

THE STATE OF SOUTH CAROLINA
In the Court of Appeal
ON APPEAL FROM CHARLESTON COUNTY

Doyet A Early, Administrative Law Judge

Order 27 November 2007

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

v.

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

RECORD ON APPEAL

Wesley E. Smith, Pro Se
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Charleston, SC 29403
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Attorney for Appellant

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RECEIVED

MAY 29 2015

SC Court of Appeals

INTRODUCTION

This appeal is taken from the Administrative Law Court Judges, express written opinion.

This action on appeal is take into account the order which is believed to be an error of appellate law. Mr. Wesley Edward Smith III was involved in a judicial action but not service according to the appeal legal process. Mr. Wesley Edward Smith III recognizable appellate legal right have been violated. The lawfully unchallenged violation was committed by the respondents while acting under the State of South Carolina Appellant Rules. As such, this action under this court judicial review, should address the denial issue and the accused rights. A modification, extension, stay or reversal is in order, and such equitable relief is sought as allowed under appellate rule 240 to be reverse on motions to reinstate or remand pursuant the rule.

The caption contains the names of the appellate court where the document is to be filed in the Court of Appeals seek resubmission of relief, in compliance with 267. I, Mr. Wesley Edward Smith III resubmit this appeal in opposition of the letter dated 19 May 2015 that is believe premature. I am exercising all my appellate legal right and privileges now after being accused and followed with loss of employment personal properties (inter alia) and all benefits

May 27, 2015



Mr. Wesley E. Smith, III Pro Se
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Attorney for the Appellant

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SC Court of Appeals

Charleston County School District et al , Respondent,
v
Mr. Wesley Edward Smith III, Appellant.

BRIEF OF APPELLANT
FOR RELIEF PURSUANT RULE 240

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INTRODUCTION:

Due process requires that the procedures by which laws are applied must be evenhanded, so that individuals are not subjected to the arbitrary exercise of government power. One of the basic criteria used to establish if due process is satisfied is whether such procedure was historically required in like circumstance. Enclosed for your immediate action is relief sought in case of 2003-CP-10-4751 (the premature awarding of Civil Summary Judgment, believed to be an error in law) to be reverse under reconsiderations pursuant rule 240 of the South Carolina Rules of Appellate Procedures. The Summary Judgment as it stand is prejudicial to this moving party, it lacks legal memorandums of law arguments and without the substantive evidence of proof of the law enforcement agency that authorized the claims for relief due to a substantiated violation.

This Summary Judgment should be reverse on the grounds that is is without the report and recommendation of the magistrates, based on third party hearsay, based upon the intervening of third party encroachment of a contractual relationship that exist with the State and its citizens for which a recognizable legal right of appellate procedural due process was violated, and reasons that are given these orders are on sheer speculation and mere conjecture of the law.

I am responding in opposition of the letter received (Enclosure 1) attached letter, as dated 19 May 2015, which is believed to have been sent from this court but there is no way for me to test its legal validity. Hence, with the letter not offering any resolutions or remedies for a appellate pursuant the rules, my legal procedural due process right have been violated by the Charleston County School District and inference drawn into question of the unsubstantiated judges orders as well into this equation. I seek to serve notice for an extension, stay, relief, and a independent action in equity, a direct verdict per each identified person independent action.

With these express written orders, either as indirect or direct evidence, I have tangible reason to believe, along with information from the rules and beliefs, this for being subject of the State judicial process without the disclosure of all applicable legal notice or the matter of facts that substantiate the required documents, that I, Mr. Wesley Edward Smith III have a legal shield in that of the "appellate rules". The appellate rules protects me from being arbitrarily targeted and shields me from mistreatment based on ones misapplication of the law. Especially by short termed and interchangeable personnel that pose as official delegate, who have decided when and where to intervene to adversely affect the rule of law or the citizens legal rights. This person discovered to have violated this sacred place trust, should not be allowed to hide out or hide

under the same set of laws. I, Wesley Edward Smith III, have not been afforded to invoke the privileges or immunities in exercising my right appeal CCSD determination in a legal action.

