The Supreme Court of South Carolina

In the Matter of H.
Franklin Burroughs, Deceased.

ORDER

Pursuant to Rule 31, RLDE, of Rule 413, SCACR, Disciplinary Counsel seeks an order appointing an attorney to take action as appropriate to protect the interests of Mr. Burroughs and the interests of Mr. Burroughs' clients.

IT IS ORDERED that Richard M. Lovelace, Esquire, is hereby appointed to assume responsibility for Mr. Burroughs' client files, trust account(s), escrow account(s), operating account(s), and any other law office accounts Mr. Burroughs may have maintained. Mr. Lovelace shall take action as required by Rule 31, RLDE, to protect the interests of Mr. Burroughs' clients and may make disbursements from Mr. Burroughs' trust, escrow, and/or operating account(s) as are necessary to effectuate this

appointment.

This Order, when served on any bank or other financial institution maintaining trust, escrow and/or operating account(s) of H. Franklin Burroughs, Esquire, shall serve as notice to the bank or other financial institution that Richard M. Lovelace, Esquire, has been duly appointed by this Court.

Finally, this Order, when served on any office of the United States Postal Service, shall serve as notice that Richard M. Lovelace, Esquire, has been duly appointed by this Court and has the authority to receive Mr. Burroughs' mail and the authority to direct that Mr. Burroughs' mail be delivered to Mr. Lovelace's office.

s/Jean H. Toal C.J.
FOR THE COURT

Columbia, South Carolina

January 24, 2002

OPINIONS

OF

THE SUPREME COURT

AND

COURT OF APPEALS

OF

SOUTH CAROLINA

January 28, 2002

ADVANCE SHEET NO. 2

Daniel E. Shearouse, Clerk
Columbia, South Carolina

www.judicial.state.sc.us

2002-MO-008 - In the Interest of Monshea C.
(Dillon County - Judge Roger E. Henderson)

PETITIONS - UNITED STATES SUPREME COURT

25319 - Kenneth E. Curtis v. State of SC, et al.	Pending
25347 - State v. Felix Cheeseboro	Pending
2001-OR-00171 - Robert Lamont Green v. State	Pending
2001-OR-00780 - Maurice Mack v. State	Pending
2001-MO-047 - DuBay Enterprises, etc. v. City of North Charleston Board of Zoning Adjustment, et al.	Pending

PETITIONS FOR REHEARING

None

2002-UP-043 State v. Antwine F. Anderson
(Greenville, Judge J. Derham Cole)

2002-UP-044 State v. Felicia Ann Deason
(York, Judge John C. Hayes, III)

2002-UP-045 State v. Valerie Freeman
(Bamberg, Judge Thomas W. Cooper, Jr.)

2002-UP-046 State v. Andrea Nicholas
(Aiken, Judge William P. Keesley)

2002-UP-047 Barnes v. The County of Anderson
(Anderson, Ellis B. Drew, Jr., Master-in-Equity)

2002-UP-048 DSS v. Stephens
(Anderson, Judge Robert H. Cureton)

2002-UP-049 State v. Teresa Cooke Updike
(Florence, Judge Sidney T. Floyd)

2002-UP-050 In the Interest of: Michael Brent H.
(Lexington, Judge Richard W. Chewning, III)

2002-UP-051 State v. Christopher Campbell
(Marlboro, Judge Paul M. Burch)

2002-UP-052 State v. Terrance Toomer
(Bamberg, Judge William P. Keesley)

2002-UP-053 State v. Frank Green
(Bamberg, Judge William P. Keesley)

2002-UP-054 County of Spartanburg v, Davis
(Spartanburg, Judge Donald W. Beatty)

2002-UP-055 State v. Sidtonio Israel Smalls
(Charleston, Judge Daniel F. Pieper)

2002-UP-056 State v. Patrick Small
(Florence, Judge James R. Barber, III)

2002-UP-057 State v. Charles Walter Koon
(Richland, Judge James R. Barber, III)

2002-UP-058 State v. Tony Rowe
(Lexington, Judge Rodney A. Peeples)

2002-UP-059 McKenzie v. The Exchange Bank of South Carolina
(Williamsburg, Judge Thomas W. Cooper, Jr.)

PETITIONS FOR REHEARING

3406 - State v. Yukoto Cherry	Pending
3408 - Brown v. Stewart	Denied 1-16-02
3411 - Lobresti v. Burry	(2) Pending
3413 - Glasscock v. United States Fidelity	Denied 1-16-02
3414 - State v. Duncan R. Proctor #1	Pending
3415 - State v. Duncan R. Proctor #2	Pending
3416 - Widman v. Widman	Denied 1-17-02
3417 - Hardee v. Hardee	(1) Denied 1-17-02 (1) Denied 1-23-02
3418 - Hedgepath v. AT&T	(2) Pending
3419 - Martin v. Paradise Cove	Pending
3420 - Brown v. Carolina Emergency	Pending
3422 - Allendale City Bank v. Cadle	Pending
3424 - State v. Roy Edward Hook	(2) Pending
3425 - State v. Linda Thompson Taylor	Denied 1-17-02
3426 - State v. Leon Crosby	Pending
3429 - Charleston County School Dist. v. Laidlaw	Pending
3430 - Barrett v. Charleston County School Dist.	Pending
3431 - State v. Paul Anthony Rice	Pending
3433 - Laurens Emergency v. Bailey	Pending

3435 - Pilgrim v. Miller	Pending
2001-UP-419 - Moak v. Cloud	Denied 1-18-02
2001-UP-430 - State v. Dale Johnson	Denied 1-16-02
2001-UP-455 - Stone v. Roadway Express	Denied 1-14-02
2001-UP-469 - James Schneider v. State	Denied 1-14-02
2001-UP-493 - State v. Marcus Griffin	Denied 1-23-02
2001-UP-507 - Adams v. Greaves	Denied 1-16-02
2001-UP-513 - Industrial Tractor Co. v. Poovey	Denied 1-16-02
2001-UP-518 - Abbott Sign Co. v. SCDOT	Denied 1-16-02
2001-UP-522 - Kenney v. Kenney	Pending
2001-UP-528 - State v. Kenneth Allen Barnes	Denied 1-23-02
2001-UP-533 - Corbett v. The Cottages at Shipyard	Denied 1-16-02
2001-UP-538 - State v. Edward Mack	Denied 1-17-02
2001-UP-543 - Benton v. Manker	Pending
2001-UP-548 - Coon v. McKay Painting	Pending
2001-UP-550 - State v. Gary W. Woodside	Denied 1-17-02
2001-UP-560 - Powell v. Colleton City	Pending
2001-UP-565 - United Student Aid v. SCDHEC	Pending
2002-UP-001 - Ex Parte: State v. A-1	Pending

