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SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM South Carolina  
Workers Compensation Commission

Full Commission Order Dated April 28, 2017 affirming Commissioner Melody L. James orders dated January 04, 2013 And September 30, 2013

Case No.: 2017-001217

John C. McDaniel.....Appellant,

v.

Snelling Staffing Services and United Wisconsin Insurance  
Company c/o United Heartland .....Respondents.

Motion to Strike Respondent's Return to Petition for Rehearing  
Or  
to order that Appellant may Reply to the Petition for Rehearing

1. Pursuant to Rules 240 and 269, SCACR the Appellant hereby moves to have the Court Strike the Respondents' Return to the Petition for Rehearing, and impose sanctions against Respondents' Attorneys for the following reasons: I) South Carolina's Appellate Court Rules prohibit filing a return in this case, II) the Return is non-responsive to the Petition for Rehearing, III) Petitioner did not receive notice of the Return being filed until after the time to Reply had expired, and IV) the Return is technically deficient.

**I) South Carolina's Appellate Court Rules prohibit filing a return in this case, as such, Respondents' should be sanctioned under Rule 269.**

2. A return to a petition for rehearing may only be filed if permitted under Rule 221(a), SCACR. Rule 240(e), SCACR.

3. When a Petition for rehearing is filed, no return may be filed unless requested by the Appellate Court. Rule 221(a), SCACR.

4. Here, after an order finally disposing of the case, Appellant petitioned the court to rehear certain issues. See Petition for Rehearing, filed May 2<sup>nd</sup>.

5. No request for a Return was made by the Court. Exhibit B

6. Respondents served a Return on May 7<sup>th</sup>, but restricted receipt of the return with a signature requirement.

7. Appellant received notice to pick up a parcel of certified mail at the USPO on May 15<sup>th</sup>. Exhibit B

8. Appellant actually received Respondents return on May 16<sup>th</sup>. Exhibit B

9. Appellant then promptly notified Respondents of the improper nature of the Return, and asked if the Return would be withdrawn. Exhibit A.

10. Respondent's informed the Appellant that, "We will let the Court handle this on their own." Exhibit A.

11. Where a return is not in compliance with the court rules, the appellate court may impose sanctions on the offending attorneys "as the circumstances of the case and discouragement of like conduct in the future may require." Rule 269, SCACR.

12. The Appellant believes that the Respondents' Attorneys are acting abusively to a pro se Appellant and should be sanctioned for it.

13. For the Above reasons the Appellant requests the Court to Strike the Respondents' Return and sanction the Respondents' Attorneys for non-compliance with the Court Rules. Further,

the Appellant asks that the sanction be severe enough to act as both a general deterrent to other law firms and as a specific deterrence to Respondents' Attorneys from engaging in this kind of behavior in the future.

## **II) The Return is non-responsive to the Petition for Rehearing.**

14. A petition for rehearing is not meant to be a rehearing of the merits but of pointed issues and specific points that have been overlooked or misapprehended by the court.

15. The Respondents have used the return to argue the merits of the case. This is impermissible.

16. Appellants issues thirteen and fifteen were reviewed under a "substantial evidence standard."

17. Appellant takes issue with the application of a "substantial evidence standard" being applied to questions of law.

18. Respondents do not argue that the issues are not questions of law, nor do they argue that substantial is the correct standard to be applied.

19. Instead, the Respondents argue the merits of the case.

20. As such, the Return from the Respondents is non-responsive to the Petition.

21. For the above reasons, the Appellant requests the Court to find the return improper in form, constructed from improper substance, and Strike the Respondents' Return. Additionally, the Court should sanction Respondents' Attorneys for non-compliance with the Court Rules. Further, the Appellant asks that the sanction be severe enough to act as both a general deterrent to other

law firms and as a specific deterrence to Respondents' Attorneys from engaging in this kind of behavior in the future.

**III) Petitioner did not receive notice of the Return being filed  
until after the time to Reply had expired.**

22. Appellant first became aware of the Return on May 16<sup>th</sup> via signature-required Registered-Mail. Exhibit B

23. Prior to this date the Appellant had not received a copy of the Return via first class mail, and has not received a copy of the return via first class mail since. Exhibit B.

24. On May 16<sup>th</sup> the c-track website did not have the Respondents' Return scanned or indexed. Exhibit B.

25. The "c-track" website did not reflect the Return the morning (Approx. 10AM) of May 20<sup>th</sup>. Exhibit B.

26. At 11:08 May 20<sup>th</sup>, Appellant contacted the court for a status update on the return and was informed that the Return was being rejected, as non-conforming. Exhibit B

27. The Appellant was instructed by the court to check "c-track" that afternoon to be able to read the letter that rejected the return as improperly filed. Exhibit B.