I believe the orders, as it remains on the docket sheets, can be construed a miscarriage to justice and a contamination in the court the judicial machinery, that there to support persons who have chosen to acts regardless of reason and action are questionably objectionable beyond intent.

SUPPORTING LEGAL ARGUEMNT

In accordance with the written rule Appellate rules, a part of the requirement of procedural due process for the right of the accused is to be noticed of his rights. As relevant this process in this court of law in this appellant court the accused, Mr. Wesley Edward Smith III, appellant right to appeal under rule 203(b)(1) from a court of common pleas, of which the respondents has not release to me the disclose for the use of my name and such proof indenting me a the wanted culprit in judicial bonds and of which my complaint rest of the lack of notification This court is not required to subjectively construe, but to legally test the evidence requested and provided . Mr. Wesley Edward Smith III was accused of a crime [under the State of South Carolina Laws]. without an impartial or unbiased hearing Mr. Wesley Edward Smith III was terminated on such unfounded allegations. But believed due to the respondents collected financial status, unlimited resources in the judicial and legislative process, prevailed prematurely in error of the appellate rules.

The orders of the honorable Doyet A. Early, and the Honorable R. Markley Dennis the order, which hold me in contempt of court (suspends all my legal entitled rights) also unfairly denies me of my rights. As granted without the substantive proof (evidence) and supporting legal

memorandum of law a the order hold not legal grounds (legal substance) to exist and just hinder the judicial process, obstructs justice, allows perjury and the encroachment of procedural due process. A reversal, modification expunge for relief under rule 267 of the order is respectfully demanded. It was a responsible duty to avoid a conflict of interest under any ethical perspectives Also seeking an independent action in equity and a direct verdict under the law as targeted.

IN CLOSING

THEREFORE, with such resubmission, my claims still remain that the respondent are believed to have violated all applicable appellate procedural due process legal rights. The requirement requires that the government involvement, even responsible for its acting entities, must give all person proper notice and hearing of the legal action before that person is deprived of his or her life, liberty, or property, The government action must be fair. With the express written opinion under rule 210 of the South Carolina Appellant Court requires that he record on appeal to be served and filed thirty (30) days after the date of the last initial brief was served. I Mr. Wesley Edward Smith III have requested all applicable information from the respondent and the courts upon request, whose job it is disclose all pertinent papers regarding the proceedings. I do not owe the respondent anything and have given them all that I am required by the written laws. This prevents any surprises. I rely on the appellate rule for relief and or afforded remedies.

WHEREAS, I am not here to contend with the 28 pages of rumors, based upon lies, deceit and misapplication of law due to the subjecting party own personal interaction of some sort, but that such presumption were made by a management team whose subjective belief are not in legal conformance of aforementioned appellate rules for which the the lower court order as a written is not finally disposed; The expressive written opinion" on the record. Citing orders of the

Honorable Doyet A. Early, Honorable R, Markley Dennis and order of the Honorable Stephanie McDonald existing as a legitimate order, but strict compliances with the mandatory state appeals process requirements which his to serve all parties notice of rights to appeal and file the same with the respectable court of law. Under South Carolina Rule of Appellant Procedures this part is absent. The appellate rule governs the submission and service of notices of a right to appeal. The presence of these aforementioned written orders on the state court docket record, makes it appear that Mr. Wesley Edward Smith III has had equal justice under the appellate rules, a fair trial, and not denied the appeals due process, for which the third parties were rewarded by the civil Summary Judgment,

WHEREAS, this unchallenged and uncontested Summary Judgement for which a reversal is demanded and respectfully in order, are from the results that were procedurally unfair, procedurally unjustified and done with unconscious minds. regardless of the mandated governing procedural liabilities for deprivations of such an obligation. The lower court Summary Judgment order(s), gives reason, based on the premature contempt of order claims charged, allows the masking the legal injuries, as sustained to Mr. Wesley Edward Smith III, while the unreasonableness for such behavior remains an obstruction to justice, the commission of perjury and lack of disclosure allowed, exists, AND