PETITIONS - SOUTH CAROLINA SUPREME COURT

3263 - SC Farm Bureau v. S.E.C.U.R.E.	Pending
3271 - Gaskins v. Southern Farm Bureau	Pending
3314 - State v. Minyard Lee Woody	Pending

3343 - Langehans v. Smith	Pending
3348 - Thomas v. Thomas	Granted 1-24-02
3351 - Chewning v. Ford Motor Co.	Pending
3353 - Green v. Cottrell	Pending
3354 - Murphy v. Owens-Corning	Granted 1-24-02
3358 - SC Coastal Conservation v. SCDHEC	Pending
3360 - Beaufort Realty v. Beaufort County	Pending
3365 - State v. Laterrance Ramon Dunlap	Granted 1-24-02
3367 - State v. James E. Henderson, III	Pending
3369 - State v. Don L. Hughes	Pending
3372 - Dukes v. Rural Metro	Pending
3376 - State v. Roy Johnson #2	Pending
3380 - State v. Claude and Phil Humphries	Pending
3381 - Bragg v. Bragg	Pending
3382 - Cox v. Woodmen	Pending
3383 - State v. Jon Pierre LaCoste	Pending
3386 - Bray v. Marathon Corporation	(2) Pending
3403 - Christy v. Christy	Pending
3404 - State v. Charles M. Stuckey, Jr.	Pending
2001-UP-016 - Stanley v. Kirkpatrick	Pending
2001-UP-232 - State v. Robert Darrell Watson, Jr.	Pending
2001-UP-235 - State v. Robert McCrorey, III & Robert Dimitry McCrorey	Pending
2001-UP-248 - Thomason v. Barrett	Pending

2001-UP-261 - San Souci Owners Association v. Miller	Denied 1-24-02
2001-UP-298 - State v. Charles Henry Bennett	Pending
2001-UP-300 - Robert L. Mathis, Jr. v. State	Pending
2001-UP-304 - Jack McIntyre v. State	Pending
2001-UP-321 - State v. Randall Scott Foster	Pending
2001-UP-322 - Edisto Island v. Gregory	Pending
2001-UP-323 - Goodwin v. Johnson	Pending
2001-UP-324 - State v. John Williams, III	Pending
2001-UP-335 - State v. Andchine Vance	Pending
2001-UP-344 - NBSC v. Renaissance Enterprises	Pending
2001-UP-355 - State v. Gavin V. Jones	Denied 1-25-02
2001-UP-360 - Davis v. Davis	Pending
2001-UP-364 - Clark v. Greenville County	Pending
2001-UP-368 - Collins Entertainment v. Vereen	Pending
2001-UP-374 - Boudreaux v. Marina Villas Association	Pending
2001-UP-377 - Doe v. The Ward Law Firm	Pending
2001-UP-384 - Taylor v. Wil Lou Gray	Pending
2001-UP-385 - Kyle & Associates v. Mahan	Pending
2001-UP-389 - Clemson v. Clemson	Pending
2001-UP-391 - State v. Jerome Hallman	Pending
2001-UP-393 - Southeast Professional v. Companion Property & Casualty	Pending
2001-UP-397 - State v. Brian Douglas Panther	(2) Pending
2001-UP-398 - Parish v. Wal-Mart Stores, Inc.	Pending
2001-UP-399 - M.B. Kahn Construction v. Three Rivers Bank	Pending

2001-UP-401 - State v. Keith D. Bratcher	Pending
2001-UP-403 - State v. Eva Mae Moss Johnson	Pending
2001-UP-409 - State v. David Hightower	Pending
2001-UP-421 - State v. Roderick Maurice Brown	Pending
2001-UP-425 - State v. Eric Pinckney	Pending
2001-UP-452 - Bowen v. Modern Classic Motors	Pending
2001-UP-461 - Storage Trailers v. Proctor	Pending
2001-UP-476 - State v. Jeffery Walls	Pending
2001-UP-477 - State v. State v. Alfonso Staton	Pending
2001-UP-479 - State v. Martin McIntosh	Pending

Assistant Attorney General Douglas E. Leadbitter, all of Columbia, for respondent.

CHIEF JUSTICE TOAL: Harold Fitzgerald Wilson ("Wilson") filed for post-conviction relief ("PCR") arguing he had ineffective assistance of counsel, the evidence against him was insufficient to secure an indictment, and the trial judge was not impartial. The PCR court dismissed Wilson's claim on summary judgment, ruling that he failed to timely file his application.

FACTUAL/ PROCEDURAL BACKGROUND

On July 26, 1995, a grand jury in Georgetown County indicted Wilson on one count of armed robbery. On October 18, 1995, a jury convicted Wilson of the charge, and the trial court sentenced Wilson to thirty (30) years confinement in the Department of Corrections. Wilson claims he instructed his attorney to appeal his conviction; however, no appeal was filed.

On September 30, 1997, Wilson filed an application for PCR alleging ineffective assistance of counsel, the evidence against him was insufficient to secure an indictment, and the trial judge was not impartial. The State moved to dismiss Wilson's claim arguing the claim was untimely under the applicable statute of limitations set forth in S.C. Code Ann. § 17-27-45(A) (Supp. 2000).[1] On November 24, 1998, the PCR court granted the State's motion to dismiss. Wilson now appeals. The sole issue before this Court is:

> Does the statute of limitations for PCR applications, S.C. Code Ann. § 17-27-45(A), apply to an applicant who alleges

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[1]Section 17-27-45(A) provides: "An application for relief filed pursuant to this chapter must be filed within one year after the entry of judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal of the filing of the final decision upon an appeal, whichever is later."

that he did not knowingly and intelligently waive his right to a direct appeal from his criminal conviction?

LAW/ ANALYSIS

Wilson argues that the PCR judge erred by summarily dismissing his PCR application based on his failure to file within the applicable statute of limitations as set forth in S.C. Code Ann. § 17-27-45(A). We agree.

When considering the State's motion for summary dismissal of an application for PCR, a judge must assume facts presented by an applicant are true and view those facts in the light most favorable to the applicant. *Al-Shabazz v. State*, 338 S.C. 354, 363, 527 S.E.2d 742, 747 (2000).

To waive a direct appeal, a defendant must make a knowing and intelligent decision not to pursue the appeal. *Davis v. State*, 288 S.C. 290, 352 S.E.2d 60 (1986); *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974). Wilson alleges that he requested an appeal from his original conviction, but his lawyer failed to timely file the appeal. Viewed in the light most favorable to Wilson, the evidence suggests that Wilson did not voluntarily waive his direct appeal.

