THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

William P. Keesley, Successor Circuit Court Judge

Case No. 2013-CP-32-01272
Case No. 2014-CP-32-00399

Appellate Case No. 2015-001821

APPEAL FROM THE WORKERS' COMPENSATION COMMISSION

WCC Case No. 0506205

Alexander Guice, Employee, Appellant,

v.

US Foodservice, Inc., Employer, and
Ace American Insurance Company, c/o
Gallagher Bassett Services, Inc., Respondents.

MOTION FOR SANCTIONS AGAINST RESPONDENTS' FOR REPEATED VIOLATIONS OF RULES 241(a) AND 269 OF THE SOUTH CAROLINA APPELLATE COURT RULES

Please take notice, that Alexander Guice, the self-represented Employee and undersigned Appellant in this matter presents this pleading in *propria persona*, wherein pleadings are to be considered without regard to technicalities. Conley v. Gibson, 355 U.S. 41 at 48 (Sup. Ct.1957). *Pursuant* to Rule 269, SCACR; and/or other applicable laws, Appellant submits this Motion seeking the imposition of SANCTIONS upon the named Respondents in the above-entitled action, for repeated violations and willful disobedience of Rules 241(a) and 269 of the South

Carolina Appellate Court Rules; bad faith conduct; and the gross indifference to the substantial rights afforded to the undersigned Appellant, through the actions and conduct of Respondents' counsel, namely, **Erin L. Hantske, Esquire and McCangus, Goudelock, & Courie, LLC** ("Attorney Hantske"), wherein as a sanction, the Court should issue an appropriate dispositional Order in favor of Appellant. In support of this Motion for Sanctions, the undersigned Appellant would allege as follows:

I. INTRODUCTION

Civil litigation is not a joke. When a lawyer abuses his/her privilege to practice law in civil proceedings, that lawyer ceases to advance his/her cause or the ends of justice. While it is undeniable that a lawyer owes their client zealous advocacy, that zeal must be constrained within the bounds placed upon them as an officers of the Court and under the Court's rules. Polk County v. Dodson, 454 U.S. 312, 323 (U.S. Sup. Ct. 1981) (though a lawyer "has a duty to advance all colorable claims and defenses . . . [i]t is the obligation of any lawyer . . . not to clog the courts with frivolous motions or appeals").

Appellant contends, as the well pled arguments shall establish below, that US Foodservice, Inc., the Employer, and ACE American Insurance Company, c/o Gallagher Bassett Services, Inc., the Employer's Insurance Carrier (collectively, "Respondents'"), through the actions of their freely-selected agent(s), namely, Attorney Hantske, has *repeatedly* violated Rules 241(a) & 269, SCACR, potentially triggering sanctions, by filing frivolous pleadings, and specifically, by advancing inadmissible evidence which includes Respondents' evidentiary submission of the September 25, 2014 Circuit Court Order, and on two separate occasions, evidencing the July 17, 2015 Circuit Court Order, currently pending review on appeal, and under an automatic stay, to support Respondents' multiple request(s) for imposing sanctions upon

Appellant.

Additionally, Attorney Hantske has requested and/or moved for the Court to impose sanctions against Appellant in her filed and serviced "Return(s)", for the Respondents', as opposed to filing required separate-cover Motion(s) for sanctions, which is improper under Rule 269. Still further, Attorney Hantske's alleged repeated violation(s) of Rule 241(a) and Rule 269, SCACR, has resulted in Respondents' acting in bad faith; Respondents' demonstrating willful disobedience to the rule of law; and Respondents' acting with gross indifference to the substantial rights afforded to the undersigned pro se Appellant.

Specifically, Rule 269 of the South Carolina Appellate Court Rules expressly sets forth the outer boundaries of acceptable attorney or pro se conduct. Id.. That rule prohibits a lawyer or pro se litigant from asserting claims or legal positions that are not well-founded under existing law; filing frivolous; or for failing to comply with Court rules, to include the authority of this Court to impose such sanctions as the circumstances of the case and discouragement of like conduct in the future may require. Rule 269, SCACR. Regrettably, Respondents', through the conduct of Attorney Erin L. Hantske, has crossed these lines, and as such, Respondents' should be appropriately sanctioned for their bad faith misconduct.

II. BRIEF FACTUAL BACKGROUND

A. On July 17, 2015 and in the matter of Alexander Guice v. US Foodservice, Inc., et al, Appellate Case Nos. 13-CP-32-01272 / 14-CP-32-00399, the Circuit Court, through presiding successor Circuit Judge William P. Keesley, issued a dismissal Order. See July 17, 2015 Circuit Court Order previously filed and contained within the Record.

B. On or around August 16, 2015 Appellant duly filed and served a timely Notice of Appeal challenging the July 17, 2015 Circuit Court Order wherein this Court assigned the instant

appeal Appellate Case No. 2015-001821. Notice of Appeal dated 08/16/2015, previously filed. Notice of Appeal Initial Letter from Clerk of Court of Appeals dated 08/28/2015, previously filed.

C. On or around March 08, 2016 and subsequent the filing and service of the Initial Brief of Respondents, Appellant duly filed and served a "Motion to Strike Respondents' Initial Brief and Leave to Stay" ("Motion to Strike"). See Motion to Strike dated 03/08/2016, previously filed and contained within the Record.

D. On or around March 17, 2016 Respondents', through Attorney Hantske, duly filed and served a "Return in Opposition to Appellant's Motion to Strike Respondents' Initial Brief and Leave to Stay" ("Return in Opposition to Motion to Strike"). Return in Opposition to Motion to Strike dated 03/17/2016 (Attachments to Return not included). Attachment "**A**". In Respondents' Return in Opposition to Motion to Strike, Respondents' cited and evidenced (Return in Opposition to Motion to Strike, Att. "A") findings and/or conclusions from the July 17, 2015 dismissal Order, currently pending appeal before this Court, and in Respondents' 'Conclusion', stated, "Respondents respectfully request this Court to deny Appellant's Motion to Strike, **caution and/or sanction him against filing further frivolous motions**". (Emphasis added). Id. Att. A.

E. On or around March 26, 2016 Appellant duly filed and served a "Reply to Return to Motion to Strike and Leave to Stay" ("Reply to Motion to Strike), wherein under Issue No. "6" ("On Return, the Respondents' request that the Court impose sanctions upon Appellant is without merit."), Appellant *inter alia* pointed out to Respondents and the Court that "...**it is improper for Respondents' to utilize and rely upon the July 17, 2015 Circuit Court Order on appeal[ll] as grounds to support their [Respondents] request that the Court impose**

sanctions upon Appellant, pursuant to Rule 241(a), SCACR..."). See Reply to Motion to Strike, dated 03/26/2016, previously filed and contained within the Record.

F. On or around July 21, 2016 Appellant duly filed and served a "Verified Motion to Recuse and/or Disqualify Chief Justice Honorable James E. Lockemy" ("Motion to Recuse"). See Motion to Recuse, dated July 21, 2016 previously filed and contained within the Record.

G. On or around July 28, 2016 Respondents, through Attorney Hantske, duly filed and served a "Respondents' Return in Opposition to Motion to Recuse and/or Disqualify Honorable James E. Lockemy" ("Return in Opposition to Motion to Recuse"). See Return in Opposition to Motion to Recuse dated 07/28/2016 (Attachments to Return not included). Attachment "**B**". In Respondents' Return in Opposition to Motion to Recuse, Respondents evidenced approximately four (4) evidentiary attachments (Respondents' Return in Opposition to Motion to Recuse, Attachments "A-D"), including the September 25, 2014 Circuit Court Order respective of Appellate Case Nos. 13-01272 and 14-00399, in support of their stated request that "...this Court should **caution and/or sanction Appellant under Rule 269**, pertaining to frivolous motions." (Emphasis added). Id. Att. B.

H. On or around August 4, 2016 Appellant duly filed and served a "Reply to Return to Verified Motion to Recuse and/or Disqualify Chief Justice Honorable James E. Lockemy" (Reply to Motion to Recuse), wherein on page 20 under Issue No. 8 ("Respondents' "request" that Appellant be sanctioned for filing a frivolous pleading is without merit."), Appellant argued,

> "...Attorney Hantske is precluded from advancing any evidentiary documentation from the pending matter which is under an 'axiomatic' stay to support the imposition of sanctions against Appellant, unless this Court; the lower court; o[r] the Commission previously issued an Order lifting the automatic stay, which has not occurred. Rule 241(a), SCACR..."

Id. See Reply to Return to Motion to Recuse, dated 08/04/2016 previously filed and contained

within the Record.

I. On or around November 01, 2016 Appellant duly filed and served a "Motion for Leave to Stay Pending Adjudication of Petition for Writ of Prohibition and/or Mandamus filed with the Supreme Court" ("Motion to Stay Pending Adjudication"), and a "Motion for Leave to Proceed In Forma Pauperis" ("Motion to Proceed in Forma Pauperis"), seeking the Court to stay the instant appeal and waive the twenty five dollar motion filing fee. See 'Motion to Stay Pending Adjudication' & 'Motion to Proceed in Forma Pauperis', both dated 11/01/2016 previously filed and contained within the Record.

J. On or around November 4, 2016 Respondents, through counsel, duly filed and served a "Respondents' Return In Opposition to Appellant's Motions For Stay Pending Adjudication Of Petition To the Supreme Court and To Proceed In Forma Pauperis, And In Support Of Respondents' Request For Sanctions" ("Return in Opposition to Motion to Stay Pending Adjudication & Motion to Proceed in Forma Pauperis and Request for Sanctions"), wherein Respondents' moved the Court to impose sanctions upon Appellant "pursuant to Rule 269, SCACR" and *inter alia* as Attachment "B", admitted the July 17, 2015 Circuit Court Order on appeal as evidence in support of Respondents request that the Court impose sanctions upon Appellant. See Return in Opposition to Motion to Stay Pending Adjudication & Motion to Proceed In Forma Pauperis and Request for Sanctions dated November 04, 2016 (Attachments to Return not included). Attachment "**C**".

