

THE STATE OF SOUTH CAROLINA  
In The Supreme Court  
APPEAL FROM THE ADMINISTRATIVE LAW COURT  
Ralph K. Anderson, III, Administrative Law Judge  
Dock. No. 07-ALJ-04-00517-AP

Order (S.C. Ct. App. filed July 20, 2017)

Fred Gatewood, #289775..... Petitioner,

v.

South Carolina Department of Corrections..... Respondent.

Court of Appeals Appellate Case No. 2017-001552

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PETITION FOR A WRIT OF CERTIORARI  
APPENDIX

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Douglas H. Westbrook, #6039  
23 Broad St.  
Charleston, SC 29401  
(843) 853-9600  
Attorney for Petitioner

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# The Supreme Court of South Carolina

Fred Gatewood, Respondent/Petitioner,

v.

South Carolina Department of Corrections,  
Petitioner/Respondent.

Appellate Case No. 2016-001221

Lower Court Case No. 2007-ALJ-04-0517-AP

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## ORDER

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Based on the vote of the Court, the petitions for a writ of certiorari to the court of appeals is denied.

FOR THE COURT

BY



CLERK

Columbia, South Carolina  
May 30, 2007

cc:

Douglas H. Westbrook, Esquire  
Lake Eric Summers, Esquire  
The Honorable Jenny Abbott Kitchings  
The Honorable Jana E. Shealy

# The South Carolina Court of Appeals

Fred Gatewood #289775, Appellant,

v.

South Carolina Department of Corrections, Respondent.

Appellate Case No. 2017-001552

---

## ORDER

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This appeal arises out of an order from the Administrative Law Court (ALC) remanding the case to the South Carolina Department of Corrections. Because the order of the ALC is not a final order, we dismiss this appeal as interlocutory. *See Charlotte-Mecklenburg Hosp. Auth. v. S.C. Dep't of Health & Envtl. Control*, 387 S.C. 265, 267, 692 S.E.2d 894, 895 (2010) ("If there is some further act which must be done by the court prior to a determination of the rights of the parties, the order is interlocutory."). The remittitur will be sent pursuant to Rule 221(b) of the South Carolina Appellate Court Rules.

 J.  
FOR THE COURT

Columbia, South Carolina

cc:

Douglas H. Westbrook, Esquire  
Lake Eric Summers, Esquire  
The Honorable Jana E. Shealy

**FILED**

July 20, 2017

# The South Carolina Court of Appeals

Fred Gatewood #289775, Appellant,

v.

South Carolina Department of Corrections, Respondent.

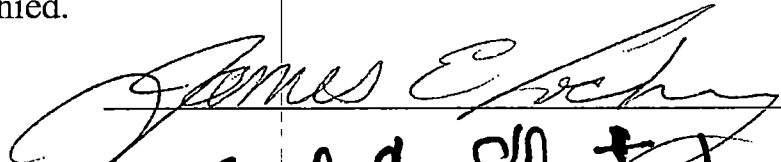
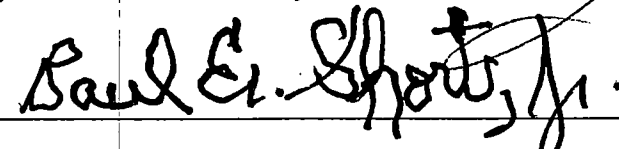

Appellate Case No. 2017-001552

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## ORDER

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After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

  
\_\_\_\_\_ J.  
  
\_\_\_\_\_ J.  
  
\_\_\_\_\_ J.

Columbia, South Carolina

cc:  
Douglas H. Westbrook, Esquire  
Lake Eric Summers, Esquire  
Jana E. Shealy

**FILED**

September 14, 2017



# The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

V. CLAIRE ALLEN  
DEPUTY CLERK

POST OFFICE BOX 11629  
COLUMBIA, SOUTH CAROLINA 29211  
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COLUMBIA, SOUTH CAROLINA 29201  
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www.sccourts.org

June 02, 2017

The Honorable Jana E. Shealy  
Edgar A. Brown Building  
1205 Pendleton Street  
Suite 224  
Columbia SC 29201

## REMITTITUR

Re: Fred Gatewood v. SCDC (2)  
Lower Court Case No. 2007ALJ040517AP  
Appellate Case No. 2014-001199

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

*V. Claire Allen, Deputy*

CLERK

Enclosure

cc: Douglas H. Westbrook, Esquire  
Lake Eric Summers, Esquire



CERTIFICATE OF SERVICE

I, E. Harvin Belser Fair, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).

*E. Harvin Belser Fair*

E. Harvin Belser Fair  
Judicial Law Clerk

June 13, 2017  
Columbia, South Carolina

*2 4*

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT  
Ralph K. Anderson, III, Administrative Law Judge  
Dock. No. 07-ALJ-04-00517-AP

Fred Gatewood..... Appellant,

v.

South Carolina Department of Corrections..... Respondent.

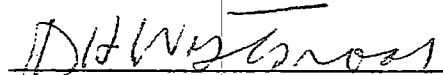
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NOTICE OF APPEAL

---

Fred Gatewood appeals the order of remand of The Honorable Ralph K. Anderson, III dated June 13, 2017.\* Gatewood received a copy of the order on June 15, 2017.

July 14, 2017.

  
Douglas H. Westbrook, #6039  
23 Broad St.  
Charleston, SC 29401  
(843) 853-9600  
Attorney for Fred Gatewood

Other Counsel of Record:

Lake E. Summers, Esquire  
Malone, Thompson, Summers & Ott, LLC  
339 Heyward St.  
Suite 200  
Columbia, SC 29201  
(803) 254-3300  
Attorney for Respondent  
S.C. Department of Corrections

---

\* In Gatewood's petition for a writ of mandamus filed July 13, 2017, he con-

tends the remand is probably interlocutory and not immediately appealable, based on circumstances here and Charlotte-Mecklenburg Hosp. v. DHEC 387 S.C. 265, 267, 692 S.E. 2d 894 (S.C., 2010). However, it is permissible to argue against precedent in the appellate brief (SCACR 217). Thus, it is possible the Court may distinguish Charlotte-Mecklenburg Hosp. based on other circumstances here which were not addressed in that case. Therefore, Gatewood attempts to appeal the remand order to preserve his rights should the Court consider the remand a final order.

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT  
Ralph K. Anderson, III, Administrative Law Judge  
Dock. No. 07-ALJ-04-00517-AP

Fred Gatewood..... Appellant,

v.

South Carolina Department of Corrections..... Respondent.

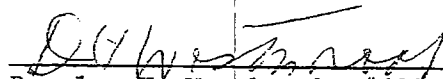
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PROOF OF SERVICE

---

I certify that I have served Appellant's Notice of Appeal and the Administrative Law Court's order of June 13, 2017 on The Honorable Ralph K. Anderson, III and the S.C. Department of Corrections, by depositing copies of these documents in the U.S. Mail, postage prepaid, on July 14, 2017, addressed to: The Honorable Ralph K. Anderson, III, Chief Judge, S.C. Administrative Law Court, Edgar A. Brown Building, Suite 224, 1205 Pendleton St., Columbia, SC 29201; and Lake Summers, Esquire, Malone, Thompson, Summers & Ott, LLC, 339 Heyward St., Suite 200, Columbia, SC 29201, attorney of record for Respondent S.C. Department of Corrections.

July 14, 2017.

  
Douglas H. Westbrook, #6039  
23 Broad St.  
Charleston, SC 29401  
(843) 853-9600  
Attorney for Fred Gatewood

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT  
Ralph K. Anderson, III, Administrative Law Judge  
Dock. No. 07-ALJ-04-00517-AP

Fred Gatewood, #289775..... Appellant,

v.

South Carolina Department of Corrections..... Respondent.

Appellate Case No. 2017-001552

---

PETITION FOR REHEARING

---

Fred Gatewood submits his Petition for Rehearing in this matter, contending the Court of Appeals overlooked the following points in its July 20, 2017 dismissal of the appeal, as more particularly described in the attached memorandum, affidavit and attachment(s).

(1) The possibility of distinguishing Charlotte-Mecklenburg Hosp. Auth. v. SCDHEC based on the inconsistency between the Court of Appeals and ALC remand orders.

(2) The subsidiary effects of the inconsistency.

(3) The circumstance that Gatewood is entitled to ALC review, which mode of trial would be denied under the ALC's remand to SCDC, which is immediately appealable.

(4) The ALC remand's effect of a violation of due process, as a circumstance distinguishing Charlotte-Mecklenburg Hosp. Auth.

