

STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED
AUG 15 2016
SC Court of Appeals

APPEAL FROM THE S.C. ADMINISTRATIVE LAW COURT

Ralph King Anderson, III, Chief Administrative Law Judge

Appellate Case No. 2014-002489

Billie Mueller,

Appellant.

v.

South Carolina Department of Employment
and Workforce, and Ebtron, Inc.,

Respondents,

RESPONDENTS' MOTION TO STRIKE AND DISMISS

Respondents South Carolina Department of Employment and Workforce ("DEW" or "the Department") and Ebtron, Inc. ("Ebtron"), collectively ("Respondents"), respectfully move to Strike Appellant Billie Mueller's ("Appellant") Record on Appeal due to her repeated failure or refusal to comply with the South Carolina Appellate Court Rules (SCACR) and this Court's Orders, and dismiss this action with prejudice. Appellant has filed a purported Record on Appeal that does not comply with the SCACR, is over four months late, and is in direct violation of the Court's previous orders.¹

BACKGROUND and RELEVANT LAW

This action is an appeal from an Order of the ALC affirming DEW's final administrative decision on Appellant's claim for unemployment insurance (UI) benefits.

¹ If the Court declines to dismiss Appellant's appeal, Respondents move, in the alternative, to strike the documents from Appellant's Record on Appeal that were not included in Appellant's Amended Designation of Matter or the Respondents' Designation of Matter, and/or which have been twice ordered by this Court to be stricken and excluded from the Record.

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 DEW's decision is supported by substantial evidence on the record as a whole, or controlled by error of law. The ALC found substantial evidence supported the Panel's decision that Appellant was discharged for misconduct and therefore, was disqualified from receiving UI benefits, pursuant to S.C. Code. Ann. § 41-35-120.

ARGUMENT

THE COURT SHOULD DISMISS APPELLANT'S APPEAL FOR FAILURE TO COMPLY WITH THE RULES GOVERNING THIS APPEAL AND FOR CONTINUED DISREGARD OF THIS COURT'S PRIOR ORDERS AND DEFICIENCY LETTERS

This appeal was initially filed by Appellant to this Court in 2014. Since then, every filing she has made has been deficient, triggering nine deficiency letters from the Court. (See Exhibit A for a timeline of filings and deficiencies). The last letter, dated March 24, 2016, notified Appellant that the time for serving the Record on Appeal and Proof of Service on opposing counsel had expired. Despite the expiration of time, the letter stated that Appellant must file the Proof of Service of the Record on Appeal within 10 days, along with a motion requesting permission to file the Proof of Service of the Record on Appeal outside of the filing deadlines. The Court cautioned Appellant that if the deficiency was not corrected, her appeal would be dismissed.

Appellant did NOT correct the deficiency. Instead, more than 10 days later, on April 7, 2016, Appellant filed a Proof of Service stating that she had served her Amended Designation of Matter and Amended Brief on opposing counsel, with no reference to or service of the Record on Appeal. Nor did she file the Court-required motion requesting

permission to file Proof of Service of the Record on Appeal outside of the required filing deadlines. In fact, such a motion has **never** been filed.

On April 28, 2016, the Court properly dismissed Appellant's appeal for failure to comply with its March 24, 2016, deficiency letter and failing to file a Proof of Service of the Record on Appeal with the requisite motion requesting permission to file same outside of the filing deadlines.

On May 11, 2016, Appellant filed a Motion of Rehearing, reiterating that she filed her Amended Designation of Matter and Amended Brief and sent Proof of Service to opposing counsel on three dates. Those three Proofs of Service do NOT include a Proof of Service of the Record on Appeal (See Exhibit B). Although Appellant still had not complied with the Court's Orders, on July 21, 2016, the Court issued an Order allowing Appellant an additional 10 days to file and serve the Record on Appeal and file Proof of Service, effectively reopening this matter.

