

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
George C. James, Circuit Court Judge

Case Nos. 2015-CP-40-6650
2015-CP-40-7176

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DEC 28 2016

SC Court of Appeals

Reginald Brown, Appellant,

v.

Dr. Samuel L. Soltis, John B. McRee, E. Holcomb, and
South Carolina Department of Corrections..... Respondents.

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

The Appellant has filed a motion requesting that the Court allow him to proceed without payments of costs or fees. In essence, the Appellant is requesting that the Court waive the requirement that he pay the \$100 filing fee for each of these

two consolidated appeals. The Respondents oppose that motion and any request seeking to proceed in forma pauperis.

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

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

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

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

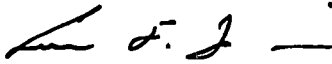
586 S.E.2d at 128.

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

For the foregoing reasons, the Respondents oppose the Appellant's request to proceed in forma pauperis or waive the requirement that the \$100 filing fee be paid to proceed with his appeal in both of the consolidated cases. The Court is respectfully requested to require the Appellant to pay the filing fees for each appeal – a total of \$200 -- before this matter proceeds any further.

Respectfully submitted,

DAVIDSON & LINDEMANN, P.A.

BY:  _____

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Counsel for Respondents

Columbia, South Carolina

December 22, 2016

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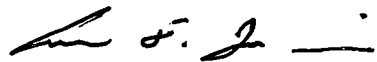
Dr. Samuel L. Soltis, John B. McRee, E. Holcomb, and
South Carolina Department of Corrections..... Respondents.

NOTICE OF APPEARANCE

The undersigned counsel for the Respondents hereby gives notice of appearance to all parties and to all counsel of record.

The undersigned counsel will represent the Respondents in conjunction with their present counsel of record, James E. Parham, Jr.

DAVIDSON & LINDEMANN, P.A.

BY:  _____

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Counsel for Respondents

Columbia, South Carolina

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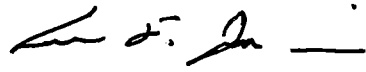
Dr. Samuel L. Soltis, John B. McRee, E. Holcomb, and
South Carolina Department of Corrections..... Respondents.

CERTIFICATE OF SERVICE

The undersigned employee of Davidson & Lindemann, P.A., counsel for the Respondents, does hereby certify that service of the **Notice of Appearance and Respondents' Return to Appellant's Motion to Proceed in Forma Pauperis** in the above-captioned matter was made upon the *pro se* Appellant and all other counsel of record by placing copies in the United States Mail, first class postage prepaid, at the below listed addresses clearly indicated on said envelopes this the 22nd day of December 2016:

Reginald Brown, #264654
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Post Office Box 205
Ridgeville, South Carolina 29472

James E. Parham, Esquire
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SC Court of Appeals
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Michael B. Wren

*Also Admitted In North Carolina
†Certified Mediator

Of Counsel
Kenneth P. Woodington

Writer's Email: alindemann@dml-law.com

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

RE: Reginald Brown v. Dr. Samuel L. Soltis, John B. McRee, E. Holcomb, and
South Carolina Department of Corrections
Appellate Case Number: 2016-002467
Civil Action Numbers: 2015-CP-40-6650 and 2015-CP-40-7176
Claim Number: 20007
Our File Number: 104.10105


Dear Ms. Kitchings:

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

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

Sincerely,

DAVIDSON & LINDEMANN, P.A.



Andrew F. Lindemann

AFL/
Enclosures

The Honorable Jenny Abbott Kitchings
December 22, 2016
Page Two

cc: (w/ Enclosures)

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Lieber Correctional Institution
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Ridgeville, South Carolina 29472

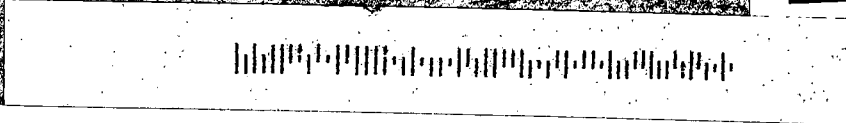
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**The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211**