Respectfully submitted,

X //

*DH Westbrook*

Douglas H. Westbrook, #6039  
23 Broad St.  
Charleston, SC 29401  
(843) 853-9600  
Attorney for Fred Gatewood

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT  
Ralph K. Anderson, III, Administrative Law Judge  
Dock. No. 07-ALJ-04-00517-AP

Fred Gatewood, #289775..... Appellant,

v.

South Carolina Department of Corrections..... Respondent.

Appellate Case No. 2017-001552

---

MEMORANDUM IN SUPPORT OF  
PETITION FOR REHEARING

---

This appeal was filed on July 14, 2017. The parties did not brief the appeal before the Court of Appeals issued its order dismissing the appeal on July 20, 2017. The Court dismissed the appeal as interlocutory, citing Charlotte-Mecklenburg Hosp. Auth. v. SCDHEC 387 S.C. 265, 267, 692 S.E. 2d 894, 895 (S.C., 2010) ("If there is some further act which must be done by the Court prior to a determination of the rights of the parties, the order is interlocutory").

Pursuant to SCACR 221(a), Gatewood contends the Court of Appeals' order overlooked the point made in Gatewood's notice of appeal footnote, that it is possible the Court may distinguish Charlotte-Mecklenburg Hosp. Auth. based on circumstances here which were not addressed in that case. Circumstances include the inconsistency between the March 9, 2016 Court of Appeals' opinion remand of "...the issue of Inmate's entitlement to costs, attorney's fees, pre-judgment interest, and post-judgment interest to the ALC for reconsideration in light of this opinion" (Gatewood v. SCDHEC 785 S.E. 2d 600, 613 (S.C. App.,

2016); and the ALC's June 13, 2017 remand "to the South Carolina Department of Corrections for processing..". See ALC remand, attached hereto.

Gatewood further contends the Court of Appeals overlooked the subsidiary effects of the inconsistency. The ALC remand does not enforce the Court of Appeals' opinion remand and June 2, 2017 remittitur (Muller v. Myrtle Beach Golf & Yacht Club 313 S.C. 412, 414-415, 438 S.E. 2d 248 (S.C., 1993); Am Jur 2d (2007), App. Rev., §§734-737, 740, 744). And, the remand was outside the ALC's jurisdiction, null and void, and the proceeding is as if the remand had not occurred (Id., §740; 20 Am Jur 2d (2015), Courts, §63). Thus, Gatewood contends the ALC retains jurisdiction to reconsider Gatewood's entitlement to costs, attorney fees, and pre and post-judgment interest.

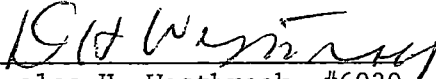
Moreover, Gatewood contends the Court of Appeals overlooked his entitlement to the ALC's reconsideration of his entitlement to costs, attorney's fees, and pre and post-judgment interest. The entitlement stems from the above quoted Court of Appeals' remand for the ALC to carry out this reconsideration. However, the ALC's remand to SCDC for processing would deprive Gatewood of the mode of trial to which he is entitled, and that is immediately appealable (J. Toal, Appellate Practice in South Carolina, 3d Ed., 2016, p. 155, citing Williford v. Downs 265 S.C. 319, 218 S.E. 2d 242 (1975)). Gatewood contends these circumstances further distinguish Charlotte-Mecklenburg Hosp. Auth.

Finally, Gatewood contends the Court of Appeals overlooked the point that the apparent authorization in the ALC remand for SCDC to determine the "beneficial results obtained" may involve calculating Gatewood's back wages. If so,

SCDC would be calculating its own damages, an obvious conflict of interest. It would also violate due process, since SCDC is not an impartial decision-maker as S.C. Constitution Art. I, §22 and case law require (Ross v. MUSC, 492 S.E. 2d 62, 72 (S.C., 1997); Al Shabazz v. State 527 S.E. 2d 742, 750, 753 (S.C., 2000); J. Toal, Appellate Practice in South Carolina, 3d Ed., 2016, pp. 66-67). In contrast, Charlotte-Mecklenburg Hosp. Auth. involved no illegal effect of the ALC remand to DHEC. Again, this circumstance also distinguishes Charlotte-Mecklenburg Hosp. Auth.

In conclusion, Gatewood requests the Court to grant his petition for a rehearing, and if appropriate, allow the parties to brief these issues.

Respectfully submitted,

  
Douglas H. Westbrook, #6039  
23 Broad St.  
Charleston, SC 29401  
(843) 853-9600  
Attorney for Fred Gatewood

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT  
Ralph K. Anderson, III, Administrative Law Judge  
Dock. No. 07-ALJ-04-00517-AP

Fred Gatewood, #289775..... Appellant,

v.

South Carolina Department of Corrections..... Respondent.

Appellate Case No. 2017-001552

AFFIDAVIT

I, Douglas H. Westbrook, depose and state as follows:

1. I represent Fred Gatewood in the within matter.
2. Between the time of filing Gatewood's notice of appeal on July 14, 2017 and receipt of the Court of Appeals' July 20, 2017 order dismissing the appeal, I did not file Gatewood's initial brief, and to my knowledge, neither did the Department of Corrections file its initial brief.

Further Deponent Sayeth Not.

Douglas H. Westbrook  
 Douglas H. Westbrook, #6039  
 23 Broad St.  
 Charleston, SC 29401  
 (843) 853-9600  
 Attorney for Fred Gatewood

Signed and Sworn  
 To Before Me This  
31 Day Of July,  
2017.

Denise Cowan  
 Notary Public for S.C.  
 My Commission Expires:  
~~3/12/2023~~

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

Fred Gatewood, #289775, )  
)  
Appellant, )  
)  
vs. )  
)  
South Carolina Department of Corrections, )  
)  
Respondent. )  
\_\_\_\_\_ )

Docket No. 07-ALJ-04-0517-A-AP

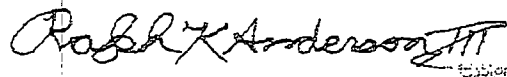
**ORDER OF REMAND**

This matter is before the South Carolina Administrative Law Court (Court or ALC) on remand from the South Carolina Court of Appeals (Court of Appeals). Fred Gatewood (Appellant) participated in prison industries, and his case was one of 197 consolidated cases regarding wages. The Court of Appeals reversed the ALC's conclusion that S.C. Code § 24-1-295 (2007) applied retroactively to inmate gross wages earned prior to August 1, 2007. In addition, the Court of Appeals remanded the issue of Appellant's entitlement to costs, attorney's fees, prejudgment interest, and post-judgement interest.

Because the determination of attorney's fees encompasses several factors, including the beneficial results obtained,<sup>1</sup> this matter shall be held in abeyance pending the outcome of the grievance hearings on the wage cases arising from both this case and *Ackerman, et al. v. S.C. Dep't of Corr.*, 415 S.C. 412, 782 S.E.2d 757 (Ct. App. 2016), *cert. denied* (May 30 2017). Accordingly,

**IT IS THEREFORE ORDERED** that the grievance is remanded to the South Carolina Department of Corrections for processing as set forth in *Gatewood v. S.C. Dep't of Corr.*, 416 S.C. 304, 785 S.E. 2d 60 (2016), *cert. denied* (May 30, 2017).

**AND IT IS SO ORDERED.**



Ralph King Anderson, III  
Chief Administrative Law Judge

June 13, 2017  
Columbia, South Carolina

<sup>1</sup> See S.C. Code Ann. § 15-77-300 (B) (2016).

**FILED**

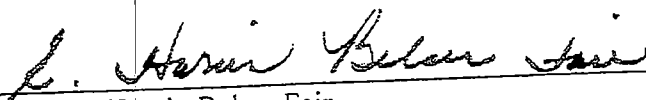
June 13, 2017

SC ADMIN. LAW COURT

3  
7 17

CERTIFICATE OF SERVICE

I, E. Harvin Belser Fair, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).



E. Harvin Belser Fair  
Judicial Law Clerk

June 13, 2017  
Columbia, South Carolina

24

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT  
Ralph K. Anderson, III, Administrative Law Judge  
Dock. No. 07-ALJ-04-00517-AP

Fred Gatewood, #289775..... Appellant,

v.

South Carolina Department of Corrections..... Respondent.

Appellate Case No. 2017-001552

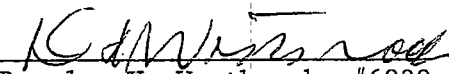
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PROOF OF SERVICE

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I certify that I have served Appellant's Petition for Rehearing, Memorandum, Affidavit and attachment(s) on the S.C. Department of Corrections by depositing a copy of these documents in the U.S. Mail, postage prepaid, on July 31, 2017, addressed to Lake Summers, Esquire, Malone, Thompson, Summers & Ott, LLC, 339 Heyward St., Suite 200, Columbia, SC 29201, attorney of record for Respondent S.C. Department of Corrections.

