

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE SOUTH CAROLINA
WORKERS' COMPENSATION COMMISSION
APPELLATE PANEL

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MAY 04 2020
SC Court of Appeals

Appellate Case No. 2019-000369
W.C.C. File Nos. 1322451, 1319203, 1420487

Terry Capone,Appellant,

v.

City of Columbia, Employer, and
Companion Third Party Administrator, LLC, Carrier, Respondents.

**RETURN OF RESPONDENTS TO
APPELLANT'S EMERGENCY MOTION REQUESTING APPOINTMENT
OF COUNSEL BY THE COURT ADA ACCOMODATION [SIC] REQUEST
DATED APRIL 20, 2020 AND TO
APPELLANT'S EMERGENCY MOTION FOR EXTENSION OF TIME TO
SERVE THE RECORD ON APPEAL DATED APRIL 20, 2020**

Respondents City of Columbia, Employer, and Companion Third Party Administrator, LLC, Carrier, ("Respondents") submit this return to the Emergency Motion Requesting Appointment of Counsel by the Court ADA Accomodation [sic] Request dated April 20, 2020, and the Emergency Motion for Extension of Time to Serve the Record on Appeal dated April 20, 2020, of Appellant Terry Capone ("Appellant").

I. The Court Should Deny Appellant's Emergency Motion Requesting Appointment of Counsel.

Despite numerous notices of appeal, a spate of motions, and voluminous records filed, sometimes simultaneously, with the South Carolina Workers' Compensation Commission and

this Court, Appellant for the first time on appeal has requested “emergency” appointment of counsel. In support of his request, Appellant, also for the first time on appeal, pleads that financial hardship, mental and physical disabilities, and federal authority authorizing litigants to request (but not requiring courts to order) representation justify the appointment of counsel. Given Appellant’s prolific filings, the unreasonable delay in seeking appointment of counsel, and the lack of any constitutional right to the appointment of counsel in a workers’ compensation proceeding, the emergency motion should be denied.

Appellant does not cite any South Carolina authority compelling this Court to appoint *pro bono* appellate counsel to represent him. While this Court previously has determined a trial court may appoint a lawyer to represent an indigent litigant who had no legal right to counsel, Respondents have located no authority indicating Appellant is entitled to *pro bono* appellate representation in a civil dispute. See *Ex parte Dibble*, 279 S.C. 592, 310 S.E.2d 440 (Ct. App. 1983). The *Dibble* Court provided trial courts with an analytical framework for addressing indigent representation, taking into consideration whether appointment of counsel is necessary to render justice and the extent to which the litigant is able to secure counsel on his own. *Id.*, 279 S.C. at 597, 310 S.E.2d at 443 (remanding to the trial court to review its order of appointment consistent with this framework). Going further, trial courts were instructed to consider:

whether there is any public agency charged with the responsibility of representing indigents which is in a position to provide the representation (*e.g.*, a legal aid or public defender's office) [;] . . . whether there are any private lawyers or organizations willing to supply counsel as a *pro bono* service to the litigant and the court ; [and whether to consider] . . . appointing lawyers, where reasonably available, who are already on the public payroll (*e.g.*, lawyer employees of the various departments and agencies of state government).

Id.

Even assuming, without conceding, the *Dibble* framework applies in the appellate context, Appellant's barebones motion falls woefully short of meeting the articulated standard. First, as Appellant notes, he has been able to comply with nearly all directives from this Court, thus negating any assertion his alleged disabilities and limitations prevent him from continuing in a *pro se* capacity or that the promotion of justice requires appointment of *pro bono* appellate counsel. Further, Appellant has not demonstrated either attempts to retain or inability to retain counsel elsewhere, and he never made the request for counsel during proceedings before the Commission. In short, justice will not be violated if this Court declines to appoint *pro bono* appellate counsel, and the Appellant's emergency motion should be denied.

Accordingly, for the reasons stated herein, Appellant's Emergency Motion Requesting Appointment of Counsel by the Court ADA Accomodation [sic] Request should be denied.

