

THE STATE OF SOUTH CAROLINA  
In The Supreme Court  
APPEAL FROM THE ADMINISTRATIVE LAW COURT  
Ralph K. Anderson, III, Administrative Law Judge

RECEIVED  
DEC 08 2017  
SC Court of Appeals

Order (S.C. Ct. App. filed Oct. 17, 2017)

Dock Nos. 07-ALJ-04-00444-AP, 07-ALJ-04-00445-AP, 07-ALJ-04-00446-AP, 07-ALJ-04-00447-AP, 07-ALJ-04-00448-AP, 07-ALJ-04-00449-AP, 07-ALJ-04-00500-AP, 07-ALJ-04-00501-AP, 07-ALJ-04-00502-AP, 07-ALJ-04-00503-AP, 07-ALJ-04-00504-AP, 07-ALJ-04-00505-AP, 07-ALJ-04-00506-AP, 07-ALJ-04-00507-AP, 07-ALJ-04-00508-AP, 07-ALJ-04-00509-AP, 07-ALJ-04-00510-AP, 07-ALJ-04-00511-AP, 07-ALJ-04-00512-AP, 07-ALJ-04-00513-AP, 07-ALJ-04-00514-AP, 07-ALJ-04-00515-AP, 07-ALJ-04-00516-AP, 07-ALJ-04-00517-AP, 07-ALJ-04-00518-AP, 07-ALJ-04-00519-AP, 07-ALJ-04-00520-AP, 07-ALJ-04-00521-AP, 07-ALJ-04-00522-AP, 07-ALJ-04-00523-AP, 07-ALJ-04-00524-AP, 07-ALJ-04-00525-AP, 07-ALJ-04-00526-AP, 07-ALJ-04-00527-AP, 07-ALJ-04-00528-AP, 07-ALJ-04-00529-AP, 07-ALJ-04-00530-AP, 07-ALJ-04-00531-AP, 07-ALJ-04-00532-AP, 07-ALJ-04-00533-AP, 07-ALJ-04-00534-AP, 07-ALJ-04-00535-AP, 07-ALJ-04-00536-AP, 07-ALJ-04-00537-AP, 07-ALJ-04-00538-AP, 07-ALJ-04-00539-AP, 07-ALJ-04-00540-AP, 07-ALJ-04-00541-AP, 07-ALJ-04-00542-AP, 07-ALJ-04-00543-AP, 07-ALJ-04-00544-AP, 07-ALJ-04-00545-AP, 07-ALJ-04-00546-AP, 07-ALJ-04-00547-AP, 07-ALJ-04-00548-AP, 07-ALJ-04-00549-IJ, 07-ALJ-04-00550-AP, 07-ALJ-04-00551-AP, 07-ALJ-04-00552-AP, 07-ALJ-04-00553-AP, 07-ALJ-04-00554-AP, 07-ALJ-04-00555-AP, 07-ALJ-04-00556-AP, 07-ALJ-04-00557-AP, 07-ALJ-04-00558-AP, 07-ALJ-04-00559-AP, 07-ALJ-04-00623-AP, 07-ALJ-04-00624-AP, 07-ALJ-04-00625-AP, 07-ALJ-04-00626-AP, 07-ALJ-04-00627-AP, 07-ALJ-04-00628-AP, 07-ALJ-04-00629-AP, 07-ALJ-04-00630-AP, 07-ALJ-04-00631-AP, 07-ALJ-04-00632-AP, 07-ALJ-04-00671-AP, 07-ALJ-04-00672-AP, 07-ALJ-04-00673-AP, 07-ALJ-04-00674-AP, 07-ALJ-04-00675-AP, 07-ALJ-04-00676-AP, 07-ALJ-04-00677-AP, 07-ALJ-04-00691-AP, 07-ALJ-04-00752-AP, 07-ALJ-04-00798-AP, 07-ALJ-04-00856-AP, 07-ALJ-04-00857-AP, 07-ALJ-04-00858-AP, 07-ALJ-04-00859-AP, 07-ALJ-04-00860-AP, 07-ALJ-04-00861-AP, 07-ALJ-04-00862-AP, 07-ALJ-04-00863-AP, 07-ALJ-04-00864-AP, 07-ALJ-04-00865-AP, 07-ALJ-04-00866-AP, 07-ALJ-04-00867-AP, 07-ALJ-04-00868-AP, 07-ALJ-04-00869-AP, 07-ALJ-04-00870-AP, 07-ALJ-04-00871-AP, 07-ALJ-04-00872-AP, 07-ALJ-04-00444-AP, 07-ALJ-04-00876-AP, 07-ALJ-04-00885-AP, 08-ALJ-04-00141-AP, 08-ALJ-04-00142-AP, 08-ALJ-04-00143-AP, 08-ALJ-04-00144-AP, 08-ALJ-04-00145-AP, 08-ALJ-04-00146-AP, 08-ALJ-04-00147-AP, 08-ALJ-04-00148-AP, 08-ALJ-04-00149-AP, 08-ALJ-04-00169-AP, 08-ALJ-04-00170-AP, 08-ALJ-04-00171-AP, 08-ALJ-04-00192-AP, 08-ALJ-04-00966-IJ, 08-ALJ-04-00967-IJ, 08-ALJ-04-00968-IJ, 08-ALJ-04-00969-IJ, 08-ALJ-04-00970-IJ, 08-ALJ-04-00971-IJ, 08-ALJ-04-00972-IJ, 08-ALJ-04-00973-IJ, 08-ALJ-04-00974-IJ, 08-ALJ-04-00975-IJ, 08-ALJ-04-00976-IJ, 08-ALJ-04-00977-IJ, 08-ALJ-04-00978-IJ, 08-ALJ-04-00979-IJ, 08-ALJ-04-00980-IJ, 08-ALJ-04-00981-IJ, 08-ALJ-04-00982-IJ, 08-ALJ-04-00983-IJ, 08-ALJ-04-00984-IJ, 08-ALJ-04-00985-IJ, 08-ALJ-04-00986-IJ, 08-ALJ-04-00987-IJ, 08-ALJ-04-00988-IJ, 08-ALJ-04-00989-IJ, 08-ALJ-04-00990-IJ, 08-ALJ-04-00991-IJ, 08-ALJ-04-00992-IJ, 08-ALJ-04-00993-IJ, 08-ALJ-04-00994-IJ, 08-ALJ-04-00995-IJ, 08-ALJ-04-00996-IJ, 08-ALJ-04-00997-IJ, 08-ALJ-04-00998-IJ, 08-ALJ-04-00999-IJ, 08-ALJ-04-01000-IJ, 08-ALJ-04-01001-IJ, 08-ALJ-

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v.