Most recently, Respondents received Appellant's Record on Appeal on August 1, 2016. Appellant still has not filed a motion requesting permission to file the Proof of Service of the Record on Appeal outside the filing deadlines, as directed by the Court on March 24, 2016. Moreover, Appellant's purported Record on Appeal contains improper materials, to wit, materials that were not listed in Appellant's Amended Designation of Matter or Respondents' Designation of Matter, materials that were not presented to DEW's Appeal Tribunal and therefore were not part of the record before the ALC,² and/or materials that have been twice ordered by this Court to be stricken from the

² Appellant attempted to introduce these materials at the ALC, but the ALC ordered them stricken.

record. As has occurred with every one of her filings, Appellant has again glaringly failed to comply with the Appellate Court Rules governing appeals.

Appellant's Amended Designation of Matter includes 4 items:

1. Order of May 28th, 2014;
2. Order of July 2nd, 2014;
3. Transcript of Proceedings pp.1-16;
4. Exhibit 1 and 2 from the SCDEWS initial hearing.

Respondents' Designation of Matter includes 4 items:

1. Order of S.C. ALC affirming DEW Appellate Panel, dated November 7, 2014;
2. DEW Appellate Panel Decision No. 2014-P-1030, dated July 2, 2014;
3. DEW Appeal Tribunal Decision No. 2014-A-8136, dated May 28, 2014;
4. DEW Record on Appeal to ALC dated September 24, 2014, pages 1 through 55.

Appellant's Record on Appeal includes 10 items:

1. DEW Appeal Tribunal Decision #2014-A 8136, dated May 28, 2014;
2. DEW Appellate Panel Decision #2014-P1030, dated July 2, 2014;
3. Record on Appeal to ALC dated September 24, 2014; (totaling 70 pages)
4. Order of S.C. ALC affirming DEW Appellate Panel dated Nov. 7, 2014;
5. Complaint;
6. Answer;
7. Charge;
8. Request to Charge;
9. Appellant Exhibits 1, 2;
10. Certificate of Appellant.

Pages 1 through 63, and pages 77 through 82, of the Record on Appeal are items included in the Designation of Matter by either Appellant or Respondents and are unobjectionable. However, the remainder of the items in the Record on Appeal (pages 64 through 76, and pages 83 through 96) are objectionable and should be stricken because these items: 1) exceed the scope of the Designation of Matter, or 2) include documents that have been proffered to and ordered by the Court to be stricken and excluded from the Record on Appeal or 3) are duplicate items that are found elsewhere in Appellant's Record on Appeal.

Finally, Item 10 is a "Certificate of Appellant," in which she attests that:

"The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material."

This attestation is simply untrue and an apparent disingenuous attempt to mislead the Court in order to continue adding documents into the record which she has been ordered by this Court to exclude. Many of the documents identified in Items 5 through 10 and portions of Item 3 were included in the initial Designation of Matter Appellant filed on January 29, 2015. After the Court ordered her to provide proof the documents she designated for inclusion were presented to the lower court in its Order of June 25, 2015, she continued her attempts to include them again in her July 6, 2015 response to the Court's Order without providing the proof the Court had requested. On August 31, 2015, the Court issued yet another Order, striking the documents at issue from the record.

On September 15, 2015, Appellant file an Amended Designation of Matter, including yet again many of the documents the Court has stricken, in blatant violation of the Court's Orders. On November 25, 2015, the Court issued another Order reminding Appellant of its previous Order regarding the documents that it has ordered stricken from the record.

Appellant's actions are in blatant disregard to this Court's orders and rules. Respondents respectfully move to strike Appellant's Record on Appeal, and dismiss this appeal due to Appellant's continued failure or outright refusal to comply with the Appellate Court Rules and Orders. Respondents respectfully urge this Court to dismiss this appeal with prejudice because Appellant's repeated failures demonstrate that she is clearly either

unwilling or unable to comply with basic, fundamental rules governing this matter, as well as this Court's patient attempts to guide Appellant by issuing deficiency letters.

