

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM THE  
ADMINISTRATIVE LAW COURT

Debra Brooks Durden, Administrative Law Judge

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Case No.: 11-ALJ-22-0553-AP

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Alma Washington,

Appellant,

v.

South Carolina Department of Employment and Workforce  
and Palmetto Health,

Respondents.

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**RESPONDENTS JOINT NOTICE OF SPECIAL APPEARANCE, MOTION TO  
DISMISS AND MEMORANDUM IN SUPPORT OF MOTION TO DISMISS**

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NOTICE IS HEREBY GIVEN that the Respondents, South Carolina Department of Employment and Workforce, (hereinafter "SCDEW" or "Department") and Palmetto Health (hereinafter collectively "Respondents") through their undersigned attorneys, make a special appearance and submit this Motion to Dismiss and Memorandum in Support of their Motion to Dismiss. Appellant has served neither the Department nor Palmetto Health with her Notice of Appeal within thirty (30) days of receipt of the Administrative Law Court's final decision as is required for jurisdiction to attach pursuant to S.C. Code Ann. § 1-23-610 and Rule 203(b)(6), SCACR. This Court must dismiss Appellant's appeal with prejudice for the failure to comply with the thirty (30) day mandatory appeal period.

**RECEIVED**

JAN 28 2013

**SC Court of Appeals**

## BACKGROUND

The Administrative Law Court issued its final decision on March 9, 2012. Respondents were copied on a correspondence from this Court to Appellant on April 24, 2012, stating the Court had received a document which the Court construed as Appellant's Motion to Proceed in Forma Pauperis. (Attachment A.) This correspondence was the first evidence Respondents received from any party that Appellant had made appeal to this Court. As of the drafting of this memorandum, Respondents have not been properly served notice of Appellant's appeal to the Court. (Attachment B & C)

## ARGUMENT

### THE COURT SHOULD DISMISS APPELLANT'S APPEAL FOR LACK OF JURISDICTION

This action is ostensibly a petition for judicial review of a final decision of the Administrative Law Court and is governed by S.C. Code Ann. § 1-23-610. Section 1-23-610(A)(1) requires:

For judicial review of a final decision of an administrative law judge, a notice of appeal by an aggrieved party must be served and filed with the court of appeals as provided in the South Carolina Appellate Court Rules in civil cases and served on the opposing party and the Administrative Law Court **not more than thirty days** after the party receives the final decision and order of the administrative law judge. Appeal in these matters is by right. (emphasis added)

Furthermore, Rule 203(b)(6), SCACR states:

When a statute allows a decision of the administrative law court...to be appealed directly to...the Court of Appeals, the notice of appeal shall be served on the agency, the administrative law court...and all parties of record **within thirty (30) days** after receipt of the decision.... (emphasis added)

The final decision of the Administrative Law Court was mailed to Appellant on March 9, 2012. As of the filing of this Motion and Memorandum, Respondents have not been served with Appellant's Notice of Appeal. Service of a notice of appeal is required for jurisdiction over the

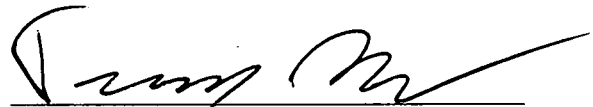
appeal to attach. Elam v. S.C. Dep't of Transp., 361 S.C. 9, 602 S.E.2d 772 (2004). Appellant has failed to comply with the requirements governing this appeal and the thirty (30) day statutory time period for perfecting the appeal has expired. Service of the appeal is a mandatory and jurisdictional requirement, and the court has no authority to extend the time in which the notice of appeal must be served. Mears v. Mears, 287 SC 168, 337 SE2d 206 (1985); State v. Brown, 344 S.C. 302, 543 S.E.2d 568 (Ct. App. 2001). Since Appellant has not complied with the statutory requirements for the Court to obtain jurisdiction to review the Administrative Law Court's final decision, the appeal should properly be dismissed.

### CONCLUSION

Respondents pray that the appeal be dismissed with prejudice. Respondents respectfully ask that all time requirements and deadlines be held in abeyance pending resolution of this motion.



Katherine Dudley Helms Bar #2907  
Todd S. Timmons#100249  
OGLETREE, DEAKINS, NASH,  
SMOAK & STEWART, P.C.  
1320 Main Street, Ste 600  
Phone: (803) 252-1300  
Fax: (803) 254-6517  
Attorneys for Respondent Palmetto Health



E.B. "Trey" McLeod, III, Bar #73642  
S.C. Dept of Employment & Workforce  
P.O. Box 8597  
Columbia, SC 29202  
Phone: (803) 737-2666  
Fax: (803) 737-0124  
Columbia, South Carolina  
Phone: (803) 737-2666  
Attorney for Respondent SCDEW

January 22, 2013

Attachment A



EOE

APR 25 2012

## The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

V. CLAIRE ALLEN  
DEPUTY CLERK

POST OFFICE BOX 11629  
COLUMBIA, SOUTH CAROLINA 29211  
1015 SUMTER STREET  
COLUMBIA, SOUTH CAROLINA 29201  
TELEPHONE: (803) 734-1890  
FAX: (803) 734-1839  
www.sccourts.org

April 24, 2012

Alma Washington  
10 Brushwood Ct  
Columbia, SC 29229

Re: Palmetto Health v. Washington, Alma  
2012210826

Dear Ms. Washington:

We have received your letter of March 28, 2012 in the above entitled case on appeal. This letter will be construed as a motion to proceed in forma pauperis. Opposing counsel may file a return to your request within ten (10) days of the date of this letter.

