

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT

Ralph King Anderson, III, Chief Administrative Law Judge

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Francis Ackerman, #266928, Malik Aljalil, #219551,  
Linso Allen, #269378, Michael Benninger, #264212,  
Frederic Brown, #289602, Timothy Brown, #238461,  
Terrell Buchanon, #277262, Christopher Buch, #200690,  
Rudy Cassidy, #238732, Sheldon Clark, #264772,  
Zawaski Cobb, #187136, Kamathene Cooper, #145333,  
Gladstone Cummings, #267450, Patrick Curtis, #175139,  
Quintin Daniels, #196284, Curtis Davis, #238776,  
Heyward Dempsey, #134171, Phillip Denney, #240678,  
Paul Durham, #219573, Jerome Durham, #270393, Keith  
Eigner, #299153, Bernard Felder, #122099, Jermaine  
Garriett, #191274, Fred Gatewood, #289775, Dennis  
Goff, #177506, Gregory Grant, #109656, Nelson  
Hampton, #286427, James Hartman, #219770, Gary  
Hayes, #263985, Michael Hood, #279987, Nikia Law,  
#260855, Stephen Lease, #137016, Harry Leonard,  
#249996, Herbert McFadden, #184297, Michael  
McFarland, #266870, Earl Mack, #216237, John Moultri,  
#276527, Matin Muntaqim, #266870, Tony Pitts,  
#280597, Germaine Pringle, #250390, Gene Richardson,  
#93614, Dennis Richey, #233472, Ignacio Rivera,  
#300424, Vondell Sanders, #241308, James Sattler,  
#235043, Joseph Schmitz, #173987, Arthur Scott,  
#251957, Jerome Scott, #153381, Roosevelt Scott,  
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#199324, James Williams, #282929, Gary Bryant,  
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#245199, Don Hughes, #256862, Michael Key, #266890,  
Archie Lee, #226354, Isaac Richardson, #232574,  
Larkland Richards, #281768, John Wojcik, #219463,  
James Bogan, #288111, Larry Burke, #281911, Jammie  
Gaymon, #208922, David Harrell, #260004, Jeff Stinson,  
#260047, Ricky Libby, #274681, Alain Lareua, #128014,  
Quentin Baker, #297868, Frank Corley, #292975, James  
Jackson, #267718, Quintin Linen, #238553, Thomas  
Miles, #246763, Chauncy Orr, #177069, Isaiah Scott,

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#228008, Eric Youmous, #281091, Derek Carter,  
#275938, Willie Hare, #256641, Ernest Miller, #235474,  
Robert Norris, #266101, Ronald Simmons, #267937,  
Samuel Simmons, #302393, William Thomas, #272501,  
Anthony Murphy, #295893, Anthony Murray, #237867,  
Johnny Hayes, #267910, Roy Morris, #288777, Daniel  
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Deveaux, #109601, James Wells, #180458, Cedric  
Martino, #291396, Donald McAteer, #292961, Robert  
Wydman, #260331, Anthony Wright, #214007, Derrick

Williams, #272958, Kenneth White, #228409, James Trumper, #247429, Jeffrey Spears, #281697, Timothy Smith, #296539, Davis Sims, #278067, Virgil Simpson, #281888, Edward Simpson, #220017, Kenneth Simmons, #278911, George Shine, #292391, Ralph Sellers, #164295, Laron Richardson, #258786, Frank Patterson, #283098, Tony McNeil, #235864, Larry McClam, #282972, Lavanza Mack, #189340, Raymond Livingston, #277133, Nicholas Lambrose, #215080, Joseph Kelsey, #217218, Keith Eugene, no number, Chuck Jackson, #266425, James Foye, #211523, Timothy Inman, #151123, Marvin Gilbert, #273934, Demetrius Wheeling, #264976, Leon Wilson, #155867, Jeffrey Tevis, #216442, Darryel Beasley, #222388, Curtis Thompson, #266448, Baron Cobbs, #280479, James Tino, #145030, Harold Roberson, #117001, Ray Gadsen, #187527, Tony Witt, #242918, Jonathan Singleton, #287670, Joe Pannell, #89592, Charles Graham, #294453, Lazarus Brannon, #227847, Darrell Williams, #219730, Wilbert Mills, #244004, Howard Grant, #255473, Timothy Wilson, #261971, Rodney Elliott, #251337, Henry Rivers, #219118, Appellants,\*

v.

South Carolina Department of Corrections, Respondent.