This Court has ruled, in *Odom v. State*, 337 S.C. 256, 523 S.E.2d 753 (1999), that the one year statute of limitations required by S.C. Code Ann. § 17-27-45(A), does not apply to *Austin*[2] appeals. *Austin* appeals do not have to be filed within the one year statute of limitations because they are belated appeals intended to correct unjust procedural defects. A petitioner is entitled to an

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[2]*Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). In *Austin*, petitioner's counsel failed to file a timely appeal following the denial of a PCR application. The petitioner then filed a subsequent PCR application claiming ineffective assistance of counsel during his first application for PCR. This Court ruled that petitioner's case must be remanded for an evidentiary hearing to determine whether petitioner requested and was denied the right to appeal.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

In the Matter of John A. Gaines, Respondent,

Opinion No. 25400
Heard December 13, 2001 - filed January 28, 2002

DISBARRED

Attorney General Charles M. Condon, and Assistant Attorney General Tracey Colton Green, both of Columbia, for the Office of Disciplinary Counsel.

John A. Gaines, *pro se*.

PER CURIAM: In this attorney disciplinary matter, the Commission on Lawyer Conduct filed formal charges against respondent. Respondent filed an answer admitting the allegations. A hearing, at which respondent did not appear, was convened before a panel of the Commission on Lawyer Conduct. The Panel recommended he receive a two-year definite suspension.

FACTS

Prior Disciplinary History

Respondent was given a public reprimand on November 8, 1983. In re

Gaines, 279 S.C. 531, 532, 309 S.E.2d 5 (1983) (noting respondent's conduct of neglecting to timely accomplish necessary tasks for his clients and failing to adequately prepare for representation of his clients demonstrated "an intolerable degree of ineptitude and indifference").

On August 24, 1987, respondent, who was facing the possibility of disbarment, was indefinitely suspended from the practice of law. In re Gaines, 293 S.C. 314, 360 S.E.2d 313 (1987). He was indefinitely suspended for conduct unbecoming to an attorney by failing to cooperate with and respond to the disciplinary investigation, and for three other acts of misconduct: (1) contacting a witness in a criminal matter and offering the witness money to drop the criminal charges against his client; (2) notarizing a forged signature on a verification form and submitting it, along with a summons and petition, to the circuit court; and, (3) failing to properly and timely account for the funds of a client. In that decision, the Court noted respondent's actions reflected a pattern of unprofessional conduct and demonstrated his unfitness to practice law. However, the Court did "not foreclose the possibility that respondent may rehabilitate himself and become capable of practicing law again." Gaines, 293 S.C. at 315, 360 S.E.2d at 314.

He was reinstated by order of the Court on October 5, 1993. Thereafter, on May 5, 1998, he received a private admonition.

Financial Matters

In numerous instances, respondent wrote checks for personal and business expenses directly from his escrow account while he was using the account as his general operating account. During the period of June 1996 through August 1997, he had sixteen negative balances and sixteen checks returned for insufficient funds. Further, he had sixteen negative balances, six checks returned for insufficient funds, and eight overdrafts between January 1999 and October 1999.

Williams Matter

Respondent was retained to represent Mr. Williams regarding an employment discrimination claim. However, he failed to properly communicate and establish the terms of his representation as to who was responsible for serving subpoenas on necessary witnesses. The Panel found respondent was not diligent in ensuring the required witnesses were subpoenaed to appear at trial. Further, respondent subpoenaed a doctor to testify without previously contacting the doctor, in contravention of an agreement between the local Bar Association and the medical profession.

Washington Matter

Respondent accepted a fee to represent Mrs. Washington; however, he failed to perform the work for which the fee was accepted. When Mrs. Washington's son requested the return of the fee, respondent executed a promissory note in favor of Mrs. Washington. He failed to make payment on the note on the stated due date. He returned the fee only after a judgment was obtained against him in magistrate's court.

Bacote Matter

Respondent was retained to represent Ms. Bacote regarding her workers' compensation claim. Although Ms. Bacote suffered no prejudice, respondent was late for a hearing on the claim. Subsequently, although respondent was able to submit the matter for consideration on the briefs, he failed to appear at an appeals hearing on Ms. Bacote's workers' compensation award. The Panel found he failed to maintain and supervise his employees with regard to maintaining a system for alerting him of pending court dates and conflicts.

Legette Matter

Respondent was retained to represent Mr. Legette regarding an employment discrimination claim. Respondent failed to meet various filing

deadlines. After missing a number of the deadlines, he attempted to file virtually the same document with a different title.

Respondent also failed to file proper objections to the Magistrate Judge's Report and Recommendation, instead repackaging as his objections a memorandum that previously was excluded from consideration by the Magistrate Judge. The United States District Court rejected the repackaged memorandum, noting that it "constitute[d] a blatant attempt to circumvent the Magistrate Judge's April 30, 1997 order striking the filing." The district court also noted for the record, respondent's "demonstrated history . . . of filing untimely and improper pleadings not permitted under the Federal Rules of Civil Procedure or the Local Rules."

Respondent subsequently improperly filed two Notices of Appeal from the federal district court's order. The Panel found he ultimately failed to perfect the appeal because he had not read the Federal Rules of Appellate Procedure, the Fourth Circuit Rules, and the applicable orders issued by the district court.

Byrd, Kolberg, Culp, and Kelly Matters

Alice Byrd, Betty Kolberg, Terrie J. Culp, and Andrea R. Kelly, all court reporters, rendered services to respondent. Respondent failed to pay for the services even though the court reporters requested that he do so in each matter. In the Culp matter, Ms. Culp contacted respondent's office at least fifteen times for payment; however, the Panel found he either ignored these contacts or made unfulfilled promises to pay the fee. The Panel found although he has now paid the court reporters, he did not do so until after they filed disciplinary complaints.

Formal charges were not filed against respondent in the Kelly matter; however, respondent stipulated the matter could be considered here. Although Ms. Kelly made numerous requests for payment, respondent failed to pay the fee. Ms. Kelly was forced to file an action against him in magistrate's court to obtain payment.

McCray Matter

Respondent was retained to represent Ms. McCray for a $1,075.00 fee. The Panel found he failed to take any action on her behalf, including filing a summons and complaint, until after she filed a disciplinary complaint.

