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S.C. SUPREME COURT

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.....

Defendants.
~~Petitioner,~~

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

APPENDIX

FRANK L. VALENTA, JR., SC Bar # 5682
General Counsel
PHILIP S. PORTER, SC Bar # 4526
Deputy General Counsel
BRANDY A. DUNCAN, SC Bar # 72052
Assistant General Counsel
SOUTH CAROLINA DEPARTMENT OF MOTOR
VEHICLES
10311 Wilson Boulevard
Post Office Box 1498
Blythewood, South Carolina 29016-0020
Telephone: 803.896.9900
Fax: 803.896.9901
Attorneys for Petitioner

Michael Laubshire, Esquire
455 Saint Andrews Road, Suite E-1
Columbia, South Carolina 29210
Telephone: 803-708-4755
Fax: 803-708-4888
Attorney for Respondent

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The South Carolina Court of Appeals

Melissa Spalt, Respondent,

v.

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

Of whom South Carolina Department of Motor Vehicles
is the Appellant.

Appellate Case No. 2015-002535

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

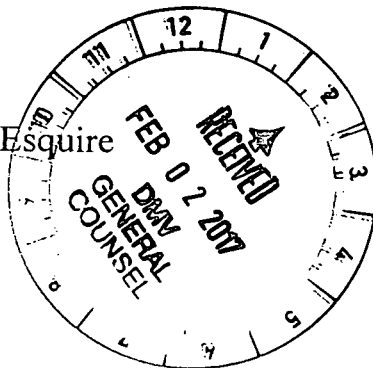
Thomas E. Huff J.

Paul E. Short, Jr. J.

James E. Moore A.J.

Columbia, South Carolina

cc: Brandy Anne Duncan, Esquire



FILED

February 1, 2017

Frank L. Valenta, Jr., Esquire
Philip S. Porter, Esquire
Michael Vincent Laubshire, Esquire
Harold W. Funderburk, Jr., Esquire

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Melissa Spalt, Respondent,

v.

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

Of whom South Carolina Department of Motor Vehicles
is the Appellant.

Appellate Case No. 2015-002535

Appeal From The Administrative Law Court
Harold W. Funderburk, Jr., Administrative Law Judge

Unpublished Opinion No. 2016-UP-475
Submitted October 1, 2016 – Filed November 9, 2016

APPEAL DISMISSED

Frank L. Valenta, Jr., Philip S. Porter, and Brandy Anne
Duncan, all of the South Carolina Department of Motor
Vehicles, of Blythewood, for Appellant.

Michael Vincent Laubshire, of the Laubshire Law Firm,
LLC, of Columbia, for Respondent.

PER CURIAM: The South Carolina Department of Motor Vehicles appeals an order by the Administrative Law Court (ALC) reversing the Office of Motor Vehicle Hearings' decision to deny Melissa Spalt's motion for a continuance and dismiss her contested case challenging the implied consent suspension of her driving privileges. Because the ALC's order is not a final decision, we dismiss this appeal. See *Charlotte-Mecklenburg Hosp. Auth. v. S.C. Dep't of Health & Envtl. Control*, 387 S.C. 265, 266, 692 S.E.2d 894, 894 (2010) ("The right of appeal arises from and is controlled by statutory law."); *Atlas Food Sys. & Servs., Inc. v. Crane Nat'l Vendors Div. of Unidynamics Corp.*, 319 S.C. 556, 558, 462 S.E.2d 858, 859 (1995) ("The general rule of statutory construction is that a specific statute prevails over a more general one."); *Charlotte-Mecklenburg*, 387 S.C. at 266, 692 S.E.2d at 894 ("[A]lthough [section] 14-3-330 permits appeals from interlocutory orders . . . , that section is inapplicable in cases where a party seeks review of a decision of the ALC because the more specific statute, [section] 1-23-610, limits review to final decisions of the ALC."); S.C. Code Ann. § 1-23-610(A)(1) (Supp. 2015) (providing for judicial review by this court of "a final decision" of the ALC); *Charlotte-Mecklenburg*, 387 S.C. at 267, 692 S.E.2d at 895 ("A final judgment disposes of the whole subject matter of the action or terminates the particular proceeding or action, leaving nothing to be done but to enforce by execution what has been determined."); *id.* at 267, 692 S.E.2d at 894 ("If there is some further act which must be done by the court prior to a determination of the rights of the parties, the order is interlocutory.").

APPEAL DISMISSED.¹

HUFF and SHORT, JJ., and MOORE, A.J., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT
The Honorable H.W. Funderburk, Jr., Administrative Law Judge

Appellate Case No. 2015-002535

Melissa Spalt Respondent,

v.

South Carolina Department of Motor Vehicles and
South Carolina Department of Public Safety Appellants.

Of Whom the South Carolina Department of Motor Vehicles is Appellant

RECORD ON APPEAL

FRANK L. VALENTA, JR., SC Bar # 5682
General Counsel
PHILIP S. PORTER, SC Bar #4526
Deputy General Counsel
BRANDY A. DUNCAN, SC Bar #72052
South Carolina Department of Motor Vehicles
10311 Wilson Boulevard
Post Office Box 1498
Blythewood, South Carolina 29016-0020
Telephone: (803) 896-9900
Facsimile: (803) 896-9901
Email: hearingsprocessingunit@scdmv.net
ATTORNEYS FOR APPELLANT

MICHAEL LAUBSHIRE, SC Bar # _____
The Laubshire Law Firm, LLC
455 Saint Andrews Road, Suite E-1
Columbia, South Carolina 29210-4487
Telephone: (803) 708-4755
Facsimile: (803) 708-4888
Email: michael@laubshirelaw.com
ATTORNEY FOR RESPONDENT

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SC Court of Appeals

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SC Court of Appeals

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STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Melissa Spalt,

Appellant,

vs.

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

Respondents.

Docket No.: 15-ALJ-1-043

FINAL ORDER
AND
ORDER OF REMAND

FILED

DEC 01 2015

SC ADMIN. LAW COURT



This matter is before the South Carolina Administrative Law Court ("ALC" or "Court") pursuant to the Notice of Appeal filed by Melissa Spalt ("Appellant") on July 10, 2015. Appellant seeks review of the Order of Dismissal from the Office of Motor Vehicle Hearings ("OMVH").

On appeal, Appellant argues that the Hearing Officer for OMVH committed reversible error in denying Appellant's Motion for Continuance under Rule 601(c), SCACR, and OMVH Rule 10(B), and dismissing the case for Appellant's failure to appear at the hearing.

BACKGROUND

Appellant was arrested on April 5, 2015, and refused to submit to a breath sample. Appellant was found to be in violation of S.C. Code Ann. § 56-5-2950 (Supp. 2014), and the arresting officer issued a Notice of Suspension form pursuant to S.C. Code Ann. § 56-5-2951 (Supp. 2014). Appellant timely requested a contested case hearing on April 10, 2015.

OMVH e-mailed a Notice of Hearing to all parties on April 14, 2015, for a hearing scheduled for June 23, 2015. The attorney for Appellant requested a continuance of the hearing on June 18, 2015, due to a conflicting court appearance.¹ OMVH e-mailed an Order of Continuance and Notice of Hearing on June 24, 2015, rescheduling the hearing for August 11, 2015.

The attorney for Appellant requested another continuance on August 7, 2015, due to a conflicting court appearance. Counsel for Appellant had a trial before the Magistrate Court also scheduled for August 11, 2015. The summons from Magistrate's Court was sent on July 15, 2015. Appellant's

¹ The Record is unclear as to how this request was made and processed.

Motion for Continuance was not signed by the attorney, nor was the Motion served on all parties.

OMVH e-mailed Appellant the denial of the request for a continuance on August 10, 2015.² The attorney for Appellant asked the Hearing Office to reconsider the Motion for Continuance.

OMVH issued an Order of Dismissal on August 12, 2015. OMVH determined that Counsel for Appellant "did not follow the requirement of Rule 601 or the procedure for requesting a continuance at the OMVH pursuant to Rule 10 (B)." Specifically, the Hearing Officer noted that "the motion was not even made with at least two full business days as required by Rule 10 (B)..." The Hearing Officer also noted that Counsel for Appellant did not notify OMVH when the conflict became apparent. Because neither Appellant nor Counsel for Appellant appeared at the hearing, the Hearing Officer dismissed the case.

Appellant filed a Motion to Reconsider on August 17, 2015, which was dismissed as moot on September 16, 2015. Appellant filed a notice of appeal to the ALC on September 11, 2015.

ISSUE ON APPEAL

- 1) Whether the Hearing Officer's decision was made upon unlawful procedure, affected by error of law, or characterized by an abuse of discretion.

STANDARD OF REVIEW

The ALC has jurisdiction to hear appeals of OMVH decisions pursuant to S.C. Code Ann. § 1-23-660(D) (Supp. 2014). The OMVH is authorized by law to determine contested cases arising from the Department. S.C. Code Ann. § 1-23-600 (Supp. 2014). As the OMVH is an "agency" under the South Carolina Administrative Procedures Act ("APA"), the APA's standard of review governs appeals from the decisions of OMVH. *See* S.C. Code Ann. § 1-23-310(2) (Supp. 2014). The standard used by appellate bodies, including the ALC, to review agency decisions is provided by S.C. Code Ann. § 1-23-380(5) (Supp. 2014). This Section provides:

The court may reverse or modify the decision [of an agency] if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions or decisions are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;

² There is no proof in the Record that OMVH served the denial of the Motion for Continuance on all parties to the proceeding.

- (e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

"The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" *S.C. Nat. Bank v. Cent. Carolina Livestock Mkt., Inc.*, 289 S.C. 309, 313, 345 S.E.2d 485, 488 (1986) (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552, 85 S.Ct 1187, 1191, 14 L.Ed.2d 62 (1965)). "[D]ue process is a flexible concept, and the requirements of due process in a particular case are dependent upon the importance of the interest involved and the circumstances under which the deprivation may occur." *Id.* (citations omitted).

An agency's conclusions of law are freely reviewable. Typically, a Court defers to the agency's construction of their own rules and regulations; however, if the plain language of the rules are contrary to the agency's interpretation, the Court will reject the agency's interpretation. *Brown v. S.C. Dep't of Health and Envtl. Control*, 348 S.C. 507, 515, 560 S.E.2d 410, 415 (2002).

"An abuse of discretion occurs when the decision is controlled by some error of law or is based on findings of fact that are without evidentiary support." *Eason v. Eason*, 384 S.C. 473, 479, 682 S.E.2d 804, 807 (2009) (citing *Degenhart v. Burriss*, 360 S.C. 497, 500, 602 S.E.2d 96, 97 (Ct. App. 2004)).

"The granting or refusal of a motion for continuance is within the discretion of the trial judge and his disposition of such a motion will not be reversed on appeal unless it is shown that there was an abuse of discretion to the prejudice of appellant." *State v. Lytchfield*, 230 S.C. 405, 409, 95 S.E.2d 857, 859 (1957).

DISCUSSION

Appellant argues that the Hearing Officer's decision dismissing the case was an error of law. This Court agrees. The issue in this case involves the interpretation of OMVH Rule 10(B) and Rule 601(c), SCACR.

OMVH Rule 10(B) reads, in part:

A motion for continuance shall be in writing, state with specificity the reasons therefor, and be signed by the requesting party or representative. All motions must

be filed at least two business days prior to the scheduled hearing. Motions filed less than two business days prior to the scheduled hearing will be granted only for good cause shown. Motions not served upon all parties will not be granted except in an emergency. Attorneys with court conflicts must include documentation of the call to court with the motion and the documentation must include the case name, the court, the county, the docket number, the presiding judge's name and telephone number, and the date the attorney received notice of the conflicting court appearance. Attorneys must notify the Office as soon as possible when a court conflict occurs.

Rule 601(c), SCACR, states that "[a]n attorney who cannot make a scheduled appearance because of the priority established by paragraph (a) of this rule shall notify the affected tribunals as soon as the conflict becomes apparent." Magistrate's Court has priority over OMVH Hearings. *See* Rule 601(a), SCACR.

In the Order of Dismissal, the Hearing Officer concluded that the attorney for Appellant did not follow the requirement of Rule 601, SCACR, or OMVH Rule 10(B). The Hearing Officer noted that the attorney for Appellant did not notify the OMVH until well after receiving notice of the conflict between Magistrate's Court and OMVH. The Hearing Officer further noted that the attorney for Appellant did not make the motion "with at least two full business days."

The summons to the jury trial for Magistrate's Court was sent on July 15, 2015. However, court schedules change, and a conflict may only become apparent when it becomes clear that neither of the cases will be rescheduled. Further, the purpose of Rule 601, SCACR, is to prevent an individual from being deprived of counsel in situations similar to the one before the Court in which an attorney is forced to abandon responsibility to one client in order to serve another. In denying the Motion for Continuance, the Hearing Officer was denying Appellant representation at the OMVH hearing. Therefore, the Hearing Officer abused his discretion by denying a Motion for Continuance in the face of a documented priority conflict under Rule 601, SCACR.

The OMVH Hearing Officer also found that the attorney for Appellant did not comply with OMVH Rule 10(B) because the Motion for Continuance was not filed with at least two full business days remaining before the hearing. The Motion for Continuance was filed on August 7, 2015, and the hearing was to be held on August 11, 2015. While the Hearing Officer is correct in noting that the Motion for Continuance was filed less than two business days prior to the hearing, OMVH Rule 10(B) is not that rigid. OMVH Rule 10(B) allows for a Motion filed less than two business days if good cause is shown. Here, there is good cause evidenced by the documented priority conflict. Although attorney for Appellant did not satisfy all of the technicalities of OMVH Rule 10(B), the

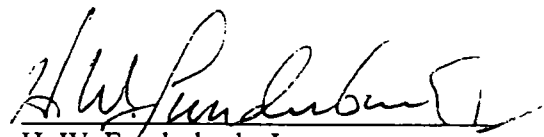
Motion was sufficient to inform the Hearing Officer of a genuine conflict that prevented Appellant's attorney from attending the OMVH hearing. The Hearing Officer committed error by concluding that a Motion for Continuance could only be filed with at least two full business days prior to the hearing and by not considering whether good cause for a continuance had been shown when the request is made less than two business days prior to the hearing.

Respondent, in its brief, contends that this case is similar to *Brockman v. S.C. Dep't of Motor Vehicles and Mauldin Police Dep't*, Docket No. 13-ALJ-21-0049-AP, 2014 WL 2895374 (Admin Ct. 2014). In *Brockman*, the ALC concluded that the Hearing Officer's denial of a Motion for Continuance was not an abuse of discretion. *Id.* However, in *Brockman*, Appellant was represented by substitute counsel and was not prejudiced by the denial of the Motion for Continuance, because a full hearing was held. *Id.* Here, there was no substitute counsel, and Appellant's case was not decided on the merits, but rather dismissed because counsel was not able to appear. Therefore, *Brockman's* facts are substantially different.

The OMVH Hearing Officer's decision to deny the Motion for Continuance and, ultimately, to dismiss the case, was made by unlawful procedure, controlled by an error of law, and characterized by an abuse of discretion, any one of these would justify reversal and remand for a hearing on the merits. It is therefore,

ORDERED that the decision of the Office of Motor Vehicles Hearings is **REVERSED**, and the case is **REMANDED** for a hearing on the merits.

AND IT IS SO ORDERED.


H. W. Funderburk, Jr.
Administrative Law Judge

December 1, 2015
Columbia, South Carolina

FILED

DEC 01 2015

SC ADMIN. LAW COURT

CERTIFICATE OF SERVICE

I, Julia M. Miller, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).

Michael Laubshire, Esq.
455 St. Andrews Rd., St., E-1
Columbia, SC 29210

SCDMV
10311 Wilson Boulevard - Building C
Blythewood, South Carolina 29016

SCDPS
10311 Wilson Blvd.
Blythewood, SC 29016

December 1, 2015
Columbia, S.C.



Julia M. Miller
Judicial Law Clerk

FILED

DEC 01 2015

SC ADMIN. LAW COURT

REDACTED

Nikki R. Haley
Governor



Kevin A. Shwedo
Executive Director

State of South Carolina
Department of Motor Vehicles

December 2, 2015

The Honorable H.W. Funderburk, Jr.
Administrative Law Judge
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201

RE: *Melissa Spalt vs. South Carolina Department of Motor Vehicles & South Carolina Department of Public Safety*
Docket No. 15-ALJ-21-0431-AP
OMVH Docket No. 15-OMVH-01-1916-CC
SCDL No.

Dear Judge Funderburk:

In addition to the cases already cited in *Brief of Respondent* filed on November 16, 2015, I would also refer you to the cases *South Carolina Department of Motor Vehicles v. Willie Pitts*, 06-ALJ-21-0592 and *South Carolina Department of Motor Vehicles v. Alana Marie Erwin*, 06-ALJ-21-0591. These cases are cited for the same proposition already discussed in detail on page 8, *Brief of Respondent* and raise no new legal issues in this case.

If you have any questions, please feel free to contact me at (803) 896-9937.

Sincerely,

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

Brandy A. Duncan
Assistant General Counsel

cc: Michael Laubshire, Esquire

APPELLANT'S REPLY BRIEF

Phil Addington, Hearing Officer

Michael Laubshire, Esq.
455 Saint Andrews Road, Ste E-1
Columbia, SC 29210-448
(803)708-4755
Attorney for Appellant

REPLY TO ARGUMENT

THE HEARING OFFICER ERRED IN DENYING THE
APPELLANTS REQUEST FOR A CONTINUANCE

- A. Rule 601 (c) of the South Carolina Rules states “ ... shall notify the affected tribunals as soon as the conflict becomes apparent.” Appellant’s attorney requested a continuance as soon as the hearing became “apparent.” In this matter my office requested a continuance as soon as the conflict became apparent. Upon examining the calendar, it became apparent for the first time that there was in fact a conflict. It was then and only then that the need for a continuance became apparent and necessary. At the time I requested the continuance, it was two business days prior to the scheduled hearing, Rule 10(A) OMVH Rules. In addition, I provided documentary evidence to support that there was good cause being shown to request same. The conflict became apparent to me and my office on August 7, 2015 and that is when a request for continuance was sent.
- B. The Magistrate Court notice that was dated for July 15, 2015 does not mean that we received it on July 15, 2015. In addition, there is absolutely no evidence that even suggests when it was delivered or what the postmark on the envelope was. The notice was calendared in my office and became apparent on or just before August 7, 2015 which is the same day we requested the continuance in full compliance with rule 601(c) SCACR. Appellant’s counsel did exactly as was required by the rule as soon as the conflict became apparent. Respondent alleges this conflict became apparent immediately upon the July 15, 2015 this is just not true. The minute this conflict became apparent to my office a continuance was requested. This case is very different from the Brockman v.

SCDMV and Mauldin Police Department, 2014 WL 2895374, 13-ALJ-21-0049-AP (SCALC 14) in at least two very important ways. First, in general session's court there is a first and second and sometimes third appearance system wherein you get personal service of the date and time of the trial. However, In this case we are dealing with the magistrate court, wherein we received written notice by mail and it was received only a day or two before it was put onto my calendar which than showed conflict. Secondly, in Brockman there was an actual hearing where the Appellant was represented by substitute counsel. In this case we did not have personal service but were served by mail and secondly there was no substitute counsel to represent the appellant at the hearing.

- C. The hearing officer's reason for the denial of this motion was simply because the matter had been continued once before this was clearly an abuse of discretion. (ROA 57). Especially since the opposing party consented to the continuance. (ROA 55). In addition, it was clearly evidenced good cause shown that I was going to be in a jury trial in Richland County and continuing this matter would not prejudice either party. The Appellant will be severely prejudiced by this matter being dismissed without opportunity to be heard.
- D. All previous business done with the Office of Motor Vehicle Hearings has been via e-mail in the same manner as done in this case. Although opposing counsel claims that "none of these requests were written as motions, none contained the caption of the case, some did not contain the e-mail address of the person or representative filing the motion, and none were signed by the attorney." This has been the normal course of business with the OMVH for the past several years as is evidenced by the OMVH hearing officer's emailed response. The prior request for continuance that was sent on June 18, 2015 was

sent via e-mail in letter form and was granted. There have never been any issues with any preceding correspondence in letter form as that is the way business has always been handled with the OMVH. There was no request or instruction by the OMVH hearing officer or his staff that the notice or e-mail request did not comply with the rules and would not be considered or heard. In addition, my office has made request for continuances right around the same time as this case but unlike this case those requests were granted.

- E. "Motions filed less than two business days prior to the scheduled hearing will be granted only for good cause shown." The request was made due to a scheduled jury trial in the Richland Magistrates Court, in which Rule 601 (a) states, Magistrates Courts takes priority over "other Administrative Bodies or Officials." Considering the trial was in the magistrate's court takes precedence over a hearing in the OMVH. Respondent's argument that the request was not made a full two business days because it was not a full forty-eight hours is not what the rule requires. The rule simply states that the request must be made within two (2) business days of the scheduled hearing. Appellant requested a continuance exactly two (2) business days prior to the hearing. There is nothing in the order or the rules requiring 48 hours as Respondent would suggest.
- F. Due to there being an actual trial scheduled, the request for continuance was not mentioned as emergent because there was due time to have the case continued, as previously done, without any issue and in the time prescribed by the above mentioned rule.
- G. Any and all requests for continuances were emailed to all parties of record listed on the original notice of hearing.

Respectfully submitted,



Michael Laubshire, Esq.
455 St. Andrews Rd., Ste. E-1
Columbia, SC 29210-4487
(803)708-4755 (Phone)
(803)708-4888 (Fax)
Attorney for the Appellant

November 23, 2015
Columbia, SC

STATE OF SOUTH CAROLINA
OFFICE OF MOTOR VEHICLE HEARINGS

Melissa Spalt

Appellant,

v.

South Carolina Department of Motor
Vehicles,

Respondent.

Docket No.: 15-ALJ-21-0431-AP

PROOF OF SERVICE

PERSONALLY appeared before me, Victoria L. Ford, who under oath states she is an employee with The Laubshire Law Firm, LLC and did mail with the proper postage affixed thereto a copy of the following:

Appellant's Reply Brief

That said pleadings were addressed to opposing counsel as follows:

Trooper J. McWhorter
South Carolina Highway Patrol
1054 Ehrenclou Drive
Camden, SC 29020

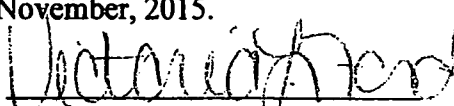
Phil Addington, Hearing officer
SC Administrative Law Court
1205 Pendleton Street, Ste 325
Columbia, SC 29201

Lieutenant R.D. Grubbs
South Carolina Highway Patrol
South Carolina Department of Public Safety
1626 Shop Road
Columbia, SC 29201

Frank L. Valenta
Office of General Counsel
P.O. Box 1498
Blythewood, SC

And were further mailed on this 23rd day of November, 2015.

Columbia, SC
November 23, 2015


Victoria L. Ford, Paralegal

SWORN TO BEFORE ME THIS

23 day of November, 2015



Notary Public of South Carolina

My Commission expires: 11/1/21

THE STATE OF SOUTH CAROLINA
IN THE DISTRICT COURT OF THE FIRST JUDICIAL CIRCLE
OF THE COUNTY OF _____

ARTHUR THOMPSON (PH) 21X0124
 OFFICE OF MOTOR VEHICLE SAFETY
 DEPARTMENT OF TRANSPORTATION

IN ADDITION, ON 11 FEBRUARY 1968,

[illegible]

SCIENTIFIC AMERICAN DEPARTMENT OF MOTOR VEHICLES
AND SOLERA EUROPEA DEPARTMENT OF PUBLIC SAFETY AND MOTOR VEHICLES

CPA Whom the South Carolina Department of Motor Vehicles will Recognize

BRIEF OF RESPONDENT

REF ID: A66372

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PHILLIPS & SON

Depuis 15 ans

1892-1893

4231132-10 (F)

Seiner Majestät

214

1947-1948

THURSDAY, APRIL 8

File # 100-30

பி. என். 803-ஆம்.

உணர்வுப் பிழைப்புகள்

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Counsel for the

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Counsel for the Respondent

THE STATE OF SOUTH CAROLINA
IN THE ADMINISTRATIVE LAW COURT

Melissa Spalt,

Appellant,

v.

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

Respondent.

Docket No. 15-ALJ-21-0431-AP
SCDL No. 011208155

BRIEF OF RESPONDENT
SOUTH CAROLINA DEPARTMENT
OF MOTOR VEHICLES

FILED

NOV 16 2015

This matter comes before the Administrative Law Court pursuant to the appeal of Melissa Spalt, who seeks review of the August 12, 2015 Order of Dismissal which dismissed with prejudice her challenge to an implied consent suspension and left the suspension in place. The Respondent, South Carolina Department of Motor Vehicles (hereinafter, "SCDMV" or "DMV"), seeks to have the Order of Dismissal affirmed and the suspension remain.

STATEMENT OF THE ISSUE ON APPEAL

1. THE HEARING OFFICER PROPERLY DISMISSED APPELLANT'S CHALLENGE TO HER IMPLIED CONSENT SUSPENSION.
2. THE HEARING OFFICER DID NOT ERROR BY DISMISSING THE CASE WITHOUT HOLDING A HEARING.

STATEMENT OF THE CASE

The Appellant was arrested on April 5, 2015 for an offense arising out of an act alleged to have been committed while she was driving a motor vehicle while under the influence of alcohol, drugs, or a combination of alcohol and drugs (ROA, p. 92-93). Upon refusal to submit to a breath sample, Appellant was found to be in violation of S.C. Code §56-5-2950, and the arresting officer issued a Notice of Suspension form pursuant to S.C. Code §56-5-2951. *Id.* Appellant timely requested a contested case hearing on April 10, 2015. *Id.*

On April 14, 2015, the Office of Motor Vehicle Hearings (hereinafter, "OMVH") e-mailed a Notice of Hearing to all parties for a hearing scheduled for June 23, 2015 (ROA, p. 87-91). This Notice of Hearing was sent again to Appellant's Counsel only on June 12, 2015 (ROA, p. 86). On Thursday, June 18, 2015, Appellant requested a continuance of the hearing scheduled for Tuesday, June 23, 2015 due to a conflicting Court appearance her Counsel had in the Magistrate's Court (ROA, p. 77-80).¹ The conflicting Magistrate's Court appearance had been noticed to Appellant's Counsel on May 19, 2015 (ROA, p. 80). On June 24, 2015, the OMVH e-mailed an Order of Continuance and Notice of Hearing to all parties (ROA, p. 76). This Order rescheduled the hearing for August 11, 2015. *Id.*

On Friday, August 7, 2015 at 12:30 p.m., Appellant requested a continuance of the hearing scheduled for Tuesday, August 11, 2015 due to a conflicting Court appearance her Counsel had in the Magistrate's Court (ROA, p. 69-74).² The conflicting Magistrate's Court appearance had been noticed to Appellant's Counsel on July 15, 2015 (ROA, p. 74). On Sunday, August 9, 2015, the Hearing Officer denied the request for continuance of the August 11, 2015 hearing (ROA, p. 68). On Monday, August 10, 2015 at 8:02 a.m., the OMVH e-mailed Appellant's Counsel the denial of the request for continuance issued by the Hearing Officer the day before (ROA, p. 67).³ Appellant's Counsel responded the same day at 1:28 p.m. and asked the Hearing Officer to reconsider the request for continuance.⁴ *Id.* On Monday, August 10, 2015

¹ Although this Request was copied via e-mail only to the arresting officer, Trooper R. D. Grubbs of the South Carolina Highway Patrol, the DMV, a party to this case, was not copied on this request and was not aware the request had been made until the June 24, 2015 Order of Continuance and Notice of Hearing was issued by the OMVH.

² Although this Request was copied via e-mail only to the arresting officer, Trooper R. D. Grubbs of the South Carolina Highway Patrol, the DMV, a party to this case, was not copied on this request and was not aware the request had been made until the August 12, 2015 Order of Dismissal was issued by the OMVH.

³ DMV, a party to this case, was not copied on this e-mail from the OMVH and, it appears, Trooper R. D. Grubbs was also not copied on this e-mail from the OMVH.

⁴ This request for reconsideration was not copied to DMV or Trooper R. D. Grubbs of the South Carolina Highway Patrol, and, in fact, was send directly to the Hearing Officer as well as the Hearing Officer's Scheduling Assistant.

at 4:41 p.m., Appellant's Counsel filed a second Motion for Continuance (ROA, p. 55-65).⁵ On Monday, August 10, 2015 at 5:02 p.m., Trooper R. D. Grubbs did e-mail Frances Inabinet of the OMVH and Appellant's Counsel's paralegal stating "No objections" to Appellant's request for a continuance.⁶

On August 12, 2015, the Hearing Officer issued an Order of Dismissal ruling that Appellant's Counsel "did not follow the requirement of Rule 601 or the procedure for requesting a continuance at the OMVH pursuant to Rule 10 (B)," that Appellant's request for a continuance had been denied, the "parties were notified of the denial on the morning of Monday, August 10, 2015," and that Appellant nor her Counsel appeared at the hearing (ROA, p. 21-22). This decision was served on all the parties via e-mail on August 13, 2015 (ROA, p. 23-24). On August 17, 2015, Appellant filed a Motion for Reconsideration of the Order of Dismissal (ROA, p. 27-46).⁷ Appellant's Motion for Reconsideration was primarily based on two (2) points: 1) that Appellant's second Motion for Continuance e-mailed at 4:41 p.m. on Monday, August 10, 2015 had not been ruled on; and 2) that "attorneys with court conflicts must serve the continuance upon all parties... As required by the rules all parties of record were notified of the request for a continuance." (ROA, p. 28-30).⁸ On September 11, 2015, Appellant filed her

All prior e-mails from Appellant's Counsel had been sent only to the Hearing Officer's Scheduling Assistant. Further, the DMV, only became aware of this request for reconsideration when the Record on Appeal was filed by the OMVH on or about October 7, 2015.