The Court has been lenient and accommodating to Appellant in recognition of her *pro se* status. However, she is not relieved of the responsibility to perfect her appeal in accordance with the South Carolina Appellate Court Rules. All counsel have spent excessive amounts of time and incurred costs in responding to Appellant's continual improper filings and motions. "There is a limit beyond which the court should allow a litigant to consume the time of the court and to prolong unnecessarily time, effort, and costs to defending parties." Georganne Apparel, Inc. v. Todd, 303 S.C. 87, 92, 399 S.E.2d 16, 19 (Ct. App. 1990) quoting Therens v. Faircloth, 291 S.C. 451, 354 S.E.2d 54 (Ct. App.1987). .

Appellant 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.").

While Appellant has chosen to represent herself and may not be well versed in the rules of appellate procedure, this does not excuse her duty to provide a proper Record on Appeal and Brief of Appellant. “A pro se litigant who knowingly elects to represent himself assumes full responsibility for complying with substantive and procedural requirements of the law.” State v. Burton, 356 S.C. 259, 265 n.5, 589 S.E.2d 6, 9 n.5 (2003).

The Court has consistently held that a “[l]ack of familiarity with legal proceedings is unacceptable and the court will not hold a layman to any lesser standard than is applied to an attorney.” Goodson v. Am. Bankers Ins. Co., 295 S.C. 400, 403, 368 S.E.2d 687, 689 (Ct. App. 1988). Appellant’s failure to understand the procedures to be followed in pursuing an appeal cannot excuse her lack of compliance with the rules. See Hill v. Dotts, 345 S.C. 304, 547 S.E.2d 894 (Ct. App. 2001) (finding that a party’s lack of familiarity with legal proceedings does not constitute excusable neglect which would relieve the party from a default judgment).

In this case, Appellant’s repeated failures to comply with the Rules and to disregard repeated written directives from the Court justify dismissal of her appeal with prejudice. Therefore, Respondents’ respectfully move this Court to dismiss Appellant’s appeal with prejudice.

CONCLUSION

For all of the foregoing reasons, Appellant's appeal to this Court should be dismissed with prejudice. Respondents request all time limits and deadlines be held in abeyance pending the resolution of this motion.

**SOUTH CAROLINA DEPARTMENT
OF EMPLOYMENT AND
WORKFORCE**

Sandra Grooms

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Email: sgrooms@dew.sc.gov
*Attorney for Respondent South Carolina
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**BLAIR CATO PICKREN CASTERLINE,
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Kristine L. Cato

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F - (803) 728-3100
Email: kris@blaircato.com
Attorney for Respondent Ebtron, Inc.

August 11, 2016.

Billie Mueller v. SCDEW and Ebtron Appeal Timeline

<u>Filings:</u>	<u>Motions:</u>	<u>Orders:</u>
1(a) 11/18/14 – Mueller files Notice of Appeal.		
1(b) 11/21/14 – Court sends a Deficiency Letter to Mueller re: her notice of Appeal.		
2(a) 12/15/14 – Mueller files Opening Brief.		
2(b) 12/19/14 – Court sends a Deficiency Letter to Mueller re: her Opening Brief.		
	1(a) 12/31/14 – Mueller filed Motion to Request 30-day extension to file Initial Brief and Designation of Matter. (her motion is dated 12/29/14)	1(b) 1/13/15 – Court issues Order extending Mueller’s time to file her Initial Brief and Designation of Matter until January 28, 2015.
3(a) 1/29/15 – Mueller files Designation of Matter (“DOM”) and Corrected Initial Brief of Appellant (dated 1/27/15)		
3(b) 2/4/15 – Court sends Deficiency Letter to Mueller re: her Initial Brief and DOM.		
	2(a) 3/30/15 – Respondents file Motion to Dismiss (dated 3/25/15). Respondents note that Appellant has attempted to file in her Designation a “Complaint,” “Answer,” and “Request to Charge.” These documents do not exist in this matter. Further Exhibits A-J were an improper attempt to add additional evidence not presented to lower court.	

