

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE
ADMINISTRATIVE LAW COURT
S. Phillip Lenski, Administrative Law Judge
Case No.: 15-ALJ-22-0328-AP

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APR 27 2016

SC Court of Appeals

Appellate Case No. 2015-002056

Edward Spears,

Appellant,

v.

South Carolina Department of Employment
and Workforce,

Respondent.

**RESPONDENT'S MOTION TO DISMISS, OR IN THE ALTERNATIVE,
MOTION TO COMPEL APPELLANT TO FILE A PROPER RECORD ON APPEAL
AND FOR AN EXTENSION OF TIME FOR RESPONDENT TO FILE ITS FINAL
BRIEF**

Pursuant to Rule 260, SCACR, Respondent, the South Carolina Department of Employment and Workforce (DEW or Respondent), moves this Court to dismiss the appeal of Appellant Edward Spears for failure to follow the South Carolina Appellate Court Rules. Specifically, Appellant has failed to follow Rules 210 and 267, SCACR regarding the Record on Appeal (ROA). As a result, Respondent is unable to timely finalize its brief to this Court.

Appellant was required to serve a copy of the ROA on DEW within 30 days after service of the last brief. Rule 210(a), SCACR. The ROA that Appellant served DEW is incomplete and improperly formatted.

The ROA arrived bound by green duct tape. Appellant failed to include an Index and to properly number the pages, as required by Rule 210(c), SCACR. Moreover, the ROA is incomplete because it does not contain all documents specified in Respondent's Designation of

Matter. By providing an incomplete and incorrectly paginated ROA, Appellant has flagrantly disregarded Rules 210(c) and 267(c) and (d), SCACR. As a result of Appellant's disregard for the Rules, Respondent has been prejudiced because DEW cannot properly finalize its brief without a complete and properly paginated ROA.

Specifically, Respondent has noticed the following deficiencies in the ROA as served:

- Appellant has failed to include the matter identified in DEW's Designation of Matter as "Appellant's Notice of Appeal Filed with the Administrative Law Court (ALC) postmarked July 13, 2015 (Case No. 15-ALJ-22-0328-AP)"
- Appellant has failed to include the entirety of the matter identified in DEW's Designation of Matter as "SCDEW Notice of Special Appearance and Motion to Dismiss dated July 31, 2015 (Case No. 15-ALJ-22-0328-AP)" because the exhibits to the Motion were not included.

Additionally, it does not appear Appellant followed Rule 210(c), SCACR, because the ROA has not been arranged in the order specified by the Rule. The foregoing errors throughout the ROA have made it impossible for Respondent to complete its final brief, as relevant documents from Respondent's Designation of Matter for inclusion in the ROA are missing entirely. Further, while some pages in the ROA are numbered, those pages are numbered incorrectly while other pages are not numbered at all.


It is the appealing party who must be held accountable for failing to present the court with an adequate ROA for review. See Johnson v. S.C. Dep't of Prob., Parole, & Pardon Servs., 372 S.C. 279, 283, 641 S.E.2d 895, 897 (2007). Dismissal is justified where there are numerous procedural errors. Talley, v. S.C. Higher Educ. Tuition Grants Comm., 289 S.C. 483, 487, 347 S.E.2d 99 (1986).

Based on Appellant's repeated failure¹ to comply with the requirements of the Appellate Court Rules, Respondent requests that this Court dismiss this Appeal in its entirety.

In the alternative, Respondent requests that the Court Order Appellant to file his ROA in compliance with the Rules, and provide Respondent an extension of time to file its final brief at a reasonable time after Appellant has served his corrected ROA.

CONCLUSION

For the foregoing reasons, Respondent requests that this appeal be dismissed, or in the alternative, that this Court Order Appellant to file the ROA in compliance with the Rules and grant Respondent an extension of time to file its final brief after Appellant has complied with the Rules.



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April 25, 2016

¹ Such failures include:

- October 2, 2015, the Court notified Appellant that his Notice of Appeal failed to be accompanied by a proof of service in a form that complied with the Rules.
- October 26, 2015, the Court notified Appellant that his initial brief contained deficiencies including lack of page numbers and lack of a caption complying with Rule 267(a), SCACR.

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PROOF OF SERVICE

I certify that I have served the Motion to Dismiss, or In the Alternative, Motion to Compel Appellant to File a Proper Record on Appeal and for an Extension of Time for Respondent to File its Final Brief of the Respondent on the Appellant in this case by depositing a copy of it in the United States Mail, postage prepaid, on April 25, 2016, addressed to the Appellant at his address of record:

Edward Spears
503 Roughfork St.
Florence, SC 29501

April 25, 2016



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SC Court of Appeals

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

RE: Edward Spears v. SCDEW
Appellate Case No: 2015-002056

Dear Ms. Kitchings:

Enclosed are the original unbound and six copies of the Motion to Dismiss, or In the Alternative, Motion to Compel Appellant to File a Proper Record on Appeal and for an Extension of Time for Respondent to File its Final Brief of the Respondent with a Certificate of Service in the above referenced case.

Please let me know if you have any questions.

Sincerely,

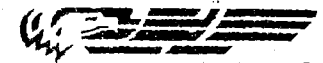
Kristi Chesley
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