⁵ Although this Request was copied via e-mail only to the arresting officer, Trooper R. D. Grubbs of the South Carolina Highway Patrol, the DMV, a party to this case, was not copied on this request and was not aware the request had been made until the August 12, 2015 Order of Dismissal was issued by the OMVH.

⁶ The DMV, a party to this case, was not copied on this e-mail and was still unaware of the requested continuance of the August 11, 2015 hearing.

⁷ There appears to be a Bates numbering error in the Record on Appeal, as the page numbers in the Record on Appeal in the possession of DMV jump from page 39 to page 46. No pages number 40-45 are contained in the Record on Appeal in the possession of the DMV.

⁸ Despite being listed by the Appellant in the caption to this Motion as a Petitioner, the DMV was not copied on this Motion and was not even aware the Motion had been made until the September 11, 2015 Notice of Appeal was received by DMV on September 15, 2015. Further, DMV did not receive any copy of the Motion for Reconsideration until the Record on Appeal was served on DMV by the OMVH on October 7, 2015.

Notice of Appeal with the Administrative Law Court (ROA, p. 5-20).⁹ On September 16, 2015, the Hearing Officer issued an Order Dismissing Respondent's Motion for Reconsideration (ROA, p. 25). This Order was served on the parties on the same date (ROA, p. 26).

As of the filing of this Brief, Appellant has not served DMV with copies of the following:

- 1) request for continuance on June 18, 2015;
- 2) request for continuance on August 7, 2015;
- 3) request for reconsideration of request for continuance on August 10, 2015 at 1:28 p.m.;
- 4) request for continuance dated August 10, 2015 and e-mailed to OMVH at 4:41 p.m.;
and
- 5) Motion for Reconsideration dated August 17, 2015.¹⁰

It is clear that Appellant is and was aware that DMV is a party to this action as DMV was served with Appellant's Notice of Appeal (ROA, p. 8) and listed as a Petitioner in Appellant's Motion for Reconsideration (ROA, p. 28).

STANDARD OF REVIEW

The scope of judicial review in cases such as this is limited by the Administrative Procedures Act, S.C. Code §1-23-380(A)(6).

(A) A party who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review....

⁹ DMV assumes Appellant has appealed the OMVH's Order of Dismissal dated August 12, 2015 and issued on August 13, 2015. DMV bases this assumption on Appellant's statement in her Notice of Appeal that she "gives notice of her Appeal from the Final Order and Decision of the [OMVH] issued on August 12, 2015..." DMV notes that no Final Order was attached to Appellant's Notice of Appeal as required by Rule 33, SCALCR, but that the only order issued in this case on August 12, 2015, as far as DMV is aware, is the Order of Dismissal dated August 12, 2015 and issued on August 13, 2015.

¹⁰ The Certificate of Service by Mail reflects that the Motion for Reconsideration was only mailed to the Hearing Officer, Trooper R. D. Grubbs, and Trooper McWhorter (ROA, p. 31).

(6) The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions or decisions are:

- (a) In violation of constitutional or statutory provisions;
- (b) In excess of the statutory authority of the agency;
- (c) Made upon unlawful procedure;
- (d) Affected by other error of law;
- (e) Clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
- (f) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

In *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 276 S.E.2d 304 (1981), our Supreme Court set out the standard of evidentiary review under the South Carolina Administrative Procedure Act:

[Section 1-23-380(g)(5)] specifically states: "The Court shall not substitute its judgment for that of the agency as to the weight of evidence on questions of fact." In addition, the statute states the decision under appeal must be "clearly erroneous" in view of the substantial evidence on the whole record.

We, therefore, caution the Bench and Bar as to the limitations upon the application of the "substantial evidence" rules in reviewing the decision of administrative agencies. As stated in *Dickinson-Tidewater, Inc. v. Supervisor of Assess.*, 273 Md. 245, 329 A.2d 18, 25, the substantial evidence test "need not and must not be either judicial fact-finding or substitution of judicial judgment for agency judgment"; and a judgment upon which reasonable men might differ will not be set aside.

The Court further noted that:

The substantial evidence rule... means that we will not overturn a finding of fact by an administrative agency "unless there is no reasonable probability that the facts could be as related by a witness upon whose testimony the finding was based." (Citation omitted.)

See also *Schudel v. South Carolina Alcoholic Beverage Control Commission*, 276 S.C. 138, 276 S.E.2d 308 (1981); *Fast Stops, Inc. v. Ingram*, 276 S.C. 593, 281 S.E.2d 18 (1981).

An appeal from action of an administrative agency must be sustained if supported by substantial evidence. *Hamm v. American Telephone & Telegraph Co.*, 302 S.C. 211, 394 S.E.2d 842 (1990); *Lark v. Bi Lo, Inc.*, *supra*. In *Lark*, our Supreme Court quoted *Consolo v. Federal*

Maritime Commission, 383 U.S. 611, 16 L.Ed.2d 131, 86 S.Ct. 1118 (1966), to define substantial evidence:

We have defined "substantial evidence" as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."... "It must be enough to justify, if the trial were to a jury, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury..." This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence.

Lark, 276 S.C. at 136, 276 S.E.2d at 311. *See, also, Dorman v. DHEC*, 565 S.E.2d 119, 350 S.C. 159 (Ct. App. 2002); *Hamm v. South Carolina Public Service Commission and Wild Dunes Utilities, Inc.*, 311 S.C. 295, 422 S.E.2d 118 (1992).

A court cannot weigh the evidence and substitute its judgment for that of the agency upon a question as to which there is room for a difference of intelligent opinion. *Dorman v. DHEC*, *supra*; *Hamm v. American Telephone & Telegraph Co.*, *supra*; *Chemical Leaman Tank Lines v. South Carolina Public Service Commission*, 258 S.C. 518, 189 S.E.2d 296 (1972). The limited substantial evidence standard of review is intended only to assure that the agency's action is properly supported and that, therefore, no abuse of delegated authority occurred. *See Fowler v. Lewis*, 260 S.C. 54, 194 S.E.2d 191 (1973).

On review of the acts or orders of administrative agencies, the courts will presume, among other things, that the agency action is regular and correct, and that the orders and decisions of the agency are valid and reasonable. 73A C.J.S. *Public Administrative Law and Procedure* Section 220(a) (1983). Therefore, the burden is on the Petitioner to show convincingly that the order of the agency is without evidentiary support or is arbitrary or capricious as a matter of law. *Hamm v. South Carolina Public Service Commission*, 294 S.C. 320, 364 S.E.2d 455 (1988).

ARGUMENT

1. THE HEARING OFFICER PROPERLY DISMISSED APPELLANT'S CHALLENGE TO HER IMPLIED CONSENT SUSPENSION.

Rule 601, SCACR states:

(a) Order of Priority as Between Tribunals. In the event an attorney of record is called to appear simultaneously in actions pending in two or more tribunals of this State, the following list shall establish the priority of his obligations to those tribunals:

- (1) The Supreme Court.
- (2) The Court of Appeals.
- (3) The Commission on Judicial Conduct, the Commission on Lawyer Conduct, and the Committee on Character and Fitness.
- (4) The Circuit Court - General Sessions.
- (5) The Family Court - merits hearings involving child abuse, child-neglect and termination of parental rights upon approval of the Chief Judge for Administrative Purposes for the Family Court and notice to the Chief Judge for Administrative Purposes for the Circuit Court five days prior to the term of the Circuit Court.
- (6) The Circuit Court - Common Pleas, Jury Term.
- (7) The Family Court - all cases not referenced in (5) above.
- (8) The Circuit Court - Common Pleas, Non-Jury Term.
- (9) The Administrative Law Court.
- (10) Alternative Dispute Resolution Conferences conducted pursuant to the SC Court-Annexed ADR Rules.
- (11) The Probate Court.
- (12) **Magistrates and Municipal Courts.**
- (13) **Other Administrative Bodies or Officials.**

When a party or his counsel is in the process of a hearing or trial before a tribunal, he may not be required to appear in another tribunal having greater priority unless the tribunal with less priority grants a recess or continuance for that purpose.

(b) Conflict With Federal Courts. When times set for appearances before state and federal courts are in conflict, appearance shall have such priority as is appropriate. Courts and counsel shall have the obligation to adjust schedules to accord with the spirit of comity between the state and federal courts.

(c) Attorney to Give Notice. **An attorney who cannot make a scheduled appearance because of the priority established by paragraph (a) of this rule shall notify the affected tribunals as soon as the conflict becomes apparent.**

Emphasis added. In this case, the conflicting Magistrate's Court appearance had been noticed to Appellant's Counsel on July 15, 2015 (ROA, p. 74). Despite the July 15, 2015 notice, Appellant's Counsel did not notify the OMVH or Hearing Officer of the anticipated conflict until Friday, August 7, 2015 at 12:30 p.m., three (3) weeks and one (1) day after the conflict was apparent to Appellant's Counsel. Rule 601(c), SCACR requires attorneys to notify affected tribunals as soon as a conflict becomes apparent. Appellant's Counsel did not do so. For these reasons, the Hearing Officer's finding that "counsel did not follow the requirement of Rule 601" was appropriate and demonstrates no abuse of discretion. In South Carolina the grant or denial of a continuance is within the sound discretion of the Hearing Officer and is reviewable on appeal only when an abuse of discretion appears from the record. *Plyler v. Burns*, 373 S.C. 637, 650, 647 S.E.2d 188, 195 (2007) ("The grant or denial of a continuance is within the sound discretion of the trial judge and is reviewable on appeal only when an abuse of discretion appears from the record."); *Newman v. Old West, Inc., et al.*, 286 S.C. 394, 334 S.E.2d 275 (1985) (The trial judge's decision to grant or deny a continuance is a matter within his sound discretion.); and *State v. Lytchfield*, 230 S.C. 405, 95 S.E.2d 857 (1957) ("The granting or refusal of a motion for continuance is within the discretion of the trial judge and his disposition of such a motion will not be reversed on appeal unless it is shown that there was an abuse of discretion to the prejudice of appellant. A multitude of cases to this effect will be found in 7 S.C.Dig., Criminal Law, k586 et seq., p. 504 et seq. and supplement. Review of them shows that reversals of refusal of continuance are about as rare as the proverbial hens' teeth."). Thus, with no evidence of an abuse of discretion, the Hearing Officer's ruling must stand.

Furthermore, Rule 10, OMVH Rules states:

- A. Content and Filing. All motions shall be written, contain the caption of the case and the title of the motion, the docket number and the name, address,

telephone number and e-mail address of the person or representative filing the motion. The motion shall state with specificity the grounds for relief and the relief sought. All motions pertaining to the hearing shall be filed not later than ten days before the hearing date. Any party may file a written response to the motion within ten days unless the time is extended or shortened by the hearing officer.

- B. Motions for Continuance. A motion for continuance shall be in writing, state with specificity the reasons therefor, and be signed by the requesting party or representative. **All motions must be filed at least two business days prior to the scheduled hearing. Motions filed less than two business days prior to the scheduled hearing will be granted only for good cause shown. Motions not served upon all parties will not be granted except in an emergency.** Attorneys with court conflicts must include documentation of the call to court with the motion and the documentation must include the case name, the court, the county, the docket number, the presiding judge's name and telephone number, and the date the attorney received notice of the conflicting court appearance. **Attorneys must notify the Office as soon as possible when a court conflict occurs.** Law enforcement officers with court conflicts must include documentation of the call to court with the motion and the documentation must include the case name, the court, the county, the docket number, the presiding judge's name and telephone number, and the date the officer received notice of the conflicting court appearance. Law enforcement officers with training conflicts must submit documentation that sets out the date, place, and time of training, and the date the officer received notice of the conflicting training. Officers must notify the Office as soon as possible when a conflict occurs.

Emphasis added. Appellant's request for continuance on June 18, 2015; request for continuance on August 7, 2015; request for reconsideration of request for continuance on August 10, 2015 at 1:28 p.m.; and request for continuance dated August 10, 2015 and e-mailed to OMVH at 4:41 p.m. did not comply with Rule 10(A), OMVH Rules. Each of these requests was sent simply as a letter or e-mail to the OMVH, the Hearing Officer, or both. Specifically, none of these requests were written as a motion, none contained the caption of the case, some did not contain the e-mail address of the person or representative filing the motion, and none were even signed by an attorney. Rather each of these were signed by "Tori Ford" for Attorney Michael Laubshire or were sent via e-mail from "Victoria Ford, Paralegal." Therefore, Appellant Counsel's

attempts to file a "motion for continuance" were, in actuality, not motions. These attempts were merely letters requesting a continuance. While a letter may comply with the requirements of Rule 601, SCACR, it does not comply with the requirements of Rule 10, OMVH Rules.

This failure to comply with the requirements of Rule 10, OMVH Rules is further demonstrated by the explicit requirements of section (B) of Rule 10, OMVH Rules. Specifically, the requirement that "All motions must be filed at least two business days prior to the scheduled hearing." Assuming for argument's sake that Appellant's Counsel's August 7, 2015 letter is considered a motion, it still did not comply with the requirement that it be filed at least two (2) business dates prior to the scheduled hearing. This hearing was scheduled for August 11, 2015 at 9:00 a.m. In August 2015, the 8th and 9th of August were Saturday and Sunday, respectively, and not business days. Therefore, any motions for the August 11, 2015 hearing had to be filed with the OMVH by no later than 9:00 a.m. on Friday, August 7, 2015. Appellant's Counsel's August 7, 2015 letter was not sent to the OMVH until 12:30 p.m. on August 7, 2015, clearly past the two business day deadline. The Rule 10(B), OMVH Rules goes on to discuss how motions submitted less than two business days prior to the scheduled hearing will be evaluated: "Motions filed less than two business days prior to the scheduled hearing will be granted only for good cause shown." Emphasis added. Obviously, the Hearing Officer did not find good cause to grant the requested continuance. In fact, the Hearing Officer took pains to point out in the Order of Dismissal Appellant's Counsel's failure to request the continuance for three (3) weeks and one (1) day after knowing there was a court conflict. Moreover, Rule 10(B), OMVH Rules specifically states, "Attorneys must notify the Office as soon as possible when a court conflict occurs." Clearly, based on the over three (3) week delay, Appellant's Counsel did not comply with this requirement of Rule 10, OMVH Rules.

In addition to the reasons specifically stated by the Hearing Officer in his Order of Dismissal, Appellant's Counsel's requests also failed to comply with other requirements of Rule 10(B), OMVH Rules. Specifically, Rule 10(B), OMVH Rules requires:

Attorneys with court conflicts must include documentation of the call to court with the motion and the documentation must include the case name, the court, the county, the docket number, the presiding judge's name and telephone number, and the date the attorney received notice of the conflicting court appearance.

Appellant's Counsel's June 18, 2015 request did not include the docket number, the presiding judge's name and telephone number, or the date the attorney received notice of the conflicting court appearance.¹¹ Rule 10(B), OMVH Rules also states "Motions not served upon all parties will not be granted except in an emergency." In this case, Appellant's Counsel failed to serve DMV with the request for continuance on June 18, 2015; the request for continuance on August 7, 2015; the request for reconsideration of request for continuance on August 10, 2015 at 1:28 p.m.; the request for continuance dated August 10, 2015 and e-mailed to OMVH at 4:41 p.m.; and the Motion for Reconsideration dated August 17, 2015. Appellant's Counsel also failed to serve Trooper Grubbs with the request for reconsideration of request for continuance on August 10, 2015 at 1:28 p.m.¹² There are no statements or indications in any of these letters, e-mails, motions, or attached documents that any of these requests were made due to an emergency. Additionally, nothing in Appellant's Notice of Appeal or Brief mentions the requests being made due to an emergency. As a result, if for no other reason than Appellant's Counsel's failure to serve copies of these requests on the DMV and Trooper Grubbs, Appellant's appeal must fail.

Finally, a review of the case *Brockman v. South Carolina Dept. of Motor Vehicles and Mauldin Police Dept.*, 2014 WL 2895374, 13-ALJ-21-0049-AP (SCALC 2014) reveals that the

¹¹ It did contain the date the notice was sent to Appellant's Counsel from the Solicitor's Office.

¹² In fact, because this request for reconsideration was not copied to DMV or Trooper R. D. Grubbs of the South Carolina Highway Patrol, and was sent directly to the Hearing Officer as well as the Hearing Officer's Scheduling Assistant, DMV believes this e-mail was an improper ex parte communication with the Hearing Officer.

Administrative Law Court has considered this exact issue in the past. In the *Brockman* case, Administrative Law Court specifically rejected a claim of abuse of discretion for a request of continuance under Rule 601, SCACR because the request for continuance was filed with less than two business days notice and Appellant was aware of the conflict well before he filed the Motion for Continuance. Thus, the *Brockman* case provides solid guidance to this Court in determining the proper outcome of this appeal.

2. THE HEARING OFFICER DID NOT ERROR BY DISMISSING THE CASE WITHOUT HOLDING A HEARING.

Appellant contends that the Hearing Officer erred in issuing an Order of Dismissal when the Hearing Officer never initiated the scheduled hearing and, by never initiating the scheduled hearing, did not require Respondent to present evidence. Appellant asserts that the Hearing Officer bears the burden of proof in enforcement actions pursuant to Rule 15, OMVH Rules and that in this case, the Hearing Officer failed to carry his burden of proof against Appellant. First, the burden of proof in implied consent actions is on the Respondent, not the Hearing Officer. Despite this error in Appellant's argument, the case *John McGeary v. South Carolina Department of Motor Vehicles and South Carolina Department of Public Safety*, 2011 WL 7119316, 11-ALJ-21-0265-AP (SCALC 2011) dealt with this exact argument.

In *McGeary*, the Administrative Law Court held that because Appellant McGeary failed to appear at the administrative hearing, without the proper consent of the OMVH Hearing Officer, the Hearing Officer clearly had the authority, under Rule 13, OMVH Rules, to dismiss the case adverse to Appellant. Further, in the *McGeary* case, the Administrative Law Court noted that "unlike its treatment of the DMV, the General Assembly has not carved out an exception to OMVH Rule 13 for motorists." The Administrative Law Court went on to state "nothing in the

rules suggest that OMVH Rule 15(B) was intended to limit a hearing officer's authority under OMVH Rule 13 to dismiss a case adverse to a defaulting party" and concluded *McGeary* ruling:

[I]n light of the fact that the State is not required to present a prima facie case for suspension in situations where the motorist does not request an administrative hearing, the court sees no reason why the State should be required to do so in cases where the motorist does not appear at the hearing. In both situations, it is clear that the motorist is not going to present a defense.

This case is no different and Appellant has failed to provide any argument or grounds for why her case should be treated any differently than *McGeary*. Additionally, to require the OMVH to hold contested case hearings when individuals who requested the hearing do not appear for the hearing would be an unjustifiable waste of time and resources, both for the OMVH, law enforcement officers, the governmental agencies involved in the case, and witnesses involved in the case. For all of these reasons Appellant's arguments with regard to Rules 14 and 15, OMVH Rules must fail.

CONCLUSION

Based upon the foregoing arguments, the Respondent SCDMV respectfully requests that the Order of Dismissal be affirmed and the suspension remain.

Respectfully submitted,

FILED

NOV 16 2015

SC ADMIN. LAW COURT

November 16, 2015
Blythewood, South Carolina



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

South Carolina Department of Motor Vehicles

Post Office Box 1498

Blythewood, South Carolina 29016-0020

Telephone: 803.896.9900

Fax: 803.896.9901

Email: hearingsprocessingunit@scdmv.net

THE STATE OF SOUTH CAROLINA
IN THE ADMINISTRATIVE LAW COURT

Melissa Spalt,

Appellant,

v.

South Carolina Department of Motor Vehicle &
South Carolina Department of Public Safety,

Respondent.

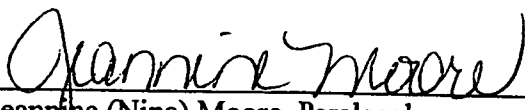
Docket No. 15-ALJ-21-0431-AP
SCDL No. 11208155

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 16, 2015, I mailed, via first class mail, postage prepaid, a true and correct copy of the foregoing **Brief of Respondent SCDMV** to the following:

Michael Laubshire, Esquire
455 Saint Andrews Road, Suite E-1
Columbia, South Carolina 29210-448

as Counsel of Record for Appellant Melissa Spalt


Jeannine (Nina) Moore, Paralegal
Office of General Counsel

November 16, 2015
Blythewood, South Carolina

FILED

NOV 16 2015

SC ADMIN. LAW COURT

**STATE OF SOUTH CAROLINA
OFFICE OF MOTOR VEHICLE HEARINGS**

Melissa Spalt,

Appellant,

vs.

South Carolina Department of Motor
Vehicles,

Respondent.

Docket No. 15-ALJ-21-0431-AP

MEMORANDUM ON APPEAL

THE STATE OF SOUTH CAROLINA

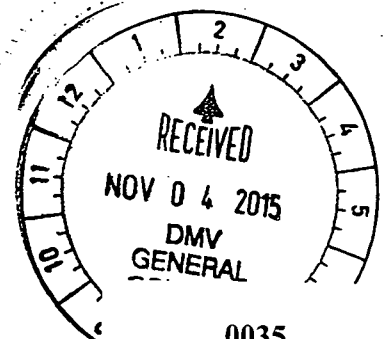
In The Administrative Law Court

APPEAL FROM
SOUTH CAROLINA
OFFICE OF MOTOR VEHICLE HEARINGS

Phil Addington, Hearing Officer

Michael Laubshire, Esq.
455 Saint Andrews Road, Ste E-1
Columbia, SC 29210-448
(803)708-4755
Attorney for Appellant

Frank L. Valenta
Office of General Counsel
P.O. Box 1498
Blythewood, South Carolina
(803) 896-9902
Attorney for Respondent



INDEX

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<i>Statement of the Case</i>	3
<i>Arguments</i>	4
<i>Conclusion</i>	5
<i>Proof of Service</i>	6

STATEMENTS OF THE ISSUES ON APPEAL

1. Did the Hearing Officer commit reversible error by dismissing the case by alleging that the Appellant failed to comply with Rule 601 (C) of the South Carolina Rules?
2. Did the Hearing Officer commit reversible error by dismissing the case by alleging that the Appellant failed to comply with Rule 10 (B) of the OMVH Rules of Procedure?
3. Did the Hearing Officer commit reversible error by dismissing the case without presenting any evidence at the hearing pursuant to the Rules of Procedure for the Office of Motor Vehicles, Rule 14?
4. Whether the Hearing Officer's decision was, in violation of constitutional and statutory provisions; in excess of the statutory authority of the agency; made upon unlawful procedure; affected by other error of law; clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; and characterized by abuse of discretion?

STATEMENT OF THE CASE

On June 23, 2015 there was an Administrative Hearing scheduled for the Appellant's case, however, due to a conflict between courts, the Appellant requested a continuance on June 18, 2015. The request was granted and a new hearing was scheduled for August 11, 2015 at 9 a.m. Again, due to a conflict between courts, the Appellant was scheduled to be in a jury trial during that time and requested a continuance on August 7, 2015. Hearing Officer, Phil Addington, denied the request. After further review, on August 10, the Appellant requested that the court reconsider the request, Lieutenant R.D. Grubbs responded "no objections". Appellant received no further denials or grants from the hearing officer nor his scheduling clerk. On August 12, 2015, Appellant received an Order of Dismissal signed by hearing officer, Phil Addington. August 17, 2015, Appellant filed a Notice of Motion and Motion for Reconsideration followed by filing a Notice of Appeal on September 11, 2015. On September 16, 2015, Appellant received an Order Dismissing Respondent's Motion for Reconsideration.

ARGUMENTS

- I. The Hearing Officer committed reversible error by dismissing the case by alleging that the Appellant failed to comply with Rule 601 (C) of the South Carolina Rules.

On August 11, 2015, the undersigned attorney had obligation to appear in the Richland County Central Court for a scheduled Jury Trial during the same time frame as the Office of Motor Vehicles Hearing that was scheduled in regards to the Appellant. Pursuant to Rule 601 of the South Carolina Rules, listed in paragraph twelve (12), Magistrate's Court has priority over the Office of Motor Vehicle Hearings and other Administrative bodies. In result of that, the Appellant sent a Request for Continuance on August 7, 2015, considering that it was ethically necessary for the Appellants Attorney to appear in the Magistrate's Court during that time. August 10, 2015, hearing Officer Phil Addington, denied the request for continuance, however, South Carolina Highway Patrol Lieutenant R.D. Grubbs, responded that he had "no objections." Since there was an actual trial scheduled during that same time, the request for continuance was resent to the court for reconsideration on August 10, 2015. The Appellant received no additional denials nor response after the final request was sent.

- II. The Hearing Officer committed reversible error by dismissing the case by alleging the Respondent failed to comply with Rule 10 (B) of the OMVH Rules of Procedure.

Rule 10(B) of the Office of Motor Vehicles, Rules of Procedure states that attorneys with court conflicts must serve the continuance upon all parties and that requests filed less than forty-eight (48) hours prior to the scheduled hearing will be granted only for good cause shown. With all of this taken into consideration, the request was sent to Frances L. Inabinet (scheduling assistant to Hearing Officers), Phil Addington (Hearing Officer) and Lieutenant R.D. Grubbs (South Carolina Highway Patrol). As required by the said rule, all parties were notified of the request for continuance. In response to the request, Lieutenant R.D. Grubbs expressed he had "no objections" therefore all parties of record were in agreeance on the request. The request was sent on August 7, 2015, which was four (4) days, two (2) of which were business days, before the scheduled hearing which, also, is in compliance with Rule 10. Not only was the request sent in compliance with the said Rule, there was also good cause shown, due to there being an actual trial scheduled during the same time as the administrative hearing.

- III. The Hearing Officer committed reversible error by dismissing the case without presenting any evidence at the hearing pursuant to the Rules of Procedure for the Office of Motor Vehicles, Rule 14.

In accordance with the Rules of Procedure for the Office of Motor Vehicle Hearings, Rule 15, the hearing officer shall give a brief opening statement describing the nature of the proceeding as well as presenting evidence. In response to our request for Transcript, it was duly noted that the hearing officer did not go on the record. Therefore, hearing officer, Phil Addington, did not adequately execute the hearing nor by dismissing the case.

- IV. The Hearings Officer's decision was, in violation of constitutional and statutory provisions; in excess of the statutory authority of the agency; made upon unlawful procedure; affected by other error of law; clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record' and characterized by abuse of discretion.

CONCLUSION

The court erred in dismissing the case based on several issues. The Appellant respectfully requests that this Honorable court reverse the lower court's decision to dismiss this case. Additionally, Appellant specifically requests that she is scheduled for another Administrative Hearing. Based on the information presented she still has the right to a fair and equal hearing. As the undersigned attorney, I request the newly scheduled hearing be in a change of venue, thus being fair for the Appellant and before an impartial hearing officer.

Respectfully submitted,



Michael Laubshire, Esq.
455 St. Andrews Rd., Ste. E-1
Columbia, SC 29210-4487
(803)708-4755 (Phone)
(803)708-4888 (Fax)
Attorney for the Appellant

October 29, 2015
Columbia, SC

STATE OF SOUTH CAROLINA
OFFICE OF MOTOR VEHICLE HEARINGS

Melissa Spalt

Appellant,

v.

South Carolina Department of Motor
Vehicles,

Respondent.

Docket No.: 15-ALJ-21-0431-AP

PROOF OF SERVICE

PERSONALLY appeared before me, Victoria L. Ford, who under oath states she is an employee with The Laubshire Law Firm, LLC and did mail with the proper postage affixed thereto a copy of the following:

Memorandum on Appeal

That said pleadings were addressed to opposing counsel as follows:

Trooper J. McWhorter
South Carolina Highway Patrol
1054 Ehrenclou Drive
Camden, SC 29020

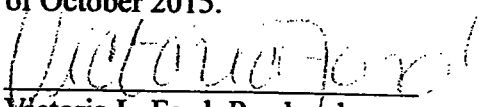
Phil Addington, Hearing officer
SC Administrative Law Court
1205 Pendleton Street, Ste 325
Columbia, SC 29201

Lieutenant R.D. Grubbs
South Carolina Highway Patrol
South Carolina Department of Public Safety
1626 Shop Road
Columbia, SC 29201

Frank L. Valenta
Office of General Counsel
P.O. Box 1498
Blythewood, SC

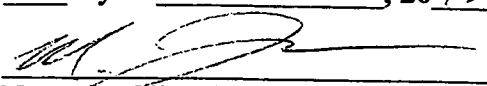
And were further mailed on this 21st day of October 2015.

Columbia, SC
October 21, 2015


Victoria L. Ford, Paralegal

SWORN TO BEFORE ME THIS

21 day of October, 2015


Notary Public of South Carolina

My Commission expires: 8/7/2016

STATE OF SOUTH CAROLINA
OFFICE OF MOTOR VEHICLE HEARINGS

Melissa Spalt,

Appellant,

vs.

South Carolina Department of Motor
Vehicles,

Respondent.

