

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**

SEP 29 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 DISMISS**

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On August 29<sup>th</sup>, 2017, Respondent filed a Motion to Dismiss Appellant's Appeal. While it is unclear from the record<sup>1</sup> whether Appellant has filed a Return to this Motion under Rule 240(e), SCACR, out of an abundance of caution Respondent offers this document as its Reply under Rule 240(f), SCACR.

It is incontrovertible that an appellant is required to file a Final Brief of Appellants in order to perfect an appeal. The Rules require "[w]ithin twenty (20) days after the service of the Record on Appeal, each party shall serve a copy of

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<sup>1</sup> While this document was being drafted, Respondent became aware through C-Track that Appellant had filed a Proof of Service for his Return to Motion on September 28, 2017. However, this document lists an incorrect address for Respondent and has not been received by Respondent independent of C-Track. Respondent's notice of the myriad filings with the Court by Appellant is primarily through C-Track.

his final brief(s) on every other party to the appeal . . . .” Rule 211(a), SCACR. While there was some confusion as to the date that the proper Record on Appeal was filed by the Appellant, according to the Non-Dispositional Decision of the Court dated July 7<sup>th</sup>, 2017, the record on appeal filed on March 28<sup>th</sup>, 2017 is considered the Record on Appeal in this case. *See* Order, July 7<sup>th</sup>, 2017. That Order instructed Respondent to file its Final Brief within thirty days, which it has done.

The July 7<sup>th</sup>, 2017 Order did not set a deadline for Appellant to file his Final Brief. However, the Court had previously sent a letter to Appellant dated May 2<sup>nd</sup>, 2017, noting deficiencies with the proposed Final Brief of Appellant and instructing “. . . any deficiency must be corrected within ten (10) days of the date of this letter or the appeal will be dismissed”. Letter of Jenny Abbot Kitchings to Clarence B. Jenkins, Jr., May 2<sup>nd</sup>, 2017. This letter gave Claimant notice that dismissal would be the result of his refusal or neglect to file a Final Brief of Appellants. There is no evidence in the record that Appellant complied with this mandate. Respondent has not been served with any Final Brief of Appellant since the date of this letter.

Regardless of whether the due date of Appellant’s Final Brief was controlled by the March 28<sup>th</sup>, 2017 Record on Appeal, the May 2<sup>nd</sup>, 2017 letter, or the July 7<sup>th</sup>, 2017 Order of the Court, the Final Brief of Appellant was not filed at the time this Motion to Dismiss was filed on August 29<sup>th</sup>, 2017, and has not been

filed as of the drafting of this Reply. Appellant's time to file his Final Brief of Appellant has expired and his appeal should be dismissed.

### CONCLUSION

Based on Appellant's refusal or neglect to file a Final Brief of Appellants, or show good cause for his refusal or neglect to do so, Respondent moves the Court to dismiss this Appeal.

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*

September 29<sup>th</sup>, 2017

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. 2015-CP-40-07178

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SEP 29 2017

SC Court of Appeals

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

v.

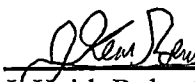
South Carolina Workers' Compensation Commission,.....Respondent.

PROOF OF SERVICE

I, the undersigned counsel for Respondents, hereby certify that I have served a copy of the RESPONDENT'S REPLY TO APPELLANT'S RETURN TO RESPONDENT'S MOTION TO DISMISS 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 29<sup>th</sup> day of September, 2017:

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

09/29/, 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

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September 29<sup>th</sup>, 2017

SEP 29 2017

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

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 Reply to Return to Motion to Dismiss, which I would appreciate your filing with the court.

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 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