

THE 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' JOINT MOTION TO CORRECT
DEFICIENCIES IN APPELLANT'S RECORD ON APPEAL**

TO: APPELLANT AND THE SOUTH CAROLINA COURT OF APPEALS:

PLEASE TAKE NOTICE that the Respondents jointly move this Court to correct deficiencies in Appellant Stephen Mueller's Record on Appeal (ROA).

The basis for this motion is that Appellant (1) included materials that were not presented to the Administrative Law Court and thus should not be included in the ROA; (2) he failed to include in the ROA some of Respondents' documents identified in their Joint Designation of Matter; and (3) he failed to number the ROA pages, thus preventing either party from complying with SCACR 211(b)(1) (i.e., referring to ROA page numbers in their Final Briefs).

SCACR Rule 209 requires counsel to certify that a designation does not include "matter which is irrelevant to the appeal," and further requires that the designation only include matters

"which may be properly included in the Record on Appeal [See Rule 210(c)]." SCACR Rule 210(c) states that the "Record shall not, however, include matter which was not presented to the lower court or tribunal." Read together, Rule 210(c) limits what the Appellant can designate under Rule 209 to only those matters which were presented to the lower court. Appellant violated this Rule by improperly including the following: (1) photos labeled Ex. 100 and 100A that are not part of the trial record; (2) a partial transcript of ALC Docket 18-ALJ-0023-CC without any further identification of what it is; and (3) his purported Summary Judgment Motion dated November 1, 2023. None of these documents were presented to the lower court and should be excluded from the ROA.

Appellant likewise failed to include the following from Respondents' Joint Designation of Matter: (1) No. 13 - Respondents' Trial Exhibits DHEC Exhibit 1, Varn and Dupre Exhibits 15A-N, 18 A and B (photographs of beach)); and (2) No. 15 - Email exchange initiated by Appellant, between Appellant and the lower court, 11/28/22 – 12/13/22. The exclusion of Respondents' documents from the ROA was improper.

Finally, SCACR 211(b)(1) addresses the Appellant's failure to include ROA page numbers. This Rule states that "[t]he references in the initial brief shall be revised to indicate [in the Final Brief] where the material appears in the Record on Appeal." This Rule then provides examples of how to reference the ROA in the Final Briefs and always includes page numbers. This Court cannot efficiently review documents identified in the Final Briefs without the Appellant paginating the ROA as one document. Until all of these deficiencies are corrected, the Respondents cannot submit their Joint Final Brief.

For the foregoing reasons, the Respondents jointly request that this Court compel the Appellant to correct these deficiencies and hold the Final Brief deadline in abeyance until such corrections are made.

Respectfully submitted,

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January 23, 2024

Charleston, South Carolina

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Jan 23 2024

SC Court of Appeals

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CERTIFICATE OF SERVICE

I hereby certify that on this date I served RESPONDENTS' JOINT MOTION TO CORRECT DEFICIENCIES IN APPELLANT'S RECORD ON APPEAL upon the below-referenced attorneys and Appellant via U.S. Mail and electronic delivery to the email addresses of record below:

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Janet H. DeBruhl

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January 23, 2024
Charleston, South Carolina



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Jan 23 2024

SC Court of Appeals

January 23, 2024

Via email to ctappfilings@sccourts.org

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1220 Senate St.
Columbia, SC 29201

RE: Stephen Mueller v. SCDHEC and Carla Varn DuPre and Jasper B. Varn, III
Appellate Case No.: 2023-000441

Dear Ms. Kitchings:

Enclosed please find for filing *Respondents' Joint Motion to Correct Deficiencies in Appellant's Record on Appeal* in the above-referenced matter. By copy hereof, we are serving all parties of record as reflected on the Certificate of Service.

Very truly yours,

Bradley D. Churdar

Bradley D. Churdar
Associate Chief Counsel

Enclosures

BDC/jhd

cc: Stephen Mueller
Mary D. Shahid, Esquire
Angelica M. Colwell, Esquire