

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission
Appellate Panel

Appellate Case No. 2018-001234

RECEIVED

NOV 15 2018

SC Court of Appeals

Pamela Cartee, Claimant,

v.

SC Judicial Department, Employer,
and State Accident Fund, Carrier, Defendants,

IN RE: Preston F. McDaniel, Esquire,
and John M. Milling, Esquire, Appellants,

v.

SC Workers' Compensation Commission.....Respondent.

MOTION TO DISMISS APPEAL
BASED ON A LACK OF JURISDICTION
OF THE COURT

TO: T. PARKIN HUNTER, ESQUIRE, AND HARLEY L. KIRKLAND, ATTORNEY
AT LAW, ATTORNEYS FOR THE RESPONDENT:

YOU WILL PLEASE TAKE NOTICE that on the 10th day after
service hereof or as soon thereafter as the Appellants may be
heard pursuant to Rule 240, SCACR, the Appellants will move for
an Order of the Court dismissing their appeal without prejudice

on the basis of a lack of jurisdiction on behalf of the Court due to a lack of finality, no Final Order of the Commission on Motion for Rehearing filed with the SC Workers' Compensation Commission on June 25th, 2018 for the reasons as are more fully set forth in the Memorandum in Support of Motion as attached hereto and incorporated herein by reference, and for a remand to the Circuit Court for Darlington County in reference to the pending Declaratory Judgment action; or in the alternative, to the Commission with instructions.

WE SO MOVE.

Respectfully submitted,



Preston F. McDaniel
MCDANIEL LAW FIRM
1315 Elmwood Avenue
Columbia, South Carolina 29201
(803) 771-7211

and

John M. Milling
MILLING LAW FIRM
Post Office Box 519
Darlington, South Carolina 29532
(843) 393-4083

APPELLANTS

November 15, 2018

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA
Workers' Compensation Commission
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Pamela Cartee, Claimant,

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SC Judicial Department, Employer,
and State Accident Fund, Carrier, Defendants,

IN RE: Preston F. McDaniel, Esquire,
and John M. Milling, Esquire, Appellants,

v.

SC Workers' Compensation Commission.....Respondent.

MEMORANDUM IN SUPPORT OF
MOTION TO DISMISS APPEAL
BASED ON LACK OF JURISDICTION
OF THE COURT

The Appellants would respectfully submit to the Court in support of the Motion to Dismiss their Appeal without prejudice for lack of jurisdiction as being premature due to a lack of finality, and for a remand to the Circuit Court, or the Commission:

1. That the SC Workers' Compensation Commission filed its Decision denying a portion of the attorneys' fees as requested for approval by Appellants on May 29, 2018. Note as to the May 29th Order and jurisdiction that although Mr. Milling was a party to the action as co-counsel and a Petitioner requesting approval of the denied portion of the attorneys' fees, Mr. Milling was never served with the Order even after request and notice. After remand by this Court to the Commission as to his status as a party by Order the Commission confirmed Mr. Milling was a party, nunc pro tunc. In addition, neither Appellant was ever properly served pursuant to statute, S.C. Code §1-23-350/380 and S.C. Code §42-17-60, even after the Commission was notified of the same.

2. That subsequently on June 25, 2018, the Appellants filed a Petition for Rehearing by mail with the SC Workers' Compensation Commission pursuant to the provisions of SC Code §1-23-380(1) and the Decisions of the Supreme Court, and this Court, confirming the right to file a Petition for rehearing within thirty (30) days.

3. That based on a Motion to Stay further proceedings before the SC Workers' Compensation Commission filed with the Fourth Circuit Court of Common Pleas (for Darlington County), in the Declaratory Judgment action Preston F. McDaniel and John M.

Milling, Plaintiffs, v. SC Workers' Compensation Commission,
Case No. 2018-CP-16-334, which action had been filed on April
17th, 2018 prior to both the May 29th Decision and the Motion for
Rehearing, the Court issued its Order on June 27th staying
further actions by the SC Workers' Compensation Commission for
60 days in reference to this matter; i.e., the denial of a
portion of the attorneys, fees requested for approval. The June
27th Stay Order is attached as Exhibit A.

