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Subject: Appellant's response in opposition to Courts ORDER dated 01-13-2016 denying petition for rehearing.
Date: Thursday, January 21, 2016 4:46:35 PM

THE STATE OF SOUTH CAROLINA In the Court of Appeals

Appeal from the Administrative Law Court, Ralph King Anderson III
Judge, Case Nos ALJ-22-0138-AP

Diana Jordan, Appellant

Appellate Case No. 2015-001912

(DEW)

v

South Carolina Department of Employment & Workforce, Respondent

Appellant Diana Jordan respectfully responds to and opposes
the Courts ORDER dated 01-13-2016 denying petition for rehearing

Relevant Background

On 9/2/15 an ORDER DENYING MOTION TO REHEAR ~~was~~ filed
with the South Carolina Administrative Law Court. Page two
lines 16-18 incorrectly states that an Administrative Law Judge
will NOT have oral arguments in appeals from DEW.

ALC Rule 39 actually states that oral arguments will
ordinarily not be ordered in appeals from Motor Vehicle. Since
this appeal is from DEW Appellant reasonably expected the
court to hold oral arguments initially and was justified in
requesting a rehearing.

On 11/5/16 Appellant received an ORDER that states FILED
01-13-2016 but unlike the document received from the
Administrative Law Court it does not indicate where it
was filed, The South Carolina Court of Appeals for example.

The ORDER filed 01-13-2016 was supposedly signed by Judge
Jasper Cureton that retired in 2003. He is not one of the
nine Judges eligible to rule on matters currently before the
South Carolina Court of Appeals.

CONCLUSION

ALC Rule 39 was incorrectly applied for the initial
hearing and Motion to Rehear. The ORDER filed 01-13-2016
doesn't state where it was filed and was not signed by

three current Judges at the South Carolina Court of Appeals as required, therefore, Appellant perceives the ORDER as invalid.

Respectfully Submitted,
Diana B. Jordan, Appellant
104 Woodglen Lane
Chapin, SC 29036
(803) 732-1762
January 21, 2016

PROOF OF SERVICE

I certify that I have served the Respondent a copy of this by US mail, postage prepaid, addressed to:

SCDEW
P.O. Box 8597
Columbia, SC 29202

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Diana Jordan,

Appellant,

vs.

South Carolina Department of
Employment and Workforce,

Respondent.

Docket No. 15-ALJ-22-0138-AP

**ORDER DENYING
MOTION TO REHEAR**

This matter is before the South Carolina Administrative Law Court (Court or ALC) pursuant to a Motion to Rehear (Motion) filed by Dianna Jordan (Appellant) on July 31, 2015. Appellant requests that the Court have oral argument in this appeal because she is not an attorney, does not have access to law books, and cannot produce a brief in compliance with the Rules of Procedure for the Administrative Law Court (ALC Rules). Appellant also stated that she attempted to file a brief and that she can use documents in oral argument to support her position. The South Carolina Department of Employment and Workforce (Department or DEW) has not filed a response to the Motion.

On March 5, 2015, Appellant filed an appeal seeking review of the denial of her request for unemployment benefits by the Department. The case was assigned on April 2, 2015. On April 21, 2015, the Department filed a Motion to Stay Appeal Proceedings Pending Criminal Prosecution (Stay). The Court denied the Stay by order filed and served May 20, 2015. The May 20, 2015 order also set a new deadline for filing the Record on Appeal (Record) and notified the parties that the date for filing briefs would be based on the new date for filing the Record.

On June 5, 2015, the Department filed the Record on Appeal. Also on June 5, 2015, Appellant filed her Brief. The Department filed a Motion to Dismiss on June 26, 2015, asserting that the appeal should be dismissed for failure to file and serve an appellate brief that complies with the ALC Rules. Appellant filed a letter in response to the Motion to Dismiss. The Court granted the Motion to Dismiss by Order filed and served on July 20, 2015. Appellant then filed this Motion on July 31, 2015.

FILED

September 2, 2015

SC ADMIN. LAW COURT

DISCUSSION

Appellant request that the Court grant her Motion in order to have oral arguments in this case. Appellant asserts that because she is not an attorney, she does not have law books to cite relevant cases and cannot submit a brief that complies with the ALC Rules. In addition, Appellant's assertions suggest that this Court should have oral argument so that her legal incompetency can be rectified at the hearing. However, it is not the role of this Court to construct Appellant's legal argument for her. As it did in the previous order in this matter, the Court recognizes that Appellant is pro se. Nevertheless, in South Carolina, pro se litigants are held to the same standards as attorneys. As explained in the ALC's 2014 Revised Notes to ALC Rule 38:

In all cases involving pro se litigants or those without substantial knowledge and experience in administrative matters, the administrative law judge may make reasonable efforts to assure fairness. Nevertheless, such litigants remain responsible for complying with these Rules and all applicable statutes.

See also State v. Burton, 356 S.C. 259, 265 n.5, 589 S.E.2d 6, 9 n.5 (2003) (“A pro se litigant who knowingly elects to represent himself assumes full responsibility for complying with substantive and procedural requirements of the law.”).

