

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

SC Court of Appeals

DeAndrea Gist Benjamin, Circuit Court Judge

Case No.: 2013-CP-40-1897
Appellate Case No.: 2016-000211

KIM MURPHYAppellant

v.

RICHLAND-LEXINGTON SCHOOL DISTRICT NO. 5 BY AND
THROUGH COUNSEL TO THE BOARD OF TRUSTEES.....Respondent

INITIAL BRIEF OF RESPONDENT

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I. STATEMENT OF THE ISSUES ON APPEAL

This appeal presents for the Court's review the following issues:

- Whether the Circuit Court properly determined Appellant is a resident of Lexington County;
- Whether the Circuit Court properly determined Respondent School Board of Trustees lawfully removed Appellant from the School Board; and
- Whether the Circuit Court properly determined Appellant was provided due process in connection with her removal from the School Board.

The Respondent respectfully contends that Appellant is a resident of Lexington County and was properly removed from the School Board pursuant to due process of law.

II. STATEMENT OF THE CASE

Respondent, Richland-Lexington School District No. 5, respectfully submits its Brief of Respondent in support of the Order Affirming the Appellant's Removal from the Board of Trustees, issued by Circuit Court Judge, DeAndrea Gist Benjamin, on October 30, 2014. This appeal arises from the decision of the Board of Trustees of Richland-Lexington School District No. 5 ("Board") to remove Appellant from the Board pursuant to S.C. Code Ann. § 59-19-60 on March 19, 2013. (Record on Appeal ("ROA"), _____, Order of Removal.)

Appellant appealed from the Board's Order to the Circuit Court, County of Richland, pursuant to S.C. Code Ann. § 59-19-560 and Rule 72, SCRCPL, on March 28, 2013. In her appeal, Appellant asserted that she was a resident of Richland County, she was denied due process, and the Board lacked authority to remove her from office under § 59-19-60, among other allegations. (ROA, _____, Notice of Appeal.)

Thereafter, on September 11, 2014, the Circuit Court held a hearing on Appellant's appeal, and on October 30, 2014, the Circuit Court issued its Order Affirming the Appellant's Removal from the Board of Trustees. (ROA, _____, Circuit Court Order.) After

unsuccessfully seeking the Circuit Court's reconsideration and amendment of its Order, Appellant timely filed her appeal to this Court.

III. STATEMENT OF FACTS

Appellant was elected to the Board as a representative of Richland County in 2010 (ROA ____, Cooper hearing transcript, p. 34, ll. 21-22.) In late 2012, the Board Chair, Robert Gantt, received information that Appellant resided in Lexington County, not Richland County, which if accurate would cause her continued service on the Board to violate 2002 S.C. Act 326, § 9.¹ (ROA, _____ Gantt letter of December 20, 2012.) Consistent with the Board's legal obligations, Mr. Gantt sought a determination from the Director of the South Carolina State Budget and Control Board's Office of Research and Statistics ("ORS"), Mr. Bobby Bowers, concerning Appellant's residency. (*Id.*) The ORS conducted a detailed review of Appellant's residency and concluded that Appellant resided in Lexington County, and Appellant therefore was not qualified to hold her position on the Board as a representative of Richland County under 2002 S.C. Act 326, § 9. (ROA, _____, Bower's letter of January 11, 2013.)

In January 2013, Mr. Gantt shared ORS's determination with the Board, and the Board, consistent with its legal obligations, designated retired Circuit Court Judge G. Thomas Cooper, Jr., to conduct an evidentiary hearing concerning Appellant's residency and her qualifications to serve as a Board member from Richland County. (ROA, ____, Public Statement of January 14, 2013, ROA ____, letter to Cooper of January 22, 2013.)

On February 1, 2013, the hearing officer, G. Thomas Cooper, Jr., issued a Pre-Hearing Order and Hearing Notice to the Appellant advising her that an evidentiary hearing regarding her residency and qualifications to serve on the Board would be held on February 15,

¹ 2002 S.C. Act No. 326, § 9 states: "[n]otwithstanding another provision of law, in Richland-Lexington School District 5: (1) three trustees must reside in Richland County and four must reside in Lexington County." Appellant was elected in 2010 from Richland County.

