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THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

RECEIVED

APPEAL FROM GREENVILLE COUNTY  
In the Court of Common Pleas

APR 13 2018

The Honorable Perry H. Gravely, Circuit Court Judge SC Court of Appeals

Case No. 2016-CP-23-02113

Appellate Case No. 2017-001147

Aminah A. Richburg, .....Appellant,

v.

E.A. "Rico" Williams, Director, District One S.C. Basketball Officials Association  
and the South Carolina High School League, ..... Respondents.

**RESPONDENTS' JOINT MOTION TO STRIKE APPELLANT'S AMENDED  
DESIGNATION OF MATTER**

Pursuant to Rule 240 and Rule 210, SCACR, Respondents jointly seek an order striking various documents in the amended Designation of Matter to be included in the Record on Appeal that Appellant filed with the Court on April 2, 2018. The Court should strike the documents discussed below from Appellant's amended Designation of Matter because these documents were not presented to the circuit court.

**BACKGROUND**

This appeal arises out of an exchange of text and email communications between Appellant and Respondent Rico Williams, the director of District One of the South Carolina Basketball Officials Association (SCBOA). Appellant filed a complaint against Williams and Respondent South Carolina High School League (the League) in the Court of Common Pleas for

Greenville County on March 31, 2016, asserting claims for defamation and negligence. In her complaint, Appellant alleges Williams defamed her by creating a “false narrative” about her performance as a basketball official in reporting issues involving Appellant to the District One Board of Directors. Appellant also claims that the League was negligent in failing to investigate Williams’ reports regarding Appellant and failing to intervene on her behalf when the District One Board of Directors reviewed her membership. Respondents filed answers denying all liability.

Throughout the course of discovery, Respondents produced numerous documents that were responsive to Appellant’s non-objectionable interrogatories and requests for production. Additionally, Appellant was deposed on December 21, 2016. At the close of discovery, Respondents both filed motions for summary judgment. Appellant, in response, filed a motion to compel and a “motion to dismiss summary judgment.” The circuit court held a hearing on all motions on March 20, 2017. Following the hearing, the circuit court entered an order granting Respondents’ motions for summary judgment and denying Appellant’s motion to compel. This appeal followed.

Appellant filed her Initial Brief and Designation of Matter on November 22, 2017. Following a deficiency notice, Appellant refiled her Designation of Matter on December 20, 2017. On January 17, 2018, Appellant filed a document titled “Motion...To Punish and Fine the Respondents and their Legal Counsel...and Allowing the Appellate an Extension on Future Court Proceedings to Order Transcripts of all Court Apperances [sic] Prior to March 20, 2017.” At the conclusion of this motion, Appellant asked for an open-ended extension to order transcripts of hearings in the circuit court that occurred prior to the hearing on March 20, 2017. The Court denied Appellant’s motion by Order dated February 7, 2018.

Appellant then filed a motion on February 16, 2018, requesting permission to include her “affidavit” of December 21, 2016 in her Designation of Matter.<sup>1</sup> The Court issued an order on March 22, 2018, granting Appellant’s request, but only “to the extent that Appellant may include the affidavit of Aminah A. Richburg dated December 21, 2016, if the affidavit was presented to the lower court.” Additionally, the Court notified Appellant that any amended Designation of Matter must be received by March 30, 2018. By Order entered on April 5, 2018, Appellant’s deadline for serving the Record on Appeal has been extended until May 21, 2018.

Appellant filed her amended Designation of Matter on April 2, 2018. Despite the warning in the Court’s order regarding the requirements of Rule 210(c), SCACR, Appellant included not only the affidavit of Aminah A. Richburg dated December 21, 2016, but she also added the transcripts of hearings before Judge Couch on September 20, 2016, and Judge Verdin on November 2, 2016, respectively. For the reasons set forth below, Appellant’s amended Designation of Matter should be stricken, in part, for failing to comply with Rule 210(c), SCACR.

### LAW

“The Record on Appeal shall include all matter designated to be included by any party under Rule 209,” but “shall not . . . include matter which was not presented to the lower court or tribunal.” Rule 210(c), SCACR. “A party shall not include any matter in his Designation which is not relevant to the appeal.” *Id.* Rule 209(b), SCACR. Additionally, “[t]he brief *shall contain* references to the transcript, pleadings, orders, exhibits, or other materials which may be properly

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<sup>1</sup> Respondents did not respond to this motion, partly because it was unclear as to which specific document Appellant was referencing. Appellant’s deposition was taken on December 21, 2016, but she also provided a twenty-six-page errata sheet to the court reporter on February 17, 2017. Respondents’ counsel have recently sent letters to Appellant attempting to clarify the identity of her referenced “affidavit.” These letters are attached as Exhibit A to this Motion pursuant to Rule 240(c), SCACR. Appellant has not responded to these letters.

included in the Record on Appeal [see Rule 210(c)] to support the salient facts alleged.” Rule 208(b)(4), SCACR (emphasis added).

