

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM SOUTH CAROLINA  
WORKERS' COMPENSATION COMMISSION  
APPELLATE PANEL

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**RECEIVED**

AUG 01 2016

SC Court of Appeals

Appellate Case No.: 2016-000601

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Scott Ledford, Employee.....Appellant,

v.

Department of Public Safety, Employer, and State Accident Fund,  
Carrier.....Respondents

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**RETURN TO APPELLANT'S MOTION TO INCLUDE ADDITIONAL MATTER  
IN THE RECORD ON APPEAL**

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(803) 227-2885

Attorneys for Respondents

The Department of Public Safety, Employer, and State Accident Fund, Carrier (“Respondents”) submit this Return to Appellant’s Motion to Include Additional Matter in the Record on Appeal pursuant to Rule 224(e), SCACR. Respondents respectfully request this Court deny Appellant’s Motion to Include Additional Matter in the Record on Appeal as the additional documents requested to be included in the Record on Appeal were never presented to the lower court.

On July 20, 2016, Appellant filed his Initial Reply Brief simultaneously with his Motion to Include Additional Matter in the Record on Appeal. Appellant moves to include in the Record on Appeal Appellant’s un-redacted Motion for Recusal and an e-mail sent by Respondents’ counsel on 08/13/2014. Both of these documents are improperly referenced in Appellant’s Initial Reply Brief as they are not properly included in the Record on Appeal.

Pursuant to Rule 210, SCACR, this Court must deny Appellant’s Motion. Rule 210(c) clearly states: “[t]he record shall not, however, include matter which was not presented to the lower court or tribunal.” Further, Rule 210(h) provides that “the appellate court will not consider any fact which does not appear in the Record on Appeal.” Appellant’s un-redacted Motion for Recusal and the e-mail should not be included in the Record of Appeal because neither document was presented to the lower court, the Single Commission or the Full Commission.

On October 9, 2014, Appellant submitted a Motion for Recusal for filing with the South Carolina Workers’ Compensation Commission (“the Commission”). The Motion for Recusal contained details of settlement negotiations that took place between the parties prior to the issuance of the Decision and Order. The Commission’s counsel intercepted the

Motion for Recusal before it reached Commissioner Barden for her review. He held a telephone conference with both parties explaining the action he took to preserve Commissioner Barden's impartiality. Appellant's counsel agreed to redact all references to the settlement negotiations and resubmit his Motion for Recusal. On October 10, 2014, Appellant submitted his revised Motion for Recusal which was properly made part of the Record on Appeal. This Court must not include the un-redacted Motion for Recusal in the Record on Appeal because Appellant failed to present it to the lower court. In addition, Appellant never challenged or objected to the redactions. Thus, he did not preserve the error if one was made, and he failed to raise this as an Issue on Appeal.

The same argument holds true in regard to the e-mail sent by Respondent's counsel on August 13, 2014. This e-mail correspondence was never presented to the Commission. Throughout the four year tenure of the case, this e-mail appears for the first time in Appellant's Initial Reply Brief. Since Appellant failed to submit this e-mail to the Commission it cannot become part of the Record on Appeal and cannot be considered by this Court.

For the reasons set forth above, Respondents respectfully request this Court dismiss Appellant's Motion to Include Additional Matter in the Record on Appeal. Further, Respondents request that all references to the un-redacted Motion for Recusal and e-mail from 08/13/2014 be stricken from Appellant's Initial Reply Brief.

Respectfully submitted,

*Sarah S. Alphin*

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Attorneys for Respondents

July 29, 2016  
Columbia, SC

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**PROOF OF SERVICE**

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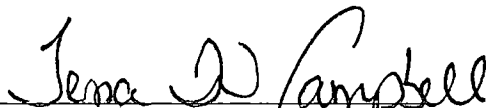
I certify that I, Tessa W. Campbell, have properly served **Respondents' Return to Appellant's Motion to Include Additional Matter in the Record on Appeal**, by mailing an original and six (6) copies of the same by United States Mail with first class postage prepaid to the following address on July 29, 2016:

The Honorable Jenny Abbott Kitchings  
The South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

and a copy of the same by United States Mail with first class postage prepaid to the following addresses on July 29, 2016:

E. Hood Temple, Esquire  
Hatfield Temple, LLP  
170 Courthouse Square  
Post Office Box 1770  
Florence, SC 29503-1770

J. Kevin Holmes, Esquire  
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July 29, 2016  
Columbia, South Carolina

# WILLSON JONES CARTER & BAXLEY, P.A.

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July 29, 2016

The Honorable Jenny Abbott Kitchings  
The South Carolina Court of Appeals  
P. O. Box 11629  
Columbia, SC 29211

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**SC Court of Appeals**

Re:    Scott Ledford vs. Department of Public Safety  
      WCC File No.: 1202545    DOI: 3/10/2012  
      Carrier: State Accident Fund - Claim No.: 2012-000722  
      WJC&B File No.: 0385.00804  
      **Appellate Case No. 2016-000601**

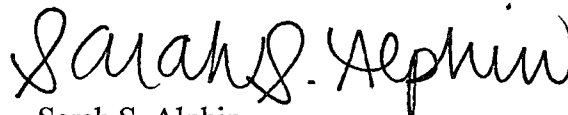
Dear Ms. Kitchings:

Pursuant to Rule 224, SCACR, please find enclosed for filing the original and six copies of the Respondents' Return to Appellant's Motion to Include Additional Matter in the Record on Appeal, along with Proof of Service for the same.

By copy of this letter, I am also serving a copy of the Respondents' Return to Appellant's Motion to Include Additional Matter in the Record on Appeal on the attorneys for the Appellant by United States Mail with first class postage prepaid.

With kindest regards,

WILLSON JONES CARTER & BAXLEY, P.A.



Sarah S. Alphin

SSA:twc  
Enclosure

cc:    J. Kevin Holmes, Esquire (w/enclosure)  
      E. Hood Temple, Esquire (w/enclosure)  
      Jessica Backman (via email & w/enclosure)

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**WILLSON JONES CARTER & BAXLEY, P.A.**  
**ATTORNEYS AT LAW**  
**4500 FORT JACKSON BOULEVARD**  
**COLUMBIA, SC 29209**

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**AUG 01 2016**  
**JENNY ABBOTT KITCHINGS, THE HONORABLE**  
**SOUTH CAROLINA COURT OF APPEALS**  
**1220 SENATE STREET**  
**COLUMBIA, SC 29201**