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

Court of Appeals Appellate Case No. 2017-002086

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PETITION FOR A WRIT OF CERTIORARI

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\* Docket No. 07-ALJ-04-00826-AP may concern an unrelated case. Also, inmate Jeffrey Spears' correct number is 281697.

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Pursuant to SCACR 242(a), Francis Ackerman, et al. (inmates) petition the Court for a Writ of Certiorari to review the final decision of the Court of Appeals in this case.

#### CERTIFICATION OF COUNSEL

Pursuant to SCACR 242(d)(1), inmates' undersigned counsel certifies that a petition for rehearing was made on October 27, 2017, and finally ruled on and denied by the Court of Appeals on November 8, 2017 (App. pp. 13, 60).

#### QUESTION PRESENTED

Did the Court of Appeals err in deciding the ALC's rulings at the September 7, 2017 status conference were not final decisions and thus not appealable?

#### STATEMENT OF THE CASE

This appeal involves inmates' grievances for past due wages under South Carolina law. Inmates worked in the Lieber/Williams Technologies (WTI) work program at various times between 1999 and at least 2013. When they worked, S.C. Code §24-3-430(D), the "prevailing wage" statute, was replaced by budget provisos beginning in July 2001. In 2007, the provisos were codified in §24-1-295.

On August 23, 2004, this Court held inmates could file prevailing wage grievances with SCDC and appeal to the Administrative Law Court (ALC) (Adkins, et al. v. SCDC 360 S.C. 413, 602 S.E. 2d 51 (S.C., 2004); Wicker v. SCDC 360 S.C. 421, 602 S.E. 2d 56 (S.C., 2004)). In September 2004, inmates signed the September 14, 2004 fee contract with counsel (App. p. 102). Also in September, many inmates filed wage grievances with SCDC. In 2007, SCDC denied these grievances for failure to timely file and on the merits.

Most inmates appealed to the ALC in 2007. In 2012, the ALC ruled all grie-

vances but one (Fred Gatewood) were untimely filed.

Inmates appealed the adverse decision to the Court of Appeals. On February 10, 2016, the Court of Appeals issued its decision reversing the ALC and remanding "...for the ALC's consideration of Inmates' grievances on the merits" (Ackerman, et al. v. SCDC 415 S.C. 412, 782 S.E. 2d 757, 762 (S.C. App., 2016)).

On May 30, 2017, this Court denied the petition for certiorari (App. p. 4). On June 2, 2017, the Court of Appeals issued the remittitur to the ALC (App. p. 14). On June 13, 2017, the ALC remanded the case "...to the South Carolina Department of Corrections for consideration of Appellants' grievances on the merits in keeping with the Court of Appeals decisions in Ackerman and Gatewood .." (App. p. 18).

On June 30, 2017, inmate Gatewood filed his petition for attorney fees, costs and pre and post-judgment interest in the ALC pursuant to S.C. Code §15-77-300, original 1985 version, and the 2004 fee contract. Gatewood also filed a motion for appointment of a special referee to calculate back wages and other matters (App. p. 85).

On September 7, 2017, the ALC held a status conference and made certain rulings affecting these cases (App. p. 24). On October 5, 2017, inmates appealed the rulings to the Court of Appeals (App. p. 22). Before the parties filed the briefs or record, the Court on October 17, 2017 issued an order dismissing the appeal as interlocutory (App. p. 8). On October 27, 2017, inmates filed a petition for rehearing with the Court (App. p. 60). On November 8, 2017, the Court issued its order denying the petition (App. p. 13).

## ARGUMENT

**The Court of Appeals should have decided that the ALC rulings at the September 7, 2017 hearing were final decisions and thus appealable.**

In its order dismissing the appeal, the Court of Appeals stated, in part, as follows (App. p. 8):

The notice of appeal filed in this case indicates the appeal is taken from statements made by the Administrative Law Judge during a status conference on this case. Because the decision of the Administrative Law Judge is not a **final** decision, this appeal is dismissed as interlocutory..

The notice of appeal stated it was appealing the rulings of the ALC during the September 7, 2017 hearing (App. p. 22). Moreover, the notice of appeal attached the hearing transcript containing these rulings (App. p. 24). Inmates contend the appeal of an ALC ruling necessarily encompasses the question of whether the ruling is a final order and thus appealable. Therefore, inmates contend the issue of appealability was raised in the Court of Appeals. The issue was also raised and discussed in the petition for rehearing (App. pp. 60-77).

Inmates contend the ALC rulings were final orders under Charlotte-Mecklenburg Hosp. Auth. v. DHEC 387 S.C. 265, 267, 692 S.E. 2d 894 (S.C., 2010), and cases relied on by the Court to explain the meaning of "finality": Mid-State Distributors, Inc. v. Century Importers, Inc. 310 S.C. 330, 426 S.E. 2d 777, 780-781 (S.C., 1993) (Regarding issue of appealability of denial of a motion to dismiss for lack of personal jurisdiction, the Court held there was no finality in the denial, and defendant could still show a lack of personal jurisdiction at trial); and Good v. Hartford Accident & Indem. Co. 201 S.C. 32, 21 S.E. 2d 209, 212 (S.C., 1942) (Regarding issue of appealability of trial

court's rulings, the Court approved principles that a final order or decree must dispose of the cause, or a distinct branch thereof, or operate to divest some right in such a manner as to put it out of court).