“[T]he 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.” *Henning v. Kaye*, 307 S.C. 436, 437, 415 S.E.2d 794, 794 (1992). “It is incumbent upon counsel to provide material that complies with the Rules and facilitates appellate review.” *Id.* “Whenever it appears that an appellant or a petitioner has failed to comply with the requirements of these Rules, the clerk shall issue an order of dismissal, which shall have the same force and effect as an order of the appellate court.” Rule 231(a), SCACR. Although Respondents do not seek a dismissal of the appeal, Rule 231(a) highlights the importance of the parties complying with the appellate court rules.

### ARGUMENT

Appellant has identified numerous documents that were not, and could not have been, presented to the lower court because they did not exist or were unavailable prior to April 19, 2017, the date on which the circuit court filed its order granting summary judgment.<sup>2</sup> Therefore, the following documents should be stricken from Appellant’s Designation of Matter because they were not presented to the circuit court:

1. Appellate Email Declined Game Football, Arbiter September 14, 2017 (Designation No. 105)
2. Appellate Calendar of Football and Volleyball Games in Arbiter September 2017 (Designation No. 106)
3. Appellate harassment by the SCHSL September 14, 2017. (Designation No. 107)

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<sup>2</sup> Notably, Appellant never filed a Rule 59(e), SCRCPP, motion to alter or amend judgment. Although Appellant filed three separate documents on April 25, 2017, she admitted these were filed with the court prior to her receipt of the order granting summary judgment. *See App. Initial Br.* at 16.

4. Email Office of South Carolina State Senator C. Ross Turner September 15-21, 2017 (Designation No. 113)
5. Transcript of Court Proceeding dated September 20, 2016, Judge Couch (Designation No. 132)
6. Transcript of Court Proceeding dated November 2, 2016, Judge Verdin (Designation No. 133)

Again, these documents did not exist prior to the entry of the order granting summary judgment and, moreover, Respondents' counsel have never been provided with copies of these documents. Accordingly, these documents do not comply with Rule 210(c), SCACR, and should be stricken from Appellant's amended Designation of Matter.

Next, Respondents would note that they are unable to identify several documents in Appellant's Designation of Matter and have sought clarification from Appellant. *See* Exhibit A. In addition to the Affidavit of Aminah Richburg dated December 21, 2016, Appellant included the following undated documents in her Designation of Matter: (1) Appellate SCHSL Arbiter Website/ Announcements Bob Wnukwoski (Designation No. 102); (2) Arbiter Appellate Game Schedule, Group, Date, Sport, Site, Home, Away, Fees (Designation No. 112); and (3) Emails Earl Richards to Appellate (Designation No. 123). Once Respondents are able to identify these documents, they will move expeditiously to supplement this motion, if necessary. Finally, while Respondents obviously object to the characterizations used by Appellant in describing documents as "falsified" and "plagiarized," Respondents do not seek any formal recourse through this motion given that the final briefs of the parties will make citations to the Record on Appeal by page numbers. *See* Rule 211(b)(1), SCACR.

For the reasons set forth above, Respondents respectfully request that the Court issue an order striking numbers 105, 106, 107, 113, 132, and 133 from Appellant's amended Designation of Matter.

Respectfully submitted,

TURNER PADGET GRAHAM & LANEY, P.A.

By: Sarah D. Hurley w/ permission by J. M. M.  
Sarah Day Hurley  
SC Bar 16241  
Post Office Box 1509  
Greenville, SC 29602  
Telephone: (864) 552-4651  
Email: shurley@turnerpadget.com

Attorney for Respondent E.A. "Rico" Williams

Greenville, South Carolina

April 13, 2018

SOWELL GRAY ROBINSON STEPP &  
LAFFITTE, LLC

By: [Signature]  
Rebecca Laffitte  
SC Bar 3105  
rlaffitte@sowellgray.com  
J. Michael Montgomery  
SC Bar 74930  
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Attorneys for Respondent South Carolina High  
School League

Columbia, South Carolina

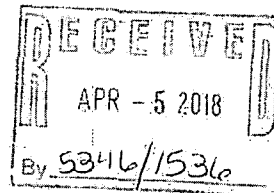
April 13, 2018

# Turner | Padget

REPLY TO:  
Sarah Day Hurley  
Certified Mediator  
Admitted in SC and GA  
E-Mail: SHurley@TurnerPadget.com  
Writer's Direct Dial: (864) 552-4651  
Direct Fax: (864) 282-5965

