

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Case No: 2015-CP-40-07178

RECEIVED
MAY 02 2017
SC Court of Appeals

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

v.

South Carolina Workers' Compensation Commission,Respondent.

**MOTION TO STRIKE APPELLANT'S
DESIGNATION OF MATTER AND RECORD ON APPEAL**

Pursuant to Rules 209, 210, and 240, SCACR, Respondent moves this Court to strike Appellant's "Amended Designation of Matter" and "Amended Record on Appeal", both of which were first filed with the Court of Appeals on April 12th, 2017, and appear to have been refiled on April 28th, 2017. Respondents further move this Court to hold in abeyance the time to file and serve the final briefs, or, in the alternative, grant Respondents additional time to file its final brief until the issues raised in this motion have been resolved.

Rule 209 requires a party to serve a "... Designation of Matter to be Included in the Record on Appeal which shall set forth with specificity those parts of the transcript, pleadings, orders, exhibits, or other material which he proposes to include in the record on appeal." Rule 209(a), SCACR. Pursuant to Rule 210(c), SCACR, the Record on Appeal "shall include all matter designated to be included by any party under Rule 209."

On December 8th, 2016, Respondent was served with Appellant's Designation of Matter. (Attachment A). On April 13th, 2017 Respondents were served with a package that contained Appellant's "Amended Designation of Matter" and "Amended Record on Appeal" that had been filed with the court on April 12th, 2017.¹ (Attachment B). Appellant's April 12th, 2017 Amended Designation of Matter and Record on Appeal contain items not listed in the December 8th, 2016 Designation of Matter.

Specifically, Appellant's December 8th, 2016 Designation of Matter listed the following items beginning on page 2 with number 19 and concluding with the last item, number 26:

19. South Carolina Worker's (sic) Compensation Commission Educational Publication Board of Directors;
20. South Carolina Worker's Compensation Commission R67-611(sic);
21. S.C. Code Ann. 15-77-50;
22. S.C. Code Ann. 15-79-125 (C);
23. S.C. Code Ann. 42-1-700 (C);
24. S.C. Code Ann 42-1-705 (C);
25. S.C. Code Ann 42-9-10
26. Alternative Dispute Resolution Rule 3; (sic)

Appellant's Designation of Matter, December 8th, 2016.

Appellant's April 12th, 2017 and April 28th, 2017 Designation of Matter lists, and Record on Appeal includes, slightly different items for numbers 19-26, and adds number 27, as follows:

19. South Carolina Worker's Compensation Commission R67-611(sic);
20. S.C. Code Ann. 15-77-50;
21. S.C. Code Ann. 15-79-125 (C);
22. S.C. Code Ann 42-1-705 (C);
23. S.C. Code Ann. 42-1-700 (C);
24. S.C. Code Ann. 42-9-10;
25. Alternative Dispute Resolution Rule 3;
26. South Carolina Worker's (sic) Compensation Commission Educational Publication Board of Directors;
27. An email letter from Honorable Casey L. Manning; (sic)

¹ According to the Court of Appeals records available online through C-Track, similarly titled documents were filed with the Court of Appeals again on April 28th, 2017. <http://ctrack.sccourts.org/public/caseView.do?csIID=62524>, Accessed May 1st, 2017. As of the date of the drafting of this Motion, Respondents have not been served with these documents by the Appellant.

Appellant's Designation of Matter and Record on Appeal, April 12th, 2017².

Respondent moves the Court to strike Appellant's Amended Designation of Matter dated April 12th, 2017 and April 28th, 2017, on the grounds that they are not timely nor proper under Rule 209, SCACR. Appellant did not file a Motion to amend his Designation of Matter under Rule 240 and did not pay the requisite filing fee. Appellant did not receive leave of the Court to amend his Designation of Matter.

Respondent moves the Court to strike Appellant's Amended Record on Appeal dated April 12th, 2017 and April 28th, 2017, on the grounds that they do not contain the content listed in the December 8th, 2016 Designation of Matter as required by Rule 210(c), SCACR. Appellant did not file a Motion to amend his Record on Appeal under Rule 240 and did not pay the requisite filing fee. Appellant did not obtain consent to supplement or otherwise comply with Rule 212, SCACR. Appellant did not receive leave of the Court to amend his Record on Appeal.