III. LEGAL STANDARD

"A motion for sanctions is a matter subject to the court's general supervisory authority to ensure fairness to all who bring their case to the judiciary for resolution." Clinton Mills, Inc. v. Alexander & Alexander, Inc., 687 F. Supp. 226, 228 (D.S.C. 1988). "Violation of

any provision of the South Carolina Rules of Professional Conduct [South Carolina Appellate Court Rules] qualifies as sanctionable misconduct." Id. An "attorney [or party] may also be sanctioned for filing a pleading, motion, or other paper in bad faith...whether or not there is good ground to support it." Johnson v. Dailey, 318 S.C. 318, 457 S.E.2d 613 (S.C. Sup.Ct.1995). Rule 269, SCACR. Conduct which tends to bring authority and the administration of the law into disrespect constitutes "contemptuous behavior." Stone v. Reddix-Smalls, 295 S.C. 514, 516, 369 S.E.2d 840 (S.C. Sup.Ct.1988). "The court has a duty to maintain the highest ethical standards of professional conduct to insure and preserve trust in the integrity of the bar." Latham v. Matthews, Docket No. 6:08-cv-02995, 2011 WL 52609, at *2 (D.S.C. Jan. 6, 2011). It is axiomatic that arguments of counsel are not evidence. Sosebee v. Leeke, 293 S.C. 531, 362 S.E.2d 22 (1987). "Where the sanction would be tantamount to granting a judgment by default, the moving party must show bad faith, willful disobedience or gross indifference to its rights to justify the sanction." Baughman v. AT & T Co., 306 S.C. 101, 410 S.E.2d 537 (S.C. Sup. Ct.1991)); see also Samples v. Mitchell, 329 S.C. 105, 112, 495 S.E.2d 213, 216 (Ct. App. 1997); see also McNair v. Fairfield Cty., 379 S.C. 462, 466, 665 S.E.2d 830, 832 (Ct. App. 2008) (internal citations omitted). Blacks' Law Dictionary, 2nd Ed., defines the term "Bad Faith" as "The opposite of "good faith," generally implying or involving actual or constructive fraud, or a design to mislead or deceive another, or a neglect or refusal to fulfill some duty or some contractual obligation, not prompted by an honest mistake as to one's rights or duties, but by some interested or sinister motive." Id. State v. Griffin, 100 S.C. 331, 331, 84 S.E. 876, 877 (1915) (citation omitted). The term "Willful Disobedience" is defined as "A willful ...act done voluntarily and intentionally with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say with bad purpose

either to disobey or disregard the law.'" State v. Bevilacqua, 316 S.C. 122, 129, 447 S.E.2d 213, 217 (Ct. App. 1994).

IV. JURISDICTION

Appellant contends jurisdiction is vested upon this Court to hear and consider Appellant's Motion for Sanctions in the above-entitled action pursuant to Appellant's timely filing and service of a 'Notice of Appeal' respective of the July 17, 2015 Order issued by the Honorable William P. Keesley, successor Circuit Judge, wherein said Notice of Appeal was filed by Appellant on or around August 16, 2015 in accordance with Rule 203, SCACR; S.C. Code Ann. § 1-23-380 (Supp. 2008); § 14-3-330(1) & (2)(c) (Supp. 2000) and/or other applicable laws, wherein this Court has proper vested jurisdiction over both the subject matter of this action and the parties. Id. Notice of Appeal and July 17, 2015 Circuit Court Order, previously filed.

V. AUTHORITY TO IMPOSE SANCTIONS

Appellant contends authority is vested with this Court to impose sanctions upon offending attorneys, pro se litigants, or parties pursuant to S.C. Code Ann. § 15-36-10(C)(1)(Supp. 2005)(stating "[a]n attorney, party, or pro se litigant shall be sanctioned . . . ."), and Rule 269, SCACR ("Where an appeal, petition, motion or **return** is **frivolous** or taken solely for the purposes of delay, **or is not in compliance with these Rules**, the appellate court may upon its own motion **or that of a party**, after ten (10) days notice, impose upon offending attorneys or parties such sanctions as the circumstances of the case and discouragement of like conduct in the future may require.")(Emphasis added). Id.

VI. ARGUMENT

1. Respondents' violated Rule 241(a), SCACR, on three (3) separate instances, wherein the imposition of sanctions is warranted.

Appellant contends the Court should impose reasonable sanctions upon Respondents' for

violating Rule 241(a), SCACR, based on several relevant factors.

As an initial matter, Rule 241(a), SCACR, **STAY AND SUPERSEDEAS IN CIVIL ACTIONS**, provides in part:

> "**(a) General Rule.** As a general rule, the service of a notice of appeal in a civil matter acts to automatically stay matters decided in the order, judgment, decree or decision on appeal, and to automatically stay the relief ordered in the appealed order, judgment, or decree or decision. This automatic stay continues in effect for the duration of the appeal unless lifted by order of the lower court, the administrative tribunal, appellate court, or judge or justice of the appellate court. The lower court or administrative tribunal retains jurisdiction over matters not affected by the appeal including the authority to enforce any matters not stayed by the appeal." Id.

Second, a review of the Record confirms that on or around August 16, 2015 Appellant duly filed and served a timely "Notice of Appeal" challenging the July 17, 2015 Circuit Court Order, wherein this Court assigned the instant appeal Appellate Case No. 2015-001821. Notice of Appeal dated 08/16/2015, previously filed. Notice of Appeal Initial Letter from Clerk of Court of Appeals dated 08/28/2015, previously filed. Third, a review of the record establishes that to date neither party has filed a motion with this Court; the lower court; or the S.C. Workers' Compensation Commission ("Commission") seeking leave and relief to lift the automatic stay imposed upon the July 17, 2015 Circuit Court Order pursuant to Rule 241(a), SCACR. Id. Record.

Fourth, a review of the record establishes that to date neither this Court; the lower court; nor the Commission has issued an Order lifting the Rule 241(a) imposed automatic stay on the aforementioned July 17, 2015 Circuit Court Order on appeal. Id. Record. Fifth, a review of the record establishes that to date, this Court has not issued an Opinion or Order reviewing the July 17, 2015 Circuit Court Order on appeal, as the instant appeal is currently in the "Final Briefing" stage of processing. Record.

However, a review of the record confirms that Respondents', through Attorney Hantske,

has on three separate occasions, and specifically, in Respondents' **a**) "Return in Opposition to Motion to Strike", dated March 17, 2016 (Att. A); **b**) "Return in Opposition to Motion to Recuse" dated July 28, 2016 (Att. B); and **c**) "Return in Opposition to Motion to Stay Pending Adjudication & Motion to Proceed in Forma Pauperis and Request for Sanctions" dated November 04, 2016 (Att. C), respectively, that Respondents' have advanced arguments in their aforementioned pleadings based on matters decided in the September 25, 2014 Circuit Court Order and the July 17, 2015 Circuit Order, to include evidencing the aforementioned Sept. 25 and July 17 Circuit Court Orders, attached to their pleadings, in clear violation of Rule 241(a), SCACR. Id.

Appellant contends Respondents violated the automatic stay provisions respective of the July 17, 2015 Circuit Court Order, which would include an automatic stay imposed on all prior decisions and actions taken by the parties respective of Appellate Case Nos. 13-01272 and 14-00399, as set forth in Rule 241(a), SCACR, on three separate instances, on 03/17/2016; 07/28/2016; and 11/04/2016 when Respondents filed Return(s) to Appellant's Motions advancing arguments and evidencing the aforementioned Orders attached to their Return(s) for the Court's consideration, and in so doing, has filed "frivolous" pleadings with this Court; has brought the administration of the law respective of the instant appeal into disrespect; and acted in "bad faith", on three (3) separate counts, in violation of S.C. Code Ann. § 15-36-10(B)(2)(Supp. 2005) of the S.C. Frivolous Civil Proceedings Sanctions Act (FCPSA), and Rule 269, SCACR. Id.

Furthermore, it is well settled federal and South Carolina jurisprudence that violations of any provisions of the South Carolina Appellate Court Rules qualifies as sanctionable misconduct. § 15-36-10(B)(2). Rule 269, SCACR. Clinton Mills, Inc. Johnson v. Dailey. Stone v. Reddix-Smalls.

As such, to ensure and restore fairness (Clinton Mills, Inc., *supra*); respect; and integrity to further the administration of justice (Stone v. Reddix-Smalls., *supra*) in the instant appeal, the Court should consider imposing reasonable sanctions upon Respondents', pursuant to Rule 269, SCACR, and/or § 15-36-10(C)(1), to discourage Respondents' repeated bad faith misconduct, in terms of violating the automatic stay provisions set forth in Rule 241(a), SCACR, on three separate instances, from occurring again in the future. Id. Att. A-C.

2. Respondents' violated Rule 269, SCACR, on six (6) separate counts, wherein the imposition of sanctions is warranted.

Appellant contends Respondents violated Rule 269, SCACR, on six (6) separate instances, wherein the Court should impose severe sanctions upon Respondents', based on; **A**) Respondents' raising and evidencing "frivolous" arguments in their three Return Briefs in support of their request for imposition of sanctions upon Appellant, in violation of Rule 241(a), SCACR & Rule 269, SCACR (counts 1-3); and **B**) Respondents' advancing improper Rule 269 request(s) for the Court to impose sanctions upon Appellant in their "Return" Briefs instead of filing mandatory Motion(s) for sanctions in accordance with expressly stated procedures pursuant to Rule 269, SCACR (counts 4-6).

A. Frivolous arguments and evidence from Circuit Court Orders under a stay

Respondents' filed three Returns in opposition to Motions filed by Appellant. Att. A-C. In each of the Returns filed by Respondents', through counsel, Respondents' requested and/or moved that the Court impose sanctions upon Appellant pursuant to Rule 269, SCACR. Id. However, in support of Respondents' three separate requests that the Court impose sanctions upon Appellant, Respondents' evidenced and relied upon *inter alia* the Sept. 25, 2014 Circuit Court Order and the July 17, 2015 Circuit Order currently pending review and under a current automatic stay in accordance with Rule 241(a), SCACR. Id. Att. A-C.

