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THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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S.C. Supreme Court

Appeal from the South Carolina Workers' Compensation Commission

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Opinion No. 27516 (S.C. Sup. Ct. filed April 22, 2015)

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Ricky Rhame,

Petitioner,

v.

Charleston County School District,

Respondent,

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REPLY TO RETURN TO  
PETITION FOR REHEARING

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The Respondent, Charleston County School District (“School District”), by and through its attorneys, files this reply in response to Appellant’s return and in further support of the School District’s petition for rehearing.

**A. The opinion as it stands will result in an undue prejudice to the School District and may result in undue problems for the bar, the public, and the South Carolina’s Workers’ Compensation Commission.**

The School District’s petition fully recites the prejudice to itself, that is, the remand of this case which was properly dismissed by the Court of Appeals, and the potential prejudice by the interpretation of the Court’s broad interpretation of various regulations. The School District did not need to raise its arguments before because it was not prejudiced by the prior rulings. Further, the School District was unaware that this Court would interpret the Commission’s regulations in the manner in which it did, as such a narrow reading of Article 2 of Chapter 67 of the Code of Regulations was never presented in Appellant’s extensive briefing.

**B. Appellant’s interpretation of 2006 Act 387 is unpersuasive.**

Appellant’s interpretation of Section 53 of 2006 Act 387 is unpersuasive. This act changed, among other issues, that judicial review of administrative decisions, barring certain exclusions, went to the Court of Appeals instead of the circuit court. Compare S.C. Code Ann. §§ 1-23-380, 1-23-390, 1-23-600, and 1-23-610 (Supp. 2005) with 2006 Act 387, §§ 2-5. The Act incorporates this change in many agency specific statutes to account for this change. See 2006 Act 387, §§ 8, 9, 10, 13, 16, 18, 19, 20, 21, 22, 23, 34, 25, 26, 37, 30, 31, 32, 33, 39, 41, 42, 43, 45, 50, & 51. Notable, the first sentence of

Section 1-23-380(A)(1) only changes that the proceedings for judicial review are instituted by “serving and filing notice of appeal as provided in the South Carolina Appellate Court Rules”<sup>1</sup> as opposed to by “filing a petition in the circuit court.”<sup>2</sup> The timing of when the petition or notice of appeal should be filed does not change. Both versions require the filing of the petition or notice of appeal “within thirty days after the final decision of the agency or, if a rehearing is requested, within thirty days after the decision is rendered.”

To draw the conclusion that Section 53 of 2006 Act 387 is to provide uniformity amongst the administrative agencies in how they handle matters which are still before them, and for which judicial review has not yet been requested, stretches the bounds of logic. If the phrase “if a rehearing is requested” was added in 2006, then Appellant’s argument as to the legislative intent may make sense. But this is not the case. When 2006 Act 387 is read in its entirety, it is clear that the Legislature intended to provide uniformity amongst the administrative agencies which were listed by merely changing the court which was to provide the judicial review.<sup>3</sup>

**C. The lack of a form is further support that the Commission will not hear petitions for rehearing after the Appellate Panel review.**

Appellant argues that Regulation 67-215 is a format rule and not an exclusionary

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<sup>1</sup> 2006 Act 387, § 2.

<sup>2</sup> S.C. Code Ann. § 1-23-380 (Supp. 2005).

<sup>3</sup> Notably, Section 1-23-600 provided that an appeal from the Workers’ Compensation Commission was to the circuit court in 2005 and then to the court of appeals after July 1, 2007. See S.C. Code Ann. § 1-23-600 (Supp. 2005) and 2007 Act 111, Pt. I, § 1. Clearly, 2006 Act 387 did not provide complete uniformity in the judicial review of administrative decisions because prior to July 1, 2007, the appeals from the Workers’ Compensation Commission still went to the circuit court. Respectfully, Appellant reads too much into Section 53 in order to find a procedural right which is not allowed at the

rule. If so, this is further support for the sole request for a rehearing being that to the Appellate Panel, which is made via a Form 30, Request for Commission Review. If the Commission intended to hear a petition for rehearing of the Appellate Panel's decision, it would have a form for this request.

### CONCLUSION

For the foregoing reasons, and for the reasons set forth in the School District's previously-filed briefs and petition (which the School District incorporates herein by reference), the School District asks this Court to rehear and reconsider its decision, and to affirm the Court of Appeals' dismissal of this appeal.

Respectfully submitted,

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Dated: May 13, 2015

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Commission level. One cannot request a rehearing unless one has the right to request a rehearing.

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PROOF OF SERVICE

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I, Catherine H. Chase, of Young Clement Rivers, LLP, do hereby certify that a copy of the Respondent's **Reply to Return to Petition for Rehearing** in the above-captioned matter was served on the Petitioner by depositing a copy of the same in the United States Mail, postage prepaid, on May 13, 2015, addressed as follows to his attorneys of record:

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By 

Charleston, South Carolina

Dated: May 13, 2015