I. Rulings Affecting a Distinct Branch of the Case

The ALC believed it did not have to carry out the Court of Appeals' remand because the ALC only has appellate jurisdiction and the Court of Appeals' remand is dictum (App. pp. 30-32). Inmates contend the ALC has jurisdiction and is duty bound to carry out the Court of Appeals' remand order (Muller v. Myrtle Beach Golf & Yacht Club 313 S.C. 412, 414-415, 438 S.E. 2d 248 (S.C., 1993) (Once remittitur is sent down from Supreme Court, Circuit Court "acquires jurisdiction" to enforce the judgment, and is vested with jurisdiction to determine attorney fees); Prince v. Beaufort Mem. Hosp. 392 S.C. 599, 709 S.E. 2d 122, 125 (S.C. App., 2011) (Appellate court's mandate is "jurisdictional", and trial court has a duty to follow appellate court's directions); SCDSS v. Basnight 346 S.C. 241, 250-251, 551 S.E. 2d 274, 279 (S.C. App., 2001); and Ackerman v. McMillan 324 S.C. 440, 443, 477 S.E. 2d 267, 268 (S.C. App., 1996)).

On June 13, 2017, the ALC remanded this case back to SCDC (App. p. 18). The ALC now believes it does not have jurisdiction to carry out the Court of Appeals' remand. Inmates submit the ALC ruling may cause inmates to lose the right to have the ALC consider the issue specified in the Court of Appeals' remand, which is a distinct branch of the case (Mid-State Distributors, Inc. v. Century Importers, Inc. 426 S.E. 2d at 780-781; Good v. Hartford Accident & Indem. Co., 21 S.E. 2d at 212). Thus, inmates submit the ALC ruling is "final" for purposes of appealability.

The ALC stated it did not have contested case, but only appellate jurisdiction (App. p. 33). Inmates contend the ALC has appellate and contested case jurisdiction (ALC Rule 2(E) ("Contested case" means a hearing required by due process or otherwise provided by law); J. Toal, Appellate Practice in South Carolina, 3d Ed., 2016, p. 74 (ALC can have both contested case and appellate jurisdiction). Here, Wicker, 602 S.E. 2d at 58 note 1 granted ALC appeal rights as a requirement of due process. In the instant matter, the ALC acquired jurisdiction to consider inmates' grievances on the merits by the Court of Appeals' remand and remittitur to the ALC in 2016 and 2017, respectively. Thus, inmates contend the ALC has appellate and contested case jurisdiction pursuant to Rule 2(E), Wicker, and the Court of Appeals' remand and remittitur.

Inmates submit the ALC ruling may cause inmates to lose the right to have the ALC consider the issue specified in the Court of Appeals' remand, which is a distinct branch of this case (Mid-State Distributors, Inc., 426 S.E. 2d at 780-781; Good, 21 S.E. 2d at 212). Thus, inmates submit the ALC ruling is "final" for purposes of appealability.

The ALC stated it did not have jurisdiction because of the pending appeal to the Court of Appeals of the ALC's June 13, 2017 remand to SCDC (App. pp. 27, 30, 35, 47, 48). Inmates contend the ALC retains jurisdiction notwithstanding the appeal (Jackson v. Speed 326 S.C. 289, 486 S.E. 2d 750, 761 (S.C., 1997) (Notice of appeal divests lower court of jurisdiction only of the order being appealed); SCACR 205 (After notice of appeal, lower court retains jurisdiction over matters not affected by the appeal); Jackson, 486 S.E. 2d at 761 (Jurisdiction retained for attorney fees); Wayne Smith Const. Co., Inc. v. Wolman, Duberstein & Thompson 294 S.C. 140, 149, 363 S.E. 2d 115, 120 (S.C. App., 1987)

(Jurisdiction retained for attorney fees); Parker v. Shecut 340 S.C. 460, 492-493, 531 S.E. 2d 546 (S.C. App., 2000) (Jurisdiction retained for contract damages); Grosshuesch v. Cramer 377 S.C. 12, 659 S.E. 2d 112, 122 note 7 (S.C., 2008) (Different subject matters in lower court and on appeal).

Inmates submit the ALC ruling may cause inmates to lose the right to have the ALC consider the issue specified in the Court of Appeals' remand, which is a distinct branch of this case (Mid-State Distributors, Inc., 426 S.E. 2d at 780-781; Good, 21 S.E. 2d at 212). Thus, inmates submit the ALC ruling is "final" for purposes of appealability.

The ALC stated it would not at this point determine the motion for appointment of a special referee (App. p. 30). Inmates contend the ALC, or a special referee, should calculate back wages, interest, contingent attorney fees, and other matters (Layman, et al. v. State of South Carolina, et al. 376 S.C. 434, 658 S.E. 2d 320, 324, 333-335 (S.C., 2008) (Supreme Court remanded attorney fees request to the Circuit Court to determine entitlement to attorney fees under §15-77-300, with the amount of such fee to be based in part on "the benefit obtained" and other factors to enhance the lodestar with a multiplier). See also, S.C. Code §14-11-60, SCRCP 53(b), and ALC Rule 68, which inmates contend allow for appointment of a special referee in this case. See motion at App. p. 85.

Inmates submit that they may lose the right to have the ALC consider the issue specified in the Court of Appeals' remand, which is a distinct branch of this case (Mid-State Distributors, Inc., 426 S.E. 2d at 780-781; Good, 21 S.E. 2d at 212). Thus, inmates submit the ALC ruling is "final" for purposes of appealability.