July 31, 2017.

  
Douglas H. Westbrook, #6039  
23 Broad St.  
Charleston, SC 29401  
(843) 853-9600  
Attorney for Fred Gatewood

**THE STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

\_\_\_\_\_  
The Honorable Ralph King Anderson, III, Chief Administrative Law Judge  
\_\_\_\_\_

Fred Gatewood, # 289775,	)	Docket No. 07-ALJ-04-0517-AP
	)	
	)	
Appellant,	)	<b>THE DEPARTMENT'S RESPONSE TO</b>
	)	<b>GATEWOOD'S FILINGS DATED</b>
vs.	)	<b>JUNE 30, 2017 AND ITS MOTION</b>
	)	<b>TO STRIKE GATEWOOD'S FILINGS</b>
South Carolina Department of Corrections,	)	<b>DATED JUNE 30, 2017</b>
	)	
	)	
Respondent.	)	

---

The Respondent, the South Carolina Department of Corrections [“the Department”], by and through its undersigned counsel and pursuant to Rule 63 of the South Carolina Administrative Law Court [“ALC”] Rules of Procedure, respectfully provides its response to the three (3) filings dated June 30, 2017 and submitted by the Appellant, Fred Gatewood [“Gatewood”], in the above-captioned matter.

The Department also moves this Court, for the reasons articulated in its instant response, to strike Gatewood’s three (3) filings dated June 30, 2017. The Department so moves, because Gatewood’s three (3) filings were void ab initio.

**I. GATEWOOD’S FILINGS DATED JUNE 30, 2017**

On July 5, 2017, the Department’s undersigned counsel received the following three (3) filings from Gatewood, each dated June 30, 2017:

1. A “Petition for Attorney Fees, Costs, and Pre and Post-Judgment Interest” and allied “Time Sheets” kept by Gatewood’s counsel, which support Gatewood’s “Petition for Attorney Fees, Costs, and Pre and Post-Judgment Interest;”
2. A “Motion and Memorandum for Appointment of Special Referee;” and
3. A “Motion and Memorandum to Supplement the Record.”

## II. APPLICABLE RULES OF PROCEDURE.

### A. SECTION V OF THE ALC’S RULES OF PROCEDURE

This Court’s jurisdiction over the instant matter has always been animated and continues to be animated by Section V of the ALC’s Rules of Procedure. Section V is entitled “Special Appeals,” and it encompasses Rules 51 through 66.

Rule 51 is entitled “Applicability,” and it provides that the rules in Section V “shall apply **exclusively** in matters heard on appeal from final decisions pursuant to [*Al-Shabazz v. State*, 527 S.E.2d 742 (S.C. 2000)].” [emphasis supplied].

The 2009 Revised Notes to Rule 51 provide as follows:

**The Special Appeals Rules are the exclusive rules of procedure used in appeals from final decisions of the Department of Corrections and the Department of Probation, Parole and Pardon Services. The [ALC’s] jurisdiction to hear such matters is derived entirely from the decisions of the South Carolina Supreme Court in [*Al-Shabazz*] and [*Furtick v. S.C. Dep’t of Probation, Parole and Pardon Services*, 576 S.E.2d 146 (S.C. 2003)]. These Rules are based upon the [ALC’s] existing general procedural and appellate rules, with adaptations for this specific type of appeal. [emphasis supplied].**

### B. SECTION VI OF THE ALC’S RULES OF PROCEDURE

Section VI of the ALC’s Rules of Procedure is entitled “Miscellaneous Provisions,” and it encompasses Rules 67 through 73.

Rule 68 is entitled “Applicability of the South Carolina Rules of Civil Procedure and South Carolina Appellate Court Rules,” and, in its entirety, it provides as follows:

The South Carolina Rules of Civil Procedure and the South Carolina Appellate Court Rules, in contested cases and appeals respectively, may, in the discretion of the presiding administrative law judge, be applied to resolve questions not addressed by these rules. [emphasis supplied].

The 2015 Revised Notes to Rule 68 provide as follows:

In contested cases only, the South Carolina Rules of Civil Procedure may, in the discretion of the presiding administrative law judge, be applied to resolve questions not addressed by these Rules. Furthermore, **the South Carolina Appellate Court Rules may be applied in like manner in appellate proceedings only.** The South Carolina Rules of Civil Procedure and the South Carolina Appellate Court Rules do not automatically apply when invoked by a party. Rather, the presiding judge must determine whether to apply the rules. [emphasis supplied].

**III. THIS COURT SHOULD, AT A MINIMUM, STRIKE GATEWOOD'S "MOTION AND MEMORANDUM FOR APPOINTMENT OF SPECIAL REFEREE"**

Before responding to Gatewood's three (3) filings dated June 30, 2017, the Department respectfully moves this Court to strike Gatewood's "Motion and Memorandum for Appointment of Special Referee."

As noted above, Section V of the ALC Rules of Procedure, under which this Court has always possessed jurisdiction and continues to possess jurisdiction over the instant matter, simply does not permit, or even contemplate, the appointment of a special referee as advocated by Gatewood in his motion. Gatewood conceded this point in his motion.<sup>1</sup>

As also noted above, the 2015 Revised Notes to ALC Rule of Procedure 68 provides that neither the South Carolina Rules of Civil Procedure nor the South Carolina Appellate Court Rules automatically apply when invoked by a party. As the instant matter exclusively falls under this Court's jurisdiction in its appellate capacity under Section V, only the South Carolina Appellate Court Rules may apply when invoked by a party.

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<sup>1</sup> See "Motion and Memorandum for Appointment of Special Referee," p. 2.

In his motion,<sup>2</sup> however, Gatewood asserted that “ALC Rule 68 allows [this Court] to apply the South Carolina Rules of Civil Procedure to resolve questions not raised by the ALC rules.” For clarity’s sake, Gatewood did not invoke any provision of the South Carolina Appellate Court Rules in his motion.

Gatewood’s assertion regarding the applicability of the South Carolina Rules of Civil Procedure under ALC Rule of Procedure 68 in the instant matter is obviously wrong, because it’s contrary to the 2015 Revised Notes to ALC Rule of Procedure 68.

Accordingly, the Department respectfully urges this Court to declare the entirety of Gatewood’s “Motion and Memorandum for Appointment of Special Referee” as void ab initio, and the Department moves to strike Gatewood’s motion. *See Pee Dee Health Care, P.A. v. Estate of Thompson*, 795 S.E.2d 40, 43 (S.C. Ct. App. 2016).

Importantly, Gatewood’s profound misapprehension of the procedural mechanisms which have animated and which continue to animate this Court’s jurisdiction over the instant matter fatally undermines his three (3) filings dated June 30, 2017.

#### **IV. THE DEPARTMENT’S RESPONSE(S) TO GATEWOOD’S THREE (3) FILINGS**

##### **A. THIS COURT’S JUNE 13, 2017 REMAND ORDER**

In its entirety, this Court’s June 13, 2017 “Order of Remand” provided as follows:

This matter is before [this Court] on remand from the South Carolina Court of Appeals (Court of Appeals). [Gatewood] participated in prison industries, and his case was one of 197 consolidated cases regarding wages. The Court of Appeals reversed [this Court’s] conclusion that S.C. Code § 24-1-295 (2007) applied retroactively to [Gatewood’s] gross wages earned prior to August 1, 2007. In addition, the Court of Appeals remanded the issue of [Gatewood’s] entitlement to costs, attorney’s fees, prejudgment interest and post-judgment interest.

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<sup>2</sup> See “Motion and Memorandum for Appointment of Special Referee,” p. 2.

Because the determination of attorney's fees encompasses several factors, including the beneficial results obtained,<sup>3</sup> this matter shall be held in abeyance pending the outcome of the grievance hearings on the wage cases arising from both this case and [*Ackerman, et al. v. S.C. Dep't of Corr.* 782 S.E.2d 757 (S.C. Ct. App. 2016)], *cert. denied* (May 30, 2017). Accordingly,

**IT IS THEREFORE ORDERED** that [Gatewood's] grievance is remanded to the [Department] for processing as set forth in [*Gatewood v. S.C. Dep't of Corr.*, 785 S.E. 2d 60 (2016)], *cert. denied* (May 30, 2017). [emphasis supplied by this Court].

