

IN THE STATE OF SOUTH CAROLINA  
In The Court Of Appeals

---

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

Honorable G. Thomas Cooper Jr., Circuit Court Judge

---

Case No.# 2015-002356

---

Clarence B. Jenkins Jr.,

Appellant,

v.

South Carolina Department of Employment &  
Workforce, South Carolina Budget and Control Board, and  
Office of the Governor of South Carolina,

Respondents.

---

**APPELLANT'S MOTION SEEKING  
CERTIFICATION OF QUESTION OF LAW**

---

- I. Did South Carolina Court of Appeals affirming a DISMISSAL of Richland County Court of Common Pleas for failure to State a claim under 12b(6) when sufficient written and factual evidence as of Record as lawful which can be proven ?
- II. Did South Carolina Court of Appeals affirming a DISMISSAL of Richland County Court of Common Pleas without required mediation for all civil complaint as ordered by South Carolina Supreme Court as lawful ?

RECEIVED

SEP 19 2017

SC Court of Appeals

III. Did South Carolina Court of Appeals affirming a DISMISSAL of Richland County Court of Common Pleas when written and factual evidence of employment discrimination under TORT CLAIM ACT as lawful ?

WHEREFORE, Appellant's request Certification Of Question Of Law be presented to South Carolina Supreme Court since controlling precedent in the decision were ignored.

September 16 2017



Clarence B. Jenkins Jr.

Clarence B. Jenkins Jr.

945 Wire Rd.

Neeses, South Carolina 29107

(803) 263-4514

Pro Se Appellant

# South Carolina Legislature

South Carolina Law > Code of Laws > Title 15

## South Carolina Code of Laws Unannotated

### Title 15 - Civil Remedies and Procedures

#### CHAPTER 78

#### South Carolina Tort Claims Act

RECEIVED

SEP 19 2017

SC Court of Appeals

#### SECTION 15-78-10. Short title.

This chapter may be cited as the "South Carolina Tort Claims Act".

HISTORY: 1986 Act No. 463, Section 1.

#### SECTION 15-78-20. Legislative findings; declaration of public policy; extent of, and construction of, waiver of immunity.

(a) The General Assembly finds that while a private entrepreneur may be readily held liable for negligence of his employees within the chosen ambit of his activity, the area within which government has the power to act for the public good has been without limit and, therefore, government did not have the duty to do everything which might have been done. The General Assembly further finds that each governmental entity has financial limitations within which it must exercise authorized power and discretion in determining the extent and nature of its activities. Thus, while total immunity from liability on the part of the government is not desirable, see *McCall v. Batson*, neither should the government be subject to unlimited nor unqualified liability for its actions. The General Assembly recognizes the potential problems and hardships each governmental entity may face being subjected to unlimited and unqualified liability for its actions. Additionally, the General Assembly recognizes the impossibility of insuring for acts retrospectively. The General Assembly seeks an orderly transition to the recognition of individuals' rights against the tortious sovereign as defined herein. Consequently, it is declared to be the public policy of the State of South Carolina that the State, and its political subdivisions, are only liable for torts within the limitations of this chapter and in accordance with the principles established herein. It is further declared to be the public policy of the State of South Carolina that to insure an orderly transition from sovereign immunity to qualified and limited liability that the General Assembly intends to provide for liability on the part of the State and its political subdivisions only from July 1, 1986, forward in prospective fashion. No governmental entity which was not insured at the time of the injury for which compensation is sought is liable under this chapter and those which were insured are liable only to the extent provided herein. Liability for acts or omissions under this chapter is based upon the traditional tort concepts of duty and the reasonably prudent person's standard of care in the performance of that duty.

(b) The General Assembly in this chapter intends to grant the State, its political subdivisions, and employees, while acting within the scope of official duty, immunity from liability and suit for any tort except as waived by this chapter. The General Assembly additionally intends to provide for liability on the part of the State, its political subdivisions, and employees, while acting within the scope of official duty, only to the extent provided herein. All other immunities applicable to a governmental entity, its employees, and agents are expressly preserved. The remedy provided by this chapter is the exclusive civil remedy available for any tort committed by a governmental entity, its employees, or its agents except as provided in Section 15-78-70(b).

(c)(i) As to those causes of action that arise or accrue prior to the effective date of this act, the General Assembly reinstates sovereign immunity on the part of the State, its political subdivisions and employees, while acting within the scope of official duty provided that sovereign immunity will not bar recovery in any cause of action arising or accruing on or before the effective date of this act if the defendant maintained liability insurance coverage.

(ii) In such cases involving governmental health care facilities, as defined in Section 15-78-30(j), recovery shall not exceed the limits of the liability insurance coverage up to a maximum recovery of five hundred thousand dollars.

(iii) In all other such cases recovery shall not exceed the limits of the liability insurance coverage.

(d) Nothing in this chapter affects liability based on contract nor does it affect the power of the State or its political subdivisions to contract.

(e) Nothing in this chapter is construed as a waiver of the state's or political subdivision's immunity from suit in federal court under the Eleventh Amendment to the Constitution of the United States nor as consent to be sued in any state court beyond the boundaries of the State of South Carolina.

(f) The provisions of this chapter establishing limitations on and exemptions to the liability of the State, its political subdivisions, and employees, while acting within the scope of official duty, must be liberally construed in favor of limiting the liability of the State.