WHEREAS, the appeal is controlled by the South Carolina rules of Appellate Procedures, all pertinent information should have been set forth in the notice of appeal and as such, notice of service commences actions as information is contained therein I am relying on the SC Appellate rules and rules related to this appellate Court actions for the aggrieved rights governing appellate al protections, safeguards and fair treatment under the same set of laws as

were applied against me. There are a plethora of SC code and appellate al 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. If the respondents continually defies authority and refuses to relinquish the required documents, which by rule disclosing paramount with the required supporting memorandum of law argument and the substantive proof needed to show that a legal harm actually occurred. The injury is listed as to the respondent injuries suatain and enumerated by the law enforcement agency for relief allotted. Without such legal support or legal ground for acting, a modification to the appellant complaint for amending Summary Judgment and amend for Judgment allowed. Upon conclusion of the investigation based on supporting findings of this court, reversal of the respondents Summary Judgment and charges awarded against Mr. Wesley Edward Smith III stricken fom the records, as administered by the honorable Doyet A. Early and the honorable R. Markley Dennis, as being respectfully demanded.

May 27, 2015



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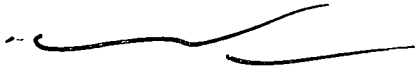
SC Court of Appeals

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 27, 2015, resubmits his notice oo appeal, appellant for relief pursuant rule 240 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
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ATTACHMENT "A"

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, SCRCPP), motion to alter or amend the judgment (Rules 52 and 59, SCRCPP), or a motion for a new trial (Rule 59, SCRCPP) 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 308 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(e).

(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 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. 13, 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 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 240

MOTIONS AND PETITIONS GENERALLY

(a) Applicability. This Rule governs all motions or petitions filed in the appellate court, including but not limited to: motions for extension of time, motions to reinstate, petitions for rehearing, motions to be relieved as counsel or for substitution of counsel, petitions for supersedeas, motions to remand or dismiss and petitions for hearing *en banc*. Where Rules 241 through 246 provide different or additional requirements or procedures, those requirements or procedures shall apply.

(b) Stay of Time Limits. Unless otherwise provided by these Rules, or ordered by the appellate court, the time limits imposed by these Rules shall not be stayed by the filing of a motion or petition. A motion to dismiss an appeal or a motion to relieve counsel shall, however, automatically stay the time limits for perfecting the appeal until the motion is decided.

(c) Form and Content of Motions and Petitions. All motions or petitions filed in an appellate court shall be in writing, shall state the grounds thereof, and shall comply with the requirements of Rule 267. The pages of the motion

or petition and all supporting documents shall be consecutively numbered. Each motion or petition shall include the following:

(1) A certificate or affidavit of service reflecting the date of service upon all parties. The original certificate or affidavit of service must be filed with the original motion or petition.

(2) A memorandum with citation of authorities in support of the motion.

(3) Where the Record on Appeal or Appendix has not been filed, or where the facts relied upon in support of the motion are not contained in the Record on Appeal or Appendix, the parties shall file affidavits and other documents in support of their positions.

(d) Filing of Motions and Petitions. An original and six (6) copies of the motion shall be filed with the clerk of the appellate court, and a copy shall be served upon each party. The copies filed with the appellate court shall be accompanied by the filing fee set by order of the Supreme Court.^[1] This filing fee shall not be required for motions or petitions in criminal appeals, petitions for writs of certiorari under Rules 242 and 243, certified questions under Rule 244, petitions to invoke the original jurisdiction of the Supreme Court under Rule 245, or motions or petitions filed by the State of South Carolina or its departments or agencies. In extraordinary cases, the appellate court may relieve a party from paying the filing fee.

