

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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APPEAL FROM THE SC WORKERS COMPENSATION COMMISSION

Full Commission Order Dated April 28, 2017 Affirming Commissioner Melody L. James  
orders dated January 04, 2013 And September 30, 2013

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Case No: 2017-0001217

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John McDaniel, Employee, Claimant, Appellant

v.

Career Employment Professional D/B/A Snelling Staffing, Employer and United Wisconsin  
Insurance Co., Carrier, Respondents

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Reply To Return In Opposition Of Appellant's  
Motion to Strike Respondent's Initial Brief

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The Appellant hereby responds to Respondents return in opposition to Appellant's Motion to  
Strike. The Respondents return is based on dispersions, vagaries, nonsensical interpretations and non-  
topical truisms, all while failing to directly retort to the Appellant's motion.

Respondents argue the following:

- 1) Appellant's Motion to Strike is clearly retaliatory in nature.
- 2) Appellant's motion is meritless.

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- 3) The Court implicitly granted Respondents Motion to Strike. As a result, (of the implicit granting) the Initial Brief of Respondents was timely filed, and there was and is no need for them to file a motion for leave to file out of time.
- 4) Respondents do not believe the remainder of Appellant's Motion to Strike warrants a detailed response.
- 5) Appellant knowingly chose to proceed pro se, thus, he assumed full responsibility for complying with substantive and procedural requirements of the law.

Then the Appellant will directly address the Respondent's prayer for relief;

- 6) "For the reasons stated herein, Respondents request that this Court deny Appellant's Motion to Strike and order Appellant to file the record on appeal in a timely manner so that this appeal may move forward."

**1) Appellant's Motion to Strike is clearly retaliatory in nature.**

The assertion that the Appellant filed his motion in retaliation is another example of the Respondents casting dispersions upon the Appellant. The exercise of a legally available remedy, based on *legally cognizable facts*, is in no way retaliatory. Although the Respondent's filed their Initial Brief late the Appellant did not move to strike the Respondent's brief on those grounds, until after responding to Respondent's Motion to Strike the Appellant's reply brief.

The Respondents confuse "reactionary" with "retaliatory." The Appellant's Motion to Strike was filed as a reaction to the Respondent's Motion to Strike. The Respondents are seasoned attorneys and must understand that certain actions need be taken at certain times, under threat that those claims made be dismissed if they are not timely pursued.

If the Appellant failed to file a Motion to Strike based on the fact that the Respondents filed their brief late, after the Respondent's filed a Motion to Strike the Appellant's brief for being late, a disparate outcome could result, although the parties acted in substantially the same manner.

The only way the Appellant can protect a fair outcome is to engage in the same actions as his adversary. If the Respondents had not filed a Motion to Strike the Appellant would not have either. Vis-à-vis, the Appellant is protecting his rights in substantially the same manner that the Respondents are protecting theirs.

**2) Appellant's motion is meritless.**

This defense has become tiresome. The Respondents constantly assert that all of the pleadings from the Appellant are meritless. Simply saying something is meritless does not make it meritless. The Respondents have constantly failed to retort directly to the Appellant's claims, and have continued to engage in character assassination.

Of note, the last time the parties were in front of this Court, case number 2014-000186, the Appellant had his case remanded to the SCWCC for lack of proper notice. At the time, the Respondents asserted that that issue was also "meritless".

**3) The Court "implicitly granted" Respondents Motion to Strike. As a result, (of the "implicit granting") the Initial Brief of Respondents was timely filed, and there was and is no need for them to file a motion for leave to file out of time.**

The Appellant is absolutely blindsided by this nonsensical assertion by the Respondents. The Respondents assert that an "implicit granting in part" of their motion was ordered by the Court through the Courts explicit denial of Respondent's Motion to Strike the Appellant's Initial Brief.

Respondents “requested that the briefing schedule be stayed while the Court considered their motion... The Court issued its order on Respondent’s Motion to Strike on August 28, 2017. In that order, the Court implicitly granted Respondents request that the briefing schedule be stayed by explaining that nothing prevented Respondents from referencing **in their brief** any documents included in the record that were not admitted below and arguing those documents should not be relied on by this Court.’ (Emphasis added by Respondents) Respondents filed their Initial Brief three days later, on August 31, 2017. As a result, the Initial Brief of Respondents was timely filed, and there was and is no need for them to file a motion for leave to file out of time.