Panel's Findings

Regarding the financial matters, the Panel found respondent failed to comply with the following record-keeping requirements as delineated by Rule 417, SCACR: failure to maintain on a regular basis a receipt and disbursement journal as required by Rule 417(a)(1); failure to maintain the proper accountings to clients or third persons showing the disbursement of funds to them or on their behalf as required by Rule 417(a)(4); failure to consistently maintain checkbook registers or check stubs as required by Rule 417(a)(7); failure to perform and maintain copies of monthly reconciliations of his trust accounts with the statements received from financial institutions as required by Rule 417(a)(8); failure to maintain adequate records to identify each item deposited into his escrow account as required by Rule 417(b)(1); and the making of withdrawals from his escrow account by check payable to "Cash," in violation of Rule 417(b)(2).[1]

Regarding the other matters, the Panel found the following violations of Rule 7(a) of the Rules for Lawyer Disciplinary Enforcement, Rule 413, SCACR: (1) violating the Rules of Professional Conduct, Rule 7(a)(1); (2) engaging in conduct tending to pollute the administration of justice or to bring the courts or the legal profession into disrepute or conduct demonstrating an unfitness to practice law, Rule 7(a)(5); and (3) violating the oath of office taken upon admission to practice law in this state, Rule 7(a)(6).

The Panel further found respondent violated certain rules from the

[1]At the hearing, it was noted that respondent did not have client money in his possession at the time and that he had not lost any client money.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

In the Matter of Fairfield
County Magistrate
Marion C. Smith, Respondent.

Opinion No. 25401
Submitted January 8, 2002 - Filed January 28, 2002

PUBLIC REPRIMAND

Henry B. Richardson, Jr. and Deborah S. McKeown, both of Columbia, for the Office of Disciplinary Counsel.

James Loggins, of Winnsboro, for respondent.

PER CURIAM: In this judicial grievance matter, respondent and Disciplinary Counsel have entered into an agreement pursuant to Rule 21, RJDE, Rule 502, SCACR. In the agreement, respondent admits misconduct and consents to an admonition or a public reprimand. We accept the agreement and publicly reprimand respondent.

Facts

Prior to June 9, 1999, respondent failed to personally sign various court orders issued in respondent's name. Respondent knowingly allowed his office personnel to sign his name to the orders. Respondent admits allowing office personnel to sign his orders, but asserts that he was unaware this practice was improper. Respondent acknowledges that he should have been aware that this practice was contrary to published orders, opinions, and guidelines of the South Carolina Supreme Court and South Carolina Court Administration, which require that judges personally sign court orders. He averred that once he was notified the practice was improper, he corrected the procedure and has personally signed all orders since June 9, 1999.

Additionally, respondent admits various orders issued by him fail to designate any factual basis to support the issuance of those orders by respondent. Respondent admits he was unaware that every order must set out the factual basis supporting the issuance of the order. Respondent has agreed to ensure that all orders issued by him include the factual basis supporting the issuance of the order.

Law

By his actions, respondent has violated the following canons set forth in the Code of Judicial Conduct, Rule 501, SCACR: Canon 1 (a judge shall uphold the integrity and independence of the judiciary); Canon 2 (a judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities); Canon 3 (a judge shall perform the duties of judicial office impartially and diligently); and Canon 3(A) (a judge shall be faithful to the law and maintain professional competence in it). These violations also constitute grounds for discipline under the following Rules for Judicial Disciplinary Enforcement, Rule 502, SCACR: Rule 7(a)(1) (violation of the Code of Judicial Conduct); 7(a)(4) (persistent performance of judicial duties in an incompetent or neglectful manner); and 7(a)(7) (willful violation of a valid court order).

Conclusion

Respondent has fully acknowledged that his actions were in violation of the Code of Judicial Conduct and the Rules for Judicial Disciplinary Enforcement. We find respondent's actions warrant a public reprimand. Accordingly, respondent is hereby publicly reprimanded for his conduct.

PUBLIC REPRIMAND.

TOAL, C.J., MOORE, WALLER, BURNETT and PLEICONES, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

In the Matter of Calhoun
Falls Municipal Court
Judge Harold C. Dixon, Respondent.

Opinion No. 25402
Submitted January 8, 2002 - Filed January 28, 2002

PUBLIC REPRIMAND

Henry B. Richardson, Jr., and Senior Assistant Attorney General Nathan Kaminski, Jr., both of Columbia, for the Office of Disciplinary Counsel.

Harold C. Dixon, of Calhoun Falls, pro se.

PER CURIAM: In this judicial grievance matter, respondent and Disciplinary Counsel have entered into an agreement pursuant to Rule 21, RJDE, Rule 502, SCACR. In the agreement, respondent admits misconduct and consents to a range of sanctions from a letter of caution to a public reprimand. We accept the agreement and publicly reprimand respondent. The facts in the agreement are as follows.

Facts

In May 2000, the victim of an assault appeared before respondent to take out arrest warrants on the three men who attacked him. The victim told respondent that he did not want to sign a warrant against one of the attackers. Respondent told the victim that he had to sign all three warrants or none at all. When respondent refused to sign the warrants, respondent imposed an unauthorized fee of $25 per warrant as court costs, giving the appearance he was attempting to pressure the victim into signing the three warrants, or that he was fining the victim for his refusal to sign the warrants.

When the victim failed to pay the fees, respondent signed a bench warrant, stating that the victim had been convicted of contempt of court and that a sentence of twenty-nine days in jail and a $75 fine had been imposed. Respondent had not issued a summons to the victim, had not conducted a contempt hearing, and had not formally imposed a sentence on the victim. Moreover, because respondent had no authority to require the victim to pay court costs under the circumstances, he had no legal basis upon which to hold the victim in contempt. As a result of the bench warrant, the victim was arrested and incarcerated until he paid the $75 fine.

Law

By his actions, respondent has violated the following canons set forth in the Code of Judicial Conduct, Rule 501, SCACR: Canon 1(A) (a judge shall uphold the integrity and independence of the judiciary); Canon 2(A) (a judge shall avoid impropriety and the appearance of impropriety in all of the judge's activities); Canon 3 (a judge shall perform the duties of judicial office impartially and diligently); Canon 3(B)(2) (a judge shall be faithful to the law and maintain professional competence in it); Canon 3(B)(4) (a judge shall be patient, dignified and courteous to litigants and others with whom the judge deals in an official capacity); Canon 3(B)(7) (a judge shall accord to every person who has a legal interest in a proceeding the right to be heard according to law); Canon 3(B)(8) (a judge shall dispose of all judicial matters promptly, efficiently and fairly); and Canon 3(C)(1) (a

judge shall diligently discharge the judge's administrative responsibilities without bias or prejudice). These violations also constitute grounds for discipline under Rule 7(a)(1), RJDE, Rule 502, SCACR.

Conclusion

We find respondent's actions warrant a public reprimand. Accordingly, respondent is hereby publicly reprimanded for his conduct.

PUBLIC REPRIMAND.

