

<u>US MAIL</u> The Honorable Jenny Abbott Kitchings, Clerk South Carolina Court of Appeals 1220 Senate Street	<div style="text-align: right;"> RECEIVED DEC 18 2018 SC Court of Appeals </div> <div style="text-align: center;"> ▲ COURT USE ONLY ▲ </div>
Appellate Case No. 2018- 001364 S.C. WCC File#: 1322451, 1319203, 142087	
Mr. Terry H Capone 130 Summerlea Drive Columbia, SC 29203	DATE: December 11, 2018
SECOND REQUEST TO RECONSIDER REQUEST AND THIS COURT NOV 2, 2018, DECISION IN THE ABOVE REFERENCED MATTERS.	

The Honorable Jenny Abbott Kitching, Clerk and South Carolina Court of Appeals:

This is my second notice to request reconsideration based on this Court November 15, 2018 Letter and South Carolina Workers' Compensation proposed decision and order. This Court accepted my \$100.00 payment for an Appeal of the South Carolina Workers Compensation interlocutory order, which affected fundamental and substantial rights. I paid for a service, this court issued no refund and I am requesting the service as this court has a duty to act. I again request this court reconsider my request and its November 2, 2018 Decision, as it did not provide the service nor answered the alternative request for the \$100.00 fee waiver for the appeal that would be forthcoming in the above referenced matters.

The South Carolina Workers' Compensation Commission continues to abridge my Constitutional Rights when it re-obtained Jurisdiction by Trickery, Acting without Authority "induced" into jurisdiction through Fraud Upon the Court/Fraudulent Misrepresentation, based on evidence already provided to this Court. This Court has the Authority to recall the case, set -aside the any judgment, and certainly has the authority and jurisdiction of "finally deciding a party's appeal".

The following for consideration:

1. violates art. I, § 22, of our State Constitution on several grounds. This provision states: No person shall be finally bound by a judicial or quasi-judicial decision of an Administrative agency affecting private rights except on due notice and an opportunity to be heard; **nor shall he be subject to the same person for both prosecution and adjudication**; nor shall he be deprived of liberty or property unless by a mode of procedure prescribed by the General Assembly, and he shall have in all such instances the right to judicial review. No person shall be deprived of life, liberty, or property without due process of law. U.S. Const. amend. XIV, § 1; S.C. Const. art. I, § 3.

2. The U.S. Supreme Court has stated that "No state legislator or executive or judicial officer can war against the Constitution without violating his undertaking to support it." Cooper v. Aaron, 358 U.S. 1, 78 S.Ct. 1401 (1958).

3. Any judge who does not comply with his oath to the Constitution of the United States wars against that Constitution and engages in acts in violation of the Supreme Law of the Land. The judge is engaged in acts of treason.

4. If a judge does not fully comply with the Constitution, then his orders are void, In re Sawyer, 124 U.S. 200 (1888), he/she is without jurisdiction, and he/she has engaged in an act or acts of treason.

5. The U.S. Supreme Court, in Scheuer v. Rhodes, 416 U.S. 232, 94 S.Ct. 1683, 1687 (1974) stated that "when a state officer acts under a state law in a manner violative of the Federal Constitution", he "comes into conflict with the superior authority of that Constitution, and he is in that case stripped of his official or representative character and is subjected in his person to the consequences of his individual conduct. The State has no power to impart to him any immunity from responsibility to the supreme authority of the United States." [Emphasis supplied in original].

6. An officer who acts in violation of the Constitution ceases to represent the government". Brookfield Co. v. Stewart, 284 F. Supp. 94.

7. "No one is bound to obey an unconstitutional law and no courts are bound to enforce it." 16th American Jurisprudence 2d, Section 177 late 2nd, Section 256

8. "An unconstitutional act is not law; it confers no right; it imposes no duties; affords no protection; it creates no office; it is in legal contemplation, as inoperative as though it had never been passed." Norton vs Shelby county, 118 U.S.425, p.442

9. "It never became a law and was as much nullity as if it had been the act or declaration of an unauthorized assemblage of individuals." (Ryan v. Lynch, 68 Ill.160)

10. **Things invalid from the beginning cannot be made valid by subsequent act**". Trayner, Max. 482. Maxims of Law, Black's Law Dictionary 9th Edition, page 1862

11. "It is a fundamental right of a party to have a neutral and detached judge preside over the judicial proceedings." Ward v Village of Monroeville, 409 U.S. 57, 61-62, 93 S.Ct 80, 83, 34 L.Ed. 2d 267 (1972); Tumey v Ohio, 273 U.S. 510, 5209, 47 S. Ct. 437, 440, 71 L.Ed. 749 (1927).

