) Affirmance on Any Ground Appearing in Record. The appellate court may affirm any ruling, order, decision or judgment upon any ground(s) appearing in the Record on Appeal.

Last amended by Order dated May 3, 2007.

RULE 221

REHEARING AND REMITTITUR

(a) Rehearing. Petitions for rehearing must be actually received by the appellate court no later than fifteen (15) days after the filing of the opinion, order, judgment, or decree of the court. A petition for rehearing shall be in accordance with Rule 240, and shall state with particularity the points supposed to have been overlooked or misapprehended by the court. No petition for rehearing shall be allowed from an order denying a petition for a writ of certiorari under Rule 242, SCACR.

(b) Remittitur. The remittitur shall contain a copy of the judgment of the appellate court, shall be sealed with the seal and signed by the clerk of the court, and unless otherwise ordered by the court shall not be sent to the lower court or administrative tribunal until fifteen (15) days have elapsed (the day of filing being excluded) since the filing of the

opinion, order, judgment, or decree of the court finally disposing of the appeal. If a petition for rehearing is received before the remittitur is sent, the remittitur shall not be sent pending disposition of the petition by the court. Where a petition for rehearing has been denied, the Court of Appeals shall not send the remittitur to the lower court or administrative tribunal until the time to petition for a writ of certiorari under Rule 242(c) has expired. If a petition for writ of certiorari is filed, the Court of Appeals shall not send the remittitur until notified that the petition has been denied. If the writ is granted by the Supreme Court, the Court of Appeals shall not send the remittitur.

(c) Rehearing of Motions. The appellate court will not entertain petitions for rehearing on a motion or petition unless the action of the court on the motion or petition has the effect of dismissing or finally deciding a party's appeal.

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

RULE 222

COSTS ON APPEAL

(a) To Whom Allowed. Unless otherwise ordered by the appellate court or agreed by the parties, costs shall be taxed against the appellant when the appeal is dismissed or judgment on appeal is affirmed. When a judgment is reversed, costs shall be taxed against the respondent unless the court orders otherwise. When an appeal is affirmed or reversed in part or is vacated, costs shall be allowed only as ordered by the appellate court.

(b) Costs Allowed. The party entitled to recover costs under this rule may, to the extent the party actually incurred these costs, recover the following: (1) the filing fee paid under Rule 203(d); (2) the cost of the court reporter's transcript; (3) premiums paid for costs of supersedeas bonds or other bonds obtained to preserve rights pending appeal; (4) the cost of printing the Record on Appeal under Rule 209; and (5) the cost of printing the party's final brief(s) under Rule 210. In addition, the party shall be entitled to recover an attorney's fee in an amount which shall be set by order of the Supreme Court.^[1] The allowance of additional costs will generally not be allowed except in the most extraordinary of circumstances.

(c) Costs for Printing Irrelevant Matter. A party who has unjustifiably designated irrelevant matter to be included in the Record on Appeal shall not be entitled to tax the cost of printing this matter in the Record on Appeal. Further, a party not otherwise entitled to costs under this Rule shall be entitled to collect the cost the party incurred for printing irrelevant matter which another party unjustifiably designated to be included in the Record on Appeal.

(d) Motion for Costs. A party desiring costs to be taxed shall, within fifteen (15) days of the issuance of the remittitur, serve and file a motion requesting that costs be assessed under this Rule. The motion shall comply with Rule 240. If costs are being sought under (b) above, the motion shall be accompanied by a sworn, itemized statement of costs incurred in the form prescribed in the Appendix to these rules. Any return or reply to the motion shall be served and filed in the manner provided by Rule 240. The return may oppose the request for costs or seek a reduction of the amount of costs to be awarded. The remittitur shall not be stayed by the filing of a motion for costs.

(e) Taxation. Costs on appeal shall be taxed only in the appellate court. If costs are taxed, they shall become part of the judgment of the appellate court and shall be added to the remittitur. If a petition for a writ of certiorari is sought under Rule 242, the Court of Appeals shall tax costs only in those cases in which the petition for a writ of certiorari is denied. In all cases in which a writ of certiorari is granted, costs shall be awarded in the manner provided by Rule 242(j).

(f) Applicability. This Rule does not apply to criminal cases or post-conviction relief cases.

[1] By order dated July 24, 1997, the amount of attorney's fee was set at \$1,000.

