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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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

Appellate Case No. 2016-000601

SCOTT LEDFORD, Employee, Appellant,

-vs.-

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

PETITION FOR REHEARING

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JUL 11 2018
SC Court of Appeals

The Appellant moves for a rehearing of the Court's Unpublished Opinion No. 2018-UP-280 filed on June 27, 2018 under Rule 219, S.C.A.C.R., on the following grounds:

I. The Court should have allowed the Appellant to argue against precedent for an objection recusal standard as requested in the Appellant's motion filed on March 27, 2018.

The Appellant raises this issue for preservation. The arguments in support of rehearing on this ground were set forth in the motion.

II. The Court misapprehended the prejudice to the Petitioner was not about money.

The Court ruled the Petitioner failed to show prejudice because the single commissioner's award was reversed on review by the Appellate Panel. Furthermore,

“[d]ue to the Appellate Panel’s reversal, we find the further discussion of the single commissioner’s ruling is not warranted.” The Court misapprehended this appeal was about money. It is about a law enforcement officer, who served honorably and with distinction until disabled by two admitted injuries in the line of duty, being called a liar by the single commissioner and threatened with criminal prosecution unless he settled his claim forfeiting his rights. As the Petition for Rehearing before the Appellate Panel explained:

The Claimant/Appellant is sincerely grateful [for] the Appellate Panel’s amendments to the Single Commissioner’s Decision and Order that has saved him and his family from financial bankruptcy, authorized him to receive ongoing physical therapy and injections recommended by his physicians, and has preserved his right to seek a change of condition within one year from the last payment of compensation under § 42-17-90, S.C. Code Anno., 1976 as amended. The problem is the Appellate Panel, by adopting the majority of the Single Commissioner’s findings has left the Claimant/Appellant still accused of being a liar and a cheat whose reputation has be destroyed.

(R. Vol. I, pp. 212 – 213). Judges rule against litigants without threatening them with criminal prosecution unless they settle their cases. The prejudice is about the personal affront to the Petitioner and the anxiety suffered being threatened with criminal prosecution. The Court overlooked any litigant threatened in such a manner would reasonably question the judge’s impartiality supporting recusal under Cannon 3(E) of the Code of Judicial Conduct, Rule 501, S.C.A.C.R.

III. The Court overlooked the shockingly inadequate award made by the single commissioner is evidence of partiality.

While it is true the fact a judge rules against a litigant is not proof of partiality, it is also true a judge’s impartiality can be questioned when his or her factual findings

are not supported by the record. *Ellis v. Procter & Gamble Dist. Co.*, 315 S.C. 283, 433 S.E.2d 856 (1993). The hearing commissioner's ignoring the unanimous opinions of the treating physicians and the objective radiographic evidence in concluding the Petitioner suffered a 0% impairment of his spine from his admitted, career ending motorcycle accident was neither fair nor impartial. Her order that the Petitioner repay an \$18,932.80 overpayment was neither fair nor impartial. Although reversed by the Appellate Panel, the court overlooked the single commissioner's award was so shockingly inadequate as to constitute evidence of partiality further supporting recusal.

- IV. The Court overlooked the Hearing Commissioner's dismissal of the allegations of her misconduct as frivolous, her combative and defensive attitude in denying recusal, and her expressing her opinions on the merits of the case prior to her decision constitutes further evidence of partiality.

In *Shaw v. State*, 276 S.C. 190, 277 S.E.2d 140 (1981) the Supreme Court discussed the authority of a judge to resolve a motion for recusal alleging misconduct by him or her. It began by saying, "It is axiomatic that the expectation of a fair and impartial tribunal is a basic tenet of all cherished notions of due process embodied in the United States Constitution." It then reviewed the affidavits submitted in support of recusal for legal sufficiency and found the affidavits caused the Court "some concern." Concern because the Court disagreed with the judge's view the allegations against him were "pure trivia." Another concern was the judge's "apparent combative and defensive attitude exhibited during the recusal hearing." And, finally the Court was concerned because the litigant "could reasonably have questioned the judge's

impartiality.” Despite these concerns, however, the Supreme Court did not reverse the denial of the motion to recuse because it found “no indication ... the trial judge ever expressed an opinion on the merits of case prior to his decision.”

The Court’s unpublished decision overlooked the single commissioner dismissed the allegations against her as “frivolous or fanciful.” R. Vol. I, pp. 100, 102. It overlooked the single commissioner took a very combative attitude in denying the motion. She accused the Petitioner’s CPA of “creative accounting” and the Petitioner’s counsel, who she praised for his representation at the hearing, of a making false allegations against her “with the knowledge it is false, or, at best, a reckless disregard for its truth or falsity.” R. Vol. I, p. 101. And, the Court overlooked the telephone conference she said was “to notify [the attorneys for the parties] of [her] tentative findings” occurred prior to her decision on the merits. These facts constitute further evidence of partiality in support of recusal.