## II. Rulings Affecting Vested Fee Contract Rights

The ALC stated counsel had a "vested contract" to a contingent fee (App. pp. 38-39). Inmates contend counsel and all inmates who signed the 2004 fee contract acquired vested contract rights, entitling them to the §15-77-300 (original 1985 version) fee, or the 40% contingent fee, whichever is greater (App. p. 102) (Sept. 14, 2004 fee contract, containing two methods of fee calculation, §15-77-300 and contingent fee; Vested contract rights: 16B Am Jur 2d (2009), Const. Law, §747; 16A C.J.S. (2015), Const. Law, §472; Black's Law Dict., Rev. Fourth Ed., p. 1735; United States Trust Co. of New York v. New Jersey 431 U.S. 1, 97 S. Ct. 1505, 1515 note 14, 1516 note 17; Catawba Indian Tribe of South Carolina v. South Carolina 372 S.C. 519, 642 S.E. 2d 751, 756 (S.C., 2007); Wilkinson ex rel Wilkinson v. Palmetto State Transp. Co. 638 S.E. 2d 109, 116 (S.C. App., 2006); First of America Bank v. Netsch 651 N.E. 2d 1105, 1113 (Ill., 1995); Entitlement to greater of §15-77-300 fee or contingent fee: Albunio, et al. v. City of New York, et al. 11 N.E. 3d 1104, 1108-1110 (Ct. of App. N.Y., 2014)).

Inmates submit the ALC ruling may effectively dispose of the attorney fee branch of the case and/or prejudice the right to pursue the attorney fee claim under §15-77-300 (Mid-State Distributors, Inc., 426 S.E. 2d at 780-781; Good, 21 S.E. 2d at 212). Thus, inmates submit the ALC ruling is "final" for purposes of appealability.

The ALC stated attorney fee petitions are remedial and §15-77-300, current version, can be applied retroactively (App. pp. 36, 38-39). Inmates contend the original 1985 version of §15-77-300 applies, and the current version does not apply and is not remedial. First, the current version would violate the

presumption against retroactive application of statutes (Kirven v. Central States Health & Life 409 S.C. 30, 760 S.E. 2d 794, 799 (S.C., 2014)). It would also materially limit the vested contract rights under the 2004 fee contract (Edwards v. SLED 395 S.C. 571, 720 S.E. 2d 462, 466-467 (S.C., 2011); Fernandez-Vargas v. Gonzales 548 U.S. 30, 126 S. Ct. 2422, 2428 (2006); and First of America Bank, 651 N.E. 2d at 1113).

Moreover, the current version of §15-77-300 (2010 amendments) is not remedial because it creates no new remedy (Edwards v. SLED, 720 S.E. 2d at 466); and it creates a different fee liability for the agency than under original §15-77-300 (Carolina Chemicals, Inc. v. SCDHEC 351 S.E. 2d 575, 578-579 (S.C. App., 1986)).

The current version of §15-77-300 would also materially alter and divest vested fee contract rights, which are "property" under the Constitution, and thus violate due process (United States Trust Co. of New York, 97 S. Ct. at 1516 note 16; Coombes v. Getz 285 U.S. 434, 52 S. Ct. 435, 438 (1932); and Jefferson Disposal Co. v. Jefferson Parrish 603 F. Supp. 1125, 1136 (ED La., 1985)).

Further, the current version of §15-77-300 would substantially impair the fee contract by altering the reasonable expectations of the contract parties (Kirven, 760 S.E. 2d at 800), since the parties are presumed to have adopted the fee contract terms in reliance on the original version of §15-77-300 to govern a later fee petition (United States Trust Co. of New York, 97 S. Ct. at 1515 note 14, 1516 note 17).

In addition, the current version of §15-77-300 would materially alter the fee contract terms (Harleysville Mut. Ins. Co. v. South Carolina 401 S.C. 15,

736 S.E. 2d 651, 658 (S.C., 2012); and the rights and obligations of the contract parties, and legal effect of the contract (Superior Motors, Inc. v. Winn-ebago Ind., Inc. 359 F. Supp. 773, 777 (D.S.C., 1973)).

Finally, application of the current version of §15-77-300 would breach a legislatively created contract in original §15-77-300 (United States Trust Co. of New York, 97 S. Ct. at 1515 note 14; Layman, et al. v. State of South Carolina, et al. 368 S.C. 631, 630 S.E. 2d 265, 268 (S.C., 2006)).

Inmates submit the ALC ruling would operate to nullify or substantially prejudice the vested fee contract rights to have the 1985 version of §15-77-300 apply (Mid-State Distributors, Inc., 426 S.E. 2d at 780-781; Good, 21 S.E. 2d at 212). Thus, inmates submit the ALC ruling is "final" for purposes of appealability.

The ALC stated, even if §15-77-300, 2010 version, is not retroactive, the ALC can still use it to "clarify" what §15-77-300 "originally intended", based on Duvall v. State Budget & Control Board 377 S.C. 36, 659 S.E. 2d 125, 130 (S.C., 2008) (App. pp. 43-44). Inmates contend that §15-77-300, original 1985 version, applies, and the 2010 amendments do not apply. See page(s) 7-9. Also, unlike the present case, in Duvall the amendment itself stated it was a clarification of, rather than a change to, existing law.

Inmates submit that they have vested fee contract rights that original §15-77-300 will apply, which rights would be lost if the 2010 amendments were used to "clarify" what the original statute intended (Mid-State Distributors, Inc., 426 S.E. 2d at 780-781; Good, 21 S.E. 2d at 212). Thus, inmates submit the ALC ruling is "final" for purposes of appealability.

The ALC stated, under the current version of §15-77-300, the ALC cannot grant attorney fees greater than the contingent fee (App. p. 36). Inmates contend §15-77-300, original 1985 version, applies and the 2010 amendments do not apply. See discussion, page(s) 7-9.

Inmates submit that they have vested fee contract rights that original §15-77-300 will apply, which rights would be lost if the current version of the statute were applied (Mid-State Distributors, Inc., 426 S.E. 2d at 780-781; Good, 21 S.E. 2d at 212). Thus, inmates submit the ALC ruling is "final" for purposes of appealability.