**B. GATEWOOD FUNDAMENTALLY MISAPPREHENDED THIS COURT'S JUNE 13, 2017 REMAND ORDER**

In the footnote at the bottom of the first page of his "Petition for Attorney Fees, Costs, and Pre and Post-Judgment Interest,"<sup>4</sup> Gatewood addressed the Court's June 13, 2017 remand order as follows:

Gatewood respectfully contends [this Court's] June 13, 2017 remand to [the Department] is not consistent with, and does not enforce, the Court of Appeals' judgment of March 9, 2016 and remittitur of June 2, 2017 requiring [this Court] to reconsider Gatewood's entitlement to costs, attorney fees, pre and post-judgment interest in light of the Court of Appeals' opinion [*Muller v. Myrtle Beach Golf & Yacht Club*, 438 S.E. 2d 248, 249 – 250 (S.C. 1993)] (Once remittitur is sent down from Supreme Court, Circuit Court acquires jurisdiction to enforce judgment and take any action consistent with Supreme Court's ruling); Am Jur 2d (2007), App. Review, §§ 734-737, 740, 744). Gatewood further contends [this Court's] remand was outside its jurisdiction, null and void, and the proceeding is as if the remand had not occurred (Id., § 740; 20 Am Jur 2d (2015), Courts, § 63). Thus, Gatewood contends [this Court] has jurisdiction to consider the within petition for attorney fees. [emphasis supplied].

Gatewood completely and fundamentally misapprehended this Court's remand order. This Court simply did not, as he asserted in the above-quoted footnote, explicitly or implicitly declare in its remand order that it would not exercise its jurisdiction regarding Gatewood's

<sup>3</sup> In the footnote associated with this passage, this Court referenced S.C. Code Ann. § 15-77-300(B) (2016).

<sup>4</sup> See Petition, p. 1. On page 5, Gatewood again asserted that this Court's remand order "was null and void, and [this] Court has jurisdiction." [emphasis supplied].

entitlement to costs, attorney fees, pre-judgment, and post-judgment interest in light of the Court of Appeals' March 9, 2016 decision.

Instead, this Court declared *only* that it would hold in abeyance the determination of attorney's fees, which encompasses several factors, including the beneficial results obtained, pending the outcome of the grievance proceedings on both Gatewood's prison industries pay claims and the prison industries pay claims advanced by Gatewood's cohorts in *Ackerman*.

Likewise, the determination of any pre-judgment and post-judgment interest that may be due Gatewood cannot occur until the administrative grievance he filed with the Department under SCDC Policy Number GA-01.12 has been processed anew by the Department and, as part of its processing of his grievance, the Department has adjudicated the merits of the prison industries pay claims Gatewood articulated in his grievance in conformity with the Court of Appeals' March 9, 2016 decision.

Stated another way, this Court recognized the reality that a *final* result in Gatewood's favor does not yet exist, and, in the concluding paragraph of its June 13, 2017 remand order, it properly remanded Gatewood's grievance back to the Department, the original forum of record, for processing so that the Department may adjudicate the merits of his prison industries pay claims in conformity with *Gatewood*.

**C. THE COURT OF APPEALS' MARCH 9, 2016 DECISION DOES NOT REPRESENT A JUDGMENT IN GATEWOOD'S FAVOR**

Gatewood also misapprehended the Court of Appeals' March 9, 2016 decision in the above-quoted footnote from his Petition, because the Court of Appeals' decision does not represent a judgment in his favor.

1. **The Court of Appeals' March 9, 2016 decision resolved eight (8) issues associated with the order issued by this Court on April 29, 2014 order in the instant matter.**

The Court of Appeals' March 9, 2016 decision only resolved the following eight (8) issues associated with the order issued by this Court on April 29, 2014, by which this Court upheld the Department's denial of the prison industries pay claims Gatewood articulated in the grievance he filed with the Department under Policy GA-01.12:

1. Did this Court err in denying Gatewood's motion to supplement the record?
2. Did this Court err in applying § 24-1-295 rather than § 24-3-40 to determine the deductions from Gatewood's gross wages?
3. Did this Court err in holding that security and overhead constituted "other required deductions" for purposes of § 24-1-295?
4. Does § 24-1-295 apply retroactively to Gatewood's pre-August 1, 2007 work?
5. Did this Court err in holding that the issue of overtime was not preserved for review?
6. Did this Court err in denying Gatewood's request for pre-judgment interest, post-judgment interest, costs, and attorney's fees?
7. Did this Court err in declining to consider whether the Department should process grievances for all inmates participating "in the program?"
8. Did this Court err in declining to enjoin the Department from further wage violations?

*See Gatewood*, 785 S.E.2d at 605 (footnotes omitted).

By its March 9, 2016 decision, the Court of Appeals affirmed this Court's rulings on five (5) of the above-listed eight (8) issues (i.e. #1, #3, #5, #7, and #8), reversed on two (2) issues (i.e. #2 and #4), and remanded a single issue (i.e. #6) back to this Court.

Again, this Court, by its June 13, 2017 remand order, is only holding its consideration of issue #6 in abeyance.

In reversing on issues #2 and #4, however, the Court of Appeals did not calculate a net or even a gross back pay award for Gatewood, an award which would have constituted a judgment in Gatewood's favor.

2. **Several issues, including the "prevailing wage" applicable to Gatewood's labor in July 2007, remain to be adjudicated.**

Before such a judgment may be entered in Gatewood's favor, one essential issue, among several, remains to be adjudicated, namely the "prevailing wage," from S.C. Code Ann. § 24-3-430(D), applicable to the labor Gatewood voluntarily provided in July 2007 to the prison industries service project the Department operated at Lieber Correctional Institution.<sup>5</sup> See *Gatewood*, 785 S.E.2d at 605 – 08.

By its June 13, 2017 remand order, this Court simply recognized that Gatewood originally filed his grievance, in which he articulated his prison industries pay claims, with the Department under Policy GA-01.12. Thus, by its remand order, this Court properly recognized that the Department is the appropriate forum in which to adjudicate the "prevailing wage" during July 2007 and, by extension, the net back wage owed to Gatewood under the Court of Appeals' March 9, 2016 decision.

3. **Gatewood's "Motion and Memorandum for Appointment of Special Referee" is glaringly inconsistent with the footnote from his "Petition for Attorney Fees, Costs, and Pre and Post-Judgment Interest."**

In his "Motion and Memorandum for Appointment of Special Referee," Gatewood again assailed this Court's June 13, 2017 remand order:<sup>6</sup>

The initial reason to appoint a Special Referee is to comply with due process in the calculation of Gatewood's back wages. On June 13, 2017, the ALC issued an order of remand to [the Department] for "processing" to determine the "beneficial results obtained", apparently

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<sup>5</sup> See note 7 below.

<sup>6</sup> See "Motion and Memorandum for Appointment of Special Referee," pp. 2 – 3.

meaning Gatewood's back wages due. However, if [the Department] calculates [Gatewood's] back wages,<sup>7</sup> deductions and the like, in effect [the Department] will be determining its own damages. In such circumstances, [the Department] would not be an impartial adjudicator as required by due process. Moreover, Gatewood submits that [the Department's] litigation of this matter since 2004 demonstrates its "will to win" to avoid paying statutory wages, and thus, its partiality [*Ross v. Med. Univ. of S.C.*, 492 S.E.2d 62, 72 (S.C. 1997)]. [emphasis supplied].

By the above-quoted passage from his "Motion and Memorandum for Appointment of Special Referee," Gatewood clearly acknowledged the reality that the Court of Appeals' March 9, 2016 decision did not and does not constitute a judgment in his favor.

Moreover, Gatewood's "Motion and Memorandum for Appointment of Special Referee," to the extent this Court considers it viable,<sup>8</sup> and the above-quoted footnote from his "Petition for Attorney Fees, Costs, and Pre and Post-Judgment Interest" are glaringly inconsistent.

On the one hand, Gatewood asserted in the above-quoted footnote from his Petition that by remanding the merits of his prison industries pay claims back to the Department via its June 13, 2017 order, this Court both ran afoul of the Court of Appeals' March 9, 2016 decision and exceeded its own jurisdiction. According to Gatewood, the Court of Appeals' decision requires

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<sup>7</sup> On page 5 of his "Motion and Memorandum for Appointment of Special Referee," Gatewood addressed the "prevailing wage" applicable to his July 2007 labor as follows: "The prevailing wage should apply for July 2007, and should be at least \$12.06 per hour based on the 2004 estimates of economist Joe Benich in the record (citation to record and footnote omitted)." The Department, in its response denying his Step 1 grievance and its final decision denying his Step 2 appeal, rejected Gatewood's reliance on the "estimates" of the "prevailing wage" offered in 2004 by Dr. Benich. Gatewood, in advocating his methodology for calculating the back pay owed to him under the Court of Appeals' March 9, 2016 decision, now claims that the "estimates" of the "prevailing wage" offered by Dr. Benich in 2004, which addressed only the years 1999, 2000, and 2001, are dispositive on the calculation of his hourly rate of pay in July 2007. The applicability of Dr. Benich's "estimates" of the "prevailing wage" in 1999, 2000, and 2001, which Dr. Benich generated in 2004, to the hourly rate at which Gatewood should have been paid in July 2007 is dubious at best. The legitimacy of Dr. Benich's 2004 "estimates" is also dubious, particularly since his "estimates" did not account for the hourly rate at which the private industry sponsor involved in the "service" project at Lieber paid the workers it employed at the facility it operated near Lieber. Thus, Dr. Benich's "estimates" may well constitute rates of pay higher than the rates of pay the private industry sponsor paid its employees who performed similar or even identical job tasks at the facility it operated near Lieber.