4. That subsequent thereto on June 28th in the mail
Appellant McDaniel received a letter dated June 26th (stamped
received by the Commission June 27th), not an Order but a letter,
from the Judicial Director of the SC Workers' Compensation
Commission returning the Motion that had been filed along with
the required filing fee which letter stated that the Petition
was untimely. A copy of that letter is attached hereto and
incorporated herein by reference as Exhibit B.

5. That the SC Workers' Compensation Commission is a
creature of statute and a quasi-judicial body and under the
statutes the Commission alone is granted the judicial authority
to conduct and make all, "judicial disposition" decisions and
decide all matters that come before the Commission for
determination under the Act. SC Code §42-3-20(C), and SC Code
§42-3-180. In RE: Crawford 205 S.C. 72, 30 S.E.2d 841

(1944) (judicial authority lies with Commission); Price v. Peachtree Elec. Services, 396 S.C. 403, 721 S.E.2d 461 (S.C. App. 2011), Reh. den., cert. granted, affirmed as modified 405 S.C. 455, 748 S.E.2d 229. Under the Act, the judicial authority lies with the Commissioners and there is no judicial authority or any dispensation or transfer of that judicial authority over any matter before the Commission either to or conferred on any other employee or representative of the Commission other than the Commission itself.

6. That as of the date of the filing of this Motion, the Full Commission has not entered a decision on the Petition for Rehearing filed with the Commission. The Commission as a creature of statute and as an administrative agency has only such powers as have been conferred by law and must act within the authority granted to it by statute. Bazzle v. Huff, 319 S.C. 443, 462 S.E.2d 273 (1995); Rhame v. Charleston County School Dist., 412 S.C. 273, 772 S.E.2d 159 (2015).

In Rhame, supra, the Supreme Court specifically held that under the provisions of SC Code §1-23-380(1) a party in a workers' compensation matter has the right to file for a Petition for Rehearing and pursuant to the provisions of that Code section such Petition must be filed within 30 days of the

date of the Decision of the Commission. Any decision on the Petition for Rehearing is a "judicial disposition".

There is simply no authority on behalf of the Commission to dismiss an action filed with the Commission in any other way other than by an Order from the Commission wherein the jurisdictional and dispositional authority lies under the Act; and further there is no authority other than that authorized by statute and any regulation contrary to the statutory provisions is in derogation of that statutory authority. The Judicial Director has no judicial authority under the Act.

7. That the Declaratory Judgment action originally filed April 17, 2018, as amended and supplemented pursuant to Circuit Court Orders filed June 25th and July 19th, is pending before the SC Circuit Court for the Fourth Judicial Circuit.

8. That based upon the letter from the Judicial Director refusing to file the Petition for Rehearing and without any decision on the Petition from the Commission, the Appellants filed a provisional appeal on June 29th, 2018 with this Court noting improper service and non-compliance with S.C. Code §1-23-380. See Notice of Appeal filed with the Court.

9. Rule 203(b)(6), SCACR, provides that a Notice of Appeal must be filed within thirty (30) days, and in this case where a Motion for Rehearing as filed "shall run from receipt of

the decision granting or denying that motion." (Emp. add.) Under Rule 205, SCACR, jurisdiction attaches upon service.

WHEREFORE, based on the lack of a final Order being issued on the Petitioner's Petition for Rehearing as filed with the Commission, this Court lacks jurisdiction over the appeal as the appeal was premature at the time that it was filed. The Appellants would pray for an Order of the Court dismissing their appeal without prejudice and remanding this matter to the SC Circuit Court for the Fourth Judicial Circuit wherein lies the Declaratory Judgment action which prays for a resolution of all of the issues in reference to the actions taken by the SC Workers' Compensation Commission in reference to this matter; i.e., the consideration and determination of the denial of a portion of the attorneys' fees requested as being proper or improper under the statutes, regulations and case law regarding such approval or disapproval of attorneys' fees requests. This matter should be remanded to the Circuit Court so that the Circuit Court may take such further action as it deems appropriate in reference to further staying any further action by the Commission until a declaration of the rights of the parties under law can be made in the declaratory judgment action. In the alternative, this matter should be simply dismissed without prejudice due to lack of finality before the

SC Workers' Compensation Commission concerning the Petition for Rehearing and remanded until such time as a final decision of the Full Commission sitting en banc is filed.

