

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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SEP 22 2014

APPEAL FROM Horry COUNTY  
Court of Common Pleas

**SC Court of Appeals**

73612

Honorable Larry B. Hyman, Circuit Court Judge

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Case No. 2013-CP-26-08446

**Appellate Case No. 2014-000756**

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William H. Bailey, Jr. . . . . *Appellant,*

v.

Marilyn Hatley, individually and as Mayor  
of the City of North Myrtle Beach,  
Michael G. Mahaney, Christopher Noury,  
and the City of North Myrtle Beach . . . . . *Respondents.*

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APPELLANT’S MOTION TO STRIKE MISLEADING,  
IRRELEVANT AND IMPROPER MATTER FROM THE RESPONDENTS’  
DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON  
APPEAL; TO COMPEL THE RESPONDENTS TO FILE A CORRECTED  
DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON  
APPEAL; TO STRIKE MISLEADING, IRRELEVANT AND IMPROPER  
MATTER FROM RESPONDENTS’ INITIAL BRIEF; TO COMPEL THE  
RESPONDENTS TO FILE A CORRECTED INITIAL BRIEF; TO STAY THE  
TIME FOR SUBMISSION OF THE RECORD ON APPEAL PENDING  
THE COURT’S DISPOSITION OF APPELLANT’S MOTION TO STRIKE

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## MOTION

Appellant William H. Bailey, Jr., by and through his undersigned counsel, hereby moves this Honorable Court for an Order (1) striking misleading, irrelevant and improper matter from the Designation of Matter to be Included in the Record on Appeal (hereinafter “Designation of Matter”) filed by the Respondents on September 2, 2014; (2) requiring the Respondents to file a Corrected Designation of Matter; (3) striking misleading, irrelevant and improper matter from the Initial Brief filed by the Respondents on September 2, 2014; (4) requiring the Respondents to file a Corrected Initial Brief; and, (5) staying the deadline for submission of the Record on Appeal pending this Court’s disposition of Appellant’s Motion to Strike.

The Appellant will show that, specifically, the Respondents’ Designation of Matter fails to comply with the requirements of Rules 209(b)–(c) and Rule 210(c), SCACR, and the Respondents’ Initial Brief fails to comply with the requirements of Rules 208(b)(4) and 210(c), SCACR. The Appellant is aware that a Motion to Strike does not stay the time limits imposed by the Appellate Court Rules; however, if the Appellant prepares the Record on Appeal before this Honorable Court rules on this Motion, the page numbers in the Record on Appeal may change. Therefore, the Appellant respectfully moves this Honorable Court for an Order to stay the deadline for submission of the Record on Appeal until a Corrected Designation of Matter and a Corrected Initial Brief has been filed and served by the Respondents. The parties

to this appeal will not be prejudiced by an extension to prepare the Record on Appeal insofar as the Initial Briefs have already been filed. The Appellant will, however, be prejudiced if the Respondents' Designation of Matter and Initial Brief are not corrected, as set forth below.

**A. By Including Misleading, Irrelevant and Improper Material in its Designation of Matter, the Respondents Have Violated the Appellate Court Rules.**

Any party to an appeal must comply with the Rules set forth in Part II of the *South Carolina Appellate Court Rules* ("SCACR"), which govern practice and procedure in appeals, petitions, and motions in the Supreme Court and the Court of Appeals.

Rules 209(b)–(c), SCACR, from the section entitled *Designation of Matter to be Included in the Record on Appeal*, states as follows:

**(b) Content.** The Designation must clearly identify what the party desires to have included in the Record on Appeal, and the Designation may only propose to include portions of the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal [See Rule 210(c) ]. *A party shall not include any matter in his Designation which is not relevant to the appeal.* (Emphasis added.)

**(c) Certification.** The Designation shall be accompanied by a certificate signed by the party's counsel of record that the Designation contains no matter which is irrelevant to the appeal.

Rule 210(c), SCACR, from the section entitled *Record on Appeal* states:

**(c) Content.** The Record on Appeal shall include all matter designated to be included by any party under Rule 209 and shall comply with the requirements of Rule 267. *The Record shall not, however, include matter which was not presented to the lower court or tribunal. . . .* (Emphasis added.)

In the Respondents' Designation of Matter at page 2, item 8, the Respondents have designated a document for inclusion in the Record on Appeal entitled the "Trial Court Order dismissing individuals in *Mitchell Bellamy v. Marilyn Hatley, et al.*, C/A No. 2013-CP-26-07765." The *Bellamy* case is alleged to be parallel in nature to the present case. The Respondents have not presented any pleadings, motions, orders, or transcripts as an Exhibit, nor proffered any evidence from *Bellamy* in the underlying case. The pleadings and Orders of the trial court in the *Bellamy* case were not submitted or proffered to the trial court in the present matter that is under appeal. The Appellant believes the designation and inclusion of an Order from the *Bellamy* case is misleading, irrelevant and improper.

Moreover, by designating the *Bellamy* Order for inclusion in the Record on Appeal, the Respondents have failed to comply with Rules 209(b) and 210(c), SCACR. The *Bellamy* Order should be stricken from the Respondents' Designation of Matter, and the Respondents be required to file a Corrected Designation of Matter.

**B. By Including Misleading, Irrelevant and Improper Material in its Initial Brief, the Respondents Have Violated the Appellate Court Rules.**

Rule 208(b)(4), SCACR, from the section entitled *Initial Briefs*, states as follows:

**(4) References to Record.** The brief shall contain references to the transcript, pleadings, orders, exhibits, or other materials *which may be properly included in the Record on Appeal [see Rule 210(c)]* to support the salient facts alleged. (Emphasis added.)

