

STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM THE ADMINISTRATIVE LAW COURT

**RECEIVED**

Deborah Brooks Durden, Administrative Law Judge

MAR 14 2014

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Administrative Law Court Docket No. 12-ALJ-04-00143-AP

**SC Court of Appeals**

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South Carolina Department of Corrections ..... Appellant

v.

Thomas J. Torrence, #094651 ..... Respondent

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**MOTION TO DISMISS APPEAL  
PURSUANT TO  
SOUTH CAROLINA CODE OF LAWS § 1-23-610(A) (1)**

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Thomas J. Torrence  
#94651  
Lieber Correctional Institution  
Post Office Box 205  
Ridgeville, South Carolina 29472

**RESPONDENT, pro se**

Other counsel of record:

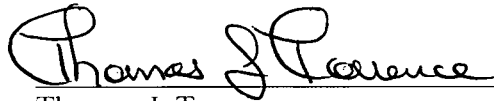
Lake E. Summers, Esq.  
**Malone, Thompson, Summers & Ott LLC**  
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Columbia, SC 29201

Counsel for Appellant South Carolina  
Department of Corrections

Thomas J. Torrence, the *pro se* Respondent in the afore-captioned appeal from the Administrative Law Court, respectfully moves this Honorable Court, pursuant to Rule 240, South Carolina Appellate Court Rules, to dismiss the afore-captioned appeal by the South Carolina Department of Corrections for lack of appealability of a matter where the January 30, 2014 Order of the Administrative Law Court is not a final judgment or order upon which an appeal may be taken at this time pursuant to South Carolina Code of Laws § 1-23-610(A)(1).

Respectfully submitted,

March 10, 2014



Thomas J. Torrence

#094651

Lieber Correctional Institution, SA-43

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**RESPONDENT, Pro se**

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that he has served a true and correct copy of Respondent's Motion to Dismiss the Appeal and Memorandum In Support thereof on all parties required by Court Rules, by placing a copy in the U.S. Mail, first-class postage affixed thereto, this 11th day of March, 2014, addressed as follows:

Lake E. Summers, Esq.  
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Thomas J. Torrence  
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**RESPONDENT, pro se**

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South Carolina Department of Corrections . . . . . Appellant

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Thomas J. Torrence, #094651 . . . . . Respondent

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**RESPONDENT'S MEMORANDUM OF LAW  
IN SUPPORT OF  
MOTION TO DISMISS APPEAL**

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**RESPONDENT, pro se**

Other counsel of record:

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Counsel for Appellant South Carolina  
Department of Corrections

## TABLE OF AUTHORITIES

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## RESPONDENT'S MEMORANDUM IN SUPPORT OF MOTION TO DISMISS APPEAL

### Introduction

The *pro se* Respondent, Thomas J. Torrence ("Respondent") has respectfully moved this Honorable Court, pursuant to Rule 240, South Carolina Appellate Court Rules, to dismiss the afore-captioned appeal by the South Carolina Department of Corrections ("Appellant" or "DOC") from the January 30, 2014 Order of the Honorable Deborah Brooks Durden, Administrative Law Judge ("ALC") for lack of appealability where the order is not a final judgment or an order upon which an appeal may be taken at this time pursuant to South Carolina Code of Laws § 1-23-610(A)(1).

### Procedural History

Respondent filed a Notice of Appeal, dated March 2, 2012 from a final agency decision of DOC raising six (6) issues regarding prevailing wages, *inter alia* the timeliness of the grievance where the DOC raised a defense of statute of limitations.

On June 5, 2012 DOC filed a Motion to Address Only One Issue In Its Brief ("Motion"). On June 7, 2012 the ALC issued an Order granting DOC's motion. The DOC filed its brief based on that order on July 9, 2012.