TOAL, C.J., MOORE, WALLER, BURNETT and PLEICONES, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

In the Matter of Olanta
Municipal Court Judge
Thomas H. Eskridge, Jr., Respondent.

Opinion No. 25403
Submitted January 8, 2002 - Filed January 28, 2002

PUBLIC REPRIMAND

Henry B. Richardson, Jr., and Senior Assistant Attorney General Nathan Kaminski, Jr., of Columbia, for the Office of Disciplinary Counsel.

Michael G. Nettles, of Lake City, for respondent.

PER CURIAM: In this judicial disciplinary matter, respondent and the Office of Disciplinary Counsel have entered into an Agreement for Discipline by Consent pursuant to Rule 21, RJDE, Rule 502, SCACR. In the agreement, respondent admits misconduct and consents to the imposition of a sanction of a confidential admonition or a public reprimand. We accept the agreement and issue a public reprimand. The facts as admitted in the agreement are as follows.

Facts

Respondent was appointed as a municipal judge for the Town of Olanta in March of 2000.[1] Prior to a municipal court hearing in December of 2000, respondent received a list of defendants scheduled to appear before him. An Olanta public official provided respondent with the list of defendants. The letters "NG" appeared by some of the defendant's names on the list. Respondent understood the letters to mean "not guilty." Each defendant whose name appeared next to the letters "NG" was subsequently found "not guilty." Even the defendants who failed to appear in court but had the letters "NG" next to their name were found "not guilty." As a result, the South Carolina Law Enforcement Division launched an investigation. After a full investigation, the solicitor elected not to prosecute respondent because he concluded there was insufficient evidence of any criminal conduct.

Law

As a result of his conduct, respondent has violated the following canons set forth in the Code of Judicial Conduct, Rule 501, SCACR: Canon 1(A) (a judge should participate in establishing, maintaining and enforcing high standards of conduct, and shall personally observe those standards so that the integrity and independence of the judiciary will be preserved); Canon 2(A) (a judge shall respect and comply with the law and shall act at all times in a manner that promotes public confidence in the integrity and impartiality of the judiciary); Canon 2(B) (a judge shall not allow family, social, political or other relationships to influence the judge's judicial conduct or judgment; a judge shall not convey or permit others to convey the impression that they are in a special position to influence the judge); Canon

[1]At the time of these events, respondent had not attended the Magistrate's Orientation School, did not possess a copy of the Magistrate's Bench Book, and had not received training concerning the Code of Judicial Conduct. Respondent has now received training in judicial ethics.

3(B)(2) (a judge shall not be swayed by partisan interests, public clamor or fear of criticism); and Canon 3(B)(7) (a judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding). These violations constitute grounds for discipline under Rule 7(a)(1), RJDE, Rule 502, SCACR.

Conclusion

We find that respondent's actions warrant a public reprimand. We therefore accept the Agreement for Discipline by Consent and publicly reprimand respondent.

PUBLIC REPRIMAND.

TOAL, C.J., MOORE, WALLER, BURNETT and PLEICONES, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

In the Matter of Pierce S. White, Jr., Respondent.

Opinion No. 25404
Submitted December 19, 2001 - Filed January 28, 2002

DEFINITE SUSPENSION

Henry B. Richardson, Jr., Susan M. Johnston, and Barbara M. Seymour, all of Columbia, for the Office of Disciplinary Counsel.

Pierce S. White, Jr., of Saluda, pro se.

PER CURIAM: In this attorney disciplinary matter, respondent and Disciplinary Counsel have entered into an Agreement for Discipline by Consent pursuant to Rule 21, RLDE, Rule 413, SCACR.[1] In the Agreement, respondent admits misconduct and consents to the imposition of any sanction deemed appropriate by this Court. We accept the Agreement and impose a definite suspension of two years from the practice of law. The facts

[1]Respondent was placed on interim suspension by order of this Court dated May 3, 2000. In the Matter of White, 340 S.C. 290, 531 S.E.2d 907 (2000).

as admitted in the Agreement are as follows.

Facts

Respondent was retained to recover a $16,000 debt for Client. Respondent obtained a judgment on behalf of Client and was paid for his services. Client subsequently retained respondent to collect payments towards the judgment from the defendant. Client agreed that respondent could retain a contingency fee from each payment, and forward the balance to him. In 1997, respondent collected funds from the defendant, and forwarded the net proceeds to Client in a timely manner. However, from 1998 through 2000, defendant continued to make payments on the judgment, but respondent did not forward any portion of these payments to Client. Respondent admits that he misappropriated approximately $14,400 for his own purposes, and that he failed to maintain accurate financial records of these transactions.

Respondent also failed to maintain a trust account separate from his personal and operating bank account. Further, from January 1997 until May 2000, respondent's bank account had a negative balance on 136 separate occasions. During the same time period, 43 checks were returned to respondent's bank because his account contained insufficient funds.

Law

By his conduct, respondent has violated the following provisions of the Rules of Professional Conduct, Rule 407, SCACR: Rule 1.15 (failure to safeguard client documents); Rule 8.4(d) (engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation); and Rule 8.4(e) (conduct prejudicial to the administration of justice). Respondent has also violated Rule 417, SCACR, by failing to maintain financial records.

Respondent has also violated the Rules for Lawyer Disciplinary Enforcement, Rule 413, SCACR: Rule 7(a)(1) (violating the Rules of Professional Conduct); Rule 7(a)(5) (engaging in conduct tending to pollute

the administration of justice or to bring the courts or the legal profession into disrepute or conduct demonstrating an unfitness to practice law); and Rule 7(a)(6) (violating the oath of office taken upon admission to practice law in this state).

Conclusion

Respondent has fully acknowledged that his actions in the aforementioned matters were in violation of the Rules of Professional Conduct and the Rules for Lawyer Disciplinary Enforcement. We therefore suspend respondent from the practice of law for two years. This suspension is not retroactive to the date of respondent's interim suspension. Prior to petitioning for reinstatement to the practice of law, respondent must provide satisfactory evidence to the Office of Disciplinary Counsel that he has repaid the Lawyer's Fund for Client Protection. Within fifteen days of the date of this opinion, respondent shall file an affidavit with the Clerk of Court showing that he has complied with Rule 30, RLDE, Rule 413, SCACR.

DEFINITE SUSPENSION.

TOAL, C.J., MOORE, WALLER, BURNETT and PLEICONES, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

In the Matter of Lillie R. Davis, Respondent.

Opinion No. 25405
Submitted December 14, 2001 - Filed January 28, 2002

DEFINITE SUSPENSION

Henry B. Richardson, Jr., and Senior Assistant Attorney General James G. Bogle, Jr., both of Columbia, for the Office of Disciplinary Counsel.