V. The Court overlooked the Petitioner alleged the findings against him were affected by errors of law.

The Petitioner argued the single commissioner’s Order Denying Recusal should be reversed because it was in violation of constitutional and statutory provisions and affected by errors of law. The Order Denying Recusal and the Decision and Order on the merits should be considered separately. The Petitioner requested review of the single commissioner’s Order Denying Recusal but his request was dismissed as interlocutory. R. Vol. I, p. 96. The two orders should not now be considered as one for purposes of judicial review. This Court finding the Appellate Panel’s finding on credibility in its Decision and Order on the merits is supported by

substantial evidence should not make review of the single commissioner's Order Denying Recusal unwarranted.

The factual basis in support of the Motion to Recuse was set forth in the affidavits and exhibits submitted to support the recusal motion. R. Vol. I, pp. 249 – 259. No contrary evidence was submitted to dispute those allegations.¹ The single commissioner admitted the substance of the allegations in her Order denying recusal. R., Vol. 1, pp. 101 – 102, Findings of Fact 10 – 14. Yet somehow the Appellate Panel's finding with regard to the single commissioner's Order Denying Recusal was, "We find the Hearing Commissioner was not required to recuse herself as there is no evidence her actions were in violation of the Judicial Code of Conduct." The Court misapprehends the substantial evidence standard of judicial review regarding a disputed factual matter has never been intended to preclude review for errors of law on undisputed facts regarding a legal matter.

CONCLUSION

The reasons for requesting the right to argue against precedent were set forth in the Petitioner's Motion March 27, 2018. The Court's decision highlights the need for an objective standard. The standard of judicial review applied by this Court is unworkable because it places too high a burden on the litigant. As applied in this case it neither vindicates the Petitioner's right to a fair and impartial hearing nor rectifies the alleged misconduct. Requiring a monetary or tangible prejudice undervalues the affront to the Petitioner's reputation and the stress endured being

¹ The Respondents did not file a response to the recusal motion and the Respondent's attorney has never challenged the accuracy of the factual allegations made in support of the motion.

threatened with criminal prosecution. While the Appellate Panel's Decision and Order may have mitigated the financial prejudice suffered by the Petitioner, it did nothing to restore the Petitioner's reputation or prevent the offending conduct from happening to other litigants. The single commissioner's award was so shocking inadequate, her outright dismissal of unopposed allegations against her as frivolous, her combative attitude in denying the motion, and her threatening the Petitioner with criminal prosecution unless he forfeited his rights before she issued her decision on the merits are all legally sufficient reasons for the Petitioner to have reasonably questioned her impartiality and, that being the case, Cannon 3(E) of the Code of Judicial Conduct, Rule 501, S.C.A.C.R., plainly says, "A judge shall disqualify himself or herself" The purpose of the Rule is to insure judicial proceedings are fair and impartial both in appearance and in fact. It is respectfully submitted it is time for our Appellate Courts to adopt a subjective standard, or at least, clarify what circumstances can or cannot be considered when deciding whether recusal is required when the allegations of misconduct involve the judge's own actions before the issuance of a decision on the merits.

Respectfully submitted,

By: 

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10th day of July, 2018.

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SOUTH Court of Appeals

Appellate Case No. 2016-000601

SCOTT LEDFORD, Employee, Appellant,

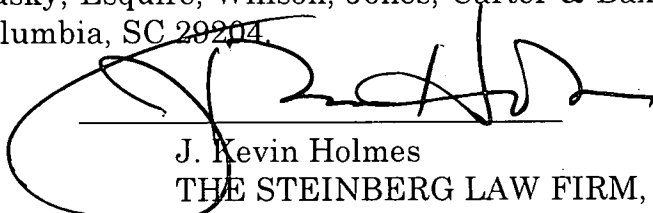
-vs.-

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

PROOF OF SERVICE

I certify that I have served the Petition For Rehearing on opposing counsel by depositing a copy of it in the United States Mail, postage prepaid on July 10, 2018, addressed to Sarah C. Sutusky, Esquire, Willson, Jones, Carter & Baxley, PA, 3600 Forest Drive, Suite 204, Columbia, SC 29204.

July 10, 2018.



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Via Federal Express Overnight Mail
The Honorable Jenny Abbot Kitchings
Clerk of Court, SC Court of Appeals
P.O. Box 11629
Columbia, SC 29211

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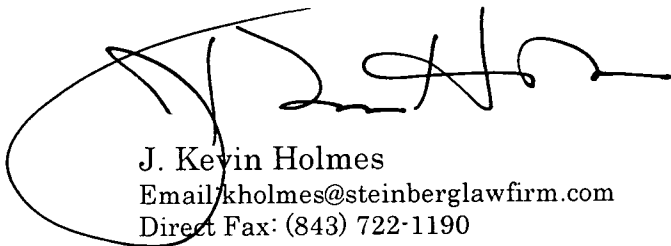
Re: Scott Ledford v. Department of Public Safety
Appellate Case No. 2016-000601

Dear Ms. Kitchings:

Enclosed for filing please find the original and six (6) copies of a Petition for Rehearing for rehearing in the above action together with a Certificate of Service on opposing counsel, Sarah C Sutusky, Esquire, and a filing fee in the amount of \$25.00.

With kindest regards, I am

Very truly yours,



J. Kevin Holmes
Email: kholmes@steinberglawfirm.com
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JKH/gmh
Enclosures
cc: Sarah C. Sutusky, Esquire
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