It appears that the Respondents think that;

- a) rule 240(b) automatically grants Respondents request that the briefing schedule be stayed;
- b) or, in the alternative, the Courts “implicitly granted” Respondents request with the words, “in their brief,”
- c) and, the Respondents assert the Court is unable to clearly author their orders, as if the Court does not have the option to grant in part and deny in part any motions that come before them.

a) **S.C.A.C.R., Rule 240 (b) Stay of Time Limits.** Unless otherwise provided by these Rules, or ordered by the appellate Court, the time limits imposed by these Rules shall not be stayed by the filing of a motion or petition. A motion to dismiss an appeal or a motion to relieve counsel shall, however, automatically stay the time limits for perfecting the appeal until the motion is decided.

The Respondents site rule 240 as a reason that their brief is not late. Their Motion to Strike portions of the Appellant’s Initial Brief was neither a motion to dismiss an appeal nor a motion to relieve

counsel, thus, the Respondents motion does not automatically stay the time limits for perfecting the appeal.

Absent an automatic stay, the Respondents may look to “unless otherwise provided by these rules” and “ordered by the appellate Court.”

As to, “unless otherwise provided by these rules”, the Respondents do not plea that any other rules allow their reply brief to be filed late, thus this portion of the rule is inapplicable.

As to, “ordered by the appellate Court”, the Appellant asserts that the appellate Court has not ordered a stay to the briefing schedule as requested by the Respondents in their Motion to Strike Appellant’s brief.

In fact, the Respondents requested a stay of the filing schedule, and that request was explicitly denied by the Court, when the motion was unconditionally denied.

Thus, the Respondents Motion to Strike the Appellant’s Initial Brief had no effect on altering the Respondents due date to file their Initial Brief of August 22, 2017. When the Respondents allegedly served their brief on August 31, 2017, the due date had passed and a cause of action to strike their brief came into existence. This cause of action can be overcome by motion to the Court, and the Respondents have failed to motion the Court to accept their Initial Brief late.

Thus this Court should strike the brief of the Respondents.

b) **The Courts “implicitly granted” Respondents request for an extension of time to file with the words, “in their brief.”**

This assertion would absolutely turn the legal system on its head. This assertion disagrees with the basic principles of English. The Respondents are arguing, the words “in their brief” is a synonym for the

phrase, "Respondents request that the briefing schedule be stayed is hereby ordered by the Court of Appeals of South Carolina."

The position of the Respondents here is simply nonsense, and the Respondents must be aware of that. These are the kinds of legal arguments that seriously call into question the integrity of the Respondents counsel. Thus, the Court should grant the Appellant's motion and warn MGC against offering any further frivolous defenses.

**c) The Respondents assert the Court is unable to clearly author their orders, as if the Court does not have the option to grant in part and deny in part any motions that come before them.**

This Court has a long history of granting in part and denying in part motions that come before them. For the Respondents to imply that the Court does not have the ability to clearly author orders is disrespectful to this Court.

The Appellant is certain if the Court had meant to grant any part of the Respondents motion that the order would have clearly said so, thus, the Respondents brief was filed late and should be stricken by this Court.

**4) Respondents do not believe the remainder of Appellant's Motion to Strike warrants a detailed response.**

The Appellant believes that the Respondents showed great disrespect for this Court by failing to retort directly to the concerns raised by the Appellant in his Motion to Strike. The Court finds itself able to treat disrespect accordingly, thus, the Respondents Initial Brief should be stricken.

**5) Appellant knowingly chose to proceed pro se, thus, he assumed full responsibility for complying with substantive and procedural requirements of the law.**

The Appellant did not analyze the standards of conduct to imply that the Appellant should be held to a different set of rules than the Respondents. The analysis was meant to draw the Courts attention to what should be considered a “good reason” for the Court to accept the filings late. Although the Appellant and the Respondents should be, and in reality they are, held to the same set of rules, that set of rules allows certain deficiencies to be overcome.

When weighing what constitutes a sufficient reason the Court should look to the individual circumstances of the parties. The individual circumstances of the parties should be well-thought-out when considering the amount of clemency to be given for a violation of the rules of Court.