2015. (ROA ____, Cooper Pre-Hearing Order and Affidavit of Service.) At the evidentiary hearing, Mr. Bowers and Mr. Sidney Miller, the former Chief of the South Carolina Geodetic Survey, both testified and fifteen exhibits were admitted into evidence. (ROA ____, hearing exhibits, ROA ____, hearing transcript.) On March 14, 2013, after careful consideration of the testimony and other evidence, the hearing officer, G. Thomas Cooper, Jr., issued written findings and recommendations to the Board, including the Appellant. (ROA, ____, Hearing Officer's Findings and Recommendations.) The hearing officer concluded that Appellant resided in Lexington County and that the Board had the authority to remove the Appellant from the office of Board trustee for Richland County under S.C. Code Ann. § 59-19-60.

The Board scheduled a special meeting for March 19, 2013, to receive evidence concerning Appellant's residency and to make a determination on her qualifications to serve on the Board. (ROA ____, Board hearing transcript, p. 3, l. 22 – p. 5, l. 7.) The Appellant and her legal counsel attended the special called meeting on March 19, 2013, and presented evidence and arguments of counsel. The Board voted to remove the Appellant from the Board pursuant to S.C. Code Ann. § 59-19-60. (ROA, ____, Board hearing transcript; ROA ____, Board Order of Removal.) The Board approved and issued its Order of Removal setting forth the grounds for removal, the nature of the notice, and the hearing accorded to the Appellant. (ROA ____, Order of Removal.)

Factually, hearing officer Cooper, the Board, and the Circuit Court all found, and the record unequivocally shows, that the Appellant's residence is situated in Lexington County. The Appellant resides at 154 Old Laurel Lane, Chapin, South Carolina (ROA ____, Cooper hearing, exhibit 12; ROA ____, Hearing officer's Findings and Recommendations.) The boundary of Lexington County is established by S.C. Code Ann. § 4-3-370 and the boundary of Richland County by S.C. Code Ann. § 4-3-460. In the area proximate to 154 Old Laurel Lane,

Chapin, both of these statutory boundary descriptions reference “a point in Slice Creek known as Rocky Ford,” which is shown on “the plat of said property, completed on November 25, 1921, by W.A. Counts and J.C. Wessinger Surveyors, said plat being filed in the office of the Secretary of State.” (S.C. Code §§ 4-3-370 to 460; ROA _____, Plat.)

At the evidentiary hearing, Mr. Bowers testified that the Appellant’s residence is located in Lexington County. (ROA, ____, Cooper hearing transcript, pp. 17-35 and exhibits referenced therein exhibits. 3-6, 8, 10, 14.) Likewise, Mr. Miller, a licensed surveyor and former Chief of the South Carolina Geodetic Survey, testified that the Appellant’s residence is located in Lexington County. (ROA ____, Cooper hearing transcript, pp. 40-67, and exhibits referenced therein.) Based on the identification of Rocky Ford, a common boundary feature referenced in both S.C. Code Ann. § 4-3-370 (Lexington County boundary) and S.C. Code Ann. § 4-3-460 (Richland County boundary), the Appellant’s residence at 154 Old Laurel Lane, Chapin is located in Lexington County.

IV. STANDARD OF REVIEW

This appeal arises from the Board’s removal of Appellant from the office of Board trustee under S.C. Code Ann. § 59-19-60. Appeals arising under S.C. Code Ann. § 59-19-60 are initially to the Court of Common Pleas pursuant to S.C. Code Ann. § 59-19-560, which provides that the court “shall consider and dispose of the cause as other equity cases are tried and disposed of, and all parties of interest shall have such rights and remedies, including the right of appeal.” S.C. Code Ann. § 59-19-560. Accordingly, in an action in equity, tried by a judge alone, the appellate court has jurisdiction to find facts in accordance with its view of the preponderance of the evidence, as well as to correct errors of law. *See Townes Assocs., Ltd. v. City of Greenville*, 266 S.C. 81, 86, 221 S.E. 2d 773, 775 (1976); *Mazloom v. Mazloom*, 382 S.C. 307, 316, 675 S.E.2d 746, 751 (Ct. App. 2009).

V. ARGUMENT

A. Appellant Is Not A Resident Of Richland County.

Appellant's residence is 154 Old Laurel Lane, Chapin, South Carolina 29036. Appellant has resided at this residence since approximately 2000, and at all times relevant to this case. There is no dispute over these facts; only over whether 154 Old Laurel Lane is situated in Richland or Lexington County.