(e) Return to Motion. Any party opposing a motion or petition shall have ten (10) days from the date of service thereof to file an original and six (6) copies of his return with the clerk and serve on all parties a copy of the return; provided, however, a return to a petition or motion for rehearing under Rule 221 need not be filed unless requested by the court. The court may in its discretion enlarge or limit the time for filing the return. The provisions of Rule 240(c) shall apply to a return. Failure of a party to timely file a return may be deemed a consent by that party to the relief sought in the motion or petition.

(f) Reply. The moving party shall have five (5) days from the date of service of a return to file an original and six (6) copies of a reply with the clerk and serve on all parties a copy of the reply. The provisions of Rule 240(c) apply to a reply.

(g) Failure to Comply. Failure of the moving party to perform any act required by this Rule may be deemed an abandonment of the motion or petition.

(h) Hearing. Unless otherwise ordered by the court, motions or petitions shall be decided without oral argument.

(i) Rehearing. The 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.

(j) Authority of an Individual Judge or Justice. Except where these rules require the concurrence of two or more members of an appellate court, an individual judge or justice may grant or deny any motion or petition on behalf of the court. Any review of an order issued by an individual judge or justice shall be by petition for rehearing.

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

^[1] By order dated October 2, 1985, the filing fee for motions and petitions was set at twenty-five (\$25.00) dollars.

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

John T. Smith, Esquire

P.O. Box 123

Columbia, SC 29000

(803) 000-0000

Attorney for Appellant

Wanda D. Jones, Esquire

P.O. Box 456

Columbia, SC 29000

(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.

ATTACHMENT "B"

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

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

WESLEY SMITH,

Plaintiff,

-vs-

CHARLESTON COUNTY SCHOOL
DISTRICT and MR. TOWNSEND,

Defendants.

ORDER

BY

JULIE J. ARNOLD
CLERK OF COURT

2006 MAR 20 3H 11:13

FILED

This matter came before this Court for a hearing on March 7, 2006, involving the Defendants Charleston County School District's (hereinafter "CCSD") and Anderson Townsend's (hereinafter "Townsend") Motion for Summary Judgment as to all of Plaintiff Wesley Smith's (hereinafter "Smith") causes of action. For the reasons expressed herein-below, this Court finds that the motion should be granted in part and denied in part as follows:

1. Summary judgment is hereby granted as to Plaintiff Smith's first cause of action for "intentional infliction of emotional distress" or "outrage" against Defendant Townsend because Plaintiff Smith has not offered admissible evidence satisfying each of the elements of his claim. See Ford v. Hudson, 276 S.C. 157, 276 S.E.2d 776 (1981), (holding that elements of "intentional infliction of emotional distress" claim are: (1) the defendant intentionally or recklessly inflicted severe emotional distress or was certain or substantially certain that such distress would result from his conduct; (2) the conduct was so extreme and outrageous as to exceed all possible bounds of decency and must be regarded as atrocious and utterly intolerable in a civilized community; (3) the actions of the defendant caused the plaintiff emotional distress;

and (4) the emotional distress suffered by the plaintiff was so severe that no reasonable man could be expected to endure it).

The admissible evidence before the Court shows that the alleged misconduct by Defendant Townsend was not "extreme and outrageous." Todd v. South Carolina Farm Bureau Mut. Ins. Co., 283 S.C. 155, 321 S.E.2d 602 (Ct. App. 1984), quashed in part on other grounds, 287 S.C. 190, 336 S.E.2d 472 (1985). Additionally, Plaintiff Smith has not produced any admissible evidence showing that Defendant Townsend acted with the intent to harm or with any recklessness. Finally, Plaintiff Smith has not shown that Defendant Townsend's alleged misconduct caused him to suffer emotional distress which was so severe that no reasonable man could be expected to endure it.

Further, the two-year statute of limitations under the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-110, applies to Defendant Townsend's alleged misconduct because Plaintiff Smith has not offered admissible evidence showing that Defendant Townsend acted outside the scope of his official duties. Plateau v. Harrelson, 355 S.C. 197, 209, 584 S.E.2d 413, 419 (Ct. App. 2003). Plaintiff Smith amended his initial Complaint to add Defendant Townsend as a party. Plaintiff Smith served Defendant Townsend with the Amended Complaint on July 6, 2004, which is more than two years after Plaintiff Smith discovered or knew of the events upon which his claims are based. Accordingly, the claim for "intentional infliction of emotional distress" is time-barred under the statute of limitations.