On January 30, 2014 the ALC issued an Order finding Respondent's grievance was timely filed, the ALC would address the merits of the issues presented in [this] appeal, and establishing a briefing schedule.<sup>1</sup>

Appellant filed a Motion to Hold In Abeyance or Otherwise Stay further Proceedings In The Instant Matter, dated March 3, 2014, in the ALC, alleging the January 30, 2014 Order of

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<sup>1</sup> *Thomas J. Torrence v. S.C. Dept. of Corrections*, ALC Docket # 12-ALJ-04-00143-AP, January 30, 2014, Order of Honorable Deborah Brooks Durden, pg. 10 (submitted by Appellant with the Notice of Appeal herein)

Judge Durden was a final order or order on the merits, and simultaneously filed the instant Notice of Appeal in this Court.

### **Facts of the Proceedings**

Appellant's Motion proposed the option that if the Court determined Respondent filed his grievance within the applicable time limit or that the deadline did not apply, then the Court could direct the Department "to submit a supplemental brief on any remaining issues animated..." Appellant's Motion also suggested "counsel respectfully submits that the Court could modify... as follows: (4) The parties shall submit additional briefs to the Court..."

The June 7, 2012 ALC Order specifically instructed the parties "the interests of judicial economy would be served by considering the timeliness of the filing as a *preliminary matter*." (Emphasis supplied).

## **ARGUMENT**

The January 30, 2014 Order of the Honorable Deborah Brooks Durden, Administrative Law Judge is neither a final order on the merits, nor an order immediately appealable at this time. Thus, Appellant's appeal lacks appealability of a matter and must be dismissed. Judge Durden's Order is quite clear that the Court's intent is to address the merits of the issues presented in Respondent's March 2, 2012 appeal.

Respondent submits that the January 30, 2014 Order does not fit into any exception enumerated in South Carolina Code Ann. § 14-3-330 (Supp. 1991). An order generally must fall into one of several categories set forth in the statute governing appellate jurisdiction in order to be immediately appealable, *see State v. Wilson*, 387 S.C. 597, 693 S.E.2d 923 (2010).

There remains in this case further acts which must be done by the Court prior to determination of the rights of the parties, which make the January 30<sup>th</sup> Order “interlocutory,” see *Mid-State Distribs. v. Century Importers*, 310 S.C. 330, 426 S.E.2d 777 (1993).

Respondent submits that the January 30<sup>th</sup> Order does not constitute an ultimate decision on the merits under South Carolina Code § 1-23-390.

Respondent suggests that the final judgment rule receives a more specialized treatment under the Administrative Procedures Act (APA) or in matters before the ALC and not the general rule established in §14-3-330 (Supp. 1991).

In *Bone v. U.S. Food Service*,<sup>2</sup> our Supreme Court followed the rule that same Court settled in *Charlotte-Mecklenburg Hospital Authority v. South Carolina Department of Health and Environmental Control*<sup>3</sup> that where there is a specialized statute, §14-3-330 does not govern the right of review. South Carolina Code Ann. § 1-23-610(A) (1) (Supp. 2009) provides that judicial review may only be sought from a *final* decision of the ALC. Therefore, although § 14-3-330 permits appeals from interlocutory orders which involve the merits, that section is inapplicable in cases where a party seeks review of a decision of the ALC because the more specific statute, § 1-23-610, limits review to final decisions of the ALC. Here, as in *Charlotte-Mecklenburg*, the order is not a final order where some further act must be done by the Court prior to determination of the rights of the parties. The Supreme Court found the order of the ALC in that case was interlocutory and was not a final decision which is not immediately appealable under § 1-23-610.

Finally, when an order is interlocutory and not immediately appealable, the service of the filing of a notice of intent to appeal, as here, does not transfer jurisdiction to the appellate court,

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<sup>2</sup> 404 S.C. 67, 744 S.E.2d 552 (2013)

<sup>3</sup> 387 S.C. 265, 692 S.E.2d 894, Order, April 10, 2010

nor does it stay further proceedings in the lower court, *see South Carolina Pub. Serv. Auth. v. Arnold*, 287 S.C. 584, 340 S.E.2d 535 (1986).

### CONCLUSION

**WHEREFORE**, the Respondent respectfully moves this Honorable Court to dismiss this appeal for a lack of appealability at this time.

Respectfully submitted,

March 10, 2014



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**RESPONDENT, Pro se**

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**RECEIVED**

MAR 11 2014

MAIL ROOM

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