

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

APPEAL FROM FLORENCE COUNTY  
Court of Common Pleas

The Honorable Michael Nettles, Circuit Court Judge

RECEIVED  
JAN 23 2020  
S.C. SUPREME COURT

Case No. 2019-002066

April Jones.....Appellant,

v.

Tim Ringer, Individually and as  
employee/agent of WAL-MART  
STORES, INC. d/b/a WAL-MART  
STORE # 630; WAL-MART STORES,  
INC.; and WAL-MART STORES  
EAST, L.P.....Respondents.

**APPELLANT’S REPLY TO RETURN TO PETITION FOR WRIT OF CERTIORARI**

Described below is the special and important reason that this Court should issue a Writ of Certiorari. Currently, there appears to be no rule that resolves conflicts in appearance dates between courts of the same level. For example, if an attorney is called to appear at a Common Pleas jury trial in Colleton County on the same date she is called to appear at a Common Pleas jury trial in Florence County, no rule determines which trial must go forward and which must be continued.

Hopefully, in such an instance, the two trial judges would talk, and one would defer to the other. Unfortunately, that has not always happened. And it did not happen here.

Sometimes, as here, both trial judges insist that the case in their county go forward as scheduled.<sup>1</sup> Obviously, the attorney cannot be in both counties at the same time. What then is the attorney to do? There does not appear to be any rule that clearly answers this question.

What is needed is a clarification of Rule 601, SCACR. Rule 601 resolves most conflicts when “an attorney of record is called to appear simultaneously in actions pending in two or more tribunals of this State.” Rule 601 accomplishes this by establishing an “Order of Priority as Between Tribunals” as shown below.

**RULE 601  
CONFLICTS IN HEARING DATES**

**(a) Order of Priority as Between Tribunals.** In the event an attorney of record is called to appear simultaneously in actions pending in two or more tribunals of this State, the following list shall establish the priority of his obligations to those tribunals:

- (1) The Supreme Court.
- (2) The Court of Appeals.
- (3) The Commission on Judicial Conduct, the Commission on Lawyer Conduct, and the Committee on Character and Fitness.
- (4) The Family Court - merits hearings involving child abuse, child neglect, and termination of parental rights; juvenile criminal hearings where the juvenile is in detention or otherwise in state custody.
- (5) The Circuit Court - General Sessions.
- (6) The Circuit Court - Common Pleas, Jury Term.
- (7) The Family Court - all cases not referenced in (4) above.
- (8) The Circuit Court - Common Pleas, Non-Jury Term.
- (9) The Administrative Law Court.
- (10) Alternative Dispute Resolution Conferences conducted pursuant to the SC Court-Annexed ADR Rules.
- (11) The Probate Court.
- (12) Magistrates and Municipal Courts.
- (13) Other Administrative Bodies or Officials.

When a party or his counsel is in the process of a hearing or trial before a tribunal, he may not be required to appear in another tribunal having greater priority unless the tribunal with less priority grants a recess or continuance for that purpose.

However, Rule 601 does not resolve *all* conflicts. What Rule 601 does not do is clearly set forth a rule for breaking ties between tribunals with the same Rule 601 priority level; in the example above, the Court of Common Pleas (jury term) in Colleton County and the Court of Common Pleas (jury term) in Florence County. Each Common Pleas jury term has a #6 priority under Rule 601. How then to decide which goes forward?

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<sup>1</sup> In the case at bar, the two trial judges ordered *some* of the attorneys of record to try one case, and *some* to try the other, thus depriving both clients of their choice of trial counsel. The facts are described more fully in the Petition (incorporated by reference), and Petitioner does not repeat them here for the sake of brevity.

Petitioner proposes a solution below. However, before getting to the solution, it helps to understand why a bright-line solution is necessary in the first place. It is necessary because the right to choose one's counsel is a substantial right<sup>2</sup>, and instances of conflict between jury trial rosters – which, if unresolved, deprive litigants of this substantial right – are increasing in frequency. This increase is driven by improvements in transportation and communication.