Because the evidence advanced and relied upon by Respondents' to seek the imposition of sanctions upon Appellant, as set forth in all three of Respondents' Returns, are under an automatic stay pursuant to Rule 241(a), and are therefore facially precluded from the Court's consideration, Respondents' Returns dated March 17, 2016; July 28, 2016; and November 04, 2016 are "frivolous" pleadings; and not in compliance with Rule 241(a), SCACR, wherein sanctions, pursuant to S.C. Code Ann. § 15-36-10, *et. seq.* and/or Rule 269, SCACR should issue. Att. A-C. Id.

Still further, Respondents', through counsel, had a duty to act in good faith, fairness and integrity in terms of ensuring that their Returns did not include frivolous arguments and did not attach inadmissible evidence for this Court's consideration, but failed to do so. Att. A-C. Shipes v. Piggly Wiggly St. Andrews 269 S.C. 479, 483, 238 S.E.2d 167, 168 (1977)(holding 'Duty is generally defined as "the obligation to conform to a particular standard of conduct toward another."'). Carson v. Adgar, 326 S.C. 212, 486 S.E.2d 3 (1997)(holding an affirmative legal duty to act exists if created by statute, contract, relationship, status, property interest, or some other special circumstance.).

Finally, because this Court has a duty to maintain the highest ethical standards of professional conduct to insure and preserve public trust in the integrity of the bar and our adversarial system of the administration of civil justice, reasonable sanctions should be imposed upon Respondents' for their three violations of Rule 269, SCACR, and Rule 241(a), SCACR, for filing three frivolous Returns seeking the imposition of sanctions upon Appellant based on inadmissible evidence under an automatic stay. Id. Att. A-C. Latham v. Matthews.

B. Improper request for imposition of sanctions filed under cover of Returns

Respondents' filed three Returns in opposition to Motions filed by Appellant. Att. A-C.

In each of the Returns filed by Respondents', through counsel, Respondents' requested and/or moved that the Court impose sanctions upon Appellant pursuant to Rule 269, SCACR. Id. However, a review of Rule 269, SCACR confirms that if a party believes that the opposing party or parties has filed a pleading that is improper, that party must file a motion to seek the imposition of sanctions, not request for imposition of sanctions against the offending party in a Return. Rule 269, SCACR ("Where an appeal, petition, motion or return is frivolous...the appellate court may upon its own **motion or that of a party**...")(Emphasis added).

Furthermore, the requirement for a party to file a Rule 269, SCACR *Motion* to seek the imposition of sanctions, as opposed to seeking the imposition of sanctions in a *Return* is jurisdictional pursuant to the Due Process Clause of reasonable notice. S.C. Const. art. I, § 22. Specifically, Rule 269, SCACR, expressly affords the nonmoving party ten (10) days reasonable notice, after service of the Motion seeking sanctions, to file an appropriate Return in opposition to the same. Rule 269, SCACR. However, pursuant to Rule 240(f), SCACR ("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."), a party served with a Return is only afforded five (5) days to file a Reply, wherein a request for sanctions filed by a party under the cover of a Return unfairly deprives a party of their entitled ten (10) days to file a responsive pleading to a motion for sanctions. Id.

Still further, a review of the Cover Letters from all three Respondents' Returns (Att. A-C) in question confirms that Respondents' did not pay the required twenty five ($25) dollar motion filing fee required to file a Rule 269 motion for sanctions against Appellant. Id.

Because Respondents' failed to file a proper motion to seek the imposition of sanctions

upon Appellant, and instead, requested this Court to impose sanctions upon Appellant, on three separate instances, under cover of Respondents' Returns, Appellant contends Respondents' three aforementioned Returns containing three separate requests that the Court impose sanctions upon Appellant (Att. A-C) constitutes vexatious, contemporaneous and frivolous pleadings filed by Respondents' with this Court, solely for the purpose and intent to harm, subdue or otherwise harass Appellant and undermine the respect and integrity of the administration of justice, wherein the imposition of severe sanctions is the appropriate course of action pursuant to Rule 269, SCACR, and/or S.C. Code Ann. § 15-36-10, *et. seq.* Id. Johnson v. Dailey. Stone v. Reddix-Smalls.

Moreover, Respondents' had a duty to act in good faith, fairness and integrity in terms of ensuring that their three request that the Court impose sanctions upon Appellant pursuant to Rule 269, SCACR was properly styled under cover of a Motion, to include paying the required motion filing fee, which Respondents' failed to do. Id. Att. A-C. Shipes v. Piggly Wiggly St. Andrews. Carson v. Adgar.

Finally, because this Court has a duty to maintain the highest ethical standards of professional conduct to insure and preserve public trust in the integrity of the bar and our adversarial system of the administration of civil justice, reasonable and severe sanctions should be imposed upon Respondents' for their additional three violations of Rule 269, SCACR, for filing three frivolous request that the Court impose sanctions upon Appellant under the erroneous cover of their Returns. Id. Att. A-C. Latham v. Matthews.

3. This Court of Equity should issue a dispositional Order in favor of Appellant as an appropriate severe sanction upon Respondent Employer and Carrier for bad faith conduct; willful disobedience; gross indifference to the rights of Appellant; and because Respondents' "hands" are "unclean".

Appellant contends the appropriate sanction which the Court should consider imposing

upon Respondents' to discourage similar conduct from occurring again in future would be to issue a dispositional Order, favorable to Appellant, as a severe sanction.

"Where the sanction would be tantamount to granting a judgment by default, the moving party must show bad faith, willful disobedience or gross indifference to its rights to justify the sanction." Baughman. Samples. McNair. Appellant contends Respondents' conduct establishes "bad faith", "willful disobedience" and "gross indifference" to Appellant's rights to support the imposition of severe sanctions, in addition to Respondents' now appearing before this Court with "unclean hands", based on several pertinent factors.

A. Bad Faith

Appellant contends there is sufficient evidence to establish that Respondents' have acted in bad faith in the instant appeal. "Bad faith" occurs where a party takes actions which manifest as "a design to mislead or deceive another" or "neglect or refusal to fulfill some duty" which is "not prompted by an honest mistake as to one's rights or duties, but by some interested or sinister motive". Black's Law Dictionary, 2nd Ed. State v. Griffin, 100 S.C. 331, 331, 84 S.E. 876, 877 (1915) (citation omitted). The lynchpin of any bad faith argument is whether or not the accused party acted reasonably or unreasonably. Mixson v. American Loyalty Ins. Co., 562 S.E.2d 659, 662 (S.C. Ct. App. 2002).

Thus, the Court must determine whether Respondents' acts were reasonable or unreasonable when Respondents' filed their three aforementioned Returns (Att. A-C) on March 17, 2016; July 28, 2016; and November 04, 2016, respectively, wherein: (**i**) Respondents' advanced arguments and evidenced *inter alia* the Sept. 25, 2014 and July 17, 2015 Circuit Court Orders for the Court's consideration, when in fact, said Orders remains under an automatic stay pursuant to Rule 241(a), SCACR, and therefore, precluded from the Court's consideration; (**ii**)

Respondents' three separate request(s) that the Court impose sanctions upon Appellant pursuant Rule 269, SCACR, based on inadmissible findings and conclusions set forth in the aforementioned stayed Circuit Court Orders, which remain precluded from the Court's consideration pursuant to Rule 241(a), SCACR; and (**iii**) Respondents' three requests that the Court impose sanctions upon Appellant pursuant to Rule 269, SCACR, as advanced in Respondents' Returns (Att. A-C), instead of filing Respondents' requests for sanctions under separate cover Motions as required pursuant to Rule 269, SCACR. Id. Mixson.

Here, Respondents' actions were unreasonable, and therefore Respondents' aforesaid actions reflect "bad faith" conduct.

Specifically, Respondents' three separate violations of Rule 241(a), SCACR (Att. A-C) (as noted in Argument "1" above), particularly where Respondents' have never moved for or received a proper Court Order lifting the automatic stay on the matters decided in the aforementioned Circuit Court Orders, as well as the pro se Appellant's expressly stated rebuttals in Appellant's Reply briefs cautioning Respondents' regarding Rule 241(a), SCACR, demonstrates "neglect or refusal to fulfill some duty" (*i.e.* Respondents' refusal and neglect, on three successive instances, of failing to move for and obtain a proper Court Order lifting the automatic stay of the aforementioned Circuit Orders and refraining from advancing any arguments or evidence from aforesaid Circuit Court Orders in their Returns), which is "not prompted by an honest mistake as to [Respondents'] rights or duties (*i.e.* Respondents' failure to comply with the South Carolina Appellate Court Rules, and specifically, comply with the automatic stay provisions set forth in Rule 241(a), SCACR and advancing the same frivolous and inadmissible arguments and evidence in three successive Returns was not an honest mistake), but by some interested or sinister motive (*i.e.* Respondents' attempts, on three successive instances,

to unlawfully procure and suborn a perjured and erroneous Court Order, from this Court unlawfully imposing sanctions upon Appellant, based on findings and conclusions contained within the aforementioned Circuit Court Order(s), which remains under an automatic stay pursuant to Rule 241(a), SCACR)", wherein Respondents', on three separate instances, have violated Rule 241(a), SCACR, and acted in "bad faith". Id. Att. A-C. Black's Law Dictionary. State v. Griffin. Reply to Motion to Strike. Previously filed. Reply to Motion to Recuse. Previously filed. Baughman v. AT & T Co. Samples v. Mitchell. McNair v. Fairfield Cty.