<sup>8</sup> See Section III above, pp. 3 - 4, and Section V below, pp. 16 - 17.

this Court itself to not only “reconsider Gatewood’s entitlement to costs, attorney fees, pre and post-judgment interest,” but to also adjudicate the merits of his prison industries pay claims.

On the other hand, Gatewood asked this Court, by his “Motion and Memorandum for Appointment of Special Referee,” to refer the adjudication of the merits of his prison industries pay claim to a special referee rather than considering the merits of his claims itself.

By way of stating the obvious, Gatewood wants to have it both ways, and the Department urges this Court to recognize the glaringly inconsistent positions Gatewood embraced between the above-quoted footnote from his Petition and his “Motion and Memorandum for Appointment of Special Referee.”

Accordingly, the Department respectfully urges this Court to deny, to the extent it considers them viable,<sup>9</sup> both Gatewood’s “Motion and Memorandum for Appointment of Special Referee” and his “Petition for Attorney Fees, Costs, and Pre and Post-Judgment Interest.”

**4. Contrary to Gatewood’s assertion, the Department is not possessed of a “will to win” that undermines its impartiality.**

As an important aside, the Department is not possessed of any purported “will to win” which undermines its impartiality on remand in any way, as Gatewood asserted in the above-quoted passage from his “Motion and Memorandum for Appointment of Special Referee.”<sup>10,</sup>

As a state agency, the Department must diligently, fairly, correctly, and impartially apply the law, as well as comply with orders and decisions issued by the bench. During the litigation of both the instant matter and the consolidated matters which comprise *Ackerman*, the Department did nothing more than advocate its position that the prison industries pay claims

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<sup>9</sup> See Section III above, pp. 3 – 4, and Section V below, pp. 16 – 17.

<sup>10</sup> See note 6 above.

articulated in grievances filed in accordance with Policy GA-01.12 by Gatewood, as well as his cohorts in *Ackerman*, were subject to the fifteen-day filing deadline established in the policy.

The ALC, including this Court, upheld the Department's application of the fifteen-day filing deadline to grievances filed by inmates in which they articulated prison industries pay claims in myriad of instances, a sampling of which includes the following:

- *Bridgeman*, #130350, v. S.C. Dep't of Corr., Docket No. 09-ALJ-04-00610-AP;
- *Cramer*, #251406, v. S.C. Dep't of Corr., Docket No. 08-ALJ-04-00577-AP;
- *Daughtry*, #250139, v. S.C. Dep't of Corr., Docket No. 04-ALJ-00783-AP;
- *Grant*, #81314, v. S.C. Dep't of Corr., Docket No. 05-ALJ-04-750-AP;
- *Grimmett, Jr.*, #102226, v. S.C. Dep't of Corr., Docket No. 05-ALJ-04-00757-AP;
- *Larrimore*, #238126, v. S.C. Dep't of Corr., Docket No. 09-ALJ-04-00470-AP;
- *Manigault*, #280550, v. S.C. Dep't of Corr., Docket No. 05-ALJ-04-00756-AP;
- *McLemore*, #127966, v. S.C. Dep't of Corr., Docket No. 09-ALJ-04-00023-AP;
- *Pipkin*, #283616, v. S.C. Dep't of Corr., Docket No. 05-ALJ-04-00733-AP;
- *Pritchett*, #260687, v. S.C. Dep't of Corr., Docket No. 07-ALJ-04-690-AP;
- *Sapp*, #218694, v. S.C. Dep't of Corr., Docket No. 05-ALJ-04-00732-AP;
- *Sumter*, #242379, v. S.C. Dep't of Corr., Docket No. 05-ALJ-04-00749-AP;
- *Smiley*, #262734, v. S.C. Dep't of Corr., Docket No. 08-ALJ-04-00571-AP;
- *Williams*, #187203, vs. S.C. Dep't of Corr., Docket No. 06-ALJ-04-622-AP; and
- *Wright*, #200123, v. S.C. Dep't of Corr., 2006 WL 1430140 (ALJD Apr. 28, 2006).

Moreover, our Supreme Court in *Okeru v. S.C. Dep't of Corr.*, -- S.E.2d --, 2012 WL 10907962 (No. 2012-MO-042) (S.C. Oct. 24, 2012), albeit an unpublished per curiam decision, *affirmed* another decision by the ALC in which the ALC upheld SCDC's application of the fifteen-day filing deadline to an inmate's grievance in which the inmate articulated prison industries pay claims.

Considering the overwhelming number of instances in which the ALC and, for that matter, our Supreme Court upheld or otherwise endorsed the Department's application of the fifteen-day filing deadline to grievances in which inmates articulated prison industries pay claims, the Department's application of the fifteen-day deadline to the grievances filed by

Gatewood and his cohorts in *Ackerman* was grounded in a reasonable basis of law and fact, and it simply does not reflect a “will to win.”

In the instant matter, this Court recognized that Gatewood filed his grievance within fifteen days of the Department first paying him for his prison industries labor, and, consequentially, this Court did not find that the filing deadline from Policy GA-01.12 barred Gatewood’s grievance.

Instead, this Court considered the final decision rendered by the Department regarding the merits of the prison industries pay claims Gatewood articulated in his grievance when Gatewood appealed the Department’s final decision as contemplated in Section V of the ALC Rules of Procedure. By its April 29, 2014 order, this Court upheld the Department’s final decision on the merits of his prison industries pay claims, and Gatewood, as was his right, appealed this Court’s decision to our Court of Appeals.

Aside from the final decision it rendered regarding the merits of Gatewood’s prison industries pay claims, this Court has not considered any other final decision rendered by the Department regarding the merits of the prison industries pay claims articulated by any of Gatewood’s cohorts from *Ackerman*.

Again, all acts undertaken by the Department in defending Gatewood’s appeal of its final decision on the merits of his prison industries pay claims or in defending Gatewood’s appeal of this Court’s April 29, 2014 order upholding the Department’s final decision to our Court of Appeals were grounded in a reasonable basis of law and fact.

Consequentially, the Department, contrary to the assertions from the above-quoted passage in his “Motion and Memorandum for Appointment of Special Referee,<sup>11</sup>” is not possessed of any “will to win” that undermines its impartiality in considering anew the merits of

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<sup>11</sup> See note 6 above.

Gatewood's prison industries pay claims in conformity with *Gatewood* as directed by this Court's June 13, 2017 remand order.

**D. AS THIS COURT SITS EXCLUSIVELY IN ITS APPELLATE CAPACITY IN THE INSTANT MATTER, THE DEPARTMENT IS THE FORUM OF RECORD**

As explained above, Gatewood completely ignored the reality that the Court of Appeals' March 9, 2016 decision does not represent a judgment in his favor. As also explained above, Gatewood completely ignored the reality that under Section V of the ALC Rules of Procedure, this Court sits in its appellate capacity when reviewing the Department's final decisions.

As noted above, the 2009 Revised Notes to ALC Rule of Procedure 51 provide that the rules in Section V "are the exclusive rules of procedure used in *appeals*" by inmates from final decisions rendered by the Department, and this Court's jurisdiction to hear such appeals "is derived entirely from" our Supreme Court's decision in *Al-Shabazz*.

In *Wicker v. S.C. Dep't of Corr.*, 602 S.E.2d 56, 57 – 58 (S.C. 2004), our Supreme Court invoked *Al-Shabazz* when it recognized the reality that the ALC could review final decisions rendered by the Department concerning administrative grievances filed by inmates in accordance with Policy GA-01.12 in which the inmates articulated prison industries pay claims:

We are not unmindful of our opinion in [*Sullivan v. S.C. Dep't of Corr.*, 586 S.E.2d 124 (S.C. 2003)], in which we held the [ALC] has jurisdiction to review [SCDC] grievance proceedings only if they involve the denial of "state created liberty interests." There, we recognized that our opinion in [*Al-Shabazz*, 527 S.E.2d at 750], held that administrative matters typically arise in two ways: (1) when an inmate is disciplined and punishment is imposed and (2) when an inmate believes prison officials have erroneously calculated his sentence, sentence-related credits, or custody status. However, we did not limit *Al-Shabazz* to these two instances. The *Al-Shabazz* Court explained that procedural due process is guaranteed when an inmate is deprived of an interest encompassed by the Fourteenth Amendment's protection of liberty and property. [527 S.E.2d at 750].

