

From: [Miller, Edward W.](#)
To: [Chelsea Clark](#); [Kitchings, Jenny](#)
Cc: [Robin Coleman](#); jwerner@retirement.sc.gov; [Deborah B. Durden](#)
Subject: RE: Miller v. SCPEBA, Appellate Case No. 2015-002228, ALC Docket No. 14-ALJ-30-0539-CC
Date: Monday, November 30, 2015 11:23:18 AM

Ms. Clark:

My e-mail to the court reporting service, used by the ALC, dated November 24, 2015 (attached below), requesting a copy of the transcript of the Hearing cited in the Order of Judge Durden, dated September 28, 2015, was made pursuant to South Carolina Appellate Court Rule 207(b). The Clerk of the Court of Appeals was copied so that the Appellate Court would know that a diligent effort was being made to comply with the Rules. The September 28, 2015 Order specifically states that a “telephonic hearing” was held and the ALJ cited statements, allegedly made by the Appellant herein, from which the ALJ made findings of fact upon which the decision was made.

If you have the authority to do so, please formally certify (in compliance with the Appellate Court Rules) that no transcript of the referenced “telephonic hearing” was ever made. Also please certify that no formal notice of this “telephonic hearing” was ever served in this case.

I hope that this e-mail clarifies for you what this issue concerns.

Yours very truly,

Edward W. Miller

From: Chelsea Clark [<mailto:cclark@scalc.net>]
Sent: Tuesday, November 24, 2015 3:14 PM
To: Miller, Edward W.; Kitchings, Jenny
Cc: Robin Coleman; jwerner@retirement.sc.gov; Deborah B. Durden
Subject: Miller v. SCPEBA, Appellate Case No. 2015-002228, ALC Docket No. 14-ALJ-30-0539-CC

Dear Judge Miller:

I am happy to conduct all communication in writing. This email is an attempt to clarify some issues for you and to address any questions the Court of Appeals may have, relating to your letter request for a transcript filed November 4, 2015. As you noted, I previously responded by email to your request for a transcript with the contact information for the service that handles court reporting for the ALC. As you mentioned, the court reporting service does not have a record of your case. At the time of the email, I was not yet familiar with your case, not having been Judge Durden’s staff attorney at the time the case was adjudicated. However, after reviewing the case file, I discovered that no hearing was ever conducted in your case, and that it therefore stands to reason that the court reporting service would not have a record.

You may recall that this case was adjudicated as a matter of law, pursuant to a request from both yourself and Mr. Werner filed May 5, 2015. In an Order filed May 7, 2015, Judge Durden stated that she would rule on the stipulations, exhibits, and memoranda of the parties as cross motions for

summary judgment. You and Mr. Werner then filed joint stipulations and exhibits. Mr. Werner filed a memorandum of law and you filed a “Brief of Petitioner,” which was accepted by the Court as a memorandum of law in support of a motion for summary judgment (as stated in a letter dated July 9, 2015 from Judge Durden). Mr. Werner filed a reply to you filing on July 10, 2015, to which you then replied, in a filing on July 17, 2015. In an Order filed August 24, 2015, Judge Durden granted Respondent’s motion for summary judgment and dismissed the case with prejudice.

You subsequently filed a “motion to alter or amend,” on September 2, 2015. In an effort to clarify your arguments, a teleconference was initiated by Judge Durden and included you and Mr. Werner. I understand that this teleconference took place on September 24, 2015 at 10:30am. Because this was a conference on your motion and no testimony was had, there was no recording or transcript of this call, as is the standard practice of this court. On September 28, 2015, an Order was issued denying your motion to alter or amend. You responded to the Order via email to Judge Durden’s aide, Robin, objecting to the term “telephonic hearing” to describe the conference call and expressing other concerns. Judge Durden responded your email, and noted that because no factual issues were considered, no testimony taken, and no factual findings made from the informal telephonic hearing, no record was made. You wrote a further email to Judge Durden on October 2, 2015, to which there was no response that I am aware of. Mr. Werner was included in all above emails.

On November 2, 2015, a letter to you from the Court of Appeals was filed, and on November 4, 2015, your letter requesting a transcript “from the hearing referenced in your Order denying Petitioner’s Motion to Alter or Amend dated September 28, 2015” was filed. You were put in touch with our external court reporting service, which found no such record. As previously explained, this is because there was never a hearing on the record in your case, which was dismissed on summary judgment.

If Ms. Kitchings, or anyone from her office, has any questions regarding the history of your case, I would be glad to address them. My contact information is below. Additionally, our Clerk of Court, Jana Shealy, also handles inquiries on closed cases, and can be reached at 803-734-6411.

Sincerely,

Chelsea J. Clark
Staff Counsel to Deborah Brooks Durden
South Carolina Administrative Law Court
1205 Pendleton St, Suite 224
Columbia SC, 29201
cclark@scalc.net
803-734-3227

Any views or opinions expressed in this email are those of the author and do not necessarily represent those of the SC Administrative Law Court.

From: Miller, Edward W. [<mailto:emillerj@sccourts.org>]

Sent: Tuesday, November 24, 2015 1:36 PM
To: Chelsea Clark <cclark@scal.net>
Subject: Miller v. PEBA; Transcript for 14-ALJ-30-0539-CC

Ms. Clark:

Subsequent to my e-mail to Crystal with Creel Court Reporting, sent this morning, my wife informed me that you had called my home and requested that I call you back. Based on my previous dealings with the Administrative Law Court, I prefer that all communications be conducted in writing. Please let me know how I can be of assistance and if there is anything you require of me.

Yours very truly,

Edward W. Miller

From: Miller, Edward W. [<mailto:emillerj@sccourts.org>]
Sent: Tuesday, November 24, 2015 11:10 AM
To: crystal@creelreporting.com
Cc: Chelsea Clark <cclark@scal.net>; Deborah B. Durden <ddurden@scal.net>; jwerner@retirement.sc.gov; Kitchings, Jenny <jkitchings@sccourts.org>
Subject: Miller v. PEBA 14-ALJ-30-0539-CC; Edward W. Miller v. SCPEBA, Appellate Case No. 2015-002228

Crystal:

This e-mail is to follow our phone conversation of November 6, 2015 concerning my request for a transcript in the above matter. You were notified of this request via an e-mail on November 6, 2015 from Chelsea Clark, Staff Attorney with the S.C. Administrative Law Court, which included an attached copy of my letter requesting the transcript. In our conversation you indicated that you could not locate a transcript but would continue to look. Please confirm whether or not you have been able to locate a transcript in this matter.

Yours very truly,

Edward W. Miller