Docket No. 15-ALJ-21-0431-AP

RECORD ON APPEAL

THE STATE OF SOUTH CAROLINA

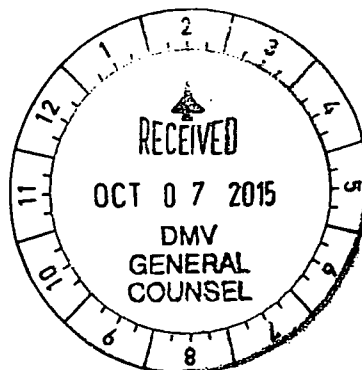
In The Administrative Law Court

APPEAL FROM
SOUTH CAROLINA
OFFICE OF MOTOR VEHICLE HEARINGS

Phil Addington, Hearing Officer

Frank L. Valenta
Office of General Counsel
P.O. Box 1498
Blythewood, South Carolina
(803) 896-9902
Attorney for Respondent

Michael Laubshire, Esquire
455 Saint Andrews Road, Ste E-1
Columbia, SC 29210-448
803-708-4755
Attorney for Appellant



INDEX

Post-Hearing 1

- ☒ Notice of Assignment
- ☐ Transcript
- ☐ Order of Transcript
- ☒ Request for Transcript
- ☐ No Transcript Request Received
- ☐ No appeal served on OMVH as required in accordance with ALC Rule 33
- ☐ Transcript Ordered/Pending
- ☐ Audiotape Request
- ☐ Brief of Appellant
- ☒ Notice of Appeal
- ☒ Order of Dismissal
- ☐ Final Order and Decision
- ☒ Order for Motion to Reconsider
- ☒ Motion to Reconsider
- ☐ Objection to Motion to Reconsider
- ☒ No Audiotape Available: *Hearing Officer did not go on the record*

Hearing / Exhibits 2

- ☐ Notice of Suspension
- ☐ Breath Alcohol Test Report
- ☐ Implied Consent Advisement
- ☐ Datamaster Certification
- ☐ Accident Report
- ☐ Character Affidavits
- ☐ Official 10-year Driver Record
- ☐ VHS/DVD available in OMVH office
- ☐ Other Exhibits _____

Pre-Hearing 3

- ☒ Order of Continuance: 2nd 3rd 4th
- ☒ Request for Continuance Granted Denied
- ☒ Subpoena Request
- ☒ Legal Representation Letter
- ☐ Pretrial Motion
- ☒ Notice of Hearing
- ☒ Hearing Request Receipt
- ☐ PPP Suspension Notice
- ☐ Official 10-year Driver Record
- ☐ Written Request for Hearing
- ☐ SCDMV Notice of Suspension
- ☒ General Correspondence

Certificate of Service 4

REDACTED

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT
OFFICE OF MOTOR VEHICLE HEARINGS

RALPH K. ANDERSON, III
Director



(803) 734-3201
FAX (803) 734-3200
WWW.SCOMVH.NET

October 2, 2015

Jana Shealy, Clerk
SC Administrative Law Court
1205 Pendleton Street, Ste 224
Columbia, SC 29201

Re: S.C. Dept of Motor Vehicles
vs
Melissa Spalt
SCDL/Customer NO.

Dear Ms. Shealy:

In compliance with Section 1-23-380 (d) of the 1976 Code of Laws of South Carolina, please find enclosed a certified copy of the record for the Judge's review. Please file in the appropriate case file. This is a petition for judicial review of the administrative decision, which was filed in the South Carolina Administrative Law Court.

If we can be of any further assistance, please advise.

Sincerely,

Yolanda P. Williams
Administrative Coordinator, OMVH

Cc: Michael Laubshire, Esquire
Frank L. Valenta, SCDMV General Counsel

000003

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Melissa Spalt,

Appellant,

vs.

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

Respondents.

NOTICE OF ASSIGNMENT
(Appeal)

DOCKET NO. 15-ALJ-21-0431-AP

NOTICE IS GIVEN that a notice of appeal seeking review of a decision of the Office of Motor Vehicle Hearings was filed on September 11, 2015. In accordance with S.C. Code Ann. § 1-23-570 (Supp. 2014), the **Honorable H. W. Funderburk, Jr.**, Administrative Law Judge, has been assigned to preside in this appeal. The Administrative Law Judge may be contacted by mail at 1205 Pendleton Street, Suite 224, Columbia, South Carolina 29201, and by telephone at (803) 734-0550.

Rules of Procedure governing matters before the Court may be obtained from the Clerk of Court or on the Court's website, www.scalc.net.

The parties are directed to the relevant provisions of the Rules of Procedure for deadlines for perfecting the appeal and briefing the issues on appeal.

This the sixteenth day of September, 2015.

Ralph King Anderson, III
Chief Administrative Law Judge

By: 

Jana E. Shealy, Clerk
Edgar A. Brown Building
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201

000004

FILED

8-11-15

) Docket No.: _____
)

NOTICE OF APPEAL

- designated counsel of record, hereby gives notice of South Carolina Office of Motor Vehicle August 12, 2015. The Appellant received notice 15. Appellant submits the following grounds reversible error dismissing the case by alleging with Rule 601 (C) of the South Carolina Rules. reversible error dismissing the case by alleging of the OMVH Rules of Procedure.

(3) The Hearing Officer committed reversible error dismissing the case without presenting any evidence at the hearing pursuant to the Rules of Procedure for the Office of Motor Vehicles, Rule 14.

(4) The Hearing Officer's decision was, in violation of constitutional and statutory provisions; in excess of the statutory authority of the agency; made upon unlawful procedure; affected by other error of law; clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; and characterized by abuse of discretion.

(5) Appellant includes and incorporates paragraphs 1 through 4 as if fully included and set forth herein. The Appellant requested a continuance on August 7, 2015 for the hearing scheduled for August 11, 2015 because of a conflict between courts and attached a copy of Richland County Magistrate Court Summons to the request for continuance. A copy is attached hereto as Exhibit 1. The Hearing officer denied Appellant's motion. A copy is attached hereto as Exhibit 2. Appellant received an email from the Arresting Officer's supervisor stating "no objection" to the request for a continuance. A copy is attached hereto as Exhibit 3. Appellant again requested a continuance attaching a copy of the 601(c), the arresting officer's supervisor's e-mail stating "no objection" to the request for a continuance, and another copy of the Richland County Court Summons since Appellant's attorney was required to appear in magistrate court in Richland County for a Jury Trial on a date certain. A copy is attached hereto as Exhibit 4. Rule 601(c) requires that this matter be continued so Appellant's attorney could appear in Magistrate Court. No response was received from the hearing officer and the case was dismissed.

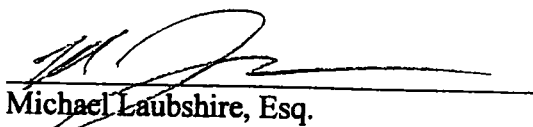
(6) Any other grounds for appeal ascertained after a review of the record.

Dated: September 11, 2012

Columbia, SC

Respectfully submitted,

THE LAUBSHIRE LAW FIRM, LLC



Michael Laubshire, Esq.
455 St. Andrews Rd., Ste., E-1
Columbia, SC 29210
(803)708-4755 (phone)
(803)708-4888 (fax)
Attorney for Appellant

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Melissa Spalt,

Appellant,

v.

South Carolina Highway Patrol, and
South Carolina Department of
Motor Vehicles,

Respondent(s).

Docket No(s): _____

CERTIFICATE OF SERVICE BY MAIL

I, Victoria L. Ford, Paralegal employed for The Laubshire Law Firm LLC, in the above captioned matter, on September 11, 2015, mailed in U.S. Post Office at Lexington, South Carolina, a sealed envelope with postage prepaid thereon, by ordinary first class mail containing a copy of Respondent's Freedom of Information Act, transcript and preservation request addressed as follows:

SC Administrative Law court
Office of Motor Vehicle Hearings
1205 Pendleton Street Suite 325
Columbia, SC 29201

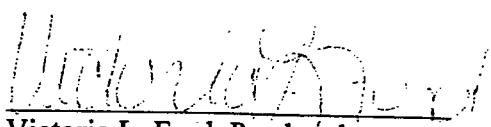
Trooper J. McWhorter
South Carolina Highway Patrol
1054 Ehrenclou Drive
Camden, SC 29020

Phil Addington, Hearing Officer
SC Administrative Law Court
1205 Pendleton Street, Suite 325
Columbia, SC 29201

Office of General Counsel
S.C. Department of Motor Vehicles
PO Box 1498
Blythewood, SC 29016-0020

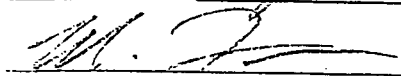
Dated: September 11, 2015

Columbia, SC


Victoria L. Ford, Paralegal

SWORN TO BEFORE ME THIS

DAY OF Sept, 2015


NOTARY PUBLIC OF SOUTH CAROLINA
MY COMMISSION EXPIRES: 8/2/2022

FILED

SEP 11 2015

SCOMVH

Exhibit 1

FILED

SEP 11 2015

SCOMVH

THE LAUBSHIRE LAW FIRM, LLC

455 Saint Andrews Road, Suite E-1
Columbia, SC 29210-4487

Phone: (803)708-4755

Fax: (803)708-4888

August 7, 2015

South Carolina Administrative Law Court
Office of Motor Vehicle Hearings
Kershaw County Court House
1121 Broad Street
Grand Jury Room
Camden, SC

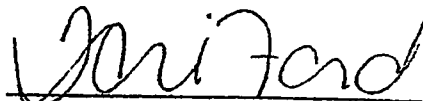
Re: The State v. Melissa Spalt
(15-OMVH-01-1916-CC)

Dear Clerk:

I am writing you in regards to the above referenced matter(s). I respectfully Request a Continuance from the court date set for August 11, 2015 at 9:00 A.M. I am unable to make this appearance due to scheduling conflict in the Richland County Central Court. Please see the enclosed Summary Court Summons.

If you have any questions, please feel free to give our office a call.

Sincerely,



Michael Laubshire, Esq.



enclosure

15100

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

Michael Laubshire
455 St. Andrews Rd., Suite E-1
Columbia, SC 29210-4487

SUMMARY COURT SUMMONS

You are hereby summoned to be and appear by **Richland County Olympia Magistrate** to serve as a defendant/defense counsel/witness in the Jury Trial of **State of South Carolina vs Deon Romeo Boyles**. The trial date and location is **Richland County Central Court, 1400 Huger Street, Courtroom 2 - A, Columbia, SC on August 11, 2015 at 9:30 AM**, Case Number **46411GO**, Violation date **March 25, 2015**.

This is a **DATE CERTAIN**. All requests for continuance must be in **WRITING** and must be submitted by **August 10, 2015** for consideration by the Court. Failure to appear by the defendant, without leave of the Court, may be construed by the Court as a Waiver of Jury Trial and the defendant will be subject to Bench Trial in absentia.

H.A. Cuff
JUDGE

Richland County Olympia Magistrate
1601 Shop Road
Columbia, SC 29201
Phone: (803) 576-2550
Fax: (803) 576-2555

July 15, 2015

Calendar: Court Checklist
Blue Book:
Client Contact:

7/17-left msg @ 9:37

Mls Received 7/16/15

Exhibit 2

FILED

SEP 11 2015

SCOMVH

0052

000012

8/14/2015

The Laubshire Law Firm, LLC. Mail - The Laubshire Law Firm



Victoria Porter <tori@laubshirelaw.com>

The Laubshire Law Firm

Frances Inabinet <finabinet@scalco.net>

To: "tori@laubshirelaw.com" <tori@laubshirelaw.com>

Mon, Aug 10, 2015 at 8:02 AM

Please see email below from hearing officer

Thanks

fli

Frances L. Inabinet

Scheduling Assistant to Hearing Officers

Phil Hayes

Robert Harley

Phil Addington

SC Administrative Law Court

Office of Motor Vehicle Hearings

1205 Pendleton St. Ste.325

Columbia SC 29201

803-734-3209

803-734-3200 (fax)

From: Phil Addington

Sent: Sunday, August 09, 2015 7:41 PM

To: Frances Inabinet <finabinet@scalco.net>

Subject: RE: The Laubshire Law Firm

000013

The Notice of Suspension was issued on April 05, 2015. The case was filed on April 10, 2015 a

0053

Exhibit 3



Michael Laubshire <michael@laubshirelaw.com>

RE: FW: The Laubshire Law Firm

1 message

Grubbs, Ricky <RDGrubbs@scdps.gov>

Mon, Aug 10, 2015 at 5:01 PM

To: Tori Ford <tori@laubshirelaw.com>

Cc: "finabinet@scalc.net" <finabinet@scalc.net>

No objections

Lieutenant R.D. Grubbs

South Carolina Highway Patrol – Troop One Headquarters

South Carolina Department of Public Safety

1626 Shop Road

Columbia, S.C. 29201

803-737-8329 (Office)

803-737-8323 (Fax)

803-360-8005 (Cell)

rdgrubbs@scdps.gov

www.scdps.gov/schp



From: Tori Ford [mailto:tori@laubshirelaw.com]

Sent: Monday, August 10, 2015 4:41 PM

To: Frances Inabinet; paddington@scalc.net; Grubbs, Ricky

Subject: Re: FW: The Laubshire Law Firm

FILED

SEP 11 2015

SCOMVH

Ms. Inabinet,

Good afternoon! Please find attached our Request for Continuance regarding Melissa Spalt scheduled for tomorrow at 9:00 a.m.

0056

000016

Exhibit 4

THE LAUBSHIRE LAW FIRM, LLC

455 Saint Andrews Road, Suite E-1
Columbia, SC 29210-4487

Phone: (803)708-4755

Fax: (803)708-4888

August 10, 2015

SC Administrative Law Court
Office of Motor Vehicle Hearings
1205 Pendleton St. Ste.325
Columbia SC 29201

Re: The State v. Melissa Spalt
Docket No.: 15-OMVH-01-1916-CC

Dear Judge:

I am writing you in regards to the above referenced matter(s). I respectfully Request a Continuance from the court date set for August 11, 2015 at 9:00 A.M. I am unable to make this appearance due to a scheduling conflict in the Richland County Central Court for a Jury Trial. I am respectfully asking that the court comply with Rule 601 of the South Carolina Rules, Conflicts in Hearing Dates. Magistrate's court (Date Certain for a Jury Trial) listed in paragraph (12) has priority over the Office of Motor Vehicle Hearings and Other Administrative Bodies listed in paragraph (13); therefore, I must appear for the scheduled Jury Trial. Please see the enclosed document.

If the Continuance is not granted, I will have no choice but to file an Appeal as I cannot be in two places at once.

If you have any questions, please feel free to give our office a call.

Sincerely,


for Michael Laubshire, Esq.

enclosures

Web: www.laubshirelaw.com
E-mail: tori@laubshirelaw.com

0058

000018

RULE 601
CONFLICTS IN HEARING DATE:

Order of Priority as Between Tribunals. In the event an attorney of record is called to appear simultaneously in actions pending in two or more tribunals of this State, the following list shall establish priority of his obligations to those tribunals:

- (1) The Supreme Court.
- (2) The Court of Appeals.
- (3) The Commission on Judicial Conduct, the Commission on Lawyer Conduct, and the Committee on Character and Fitness.
- (4) The Circuit Court - General Sessions.
- (5) The Family Court - merits hearings involving child abuse, child neglect and termination of parental rights upon approval of the Chief Judge for Administrative Purposes for the Family Court and notice to the Chief Judge for Administrative Purposes for the Circuit Court five days prior to the term of the Circuit Court.
- (6) The Circuit Court - Common Pleas, Jury Term.
- (7) The Family Court - all cases not referenced in (5) above.
- (8) The Circuit Court - Common Pleas, Non-Jury Term.
- (9) The Administrative Law Court.
- (10) Alternative Dispute Resolution Conferences conducted pursuant to the SC Court-Annexed ADR Rules.
- (11) The Probate Court.
- (12) Magistrates and Municipal Courts.
- (13) Other Administrative Bodies or Officials.

If a party or his counsel is in the process of a hearing or trial before a tribunal, he may not be required to appear in another tribunal having greater priority unless the tribunal with less priority grants a continuance for that purpose.

Conflict With Federal Courts. When times set for appearances before state and federal courts are in conflict, appearance shall have such priority as is appropriate. Courts and counsel shall have the discretion to adjust schedules to accord with the spirit of comity between the state and federal courts.

Attorney to Give Notice. An attorney who cannot make a scheduled appearance because of the conflict established by paragraph (a) of this rule shall notify the affected tribunals as soon as the conflict becomes apparent.

Adopted by Order dated May 14, 2010, effective immediately.

15100

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

**Michael Laubshire
455 St. Andrews Rd., Suite E-1
Columbia, SC 29210-4487**

SUMMARY COURT SUMMONS

You are hereby summoned to be and appear by Richland County Olympia Magistrate to serve as a defendant/defense counsel/witness in the Jury Trial of State of South Carolina vs Deon Romeo Boyles. The trial date and location is Richland County Central Court, 1400 Huger Street, Courtroom 2 - A, Columbia, SC on August 11, 2015 at 9:30 AM, Case Number 46411GO, Violation date March 25, 2015.

This is a **DATE CERTAIN**. All requests for continuance must be in **WRITING** and must be submitted by **August 10, 2015** for consideration by the Court. Failure to appear by the defendant, without leave of the Court, may be construed by the Court as a Waiver of Jury Trial and the defendant will be subject to Bench Trial in absentia.

H.A. Curry
JUDGE

**Richland County Olympia Magistrate
1601 Shop Road
Columbia, SC 29201
Phone: (803) 576-2550
Fax: (803) 576-2555**

July 15, 2015

FILED

SEP 11 2015

OMVH

0060

Court Checklist
Calendar: _____
Blue Book: _____
Client Contact: _____
7/17-left msg @ 9:37
Received 7/16/15

000020

REDACTED

STATE OF SOUTH CAROLINA
OFFICE OF MOTOR VEHICLE HEARINGS

South Carolina Department of Public Safety,)
and)
South Carolina Department of Motor)
Vehicles,)
Petitioners,)
v.)
Melissa Spalt,)
Respondent.)

Docket No.15-OMVH-01-1916-CC

ORDER OF DISMISSAL

Appearances:

For the Respondent: No one at the time of the hearing. Respondent's
counsel, Michael Laubshire appeared through pre-trial documents.
Petitioner's Witness: Trooper J.C. McWhorter
Randy Brown- South Carolina Law Enforcement -Agent

Other information:

Respondent's Driver's License No:
Type of Hearing: Implied Consent

This matter is before the South Carolina Office of Motor Vehicle Hearings (OMVH) pursuant to Respondent's request for a contested case hearing regarding the suspension of Respondent's driver's license or driving privilege. Pursuant to notice to the parties, a hearing was held before me on August 11, 2015 at the Kershaw County Court House, Camden, South Carolina. On August 7, 2015, counsel for the Respondent requested a continuance stating that he was scheduled to be in Richland County Central Court for a jury trial on the morning of August 11, 2015. The request was denied. The parties were notified of the denial on the morning of Monday, August 10, 2015. Counsel then argued by email that Magistrates Court "trumps" the OMVH and he attached a cover letter along with a copy of Rule 601 of the Supreme Courts rules governing conflicts and his notice to be at a magistrate's jury trial.

However, attorneys also have a duty under the provisions of Rule 601 (C). It states, "An attorney who cannot make a scheduled appearance because of the priority established by paragraph (a) of this rule shall notify the affected tribunals as soon as the conflict becomes apparent." Counsel was notified of the date of the OMVH hearing on June 24, 2015. According to the "received"

notation of his office, the summons to the jury trial was received on July 16, 2015. Counsel requested a continuance on August 7, 2015, three (3) weeks and one (1) day after receiving notice of the conflict. Based on the time of his first e-mail requesting a continuance at the OMVH, the motion was not even made with at least two full business days as required by Rule 10 (B) of the OMVH Rules of Procedure. I conclude that counsel did not follow the requirement of Rule 601 or the procedure for requesting a continuance at the OMVH pursuant to Rule 10 (B).

Neither Respondent nor his counsel appeared at the hearing and therefore waived the right to challenge the pending suspension of the driver's license or driving privilege. The Petitioners did appear through Trooper McWhorter. Accordingly, pursuant to Rule 13 of the Rules of Procedure of the Office of Motor Vehicle Hearings, a case can be dismissed adverse to a defaulting party when the party fails to appear at the hearing to prosecute the case. Therefore,

IT IS HEREBY ORDERED that the above-captioned case is **DISMISSED** with prejudice and Respondent's driver's license or driving privilege remains suspended.

AND IT IS SO ORDERED.



P. T. Addington
Senior OMVH Hearing Officer

August 12, 2015
Camden, South Carolina

FILED

AUG 13 2015

SCOMVH

CERTIFICATE OF SERVICE

I, Frances L. Inabinet, hereby certify that I have this date served this Order upon all parties to this caused by depositing a copy hereof, in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).

Frances L. Inabinet

Frances L. Inabinet

August 13, 2015

Columbia, South Carolina

0063

000023

Frances Inabinet

From: Frances Inabinet
Sent: Thursday, August 13, 2015 1:37 PM
To: 'hpu@scdmv.net'; 'rdgrubbs@schp.org'; michael@laubshirelaw.com; 'Tori Ford'
Subject: Melissa Spalt OOD 1916
Attachments: 8-13-15 Cert. of Serv.-signed.pdf; Melissa Spalt-08-11-15.pdf

Attached is a copy of the hearing officer's decision. Your client will receive additional information via mail from the DMV regarding their driving privileges.

Frances L. Inabinet
Scheduling Assistant to Hearing Officers
Phil Hayes
Robert Harley
Phil Addington
SC Administrative Law Court
Office of Motor Vehicle Hearings
1205 Pendleton St. Ste.325
Columbia SC 29201
803-734-3209
803-734-3200 (fax)

REDACTED

STATE OF SOUTH CAROLINA
OFFICE OF MOTOR VEHICLE HEARINGS

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

Petitioners,)

vs.)

Melissa Spalt,)

Respondent.)

Docket No. 15-OMVH-01-1916-CC
SC DL#

**ORDER DISMISSING
RESPONDENT'S MOTION FOR
RECONSIDERATION**

This matter is before the South Carolina Office of Motor Vehicle Hearings ("OMVH") pursuant to a motion to reconsider filed by the Respondent. In this case, Respondent initially filed a request for a contested case hearing to challenge the suspension of his driver's license or driving privileges. Pursuant to notice to the parties, a hearing was scheduled before me on August 11, 2015 and an Order of Dismissal was issued sustaining the suspension on August 12, 2015.

On August 17, 2015, the Respondent filed a motion seeking reconsideration of the order and a motion for a stay for enforcement of the order. Nevertheless, on September 11, 2015, before the expiration of the thirty (30) days allowed for consideration of the motion, the OMVH received a copy of a Notice of Appeal filed at the Administrative Law Court ("ALC").

Because this matter has been appealed, I no longer have jurisdiction over the case. Therefore, I cannot consider the Motion for Reconsideration filed by the Respondent at the OMVH and it is **DISMISSED** as moot.

AND IT IS SO ORDERED.



P.T. Addington
OMVH Senior Hearing Officer

September 16, 2015
Columbia, South Carolina

FILED

SEP 16 2015

SCOMVH

0065

CERTIFICATE OF SERVICE

I, Frances L. Inabinet, hereby certify that I have this date served this Order upon all parties to this caused by depositing a copy hereof, in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).

Frances L. Inabinet

Frances L. Inabinet

September 16, 2015

Columbia, South Carolina

THE LAUBSHIRE LAW FIRM, LLC

455 Saint Andrews Road, Suite E-1
Columbia, SC 29210-4487

Phone: (803)708-4755

Fax: (803)708-4888

August 17, 2015

Phil Addington
Hearing Officer
SC Administrative Law Court
1205 Pendleton Street Suite 325
Columbia, SC 29201

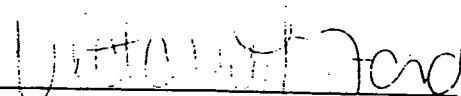
Re: Case No.: 15-OMVH-01-1916-CC

Dear Mr. Addington:

I am writing you in regards to the above referenced case. Please find enclosed and served upon you one copy of the Respondent's Notice of Motion and Motion for Reconsideration and Certificate of Service for same.

If you have any questions, please feel free to give our office a call.

Sincerely,


Victoria L. Ford, Paralegal

Enclosures

RECEIVED

AUG 19 2015

SCOMVH

FILED

AUG 17 2015

SCOMVH

**STATE OF SOUTH CAROLINA
OFFICE MOTOR VEHICLE HEARINGS**

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

Petitioners,

v.

Melissa Robin Spalt,

Respondent,

Docket No.: 15-OMVH-01-1916-CC

**NOTICE OF MOTION AND
MOTION FOR RECONSIDERATION**

PLEASE TAKE NOTICE that Respondent, Melissa Robin Spalt, by and through the undersigned attorney of record, submits this Motion For Reconsideration pursuant to Rule 15(E) of the Rules of Procedure for the Office of Motor Vehicle Hearings. In support of this motion the Respondent will show unto the Office of Motor Vehicle Hearings the following:

STATEMENT OF THE CASE

A hearing was held before the South Carolina Office of Motor Vehicles (herein after "OMVH") before Hearing Officer, Phil Addington on August 11, 2015. On August 12, 2015, an Order was issued by Hearing Officer, Phil Addington sustaining Respondent's suspension. At the hearing, the arresting officer, Trooper McWhorter, South Carolina Highway Patrol was present; however, the Respondent's undersigned attorney of record, Michael Laubshire, was not present, after having timely requested a continuance on more than one occasion, the case was dismissed.

RESPONDENT'S FIRST OBJECTION TO DISMISSAL

Pursuant to the holdings of the Rules of Procedure for the Office of Motor Vehicles Rule 10 (B), a request for continuance must be made two (2) business days prior to the hearing. On August 7, 2015 a request for continuance was sent, due to a conflict in the Richland County Magistrate's court scheduled for the same day as the Respondent's hearing on August 11, 2015.

A copy is attached hereto as Exhibit 1. Pursuant to Rule 601 of the South Carolina Rules, Conflicts in hearing Dates, listed in paragraph twelve (12) Magistrate's Court has priority over the Office of Motor Vehicle Hearings and other Administrative bodies, mentioned in paragraph thirteen (13). August 11, 2015 was a date certain for a jury trial in the Richland County Magistrates court therefore, finding it ethically necessary to send the request for continuance. In accordance with the rules, Respondent made the request for a continuance as soon as the need for the continuance became apparent to Respondents Attorney on August 7, 2015. August 10, 2015 hearing officer, Phil Addison, denied the request for continuance. Considering there was an actual trial scheduled during the same time frame, the request for continuance was resent and asked the court for reconsideration on August 10, 2015. A copy is attached hereto as Exhibit 2. There was no additional denial received after the final request. Respondent did receive an email from Lt. R.D Grubbs, South Carolina Highway Patrol that he had "No Objections." A copy is attached hereto as Exhibit 3. Respondent moves for the hearing officer to reconsider the dismissal and continue this case so the Respondent has an opportunity to be heard on all issues.

RESPONDENT'S SECOND OBJECTION TO DISMISSAL

Pursuant to the Rules of Procedure for the Office of Motor Vehicles Rule 10 (B), attorneys with court conflicts must serve the continuance upon all parties. An email requesting a continuance was sent to Frances L. Inabinet (scheduling assistant to Hearing Officers), Phil Addington (Hearing Officer) and Lieutenant R.D. Grubbs (South Carolina Highway Patrol). As required by the rules all parties of record were notified of the request for a continuance. In response to the email, Lieutenant R.D. Grubbs expressed he had "no objections" therefore all parties of record were in agreeance on the request for continuance. Respondent moves for the

hearing officer to reconsider the dismissal and continue this case so the Respondent has an opportunity to be heard on all issues.

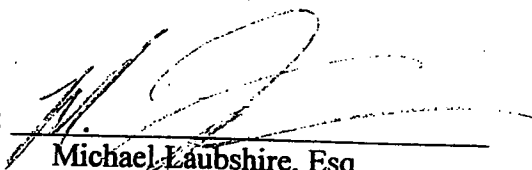
RESPONDENT'S THIRD OBJECTION TO DISMISSAL

Pursuant to the holdings of the Rules of Procedure for the Office of Motor Vehicles Rule 14, the Order received on August 13, 2015 did not state where there had been any evidence presented at the hearing to uphold the suspension and dismiss the case. Respondent moves for the hearing officer to reconsider the dismissal and continue this case so the Respondent has an opportunity to be heard on all issues.

WHEREFORE, based on the aforementioned reasons the Respondent respectfully requests the Office of Motor Vehicle Hearings grant Respondent's Motion for Reconsideration and the hearing officer to reconsider the dismissal and continue this case so the Respondent has an opportunity to be heard on all issues.

Respectfully Submitted,

THE LAUBSHIRE LAW FIRM, LLC

By: 

Michael Laubshire, Esq.
455 St. Andrews Rd. Suite E-1
Columbia, SC 29210-4487
(803)708-4755 (Phone)
(803)708-4888 (Fax)
Attorney for the Respondent

Columbia, SC

August 14, 2015

FILED

AUG 17 2015

SCOMVH

000631

Exhibit 1

FILED

AUG 17 2015

SCOM/H

8/14/2015

The Laubshire Law Firm, LLC. Mail - The Laubshire Law



Victoria Porter <tori@laubshirelaw.com>

The Laubshire Law Firm

Tori Ford <tori@laubshirelaw.com>

Fri, Aug 7, 2015 at 12:29 PM

To: rdgrubbs@schp.org, finabinet@scalc.net, tlangford@scalc.net

Ms. Inabinet,

Good afternoon! Please find attached a request for continuance in regards to Melissa Spalt (2015-OMVH-01-1916-CC) as Michael is scheduled to be in Richland County Central Court for a jury trial at the same date and time.

Please let me know if you have any questions.

Sincerely,

Victoria Ford, Paralegal

The Laubshire Law Firm, LLC
455 Saint Andrews Road, Suite E-1
Columbia, SC 29210-4487
(803)708-4755 (Phone)
(803)708-4888 (Fax)
(855) 520-4753 (24 Hr. Emergency)

Please consider whether it is absolutely necessary to print this email: save resources and paper costs.