We find the state's statutory mandate that inmates be paid the prevailing wage creates such an interest, which may not be denied without due process. [*Piatt v. MacDougall*, 773 F.2d 1032, 1036 (9th Cir. 1985)]. Accordingly, in this very limited circumstance,<sup>12</sup> we hold the [Department's] failure to pay in accordance with the statutes is reviewable by the [ALC]. [emphasis supplied].

As explicitly stated in the 2009 Revised Notes to Rule 51 and as reflected by the above-quoted passage from *Wicker*, this Court sits exclusively in its appellate capacity in reviewing final decisions rendered by the Department for grievances in which inmates challenge their prison industries pay, and the Department's administrative grievance process, as established in and by Policy GA-01.12, is the forum of record for all such matters.

In the footnote at the bottom of the first page of his "Petition for Attorney Fees, Costs, and Pre and Post-Judgment Interest,"<sup>13</sup> Gatewood invoked our Supreme Court's decision in *Muller*, 438 S.E. 2d at 249 – 250, in support of the following proposition: "Once remittitur is sent down from Supreme Court, Circuit Court acquires jurisdiction to enforce judgment and take any action consistent with Supreme Court's ruling."

Bluntly stated, Gatewood failed to analyze the above-quoted proposition from *Muller* in the context in which it was uttered. More precisely, Gatewood failed to account for the reality that the circuit court was the forum of record in the controversy examined in *Muller*.

However, the *Muller* Court, in the first paragraph from the section of its decision entitled "Facts," 438 S.E.2d at 249, acknowledged the obvious:

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<sup>12</sup> In the footnote associated with this passage from *Wicker*, 602 S.E.2d at 58, our Supreme Court commented as follows: "We note that our holding today is extremely limited and is not to be viewed as expanding the jurisdiction of the [ALC] in any other circumstance." [emphasis supplied].

<sup>13</sup> See note 4 above.

In 1988, [Muller] brought suit against Winters for foreclosure of a mechanic's lien and, alternatively, breach of contract and *quantum meruit*. **In Circuit Court Muller prevailed and was awarded attorney's fees** pursuant to S.C. Code Ann. § 29-5-10 (1991) (mechanic's lien statute). [emphasis supplied].

The *Muller* Court, *Id.*, continued with the relevant procedural history as follows:

Court of Appeals reversed this judgment. [*Muller v. Myrtle Beach Golf & Yacht Club*, 399 S.E.2d 430 (S.C. Ct. App.1990), *cert. dismissed* 408 S.E.2d 242 (S.C. 1991)]. The remittitur was then sent to the **Circuit Court** on August 21, 1991.

On September 17, 1991, Winters petitioned this Court for attorney's fees and costs pursuant to [South Carolina Appellate Court Rule 222]. He was advised that this Court no longer had jurisdiction since the remittitur had been sent down.

Winters then petitioned **Circuit Court** for attorney's fees and costs incurred in the trial phase, as well as the appellate and post-appellate phases of the case, pursuant to § 29-5-10. After a hearing, **Circuit Court** denied attorney's fees, holding that, absent a directive of the Supreme Court, it was without jurisdiction to act. **This appeal follows.** [emphasis supplied].

After identifying the issues on appeal, the *Muller* Court, in the first paragraph of the section of its decision entitled "Jurisdiction," 438 S.E.2d at 250, articulated the proposition Gatewood offered in the footnote from the bottom of the first page of his Petition:

The holding of Circuit Court that it was without jurisdiction to adjudicate the issue of attorney's fees was erroneous. **Once the remittitur is sent down from this Court, Circuit Court acquires jurisdiction to enforce the judgment and take any action consistent with the Supreme Court ruling.** [emphasis supplied and citations omitted].

Again, this Court did not, in its June 13, 2017 remand order, decline to exercise its jurisdiction over Gatewood's entitlement to costs, attorney fees, pre-judgment, and post-judgment interest in light of the Court of Appeals' March 9, 2016 decision; it simply held the determination of the same in abeyance.

By its June 13, 2017 order, this Court remanded the merits of Gatewood's prison industries pay claims back to the Department for processing and, by extension, adjudication. Like the circuit court in *Muller*, the Department, by and under Policy GA-01.12, is the forum of record for the adjudication of Gatewood's pay claims.

Once the Department adjudicates his pay claims and calculates the amount of any back pay to which he may be entitled in conformity with the Court of Appeals' March 9, 2016 decision, Gatewood may, as it his right, appeal the Department's final decision to this Court.

For clarity's sake, the Department also respectfully urges this Court, to the extent it may consider it viable,<sup>14</sup> to deny Gatewood's "Motion and Memorandum to Supplement the Record."

Gatewood may move for the inclusion of the materials he identified in his motion and memorandum, and which accompanied the same, while this controversy is on remand to the Department, the forum of record for the instant matter, pursuant to the Court's June 13, 2017 order. Should the Department deny any such motion he files, Gatewood may appeal the Department's denial to this Court and/or move this Court to supplement the record if and when he appeals whatever final decision the Department renders regarding his prison industries pay claims when it reconsiders them in light of *Gatewood*.

Thus, for the foregoing reasons, Gatewood's invocation of *Muller* is profoundly flawed, and, as such, it presents no legitimate grounds upon which this Court should consider any of Gatewood's three (3) filings dated June 30, 2017.

**V. THE DEPARTMENT MOVES TO STRIKE EACH OF GATEWOOD'S THREE (3) FILINGS DAED JUNE 30, 2017**

The appellant in *Muller* challenged the circuit court's denial of his petition for attorney's fees and costs by appealing it. Nothing in the procedural history discussed by our Supreme

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<sup>14</sup> See Section V immediately below.

Court in *Muller* indicates that the appellant advised the circuit court that its action was outside of its jurisdiction, null and void, and the matter before the circuit court remained as if the circuit court's denial of the petition for attorney's fees and costs had simply not occurred.

Gatewood's assertion, in the footnote on the first page of his Petition,<sup>15</sup> that this Court's June 13, 2017 remand order "was outside of [its] jurisdiction, null and void and the proceeding is as if the remand had not occurred" is absurd, and it represents nothing more than a conclusory statement lacking the support of any applicable precedent or rule of procedure.

By uttering such an assertion, Gatewood simply ignored, without any legitimate grounds, this Court's remand order as if it never existed. Unlike the appellant in *Muller*, Gatewood took no action to challenge, such as a motion to set aside, withdraw, or vacate, this Court's remand order, and, accordingly, this Court's remand order remains unfettered and in full effect.

Therefore, the Department respectfully asserts that each of Gatewood's three (3) filings dated June 30, 2017 were void ab initio, and it respectfully moves this Court to strike them. *See Channel Group, LLC, v. Parks*, 2013 WL 8541547 (S.C. Ct. App. Oct. 30, 2013) (quoting *Ness v. Eckerd Corp.*, 566 S.E.2d 193, 196 (S.C. Ct. App. 2002) and *I'On, L.L.C. v. Town of Mt. Pleasant*, 526 S.E.2d 716, 724 (S.C. 2000)). *See also Pee Dee Health Care*, supra.

## VI. CONCLUSION


For the reasons articulated above in Sections III and V respectively, this Court should strike each of Gatewood's three (3) filings dated June 30, 2017.

Should it deny the Department's motion to strike, this Court should, for all the foregoing reasons, deny each of Gatewood's three (3) filings dated June 30, 2017.

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<sup>15</sup> See note 4 above.