Additionally, Respondent moves the Court to hold in abeyance the time to file and serve the final briefs, as Respondent cannot prepare a proper Final Brief until it is determined which Record on Appeal Respondent is expected to cite. Appellant's filing of another seemingly identical Record on Appeal on April 28th, 2017 further muddies the waters. Respondent needs clear guidance from the Court regarding what it considers the proper Record on Appeal before Respondent can file its Final Brief. If the Court cannot grant Respondent's request to hold the briefing schedule in abeyance, then Respondent moves the Court for leave to file its Final Brief of Respondents late, pending a decision on Respondent's Motion to Strike, above.

² Identical language and items appear in Appellant's Amended Designation of Matter and Amended Record on Appeal accessible through C-Track that were filed with the Court of Appeals on April 28th, 2017 but have not been received by Respondent.

CONCLUSION

Based on the Appellant's failure to comply with Rule 209 and Rule 240, Appellant's Amended Designation of Matter dated April 12th, 2017 and April 28th, 2017 should be stricken. Based on Appellant's failure to comply with Rule 210(c) Appellant's Amended Record on Appeal dated April 12th, 2017 and April 28th, 2017 should be stricken. Finally, Respondent requests the Court hold in abeyance the time to file and serve the final briefs, or, in the alternative, grant Respondents additional time to file its final brief until the issues raised in this motion have been resolved.

Respectfully submitted,

THE SOUTH CAROLINA WORKERS' COMPENSATION
COMMISSION



J. Keith Roberts
SC Bar No. 100735
1333 Main Street, Suite 500,
P.O. Box 1715
Columbia, South Carolina 29202-1715
(803) 737-5701

*Attorney for Respondent South Carolina Workers' Compensation
Commission*

05/02/2017

DATE

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Casey L. Manning, Circuit Court Judge

Case No. 2016-001382

Clarence B. Jenkins Jr,

Appellant,

v.

South Carolina Worker's
Compensation
Commission,

Respondent.

AMENDED DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD ON APPEAL

Appellant proposes the following be included in the Record on Appeal:


1. Order of May 27, 2016;
2. Decision and Order of February 26, 2016;
3. Decision and Order of August 14, 2015;
4. Proposed Order of May 26, 2015;
5. Complaint dated December 1, 2015;
6. Answer
7. Transcript of Proceedings of Richland County Court of Common Pleas
March 22, 2016;
8. Transcript of Proceedings of South Carolina Worker's Compensation
Commission Full Board Hearing December 14, 2015;
9. Transcript of May 21, 2015 South Carolina Worker's Compensation
Commission Hearing pp.1-19

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JUDICIAL

10. ✓ Motion to Include Dr. Mahmoud Abu-Ata Medical Records;
11. ✓ Motion to Include Medical Reports by Dr. Carol Benoit and Dr. James Way and Disability Determination by Social Security Administration;
12. ✓ Notice of deposition of Mahmoud Abu-Ata, M.D.;
13. ✓ Form 50 filed by pro se claimant dated February 25, 2015;
14. ✓ A police report filed by J. R. Brock of Lexington, South Carolina;
15. ✓ South Carolina Worker's Compensation Commission Regulatory Advisory of Form 14B;
16. ✓ An email letter from Attorney Russell J. Goudelock dated April 24, 2014;
17. ✓ A letter from Nurse Kelly Wells of Disability case Management Professionals dated June 9, 2014;
18. ✓ An email letter from Michelle Doyle of Amazon.Com, DEDC, LLC Human Resource Office on February 19, 2014;
19. (19) South Carolina Worker's Compensation Commission Educational Publication Board of Directors;
20. (20) South Carolina Worker's Compensation Commission R67-611;
21. (21) S.C. Code Ann. 15-77-50;
22. (22) S.C. Code Ann. 15-79-125 (C);
23. (23) S.C. Code Ann. 42-1-700 (C);
24. (24) S.C. Code Ann. 42-1-705 (C);
25. (25) S.C. Code Ann. 42-9-10;
26. (26) Alternative Dispute Resolution Rule 3;

I certify that this designation contains no matter which is irrelevant to this appeal.