In the past, most lawyers in South Carolina appeared of-record in a single county, or perhaps in two counties. Only a handful of attorneys practiced in more than three counties. Practicing close to home was a practical necessity, not just because travel was slow, but because filing at a distance was cumbersome and uncertain. Senior members of the bar remember this – to file in a far-off county, one mailed multiple copies of a pleading along with a check and a return envelope. Then one waited; and waited. There was no on-line public index to check to see if the pleading had arrived safely and been entered. One just waited for a clocked copy to come back by mail. Or not. In which case one called the Clerk of Court and began tracking it down. This all presented a strong incentive to practice close to home, in one county, maybe two. Accordingly, conflicts in which an attorney was called to appear in multiple counties at the same time for the same type of appearance were vanishingly rare.

By 2019, all this had changed. Transportation is now faster – every County Courthouse is now within a two hour and thirty-seven minute drive of the Supreme Court.<sup>3</sup> More importantly,

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<sup>2</sup> This substantial right is described in detail in the Petition for Writ of Certiorari which, for the sake of brevity, is incorporated herein by reference.

<sup>3</sup> According to Google Maps, the furthest away is the Oconee County Courthouse at two hours, thirty-seven minutes. <https://www.google.com/maps/dir/South+Carolina+Supreme+Court,+Gervais+Street,+Columbia,+SC/Oconee+County+Court+House,+West+Main+Street,+Walhalla,+SC/@34.4159433,-82.6112075,9z/data=!3m1!4b1!4m14!4m13!1m5!1m1!1s0x88f8bb2a9461b1f7:0x96e459c95595dffe!2m2!1d-81.0324726!2d34.001932!1m5!1m1!1s0x8858f1efef2c5013:0xa9fb6d9a4d27215d!2m2!1d-83.0678744!2d34.7650705!3e0> Last visited January 21, 2020.

the online public index allows filings and rosters to be checked instantly from anywhere. And the biggest change of all came just recently as a result of E-Filing. With E-filing, *any* attorney, *anywhere*, can file in *any* county just as easily as in any other county. In terms of ease-of-appearance, all forty-six counties are now exactly the same.

As a result, more and more attorneys are appearing in multiple counties. By way of example, the undersigned attorneys are counsel-of-record in 23, 36, and 36 counties respectively. This would have been unthinkable twenty years ago. But now, it is the trend; the trend is toward appearing as counsel-of-record in numerous counties. While the undersigned may represent the leading edge of this trend, many other attorneys are following. As a result, instances of conflict between same-priority courts in different counties continue to increase. And because choice of counsel is such an important right, a bright-line rule is needed to resolve these conflicts so that clients are not deprived of their choice of counsel when their case comes up on the trial roster.

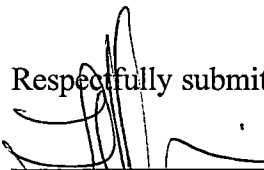
Petitioner respectfully proposes a simple solution. Petitioner proposes that conflicts between matters with the same Rule 601 priority be resolved by giving priority to the matter which has higher position on the roster, and if two matters have the same roster position, then giving priority to the matter which was filed first (i.e. is the oldest).

There may be other solutions, but whatever the solution, a bright-line rule is needed to safeguard the right of civil litigants to choose their own counsel. Because these conflicts arise *between* counties, no individual Chief Administrative Judge can resolve them. Instead, only the Supreme Court can implement the necessary state-wide solution to avoid these increasingly common conflicts.<sup>4</sup> That is the special and important reason that this Court should issue a Writ of Certiorari and hear this matter.

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<sup>4</sup> Which conflicts are, by their very nature, capable of repetition yet evading review.

Respectfully submitted,



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January 21, 2020

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Wal-Mart Stores East, L.P.*

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PROOF OF SERVICE

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I certify that Appellant's Reply to Return to Petition for Writ of Certiorari was served on the South Carolina Supreme Court and Respondents by U.S. Mail Postage Prepaid on January 21, 2020, addressed to Respondents' attorney of record, Regina Hollins Lewis and Nashiba Boyd, 3700 Forest Drive, Suite 400 Columbia, SC 29204.

January 21, 2020

[SIGNATURE ON FOLLOWING PAGE]



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