

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM NEWBERRY COUNTY
Court of Common Pleas

Frank R. Addy, Jr., Circuit Court Judge

Appellate Case No. 2014-002532
Case No. 2013-CP-36-00321

RECEIVED

MAY 11 2017

SC Court of Appeals

Anthony Derone Richardson,

Appellant,

v.

Jackie Swindler, Chief of Police,
Newberry County Municipal Police,

Respondent.

**RESPONDENT'S MOTION TO DISMISS, OR IN THE ALTERNATIVE,
RESPONDENT'S FIFTH MOTION TO CORRECT THE RECORD ON APPEAL**

The Respondent Jackie Swindler respectfully moves this Court, pursuant to Rule 240(a), SCACR, for an Order dismissing this Appeal because of the Appellant's continued refusal to comply with the Appellate Court Rules in compiling the Record on Appeal in this matter. Alternatively, the Respondent moves this Court, pursuant to Rule 240(a), SCACR for an Order requiring the Appellant to file and serve a corrected Record on Appeal that complies with the South Carolina Appellate Court Rules. Specifically, the Respondent respectfully requests that

the Appellant correct the Record on Appeal to include all documents designated by the parties and to consecutively number each page of the Record on Appeal from beginning to end.

The Respondent's motion is addressed in greater detail in the supporting memorandum filed herewith. The Respondent requests that the Court hold all deadlines in abeyance until the issue regarding the Record on Appeal is resolved.

Respectfully submitted by,

MORRISON LAW FIRM, LLC

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ATTORNEYS FOR THE RESPONDENT

Columbia, South Carolina

May 9, 2017

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Respondent.

**RESPONDENT'S MEMORANDUM IN SUPPORT OF MOTION TO DISMISS, OR IN
THE ALTERNATIVE, RESPONDENT'S FIFTH MOTION TO CORRECT THE
RECORD ON APPEAL**

The Respondent Jackie Swindler, through his undersigned attorneys, hereby submits this Memorandum in Support of the Respondent's Motion to Dismiss the Appellant's Appeal, or In the Alternative, to Correct the Record on Appeal.

The ground for the Respondent's Motion to Dismiss is the Appellant's continued refusal to comply with the Appellate Court Rules. Since January, 2016, the Appellant has prepared more than five Records on Appeal, and none of them have complied with the Appellate Court Rules. In his first Record on Appeal dated January 5, 2016, the Appellate failed to include all of

the items designated by the Respondent, failed to number the pages consecutively, and the Record was completely out of order. The Respondent subsequently filed a Motion to Correct the Record on Appeal, which the Court granted. In a series of Records on Appeal he served on or about February 22, 2016, February 29, 2016 and on March 3, 2016, the Appellant again failed to include five items designated by the Respondent, and he had again failed to consecutively number the pages. The Respondent filed a Motion to Correct the Record on March 18, 2016, which the Court granted. The Appellant's third Record on Appeal the Appellant failed to include items that were omitted from the previous Records on Appeal. On or about May 19, 2016, the Respondent filed his Third Motion to Correct the Record on Appeal, which the Court granted. In his fourth Record on Appeal, the Appellant failed to include two of the items designated by the Respondent and did not include the entire transcript of the Plaintiff's deposition leaving out many pages to which the Respondent had cited in his Initial Brief. On October 20, 2016, the Respondent filed his Fourth Motion to Correct the Record on Appeal, which the Court granted.

On May 3, 2017, the Appellant served a Supplement Record on Appeal. However, he did not include the Defendant's Amended Memorandum In Support of Motion for Summary Judgment, which has been omitted from the previous Records on Appeal, and he did not consecutively number each page of the Supplemental Record on Appeal. The relevant portion of Rule 210(c), SCACR, provides:

The record on Appeal ***shall include all matter designated to be included by any party*** under Rule 209 and shall comply with the requirements of Rule 267. The Record shall not, however, include matter which was not presented to the lower court or tribunal. Matter contained in the Record on Appeal shall be arranged in the following order: the title page, index, orders, judgments, decrees, decisions, pleadings, transcript, charges, exhibits and other materials or documents, and certificate by appellant. ***Each page of the Record on Appeal shall be numbered consecutively beginning with the index.***

Rule 210(c), SCACR (emphases added).

It is the Appellant's responsibility to know and comply with the Appellate Court Rules. "The South Carolina Appellate Court Rules are not mere technicalities but provide the parties and this Court with an orderly mechanism through which to guide appeals in this State. It is incumbent upon counsel to provide material that complies with the Rules and facilitates appellate review." Henning v. Kaye, 415 S.E.2d 794, 794 (S.C. 1992). Furthermore, "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, 589 S.E.2d 6, 9 n. 5 (S.C. 2003). Established rules of procedure are not to be cast off simply because a party appeared pro se. State v. Hollman, 102 S.E.2d 873, 877 (S.C. 1958) (overruled on other grounds by, Stevenson v. State, 516 S.E.2d 434 (S.C. 1999)).