28. After that conversation on the 20<sup>th</sup>, the Return was uploaded to "c-track" with no notice that it had been rejected or a letter updating its status from "rejected" to "filed." Exhibit B.

29. The Appellant contacted the Court later that same day and was informed that the decision was made to accept the filing. Exhibit B.

30. In Summary, the morning of the 20<sup>th</sup>, the Return had not been filed, and no right to reply existed for the Appellant. Then the moment the Court filed the document (11 days after it was received) the Appellant was already outside the statutory window to reply.

31. For the above reasons, the Court should Strike Respondents' Return, or alternatively, order that a reply may be filed by the Appellant.

#### **IV) The Return is technically deficient.**

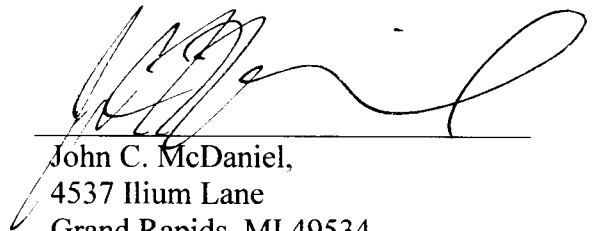
32. Under Rule 240(c)(2), SCACR, all returns shall include "A memorandum with citation of authorities in support of the motion [or return]."

33. The Respondents' Return lacks a memorandum of authorities.

34. For the above reason the Appellant requests the Court to Strike the Respondents' Return and sanction the Respondents' Attorneys for non-compliance with the Court Rules. Further, the Appellant asks that the sanction be severe enough to act as both a general deterrent to other law firms and as a specific deterrence to Respondents' Attorneys from engaging in this kind of behavior in the future.

#### **In Conclusion**

35. For the above reasons, the Appellant respectfully prays that this honorable court grant the Petitioner's Motion to Strike the Respondents' Return and sanction the Respondents' Attorneys for non-compliance with the court rules. In the Alternative, the Court should grant Appellant the opportunity to file a reply.



---

John C. McDaniel,  
4537 Ilium Lane  
Grand Rapids, MI 49534  
843-425-3000  
Jmcdaniel1982@gmail.com

May 25, 2019

**Memoranda of Authorities**

S.C. Appellate Court Rules

Rule 221, SCACR  
Rule 240, SCACR  
Rule 269, SCACR

# **Exhibit A**

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**return to petition for rehearing (McDaniel, John)**

2 messages

**John McDaniel** <jmcdaniel1982@gmail.com>

Thu, May 16, 2019 at 3:40 PM

To: Helen Hiser &lt;helen.hiser@mgclaw.com&gt;

Ms. Hiser,

Your firm has recently filed a return to petition for rehearing concerning Appellate case number 2017-001217. This is prohibited under the rule concerning petitions for rehearing.

(a) Rehearing. Petitions for rehearing must be actually received by the appellate court no later than fifteen (15) days after the filing of the opinion, order, judgment, or decree of the court. A petition for rehearing shall be in accordance with Rule 240, and shall state with particularity the points supposed to have been overlooked or misapprehended by the court. **No return to a petition for rehearing may be filed unless requested by the appellate court.** Ordinarily, however, rehearing will not be granted in the absence of such a request. No petition for rehearing shall be allowed from an order denying a petition for a writ of certiorari under Rule 242, SCACR.

I am unaware of a request for return from the court. Would you like to withdraw this return?

Please advise,  
John McDaniel

---

**Helen Hiser** <helen.hiser@mgclaw.com>

Mon, May 20, 2019 at 10:52 AM

To: John McDaniel &lt;jmcdaniel1982@gmail.com&gt;

Mr. McDaniel, We will let the Court handle this on their own.

Sincerely,

Helen Hiser

[Quoted text hidden]

**Helen Hiser, Attorney**

helen.hiser@mgclaw.com

735 Johnnie Dodds Blvd. Ste 200

Mt. Pleasant, SC 29464

Main:843-576-2900 | Direct:843-576-2930 | Fax:843-534-0605

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# **Exhibit B**

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APPEAL FROM South Carolina  
Workers Compensation Commission

Full Commission Order Dated April 28, 2017 affirming Commissioner Melody L. James orders dated January 04, 2013 And September 30, 2013

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Case No.: 2017-001217

WCC: 1116275

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John C. McDaniel.....Appellant,

v.

Snelling Staffing Services and United Wisconsin Insurance  
Company c/o United Heartland .....Respondents.