12. Fraud Upon the court is fraud which is directed to the judicial machinery itself and is not fraud between two parties or fraudulent documents, false statements or perjury....It is where the court or a member is corrupted, or influenced, or influence is attempted, or where the judge performed his judicial function---i.e., where the impartial functions of the court have been directly corrupted." Bulloch v. United States, 763 F.2d 1115, 1121(10th Cir. 1985)

13. Fraudulent misrepresentation by Commission to obtain Jurisdiction by Trickery, Acting without Authority "induced" into jurisdiction through Fraud Upon the Court/ Fraudulent Misrepresentation.

14. There can be No "Law of the Case", where a Commissioner (A PRETENDER) has no license to practice and is ignorant of the law in the State of South Carolina. Masquerading as judges warring against the United States and South Carolina Constitution; a treasonous act. The South Carolina Workers' Compensation Commission is a Fraudulent Systems, lacking credibility, paying Commissioners over \$124,000.00 and secretaries/assistants that are paid over \$50,000.00, bilking unwitting South Carolina Citizens out of Billions.

15. Clearly I have been severely prejudiced by the South Carolina Workers Compensation Commission request for a re-hearing October 22, 2018, after the South Carolina Court of Appeals Docketed the case and briefs were submitted just to re-write the Decision or Order and not consider the "whole record" and all evidence presented allowing the same Commissioners to recycle through the decision making processes, essentially bolstering their own prior decisions; how many times in the process does Henry Gene McCaskill (A PRETENDER/ NO LICENSE TO PRACTICE LAW) using terms, pretending to be authentic/ genuine; Juxtaposed this and that, but only merely a himself Juxtaposed to be an Imposter/ a Fraud. The Kangaroo Court, conducted in my case clearly shows why the qualification standards of "Commissioners" need to be raised and is a matter of great importance and public policy that competent individuals hold competent

positions concerning matters of great public trust and he and other Commissioners' get to decide in favor of their initial fraudulent decisions? Operating without respect or effect of law and continuing to violate my fundamental and rights that have not been bestowed to them, no authority, no jurisdiction not standing AND Acts are void.

16. "Waivers of Constitutional Rights, not only must they be voluntary, they must be knowingly intelligent acts done with sufficient awareness." *Brady v. U.S.*, 397 U.S. 742, 748

17. A "legislative act will not be declared unconstitutional unless its repugnance to the constitution is clear and beyond a reasonable doubt." *Joytime Distribs. and Amusement Co.*, 338 S.C. at 640, 528 S.E.2d at 650. Since the decision in *M'Culloch v. Maryland*, 17 U.S. 316 (1819), it has been settled that state law that conflicts with federal law is "without effect." *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 516 (1992); see also *Maryland v. Louisiana*, 451 U.S. 725, 746 (1981) ("It is basic to this constitutional command that all conflicting state provisions be without effect.").

18. Implicit in the requirement of justice is that no rule of the Industrial Commission may compel a result incompatible with the fundamental rights of any party. *See Handy v. PPG Indus.*, 154 N.C. App. 311, 571 S.E.2d 853 (2002) (emphasizing the importance of neutrality and impartiality of any tribunal in maintaining the integrity of our judicial and quasi-judicial processes).

19. Art. I, § 22, of our State Constitution on several grounds. This provision states: No person shall be finally bound by a judicial or quasi-judicial decision of an Administrative agency affecting private rights except on due notice and an opportunity to be heard; nor shall he be subject to the same person for both prosecution and adjudication; nor shall he be deprived of liberty or property unless by a mode of procedure prescribed by the General Assembly, and he shall have in all such instances the right to judicial review. No person shall be deprived of life, liberty, or property without due process of law. U.S. Const. amend. XIV, § 1; S.C. Const. art. I, § 3.

