

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
G. Thomas Cooper, Jr., Circuit Court Judge

RECEIVED

NOV 28 2013

SC Court of Appeals

Appellate Case No.: 2013-001880

City of Columbia,.....Appellant,

v.

George S. Glassmeyer,.....Respondent.

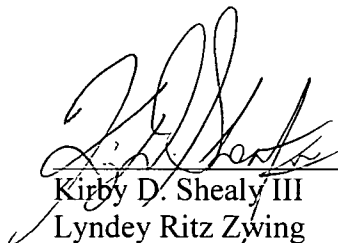
RESPONDENT'S RETURN TO APPELLANT'S
MOTION TO SUPPLEMENT RECORD ON APPEAL

Respondent, by and through his undersigned counsel, hereby files this Return in Opposition to Appellant's Motion to Supplement the Record on Appeal.

In its first initial brief, filed on November 5, 2013, Appellant attempted to attach two unpublished South Carolina Attorney General Opinions to which it refers in its brief and on which it relies for legal support. On November 12, 2013, the Clerk of Court notified Appellant's counsel that the attachment of legal authority to its Initial Brief was improper. In its motion, Appellant indicates that it seeks to include these authorities in the Record on Appeal as a matter of convenience for the Court. Respondent contends that while Appellant's desire to promote judicial convenience is commendable, the Appellate Court Rules do not provide a vehicle for appending legal authorities to the Record on Appeal, particularly when those authorities were not presented to the circuit court.

Rule 210(c), SCACR, provides: “The Record shall not . . . include matter which was not presented to the lower court or tribunal.” Respondent has no grounds to oppose Appellant’s citation to these authorities within its brief, but it believes that the Record on Appeal should merely capture the allegations, evidence, procedural motions and legal rulings in the lower court. *See* Rule 201(h) (the Court “will not consider any fact which does not appear in the Record”) (emphasis added); *Spreeuw v. Barker*, 385 S.C. 45, 682 S.E.2d 843 (Ct. App. 2009) (court could not consider evidence on an alleged income tax return that was not included in the Record on Appeal). Respondent is further informed and believes that the Court may readily access the South Carolina Attorney General’s opinions without having them included in the Record on Appeal.

For the above stated reasons, Respondent respectfully requests that this Court deny Appellant’s motion.



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November 22, 2013.

Attorneys for Respondent

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas
G. Thomas Cooper, Jr., Circuit Court Judge

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SC Court of Appeals

Appellate Case No.: 2013-001880

City of Columbia,.....Appellant,

v.

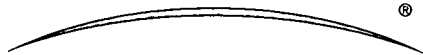
George S. Glassmeyer,.....Respondent.

PROOF OF SERVICE

I certify that I have served Respondent's Return to Appellant's Motion to Supplement Record on Appeal by depositing a copy of such document in the United States Mail, postage prepaid, on November 22, 2013, addressed to his attorney of record, W. Allen Nickles, III, Esquire, 1519 Richland Street, Columbia, South Carolina 29201.

November 22nd, 2013.


Liz Davison - Legal Assistant



November 22, 2013

Attorneys at Law

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Florida
Louisiana
Mississippi
South Carolina
Tennessee
Texas
Washington, DC

VIA Hand Delivery:

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
P.O. Box 11629
Columbia, South Carolina 29211

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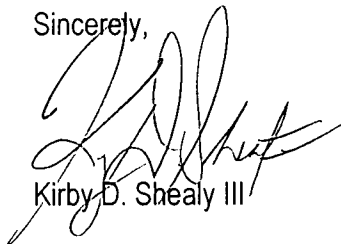
RE: *City of Columbia v. George S. Glassmeyer*
Appellate Case No.: 2013-001880
Civil Action No.: 2013-CP-40-01450
A&R File No.: 053004-000001

Dear Ms. Kitchings:

Enclosed please find the original and seven copies of Respondent's Return to Appellant's Motion to Supplement Record on Appeal together with the Proof of Service in the above-referenced appeal. I would greatly appreciate it if you would file the original and six copies and return a clocked-in copy to me via my courier.

Should you have any questions or comments, please do not hesitate to contact me directly.

Sincerely,



Kirby D. Shealy III

KDSIII/LRZ/ltd
Enclosures

cc: W. Allen Nickles, III (*via U.S. Mail*)
George S. Glassmeyer (*via electronic mail*)

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