

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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

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Case No: 2015-CP-40-07178

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RECEIVED  
MAY 22 2017  
SC Court of Appeals

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

v.

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

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**REPLY TO APPELLANT'S RETURN TO MOTION TO STRIKE**

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On May 2<sup>nd</sup>, 2017, Respondent filed a Motion to Strike Appellant's Designation of Matter and Record on Appeal. Appellant served Respondent with his Return under Rule 240(e), SCACR on May 16<sup>th</sup>, 2017. Respondent offers this memorandum as its Reply under Rule 240(f), SCACR.

**BACKGROUND**

Respondent moved pursuant to Rules 209, 210 and 240, SCACR, the Court to strike Appellant's "Amended Designation of Matter" and "Amended Record on Appeal". Both of these documents were filed with the Court of Appeals on April 12<sup>th</sup>, 2017, and are listed in C-Track as having been refiled on

April 28<sup>th</sup>, 2017. Respondent has never been served with the April 28<sup>th</sup>, 2017 filings, and is only aware of them from accessing them through C-Track.

Respondent also moved the Court to hold in abeyance the time to file and serve the final briefs. Respondent needs clarification on which document the Court considers the Record on Appeal, so that Respondents can comply with Rule 211(b)(1), SCACR, when preparing its Final Brief.

On May 2<sup>nd</sup>, 2017, Respondent received a bound “Final Brief of Appellant”, which also includes the “Amended Designation of Matter” and “Amended Record on Appeal”. That same day, May 2<sup>nd</sup>, 2017, the Court issued a Notice declaring deficient the “Final Brief of Appellant” for failure to comply with Rule 267(d), SCACR, and instructing Appellant to re-file within ten days. To date, Respondents have not been served with a corrected document. On May 16<sup>th</sup>, 2017, Appellant served Respondent with his “Return to Motion”.

### **ARGUMENT**

Appellant *pro se* has filed or attempted to file no less than seven (7) different Designations of Matter, on the following dates: August 10<sup>th</sup>, 2016, October 3<sup>rd</sup>, 2016, December 8<sup>th</sup>, 2016, December 28<sup>th</sup>, 2016, April 12<sup>th</sup>, 2017, April 28<sup>th</sup>, 2017, and May 2<sup>nd</sup>, 2017.

<http://ctrack.sccourts.org/public/caseView.do?csIID=62524>, accessed May 22<sup>nd</sup>, 2017.

Appellant has further filed or attempted to file no less than six (6) different Records on Appeal, on the following dates: December 16<sup>th</sup>, 2016, December 28<sup>th</sup>, 2016, March 28<sup>th</sup>, 2017, April 12<sup>th</sup>, 2017, April 28<sup>th</sup>, 2017, and May 5<sup>th</sup>, 2017. *Id.*

Respondent requests the Court issue a ruling granting its Motion to Strike. Respondent has a duty under Rule 211(b)(1), SCACR, to file and serve a Final Brief which makes reference to the Record on Appeal. In order to prepare its Final Brief, Respondent would graciously appreciate the Court answering the following three questions:

- 1) Which items are included in the Designation of Matter that will be considered by the Court?
- 2) Which document filed by the Appellant, if any, is the proper Record on Appeal that will be considered by the Court?
- 3) Which filing by Appellant must Respondent use to calculate the due date of the Final Brief of Respondents?

As it stands today, Respondent cannot prepare its Final Brief, as it is impossible based on Appellant's myriad filings for Respondent to comply with Rule 211(b)(1), SCACR. The various Designations of Matter and Records on Appeal contain inconsistent items, as outlined in Respondent's Motion to Strike. It is the position of Respondent that Appellant's inconsistent filings have deprived it of notice as to what Record on Appeal will be considered by the Court. Any changes to the Designation of Matter and Record on Appeal made after

Respondent filed its Initial Brief on October 31<sup>st</sup>, 2016, deprive Respondent of its right to be heard, as Respondent does not have the opportunity to address these items in its brief on the merits to the Court.


Appellant's Return to Motion served on Respondents on May 16<sup>th</sup>, 2017 acknowledges that Appellant made changes to his Designation of Matter and Record on Appeal on his own accord, and without leave of the Court. Appellant alleges nothing in his Return to indicate that these changes are lawful.

### **CONCLUSION**

Appellant's Amended Designation of Matter and Amended Record on Appeal, dated April 12<sup>th</sup>, 2017 and April 28<sup>th</sup>, 2017, should be stricken. Respondent requests the Court hold in abeyance the time to file and serve the final briefs, or grant Respondents additional time to file its final brief to allow the issues raised in this motion have been resolved. Finally, Respondent requests clear instructions from the Court regarding what should be considered the Designation of Matter, what should be considered the Record on Appeal, and what should be considered the due date of the final briefs, for purposes of preparing its Final Brief of Respondents.

Respectfully submitted,

THE SOUTH CAROLINA WORKERS' COMPENSATION  
COMMISSION

  
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J. Keith Roberts, S.C. 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*

May 22<sup>nd</sup>, 2017

THE STATE OF SOUTH CAROLINA  
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MAY 22 2017

SC Court of Appeals

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

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 REPLY TO APPELLANT'S RETURN TO RESPONDENT'S MOTION TO STRIKE AND/OR MOTION TO ALLOW FOR LATE FILING OF FINAL BRIEF RESPONDENT 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 22<sup>nd</sup> day of MAY, 2017:

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

05/22/, 2017



J. Keith Roberts  
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*

*State of South Carolina*

J. Keith Roberts  
General Counsel  
1333 Main Street, 5<sup>th</sup> Floor  
P.O. Box 1715  
Columbia, S.C. 29202-1715



TEL: (803) 737-5701  
FAX: (803) 737-5764  
KeRoberts@wcc.sc.gov

*Workers' Compensation Commission*

**RECEIVED**

MAY 22 2017

**SC Court of Appeals**

May 22<sup>nd</sup>, 2017

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

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

Dear Ms. Kitchings:

Enclosed are the original and six (6) copies of Respondent's Reply to Appellant's Return which I would appreciate you filing with the Court.

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

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

With warmest regards,

Sincerely,

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