

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM ADMINISTRATIVE LAW COURT

Deborah Brooks- Durden, Administrative Law Judge

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Case No. 13-ALJ-22-0508-AP  
Appellate Case No. 2013-002744

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Timothy D. Revels .....Appellant,

v.

South Carolina Department of Employment and  
Workforce, and Sherman College of Chiropractic ..... Respondents.

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**FINAL BRIEF OF RESPONDENT SHERMAN COLLEGE**

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SC Court of Appeals

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## **STATEMENT OF ISSUES ON APPEAL**

DID THE ADMINISTRATIVE LAW COURT ERR IN DISMISSING APPELLANT'S APPEAL OF THE AGENCY DECISION FOR LACK OF JURISDICTION AND FAILURE TO FOLLOW THE RULES OF THE ADMINISTRATIVE LAW COURT?

### **STATEMENT OF THE CASE**

Appellant was employed with Respondent Sherman College of Chiropractic, Inc. ("Sherman College") as its Vice President for Business and Finance/Chief Financial Officer until his termination on March 18, 2013. Appellant subsequently filed for unemployment compensation with Respondent S.C. Department of Employment and Workforce (DEW). The Appellate Panel of Respondent DEW ultimately disqualified Appellant from receiving unemployment benefits by its decision dated September 26, 2013.

Appellant appealed the final agency decision of Respondent DEW to the Administrative Law Court on October 22, 2013. Although Appellant served Respondent Sherman College with the Notice of Appeal, he failed to serve Respondent DEW with the Notice of Appeal as expressly required by Administrative Law Court Rule 33.

Respondent DEW filed a Notice of Special Appearance and Motion to Dismiss with the Administrative Law Court on November 14, 2013, and Respondent Sherman College filed its Joinder in the Motion to Dismiss two days later. On November 26, 2013, the Administrative Law Court issued its Order of Dismissal, finding that Appellant's failure to serve Respondent DEW with the Notice of Appeal deprived it of jurisdiction and dismissed the appeal.

## ARGUMENT

THE ADMINISTRATIVE LAW COURT CORRECTLY DISMISSED THE APPEAL OF APPELLANT BECAUSE HIS FAILURE TO SERVE RESPONDENT DEW WITH THE NOTICE OF APPEAL DEPRIVED IT OF JURISDICTION.

In its Order of Dismissal, the Administrative Law Court set forth a considered and reasoned analysis of the effect of Appellant's failure to serve Respondent DEW with the Notice of Appeal. (R. pp. 2-4.) The Administrative Law Court explained that Appellant had to comply with the statutory mandate for final DEW appeals in S.C. Code Ann. § 41-35-750 (Supp. 2012) and with Rule 33 of the Administrative Law Court Rules to "cross the mandatory jurisdictional threshold" for it to decide the appeal and that his failure to do so required dismissal. (*Id.*) Respondent Sherman College contends that the decision of the Administrative Law Court was not arbitrary, capricious, or an abuse of discretion, and this Court should affirm it.

Failure to perfect an appeal is a far different matter from other errors caused by mistake, inadvertence, surprise, or excusable neglect. Such less serious errors fall within the discretion of the court as to whether relief should be granted. Failure to perfect an appeal, however, is a jurisdictional issue which is beyond the discretion of the reviewing court. "A motion to be relieved from a failure to timely appeal is not one to set aside a judgment, order or proceeding but is, in effect, an application to extend the time for appeal so as to give the court jurisdiction; for, without a timely notice of appeal, the court would have no jurisdiction. Such a motion is not addressed to the discretion of the court." *Burnett v. South Carolina State Highway Dep't*, 252 S.C. 568, 167 S.E.2d 571, 572 (1969). To perfect an appeal, actual service of a notice on the adverse party is required, and reliance on routine clerical correspondence from the court is not sufficient

to confer appellate jurisdiction, as Appellant argues. “Service of the notice of intent to appeal is a jurisdictional requirement, and this Court has no authority to extend or expand the time in which the notice of intent to appeal must be served.” *Mears v. Mears*, 287 S.C. 168, 337 S.E.2d 206, 207 (1985) (citations omitted) (rejecting request by appellant to relax court rule governing service of notice of appeal on adverse party). *See also Elam v. South Carolina Dep’t of Transp.*, 361 S.C. 9, 602 S.E.2d 772, 775 (2004) (requirement of timely service of notice of appeal is jurisdictional and appellate court has no authority or discretion to rescue the delinquent party); *Morris Commc’n, Inc., v. South Carolina Public Serv. Comm’n*, 267 S.C. 207, 226 S.E.2d 892, 893 (1976) (failure to timely issue summons to administrative agency deprived reviewing court of appellate jurisdiction). Therefore, the Administrative Law Court lacked the authority or discretion to waive the appeal requirements in Administrative Law Court Rule 33, so its decision could not have been arbitrary, capricious, or an abuse of discretion as a matter of law.