RESPECTFULLY SUBMITTED,



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Lake E. Summers

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Counsel for the Department

Columbia, South Carolina  
July 13, 2017

**THE STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

\_\_\_\_\_  
The Honorable Ralph King Anderson, III, Chief Administrative Law Judge  
\_\_\_\_\_

Fred Gatewood, # 289775, )  
)  
)  
Appellant, )  
)  
vs. )  
)  
South Carolina Department of Corrections, )  
)  
)  
Respondent. )  
\_\_\_\_\_

Docket No. 07-ALJ-04-0517-AP

**THE DEPARTMENT'S RESPONSE TO  
GATEWOOD'S FILINGS DATED  
JUNE 30, 2017 AND ITS MOTION  
TO STRIKE GATEWOOD'S FILINGS  
DATED JUNE 30, 2017**

**CERTIFICATE OF SERVICE**

I certify that I have served a copy of the Department's Response to Gatewood's Filings dated June 30, 2017 and its Motion to Strike Gatewood's Filings dated June 30, 2017 in the above-captioned matter on the Appellant by mailing a copy of it to his counsel, first class postage pre-paid, at the following address:

Douglas H. Westbrook, Esquire  
Attorney at Law  
23 Broad Street  
Charleston, South Carolina 29401

July 13, 2017

  
\_\_\_\_\_  
LAKLE E. SUMMERS

DOUGLAS H. WESTBROOK  
ATTORNEY AT LAW  
23 BROAD STREET  
CHARLESTON, SOUTH CAROLINA 29401  
TELEPHONE: (843) 853-9600  
FAX: (843) 577-2241

September 14, 2004

Mr. Darrell Williams  
#219730  
Lieber Correctional Institution  
P.O. Box 205  
Ridgeville, SC 29472

Re: Collection of Wages Against SCDC and Williams Technologies, Inc.; Supplement to August 27, 2002 Fee Agreement; Authorization to File a Grievance and Proceed Through ALJ and Court Channels

Dear Mr. Williams:

This will confirm our previous conversations concerning the above captioned matter.

This letter will supplement our August 27, 2002 Fee Agreement, and authorize me as class counsel in Williams, et al. v. SCDC, et al., Case No. 02-CP-18-134, and Darrell Williams as class representative, to file a grievance against SCDC for collection of wages, and pursue that grievance on behalf of the class through the Administrative Law Judge Division and Courts, if necessary.

My attorney fee will be one third of any amount recovered by the inmates by way of settlement, judgment, or otherwise, whether before or after suit is filed. I may ask the Court, in appropriate circumstances, to require the State to pay the attorney fees in this case pursuant to S.C. Code 15-77-300.

The attorney fee does not include any costs which may be incurred, which are the inmates' responsibility to pay, and must be paid in advance at my election.

The above described 33 1/3 % contingent fee is based on the gross amount recovered, before costs, and if approved by the Court, any statutory deductions are made.

Mr. Darrell Williams  
September 14, 2004  
Page Two

This supplemental fee agreement covers handling the case at the grievance level only, plus appeal to the ALJ Division and Circuit Court. I retain the right to include any appeal beyond the Circuit Court in this contingent fee agreement, and if that occurs, the attorney fee will increase to 40% of any amount recovered, and the inmates will bear the cost of any appeal costs.

I also retain the right to withdraw from representing you and the inmates if, after further investigation and research, I determine there is questionable liability and/or damages, or there is no likely source of funds from which an award or attorney fee could be paid. In addition, if you discharge me as your lawyer, I will be entitled to compensation for my services up to the time of discharge.

If the above is agreeable, please sign (and have the below named other inmates sign) and date the blanks by your name(s), and return all sheets to me.


Sincerely,



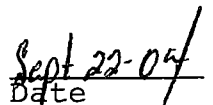
Douglas H. Westbrook

DHW/

I have read the attached supplemental fee agreement dated September 14, 2004, and understand and agree that it, along with the August 27, 2002 fee agreement, constitutes the fee agreement for this case. I further agree to make prompt payment of any expenses required. I also understand that the outcome of any litigation is uncertain, and that no promises of success in the case have been made to me.

✓   
Darrell Williams  
Class Representative

  
Signature

  
Date

J.M. J. Batewood, #289775

LC10871-04

I find that SCDC does not owe you back wages for the labor you provided as part of your participation in the prison industries project located here at Lieber. I also find that none of the authorities you discuss in your grievance require SCDC to pay you a different hourly rate than the hourly rate SCDC currently pays you for your prison industries labor. Therefore, I deny your grievance.

In making these findings, I consulted with Lieber's Inmate Grievance Coordinator. The Inmate Grievance Coordinator, in turn, consulted with SCDC's General Counsel's Office and SCDC's attorney in the class action lawsuit that raises the same issues you raised in your grievance, Williams, et al. v. SCDC, et al., Case No. 02-CP-180134. This attorney also represented SCDC in the South Carolina Supreme Court cases you reference in your grievance, Adkins, et al., v. SCDC and Wicker v. SCDC.

As a result of these efforts, I learned that a circuit court judge will soon consider motions filed by both SCDC and Williams Technologies, Inc. (WTI), the other defendant in the Williams lawsuit, to completely dismiss the case.

I also learned that former Inmate Darrell Williams, the named plaintiff in the class action lawsuit discussed above, also filed a grievance demanding SCDC take action similar if not identical to the action you demand in your grievance. I also learned that Mr. Williams' grievance claims to be a "class action" grievance on behalf of inmates like you. However, I learned that SCDC, in accordance with SCDC policy, terminated Mr. Williams' grievance when SCDC released him from its custody on October 1, 2004.

I conclude that neither the Adkins opinion nor the Wicker opinion ordered you or any other inmate in your position to file a grievance demanding the relief you demand in your grievance. These opinions merely allowed you and other inmates in your position to file such grievances.

I conclude that you are not an "employee" of WTI and that neither Adkins nor Wicker declare that you or inmates in your position are employees of WTI or any other private business. Therefore, to the extent you use the term "inmate/employee" to describe your position or status; I reject your use of that term. You and the other inmates in your position have been, are, and remain inmates lawfully confined within an SCDC facility, and you performed all of your labor in this prison industries project inside the walls of Lieber CI.

I conclude that while Adkins and Wicker discuss and interpret Section 24-3-430, they do not require that you or inmates in your position receive the "prevailing wage" at the rates set forth in Mr. Williams' now terminated grievance. Mr. Williams stated that the "prevailing wage" for work of a similar nature in the private sector was \$8.40 to \$10.97 per hour in 1999, \$9.74 to \$11.79 per hour in 2000, and \$10.10 to \$12.06 per hour in 2001. Mr. Williams based these wage ranges upon a one page memorandum from a College of Charleston Professor, Dr. Joseph Benich. Dr. Benich describes himself as an "Economic Loss Expert". Mr. Williams also stated in his now terminated grievance that, since July 2001, SCDC should have paid you and the other inmates in your position a "negotiated wage" of \$4.00 per hour for your labor under other South Carolina statutes.

I conclude that neither Adkins nor Wicker required SCDC to pay you or other inmates in your position the hourly wage rates as stated by Mr. Williams in his now terminated grievance.

Also, to the extent that you demand overtime wages in your grievance, I conclude that neither Adkins nor Wicker require SCDC to pay you or any other inmate in your position overtime wages for your prison industries labor during the time period you discuss in your grievance.

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To the extent that you want SCDC to recognize your grievance and the grievances filed by inmates in your position as a "class grievance", none of the authorities you discuss in your grievance require or even consider such recognition. Additionally, none of the authorities Mr. Williams discussed in his now terminated grievance require or even consider such recognition. Finally, none of the applicable SCDC policies or applicable rules of court require or even consider such recognition.

To the extent that you demand in your grievance the same "pre/post judgement interest, costs and attorney fees" Mr. Williams demanded in his now terminated grievance, SCDC's Inmate Grievance System Policy does not entitle you or any other inmate to any pre or post-judgement interest, costs or attorneys fees in connection with SCDC's review and processing of your grievance. Furthermore, SCDC's Inmate Grievance System Policy does not allow for your representation by an attorney at any phase of its review and processing of your grievance.

Therefore, I, again, deny your grievance.

If you desire you may appeal my response within five days of receipt via the Inmate Grievance Coordinator.

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As directed by the order filed July 1, 2005 and signed June 23, 2005 by Circuit Court Judge Diane S. Goodstein in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., civil action number 02-CP-18-0134, I have reviewed your Step 2 appeal dated November 2, 2004. Along with reviewing your Step 2 appeal, I have also reviewed any and all documents you submitted in support of your Step 1 grievance form dated October 16, 2004.

Additionally, your prison industries participation and pay records were reviewed by the responsible officials at both Lieber and Division of Industries Headquarters in Columbia. These records reflect that you began participating in the prison industries project at Lieber on September 28, 2004 and that, as of the date of this response, you are still participating in this project.

After carefully considering the arguments you made in both your Step 2 appeal and your Step 1 grievance, I deny your Step 2 appeal.

