

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

APPEAL FROM THE SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

Marvin F. Kittrell, Chief Judge

Case No.: 2008-ALJ-30-0061-AP

RECEIVED

MAY 11 2012

S.C. Supreme Court

Kenneth Lee Holbert, Jr., ..... Appellant,

v.

South Carolina State Board for Technical  
and Comprehensive Education, ..... Respondent.

**RESPONDENT'S RETURN  
IN OPPOSITION TO APPELLANT'S  
MOTION FOR EXTENTION OF  
TIME TO FILE A MOTION FOR  
WRIT OF CERTIORARI**

**INTRODUCTION**

Respondent, South Carolina State Board for Technical and Comprehensive Education (hereinafter "State Tech " or "Respondent"), by and through its undersigned counsel, hereby files its Return to Appellant Kenneth Lee Holbert, Jr's (hereinafter "Holbert") Motion for Extension of Time to File a Motion for Writ of Certiorari (hereinafter "Motion"). State Tech believes that the Court of Appeals' decision did not overlook, misapprehend or disregard any points or material facts in this matter, and Holbert's Motion is interposed for delay. For the aforementioned reasons, and as discussed more fully below, Holbert's Motion should be denied.

## PROCEDURAL HISTORY

This matter is on appeal from the Administrative Law Court (hereinafter the “ALC”). On January 11, 2007, the Director of Human Resources at Greenville Technical College (hereinafter the “College”) sent a letter to Holbert informing him that the College would fill his position, which would result in Holbert’s separation from the College, if he was unable to return to work on January 12, 2007. (R. p. 371). When Holbert did not return to work on January 12, 2007, the College moved forward with its decision to separate Holbert from his employment. (R. pp. 138-40, 357, 359, 365).

On January 25, 2007, Holbert initiated the grievance procedure with the College, and the decision to terminate Holbert’s employment was upheld by Holbert’s supervisor, the President of the College, Dr. Thomas Barton, and the President of the South Carolina Technical College System, Dr. Barry Russell. (R. pp. 338, 330-31, 341-42, 412-14, 434-38). Holbert appealed the grievance decision to the State Human Resource Director of the South Carolina Budget and Control Board, and the State Employee Grievance Committee (hereinafter the “Committee”) issued its Final Decision, upholding the termination, on September 19, 2007. (R. pp. 3-6, 86-87). Holbert’s Request for Reconsideration by the Committee was denied on January 4, 2008. (R. p. 64).

On February 4, 2008, Holbert appealed the Committee’s decision to the ALC, and the ALC issued an Order, affirming the decision of the Committee, on February 24, 2009. (R. pp. A-1 – A-16). Holbert appealed the ALC’s decision to the S.C. Court of Appeals, via facsimile on March 27, 2009. Prior to the Court of Appeals hearing oral arguments, on October 19, 2011, Holbert filed a lawsuit against the College arising out of the same set of facts, and he is proceeding *pro se*.

On February 16, 2012, the Court of Appeals heard oral arguments and filed an

Unpublished Opinion (No. 2012-UP-133) on February 29, 2012 which affirmed the ALC's decision. Holbert notified the Court of Appeals Respondent of his Petition for Rehearing on March 15, 2012. On March 29, 2012, the Court of Appeals denied Holbert's Petition for Rehearing. Holbert served Respondent with a Motion for Extension of Time to File a Motion for Writ of Certiorari on April 30, 2012.

### **LEGAL ANALYSIS**

Holbert's Motion should be denied because he offers no reason which justifies an extension under the circumstances he has described. The South Carolina Appellate Court Rules are clear that a party has thirty (30) days from the final decision on a petition for rehearing to file a petition for writ of certiorari with the S.C. Supreme Court. Rule 242(c), SCACR. In this case, Holbert on the thirtieth day, filed a Motion for Extension, sighting a need to retain legal counsel, rather than filing his petition for writ of certiorari.

Holbert has been acting without counsel since approximately March 2012, as Holbert filed the Motion for Reconsideration in the Court of Appeals without the assistance of counsel. Furthermore, we ask that this Court take judicial notice of the fact that Holbert has filed a civil lawsuit against the College in federal court, and has proceeded *pro se* since the original filing of that action on October 19, 2011.<sup>1</sup> Therefore, Respondent believes that Holbert's alleged need for an extension to obtain counsel is simply a dilatory tactic.