Respectfully submitted,



Preston F. McDaniel
MCDANIEL LAW FIRM
1315 Elmwood Avenue
Columbia, South Carolina 29201
(803) 771-7211

and

John M. Milling
MILLING LAW FIRM
Post Office Box 519
Darlington, South Carolina 29532
(843) 393-4083

APPELLANTS

November 15, 2018

STATE OF SOUTH CAROLINA
COUNTY OF
IN THE COURT OF COMMON PLEAS

JUDGMENT IN CIVIL CASE

CASE NO. 2018 CP- 16 - 334

Preston F. McDaniel, Esq.
et al.
PLAINTIFF(S)

S.C. Workers Compensation
Commission
DEFENDANT(S)

Submitted by:	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant
	or <input type="checkbox"/> Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.
Additional Information for the Clerk :

Matter is stayed for 60 days.

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

SC01 JUN 27 2018 PM 12:12
 CLERK OF COURT / R.D.
 DARLINGTON COUNTY, SC

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

[Signature]
Circuit Court Judge

2048
Judge Code

6/27/2018
Date



For Clerk of Court Office Use Only

This judgment was entered on the 27 day of June, 20 18 and a copy mailed first class or placed in the appropriate attorney's box on this 27 day of June, 20 18 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRPC.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

2018 JUN 27 PM 12:01
SCOTT B. SUGGS
CLERK OF COURT/RMG
DARLINGTON COUNTY, S.C.

TRUE CERTIFIED COPY,
Scott B. Suggs
CLERK OF COURT/RMG
DARLINGTON COUNTY, SC

State of South Carolina

1333 Main St, Suite 500
P.O. Box 1715
Columbia, S.C. 29202-1715



Tel: (803) 737-5700
Fax: (803) 737-1281
www.wcc.sc.gov

Workers' Compensation Commission

June 26, 2018

Preston F. McDaniel
McDaniel Law Firm
1315 Elmwood Ave.
Columbia, SC 29201

Carrier Code No. 00500

Carrier File No. 2013001614

Re: WCC File No. 1307922
Pamela Cartee v. SC JUDICIAL DEPT.
Date of Injury: 03/01/2013

The enclosed Motion is being returned for the following reason(s):

The attached motion is being returned to you because it has been received untimely. Any motion for reconsideration must be made within five (5) days of the date that the order, opinion, or award is served. S.C. Code Ann. Regs. 67-215(B) (2018 Supp.); S.C. Document Number 4735, effective February 23, 2018. The final Decision and Order of the Full Commission was served electronically on you May 30, 2018 making the due date for the Motion June 4, 2018.

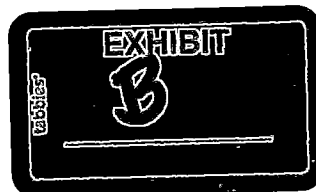
Once the hard copy is received the Motion and the filing fee will be returned promptly. Please let me know if you have any additional questions or concerns.

Sincerely,

Eugenia C. Hollmon
Judicial Docketing Director
803-737-5737

c:
Pamela O Cartee
1825 Woodbine Dr
Hartsville, SC 29550

JOHN M MILLING, Esquire
ATTORNEY AT LAW
PO Box 519
DARLINGTON, SC 29532-3216



McDANIEL LAW FIRM
ATTORNEYS AND COUNSELORS AT LAW
1315 ELMWOOD AVENUE
COLUMBIA, SOUTH CAROLINA 29201

**Proudly representing injured workers
for over 30 years.**

Preston F. McDaniel

Telephone (803) 771-7211

Matthew Robertson

Facsimile (803) 252-0709

June 25, 2018

**VIA EMAIL - abracy@wcc.sc.gov
AND US MAIL**

Ms. Amy Bracy
Judicial Director
SC Workers' Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202

**RE: Pamela Cartee v. SC Judicial Department
WCC File No. 1307922**

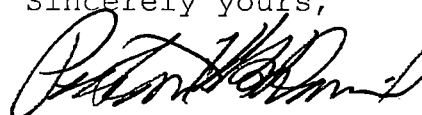
Dear Amy:

Although we have not been properly served pursuant to S.C. Code §42-17-60, we are going ahead and filing a Motion to Rehearing to the Order entered by the Full Commission in the above-referenced matter. You will please take notice that on May 31st, 2018, I previously filed notice of our intent to file a Petition for Rehearing and my request that the Order be redrafted so that it was properly captioned and notice that it had not been properly served on my co-counsel.

