

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM RICHLAND COUNTY  
L. Casey Manning, Circuit Court Judge

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**RECEIVED**

Case No. 2015-CP-40-3563

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OCT 17 2016

**SC Court of Appeals**

Kevin J. Daniels, #247291, ..... Appellant,

v.

Bryan P. Stirling, Director of S.C. Dept. of Corrections,  
David Dunlap, Warden, Kershaw Correctional Institution,  
Lisa Engram, Associate Warden, Kershaw Correctional Institution,  
Janice Phillips, Administrative Coordinator, S.C. Dept. of Corrections,  
Division of Health Services, Nurses Ussery and Jane Doe,  
Kershaw Correctional Institution Medical Dept.,  
individually and in the official capacities, et. al..... Respondents.

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**RESPONDENTS' RETURN TO  
APPELLANT'S MOTION TO PROCEED  
IN FORMA PAUPERIS**

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The Appellant has filed a motion requesting that the Court waive the requirement that he pay the \$100 filing fee for his appeal. The Respondents Bryan P.

Stirling, David Dunlap, Lisa Engram and Janice Phillips oppose that motion and any request seeking to proceed in forma pauperis.

The Appellant's request to avoid the filing fee requirement is not permitted under South Carolina law. In the case of *Ex Parte: Martin v. State*, 321 S.C. 533, 471 S.E.2d 134 (1995), the South Carolina Supreme Court addressed the issue of granting motions to proceed in forma pauperis. The Court held that "[i]n the absence of a statutory provision allowing the general waiver of filing fees, we conclude motions to proceed in forma pauperis may only be granted where specifically authorized by statute or required by constitutional provisions." 471 S.E.2d at 134-135.

Later, in *Martin v. South Carolina Department of Corrections*, 350 S.C. 196, 565 S.E.2d 756 (2001), the South Carolina Supreme Court required full payment of appellate filing fees by an indigent prisoner. The Court concluded that the statutes allowing a partial payment of the filing fees when an indigent prisoner brings a civil action do not apply to appellate filing fees incurred at either the Supreme Court or the Court of Appeals.

Thereafter, in *Sullivan v. South Carolina Department of Corrections*, 355 S.C. 437, 586 S.E.2d 124 (2003), the Supreme Court held that a prisoner is not entitled to proceed in forma pauperis in *Al-Shabazz* appeals from the Administrative Law Court. The Court further explained:

The General Assembly is the body charged with the power to waive filing fees, and they have not created a waiver for this set of cases. Further, this is not a case involving "fundamental rights," so access to the courts is not constitutionally required in this case. Therefore, Sullivan is not entitled to proceed in forma pauperis on his appeal from the ALJ's dismissal.

586 S.E.2d at 128.

In the present case, there is no statutory provision allowing this Court to waive the payment of a \$100 filing fee as required pursuant to Rule 203(d), SCACR, under the circumstances presented by the Appellant. Rule 203(d), SCACR, provides only two exceptions: (1) for a criminal appeal, and (2) for an appeal by the State of South Carolina or its departments or agencies. Neither exception is applicable here. Moreover, the Appellant does not enjoy a constitutional right to an appeal nor does his appeal involve the type of "fundamental rights" for which a waiver of the filing fee is appropriate.

For the foregoing reasons, the Respondents Bryan P. Stirling, David Dunlap, Lisa Ingram and Janice Phillips oppose the Appellant's request to proceed in forma pauperis or waive the requirement that the \$100 filing fee be paid to proceed with his appeal. The Court is respectfully requested to require the Appellant to pay the filing fee before this appeal proceeds any further.

Respectfully submitted,

DAVIDSON & LINDEMANN, P.A.

BY: 

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*Counsel for Respondents Bryan P. Stirling,  
David Dunlap, Lisa Engram and  
Janice Phillips*

Columbia, South Carolina

October 17, 2016

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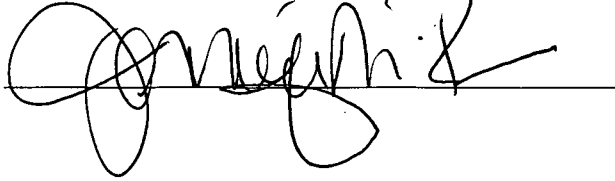
**CERTIFICATE OF SERVICE**

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The undersigned employee of Davidson & Lindemann, P.A., counsel for the Respondents Bryan P. Stirling, David Dunlap, Lisa Engram and Janice Phillips, does hereby certify that service of the **Notice of Appearance and Respondents' Return to Appellant's Motion to Proceed in Forma Pauperis** in the above-captioned matter was made upon the *pro se* Appellant and all other counsel of record by placing copies in the United States Mail, first class postage prepaid, at the below listed addresses clearly indicated on said envelopes this the 17th day of October 2016:

Kevin J. Daniels, #247291  
Turbeville Correctional Institution  
1578 Clarence Coker Highway  
Turbeville, South Carolina 29162

James E. Parham, Esquire  
James E. Parham, Jr., P.A.  
Post Office Box 1576  
Irmo, South Carolina 29063

A handwritten signature in black ink, appearing to read "James E. Parham, Jr.", is written over a horizontal line. The signature is stylized and cursive.

DAVIDSON & LINDEMANN, P.A.

ATTORNEYS AND COUNSELLORS AT LAW

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October 17, 2016

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\*Also Admitted In North Carolina  
†Certified Mediator

Of Counsel  
Kenneth P. Woodington

Writer's Email: [alindemann@dml-law.com](mailto:alindemann@dml-law.com)

**Hand Delivered**

The Honorable Jenny Abbott Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
1220 Senate Street  
Columbia, South Carolina 29201

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SC Court of Appeals

RE: Kevin J. Daniels, #247291 v. Bryan P. Stirling, Director of S.C. Dept. of Corrections, David Dunlap, Warden, Kershaw Correctional Institution, Lisa Engram, Associate Warden, Kershaw Correctional Institution, Janice Phillips, Administrative Coordinator, S.C. Dept. of Corrections, Division of Health Services, Nurses Usserry and Jane Doe, Kershaw Correctional Institution Medical Dept., individually and in the official capacities, et. al.  
Case Tracking Number: 2016-002088  
Civil Action Number: 2015-CP-40-3563  
Claim Number: 9977

Dear Ms. Kitchings:

Please find enclosed for filing the originals and one copy each of the **Notice of Appearance** and **Respondents' Return to Appellant's Motion to Proceed in Forma Pauperis** in the above referenced matter. Please file the originals and return a clocked-in copy of each document to me in the enclosed envelope.

By copy of this letter, I am serving copies on the *pro se* Appellant and all other counsel of record. Thank you for your assistance in this matter.

Sincerely,

DAVIDSON & LINDEMANN, P.A.



Andrew F. Lindemann

AFL/jmb  
Enclosures

The Honorable Jenny Abbott Kitchings  
October 17, 2016  
Page Two

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cc: (w/ Enclosures)

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1578 Clarence Coker Highway  
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