Appellate Case No. 2012-210588

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\* The Respondent's undersigned counsel respectfully brings the Court's attention to the following typographical errors which appear in the caption of the order it issued July 5, 2013 in the instant matter: Appellant "James Hartmant," #219770, whose name appears on the first page of the Court's July 5, 2013 order, is actually named "James Hartman;" Appellant "Isaace Richardson," #232574, whose name also appears on the order's first page, is actually named "Isaac Richardson;" Appellant "Larry McCam," #282972, whose name appears on the order's second page, is actually named "Larry McClam;" and Appellant "Charlse Graham," #294453, whose name appears on the order's third page, is actually named "Charles Graham." The caption provided by the Respondent's undersigned counsel for their instant motion reflects corrections to these typographical errors.

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**RESPONDENT'S MOTION FOR A 30-DAY PERIOD OF TIME BY  
WHICH IT MAY FILE A MOTION TO STRIKE ITEMS FROM THE  
DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON  
APPEAL FILED BY APPELLANTS' COUNSEL IN EARLY FEBRUARY 2013**

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**I. RELEVANT CHRONOLOGY**

By an order filed January 11, 2013, this Court observed and directed as follows:

On July 23, 2012, this Court remanded this consolidated appeal to the Administrative Law Court (ALC). On remand, the ALC issued a Second Amended Order. Appellants subsequently filed a notice of appeal from the amended order.

Appellants have now filed a motion requesting leave to amend their initial brief in order to reference the ALC's amended order. Appellants' motion is granted. Within thirty days, Appellants shall serve and file their amended initial brief and designation of matter.

By the terms of the Court's above-quoted order, the Appellants' Amended Initial Brief and Designation of Matter were due on Monday, February 11, 2013.

On February 11, 2013, the Respondent's undersigned counsel received from Appellants' counsel the following filings: the Appellants' Amended Initial Brief and the Appellant's Designation of Matter to be included in the Record on Appeal. These two (2) filings from the Appellants' counsel were dated February 8, 2013.

The Respondent's undersigned counsel, by virtue of their receipt of the Appellants' Amended Initial Brief and Designation of Matter on February 11, 2013, originally confronted a deadline of Wednesday, March 13, 2013 to file the Respondent's Initial Brief and Designation of Matter to be included in the Record on Appeal.

However, before they could file a motion to exclude some of the items identified in the February 8, 2013 Designation of Matter submitted by Appellant's counsel, the Respondent's

undersigned counsel received from the Appellants' counsel a motion dated February 19, 2013 and entitled "Appellants' Motion to Abbreviate Record on Appeal." The Respondent's undersigned counsel received the "Appellants' Motion to Abbreviate Record on Appeal," its supporting memorandum, and its supporting affidavit on February 21, 2013.

By his motion, Appellants' counsel advocated as follows (p. 4):

COMES NOW, Appellants by counsel, who respectfully request that the Court issue an order allowing the parties to designate for the Record on Appeal representative samples of Appellants' grievance documents, instead of designating all such documents of over 3000 pages.

Appellants further request the Court to order that the ALC record, which includes all grievance documents, to be made a part of the Court of Appeals Record on Appeal, without the parties having to copy and physically include all such documents in their designated portions of that Record.

In the memorandum he submitted in support of the "Appellants' Motion to Abbreviate Record on Appeal" (p. 10, ¶¶ (b) and (c)), Appellants' counsel also sought the following relief:

That the Court order the ALC record, which includes all inmates' grievance documents, to be made part of the Court of Appeals' Record on Appeal, without the parties having to copy and physically include all inmates' grievance documents in their designation portion of the Record.

By a March 13, 2013 filing, the Respondent, by and through its undersigned counsel, moved this Court to issue an order by which it compelled the Appellants and their counsel to clearly identify the material described within the "Appellants' Motion to Abbreviate Record on Appeal." By the same filing, the Respondent moved this Court to hold the timelines associated with the parties' briefing in abeyance until this Court could resolve the issues concerning the composition of the Record on Appeal in the instant matter.

By a filing dated March 23, 2013, Appellants' counsel filed a return in opposition to the Respondent's March 13, 2013 motion to compel clarification.

By an order filed July 5, 2013, this Court denied the “Appellants’ Motion to Abbreviate Record on Appeal” filed by Appellants’ counsel in late February 2013. As a consequence of denying the “Appellants’ Motion to Abbreviate Record on Appeal,” this Court determined that it did not need to consider the Respondent’s March 13, 2013 motion to compel clarification.

The Respondent’s undersigned counsel have received no subsequent filings from Appellants’ counsel since the Court’s issued its July 5, 2013 order.

## II. RESPONDENT’S MOTION

Thus, in light of the above-provided chronology, the Respondent’s undersigned counsel respectfully move this Court to allow them 30 days in which to file a motion to strike items listed by the Appellants’ counsel in the original Designation of Matter to be included in the Record on Appeal he filed in early February 2013.