Enclosed is the required number of copies pursuant to the Commission Regulations and the required \$25.00 filing fee. Upon proper service of an Amended Order, properly served on the parties to this action involving a request of the approval for attorneys fees, I will be glad to file an Amended Motion for Rehearing.

I am including an Affidavit of Service on Ms. Cartee who is the only other party to the action which as noted by the Full Commission waived appearance and has no objection to the fee as requested being approved by the Commission.

Sincerely yours,



Preston F. McDaniel

SCWCC

JUN 27 2018

JUDICIAL

PFM/abh
Enclosure

cc: John Milling, Esquire (via email johnmilling@bellsouth.net)
Pamela O. Cartee

McDANIEL LAW FIRM
ATTORNEYS AND COUNSELORS AT LAW
1315 ELMWOOD AVENUE
COLUMBIA, SOUTH CAROLINA 29201

Proudly representing injured workers
for over 30 years.

Preston F. McDaniel

Telephone (803) 771-7211

Matthew Robertson

Facsimile (803) 252-0709

June 28, 2018

VIA EMAIL ONLY: abracy@wcc.sc.gov
& US MAIL
Amy Bracy
Judicial Director
SC Workers' Compensation Commission
Post Office Box 1715
Columbia, South Carolina 29202

RE: **Cartee v. SC Judicial Department**
WCC File No. 1307922

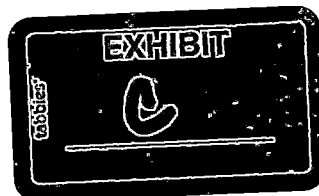
Dear Amy:

I am forwarding this email to you in your capacity as Judicial Director for the agency, and I am forwarding a copy to your attorney of Record Kevin Maroney with the Attorney General's Office.

It is my understanding that you intend to not file the Motion and return the Motion to us as not being timely. Most respectfully, the judicial authority of the Commission rests solely with the Commissioners under §42-3-20. If the Motion is returned to me per the letter, I will simply refile it and await the decision of the Commission as to whether or not it is timely. In fact, Regulation 67-215 concerning motions provides that the Commission will not even entertain a Motion for Dismissal. That is not to say that the Commissioners cannot enter a decision but the Commissioners must enter that decision dismissing the Motion as not being untimely.

Because I received a letter via email on June 26th noting the Commission's intended action upon our motion for rehearing being "filed", I am forwarding a copy of the attached Motion to Stay issued by the Circuit Court on June 27th. The certified copy, a copy of which is attached to this email, will also be forwarded to you by regular mail.

I assume that normal procedure will be followed meaning that the Commission will at some point issue a form order after the filing and I assume, after it is presented to the Judicial Conference since the decision was rendered by the Full Commission en banc, dismissing the Motion for failure to timely file it under the new Regulation.



Amy Bracy, Judicial Director
June 28, 2018
Page 2

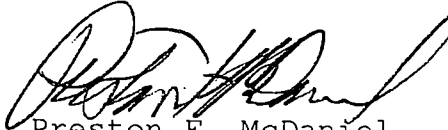
Also, for the Record since a Regulation cannot, "alter or add to the terms of the Statute" the Regulation cannot change the statutory filing time or method of service. See for example, Gadson v Mikasa Corporation, 368 S.C. 214, 628 SE2d, 262 S.C. App (2006). In that regard, S.C. Code §42-17-60 requires that we be served by registered mail before our time to appeal begins to run. In addition, S.C. Code §1-23-380 provides that a party to an administrative procedure may appeal or petition for re-hearing within thirty (30) days of the date of the final decision of the agency.

I simply note all of that to renew our request for Mr. Milling to be served and for us to be served pursuant to Statute by registered mail. Please contact your Attorney general counsel concerning any concerns and directions on how to proceed.

On a personal note, I sincerely apologize to you, Eugenia and everyone in the Judicial Department being caught up in this and I know that you are simply processing all matters filed with the Judicial Department and all matters pertaining to the Workers' Compensation Commission as instructed. I have always appreciated all the help your staff gives us over the years and on a day-to-day basis and your prompt responses in all matters.

As always, I appreciate all the courtesies and kindnesses shown to me by you and your department.

