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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
The Honorable Casey L. Manning

Case No: 2015-CP-40-07178

Clarence B. Jenkins, Jr., Appellant,.....Appellant,

v.

South Carolina Workers' Compensation Commission,.....Respondent.

MOTION TO EXCLUDE APPELLANT'S LETTER DATED NOVEMBER 2ND 2016 AS A RETURN TO MOTION UNDER RULE 240(e), AND/ OR, IN THE ALTERNATIVE, MOTION TO ALLOW FOR LATE FILING OF RESPONDENT'S REPLY

Pursuant to Rules 208, 209, 210 and 240, SCACR, Respondent the South Carolina Workers' Compensation Commission moves this Court to Exclude Appellant's Letter dated November 2nd, 2016 as Appellant's Return to Motion. Respondent respectfully requests the Court to hold (1) Appellant did not properly file a Return to Motion in accordance with Rule 240(e), SCACR, (2) Respondent did not fail to comply with Rule 240(f), SCACR, and (3) Respondent should not be deemed to have abandoned its Motion in accordance with Rule 240(g), SCACR.

On October 28th, 2016, Respondent filed with the Court and served on the Appellant Respondent's Motion to Strike and/or For Correction of Designation of Matter and Initial Brief. Respondent believed that it had not been served with a Return to Motion in accordance with Rule 240(e), SCACR. Therefore, Respondent's understanding was that no Reply was due in accordance with Rule 240(f), SCACR.

Respondent did receive a letter from the *pro se* Appellant dated November 2nd, 2016 ("Appellant's November 2nd, 2016 Letter"). [1] Respondent is concerned that it appears to the Court that Respondent neglected or declined to file a Reply in accordance Rule 240(f), SCACR and therefore abandoned its Motion in accordance with Rule 240(g), SCACR. Respondent assures the Court that it had no such intention. The sole reason Respondent had not previously filed a Reply was because Respondent believed in good faith that Appellant had not filed a Return with the Court.

Respondent's asserts that Appellant's November 2nd, 2016 Letter does not provide sufficient notice that it is a Return to Motion in accordance with Rule

[1] Respondent reviewed the Case Information for the above-referenced appeal on the South Carolina Appellate Case Management System and discovered that the Court had listed under the Event Information section Appellant's November 2nd, 2016 Letter as "Motion-Return (regarding motion to strike)" with a Filed Date of November 4th, 2016. *See* http://ctrack.sccourts.org/public/caseView.do?csIID=62524, accessed November 17th, 2016. Further, on November 17th, 2016, the Court entered Event Information "Motion-No Reply". *Id.* This was the first notice Respondent had that the Court had interpreted Appellant's November 2nd, 2016 Letter as a Return to Motion and expected Respondent to file a Reply.

240(e), SCACR. Appellant's November 2nd, 2016 Letter contains no title. It begins with the declaration "I have received SC Worker's (sic.) Compensation Commission's Motion to Strike And/Or (sic.) For Correction of Designation Of (sic.) Matter and Initial Brief of Appellant." Appellant's November 2nd, 2016 Letter. It then goes on to list documents Appellant intends to send to the Court of Appeals, but makes no motion for the Court to consider. It makes no reference to Rule 240(e), SCACR, does not argue the legal authorities addressed in Respondent's Motion, and does not argue that the relief sought in Respondent's Motion should not be granted. Further, it does not comply with the form and content requirements of Rule 240(c) or Rule 267 SCACR. It contains neither a certificate or affidavit of service, nor a memorandum with citation of authorities. Respondent asserts that due to these defects Appellant's November 2nd, 2016 Letter does not provide Respondent with sufficient notice that it is intended to constitute Appellant's Return to Motion. From Respondent's perspective, Appellant's November 2nd, 2016 Letter was not descriptive enough to distinguish it from other correspondence Respondent receives from Appellant on a regular basis.[2]

[2] It is important for the Court to understand that the instant appeal is not the only action at law that Appellant is pursuing *pro se* involving the workers' compensation system. Appellant filed a workers' compensation claim that was adjudicated by Respondent in accordance with § 42-3-180. Appellant is appealing that matter to the Court of Appeals. Appellate Case No. 2016-000598 is assigned to that appeal. Despite the appeal, Appellant inveterately bombards the Commission with emails and correspondence regarding both these appeals and his underlying workers' compensation claim. The Commission receives multiple emails and correspondence from Appellant on a regular, if not daily, basis.