### III. Ruling Affecting Due Process Rights

The ALC stated he did not think he could hear attorney's fees until there is a determination as to the "official results obtained" (App. p. 35). The ALC's June 13, 2017 Gatewood remand was for SCDC to determine the "beneficial results obtained" (App. p. 83). Presumably, this means back wage calculations. Inmates contend due process requires an impartial adjudicator to determine the "beneficial results obtained" (Due Process Clause of the South Carolina and United States Constitutions; Article I, Section 22 of the S.C. Constitution; Ross v. MUSC 492 S.E. 2d 62, 72 (S.C., 1997) (Due process in administrative matters requires impartial adjudicator); Al-Shabazz, 527 S.E. 2d at 753; J. Toal, Appellate Practice in South Carolina, 3d Ed., 2016, pp. 66-67).

Inmates further contend due process would exclude SCDC as a back wage adjudicator since it would be a conflict of interest for SCDC to determine its own damages. Moreover, SCDC's contesting liability for 13 years in these cases has demonstrated its "will to win" (Ross v. MUSC 492 S.E. 2d at 72 ("Will to win" demonstrates partiality by an administrative adjudicator)).

Inmates submit that the due process right to have an impartial adjudicator calculate back wages would be lost if SCDC performed that task (Good, 21 S.E. 2d at 212). Moreover, given SCDC's "will to win" and partiality, the ALC ruling and remand to SCDC may effectively dispose of the back wages calculations branch of the case, and eliminate or prejudice the claim for back wages (Id; Mid-State Distributors, Inc., 426 S.E. 2d at 780-781). Thus, inmates submit the ALC ruling is "final" for purposes of appealability.

#### IV. Rulings Affecting Attorney Fee Rights

The ALC stated the attorney fee is determined by considering the six (common law) factors, and then if necessary considering the lodestar. The ALC also stated the lodestar is the (fee) enhancement (App. pp. 39-41). Inmates contend that under Layman, 658 S.E. 2d at 332-335, the ALC was incorrect, as the lodestar is calculated first, and then the Court may enhance the lodestar with a multiplier based on one or more of the common law factors (Id).

Inmates submit the ALC ruling would result in miscalculation of attorney fees, and divest the right under Layman to claim attorney fees as calculated therein (Mid-State Distributors, Inc., 426 S.E. 2d at 780-781; Good, 21 S.E. 2d at 212). Thus, inmates submit the ALC ruling is "final" for purposes of appealability.

The ALC stated there is a question of law as to whether litigation in the ALC is a "civil action" under §15-77-300 (App. p. 49). Inmates contend ALC litigation for judicial review of SCDC wage denial is a "civil action" under the statute (McDowell v. SCDSS 304 S.C. 537, 543, 405 S.E. 2d 830, 833 (S.C., 1991) (Agency typically "presses its claim" in judicial review actions); Al-Shabazz, 527 S.E. 2d at 750 (Inmates may seek judicial review in ALC of SCDC final deci-

sions); Wicker, 602 S.E. 2d at 58 (Due process requires judicial review in ALC of SCDC wage denial claims); and Ross v. MUSC 312 S.C. 532, 435 S.E. 2d 877, 878 note 2 (S.C. App., 1993) (Proceeding under APA is a civil action for purposes of attorney fee recovery).

Inmates submit the ALC ruling, if adverse to inmates, would prevent their attorney fee claim for ALC litigation on judicial review of these cases (Mid-State Distributors, Inc., 426 S.E. 2d at 780-781; Good, 21 S.E. 2d at 212). Thus, inmates submit, if the ALC rules adversely to inmates, it would be a "final" ruling for purposes of appealability.

The ALC stated, "(A)nything that happens at the agency level is not considered a civil action" (App. p. 46). Inmates contend the filing of grievances with SCDC was a civil action under §15-77-300. In McDowell, 405 S.E. 2d at 833, the Court held McDowell was not entitled to §15-77-300 attorney fees for the DSS hearing since DSS was not "pressing its claim" in litigation but merely functioning as an administrative decision maker.

Inmates contend McDowell is distinguishable on this point because here, SCDC was pressing its claim when grievances were filed. SCDC grievance procedure is based on 42 U.S.C. §1997, the Civil Rights of Institutionalized Persons Act (App. p. 104). Moreover, grievances alleged entitlement to prevailing back wages under §24-3-430 and the decisions in Adkins and Wicker (App. p. 105). These decisions held §24-3-430(D) was mandatory and created an interest protected by due process. Thus, inmates had a right to file wage grievances and appeal to the ALC. In short, filing a wage grievance was a judicially created remedy to enforce wage rights under the statute and due process.

In its denials of the grievances, SCDC alleged multiple procedural and sub-

stantive defenses. Primarily, SCDC relied on the 15 day filing limitation in §13.1 of grievance policy (App. pp. 107-108, 112-118). SCDC prevailed on that point in the ALC, but the Court of Appeals reversed and remanded to the ALC for consideration of grievances on the merits.

In its denial responses, SCDC also made "findings"; consulted with the grievance coordinator; made "conclusions" concerning court decisions, inmates' "employee" status and other matters; purported to follow a Circuit Court order in reviewing grievances; reviewed supporting documents; reviewed inmate pay records; considered inmates' arguments; rejected inmates' language; interpreted court rules; and denied grievances on the merits and the requested relief (App. pp. 107, 112).

Given the statutory basis of grievance policy, the constitutional, statutory and judicial bases of wage grievances, and the allegations and defenses put forth by the parties, inmates contend SCDC was pressing its claim in litigation at the SCDC level under §15-77-300.

