

IN THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM HORRY COUNTY  
Court of Common Pleas

Honorable Benjamin Culbertson, Circuit Court Judge

**RECEIVED**

**Jul 27 2020**

**SC Court of Appeals**

Case No. 2019-001749

Colleen Kennedy,

Appellant,

v.

South Carolina Technical College System & Horry-Georgetown Technical College,

Respondents.

**RESPONDENTS' RETURN TO APPELLANT'S MOTION TO REINSTATE APPEAL**

On July 17, 2020, Colleen Kennedy (“Appellant”) filed Appellant’s Motion to Reinstate Appeal (Appellant’s “Motion to Reinstate”).<sup>1</sup> Respondents South Carolina Technical College System and Horry-Georgetown Technical College (“Respondents”), through their undersigned counsel, submit this Return to Appellant’s Motion to Reinstate (“Respondents’ Return”).

**RELEVANT BACKGROUND**

On October 21, 2019, the Court notified counsel for Appellant the time for ordering the

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<sup>1</sup> Notably, this is Appellant’s second motion to reinstate. Appellant filed a Motion to Reinstate the Appeal on November 21, 2019, after this Court previously dismissed Appellant’s appeal.

transcript related to her appeal expired.<sup>2</sup> The October 21, 2019, letter states, in part, “[p]lease advise the Court of the status of the transcript within ten (10) days of the date of this letter or your appeal will be dismissed.” Subsequently, on November 19, 2019, this Court entered an Order dismissing the appeal due to Appellant’s failure to correct certain deficiencies as required by the Court’s October 21, 2019, letter, including the requirement to make arrangements to order the transcript of the hearing related to the appeal.<sup>3</sup> Thereafter, on November 21, 2019, Appellant filed her first Motion to Reinstate the Appeal.

On January 24, 2020, the Court entered its Order reinstating the appeal. The January 24, 2020, Order states, in part, “Appellant shall provide she has made ‘satisfactory arrangements **(including agreement regarding payment for the transcript)**, in writing with the court reporter for furnishing the transcript” (emphasis added).<sup>4</sup> On February 7, 2020, the Court sent a letter to counsel for Appellant with instructions to “advise the Court of the status of the transcript within ten (10) days of the date this letter, or [Appellant’s] appeal will be dismissed.” On July 16, 2020, the Court filed a second Order dismissing the appeal because Appellant did not comply with the Court’s February 7, 2020, letter. Appellant then filed her second Motion to Reinstate on July 17, 2020.

Appellant failed to make satisfactory arrangements regarding payment for the transcript within the time required by the January 24, 2020, Order. Appellant was informed by the court reporter of the cost of the transcript and how to remit payment as early as **November 21, 2019**.<sup>5</sup> According to Appellant’s Motion to Reinstate, counsel for Appellant did not send payment until

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<sup>2</sup> Exhibit 1 (October 21, 2019, Letter).

<sup>3</sup> Exhibit 2 (November 19, 2019, Order).

<sup>4</sup> Exhibit 3 (January 24, 2020 Order).

<sup>5</sup> Exhibit 4 (Proof Regarding Payment for Transcript, Filed February 4, 2020).

**June 18, 2020**, almost seven months after the transcript was ordered.

Further, in her Motion to Reinstate, Appellant states, “Appellant’s counsel’s records do not reflect receipt of [the February 7, 2020] letter.” Notably, this is the second instance counsel for Appellant, in requesting this Court reinstate Appellant’s appeal, told to the Court they did not receive the Court’s communications.<sup>6</sup> Appellant’s Motion to Reinstate further states the operation of her counsel’s office was impeded by the health concerns related to COVID-19.

### CONCLUSION

Under the current circumstances, in particular, the ongoing COVID-19 pandemic and related impacts on the courts and the bar, Respondents do not oppose Appellant’s Motion to Reinstate. However, Respondents request the Court, as part of any order reinstating the appeal, order counsel for Appellant verify their office mailing address with the Court and take proper steps to ensure future correspondence is received from the Court.