	2(b) 4/17/15 – Appellant files Motion to Strike and Remove Respondents’ Motion to Dismiss Case for Respondents’ Failure to Disclose at Original Hearing (dated 4/13/15)	
	2(c) 4/24/15 – Respondents file Joint Return in Opposition to Appellant’s Motion to Strike and Remove Respondents’ Motion to Dismiss (dated 4/23/15)	2(d) 6/25/15 – Court denies Respondents’ Motion to Dismiss and Appellant’s Motion to Strike and Remove Respondents’ Motion to Dismiss. The Order also requires Appellant to provide to the Court within 10 days proof that documents designated for inclusion in the record on appeal were presented to the lower court.
4(a) 7/6/15 – Mueller files her response to the Court’s Order and provides several documents to the Court, including her separation agreement. (dated 6/29/15)		
4(b) 7/7/15 - Court sends Mueller Deficiency Letter re: her response to the Court’s Order.		
5(a) 7/14/15 – Mueller provides Proof of Service stating she served the parties on July 13, 2015 – <u>more than 10 days after Court ordered her to fix her deficiency.</u>		5(b) 8/31/15 – Court issues Order - Appellant has failed to satisfy to the Court that the documents referenced in Respondents’ Motion to Dismiss were presented to the lower court and strikes those documents from the record. Gives Appellant 10 days to file Amended DOM.

<p>6(a) 9/15/15 – Mueller files Amended Initial Brief and Amended DOM – lists “Complaint,” “Answer,” and “Request to Charge” in Amended DOM, in violation of Court’s Order striking documents.</p>		
<p>6(b) 9/17/15 - Court sends Deficiency Letter to Mueller re: her Amended Initial Brief.</p>		
<p>6(c) 9/21/15 – Court sends Deficiency Letter to Mueller re: her Amended DOM.</p>		
<p>6(d) 9/21/15 – Court returns transcript documents to Mueller that she attempted to file with her Amended Initial Brief and DOM</p>		
	<p>3(a) 9/28/15 – Mueller files Motion to Submit Amended DOM and Amended Brief of Appellant dated 9/24/15)</p>	
	<p>3(b) 10/8/15 – Respondents file Joint Return in Opposition to Appellant’s Motion to Submit Amended Designation of Matter and Amended Brief. In the Return, Respondents note that Appellant attempted to file a Complaint, Answer and Request to Charge, defying the Court’s previous order, the DOM was untimely filed, her 9/28/15 Motion gives no reason as to how or why her brief was amended or why Motion should be granted and notes that Appellant continues to serve Respondent Ebtron at wrong address since February 2015.</p>	

	3(c) 10/19/15 – Mueller files Motion to Strike and Remove Respondents’ Motion to Dismiss for Failure to Disclose at Original Hearing (dated 10/13/15)	3(d) 11/25/15 – Court issues Order denying Appellant’s Motion to reconsider Appellant’s Amended DOM and Amended Brief and reminds Appellant of its 8/31/15 Order in which it struck from Appellant’s Designation of Matter the Complaint, Answer, Request to Charge and Exhibits A-J. Court gives Appellant 10 days to file Amended Designation of Matter that complies with the 8/31/15 Order.
		3(e) 12/10/15 – Court issues Order denying Appellant’s Motion to Strike and Remove Respondents’ Motion to Dismiss.
7(a) 12/3/15 – Mueller files Amended Brief of Appellant and Amended DOM dated 11/30/15). Certificates of Service for both documents state she is serving Appellant’s Motion to submit Amended DOM and Amended Brief.		
7(b) 12/8/15 - Court sends Deficiency Letter to Mueller re: her Amended Initial Brief and DOM.		
8(a) 12/21/15 – Mueller files Proof of Service which still states she has served Appellant’s Motion to Submit Amended DOM and Amended Brief. (mailed 12/17/15) (incorrect)		

