

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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OCT 01 2019

S.C. SUPREME COURT

APPEAL FROM Horry COUNTY

William H. Seals, Jr., Circuit Court Judge

Appellate Case No. 2019-001134

City of Myrtle Beach, For Itself and a Class of Similarly Situated Plaintiffs, ..... Respondents,

v.

Horry County, ..... Appellant.

**RESPONDENTS' MOTION FOR SECOND EXTENSION OF TIME**

Pursuant to Rules 240 and 263(b), SCACR, Respondent City of Myrtle Beach, for Itself and a Class of Similarly Situated Plaintiffs, ("City") respectfully moves this Court for a second extension of time in which to serve its Initial Brief of Respondents and Designation of Matter to be Included in the Record on Appeal. In support of this motion, the City states as follows:

1. Concurrent with this motion, the City has filed a Motion to Strike Appellant Horry County's ("County") designation of "County's Confidential Memorandum for June 14, 2019 Hearing" to be included in the Record on Appeal. As explained therein, inclusion of the County's confidential hearing brief in the Record on Appeal is improper under the well-established case law of this state, *see, e.g., Hays v. Adair*, 267 S.C. 291, 297, 227 S.E.2d 665, 668 (1976), and the City believes that the brief may contain new or additional arguments not advanced in the County's motion, memoranda, and supporting exhibits filed with the circuit court and thereby allow the County to improperly attempt to cure significant issue preservation

defects in its arguments in violation of the City's due process rights, Rule 210(c), SCACR, and this Court's long-standing issue preservation requirements.

2. The City's Initial Brief of Respondents and Designation of Matter to be Included in the Record on Appeal currently are due October 9, 2019, consistent with the first extension request granted September 20, 2019, by the Court of Appeals over the County's objection. The resolution of the City's Motion to Strike may have a material impact on the content of the City's brief and designation. As a result, the City respectfully requests that the deadline to file and serve its Initial Brief and Designation of Matter be extended. Should the Court agree to strike the County's designation, the City respectfully requests an additional 10 days after the Court rules on the Motion to finalize and file its Initial Brief and Designation of Matter. Should the Court disagree and decline to strike the County's designation, the City respectfully requests the Court to direct the County to provide the City its confidential trial brief, and that the City be provided an additional 10 days following its receipt of the brief to file the Initial Brief and Designation of Matter.

3. This is the second request for an extension by the City with respect to the Initial Brief of Respondents and Designation of Matter to be Included in the Record on Appeal; however, it is the first such request associated with the concurrently-filed Motion to Strike. The first such request was based on the workload of counsel, and the County opposed that motion. This second request results from the County's improper designation of matter and concomitant refusal to withdraw this designation at the City's request.

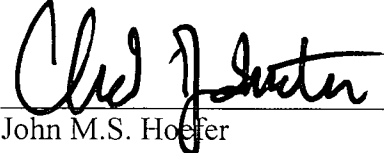
4. The County will not be prejudiced by this extension.

5. This request is made in good faith, and not for purposes of delay. To that point, prior to filing the Motion to Strike and the within motion for extension, the undersigned consulted

with counsel for the County to inquire as to what legitimate purpose inclusion of the County's confidential trial brief might serve, to provide notice of the City's intent to move to strike the brief, and to request the County's agreement to retract its designation of the confidential brief. The County indicated that it believes inclusion of the trial brief in the Record on Appeal is proper and refused to agree to remove it from the County's designation.

The City therefore respectfully requests that this Court grant this motion and extend the time for filing and serving the Initial Brief of Respondents and Designation of Matter to be Included in the Record on Appeal consistent herewith.

Respectfully submitted,



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Columbia, South Carolina  
October 1, 2019

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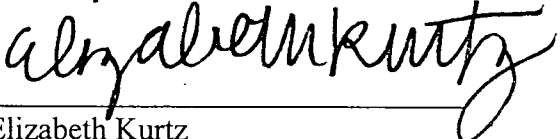
**CERTIFICATE OF SERVICE**

This is to certify that I, Elizabeth Kurtz, a paralegal with the law firm Willoughby & Hoefer, P.A., have caused to be served this day one (1) copy of Respondent City of Myrtle Beach's **Motion to Strike Appellant Horry County's Designation of its Confidential Trial Brief as a document to be included in the Record on Appeal, and its Motion for Extension of Time to serve its Initial Brief of Respondents and Designation of Matter to be Included in the Record on Appeal** by placing same in the care and custody of the United States Postal Service with first class postage affixed thereto and addressed as follows::

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Elizabeth Kurtz

Columbia, South Carolina  
This 1<sup>st</sup> day of October, 2019