RULE 246
STAY IN CRIMINAL CASES

(a) Stays Pending Appeal. The service of a notice of appeal by a criminal defendant shall operate as a stay of the execution of the sentence until the appeal is finally disposed of; provided, however, a sentence of confinement shall not be stayed until the defendant has posted bail under S.C. Code Ann. §§ 18-1-80 and -90 (1985). Where the sentence exceeds imprisonment for ten (10) years, the defendant may only be admitted to bail by an appellate court. Where the State has taken an appeal, the appeal shall automatically operate as a stay of further proceedings in the lower court.

(b) Stays of Sentences After Affirmance. No stay of any sentence in a criminal case which has been affirmed by the judgment of an appellate court shall be granted, except by order of an appellate court, or a judge or justice thereof, upon motion pursuant to Rule 240.

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

RULE 247
CERTIORARI TO REVIEW DNA TESTING DECISIONS

(a) Review by Writ of Certiorari. A final order of the circuit or family court denying or granting DNA testing under the Access to Justice Post-Conviction DNA Testing Act (S.C. Code Ann. §§17-28-10 to -120) shall be reviewed upon petition of either party for a writ of certiorari according to the procedure set forth in this rule.

(b) Notice of Appeal and Ordering Transcript. The notice of appeal shall be served on all respondents within ten (10) days after receipt of written notice of entry of the final order. If review will involve testing relating to a case in which a sentence of death was imposed or will involve a challenge on state or federal grounds to the constitutionality of a state law or county or municipal ordinance, the notice of appeal shall be filed with the Supreme Court. In all other cases, the notice of appeal shall be filed with the Court of Appeals. Under Rule 204, SCACR, the Supreme Court may certify a case for review by the Supreme Court. Further, in the same manner and under the same time limitations as provided for appeals from the Court of General Sessions or the Family Court in juvenile delinquency cases in Rule 207, the petitioner shall obtain from the court reporter a transcript of the proceedings in the lower court.

(c) Service and Filing of Petition and Appendix. Within thirty (30) days of receipt of the transcript, petitioner shall serve a copy of the Appendix and petition for a writ of certiorari on opposing counsel and shall file with the Clerk of the appellate court in which the matter is pending an original plus six (6) copies of the petition, two (2) copies of the Appendix, and proof of service showing the Appendix and petition have been served. As provided by Rule 267(d), one copy of the Appendix filed with the appellate court shall be filed unbound.

(d) Content of Petition. The petition shall contain:

(1) The questions presented for review, expressed in the terms and circumstances of the case but without unnecessary detail.

(2) A concise statement of the case containing the facts material to the consideration of the questions presented.

(3) A direct and concise argument in support of the petition. The argument on each question shall include citation of authority and specific reference to pertinent portions of the lower court record. The total length of a

petition shall not exceed twenty-five (25) pages.

(e) Content of Appendix. The Appendix shall contain:

- (1) The entire lower court record.
- (2) A copy of the final order entered in the proceeding.
- (3) An index setting forth the principal matters contained in the appendix. This index shall be in the same form required for a Record on Appeal under Rule 210(e).

(f) Return of Respondent. Within thirty (30) days after service of the petition and Appendix, respondent shall serve a copy of a return on opposing counsel, and shall file with the Clerk of the appellate court in which the matter is pending an original and six (6) copies of the return and proof of service showing that the return has been served. The return may rephrase the questions, offer additional sustaining grounds, and present a concise counter-statement. The total length of a return shall not exceed twenty-five (25) pages.

(g) Reply. The petitioner shall have ten (10) days from the date of service of the return to file with the Clerk of the appellate court in which the matter is pending an original and six (6) copies of a reply and proof of service showing that the reply has been served. The total length of the reply shall not exceed fifteen (15) pages.