Susan B. Lipscomb, of Columbia, for Respondent.

PER CURIAM: In this attorney disciplinary matter, respondent and the Office of Disciplinary Counsel (ODC) have entered into an Agreement for Discipline by Consent pursuant to Rule 21, RLDE, Rule 413, SCACR.[1] In the agreement, respondent conditionally admits misconduct and consents to a definite suspension ranging from six months to twenty months. We accept the agreement and hereby suspend respondent. The facts as set

[1]Respondent has received two previous public reprimands. In the Matter of Davis, 336 S.C. 574, 521 S.E.2d 275 (1999); In the Matter of Davis, 321 S.C. 281, 468 S.E.2d 301 (1996).

forth in the agreement are as follows.

Facts

In the first matter, respondent chose to proceed with a theory of recovery in which there was insufficient evidence to establish all of the necessary elements. Respondent falsely represented to client that the action had been filed on client's behalf. However, the action was never filed. Respondent did not communicate with client regarding the status of the case and failed to follow client's instructions regarding the case. Respondent failed to return client's file and refund unearned fees. Respondent also falsely represented the amount of time spent on client's case to ODC and failed to respond to two inquiries from ODC. Additionally, respondent failed to cooperate with ODC's investigation.

In a second matter, respondent failed to deposit a retainer fee into her trust account and converted it to her own use. Shortly after retaining respondent, client terminated respondent's services and requested a refund of her fee. Respondent only returned half of the fee even though respondent did not bill against the fee nor did respondent offer any accounting to client as to how the fee was earned. Additionally, respondent failed to properly supervise her employee, causing an affidavit of attorney's fees to contain false information. Respondent also failed to reply to two inquiries from ODC and failed to cooperate with ODC's investigation.

In a third matter, respondent executed a retainer agreement which did not comply with Rule 1.5 (c) of the Rules of Professional Conduct, Rule 407, SCACR. Respondent failed to communicate with client regarding the status of the case, did not advise client of the expiration of the statute of limitations, falsely represented to client that the case was being litigated, and failed to take any action within the applicable statute of limitations period. Respondent also obstructed ODC's investigation and failed to cooperate with the investigation.

In a fourth matter, respondent was retained by client to represent

her in two separate actions. With regard to the first action, respondent deposited client's retainer fee into an account other than her trust account prior to earning the fee and failed to communicate with client. Frustrated with respondent's lack of communication regarding her case, client terminated respondent's services and requested a refund of unearned attorney's fees and her client file. Respondent refused and client subsequently filed a civil action against respondent which resulted in a $350 judgment against respondent. Respondent did not appeal or pay the judgment. In regard to the second action, respondent executed a retainer agreement that did not comply with Rule 1.5 of the Rules of Professional Conduct, Rule 407, SCACR. Moreover, respondent agreed to represent the client despite a conflict of interest in violation of Rule 1.7 of the Rules of Professional Conduct, Rule 407, SCACR. Respondent also failed to apply money recovered in the action to certain liens. Additionally, respondent failed to respond to two inquires from ODC and failed to cooperate in ODC's investigation.

In a fifth matter, respondent failed to withhold and pay taxes from her employee's paychecks. As a result, several federal tax liens were filed against her. Additionally, several warrants of distraint were filed against respondent by the South Carolina Department of Revenue.

Law

Respondent admits that her conduct violated the following Rules of Professional Conduct, Rule 407, SCACR: Rule 1.1 (failing to provide competent representation); Rule 1.2 (a lawyer shall abide by a client's decisions concerning the objectives of representation, and shall consult with the client as to the means by which they are to be pursued); Rule 1.3 (failing to act with reasonable diligence and promptness while representing a client); Rule 1.4 (failing to keep a client reasonably informed about the status of a matter, failing to promptly respond to reasonable requests for information, and failing to explain matters to the extent reasonably necessary to permit the client to make informed decisions regarding the representation); Rule 1.5 (fees); Rule1.7 (a lawyer shall not represent a client if representation of that

client creates a conflict of interest); Rule 1.15 (failure to keep client funds in a separate account); Rule 1.16 (failure to withdraw from representation when representation results in a conflict of interest or when the lawyer is discharged by the client); Rule 3.1 (bringing a frivolous lawsuit); Rule 3.3 (knowingly making a false statement of material fact to a tribunal and offering evidence that the lawyer knows is false); Rule 4.1 (making a false statement of material fact to a third person in the course of representing a client); Rule 4.4 (using means in the course of representing a client, that have no purpose other than to delay or burden a person); Rule 5.3 (failing to properly supervise non-lawyer employees); Rule 8.1(b) (failing to respond to a lawful demand for information from a disciplinary authority); Rule 8.4(a),(d), and (e) (violating the Rules of Professional Conduct, engaging in conduct involving dishonestly, fraud, deceit or misrepresentation).

Respondent also admits that she violated Rule 7(a)(1), RLDE, Rule 413, SCACR (violating the Rules of Professional Conduct), and Rule 417, SCACR (requirements of financial record keeping).

Conclusion

We find that respondent's misconduct warrants a definite suspension. Accordingly, we accept the Agreement for Discipline by Consent and hereby suspend respondent from the practice of law for twenty months.

Within fifteen days of the date of this opinion, respondent shall file an affidavit with the Clerk of Court showing that she has complied with Rule 30 of Rule 413, SCACR.

DEFINITE SUSPENSION.

TOAL, C.J., MOORE, WALLER, BURNETT and PLEICONES, JJ., concur.

The Supreme Court of South Carolina

In the Matter of Harry
Ennis Bodiford, Respondent.

ORDER

By order dated April 17, 1997, petitioner was transferred to incapacity inactive status. In the Matter of Bodiford, 326 S.C. 88, 484 S.E.2d 473 (1997). Petitioner has filed a petition in which he seeks to return to active status. The petition is granted.

IT IS SO ORDERED.

S/Jean H. Toal C.J.

S/James E. Moore J.

S/John H. Waller, Jr. J.

S/E.C. Burnett, III J.

S/Costa M. Pleicones J.

Columbia, South Carolina
January 14, 2002

clients. Mr. Suggs may make disbursements from respondent's trust account(s), escrow account(s), operating account(s), and any other law office accounts respondent may maintain that are necessary to effectuate this appointment.

This Order, when served on any bank or other financial institution maintaining trust, escrow and/or operating account(s) of respondent, shall serve as an injunction to prevent respondent from making withdrawals from the account(s) and shall further serve as notice to the bank or other financial institution that B. Scott Suggs, Esquire, has been duly appointed by this Court.