Very truly yours,

*V. Claire Allen, Deputy*  
CLERK

JAK/ma

cc: Brenda L. Gorski, Esquire  
Katherine Dudley Helms, Esquire

STATE OF SOUTH CAROLINA            )  
  )  
COUNTY OF RICHLAND                )     CASE No. 11-ALJ-22-0553-AP

**AFFIDAVIT OF MEREDITH SMITH**

PERSONALLY appeared before me, Meredith Smith, who, upon being duly sworn, deposes and states as follows:

1. I am an Administrative Legal Assistant for Todd Timmons at Ogletree, Deakins, Nash, Smoak & Stewart, P.C., at 1320 Main Street, Suite 600, Columbia, SC 29201. I have been in this position for eleven (11) years. As such, I am responsible for receiving and processing Mr. Timmons' mail.

2. Mr. Timmons is listed as an attorney of record for Palmetto Health in the matter of *Alma Washington v. South Carolina Department of Employment and Workforce, and Palmetto Health, Case No. 11-ALJ-22-0553-AP*, and the address of record is 1320 Main Street, Suite 600, Columbia, SC 29201. Mr. Timmons has received all mail from the courts and Ms. Washington at this address.

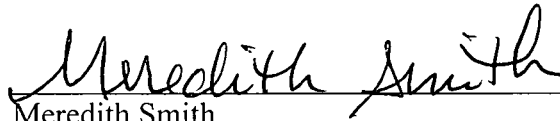
3. The only document from Ms. Washington that Mr. Timmons has received referencing "Notice of Appeal" is attached as Attachment A to this Affidavit.

4. There is no image of any other document as a Notice of Appeal contained in the Ogletree Document Management System for this matter.

5. The information contained in this Affidavit is based on my personal knowledge and is true and accurate to the best of my knowledge and belief.

Further affiant sayeth not.

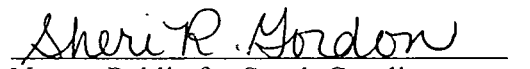
Dated this the 18<sup>th</sup> day of January 2013.



Meredith Smith

*Legal Assistant to Todd Timmons*

Sworn to and subscribed before me  
this the 18<sup>th</sup> day of January 2013.

  
Notary Public for South Carolina  
My Commission expires: 06-14-22

# Attachment A

FORM 7  
PROOF OF SERVICE OF A NOTICE OF APPEAL

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals  
[In The Supreme Court]

APPEAL FROM Richland County  
Court of Common Pleas

HONORABLE Debra Book Darden, Circuit Court Judge

Case No. 2012-210826

Palmetto Health  
+  
SC Dept of Employment + Work Force

Respondent,

v.

Alma Washington

Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Palmetto Health by depositing a copy of it in the United States Mail, postage prepaid, on January 15<sup>th</sup> 2013 addressed to his attorney of record, Katherine Helms Columbia South Carolina 29201 [by personally delivering a copy of it to his attorney of record, Katherine Helms at her office at 1320 Main St Columbia, South Carolina 29201-3266].

January 15, 2013

Alma Washington  
Alma Washington  
10314 Sh Wood St  
Columbia, South Carolina 29207  
803 521-8990  
Appellant

Jenny Abbott Kutchins  
Clerk of Court  
P.O. Box 11629  
Columbia SC 29211

Brenda Gorski Esq Atty  
SC Dept of Employment + Work Force  
P.O. 8597  
Columbia SC 29202

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )

CASE No. 11-ALJ-22-0553-AP

**AFFIDAVIT OF BETH SWALGREN**

PERSONALLY appeared before me, Beth Swalgren, who, upon being duly sworn, deposes and states as follows:

1. I am an Administrative Legal Assistant for Kathy Dudley Helms at Ogletree, Deakins, Nash, Smoak & Stewart, P.C., at 1320 Main Street, Suite 600, Columbia, SC 29201. I have been in this position for five (5) years. As such, I am responsible for receiving and processing Ms. Helms' mail.

2. Ms. Helms is listed as an attorney of record for Palmetto Health in the matter of *Alma Washington v. South Carolina Department of Employment and Workforce, and Palmetto Health, Case No. 11-ALJ-22-0553-AP*, and the address of record is 1320 Main Street, Suite 600, Columbia, SC 29201. Ms. Helms has received all mail from the courts and Ms. Washington at this address.

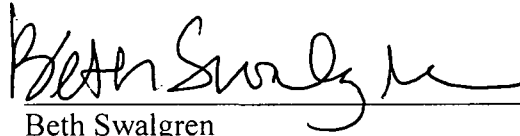
3. The only document from Ms. Washington that Ms. Helms has received referencing "Notice of Appeal" is attached as Attachment A to this Affidavit.