December 7, 2016


s/ Clarence B. Jenkins Jr
Clarence B. Jenkins Jr,
945 Wire Rd.
Neeses, South Carolina 29107
(803) 263-4514

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Casey L. Manning, Circuit Court Judge

Case No. 2016-001382

Clarence B. Jenkins Jr,

Appellant,

v.

South Carolina Worker's
Compensation Commission,

Respondent.

AMENDED DESIGNATION OF MATTER TO BE
INCLUDED IN THE RECORD ON APPEAL

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8. Transcript of Proceedings of South Carolina Worker's Compensation Commission Full Board Hearing December 14, 2015;
9. Transcript of May 21, 2015 South Carolina Worker's Compensation Commission Hearing pp.1-20

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S. C. WORKERS' COMP. COMM
EXECUTIVE DIRECTOR

10. Motion to Include Dr. Mahmoud Abu-Ata Medical Records;
11. Motion to Include Medical Reports by Dr. Carol Benoit and Dr. James Way and Disability Determination by Social Security Administration;
12. Notice of deposition of Mahmoud Abu-Ata, M.D.;
13. Form 50 filed by pro se claimant dated February 25, 2015;
14. A police report filed by J. R. Brock of Lexington, South Carolina;
15. South Carolina Worker's Compensation Commission Regulatory Advisory of Form 14B;
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23. S.C. Code Ann. 42-1-705 (C);
24. S.C. Code Ann. 42-9-10;
25. Alternative Dispute Resolution Rule 3;
26. South Carolina Worker's Compensation Commission Educational Publication Board of Directors;
27. An email letter from Honorable Casey. L. Manning;

I certify that this designation contains no matter which is irrelevant to this appeal.

April 11, 2017


s/ Clarence B. Jenkins Jr.
Clarence B. Jenkins Jr,
945 Wire Rd.
Neeses, South Carolina 29107
(803) 263-4514
Pro Se Appellant

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
COURT OF COMMON PLEAS

Casey L. Manning, Circuit Court Judge

Case No. 2016-001382

Clarence B. Jenkins, Jr.,Appellant,

v.

South Carolina Worker's Compensation Commission, Respondent.

AMENDED RECORD ON APPEAL

Clarence B. Jenkins Jr.
945 Wire Rd.
Neeses, S.C 29107
(803) 263-4514
Attorney for Appellant

Attorney Keith J. Roberts
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Columbia, SC 29202-1715
(803) 737-5700
Attorney for Respondent

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South Carolina Appellate Case Management System

CLERK'S OFFICE
SUPREME COURT
COURT OF APPEALS

C-Track, the browser based CMS for Appellate Courts

Appellate Case No. ...


















Disclaimer: The information and documents available here should not be relied upon as an official record of action. Only filed documents can be viewed. Some documents received in a case may not be available for viewing. Some documents originating from a lower court, including records and appendices, may not be available for viewing.

Case Information: 2016-001382			
Court:	Court of Appeals	Classification:	Appeal - Common Pleas - Other
Short Title:	Clarence Jenkins v. SCWCC View Full Title	Case Status:	Final Briefing / Record
Consolidated:			
Filed Date:	06/30/2016	Oral Argument Date:	
Disposition Date:		Disposition Type:	
Remittitur Date:			
Lower Court or Tribunal:	Richland (2015CP4007178)		

- Party Information			
Appellate Role	Party Name	Former	Attorney(s)
Appellant	Clarence B. Jenkins, Jr.	N	Self Represented
Respondent	South Carolina Workers' Compensation Commission	N	James Keith Roberts