***** CONFIDENTIALITY NOTE *****

This message may contain information that is confidential or privileged under an attorney-client relationship or attorney work product. It is intended only for use of the individual or entity to which it is addressed, and any other dissemination, distribution, or copying of this communication is strictly prohibited and may be illegal under federal or state law. If you have received this communication in error, please notify us immediately by replying to this email and by deleting the original message and any copies. Thank you.

image2015-08-07-162332.pdf
504K

000633

THE LAUBSHIRE LAW FIRM, LLC

455 Saint Andrews Road, Suite E-1
Columbia, SC 29210-4487

Phone: (803)708-4755

Fax: (803)708-4888

August 7, 2015

South Carolina Administrative Law Court
Office of Motor Vehicle Hearings
Kershaw County Court House
1121 Broad Street
Grand Jury Room
Camden, SC

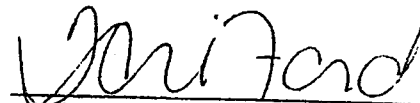
Re: The State v. Melissa Spalt
(15-OMVH-01-1916-CC)

Dear Clerk:

I am writing you in regards to the above referenced matter(s). I respectfully Request a Continuance from the court date set for August 11, 2015 at 9:00 A.M. I am unable to make this appearance due to scheduling conflict in the Richland County Central Court. Please see the enclosed Summary Court Summons.

If you have any questions, please feel free to give our office a call.

Sincerely,



Michael Laubshire, Esq.



enclosure

15100

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

Michael Laubshire
455 St. Andrews Rd., Suite E-1
Columbia, SC 29210-4487

SUMMARY COURT SUMMONS

You are hereby summoned to be and appear by **Richland County Olympia Magistrate** to serve as a defendant/defense counsel/witness in the Jury Trial of **State of South Carolina vs Deon Romeo Boyles**. The trial date and location is **Richland County Central Court, 1400 Huger Street, Courtroom 2 – A, Columbia, SC** on **August 11, 2015 at 9:30 AM**, Case Number **46411GO**, Violation date **March 25, 2015**.

This is a **DATE CERTAIN**. All requests for continuance must be in **WRITING** and must be submitted by **August 10, 2015** for consideration by the Court. Failure to appear by the defendant, without leave of the Court, may be construed by the Court as a Waiver of Jury Trial and the defendant will be subject to Bench Trial in absentia.

H.A. Cuff
JUDGE

Richland County Olympia Magistrate
1601 Shop Road
Columbia, SC 29201
Phone: (803) 576-2550
Fax: (803) 576-2555

July 15, 2015

Calendar: Court Checklist
Blue Book:
Client Contact:

7/17-left msg @ 9:37

Mis Received 7/16/15 000635

0075

Exhibit 2

8/14/2015

The Laubshire Law Firm, LLC. Mail - The Laubshire La



Victoria Porter <tori@laubshirelaw.com>

The Laubshire Law Firm

Frances Inabinet <finabinet@scalc.net>

To: "tori@laubshirelaw.com" <tori@laubshirelaw.com>

Mon, Aug 10, 2015 at 8:02 AM

Please see email below from hearing officer

Thanks

fli

Frances L. Inabinet

Scheduling Assistant to Hearing Officers

Phil Hayes

Robert Harley

Phil Addington

SC Administrative Law Court

Office of Motor Vehicle Hearings

1205 Pendleton St. Ste.325

Columbia SC 29201

803-734-3209

803-734-3200 (fax)

From: Phil Addington

Sent: Sunday, August 09, 2015 7:41 PM

To: Frances Inabinet <finabinet@scalc.net>

Subject: RE: The Laubshire Law Firm

0077

060637

The Notice of Suspension was issued on April 05, 2015. The case was filed on April 10, 2015 and a hearing

8/14/2015

The Laubshire Law Firm, LLC. Mail - The Laubshire Law Firm

date of June 23, 2015 was scheduled. A request for a continuance was requested on June 18, 2015 and this request was granted. A new hearing date was set for August 11, 2015. This is the second request for a hearing. The new hearing date of August 11, 2015 went out on June 24, 2015. This request is denied.

From: Frances Inabinet
Sent: Friday, August 07, 2015 1:01 PM
To: Phil Addington <paddington@scalc.net>
Subject: FW: The Laubshire Law Firm

LET ME KNOW!

Frances L. Inabinet

Scheduling Assistant to Hearing Officers

Phil Hayes

Robert Harley

Phil Addington

SC Administrative Law Court

Office of Motor Vehicle Hearings

1205 Pendleton St. Ste.325

Columbia SC 29201

803-734-3209

803-734-3200 (fax)

From: Tori Ford [mailto:tori@laubshirelaw.com]
Sent: Friday, August 07, 2015 12:30 PM
To: rdgrubbs@schp.org; Frances Inabinet <finabinet@scalc.net>; Teresa Langford <tlangford@scalc.net>
Subject: Fwd: The Laubshire Law Firm

[Quoted text hidden]

000638

Any views or opinions expressed in this email are those of the author and do not necessarily represent those of the SC Administrative Law Court.

0078

pressed in this email are those of the author and do not necessarily represent those of the SC Administrative Law Court.

8/14/2015

JC The Laubshire Law Firm, LLC. Mail - The Laubshire Law Firm

Any views or opinions expressed in this email are those of the author and do not necessarily represent those of the SC Administrative Law Court.

000639

0079



Michael Laubshire <michael@laubshirelaw.com>

RE: FW: The Laubshire Law Firm

1 message

Grubbs, Ricky <RDGrubbs@scdps.gov>
To: Tori Ford <tori@laubshirelaw.com>
Cc: "finabinet@scalc.net" <finabinet@scalc.net>

Mon, Aug 10, 2015 at 5:01 PM

No objections

Lieutenant R.D. Grubbs

South Carolina Highway Patrol -- Troop One Headquarters

South Carolina Department of Public Safety

1626 Shop Road

Columbia, S.C. 29201

803-737-8329 (Office)

803-737-8323 (Fax)

803-360-8005 (Cell)

rdgrubbs@scdps.gov

www.scdps.gov/schp



From: Tori Ford [mailto:tori@laubshirelaw.com]
Sent: Monday, August 10, 2015 4:41 PM
To: Frances Inabinet; paddington@scalc.net; Grubbs, Ricky
Subject: Re: FW: The Laubshire Law Firm

Ms. Inabinet,

FILED

AUG 17 2015

SCOMVH

Good afternoon! Please find attached our Request for Continuance regarding Melissa Spalt scheduled for tomorrow at 9:00 a.m.

000640

0080

On Mon, Aug 10, 2015 at 1:28 PM, Frances Inabinet <finabinet@scalc.net> wrote:

I have forwarded to the hearing officer

Thanks

fli

Frances L. Inabinet

Scheduling Assistant to Hearing Officers

Phil Hayes

Robert Harley

Phil Addington

SC Administrative Law Court

Office of Motor Vehicle Hearings

1205 Pendleton St. Ste.325

Columbia SC 29201

803-734-3209

803-734-3200 (fax)

From: Tori Ford [mailto:tori@laubshirelaw.com]

Sent: Monday, August 10, 2015 1:28 PM

To: Frances Inabinet <finabinet@scalc.net>; Phil Addington <paddington@scalc.net>

Subject: Re: FW: The Laubshire Law Firm

We did recieve the Notice on June 24th, however, we were notified of a scheduled Jury Trial on July 15th. Considering Magistrates Court trumps the OMV, we kindly request you reconsider and grant the Continuance as previously requested.

On Mon, Aug 10, 2015 at 8:02 AM, Frances Inabinet <finabinet@scalc.net> wrote:

000641

THE LAUBSHIRE LAW FIRM, LLC

455 Saint Andrews Road, Suite E-1
Columbia, SC 29210-4487

Phone: (803)708-4755

Fax: (803)708-4888

August 10, 2015

SC Administrative Law Court
Office of Motor Vehicle Hearings
1205 Pendleton St. Ste.325
Columbia SC 29201

Re: The State v. Melissa Spalt
Docket No.: 15-OMVH-01-1916-CC

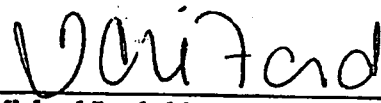
Dear Judge:

I am writing you in regards to the above referenced matter(s). I respectfully Request a Continuance from the court date set for August 11, 2015 at 9:00 A.M. I am unable to make this appearance due to a scheduling conflict in the Richland County Central Court for a Jury Trial. I am respectfully asking that the court comply with Rule 601 of the South Carolina Rules, Conflicts in Hearing Dates. Magistrate's court (Date Certain for a Jury Trial) listed in paragraph (12) has priority over the Office of Motor Vehicle Hearings and Other Administrative Bodies listed in paragraph (13); therefore, I must appear for the scheduled Jury Trial. Please see the enclosed document.

If the Continuance is not granted, I will have no choice but to file an Appeal as I cannot be in two places at once.

If you have any questions, please feel free to give our office a call.

Sincerely,


for Michael Laubshire, Esq.

enclosures

**RULE 601
CONFLICTS IN HEARING DATE**

a) Order of Priority as Between Tribunals. In the event an attorney of record is called to appear simultaneously in actions pending in two or more tribunals of this State, the following list shall establish the priority of his obligations to those tribunals:

- (1) The Supreme Court.
- (2) The Court of Appeals.
- (3) The Commission on Judicial Conduct, the Commission on Lawyer Conduct, and the Committee on Character and Fitness.
- (4) The Circuit Court - General Sessions.
- (5) The Family Court - merits hearings involving child abuse, child neglect and termination of parental rights upon approval of the Chief Judge for Administrative Purposes for the Family Court and notice to the Chief Judge for Administrative Purposes for the Circuit Court five days prior to the term of the Circuit Court.
- (6) The Circuit Court - Common Pleas, Jury Term.
- (7) The Family Court - all cases not referenced in (5) above.
- (8) The Circuit Court - Common Pleas, Non-Jury Term.
- (9) The Administrative Law Court.
- (10) Alternative Dispute Resolution Conferences conducted pursuant to the SC Court-Annexed ADR Rules.
- (11) The Probate Court.
- (12) Magistrates and Municipal Courts.
- (13) Other Administrative Bodies or Officials.

When a party or his counsel is in the process of a hearing or trial before a tribunal, he may not be required to appear in another tribunal having greater priority unless the tribunal with less priority grants a recess or continuance for that purpose.

b) Conflict With Federal Courts. When times set for appearances before state and federal courts are in conflict, appearance shall have such priority as is appropriate. Courts and counsel shall have the obligation to adjust schedules to accord with the spirit of comity between the state and federal courts.

c) Attorney to Give Notice. An attorney who cannot make a scheduled appearance because of the priority established by paragraph (a) of this rule shall notify the affected tribunals as soon as the conflict becomes apparent.

Adopted by Order dated May 14, 2010, effective immediately.

FILED

AUG 17 2015

SCOMVH

000043

15100

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

**Michael Laubshire
455 St. Andrews Rd., Suite E-1
Columbia, SC 29210-4487**

SUMMARY COURT SUMMONS

You are hereby summoned to be and appear by Richland County Olympia Magistrate to serve as a defendant/defense counsel/witness in the Jury Trial of State of South Carolina vs Deon Romeo Boyles. The trial date and location is Richland County Central Court, 1400 Huger Street, Courtroom 2 - A, Columbia, SC on August 11, 2015 at 9:30 AM, Case Number 46411GO, Violation date March 25, 2015.

This is a **DATE CERTAIN**. All requests for continuance must be in **WRITING** and must be submitted by **August 10, 2015** for consideration by the Court. Failure to appear by the defendant, without leave of the Court, may be construed by the Court as a Waiver of Jury Trial and the defendant will be subject to Bench Trial in absentia.

H.A. Cuff
JUDGE

**Richland County Olympia Magistrate
1601 Shop Road
Columbia, SC 29201
Phone: (803) 576-2550
Fax: (803) 576-2555**

July 15, 2015

Calendar: Court Checklist
Blue Book:
Client Contact:
7/17-Left msg @ 9:37
Mis Received 7/16/15 000644

Exhibit 3

000645

8/14/2015

The Laubshire Law Firm, LLC. Mail - The Laubshire Law Firm



Victoria Porter <tori@laubshirelaw.com>

The Laubshire Law Firm

Grubbs, Ricky <RDGrubbs@scdps.gov>
To: **Tori Ford** <tori@laubshirelaw.com>
Cc: "finabinet@scalc.net" <finabinet@scalc.net>

Mon, Aug 10, 2015 at 5:01 PM

No objections

Lieutenant R.D. Grubbs

South Carolina Highway Patrol – Troop One Headquarters

South Carolina Department of Public Safety

1626 Shop Road

Columbia, S.C. 29201

803-737-8329 (Office)

803-737-8323 (Fax)

803-360-8005 (Cell)

rdgrubbs@scdps.gov

www.scdps.gov/schp



From: Tori Ford [mailto:tori@laubshirelaw.com]
Sent: Monday, August 10, 2015 4:41 PM
To: Frances Inabinet; paddington@scalc.net; Grubbs, Ricky

[Quoted text hidden]

[Quoted text hidden]

Frances Inabinet

15-1914

From: Frances Inabinet
Sent: Wednesday, August 19, 2015 1:43 PM
To: Phil Addington
Subject: HARD COPY

Received hard copy of Michael Laubshire MFR on Melissa Spalt 8-11-15

Frances L. Inabinet
Scheduling Assistant to Hearing Officers
Phil Hayes
Robert Harley
Phil Addington
SC Administrative Law Court
Office of Motor Vehicle Hearings
1205 Pendleton St. Ste.325
Columbia SC 29201
803-734-3209
803-734-3200 (fax)

Frances Inabinet

From: Tori Ford <tori@laubshirelaw.com>
Sent: Monday, August 10, 2015 4:41 PM
To: Frances Inabinet; Phil Addington; rdgrubbs@schp.org
Subject: Re: FW: The Laubshire Law Firm
Attachments: Melissa Spalt Continuance Request.pdf

Ms. Inabinet,

Good afternoon! Please find attached our Request for Continuance regarding Melissa Spalt scheduled for tomorrow at 9:00 a.m.

On Mon, Aug 10, 2015 at 1:28 PM, Frances Inabinet <finabinet@scalco.net> wrote:

I have forwarded to the hearing officer

Thanks

fli

Frances L. Inabinet

Scheduling Assistant to Hearing Officers

Phil Hayes

Robert Harley

Phil Addington

SC Administrative Law Court

Office of Motor Vehicle Hearings

1205 Pendleton St. Ste.325

Columbia SC 29201

803-734-3209

803-734-3200 (fax)

0088

From: Tori Ford [mailto:tori@laubshirelaw.com]

Sent: Monday, August 10, 2015 1:28 PM

To: Frances Inabinet <finabinet@scalc.net>; Phil Addington <paddington@scalc.net>

Subject: Re: FW: The Laubshire Law Firm

We did recieve the Notice on June 24th, however, we were notified of a scheduled Jury Trial on July 15th. Considering Magistrates Court trumps the OMV, we kindly request you reconsider and grant the Continuance as previously requested.

On Mon, Aug 10, 2015 at 8:02 AM, Frances Inabinet <finabinet@scalc.net> wrote:

Please see email below from hearing officer

Thanks

fli

Frances L. Inabinet

Scheduling Assistant to Hearing Officers

Phil Hayes

Robert Harley

Phil Addington

SC Administrative Law Court

Office of Motor Vehicle Hearings

1205 Pendleton St. Ste.325

Columbia SC 29201

803-734-3209

803-734-3200 (fax)

From: Phil Addington
Sent: Sunday, August 09, 2015 7:41 PM
To: Frances Inabinet <finabinet@scalp.net>
Subject: RE: The Laubshire Law Firm

The Notice of Suspension was issued on April 05, 2015. The case was filed on April 10, 2015 and a hearing date of June 23, 2015 was scheduled. A request for a continuance was requested on June 18, 2015 and this request was granted. A new hearing date was set for August 11, 2015. This is the second request for a hearing. The new hearing date of August 11, 2015 went out on June 24, 2015. This request is denied.

From: Frances Inabinet
Sent: Friday, August 07, 2015 1:01 PM
To: Phil Addington <paddington@scalp.net>
Subject: FW: The Laubshire Law Firm

LET ME KNOW!

Frances L. Inabinet

Scheduling Assistant to Hearing Officers

Phil Hayes

Robert Harley

Phil Addington

SC Administrative Law Court

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Columbia SC 29201

803-734-3209

803-734-3200 (fax)

0090

000050

From: Tori Ford [mailto:tori@laubshirelaw.com]

Sent: Friday, August 07, 2015 12:30 PM

To: rdgrubbs@schp.org; Frances Inabinet <finabinet@scalc.net>; Teresa Langford <tlangford@scalc.net>

Subject: Fwd: The Laubshire Law Firm

Ms. Inabinet,

Good afternoon! Please find attached a request for continuance in regards to Melissa Spalt (2015-OMVH-01-1916-CC) as Michael is scheduled to be in Richland County Central Court for a jury trial at the same date and time.

Please let me know if you have any questions.

Sincerely,

Victoria Ford, Paralegal

The Laubshire Law Firm, LLC

455 Saint Andrews Road, Suite E-1

Columbia, SC 29210-4487

(803)708-4755 (Phone)

(803)708-4888 (Fax)

(855) 520-4753 (24 Hr. Emergency)

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Frances Inabinet

From: Grubbs, Ricky <RDGrubbs@SCDPS.GOV>
Sent: Monday, August 10, 2015 5:02 PM
To: 'Tori Ford'
Cc: Frances Inabinet
Subject: RE: FW: The Laubshire Law Firm

No objections

Lieutenant R.D. Grubbs
South Carolina Highway Patrol – Troop One Headquarters
South Carolina Department of Public Safety
1626 Shop Road
Columbia, S.C. 29201
803-737-8329 (Office)
803-737-8323 (Fax)
803-360-8005 (Cell)
rdgrubbs@scdps.gov
www.scdps.gov/schp



From: Tori Ford [mailto:tori@laubshirelaw.com]
Sent: Monday, August 10, 2015 4:41 PM
To: Frances Inabinet; paddington@scalc.net; Grubbs, Ricky
Subject: Re: FW: The Laubshire Law Firm

Ms. Inabinet,

Good afternoon! Please find attached our Request for Continuance regarding Melissa Spalt scheduled for tomorrow at 9:00 a.m.

On Mon, Aug 10, 2015 at 1:28 PM, Frances Inabinet <finabinet@scalc.net> wrote:

I have forwarded to the hearing officer

Thanks

fli

Frances L. Inabinet

Scheduling Assistant to Hearing Officers

Phil Hayes

Robert Harley

Phil Addington

SC Administrative Law Court

Office of Motor Vehicle Hearings

1205 Pendleton St. Ste.325

Columbia SC 29201

803-734-3209

803-734-3200 (fax)

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Sent: Monday, August 10, 2015 1:28 PM

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Subject: Re: FW: The Laubshire Law Firm

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Sent: Sunday, August 09, 2015 7:41 PM

To: Frances Inabinet <finabinet@scalc.net>

Subject: RE: The Laubshire Law Firm

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To: Phil Addington <paddington@scalc.net>

Subject: FW: The Laubshire Law Firm

LET ME KNOW!

Frances L. Inabinet

Scheduling Assistant to Hearing Officers

0097

000057

Phil Hayes

Robert Harley

Phil Addington

SC Administrative Law Court

Office of Motor Vehicle Hearings

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Sent: Friday, August 07, 2015 12:30 PM

To: rdgrubbs@schp.org; Frances Inabinet <finabinet@scalc.net>; Teresa Langford <tlangford@scalc.net>

Subject: Fwd: The Laubshire Law Firm

Ms. Inabinet,

Good afternoon! Please find attached a request for continuance in regards to Melissa Spalt (2015-OMVH-01-1916-CC) as Michael is scheduled to be in Richland County Central Court for a jury trial at the same date and time.

Please let me know if you have any questions.

--

0098

Sincerely,

Victoria Ford, Paralegal

The Laubshire Law Firm, LLC

455 Saint Andrews Road, Suite E-1

Columbia, SC 29210-4487

(803)708-4755 (Phone)

(803)708-4888 (Fax)

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000659

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000061

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THE LAUBSHIRE LAW FIRM, LLC

455 Saint Andrews Road, Suite E-1
Columbia, SC 29210-4487

Phone: (803)708-4755

Fax: (803)708-4888

August 10, 2015

SC Administrative Law Court
Office of Motor Vehicle Hearings
1205 Pendleton St. Ste.325
Columbia SC 29201

Re: The State v. Melissa Spalt
Docket No.: 15-OMVH-01-1916-CC

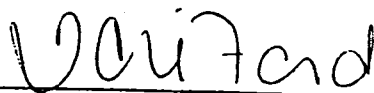
Dear Judge:

I am writing you in regards to the above referenced matter(s). I respectfully Request a Continuance from the court date set for August 11, 2015 at 9:00 A.M. I am unable to make this appearance due to a scheduling conflict in the Richland County Central Court for a Jury Trial. I am respectfully asking that the court comply with Rule 601 of the South Carolina Rules, Conflicts in Hearing Dates. Magistrate's court (Date Certain for a Jury Trial) listed in paragraph (12) has priority over the Office of Motor Vehicle Hearings and Other Administrative Bodies listed in paragraph (13); therefore, I must appear for the scheduled Jury Trial. Please see the enclosed document.

If the Continuance is not granted, I will have no choice but to file an Appeal as I cannot be in two places at once.

If you have any questions, please feel free to give our office a call.

Sincerely,


for Michael Laubshire, Esq.

enclosures

RULE 601
CONFLICTS IN HEARING DATES

a) Order of Priority as Between Tribunals. In the event an attorney of record is called to appear simultaneously in actions pending in two or more tribunals of this State, the following list shall establish the priority of his obligations to those tribunals:

- (1) The Supreme Court.
- (2) The Court of Appeals.
- (3) The Commission on Judicial Conduct, the Commission on Lawyer Conduct, and the Committee on Character and Fitness.
- (4) The Circuit Court - General Sessions.
- (5) The Family Court - merits hearings involving child abuse, child neglect and termination of parental rights upon approval of the Chief Judge for Administrative Purposes for the Family Court and notice to the Chief Judge for Administrative Purposes for the Circuit Court five days prior to the term of the Circuit Court.
- (6) The Circuit Court - Common Pleas, Jury Term.
- (7) The Family Court - all cases not referenced in (5) above.
- (8) The Circuit Court - Common Pleas, Non-Jury Term.
- (9) The Administrative Law Court.
- (10) Alternative Dispute Resolution Conferences conducted pursuant to the SC Court-Annexed ADR Rules.
- (11) The Probate Court.
- (12) Magistrates and Municipal Courts.
- (13) Other Administrative Bodies or Officials.

When a party or his counsel is in the process of a hearing or trial before a tribunal, he may not be required to appear in another tribunal having greater priority unless the tribunal with less priority grants a recess or continuance for that purpose.

b) Conflict With Federal Courts. When times set for appearances before state and federal courts are in conflict, appearance shall have such priority as is appropriate. Courts and counsel shall have the obligation to adjust schedules to accord with the spirit of comity between the state and federal courts.

c) Attorney to Give Notice. An attorney who cannot make a scheduled appearance because of the priority established by paragraph (a) of this rule shall notify the affected tribunals as soon as the conflict becomes apparent.

Amended by Order dated May 14, 2010, effective immediately.

15100

**STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND**

**Michael Laubshire
455 St. Andrews Rd., Suite E-1
Columbia, SC 29210-4487**

SUMMARY COURT SUMMONS

You are hereby summoned to be and appear by **Richland County Olympia Magistrate** to serve as a defendant/defense counsel/witness in the Jury Trial of State of **South Carolina vs Deon Romeo Boyles**. The trial date and location is **Richland County Central Court, 1400 Huger Street, Courtroom 2 – A, Columbia, SC** on **August 11, 2015 at 9:30 AM**, Case Number **46411GO**, Violation date **March 25, 2015**.

This is a **DATE CERTAIN**. All requests for continuance must be in **WRITING** and must be submitted by **August 10, 2015** for consideration by the Court. Failure to appear by the defendant, without leave of the Court, may be construed by the Court as a Waiver of Jury Trial and the defendant will be subject to Bench Trial in absentia.

H.A. Cuff
JUDGE

**Richland County Olympia Magistrate
1601 Shop Road
Columbia, SC 29201
Phone: (803) 576-2550
Fax: (803) 576-2555**

July 15, 2015

Court Checklist
Calendar: _____
Blue Book: _____
Client Contact: _____
7/17-left msg @ 9:37

Misc Received 7/16/15

Frances Inabinet

From: Tori Ford <tori@laubshirelaw.com>
Sent: Monday, August 10, 2015 4:41 PM
To: Frances Inabinet; Phil Addington; rdgrubbs@schp.org
Subject: Re: FW: The Laubshire Law Firm
Attachments: Melissa Spalt Continuance Request.pdf

Ms. Inabinet,

Good afternoon! Please find attached our Request for Continuance regarding Melissa Spalt scheduled for tomorrow at 9:00 a.m.

On Mon, Aug 10, 2015 at 1:28 PM, Frances Inabinet <finabinet@scalp.net> wrote:

I have forwarded to the hearing officer

Thanks

fli

Frances L. Inabinet

Scheduling Assistant to Hearing Officers

Phil Hayes

Robert Harley

Phil Addington

SC Administrative Law Court

Office of Motor Vehicle Hearings

1205 Pendleton St. Ste.325

Columbia SC 29201

803-734-3209

803-734-3200 (fax)

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0107

0000667

From: Phil Addington
Sent: Sunday, August 09, 2015 7:41 PM
To: Frances Inabinet <finabinet@scalco.net>
Subject: RE: The Laubshire Law Firm

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Subject: FW: The Laubshire Law Firm

LET ME KNOW!

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Scheduling Assistant to Hearing Officers

Phil Hayes

Robert Harley

Phil Addington

SC Administrative Law Court

Office of Motor Vehicle Hearings

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Please let me know if you have any questions.

--

Sincerely,

Victoria Ford, Paralegal

The Laubshire Law Firm, LLC

455 Saint Andrews Road, Suite E-1

Columbia, SC 29210-4487

(803)708-4755 (Phone)

(803)708-4888 (Fax)

0109

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(855) 520-4753 (24 Hr. Emergency)

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0111

060671

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Columbia, SC 29210-4487

Phone: (803)708-4755

Fax: (803)708-4888

August 7, 2015

South Carolina Administrative Law Court
Office of Motor Vehicle Hearings
Kershaw County Court House
1121 Broad Street
Grand Jury Room
Camden, SC

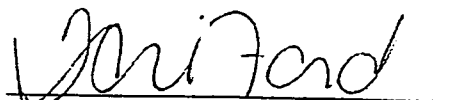
Re: The State v. Melissa Spalt
(15-OMVH-01-1916-CC)

Dear Clerk:

I am writing you in regards to the above referenced matter(s). I respectfully Request a Continuance from the court date set for August 11, 2015 at 9:00 A.M. I am unable to make this appearance due to scheduling conflict in the Richland County Central Court. Please see the enclosed Summary Court Summons.

If you have any questions, please feel free to give our office a call.

Sincerely,


Michael Laubshire, Esq.

for

enclosure

0113

000073

15100

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Michael Laubshire
455 St. Andrews Rd., Suite E-1
Columbia, SC 29210-4487

SUMMARY COURT SUMMONS

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H.A. Cuff
JUDGE

Richland County Olympia Magistrate
1601 Shop Road
Columbia, SC 29201
Phone: (803) 576-2550
Fax: (803) 576-2555

July 15, 2015

Calendar: Court Checklist

Blue Book:

Client Contact: 7/17-left msg @ 9:37

Misc: Received 7/16/15

Frances Inabinet

From: Frances Inabinet
Sent: Wednesday, June 24, 2015 7:51 AM
To: 'hpu@scdmv.net'; 'rdgrubbs@schp.org'; michael@laubshirelaw.com;
'tori@laubshirelaw.com'
Subject: Reschedule Letter, Melissa Spalt 8-11-15 dkt# 1916
Attachments: Reschedule Letter, Melissa Spalt 8-11-15 dkt# 1916.pdf

Frances L. Inabinet
Scheduling Assistant to Hearing Officers
Phil Hayes
Robert Harley
Phil Addington
SC Administrative Law Court
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Frances Inabinet

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Sent: Tuesday, June 23, 2015 2:28 PM
To: Frances Inabinet
Subject: RE: The Laubshire Law Firm

Told them yesterday we were, they must not have told you!!!!!!

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Sent: Tuesday, June 23, 2015 8:02 AM
To: Phil Addington
Subject: FW: The Laubshire Law Firm

ARE WE CONTINUING THIS ONE????

Frances L. Inabinet
Scheduling Assistant to Hearing Officers
Phil Hayes
Robert Harley
Phil Addington
SC Administrative Law Court
Office of Motor Vehicle Hearings
1205 Pendleton St. Ste.325
Columbia SC 29201
803-734-3209
803-734-3200 (fax)

From: Victoria Porter [<mailto:tori@laubshirelaw.com>]
Sent: Friday, June 19, 2015 12:19 PM
To: rdgrubbs@schp.org; Frances Inabinet; Teresa Langford
Subject: Fwd: The Laubshire Law Firm

Ms. Inabinet,

Good afternoon! Please find attached a request for continuance in regards to Melissa Spalt (2015-OMVH-01-1916-CC) as Michael is scheduled to be in the Richland County General Sessions court at the same date and time.

Please let me know if you have any questions.

--

Sincerely,

Victoria Ford, Paralegal

1914

The Laubshire Law Firm, LLC
455 Saint Andrews Road, Suite E-1
Columbia, SC 29210-4487
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455 St. Andrews Rd., Ste. E-1
Columbia, SC 29210-4487

Phone: (803)708-4755

Fax: (803)708-4888

June 18, 2015

Sent VIA fax, email and US Postal Mail

South Carolina Administrative Law Court
Office of Motor Vehicle Hearings
Edgar A. Brown Building
1205 Pendleton Street, Suite 325
Columbia, S.C. 29201

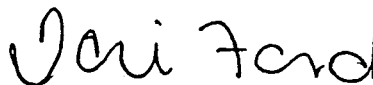
Re: Request for Continuance
Case No(s): 2015-OMVH-01-1916-CC

Dear Clerk of Court:

I am writing you in regards to the above referenced case. I am requesting that this matter be continued because this case is set to be heard Tuesday, June 23, 2015 at 9:00 a.m. however, I am scheduled to be in Richland County General Sessions court at the same date and time.