Finally, this Order, when served on any office of the United States Postal Service, shall serve as notice that B. Scott Suggs, Esquire, has been duly appointed by this Court and has the authority to receive respondent's mail and the authority to direct that respondent's mail be delivered to Mr. Suggs' office.

s/Jean H. Toal C.J.
FOR THE COURT

Columbia, South Carolina

January 16, 2002

The Supreme Court of South Carolina

In the Matter of J.
Stephen McCormack, Respondent.

O R D E R

The Office of Disciplinary Counsel has filed a petition asking this Court to place respondent on interim suspension pursuant to Rule 17(b), RLDE, Rule 413, SCACR, and seeking the appointment of an attorney to protect clients' interests pursuant to Rule 31, RLDE, Rule 413, SCACR. Respondent consents to the relief sought by Disciplinary Counsel.

IT IS ORDERED that respondent's license to practice law in this State is suspended until further order of the Court.

IT IS FURTHER ORDERED that Daniel E. Henderson, Esquire, is hereby appointed to assume responsibility for respondent's client files, trust account(s), escrow account(s), operating account(s), and any other law office accounts respondent may maintain. Mr. Henderson shall take action as

CONNOR, J.: United Educational Distributors, LLC ("UED") appeals the dismissal of its cause of action for "tortious interference with prospective economic advantage." We affirm.

FACTS/PROCEDURAL BACKGROUND

Educational Testing Services ("ETS"), a nonprofit corporation headquartered in Lawrenceville, New Jersey, administers, scores, and prepares testing materials for, among others, the College-Level Examination Program ("CLEP"). UED sells study aids for the CLEP test, which it markets primarily to military personnel.

On October 9, 1998, UED filed its original complaint in the Court of Common Pleas for the County of Beaufort alleging ETS wrongfully interfered with UED's present and future sales contracts of its study materials. Essentially, UED alleged two tort causes of action: (1) intentional interference with present contractual relationships and (2) intentional interference with prospective economic advantage.[1] UED prayed for actual and punitive damages of not less than $1,500,000.00.

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[1] Although the trial court identified this action as "tortious interference with prospective economic advantage," South Carolina has labeled this tort "intentional interference with prospective contractual relations." See Crandall Corp. v. Navistar Int'l Transp. Corp., 302 S.C. 265, 395 S.E.2d 179 (1990). Because the parties use the two terms interchangeably, we will, for consistency purposes, analyze UED's cause of action as that of intentional interference with prospective contractual relations. This decision does not affect the substance of our analysis. See 45 Am. Jur. 2d Interference § 36 (1999) ("The torts of intentional interference with contractual relations, with lawful business, and with prospective business advantage are closely related. . . . The general wrong involved in each tort consists of intentional and improper methods of diverting or taking away ongoing or prospective business or contractual rights from another, which methods are not within the privilege of fair competition.").

SNA, 51 F. Supp. 2d at 568 (emphasis added). Likewise, in Minnesota Mining & Mfg. Co. v. Graham-Field, Inc., 1997-2 Trade Cases P 71,882, 1997 WL 166497 (S.D.N.Y. 1997), a New York District Court dismissed defendant's counterclaim because it failed to state its alleged losses with specificity. The court stated:

> GFI fails to allege a particular customer relationship with which plaintiff interfered. Rather, GFI alleges generally that as a result of [plaintiff's] actions, "certain of GFI's customers have brought their business elsewhere." This is insufficient to sustain GFI's tortious interference with prospective economic advantage counterclaim, and that counterclaim must be dismissed.

Id. at *7.

Here, UED has redrafted its complaint twice and still has not alleged that it had a reasonable probability of entering into a specific contract but for the interference of ETS. Rather, UED merely asserts, based on past experience, it would have received a response from approximately 10% of its mailings. Further, UED asserts that *everyone* on the military bases it tried to serve constitutes a potential customer and, therefore, prospective contracts. Even with these alleged potential customers, however, UED acknowledges it "has no way of knowing who didn't respond and why." Moreover, UED does not allege that any of its past customers provided repeat business. Therefore, UED has failed to plead any potential contract was thwarted by any alleged tortious conduct on the part of ETS.

For the foregoing reasons, the decision of the circuit court dismissing UED's action for intentional interference with prospective contractual relations pursuant to Rule 12(b)(6) is

AFFIRMED.

HEARN, C.J. and GOOLSBY, J., concur.

Opinion No. 3437
Heard December 5, 2001 - Filed January 22, 2002

REVERSED AND REMANDED

Daniel E. Henderson, of Peters, Murdaugh, Parker, Eltzroth & Detrick, of Ridgeland, for appellants.

Gray T. Culbreath and Clayton B. McCullough, of Collins & Lacy, of Columbia, for respondents.

STILWELL, J.: Charles and Joanna Olmstead appeal the order of the circuit court dismissing their tort actions against Shakespeare. The circuit court held that Olmstead was Shakespeare's statutory employee and thus barred by the exclusive remedy provision of the Workers' Compensation Act. We reverse and remand.

FACTS/PROCEDURAL HISTORY

Olmstead is the owner-operator of a truck-trailer combination used for long distance hauling of goods and materials. He leased his equipment to Hot Shot Express, which provided his tags, ICC licensing, and placards. He was paid by Hot Shot based on the miles he drove. Hot Shot dispatched Olmstead to Shakespeare's Newberry plant to pick up a load of utility poles. Olmstead's truck was loaded by Shakespeare employees, and Olmstead strapped the load down. After the load was strapped, Olmstead was asked to unstrap the poles because of a quality control problem. He was injured when some of the poles fell during unstrapping.

Olmstead filed suit against Shakespeare for negligence, and his wife filed suit for loss of consortium. Shakespeare answered and alleged, as an affirmative defense, that Olmstead was a statutory employee and thus the exclusive remedy

was under the South Carolina Workers' Compensation Act. After the period for filing a workers' compensation claim had expired, Shakespeare filed a motion to dismiss on the same basis. The circuit court granted the motion.

STANDARD OF REVIEW

In workers' compensation cases, the "existence of the employer-employee relationship is a jurisdictional question." Lake v. Reeder Constr. Co., 330 S.C. 242, 247, 498 S.E.2d 650, 653 (Ct. App. 1998). Subject matter jurisdiction is a question of law for decision by the court and includes findings of fact which relate to jurisdiction. Bridges v. Wyandotte Worsted Co., 243 S.C. 1, 7, 132 S.E.2d 18, 21 (1963). "[T]his court may reverse where the decision is affected by an error of law." Lake at 247, 498 S.E.2d at 653.

LAW/ANALYSIS

Olmstead argues the trial court erred in holding that he was a statutory employee of Shakespeare. We agree.

