

RECEIVED

Mar 04 2024

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

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 REQUEST DESIGNATION OF THE RECORD
ON APPEAL FILED BY RESPONDENTS AS THE ORIGINAL RECORD OF APPEAL**

Bradley D. Churdar, Esquire
SCDHEC
1362 McMillan Avenue, Suite 400
Columbia, SC 29201
Office: 843.953.0213
Mobile: 843.718.5685
Fax: 843.953.0201

Email: churdabd@dhec.sc.gov

*Attorneys for the Respondent,
SCDHEC*

Mary D. Shahid, Esquire
Angelica M. Colwell, Esquire
MAYNARD NEXSEN PC
205 King Street, Suite 400
Charleston, SC 29401
Office: 843.720.1788
Mobile: 843.345.5838
Fax: 843.414.8242

Email: mshahid@maynardnexsen.com
acolwell@maynardnexsen.com

*Attorneys for the Respondents,
Carla Varn DuPre and Jasper B. Varn, III*

ARGUMENT

On October 17, 2023, this Court sent a letter to both parties to this appeal stating that “...each party must file an original record on appeal and/or final brief, in either electronic or unbound paper form, as well as one bound paper copy, at the time the record on appeal and final briefs are due to be served and filed in accordance with the SCACR.” (Copy of letter attached as Ex. A). Rule 210(a), SCACR requires the *appellant* to serve a copy of the Record on Appeal on each party who has served a brief within thirty days after service of the last brief (emphasis added). Rule 210(b), SCACR specifically states that the *appellant* must file fifteen copies of the Record on Appeal with the clerk of the appellate court no later than the date his brief(s) are due under Rule 211 (emphasis added).

While Respondents were not required by Rule 210 to file or serve a Record on Appeal (“ROA”), one was filed and served on November 2, 2023 out of an abundance of caution in response to the letter received from the Court, as noted above.¹ Appellant, Stephen Mueller, did not file or serve a Record on Appeal before the deadline. As such, on November 17, 2023, this Court sent another letter to the parties regarding filing of the Record on Appeal, clearly stating that the appeal would be dismissed unless Mr. Mueller, as the Appellant, provided the Record on Appeal with a motion to file the record out of time and a filing fee. This letter prompted Mr. Mueller to submit correspondence to the Court identified as the Record on Appeal but consisting of only a list of documents intended to be included in the Record on Appeal.

¹ Respondents timely filed their Joint Initial Brief on October 2, 2023 with a cover letter, their Designation of Matter and Proof of Service.

Subsequently, on November 22, 2023, Mr. Mueller filed a Record on Appeal with the Court. On January 23, 2024, Respondents' filed a Joint Motion to Correct Deficiencies in Appellant's Record on Appeal on the grounds that (1) it included materials that were not presented to the Administrative Law Court and thus should not be included in the ROA, (2) it did not include several documents identified in Respondents' Joint Designation of Matter, and (3) it had no page numbering, which has prevented any party from complying with Rule 211(b)(1) SCACR requiring reference to ROA page numbers in Final Briefs. (Respondents' Joint Motion to Correct Deficiencies in Appellant's Record on Appeal, pp. 1-2).

In order to move this appeal forward, Respondents seek to withdraw the Joint Motion to Correct Deficiencies and request that the Court accept the Record on Appeal filed on behalf of Respondents as satisfying the requirements of Rule 210, SCACR, such that a deadline for submission of Final Briefs may be identified. Respondents will adopt the documents identified in Appellant's Record on Appeal as numbers 2-12, 14 and 16. These documents could be given page numbers sequential to Respondents' Joint Record on Appeal, which ended with page 308. This would allow all parties to prepare Final Briefs to move the appeal forward.

CONCLUSION

This appeal has been pending just short of one year. Progress of the appeal has been delayed, in part, by *Pro Se* Appellant's failure to comply with the South Carolina Appellate Court Rules. In order to move this appeal forward and in the interests of justice, Respondents respectfully request withdrawal of the Joint Motion to Correct Deficiencies in Appellant's Record on Appeal, and further move that this Court accept the Record of

Appeal filed on behalf of both Respondents, with addition of the documents identified by Appellant at outlined above, as the original Record on Appeal and identify the deadline for filing of Final Briefs by all parties.

s/Mary D. Shahid, Esq.
Mary D. Shahid, Esquire
Angelica M. Colwell, Esquire
MAYNARD NEXSEN PC
205 King Street, Suite 400 (29401)
P.O. Box 486
Charleston, South Carolina 29402
PHONE: 843.577.9440
FAX: 843.414.8242
mshahid@maynardnexsen.com
acolwell@maynardnexsen.com
Attorneys for Respondents
Carla V. DuPre and Jasper B. Varn, III

s/Bradley D. Churdar, Esq.
SCDHEC
1362 McMillan Avenue, Suite 400
Charleston, South Carolina 29201
PHONE: 843.953.0213
FAX: 843.953.0201
churdabd@dhec.sc.gov
Attorneys for Respondent
SCDHEC

March 4, 2024
Charleston, South Carolina

RECEIVED

Mar 04 2024

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.

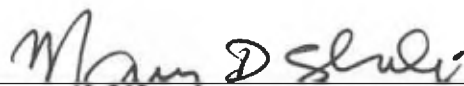
CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that I have this date, March 4, 2024, served this Joint Motion to Request Designation of the Record on Appeal Filed by Respondents as the Original Record of Appeal upon all parties to this appeal, and/or their attorneys, by depositing a copy hereof in the United States by electronic mail to the following:

Bradley D. Churdar, Esquire
SCDHEC
1362 McMillan Avenue, Suite 400
Columbia, SC 29201
Office: 843.953.0213
Mobile: 843.718.5685
Fax: 843.953.0201
Email: churdabd@dhec.sc.gov

Stephen Mueller
21 Hillsboro Rd.
Rochester, NY 14610
Email: stevem44442002@yahoo.com

*Attorneys for the Respondent,
SCDHEC*



Mary D. Shahid, Esquire
Angelica M. Colwell, Esquire
Maynard Nexsen, PC
205 King Street, Suite 400 (29401)
P.O. Box 486
Charleston, South Carolina 29402
PHONE: 843.577.9440
FAX: 843.414.8242
mshahid@maynardnexsen.com
acolwell@maynardnexsen.com
Attorneys for Respondents
Carla V. DuPre and Jasper B. Varn, III



Mary D. Shahid
Shareholder

March 4, 2024

RECEIVED

Mar 04 2024

SC Court of Appeals

VIA EMAIL ONLY

Jenny Adams Kitchings
South Carolina Court of Appeals
Clerk of Court
1220 Senate Street
Columbia, SC 29201

Re: Appellate Case No.: 2023-000441

Dear Madam Clerk:

Please find enclosed Respondents' Joint Motion to Request that the Record on Appeal filed by Respondents serve as the Record of Appeal in the above referenced appellate case, so that the parties' are able to file the Final Briefs.

Very truly yours,

A handwritten signature in black ink that reads "Mary D. Shahid".

Mary D. Shahid

cc: Stephen Mueller (via email)
Bradley Churdar (via email)