(h) Procedure Upon Grant of Certiorari. Upon the concurrence of any two justices of the Supreme Court or one judge of a three-judge panel of the Court of Appeals, the petition may be granted on any question presented. The petition will be considered by the appellate court without oral argument. If the petition is granted, the Clerk shall notify each party or his attorney, specifying the question or questions to be considered, and the parties shall prepare briefs addressing the question(s). Petitioner shall have thirty (30) days from the date the petition is granted to serve a copy of a brief on all parties to the appeal, and file with the Clerk of the appellate court fifteen (15) copies of the brief, along with proof of service. At the time the brief is filed, petitioner shall also file thirteen (13) additional copies of the Appendix. Within thirty (30) days after service of petitioner's brief, respondent shall serve a copy of a brief on all parties to the appeal, and file with the Clerk of the appellate court fifteen (15) copies of the brief, along with proof of service. Petitioner may file a reply brief. If a reply brief is prepared, petitioner shall, within ten (10) days after service of respondent's brief, serve a copy of the reply brief on all parties to the appeal and file with the Clerk of the appellate court fifteen (15) copies of the reply brief, along with proof of service. The briefs shall, to the extent possible, comply with the requirements of Rule 208(b). Oral argument shall not be permitted unless ordered by the appellate court.

(i) Review of Decisions of the Court of Appeals. A final decision of the Court of Appeals under this rule may be reviewed as provided by Rule 242, SCACR.

This rule was added to the SCACR by Order dated January 29, 2009, effective April 29, 2009, by Order of the same date.

RULE 260

DISMISSAL AND REINSTATEMENT

(a) Involuntary Dismissal and Reinstatement. Whenever it appears that an appellant or a petitioner has failed to comply with the requirements of these Rules, the clerk shall issue an order of dismissal, which shall have the same force and effect as an order of the appellate court. A case shall not be reinstated except by leave of the court, upon good cause shown, after notice to all parties. The clerk shall remit the case to the lower court or administrative tribunal in accordance with Rule 221 unless a motion to reinstate the appeal has been actually received by the court within fifteen (15) days of filing of the order of dismissal (the day of filing being excluded).

(b) Agreed Dismissal. If the parties to an appeal or other proceeding shall sign and file with the clerk of the appellate court an agreement that the proceeding be dismissed, the appellate court may enter an order of dismissal. The agreement may contain a provision altering the costs to be assessed under Rule 222 and/or other settlement terms subject to the provisions of Rule 261.

(c) Withdrawal. An appeal or other proceeding may be dismissed on motion of the appellant or petitioner upon such terms as may be fixed by the court.

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

RULE 261

AGREEMENTS AND SETTLEMENTS

(a) Agreements Generally. Any agreement submitted to the appellate court for its consideration shall be in writing and signed by the parties or their attorneys. Further, any agreement submitted to the appellate court shall be public unless a motion to seal is filed and the appellate court determines that the matters should be sealed under the standard provided by Rule 41.1, SCRCP.

(b) Settlement Agreements. If a settlement agreement relates to a matter that is pending before an appellate court, the settlement agreement need not be submitted to the appellate court unless approval by the appellate court, a lower court or tribunal is required before the agreement can be effective, or the parties desire to have the agreement approved by the appellate court.

(c) Agreements Regarding Rules. Any agreement to modify a requirement of these Appellate Court Rules must be approved by the appellate court.

(d) Vacation of Prior Opinions, Orders or Judgments. In the agreement, the parties may request vacation of opinions, orders, decisions and judgments previously issued in the matter. The agreement must set forth the facts that warrant this extraordinary relief. If the matter is pending before the Supreme Court and the agreement requests the vacation of an order or opinion of the Court of Appeals, the Supreme Court, in its discretion, may seek a

recommendation from the Court of Appeals regarding the request for vacation. If an agreement containing a request for vacation is rejected, the parties may resubmit the agreement without the request for vacation.
Last amended by Orders dated January 28 and 29, 2009, effective April 29, 2009, by Orders of the same date.

RULE 262
FILING AND SERVICE

(a) Filing. Except for petitions for rehearing (Rule 221) and motions for reinstatement (Rule 260), filing may be accomplished by:

(1) Delivering the document to the clerk of the appellate court. Whenever a document is filed with the appellate court, at least one copy of the document must contain an original signature as set forth in Rule 267(b); or

(2) By depositing the document in the U.S. mail, properly addressed to the clerk, with sufficient first class postage attached. The date of filing shall be the date of delivery or the date of mailing. Any document filed with the appellate court shall be accompanied by proof of service of such document on all parties. An electronically transmitted facsimile copy of a document may be accepted for filing; however, an original of the document must be immediately sent by U.S. mail to the clerk.

