

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

Appeal from the Administrative Law Court  
Honorable Milton G. Kimpson, Administrative Law Judge

Appellate Case No.: 2023-000441

Stephen Mueller, ..... Appellant,

v.

South Carolina Department of Health and Environmental Control, and  
Carla Varn DuPre and Jasper B. Varn, III, ..... Respondents.

RESPONDENTS' SECOND JOINT MOTION TO REQUEST DISMISSAL

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Carla Varn DuPre and Jasper B.  
Varn, III

## *BACKGROUND*

The ALC issued its Final Order in the case underlying this appeal on June 7, 2022, finding the action of Respondent S.C. Department of Health and Environmental Control (the “Department”), in issuing the Permit that Appellant Stephen Mueller (“Mr. Mueller”) challenged, OCRM02808, supported by the evidence and consistent with the applicable regulatory requirements. Appellant did not file a Notice of Appeal of this Final Order nor move for reconsideration under SCRCP 59(e).

On March 9, 2023, by electronic mail directed to the Court (and, perhaps, by U. S. Mail although not delivered to Respondents), Mr. Mueller attempted to file a Notice of Appeal with this Court *pro se*. On March 17, 2023, this Court sent Mr. Mueller the first of six deficiency letters issued to address problems with his attempted filings. In the first letter, Mr. Mueller was given notice of his failure to send the required filing fee and Proof of Service with the Notice of Appeal he attempted to file, and further instructed that the Notice was incorrectly formatted. The letter required correction of the deficiency “within ten (10) days of the date of this letter, or this appeal will be dismissed.”

On March 29, 2023, this Court issued a second deficiency letter to Mr. Mueller regarding Mr. Mueller’s failure to include Proof of Service on the Administrative Law Court. The letter required correction of the deficiency “within ten (10) days of the date of this letter, or this appeal will be dismissed.”

On April 3, 2023, this Court issued a third deficiency letter to Mr. Mueller regarding Mr. Mueller’s failure to include Proof of Service for a Motion to Disregard filed by Mr. Mueller. The letter required correction of the deficiency “within ten (10) days of the date of this letter, or your motion will not be considered.”

On April 6, 2023, this Court issued a fourth deficiency letter to Mr. Mueller regarding Mr. Mueller's failure to include the required filing fee and Proof of Service for a motion to continue to consider an appeal in civil court. The letter required correction of the deficiency "within ten (10) days of the date of this letter, or this motion will not be considered."

On June 16, 2023, this Court issued a letter to Terry Richardson, Esquire, stating that no transcript had been received by the Court for Appellant's appeal, that no extension had been granted to the court reporter for providing the transcript, and that no initial brief had been received from Mr. Mueller. Mr. Richardson was given ten (10) days to advise the Court of the status of the transcript.

On June 27, 2023, this Court issued a second letter to Terry Richardson, Esquire, confirming receipt of an email sent by Mr. Richardson, in which Mr. Richardson represented to the Court that he was not counsel of record for Mr. Mueller. As this Court pointed out to Mr. Richardson, however, on April 24, 2023, he had filed a notice of appearance requesting oral argument in this appeal.

On July 7, 2023, an initial brief was attempted to be filed by Mr. Mueller, again as a *pro se* appellant.

On July 10, 2023, this Court issued a fifth deficiency letter to Mr. Mueller regarding Mr. Mueller's initial brief, which did not have a caption/title in compliance with Rule 267(a), SCACR, was not accompanied by a designation of matter and did not include a Proof of Service. The letter required correction of the deficiency "within ten (10) days of the date of this letter, or this matter will be dismissed."

On July 18, 2023, Mr. Richardson filed a motion attempting to withdraw as Mr. Mueller's counsel. On July 19, 2023, this Court issued a sixth deficiency letter in this case regarding Mr. Richardson's motion to withdraw, which lacked the required filing fee and Proof of Service. The letter required correction of the deficiency "within ten (10) days of the date of this letter, or [the] filing will not be considered."

#### *ARGUMENT*

Each of the above letters, which have followed faulty actions by Mr. Mueller and his counsel of record, has delayed this appeal to the detriment of Respondents Carla Varn DuPre and Jasper B. Varn, III, who properly followed all the required procedures to obtain the permit for their beachfront lot that was challenged in the underlying case, a challenge wherein Mr. Mueller failed to prevail. Respondents have had the property which is the subject of Mueller's appeal under contract for sale for a significant sum but have been prevented from closing on the purchase due to the intervening legal challenges and this appeal pursued by Mueller.

