

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Carolyn C. Matthews, Administrative Law Judge

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JUN 06 2017

SC Court of Appeals

Case No. 14-ALJ-30-0538-AP
Appellate Case No. 2015-001548

William Henry Chapman, Appellant,

v.

South Carolina Department of Social Services, Respondent.

**RESPONDENT'S REPLY TO
APPELLANT'S RETURN TO
RESPONDENT'S PETITION FOR REHEARING**

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Attorney for Respondent

Pursuant to Rule 240 of the South Carolina Appellate Court Rules, Respondent, South Carolina Department of Social Services ("Respondent"), herewith submits its Reply to Appellant's Return to Respondent's Petition for Rehearing in the above-referenced matter, which resulted in Opinion Number 5482 filed on May 3, 2017 ("opinion"), and requests the Court grant the Petition for Rehearing, consideration given to the exceptional importance of the potential impact of the Court's ruling on other actions by agencies of the State of South Carolina, the matter to be heard by the Court *en banc*.

In his Return Appellant cites this Court's opinion in *Gordon v. Busbee* [367 S.C. 116, 623 S.E.2d 857 (2005)] for the proposition that a court will reject a statutory interpretation that leads to "a result so plainly absurd that it could not have been intended by the legislature or would defeat the plain legislative intention." (Id. at 119, 859) (Return, p. 10)

Appellant fails, however, to acknowledge that this Court specifically noted in *Gordon* that the language of a statute "must also be read in a sense which harmonizes with its subject matter and accords with its general purpose" and that "[a] statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of the lawmakers." (Id. at 119, 858-859)

The "absurd result" decried by Appellant would be reached were this Court to disregard the plain language of S.C. Code Ann. § 8-17-330 stating that "[e]ach agency shall establish an agency employee grievance procedure that must be reduced to writing and submitted for approval to the Office of Human Resources." Had the General Assembly not intended that each agency should create its own employee grievance procedure addressing its individual operational needs, which procedure was required to be approved by the Office of Human

Resources, there would be no practical purpose in inserting the statutory language addressing the minimal requirements that must be included in the procedure that is submitted to the Office of Human Resources. Were such the intention of the General Assembly, the statute would have simply specified the precise mechanism for the employee grievance procedure for all state agencies. The reasonable and fair interpretation of the statute is that the General Assembly intended that each agency's policy would differ in its operational aspects but would be required to incorporate the specified minimal requirements with respect to the time frame in which the written grievance must be filed and received.

Further, the Court's opinion citing with approval the Grievance Procedure Model Policy existing at the time of the Appellant's termination, which provided that a "grievance must be in writing and must be received... within 14 calendar days of the effective date of the action or 14 calendar days from when the employee is notified of the action, whichever is later," failed to also consider that the full language of the same model policy which required that "[a] covered employee who wishes to file a grievance must initiate the grievance with the agency's Human Resources Office."

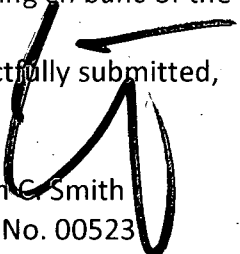
Appellant argues that Respondent's request for rehearing in this matter should be denied because the request "does not rise to the level of exceptional importance such as to warrant consideration," and "the facts of the case will not change on rehearing." (Return, p. 7)

While Respondent acknowledges that the facts of this case will not change, that reason has no bearing on the possible long term effect the Court's decision will have on state agencies such as Respondent. It would be shortsighted to disregard the effect that the Court's ruling will have on state agencies, such as Respondent, who must daily promulgate regulations and policy

to effectuate the intentions of the General Assembly and who would be placed in the peculiar situation of not knowing the extent to which their regulations or policies might be promulgated so as to reflect operational necessity.

For the above reasons, the Respondent respectfully requests that it be provided a rehearing *en banc* of the Court's current decision.

Respectfully submitted,



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Attorney for Respondent

June 5, 2017

DSS SOUTH CAROLINA
DEPARTMENT of SOCIAL SERVICES

HENRY McMASTER, GOVERNOR
V. SUSAN ALFORD, STATE DIRECTOR



June 5, 2017

Honorable Jenny Abbott Kitchings
Clerk of the South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

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SC Court of Appeals

Re: Reply to Return to Petition for Rehearing
William Henry Chapman v. South Carolina Department of Social Services
Appellate Case Number 2015-001548
Opinion No. 5482 (Heard February 13, 2017 – Filed May 3, 2017)

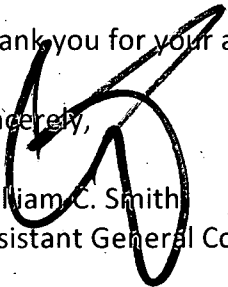
Dear Ms. Kitchings:

Enclosed for filing are the original and six (6) copies of the Respondent's Reply to Appellant's Return to Respondent's Petition for Rehearing in the above referenced matter and Proof of Service of the same. Appellant's Return was received via the U.S. Postal Service in this office on May 30, 2017.

Please file and date stamp one copy of each of the above documents, which are herewith enclosed, and return them to me in the enclosed self-addressed postage prepaid envelope. I have also served copies of this letter and the above referenced items upon Appellant's counsel of record, Dwight C. Moore.

Thank you for your assistance.

Sincerely,


William C. Smith
Assistant General Counsel

Enclosures

cc: Dwight C. Moore, Esquire
Moore Law Firm, L.L.C.
26 North Main Street
Sumter, South Carolina 29151-1229

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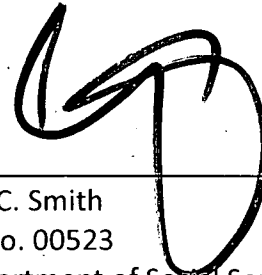
South Carolina Department of Social Services, Respondent.

PROOF OF SERVICE

I certify that I have served the Respondent's Reply to Appellant's Return to Respondent's Petition for Rehearing upon the Appellant's attorney of record via electronic mail to moorelawfirm@ftc-i.net and also have served the same upon Appellant's attorney of record and upon the Honorable Jenny Abbott Kitchings, Clerk of the South Carolina Court of Appeals, by depositing a copy of the same with the U.S. Postal Service at Columbia, South Carolina, with proper postage attached, on June 5, 2017, addressed as follows:

Dwight C. Moore, Esquire
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26 North Main Street
Sumter, South Carolina 29151-1229

Honorable Jenny Abbott Kitchings
Clerk of the South Carolina Court of Appeals
1220 Senate Street
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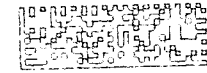
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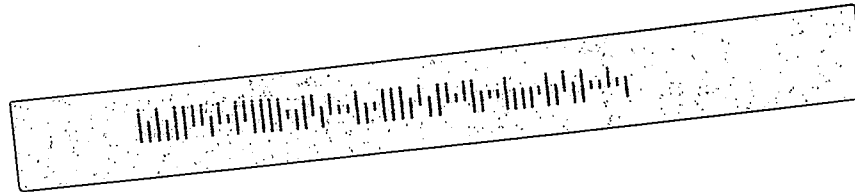
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DEPARTMENT of SOCIAL SERVICES

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