Said another way, a law firm as large as MGC would have to present a much more compelling reason for filing 10 days late than a pro se litigant. A simple illness can affect a pro se litigant, however if any of the named attorneys from MGC had the same simple illness, MGC would be able to carry on the case without missing a beat. Thus, pro se litigants and attorneys while abiding by the same set of rules should not necessarily be given the same amount of clemency when a violation has occurred.

The Appellant does not understand how his status as a pro se litigant, could act as a defense, or a reason why the Court should not strike the Respondents Initial Brief upon motion of the Appellant. The Respondents cite two cases as discussed below, and Appellant feels the need to respond to all of the Respondents arguments.

As to Goodson V American Bankers Ins. Co. of Fla., 295 S.C. 400, 403, 368 S.E.2d 687 (1988)  
“Secondly, a party has a duty to monitor the progress of his case. Lack of familiarity with legal proceedings is unacceptable and the Court will not hold a layman to any lesser standard than is applied to an attorney.”

Goodson was seeking post-trial relief based on a layman failing to include their address on the answer to the complaint by American, which resulted in a default judgment being entered.

The facts of the current case are quite contrary to Goodson. In the current case, the Appellant only became aware of the Respondents filing an initial response brief after accessing the Courts website, in order to monitor the progress of his case. This was done sometime after September 5, 2017 as that was the date on the registered mail notice received by the Appellant. Checking the Courts website was necessary as the Appellant was never served the Respondents Initial Brief. As discussed in the reply to Respondent's Motion to Strike and in Appellant's motion to accept Appellant's initial reply brief, the Respondents only sent their motion registered mail. The Appellant never received the regular or registered mail, and the Respondents never assert that it was served by regular mail also.

As to State V Burton, 356 S.C. 259, 265, 589 S.E.2d 6, 9 (2003) footnote 5, "a pro se litigant who knowingly elects to represent himself assumes full responsibility for complying with substantive and procedural requirements of the law."

The Appellant does not believe that the Respondents are accusing him of failing to comply with substantive law, therefore the only applicable part of the above truism is that a pro se litigant assumes responsibility for complying with procedural requirements of law.

The procedural requirements of the law under rule 240 and rule 263, S.C.A.C.R., both allow for the filing of motions and for the extension of time to file.

Rule 240, S.C.A.C.R., allows for the Appellant to move the Court to act on specifically requested relief.

Rule 263 (b) S.C.A.C.R., Extending and Diminishing Time Prescribed by These Rules. The time prescribed by these Rules for performing any act except the time for serving the notice of appeal under

Rules 203 and 243 may be extended or shortened by the appellate Court, or by any judge or justice thereof.

As soon as the Appellant became aware that the Respondents were challenging the timeliness of the filing of his reply brief the Appellant filed a motion to accept. The Rules of Court allow for such motions, and the Appellant feels that he has presented compelling reasons for the Court to show leniency by not striking the Appellant's brief under motion of the Respondents.

**6) a) "For the reasons stated herein, Respondents request that this Court deny Appellant's Motion to Strike and b) order Appellant to file the record on appeal in a timely manner so that this appeal may move forward."**

a) The Respondents did not give any reasons other than to say the filing was not late. The Respondents should have pled alternatively, that if the Court found they had filed late that it was because of excusable mistake or other valid reason. When the Respondents fail to plead any alternatives, the Court must find if the only grounds pled upon are factually correct or incorrect. In this case, the Respondents assertion that they filed timely is factually inaccurate. Appellant filed his Initial Brief and designation of matter on July 22, 2017, thus the due date for Respondents Initial Brief was August 22, 2017.

The Respondents argument never put forth an actual due date that their brief should of been filed by. This should absolutely send up red flags for this Court. If the Respondents failed to proffer a due date, the Court must accept the due date put forth by the Appellant, and absent good reason for the late filing of the Respondents brief, the Court should strike the Respondents brief.

b) The Appellant served the record on appeal on Friday, the 20<sup>th</sup> of October, 2017. The Appellant understands that he can refile the record on appeal or modify what will be filed based on the outcome of the current motions. The Appellant also understands that although he requested the scheduling for

the record on appeal be delayed while the motions were determined, simply filing a motion does not stay any time limits automatically. Thus, the Appellant filed the record on appeal when it was due under the Rules of Court.