Inmates further contend SCDC was not merely functioning as an administrative decision maker. SCDC's normal function is to serve as a jail for State convicted offenders. In contrast, inmates' grievances pertain to a work program established by enabling legislation in 1995 and by contract in 1998, where work is voluntary and inmates work in private industry for market wages. The grievances and SCDC responses are the basic components of a process first authorized for wage claims in Adkins and Wicker. In a real sense, they are the "complaint" and "answer" the Court provided as inmates' remedy in lieu of a regular civil action. In sum, SCDC was not merely functioning as a jail keeper in issuing grievance decisions denying back wages.

Finally, inmates note SCRCP 2, which states there is one form of action, to be known as a "civil action". The note to the rule states it abolishes the mostly cosmetic differences between "actions" and "special proceedings". And, a "special proceeding" is really only a "civil action" in which some "special remedy" is sought. Here, Adkins/Wicker created the special remedy of filing grievances to satisfy due process. Thus, it should be a "civil action" under SCRCP 2.

Inmates submit the ALC ruling would bar the attorney fee claim for litigation at the SCDC level of their grievances (Mid-State Distributors, Inc., 426 S.E. 2d at 780-781; Good, 21 S.E. 2d at 212). Thus, inmates submit the ALC ruling is "final" for purposes of appealability.

#### V. Considerations Governing Review

Inmates submit there are special and important reasons to grant the petition (SCACR 242(b)). First, the Court of Appeals dismissal raises novel questions of law (SCACR 242(b)(1)) about the effective finality of lower court rulings which dispose of or prejudice a distinct branch of the case, or take away vested contract rights, due process rights, and statutory attorney fee rights.

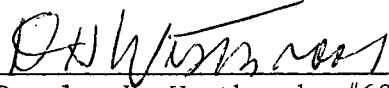
Second, inmates contend the dismissal conflicts with the meaning of "finality" in Charlotte-Mecklenburg Hosp.'s cited authorities, Mid-State Distributors, Inc. and Good, as explained herein (SCACR 242(b)(3)).

#### CONCLUSION

For the reasons, herein stated, petitioners request the Court to grant the Petition for a Writ of Certiorari. If the Court grants the petition, the Court may consider consolidating this case with Ackerman, et al. v. SCDC Appellate

Case No. 2017-002010, and Gatewood v. SCDC Appellate Case No. 2017-002119.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "D. Westbrook", is written over a horizontal line.

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Attorney for Petitioners

THE STATE OF SOUTH CAROLINA  
In The Supreme Court  
APPEAL FROM THE ADMINISTRATIVE LAW COURT  
Ralph K. Anderson, III, Administrative Law Judge  
Order (S.C. Ct. App. filed Oct. 17, 2017)

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DEC 08 2017

SC Court of Appeals

Dock Nos. 07-ALJ-04-00444-AP, 07-ALJ-04-00445-AP, 07-ALJ-04-00446-AP, 07-ALJ-04-00447-AP, 07-ALJ-04-00448-AP, 07-ALJ-04-00449-AP, 07-ALJ-04-00500-AP, 07-ALJ-04-00501-AP, 07-ALJ-04-00502-AP, 07-ALJ-04-00503-AP, 07-ALJ-04-00504-AP, 07-ALJ-04-00505-AP, 07-ALJ-04-00506-AP, 07-ALJ-04-00507-AP, 07-ALJ-04-00508-AP, 07-ALJ-04-00509-AP, 07-ALJ-04-00510-AP, 07-ALJ-04-00511-AP, 07-ALJ-04-00512-AP, 07-ALJ-04-00513-AP, 07-ALJ-04-00514-AP, 07-ALJ-04-00515-AP, 07-ALJ-04-00516-AP, 07-ALJ-04-00517-AP, 07-ALJ-04-00518-AP, 07-ALJ-04-00519-AP, 07-ALJ-04-00520-AP, 07-ALJ-04-00521-AP, 07-ALJ-04-00522-AP, 07-ALJ-04-00523-AP, 07-ALJ-04-00524-AP, 07-ALJ-04-00525-AP, 07-ALJ-04-00526-AP, 07-ALJ-04-00527-AP, 07-ALJ-04-00528-AP, 07-ALJ-04-00529-AP, 07-ALJ-04-00530-AP, 07-ALJ-04-00531-AP, 07-ALJ-04-00532-AP, 07-ALJ-04-00533-AP, 07-ALJ-04-00534-AP, 07-ALJ-04-00535-AP, 07-ALJ-04-00536-AP, 07-ALJ-04-00537-AP, 07-ALJ-04-00538-AP, 07-ALJ-04-00539-AP, 07-ALJ-04-00540-AP, 07-ALJ-04-00541-AP, 07-ALJ-04-00542-AP, 07-ALJ-04-00543-AP, 07-ALJ-04-00544-AP, 07-ALJ-04-00545-AP, 07-ALJ-04-00546-AP, 07-ALJ-04-00547-AP, 07-ALJ-04-00548-AP, 07-ALJ-04-00549-IJ, 07-ALJ-04-00550-AP, 07-ALJ-04-00551-AP, 07-ALJ-04-00552-AP, 07-ALJ-04-00553-AP, 07-ALJ-04-00554-AP, 07-ALJ-04-00555-AP, 07-ALJ-04-00556-AP, 07-ALJ-04-00557-AP, 07-ALJ-04-00558-AP, 07-ALJ-04-00559-AP, 07-ALJ-04-00623-AP, 07-ALJ-04-00624-AP, 07-ALJ-04-00625-AP, 07-ALJ-04-00626-AP, 07-ALJ-04-00627-AP, 07-ALJ-04-00628-AP, 07-ALJ-04-00629-AP, 07-ALJ-04-00630-AP, 07-ALJ-04-00631-AP, 07-ALJ-04-00632-AP, 07-ALJ-04-00671-AP, 07-ALJ-04-00672-AP, 07-ALJ-04-00673-AP, 07-ALJ-04-00674-AP, 07-ALJ-04-00675-AP, 07-ALJ-04-00676-AP, 07-ALJ-04-00677-AP, 07-ALJ-04-00691-AP, 07-ALJ-04-00752-AP, 07-ALJ-04-00798-AP, 07-ALJ-04-00856-AP, 07-ALJ-04-00857-AP, 07-ALJ-04-00858-AP, 07-ALJ-04-00859-AP, 07-ALJ-04-00860-AP, 07-ALJ-04-00861-AP, 07-ALJ-04-00862-AP, 07-ALJ-04-00863-AP, 07-ALJ-04-00864-AP, 07-ALJ-04-00865-AP, 07-ALJ-04-00866-AP, 07-ALJ-04-00867-AP, 07-ALJ-04-00868-AP, 07-ALJ-04-00869-AP, 07-ALJ-04-00870-AP, 07-ALJ-04-00871-AP, 07-ALJ-04-00872-AP, 07-ALJ-04-00444-AP, 07-ALJ-04-00876-AP, 07-ALJ-04-00885-AP, 08-ALJ-04-00141-AP, 08-ALJ-04-00142-AP, 08-ALJ-04-00143-AP, 08-ALJ-04-00144-AP, 08-ALJ-04-00145-AP, 08-ALJ-04-00146-AP, 08-ALJ-04-00147-AP, 08-ALJ-04-00148-AP, 08-ALJ-04-00149-AP, 08-ALJ-04-00169-AP, 08-ALJ-04-00170-AP, 08-ALJ-04-00171-AP, 08-ALJ-04-00192-AP, 08-ALJ-04-00966-IJ, 08-ALJ-04-00967-IJ, 08-ALJ-04-00968-IJ, 08-ALJ-04-00969-IJ, 08-ALJ-04-00970-IJ, 08-ALJ-04-00971-IJ, 08-ALJ-04-00972-IJ, 08-ALJ-04-00973-IJ, 08-ALJ-04-00974-IJ, 08-ALJ-04-00975-IJ, 08-ALJ-04-00976-IJ, 08-ALJ-04-00977-IJ, 08-ALJ-04-00978-IJ, 08-ALJ-04-00979-IJ, 08-ALJ-04-00980-IJ, 08-ALJ-04-00981-IJ, 08-ALJ-04-00982-IJ, 08-ALJ-04-00983-IJ, 08-ALJ-04-00984-IJ, 08-ALJ-04-00985-IJ, 08-ALJ-04-00986-IJ, 08-ALJ-04-00987-IJ, 08-ALJ-04-00988-IJ, 08-ALJ-04-00989-IJ, 08-ALJ-04-00990-IJ, 08-ALJ-04-00991-IJ, 08-ALJ-04-00992-IJ, 08-ALJ-04-00993-IJ, 08-ALJ-04-00994-IJ, 08-ALJ-04-00995-IJ, 08-ALJ-04-00996-IJ, 08-ALJ-04-00997-IJ, 08-ALJ-04-00998-IJ, 08-ALJ-04-00999-IJ, 08-ALJ-04-01000-IJ, 08-ALJ-04-01001-IJ, 08-ALJ-

