

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM THE  
ADMINISTRATIVE LAW COURT

Shirley C. Robinson, Administrative Law Judge

Case No.: 13-ALJ-22-0555-AP

Stephanie Stewart,

Appellant,

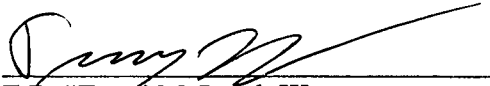
v.

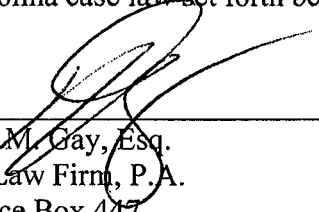
South Carolina Department of Employment  
and Workforce and Oconee County,

Respondents.

**RESPONDENTS' JOINT MOTION TO DISMISS APPELLANT'S APPEAL FOR  
FAILURE TO COMPLY WITH THE SOUTH CAROLINA APPELLATE COURT  
RULES OR, IN THE ALTERNATIVE, MOTION TO STRIKE**

Respondents, the South Carolina Department of Employment and Workforce (DEW), and Oconee County (Oconee) move this Court to dismiss Appellant, Stephanie Stewart's (Stewart) appeal for failure to comply with the South Carolina Appellate Court Rules, or in the alternative, to strike from Stewart's Initial Brief and Designation of Matter to exclude documents and/or statements which were not presented to the agency or Administrative Law Court and matters which are not relevant to the appeal. This motion is made pursuant to Rules 240, 208(b)(4), 209(b), 210(c), and 260(a), SCACR, as well as relevant South Carolina case law set forth below.

  
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November 3, 2014

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**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM THE  
ADMINISTRATIVE LAW COURT

Shirley C. Robinson, Administrative Law Judge

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Case No.: 13-ALJ-22-0555-AP

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Stephanie Stewart,

Appellant,

v.

South Carolina Department of Employment  
and Workforce and Oconee County,

Respondents.

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**MEMORANDUM IN SUPPORT OF JOINT MOTION TO DISMISS APPELLANT'S  
APPEAL FOR FAILURE TO COMPLY WITH THE SOUTH CAROLINA APPELLATE  
COURT RULES OR, IN THE ALTERNATIVE, MOTION TO STRIKE**

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Now comes Respondents who submit the following memorandum of authorities in support of Respondents' Joint Motion to Dismiss Stewart's Appeal for failure to comply with the South Carolina Appellate Court Rules or, in the alternative, to strike from Stewart's Initial Brief and Stewart's Designation of Matter (DOM) to be Included in the Record on Appeal documents and/or statements which were not presented to the lower court and matters which are not relevant to the appeal.

**STEWART'S INITIAL BRIEF**

On October 23, 2014, Appellant Stephanie Stewart (Stewart) filed her Initial Brief and DOM. Upon review of the DOM<sup>1</sup> and the over fifty pages of Stewart's Initial Brief, Stewart

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<sup>1</sup> Stewart has repeatedly failed to comply with the requirement to serve all documents on DEW and Respondent Oconee County beginning with the Filing of the Notice of Appeal with this Honorable Court. The 245 pages of miscellaneous documents were no exception to her continued violations of the service rules despite certifying to the Court that she had complied with such rules. This behavior continues despite DEW on August 7, 2014, informing

obviously prepared it with virtually no regard for the rules of this Court. Her brief does not fully comply with Rule 208(b), *Content of Brief*, and totally disregards Rule 208(b)(4), *References to Record*, and exceeds the page limit imposed by Rule 208(b)(5), SCACR, *Length of Briefs*. Accordingly, the appeal should be dismissed for failure to comply with the South Carolina Appellate Court Rules, or in the alternative, the initial brief stricken as required to be in compliance with the Appellate Court Rules.

Beginning in the “Statement of the Case” Stewart states:

On May 30, 2013, Stewart filed a timely Notice of Appeal of this determination contending the termination was retaliation for submission of "complaints of racial discrimination", amongst other cumulative reasons (AROA 2). On August 17, 2013, Stewart submitted a pleading with thirty-one evidentiary exhibits to the Appeal Tribunal in support of her impending defense (AROA 7-34). Stewart's Appeal Tribunal Hearing commenced on August 20, 2013 before Administrative Hearing Officer Lane K. Cook (hereinafter, "AHO"). During the Tribunal Hearing, Stewart informally moved the AHO to include pleadings with evidentiary exhibits as part of the record and subsequently cross-examined witnesses utilizing such (AROA 168). On August 23, 2013, the AHO mailed his decision that Stewart was discharged for misconduct based on her "acknowledg[ing] ... having told [her supervisor] that what he said about an earlier conversation was inaccurate" (ROA 3-4). Review of Stewart's pleading, exhibits, and defense by the AHO were excluded from the Record and not submitted to the Appellate Panel as part of the Record.