April 3, 2018

Ms. Aminah A. Richburg  
217 Plum Creek Lane  
Greenville, SC 29607



Re: Aminah A. Richburg v. E.A. Williams, et. al.  
Civil Action No.: 2016-CP-23-02113  
TPGL No.: 210.1204

Dear Ms. Richburg:

I have received your latest Designation of Matters to Be Included in the Record on Appeal, which you served on March 29, 2018. I noticed that you have included, as item no. 131 in your Designation, "Affidavit of Aminah Richburg dated December 21, 2016." I do not recall receiving such affidavit, and would appreciate it if you would send a copy to me. As you know, the Court of Appeals has ordered that the purported affidavit may not be included in the Record on Appeal if it was not filed with the Court below. Of course, that is true as to any matter included in the Record. See Rule 210 ("The Record, however, shall not include matter which was not presented to the lower court or tribunal."). We will object to any matter in your Designation which was not previously filed with the Circuit Court.

I would appreciate it if you would provide me with a filed copy of the affidavit by this Friday, April 6<sup>th</sup>, or else, confirm that you do not intend to include that in the Record on Appeal. Although I am only requesting a copy of the affidavit at this time, we reserve the right to object to any other materials to the extent they too were not presented to the Court below.

TURNER PADGET GRAHAM & LANEY P.A.  
Columbia | Charleston | Greenville | Florence | Myrtle Beach

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200 East Broad St., Suite 250, (29601) | P.O. Box 1509, Greenville, SC 29602.

EXHIBIT A

Ltr to Aminah Richburg  
April 3, 2018  
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Sincerely,

TURNER PADGET

*Sarah Day Hurley*  
Sarah Day Hurley

SDH/bj  
cc: Michael Montgomery, Esq.

EXHIBIT A



SOWELL GRAY  
ROBINSON

Litigation + Business

MICHAEL MONTGOMERY

DIRECT 803 231.7833 DIRECT FAX 803 231.7890

mmontgomery@sowellgray.com

April 9, 2018

Ms. Aminah A. Richburg  
217 Plum Creek Lane  
Greenville, South Carolina 29607

RE: Aminah A. Richburg v. E.A. "Rico" Williams, Director, District One S.C. Basketball Officials Association, and the South Carolina High School League  
Civil Action No.: 2016-CP-23-02113  
Date of Loss: 2/2/16  
IRF Claim No.: 74430  
Our File No.: 5346/1536

Dear Aminah:

I hope you are doing well. I am writing to follow up on the letter Sarah Hurley sent you dated April 3, 2018, as I would like to address several matters prior to you incurring the expense of preparing the Record on Appeal.

First of all, I want to make sure I understand which document you are referring to by "Affidavit of Aminah A. Richburg dated December 21, 2016," in your amended Designation of Matter. I initially thought you were either referencing your deposition transcript, which was taken on December 21, 2016, or your signed errata sheet dated February 17, 2017. If you could please confirm that you were referencing your deposition transcript or your errata sheet, I would appreciate it. If you are referring to a completely different document, I would appreciate you sending me a copy prior to including it in the bound Record on Appeal.

Secondly, I would respectfully ask you to remove several documents from the Designation of Matter you filed with the Court of Appeals, as they clearly could not have been presented to the trial court because they did not exist at the time of the summary judgment hearing. Those documents would include:

1. Appellate Email Declined Game Football, Arbitr September 14, 2017 (Designation of Matter No. 105)
2. Appellate Calendar of Football and Volleyball Games in Arbitr September 2017 (Designation of Matter No. 106)



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ROBINSON

April 9, 2018  
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3. Appellate harassment by the SCHSL September 14, 2017 (Designation of Matter No. 107)
4. Email Office of South Carolina State Senator C. Ross Turner September 15-21, 2017 (Designation of Matter No. 113)
5. Transcript of Court Proceeding dated September 20, 2016, Judge Couch (Designation of Matter No. 132)
6. Transcript of Court Proceeding dated November 2, 2016, Judge Verdin (Designation of Matter No. 133)

Additionally, I would respectfully ask that you provide me with a copy of the following documents referenced in your Designation of Matter: (1) Appellate SCHSL Arbiter Website/ Announcements Bob Wnukowski (Designation No. 102); (2) Arbiter Appellate Game Schedule, Group, Date, Sport, Site, Home, Away, Fees (Designation No. 112); and (3) Emails Earl Richards to Appellate (Designation No. 123). If it is too burdensome for you to provide copies of these documents, it would be fine if you let me know the specific date or specific manner in which they were originally transmitted to me.