With respect to Respondents' three separate violations of Rule 269, SCACR (as noted in Argument "2(A)" above) set forth in Respondents' Returns (Att. A-C) in terms of repeated and frivolous request that the Court impose sanctions upon Appellant based upon inadmissible arguments and evidence from the aforementioned Circuit Court Orders, which remain in an automatic stay, demonstrates "neglect or refusal to fulfill some duty" (*i.e.* refrain from advancing inadmissible arguments and evidence from said Circuit Court Orders under a lawful and valid automatic stay (Rule 241(a)) and advance arguments and evidence for sanctions based on grounds which are valid under existing laws), which is "not prompted by an honest mistake as to [Respondents'] rights or duties (*i.e.* Respondents' failing to fulfil the required duty to comply with the South Carolina Appellate Court Rules, and specifically, comply with the automatic stay provisions set forth in Rule 241(a), SCACR and advancing the same frivolous and inadmissible arguments and evidence in three successive Returns), but by some interested or sinister motive (*i.e.* Respondents' attempts, on three successive instances, to unlawfully procure and suborn a perjured and erroneous Court Order, from this Court unlawfully imposing sanctions upon Appellant, based on findings and conclusions contained within the aforementioned Circuit Court Order(s), which remains under an automatic stay pursuant to Rule 241(a), SCACR)", wherein

Respondents', on three separate instances, have violated Rule 241(a), SCACR; Rule 269, SCACR; and acted in "bad faith". Id. Att. A-C. Black's Law Dictionary. § 15-36-10 *et. seq.* Baughman v. AT & T Co. Samples v. Mitchell. McNair v. Fairfield Cty. State v. Griffin.

Finally, with respect to Respondents' three separate additional Rule 269, SCACR, violations (as noted in Argument "2(B)" above) in terms of Respondents' repeated, frivolous and vexatious requests that the Court impose sanctions upon Appellant as set forth in Respondents' Returns (Att. A-C) instead of Respondents' mandatory compliance with Rule 269, SCACR, in terms of styling said sanction requests in required Motions, demonstrates "neglect or refusal to fulfill some duty" (*i.e.* Respondents' refusal and neglect, on three successive instances, to fulfill the duty of filing a Rule 269, SCACR *Motion* for Sanctions, to include failing to ever pay the required $25.00 Motion filing fee(s)), which is "not prompted by an honest mistake as to [Respondents'] rights or duties (*i.e.* Respondents' required duty to comply with the South Carolina Appellate Court Rules, and specifically, comply with the filing and fee requirements of Rule 269, SCACR, on three successive instances, was not an honest mistake), but by some interested or sinister motive (*i.e.* Respondents' attempts, on three successive instances, to unlawfully procure and suborn a perjured and erroneous Court Order, from this Court unlawfully imposing sanctions upon Appellant, based on improper requests for sanctions set forth in Respondents' Returns instead of seeking sanctions by way of filing a proper Motion as clearly expressed in Rule 269, SCACR)", wherein Respondents', on three separate (additional) instances, have violated Rule 269, SCACR, and acted in "bad faith". Id. Att. A-C. Black's Law Dictionary. Baughman v. AT & T Co. Samples v. Mitchell. McNair v. Fairfield Cty. State v. Griffin.

As such, Respondents' have acted in "bad faith" wherein the imposition of sanctions, and

severe sanctions, is both warranted and appropriate. Id.

B. Willful Disobedience

Respondents' conduct (as noted in Arguments "1" and "2" above) demonstrates willful disobedience to the rule of law based on several relevant factors.

As advanced above, the term "Willful Disobedience" is defined as "A willful ...act done voluntarily and intentionally with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say with bad purpose either to disobey or disregard the law.'" Bevilacqua, *supra.*

Here, Respondents' acted with "willful disobedience" to the law, and specifically, willfully disobeying Rules 241(a) and 269 of the South Carolina Rules of Appellate Procedure; § 15-36-10 *et. seq.*; and other holding authorities, on at least nine (9) separate instances, in their duly filed and serviced Return(s) (Att. A-C), by: (**a**) advancing frivolous arguments and evidence to this Court for consideration in Respondents' aforementioned Returns based upon Circuit Court Orders which remain in an active and lawful stay, willfully disobeying Rule 241(a), SCACR, on three separate instances which was done voluntarily and intentionally by Respondents' with intent to violate the Rule 241(a) imposed automatic stay which the law forbids; (**b**) advancing frivolous arguments and evidence in Respondents' Returns (Att. A-C) seeking the Court to impose sanctions upon Appellant, which was not based on any existing legal theory, willfully disobeying Rule 241(a) & Rule 269, SCACR, which was done voluntarily and intentionally by Respondents' with intent to violate the Rule 241(a) imposed automatic stay and seeking bad faith and unsupported grounds in support of requesting sanctions in violation of Rule 269, SCACR and § 15-36-10 *et. seq.*, on three separate instances, which the law forbids; and (**c**) seeking the Court to impose sanctions upon Appellant, as set forth in Respondents' Returns (Att. A-C) as

opposed to filing required Motions and paying the required motion filing fee with the Court, which was done voluntarily and intentionally by Respondents' with intent to violate the motion filing and fee requirements of Rule 269, SCACR, on three separate instances, which the law forbids. Id. Bevilacqua. Baughman v. AT & T Co. Samples v. Mitchell. McNair v. Fairfield Cty.

C. Gross Indifference

Respondents' conduct (as noted in Arguments "1" and "2" above) demonstrates "gross indifference" to the substantial rights afforded to Appellant based on several relevant factors.

With respect to Respondents' Returns (Att. A-C) advancing arguments and evidence regarding the aforementioned decided matters set forth in the Circuit Court Order(s) currently under an automatic and valid stay pursuant to Rule 241(a), SCACR, on three separate instances, Respondents' acted with gross indifference to Appellant's substantial Due Process Right for the opportunity to be heard in a meaningful manner, pursuant to the Due Process Clause as set forth U.S. Const. amend. XIV, § 1; and S.C. Const. art. I, § 22, respectively and specifically, after either **a**) the Court has conducted a proper review of the instant appeal and affirmed the Circuit Court Orders; or **b**) an appropriate Order was previously issued wherein the automatic stay on the matters decided in the aforementioned Circuit Court Orders had been lifted, which did not and has not happened here. Id.

Further, with respect to Respondents' three separate Returns (Att. A-C) advancing, evidencing and relying upon the aforementioned Circuit Court Orders in support of this Court imposing sanctions upon Appellant pursuant to Rule 269, SCACR, when in fact, said arguments and evidence relied upon by Respondents' remains inadmissible (Rule 241(a), SCACR), and as such, frivolous, vexatious, and wanton filed Returns, Respondents' acted with "gross

indifference" to Appellant's substantial rights, on three separate occasions, in terms of failing to treat Appellant in good faith; with respect; integrity; and without unlawful harassment. Id. Clinton Mills, Inc. Stone v. Reddix-Smalls.

Moreover, with respect to Respondents' three separate Returns (Att. A-C) moving the Court to impose sanctions upon Appellant pursuant to Rule 269, SCACR, instead of filing mandatory Motions and payment of required filing fees, Respondents' acted with "gross indifference" to the substantial Due Process Rights afforded to Appellant respective of "Reasonable Notice" prong pursuant to the Due Process Clause of the U.S. and South Carolina Constitutions, respectively, as Appellant was only afforded five (5) days, and the not the mandatory ten (10) days prior notice set forth in Rule 269, SCACR, to file Replies to oppose Respondents' three separate Returns seeking the impose sanctions upon Appellant. Id.

Still further, where Appellant is required to show or establish either "Bad Faith"; "Willful Disobedience"; or "Gross Indifference" to the substantial rights afforded Appellant[1], by Respondents', and where Appellant has in fact established Respondents' actions and conduct as bad faith, willful disobedience to the law, and gross indifference to the rights of Appellant, the imposition of sanctions, and specifically, severe sanctions, is justified and warranted here. Att. A-C. Baughman v. AT & T Co. Samples v. Mitchell. McNair v. Fairfield Cty.

D. Unclean Hands

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1 Appellant contends this Court should further scrutinize and deem Respondents' alleged bad faith, willful disobedience, and gross indifference conduct even more egregious based on the fact Respondents' voluntarily-chosen representative agent(s), Attorney Hantske, is a member of the South Carolina Bar and an Officer of this Court, where the Appellant is not an attorney; is self-represented; and therefore should not subjected to this type of blatant bad faith misconduct, wherein a failure of this Court to take notice of Respondents' misconduct would certainly set a disturbing precedent in terms of acceptable conduct before this Court by members of the bar when the opposing party is appearing pro se and is not a member of the bar.

The Court should impose sever sanctions upon Respondents' in terms of issuing a dispositional Order in favor of Appellant on grounds that under "Unclean Hands Doctrine", Respondents' are now precluded from prevailing in the instant appeal based on Respondents' demonstrated "bad faith" conduct in this matter.

"He who comes into equity must come with clean hands. It is far more than a mere banality. It is a self-imposed ordinance that closes the door of the court of equity to one tainted with inequitableness or bad faith relative to the matter in which he seeks relief." Emery v. Smith, 361 S.C. 207, 220, 603 S.E.2d 598, 605 (Ct. App. 2004) (internal quotation marks omitted); also see Straight v. Goss, 383 S.C. 180, 207, 678 S.E.2d 443, 457-58 (Ct. App. 2009).

As an initial matter, because the instant appeal is an appeal from the South Carolina Workers' Compensation Commission, and specifically, is based on a workers' compensation claim, this matter is rested in a Court of equity. Spoon v. Newsome Chevrolet Buick, 306 S.C. 438, 440 412 S.E.2d 434, 43435 (Ct. App. 1991)(holding "Worker's compensation laws are a classic example of this legislative balancing of the equities... The function of equity is to supplement the law, not to displace it.").

Next, the Court must consider whether Respondents' conduct meets the criteria to be deemed "bad faith" or "inequitable" and whether the alleged misconduct is related to the instant appeal. As advanced in Argument No. "3A" above, Appellant has established that **a**) Respondents' have in fact acted in "bad faith"; and **b**) the bad faith conduct by Respondents' is relative to the instant appeal. *Supra.*

Pursuant to this Court's holdings in Emery and Straight, because the instant appeal sits before this Court in equity; Respondents' have acted in bad faith; and Respondents' bad faith conduct is relative to the instant appeal, Respondents' now appear before this Court with

'unclean hands', as Respondents' are tainted with bad faith, wherein this Court of equity must close the door on any possibility of Respondents' ability to prevail in the instant appeal as a matter of law. Att. A-C. Id.