Respondents are entitled to finality of this legal process. Instead, they have been delayed by a protracted series of deficient filings over several months as Mr. Mueller has filed responses to the deficiency letters well outside of the ten-day deadline cited in nearly every letter that has been issued. Although Mr. Mueller made a filing attempting to correct the last deficiencies identified by the Clerk of Courts nearly simultaneously with this filing Mr. Mueller is eleven days past the deadline of July 20, 2023 stated in the Court's letter dated July 10, 2023. Mr. Mueller has a consistent history, not only in this appeal but also in the underlying case, of failing to follow instructions and make timely filings, which will likely continue into the future resulting in more extensions to correct filing problems and

more delay in finality of the issues raised on appeal. It also appears that Mr. Mueller is reluctant to retain and keep an attorney on his case to ensure compliance with court rules and procedure.

Mr. Richardson's appearance in this matter has further complicated the situation. As noted by the Court, the Notice of Appearance filed by Mr. Richardson is clear confirmation of Mr. Richardson's status as Mr. Mueller's attorney of record for this case. Mr. Richardson was still Mr. Mueller's attorney of record when Mr. Mueller filed his Initial Brief, which was clearly filed well outside of the thirty (30) days provided by Rule 208, SCACR, when no transcript is ordered. More importantly, Mr. Mueller purported to file his initial brief *pro se* even though he was clearly represented by Mr. Richardson at the time. Mr. Mueller. Mr. Richardson was obligated to continue to represent Mr. Mueller until his withdrawal from representative was approved, which has not yet occurred to date State v. Devore, 416 S.C. 115, 123, 784 S.E.2d 690, 694 (2016). Since Mr. Mueller was represented by counsel, his *pro se* Initial Brief was not proper and should not have been accepted. Id. at 120, 784 S.E.2d 693 ("Since there is no right to 'hybrid representation' that is partially *pro se* and partially by counsel, substantive documents, with the exception of motions to relieve counsel, filed *pro se* by a person represented by counsel are not to be accepted unless submitted by counsel.")<sup>1</sup>

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<sup>1</sup> This finding was made by the South Carolina Supreme Court in relation to an attempted filing of an initial appellate brief and designation of matter *pro se* with the intention of having it incorporated with the initial brief that the appellant expected counsel to file in the matter. State v. Stuckey, 333 S.C. 56, 57, 508 S.E.2d 564, 564 (1998). As the Court explained in Devore, "[b]ecause Stuckey attempted to file a substantive document related to the case while she was represented by counsel and the document was not submitted through counsel, it was 'not appropriate for consideration' by the appellate court." 333 S.C. at 58, 508 S.E.2d at 564-565.

## CONCLUSION

SCACR RULE 260 provides for dismissal and reinstatement of appeals. In accordance with Rule 260(a): “Whenever it appears that an appellant or a petitioner has failed to comply with the requirements of these Rules, the clerk shall issue an order of dismissal, which shall have the same force and effect as an order of the appellate court.” Appellant’s conduct throughout this history of his appeal warrants the remedy provided in SCAR Rule 260. Respondents seek an Order from the Clerk dismissing the appeal for continuing failures to follow the instructions of this Court.

In addition, Respondents seek to have all deadlines pending in this matter held in abeyance until this Motion is determined.

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July 31, 2023  
Charleston, South Carolina

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Jul 31 2023

SC Court of Appeals

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

Appeal from the Administrative Law Court  
Honorable Milton G. Kimpson, Administrative Law Judge  
Case No.: 2021-ALJ-07-0144-CC

**Appellate Case No.:**

Stephen Mueller, ..... Appellant,

v.

South Carolina Department of Health and Environmental Control, and  
Carla Varn DuPre and Jasper B. Varn, III, ..... Respondents.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY, that I have this date, July 31, 2023, served this Respondent's  
Second Joint Motion to Request Dismissal upon all parties to this appeal, and/or their  
attorneys, by depositing a copy hereof in the United States mail, postage paid, and by  
electronic mail to the following:

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[SIGNATURE ON FOLLOWING PAGE]

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Carla V. DuPre and Jasper B. Varn, III



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Jul 31 2023

SC Court of Appeals

Mary D. Shahid  
Member  
Admitted in SC

July 31, 2023

**VIA USPS MAIL & ELECTRONIC MAIL**

Jenny Adams Kitchings  
South Carolina Court of Appeals  
Clerk of Court  
1220 Senate Street  
Columbia, SC 29201  
Email: [ctappfilings@sccourts.org](mailto:ctappfilings@sccourts.org)

Re: 21-ALJ-07-0144-CC Mueller v. SC DHEC

Dear Madam Clerk:

Please find enclosed for service Respondents; Second Joint Motion to Request Dismissal in the above referenced matter.

This Joint Motion was delivered to the Court via email on Monday, July 31, 2023. I am also enclosing a check in the amount of \$50.00 as the mandated filing fee for this Motion, and a certificate of service.

Very truly yours,

*Mary D. Shahid*

Mary D. Shahid

Enclosure(s)

cc (via email only): Bradley D. Churdar, Esq. ([churdabd@dhec.sc.gov](mailto:churdabd@dhec.sc.gov)),  
Steven Mueller [stevem44442002@yahoo.com](mailto:stevem44442002@yahoo.com)