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THE SUPREME COURT
IN THE STATE OF SOUTH CAROLINA

S.C. SUPREME COURT

Melissa Spalt,

Respondent,

v.

South Carolina Department of Motor
Vehicles and South Carolina Department
of Public Safety,

Petitioners.

Case No. 2017-000545

**NOTICE OF MOTION
AND MOTION TO FILE REPLY
BRIEF OUT-OF-TIME**

TO: RESPONDENT MELISSA SPALT AND HER ATTORNEY:

PLEASE TAKE NOTICE that Petition South Carolina Department of Motor Vehicles (hereinafter, "DMV") will move, pursuant to Rule 240, SCACR, before this Honorable Court ten (10) days from this notice or as soon thereafter as the matter may be heard or determined, to file DMV's Reply Brief out-of-time. The grounds of this motion are set forth below.

Rule 242(i), SCACR directs that if a Petitioner wishes to file a reply brief, the reply brief must be filed and served on Respondent within ten days after service of Respondent's brief. In this case, Respondent served her brief on DMV on December 14, 2017 (Proof of Service attached to Respondent's Brief). Despite this, DMV did not receive Respondent's Brief until December 27, 2017 at approximately 2:00 p.m. (Exhibit A). Because Respondent served her Brief on December 14, 2017, that meant any reply brief filed by Petitioner DMV was required to be filed by no later than December 27, 2017.¹ Due to the extreme delay in receiving

¹ December 24, 2017 was a Sunday and Christmas Eve. Monday, December 25, 2017 and Tuesday, December 26, 2017 were State holidays in recognition of the Christmas holiday. Pursuant to Rule 263(a), SCACR, when the last day of a deadline falls on a Saturday, Sunday, or a state or federal holiday, the deadline automatically extends to the next day that is not a Saturday, Sunday, or such holiday.



Respondent's Brief (nearly two weeks from the date of mailing), a filing date of December 27, 2017 did not provide DMV with any reasonable time with which to draft a reply brief and copy and file the same.

Petitioner has consulted with Respondent's counsel about the delay in receiving Respondent's Brief and the difficulties this delay presented to DMV. Respondent's counsel states Respondent has no objection to DMV filing its reply brief by no later than January 3, 2018 (Exhibit B).

Petitioner DMV therefore moves to file its Reply Brief out-of-time.

And we so move.



BRANDY A. DUNCAN, SC Bar # 72052
Assistant General Counsel
FRANK L. VALENTA, JR., SC Bar # 5682
General Counsel
PHILIP S. PORTER, SC Bar # 4526
Deputy General Counsel
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Email: hearingsprocessingunit@scdmv.net
Attorneys for Petitioner

December 29, 2017
Blythewood, South Carolina

THE SUPREME COURT
IN THE STATE OF SOUTH CAROLINA

Melissa Spalt,

Respondent,

v.

South Carolina Department of Motor Vehicles
and South Carolina Department of Public
Safety,

Petitioners.

Case No. 2017-000545

AFFIDAVIT OF JEANNINE MOORE

PERSONALLY APPEARED before me, a Notary Public in and for the State of South Carolina, Jeannine Moore, who first being duly sworn, deposes and says:

1. I am employed by the South Carolina Department of Motor Vehicles (hereinafter, "DMV"), an agency of the State of South Carolina, as Paralegal in the Office of General Counsel and the supervisor of Wanda Ealy, Paralegal Assistant in the Office of General Counsel.
2. On December 27, 2017, Wanda Ealy received and opened all of the DMV Office of General Counsel's mail.
3. DMV first received a copy of *Respondent's Brief* in this case, referenced above, on December 27, 2017. I know this because, pursuant to the DMV Office of General Counsel's normal procedures, Wanda Ealy stamped *Respondent's Brief* in this case with a received date of "December 27, 2017" and then placed the brief on my desk for further processing.
4. Wanda Ealy is not available at this time to provide an affidavit regarding this matter as she is on annual leave until January 2, 2018.



FURTHER AFFIANT SAYETH NOT.


JEANNINE MOORE

SWORN TO and subscribed before me

This 28th day of December, 2017.


NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission expires May 9, 2023.

Duncan, Brandy A

From: Michael Laubshire <michael@laubshirelaw.com>
Sent: Wednesday, December 27, 2017 7:12 PM
To: Duncan, Brandy A
Cc: tori@laubshirelaw.com; Moore, Jeannine (Nina); Valenta, Val
Subject: Re: SCDMV and SCDPS v Spalt

I have no objections.