Finally, there are several examples where a party was severely sanctioned wherein the sanction was tantamount to a default judgment, summary judgment, or dismissal favorable to the opposing party for that party's bad faith conduct, willful disobedience or gross indifference to the substantial rights of the opposing party. See, *e.g.* Robert Hanekamp v. Atlas Technologies, Inc., et al, Case No. 2011-CP-10-1243 (9th Cir. May 15, 2014)(imposing sanctions upon Plaintiff Hanekamp and granting summary judgment for Defendants, as a sanction, for *inter alia* "Filing a frivolous motion for summary judgment seeking appointment of a receiver for a third (3rd) time while the parties were in a Court ordered abeyance" and "Filing a second frivolous Motion for Sanctions, Motion to Compel and Motion for Rule to Show Cause, in which Plaintiff misrepresented the understandings and agreements between the parties with respect to several issues..."); see also QZO, Inc. v. Moyer, 358 S.C. 246, 257-58, 594 S.E.2d 541, 548 (Ct. App. 2004)(affirming lower court's dismissal as a sanction based on QZO's willful disobedience and willful destruction of evidence); see also Helena Chemical Company v. Allianz Underwriters Insurance Company, Opinion No. 25797 (Sup. Ct. March 22, 2004)(Sup. Ct. affirming lower court's grant of summary judgment to Allianz for bad faith claims filed by Helena); also see McNair v. Fairfield Cnty., 379 S.C. 462, 467, 665 S.E.2d 830, 832-33 (Ct. App. 2008) (finding "the severe sanction" of striking the defendant's answer appropriate due to willful disobedience); also see Davis v. Parkview Apartments, 409 S.C. 266, 283, 762 S.E.2d 535, 544 (Sup. Ct. 2014)(affirming lower court's issuance of a dismissal as a sanction on grounds of willful disobedience to court orders and gross indifference to the rights of the opposing party).

4. Imposing sanctions, and severe sanctions, upon Respondents' for the actions and conduct of their representatives is both just and proper pursuant to Rule 269, SCACR and S.C. Code Ann. § 15-36-10 *et. seq.*

Appellant contends imposing severe sanctions upon Respondents', and not Respondents' counsel, for the alleged violations of Rule 241(a) and Rule 269, SCACR, as alleged above (Att. A-C), is just and proper based on several factors.

First, Rule 269, SCACR ("Where an appeal, petition, motion or return is frivolous or taken solely for the purposes of delay, or is not in compliance with these Rules, the appellate court may upon its own motion or that of a party, after ten (10) days notice, impose upon offending attorneys **or parties** such sanctions as the circumstances of the case and discouragement of like conduct in the future may require...")(Emphasis added), specifically establishes that parties can be sanctioned based on misconduct of their representatives. Id.

Second, as it relates to a party being sanctioned for the conduct of their attorney(s), in Holmes v. East Cooper Community Hospital, Inc., et al, Opinion No. 27370 (Sup. Ct. March 26, 2014), the Supreme Court found that "...the new version of the FCPSA repeatedly speaks in terms of sanctioning a "party" in addition to an attorney or pro se litigant. *See, e.g.*, S.C. Code Ann. § 15-36-10(C)(1)(stating "[a]n attorney, party, or pro se litigant shall be sanctioned . . . ."). Thus, we must presume that the legislature intended for a *party*, even a party represented by counsel, to be sanctionable under the FCPSA." Id.

Finally, federal jurisprudence is consistent with the practice of sanctioning parties for the acts and omissions of their freely selected representative agents. In the 1962 decision of Link v. Wabash Railroad Co., the U.S. Sup. Court reviewed a district court's sua sponte dismissal of a diversity negligence action. Id. Six years after the plaintiff filed the matter, the district court scheduled a pretrial conference and gave counsel two weeks prior notice of the scheduled

conference. Id. On the day of the conference, plaintiff's counsel called the court to say that he would be unable to attend the conference, giving the impolitic reason that he was busy preparing some documents for the state supreme court. Id. The attorney did not attend the conference, and the district court dismissed the matter for failure to appear and prosecute the claim. Id. In reviewing the district court dismissal, the Supreme Court opined:

> "There is certainly no merit to the contention that dismissal of petitioner's claim because of his counsel's unexcused conduct imposes an unjust penalty on the client. Petitioner voluntarily chose this attorney as his representative in the action, and he cannot now avoid the consequences of the acts or omission of this freely selected agent. Any other notion would be wholly inconsistent with our system of representative litigation, in which each party is deemed bound by the acts of his lawyer-agent and is considered to have "notice of all facts, notice of which can be charged upon the attorney.""

Id. at 370 U.S. 633-34 (1962)(quoting Smith v. Ayer, 101 U.S. 320, 326 (1879).

As such, if the Court agrees with Appellant's above stated allegations of bad faith conduct (*supra*), etc., the imposition of severe sanctions upon Respondents', and not Respondents' attorney(s), would be just and proper.

VII. CONCLUSION

Based on the foregoing, Appellant moves the Court, pursuant to Rule 269, SCACR, and/or other holding authorities, for the imposition of severe sanctions upon Respondents', to include; **VACATING** the Circuit Court Order dated July 17, 2015; **VACATING** the Appellate Panel Order dated July 17, 2013; **VACATING** the 'Settlement Agreement and Release' approved by the Commission on January 05, 2006; and **ORDERING** Respondents' to immediately **REINSTATE** and **RELEASE** entitled Temporary Total Compensation Payments to Appellant, effective November 03, 2005, at the mutually agreed upon average weekly wage of $1,161.00, plus the mandatory S.C. Code Ann. § 42-9-260(G)(Supp. 2005) imposed twenty five percent (25%) interest penalty, as an appropriate sanction. In addition, Appellant request that the

deadline for filing the Record on Appeal be suspended until such time as this Court rules on this Motion and determines whether the imposition of sanctions, and severe sanctions, is warranted in this matter[2].

Respectfully submitted,

By: _____

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Honorable Disabled Veteran
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alguice@hotmail.com
Appellant, Pro Se

November 29, 2016

2 Pursuant to the Sup. Ct. Order dated 01/28/2016 (Appellate Case No. 2015-002219) amending Rule 11(a), SCRCP, this prayer is not required to be verified or accompanied by affidavit.

ATTACHMENT A

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
COURT OF COMMON PLEAS

Honorable William P. Keesley, Circuit Court Judge

Case No. 2013-CP-32-01272
Case No. 2014-CP-32-00399

Alexander Guice, ...Appellant,

v.

US Food Service, Inc., Employer, and
ACE American Insurance Company
c/o Gallagher Bassett Services, Inc.,..... Respondents.

RESPONDENTS' RETURN IN OPPOSITION TO APPELLANT'S MOTION TO STRIKE RESPONDENTS' INITIAL BRIEF AND LEAVE TO STAY

Pursuant to Rule 240(e), SCACR, Respondents US Food Service, Inc. and ACE American Insurance Company c/o Gallagher Bassett Services, Inc. submit their Return in Opposition to Appellant's Motion to Strike Respondents' Initial Brief and Leave to Stay ("Motion to Strike"). Although Appellant's lengthy Motion to Strike ostensibly seeks to strike Respondents' Initial Brief on the basis of Rule 269, SCACR, Appellant provides no grounds that would justify such action. Instead, Appellant argues the merits of his claim in place of simply filing an initial reply brief pursuant to this Court's appellate rules. Many of the arguments raised in Appellant's Motion to Strike respond substantively to

arguments raised by Respondents in their Initial Brief. Finally, although Appellant characterizes his Motion to Strike as being a "Rule 269 strike motion," that rule does not apply to the filing of Respondents' Initial Brief, as is explained in more detail below.

Appellant sets out a long list of what he asserts are uncontested "facts," and then he proceeds to argue some of those "facts." This in itself shows that the facts are not uncontested but, instead, simply Appellant's view of the facts and record below. Furthermore, Respondents dispute a number of Appellant's alleged "mutually agreed upon facts stipulated between the parties," (Motion to Strike, p. 5), including but not limited to the fact that at the time of the Settlement Agreement, his average weekly wage was $1,154.00 (with a corresponding compensation rate of $592.56) (*see* Exhibit "D" to Appellant's Motion for Summary Judgment), not $1,161.00. The circumstances under which Appellant ceased working for US Foods have not been stipulated and, moreover, are irrelevant to this appeal. The December 22, 2005 Settlement Agreement and Release, signed by Appellant, was not a "**proposed** Settlement Agreement and Release," as characterized by Appellant. (Motion to Strike, p. 6) (emphasis added). It was a fully executed contract between the parties.

Respondents do not address every argument or assertion raised in Appellant's 49-page Motion to Strike as most of his arguments have nothing to do with whether Respondents' Initial Brief should be stricken but, instead, go to the substance of Appellant's appeal. Respondents address some of the more egregious allegations contained in the Motion to Strike and, for the remaining arguments, Respondents submit a general denial: 1) of all of Appellant's arguments that the Settlement Agreement is not a valid and enforceable order of the Workers' Compensation Commission, and 2) that

Respondents and/or their counsel have engaged in any sanctionable behavior in this case. In particular, Respondents deny, as they have all along, that Appellant is entitled to any additional workers' compensation benefits. Respondents continue to maintain their position that Appellant's employment retaliation/reinstatement claims are completely without basis, that the Commission has no jurisdiction to consider such claims and, on this appeal from the Commission, neither does this Court.

Appellant cites McCreery v. Covenant Pres. Church, 299 S.C. 218, 383 S.E.2d 264 (Ct. App. 1989), where this Court determined it had jurisdiction to determine whether an employer/employee relationship existed at the time of injury some six months after the Commission approved a settlement agreement between the parties. However, this Court's opinion was overruled by the Supreme Court in McCreery v. Covenant Pres. Church, 303 S.C. 271, 400 S.E.2d 130 (1990), where the Supreme Court confirmed that, "once the Commission approves a compensation agreement, the factual issue of liability under the act is finally adjudicated and cannot be retried on collateral attack." 303 S.C. at 273, 400 S.E.2d at 131. A Commission-approved settlement "becomes a[s] binding as a judicial decree and the facts contained therein are as definitely settled as factual findings incorporated in a decree." Id. Appellant's argument that the facts in this case are "inapposite" to those under consideration in this Court's McCreery opinion does not alter the fact that that opinion was reversed on the very points on which Appellant relies.