(b) Service. Whenever under these Rules service is required or permitted to be made upon a party represented by an attorney the service shall be made upon the attorney unless service upon the party himself is ordered by the appellate court. Service upon the attorney or upon a party shall be made by delivering a copy to him or by mailing it to him at his last known address or, if no address is known, by leaving it with the clerk of court. Delivery of a copy within this Rule means: handing it to the attorney or to the party; or leaving it at his office with his clerk or other person in charge thereof; or, if there be no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving a copy at his dwelling place or usual place of abode with some person of suitable age and discretion then residing therein. Service by mail is complete upon mailing.

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

RULE 263

TIME

(a) Computation. In computing any period of time prescribed or allowed by these Rules, by order of court, or by any applicable statute, the day of the act, event, or default after which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, Sunday or a state or federal holiday, in which event the period runs until the end of the next day which is neither a Saturday, Sunday nor such holiday. When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays and holidays shall be excluded in the computation. A half holiday shall be considered as other days and not as a holiday. No additional time shall be allowed after service by mail or upon a statutory agent. Rule 6(e), SCRC, is not applicable to these rules, and no additional time shall be allowed by reason of service by mail or upon a statutory agent.

(b) Extending and Diminishing Time Prescribed by These Rules. The time prescribed by these Rules for performing any act except the time for serving the notice of appeal under Rules 203 and 243 may be extended or shortened by the appellate court, or by any judge or justice thereof. The time prescribed by these Rules for performing any act or taking any action may not be extended by agreement of the parties.

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

RULE 264

SUBSTITUTION OF ATTORNEYS OR GUARDIANS

(a) Continued Representation. The attorneys and/or guardians *ad litem* of the respective parties in the court below

shall be deemed the attorneys and guardians of the same parties in the appellate court until withdrawal is approved and notice is given as provided in this Rule.

(b) Withdrawal. An attorney of record in a matter pending before an appellate court may not withdraw from representation of his client without justifiable cause, or the consent of his client; and then only after proper written notice to his client, on petition to and by written order of the appellate court, and with notice to the adverse party. Amended by Order dated January 29, 2009, effective April 29, 2009, by Order of the same date.

RULE 265

SUBSTITUTION OF PARTIES

(a) Service of Notice in the Event of the Death or Incompetency of a Party. If a party against whom an appeal may be taken dies or becomes incompetent before a notice of appeal is served, an appellant may serve the party's personal representative, guardian *ad litem*, committee or his attorney of record. If a party entitled to appeal shall die or become incompetent before serving a notice of appeal, the notice may be served by his personal representative, guardian *ad litem*, committee or his attorney of record. In either event, if there is no attorney of record, the time for serving the notice shall be tolled until a personal representative, guardian *ad litem* or committee is properly appointed.

(b) Substitution Upon Death or Incompetency of a Party. If a party to an appeal dies or becomes incompetent, the appellate court may, upon motion or on its own initiative, order substitution of the proper parties or remand the case to the trial court for the substitution of the proper parties as provided by Rule 25, SCRCP.

(c) Other Substitution. If substitution of a party is desired for any reason other than death or incompetency, substitution shall be by motion to the appellate court.

(d) Substitution of Official Party. If a public officer in his official capacity is a party to an action pending in an appellate court and during its pendency he ceases to hold office, his successor in office shall be automatically substituted as a party. Proceedings following substitution shall be in the name of the substituted party. An order of substitution may be entered at any time upon the suggestion of the substituted party or any other party, but the omission to enter such an order shall not affect the substitution.

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

RULE 266

SUBSEQUENT APPLICATIONS FOR RELIEF

When any justice or judge of any of the courts of this State has declined to grant any order or writ in any case, and thereafter application for the same order or writ, or an order or writ of a similar character, is made to an appellate court or any member thereof, it shall be incumbent upon the party, or his attorney, to show in the application the former refusal and the judge or justice who refused the same, and if the refusal has been reduced to writing, a copy of the order shall be attached to the application.