All of the evidence in this case shows Appellant's residence is in Lexington County and not Richland County. The testimony of Mr. Bowers and Mr. Miller establishes that with Geographic Information System tools, Appellant's residence can be located on Lot 4 of "Final Subdivision Plat of Laurel Springs" dated April 4, 1997. (ROA ____, exhibit 13, 1997 Plat.) This plat shows an "Approx. County Line," marked on it, which approximate county line also appears on Richland County's own tax mapping computer data base. (ROA ____, exhibit 12, Richland County GIS map.) Based on Richland County's map, Richland County granted "elector" status to Appellant. (ROA ____, Voter Resignation.)

However, the actual facts on the ground and mapping data show Appellant is not a resident of Richland County, and Lexington County, the United States Geological Service, and the United States Census Bureau all have other boundary lines near Appellant's residence meant to denote the boundary between Richland and Lexington Counties. (ROA ____, exhibit 10.) Additionally, the testimony of Mr. Bowers and Mr. Miller show that because the location of Rocky Ford is established and the relevant county boundary statues defining the county boundaries contain specific bearings from that point, which can be plotted to locate the county line near Appellant's residence, the line is neither ill-defined, unmarked, or poorly marked. Based on this boundary line, Appellant's residence is located inside of Lexington County.

2002 S.C. Act No. 326, § 9 only permits a resident of Richland County to hold the

seat on the Board to which Appellant was elected (one of the seats allocated to Richland County). S.C. Act No. 326 expressly states: “[n]otwithstanding another provision of law, in Richland-Lexington School District 5: (1) three trustees must reside in Richland County and four must reside in Lexington County.” Appellant held a seat of a trustee who “must reside in Richland County.”

In South Carolina, the General Assembly alone has the power to set or change a county boundary, S.C. Const. art. VII, §§ 7, 13 and art. VIII, § 2. Counties also depend on self-generated or maintained maps, such as tax parcel maps for various county purposes; however, “[i]n the absence of statutory authority, a county may survey its boundaries for temporary guidance of its offices, but a survey so made is not binding on the adjoining county nor on the public generally. 20 C.J.S. Counties § 29. The location of a disputed boundary line is a question of fact. *Danley Williams v. Moore*, 400 S.C. 90, 102, 733 S.E. 2d 224, 230 (S.C. App. 2012). Errors in an unauthorized map cannot change a legislated boundary line.

The South Carolina Code of Laws sets the Richland-Lexington County line, and Appellant’s residence is on the Lexington County side of this line. When, in late 2012, the question arose concerning Appellant’s county of residence, the ORS, consistent with its statutory duties, undertook to verify the location of the monument in the statutes identified as Rocky Ford. The ORS followed and traced the relevant portions of the old surveys and verified the statutory bearings to ensure accuracy. The ORS then made a determination to a level of precision necessary to provide professional confidence in its determination.

The boundary of Richland County is set by the General Assembly in S.C. Code Ann. § 4-3-460. The boundary of Lexington County is described in S.C. Code Ann. § 4-3-370. Both statutory descriptions reference “a point in Slice Creek known as Rocky Ford.” Rocky Ford is a common geographic feature, or monument, used to establish the boundary between the

counties in the area of Appellant's residence. The statutes describing Richland and Lexington Counties contain language that the county line runs "S. 23° E. 142.5 chains to a point in Slice Creek known as Rocky Ford; thence turning and running northerly along Slice Creek 164 chains...." The evidence admitted in this case demonstrates a consistent placement of Rocky Ford on surveys and maps, which establish the fact that Appellant's residence is clearly and unambiguously located in Lexington County. The testimony of Mr. Miller compellingly demonstrates the consistent placement of Rocky Ford and the efforts taken to confirm its location. (ROA ____, Cooper hearing transcript, pp. 45, l. 17- p. 67, l. 6; ROA ____, photos of Rocky Ford, Cooper hearing, exhibit 14.)

The overwhelming evidence in the record supports the Board's and the Circuit Court's factual finding that the Appellant is not a resident of Richland County. Indeed, Appellant's residence is located hundreds of feet within Lexington County. When Mr. Miller delineated the statutory boundary from Rocky Ford pursuant to statute in both directions as described in his testimony, he confirmed Appellant's residence to be in Lexington County. The United States Census tract maps, as well as those developed by the ORS for the General Assembly further demonstrate that Appellant is a Lexington County resident. (ROA ____, Cooper hearing exhibits 3-6, 10.)