This paragraph is nothing more than improper argument, and has no business in the “Statement of the Case.” While it includes cites to the record, it is rife with argumentative references and phrases. See Rule 208(B)(1)(C), SCACR (“The statement [of the case] shall not contain contested matters.”)

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the Court and Stewart that it had not received her First *Motion for Extension to File Stewart's Initial Brief* which led to the Court ruling on the matter without DEW's knowledge. The letter stated:

The Department first received constructive notice of this motion through receipt of the Court's August 6, 2014, Order granting Stewart's request for extension. While the Department does not oppose any such extension, Rule 240(d), SCACR requires that with regard to any motions filed with the Court, “a copy shall be served upon each party” in accordance with Rule 262(B), SCACR. The Department respectfully requests that Stewart comply with these rules of procedure for all future filings to avoid prejudice to the Department.

The second section of the “Statement of the Case” entitled “Procedural History” begins without any record cites, and contains argumentative statements and contested matters. Such statements include, “Stewart submitted a response...arguing the Supplemental Record on Appeal further excluded Appellate Panel Transcripts and evidence submitted during the Appeal Tribunal” and “[o]n March 3, 2014, Stewart filed a motion for sanctions...due to an incomplete Record on Appeal filed by the Respondent for the third time.” (App. Br’f p. 3.) The section goes on to make statements such as: DEW “refused to provide the Appellate Panel Transcripts, reasoning they were not evidence.” Stewart continues by denigrating the ALC by asserting the denial of one of her motions occurred “presumably because the Judge's decision was made prior to receiving Stewart's Traverse.” *Id.* The argument is blatant and continues in the next sentence, stating “As a result, Stewart filed a Motion for Reconsideration on March 19, 2014, and Ms. Henderson<sup>2</sup> forwarded an email absent a signed Order or Opinion by the ALC Judge, denying Stewart's Motion.” *Id.* These statements are nothing but argument.

The next section, “Statement of Facts”, starts with the statement, “From a reasonable fact finder’s perspective the facts are simple and straightforward.” (App. Br’f p. 4.). The rest of the page contains nothing more than argument and there are no record cites to support the blatantly argumentative assertions. In almost every paragraph, Stewart uses argumentative and inappropriate phrases. Additionally, she argues evidence outside of the record of the case. These clearly improper arguments appear throughout the entirety of the “Statement of the Facts.” Even where there is a citation to the record, Stewart has inserted overt argument.

The Court is fully within its rights to dismiss this appeal based on Stewart's numerous violations of the Rules. See Henning v. Kaye, 307 S.C. 436, 437, 415 S.E.2d 794, 794 (1992)(“Court would be completely justified in dismissing this appeal based on appellant's numerous violations of the Rules...”) In Henning, the Supreme Court announced, “[T]he South

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<sup>2</sup> Stewart is referring to Ms. Teckla Henderson, Judicial Law Clerk for the Honorable Shirley C. Robinson.

Carolina Appellate 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.” *Id.* This holding also applies to *pro se* litigants because “[a] *pro se* litigant who knowingly elects to represent [her]self assumes full responsibility for complying with substantive and procedural requirements of the law.” State v. Burton, 356 S.C. 259, 265, n. 5, 589 S.E.2d 6, 9 n. 5 (2003); see also State v. Hollman, 232 S.C. 489, 498, 102 S.E.2d 873, 877 (1958) (stating that established rules of procedure are not to be discarded on appeal merely because a party appeared *pro se*), *overruled on other grounds by Stevenson v. State*, 335 S.C. 193, 516 S.E.2d 434 (1999). The Court should **dismiss** this case because “There is a limit beyond which the court should allow a litigant to consume the time of the court and to prolong unnecessarily time, effort, and costs to defending parties.” Georganne Apparel, Inc. v. Todd, 303 S.C. 87, 92, 399 S.E.2d 16, 19 (Ct. App. 1990) *quoting* Therens v. Faircloth, 291 S.C. 451, 354 S.E.2d 54 (Ct.App.1987).

In the alternative, the Court should strike Stewart’s brief in its entirety. If the brief contained only one or two inadvertent argumentative references, striking the brief might not be necessary. However, when the entire “Statement of the Case” and “Statement of the Facts” are replete with improper and unacceptable argument, making it impossible for DEW and Oconee to address each specific impropriety, the only remedy (if not dismissal of the appeal) is to strike the brief with directions to file a proper brief.

#### **STEWART’S DESIGNATION OF MATTER**

S.C. Code Ann. § 1-23-380 is entitled “Judicial review upon exhaustion of administrative remedies,” and S.C. Code Ann. § 1-23-610 is entitled “Judicial review of final decision of administrative law judge.” The first sentence of both §§ 1-23-380(4) and 1-23-610(B) provide that the review conducted by this Court “must be confined to the record.” Rule 210(c), SCACR, provides that the Record on Appeal “shall not...include matter which was not presented to the

lower court or tribunal.” The Rule further provides that “the appellate court will not consider any fact which does not appear in the Record on Appeal.” Rule 210(h), SCACR.