There is no genuine issue as to any material fact and Defendant Townsend is entitled to judgment as a matter of law as to Plaintiff Smith's first cause of action for "intentional infliction of emotional distress."

2. Summary judgment is hereby granted as to Plaintiff Smith's second cause of action for "breach of contract accompanied by fraudulent intent" against Defendant CCSD because such a claim is not permitted under the South Carolina Tort Claims Act. The cause of action for "breach of contract accompanied by fraudulent intent" requires a showing that the defendant acted with a fraudulent intent and the intent to injure the plaintiff. See Floyd v. Country Squire Mobile Homes, Inc., 287 S.C. 51, 336 S.E.2d 502 (Ct. App. 1985); Harper v. Ethridge & Fann, 290 S.C. 112, 348 S.E.2d 374 (Ct. App. 1986). The Tort Claims Act provides that a governmental entity such as a school district cannot be held liable for "employee conduct . . . which constitutes actual fraud, actual malice, intent to harm, or a crime involving moral turpitude." S.C. CODE ANN. § 15-78-60(17). Accordingly, the cause of action alleging breach of contract accompanied by fraud is barred as a matter of law.

Additionally, assuming *arguendo* that the Tort Claims Act was inapplicable and Plaintiff Smith produced evidence that Defendant CCSD breached an employment contract with him, Plaintiff Smith has not offered admissible evidence showing that Defendant CCSD breached any such contract with a fraudulent intent or that Defendant CCSD committed any fraudulent act accompanying the alleged breach of contract. See Minter v. GOCT, Inc., 322 S.C. 525, 473 S.E.2d 67 (Ct. App. 1996); Foxfire Village Inc. v. Black & Veatch, 304 S.C. 366, 404 S.E.2d 912 (Ct. App. 1991).

There is no genuine issue as to any material fact and Defendant Townsend is entitled to judgment as a matter of law as to Plaintiff Smith's second cause of action for "breach of contract accompanied by fraudulent intent."

3. Summary judgment is hereby denied as to Plaintiff Smith's third cause of action for "breach of contract" against Defendant CCSD. Defendant CCSD argues that summary

judgment is appropriate because Plaintiff Smith did not have an employment contract with Defendant CCSD and was an "at-will" employee. However, Plaintiff Smith testified at his deposition that he received a written employee handbook from Defendant CCSD. Under certain circumstances, our courts have held that an employer may modify an employee's at-will status through the issuance of written handbooks. See Prescott v. Farmers Tel. Co-Op, 335 S.C. 330, 516 S.E.2d 923 (1999).

Although Mr. Smith testified at his deposition that he possessed a copy of the handbook, the handbook has not yet been produced and is not presently before the Court for review or examination. Because this Court has not yet been able to review the handbook, this Court rules that it would be premature at this juncture to grant summary judgment because such a handbook may possibly provide evidence creating an issue of material fact concerning whether the Plaintiff was employed by Defendant CCSD pursuant to an employment contract and, if so, whether his termination breached the employment contract. See Baughman v. American Tel. & Tel. Co., 306 S.C. 101, 410 S.E.2d 537 (1991) (summary judgment was prematurely granted when showing was made that further discovery may reveal additional relevant evidence).

Accordingly, Defendant CCSD's motion for summary judgment is denied at this time as to Plaintiff Smith's third cause of action for "breach of contract" against Defendant CCSD. Nothing herein shall be construed as barring or preventing Defendant CCSD from making a renewed or subsequent motion for summary judgment (or a directed verdict motion at trial) after additional discovery is conducted regarding the handbook.