The basis for much of Appellant's argument in his Motion to Strike appears to be his erroneous assumption that the Commission lacked subject matter jurisdiction to approve the Settlement Agreement because his employment relationship with US Foods ceased prior to the signing and approval of the Settlement Agreement. Clearly, an

employer/employee relationship existed at the time of Appellant's injury,[1] which is the relevant inquiry to determine whether the Commission has subject matter justification to adjudicate a compensation claim. *E.g.*, Shatto v. McLeod Reg. Med. Ctr., 406 S.C. 470, 475, 753 S.E.2d 416, 419 (2013) (determining whether the claimant was an employee at the time of injury in order to sustain a workers' compensation award); Alewine v. Tobin Quarries, Inc., 206 S.C. 103, 109, 33 S.E.2d 81, 83 (1945) (holding that "[n]o award under the Act is authorized unless the employer-employee relationship existed at the time of the alleged injury for which claim is made"); McLeod v. Piggly Wiggly Carolina Co., 280 S.C. 466, 469, 313 S.E.2d 38, 39 (Ct. App. 1984) (same). This premise cannot be disputed seriously. In fact, in Alewine, the worker was deceased – and clearly no longer an employee – at the time his surviving widow and child brought a successful workers' compensation claim. 206 S.C. at 106, 33 S.E.2d at 82. Under long-standing precedent, the Commission had subject matter jurisdiction in this case at the time the Settlement Agreement was approved. Even it if did not, which Respondents do not concede, the holding in McCreery confirms that the Settlement Agreement is final and binding and cannot be "retried on collateral attack." 303 S.C. at 273, 400 S.E.2d at 131.

Appellant's substantive arguments alleging civil conspiracy, intentional/negligent misrepresentation, fraud, and insurance fraud between and by his own prior counsel, Attorney Bacon, and Respondents' prior and current counsel, Attorneys Barefoot and Hantske, are incorrect, unsupported and irrelevant to his Motion to Strike. Respondents deny all such allegations. Respondents and their counsel did not and do not owe Appellant the fiduciary obligations he alleges. Neither State v. Scott, 330 S.C. 125, 497

[1] Appellant acknowledges that he was hired in 2001 and his injury occurred on May 5, 2005, almost six months before his employment relationship with US Foods ceased. (Motion to Strike, p. 5).

S.E.2d 735 (Ct. App. 1998) nor the other cases cited by Appellant in his Motion to Strike hold otherwise. Furthermore, as explained above and in Respondents' Initial Brief, the Settlement Agreement was properly entered into and approved by the Commission.

As to Appellant's assertion that the undersigned engaged in negligent misrepresentation and fraud by excluding from Respondents' Initial Brief certain factual allegations asserted by Appellant, this claim is without merit as well. Rule 208(b)(1)(C), SCACR, provides that the appellant's brief "shall contain a concise history of the proceedings," which "statement shall not contain contested matters ..." Rule 208(b)(2), SCACR, allows a respondent to provide a counter-statement of the case and/or issues. Rule 208 (b)(1)(D), SCACR, provides that "[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." Therefore, Appellant is entitled to present the procedural and factual bases in the record that support his claim and Respondents are entitled to do likewise. There is no rule requiring Respondents to make Appellant's case for him or to include facts that he desires to be presented to the Court. Finally, the factual allegations that Appellant asserts Respondents omitted from their brief are not determinative or relevant to the issue of whether the Settlement Agreement can be challenged nearly six years after it was approved by the Commission as a final and binding order. *See* McCreery, 303 S.C. at 273, 400 S.E.2d at 131 (explaining that, "once the Commission approves a compensation agreement, the factual issue of liability under the act is final adjudicated and cannot be retried on collateral attack").

Appellant's Exhibit "R," dated September 21, 2015, and Exhibit "U" are improperly before this Court, as they were not submitted to the Commission in the underlying proceeding. Furthermore, Appellant's arguments based on "Exhibit U," found on pages 38-39 of his Motion to Strike, have never been presented to any tribunal below and, therefore, are not preserved for appeal.

Finally, Rule 269, SCACR, provides in pertinent part that, "[w]here an appeal, petition, motion or return is frivolous or taken solely for the purposes of delay, or is not in compliance with these Rules, the appellate court may upon its own motion or that of a party, after ten (10) days notice, impose upon offending attorneys or parties such sanctions as the circumstances of the case and discouragement of like conduct in the future may require." Respondents have filed their Initial Brief as provided for in this Court's rules, responding to Appellant's Initial Brief. Respondents have not filed any "appeal, petition, motion or return" in this case that was either frivolous or taken solely for the purposes of delay. In fact, it is Appellant who should be sanctioned under Rule 269 for repeatedly filing frivolous motions. As the circuit court found, "from the outset, the relief sought by the Appellant was unsupported by law or procedure." However, "Respondents have been forced to respond to multiple duplicative and redundant filings submitted by Appellant over approximately three years since Appellant sought to reopen his original settlement," and "the defense [of this case] was made needlessly difficult because the Appellant insisted on taking unfounded positions, did not accept reasonable explanations, caused redundant filings in various forums, and liberally made unwarranted defamatory accusations." Circuit Court Order, filed July 17, 2015, p. 26 (Att. A).

At its essence, Appellant's Motion to Strike is yet another attempt to convince this Court to decide the substance of his appeal outside of the normal briefing and argument process, which attempt should be denied and discouraged. At a minimum, Appellant's Motion to Strike should be denied, and Appellant should be ordered to file his Initial Reply Brief or, if he chooses not to file a reply brief, the Record on Appeal in a timely fashion.

CONCLUSION

Respondents respectfully request this Court to deny Appellant's Motion to Strike, caution and/or sanction him against filing further frivolous motions, and order him to promptly file his Initial Reply Brief or, if he chooses not to file a reply brief, the Record on Appeal in a timely fashion.

Respectfully submitted,

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Attorney for Respondents

March 17, 2016

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
COURT OF COMMON PLEAS

Honorable William P. Keesley, Circuit Court Judge

Case No. 2013-CP-32-01272
Case No. 2014-CP-32-00399

Alexander Guice, ... Appellant,

v.

US Food Service, Inc., Employer, and
ACE American Insurance Company
c/o Gallagher Bassett Services, Inc., ... Respondents.

PROOF OF SERVICE

I certify that I have served the **Respondents' Return in Opposition to Appellant's Motion to Strike Respondents' Initial Brief and Leave to Stay** on Alexander Guice, pro se, by depositing a copy of it in the United States Mail, postage prepaid, on March 17, 2016, addressed as follows:

Alexander Guice
P.O. Box 13281
Tampa, Florida 33681

Michaela Shephard

Michaela Shephard
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Reply To
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March 17, 2016

Via U.S. Mail
The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211

RE: Alexander Guice v. U.S. Food Service, Inc. and ACE American Insurance Company c/o Gallagher Bassett Services, Inc.
Date of Accident: May 5, 2005
WCC File No.: 0506205
Our File No.: 2098.12550
Claim No.: 004063-032175-wc-01
Appeal No.: 2015-001821

Dear Ms. Kitchings:

Enclosed please find the original and seven (7) copies of Respondents' Return in Opposition to Appellant's Motion to Strike Respondents' Initial Brief and Leave to Stay, and the original and one copy of the Proof of Service in the above-referenced matter. Please file the originals and return a clocked-in copy in the self-addressed, stamped envelope.

If you have any questions, please do not hesitate to contact me.

Yours truly,
McAngus Goudelock & Courie, LLC

Erin L. Hantske

Enclosures
cc: Alexander Guice, *pro se*

ATTACHMENT B

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
COURT OF COMMON PLEAS

Honorable William P. Keesley

Case No. 2013-CP-32-01272
Case No. 2014-CP-32-00399

Alexander Guice, ... Appellant,

v.

US Food Service, Inc., Employer, and
ACE American Insurance Company
c/o Gallagher Bassett Services, Inc., ... Respondents.

RESPONDENTS' RETURN IN OPPOSITION TO MOTION TO RECUSE AND/OR DISQUALIFY THE HONORABLE JAMES E. LOCKEMY

Pursuant to Rule 240, SCACR, Respondents US Food Service, Inc. and ACE American Insurance Company c/o Gallagher Bassett Services, Inc. hereby oppose Appellant Alexander Guice's Motion to Recuse and/or Disqualify the Honorable James E. Lockemy ("Motion to Recuse"). There is no merit whatsoever to Appellant's Motion to Recuse. In addition, Appellant makes a number of spurious accusations in his Motion to Recuse that are baseless, unwarranted and wholly unsupported.

Appellant has not presented any evidence of personal bias on the part of Judge Lockemy that would justify recusal. *E.g.*, Christensen v. Mikell, 324 S.C. 70, 74, 476

S.E.2d 692, 694 (1996) ("[i]t is not enough for a party to allege bias; a party seeking disqualification of a judge must show some evidence of bias or prejudice"). The evidence must show that the bias is "personal, as distinguished from judicial, in nature." Id.; *see also* Parker v. Shecut, 340 S.C. 460, 497, 531 S.E.2d 546, 566 (Ct. App. 2000), *overruled on other gds.* 349 S.C. 226, 562 S.E.2d 620 (2002) (denying recusal where party seeking recusal failed to present evidence of personal, as opposed to judicial bias).

The basis for Appellant's Motion to Recuse appears to be the brevity of two orders issued by Judge Lockemy denying Appellant's Motion for Summary Judgment and a subsequent Motion to Strike ("Orders"). Although Appellant alleges the Orders violate Rule 220(b), SCACR, this Court routinely decides motions in the same format and manner as the Orders. Rule 220(b) provides that, "[i]n 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." Rule 220(b), SCACR (emphasis added). Neither of the Orders complained of by Appellant decided the appeal and, because this appeal is still in the briefing stage, no Record has been filed with the Court. In addition, Rule 220(b)(2) provides that this Court "need not address a point which is manifestly without merit." Rule 220(b)(2), SCACR. Because the Orders were not decisions on the merits of this appeal and because the points raised in Appellant's Motion for Summary Judgment and Motion to Strike were manifestly without merit, the Orders did not violate Rule 220(b). Finally, and contrary to Appellant's arguments, the brevity of the Orders neither denied Appellant due process nor evidenced any personal bias against him.