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

RULE 267

FORM OF PAPERS

(a) Captions. All documents filed in the appellate court shall be headed by a caption. Except as provided below for appeals from administrative tribunals, the caption shall contain the name of the appellate court where the document is to be filed (i.e., Supreme Court or Court of Appeals); if the matter involves review of a lower court decision, the name of the county and judge from which the appeal is taken including the title of the judge (e.g., Circuit Court Judge, Family Court Judge, Master-in-Equity, Probate Judge, Special Referee, Special Circuit Court Judge); the title of the case (the party commencing the action in the lower court shall always appear first in the title regardless of whom is appellant or petitioner); the title of the document (e.g., RECORD ON APPEAL; APPENDIX; BRIEF OF APPELLANT; PETITION FOR WRIT OF CERTIORARI; MOTION TO DISMISS); and the name, address and

phone number of the counsel submitting the document, or in the case of a Record on Appeal or Appendix, the names, addresses and phone numbers of all counsel in the case. The caption should be substantially in the form shown by this example:

THE STATE OF SOUTH CAROLINA
In the Supreme Court
APPEAL FROM RICHLAND COUNTY
Howard S. Barnes, Circuit Court Judge

Paul L. Doe, Appellant (or Respondent),

v.

Mary M. Roe, Respondent (or Appellant).

RECORD ON APPEAL

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(803) 000-0000
Attorney for Respondent

In appeals from administrative tribunals, the caption shall contain the name of the appellate court where the document is to be filed (i.e. Supreme Court or Court of Appeals); the name of the tribunal from which the appeal is taken (e.g., Administrative Law Court, Public Service Commission, etc.); the name of the administrative law judge (if applicable); the title of the case (the title shall remain the same as the title before the tribunal regardless of whom is the appellant); the title of the document (e.g., RECORD ON APPEAL; BRIEF OF APPELLANT; MOTION TO DISMISS); and the name, address and phone number of the counsel submitting the document, or in the case of a Record on Appeal, the names, addresses and phone numbers of all counsel in the case. The caption should be substantially in the form shown by this example:

THE STATE OF SOUTH CAROLINA
In the Court of Appeals
[In the Supreme Court]
APPEAL FROM THE ADMINISTRATIVE LAW COURT [OR NAME OF AGENCY]
George E. Brown, Administrative Law Judge

Case No. 05-ALJ-00-0000-CC

South Carolina Department of Revenue, Respondent,

v.

Jane C. Roe, Appellant.

BRIEF OF APPELLANT

John E. Smith, Esquire

P.O. Box 123
Greenville, SC 29000
(864) 000-0000
Attorney for Appellant
Wanda D. Jones, Esquire
P.O. Box 456
Columbia, SC 29000
(803) 000-0000
Attorney for Respondent

On motions or petitions, the name, address and phone number of counsel submitting the document shall be placed at the end of the document with his signature.

(b) Signatures. The original of a document or paper filed by a party or his attorney shall be signed by the party or the attorney. The signature of a party or attorney constitutes a certificate by him that he has read the document or 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.

(c) Paper and Type Size. All papers or documents filed with the appellate court shall be typewritten or machine duplicated. Type size shall be standard 12-point or larger and double spaced on white bond paper of not less than twenty pound weight, 8 1/2 inches by 11 inches. With the exception of exhibits as provided in Rule 210(f), no photographic reduction of the Record on Appeal, brief or other paper is acceptable which reduces the size of the alphabet below that of pica type. Paper shall be of good quality, opaque and unglazed. Duplication through use of chemically treated paper, commonly referred to as "wet image or process copy", does not comply with this rule. Copy may be typed or reproduced on both sides if type or reproduction does not show through; provided, however, if the Record on Appeal or Appendix exceeds 100 pages, copy must be typed or reproduced on both sides of the paper. All copies must be clean, neat and clearly legible.

(d) Margins and Bindings. Typewritten papers or reproductions must have a blank margin of an inch and a half on the left. If more than two sheets are used, they shall be securely fastened on the left margin. While petitions or motions need not be bound, Records on Appeal, Appendices in post-conviction relief matters and briefs must be bound in volumes not exceeding 250 sheets each. If staples or clasps are used to bind the volumes, the spines of the volumes shall be bound with heavy tape. One copy of every Final Brief, Record on Appeal, Supplemental Record, or Appendix filed with the appellate court shall be filed unbound.

(e) Covers. Covers of the Record on Appeal and briefs shall be of a material not less than 50 pound weight and not glassine. The cover of the Record on Appeal shall be white; that of the brief of appellant blue; that of respondent red; that of an intervenor or amicus curiae green; and that of any reply brief gray. The front cover of a brief or Record on Appeal shall contain only the caption.

(f) Compliance. The clerk of the appellate court shall insure compliance with this Rule before accepting any papers for filing.

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