<p>8(b) 12/22/15 - Court sends Deficiency Letter to Mueller re: her Amended Initial Brief and DOM.</p>		
<p>9(a) 1/8/16 – Mueller files corrected Proof of Service. (mailed 1/6/16)</p>		
<p>10(a) 2/12/16 – Respondents file Initial Brief and DOM. (dated 2/11/16)</p>		
<p>11(a) 3/24/16 - Court sends Deficiency Letter to Mueller re: time for service of Record on Appeal on opposing counsel and filing of proof of service with Court has expired. Within 10 days Mueller must file proof of service of record on appeal along with motion requesting permission to file proof of service of record on appeal outside of the filing deadlines. Also states if deficiency is not corrected appeal will be dismissed.</p>		
<p>11(b) 4/11/16 – Mueller files a Proof of Service stating she has served Appellant’s Amended DOM and Amended Brief. (mailed 4/7/16)</p>		<p>11(c) 4/28/16 – Court issues Order dismissing Appeal as Appellant has failed to file proof of service of record on appeal along with motion requesting permission to file proof of service of record on appeal outside of the filing deadlines.</p>
	<p>4(a) 5/13/16 – Mueller files Appellant’s Motion of Rehearing. (dated 5/11/16)</p>	<p>4(b) 7/21/16 – Court issues Order ordering Appellant to serve Record on Appeal and Proof of Service within 10 days.</p>

12(a) Mueller serves Record on Appeal dated 7/28/16 which contains incorrect statements, exceeds her DOM, and violates the Court's Order of 8/31/15. (received 8/1/16)		
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The State of South Carolina Court of Appeals

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Billie D. Mueller,
Appellate,

vs

South Carolina Dept. of Employment &
Workforce & Ebtron, Inc.,
Respondent

Appellate Case No.: 2014-002489

**APPELLANT BILLIE D. MUELLER'S
MOTION OF REHEARING**

PLEASE TAKE NOTICE that Appellant Billie D. Mueller respectfully moves the Court for Motion to Rehear Appellants submission of Amended Designation of Matter and Amended Brief to the South Carolina Court of Appeals and opposing counsel.

Appellant Billie D. Mueller does not understand why the Court would consider the Order to Dismiss, Appellant respectfully asks the Court for a Motion to Rehear because the Proof of Service was sent to all opposing counsel as well as the Court of Appeals on 12/01/15 and resent on 01/05/16 and again on 04/07/16 by depositing postage paid in the US Mail.

Dated this 11th day of May, 2016

Billie D. Mueller

Billie D. Mueller
PO Box 98, Davis Station, SC 29041
Telephone: 803-410-6935
E-mail address: dinkerboy49@gmail.com
Petitioner has no Attorney

PROOF OF SERVICE OF A NOTICE OF MOTION

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
[In The Supreme Court]

RECEIVED

DEC 03 2015

SC Court of Appeals

Appellate Case No. 2014-002489

South Carolina Department of Employment
and Workforce. And Ebtron, Inc., Administrative
Law Court

Respondent,

v.


Billie Mueller

Appellant

PROOF OF SERVICE

I certify that I have served the Appellant's Motion to submit Amended Designation of Matter and Amended Brief to the South Carolina Court of Appeals Order on Sandra Grooms by depositing a copy of it in the United States Mail, postage paid, on November 30, 2015, addressed to the Office of General Counsel-SCDEW, PO Box 8597, Columbia, SC 29202

November 30, 2015



Billie Mueller
PO Box 98
Davis Station, SC 29041
Appellant Has No Attorney

PROOF OF SERVICE OF A NOTICE OF MOTION

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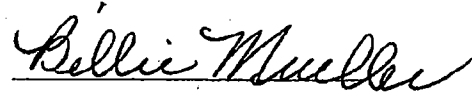
Billie Mueller