I assure you that I am only asking for clarification on these documents so that any disputes can be resolved before you prepare the Record on Appeal. As you are aware, the appellant is responsible for preparing the Record on Appeal in compliance with Rule 210 and Rule 267 of the South Carolina Appellate Court Rules. That means the appellant must take all documents designated by all parties to the appeal and arrange them as specified in Rule 210(c), SCACR. The appellant also must comply with Rule 267, SCACR, which requires the Record on Appeal be bound in volumes not exceeding 250 sheets apiece. Furthermore, in addition to serving Ms. Hurley and me with a bound copy of the Record on Appeal, Rule 210(b), SCACR, mandates that the appellant file fifteen (15) copies of the Record on Appeal with the Clerk of the Court of Appeals, with one copy remaining unbound.

As you may imagine, it can be costly and time-consuming to prepare the Record on Appeal. If we do not get clarification from you on some of the documents in question until after we receive the Record on Appeal, we may have no choice but to file a Motion to Strike those documents from the Record if they do not comply with Rule 210(c), which states that "The Record shall not, however, include matter which was not presented to the lower court or tribunal." If we are successful in getting those documents removed from the Record on Appeal, the Court of Appeals may require you to resubmit the Record a second time.

Therefore, if we have any additional disagreements about appropriate matter to be included in the Record on Appeal, my hope is that those disagreements can be resolved before you prepare eighteen



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copies of the Record on Appeal (fifteen for the Court and three for the parties). I would ask that you let me know by Friday, April 13, as to whether you will voluntarily remove numbers 105, 106, 107, 113, 132, and 133 from your Designation of Matter. I also look forward to hearing from you regarding the affidavit in question and the three other documents I mentioned above. If I do not hear from you by April 13<sup>th</sup>, I will have no choice but to file a Motion to Strike. If you have any additional questions or concerns, please do not hesitate to contact me.

With warmest regards, I remain

Very truly yours,

A handwritten signature in black ink, appearing to read 'J. Michael Montgomery'.

J. Michael Montgomery

cc: Sarah Day Hurley, Esquire

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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**RECEIVED**

APPEAL FROM GREENVILLE COUNTY  
In The Court of Common Pleas

APR 13 2018

SC Court of Appeals

The Honorable Perry H. Gravely, Circuit Court Judge

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Case No.: 2016-CP-23-02113

Appellate Case No.: 2017-001147

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Aminah A. Richburg ..... Appellant,

v.

E.A. "Rico" Williams, Director, District One S.C. Basketball Officials  
Associations and the South Carolina High School League. .... Respondents.

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**CERTIFICATE OF SERVICE**

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I, the undersigned legal assistant of the law offices of Sowell Gray Robinson Stepp & Laffitte, L.L.C., attorneys for Defendant, South Carolina High School League, do hereby certify that I have served Appellant and all counsel in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same by United States Mail, postage prepaid, to the following address(es):

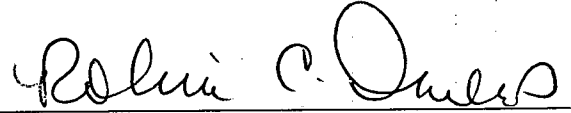
**Pleadings:**

Respondents' Joint Motion to Strike Appellant's Amended Designation of Matter

**Counsel Served:**

Ms. Aminah A. Richburg  
217 Plum Creek Lane  
Greenville, South Carolina 29607

Sarah Day Hurley, Esquire  
Turner Padgett Graham & Laney, P.A.  
Post Office Box 1509  
Greenville, South Carolina 29602



Robin C. Owens  
Legal Assistant

Columbia, South Carolina

4/13 2018.



**SOWELL GRAY  
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Litigation + Business

MICHAEL MONTGOMERY

DIRECT 803 231.7833 DIRECT FAX 803 231.7890

mmontgomery@sowellgray.com

April 13, 2018

**RECEIVED**

APR 13 2018

SC Court of Appeals

Via Hand Delivery

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

Re: Aminah A. Richburg v. E.A. "Rico" Williams, Director, District  
One SC Basketball Officials Associations, and the South  
Carolina High School League  
Appellate Case No. 2017-001147  
Our File No. 5346/1536

Dear Ms. Kitchings:

Enclosed for filing are the original and seven copies of Respondents' Joint Motion to Strike Appellant's Amended Designation of Matter with proof of service and filing fee in the above matter. Please return a filed copy to me via our courier.

By copy of this letter to *pro se* Appellant and counsel shown below, I am serving a copy of same upon them by mail. Thank you for your assistance.

Sincerely,



J. Michael Montgomery

JMM:rc0  
Enclosures

cc: Ms. Aminah A. Richburg  
Sarah Day Hurley, Esquire  
Vordman Carlisle Traywick, III, Esquire  
Rebecca Laffitte, Esquire