If you have any questions feel free to give our office a call.

Sincerely,



for
Michael Laubshire, Esq.

The State of South Carolina



Dan Johnson
Solicitor

Paulette Edwards
Deputy Solicitor

SOLICITOR
Fifth Judicial Circuit
1701 Main Street
Post Office Box 192
Columbia, South Carolina 29201

Phone: (803) 576-1800
Fax: (803) 576-1718

Daniel R. Goldberg
Deputy Solicitor

STATE OF SOUTH CAROLINA,

VS.

IN THE COURT OF GENERAL
SESSIONS

James Harris
Defendant

NOTICE FOR COURT

You are hereby notified that your case(s) has (have) been scheduled for a trial in Richland County General Sessions Court on June 23 20 15 at 9:00 A.M. You will receive no other notice. If you fail to appear on this date a bench warrant will be issued for your arrest. You must contact your attorney as soon as possible regarding this notice.

[Signature]
Defendant's Signature

Cheryl B. White, Wills
Solicitor's Signature

May 19, 2015
Date

The Laubshire Law Firm, LLC

455 St. Andrews Rd., Ste. E-1
Columbia, SC 29210-4487

Phone: (803)708-4755

Fax: (803)708-4888

June 12, 2015

South Carolina Administrative Law Court
Office of Motor Vehicle Hearings
Edgar A. Brown Building
1205 Pendleton Street, Suite 325
Columbia, S.C. 29201

PA
6-23-15

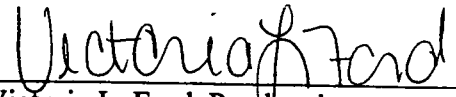
Re: Case No(s): 2015-OMVH-01-1916-CC

Dear Clerk of Court:

I am writing you in regards to the above referenced case. Please find enclosed an original and one copy of Subpoena and Certificate of Service for same. I kindly request you file in your normal manner and return to us a copy in the enclosed self-addressed envelope.

If you have any questions feel free to give our office a call.

Sincerely,


Victoria L. Ford, Paralegal

RECEIVED

JUN 17 2015

SCOMVH

FILED

JUN 12 2015

SCOM

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0121

THE LAUBSHIRE LAW FIRM, LLC

455 Saint Andrews Road, Suite E-1
Columbia, SC 29210-4487

Phone: (803)708-4755

Fax: (803)708-4888

June 12, 2015

Trooper J. McWhorter
South Carolina Highway Patrol
1054 Ehrenclou Drive
Camden, SC 29020

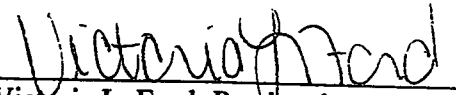
Re: Case No.: 15-OMVH-01-1916-CC

Dear Trooper McWhorter:

I am writing you in regards to the above referenced case. Please find enclosed and served upon you one copy of the Respondent's Subpoena Duces Tecum and Certificate of Service for same.

If you have any questions, please feel free to give our office a call.

Sincerely,


Victoria L. Ford, Paralegal

Enclosures

FILED

JUN 12 2015

SCOMVH

Web: www.laubshirelaw.com
E-mail: tori@laubshirelaw.com

0122

000082

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

OFFICE OF MOTOR VEHICLE HEARINGS		SUBPOENA (Appearance/Production)	
v. Melissa Spalt		Docket Number: 15-OMVH-01-1916-CC	
TO: (Name and address of witness being served): TROOPER J. MCWHORTER SOUTH CAROLINA HIGHWAY PATROL 1054 EHRENCLOU DRIVE CAMDEN, SC 29020			
YOU ARE HEREBY COMMANDED to: ☐ Appear and testify in the above captioned case at the Place, date and time shown below; and/or ☒ Produce the following items at the place, date and time shown below.			
LIST DOCUMENT(S) or OBJECTS(S): Police Report/Incident Report/Collision Report, At-Scene-Video and/or Affidavit for Failure to Comply with Videotaping Requirement, Advisement of Implied Consent, Datamaster Video and/or Affidavit for Failure to Comply with Videotaping Requirement, Breath/Alcohol Test Analysis Report, Breath Test Profile, Breath Graph Profile, Urine/Blood Collection Report and Datamaster Certification.			
PLACE: 455 St. Andrews Rd, Suite E-1 Columbia, SC 29210-4487		DATE: June 17, 2015	
		TIME: 8:45 a.m.	
NAME AND ADDRESS OF PARTY REQUESTING SUBPOENA: Michael Laubshire, Esq. 455 St. Andrews Rd, Suite E-1 Columbia, SC 29210-4487		TELEPHONE OF PARTY REQUESTING SUBPOENA: (803) 708-4755	
I CERTIFY THAT THIS SUBPOENA IS ISSUED IN COMPLIANCE WITH DMVH RULE 12(A).		DATE of ISSUE:	
ISSUING ATTORNEY'S NAME, ADDRESS AND TELEPHONE: Michael Laubshire, Esq. (803) 708-4755 455 St. Andrews Rd., Ste. E-1, Columbia, SC 29210		06/12/2015	
ISSUING ATTORNEY'S SIGNATURE AND TITLE: 		S.C. BAR #: 79078	
ATTORNEY FOR:			
☐ Petitioner ☒ Respondent ☐ Other		FILED	
Revised June 2008 (attorney form)			

JUN 12 2015

SC 0123

STATE OF SOUTH CAROLINA)

COUNTY OF KERSHAW)

THE STATE,)

v.)

Melissa Spalt,)

Defendant.)

IN THE MAGISTRATES COURT FOR
THE FIFTH JUDICIAL CIRCUIT

Ticket No(s): G188518

15-1916

NOTICE OF APPEARANCE
OF COUNSEL

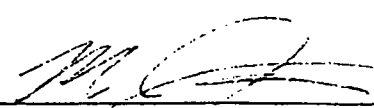
To: The Clerk of the above named Court and all Parties of record:

PLEASE TAKE NOTICE that I, the undersigned attorney, am appearing in this case as counsel for the Defendant, Melissa Spalt. I respectfully request all correspondence regarding the above-captioned matters be sent to my office at the address listed below.

Dated: April 20, 2015
Columbia, SC

Respectfully submitted,

THE LAUBSHIRE LAW FIRM, LLC,


Michael Laubshire, Esq.
455 St. Andrews Rd., Ste. E-1
Columbia, SC 29210-4487
(803)708-4755 (phone)
(803)708-4888 (fax)
Attorney for Defendant

FILED

JUN 12 2015

SC

0125

Teresa Langford

From: Teresa Langford
Sent: Friday, June 12, 2015 10:32 AM
To: Michael Laubshire (michael@laubshirelaw.com); tori@laubshirelaw.com
Attachments: Notice of Hearing, Melissa Spalt 6-23 dkt# 191

Teresa H Langford
Scheduling Assistant
SC Administrative Law Court
Office Of Motor Vehicle Hearings
1205 Pendleton Street Suite 325
Columbia SC 29201
803-734-3203
Fax#: 803-734-3200

**STATE OF SOUTH CAROLINA
OFFICE OF MOTOR VEHICLE HEARINGS**

Docket No. 15-OMVH-01-1916-CC
DL#

NOTICE OF HEARING

Melissa Robin Spalt,
Respondent.

IT IS HEREBY NOTICED that a hearing on the merits of this action before Hearing Officer Phillip T. Addington is scheduled to begin at **9:00 AM on Tuesday, June 23 2015 at Kershaw County Court House 1121 Broad St., Grand Jury Room Camden SC.** All parties are to arrive at least fifteen minutes prior to the time set for the hearing.

0127

Frances Inabinet

From: Frances Inabinet
Sent: Tuesday, April 14, 2015 11:10 AM
To: 'mystycal_one@hotmail.com'
Subject: FW: Notice of Hearing, Melissa Spalt 6-23 dkt# 1916
Attachments: Notice of Hearing, Melissa Spalt 6-23 dkt# 1916.pdf

Frances L. Inabinet
Scheduling Assistant to Hearing Officers
Phil Hayes
Robert Harley
Phil Addington
SC Administrative Law Court
Office of Motor Vehicle Hearings
1205 Pendleton St. Ste.325
Columbia SC 29201
803-734-3209
803-734-3200 (fax)

From: Frances Inabinet
Sent: Tuesday, April 14, 2015 11:08 AM
To: 'hpu@scdmv.net'; 'rdgrubbs@schp.org'; 'mystycal-one@hotmail.com'
Subject: Notice of Hearing, Melissa Spalt 6-23 dkt# 1916

Frances L. Inabinet
Scheduling Assistant to Hearing Officers
Phil Hayes
Robert Harley
Phil Addington
SC Administrative Law Court
Office of Motor Vehicle Hearings
1205 Pendleton St. Ste.325
Columbia SC 29201
803-734-3209
803-734-3200 (fax)

Frances Inabinet

From: Microsoft Outlook
To: mystycal-one@hotmail.com
Sent: Tuesday, April 14, 2015 11:08 AM
Subject: Undeliverable: Notice of Hearing, Melissa Spalt 6-23 dkt# 1916

COL004-MC3F29.hotmail.com rejected your message to the following email addresses:

mystycal-one@hotmail.com (mystycal-one@hotmail.com)

A problem occurred while delivering your message to this email address. Try sending your message again. If the problem continues, please contact your email admin.

COL004-MC3F29.hotmail.com gave this error:
Requested action not taken: mailbox unavailable

Diagnostic information for administrators:

Generating server: BN1PR04MB278.namprd04.prod.outlook.com

mystycal-one@hotmail.com
COL004-MC3F29.hotmail.com

Remote Server returned '550 Requested action not taken: mailbox unavailable'

Original message headers:

Received: from BN1PR04MB042.namprd04.prod.outlook.com (10.255.203.21) by BN1PR04MB278.namprd04.prod.outlook.com (10.141.64.149) with Microsoft SMTP Server (TLS) id 15.1.130.23; Tue, 14 Apr 2015 15:08:17 +0000

Received: from BN1PR04MB044.namprd04.prod.outlook.com (10.255.203.23) by BN1PR04MB042.namprd04.prod.outlook.com (10.255.203.21) with Microsoft SMTP Server (TLS) id 15.1.118.21; Tue, 14 Apr 2015 15:08:15 +0000

Received: from BN1PR04MB044.namprd04.prod.outlook.com ([169.254.3.44]) by BN1PR04MB044.namprd04.prod.outlook.com ([169.254.3.44]) with mapi id 15.01.0130.020; Tue, 14 Apr 2015 15:08:15 +0000

From: Frances Inabinet <finabinet@scalcn.net>

To: "hpu@scdmv.net" <hpu@scdmv.net>, "rdgrubbs@schp.org" <rdgrubbs@schp.org>, "mystycal-one@hotmail.com" <mystycal-one@hotmail.com>

Subject: Notice of Hearing, Melissa Spalt 6-23 dkt# 1916

Thread-Topic: Notice of Hearing, Melissa Spalt 6-23 dkt# 1916

Thread-Index: AdB2xNTuihBLxa+ATaCQVagrSNxFlw==

Date: Tue, 14 Apr 2015 15:08:15 +0000

Message-ID: <BN1PR04MB0442962110DAC7A17F4A631A1E60@BN1PR04MB044.namprd04.prod.out>

000089

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X-MS-TNEF-Correlator:
x-originating-ip: [167.7.27.190]
authentication-results: scdmv.net; dkim=none (message not signed)
header.d=none;
x-microsoft-antispam:
UriScan::BCL:0;PCL:0;RULEID::SRVR:BN1PR04MB042;UriScan::BCL:0;PCL:0;RULEID::SRVR:BN1PR04MB278;
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x-exchange-antispam-report-test: UriScan;;
x-exchange-antispam-report-cfa-test:
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MIME-Version: 1.0
X-MS-Exchange-CrossTenant-originalarrivaltime: 14 Apr 2015 15:08:15.6806
(UTC)
X-MS-Exchange-CrossTenant-fromentityheader: Hosted
X-MS-Exchange-CrossTenant-id: 04872565-6fdc-4909-be87-973bb79d559d
X-MS-Exchange-Transport-CrossTenantHeadersStamped: BN1PR04MB042
Return-Path: finabinet@scalcn.net
X-OriginatorOrg: scalcn.net



Notice of
earing, Melissa Sp

Frances Inabinet

From: Frances Inabinet
Sent: Tuesday, April 14, 2015 11:08 AM
To: 'hpu@scdmv.net'; 'rdgrubbs@schp.org'; 'mystycal-one@hotmail.com'
Subject: Notice of Hearing, Melissa Spalt 6-23 dkt# 1916
Attachments: Notice of Hearing, Melissa Spalt 6-23 dkt# 1916.pdf

Frances L. Inabinet
Scheduling Assistant to Hearing Officers
Phil Hayes
Robert Harley
Phil Addington
SC Administrative Law Court
Office of Motor Vehicle Hearings
1205 Pendleton St. Ste.325
Columbia SC 29201
803-734-3209
803-734-3200 (fax)

REDACTED

2015 .OMVH 1-14/6



South Carolina Department of Motor Vehicles

MV-65
(Rev. 8/12)

NOTICE OF SUSPENSION

Driver's Name Melissa Robin Spelt BR/DL State and Number SC 29732 Date of Birth 1725 Ashcroft Street Rock Hill SC 29732
Address on Driver's License: Street address, Apt. No., City, State, Zip Code

Special mailing address for notices (if different from driver's license address): Street address, Apt. No., City, State, Zip Code

Vehicle License Plate State and No. SC- CXX241 Vehicle Type: Commercial ☐ Yes ☒ No Hazardous Material ☐ Yes ☒ No

**YOUR PRIVILEGE TO DRIVE IN SOUTH CAROLINA IS SUSPENDED IMMEDIATELY FOR THE FOLLOWING:
(CHECK ONLY ONE BOX)**

**UNDER THE AGE OF TWENTY-ONE (21)
AND NOT UNDER ARREST FOR DUI***

- ☐ Registering an alcohol concentration of .02 or greater*
☐ Refusing to submit to a breath, blood or urine test*
Date of Test/Refusal

ANY AGE UNDER ARREST FOR DUI

- ☐ Registering an alcohol concentration of .15 or greater
☒ Refusing to submit to a breath, blood or urine test
04-05-2015 Date of Test/Refusal

*A person who is taken for testing under 56-1-286 cannot be prosecuted under 20-7-8920, 20-7-8925, 56-5-2930 or 56-5-2933. Everyone who receives this Notice of Suspension can request a hearing to challenge the suspension. A request for a hearing must be filed with the SC Office of Motor Vehicle Hearings within thirty days of the issuance of the Notice of Suspension. There is a \$200.00 filing fee. (Personal checks are not accepted.) See the back of this form for more information on how to ask for a hearing.

If a hearing is scheduled, you may be able to get a temporary alcohol restricted license. The temporary alcohol restricted license costs \$100.00 and allows you to drive without restrictions until the hearing results are mailed to you. See the back of this form for instructions on how to obtain a temporary alcohol restricted license.

If you do not obtain a temporary alcohol restricted license, your suspension continues. You cannot drive until you either obtain a route-restricted license or your suspension period ends and you: 1) enroll in ADSAP [if you do not complete ADSAP, your driver's license will again be suspended]; 2) pay a \$100.00 reinstatement fee; and 3) have a license issued to you.

If you do obtain a temporary alcohol restricted license and the hearing officer rules against you after your hearing, your suspension will go back into effect. If you were suspended after having been arrested for DUI, you may be eligible for a route-restricted license to allow you to drive for the remainder of the suspension. There are instructions on the back of this form to obtain a route-restricted license. If you do not obtain a route-restricted license or if you are under the age of twenty-one (21) and were not arrested for DUI, you cannot drive until your suspension period ends and you: 1) enroll in ADSAP [if you do not complete ADSAP, your driver's license will again be suspended]; 2) pay a \$100.00 reinstatement fee; and 3) have a license issued to you.

If you do obtain a temporary alcohol restricted license and the hearing officer rules in your favor, the suspension will be cancelled. Your driving privileges will be reinstated. However, you must go to a Department of Motor Vehicles office to obtain a regular license issued.

If you were suspended after having been arrested for DUI, you may be entitled to have a route-restricted license during your suspension period. You do not have to request a hearing to be eligible for a route-restricted license. The route-restricted license costs \$100.00 and allows you to drive only to and from work, college, ADSAP classes, and a court-ordered drug program, plus during the course of your employment or college. However, you must enroll in ADSAP before a route-restricted license will be issued. See the back of this form for instructions on how to obtain a route-restricted license.

I understand that I cannot drive until a license has been issued to me. Refused to sign 04-05-2015
Signature of Driver Date Signed

Driver's license or permit surrendered ☒ (yes) or no YES (If yes, license must be attached to yellow copy of this form)

04-05-2015 J.C. Mawharter
Date Signed Signature of Arresting Officer

SCHP Troop 1 Kershaw HP0100
Agency Name Agency Code

04-05-2015 J.C. Mawharter
Date Signed Signature of DataMaster Operator

SCHP Troop 1 Kershaw HP0100
Agency Name Agency Code

J.C. Mawharter
Printed Name of Arresting Officer

803-775-5353
Agency Telephone Number

J.C. Mawharter
Printed Name of DataMaster Operator

803-775-5353 060692
Agency Telephone Number

the following information:

1. Name of the person requesting the hearing (last, first, and middle names, and any aliases or nicknames);
2. Date of birth of the person requesting the hearing; and
3. Address of the person requesting the hearing (street, city, state, and zip code).

4/10/15

[Signature]

1725 Ashcroft Lane Rock Hill SC 2972

704 605 6712

mystical-one
notmai

Name of the person requesting the hearing

Address, Phone Number, and Email Address

1. Date of the hearing (month, day, and year) and time of the hearing (hour and minute).

INSTRUCTIONS FOR USING THIS FORM TO REQUEST A HEARING

1. Complete this form and mail it to the Department of Social Services, 1000 North Main Street, Columbia, South Carolina 29201.

2. If you are requesting a hearing for a child, you must also complete the Child Welfare Information Statement (CWIS) and mail it to the Department of Social Services.

3. If you are requesting a hearing for a child, you must also complete the Child Welfare Information Statement (CWIS) and mail it to the Department of Social Services.

INSTRUCTIONS FOR USING THIS FORM TO REQUEST A HEARING

1. Complete this form and mail it to the Department of Social Services, 1000 North Main Street, Columbia, South Carolina 29201.

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4. If you are requesting a hearing for a child, you must also complete the Child Welfare Information Statement (CWIS) and mail it to the Department of Social Services.

5. If you are requesting a hearing for a child, you must also complete the Child Welfare Information Statement (CWIS) and mail it to the Department of Social Services.

6. If you are requesting a hearing for a child, you must also complete the Child Welfare Information Statement (CWIS) and mail it to the Department of Social Services.

7. If you are requesting a hearing for a child, you must also complete the Child Welfare Information Statement (CWIS) and mail it to the Department of Social Services.

8. If you are requesting a hearing for a child, you must also complete the Child Welfare Information Statement (CWIS) and mail it to the Department of Social Services.

9. If you are requesting a hearing for a child, you must also complete the Child Welfare Information Statement (CWIS) and mail it to the Department of Social Services.

10. If you are requesting a hearing for a child, you must also complete the Child Welfare Information Statement (CWIS) and mail it to the Department of Social Services.

11. If you are requesting a hearing for a child, you must also complete the Child Welfare Information Statement (CWIS) and mail it to the Department of Social Services.

12. If you are requesting a hearing for a child, you must also complete the Child Welfare Information Statement (CWIS) and mail it to the Department of Social Services.

13. If you are requesting a hearing for a child, you must also complete the Child Welfare Information Statement (CWIS) and mail it to the Department of Social Services.

14. If you are requesting a hearing for a child, you must also complete the Child Welfare Information Statement (CWIS) and mail it to the Department of Social Services.

15. If you are requesting a hearing for a child, you must also complete the Child Welfare Information Statement (CWIS) and mail it to the Department of Social Services.

View Cash Receipt

Page 1 of 1

Receipt

Number: CR1504-0212
Till: OMVH Till
Posted: Yes

Dated: 04-10-2015
Total Paid: \$200.00

Void Information

Void Method: Voided: No
Void Posted: No
Void Explanation:

Generate

Cash Receipt

Date	Number	Item Type	Customer	Paid
04-10-2015	NV1504-0212	Case Filing Fee - \$200	Spalt, Melissa Robin	200.00

Payment Method	Reference	Paid
Cash		200.00

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT
OFFICE OF MOTOR VEHICLE HEARINGS

RALPH K. ANDERSON, III
Director



(803) 734-3201
FAX (803) 734-3200
WWW.SCOMVH.NET

September 9, 2015

Michael Laubshire, Esquire
The Laubshire Law Firm, LLC
455 Saint Andrews Road, Suite E-1
Columbia, SC 29210-4487

Re: Melissa Spalt, FOIA request

Dear Mr. Laubshire,

We received your request made pursuant to the Freedom of Information Act in which you seek copies of the documents in the OMVH file regarding Ms. Spalt.

The entire file consists of 95 pages. The Administrative Law Court, and thus the OMVH, charges \$.50 per page for documents. Therefore, the cost will be \$47.50. Be advised that the Motion for Reconsideration filed by you is 19 pages and we received it twice. Therefore, if you do not want that copied twice, we will deduct \$9.50 from the total.

Since you are the attorney of record in this case, we will scan and email the documents to you free of charge if you prefer to receive them that way.

There was no audio recording made in this case.

Please let us know how you wish to proceed. If you have any questions, you may contact me at (803) 734-3201.

Sincerely,

Ester F. Haymond
Senior Staff Counsel

0135

000095

THE LAUBSHIRE LAW FIRM, LLC

455 Saint Andrews Road, Suite E-1
Columbia, SC 29210-4487

Phone: (803)708-4755

Fax: (803)708-4888

August 18, 2015

SC Administrative Law Court
Office of Motor Vehicle Hearings
1205 Pendleton St. Suite 325
Columbia SC 29201

Re: South Carolina Department of Public
Safety and South Carolina Department of
Motor Vehicles v. Melissa Spalt

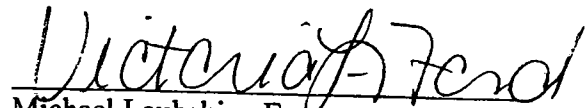
Dear Sir/Madam:

This is a request made pursuant to the Freedom of Information Act.

I am writing to request a certified copy of the entire courts record in the above referenced case, including the audio recording and transcript of the Respondent, Melissa Spalt's hearing on August 11, 2015. I am also requesting the court preserve the original record and recording should it become necessary as part of the record on appeal. Please let us know of any fees due upon this request.

I am enclosing an original and one copy of this letter with a certificate of service for same. I respectfully request this letter be clocked and become part of the Courts record. Kindly file in your usual manner and return the stamped copy to me in the enclosed and self-addresses stamped envelope.

Sincerely,


Michael Laubshire, Esq.

for
FILED

AUG 18 2015

SCOMVH

000096

RECEIVED

AUG 20 2015

Certificate of Service

This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof, in the United States mail, postage aid, or in the interagency Mail Service addressed to the party (ies) or their attorney(s).

This 2nd day of October 2015

By: Yokanda P. Williams

Title: Administrative Coordinator, OMVH

**STATE OF SOUTH CAROLINA
OFFICE OF MOTOR VEHICLE HEARINGS**

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

Petitioner,

vs.

Melissa Robin Spalt,

Respondent.

Docket No. 15-OMVH-01-1916-CC

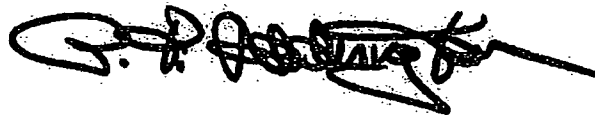
**NOTICE OF RESCHEDULED
HEARING (AFTER REMAND)**

This matter was initially before the South Carolina Office of Motor Vehicle Hearings (OMVH) pursuant to Respondent's request for a contested case hearing regarding the suspension of Respondent's driver's license and driving privileges. The case was dismissed on August 12, 2015, but was remanded for a hearing on December 1, 2015, after appeal.

THEREFORE, IT IS HEREBY NOTICED that a hearing is now scheduled in this case to begin before me at 9:00 a.m. on Tuesday, March 8, 2016, at the Kershaw County Courthouse, 1121 Broad Street, Grand Jury Room, Camden, South Carolina.

All other provisions of the hearing notice issued previously in this case shall be applicable to this new hearing notice.

AND IT IS SO ORDERED.



Phillip T. Addington
Senior OMVH Hearing Officer

December 2, 2015
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT
The Honorable H.W. Funderburk, Jr., Administrative Law Judge

Appellate Case No. 2015-002535

Melissa Spalt Respondent,

v.

South Carolina Department of Motor Vehicles and
South Carolina Department of Public Safety Appellants.

Of Whom the South Carolina Department of Motor Vehicles is Appellant

CERTIFICATE OF COUNSEL

The undersigned counsel hereby certifies pursuant to SCARC Rule 210(g) that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



Brandy A. Duncan, SC Bar # 72052
Assistant General Counsel
S.C. Department of Motor Vehicles

February 10, 2016
Blythewood, SC

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT
The Honorable H.W. Funderburk, Jr., Administrative Law Judge

Appellate Case No. 2015-002535

Melissa Spalt Respondent,

v.

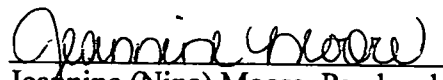
South Carolina Department of Motor Vehicles and
South Carolina Department of Public Safety Appellants.

Of Whom the South Carolina Department of Motor Vehicles is Appellant

CERTIFICATE OF SERVICE

PURSUANT TO SCACR, I HEREBY CERTIFY that today, February 16, 2016, I served one (1) copy of the Record on Appeal by depositing with the United States Postal Service, correct postage prepaid, to Counsel for the Respondent at the address indicated below:

Michael Laubshire, Esquire
455 Saint Andrews Road, Suite E-1
Columbia, South Carolina 29210-4487


Jeannine (Nina) Moore, Paralegal
Office of General Counsel

February 16, 2016
Blythewood, South Carolina

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SC Court of Appeals

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Melissa Spalt Respondent,
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South Carolina Department of Motor Vehicles and
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Of Whom the South Carolina Department of Motor Vehicles is Appellant.

PETITION FOR REHEARING

Pursuant to Rules 240 and 242(c), SCACR, the Appellant South Carolina Department of Motor Vehicles (SCDMV) petitions for rehearing of this matter. The grounds for this petition are:

- 1) THE DECEMBER 1, 2015 FINAL ORDER AND ORDER OF REMAND ISSUED BY THE ADMINISTRATIVE LAW COURT IS IMMEDIATELY APPEALABLE TO THIS COURT.

S.C. Code §14-8-200 sets forth those cases that may be considered by the appellate courts of South Carolina. S.C. Code §14-8-200 states:

...[T]he court has jurisdiction over any case in which an appeal is taken from an order, judgment, or decree of... a final decision of an administrative law judge... This jurisdiction is appellate only, and the court shall apply the same scope of review that the Supreme Court would apply in a similar case...



(Emphasis added). In this case, the order issued by the Administrative Law Court (hereinafter, "ALC") on December 1, 2015 was explicitly titled "Final Order and Order of Remand." Therefore, there can be no doubt that the December 1, 2015 ALC Order is a "final decision of an administrative law judge" as the title itself proclaims it to be a "Final Order..." For this reason alone, this case is immediately appealable to this Court.

The Final Order and Order of Remand issued by the ALC on December 1, 2015 explicitly remands this case back to the OMVH "for a hearing on the merits." This case was already scheduled for a hearing once before and Respondent, nor her Counsel appeared at the hearing. Therefore, the ALC's Order of Remand has, essentially, granted Respondent a new "trial" via the new hearing. Instructive in this regard is the recently decided case *Morrow v. Fundamental Long-Term Care Holdings, LLC*, 412 S.C. 534, 539, 773 S.E.2d 144, 146. The *Morrow* case was dismissed by the Court of Appeals as interlocutory. This dismissal by the Court of Appeals was then appealed to the South Carolina Supreme Court, which decided the appeal was not interlocutory and decided the underlying issue that was original appealed to the Court of Appeals, specifically, whether several defendants in the lawsuit could be severed under the label "bifurcation." In the *Morrow* case the Supreme Court held the order of "bifurcation" went far beyond the Court's understanding of bifurcation, thereby affecting a substantial right of the petitioners. Thus, the Supreme Court reversed the order of Dismissal issued by the Court of Appeals and the order of "bifurcation" issued by the trial court. Similarly, in this case, because the Order issued by the ALC on December 1, 2015 explicitly remands this case back to the OMVH "for a hearing on the merits" and because this case was already scheduled for a hearing once before (Respondent, nor her Counsel appeared at the

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hearing), the ALC's Order of Remand has, essentially, granted Respondent a new "trial" via the new hearing. As discussed in the *Morrow* case, to prevent Appellant DMV "from appealing the order immediately would encourage piecemeal litigation and limit [DMV's] appellate remedies." See also, *Knight v. Johnson*, 244 S.C. 70, 135 S.E.2d 372 (1964) (An order of the trial court granting or refusing a new trial, when based solely on an error of law, is subject to review by the Supreme Court); and *Daughy v. Northwestern R. Co. of South Carolina*, 92 S.C. 361, 75 S.E. 553 (1912) (This statute does not undertake to make an order granting a new trial appealable, when it is based upon questions of fact; but it can review orders granting new trials when based upon error of law.).