Stewart's DOM reflects her attempt to include in the Record on Appeal material that was not presented to the lower court, in violation of Rule 210(c) SCACR, and Rule 208(b)(4) SCACR. Additionally, Stewart has included in her DOM matters not relevant to the appeal which violates Rule 209(b), SCACR. The numerous references to: (1) the thirty-one (31) documents the Panel did not consider; (2) the various motions not relevant to the appeal; and (3) the factual assertions found in Stewart's motions to the Tribunal, Panel and ALC located throughout Stewart's initial brief. The inclusion of these items demonstrates a determined effort by Stewart to argue matters that were not presented to the agency either at the hearing or upon *de novo* review of the case by the Panel in violation of Rule 210(c), SCACR and Rule 208(b)(4), SCACR. Stewart must not be permitted to flagrantly violate the South Carolina Appellate Court Rules. As declared in Henning, supra, “the South Carolina Appellate Court Rules are not mere technicalities but provide the parties and the Court with an orderly mechanism through which to guide appeals in this State. It is incumbent upon counsel to provide material that complies with Rules and facilitates appellate review...Appellant is reminded that the Record on Appeal shall not contain any matter not presented to the trial court.” Furthermore, “*Lack of familiarity with legal proceedings is unacceptable and the court will not hold a layman to any lesser standard than is applied to an attorney.*” Goodson v. Am. Bankers Ins. Co. of Florida, 295 S.C. 400, 403, 368 S.E.2d 687, 689 (Ct. App. 1988)(emphasis added).


The foregoing demonstrates Stewart's determined effort to: (1) represent as “facts,” matters that were not presented to the lower court; and (2) present arguments to this Honorable Court based upon “facts” that were not presented to the lower court, in flagrant violation of Rule 209(b), SCACR, Rule 210(c), SCACR, and Rule 208(b)(4), SCACR. Respondents respectfully

request that this Court dismiss Stewart's appeal pursuant to Rule 260(a), SCACR, for failure to comply with the South Carolina Appellate Court Rules.

In the event that this Court declines to dismiss Stewart's appeal, Respondents request that this Court issue an Order that strikes from Stewart's Initial Brief and Stewart's DOM the documents and/or statements referenced hereinabove which were not presented to the lower court as well as matters set forth in the DOM which are not relevant to the appeal.

### CONCLUSION

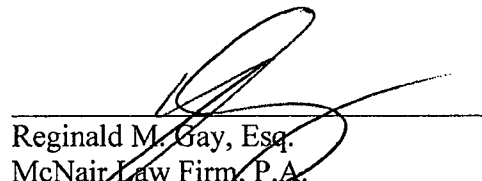
WHEREFORE Respondents jointly and respectfully request that this Honorable Court dismiss Stewart's appeal pursuant to Rule 260(a), SCACR for failure to comply with the South Carolina Appellate Court Rules or, in the alternative, strike from Stewart's initial brief and DOM the documents and/or statements referenced hereinabove which were not presented to the lower court(s) and/or irrelevant issues.



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Attorney for Respondent, Oconee County

November 3, 2014

THE STATE OF SOUTH CAROLINA  
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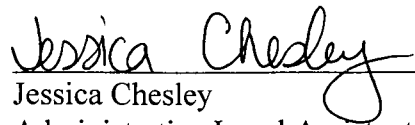
PROOF OF SERVICE

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I certify that I have served the Respondents' Joint Motion to Dismiss Appellant's Appeal for Failure to Comply with the SC Appellate Court Rules, or, in the Alternative, Motion to Strike on the appellant by depositing a copy of it in the United States Mail, postage prepaid, on November 4, 2014, addressed to the addresses of record,

Stephanie Stewart  
2142 Toccoa Highway  
Westminster SC 29693

November 4, 2014

  
\_\_\_\_\_  
Jessica Chesley  
Administrative Legal Assistant for  
SC Dept of Employment and Workforce  
Post Office Box 8597  
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(803) 737-0395

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**SC Court of Appeals**

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Nikki R. Haley  
Governor

Cheryl M. Stanton  
Executive Director

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November 4, 2014

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

RE: Stephanie Stewart v. SCDEW and Oconee County  
Case No: 13-ALJ-22-0555-AP

Dear Ms. Kitchings:

Enclosed is the Respondents' Joint Motion to Dismiss Appellant's Appeal for Failure to Comply with the SC Appellate Court Rules, or, in the Alternative, Motion to Strike of DEW and Oconee County. Also enclosed is a certificate of service to the parties.

Please let me know if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Jessica Chesley".

Jessica Chesley  
Administrative Legal Assistant for  
Trey McLeod  
Assistant General Counsel

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**SC Court of Appeals**



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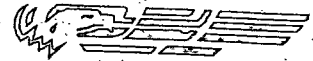
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