(g) The General Assembly recognizes the competing interests of either providing physicians and dentists qualified immunity under the provisions of the South Carolina Tort Claims Act or continuing unqualified liability for medical malpractice actions brought against governmentally employed physicians or dentists. While patients deserve accountable and competent health care, regardless of the public or private character of the provider, governmental entities, in order to attract qualified physicians and dentists, must be able to offer an affordable compensation and employment package, including liability insurance. The General Assembly, in amending this chapter, intends to provide an orderly transition from noninclusion to inclusion of physicians and dentists under the provisions of this chapter. Additionally, the liability limits, and hence mandated insurance coverage, of governmental entities for acts of physicians or dentists, acting within the scope of their profession, are set somewhat higher than those provided for other types of governmental liability. These higher limits and mandated coverages are recognition by the General Assembly of significantly higher damages in cases of medical malpractice. To this end, inclusion of physicians and dentists within this chapter has been delayed until January 1, 1989, when an affordable program of group liability insurance will be instituted.

HISTORY: 1986 Act No. 463, Section 1; 1987 Act No. 7, Section 1; 1988 Act No. 352, Section 2.

#### SECTION 15-78-30. Definitions.

(a) "Agency" means the individual office, agency, authority, department, commission, board, division, instrumentality, or institution, including a state-supported governmental health care facility, school, college, university, or technical college, which employs the employee whose act or omission gives rise to a claim under this chapter.

(b) "Claim" means any written demand against the State of South Carolina or a political subdivision for money only, on account of loss, caused by the tort of any employee of the State or a political subdivision while acting within the scope of his official duty.

(c) Prior to January 1, 1989, "employee" means any officer, employee, or agent of the State or its political subdivisions, including elected or appointed officials, law enforcement officers, and persons acting on behalf or in service of a governmental entity in the scope of official duty, whether with or without compensation, but the term does not include an independent contractor doing business with the State or a political subdivision of the State. Custody of prisoners by the State or any of its political subdivisions does not in and of itself create an employer and employee relationship between the State and the prisoner. Provided, the provisions of this section in no way limit or modify the liability of a licensed physician or dentist, acting within the scope of his profession.

On or after January 1, 1989, "employee" means any officer, employee, agent, or court appointed representative of the State or its political subdivisions, including elected or appointed officials, law enforcement officers, and persons acting on behalf or in service of a governmental entity in the scope of official duty including, but not limited to, technical experts whether with or without compensation, but the term does not include an independent contractor doing business with the State or a political subdivision of the State. Custody of prisoners by the State or any of its political subdivisions does not in and of itself create an employer and employee relationship between the State and the prisoner. Provided, the provisions of this section in no way limit or modify the liability of a licensed physician or dentist, acting within the scope of his profession, with respect to any action or claim which involved services for which the physician or dentist was paid, should have been paid, or expected to be paid at the time of the

2010-09-01-01

# The Supreme Court of South Carolina

RE: Circuit Court Arbitration and Mediation  
and Family Court Mediation

\_\_\_\_\_

ORDER

\_\_\_\_\_

RECEIVED

SEP 19 2010

SC Court of Appeals

By order dated February 1, 2006, this Court adopted Court-Annexed Alternative Dispute Resolution (ADR) Rules which govern court-annexed ADR processes in South Carolina Circuit Courts in civil suits, and in South Carolina Family Courts in domestic relations actions in counties designated by this Court for mandatory ADR or as required by statute.

Effective with cases filed *in the family court* on or after October 1, 2010, and cases filed *in the court of common pleas* on or after January 1, 2011, the counties in the Third Judicial Circuit join those counties previously designated by this Court for mandatory ADR. The counties designated by this Court for mandatory ADR are as follows:

Allendale	Greenville	Pickens - Family Court only
Anderson	Hampton	Richland
Beaufort	Horry	Sumter
Clarendon	Jasper	Union
Colleton	Lee	Williamsburg
Florence	Lexington	York

Effective October 1, 2010, this order supersedes the order dated September 16, 2009, listing the counties previously designated for mandatory ADR.

s/Jean H. Toal C.J.

s/Costa M. Pleicones J.

s/Donald W. Beatty J.

s/John W. Kittredge J.

Hearn, J., not participating

Columbia, South Carolina  
September 1, 2010

September 16, 2017

Daniel Shearouse, Clerk of Court  
Supreme Court of South Carolina  
PO Box 11330  
Columbia, SC 29211

Jeanette Kitchings, Clerk of Court  
PO Box 11629  
Columbia, SC 29211

Clarence B. Jenkins Jr.  
945 Wire Rd.  
Neeses, SC 29107  
(803) 263-4514

REF: Case No#. 2015-002356: South Carolina Department & Employment Workforce,  
South Carolina Budget and Control Board and Office of the Governor of  
South Carolina.

Mr. Shearouse:

Please find enclosed Appellant's Motion Seeking Certification Of Question Of  
Law from South Carolina Court of Appeals pertaining to Appellate Case No. 2015-  
002356.

A copy will be sent South Carolina Court of Appeals and Atty. Eugene H. Matthews for  
Respondents. Please contact for any concerns.

  
Clarence B. Jenkins Jr.

CC. Atty. Eugene H. Matthews

Enclosures

RECEIVED

SEP 19 2017

SC Court of Appeals

Clarence Jett Dyk  
945 Wylie Rd.  
Neeses, SC 29107

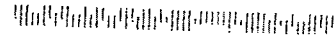


1000



29211

U.S. POSTAGE  
PAID  
NEESSES, SC  
29107  
SEP 16, 17  
AMOUNT  
**\$1.40**  
R2305K136656-05



Jeannette Hutchins, Clerk of Court  
S.C. Court of Appeals  
PO Box 11629  
Columbia, SC 29211

RECEIVED

SEP 19 2017

SC Court of Appeals