Next, Appellant alleges that Judge Lockemy's denial of his Motion to Strike constitutes obstruction of a criminal investigation. There is no pending criminal investigation. As a result, there is no obstruction. Further, although Section 42-9-440 directs the Workers' Compensation Commission to "report all cases of suspected false statement or misrepresentation, as defined in Section 38-55-530(D) to the Insurance Fraud Division of the office of the Attorney General for investigation and prosecution, if warranted," S.C. Code Ann. § 42-9-440, that section does not pertain to this Court.

Appellant's vague and self-serving allegations of obstruction of justice (based on his assertion that he should have prevailed on his Motion to Strike) do not constitute evidence of bias or justify recusal. As noted above, the evidence must show some personal, as opposed judicial bias. Christensen, 324 S.C. at 74, 476 S.E.2d at 694; Parker, 340 S.C. at 497, 531 S.E.2d at 566.

Appellant asserts as proven fact various allegations and charges that, not only have not been proven, but which are simply false. For example, he asserts that he has established that Respondents "knowingly and willfully failed to report the May 27, 2004 Compensable Work-related injury sustained to Appellant's Back to the Workers' Compensation Commission," and that Respondents "subjected appellant to a Retaliatory Discharge on November 2, 2005 ..." (Motion to Recuse pp. 10-11). In addition to his false accusations concerning insurance fraud against the undersigned and others, Appellant's allegations are unsubstantiated and patently false.

Appellant's exposition on "Black Codes" and "Jim Crow" laws have no bearing on this case. There is no evidence whatsoever that anyone at any stage in his protracted litigation over his workers' compensation claim has demonstrated racial bias against

Appellant. Mere disagreement with his position does not constitute racially-based animus.

Particularly troubling is Appellant's assertion that Judge Lockemy should be recused because Appellant has filed "a formal Request for Investigation regarding C.J. Lockemy's actions taken in the instant appeal with the Office of the Attorney General." Appellant's Request for Investigation, attached to his Motion to Recuse, repeats a number of the false statements and unsupported accusations contained in his Motion to Recuse.[1] There is no reason to believe that the Attorney General will conduct any "investigation" of Judge Lockemy based on the allegations contained in Appellant's unsubstantiated Request for Investigation. To allow a litigant or appellant to "manufacture" a supposed conflict in order to have a judge recused by simply filing a meritless complaint against that judge, as Appellant has done here, would allow parties to block any judge that they believe might render an unfavorable decision from hearing their case by filing false accusations with the Attorney General. Parties should not be allowed to play fast and loose with the judicial system in this manner.

Respondents dispute that Appellant has filed his Motion to Recuse in good faith. In fact, he has a history of filing recusal motions against judges who rule against him. First, he moved to disqualify Judge Thomas A. Russo from hearing his appeal from the Commission, accusing him of, among other things, "deliberate ignorance of the facts," "a

[1] Respondents note that, although Appellant's Request for Investigation indicates that copies of that request were served on the undersigned, Appellant's Motion to Recuse constitutes the first notice Respondents have received of his request and, as of today's date, the undersigned still has not received a service copy of the Request for Investigation. Given the serious nature and lack of evidence of or truth in the allegations made in Appellant's Request for Investigation, at a minimum, Respondents should have been served promptly with Appellant's filing with the Attorney General.

gross abuse of authority," "deliberate deprivation of the substantial rights of the Appellant," and "a level of incompetence that merits review for possible removal from the positions of both Circuit Court Judge and Chief Administrative Judge." (Att. A).

Later, as part of his Motion for New Trial, Appellant accused Judge Brian M. Gibbons of "fraud upon the court," as well as "a lack of integrity and the ability to adjudicate the instant case fairly and impartially," and "intentional acts of abuse of discretionary authority," and moved for recusal. Appellant also sought a criminal investigation into the actions of Judge Gibbons, among others. (Att. B, pp. 16-29). Although Judge Gibbons denied Appellant's motion to recuse, in light of what he deemed "numerous pages of meritless and spurious allegations of unethical, incompetent, and impartial behavior from the Appellant/Claimant," Judge Gibbons recused himself from further participation in this case on his own motion. (Att. C).

Appellant later moved Judge William P. Keesley to disqualify himself, accusing Judge Keesley of, among other things, partiality, unlawful orders and abuse of his office and of his discretionary authority. (Att. D). Throughout these recusal motions, Appellant has made numerous and spurious allegations impugning the character and actions of both counsel and presiding judges without producing any evidence of unprofessional, biased, sanctionable or criminal actions taken by either counsel or court. At some point, and Respondents believe that point has been reached in this case, Appellant must be required to either provide proof of the serious accusations he makes, or be cautioned by the Court regarding impugning the character and actions of counsel and court. At some point, and Respondents believe that point has been reached in this case, sanctions should be

imposed on Appellant to dissuade him from continuing to file frivolous motions. Rule 269, SCACR.

Finally, other than suspending the briefing schedule until the various motions are decided, there is no reason to suspend action on any other motion pending before this Court.

CONCLUSION

For all the reasons stated herein, this Court should deny and dismiss Appellant's Motion to Recuse. In addition, this Court should caution and/or sanction Appellant under Rule 269, SCACR, pertaining to frivolous motions.

Respectfully submitted,

July 28, 2016

Erin L. Hantske, S.C. Bar No.: 76313
McANGUS GOUDELOCK & COURIE, LLC
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Attorney for Respondents

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
COURT OF COMMON PLEAS

Honorable William P. Keesley, Circuit Court Judge

Case No. 2013-CP-32-01272
Case No. 2014-CP-32-00399

Alexander Guice, ... Appellant,

v.

US Food Service, Inc., Employer, and
ACE American Insurance Company
c/o Gallagher Bassett Services, Inc., ... Respondents.

PROOF OF SERVICE

I certify that I have served the **Respondents' Return in Opposition to Appellant's Motion to Recuse and/or Disqualify the Honorable James E. Lockemy** on Alexander Guice, pro se, by depositing a copy of it in the United States Mail, postage prepaid, on July 28, 2016, addressed as follows:

Alexander Guice
P.O. Box 13281
Tampa, Florida 33681

Michaela Shepherd

Michaela Shepherd
Legal Assistant to Erin L. Hantske
McANGUS GOUDELOCK & COURIE LLC
735 Johnnie Dodds Blvd., Suite 200 (29464)
PO Box 650007
Mount Pleasant, South Carolina 29465
(843) 576-2900
Attorneys for Respondents

mgc

Reply To
ERIN L. HANTSKE
Direct Dial: (843) 576-2946
erin.hantske@mgclaw.com

July 28, 2016

Via U.S. Mail
The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211

RE: Alexander Guice v. U.S. Food Service, Inc. and ACE American Insurance Company c/o Gallagher Bassett Services, Inc.
Date of Accident: May 5, 2005
WCC File No.: 0506205
Our File No.: 2098.12550
Claim No.: 004063-032175-wc-01
Appeal No.: 2015-001821

Dear Ms. Kitchings:

Enclosed please find the original and seven (7) copies of Respondents' Return in Opposition to Appellant's Motion to Recuse and/or Disqualify the Honorable James E. Lockemy, and the original and one copy of the Proof of Service in the above-referenced matter. Please file the originals and return a clocked-in copy in the self-addressed, stamped envelope.

If you have any questions, please do not hesitate to contact me.

Yours truly,
McAngus Goudelock & Courie, LLC

Erin L. Hantske

Enclosures
cc: Alexander Guice, *pro se*

ATTACHMENT C

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
COURT OF COMMON PLEAS

Honorable William P. Keesley

Case No. 2013-CP-32-01272
Case No. 2014-CP-32-00399

Alexander Guice, ... Appellant,

v.

US Food Service, Inc., Employer, and
ACE American Insurance Company
c/o Gallagher Bassett Services, Inc., ... Respondents.

RESPONDENTS' RETURN IN OPPOSITION TO APPELLANT'S MOTIONS FOR STAY PENDING ADJUDICATION OF PETITION TO THE SUPREME COURT AND TO PROCEED IN FORMA PAUPERIS, AND IN SUPPORT OF RESPONDENTS' REQUEST FOR SANCTIONS

Pursuant to Rule 240, SCACR, Respondents US Food Service, Inc. and ACE American Insurance Company c/o Gallagher Bassett Services, Inc. hereby oppose Appellant Alexander Guice's Motion for Leave to Stay Pending Adjudication of Petition for Writ of Prohibition and/or Mandamus Filed With the Supreme Court ("Motion to Stay"), and his Motion for Leave to Proceed *In Forma Pauperis* ("Motion to Proceed IFP"). In addition, Respondents move for sanctions pursuant to Rule 269, SCACR.

Appellant's Motion to Stay, along with his petition to the South Carolina Supreme Court, are yet additional attempts by Appellant to circumvent the appellate briefing process as set forth in Rule 208, SCACR. Due to Appellant's continuing attempts to circumvent proper judicial and appellate process, Respondents have expended a great deal of effort and resources in responding to his repetitive and frivolous filings.

While Respondents did not oppose Appellant's prior request for some extension of time in which to file his initial reply brief, rather than filing his reply brief, Appellant chose instead to file the instant frivolous Motion to Stay, along with his Motion to Proceed IFP, as well as a petition to the Supreme Court. Combined, Appellant's Petition, Complaint and Memorandum in Support against Judge Lockemy in the Supreme Court contain 60 pages of legal argument as to why he should win his appeal, not to mention the voluminous attachments (27 separate attachments comprised of 223 pages of attachment materials) (Att. C).[1] Clearly, whatever physical limitations Appellant is experiencing, they are not sufficient to preclude him from filing multiple motions and petitions.[2]

At this point, Appellant's claim has been the subject of two "proceedings" before the Workers' Compensation Commission (not including his original 2005 proceeding), two separate appellate proceedings before the circuit court (under Docket Nos.: 2013-CP-32-01272 and 2014-CP-32-00399), multiple appeals to this Court (under Appeal

[1] In the interest of conservation, Respondents are attaching hereto only Appellant's: 1) Petition for Writ of Prohibition and/or Mandamus, 2) Notice, 3) Complaint, 4) Proof of Service, and 5) Memorandum in Support of Petition for Writ of Prohibition and/or Mandamus, and are not including the 223 pages of attachments.