4. There is no image of any other document as a Notice of Appeal contained in the Ogletree Document Management System for this matter.

5. The information contained in this Affidavit is based on my personal knowledge and is true and accurate to the best of my knowledge and belief.

Further affiant sayeth not.

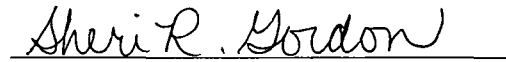
Dated this the 17<sup>th</sup> day of January 2013.



Beth Swalgren

*Legal Assistant to Katherine Dudley Helms*

Sworn to and subscribed before me  
this the 17<sup>th</sup> day of January 2013.



Notary Public for South Carolina

My Commission expires: 06-14-22

# Attachment A

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THE STATE OF SOUTH CAROLINA  
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APPEAL FROM Richland County  
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Case No. 2012-210826

Palmetto Health  
+  
SC Dept of Employment + Work Force

Respondent,

v.

Alma Washington

Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Palmetto Health by depositing a copy of it in the United States Mail, postage prepaid, on JANUARY 15<sup>th</sup> 2013 addressed to his attorney of record, KATHERINE HELM, Columbia South Carolina 29201 [by personally delivering a copy of it to his attorney of record, Katherine Helm, at her office at 1320 Main St COLA, South Carolina 29201-3266].

January 15, 2013

Alma Washington  
Alma Washington  
10 Brushwood Ct  
Columbia South Carolina 29207  
803 521-8990  
Appellant

Jenny Abbott Kutchins  
Clerk of Court  
P.O. Box 11629  
COLA SC 29211

Brenda Gorski Esq Atty  
SC Dept of Employment + Work Force  
P.O. 8597  
COLA SC 29202


STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )

CASE No. 11-ALJ22-0553

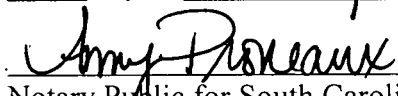
**AFFIDAVIT OF JESSICA CHESLEY**

PERSONALLY came before me, the undersigned Notary, the within named Jessica Chesley who is employed in Richland County, State of South Carolina, and makes this her statement and affidavit upon oath and affirmation of belief and personal knowledge that the following matters, facts and things set forth are true and correct to the best of her knowledge:

1. I am the Administrative Legal Assistant for the SC Department of Employment and Workforce (SCDEW). I am responsible for receiving, opening and processing the mail addressed to: Legal Department, S.C. Department of Employment and Workforce, Post Office Box 995, Columbia, SC 29202, as set forth in the Letter of Transmittal which accompanied the decision from the agency's Appellate Panel and was the address of record in the matter of Alma Washington v. SCDEW and Palmetto Health (Docket No. 11-ALJ-22-0553-AP).
2. Subsequent to filing of the matter of Alma Washington v. SCDEW and Palmetto Health (Docket No. 11-ALJ-22-0553-AP), the mailing address for notices of appeal was updated to: Legal Department, S.C. Department of Employment and Workforce, Post Office Box 8597, Columbia, SC 29202.
3. The Legal Department still receives mail at P.O. Box 995 as it is currently an active mailing address.
4. I have not received a Notice of Appeal from the Appellant in the matter of Alma Washington v. SCDEW and Palmetto Health (Docket No. 11-ALJ-22-0553-AP) at either mailing address listed above.
5. No record of a Notice of Appeal in this matter is found on the Imaging/Records system of SCDEW.

  
Signature of Affiant  
Jessica Chesley

DATED AND SWORN to before me this the  
22<sup>nd</sup> day of January, 2013.

 (LS)  
Notary Public for South Carolina  
My Commission Expires: 12/5/2022

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM THE  
ADMINISTRATIVE LAW COURT

Deborah Brooks Durden, Administrative Law Judge

---

Case No.: 11-ALJ-22-0553

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Alma Washington,

Appellant,

v.

South Carolina Department of Employment  
And Workforce and Palmetto Health,

Respondent.

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**PROOF OF SERVICE**

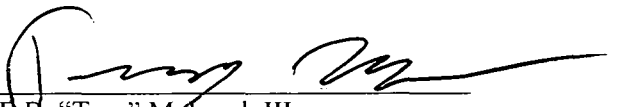
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I certify that I have served the **Respondents' Joint Notice of Special Appearance , Motion to Dismiss and Memorandum in Support of Motion to Dismiss**, on all parties in this action by depositing a copy of it in the United States Mail, first class postage prepaid, on January 24, 2013, to the following address:

Alma Washington  
10 Brushwood Ct  
Columbia, South Carolina 29229

Katherine D. Helms, Esq.  
Ogletree, Deakins, Nash, Smoak & Stewart  
1320 Main Street, Suite 600  
Columbia, South Carolina 29201

January 24, 2013

  
E.B. "Trey" McLeod, III  
S.C. Department of Employment and Workforce  
Post Office Box 8597  
Columbia, South Carolina  
Attorney for Respondent

**RECEIVED**  
JAN 28 2013  
SC Court of Appeals