

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Shirley C. Robinson, Administrative Law Judge

Appellate Case No.: 2015-001561

RECEIVED
JUN 07 2018
SC Court of Appeals

Jeffrey D. Allen, on behalf of Jane Doe.....Appellant,

v.

South Carolina Budget and Control Board,
Employee Insurance Program.....Respondent.

**APPELLANT’S RETURN OPPOSING
RESPONDENT’S AMENDED MOTION TO SERVE AND FILE ITEMIZED
STATEMENT OF COSTS**

This is an appeal from an Order of the Administrative Law Court’s which denied a motion for attorneys’ fees made by Appellant after Appellant had prevailed in the South Carolina Supreme Court on appeal of a dispute with the State Health Plan. This appeal was filed on July 16, 2015 in the South Carolina Court of Appeals. The Court of Appeals affirmed the ALJ’s Order denying attorneys’ fees some two (2) years later on September 20, 2017. After the petition for rehearing was denied, on or about February 5, 2018, the Appellant filed this Petition for Certiorari. It was denied on May 2, 2108. Remittitur was issued May 7, 2018.

Respondent filed and served its Motion for Costs on May 11, 2018 and sought a total sum of \$1,112.09 which included the \$1,000 attorney fee as referenced in footnote 1 to SCACR, Rule 222(b). Appellant did not oppose said Motion. However, on June 5, 2018, Appellant received

Respondent's Amended Motion to Serve and File Itemized Statement of Costs seeking permission to increase the attorney fee sought from \$1,000 to \$2,500.

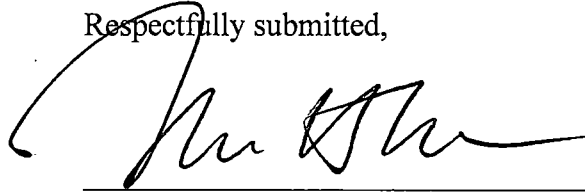
Appellant acknowledges this Court's Administrative Order 2018-01-17-02 which increased the attorney fee allowed in SCACR, Rule 222(b) from \$1,000 to \$2,500 (albeit the new \$2,500 attorney fee amount has not yet been printed in the 2018 SC Rules of Court reference book). For the reasons below as permitted in SCACR, Rule 222(d), Appellant opposes the Amended Motion and objects to the application of the new attorneys' fee amount to this appeal:

1. The Amended Motion is untimely in that it was not served within the fifteen (15) days of the issuance of Remittitur;
2. The SCARC contains no rule or procedure for seeking leave to file an Amended Motion;
3. SCARC, Rule 240(g) states that failure of the moving party to perform any act required by this Rule may be deemed an abandonment of the motion or petition; and
4. The court should apply Order 2018-01-17-02 only to those appeals filed after the date of the Administrative Order in order to provide litigants adequate notice of the changes to the rules. *Compare* SCACR, Rule 102 (a) Effective Date. (However, Part II, governing practice and procedure in appeals, petitions, and motions in the Supreme Court and Court of Appeals, of the SCACR shall not apply in any appeal where a notice of intent to appeal was served prior to the effective date of these rules [September 1, 1990].)

For these reasons, the Appellant respectfully requests that the court deny the Amended Motion.

June 5, 2018

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John A. Massalon", written over a horizontal line.

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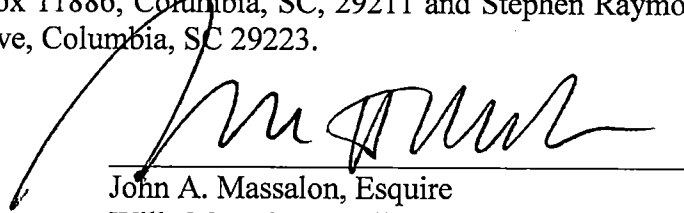
v.

South Carolina Budget and Control Board,
Employee Insurance ProgramRespondent.

PROOF OF SERVICE

I certify that I have served Appellant’s Return Opposing Respondent’s Amended Motion to Serve and File Itemized Statement of Costs by depositing a copy of it in the United States Mail, postage prepaid, on June 5, 2018 addressed to its attorneys of record, Theodore D. Willard, Jr., Montgomery Willard, LLC, P.O. Box 11886, Columbia, SC, 29211 and Stephen Raymond Van Camp, Esquire, 202 Arbor Lake Drive, Columbia, SC 29223.

June 5, 2018



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June 5, 2018

RECEIVED Direct Dial: (843) 793-6039

JUN 07 2018

SC Court of Appeals

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: Jeffrey D. Allen, on behalf of Jane Doe v. South Carolina Budget and Control Board,
Employee Insurance Program
Case No.: 2015-001561
File No.: 595-1

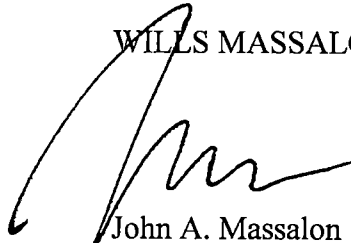
Dear Ms. Kitchings:

Enclosed please find the original and seven (7) copies of Appellant's Return Opposing Respondent's Amended Motion to Serve and File Itemized Statement of Costs and Proof of Service in regard to the above-referenced matter. Please return a file-stamped copy to me in the self-addressed, stamped envelope provided. If you have any questions, please do not hesitate to contact me.

With kind regards, I am

Sincerely,

WILLS MASSALON & ALLEN LLC



John A. Massalon
jmassalon@wmalawfirm.net

JAM/cb
Enclosures

cc: Terry E. Richardson, Jr., Esquire
Theodore D. Willard, Jr., Esquire
Stephen R. Van Camp, Esquire

WMA

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