Sincerely yours,



Preston F. McDaniel
Attorney at Law

PFM/rmt/abh


cc: Kevin Desmond Maroney, Assistant Attorney General
(via email: kmaroney@scag.gov & US Mail)
Harley Kirkland, Assistant Attorney General
(via email: hkirkland@scag.gov & US Mail)

Andrea Ham

From: Andrea Ham <aham@pfmcdlaw.com>
Sent: Thursday, June 28, 2018 5:13 PM
To: 'Bracy, Amy'
Cc: 'kmaroney@scag.gov'; 'hkirkland@scag.gov'; 'sabrina@pfmcdlaw.com'; 'johnmilling@bellsouth.net'
Subject: Re: Cartee v. SC Judicial Department
Attachments: SCAN18062817130.pdf

The following email is being sent at the request of Preston F. McDaniel.

Thank you,
Andrea Ham
Legal Assistant
McDaniel Law Firm
(803)771-7211
(803)252-0709

 *Please consider the environment before printing this email.*

CONFIDENTIAL COMMUNICATION: The information contained in this message may contain legally privileged and confidential information intended only for the use of the individual or entity named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or duplication of this transmission is strictly prohibited. If you have received this communication in error, please notify us by telephone or email immediately and return the original message to us or destroy all printed and electronic copies. Nothing in this transmission is intended to be an electronic signature nor to constitute an agreement of any kind under applicable law unless otherwise expressly indicated. Intentional interception or dissemination of electronic mail not belonging to you may violate federal or state law.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SOUTH CAROLINA
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Appellate Case No. 2018-001234

Pamela Cartee, Claimant,

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SC Judicial Department, Employer,
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IN RE: Preston F. McDaniel, Esquire,
and John M. Milling, Esquire,.....Appellants,

v.

SC Workers' Compensation Commission.....Respondents.

AFFIDAVIT OF PRESTON F. MCDANIEL, APPELLANT

I, PRESTON F. MCDANIEL, having been duly and properly sworn
do depose and state:

1. That I am one of the Appellants along with Mr. John
Milling in the above-referenced matter filed with the Court. Mr.
Milling and I are co-counsel and represented Ms. Cartee before the
Commission. This matter involves our Petition for Review and the
Full Commission's Decision sitting en banc for refusing to approve
a portion of the attorneys' fees for which we requested approval.

Ms. Cartee has written the Commission and advised that she respectfully requested that the portion of the attorneys' fees which were denied be approved by the Commission which letter was specifically made a part of the Record at all hearings before the Commission. Although a matter of contract involving the attorney-client privilege and Ethical Rules of Conduct subject in a workers' compensation action to the statutory authority of a Commissioner or a Court of competent jurisdiction to approve fees, attorney's fees in this case, both Defendants were served with Notice, over objection on both ethical and legal grounds, of all Hearings and proceedings in this matter; i.e., approval/disapproval of attorneys' fees. Neither Ms. Cartee nor either Defendant appeared at any proceeding.

2. Upon receipt via email of the Commission Decision on May 29th, 2018 which was only served by email on Preston F. McDaniel, I notified the Commission as to the improper captioning of the decision which failed to include Mr. Milling as a party; placed the Commission on notice that Mr. Milling had not been served with a copy of the Order; and noted that I had not been properly served pursuant to the provisions of S.C. Code §42-17-60 and S.C. Code §§ 1-23-350 and 380 with the Order. I also noted to the Commission at that time that we would be filing a Petition for Rehearing. To my knowledge, Mr. Milling was never added as a party until after remand by this Court to the Commission and the Commission then issued its Order finding and agreeing that Mr. Milling was a party nunc pro tunc to the Petition filed with the


Commission. To my knowledge, we have never been served pursuant to statute and as required by statute with the original Order of the Full Commission filed on May 29th, 2018. On June 25th, 2018 by mail, we filed a Petition for Rehearing pursuant to statute within 30 days of the Order of May 29th.

3. That all documents attached to this Motion to Dismiss as Exhibits are part of my business records in this matter and are on file with both my law practice and Mr. John Milling's law practice and are records kept in a normal course of business in reference to this matter in our offices. Further, all documents in reference to this dispute over the refusal of the Commission to approve a portion of the attorneys' fees as requested for approval which were submitted pursuant to our Fee Contract with our client, Ms. Pam Cartee and as noted in the Record, Ms. Cartee does not dispute and specifically has requested that the Commission approve the attorneys' fees as requested as being in accordance with our Fee Contract and in accordance with law. Therefore, the parties to this action are the Commission, Mr. Milling and myself. The declaratory judgment action as referenced in the Motion is on file with the Fourth Circuit Court of Common Pleas: Preston F. McDaniel and John M. Milling, Plaintiffs, v. SC Workers' Compensation Commission.