20. Where rights secured by the Constitution are involved, there can be no rule making or legislation which would abrogate them." *Miranda v. Arizona*, 384 US 436, 491.

21. The assertion of federal rights, when plainly and reasonably made, is not to be defeated under the name of local practice." *Davis v. Wechsler*, 263 US 22, 24.

22. "This Court has held that when the matter is 'appealed' to the full Commission pursuant to G.S. 97-85, it is the duty and responsibility of the full Commission *to decide all of the matters in controversy between the parties.*" *Vierегge*, 105 N.C. App. at 638, 414 S.E.2d at 774 (emphasis added) (citation omitted)

23. An oft-quoted passage from one of the leading evidence treatises explains: It has always been understood—the inference, indeed, is one of the simplest in human experience—that a party's falsehood or other fraud in the preparation and presentation of his cause, his fabrication or suppression of evidence by bribery or spoliation, and all similar conduct is receivable against him as an indication of his consciousness that his case is a weak or unfounded one; and from that consciousness may be inferred the fact itself of the cause's lack of truth and merit. The inference

thus does not necessarily apply to any specific fact in the cause, but operates, indefinitely though strongly, against the whole mass of alleged facts constituting his cause. 2 J. WIGMORE, EVIDENCES § 278, at 133 (Chadbourn ed. 1979).

24. "brutum fulmen": "An empty noise; an empty threat. A judgment void upon its face which is in legal effect no judgment at all, and which no rights are divested, and from which none can be obtained; and neither binds nor bars anyone. Dollert v, Pratt-Hewitt Oil Corporation, Tex, Civ. Appl, 179 S.W.2d 346, 348. Also, see Corpus Juris Secundum, "Judgments" §§ 499, 512 546, 549. Black's law Dictionary, 4th Edition.

I certify that I am placing a copy of this letter as notification to the South Carolina Workers' Compensation Commission and defendants counsel who I know to be Attorney Cynthia C Dooley, Turner Padgett Graham & laney PA PO BOX 1473 Columbia SC 29202 US mail certified 12/11/2018.

Thank you for your consideration.

With The Highest Regards,

A handwritten signature in black ink, appearing to be 'C. Dooley', written in a cursive style.

Enclosure(s): NONE

Cc: Cynthia Dooley /Carmelo B. Sammataro Attorney for Respondents
South Carolina Workers Compensation Commission: Judicial Department



RETIRED

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DEC 13 2018
SC Court of Appeals

December 11, 2018

US MAIL

The Honorable Jenny Abbott Kitchings, Clerk
South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

Re: Terry Capone v. City of Columbia and Companion Third Party Administrator, LLC
W.C.C. File Nos. 1322789, 1719990, 1423445, 1519702, 1503655: SC WCC Motion Order
November 28, 2018.

Dear Ms. Kitchings:

Please let this notice and enclosed payment \$100.00, serve as notice that I would like to appeal the attached South Carolina Workers' Full Compensation Commission Appeal of Motion Order dated November 28, 2018, because the Commission in its decision and Order has abridged my Constitutional protected, fundamental and substantive rights. I request that a decision be made; no order pending can have affect that attempts to deny fundamental and substantive rights. I object to Commissioners obliging themselves to "prosecution "and "adjudication" of my claims before them, arbitrarily rotating roles and is Fraud Upon the Court to bolster your decisions. I object to any Commissioner without a license to practice law and their name does not appear on the role of South Carolina Attorneys to make any determination on my claims. This is an attempt denial /devaluation of my South Carolina Workers Compensation Benefits (PROPERTY) that I hold a substantial property interest, Denial of procedural and substantive due process, Denial of Equal Protection under the color of Law and other violations of law.

These due process rights apply to South Carolina Workers' Compensation benefits all covered South Carolinian's have a property interest in South Carolina Workers' Compensation benefits, "we have previously recognized that entitlement to workers' compensation benefits constitutes a property interest. *Orszula v. Orszula*, 292 S.C. 264, 356 S.E. (2d) 114 (1987)".

1. Implicit in the requirement of justice is that no rule of the Industrial Commission may compel a result incompatible with the fundamental rights of any party. *See Handy v. PPG Indus.*, 154 N.C. App. 311, 571 S.E.2d 853 (2002) (emphasizing the importance of neutrality and impartiality of any tribunal in maintaining the integrity of our judicial and quasi-judicial processes).