[2] Ironically, one of Appellant's complaints to the Supreme Court is that this Court has "failed to act promptly and swiftly in determining whether Petitioner is entitled to benefits under The South Carolina Workers' Compensation Act ..." (Complaint, Att. C, p. 2).

Nos.: 2013-000713, 2013-001804, 2013-002491, and the instant appeal, No. 2015-001821) and, at this point, three appeals/petitions to the Supreme Court (under Appeal Nos.: 2014-001450, 2014-002625 and his current petition). When the Supreme Court denied his petition for a writ of mandamus in Case No. 2014-002625, it cautioned Appellant against filing further frivolous motions and petitions. (Order, dated, February 5, 2105, Att. A). As noted by Judge Keesley when he awarded attorneys' fees to Respondents below, defense of this case has been made "needlessly difficult because the Appellant insisted on taking unfounded positions, did not accept reasonable explanations, caused redundant filings in various forums, and liberally made unwarranted defamatory accusations." (Order, filed July 17, 2015, p. 26, Att. B). Appellant continues to do so.

The primary basis for Appellant's petition to the Supreme Court appears to be that this Court lacks jurisdiction to hear his appeal "as of June 24, 2016," which is the date this Court denied Appellant's Motion to Strike Respondents' Initial Brief and Leave to Stay. Denial of a motion to strike does not divest this Court of jurisdiction, and Appellant cites no case law in support of his contentions otherwise. Appellant also asks the Supreme Court (again) to simply grant him the relief he seeks. As the Court explained in, Key v. Currie, 305 S.C. 115, 116, 406 S.E.2d 356, 357 (1991), the South Carolina Supreme Court "will not entertain matters in its original jurisdiction where the matter can be entertained" by lower courts, and "[o]nly when there is an extraordinary reason such as a question of significant public interest or an emergency will this Court exercise its original jurisdiction." Appellant's petition does not raise any extraordinary reasons or questions of significant public interest or emergency. Instead, Appellant's

petition to the Supreme Court is clearly frivolous and does not serve as a basis to stay his appeal before this Court.

Apparently, Appellant has moved to proceed *in forma pauperis* both in this appeal in in his petition to the Supreme Court. (*See* Verification, attached to Motion to Proceed IFP). Because allowing Appellant to proceed *in forma pauperis* would only encourage additional frivolous motions and petitions, *see* Richardson v. Stewart, 386 S.C. 282, 688 S.E.2d 124 (2010), Respondents oppose his Motion to Proceed IFP. In In re Maxton, 325 S.C. 3, 478 S.E.2d 679 (1996), cited by the Supreme Court in its February 5, 2105 Order, (Att. A), filing repetitive and frivolous petitions raising the same claims that have been dismissed previously constitutes grounds for denying a motion to proceed *in forma pauperis*. Such grounds clearly exist in the instant appeal.

Finally, Rule 269, SCACR, provides in pertinent part that, "[w]here an appeal, petition, motion or return is frivolous or taken solely for the purposes of delay, or is not in compliance with these Rules, the appellate court may upon its own motion or that of a party, after ten (10) days notice, impose upon offending attorneys or parties such sanctions as the circumstances of the case and discouragement of like conduct in the future may require." Instead of simply filing his initial reply brief in order to move his appeal forward, Appellant has filed multiple motions and petitions that only serve to delay the ultimate resolution of his appeal. Each time Appellant files a frivolous motion or petition, he wastes the Court's time and Respondents are compelled to incur costs responding in order to protect their interests. Respondents believe that sanctions should be imposed on Appellant to dissuade him from continuing to file frivolous motions. Rule 269, SCACR.

CONCLUSION

For all the reasons stated herein, Respondents respectfully request this Court to deny both Appellant's Motion to Stay and his Motion to Proceed IFP, and caution and/or sanction him against filing further frivolous motions.

Respectfully submitted,

November 4, 2016

Erin L. Hantske, S.C. Bar No.: 76313
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Attorney for Respondents

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
COURT OF COMMON PLEAS

Honorable William P. Keesley, Circuit Court Judge

Case No. 2013-CP-32-01272
Case No. 2014-CP-32-00399

Alexander Guice, ... Appellant,

v.

US Food Service, Inc., Employer, and
ACE American Insurance Company
c/o Gallagher Bassett Services, Inc., ... Respondents.

PROOF OF SERVICE

I certify that I have served the **Respondents' Return in Opposition to Appellant's Motions for Stay Pending Adjudication of Petition to the Supreme Court and to Proceed In Forma Pauperis, and in Support of Respondents' Request for Sanctions** on Alexander Guice, pro se, by depositing a copy of it in the United States Mail, postage prepaid, on November 4, 2016, addressed as follows:

Alexander Guice
P.O. Box 13281
Tampa, Florida 33681

Kathy Aldrich

Kathy Aldrich
Legal Assistant to Erin L. Hantske
McANGUS GOUDELOCK & COURIE LLC
735 Johnnie Dodds Blvd., Suite 200 (29464)
PO Box 650007
Mount Pleasant, South Carolina 29465
(843) 576-2900
Attorneys for Respondents

mgc

Reply To
ERIN L. HANTSKE
Direct Dial: (843) 576-2946
erin.hantske@mgclaw.com

November 4, 2016

Via U.S. Mail
The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

RE: Alexander Guice v. U.S. Food Service, Inc. and ACE American Insurance Company c/o Gallagher Bassett Services, Inc.
Date of Accident: May 5, 2005
WCC File No.: 0506205
Our File No.: 2098.12550
Claim No.: 004063-032175-wc-01
Appeal No.: 2015-001821

Dear Ms. Kitchings:

Enclosed please find the original and seven (7) copies of Respondents' Return in Opposition to Appellant's Motions for Stay Pending Adjudication of Petition to the Supreme Court and to Proceed In Forma Pauperis, and in Support of Respondents' Request for Sanctions, and the original and one copy of the Proof of Service in the above-referenced matter. Please file the originals and return a clocked-in copy in the self-addressed, stamped envelope.

If you have any questions, please do not hesitate to contact me.

Yours truly,
McAngus Goudelock & Courie, LLC

for/
Erin L. Hantske

Enclosures
cc: Alexander Guice, *pro se*

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

William P. Keesley, Successor Circuit Court Judge

Case No. 2013-CP-32-01272
Case No. 2014-CP-32-00399

Appellate Case No. 2015-001821

APPEAL FROM THE WORKERS' COMPENSATION COMMISSION
WCC Case No. 0506205

Alexander Guice, Employee, Appellant,

v.

US Food Service, Inc., Employer, and
Ace American Insurance Company c/o
Gallagher Bassett Services, Inc., Respondents.

PROOF OF SERVICE

I hereby certify that the Respondents', through Counsel, were provided a true copy of a cover letter to the Clerk; a 'Motion for Sanctions for Repeated Violations of Rules 241(a) and 269 of the South Carolina Appellate Court Rules'; and a proof of service, by depositing the same in the US Postal Service, via Priority Mail, and addressed to: **Erin L. Hantske, Esq., P.O. Box 650007 Mt. Pleasant, SC 29465** on this **29th** day of November, 2016.

By: _____

Alexander Guice
U.S. African American Citizen
P.O. Box 13281
Tampa, FL 33681
(813) 562-0547
alguice@hotmail.com
Appellant, Pro Se

November 29, 2016

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

William P. Keesley, Successor Circuit Court Judge

Case No. 2013-CP-32-01272
Case No. 2014-CP-32-00399

Appellate Case No. 2015-001821

APPEAL FROM THE WORKERS' COMPENSATION COMMISSION
WCC Case No. 0506205

Alexander Guice, Employee, Appellant,

v.

US Food Service, Inc., Employer, and
Ace American Insurance Company c/o
Gallagher Bassett Services, Inc., Respondents.

PROOF OF SERVICE

I hereby certify that I provided the Clerk of Court an original and a true copy of a cover letter; an original and seven (7) copies of a 'Motion for Sanctions for Repeated Violations of Rules 241(a) and 269 of the South Carolina Appellate Court Rules'; an original and a copy of a proof of service, a proof of service; a $25.00 certified money order; and a prepaid self-addressed envelope, by depositing the same in the US Postal Service, via Priority Mail, and addressed to: **Clerk of Court, P.O. Box 11629 Columbia, SC 29211** on this **29th** day of November, 2016.

By: _____

Alexander Guice
U.S. African American Citizen
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Tampa, FL 33681
(813) 562-0547
alguice@hotmail.com
Appellant, Pro Se

November 29, 2016

Alexander Guice

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Phone: (813) 562-0547
Email: alguice@hotmail.com

November 29, 2016

Via Priority Mail

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: Alexander Guice v. US Foodservice, Inc., et al
Appellate Case No. 2015-001821

Dear Ms. Kitchings:

Please find enclosed with this cover letter an original and seven (7) copies of a 'Motion for Sanctions Against Respondents' for Repeated Violations of Rules 241(a) and 269 of the South Carolina Rules of Appellate Procedure'; an original and a copy of a proof of service; a proof of service; and a $25.00 certified money order for the motion filing fee in regards to the above-entitled action. Please forward to the appropriate personnel for processing, and please return clocked copies of the same to the undersigned in the pre-paid self-addressed envelope enclosed for your convenience.

By copy of this correspondence, Erin L. Hantske, Esq., the Respondents' Counsel of record, has been provided a copy of the same via priority mail with enclosures.

Should you have any questions, please do not hesitate to contact me. Thank you for your assistance in this matter.

Very truly yours,

Alexander Guice
Appellant, *pro se*

Enclosures: As stated

cc: Erin L. Hantske, Esquire

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