Respectfully submitted,



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Caroline Cleveland (SC Bar # 64253)  
Bob J. Conley (SC Bar # 12243)  
Emmanuel J. Ferguson (SC Bar# 81431)  
CLEVELAND & CONLEY, LLC  
171 Church Street, Suite 310  
Charleston, SC 29401  
Telephone: (843)577-9626  
Facsimile: (843)577-6672  
[ccleveland@clevelandlaborlaw.com](mailto:ccleveland@clevelandlaborlaw.com)  
[bconley@clevelandlaborlaw.com](mailto:bconley@clevelandlaborlaw.com)  
[eferguson@clevelandlaborlaw.com](mailto:eferguson@clevelandlaborlaw.com)

July 27, 2020

ATTORNEYS FOR RESPONDENTS

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<sup>6</sup> Exhibit 5, Paragraph 6 (Appellant’s Motion to Reinstate Appeal, filed November 21, 2019) (“[...Appellant] counsel’s records did not reflect receipt of the October 21, 2019 deficiency letter.”).

# EXHIBIT 1

October 21, 2019, Deficiency Letter



# The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

V. CLAIRE ALLEN  
DEPUTY CLERK

POST OFFICE BOX 11629  
COLUMBIA, SOUTH CAROLINA 29211  
1220 SENATE STREET  
COLUMBIA, SOUTH CAROLINA 29201  
TELEPHONE: (803) 734-1890  
FAX: (803) 734-1839  
[www.sccourts.org](http://www.sccourts.org)

October 21, 2019

Mr. Donald Gist, Esquire  
PO Box 30007  
Columbia SC 29230

Re: Kennedy v. SC Technical College System  
Appellate Case No. 2019-001749

Dear Counsel:

Upon reviewing your notice of appeal, the following deficiency has been noted under the South Carolina Appellate Court Rules (SCACR), and this deficiency must be corrected within ten (10) days of the date of this letter or this appeal will be dismissed:

- The caption/title does not comply with Rule 267(a), SCACR. Specifically, the format of the notice of appeal caption should match your proof of service.
- Please file an amended notice of appeal that conforms strictly with Rule 203, SCACR.

Very truly yours,

*V. Claire Allen, Deputy*  
CLERK

cc: Bob J. Conley, Esquire  
Emmanuel Joseph Ferguson, Sr., Esquire  
Aaron Vernon Wallace, Esquire

# EXHIBIT 2

November 19, 2019, Order Dismissing Appeal

# The South Carolina Court of Appeals

Coleen R. Kennedy, Appellant,

v.

South Carolina Technical College System & Horry-  
Georgetown Technical College, Respondents.

Appellate Case No. 2019-001749

The Honorable Benjamin H. Culbertson  
Horry County  
Trial Court Case No. 2018CP2601696

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## ORDER

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Appellant has failed to amend the notice of appeal and correct the deficiencies as requested in the Court's correspondence dated October 21, 2019 and as required by Rule 267 and 203 of the South Carolina Appellate Court Rules, SCACR. Accordingly, this appeal is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.

FOR THE COURT

BY V. Claire Allen, Deputy  
CLERK

Columbia, South Carolina

cc:  
Bob J. Conley, Esquire  
Emmanuel Joseph Ferguson, Sr., Esquire  
Donald Gist, Esquire  
Aron Vernon Wallace, Esquire

**FILED**

November 19, 2019

# EXHIBIT 3

January 24, 2020, Order Reinstating Appeal

# The South Carolina Court of Appeals

Coleen R. Kennedy, Appellant,

v.

South Carolina Technical College System & Horry-  
Georgetown Technical College, Respondents.

Appellate Case No. 2019-001749

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## ORDER

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After careful consideration, Appellant's petition to reinstate is granted because this appeal was dismissed in error. Within ten days of the date of this order, Appellant shall provide proof she has made "satisfactory arrangements (including agreement regarding payment for the transcript), in writing with the court reporter for furnishing the transcript." Rule 207(a)(1), SCACR.



FOR THE COURT

Columbia, South Carolina

cc:

Bob J. Conley, Esquire

Emmanuel Joseph Ferguson, Sr., Esquire

Donald Gist, Esquire

Aaron Vernon Wallace, Esquire

**FILED**

January 24, 2020

# EXHIBIT 4

Proof Regarding Payment for Transcript,

Filed February 4, 2020

THE SOUTH CAROLINA COURT OF APPEALS

Coleen R. Kennedy, Appellant,

v.

South Carolina Technical College System & Horry-  
Georgetown Technical College, Respondents.