In denying this appeal, on the basis of the appeal being interlocutory, the Court of Appeals relied on the case *Charlotte-Mecklenburg Hosp. Auth. v. S.C. Dep't of Health & Envtl. Control*, 387 S.C. 265, 266, 692 S.E.2d 894, 894 (2010). In relying on this case, the Court of Appeal cited sections that stated "A final judgment disposes of the whole subject matter of the action or terminates the particular proceeding or action, leaving nothing to be done but to enforce by execution what has been determined" and "If there is some further act which must be done by the court prior to a determination of the rights of the parties, the order is interlocutory." These citations, however, ignore the similar fundamental issue in this case and in the *Morrow* case, i.e. if the only "further act which must be done by the court" is to have a full blown trial or hearing, then the Order is not interlocutory. So, while the factual issue in the *Morrow* case was whether to have a consolidated or bifurcated trial and the issue in this case whether a new hearing should be held at all, the cases are still very similar. Since the only "further act which must be done



by the court” is to have a new hearing, as ordered by the ALC, this case is not interlocutory. The legal issue in this case before the ALC was decided by the ALC in full and the facts regarding that legal issue are fully developed in the record. Thus, this case is not interlocutory. To find otherwise, would create a way for any and/or all Office of Motor Vehicle Hearings (hereinafter, “OMVH”) cases from ever being appealed beyond the ALC. All the ALC would have to do to prevent such appeals is to always order some further action be taken by the OMVH: a new hearing, an assessment of costs, a review of some factual finding, etc... This is not the intent of S.C. Code §§14-8-200, 1-23-660, or the applicable case law. In the *Charlotte-Mecklenburg* case, the case needed to be remanded to DHEC “to determine whether any of the applicants were entitled to the certificate of need,” a factual question that had not been addressed by DHEC or the ALC yet, and therefore, one that could not be addressed by the appeals courts until that factual question was addressed. In this case, the only substantive issue on appeal is whether the OMVH had authority to and did properly dismiss this case due to the Respondent’s failure to appear at the OMVH hearing, i.e. due to Respondent’s default. All of the factual issues regarding this legal issue have already been fully developed in the record. So, an Order requiring this case to go back to the OMVH for a hearing on the merits is a final order in that it, essentially, tells the OMVH ‘*you were wrong to dismiss this case due to failure to appear.*’ It is the Appellant’s position that the parties are entitled to have this issue decided on appeal, prior to any new hearing being held at the OMVH, and that requiring a new hearing to be held at the OMVH prior to deciding this issue would ultimately eradicate this legal issue in any future action on this case.¹ Further, if the

¹ Moreover, requiring a hearing to be held, when it may be found that the Order of Dismissal issued by the OMVH was proper and should remain the ultimate finding in the case, would waste the OMVH and parties

current Court of Appeals ruling in this case is maintained, the indirect message sent to the OMVH and attorneys that handle cases in the OMVH is that the OMVH does not have authority to ever dismiss a case due to a party defaulting and that the OMVH has no authority to deny requests for continuances, no matter how late and/or preposterous the request for continuance is. The undersigned does not believe this is the message the Court of Appeals intends to send to the OMVH and, for this reason, asserts that rehearing is necessary to clarify the Court of Appeals ruling in this case.

For these reasons, Appellant again asserts the ALC's Final Order and Order of Remand issued on December 1, 2015 is immediately appealable and should be addressed by the Court of Appeals.



FRANK L. VALENTA, JR., SC Bar # 5682

General Counsel

PHILIP S. PORTER, SC Bar # 4526

Deputy General Counsel

BRANDY A. DUNCAN, SC Bar # 72052

Assistant General Counsel

South Carolina Department of Motor Vehicles

10311 Wilson Boulevard

Post Office Box 1498

Blythewood, South Carolina 29016-0020

Telephone: (803) 896-9900

Facsimile: (803) 896-9901

Email: hearingsprocessingunit@scdmv.net

Counsel for the Appellant

November 21, 2016
Blythewood, South Carolina

time and resources.

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I served one (1) copy of Appellant's Petition for Rehearing by depositing with the United
States Postal Service, correct postage prepaid, to Counsel for the Respondent at the
address indicated below:

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



Brandy A. Duncan
Assistant General Counsel

Blythewood, SC

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

FINAL REPLY BRIEF OF THE APPELLANT

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

South Carolina Department of Motor Vehicles
10311 Wilson Boulevard
Post Office Box 1498

Blythewood, South Carolina 29016-0020

Telephone: (803) 896-9900

Facsimile: (803) 896-9901

Email: hearingsprocessingunit@scdmv.net

Attorneys for the Appellant

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STATEMENT OF ISSUES ON APPEAL

- 1) THE DECEMBER 1, 2015 FINAL ORDER AND ORDER OF REMAND ISSUED BY THE ADMINISTRATIVE LAW COURT IS IMMEDIATELY APPEALABLE TO THIS COURT.
- 2) THE HEARING OFFICER PROPERLY DISMISSED RESPONDENT'S CHALLENGE TO HER IMPLIED CONSENT SUSPENSION.
- 3) THE HEARING OFFICER DID NOT ERR BY DISMISSING THE CASE WITHOUT HOLDING A HEARING.

STATEMENT OF THE CASE

Appellant retains the statement of the case set forth in its initial brief. Appellant specifically reminds this Court of the following sections of its statement of the case as originally set forth in its initial brief:

- 1) On April 14, 2015, the OMVH e-mailed a Notice of Hearing to all parties, including the DMV, for a hearing scheduled for June 23, 2015 (R. pp. 122-126).
- 2) On Thursday, June 18, 2015, Respondent requested a continuance of the hearing scheduled for Tuesday, June 23, 2015 due to a conflicting Court appearance her Counsel had in the Magistrate's Court (R. pp. 112-115). The DMV, a party to this case, was not copied on this request.
- 3) On June 24, 2015, an Order of Continuance rescheduled the hearing for August 11, 2015 (R. pp. 110-111).
- 4) On Friday, August 7, 2015 at 12:30 p.m., Respondent requested a continuance of the hearing scheduled for Tuesday, August 11, 2015 due to a conflicting Court appearance her Counsel had in the Magistrate's Court (R. pp. 104-

109).¹ The DMV, a party to this case, was not copied on this request.

- 5) On Monday, August 10, 2015 at 8:02 a.m., the OMVH e-mailed Respondent's Counsel a denial of the request for continuance (R. p. 103). DMV and Trooper R. D. Grubbs, both parties to this case, were not copied on this e-mail from the OMVH.
- 6) Respondent's Counsel responded the same day at 1:28 p.m. and asked the Hearing Officer to reconsider the request for continuance (R. p. 102). This request for reconsideration was not copied to DMV or Trooper R. D. Grubbs, and was sent directly to the Hearing Officer, as well as the Hearing Officer's Scheduling Assistant.
- 7) On Monday, August 10, 2015 at 4:41 p.m., Respondent's Counsel filed a second Motion for Continuance (R. pp. 90-100). The DMV, a party to this case, was not copied on this request.

STANDARD OF REVIEW

Appellant retains the standard of review set forth in its initial brief.

ARGUMENT

- 1) THE DECEMBER 1, 2015 FINAL ORDER AND ORDER OF REMAND ISSUED BY THE ADMINISTRATIVE LAW COURT IS IMMEDIATELY APPEALABLE TO THIS COURT.

Appellant retains all arguments under this section set forth in its initial brief and adds the following arguments. Respondent is correct that the undersigned erroneously cited S.C. Code §14-3-330 as the appropriate statute setting forth those cases that may be

¹ In Respondent's Initial Brief, Respondent states she (Respondent Spalt) "was scheduled to be in a jury trial..." As the conflict that existed was for Respondent's *Counsel* and not *Respondent*, Appellant DMV can only assume this is a typographical error that will be corrected in Respondent's Final Brief filed with this Court.

considered by the Court of Appeals for South Carolina and that the correct statute is S.C.

Code §14-8-200. S.C. Code §14-8-200 states:

...[T]he court has jurisdiction over any case in which an appeal is taken from an order, judgment, or decree of... a final decision of an administrative law judge... This jurisdiction is appellate only, and the court shall apply the same scope of review that the Supreme Court would apply in a similar case...

(Emphasis added). In this case, the order issued by the ALC on December 1, 2015 was explicitly titled "Final Order and Order of Remand." Therefore, there can be no doubt that the December 1, 2015 ALC Order is a "final decision of an administrative law judge" as the title itself proclaims it to be a "Final Order..." For this reason alone, this case is immediately appealable to this Court.

Respondent asserts that the cases cited in Appellant's initial brief do not apply to this case because they deal with the jurisdiction of the South Carolina Supreme Court. This is not accurate. The recently decided case *Morrow v. Fundamental Long-Term Care Holdings, LLC*, 412 S.C. 534, 539, 773 S.E.2d 144, 146, began in the Court of Appeals and was dismissed by the Court of Appeals as interlocutory. This order of dismissal by the Court of Appeals was then appealed to the South Carolina Supreme Court, which decided the appeal was not interlocutory and decided the underlying issue that was original appealed to the Court of Appeals, specifically, whether several defendants in the lawsuit could be severed under the label "bifurcation." In the *Morrow* case the Supreme Court held the order of "bifurcation" went far beyond the Court's understanding of bifurcation, thereby affecting a substantial right of the petitioners. Thus, the Supreme Court reversed the order of Dismissal issued by the Court of Appeals and the order of "bifurcation" issued by the trial court. While the discussion of in the *Morrow* case

focused on S.C. Code §14-3-330, the underlying principle, that the order of “bifurcation” was immediately appealable (including being immediately appealable to the Court of Appeals), is still applicable here for all the reasons discussed in the *Morrow* case. Specifically, because the Order issued by the ALC on December 1, 2015 explicitly remands this case back to the OMVH “for a hearing on the merits” and because this case was already scheduled for a hearing once before (Respondent, nor her Counsel appeared at the hearing), the ALC’s Order of Remand has, essentially, granted Respondent a new “trial” via the new hearing. As discussed in the *Morrow* case, to prevent Appellant DMV “from appealing the order immediately would encourage piecemeal litigation and limit [DMV’s] appellate remedies.”

Respondent also attacks Appellant’s cites to the cases *Knight v. Johnson*, 244 S.C. 70, 135 S.E.2d 372 (1964) (An order of the trial court granting or refusing a new trial, when based solely on an error of law, is subject to review by the Supreme Court); and *Daughy v. Northwestern R. Co. of South Carolina*, 92 S.C. 361, 75 S.E. 553 (1912) (This statute does not undertake to make an order granting a new trial appealable, when it is based upon questions of fact; but it can review orders granting new trials when based upon error of law.). Respondent fails to recognize that both the *Knight* case and the *Daughy* case were decided before the South Carolina Court of Appeals was created on September 1, 1983.² Therefore, Appellant’s arguments that these cases are improperly cited by Appellant is misplaced.

For these reasons, the ALC’s Final Order and Order of Remand issued on December 1, 2015 is immediately appealable.

² South Carolina Court of Appeals website at <http://www.sccourts.org/appeals/>, last accessed on 1/21/2016 at 10:13 a.m.

2) THE HEARING OFFICER PROPERLY DISMISSED RESPONDENT'S CHALLENGE TO HER IMPLIED CONSENT SUSPENSION.

Appellant retains all arguments under this section set forth in its initial brief and adds the following arguments.

In the section of Respondent's Brief that corresponds to this section, Respondent asserts on at least three (3) occasions that "all parties" were notified of her motions for continuance, reconsideration, etc... As evidenced by the documents in the Record on Appeal cited in Appellant's Statement of the Case in Appellant's Brief and Appellant's Reply Brief, this is simply not true.³ Appellant DMV was repeatedly and consistently left out of all four (4) of Respondent's motions for continuances and/or motions for reconsideration. Further, Trooper R. D. Grubbs was also left out of Respondent's motion for reconsideration sent directly to the OMVH Hearing Officer on Monday, August 10, 2015.⁴ Failure to serve motions on opposing parties is no small matter and yet, Respondent did so repeatedly.

Respondent argues that her Counsel promptly notified the OMVH of his conflicting court appearances "as soon as the conflict became apparent." Respondent states that her Counsel did not receive "confirmation that the jury trial which was scheduled in Richland County Central Court would in fact go forward on August 11, 2015" until "August 7, 2015." Despite this assertion, Respondent has failed to ever attach or cite anything regarding a "confirmation that the jury trial which was scheduled

³ Also, a review of Respondent's *Motion for Reconsideration* dated August 14, 2015 demonstrates that Respondent clearly admits that she only served her August 7, 2015 request for a continuance via e-mail to Trooper R. D. Grubbs and the OMVH. See p. 2 of the *Motion for Reconsideration* in the last paragraph. Tellingly, Respondent immediately follows this admission up with the statement "As required by the rules all parties of record were notified of the request for a continuance." Further, a review of the *Certificate of Service by Mail* for Respondent's *Motion for Reconsideration* clearly shows that Appellant DMV was not served with a copy of the *Motion for Reconsideration*.

⁴ This means, of course, that for this motion for reconsideration, that no party for the State of South Carolina was copied on/served with the motion for reconsideration.

in Richland County Central Court would in fact go forward on August 11, 2015.” So, the only evidence before the OMVH and the ALC of when Respondent’s Counsel became aware of the conflicting court appearances was the Summary Court Summons contained on pages 11, 35, 65, and 74 of the ALC Record on Appeal, which all indicate that Respondent’s Counsel received the Summons on July 16, 2015. Despite the July 15, 2015 Summons being received by Respondent’s Counsel on July 16, 2015, Respondent’s Counsel did not notify the OMVH or Hearing Officer of the anticipated conflict until Friday, August 7, 2015 at 12:30 p.m., three (3) weeks and (1) day after Respondent’s Counsel received the Summons.

Respondent asserts that several cases cited in this section of Appellant’s Brief are not in compliance with Rule 268(d)(2), SCACR and, as a result, should not be considered by this Court and should be stricken from the record. Specifically, Respondent asserts the following cases in this section are not in compliance with Rule 268(d)(2), SCACR:

- 1) *Brockman v. South Carolina Dept. of Motor Vehicles and Mauldin Police Dept.*, 2014 WL 2895374, 13-ALJ-21-0049-AP (SCALC 2014)
- 2) *Chadwick Dale Martin v. S.C. Dept. of Motor Vehicles*, 2007 WL 4184375 (2007)
- 3) *Joseph W. Hiller, Sr., v. S.C. Dept. of Labor, Licensing and Regulation*, 1999 WL 51899 (1999)
- 4) *S.C. Dept. of Revenue v. Edwin Alewine*, 1997 WL 816208 (1997)

Respondent fails to disclose that none of these cases are South Carolina Supreme Court cases or South Carolina Court of Appeals cases. Each of these cases are final decisions/final orders in ALC cases. Therefore, these are not “memorandum opinions” or

“unpublished orders.” Three of these cases are the published opinions of the ALC in its appellate capacity, in fact the *Brockman* case and the *Martin* case are the published opinions of the ALC in its appellate capacity over the OMVH. Only the *Alewine* case was not an ALC appellate opinion, but rather was a final order in a contested case hearing. Given the fact that ALC appellate rulings are binding on the OMVH unless overruled by this Court or the South Carolina Supreme Court, it makes perfect sense for this Court to consider as persuasive authority prior rulings by the ALC in determining the outcome of this case.⁵

Further, Respondent’s argument “that cases in Magistrate’s Court are often continued for many reasons the week of trial” ignores the fact such logic places the courts, particularly those with lower priority under Rule 601, SCACR, in an untenable position. Following this logic, an attorney could wait until literally one (1) minute prior to a scheduled hearing or trial to inform a court that he/she had an appearance in a court with a higher priority for the same date and time.⁶ The attorney would merely have to state that he/she believed one of the court schedules would change. Such a holding would essentially eviscerate Rule 601, SCARC and waste court time and resources.

3) THE HEARING OFFICER DID NOT ERR BY DISMISSING THE CASE WITHOUT HOLDING A HEARING.

Appellant retains all arguments under this section set forth in its initial brief and adds one additional argument. Respondent asserts that several cases cited in Appellant’s

⁵ While an ALC order is not binding authority on this Court or the ALC, they are binding decisions for the OMVH because the OMVH is a lower court to the ALC. See 21 C.J.S. Courts § 212 (2006) (“Trial or inferior court decisions are not precedents binding other courts, including appellate courts or other judges of the same trial court.”)(Emphasis added).

⁶ For example, if an attorney had oral arguments scheduled for the same day and time before the South Carolina Supreme Court and the South Carolina Court of Appeals, he/she could wait until only minutes before the argument was scheduled to begin at the Court of Appeals to inform the Court of Appeals of the conflict and could simply state that he/she believed the oral argument in the Supreme Court would be rescheduled.

Brief in this section are not in compliance with Rule 268(d)(2), SCACR and, as a result, should not be considered by this Court and should be stricken from the record. Specifically, Respondent asserts the following cases in this section are not in compliance with Rule 268(d)(2), SCACR:

- 1) *John McGeary v. S.C. Dept. of Motor Vehicles and S.C. Dept. of Public Safety*, 2011 WL 7119316 (2011)⁷
- 2) *S.C. Dept. of Motor Vehicles v. Willie Pitts*, 06-ALJ-21-0592⁸
- 3) *S.C. Dept. of Motor Vehicles v. Alana Marie Erwin*, 06-ALJ-21-0591⁹

Respondent fails to disclose that none of these cases are South Carolina Supreme Court cases or South Carolina Court of Appeals cases. Each of these cases are final decisions/final orders in ALC cases. Therefore, these are not “memorandum opinions” or “unpublished orders.” All of these cases are the published opinions of the ALC in its appellate capacity over the OMVH. Given the fact that ALC appellate rulings are binding on the OMVH unless overruled by this Court or the South Carolina Supreme Court, it makes perfect sense for this Court to consider as persuasive authority prior rulings by the ALC in determining the outcome of this case.¹⁰

⁷ Respondent even goes so far as to state that this case “is an unreported opinion and has no presidential value as is stated on the opinion itself.” (Emphasis added). A review of this case via Westlaw demonstrates that no such statement is “stated on the opinion itself.”

⁸ Respondent claims this case is “unreported and unavailable to the Respondent.” This is untrue. This opinion is available from the ALC directly (i.e. in person), from the ALC via their webpage at <http://www.scalc.net/search.aspx>, is online at Westlaw.com at 2007 WL 2377440, and also could have been obtained by requesting a copy from the undersigned.

⁹ Respondent claims this case is “unreported and unavailable to the Respondent.” This is untrue. This opinion is available from the ALC directly (i.e. in person), from the ALC via their webpage at <http://www.scalc.net/search.aspx>, is online at Westlaw.com at 2007 WL 2452663, and also could have been obtained by requesting a copy from the undersigned.

¹⁰ While an ALC order is not binding authority on this Court or the ALC, they are binding decisions for the OMVH because the OMVH is a lower court to the ALC. See 21 C.J.S. Courts § 212 (2006) (“Trial or inferior court decisions are not precedents binding other courts, including appellate courts or other judges of the same trial court.”)(Emphasis added).

Respondent argues there "is no waste of resources in requiring the State to meet its burden of proof" in this case. Appellant respectfully disagrees. In this case, both the OMVH Hearing Officer and Trooper Grubes were present at the hearing on August 11, 2015 and were ready to go forward with the hearing. This required both the OMVH Hearing Officer and Trooper Grubes to prepare for the hearing, secure a location for the hearing (OMVH only), provide notice of the hearing to all parties (OMVH only), travel to the hearing, wait for the case to be called (Trooper Grubes only), only to discover that Respondent and her Counsel did not appear. Thus, resources of the State have already been expended on this case. If the OMVH is required to hold a second hearing, all of these actions will have to be performed a second time. Thus, there is no question there will be a waste of resources, particularly if this Court finds that this appeal is properly before this Court at this time and that the OMVH Hearing Officer did not commit an error of law by dismissing this case due to Respondent's failure to appear at the August 11, 2015 hearing.

Finally, Respondent's statement that "Neither party will be prejudiced by Respondent having an opportunity to have a hearing" blatantly ignores the impact of Respondent's Counsel's late request for a continuance on the OMVH, the OMVH Hearing Officer, Trooper Grubes, and the DMV. As outlined above, several things were done by the OMVH Hearing Officer, the OMVH, and Trooper Grubes in preparation for the August 11, 2015 hearing. Thus, requiring the OMVH, the OMVH Hearing Officer, and Trooper Grubes to perform these acts a second time, when Respondent's Counsel was already well aware that his requests for a continuance had been denied, does prejudice the OMVH, the OMVH Hearing Officer, and Trooper Grubes due to the simple

repetition of the acts leading to the hearing and the waste of their time on August 11, 2015. Further, the OMVH and the OMVH Hearing Officer would be further prejudiced because Respondent's Counsel (and potentially other attorneys) would then "know" they don't really have to provide any timely notice of court conflicts to lower courts.

CONCLUSION

For the reasons set forth above and in Appellant's initial brief, the order of the ALC is immediately appealable, should be overturned and the OMVH Order of Dismissal issued August 12, 2015 should be reinstated in full.

Respectfully submitted,



FRANK L. VALENTA, JR., SC Bar # 5682
General Counsel

PHILIP S. PORTER, SC Bar # 4526
Deputy General Counsel

BRANDY A. DUNCAN, SC Bar # 72052
South Carolina Department of Motor Vehicles
10311 Wilson Boulevard

Post Office Box 1498

Blythewood, South Carolina 29016-0020

Telephone: 803.896.9900

Fax: 803.896.9901

Email: hearingsprocessingunit@scdmv.net

Attorneys for the Appellant

February 24, 2016
Blythewood, South Carolina

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In the Court of Appeals

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FEB 25 2016

APPEAL FROM RICHLAND COUNTY
Administrative Law Court
The Honorable S. Phillip Lenski, Administrative Law Judge

SC Court of Appeals

Appellate Case No. 2015-001622

James Winston Davis, Jr. Respondent,

v.

South Carolina Department of Motor Vehicles Appellant.

CERTIFICATE OF COUNSEL

The undersigned counsel hereby certifies that the Final Reply Brief of Appellant complies with Rule 211(b) SCACR.



Brandy A. Duncan, SC Bar # 72052
Assistant General Counsel
S.C. Department of Motor Vehicles

February 24, 2016
Blythewood, SC

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT
The Honorable H. W. Funderburk, Jr., Administrative Law Judge

Case No. 2015-002535

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FEB 25 2016

SC Court of Appeals

Melissa Spalt Respondent,

v.

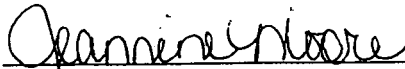
South Carolina Department of Motor Vehicles and
South Carolina Department of Public Safety Appellants.

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

CERTIFICATE OF SERVICE

PURSUANT TO SCACR, I HEREBY CERTIFY that today, February 25, 2016,
I served one (1) copy of the Appellant's Final Reply Brief by depositing with the United
States Postal Service, correct postage prepaid, to Counsel for the Respondent at the
address indicated below:

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


Jeanine (Nina) Moore, Paralegal
Office of General Counsel

February 25, 2016
Blythewood, South Carolina

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THE STATE OF SOUTH CAROLINA

MAY 27 1966

OFFICE OF THE COMMISSIONER
OF GENERAL LANDS AND WATER

Be it remembered that on this day of May 1966, the following instrument was filed for record:

DEED

Vol. 10, p. 100

Page 100

Witness my hand and seal of office
this 27th day of May 1966.
At Columbia, South Carolina.
Commissioner of General Lands and Water

Notary Public for South Carolina
My Commission Expires 12/31/66

RECORDED IN THE OFFICE OF THE CLERK OF THE COURT

FILED IN THE OFFICE OF THE CLERK OF THE COURT

BOOK 10, PAGE 100

DEED

FILED IN THE OFFICE OF THE CLERK OF THE COURT

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STATEMENT OF ISSUES ON APPEAL

- I. THE DECEMBER 1, 2015 FINAL ORDER AND ORDER OF REMAND ISSUED BY THE ADMINISTRATIVE LAW COURT IS NOT IMMEDIATELY APPEALABLE TO THIS COURT
- II. THE HEARING OFFICER ERRED IN DISMISSING RESPONDENT'S CHALLENGE TO HER IMPLIED CONSENT SUSPENSION
- III. THE HEARING OFFICER ERRED BY DISMISSING THE CASE WITHOUT HOLDING A HEARING

STATEMENT OF THE CASE

On June 23, 2015 an Administrative Hearing was scheduled for the Respondent's case, however, due to a conflict between courts, the Respondent requested a continuance on June 18, 2015 (R. pp. 114-115). This request was granted and a new hearing was scheduled for August 11, 2015 at 9 a.m. (R. pp. 110). Again, due to a conflict between courts, the Respondent was scheduled to be in a jury trial during that time and requested a continuance on August 7, 2015 (R. pp. 108-109). Respondent's request for a continuance included a copy of the Richland County Court Summons showing the Respondent's attorney was scheduled to be at a magistrate court jury trial in Richland County. The Hearing Officer, Phil Addington, denied the August 7th request stating that this case had already been continued once (R. pp. 101-107). Thereafter, on August 10, the Respondent requested that the court reconsider the request and resubmitted the Richland County Court Summons and a copy of Rule 601 (R. pp. 83, 98-100), Lieutenant R.D. Grubbs, of the South Carolina Highway Patrol responded by email "no objections" to the Respondent's August 7th

request for a continuance (R. pp. 90). Petitioner did not respond to Respondent's request for a continuance. Respondent received no further denials or grants from neither the Hearing Officer nor his scheduling clerk. On August 12, 2015, Respondent received an Order of Dismissal signed by Hearing Officer, Phil Addington (R. pp. 56-58). The case was dismissed, prejudicing Respondent, without a hearing on August 11, 2015. On August 17, 2015, Respondent filed a Notice of Motion and Motion for Reconsideration (R. pp. 63-66) followed by filing a Notice of Appeal on September 11, 2015 (R. pp. 40-43). On September 16, 2015, Respondent received an Order Dismissing her Motion for Reconsideration for lack of jurisdiction (R. pp. 60-61). On October 2, 2015 the Office of Motor Vehicles filed the Record on Appeal (R. pp. 36). On October 29, 2015, Memorandum on Appeal was filed by the Respondent (R. pp. 30-35). On November 16, 2015, the South Carolina Department of Motor Vehicles filed its brief in the Administrative Law Court (R. pp. 16-29). On November 23, 2015, the Respondent filed a reply brief (R. pp. 9-14). On December 1, 2015, the Administrative Law Court issued the Final Order and Order of Remand (R. pp. 2-7). The Administrative Law Court's Order remanded the case back to the Office of Motor Vehicle Hearings for a full hearing on the merits. On December 2, 2015 the Office of Motor Vehicle Hearings scheduled a new hearing for this case. This appeal followed.

ARGUMENTS

I. THE DECEMBER 1, 2015 FINAL ORDER AND ORDER OF REMAND ISSUED BY THE ADMINISTRATIVE LAW COURT IS NOT IMMEDIATELY APPEALABLE TO THIS COURT.

South Carolina Code Ann. §14-8-200 sets forth those cases that may be considered by the Court of Appeals in South Carolina. Petitioners reliance upon S.C. Code Ann §14-3-330 is misplaced as it specifically deals with the appellate jurisdiction of the South Carolina Supreme Court not the South Carolina Court of Appeals. South Carolina Court of Appeals jurisdiction is set and limited by S.C. Code §14-8-200.

Although Petitioner alleges there was a hearing, the hearing officer did not make any record of any hearing in this matter other than to issue a form order dismissing the case. The final order of the Administrative Law Court does not order a "new hearing" it orders "a hearing on the merits." Since there has been no hearing on the merits an appeal to the Court of Appeals is interlocutory.

In support of its position that this case is immediately appealable to this court Petitioner cites, Morrow v. Fundamental Long-Term Care Holdings, LLC, 412 S.C. 534, 539, 773 S.E.2n 144, 146 which has nothing to do with the jurisdiction of this Court, in this case, rather it deals with the exclusive jurisdiction of the South Carolina Supreme Court pursuant to S.C. Code §14-3-330 in an interlocutory appeal of a motion to bifurcate a trial.

Also in support of its position Petitioner cites, Knight v. Johnson, 244 S.C. 70, 135 S.E.2nd 372 (1964) which was a case in the circuit court that was tried to

conclusion and was appealed to the Supreme Court of South Carolina. This case is also easily distinguishable because in this matter there has been no hearing, there is no record of a hearing other than a summary order, and this case also deals with an appeal in the exclusive jurisdiction of the Supreme Court of South Carolina, not the Court of Appeals. Similarly, Daughy v. Northwestern R. Co. of South Carolina, 92 S.C. 361, 75 S.E. 553 (1912) is also a case that deals specifically with the jurisdiction of the Supreme Court of South Carolina not the Court of Appeals.

Finally, the Petitioner is in no manner precluded from appealing a subsequent, and truly final, order. Since there has been no actual hearing on the merits there is substantial right or prejudice being affected. S.C. Code §14-3-330(2)(a), specifically deals with interlocutory appeals to the Supreme Court which allows an appeal from an interlocutory order when the order in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action. The order in this case neither discontinues their action nor prevents a judgment from which an appeal may be taken. Petitioner has not filed this appeal in the South Carolina Supreme Court, therefore, the statute and cases cited to support her position that this matter is immediately appealable to the Supreme Court are not relevant since this matter was filed in the South Carolina Court of Appeals.

If this matter is immediately appealable to the Supreme Court under §14-3-330, Petitioner has filed this appeal in the wrong court and has missed the filing deadline. Based upon the foregoing the Respondent requests this matter be dismissed and remanded for a full hearing on the merits.

II. THE HEARING OFFICER ERRED IN DISMISSING RESPONDENT'S CHALLENGE TO HER IMPLIED CONSENT SUSPENSION.

Rule 601 (c) specifically states "An attorney who cannot make a scheduled appearance because of the priority established by paragraph (a) of this rule shall notify the affected tribunals as soon as the conflict becomes apparent." In this specific case, August 7, 2015 was the soonest the conflict became apparent. It has been Respondent's attorney's experience that cases in Magistrate Court are often continued for many reasons the week of trial. For example, the officers are unavailable; the prosecutor is not ready to try the case, evidentiary issues, just to name a few. Therefore, in the best interest of judicial economy it is reasonable to wait until it is confirmed that the trial is going to take place before requesting continuances in other courts. Upon confirmation that the jury trial which was scheduled in Richland County Central Court would in fact go forward on August 11, 2015, is when the request for a continuance was sent.