Moreover, to the extent that Holbert's stated reasons rely upon matters that are outside of the Record before the Court of Appeals as a basis for an extension of time or to

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<sup>1</sup> Kenneth L. Holbert, Jr. v. Greenville Technical College, C.A. No.: 6:11-cv-02846-HMH-KFM. This Court may take judicial notice of any fact which is capable of verification by reference to readily available sources of indisputable reliability. Masters v. Rodgers Development Group, 283 S.C. 251, 321 S.E.2d 194 (Ct. App. 1984) (citing Matter of Harry C.; 280 S.C. 308, 313 S.E.2d 287 (1984) and Moss v. Aetna Life Ins. Co., 267 S.C. 370, 228 S.E.2d 108 (1976)).

support a petition for writ of certiorari, such reliance is misplaced. Holbert's appeal was based upon, and any petition for writ of certiorari will involve, a review of the record, and it is well settled that appellate courts "will not consider any fact which does not appear in the Record on Appeal." Rule 210(h), SCACR; Johnson v. S.C. Dept. of Probation, Parole, and Pardon Serv., 372 S.C. 279, 284, 641 S.E.2d 895, 897 (2007). Therefore, the reasons stated by Holbert do not warrant an extension of time in which to file a petition for writ of certiorari.

Finally, Holbert's filing of this Motion on the thirtieth day, instead of the petition for writ of certiorari, makes the writ of certiorari time-barred because Holbert's Motion does not stay the deadline to file such writ. The petition for writ of certiorari was to be filed by April 30, 2012.<sup>2</sup> See Rule 242(c), SCACR (providing that a petition for writ of certiorari "shall be served . . . and filed within thirty (30) days after the petition for rehearing . . . is finally decided by the Court of Appeals."); Rule 240(b), SCACR (providing that "the time limits imposed by these Rules shall not be stayed by the filing of a motion.").

### **CONCLUSION**

For the aforementioned reasons, we respectfully request that this Court deny Holbert's Motion.

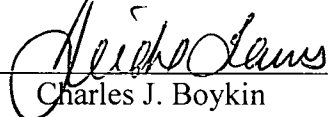
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<sup>2</sup> Thirty (30) days from March 29, 2012 is Saturday, April 28, 2012. As such, the deadline ran "until the end of the next day which is neither a Saturday, Sunday nor such holiday," which is April 30, 2012. Rule 263, SCACR.

Respectfully Submitted,

BOYKIN & DAVIS, L.L.C.

By:   
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Deidre D. Laws

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Attorneys for Respondent

May 11, 2012  
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Marvin F. Kittrell, Chief Judge

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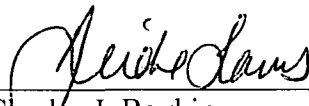
**PROOF OF SERVICE**

The undersigned of Boykin & Davis, L.L.C., hereby certifies that they have served the **RESPONDENT'S RETURN TO APPELLANT'S REQUEST FOR EXTENSION OF TIMETO FILE A MOTION FOR WRIT OF CERTIORARI** on Appellant and Appellant's counsel of record, by mailing a copy of same, postage prepaid and return address clearly indicated to the following:

May 11, 2012

J. Falkner Wilkes, Esq. (Attorney of Record)  
638 East Washington Street  
Greenville, SC 29601

Kenneth L. Holbert  
104 Sun Boulevard  
Easley, SC 29642

  
\_\_\_\_\_  
Charles J. Boykin  
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May 11, 2012

\* CERTIFIED CIVIL ARBITRATOR AND MEDIATOR  
† ALSO ADMITTED IN CALIFORNIA

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S.C. Supreme Court

## VIA HAND-DELIVERY

The Honorable Daniel Shearouse  
Clerk, South Carolina Supreme Court  
1231 Gervais Street  
Columbia, South Carolina 29201

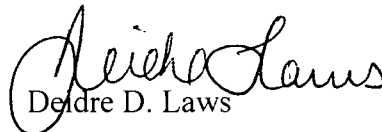
Re: Kenneth L. Holbert v. South Carolina State Board for Technical and  
Comprehensive Education  
Case No.: 08-ALJ-30-0061-AP

Dear Mr. Shearouse:

Enclosed please find for filing the original and six (6) copies of the Respondent's Return to Appellant's Request for Extension of Time to File a Motion for Writ of Certiorari in the above-referenced matter. Please return a time-stamped copy to our courier.

By copy of this letter, we are serving a copy on the Appellant and the Appellant's counsel of record. Should you have any questions, please feel free to contact Charles Boykin or me.

Sincerely,

  
Deidre D. Laws

/lth

Enclosures

cc: J. Falkner Wilkes, Esq. (w/encl.)  
Kenneth L. Holbert, Jr. (w/encl.)  
Charles J. Boykin, Esq. (w/o encl.)