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April 18, 2017

*VIA HAND DELIVERY*

The Honorable Daniel E. Shearouse  
Clerk of Court  
South Carolina Supreme Court  
1231 Gervais Street  
Columbia, South Carolina 29201

**RECEIVED**

APR 18 2017

**S.C. SUPREME COURT**

*Re: Appellate Case Number ~~2013-002697~~ 2017-000584  
William J. Montgomery v. Spartanburg County Assessor*

Dear Mr. Shearouse:

William J. Montgomery (“Montgomery”) filed a Petition for Certiorari for the above referenced case. The Respondent, Spartanburg County Assessor (“Assessor”) filed his Return arguing the Petition should not be granted. The Petition is pending.

Subsequent to filing the Petition, in a letter to the Clerk dated April 14, 2017, Montgomery asserts:

Pursuant to SCACR 208(b)(7), Petitioner William Montgomery writes to advise the Court of significant authority that has come to the attention of Petitioner after filing his Petition for Writ of Certiorari: the testimony of Sandy Houck, a 35 year employee of SCDOR and witness for the Respondent . . . in *Dotsy, LLC v. Greenwood County Assessor*, No. 13-ALJ-17-0061-CC (S.C. Admin. Law Ct. 2014).

(emphasis added). Rule 208(b)(7) of the South Carolina Appellate Court Rules (“Rule”) explains:

When pertinent and significant authorities come to the attention of a party after his initial brief(s) has been served and filed, the party shall promptly advise the clerk of the appellate court, by letter, with a copy to all counsel, setting forth the citations. There shall be a reference either to the page of the brief or to an issue to which the citations pertain, but the letter shall, without argument, state the reasons for the supplemental citations. Any response shall be made promptly and shall be similarly limited.

Montgomery's letter attaches forty-nine pages of testimony from *Dotsy, LLC v. Greenwood County Assessor*, No. 13-ALJ-17-0061-CC (S.C. Admin. Law Ct. 2014). Montgomery's letter and attachment do not comply with the Rule and should be rejected.

First, the Rule permits a party to submit newly-decided case law. *See, e.g., Matsell v. Crowfield Plantation Cmty. Servs. Ass'n, Inc.*, 393 S.C. 65, 70, 710 S.E.2d 90, 93 (Ct. App. 2011) (there "[t]he Association filed . . . pursuant to Rule 208(b)(7), SCACR, to bring to our attention the recently decided case of *Buffington v. T.O.E. Enterprises*, 383 S.C. 388, 680 S.E.2d 289 (2009)" (emphasis added)). The Rule does not permit a party to submit testimony, particularly not testimony from a hearing to which neither Montgomery nor Assessor were party.

Second, utilizing the Rule to submit testimony from a hearing to which neither Montgomery nor the Assessor were party violates Rule 210(c), SCACR, by seeking to insert factual material outside the Record on Appeal. Rule 210(c), SCACR, states, "[t]he Record on Appeal . . . shall not . . . include matter which was not presented to the lower court or tribunal." Montgomery's letter attempting to include the "*Dotsy* testimony" as "supplemental authority" establishes neither Montgomery's letter nor its attachment is part of the Record on Appeal in this matter.

Third, the Rule permits submitting case law that "come[s] to the attention of a party after his initial brief[] has been served and filed" (emphasis added). The Rule does not permit a party to submit information related to a case that same party has known about for months. The "*Dotsy* testimony" occurred and was known to Montgomery on October 13, 2013. Montgomery filed his Initial Brief to the Court of Appeals, May 19, 2014. Montgomery extensively discusses the purported legal similarities of *Dosty* across two pages of that brief. (Montgomery Initial Brief to Ct. of Appeals, p. 21-22). Thus, the "*Dosty* testimony" was well known to Montgomery long before filing his Initial Brief.

Fourth, the Rule is inapplicable to a Petition for a Writ of Certiorari. The Rule's plain language authorizes submission of supplemental authorities "after [the] initial brief[] has been served and filed." Here, no Initial Brief to the Supreme Court has been served and filed. The Rule does not permit filing "supplemental authority" with respect to a Petition.

If you have questions regarding this matter, please contact me.

Sincerely,

  
Ray N. Stevens

cc: James G. Carpenter, Esquire