The clear and convincing evidence in the record is that Appellant's residence is located in Lexington County. Any agreements between Lexington and Richland County officials or county-generated maps are not official and cannot contravene, much less supersede, the statutory county boundaries. Counties cannot by agreement, laches, or any other way change or alter the county line. Only the General Assembly is authorized to move, change or alter a county line. Accordingly, the Circuit Court properly determined as a matter of fact that Appellant is not a resident of Richland County, and the Board respectfully asks this Court to affirm this ruling.

**B. Appellant Was Properly Removed From The Office Of
School Board Trustee.**

The Board's Order of Removal removed Appellant from her position as a Board trustee. The Board determined Appellant did not reside in Richland County as required by 2002 Act No. 326, § 9. Accordingly, the Board further determined Appellant was not qualified to continue to hold her seat on the Board, pursuant to its powers to remove Board trustees for cause under S.C. Code Ann. § 59-19-60.

In adopting Act No. 326 of 2002, the General Assembly transferred one of seven Board seats from Lexington to Richland County. The purpose of the move was to accommodate the changing balance of population in two portions of the school district to comply with the Constitutional one-man-one-vote requirements for local representation. *See, e.g., Avery v. Midland County Tex.*, 390 U.S. 474, 480-81, 88 S. Ct. 1114, 1119 (1968). The very purpose of the Act was to assure Richland County the constitutionally required level of representation on the Board.

Area representation is a familiar form of local representative government. The purpose is to give each and every part of the city or town representation. Such legislative plan is modeled in accordance with the national and state systems. It is designed to render a council a popular branch and keep it more directly in touch with the people.

Gaud v. Walker, 214 S.C. 451, 476, 53 S.E. 2d 316, 327 (S.C. 1949) (quoting, *McQuillen, Municipal Corporations* 2d Ed., Volume 2, § 598). Consequently, in order to be qualified to hold her seat on the Board, Appellant must reside in Richland County. This residency requirement is important, mandated by statute, and is rooted in fundamental constitutional principles of equal representation.

Further, S.C. Code Ann. § 59-19-60 provides generally that school district

trustees shall be subject to removal for cause by county boards of education. The County Board of Education of Lexington and Richland Counties were abolished in 1994 and 1969, respectfully. 1994 S.C. Act No. 601; 1969 S.C. Act No. 140. The Lexington County Board of Education's power and duties, including the power to remove school district trustees, were legislatively devolved on the various school district boards in Lexington County, including this Board. 1994 S.C. Act No. 601. The Richland County Board of Education's duties were generally transferred on to the Richland County Council in 1969. 1969 S.C. Act No. 140. However, subsequently, the General Assembly clarified that the Richland County Council did not have the authority to remove school district trustees from office. 1984 S.C. Act No. 610.

Based on the statutes, the Board found it had the authority to remove Appellant from the Board for cause under S.C. Code Ann. § 59-19-60. (ROA _____, Order of Removal.) Additionally, the South Carolina Attorney General has also opined that the Board "would now most probably possess the authority to remove a board member pursuant to the procedures specified in S.C. Code Ann. § 59-19-60." Op. S.C. Att'y. Gen., 2005 WL 1609288 (June 27, 2005); see also, S.C. Court art. III, § 27; *State v. Seigler*, 230, S.C. 115, 94 S.E 2d 231 (1956). The Circuit Court's decision that the Board has the authority to remove a Board member for cause is a proper application of S.C. Code Ann. § 59-19-60 and should be affirmed.

The Circuit Court's determination of the Board's authority is logical, practical, and consistent with the rules of statutory construction. *Brown v. County of Horry*, 308 S.C. 180, 183, 417 S.E. 2d 565, 567 (1992) ("it is the duty of the court to ascertain the intent of the legislature and give it effect."); *State ex rel. McLeod v. Montgomery*, 244 S.C. 308, 136 S.E. 2d 778 (1964) ("The Court must presume the legislature did not intend a futile act, but rather intended its statutes to accomplish something.) *Bolton v. Doe*, 266 S.C. 344, 349, 223 S.E. 2d 187, 189 (1976) ("A statute is not to be read in an atmosphere of sterility, but in the context of

what actually happens when human beings go about the fulfillment of its purposes.”).