CONCLUSION

Respondent's position is that Appellant's November 2nd, 2016 Letter contains only passing reference to Respondent's Motion and does not give Respondent adequate notice to conclude that Appellant's November 2nd, 2016 Letter triggers Respondent's obligation to file a Reply under Rule 240(f), SCACR. Therefore, Respondent requests that the Court find that (1) Appellant did not properly file a Return to Motion in accordance with Rule 240(e), SCACR, (2) Respondent did not fail to comply with Rule 240(f), SCACR, and (3) Respondent should not be deemed to have abandoned its Motion in accordance with Rule 240(g), SCACR.

In the alternative, should the Court find that Appellant's November 2nd, 2016 Letter constitutes a Return to Motion in accordance with Rule 240(e), SCACR, Respondent respectfully moves for the Court to excuse the late filing of its enclosed Reply. Respondent asserts that it has a meritorious defense of excusable neglect for filing its Reply late, in that Appellant's November 2nd, 2016 Letter failed to provide Respondent with adequate notice that it was intended to be a Return to Motion, as outlined above.

November 21st, 2016

J. Keith Roberts, S.C. Bar No.: 100735
1333 Main Street, Suite 500,

P.O. Box 1715
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(803) 737-5701

Attorneys for Respondent South Carolina Workers' Compensation Commission

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Casey L. Manning, Circuit Court Judge

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Clarence B. Jenkins, Jr.,.....Appellant,

v.

South Carolina Workers' Compensation Commission,.....Respondent.

PROOF OF SERVICE

I, the undersigned counsel for Respondents, hereby certify that I have served a copy of the MOTION TO EXCLUDE APPELLANT'S NOVEMBER 2ND, 2016 LETTER AS A RETURN TO MOTION AND/OR MOTION TO ALLOW FOR LATE FILING OF RESPONDENT'S REPLY by causing a copy of the same to be deposited in the United States mail, first class postage, prepaid, address to the *pro se* Appellant on this the 21st day of November, 2016:

Clarence B. Jenkins, Jr.
945 Wire Road
Neeses, SC 29107

11/21, 2016

J. Keith Roberts
1333 Main Street, Suite 500,
P.O. Box 1715
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Attorneys for Respondent South Carolina Workers' Compensation Commission

State of South Carolina

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Workers' Compensation Commission

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November 21st, 2016

South Carolina Court of Appeals
The Hon. Jenny Abbott Kitchings, Clerk of Court
1220 Senate St.
P.O. Box 11629
Columbia, SC 29211

Re: Clarence B. Jenkins, Jr., Appellant v. S.C. Workers' Compensation Commission, Respondent.
Appellate Case No.: 2016-001382

Dear Ms. Kitchings:

Enclosed please find the original and six (6) copies of Respondent the South Carolina Workers' Compensation Commission's Motion to Exclude Appellant's Letter Dated November 2nd, 2016 as a Return to Motion under Rule 240(e) and/ or Motion to Allow for Late Filing of Respondent's Reply, which I would appreciate your filing with the court. Respondent understands that, as an agency of the State of South Carolina, it is exempt from paying a filing fee pursuant to Rule 240(d), SCACR. If a filing fee is required for this motion, please notify my office immediately and it will be promptly remitted. Also enclosed are the original and six (6) copies of Respondent's Reply to Appellant's Return which I would appreciate you filing with the Court.

By copy of this letter to the last known address for Mr. Clarence B. Jenkins, Jr., Claimant *pro se*, I am hereby serving him with a copy of our Motion and Reply. Please see the attached Certificate of Service.

If there is anything further the court requires from the Respondent at this time, please do not hesitate to ask.

With warmest regards,

Sincerely,

J. Keith Roberts, Esquire
S.C. Workers' Compensation Commission

Enclosure
Cc: Mr. Clarence B. Jenkins, Jr.
945 Wire Rd.
Neeses, SC 29107

South Carolina Workers' Compensation Commission
1333 MAIN STREET, SUITE 500
P.O. Box 1715
COLUMBIA, SOUTH CAROLINA 29202-1715

RETURN SERVICE REQUESTED

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