Sent from my iPhone

> On Dec 27, 2017, at 5:29 PM, Duncan, Brandy A <Brandy.Duncan@scdmv.net> wrote:

>

> Mr. Laubshire,

>

> SCDMV just received the Respondent's Brief in the Spalt case in the mail today. I see that the Proof of Service states that it was mailed to SCDMV on December 14, 2017. Given the significant delay in the Brief making its way to SCDMV would you consent to SCDMV filing our Reply Brief by no later than Wednesday, January 3, 2018?

>

> I am aware that I still have to ask to the Court for permission to file the Reply Brief out-of-time, but I would like to state in that motion that we have spoken and, because of the significant delay in the Brief making its way to SCDMV, Ms. Spalt has no objection to us filing out-of-time.

>

> Please note that filing the reply brief on January 3, 2018 will only give me 2 days to work on the reply brief, as Monday, January 1, 2018 is a State Holiday (thus, I am not allowed to work) and I am on annual leave on Tuesday, January 2, 2018. Wednesday, January 3, 2018 would be spent making the necessary copies for filing and then binding the reply brief.

>

> Thanks,

>

> Brandy A. Duncan, Asst. General Counsel S.C. Department of Motor

> Vehicles P. O. Box 1498 Blythewood, South Carolina 29016

> (803) 896-9937

> (803) 896-9901 (fax)

>

> Notice of Confidentiality: The information contained in this e-mail may be legally privileged and/or confidential. It is intended only for the use of the individual(s) or entity named in the body of the e-mail. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, copying, or use of the information contained in this e-mail or the e-mail itself is strictly prohibited. If you have received this e-mail in error, please notify me immediately by telephone at the number listed above, delete the original e-mail, and return any printed copies of the e-mail to me at the address listed above via the United States Postal Service. Thank you.

>

>

> -----Original Message-----

> From: Duncan, Brandy A

> Sent: Tuesday, November 28, 2017 2:22 PM

> To: 'Michael Laubshire' <michael@laubshirelaw.com>

> Cc: Tori Ford <tori@laubshirelaw.com>; Moore, Jeannine (Nina)

> <Jeannine.Moore@scdmv.net>

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM ADMINISTRATIVE LAW COURT

The Honorable H.W. Funderburk, Jr., Administrative Law Judge

Case No. 2017-000545

Melissa Spalt.....Respondent,

v.

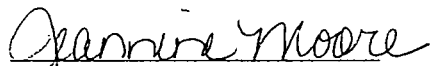
South Carolina Department of Motor Vehicles and
South Carolina Department of Public Safety.....Petitioner,

Of Whom the South Carolina Department of Motor Vehicles is the Petitioner.

PROOF OF SERVICE

I HEREBY CERTIFY that I have served the Petitioner's Notice of Motion and Motion to File Reply Brief Out-of-Time by depositing a copy of it in the United States Mail, postage prepaid, on the 29th day of December, 2017, addressed to the attorney for the Respondent as follows:

Michael Laubshire, Esquire
455 Saint Andrews Road, Suite E-1
Columbia, South Carolina 29210


Jeannine Moore, Paralegal
S.C. Department Motor Vehicles

Henry McMaster
Governor



Kevin A. Shwedo
Director

State of South Carolina
Department of Motor Vehicles

December 29, 2017

The Honorable Daniel E. Shearhouse
Clerk, Supreme Court of South Carolina
Post Office Box 11330
Columbia, South Carolina 29211

RECEIVED
DEC 29 2017
S.C. SUPREME COURT

RE: *South Carolina Department of Motor Vehicles and South Carolina Department
of Public Safety v. Melissa Spalt*
Case No. 2017-000545

Dear Mr. Shearhouse:

Enclosed for filing please find the unbound original and sixteen (16) copies of the Petitioner's Reply Brief along with Petitioner's Notice of Motion and Motion to File Reply Brief Out-of-Time and Proof of Service of these documents on counsel for the Respondent.

Please file the originals and copies necessary for SCACR compliance and return the extra copy to me with an affixed clerk's date of filing in the enclosed self-addressed stamped envelope.

Sincerely,

A handwritten signature in cursive script, appearing to read "Brandy A. Duncan".

Brandy A. Duncan
Assistant General Counsel

Enclosures

cc: Michael Laubshire, Esquire