

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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JUL 28 2016

SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
Administrative Law Court

The Honorable Deborah Brooks Durden, Administrative Law Judge

Appellate Case No. 2016-001030

South Carolina Department of Motor Vehicles Appellant,

v.

Michelle Dover Respondent.

**MOTION TO RESOLVE APPEAL IN APPELLANT'S FAVOR
OR, ALTERNATIVELY, TO SET A DATE FOR
FILING OF THE RECORD ON APPEAL**

Pursuant to Rule 208(A)(4), SCACR, the Respondent South Carolina Department of Motor Vehicles (SCDMV) moves for resolution of this appeal in favor of Appellant due to Respondent's failure to timely file her Initial Brief and Designation of Matter to be Included in the Record on Appeal (hereinafter, "Designation").

The Notice of Appeal in this case was filed on May 12, 2016. On June 9, 2016, Appellant SCDMV filed Initial Brief of Appellant and Designation of Appellant. Rules 208 and 209, SCACR requires the Initial Brief of Respondent and Respondent's Designation to be filed within thirty (30) days after service of Initial Brief of Appellant.

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In this case, that means Initial Brief of Respondent and Respondent's Designation were due to be filed by no later than July 11, 2016.¹ As of the filing of this motion, Appellant SCDMV has not received Initial Brief of Respondent or Respondent's Designation. Rule 208(a)(4) states, in part, "Upon the failure of respondent to timely file a brief, the appellate court may take such action as it deems proper." Significantly, Respondent was also the Respondent in the Administrative Law Court (hereinafter, "ALC") appeal of this same matter and also failed to file any brief or responsive pleadings during the ALC appeal.² In fact, the only communications Respondent has had with the any courts regarding this matter are when Respondent requested a contested case hearing before the Office of Motor Vehicle Hearings (hereinafter, "OMVH") and when Respondent appeared at the OMVH hearing.

Thus, due to Respondent's failure to timely file Initial Brief of Respondent and Respondent's Designation, Appellant SCDMV moves for resolution of this appeal in Appellant's favor.

Alternatively, should the motion for resolution of this appeal in Appellant's favor be denied, Appellant moves for an order setting forth the date upon which the Record on Appeal must be filed in this case³ and Appellant respectfully requests that the date upon which the Record on Appeal must be filed in this case be at thirty (30) days from the date of the order.

¹ The Initial Brief of Appellant was served on June 9, 2016. The month of June has 30 days. Thus, normally the Initial Brief of Respondent and Respondent's Designation would have been due on July 9, 2016, but July 9, 2016 was a Saturday. So, pursuant to Rule 263, SCACR the time to file the Initial Brief of Respondent and Respondent's Designation automatically extended to Monday, July 11, 2016.

² Appellant SCDMV moved in the ALC to have the appeal before the ALC resolved in SCDMV's favor due to the Respondent's failure to file a brief before the ALC. The ALC denied that motion.

³ As that date is currently unclear due to Respondent's failure to file Initial Brief of Respondent. Rule 210, SCACR states the Record on Appeal is due thirty (30) days after service of the last brief. Currently, the last brief filed in this case is Initial Brief of Appellant, which was filed on June 9, 2016 and Appellant did not know Respondent would again fail to file a brief before an appellate court.

2. 



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Counsel for the Appellant

July 25, 2016

Blythewood, South Carolina

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APPEAL FROM RICHLAND COUNTY
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The Honorable Deborah Brooks Durden, Administrative Law Judge

Appellate Case No. 2016-001030

South Carolina Department of Motor Vehicles Appellant,

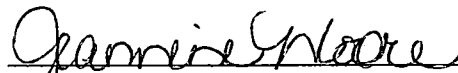
v.

Michelle Dover Respondent.

PROOF OF SERVICE

I HEREBY CERTIFY that I have served the Appellant's Motion to Resolve Appeal in Appellant's Favor or, Alternatively, to Set a Date for Filing of the Record on Appeal by depositing a copy of same in the United States Mail, postage prepaid, on this 25th day of July, 2016, addressed to the Respondent and the South Carolina Administrative Law Court as follows:

Michelle Dover, *Pro se* Respondent
35 Railroad Avenue
York, South Carolina 29745


Jeannine (Nina) Moore, Paralegal
Office of General Counsel

July 25, 2016
Blythewood, South Carolina

Nikki R. Haley
Governor



Kevin A. Shwedo
Director

State of South Carolina
Department of Motor Vehicles

July 25, 2016

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

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SC Court of Appeals


RE: *South Carolina Department of Motor Vehicles v. Michelle Dover*
Appellate Case No. 2016-001030

Dear Ms. Kitchings:

Enclosed for filing please find an original and one copy of the South Carolina Department of Motor Vehicles' Motion to Resolve Appeal in Appellant's Favor or, Alternatively, to Set a Date for Filing of the Record on Appeal in the above-referenced matter. Please file the original and return the extra copy to us with an affixed clerk's date of filing in the enclosed self-addressed stamped envelope.

Thank you for your cooperation in this matter.

Sincerely,


Jeannine (Nina) Moore, Paralegal
Office of General Counsel

Enclosures

cc: Michelle Dover, *Pro se* Respondent



South Carolina Department of Motor Vehicles

P.O. Box 1498
Blythewood, S.C. 29016

Form 103

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SC 290

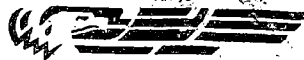
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SC Court of Appeals

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Clerk, The South Carolina Court of Appeals
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