**RECEIVED**

FEB 04 2020

SC Court of Appeals

Appellate Case No. 2019-001749

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PROOF OF AGREEMENT REGARDING PAYMENT FOR TRANSCRIPT  
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Pursuant to the Order of the Court dated January 24, 2020, Appellant hereby provides herein proof of "satisfactory arrangements" for payment for the hearing transcript in this case.

Respectfully Submitted,



Donald Gist  
Aaron Wallace  
Gist Law Firm, PA  
4400 North Main Street  
Columbia, SC 29203  
803-771-8007

February 4, 2020

From: Work aaronwallace.gistlawfirm@gmail.com  
 Subject: Kennedy Transcript Request  
 Date: Nov 21, 2019 at 11:13:14 AM  
 To: Natalie Dahl ndahl@sccourts.org  
 Cc: transcripts@sccourts.org, Emmanuel Ferguson  
 eferguson@clevelandlaborlaw.com, Cynthia Gist  
 cynthiagist@yahoo.com

Dear Ms. Dahl:

Please see below.

**RECEIVED**  
 FEB 04 2020  
 SC Court of Appeals

### Transcript Request Form

Pursuant to Rule 207 and 607 of the South Carolina Appellate Court Rules, the transcribed paper copy is the official record of court proceedings. You may request a transcript by completing this form and emailing it to the Court Reporter and to South Carolina Court Administration at [transcripts@sccourts.org](mailto:transcripts@sccourts.org). Click here for instructions on how to find the court reporter's email and mailing addresses. Once the court reporter receives your request, it will be processed pursuant to Rule 207 and 607 of the SCACR. Rule 607(h) governs the fees for transcripts, which are not provided for free or at reduced rates to any party. Please send by mail a money order or certified bank check to the court reporter in order to obtain the transcript. Some court reporters may accept personal checks. Please check with the court reporter to see if this option is available. Once your request is received, you will receive a copy of this form with the bottom portion completed. Please promptly submit your payment in order for the transcript to be provided. If you need to cancel the transcript request for any reason, you are responsible for paying for the pages of the transcript that have already been completed at the time of the cancellation.

Requestor's Information			
Full Name <u>Donald Gist / Gist Law Firm, PA</u>		Phone Number <u>803 771-8007</u>	Email Address <u>aaronwallace.gistlawfirm@gmail.com</u>
Mailing Address <u>4400 North Main Street</u>		City <u>Columbia</u>	State <u>SC</u>
		Zip Code <u>29203</u>	
Transcript Information			
Docket Number <u>2018-CP-26-01696</u>	Case Caption (i.e. State v. John Doe or Smith v. Smith) <u>Celena R. Kennedy vs. South Carolina Technical College System &amp; Army League Federal College</u>		
Date(s) of Proceeding <u>July 24, 2019</u>	Circuit <input checked="" type="checkbox"/>	County <u>Horry</u>	
Presiding Judge <u>Benjamin Culbertson</u>		Expedited Yes <input checked="" type="checkbox"/> No <input type="checkbox"/>	
Court Reporter(s) <u>Ms. Natalie Dahl (ndahl@sccourts.org)</u> <u>P.O. Box 762, Conway, SC 29526</u>		Opposing Counsel <u>Rob Conley</u> <u>Emmanuel Ferguson</u>	

Requestor's Signature: [Signature]  
 (Typed name will serve as signature)

Date: 11/19/19

Note: If you are ordering a transcript pursuant to Rule 207(a)(1), SCACR, you must contemporaneously furnish all parties, the Office of Court Administration, and the clerk of the appellate court with copies of all correspondence with the court reporter.

For Court Reporter Use Only			
Full Name _____	Date Received _____	Email Address _____	
Notice of Estimate to Requestor Party			
Date: _____	Number of Pages: _____	Estimated Amount _____	
Mailing Address for Payment _____	City _____	State _____	Zip Code _____

SCCA 800 (1/2019)

Sincerely,

Aaron Wallace  
Attorney at Law

From: Work aaronwallace.gistlawfirm@gmail.com  
Subject: Fwd: Kennedy Transcript Request  
Date: Feb 3, 2020 at 9:02:56 AM  
To: Cynthia Gist cynthiagist@yahoo.com

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Sincerely,

Aaron Wallace  
Attorney at Law

Begin forwarded message:

**From:** "Dahl, Natalie" <ndahl@sccourts.org>  
**Date:** November 21, 2019 at 11:42:06 AM EST  
**To:** Work <aaronwallace.gistlawfirm@gmail.com>  
**Cc:** Transcripts <transcripts@sccourts.org>, Emmanuel Ferguson <eferguson@clevelandlaborlaw.com>, Cynthia Gist <cynthiagist@yahoo.com>  
**Subject:** Re: Kennedy Transcript Request

Good afternoon,

It looks to be about 17 pages. It is \$5 a page for one-week turnaround (so \$85.00), and that seven days starts at the time that payment is received. If you would like a hard copy instead of a PDF e-mailed version, you add \$7.35 for shipping.