It is clear under 1994 S.C. Act No. 601 that the four Board members from Lexington County have the authority of a county board of education under S.C. Code Ann. § 59-19-60 to remove a Board member. Further, it is reasonable and in harmony with Act No. 601 of 1994 and the South Carolina Const. art. IV, § 9 to construe S.C. Act No. 601 as also vesting this authority in the Board as a whole. This is especially true in light of the express denial of the authority to remove school board members to the Richland County Council in S.C. Act No. 610. Any other construction or interpretation of these statutes would yield the absurd result of four Board members having authority to remove a Board member under S.C. Code Ann. § 59-19-60, while three others do not. *Hodges v. Rainey*, 341 S.C. 79, 91, 535 S.E. 2d 578, 584 (2000) (stating “[t]he goal of statutory construction is to harmonize conflicting statutes whenever possible and to prevent an interpretation that would lead to a result that is plainly absurd.”).

Moreover, Appellant’s failure to satisfy the qualifications to hold the position of Board trustee based on her residency clearly constitutes cause for her removal. “Cause is a flexible concept that relates to an employee’s qualifications and implicates the public interest.” Op. Att’y Gen, 2005 WL 1609288 (June 27, 2005) (quoting 63C Am. Jur. 2d, Public Officers and Employees, § 183 (1997)). Here, the mandatory residency requirement established by 2002 S.C. Act No. 326, § 9 directly affects the constitutional rights and interests of the public and is a matter of significant public interest. The public is entitled to have only legally qualified representation. Accordingly, Appellant’s failure to meet the residency requirements of a Board member under S.C. Act No. 326 constitutes cause for removal, and the Circuit Court’s order affirming the Board’s removal of Appellant for cause should be affirmed.

C. The Appellant Was Afforded Due Process.

To establish a procedural due process violation, Appellant must show that (1) she

has a constitutional property interest in being a member of the Board, (2) the District deprived her of her property interest, (3) without due process of law (i.e. without notice and an opportunity to be heard). *Sunrise Corp. of Myrtle Beach v. City of Myrtle Beach*, 420 F.3d 322, 328 (4th Cir. 2005). Appellant cannot establish the elements of a due process violation.

Initially, Appellant does not have a constitutional property interest in being a member of the Board. Elected public officials do not have a personal property interest in the offices to which they are elected. *Wright v. City of Florence*, 229 S.C. 419, 428, 93 S.E.2d 215, 220 (1956); *Anders v. County Council for Richland County*, 284 S.C. 142, 144, 325 S.E.2d 538, 539 (1985). Public offices are created for the benefit of the State, and individuals have no contract or property rights in their offices. *Id. Anders*, 284 S.C. at 144, 325 S.E.2d at 539. Unless it is otherwise provided by the Constitution, public officials are subject to legislative control, and the General Assembly may provide for removal of public officers. *Id.*

Additionally, the Board provided Appellant with the statutorily required notice and opportunity to be heard. S.C. Code Ann. § 59-19-60 sets forth the process necessary for removal of a school district trustee. Specifically, S.C. Code Ann. § 59-19-60 states that “school district trustees shall be subject to removal from office for cause...upon notice and after being given an opportunity to be heard by the county board of education.” S.C. Code Ann. § 59-19-60. Additionally, an “order of removal shall state the grounds thereof, the manner of notice and the hearing accorded the trustee.” S.C. Code Ann. § 59-19-60.

In this instance, Appellant was given notice of the evidentiary hearing before hearing officer Cooper, and she elected not to participate in the evidentiary hearing, except to object to the proceeding. Appellant was provided with a copy of the hearing officer’s Findings and Recommendations. Appellant was provided with notice of the Board’s subsequent special meeting to consider her residency and qualifications to serve on the Board. Appellant attended

the meeting and her counsel presented evidence to the Board for the Board's consideration. After the Board voted to remove Appellant from office pursuant to S.C. Code Ann. § 59-19-60, the Board issued an Order of Removal setting forth the grounds for its decision, the manner of notice, and the hearing accorded to Appellant. (ROA _____, Order of Removal.) Therefore, the Board provided Appellant with the due process required to remove a trustee from office under S.C. Code Ann. § 59-19-60.

Further, substantial prejudice must be shown to establish a violation of due process. *Tall Tower, Inc. v. S.C. Procurement Review Panel*, 294 S.C. 225, 233, 363 S.E.2d 683, 687 (1987); *Felder v. Charleston County Sch. Dist.*, 327 S.C. 21, 26, 489 S.E.2d 191, 193 (1997). In regard to hearings by school boards "school board members are clothed with a presumption of honesty and integrity...in the discharge of their decision-making responsibilities." *Felder v. Charleston County Sch. Dist.*, 327 S.C. 21, 26, 489 S.E.2d 191, 193-94 (1997). In *Felder*, the South Carolina Supreme Court held that where the factual findings on the merits were supported by the record and no evidence demonstrating actual bias existed, there was no substantial prejudice. Here too, the Board's decision on the merits is fully supported by the factual record, and Appellant presented no evidence of actual bias. Accordingly, Appellant was provided notice of the concern about her residency and legal ability to be a Board member elected from Richland County, as well as an impartial hearing on the matter; due process requires nothing more.