The Appellant has had five opportunities to provide a Record on Appeal that complies with the Appellate Court Rules and has continuously failed to comply with even the most basic requirements of the Rules. When an appellant frequently violates the Appellate Court Rules, the Court is justified in dismissing an appeal. See Henning, 415 S.E.2d at 794 (acknowledging that the Court would be "completely justified" in dismissing an appeal based on an appellant's numerous violations of the Appellate Court Rules, but declining to do so in that case). Because of the numerous opportunities given to the Appellant in this case to provide a Record on Appeal that complies with the Rules and his continued failure to do so over the last year and four months, the Respondent respectfully requests that the Court exercise its discretion and dismiss the Appellant's Appeal.

If the Court is not inclined to dismiss the Appeal at this time, the Respondent respectfully requests that the Court issue an Order requiring the Appellant to correct the Record on Appeal. Specifically, the Respondent requests that the Appellant include a copy of the Defendant's

Amended Memorandum In Support of Motion for Summary Judgment. Furthermore, as it currently stands, there is a purported Record on Appeal that is consecutively numbered and a purported Supplemental Record that is not consecutively numbered. Given the current format, the Respondent cannot appropriately reference the Record in his Final Brief. Rule 211(b)(1), SCACR provides: “[t]he references in the initial brief shall be revised to indicate where the material appears in the Record on Appeal. These revised references may be in place of or in addition to the initial references, and shall be in the form indicated by the following examples: (R. p. 15) (R. p. 75 lines 8-20) (R. p. 90, line 1 – p. 101, line 14) (R. pp. 29-31).” (See Rule 211(b)(1)). Accordingly, should the Court decide not to dismiss the Appellant’s Appeal, the Respondent respectfully requests that the Appellant be required to correct the Record on Appeal to include all matter designated by the Respondent in a document that is consecutively numbered from beginning to end.

Respectfully submitted by,

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ATTORNEYS FOR THE RESPONDENT

Columbia, South Carolina

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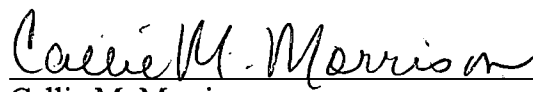
Respondent.

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CERTIFICATE OF SERVICE

The undersigned employee of Morrison Law Firm, LLC, attorney for the Respondent does hereby certify that service of the **Respondent's Motion to Dismiss, or In the Alternative, Respondent's Fifth Motion to Correct the Record on Appeal and Memorandum in Support of Motion** in the above-captioned action was made upon the Appellate by placing same in the United States Mail, first class postage prepaid, at the below listed address clearly indicated on said envelope this the 9th day of May, 2017, addressed as follows:

Anthony D. Richardson
Post Office Box 221
Newberry, South Carolina 29108


Callie M. Morrison

Columbia, South Carolina

Morrison Law Firm, LLC

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David L. Morrison*
Kassi B. Sandifer
Robert G. Cooper**
J. Jordon Johnson

*Licensed in SC & NC
*Certified Mediator
**Of Counsel

May 9, 2017

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

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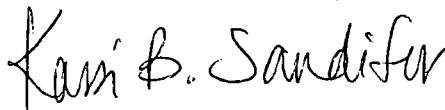
RE: Anthony Derone Richardson v. Jackie Swindler, Chief of Police, Newberry County
Municipal Police
Appellate Case #: 2014-002532
C/A #: 13-CP-36-00321
Our file: 210.0411

Dear Clerk Kitchings:

Enclosed are the original and one copy of the Respondent's Motion to Dismiss, or In the Alternative, Respondent's Fifth Motion to Correct the Record on Appeal and Memorandum In Support in this matter. Please return a clocked-in copy to me in the self-addressed stamped envelope enclosed for your convenience. By copy of this letter, I am serving the Appellant with a copy of these documents.

Very truly yours,

MORRISON LAW FIRM, LLC

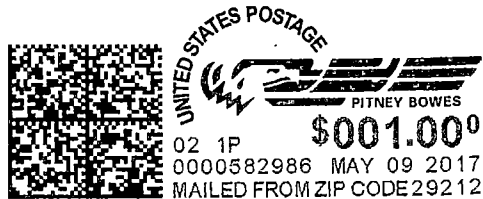


Kassi B. Sandifer

Enclosure

cc: Anthony D. Richardson

MORRISON LAW FIRM, LLC
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Columbia, South Carolina 29212



Honorable Jenny Abbott Kitchings
Clerk of Court, Court of Appeals
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