Appellant

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I certify that I have served the Appellant's Motion to submit Amended Designation of Matter and Amended Brief to the South Carolina Court of Appeals Order on Kris Cato by depositing a copy of it in the United States Mail, postage paid, on November 30, 2015, addressed to the Blair Cato Pickren Casterline, LLC, PO Box 123, Columbia, SC 29202-0123

November 30, 2015



Billie Mueller
PO Box 98
Davis Station, SC 29041
Appellate has no Attorney

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JAN 08 2016

SC Court of Appeals

PROOF OF SERVICE OF A NOTICE OF APPEAL

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
[In The Supreme Court]

APPEAL THE ORDER FROM THE ADMINISTRATIVE LAW COURT

Ralph King Anderson, III, Chief Administrative Law Judge

Appellate Case No. 2014-002489

South Carolina Department of Employment
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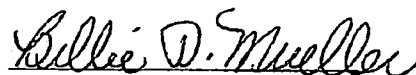
Billie Mueller

Appellant

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November 30, 2015



Billie Mueller
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Appellant Has No Attorney

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In The Court of Appeals
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Appellate Case No: 2014-002489

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Billie Mueller

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November 30, 2015



Billie Mueller
PO Box 98
Davis Station, SC 29041
Appellate has no Attorney

COPY

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[In The Supreme Court]

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SC Court of Appeals

APPEAL THE ORDER FROM THE ADMINISTRATIVE LAW COURT
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Appellate Case No. 2014-002489

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November 30, 2015

Billie D. Mueller

Billie Mueller
PO Box 98
Davis Station, SC 29041
Appellant Has No Attorney

PROOF OF SERVICE OF A NOTICE OF APPEAL

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APR 11 2016
SC Court of Appeals

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In The Court of Appeals
[In The Supreme Court]

APPEAL THE ORDER FROM THE ADMINISTRATIVE LAW COURT
Ralph King Anderson, III, Chief Administrative Law Judge

Appellate Case No. 2014-002489

South Carolina Department of Employment and Workforce And Ebron, Inc., Administrative Law Court Respondent;
v.
Billie Mueller Appellant

PROOF OF SERVICE

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November 30, 2015

Billie D. Mueller
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Appellate has no Attorney

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Ralph King Anderson, III, Chief Administrative Law Judge

Appellate Case No. 2014-002489

Billie Mueller,

Appellant.

v.

South Carolina Department of Employment
and Workforce, and Ebtron, Inc.,

Respondents,

PROOF OF SERVICE

I hereby certify that I have this 11th day of August, 2016 served a copy of the foregoing **RESPONDENTS' MOTION TO STRIKE AND DISMISS** by mailing copies of same, postage prepaid, in the United States mail, with sufficient postage affixed as follows:

Billie D. Mueller
P.O. Box 98
Davis Station, SC 29041



Kristi Chesley
Administrative Legal Assistant for
Sandra Grooms
Attorney for SC DEW

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Nikki R. Haley
Governor

Cheryl M. Stanton
Executive Director

Post Office Box 8597
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Telephone: (803) 737-2666
Fax: (803) 737-0124

August 11, 2016

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

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AUG 15 2016

SC Court of Appeals

RE: Billie Mueller v. SCDEW
Appellate Case No: 2014-002489

Dear Ms. Kitchings:

Enclosed are the original unbound and six stapled copies of the Respondents' Motion to Strike and Dismiss 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 that reads "Kristi Chesley".

Kristi Chesley
Administrative Legal Assistant for
Sandra Grooms
Attorney for Appellant SCDEW

SOUTH CAROLINA
DEPARTMENT OF EMPLOYMENT AND WORKFORCE
P.O. BOX 995
COLUMBIA, S.C. 29202



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

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SC Court of Appeals