4. Summary judgment is hereby granted as to Plaintiff Smith's fourth cause of action for "third party interference with a contract" against Defendant Townsend because Plaintiff Smith did not timely commence the claim within the applicable statute of limitations. The two-

year statute of limitations under the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-110, applies to Defendant Townsend's alleged misconduct because Plaintiff Smith has not offered admissible evidence showing that Defendant Townsend acted outside the scope of his official duties. Flateau, supra. Plaintiff Smith served his Amended Complaint against Defendant Townsend more than two years after Plaintiff Smith discovered or knew of the events upon which his claims are based. Accordingly, the claim for "third party interference with a contract" is time-barred under the statute of limitations.

There is no genuine issue as to any material fact and Defendant Townsend is entitled to judgment as a matter of law as to Plaintiff Smith's fourth cause of action for "third party interference with a contract."

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

ORDERED, ADJUDGED, AND DECREED that Defendants' Motion for Summary Judgment is hereby GRANTED as to Plaintiff's first cause of action for "intentional infliction of emotional distress" or "outrage," Plaintiff's second cause of action for "breach of contract accompanied by fraudulent intent," and Plaintiff's fourth cause of action for "third party interference with a contract;" and it is further

ORDERED, ADJUDGED, AND DECREED that Defendants' Motion for Summary Judgment is hereby DENIED as to Plaintiff's third cause of action for "breach of contract" against Defendant CCSD.

AND IT IS SO ORDERED!


R. Markley Dennis, Jr.
Presiding Circuit Court Judge

Thoncho Lewis South Carolina.

This 16th day of March, 2006.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

WESLEY SMITH,

Plaintiff,

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

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.

(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 Clifton 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 Mawhin (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 3, 2007; and a "Plaintiff's Supporting Memorandum to the Record for Sanction Devied Against the Defense in this Action" dated November 8, 2007.

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 ~~12.5 million~~ for a single termination; damages in the amount of ~~12.5 million~~ under the South Carolina Tort Claims Act; and punitive damages ~~of 25 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. P. 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 re-litigate his claims even after service of the Defendants' Motion for Sanctions.

LEGAL 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, 286 S.E.2d 250 (Ct. App. 1983); see Chitry v. Chitry, 317 S.C. 143, 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

reaffirmed 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). ~~It is not the duty of the trial court to hold a lesser standard than it applied to any other party.~~ 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 in

- (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. E.C. CODE ANN. §§ 15-35-10(B) & (C) 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.

(C) Sanctions may include:

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

any additional reasonable consequential expenses of the prevailing party resulting from the frivolous proceeding;

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

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

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 direct 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

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 Gebbi 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 Gebbi, 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.

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

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 or 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

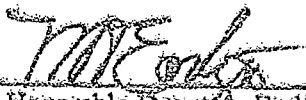
FURTHER ORDERED, ADJUDGED, AND DECREED that the prior Order filed in this Court on January 10, 2007, which granted Plaintiff Wesley Smith's Motion to Proceed *in forma pauperis*, is hereby rescinded and canceled; and

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

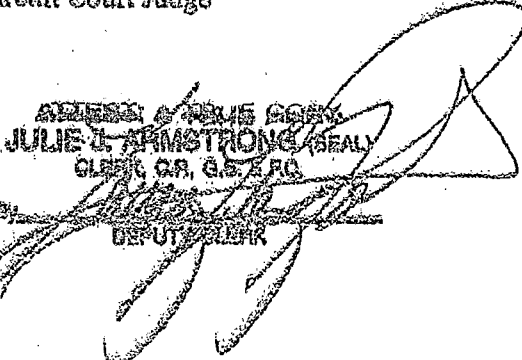
FURTHER ORDERED, ADJUDGED, AND DECREED that willful disobedience of the non-monetary requirements of this Order by any party to this action shall constitute contempt of Court subjecting the offending party to an appropriate penalty or punishment; and

AND IT IS SO ORDERED!


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

Barnberg, South Carolina.

This 20th day of November, 2007.


JULIE L. ARMSTRONG (SEAL)
CLERK, C.R. & S.E.D.
DEPUTY CLERK

ATTACHMENT "C"