II. Respondents Do Not Oppose Appellant's Motion For An Extension Of Time To Serve And File The Record On Appeal.

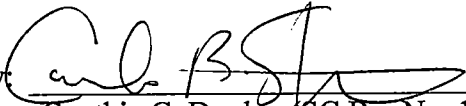
This appeal has been mired in the briefing stages for more than a year. By Respondents' count, Appellant has filed at least four motions for extensions of time and received at least three deficiency letters – all resulting in multiple delays in the progression to final resolution of this appeal. While Respondents do not oppose Appellant's Emergency Motion for Extension of Time to Serve the Record on Appeal in this instance, they respectfully request any further extensions of time be denied in order to preserve the resources of both the Court and the parties.

CONCLUSION

For the reasons stated herein, Respondents respectfully submit that the Emergency Motion Requesting Appointment of Counsel by the Court ADA Accomodation [sic] Request should be denied. Further, while Respondents do not oppose an extension of time for Appellant to serve and file the record on appeal in this instance, they respectfully submit that any future

requests for extension of time be denied.

April 30, 2020

By 
Cynthia C. Dooley (SC Bar No. 13623)
Carmelo B. Sammataro (SC Bar No. 69746)
TURNER PADGET GRAHAM & LANEY P.A.
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ATTORNEYS FOR RESPONDENTS

THE STATE OF SOUTH CAROLINA
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PROOF OF SERVICE

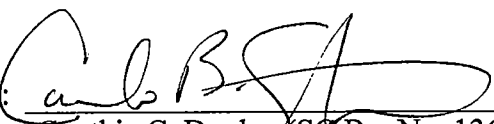
I certify this 30th day of April 2020 that I have served a copy of the RETURN OF RESPONDENTS TO APPELLANT'S EMERGENCY MOTION REQUESTING APPOINTMENT OF COUNSEL BY THE COURT ADA ACCOMODATION [SIC] REQUEST DATED APRIL 20, 2020, AND TO APPELLANT'S EMERGENCY MOTION FOR EXTENSION OF TIME TO SERVE THE RECORD ON APPEAL DATED APRIL 20, 2020, by mailing same, postage prepaid in the United States mail, addressed to the following:

Terry Capone
130 Summerlea Drive
Columbia, SC 29203

APPELLANT, *PRO SE*

(Signature page to follow.)

April 30, 2020

By: 
Cynthia C. Dooley (SC Bar No. 13623)
Carmelo B. Sammataro (SC Bar No. 69746)
TURNER PADGET GRAHAM & LANEY P.A.
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April 30, 2020

The Honorable Jenny Abbott Kitchings, Clerk
South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

Re: Terry Capone v. City of Columbia and Companion Third Party Administrator,
LLC
Appellate Case No.: 2019-000369
File No.: 15030.119

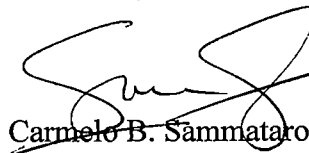
Dear Ms. Kitchings:

Enclosed please find the original and one copy of the Return of Respondents to Appellant's Emergency Motion Requesting Appointment of Counsel by the Court ADA Accomodation [Sic] Request dated April 20, 2020, and to Appellant's Emergency Motion for Extension of Time to Serve the Record on Appeal dated April 20, 2020, and the Proof of Service regarding the above-referenced matter. Please file the original filings and return clocked copies to me via the enclosed envelope. Thank you for your assistance with this matter, and please contact me if you have any questions.

With kind regards, I am

Very truly yours,

TURNER, PADGET, GRAHAM & LANEY, P.A.


Carmelo B. Sammataro

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CBS/tj

Enclosures

cc: Terry Capone, Appellant *pro se* (w/enc.)

Turner Padget

P.O. Box 1473 Columbia, SC 29202

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SC Court of Appeals

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The Honorable Jenny Abbott Kitchings, Clerk
South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211