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Francis Ackerman, #266928, Malik Aljalil, #219551, Linso Allen, #269378, Michael Benninger, #264212, Fredrick Brown, #289602, Timothy Brown, #238461, Terrell Buchanon, #277262, Christopher Bush, #300690, Rudy Cassady, #238732, Sheldon Clark, #264772, Zawaski Cobb, #187136, Kamathene Cooper, #145333, Gladstone Cummings, #267450, Patrick Curtis, #175139, Quintin Daniels, #196284, Curtis Davis, #238776, Heyward Dempsey, #134171, Phillip Denney, #240678, Paul Durham, #219573, Jerome Durham, #270393, Keith Eigner, #299153, Bernard Felder, #122099, Jermaine Garriett, #191274, Fred Gatewood, #289775, Dennis Goff, #177506, Gregory Grant, #109656, Nelson Hampton, #286427, James Hartman, #219770, Gary Hayes, #263985, Michael Hood, #279897, Nikia Law, #260855, Stephen Lease, #137016, Harry Leonard, #249996, Herbert McFadden, #184297, Michael McFarland, #266870, Earl Mack, #216237, John Moultrie, #276527, Matin Muntaqim, #142282, Tony Pitts, #280579, Germaine Pringle, #250390, Gene Richardson, #93614, Dennis Richey, #233472, Ignacio Rivera, #300424, Vondell Sanders, #241308, James Sattler, #235043, Joseph Schmitz, #173987, Arthur Scott, #251957, Jerome Scott, #153381, Roosevelt Scott, #275631, Archie Simmons, #161419, Robert Smith, #199324, James Williams, #282929, Gary Bryant, #258972, Harlon Edger, #261866, Johnny Holden, #245199, Don Hughes, #256862, Michael Key, #266890, Archie Lee, #226354, Isaac Richardson, #232574, Larkland Richards, #281768, John Wojcik, #219463, James Bogan, #288111, Larry Burke, #281911, Jammie Gaymon, #208922, David Harrell, #260004, Jeff Stinson, #260047, Ricky Libby, #274681, Alain Lareau, #128014, Quentin Baker, #297868, Frank Corley, #292975, James Jackson, #267718, Quintin Linen, #238553, Thomas Miles, #246763, Chauncy Orr, #177069, Isaiah Scott, #228008, Eric Youmous, #281091, Derek Carter, #275938, Willie Hare, #256641, Ernest Miller, #235474, Robert Norris, #266101, Ronald Simmons, #267937, Samuel Simmons, #302393, William Thomas, #272501, Anthony Murphy, #295893, Anthony Murray, #237867, Johnny Hayes, #267910, Roy Morris, #288777, Daniel Dewey, #276678, Nehemiah Greene, #243339, Leroy Choice, #113990, James McFadden, #235419, Francis Prioleau, #268813, Darrell Rochester, #146731, Wilbur Jordan, #272264, Alvin Stewart, #278595, Kevin Poston, #266083, Kevin Smith, #272440, Donald Robinson, #277520, Douglas Bude, #263537, Willie Elder, #246208, Rogelio Zavala, #245106, Dennis Knight, #286981, Jacob Beach, #301270, Francis Ackerman, #266928, Darrin Miller, #259593, Edward Bryant, #255998, Sherman Austin, #300028, Michael Baylor, #265682, Taurus Bowman, #252745,