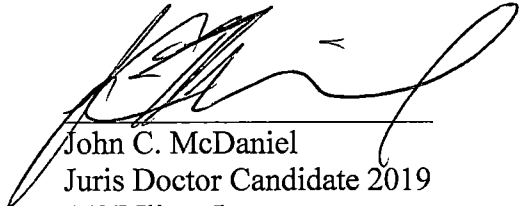
I would like to draw the Courts attention to a specific phrase in the Respondent's prayer for relief. Respondents state the Court should order the Appellant to file the record on appeal "in a timely manner so that this appeal may move forward." As if the Appellant were responsible for the delays in the Court hearing this case.

The Respondents have literally moved to strike every single pleading that the Appellant has filed with this Court. To then imply that the Appellant is responsible for the delays is another example of the Respondents engaging in the casting of dispersions upon the Appellant.

#### **Conclusion**

For the reasons stated herein, and to uphold the integrity of the legal system, the Appellant requests this Court to strike the Initial Brief of the Respondents.

October 23, 2017



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IN THE COURT OF APPEALS

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Career Employment Professional D/B/A Snelling Staffing, Employer and United Wisconsin  
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I certify that I have served Appellant's Reply to Respondents Return/Motion to Strike by  
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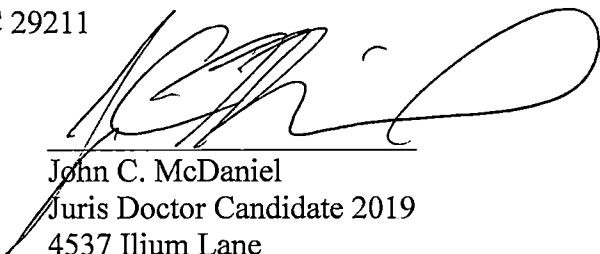
**Via USPS**

Helen F. Hiser  
R. Mark Davis  
McAngus, Goudelock & Courie, LLC  
735 Johnnie Dodds Blvd., Suite 200  
Mount Pleasant, SC 29465

**Via UPS**

Jenny Abbott Kitchings  
SC Court of Appeals  
Clerk of Court  
PO Box 11629  
Columbia, SC 29211

October 23, 2017



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October , 2017

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McAngus Goudelock & Courie, LLC  
735 Johnnie Dodds Blvd., Suite 200  
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RE: John C. McDaniel v. Career Employment Professional d/b/a Spelling Staffing  
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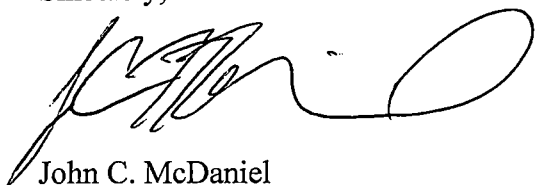
Dear Ms. Kitchings,

Enclosed for filing, please find Appellant's Reply to Return / Motion to Strike, Proof of Service for same, along with Proof of service of the record on appeal. At your earliest conveniences please file the original.

By copy of this letter, I am serving counsel of record with same.

Please call me if you have any questions about the enclosed. Thank you for your time.

Sincerely,



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4537 Ilium Lane  
Grand Rapids, MI 49534  
Phone Number: 843-425-3000  
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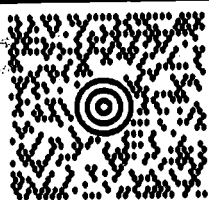
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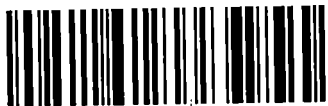
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COLUMBIA SC 29201-3769

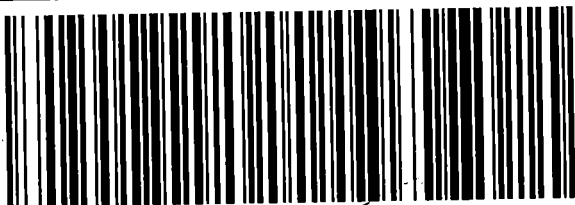


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