The authorities cited by Appellant for his argument that Administrative Law Court Rule 33 is a technicality are easily distinguishable from the instant case. For example, in *Balloon Plantation, Inc., v. Head Balloons, Inc.*, 303 S.C. 152, 399 S.E.2d 439 (Ct.App.1990), the dismissal issue arose from the failure of a party to timely serve answers to interrogatories and not the failure to file a proper notice of appeal, a far more serious error. In *Williams v. Watkins*, 384 S.C. 319, 681 S.E.2d 914 (Ct.App.2009), the issue was a *pro se* party who failed to appear for a magistrate’s court trial because of a misunderstanding about a prior continuance. This Court analyzed the issue under the standard for mistake, inadvertence, surprise, or excusable neglect under South Carolina Rule of Civil Procedure 60(b)(1). As explained earlier, that standard does not apply to

defective appeals, and the *Williams* case is not instructive, especially since it involved an unrepresented party. Finally, the case of *Home Health of South Carolina, Inc., v. South Carolina Dep't of Health and Envtl. Control*, 101695 SCALC, No. 95-ALJ-07-0477-CC (Oct. 16, 1995), is inapplicable because the failure of service occurred before one of the parties was formally joined in the proceeding, and the court noted “some legitimate confusion among litigants as to certain pleading and procedural requirements for CON cases before the Administrative Law Judge Division.” *Id.* In contrast, Respondent DEW is the primary party subject to the appeal here, no joinder issue exists, and Administrative Law Court Rule 33 is clear in its requirements to perfect an appeal.

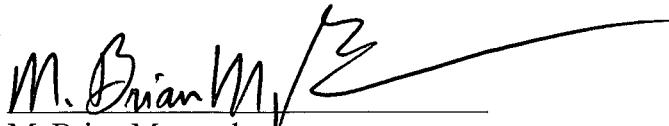
Finally, in several parts of his Final Brief, Appellant variously characterizes the service requirement under Administrative Law Court Rule 33 as a “technicality,” “a mere procedural technicality,” and “an insignificant technicality.” (App. Final Brief at pp. 2-4). Respondent Sherman College submits that the Rule is clearly stated, not obscure, and included for a particular purpose, *i.e.*, that the agency whose decision is being challenged receive proper and timely notice of that challenge on appeal. The Rules of the Administrative Law Court are no less important to its operation than the rules which govern this Court. Court rules “are not mere technicalities but provide the parties and this Court with an orderly mechanism through which to guide appeals in this State. It is incumbent upon counsel to provide material that complies with the Rules and facilitates appellate review.” *Forner v. Butler*, 319 S.C. 275, 460 S.E.2d 425, 427 n.1 (Ct.App.1995) (*quoting Henning v. Kaye*, 307 S.C. 436, 415 S.E.2d 794 (1992)). Therefore, Appellant’s apparent low opinion of the Rules of the Administrative Law

Court is misplaced, and this Court should affirm the decision of the Administrative Law Court, especially as it relates to enforcement of its own rules and procedures.

**CONCLUSION**

For the reasons stated herein, Respondent Sherman College respectfully urges this Court to affirm the decision of the Administrative Law Court and uphold the dismissal of Appellant's appeal of the agency decision below.

April 10, 2014

  
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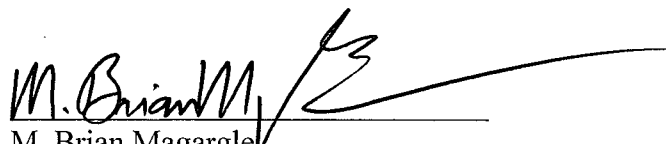
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**PROOF OF SERVICE**

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I certify that I have served the Final Brief of Respondent Sherman College on Timothy Revels, by depositing a copy of it in the United States Mail, postage prepaid, on April 10, 2014, addressed to his attorney of record, Scott F. Talley, 2500 Winchester Place, Suite 100, Spartanburg, South Carolina 29301. I further certify that I have served the Final Brief of Respondent Sherman College on the South Carolina Department of Employment and Workforce, by depositing a copy of it in the United States Mail, postage prepaid, on April 10, 2014, addressed to its attorney of record, Maura Dawson Baker, Post Office Box 8597, Columbia, South Carolina 29202.

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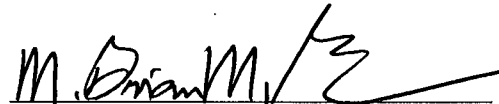
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**CERTIFICATE OF COUNSEL**

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The undersigned certifies that the Final Brief of Respondent Sherman College of Chiropractic complies with Rule 211(b), SCACR.

April 10, 2014

  
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