The Rule also lists the order of priority between tribunals, which clearly states that Magistrate and Municipal Courts take priority over other Administrative Bodies or Officials. In which case, Respondent's counsel could not be in two places at once, his obligation, under the rule, was to be at the scheduled jury trial rather than at a hearing in the Office of Motor Vehicles.

Additionally, the request for a continuance was made as soon as the conflict became apparent as the rule requires. Not only was the request made two (2) business days prior to the scheduled hearing but was emailed to all parties who were notified of the original hearing date which was sent by the scheduling assistant. Rule 10,

OMVH Rules states that all requests for continuances must be made at least two business days prior to the scheduled hearing, it does not state that it must be forty-eight (48) hours prior, in which case this requirement was also met. The request was sent in letter form, the same format that has been used between Respondent and the Office of Motor Vehicle Hearings in every continuance needed in all previous cases including this specific case without any prior rebukes. The request for continuance was sent immediately as it was confirmed that the scheduled jury trial would in fact go forward and that it would not be rescheduled for any reason. The hearing officer had more than good cause to grant the continuance for the sole purpose that the conflict was due to a jury trial, not an administrative hearing.

Furthermore, the request for a continuance was not marked as an emergency because the situation was not really an emergency. This was a simple request for a continuance, with good cause shown, submitted to the Office of Motor Vehicles on Friday, August 7, for a hearing set to take place the following Tuesday, August 11, it was not filed at the last minute as Petitioner states. There was more than enough time, in corroboration with the Rule, to have the hearing continued. Further, all parties to the case were notified of the request. Trooper Grubbs replied "No objections." The Hearing Officer denied the request for no reason other than stating this case has been continued once. There is no Rule of Court that states there is a limit on how many continuances or new hearings are scheduled when there are sufficient grounds and good cause shown in order to comply with Rule 601. The request was made in a reasonable time with good cause having been shown and the

Hearing Officer erred by denying the request. The Hearing Officer's denial of the request for a continuance was an abuse of discretion and prejudicial to the Respondent since she has been denied her right to a hearing on the merits.

In support of its position the Petitioner states the following cases. Brockman v. South Carolina Dept. of Motor Vehicles and Mauldin Police Dept., 2014 WL 2895374, 13-ALJ-21-0049-AP (SCALC 2014); Chadwick Dale Martin v. S.C. Dept. of Motor Vehicles, 2007 WL 4184375 (2007); Joseph W. Hiller v. S.C. Dept. of Labor, Licensing, and Regulation, 1999 WL 51899 (1999); S.C. Department of Revenue v. Edwin Alewin, 1997 WL 816208 (1997) while each of these cases are easily distinguishable, South Carolina Appellate Court Rule 268(d)(2) specifically states opinions and unpublished orders have no precedential value and should not be cited except in proceedings in which they are directly involved. All of the cases listed above are opinions and unpublished orders and have no precedential value in this appeal.

Respondent requests that any and all cases cited by Petitioner not in compliance with South Carolina Appellate Court Rule 268(d)(2) not be considered by this Court and be stricken from the record.

All parties listed on the e-mail of the Original Notice of Hearing were copied on all communications between the Office of Motor Vehicle Hearings and Respondent, which has been the normal course of business in dealing with the Office of Motor Vehicle Hearings. Based on the forgoing the Respondent requests this matter be dismissed and remanded for a full hearing on the merits.

III. THE HEARING OFFICER ERRED BY DISMISSING THE CASE WITHOUT HOLDING A HEARING.

In accordance with the Rules of Procedure for the Office of Motor Vehicle Hearings, Rule 15, the hearing officer shall give a brief opening statement describing the nature of the proceeding as well as the taking of evidence that is presented. In the Transcript, it was duly noted that the hearing officer did not go on the record. Therefore, the arresting officer failed to meet his burden of proof and the hearing officer erred in dismissing the case and upholding the suspension. If anything since the officer failed to put any evidence on the record this matter should have been dismissed if at all in favor of the Respondent.

In support of its position Petitioner cites, John McGeary v. S.C. Dept. of Motor Vehicles and S.C. Department of Public Safety, 2011 WL 7119316 (2011), McGeary, as cited by the Petitioner, was dismissed by this Court for a preservation issue which has nothing to do with the issues in this matter. S.C. Dept. of Motor Vehicles v. Pitts, 06-ALJ-21-0592 and S.C. Dept. of Motor Vehicles v. Alana Marie Erwin, 06-ALJ-21-059. However, South Carolina Appellate Court Rule 268(d)(2) specifically states opinions and unpublished orders have no precedential value and should not be cited except in proceedings in which they are directly involved. All of the cases listed above are opinions and unpublished orders and have no precedential value in this matter.

Respondent is unable to address the cases other than McGeary, which is available but is an unreported opinion and has no presidential value as is stated on the

opinion itself. The other cases cited by the Petitioner are unreported and unavailable to the Respondent.

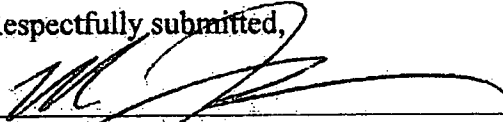
Respondent request that any and all cases cited by Petitioner not in compliance with South Carolina Appellate Court Rule 268(d)(2) not be considered by this Court and be stricken from the record.

There is no waste of resources in requiring the State to meet its burden of proof. The Respondent bore the financial burden in this matter since she has paid filing fee for the cost of having the hearing and she is entitled at a minimum to hold the state to its burden of proof. Although Petitioner takes the position that a failure to appear makes it clear that the motorist is not going to present a defense that is not relevant. There is no requirement, even if present at the hearing the Respondent present a defense, however, the state must put up its evidence to prove its case. Based on the forgoing the Respondent requests this appeal be dismissed and remanded for a full hearing on the merits.

CONCLUSION

Based upon the above-mentioned arguments, the Respondent, Melissa Spalt, requests that the Final Order and Order of Remand Issued by the Administrative Law Court be affirmed and that Respondent be afforded an opportunity to have a full hearing on the merits. Neither party will be prejudiced by Respondent having an opportunity to have a hearing.

Respectfully submitted,



March 3, 2016

Michael Laubshire, Esq.
455 St. Andrews Road, Ste E-1
Columbia, SC 29210
(803) 708-4755
Attorney for Respondent

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

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

Case No. 2015-002535

Melissa Spalt,

Respondent,

v.

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

Appellant.

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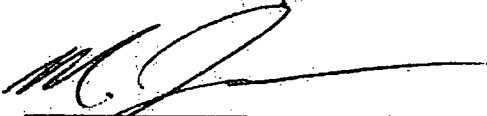
MAR 04 2016

SC Court of Appeals

CERTIFICATE OF COUNSEL

The undersigned Counsel certifies that the attached Final Brief is in compliance with SCACR 211 (b).

Columbia, SC
March 3, 2016


Michael Laubshire
Attorney for Respondent

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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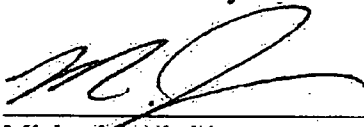
Appellant.

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SC Court of Appeals

CERTIFICATE OF COMPLIANCE

The undersigned counsel hereby certifies that Respondent's Final Brief complies with South Carolina Supreme Court Order 2007-08-13-02 Amended by Order 2014-04-15-02, filed April 15, 2014.

Columbia, SC
March 3, 2016


Michael Laubshire
Attorney of Respondent

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

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

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Appellant.

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CERTIFICATE OF SERVICE

PERSONALLY appeared before me, Victoria L. Ford, who under oath states she is an employee with The Laubshire Law Firm, LLC and did mail with the proper postage affixed thereto a copy of the following:

Final Brief of Respondent

That said pleadings were addressed to opposing counsel as follows:

Frank L. Valenta, Jr.

General Counsel

Philip S. Porter

Deputy General Counsel

Brandy A. Duncan

South Carolina Department of Motor Vehicles

10311 Wilson Boulevard

Post Office Box 1498

Blythewood, SC 29016-0020

(803) 896-9900

Attorneys for the Appellant

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

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

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General Counsel

Philip S. Porter

Deputy General Counsel

Brandy A. Duncan

South Carolina Department of Motor Vehicles

10311 Wilson Boulevard

Post Office Box 1498

Blythewood, SC 29016-0020

(803) 896-9900

Attorneys for the Appellant

And were further mailed on this 3rd day of March, 2016.

Columbia, SC
March 3, 2016

Victoria L. Ford
Victoria L. Ford, Paralegal

SWORN TO BEFORE ME THIS

3 day of March, 2016

Alyssa Cochran

Notary Public of South Carolina

My Commission expires: 11/1/21

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM ADMINISTRATIVE LAW COURT

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Melissa Spalt

Respondent

v.

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

Appellants

Of Whom the South Carolina Department of Motor Vehicles is Appellant

FINAL BRIEF OF THE APPELLANT

FRANK L. VALENTA, JR., SC Bar # 5682

General Counsel

PHILIP S. PORTER, SC Bar #4526

Deputy General Counsel

BRANDY A. DUNCAN, SC Bar #72052

South Carolina Department of Motor Vehicles

10311 Wilson Boulevard

Post Office Box 1498

Blythewood, South Carolina 29016-0020

Telephone: (803) 896-9900

Facsimile: (803) 896-9901

Email: hearingsprocessingunit@scdmv.net

Attorneys for the Appellant

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STATEMENT OF ISSUES ON APPEAL

- 1) THE DECEMBER 1, 2015 FINAL ORDER AND ORDER OF REMAND ISSUED BY THE ADMINISTRATIVE LAW COURT IS IMMEDIATELY APPEALABLE TO THIS COURT.
- 2) THE HEARING OFFICER PROPERLY DISMISSED RESPONDENT'S CHALLENGE TO HER IMPLIED CONSENT SUSPENSION.
- 3) THE HEARING OFFICER DID NOT ERROR BY DISMISSING THE CASE WITHOUT HOLDING A HEARING.

STATEMENT OF THE CASE

This matter comes before the Court of Appeals pursuant to the appeal of the South Carolina Department of Motor Vehicles (hereinafter, "SCDMV" or "DMV"), who seeks review of the December 1, 2015 Final Order and Order of Remand from the Administrative Law Court (hereinafter, "ALC") which remanded for a hearing before the Office of Motor Vehicles Hearings (hereinafter, "OMVH") Respondent Spalt's challenge to an implied consent suspension. The Appellant, SCDMV seeks to have the ALC's Final Order and Order of Remand overturned and the OMVH Order of Dismissal issued August 12, 2015 reinstated in full.

Respondent Spalt was arrested on April 5, 2015 for an offense arising out of an act alleged to have been committed while she was driving a motor vehicle while under the influence of alcohol, drugs, or a combination of alcohol and drugs (R. pp. 127-128). Upon refusal to submit to a breath sample, Respondent was found to be in violation of S.C. Code §56-5-2950, and the arresting officer issued a Notice of Suspension form pursuant to S.C. Code §56-5-2951. *Id.* Respondent timely requested a contested case hearing on April 10, 2015. *Id.*

On April 14, 2015, the OMVH e-mailed a Notice of Hearing to all parties for a

hearing scheduled for June 23, 2015 (R. pp. 122-126). This Notice of Hearing was sent again to Respondent Spalt's Counsel only on June 12, 2015 (R. p. 121). On Thursday, June 18, 2015, Respondent requested a continuance of the hearing scheduled for Tuesday, June 23, 2015 due to a conflicting Court appearance her Counsel had in the Magistrate's Court (R. pp. 112-115).¹ The conflicting Magistrate's Court appearance had been noticed to Respondent's Counsel on May 19, 2015 (R. p. 115). On June 24, 2015, the OMVH e-mailed an Order of Continuance and Notice of Hearing to all parties (R. pp. 110-111). This Order rescheduled the hearing for August 11, 2015. *Id.*

On Friday, August 7, 2015 at 12:30 p.m., Respondent requested a continuance of the hearing scheduled for Tuesday, August 11, 2015 due to a conflicting Court appearance her Counsel had in the Magistrate's Court (R. pp. 104-109).² The conflicting Magistrate's Court appearance had been noticed to Respondent's Counsel on July 15, 2015 (R. p. 109).³ On Sunday, August 9, 2015, the Hearing Officer denied the request for continuance of the August 11, 2015 hearing (R. p. 103). On Monday, August 10, 2015 at 8:02 a.m., the OMVH e-mailed Respondent's Counsel the denial of the request for continuance issued by the Hearing Officer the day before (R. p. 102).⁴ Respondent's Counsel responded the same day at 1:28 p.m. and asked the Hearing Officer to reconsider

¹ The DMV, a party to this case, was not copied on this request and was not aware the request had been made until the June 24, 2015 Order of Continuance and Notice of Hearing was issued by the OMVH.

² The DMV, a party to this case, was not copied on this request and was not aware the request had been made until the August 12, 2015 Order of Dismissal was issued by the OMVH.

³ Although Respondent stated DMV "alleges this conflict became apparent immediately upon the July 15, 2015 this is just not true," an August 10, 2015 e-mail from Respondent's Counsel's office to the OMVH clearly stated Respondent's Counsel "were notified of a scheduled Jury Trial on July 15th." R. pp. 10 and 102.

⁴ DMV, a party to this case, was not copied on this e-mail from the OMVH and, it appears, Trooper R. D. Grubbs, the arresting officer, was also not copied on this e-mail from the OMVH.

the request for continuance.⁵ *Id.* On Monday, August 10, 2015 at 4:41 p.m., Respondent's Counsel filed a second Motion for Continuance (R. pp. 90-100).⁶ On Monday, August 10, 2015 at 5:02 p.m., Trooper R. D. Grubbs did e-mail Frances Inabinet of the OMVH and Respondent's Counsel's paralegal stating "No objections" to Respondent's request for a continuance (R. p. 90).⁷

On August 12, 2015, the Hearing Officer issued an Order of Dismissal ruling that Respondent "did not follow the requirement of Rule 601 or the procedure for requesting a continuance at the OMVH pursuant to Rule 10 (B)," that Respondent's request for a continuance had been denied, the "parties were notified of the denial on the morning of Monday, August 10, 2015," and that Respondent nor her Counsel appeared at the hearing (R. pp. 56-57). This decision was served on all the parties via e-mail on August 13, 2015 (R. pp. 58-59). On August 17, 2015, Respondent filed a Motion for Reconsideration of the Order of Dismissal (R. pp. 62-81). Respondent's Motion for Reconsideration was primarily based on two (2) points: 1) that Appellant's second Motion for Continuance e-mailed at 4:41 p.m. on Monday, August 10, 2015 had not been ruled on; and 2) that "attorneys with court conflicts must serve the continuance upon all parties... As required by the rules all parties of record were notified of the request for a continuance." (R. pp. 63-65).⁸ On September 11, 2015, Respondent filed her Notice of Appeal with the ALC

⁵ This request for reconsideration was not copied to DMV or Trooper R. D. Grubbs, and, in fact, was sent directly to the Hearing Officer as well as the Hearing Officer's Scheduling Assistant. All prior e-mails from Respondent's Counsel had been sent only to the Hearing Officer's Scheduling Assistant. Further, the DMV, only became aware of this request for reconsideration when the Record on Appeal was filed in the ALC by the OMVH on or about October 7, 2015.

⁶ The DMV, a party to this case, was not copied on this request and was not aware the request had been made until the August 12, 2015 Order of Dismissal was issued by the OMVH.

⁷ The DMV, a party to this case, was not copied on this e-mail and was still unaware of the requested continuance of the August 11, 2015 hearing.

⁸ Despite being listed by the Appellant in the caption to this Motion as a Petitioner, the DMV was not copied on this Motion and was not even aware the Motion had been made until the September 11, 2015

(R. pp. 40-55).⁹ On September 16, 2015, the Hearing Officer issued an Order Dismissing Respondent's Motion for Reconsideration (R. p. 60). This Order was served on the parties on the same date (R. p. 61).

The ALC appeal was assigned to the Honorable H. W. Funderburk, Jr. on September 16, 2015 (R. p. 39). The Record on Appeal was filed on or about October 2, 2015 (R. pp. 38 and 133). On October 29, 2015, Memorandum on Appeal was filed by Respondent Spalt (R. pp. 30-35). On November 16, 2015, DMV filed its Brief in the ALC (R. pp. 15-29). On November 23, 2015, Respondent Spalt filed her Reply Brief (R. pp. 9-14). On December 1, 2015, the ALC issued Final Order and Order of Remand (R. pp. 2-7). On December 2, 2015, prior to receiving the ALC's Final Order and Order of Remand, Appellant mailed the ALC a letter supplementing its Brief with two (2) additional cases (R. p. 8). Also, on December 2, 2015, the OMVH scheduled a hearing for this case pursuant to the ALC's December 1, 2015 Order of Remand (R. p. 134).

On December 10, 2015, DMV filed a Notice of Appeal to this Court. This Notice of Appeal was served on Respondent's Counsel, the Clerk for the ALC, and Yolanda Williams of the OMVH on December 8, 2015.

As of the filing of this Brief, Respondent Spalt has still not served DMV with copies of the following:

- 1) request for continuance on June 18, 2015;

Notice of Appeal was received by DMV on September 15, 2015. Further, DMV did not receive any copy of the Motion for Reconsideration until the ALC Record on Appeal was served on DMV by the OMVH on October 7, 2015.

⁹ DMV assumes Respondent's ALC appeal focused on the OMVH's Order of Dismissal dated August 12, 2015 and issued on August 13, 2015. DMV bases this assumption on Respondent's statement in her Notice of Appeal that she "gives notice of her Appeal from the Final Order and Decision of the [OMVH] issued on August 12, 2015..." DMV notes that no Final Order was attached to Respondent's ALC Notice of Appeal as required by Rule 33, SCALCR, but that the only order issued in this case on August 12, 2015, as far as DMV is aware, is the Order of Dismissal dated August 12, 2015 and issued on August 13, 2015.

- 2) request for continuance on August 7, 2015;
- 3) request for reconsideration of request for continuance on August 10, 2015 at 1:28 p.m.;
- 4) request for continuance dated August 10, 2015 and e-mailed to OMVH at 4:41 p.m.; and
- 5) Motion for Reconsideration dated August 17, 2015.¹⁰

Failure of Respondent Spalt to serve these documents on DMV has continued despite DMV pointing out this failure to serve in DMV's ALC Brief. Further, it is clear that Respondent is and was aware that DMV is a party to this action as DMV was served with Respondent's ALC Notice of Appeal (R. p. 43) and Respondent listed DMV as a Petitioner in Respondent's Motion for Reconsideration (R. p. 63).

STANDARD OF REVIEW

The scope of judicial review in cases such as this is limited by the Administrative Procedures Act, S.C. Code §1-23-380(A)(6).

(A) A party who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review....

(6) The court shall not substitute its judgment for that of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions or decisions are:

- (a) In violation of constitutional or statutory provisions;
- (b) In excess of the statutory authority of the agency;
- (c) Made upon unlawful procedure;
- (d) Affected by other error of law;

¹⁰ The Certificate of Service by Mail reflects that the Motion for Reconsideration was only mailed to the Hearing Officer, Trooper R. D. Grubbs, and Trooper McWhorter (R. p. 66).

- (e) Clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
- (f) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

In *Lark v. Bi-Lo, Inc.*, 276 S.C. 130, 276 S.E.2d 304 (1981), our Supreme Court set out the standard of evidentiary review under the South Carolina Administrative Procedure Act:

[Section 1-23-380(g)(5)] specifically states: "The Court shall not substitute its judgment for that of the agency as to the weight of evidence on questions of fact." In addition, the statute states the decision under appeal must be "clearly erroneous" in view of the substantial evidence on the whole record.

We, therefore, caution the Bench and Bar as to the limitations upon the application of the "substantial evidence" rules in reviewing the decision of administrative agencies. As stated in *Dickinson-Tidewater, Inc. v. Supervisor of Assess.*, 273 Md. 245, 329 A.2d 18, 25, the substantial evidence test "need not and must not be either judicial fact-finding or substitution of judicial judgment for agency judgment"; and a judgment upon which reasonable men might differ will not be set aside.

The Court further noted that:

The substantial evidence rule... means that we will not overturn a finding of fact by an administrative agency "unless there is no reasonable probability that the facts could be as related by a witness upon whose testimony the finding was based." (Citation omitted.)

See also *Schudel v. South Carolina Alcoholic Beverage Control Commission*, 276 S.C. 138, 276 S.E.2d 308 (1981); *Fast Stops, Inc. v. Ingram*, 276 S.C. 593, 281 S.E.2d 18 (1981).

An appeal from action of an administrative agency must be sustained if supported by substantial evidence. *Hamm v. American Telephone & Telegraph Co.*, 302 S.C. 211, 394 S.E.2d 842 (1990); *Lark v. Bi Lo, Inc.*, *supra*. In *Lark*, our Supreme Court quoted

Consolo v. Federal Maritime Commission, 383 U.S. 611, 16 L.Ed.2d 131, 86 S.Ct. 1118 (1966), to define substantial evidence:

We have defined "substantial evidence" as "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."... "It must be enough to justify, if the trial were to a jury, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury..." This is something less than the weight of the evidence, and the possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence.

Lark, 276 S.C. at 136, 276 S.E.2d at 311. *See, also, Dorman v. DHEC*, 565 S.E.2d 119, 350 S.C. 159 (Ct. App. 2002); *Hamm v. South Carolina Public Service Commission and Wild Dunes Utilities, Inc.*, 311 S.C. 295, 422 S.E.2d 118 (1992).

A court cannot weigh the evidence and substitute its judgment for that of the agency upon a question as to which there is room for a difference of intelligent opinion. *Dorman v. DHEC*, *supra*; *Hamm v. American Telephone & Telegraph Co.*, *supra*; *Chemical Leaman Tank Lines v. South Carolina Public Service Commission*, 258 S.C. 518, 189 S.E.2d 296 (1972). The limited substantial evidence standard of review is intended only to assure that the agency's action is properly supported and that, therefore, no abuse of delegated authority occurred. *See Fowler v. Lewis*, 260 S.C. 54, 194 S.E.2d 191 (1973).

On review of the acts or orders of administrative agencies, the courts will presume, among other things, that the agency action is regular and correct, and that the orders and decisions of the agency are valid and reasonable. 73A C.J.S. *Public Administrative Law and Procedure* Section 220(a) (1983). Therefore, the burden is on the Petitioner to show convincingly that the order of the agency is without evidentiary support or is arbitrary or capricious as a matter of law. *Hamm v. South Carolina Public*

Service Commission, 294 S.C. 320, 364 S.E.2d 455 (1988).

ARGUMENT

- 1) THE DECEMBER 1, 2015 FINAL ORDER AND ORDER OF REMAND ISSUED BY THE ADMINISTRATIVE LAW COURT IS IMMEDIATELY APPEALABLE TO THIS COURT.

S.C. Code §14-3-330 sets forth those cases that may be considered by the appellate courts of South Carolina. One of the types of cases that may be considered by the appellate courts of this state are those where “An order affecting a substantial right made in an action when such order...(b) grants or refuses a new trial...” The order appealed in this case is just such an order. The Final Order and Order of Remand issued by the ALC on December 1, 2015 explicitly remands this case back to the OMVH “for a hearing on the merits.” This case was already scheduled for a hearing once before and Respondent, nor her Counsel appeared at the hearing. Therefore, the ALC’s Order of Remand has, essentially, granted Respondent a new “trial” via the new hearing. As held in the recently decided case *Morrow v. Fundamental Long-Term Care Holdings, LLC*, 412 S.C. 534, 539, 773 S.E.2d 144, 146, to prevent Appellant DMV “from appealing the order immediately would encourage piecemeal litigation and limit [DMV’s] appellate remedies.” See also, *Knight v. Johnson*, 244 S.C. 70, 135 S.E.2d 372 (1964) (An order of the trial court granting or refusing a new trial, when based solely on an error of law, is subject to review by the Supreme Court); and *Daugherty v. Northwestern R. Co. of South Carolina*, 92 S.C. 361, 75 S.E. 553 (1912) (This statute does not undertake to make an order granting a new trial appealable, when it is based upon questions of fact; but it can review orders granting new trials when based upon error of law.). For these reasons, the

ALC's Final Order and Order of Remand issued on December 1, 2015 is immediately appealable.

2) THE HEARING OFFICER PROPERLY DISMISSED RESPONDENT'S CHALLENGE TO HER IMPLIED CONSENT SUSPENSION.

Rule 601, SCACR states:

(a) Order of Priority as Between Tribunals. In the event an attorney of record is called to appear simultaneously in actions pending in two or more tribunals of this State, the following list shall establish the priority of his obligations to those tribunals:

- (1) The Supreme Court.
- (2) The Court of Appeals.
- (3) The Commission on Judicial Conduct, the Commission on Lawyer Conduct, and the Committee on Character and Fitness.
- (4) The Circuit Court - General Sessions.
- (5) The Family Court - merits hearings involving child abuse, child neglect and termination of parental rights upon approval of the Chief Judge for Administrative Purposes for the Family Court and notice to the Chief Judge for Administrative Purposes for the Circuit Court five days prior to the term of the Circuit Court.
- (6) The Circuit Court - Common Pleas, Jury Term.
- (7) The Family Court - all cases not referenced in (5) above.
- (8) The Circuit Court - Common Pleas, Non-Jury Term.
- (9) The Administrative Law Court.
- (10) Alternative Dispute Resolution Conferences conducted pursuant to the SC Court-Annexed ADR Rules.
- (11) The Probate Court.
- (12) **Magistrates and Municipal Courts.**
- (13) **Other Administrative Bodies or Officials.**

When a party or his counsel is in the process of a hearing or trial before a tribunal, he may not be required to appear in another tribunal having greater priority unless the tribunal with less priority grants a recess or continuance for that purpose.

(b) Conflict With Federal Courts. When times set for appearances before state and federal courts are in conflict, appearance shall have such priority as is appropriate. Courts and counsel shall have the obligation to adjust schedules to accord with the spirit of comity between the state and federal courts.

(c) Attorney to Give Notice. **An attorney who cannot make a scheduled appearance because of the priority established by paragraph (a) of this rule shall notify the affected tribunals as soon as the conflict becomes apparent.**

Emphasis added. In this case, the conflicting Magistrate's Court appearance had been noticed to Respondent's Counsel on July 15, 2015 (R. pp. 102 and 109). Despite the July 15, 2015 notice, Respondent's Counsel did not notify the OMVH or Hearing Officer of the anticipated conflict until Friday, August 7, 2015 at 12:30 p.m., three (3) weeks and one (1) day after the conflict was apparent to Respondent's Counsel. Rule 601(c), SCACR requires attorneys to notify affected tribunals as soon as a conflict becomes apparent. Respondent's Counsel did not do so. For these reasons, the Hearing Officer's finding that "counsel did not follow the requirement of Rule 601" was appropriate and demonstrates no abuse of discretion.

In South Carolina, the grant or denial of a continuance is within the sound discretion of the Hearing Officer and is reviewable on appeal only when an abuse of discretion appears from the record. *Plyler v. Burns*, 373 S.C. 637, 650, 647 S.E.2d 188, 195 (2007) ("The grant or denial of a continuance is within the sound discretion of the trial judge and is reviewable on appeal only when an abuse of discretion appears from the record."); *Newman v. Old West, Inc., et al.*, 286 S.C. 394, 334 S.E.2d 275 (1985) (The trial judge's decision to grant or deny a continuance is a matter within his sound discretion.); and *State v. Lytchfield*, 230 S.C. 405, 95 S.E.2d 857 (1957) ("The granting or refusal of a motion for continuance is within the discretion of the trial judge and his disposition of such a motion will not be reversed on appeal unless it is shown that there was an abuse of discretion to the prejudice of appellant. A multitude of cases to this effect will be found in 7 S.C.Dig., Criminal Law, k586 et seq., p. 504 et seq. and

supplement. Review of them shows that reversals of refusal of continuance are about as rare as the proverbial hens' teeth."'). Thus, with no evidence of an abuse of discretion, the Hearing Officer's ruling must stand.

Furthermore, Rule 10, OMVH Rules states:

- A. Content and Filing. All motions shall be written, contain the caption of the case and the title of the motion, the docket number and the name, address, telephone number and e-mail address of the person or representative filing the motion. The motion shall state with specificity the grounds for relief and the relief sought. All motions pertaining to the hearing shall be filed not later than ten days before the hearing date. Any party may file a written response to the motion within ten days unless the time is extended or shortened by the hearing officer.
- B. Motions for Continuance. A motion for continuance shall be in writing, state with specificity the reasons therefor, and be signed by the requesting party or representative. **All motions must be filed at least two business days prior to the scheduled hearing. Motions filed less than two business days prior to the scheduled hearing will be granted only for good cause shown. Motions not served upon all parties will not be granted except in an emergency.** Attorneys with court conflicts must include documentation of the call to court with the motion and the documentation must include the case name, the court, the county, the docket number, the presiding judge's name and telephone number, and the date the attorney received notice of the conflicting court appearance. **Attorneys must notify the Office as soon as possible when a court conflict occurs.** Law enforcement officers with court conflicts must include documentation of the call to court with the motion and the documentation must include the case name, the court, the county, the docket number, the presiding judge's name and telephone number, and the date the officer received notice of the conflicting court appearance. Law enforcement officers with training conflicts must submit documentation that sets out the date, place, and time of training, and the date the officer received notice of the conflicting training. Officers must notify the Office as soon as possible when a conflict occurs.