2. violates art. I, § 22, of our State Constitution on several grounds. This provision states:

No person shall be finally bound by a judicial or quasi-judicial decision of an Administrative agency affecting private rights except on due notice and an opportunity to be heard; nor shall he be subject to the same person for both prosecution and adjudication; nor shall he be deprived of liberty or property unless by a mode of procedure prescribed by the General Assembly, and he shall have in all such instances the right to judicial review. No person shall be deprived of life, liberty, or property without due process of law. U.S. Const. amend. XIV, § 1; S.C. Const. art. I, § 3.

3. The U.S. Supreme Court has stated that "No state legislator or executive or judicial officer can war against the Constitution without violating his undertaking to support it." Cooper v. Aaron, 358 U.S. 1, 78 S.Ct. 1401 (1958).

4. Any judge who does not comply with his oath to the Constitution of the United States wars against that Constitution and engages in acts in violation of the Supreme Law of the Land. The judge is engaged in acts of treason.

5. If a judge does not fully comply with the Constitution, then his orders are void, In re Sawyer, 124 U.S. 200 (1888), he/she is without jurisdiction, and he/she has engaged in an act or acts of treason.

6. Fraud Upon the Court- C.B.H. Resources, Inc. v. Mars Forging Co., 98 F.R.D. 564, 569 (W.D. Pa. 1983) (dismissing under Fed. R. Civ. P. 41(b) where party's fraudulent scheme, including use of a bogus subpoena, was "totally at odds with the . . . notions of fairness central to our system of litigation")

7. Fraud Upon the Court- "[w]hen a subpoena should not have been issued, literally everything done in response to it constitutes 'undue burden or expense' within the meaning of Civil Rule 45(c)(1)." CareToLive v. von Eschenbach, 2008 WL 552431 at *3 (S.D.Ohio Feb. 26, 2008) (citation omitted).

8. Fraud Upon the Court -The underlying purpose of Rule 45(c)(1), is "to protect a non-party witness as a result of a misuse of the subpoena," which also shows that the imposition of sanctions is appropriate. Care-ToLive, 2008 WL 552431 at *3 (citing Fed.R.Civ.P. 45(c)(1) advisory committee's notes (1991) (quotation marks omitted)).

9. "Fraud Upon the court is fraud which is directed to the judicial machinery itself and is not fraud between two parties or fraudulent documents, false statements or perjury....It is where the court or a member is corrupted, or influenced, or influence is attempted, or where the judge performed his judicial function---i.e., where the impartial functions of the court have been directly corrupted." Bulloch v. United States, 763 F.2d 1115, 1121(10th Cir. 1985)

10. This is Fraud Upon The Court, Obstruction of Justice, Civil (RICO) Racketeer Influenced Corrupt Organization ACT and Conspiracy to Commit CIVIL RICO to include Wire Fraud and Mail Fraud in the denial/devaluation of South Carolina Workers' Compensation Benefits (PROPERTY) that I hold a substantial property-interest, Denial of my fundamental rights protected by the Constitution of this State and the United States, Procedural and Substantive due process, Denial of Equal Protection under the Color of Law and other violations that had lead to arbitrary and capricious decisions and unfair manner of treatment abusing this Commissions discretion and not in accordance with the Supreme law of the land or was made without observation of procedure and regulations required by law or modern standards or practices.

I certify that I am placing a copy of this letter as notification to the South Carolina Workers' Compensation Commission and defendants counsel who I know to be Attorney Cynthia C Dooley, Turner Padgett Graham & laney PA PO BOX 1473 Columbia SC 29202 US mail certified 12/11/2018.

Thank you for your consideration.

With The Regards,

A handwritten signature in black ink, appearing to be 'T. Capone', written in a cursive style.

Enclosure(s) Motion Order

Cc: Cynthia Dooley Attorney for Respondents (w/all enclosures)

South Carolina Workers Compensation Commission: Judicial Department

Mr. Terry H. Capone
Fire Battalion Chief-Retired
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Columbia, SC 29203
Email: tcapone@liberty.edu

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