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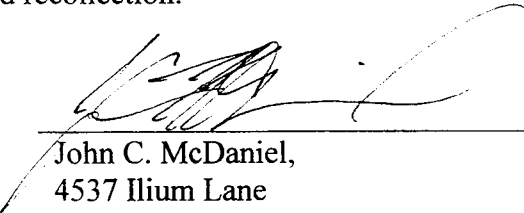
Affidavit

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- 1) I, John C. McDaniel, am the Appellant in the above case.
- 2) Appellant filed a petition for rehearing on May 2<sup>nd</sup> in the above action.
- 3) No request for a Return was made by the Court.
- 4) Respondents filed a Return with a certificate of service dated May 7<sup>th</sup>, and declared service via first-class mail and certified mail.
- 5) Appellant first became aware of the Return on May 16<sup>th</sup> via signature-required Registered-Mail.
- 6) Prior to this date the Appellant had not received a copy of the Return via first class mail, and has not received a copy of the return via first class mail since.

- 7) On May 16<sup>th</sup> the c-track website did not have the Respondents' Return scanned or indexed.
- 8) The "c-track" website did not reflect the Return the morning (Approx. 10AM) of May 20<sup>th</sup>.
- 9) At 11:08 May 20<sup>th</sup>, Appellant contacted the court for a status update on the return and was informed that the Return was being rejected, as non-conforming.
- 10) The Appellant was instructed by the court to check "c-track" that afternoon to be able to read the letter that rejected the return as improperly filed.
- 11) At 4:01 pm on May 20<sup>th</sup>, the Appellant contacted the Court and was informed that the decision was made to accept the filing.

I hereby swear, under penalty of perjury, that the above statements are true, made with personal knowledge, and relayed to the best of my knowledge and recollection.



---

John C. McDaniel,  
4537 Ilium Lane  
Grand Rapids, MI 49534  
843-425-3000  
Jmcdaniel1982@gmail.com

May 25, 2019

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM South Carolina  
Workers Compensation Commission

Full Commission Order Dated April 28, 2017 Affirming Commissioner Melody L. James orders dated January 04, 2013 And September 30, 2013

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Case No.: 2017-001217  
WCC 1116275

---

John C. McDaniel, Employee, Claimant, Appellant.....Appellant,

v.

Career Employment Professional d/b/a Snelling Staffing, Employer and United Wisconsin Insurance Co., Carrier, Respondents. ....Respondents.

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**PROOF OF SERVICE**

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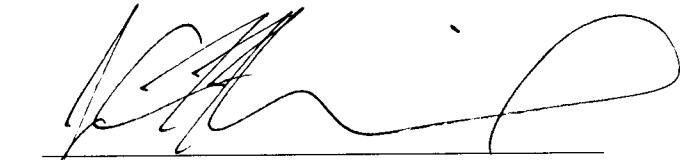
I certify that I have served the Appellant's Motion to Strike by depositing a copy in the U.S. Mail, postage paid on May 25, 2019 addressed to the below:

Helen F. Hiser  
R. Mark Davis  
McAngus Goudelock & Courie, LLC  
735 Johnnie Dodds Blvd., Suite 200  
Mt. Pleasant, SC 29465

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MAY 29 2019

SC Court of Appeals



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John C. McDaniel  
4537 Ilium Lane  
Grand Rapids, MI 49534  
Phone Number: 843-425-3000  
Email: jmcdaniel1982@gmail.com

May 25, 2019

# John C. McDaniel

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4537 Ilium Lane, Grand Rapids MI 49534  
Phone Number: 843-425-3000  
Email: jmcdaniel1982@gmail.com

May 25, 2019

Jenny Abbott Kitchings  
SC Court of Appeals  
Clerk of Court  
P.O. Box 11629  
Columbia, SC 29211

McAngus Goudelock & Courie, LLC  
735 Johnnie Dodds Blvd., Suite 200  
Mt. Pleasant, SC 29465

RE: John C. McDaniel v. Career Employment Professional d/b/a Snelling Staffing  
DOI: 11/21/2011  
WCC File: 1116275  
Appellant Case No: 2017-001217

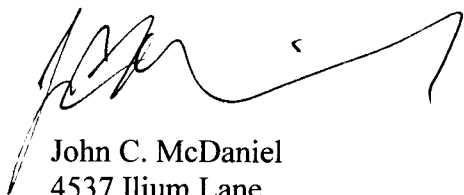
Dear Ms. Kitchings,

Enclosed for filing, please find the Original Appellant's Motion to Strike, Original Certificate of Service, along with 6 copies of each, and a \$50 check for the fee.

By copy of this letter, I am serving counsel of record with same.

Please call me if you have any questions about the enclosed. Thank you for your time.

Sincerely,



John C. McDaniel  
4537 Ilium Lane  
Grand Rapids, MI 49534  
Phone Number: 843-425-3000  
Email: jmcdaniel1982@gmail.com

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Grand Rapids, MI  
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