The Respondents discuss the *Bellamy* Order referenced above in their Initial Brief at page 6, footnote 1. The Appellant reasserts that the Respondents have not presented any pleadings, motions, orders, or transcripts as an Exhibit, nor proffered any evidence from *Bellamy* in the underlying case. The Appellant believes that any reference or discussion of the *Bellamy* case in the Respondents' Initial Brief is misleading, irrelevant and improper. Moreover, it violates Rules 208(b)(4) and 210(c), SCACR and should be stricken from Respondents' Initial Brief, and the Respondents be required to file a Corrected Initial Brief.

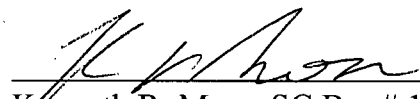
**C. Conclusion.**

For the reasons set forth above, the Appellant hereby moves this Honorable Court for an Order (1) striking all improper matter from the Respondents' Designation of Matter and Initial Brief; and, (2) compelling the Respondents to file and serve a Corrected Designation of Matter and a Corrected Initial Brief. The Appellant further

moves this Honorable Court for an Order to Stay the Time Limit for filing the Record on Appeal until such time as the Respondents have filed and served a Corrected Designation of Matter, and a Corrected Initial Brief.

Respectfully submitted,

**WRIGHT, WORLEY, POPE, EKSTER  
& MOSS, PLLC**



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*Attorneys for Appellant*

North Myrtle Beach, South Carolina  
September 18, 2014

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM HORRY COUNTY  
Court of Common Pleas

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Honorable Larry B. Hyman, Circuit Court Judge

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**SC Court of Appeals**

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Marilyn Hatley, individually and as Mayor  
of the City of North Myrtle Beach,  
Michael G. Mahaney, Christopher Noury,  
and the City of North Myrtle Beach ..... *Respondents.*

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**PROOF OF SERVICE**

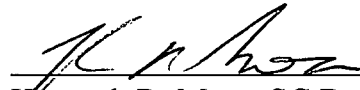
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I certify that I have served a copy of the *Appellant's Motion to Strike Misleading, Irrelevant and Improper Matter from the Respondents' Designation of Matter to Be Included in the Record on Appeal; to Compel the Respondents to File a Corrected Designation of Matter to Be Included in the Record on Appeal; to Strike Misleading, Irrelevant and Improper Matter from Respondents' Initial Brief; to Compel the Respondents to File a Corrected Initial Brief; to Stay the Time for Submission of the Record on Appeal Pending the Court's Disposition of Appellant's Motion to Strike*, along with the Proof of Service of same in the above-captioned appeal, on counsel for the Respondents by United States Mail, with sufficient first-class postage affixed, addressed as follows:

Michael W. Battle, Esq.  
Battle Law Firm, LLC  
1200 Main Street  
Post Office Box 530  
Conway, South Carolina 29528

Respectfully submitted,

**WRIGHT, WORLEY, POPE, EKSTER  
& MOSS, PLLC**



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*Attorneys for Appellant*

North Myrtle Beach, South Carolina  
September 18, 2014

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ELIZABETH W. EMBREY\*\*\*  
BOYD T. WORLEY\*  
PRESTON B. HILTON\*  
RICHARD S. "RICK" PARROTTE\*

D.F. McGOUGAN, JR.  
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♦ Certified Family Court Mediator, Guardian *ad Litem*

♦♦ Certified Circuit Court Mediator

September 18, 2014

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SEP 22 2014

**SC Court of Appeals**

**VIA CERTIFIED MAIL # 7011 1570 0001 5422 3511**

**RETURN RECEIPT REQUESTED**

The Honorable Jenny Abbott Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

RE: William H. Bailey, Jr., *Appellant* vs. Marilyn Hatley, *et al.*, *Respondents*  
Civil Action No. 2013-CP-26-08446  
**Appellate Case No. 2014-000756**  
Our file no. SC-3922-012A

Dear Ms. Kitchings:

Enclosed for filing is one (1) unbound original and six (6) copies of *Appellant's Motion to Strike Misleading, Irrelevant and Improper Matter from the Respondents' Designation of Matter to be Included in the Record on Appeal; to Compel the Respondents to File a Corrected Designation of Matter to be Included in the Record on Appeal; to Strike Misleading, Irrelevant and Improper Matter from Respondents' Initial Brief; to Compel the Respondents to File a Corrected Initial Brief; to Stay the Time for Submission of the Record on Appeal Pending the Court's Disposition of Appellant's Motion to Strike* in the above-referenced case, Proof of Service of same, and a check in the amount of \$25.00 for the filing fee.

I have included an additional copy of the Proof of Service and would appreciate you returning a clocked copy to me in the enclosed self-addressed, stamped envelope I have provided for your convenience.

The Honorable Jenny Abbott Kitchings  
September 18, 2014  
Page 2 of 2

With best regards, I am

Sincerely yours,

A handwritten signature in black ink, appearing to read "K. Moss", written in a cursive style.

Kenneth R. Moss

KRM/cd  
Enclosures as stated  
cc: Michael W. Battle, Esq. (*via U.S. Mail*)  
Client (*via hand delivery*)

Wright, Worley, Pope, Ekster  
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North Myrtle Beach, SC 29582



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The Honorable Jenny Abbott Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
P.O. Box 11629  
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