

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

RECEIVED

APPEAL FROM ADMINISTRATIVE LAW COURT

DEC 18 2017

Ralph King Anderson, III, Administrative Law Judge

SC Court of Appeals

Appellant Case No. 2014-000847

Preservation Society of Charleston, Historic Charleston Foundation, Historic Ansonborough Neighborhood Association, South Carolina Coastal Conservation League, Charlestowne Neighborhood Association, Charleston Chapter of the Surfrider Foundation, and Charleston Communities for Cruise Control Appellants,

vs.

South Carolina State Ports Authority and South Carolina Department of Health and Environmental Control..... Respondents.

PRECAUTIONARY MOTION TO FILE OUT OF TIME

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Attorneys for the Appellants

1. Appellant Community Groups filed their Petition for Rehearing on November 1, 2017. Appellee South Carolina State Ports Authority (“SPA”) filed its Return on November 13, 2017, but failed to serve all counsel for record for the Community Groups at that time.

2. Specifically, SPA mailed its Return to the Community Groups’ lead counsel, J. Blanding Holman IV, to an incorrect address.

3. The errant mailing was returned to SPA, but it is unclear on what date SPA received the returned envelope.

4. Nearly a month after the initial filing, SPA submitted a revised certificate of service to the Court via hand delivery, and mailed a copy of the return and the revised certificate of service to Mr. Holman at his correct address.

5. Mr. Holman received the Return on December 11, 2017.

6. Mr. Holman had no actual notice of SPA’s filing until December 11, 2017. Staff at the Southern Environmental Law Center had periodically reviewed the online filing system to see if a Return had been filed, but as of November 22, 2017, nine days after the filing was due, SPA’s Return had not yet posted.

7. Litigants are not required to file a Return to a Petition for Rehearing. Rule 240(e), SCACR.

8. The Community Groups through Mr. Holman propose to file their Reply brief today, December 15, four days after receiving SPA’s Return. The Appellate Court Rules allow 5 days after service in which to file a Reply, excluding weekends and holidays. Rules 240(f), 263(a), SCACR.

9. The attached Reply is timely filed within five days of SPA’s mailed service of the Return to Mr. Holman.

10. SPA never notified Mr. Holman by telephone, email, or otherwise regarding its error in service prior to Mr. Holman's receipt of the re-served Return. Other counsel for the Community Groups were unaware that lead counsel had not received the Return and assumed he was filing a Reply on behalf of the Community Groups.

11. The Appellate Court Rules require "service upon the attorney" when service is required or permitted upon a party represented by an attorney. Rule 262(b), SCACR. Here, however, the Community Groups are represented by multiple counsel, associated with different law firms, located in different cities. The Rules are not clear as to whether service upon all counsel of record is required for service to be complete.

12. As a precaution, the Community Groups are requesting the Court's leave to file their Reply out of time. Under Rule 263(b), SCACR, the Court may extend the time allowed for filing the attached Reply. Good cause and the interests of fairness and justice support extension if required because, due to SPA's service error, Mr. Holman lacked actual notice of the filing of SPA's Return until December 11, 2017, and once made aware of the filed Return, Mr. Holman acted promptly to file the Reply. Further, no parties would be prejudiced by acceptance of the Reply.

13. For the foregoing reasons, Appellants respectfully request that their motion to file brief out of time be allowed as necessary.

Respectfully submitted,



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Attorneys for the Appellants

Charleston, SC
December 15, 2017

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vs.

South Carolina State Ports Authority and South Carolina Department of Health and Environmental Control..... Respondents.

CERTIFICATE OF SERVICE

I hereby certify that on December 15, 2017, I caused to be served the foregoing *Precautionary Motion to File out of Time* on all counsel of record by placing copies of same in the U.S. Mail addressed to:

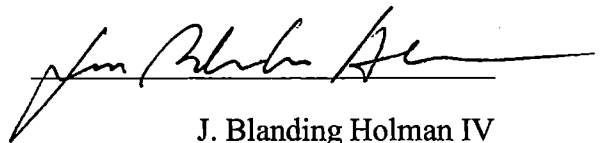
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December 15, 2017

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December 15, 2017

Via Certified Mail

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

RECEIVED
DEC 18 2017
SC Court of Appeals

**Re: Preservation Society of Charleston v. SCDHEC
Appellate Case No. 2014-000847**

Dear Ms. Kitchings:

Enclosed for filing are the original and seven (7) copies of Appellants' Reply in Support of Petition for Rehearing and Proof of Service in the above-referenced matter. Also enclosed are the original and seven (7) copies of Appellants' Precautionary Motion to File Out of Time and a check for \$25.00 to cover the associated filing fee.

Please return file-stamped copies of the Reply and the Motion to our office in the enclosed self-addressed, stamped envelope.

By copy of this correspondence, I am serving the same upon all counsel of record. If you have any questions, please do not hesitate to contact me at 843-720-5270 or bholman@selcsc.org. Thank you for your assistance with this matter.

Sincerely,



J. Blanding Holman IV

JBH/arp
Enclosures

cc: All Counsel of Record (via First Class Mail)