

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM THE  
ADMINISTRATIVE LAW COURT

AUG 02 2016

SC Court of Appeals

John D. McLeod, Administrative Law Judge  
Case No.: 15-ALJ-22-0497-AP

Appellate Case Number: 2016-000037

Billie D. Mueller,

Appellant,

v.

South Carolina Department of Employment  
and Workforce,

Respondent.

**RESPONDENT'S MOTION TO DISMISS OR STRIKE AND  
MEMORANDUM SUPPORT**

Respondent the South Carolina Department of Employment and Workforce (DEW), respectfully move to dismiss Appellant Billie Mueller's (Appellant) appeal due to her continual failures to comply with the South Carolina Appellate Court Rules (SCACR). Respondents note that Appellant has received repeated deficiency letters from the Court, yet Appellant persists in not following either the letter or the spirit of the requirements in the Rules. Most recently, Appellant filed her corrected Record on Appeal (Record) with the Court on July 17, 2016, to purportedly correct the deficiencies outlined in the Court's July 11, 2016, memo to Appellant. Appellant has now filed a corrected Record containing improper materials not presented to the Administrative Law Court

(ALC) or the Department's Appellate Panel. Once more, Appellant has failed to comply with the SCACRs.

Respondent respectfully moves to dismiss this appeal for Appellant's various failures to comply with the Appellate Court Rules.<sup>1</sup> Respondent respectfully urges this Court to dismiss this appeal because Appellant's repeated failures demonstrate that she is clearly either unwilling or unable to comply with basic, fundamental SCALR Rules governing this matter, as well as this Court's patient attempts to guide Appellant by issuing deficiency letters.

In the alternative, Respondent hereby moves to strike portions of the corrected Record filed by Appellant on July 17, 2016 that were not part of the record before the Administrative Law Court.

#### **BACKGROUND and RELEVANT LAW**

This action is an appeal from the Order of the ALC affirming a final administrative decision of Respondent DEW on Appellant's claim for unemployment benefits. Pursuant to S.C. Code Ann. § 1-23-380, appellate review is confined to the same record upon which the agency reached its decision, and is limited to determining whether the DEW's decision is supported by substantial evidence on the record as a whole, or

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<sup>1</sup> Such failures include:

- January 20, 2016, the Court notified Appellant that her Notice of Appeal failed to be accompanied by a proof of service in a form that complied with the Rules.
- March 24, 2016, the Court notified Appellant that her initial brief contained deficiencies including improperly paginated pages.
- June 20, 2016, the Court notified Appellant that her that the time for serving and filing the Record had passed and that Appellant must serve and file the Record within ten (10) days of the date of this letter or the appeal will be dismissed.
- July 11, 2016, the Court notified Appellant that several deficiencies had been noted in the submission of her Record on July 6, 2016, and any deficiency must be corrected within ten (10) days of the date of this letter or the appeal will be dismissed.

controlled by error of law. The ALC found substantial evidence supported the Panel's decision dismissing Appellant's appeal as untimely filed.

**THE COURT SHOULD STRIKE PORTIONS OF APPELLANT'S RECORD BECAUSE APPELLANT IMPROPERLY INCLUDED MATTER OUTSIDE OF THE ALC'S RECORD ON APPEAL.**

Appellant has filed an appeal to this Court, seeking reversal of the ALC Order and DEW's final decision. By virtue of her request for judicial review in this matter, Appellant has the burden of providing an adequate record on appeal. Solley v. Navy Fed. Credit Union, Inc., 397 S.C. 192, 723 S.E.2d 597 (2012). Rule 210(c), SCACR expressly states that in an appeal from a lower court decision, the record consists only of "orders, judgments, decrees, decisions, pleadings, transcript, charges, exhibits and other materials or document" presented to the lower court or tribunal. Conversely, it clarifies that "the Record shall not... include matter which was not presented to the lower court or tribunal." Id; Henning v. Kaye, 307 S.C. 436, 438, 415 S.E.2d 794, 794-95 (1992)("Appellant is reminded that the Record on Appeal shall not contain any matter not presented to the trial court.")

In this case, Appellant has attempted to supplement and expand the Record by including 10 pages (Record pp. 56-65) of additional materials that she has included in her submission in the Record. Appellant attempts to put these extraneous documents before the Court to bolster an argument that was never raised to or ruled on by the Panel or ALC. Furthermore, neither Appellant nor the Department identified these documents in their respective Designations of Matter filed with this Court.

The Department is aware of the fact that Appellant has chosen to represent herself and may not be versed in the rules of appellate procedure; however, this does not excuse

her duty to provide a proper Record on Appeal and Brief of Appellant. See 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.”).

### CONCLUSION

For these reasons, Appellant’s appeal to this Court should be dismissed or in the alternative her Record appropriately stricken. Additionally, Respondent prays that all time limits and deadlines be held in abeyance pending the resolution of this motion.



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August 1, 2016

THE STATE OF SOUTH CAROLINA  
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John D. McLeod, Administrative Law Judge

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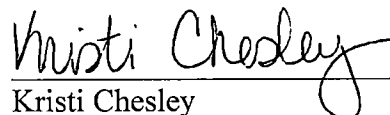
Respondent.

PROOF OF SERVICE

I certify that I have served the Motion to Dismiss or Strike and Memorandum in Support of the Respondent on the Appellant in this case by depositing a copy of it in the United States Mail, postage prepaid, on August 1, 2016, addressed to the Appellant at her address of record:

Billie D. Mueller  
1341 Rockfish Drive  
Manning, SC 29102

August 1, 2016



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SC Dept of Employment and Workforce  
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SC Court of Appeals

August 1, 2016

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

RE: Billie Mueller v. SCDEW (2)  
Appellate Case No: 2016-000037

Dear Ms. Kitchings:

Enclosed are the original unbound and six stapled copies of the Respondent's Motion to Dismiss or Strike and Memorandum in Support in the above case with a Certificate of Service to the other parties.

Please let me know if you have any questions.

Sincerely,

A handwritten signature in cursive script, reading "Kristi Chesley". The signature is written in dark ink and is positioned above the typed name.

Kristi Chesley  
Administrative Legal Assistant for  
Trey McLeod  
Attorney for Appellant SCDEW

**SOUTH CAROLINA**  
**DEPARTMENT OF EMPLOYMENT AND WORKFORCE**  
P.O. BOX 995  
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