Nevertheless, Appellant now contends procedures under S.C. Code Ann. § 27-2-105 (1976) should have been followed, rather than S.C. Code Ann. § 59-19-60. First and foremost, this issue is not properly before the Court on appeal as it was neither raised, nor ruled on by the Circuit Court in this case. *Wilder Corp v. Wilke*, 330 S.C. 71, 76, 497 S.E. 2d 731, 733 (1998). Moreover, Appellant's argument is simply inapposite to the facts and law of this case.

This is not a case seeking to resolve a boundary dispute between Richland County and Lexington County under S.C. Code Ann. § 27-2-105. No boundary dispute between counties is presented by this case and there is no evidence that the boundary at issue is ill-defined, unmarked, or poorly marked. To the contrary, the evidence before the Board and Circuit Court clearly shows the boundary line as it is derived from Rocky Ford based on the statutory description of the boundary between Lexington and Richland counties.

Accordingly, this Court should affirm the Circuit Court's ruling that Appellant was provided due process of law as required by S.C. Code Ann. § 59-19-60.

VI. CONCLUSION

For the reasons set forth herein, Appellant is not a resident of Richland County, and the Board acted within its statutory authority in removing her from the position of Board trustee. Therefore, the decision of the Circuit Court affirming the Board's removal of Appellant from the Board should be affirmed.

Respectfully submitted,

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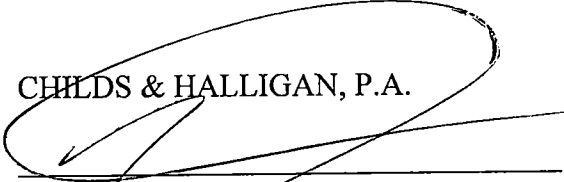
v.

RICHLAND-LEXINGTON SCHOOL DISTRICT NO. 5 BY AND
THROUGH COUNSEL TO THE BOARD OF TRUSTEES.....Respondent.

CERTIFICATE OF COUNSEL

I hereby certify, as counsel of record in the above-captioned case, that the Designation submitted herewith contains no matter which is irrelevant to the appeal as required by Rule 209(c), SCACR.

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The Honorable Jenny Abbott Kitchings
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RECEIVED
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Re: Kim Murphy v. Richland-Lexington School District No. 5 by and through
Counsel to the Board of Trustees
Appellate Case No. 2016-000211

Dear Ms. Kitchings:

Our firm represents Respondent in the above-referenced matter. Enclosed for filing, please find the original and one copy of each of the following:

- Respondent's Initial Brief;
- Respondent's Designation of Matter; and
- Certificate of Counsel.

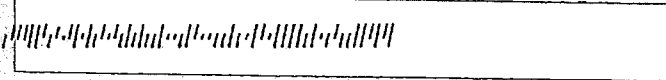
Please file the originals and return the extra clocked-in copies in the self-addressed stamped envelope enclosed. By copy of this letter, we are today serving a copy of the above-referenced documents on counsel for Appellant. Thank you for your assistance.

Sincerely yours,


John M. Reagle
jreagle@childs-halligan.net

Encl.
/rml

c: J. Lewis Cromer (via e-mail and U.S. mail)



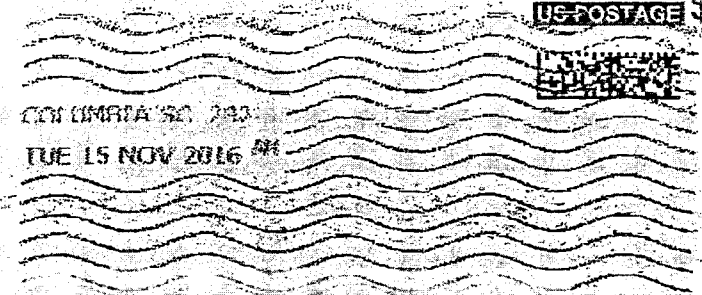
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The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
P. O. Box 11629
Columbia, SC 29211

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