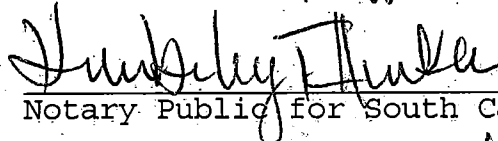
The declaratory judgment action involves all of the questions filed with this Court in the provisional appeal but also involves many other requests for declarations of the rights of the Appellants under the Rules, Regulations and Statutory Authority of

the Commission and seeks discovery as to the irregularities as to the procedures before the Commission at all levels and throughout the processing of this matter. The declaratory judgment action also includes a declaration of certain ethics considerations and determinations since this action involves the confidentiality of the attorney/client privilege. Under freedom of contract and disclosure of confidential information of that contractual relationship between attorneys and their clients is confidential; except that it is required to be disclosed to the Commission (no other parties) only based on the statutory authority of the Commission to approve attorneys' fees as requested in a workers' compensation matter.

FURTHER THE AFFIANT SAYETH NOT.


PRESTON F. MCDANIEL, Affiant

SWORN TO BEFORE ME this
15th day of November, 2018.


Notary Public for South Carolina L.S.

My Commission Expires: 4-26-20

THE STATE OF SOUTH CAROLINA
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and John M. Milling, Esquire, Appellants,

v.

SC Workers' Compensation Commission.....Respondent.

PROOF OF SERVICE

I certify that I have served the MOTION TO DISMISS APPEAL
BASED ON A LACK OF JURISDICTION OF THE COURT with MEMORANDUM IN
SUPPORT and AFFIDAVIT OF PRESTON F. MCDANIEL thereof by
depositing a copy of same in the United States Mail, postage
prepaid, on November 15, 2018 addressed to:

T. Parkin C. Hunter, Esquire
Harley L. Kirkland, Attorney at Law
Post Office Box 11549
Columbia, South Carolina 29211-1549



Preston F. McDaniel
MCDANIEL LAW FIRM
1315 Elmwood Avenue
Columbia, South Carolina 29201
(803) 771-7211

and

John M. Milling
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Post Office Box 519
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APPELLANTS

November 15, 2018

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Proudly representing injured workers
for over 30 years.

Preston F. McDaniel

Matthew Robertson

Telephone (803) 771-7211

Facsimile (803) 252-0709

November 15, 2018

VIA HAND DELIVERY

Honorable Jenny Abbott Kitchings
Clerk of Court
SC Court of Appeals
1220 Senate Street
Columbia, South Carolina 29211

RECEIVED

NOV 15 2018

RE: McDaniel, et al. v SCWCC
Appellate Case No. 2018-001234

SC Court of Appeals

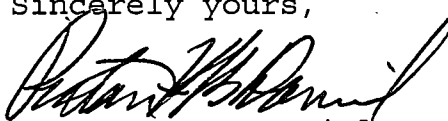
Dear Ms. Kitchings:

Please find enclosed the original and seven copies of Appellants' (Mr. Milling's and my) Motion to Dismiss our appeal without prejudice on jurisdictional grounds as being premature due to a lack of finality before the SC Workers' Compensation Commission for failure of the Commission to enter a final Decision on our Petition for Rehearing. Since this is a substantive Motion outside of the usual motions filed with the Court under the Appellate Court Rules involving whether jurisdiction has attached and alleging irregularities in procedure before the Commission under S.C. Code §1-23-380(4), I believe a hearing before a Judge providing us with a reasonable opportunity to be heard at a meaningful time and in a meaningful manner is required. However, to the extent that SCACR, Rule 240(h) would make a hearing discretionary, we would request that the Court grant the same.

By copy of this letter, I am notifying and serving Counsel for the Respondent with a copy of this Motion, and our request for a hearing before a Judge if same is determined to be discretionary.

Also, enclosed is the required filing fee and as always, I appreciate all the courtesies and kindnesses shown to me by the Court in this and all matters.

Sincerely yours,


Preston F. McDaniel

PFM/kth/abh
Enclosures

cc: John M. Milling, Esquire
T. Parkin Hunter, Esquire
Harley L. Kirkland, Attorney at Law