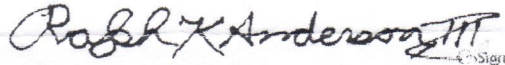
→ According to ALC Rule 39, an administrative law judge will **not** have oral arguments in appeals from DEW “unless the proceeding involves a novel issue or question of exceptional importance.” However, Appellant has not established or alleged facts supporting the position that this Court should have held oral arguments initially, much less upon a motion to rehear a case following a dismissal. Rules of court “are not mere technicalities but provide the parties and [court] with an orderly mechanism through which to guide appeals in this State. . . .” *Henning v. Kaye*, 307 S.C. 436, 437, 415 S.E.2d 794, 794 (1992). Furthermore, “[i]t is incumbent upon [Appellant] to provide material that complies with the Rules and facilitates appellate review.” *Id.*; *see also* ALC Rule 38 (stating that an administrative law judge may, upon his or her own motion, dismiss an appeal for failure to comply with any of the ALC Rules of Procedure for appeals).

Finally, Appellant also did not provide any legal support for the Court to grant the Motion. Appellant's argument is therefore deemed abandoned. *See First Sav. Bank v. McLean*, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) (noting an issue is deemed abandoned where appellant fails to provide arguments or supporting authority for his assertion); *Eaddy v. Smurfit-Stone Container Corp.*, 355 S.C. 154, 164, 584 S.E.2d 390, 396 (Ct. App. 2003) (“[S]hort, conclusory statements

made without supporting authority are deemed abandoned on appeal and therefore not preserved for our review.”).

In sum, ALC Rule 40 provides that “[m]otions for rehearing may be allowed in the discretion of the presiding administrative law judge.” Because Appellant’s Motion did not present any legal authority suggesting error in the Court’s July 20, 2015 Order, Appellant failed to establish that a rehearing of this matter is warranted.¹

IT IS THEREFORE ORDERED that the Motion to Rehear is **DENIED**.
AND IT IS SO ORDERED.



Ralph King Anderson, III
Chief Administrative Law Judge

September 2, 2015
Columbia, South Carolina

¹ Appellant also filed a Motion to Charge Attorney General with Prosecutorial Misconduct on August 20, 2015. That motion is denied because this case is dismissed and the Motion to Rehear is denied, thus making her request moot.

proceedings, insofar as necessary to an understanding of the appeal. The statement shall not contain contested matters and shall contain as a minimum, the following information: the date of the commencement of the action; the nature of the action; the nature of the defense or response; the date and nature of the agency action appealed from; the date of the service of the notice of appeal; the date of and description of any orders or proceedings in the agency as may have affected the appeal, or may throw light upon the questions involved in the appeal. Any matters stated or alleged in a party's statement shall be binding on that party.

- (3) **Argument.** The brief shall be divided into as many parts as there are issues to be argued, and each such part shall bear an appropriate caption, followed by a discussion and citation of authority. A party may also include a separate statement of facts relevant to the issues presented for review, with reference to the record on appeal, which may include contested matters and summarize that party's contentions.
- (4) **Conclusion.** A short conclusion stating the precise relief requested.
- (5) **Certificate of Service.** A certificate showing the service of the brief on all parties of record.

- C. **Service of Brief.** At the time of filing the brief with the Court, one copy of the brief and any appendix shall be served on each party to the appeal.
- D. **Cover of Brief.** The cover of the appellant's brief shall be blue; that of the respondent red; that of an intervenor or amicus curiae green; and that of any reply brief gray. The cover of a brief shall contain only the caption and the names, addresses, telephone numbers and e-mail addresses of counsel. This subsection shall not apply to briefs filed by pro se litigants.
- E. **Margins and Bindings.** Typewritten papers or reproductions must have a blank margin of an inch and a half on the left and must be securely fastened on the left margin.

2010 Revised Notes

The appellant's brief must be filed within thirty days after the filing of the Record on Appeal, and the respondent's brief must be filed within thirty days after the appellant's brief is filed. These deadlines provide a readily ascertainable time for the submission of the briefs. Statements of fact set forth in the briefs are binding upon the proponent of the statement. The format of the briefs is similar to that used in the South Carolina Appellate Court Rules. The requirements of subsection (D), which specify the colors to be used for the cover of the briefs, do not apply to briefs filed by pro se litigants. The original and one copy of each brief must be filed with the Court.

38. **Dismissal of Appeal for Failure to Comply with the Rules.** Upon motion of any party, or on its own motion, an administrative law judge may dismiss an appeal for failure to comply with any of the rules of procedure for appeals, including the failure to comply with any of the time limits provided by this section.

2009 Revised Notes

In all cases involving pro se litigants or those without substantial knowledge and experience in administrative matters, the administrative law judge may make reasonable efforts to assure fairness. Nevertheless, such litigants remain responsible for complying with these Rules and all applicable statutes.

- 39. **Oral Argument.** The administrative law judge shall provide at least twenty (20) days notice of oral argument. The oral argument shall follow the procedure in Rule 218, SCACR. In the discretion of the administrative law judge, oral argument may not be required. Oral argument will ordinarily not be ordered by the Administrative Law Judge in appeals from the Office of Motor Vehicle Hearings unless the proceeding involves a novel issue or a question of exceptional importance. ←