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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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MAR 29 2018

APPEAL FROM THE APPELLATE PANEL OF THE SOUTH
CAROLINA WORKERS' COMPENSATION COMMISSION

Court of Appeals

W.C.C. File No.: 1202545

Scott Ledford, Employee, Appellant,

v.

Department of Public Safety, Employer, and
State Accident Fund, Carrier, Respondents.

MOTION TO ARGUE AGAINST PRECEDENT AND MEMORANDUM

The Appellant moves to argue against precedent under Rule 217, S.C.A.C.R., to urge the Court to adopt *de novo* review under an objective standard when determining whether judicial recusal is required. The language of Rule 501 (3)(E)(1), Code of Judicial Conduct, requires recusal whenever there is an appearance of impropriety but South Carolina precedent requires evidence of prejudice for reversal on appeal.¹ The Appellant submits adopting *de novo* review under an objective test would follow the holdings of the United States Supreme Court in the cases of Lifeberg v. Health Services Acquisition Corp., 486 U.S. 487, 108 S.Ct. 2194, 100 L.Ed.2d 855

¹ See: Mallett v. Mallet, 323 S.C. 141, 473 S.E.2d 804 (Ct. App. 1996); Roche v. Young Brothers, Inc. of Florence, 332 S.C. 75, 504 S.E.2d 311 (1998); Patel v. Patel, 359 S.c. 515 (2004); Simpson v. Simpson, 377 S.C. 519, 660 S.E.2d 274 (Ct. App. 2008).

(1986) and Caperton v. A.T. Massey Coal Co., 566 U.S. 866, 129 S.Ct. 2252, 1732 L.Ed.2d 1208 (2009) decided upon due process grounds.

The Appellant acknowledges the South Carolina Supreme Court declined to adopt an objective standard “at this time” with Patell v. Patell, 359 S.C. 515, 599 S.E.2d 114 (2004), however, contends the Court did so because the Appellant would not have prevailed under the facts of the case even if the proposed objective standard was adopted. The Appellant submits the Appellant can meet the standard for reversal under either test based upon the reversal of the judicial officer’s shockingly inadequate award, her failure to perform a statutory duty if she believed the Appellant had committed insurance fraud requiring referral to the Attorney General for prosecution, her exceeding her authority by reversing the unappealed order of another commissioner, and by her making speculative findings not supported by substantial evidence. The Appellant would should show the alleged impropriety originated in conduct committed by the judicial officer herself mitigating against concern the adoption of such a rule in this case could invite the less scrupulous to use third parties as a stratagem to eliminate any judge.

The Code of Judicial Conduct insures proceedings are conducted impartially both in appearance and in fact. The facts in this case present the time to reconsider precedent and adopt *de novo* review of the denial of a recusal motion based upon an objective standard to fulfil the purpose of the Code. In cases originating from conduct committed by the judicial officer, the objective standard adopted should be whether the judicial conduct would create in reasonable minds a perception that the judge

violated the Code of Judicial Conduct or engaged in conduct that reflects adversely on the judge's honesty, impartiality, temperament, or fitness to serve as a judge.² Proof of actual prejudice should no longer be required in such cases.

Respectfully submitted,

By: 

E. Hood Temple
Hatfield Temple, L.L.P.
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(843) 662-5000

and

By: 

J. Kevin Holmes
The Steinberg Law Firm, L.L.P.
P.O. Box 9
Charleston, South Carolina 29402
(843) 720-2800

Charleston, South Carolina

27 day of March, 2018.

² Model Code of Judicial Conduct, R. 1.2 cmt. 5 (2007). See: John P. Freeman, *Appearance of Impropriety, Recusal, and the Segars-Andrews Case*, 62 S.C. L. Rev. 495 (2011), fn 22.

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SCOTT LEDFORD, Employee, Appellant,

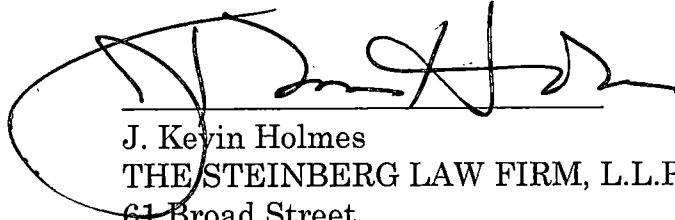
—vs.—

DEPARTMENT OF PUBLIC SAFETY, Employer,
and STATE ACCIDENT FUND, Carrier, Respondents.

PROOF OF SERVICE

I certify that I have served the Appellant's Motion to Argue Against Precedent and Memorandum on opposing counsel by depositing a copy of it in the United States Mail, postage prepaid on March 27, 2018, addressed to Sarah S. Alphin, Esquire, Willson, Jones, Carter & Baxley, PA, 3600 Forest Drive, Suite 204, Columbia, SC 29204.

March 27, 2018.



J. Kevin Holmes
THE STEINBERG LAW FIRM, L.L.P.
61 Broad Street
Post Office Box 9
Charleston, South Carolina 29402
Attorney for Appellant

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SC Court of Appeals

DAVID T. PEARLMAN
J. KEVIN HOLMES
THOMAS M. WHITE
MALCOLM M. CROSLAND, JR.
STEVEN E. GOLDBERG
MICHAEL J. JORDAN
BENJAMIN W. AKERY



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Monday, March 26, 2018

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

Re: Scott Ledford, Employee, Appellant v. Department of Public Safety,
Employer, and State Accident Fund, Carrier, Respondents
Appellate Case No. 2016-000601

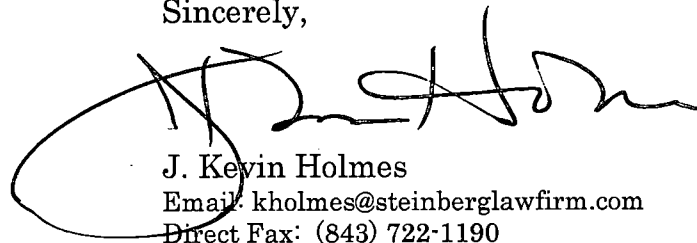
Dear Ms. Kitchings:

Enclosed please find for filing the original and six copies of a Motion to Argue
Against Precedent and Memorandum in the above matter. Also enclosed please find:

1. A Certificate of Service on opposing counsel; and
2. A filing fee of \$25.00.

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SC Court of Appeals

Sincerely,



J. Kevin Holmes
Email: kholmes@steinberglawfirm.com
Direct Fax: (843) 722-1190

JKH/gdm
Enclosures
cc: Sarah S. Alphin, Esquire



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J. Kevin Holmes



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Honorable Jenny Abbott Kitchings
The South Carolina Court of Appeals
P.O. Box 11629
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