

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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JUN 19 2020

SC Court of Appeals

APPEAL FROM ADMINISTRATIVE LAW COURT

Administrative Law Judge Ralph King Anderson, III

ALC Case No. 19-ALJ-04-0446-AP  
Appellate Case No. 2020-000251

Kenneth Rivera, #318979.....Appellant,

v.

South Carolina Department of Corrections.....Respondent.

**MOTION TO FILE A SUPPLEMENTAL RECORD ON APPEAL**

Comes now Respondent, through undersigned counsel, and requests that this Court allow Respondent to file A Supplemental Record on Appeal. The relevant facts supporting this request are as follows.

Appellant filed his Initial Brief on March 19, 2020. He attached several documents to that brief which he referred to as exhibits. Respondent filed a motion to strike those exhibits on March 26, 2020 on the basis that the South Carolina Appellate Court Rules do not provide for the attachment of exhibits to briefs and that the documents in question could not properly be included in the Record on Appeal under South Carolina Appellate Court Rule 210. Appellant filed a return to Respondent's motion on March 30, 2020.

On March 30, 2020 Appellant filed his Designation of Matter. Respondent filed a motion to strike certain items listed in Appellant's Designation of Matter on April 16, 2020. Respondent also filed Respondent's Designation of Matter on April 16, 2020.

Appellant filed the Record on Appeal in this case on May 14, 2020. However, the documents filed by Appellant does not comply with Rule 210 of the South Carolina Appellate Court Rules. This rule states that the Record on Appeal "*shall* include all matter designated to be included by any party." Rule 210, SCACR. Appellant failed to include copies of several documents which were listed in Respondent's Designation of Matter including Appellant's Notice of Appeal filed with the Administrative Law Court (ALC) on September 7, 2019, Appellant's Brief filed with the ALC on December 16, 2019, Respondent's Motion to Dismiss filed with the ALC on January 14, 2020, and ALC Judge Anderson's Order of Dismissal issued February 6, 2020. Instead of including these documents, Appellant included pages on which he states the dates the documents were filed. Unlike the documents they reference, these placeholder notes are all one page. This prevents proper citation to these documents in Respondent's Final Brief.

In addition to omitting documents which were properly included in Respondent's Designation of Matter, Appellant included other documents as his "exhibits." Respondent's Designation of Matter included the Step 1 and Step 2 grievance forms for grievance BRCI-0340-19 and Request to Staff Member (RTSM) 19-01217056. Appellant included these documents in the exhibits he attached to the end of the Record on Appeal. However, he did not include page numbers on these documents as required by Rule 210 which prevents proper citation to these documents in Respondent's Final Brief. Appellant also included in this "exhibits" section of the Record on Appeal the documents to which

Respondent's March 26, 2020 motion objects. These documents cannot properly be included in the Record on Appeal as they were never considered by the Administrative Law Court. Rule 210, SCACR.

On May 29, 2020, this court granted Respondent's Motion to Strike. The cover letter which accompanied this order directed Appellant to file an amended record on appeal. Appellant did so on June 5, 2020. While the Amended Record on Appeal does not contain the documents which the May 29, 2020 Order struck, it does not contain actual copies of most of the documents and the documents it does contain are not paginated. Just like the original Record on Appeal Appellant filed on May 14, 2020, Appellant has included placeholder pages for most of the documents. These placeholder pages state the date on which the referenced document was filed or issued. These placeholders are only one page but stand in for documents of multiple pages. This makes proper citation to the Record on Appeal in the Final Brief of Respondent impossible. In the interest of expediency, Respondent has prepared a Supplemental Record on Appeal which includes actual copies of the documents which were not included in the Amended Record on Appeal but were requested in both party's Designations of Matter. Respondent requests leave of the court to file this Supplemental Record on Appeal.

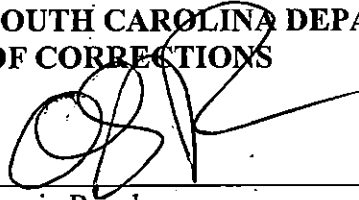
Additionally, in the Amended Record on Appeal, Appellant has once again included the Request to Staff Member and Grievance documents as exhibits attached to the Record instead of part of the Record itself. These exhibits are not paginated. If the pagination were continued onto these documents they would be paginated as follows: Page 16 would be the Request to staff Member. Page 17 would be Grievance BRCI-0340-19, Step One. Page 18 would be Grievance BRCI-0340-19, response to Step One.

Page 19 would be Grievance BRCI-0340-19, Step Two. Respondent requests that the court accept this pagination of these documents or provide guidance regarding citations to these documents in the Final Brief of Respondent.

Respondent respectfully requests that this Court extend the time for filing the Final Brief of Respondent until twenty days after the Court rules on this motion.

Respectfully submitted,

**SOUTH CAROLINA DEPARTMENT  
OF CORRECTIONS**

A handwritten signature in black ink, appearing to be 'AR', written over a horizontal line.

Annie Rumler  
Deputy General Counsel  
Office of General Counsel  
S.C. Department of Corrections  
Post Office Box 21787  
Columbia, South Carolina 29221  
(803) 896-8508

**ATTORNEY FOR RESPONDENT**

June 17, 2020

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APPEAL FROM ADMINISTRATIVE LAW

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Administrative Law Judge Ralph King Anderson, III

ALC Case No. 19-ALJ-04-0446-AP  
Appellate Case No. 2020-000251

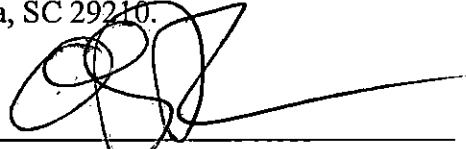
Kenneth Rivera, #318979.....Appellant,

v.

South Carolina Department of Corrections.....Respondent.

**CERTIFICATE OF SERVICE**

Undersigned counsel hereby certifies that on today's date she mailed a copy of the **Motion to File a Supplemental Record on Appeal** to Appellant, addressed as follows:  
Kenneth Rivera, #318979, Dorm-Room-Bunk: WAA-0225-B, Broad River Correctional Institution, 4460 Broad River Road, Columbia, SC 29210.



**Annie Laurie Rumler**  
Deputy General Counsel  
Office of General Counsel  
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June 17, 2020



**SOUTH CAROLINA**  
DEPARTMENT OF CORRECTIONS  
*Safety, Service, and Stewardship*

HENRY McMASTER, Governor  
BRYAN P. STIRLING, Director

OFFICE OF GENERAL COUNSEL

June 17, 2020

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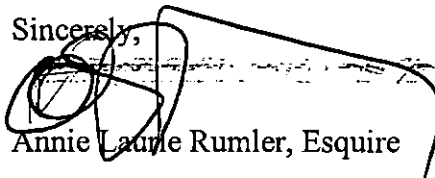
The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

Reference: App. Case No.: 2020-000251 (*Kenneth Rivera, #318979*)  
*v. South Carolina Department of Corrections*)

Dear Madam Clerk:

Enclosed, please find the original and one copy of Respondent's Motion to File a Supplemental Record on Appeal as well as the original and one copy of the Supplemental Record on Appeal. Please return the copies clock-stamped to me in the enclosed self-addressed stamped envelope. I have not included the additional copies normally required by South Carolina Appellate Court Rules 240(d) and 210(b), respectively, in accordance with the Supreme Court of South Carolina's May 29, 2020 Amended Order regarding appellate court operations during the COVID-19 emergency. If additional copies are required please let me know and I will be happy to provide them. Thank you.

Sincerely,



Annie Laurie Rumler, Esquire

Enclosure

cc: Kenneth Rivera, #318979

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