### A. PROVISIONS OF SCACR 209 AND 210

SCACR 209 is entitled “Designation of Matter to be included in the Record on Appeal. SCACR 209(a), which is entitled “Time to Serve and File,” provides as follows:

At the same time a party serves his initial brief(s) under [SCACR] 208, to include a reply brief, he shall also serve on all parties to the appeal a Designation of Matter to be Included in the Record on Appeal **which shall set forth with specificity those parts of the transcript, pleadings, orders, exhibits, or other materials which he proposes to include in the record on appeal.** [emphasis supplied].

SCACR 209(b), which is entitled “Content,” further provides as follows:

The Designation must clearly identify what the party desires to have included in the Record on Appeal, and **the Designation may only propose to include portions of the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal.** [See (SCACR) 210(c)]. [emphasis supplied].

In pertinent part, SCACR 210(c) provides that “[t]he Record **shall not** ... include matter which was not presented to the lower court or tribunal.” [emphasis supplied].

## B. GROUNDS FOR MOTION

Within the original Designation of Matter he filed in early February 2013, Appellants' counsel identified 44 items for inclusion in the Record in this matter, and the Respondent's undersigned counsel respectfully submits that a significant number of these items should not be included in the Record for the instant matter.

In the memorandum he submitted in support of the "Appellants' Motion to Abbreviate Record on Appeal" (pp. 8 – 9, ¶¶ 3 – 6) in late February 2013, Appellants' counsel stated as follows:

For the most part, these issues are based on at least three types of documents **in the ALC record**: (a) grievance documents for all 197 inmates, totaling over 3000 pages; (b) two certificates of service covering some 178 inmate grievance filings in September 2004, totaling 4 pages; (c) and two spreadsheets covering inmate file dates and work dates, totaling 30-35 pages each.

In order to protect their interests, and out of any abundance of caution, inmates designated on February 8, 2013 approximately 3800 pages in documents for the Record on Appeal. The great majority of these are grievance documents for all 197 inmates. [emphasis supplied].

However, Appellants' counsel identified a significant number of items within the Designation of Matter he filed in early February 2013 which simply did not appear "in the ALC record" as described in the above-provided passage from the memorandum he submitted in support of the "Appellants' Motion to Abbreviate Record on Appeal." In late May 2011, Appellants' counsel moved the ALC to supplement the record before it by adding a substantial amount of material. The ALC, by a written order issued August 5, 2011, denied the motion filed by Appellants' counsel in late May 2011.

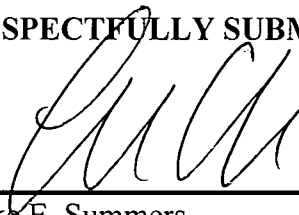
Notwithstanding the ALC's order or, for that matter, the provisions of SCACR 209(b) and SCACR 201(c), Appellants' counsel, by the Designation of Matter he filed in early February 2013, still sought to include in the Record before this Court a significant number of items that the ALC excluded from the record it considered. For the sake of clarity, Appellants' counsel did not indicate in any of the multiple Notices of Appeal he has filed to date in this matter (i.e. notices dated March 29, 2012, June 15, 2012, and August 22, 2012) that the Appellants challenged any component of the written order issued by the ALC on August 5, 2011.

Therefore, the Respondent's undersigned counsel respectfully submits that they still cannot prepare a cogent and meaningful initial brief on the Respondent's behalf in light of the uncertainty that they respectfully submit is still associated with the contents of the Record in this matter. Additionally, the Respondent's undersigned counsel anticipates the possibility that Appellants' counsel may be compelled, once the issues associated with the Record in this consolidated appeal are resolved, to prepare and file another amended initial brief.

### **C. CONCLUSION**

Accordingly, the Respondent's undersigned counsel respectfully move the Court to allow them 30 days in which they may file a motion to strike items listed within the Designation of Matter to be Included in the Record on Appeal filed by Appellants' counsel in early February 2013.

RESPECTFULLY SUBMITTED,



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Lake E. Summers

Katherine A. Phillips

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Counsel for Respondent

Columbia, South Carolina

July 23, 2013

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT

Ralph King Anderson, III, Chief Administrative Law Judge

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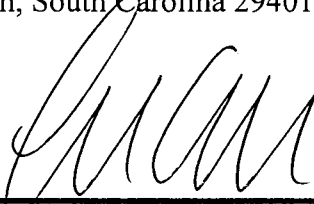
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I certify that I have served the **RESPONDENT'S MOTION FOR A 30-DAY PERIOD OF TIME BY WHICH IT MAY FILE A MOTION TO STRIKE ITEMS FROM THE DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL FILED BY APPELLANTS' COUNSEL IN EARLY FEBRUARY 2013** upon the above-named Appellants by mailing a copy of their counsel, first class postage pre-paid, at the following address:

Douglas H. Westbrook, Esquire  
Attorney at Law  
23 Broad Street  
Charleston, South Carolina 29401



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LAKE E. SUMMERS

July 23, 2013

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