Views
 Display: Descending

Filed Date	Event Information	Doc
05/01/2017	Final Brief - Appellant	
→ 04/28/2017	Designation of Matter - Designation of Matter Filed-Amended	
04/28/2017	Deficiency - Correction-Amended Record on Appeal	
04/12/2017	Designation of Matter - Amended Designation of Matter Filed (Appellant)	
04/12/2017	Record - Amended Record on Appeal Filed	
03/31/2017	Deficiency - Deficiency Letter Sent-record on appeal	
03/28/2017	Record - Record on Appeal Filed	
03/07/2017	Correspondence - Outgoing (Timeline for Record on Appeal)	
03/06/2017	Non-Dispositional Decision - Order	
02/08/2017	Motion - No Reply	
01/27/2017	Motion - Return	
01/17/2017	Deficiency - Correction	
01/10/2017	Deficiency - Deficiency Letter Sent (motion)	
01/09/2017	Motion - Other Motion (Declare Violation of Rule 4.1 and 8.4)	
12/28/2016	Deficiency - Correction (proof of service --record on appeal)	
12/28/2016	Deficiency - Correction (designation of matter)	
12/22/2016	Non-Dispositional Decision - Order (Motion to Strike)	
12/16/2016	Deficiency - Deficiency Letter Sent (record on appeal) (Returned copy of ROA as premature filing)	
12/15/2016	Deficiency - Deficiency Letter Sent (amended designation of matter)	
12/08/2016	Designation of Matter - Designation of Matter Filed (Amended)	
12/08/2016	Record - Record on Appeal Filed (Returned as premature filing 12-16-16)	
11/22/2016	Non-Dispositional Decision - Order (late filing of reply to return)	
11/21/2016	Correspondence - Outgoing (Unbound Originals Letter)	
11/21/2016	Motion - Other Motion (to exclude appellant's letter of 11-16-16 as return to motion)	
11/21/2016	Motion - Allow Late Filing (regarding reply to return to motion)	
11/21/2016	Motion - Reply (regarding motion to strike)	

11/15/2016	Initial Brief - Reply	
11/04/2016	Motion - Return (regarding motion to strike)	
11/03/2016	Designation of Matter - Designation of Matter Filed (respondent)	
11/03/2016	Deficiency - Correction	
11/02/2016	Deficiency - Deficiency Letter Sent (respondent initial brief)	
10/31/2016	Initial Brief - Respondent	
10/28/2016	Motion - Strike (regarding appellant initial brief)	
10/03/2016	Transcript Documents - Transcript Delivered - Direct Appeal	
10/03/2016	Designation of Matter - Designation of Matter Filed	
10/03/2016	Initial Brief - Appellant	
08/10/2016	Correspondence - Outgoing (Initial Brief and Designation returned-prematurelyfiled.)	
08/04/2016	Transcript Documents - Transcript Ordered	
08/01/2016	Correspondence - Outgoing (transcript not ordered)	
07/18/2016	Deficiency - Correction (fee)	
07/05/2016	Deficiency - Deficiency Letter Sent	
07/05/2016	Correspondence - Outgoing (initial letter)	
06/30/2016	Notice of Appeal (Civil) - Initial	

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Casey L. Manning, Circuit Court Judge

SC Court of Appeals

Case No. 2015-CP-40-07178

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

v.


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

PROOF OF SERVICE

I, the undersigned counsel for Respondents, hereby certify that I have served a copy of the MOTION STRIKE APPELLANT'S DESIGNATION OF MATTER AND RECORD ON APPEAL, AND FOR A STAY IN THE FILING AND SERVING OF FINAL BRIEFS by causing a copy of the same to be deposited in the United States mail, first class postage, prepaid, address to the *pro se* Appellant on this the 2ND day of May, 2017:

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

May 2nd, 2017



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1333 Main Street, Suite 500,
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*Attorneys for Respondent South
Carolina Workers' Compensation
Commission*

State of South Carolina

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Workers' Compensation Commission

May 2nd, 2017

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

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MAY 02 2017

SC Court of Appeals

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

Dear Ms. Kitchings:

Enclosed please find the original and six (6) copies of Respondent the South Carolina Workers' Compensation Commission's Motion to Strike Appellant's Designation of Matter and Record on Appeal, and for a Stay in the Filing and Serving of Final Briefs, which I would appreciate your filing with the court. Respondent understands that, as an agency of the State of South Carolina, it is exempt from paying a filing fee pursuant to Rule 240(d), SCACR. If a filing fee is required for this motion, please notify my office immediately and it will be promptly remitted.

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

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

With warmest regards,

Sincerely,

A handwritten signature in cursive script, appearing to read "J. Keith Roberts".

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

Enclosure

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