The recent supreme court case of Abbott v. The Limited, Inc., 338 S.C. 161, 526 S.E.2d 513 (2000) is controlling. Abbott was employed by a common carrier which had a contract with The Limited Distribution Services to deliver goods to its retail stores. Abbott was injured while unloading boxes on the retailer's premises. The Abbott court cited the three established tests used to determine

> whether an employee is engaged in an activity that is part of the owner's trade, business, or occupation as required under [S.C. Code Ann.] § 42-1-400 (1985). . . : (1) is the activity an important part of the owner's business or trade; (2) is the activity a necessary, essential, and integral part of the owner's business; or (3) has the activity previously been performed by the owner's employees? . . . '[T]he guidepost is whether or not that which is being done is or is not a part of the general trade, business, or occupation of the owner.'

Abbott at 163, 526 S.E.2d at 514. In finding Abbott was not a statutory employee of The Limited, our supreme court stated, "'[t]he mere fact that transportation of goods to one's place of business is essential for the conduct of the business does not mean that the transportation of the goods is a part or process of the business.' We conclude that the mere recipient of goods delivered by a common carrier is not the statutory employer of the common carrier's employee." Abbott at 163-64, 526 S.E.2d at 514 (quoting Caton v. Winslow Bros. & Smith Co., 34 N.E.2d 638, 641 (1941)). In so holding, the court stated in a footnote: "To the extent Neese v. Michelin Tire Corp., 324 S.C. 465, 478 S.E.2d 91 (Ct. App. 1996), and Hairston v. Re: Leasing, Inc., 286 S.C. 493, 334 S.E.2d 825 (Ct. App. 1985), may be read to hold otherwise, they are hereby overruled."

In this case, the trial court stated it was influenced primarily by two factors in finding Olmstead was a statutory employee. First, the supreme court could easily have broadened the reach of Abbott to all transportation cases but chose not to, specifically limiting its holding to receipt of goods. Second, Abbott did not overrule Revels v. Hoechst Celanese Corp., 301 S.C. 316, 391 S.E.2d 731 (Ct. App. 1990). We find the court's reliance on these factors misplaced. We do not agree with the overly narrow reading of Abbott, as we find that its holding is not limited to situations involving a retailer's receipt of goods. The facts of Abbott involved receipt of goods, so it was unnecessary for the court to address the delivery of goods from a manufacturer to a customer because that issue was not presented.

A review of the overruled cases provides further evidence that the holding of Abbott is not limited to receipt of goods. In Hairston, the recipients determined the delivery dates and drop-off points for vehicles being transported by the common carrier. Hairston at 496, 334 S.E.2d at 826. The court did not emphasize or even address the delivery aspect of the case, but rather found that the preponderance of the evidence indicated the driver was performing services which were part of the trade or business. Hairston at 498, 334 S.E.2d at 827.

In Neese, an employee of a common carrier was injured while unloading a truck. In a footnote, the court noted the parties were not in agreement as to when the injury occurred. Neese at 470 n.1, 478 S.E.2d at 93-94 n.1. Neese

contended he was injured while transporting the goods from the Michelin plant to another location. Michelin contended he was injured while transporting materials back to the Michelin plant. The court stated, "Whether Neese was injured at AVRC or the Sandy Springs [Michelin] plant is not relevant to the issues involved in this appeal." Id. This language indicates the court did not make a distinction, nor would it have made a difference if Neese were delivering or receiving the goods. The court held that "[c]learly, the packaging and transportation of these semi-finished products . . . is an integral part of Michelin's business." Neese, 324 S.C. at 473, 478 S.E.2d at 95. Because this case did not specifically involve delivery or receipt, Abbott cannot be read to have been overruling a receipt case when it overruled Neese. Rather, we find that Abbott focused on the transportation aspect to determine if the individual is a statutory employee, not whether the purported statutory employer was a shipper or a recipient of goods.

Additionally, the trial court's reliance on the fact that the supreme court did not overrule Revels was error. Revels was employed by a common carrier to transport liquid organic chemicals. Revels at 317, 391 S.E.2d at 731. The Revels court found "no difficulty in deciding that Revels was Celanese' 'statutory employee' when he was injured. The work then being performed by Revels, *i.e.*, checking the levels of the chemicals being loaded into the tanker, was a part of Celanese' general business." Revels at 318, 391 S.E.2d at 732. Unlike the employees in Abbott, Neese, and Hairston, who were merely transporting goods, Revels was more involved in the business process, since he monitored the levels of chemicals being pumped into the tanker. Additionally, this court in Revels specifically found that distribution, and therefore transportation, was an integral part of Celanese's business. Since Revels involved more than transportation alone and is easily distinguished on its facts, the supreme court had no reason to expressly overrule it.

We find the facts in the present case do not support the ruling that Olmstead was a statutory employee of Shakespeare. Olmstead was transporting a finished product away from Shakespeare's manufacturing plant to a customer. Shakespeare does not own or operate any receiving or delivery trucks. All of the raw material that arrives at its plant and all of the finished product that leaves its plant does so by common carrier. We find that Olmstead, as an

employee of a common carrier involved only in the transportation of goods, was not part of the general trade, business, or occupation of Shakespeare. We thus hold he was not a statutory employee.

While generally workers' compensation should be construed broadly in favor of coverage to further its purpose, the underlying rationale is not as pertinent where the statutory employee definition and exclusive remedy provision are used as a shield to prevent recovery under another theory. See Peay v. U.S. Silica Co., 313 S.C. 91, 94, 437 S.E.2d 64, 65 (1993) ("[W]orkers' compensation statutes are construed liberally in favor of coverage. It follows that any exception to workers' compensation coverage must be narrowly construed."); Caughman v. Columbia Y.M.C.A., 212 S.C. 337, 47 S.E.2d 788 (1948) (definitions in compensation acts should be broadly or liberally construed to effect legislative purpose); Pelfrey v. Oconee County, 207 S.C. 433, 440, 36 S.E.2d 297, 300 (1945) ("'Common sense indicates that a compensation law passed to increase workers' rights (because their common law rights were too narrow) should not thereafter be narrowly construed.'"); Ham v. Mullins Lumber Co., 193 S.C. 66, 75, 7 S.E.2d 712, 716 (1940) ("[T]he general and well established rule in construction of compensation acts is that they are intended to be for the benefit of employees and must be construed liberally in their favor."); but see Gentry v. Milliken & Co., 307 S.C. 235, 414 S.E.2d 180 (Ct. App. 1992).

Because we hold that Olmstead was not a statutory employee of Shakespeare, we need not address his estoppel argument. The decision of the trial court is reversed, and these cases are remanded for proceedings consistent with this opinion.

REVERSED AND REMANDED.

CURETON and SHULER, JJ., concur.