As I said at the very beginning of my response, I reviewed your Step 2 appeal and all of the other documents you submitted as directed by the order Judge Goodstein signed on June 23, 2005 order in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc. In the last section of the order she signed June 23, 2005, Judge Goodstein lifted a stay she first imposed on November 3, 2004 by which she halted SCDC's processing of all grievances filed by inmates, like yourself, in which the inmates demanded back wages or higher current wages for the labor they had provided or were currently providing to the prison industries project at Lieber in which Williams Technologies, Inc., acts as the private industry participant. Also within the last section of the order she signed June 23, 2005, Judge Goodstein restored both the grieving inmates and SCDC to the positions they held regarding their respective grievances and responses as of November 3, 2004, and she directed that her stay would be lifted approximately 60 days from the day she signed her order. However, as the attorney who represented the inmates in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., (Douglas Westbrook of Charleston) appealed other sections of the order Judge Goodstein signed on June 23, 2005, the section of Judge Goodstein's order by which she lifted the stay on grievance processing she first imposed on November 3, 2004 could not go into effect until the appellate courts of our state decided with finality the appeal of the other sections of her order.

On February 26, 2007, the South Carolina Supreme Court issued its opinion regarding the appeal filed by the inmates' attorney concerning the other sections of the order signed by Judge Goodstein on June 23, 2005, and the Court's opinion is cited as Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., 372 S.C. 255, 641 S.E.2d 885 (2007). In its opinion, the Supreme Court denied the appeal filed by the inmates' attorney and affirmed the decisions made by Judge Goodstein in the other sections of the order she signed June 23, 2005. Specifically, the Supreme Court affirmed Judge Goodstein's decision to dismiss the inmates' class action lawsuit in its entirety and the Supreme Court also affirmed Judge Goodstein's decision to dismiss the class of inmates she had recognized in earlier proceedings. The inmates' attorney filed a Petition for Rehearing with the Court, but, in an order issued March 21, 2007, the Court denied this Petition for Rehearing. On March 22, 2007, the Clerk of Court for Dorchester County received notice of the Supreme Court's denial of the Petition for Rehearing.

As a result of the Supreme Court's decision to deny the Petition for Rehearing filed by the inmates' attorney and the receipt of the Supreme Court's decision by the Clerk of Court for Dorchester County on March 22, 2007, the section of the order Judge Goodstein signed on June 23, 2005 order by which she lifted the stay on grievance processing she first imposed on November 3, 2004 finally went into effect. Therefore, SCDC had 60 days from the date the Dorchester County Clerk of Court received notice of the Supreme Court's denial of the Petition for Rehearing or May 22, 2007 to resume its processing of grievances including your Step 2 appeal.

The South Carolina Supreme Court, in two opinions it issued on August 23, 2004, first determined that you could file a grievance by which to protest any provision of the "prevailing wage" statutes that applied to the prison industries project in which you participated. These opinions are Adkins, et al., v. SCDC and

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Wicker v. SCDC. Both of these cases discussed S.C. Code Section 24-3-40, 24-3-310, et seq., and, specifically, 24-3-430. Under Wicker, the grievances must be filed, processed, and determined in accordance with the provisions of SCDC's Inmate Grievance System Policy.

SCDC Policy Number GA-01.12 is the policy that establishes SCDC's inmate grievance system. Paragraph 13.1 of SCDC's inmate grievance policy establishes a deadline by which inmates must file grievances for alleged incidents. Specifically, Paragraph 13.1 requires that an inmate must file a grievance "within 15 days of the alleged incident." Exceptions to this deadline appear in paragraph 13.9 of SCDC's policy.

I conclude, after again reviewing your Step 1 grievance and your Step 2 appeal in light of Adkins, Wicker, the deadline established by paragraph 13.1, and the exceptions to this deadline recognized by paragraph 13.9, that you did not submit your Step 1 grievance by the deadline set forth in SCDC's inmate grievance policy. You simply did not submit your grievance within 15 days of when SCDC first paid you an hourly wage that allegedly violated the applicable prison industries statutes and, specifically, Section 24-3-430. The 15 day deadline established in this policy applies to nearly every aspect of inmate activity, and no special exception applies to prison industries pay disputes. Consequentially, the 15 day deadline applies to your grievance.

Moreover, you filed your Step 1 grievance over 15 days after you first started participating in the project located at Lieber. Clearly, you exceeded the time frame associated with filing a grievance under SCDC's applicable policy.

In making this decision, I also rely upon the orders issued by the Administrative Law Court in James Wright, #200123, v. SCDC, ALC Docket No. 06-ALJ-04-00114-AP and Henry Williams, #187203, vs. SCDC, Docket No. 06-ALJ-04-00622-AP.

Also, even if you had met the time frames established in paragraphs 13.1 and 13.9, I find that you are not entitled to any of the relief you demand in your Step 1 grievance or your Step 2 appeal.

Contrary to the claims you made in your appeal and grievance, however, I conclude that neither the South Carolina Supreme Court's opinion in Adkins nor its opinion in Wicker ordered you or any other inmate in your position to file a grievance demanding the relief you demand in your Step 1 grievance. These opinions simply acknowledged for the first time that you and other inmates in your position could file such grievances if you desired.

Also, contrary to the claims you made in your appeal and grievance, I conclude that you have never been and are not currently an "employee" of either SCDC or Williams Technologies, and I also conclude that neither Adkins nor Wicker declared that you or inmates in your position are employees of SCDC, Williams Technologies, or, for that matter, or any other agency or company. I make this conclusion in reliance of the South Carolina Supreme Court's opinion in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., in which the Court recognized both that inmates are not "employees" of the State of South Carolina and that inmates are not the "employees" of prison industry sponsors like Williams Technologies.

Contrary to the claim you raised in your Step 2 appeal, I specifically conclude, under the Court's opinion in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., that SCDC did not act as an "agent" for Williams Technologies when it paid you for the labor you voluntarily provided to the prison industries project SCDC operates at Lieber.

Therefore, to the extent you use the term "inmate/employee" within your appeal and grievance to describe your position; I reject your use of that term. You and the other inmates in your position have been, are, and remain inmates lawfully confined within an SCDC facility, and you performed all of your labor in this prison industries project inside the walls of Lieber CI.

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I further conclude that while Adkins, Wicker, and, to some extent, Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., discuss and interpret Section 24-3-430, they do not require that you or inmates in your position receive the "prevailing wage" at the rates set forth in Mr. Williams' September 22, 2004 Step 1 grievance. Mr. Williams stated that the "prevailing wage" for work of a similar nature in the private sector was \$8.40 to \$10.97 per hour in 1999, \$9.74 to \$11.79 per hour in 2000, and \$10.10 to \$12.06 per hour in 2001. Mr. Williams based these wage ranges upon a one page memorandum from a College of Charleston professor, Dr. Joseph Benich. Dr. Benich describes himself as an "Economic Loss Expert." Mr. Williams also claimed in his September 22, 2004 Step 1 grievance that, since July 2001, SCDC should have paid you and the other inmates in your position a "negotiated wage" of \$4.00 per hour for your labor under other South Carolina statutes. Again, I conclude that no part of the South Carolina Supreme Court's opinions in Adkins, Wicker, or Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., required SCDC to pay you or other inmates in your position the hourly wage rates stated by Mr. Williams in his September 22, 2004 grievance.

Again, I conclude that no part of the South Carolina Supreme Court's opinions in Adkins, Wicker, or Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., required SCDC to pay you or other inmates in your position the hourly wage rates stated by Mr. Williams in his September 22, 2004 grievance.

Moreover, the hourly rate at which SCDC pays inmates for the labor they provide to any prison industries project may be different than the hourly rate at which SCDC leases the inmates' labor to the private company sponsor under the contract between SCDC and the private company sponsor.

To the extent that you demand overtime wages in your appeal or grievance, I conclude that neither Adkins nor Wicker nor, for that matter, Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc., require SCDC to pay you or any other inmate in your position overtime wages for your prison industries labor during the time period you discuss in your Step 1 grievance.

To the extent that you want SCDC to recognize your grievance and the grievances filed by inmates in your position as a "class grievance," none of the authorities you discuss in your appeal and grievance require or even consider such recognition. Additionally, none of the authorities Mr. Williams discussed in his September 22, 2004 Step 1 grievance requires or even considers such recognition. Finally, none of the applicable SCDC policies or applicable rules of court requires or even considers such recognition. Again, the South Carolina Supreme Court affirmed Judge Goodstein's decision to dismiss the class of inmates she had earlier recognized in Darrell Williams, Class Representative, et al., v. SCDC and Williams Technologies, Inc.

Finally, to the extent that you demand in your appeal or grievance the same "pre/post judgment interest, costs, and attorney fees" Mr. Williams demanded in his Step 1 grievance, no decision of the South Carolina Supreme Court nor any provision of SCDC's Inmate Grievance System Policy entitles you or any other inmate to any pre or post-judgment interest, costs or attorneys fees in connection with SCDC's review and processing of your grievance.

Therefore, I, again, deny your Step 2 appeal in its entirety.

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