Kenneth Carter, #243538, Calvin Drummond, #236322, David Feggins, #287157, Terry Ferguson, #299080, Willie House, #257820, Peter Jenkins, #257321, Percy Martin, #270035, James Murray, #165487, Stephone Simmons, #300422, Larry McClam, #282972, Tyrone Aiken, #244428, Tyrone Aiken, #248367, Frank Anderson, #282800, Ronald Brewer, #285756, Keith Brown, #295762, Pete Bryant, #242370, Michael Busques, #191961, Richard Butler, #162467, Gary Davis, #106144, Anthony English, #238474, Kerlan Etheredge, #236635, James Evans, #267837, Jose Flores, #240563, Robert Garrett, #291096, Reginald Geddis, #183851, Richard Graham, #228235, Gary Grooms, #283860, Wayne Harlen, #245705, Johnny Hayes, #267910, Steven Hickenbottom, #196263, Alfred Joyner, #260442, Donald Lyles, #296135, Henry Baker, #263398, Thomas Carter, #249362, Thomas Butler, #257552, Bobby Williams, #261486, Ray Wells, #173651, Rodney Pressley, #177947, Keith Kelly, #257556, Maxie Gamble, #254413, James Enriquez, #215539, Perry Deveaux, #109601, James Wells, #180458, Cedric Martino, #291396, Donald McAteer, #292961, Robert Wydman, #260331, Anthony Wright, #214007, Derrick Williams, #272958, Kenneth White, #228409, James Trumper, #247429, Jeffrey Spears,\* #281967, Timothy Smith, #296539, David Sims, #278067, Virgil Simpson, #281888, Edward Simpson, #220017, Kenneth Simmons, #278911, George Shine, #292391, Ralph Sellers, #164295, Laron Richardson, #258786, Frank Patterson, #283098, Tony McNeil, #235846, Larry McClam, #282972, Lavanza Mack, #189340, Raymond Livingston, #277133, Nicholas Lambrose, #215080, Joseph Kelsey, #217218, Keith Eugene, no number, Chuck Jackson, #266425, James Foye, #211523, Timothy Inman, #151123, Marvin Gilbert, #273934, Demetrius Wheeling, #264976, Leon Wilson, #155867, Jeffrey Tevis, #216442, Darryel Beasley, #222388, Curtis Thompson, #266448, Baron Cobbs, #280479, James Tino, #145030, Harold Roberson, #117001, Ray Gadsden, #187527, Tony Witt, #242918, Jonathan Singleton, #287670, Joe Pannell, #89592, Charles Graham, #294453, Lazarus Brannon, #227847, Darrell Williams, #219730, Wilbert Mills, #244004, Howard Grant, #255473, Timothy Wilson, #261971, Rodney Elliott, #251337, Henry Rivers, #219118... Petitioners,

v.

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

Court of Appeals Appellate Case No. 2017-002086

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PROOF OF SERVICE

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I certify that I have served petitioners' Petition for a Writ of Certio-

---

\* Docket No. 07-ALJ-04-00826-AP may concern an unrelated case. Also, inmate Jeffrey Spears' correct number is 281697.

rari and Appendix on the S.C. Department of Corrections by depositing copies of them in the U.S. Mail, postage prepaid, on December 6, 2017, addressed to its attorney of record, Lake Summers, Esquire, of Malone, Thompson, Summers & Ott, LLC, 339 Heyward St., Suite 200, Columbia, SC 29201.

December 6, 2017.



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December 6, 2017

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DEC 08 2017

SC Court of Appeals

The Honorable Daniel E. Shearouse  
Clerk of Court  
The Supreme Court of South Carolina  
P.O. Box 11330  
Columbia, SC 29211

Re: Francis Ackerman, et al. v. SCDC  
Court of Appeals Appellate Case No. 2017-002086

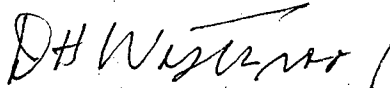
Dear Mr. Shearouse:

Pursuant to SCACR 242(a)(c), please find enclosed for filing with the Court the original and six copies of Petitioners Francis Ackerman, et al.'s Petition for Writ of Certiorari and Proof of Service. I also enclose two copies of the Appendix, one copy unbound, pursuant to SCACR 242(e). Finally, I enclose a check for the \$100 filing fee.

I have this date filed by mail a copy of the Petition and Proof of Service with the Clerk of the Court of Appeals. By copy of this letter, I also served by mail a copy of the Petition, Appendix, and Proof of Service on counsel for the Department of Corrections.

Thank you for your assistance in this matter.

Sincerely,



Douglas H. Westbrook

DHW/  
Encl.

cc: The Honorable Jenny Abbott Kitchings  
Lake E. Summers, Esquire

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December 6, 2017

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SC Court of Appeals

The Honorable Jenny Abbott Kitchings  
Clerk of Court  
The South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

Re: Francis Ackerman, et al. v. SCDC  
Court of Appeals Appellate Case No. 2017-002086

Dear Ms. Kitchings:

Pursuant to SCACR 242(c), please find enclosed for filing with the Court a copy of Petitioners Francis Ackerman, et al.'s Petition for Writ of Certiorari and Proof of Service, which have been filed by mail this date in the Supreme Court.

Thank you for your assistance in this matter.

Sincerely,



Douglas H. Westbrook

DHW/  
Encl.

cc: The Honorable Daniel E. Shearouse  
Lake E. Summers, Esquire



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SC Court of Appeals