Emphasis added. Respondent's request for continuance on June 18, 2015; request for continuance on August 7, 2015; request for reconsideration of request for continuance on August 10, 2015 at 1:28 p.m.; and request for continuance dated August 10, 2015 and e-

mailed to OMVH at 4:41 p.m. did not comply with Rule 10(A), OMVH Rules. Each of these requests was sent simply as a letter or e-mail to the OMVH, the Hearing Officer, or both. Specifically, none of these requests were written as a motion, none contained the caption of the case, some did not contain the e-mail address of the person or representative filing the motion, and none were signed by an attorney. Rather each of these were signed by "Tori Ford" for Attorney Michael Laubshire or were sent via e-mail from "Victoria Ford, Paralegal." Therefore, Respondent's Counsel's attempts to file a "motion for continuance" were, in actuality, not motions. These attempts were merely letters requesting a continuance. While a letter may comply with the requirements of Rule 601, SCACR, it does not comply with the requirements of Rule 10, OMVH Rules.

The failure to comply with the requirements of Rule 10, OMVH Rules is further demonstrated by the explicit requirements of section (B) of Rule 10, OMVH Rules. Specifically, the requirement that "All motions must be filed at least two business days prior to the scheduled hearing." Assuming for argument's sake that Respondent's Counsel's August 7, 2015 letter is considered a motion, it still did not comply with the requirement that it be filed at least two (2) business dates prior to the scheduled hearing. This hearing was scheduled for August 11, 2015 at 9:00 a.m. In August 2015, the 8th and 9th of August were Saturday and Sunday, respectively, and not business days. Therefore, any motions for the August 11, 2015 hearing had to be filed with the OMVH by no later than 9:00 a.m. on Friday, August 7, 2015. Respondent's Counsel's August 7, 2015 letter was not sent to the OMVH until 12:30 p.m. on August 7, 2015, clearly past the two business day deadline. The Rule 10(B), OMVH Rules goes on to discuss how motions submitted less than two business days prior to the scheduled hearing will be evaluated:

"Motions filed less than two business days prior to the scheduled hearing will be granted only for good cause shown." Emphasis added. Obviously, the Hearing Officer did not find good cause to grant the requested continuance. In fact, the Hearing Officer took pains to point out in the Order of Dismissal Respondent's Counsel's failure to request the continuance for three (3) weeks and one (1) day after knowing there was a court conflict. Moreover, Rule 10(B), OMVH Rules specifically states, "Attorneys must notify the Office as soon as possible when a court conflict occurs." Clearly, based on the over three (3) week delay, Respondent's Counsel did not comply with this requirement of Rule 10, OMVH Rules.

In addition to the reasons specifically stated by the Hearing Officer in his Order of Dismissal, Respondent's Counsel's requests also failed to comply with other requirements of Rule 10(B), OMVH Rules. Specifically, Rule 10(B), OMVH Rules requires:

Attorneys with court conflicts must include documentation of the call to court with the motion and the documentation must include the case name, the court, the county, the docket number, the presiding judge's name and telephone number, and the date the attorney received notice of the conflicting court appearance.

Respondent's Counsel's June 18, 2015 request did not include the docket number, the presiding judge's name and telephone number, or the date the attorney received notice of the conflicting court appearance.¹¹ Additionally and significantly, Rule 10(B), OMVH Rules also states "Motions not served upon all parties will not be granted except in an emergency." In this case, Respondent's Counsel failed to serve DMV with:

¹¹ It did contain the date the notice was sent to Appellant's Counsel from the Solicitor's Office and later the date of receipt was confirmed by Respondent's Counsel to the OMVH (R. p. 102).

- 1) the request for continuance on June 18, 2015;^{12 13}
- 2) the request for continuance on August 7, 2015;¹⁴
- 3) the request for reconsideration of request for continuance on August 10, 2015 at 1:28 p.m.;¹⁵
- 4) the request for continuance dated August 10, 2015 and e-mailed to OMVH at 4:41 p.m.; and¹⁶
- 5) the Motion for Reconsideration dated August 17, 2015.^{17 18}

Respondent's Counsel also failed to serve Trooper Grubbs with the request for reconsideration of request for continuance on August 10, 2015 at 1:28 p.m.¹⁹ There are no statements or indications in any of these letters, e-mails, motions, or attached documents that any of these requests were made due to an emergency. Moreover, nothing in Respondent's Notice of Appeal or briefs in the ALC indicated that any of these letters, e-mails, and/or motions were made due to an emergency. The ALC Final Order and Order of Remand blithely dismisses Respondent's Counsel's failure to comply with the requirements of Rule 10, OMVH Rules as merely "not satisfy[ing] all of the technicalities" of the rule (R. p. 5). Service of a motion on other parties to a case is not a mere "technicality." By failing to serve all the parties, Respondent removed the parties'

¹² R. pp. 112-115.

¹³ Footnote 1 of the ALC's Final Order and Order of Remand states "The Record is unclear as to how this request was made and processed." The ALC Record on Appeal, however, contains a copies of the letters and e-mails regarding this request and how the request was made. See R. pp. 112-115.

¹⁴ R. pp. 104-109.

¹⁵ R. p. 102.

¹⁶ R. pp. 90-100.

¹⁷ R. p. 62-81.

¹⁸ Respondent's ALC Reply Brief stated "Any and all requests for continuances were emailed to all parties of record listed on the original notice of hearing." This statement is incorrect, as shown by the listing above, and as shown in the R. pp. 122-126 and 110-111.

¹⁹ In fact, because this request for reconsideration was not copied to DMV or Trooper R. D. Grubbs of the South Carolina Highway Patrol, and was sent directly to the Hearing Officer as well as the Hearing Officer's Scheduling Assistant, DMV believes this e-mail was an improper ex parte communication with the Hearing Officer.

ability to respond to or challenge in anyway the motions made to the OMVH. Moreover, by failing to serve all the parties, Respondent potentially placed the parties in the unenviable position of showing up to a hearing that may have been continued without the party's knowledge.²⁰ These collateral consequences of failure to serve motions on other parties to a case are not mere "technicalities," but, rather, can have a very real effect on the parties and the case. The various rules regarding service of motions and other pleadings are in place specifically to avoid situations such as those suggested above. As a result, if for no other reason than Respondent's Counsel's failure to serve copies of these requests on the DMV and Trooper Grubbs, the ALC Final Order and Order of Remand should be overturned and the OMVH Order of Dismissal issued August 12, 2015 reinstated in full.

Case law also supports overturning the ALC decision in this case. A review of the case *Brockman v. South Carolina Dept. of Motor Vehicles and Mauldin Police Dept.*, 2014 WL 2895374, 13-ALJ-21-0049-AP (SCALC 2014) reveals that the ALC has considered this exact issue in the past. In the *Brockman* case, the ALC specifically rejected a claim of abuse of discretion for a request of continuance under Rule 601, SCACR because the request for continuance was filed with less than two business days notice and Appellant was aware of the conflict well before he filed the Motion for Continuance. Thus, the *Brockman* case provides solid guidance to this Court in determining the proper outcome of this appeal and demonstrates that the ALC Final Order and Order of Remand issued December 1, 2015 is a departure from the precedent of the ALC. The ALC Final Order and Order of Remand finds that the *Brockman* case is

²⁰ For example, a law enforcement officer showing up for a 9:00 a.m. hearing after working a 7:00 p.m.-7:00 a.m. shift or an attorney for the DMV driving 3 hours from Columbia to a hearing in Horry, only to discover the hearing has been rescheduled and no notice was provided to them about the rescheduling.

not similar to this case because *Brockman* “was represented by substitute counsel and... a full hearing was held” (R. p. 5). What this finding by the ALC fails to acknowledge is that Respondent and/or her Counsel or substitute counsel could have appeared at the hearing. If they had done so, the OMVH would have held a full hearing as was done in the *Brockman* case. Therefore, despite the ALC’s finding, there are not substantive differences in this case and the *Brockman* case.

Also instructive on this matter is the case of *Chadwick Dale Martin v. S.C. Dept. of Motor Vehicles*, 2007 WL 4184375 (2007). *Martin* found an appeal such as the one initiated by the Respondent in this case in the ALC is more like a Motion to Reopen and analyzed the case under the *Mictronics, Inc. v. S.C. Dept. of Revenue*, 345 S.C. 506, 548 S.E.2d 223 (Ct. App. 2001) four part test. In *Mictronics, Inc.*, the Court put forth the following four part test: “(1) the promptness with which relief is sought, (2) the reasons for the failure to act promptly, (3) the existence of a meritorious defense, and (4) the prejudice to the other party.” *Mictronics, Inc.*, 548 at 226. In *Martin*, as we have in this case, there has been no information put forth for the Court to make a “tenable judgment on whether a meritorious defense exists” and, thus, the ALC found there was no abuse of discretion in the OMVH’s dismissal pursuant to Rule 601, SCACR.

Further, “Nothing in Rule 601, SCACR mandates that one tribunal always be given priority over the other.” *Joseph W. Hiller, Sr., v. S.C. Dept. of Labor, Licensing and Regulation*, 1999 WL 51899 (1999).

Another case which provides guidance on this matter is *S.C. Dept. of Revenue v. Edwin Alewine*, 1997 WL 816208 (1997). The *Alewine* case focused on:

- 1) the late notice to the ALC of a conflicting General Sessions court appearance (less than 24 hours);
- 2) the requirement of Rule 601, SCACR that “an attorney must give notice of a scheduling conflict as soon as it becomes apparent;”
- 3) that Counsel requesting the continuance did not state the date when he was noticed of the Circuit Court trial (notice of the ALC hearing was issued 45 days prior to the hearing);
- 4) there was no “explanation as to why the request was not made earlier;”
- 5) the number of prior requests for continuances and the reasons for those requests;
- 6) that Counsel stated he “did not have anyone in his firm that would be able to attend the hearing for him ‘because of the short notice;’” and
- 7) the amount of delay the previous continuances had created in the case (six months in *Alewine* and at least two months in this case, see R. p. 87 & 75).²¹

Emphasis in the original. This case shares many similarities to the *Alewine* case. The original request for a continuance was sent with less than two (2) business days notice, Respondent’s Counsel waiting for three (3) weeks and one (1) day after receiving notice of the conflicting court appearance before advising the OMVH of the conflict, the original request did not state the date on which Respondent’s Counsel received the notice of appearance for the conflicting court appearance, no explanation was provided (to the OMVH or the ALC during the appeal) as to why the request was not made earlier, Respondent’s Counsel had previously asked for a continuance in this case for another

²¹ If the requested continuance had been granted by the OMVH, this hearing likely would have been scheduled 2-3 months from the date of the request putting the total delay time at four (4) to five (5) months.

court appearance, and the previous continuance had already caused a two month delay in this case. The *Alewine* case also noted “counsel has shown a predilection for making multiple requests for continuances in other cases adjudicated before this tribunal.” While it is not specifically listed as one of the reasons for dismissal in the Order of Dismissal issued by the OMVH, Appellant suspects, based on the e-mail communications between Respondent’s Counsel and the OMVH, that Respondent’s Counsel’s “predilection for making multiple requests for continuances in other cases” before the OMVH contributed to the OMVH’s decision in this matter. (R. pp. 83-97, 101-107).

Additionally, the ALC’s reasoning that “court schedules change, and a conflict may only become apparent when it becomes clear that neither of the cases will be rescheduled”²² places the courts, particularly those with lower priority under Rule 601, SCACR, in an untenable position. Following the ALC’s logic, an attorney could wait until literally one (1) minute prior to a scheduled hearing or trial to inform a court that he/she had an appearance in a court with a higher priority for the same date and time.²³ The attorney would merely have to state that he/she believed one of the court schedules would change. Such a holding would essentially eviscerate Rule 601, SCARC.

The ALC Order continued by asserting that the purpose of Rule 601, SCACR “is to prevent an individual from being deprived of counsel in situations similar to the one before the Court in which an attorney is forced to abandon responsibility to one client in order to serve another” (R. p. 5). While the ALC may believe this to be the primary

²² *Id.*

²³ For example, if an attorney had oral arguments scheduled for the same day and time before the South Carolina Supreme Court and the South Carolina Court of Appeals, he/she could wait until only minutes before the argument was scheduled to begin at the Court of Appeals to inform the Court of Appeals of the conflict and could simply state that he/she believed the oral argument in the Supreme Court would be rescheduled.

purpose of Rule 601, SCACR, by waiting until nearly the last minute to advise the OMVH of the conflict that existed in this case, Respondent's Counsel, not the OMVH Hearing Officer, is the one that deprived Respondent of his presence at the hearing. Appellant DMV asserts that the primary purpose of Rule 601, SCACR is to improve juridical economy and efficiency by allowing the prompt rescheduling of trials and hearings and reassignment of court time to other matters when there are conflicts with a court with a higher priority under Rule 601, SCACR. If this assertion is correct, then following the ALC's logic of allowing last minute notification to courts of conflicts, would defeat the primary purpose of Rule 601, SCACR.

3) THE HEARING OFFICER DID NOT ERROR BY DISMISSING THE CASE WITHOUT HOLDING A HEARING.

In the ALC the Respondent contended that the OMVH Hearing Officer erred in issuing an Order of Dismissal when the Hearing Officer never initiated the scheduled hearing and, by never initiating the scheduled hearing, did not require Appellant to present evidence. Respondent further asserted that the OMVH Hearing Officer bore the burden of proof in enforcement actions pursuant to Rule 15, OMVH Rules and that in this case, the Hearing Officer failed to carry his burden of proof against Appellant.

First, the burden of proof in implied consent actions is on the Appellant, i.e. DMV or the law enforcement officer, not the OMVH Hearing Officer. Despite this error in Respondent's argument, the cases *John McGeary v. S.C. Dept. of Motor Vehicles and S.C. Dept. of Public Safety*, 2011 WL 7119316 (2011), *S.C. Dept. of Motor Vehicles v. Willie Pitts*, 06-ALJ-21-0592 and *S.C. Dept. of Motor Vehicles v. Alana Marie Erwin*, 06-ALJ-21-0591 dealt with this exact argument. In *McGeary*, the ALC held that because Appellant McGeary failed to appear at the administrative hearing, without the proper

consent of the OMVH Hearing Officer, the Hearing Officer clearly had the authority, under Rule 13, OMVH Rules, to dismiss the case adverse to Appellant. Further, in the *McGeary* case, the Administrative Law Court noted that "unlike its treatment of the DMV, the General Assembly has not carved out an exception to OMVH Rule 13 for motorists." The ALC went on to state "nothing in the rules suggest that OMVH Rule 15(B) was intended to limit a hearing officer's authority under OMVH Rule 13 to dismiss a case adverse to a defaulting party" and concluded *McGeary* ruling:

[I]n light of the fact that the State is not required to present a prima facie case for suspension in situations where the motorist does not request an administrative hearing, the court sees no reason why the State should be required to do so in cases where the motorist does not appear at the hearing. In both situations, it is clear that the motorist is not going to present a defense.

This case is no different and Respondent, even in her ALC Reply Brief, has failed to provide any argument or grounds for why her case should be treated any differently than *McGeary*. Additionally, to require the OMVH to hold contested case hearings when individuals who requested the hearing do not appear for the hearing would be an unjustifiable waste of time and resources, both for the OMVH, law enforcement officers, the governmental agencies involved in the case, and witnesses involved in the case. For all of these reasons Appellant's arguments with regard to Rules 14 and 15, OMVH Rules must fail.

CONCLUSION

For the reasons set forth above, the order of the ALC is immediately appealable, should be overturned and the OMVH Order of Dismissal issued August 12, 2015 reinstated in full.

Respectfully submitted,



FRANK L. VALENTA, JR., SC Bar # 5682

General Counsel

PHILIP S. PORTER, SC Bar # 4526

Deputy General Counsel

BRANDY A. DUNCAN, SC Bar # 72052

South Carolina Department of Motor Vehicles

10311 Wilson Boulevard

Post Office Box 1498

Blythewood, South Carolina 29016-0020

Telephone: 803.896.9900

Fax: 803.896.9901

Email: hearingsprocessingunit@scdmv.net

Attorneys for the Appellant

February 24, 2016
Blythewood, South Carolina

RECEIVED

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

FEB 25 2016

SC Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

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

Case No. 2015-002535

Melissa Spalt Respondent,

v.

South Carolina Department of Motor Vehicles and
South Carolina Department of Public Safety Appellants.

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

CERTIFICATE OF COUNSEL

The Undersigned Counsel certifies that the attached Final Brief is in compliance with
SCACR 211(b).



Brandy A. Duncan, SC Bar # 72052
Assistant General Counsel
South Carolina Department of Motor Vehicles

February 24, 2016
Blythewood, SC

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FEB 25 2016
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APPEAL FROM ADMINISTRATIVE LAW COURT

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South Carolina Department of Motor Vehicles and
South Carolina Department of Public Safety Appellants.

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

CERTIFICATE OF COMPLIANCE

The undersigned counsel hereby certifies that Appellant's Final Brief complies with
South Carolina Supreme Court Order 2007-08-13-02 Amended by Order 2014-04-15-02,
filed April 15, 2104.



Brandy A. Duncan, SC Bar # 72052
Assistant General Counsel
South Carolina Department of Motor Vehicles

February 24, 2016
Blythewood, SC

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FEB 25 2016

THE STATE OF SOUTH CAROLINA
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SC Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

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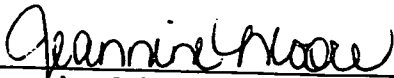
South Carolina Department of Motor Vehicles and
South Carolina Department of Public Safety Appellants.

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

CERTIFICATE OF SERVICE

PURSUANT TO SCACR, I HEREBY CERTIFY that today, February 25, 2016,
I served one (1) copy of Appellant's Final Brief by depositing with the United States
Postal Service, correct postage prepaid, to Counsel for the Respondent at the address
indicated below:

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


Jeannine (Nina) Moore, Paralegal
Office of General Counsel

Blythewood, SC

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Administrative Law Court

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

Case No. 15-ALJ-21-0431-AP

Melissa Spalt Respondent,

v.

South Carolina Department of Motor Vehicles and
South Carolina Department of Public Safety Appellants.

Of Whom the South Carolina Department of Motor Vehicles is Appellant

NOTICE OF APPEAL

The South Carolina Department of Motor Vehicles hereby appeals from the Order of the Honorable H.W. Funderburk, Jr. dated December 1, 2015 (copy attached). Appellant received written notice of entry of this Order on December 1, 2015.



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

South Carolina Department of Motor Vehicles

Post Office Box 1498

Blythewood, South Carolina 29016-0020

Telephone: 803.896.9900

Fax: 803.896.9901

Email: brandy.duncan@scdmv.net

ATTORNEY FOR APPELLANT

December 8, 2015

Blythewood, South Carolina

Other Counsel of Record:

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

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Melissa Spalt,

Appellant,

vs.

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

Respondents.

Docket No.: 15-ALJ-21-0431-AP

**FINAL ORDER
AND
ORDER OF REMAND**

FILED

DEC 01 2015

SC ADMIN. LAW COURT

This matter is before the South Carolina Administrative Law Court ("ALC" or "Court") pursuant to the Notice of Appeal filed by Melissa Spalt ("Appellant") on July 10, 2015. Appellant seeks review of the Order of Dismissal from the Office of Motor Vehicle Hearings ("OMVH").

On appeal, Appellant argues that the Hearing Officer for OMVH committed reversible error in denying Appellant's Motion for Continuance under Rule 601(c), SCACR, and OMVH Rule 10(B), and dismissing the case for Appellant's failure to appear at the hearing.

BACKGROUND

Appellant was arrested on April 5, 2015, and refused to submit to a breath sample. Appellant was found to be in violation of S.C. Code Ann. § 56-5-2950 (Supp. 2014), and the arresting officer issued a Notice of Suspension form pursuant to S.C. Code Ann. § 56-5-2951 (Supp. 2014). Appellant timely requested a contested case hearing on April 10, 2015.

OMVH e-mailed a Notice of Hearing to all parties on April 14, 2015, for a hearing scheduled for June 23, 2015. The attorney for Appellant requested a continuance of the hearing on June 18, 2015, due to a conflicting court appearance.¹ OMVH e-mailed an Order of Continuance and Notice of Hearing on June 24, 2015, rescheduling the hearing for August 11, 2015.

The attorney for Appellant requested another continuance on August 7, 2015, due to a conflicting court appearance. Counsel for Appellant had a trial before the Magistrate Court also scheduled for August 11, 2015. The summons from Magistrate's Court was sent on July 15, 2015. Appellant's

¹ The Record is unclear as to how this request was made and processed.

Motion for Continuance was not signed by the attorney, nor was the Motion served on all parties.

OMVH e-mailed Appellant the denial of the request for a continuance on August 10, 2015.² The attorney for Appellant asked the Hearing Office to reconsider the Motion for Continuance.

OMVH issued an Order of Dismissal on August 12, 2015. OMVH determined that Counsel for Appellant "did not follow the requirement of Rule 601 or the procedure for requesting a continuance at the OMVH pursuant to Rule 10 (B)." Specifically, the Hearing Officer noted that "the motion was not even made with at least two full business days as required by Rule 10 (B)..." The Hearing Officer also noted that Counsel for Appellant did not notify OMVH when the conflict became apparent. Because neither Appellant nor Counsel for Appellant appeared at the hearing, the Hearing Officer dismissed the case.

Appellant filed a Motion to Reconsider on August 17, 2015, which was dismissed as moot on September 16, 2015. Appellant filed a notice of appeal to the ALC on September 11, 2015.

ISSUE ON APPEAL

- 1) Whether the Hearing Officer's decision was made upon unlawful procedure, affected by error of law, or characterized by an abuse of discretion.

STANDARD OF REVIEW

The ALC has jurisdiction to hear appeals of OMVH decisions pursuant to S.C. Code Ann. § 1-23-660(D) (Supp. 2014). The OMVH is authorized by law to determine contested cases arising from the Department. S.C. Code Ann. § 1-23-600 (Supp. 2014). As the OMVH is an "agency" under the South Carolina Administrative Procedures Act ("APA"), the APA's standard of review governs appeals from the decisions of OMVH. *See* S.C. Code Ann. § 1-23-310(2) (Supp. 2014). The standard used by appellate bodies, including the ALC, to review agency decisions is provided by S.C. Code Ann. § 1-23-380(5) (Supp. 2014). This Section provides:

The court may reverse or modify the decision [of an agency] if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions or decisions are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;

² There is no proof in the Record that OMVH served the denial of the Motion for Continuance on all parties to the proceeding.

- (e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

"The fundamental requirement of due process is the opportunity to be heard 'at a meaningful time and in a meaningful manner.'" *S.C. Nat. Bank v. Cent. Carolina Livestock Mkt., Inc.*, 289 S.C. 309, 313, 345 S.E.2d 485, 488 (1986) (quoting *Armstrong v. Manzo*, 380 U.S. 545, 552, 85 S.Ct 1187, 1191, 14 L.Ed.2d 62 (1965)). "[D]ue process is a flexible concept, and the requirements of due process in a particular case are dependent upon the importance of the interest involved and the circumstances under which the deprivation may occur." *Id.* (citations omitted).

An agency's conclusions of law are freely reviewable. Typically, a Court defers to the agency's construction of their own rules and regulations; however, if the plain language of the rules are contrary to the agency's interpretation, the Court will reject the agency's interpretation. *Brown v. S.C. Dep't of Health and Envtl. Control*, 348 S.C. 507, 515, 560 S.E.2d 410, 415 (2002).

"An abuse of discretion occurs when the decision is controlled by some error of law or is based on findings of fact that are without evidentiary support." *Eason v. Eason*, 384 S.C. 473, 479, 682 S.E.2d 804, 807 (2009) (citing *Degenhart v. Burriss*, 360 S.C. 497, 500, 602 S.E.2d 96, 97 (Ct. App. 2004)).

"The granting or refusal of a motion for continuance is within the discretion of the trial judge and his disposition of such a motion will not be reversed on appeal unless it is shown that there was an abuse of discretion to the prejudice of appellant." *State v. Lytchfield*, 230 S.C. 405, 409, 95 S.E.2d 857, 859 (1957).

DISCUSSION

Appellant argues that the Hearing Officer's decision dismissing the case was an error of law. This Court agrees. The issue in this case involves the interpretation of OMVH Rule 10(B) and Rule 601(c), SCACR.

OMVH Rule 10(B) reads, in part:

A motion for continuance shall be in writing, state with specificity the reasons therefor, and be signed by the requesting party or representative. All motions must

be filed at least two business days prior to the scheduled hearing. Motions filed less than two business days prior to the scheduled hearing will be granted only for good cause shown. Motions not served upon all parties will not be granted except in an emergency. Attorneys with court conflicts must include documentation of the call to court with the motion and the documentation must include the case name, the court, the county, the docket number, the presiding judge's name and telephone number, and the date the attorney received notice of the conflicting court appearance. Attorneys must notify the Office as soon as possible when a court conflict occurs.

Rule 601(c), SCACR, states that "[a]n attorney who cannot make a scheduled appearance because of the priority established by paragraph (a) of this rule shall notify the affected tribunals as soon as the conflict becomes apparent." Magistrate's Court has priority over OMVH Hearings. *See* Rule 601(a), SCACR.

In the Order of Dismissal, the Hearing Officer concluded that the attorney for Appellant did not follow the requirement of Rule 601, SCACR, or OMVH Rule 10(B). The Hearing Officer noted that the attorney for Appellant did not notify the OMVH until well after receiving notice of the conflict between Magistrate's Court and OMVH. The Hearing Officer further noted that the attorney for Appellant did not make the motion "with at least two full business days."

The summons to the jury trial for Magistrate's Court was sent on July 15, 2015. However, court schedules change, and a conflict may only become apparent when it becomes clear that neither of the cases will be rescheduled. Further, the purpose of Rule 601, SCACR, is to prevent an individual from being deprived of counsel in situations similar to the one before the Court in which an attorney is forced to abandon responsibility to one client in order to serve another. In denying the Motion for Continuance, the Hearing Officer was denying Appellant representation at the OMVH hearing. Therefore, the Hearing Officer abused his discretion by denying a Motion for Continuance in the face of a documented priority conflict under Rule 601, SCACR.

The OMVH Hearing Officer also found that the attorney for Appellant did not comply with OMVH Rule 10(B) because the Motion for Continuance was not filed with at least two full business days remaining before the hearing. The Motion for Continuance was filed on August 7, 2015, and the hearing was to be held on August 11, 2015. While the Hearing Officer is correct in noting that the Motion for Continuance was filed less than two business days prior to the hearing, OMVH Rule 10(B) is not that rigid. OMVH Rule 10(B) allows for a Motion filed less than two business days if good cause is shown. Here, there is good cause evidenced by the documented priority conflict. Although attorney for Appellant did not satisfy all of the technicalities of OMVH Rule 10(B), the

Motion was sufficient to inform the Hearing Officer of a genuine conflict that prevented Appellant's attorney from attending the OMVH hearing. The Hearing Officer committed error by concluding that a Motion for Continuance could only be filed with at least two full business days prior to the hearing and by not considering whether good cause for a continuance had been shown when the request is made less than two business days prior to the hearing.

Respondent, in its brief, contends that this case is similar to *Brockman v. S.C. Dep't of Motor Vehicles and Mauldin Police Dep't*, Docket No. 13-ALJ-21-0049-AP, 2014 WL 2895374 (Admin Ct. 2014). In *Brockman*, the ALC concluded that the Hearing Officer's denial of a Motion for Continuance was not an abuse of discretion. *Id.* However, in *Brockman*, Appellant was represented by substitute counsel and was not prejudiced by the denial of the Motion for Continuance, because a full hearing was held. *Id.* Here, there was no substitute counsel, and Appellant's case was not decided on the merits, but rather dismissed because counsel was not able to appear. Therefore, *Brockman's* facts are substantially different.

The OMVH Hearing Officer's decision to deny the Motion for Continuance and, ultimately, to dismiss the case, was made by unlawful procedure, controlled by an error of law, and characterized by an abuse of discretion, any one of these would justify reversal and remand for a hearing on the merits. It is therefore,

ORDERED that the decision of the Office of Motor Vehicles Hearings is **REVERSED**, and the case is **REMANDED** for a hearing on the merits.

AND IT IS SO ORDERED.


H. W. Funderburk, Jr.
Administrative Law Judge

December 1, 2015
Columbia, South Carolina

FILED

DEC 01 2015

SC ADMIN. LAW COURT

CERTIFICATE OF SERVICE

I, Julia M. Miller, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, in the Interagency Mail Service, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).

Michael Laubshire, Esq.
455 St. Andrews Rd., St., E-1
Columbia, SC 29210

SCDMV
10311 Wilson Boulevard - Building C
Blythewood, South Carolina 29016

SCDPS
10311 Wilson Blvd.
Blythewood, SC 29016

December 1, 2015
Columbia, S.C.



Julia M. Miller
Judicial Law Clerk

FILED

DEC 01 2015

SC ADMIN. LAW COURT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Administrative Law Court

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

Case No. 15-ALJ-21-0431-AP

Melissa Spalt Respondent,

v.

South Carolina Department of Motor Vehicles and
South Carolina Department of Public Safety Appellants.

Of Whom the South Carolina Department of Motor Vehicles is Appellant

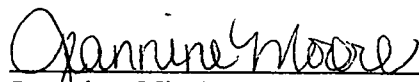
PROOF OF SERVICE

I HEREBY CERTIFY that I have served the Appellant's Notice of Appeal by depositing a copy of same in the United States Mail, postage prepaid, on this 8th day of December, 2015, addressed as follows:

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

The Honorable Jana Shealy, Clerk
South Carolina Administrative Law Court
Edgar A. Brown Building
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201

Yolanda P. Williams
Administrative Coordinator
Office of Motor Vehicles Hearings
SC Administrative Law Court
1205 Pendleton Street, Suite 325
Columbia, South Carolina 29201


Jeannine (Nina) Moore, Paralegal
Office of General Counsel

Blythewood, South Carolina

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.

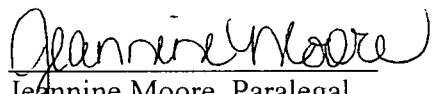
South Carolina Department of Motor Vehicles and
South Carolina Department of Public Safety.....Petitioner,

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

PROOF OF SERVICE

I HEREBY CERTIFY that I have served the Appendix by depositing a copy of it in the United States Mail, postage prepaid, on the 6th day of March, 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