You can send payment to my attention at PO Box 762, Conway, SC 29526. If you would also include the case name and the date that the hearing was with payment, please. I get a lot of checks and requests and it's hard to know

what is what and then it takes time for me to track down all the info. Also include in there if you just want an e-mailed PDF, or hard copy with the addresses.

If you have any other questions, please don't hesitate to contact me!

Natalie Dahl, RPR  
South Carolina Official Court Reporter

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From: Work <[aaronwallace.gistlawfirm@gmail.com](mailto:aaronwallace.gistlawfirm@gmail.com)>

Sent: Thursday, November 21, 2019 11:13 AM

To: Dahl, Natalie

Cc: Transcripts; Emmanuel Ferguson; Cynthia Gist

Subject: Kennedy Transcript Request

\*\*\* EXTERNAL EMAIL: This email originated from outside the organization.  
Please exercise caution before clicking any links or opening attachments. \*\*\*

Dear Ms. Dahl:

Please see below.

# THE SOUTH CAROLINA COURT OF APPEALS

Coleen R. Kennedy, Appellant,

v.

South Carolina Technical College System & Horry-  
Georgetown Technical College, Respondents.

Appellate Case No. 2019-001749

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FEB 04 2020

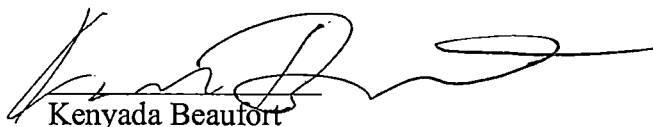
SC Court of Appeals

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Certificate of Service

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I certify that I have served the Proof of Agreement Regarding Payment of Transcript on Counsel for Appellant, Bob Conley, Esquire and Emmanuel J. Ferguson, Esquire via US Mail at their office address at 171 Church Street #310, Charleston, SC 29401 this 4<sup>th</sup> day of February 2020.



Kenyada Beaufort  
Paralegal  
Gist Law Firm, PA  
4400 North Main Street  
Columbia, SC 29203  
803-771-8007

February 4, 2020

# EXHIBIT 5

Appellant's Motion to Reinstate Appeal,

Filed November 21, 2019

91494

# THE SOUTH CAROLINA COURT OF APPEALS

Coleen R. Kennedy, Appellant

v.

South Carolina Technical College System & Horry-  
Georgetown Technical, College, Respondents.

Appellate Case. No. 2019-001749

**RECEIVED**

NOV 21 2019

SC Court of Appeals

The Honorable Benjamin H. Culbertson  
Horry County  
Trial Case No. 2018CP2601696

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Motion to Reinstate Appeal Pursuant to SCACR 240 and 260

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Comes now Appellant, by and through the undersigned counsel, and respectfully moves to reinstate this Appeal in accordance with Rule 240 and 260 of the South Carolina Appellate Court Rules. In support of this motion, Appellant states as follows:


1. Appellant timely filed this action on October 17, 2019 after the final order of dismissal was filed in the lower court on July 24, 2019.
2. The original proceeding in this action dismissed this case on Summary Judgment on July 24, 2019.
3. On November 19, 2019 counsel for Appellant received notice from the Clerk of the Appellate Court through a November 18, 2019 deficiency letter for counsel to Order the Transcript and to file a motion requesting permission to order the transcript outside of the filing deadlines in accordance with Rule 207 of the SCACR. Counsel had previously sent correspondence to the Court reporter, but inadvertently sent such to the incorrect email address.

4. The November 18, 2019 letter proscribed counsel a ten day deadline (until November 28, 2019) for counsel to file the motion and order the transcript. Counsel was therefore under the impression that the Appeal was still in place as of November 21, 2019 and had not been dismissed.
5. As counsel was actively in the process of ordering the transcript in accordance with the November 18, 2019 correspondence from the Court, Appellant's counsel received notice from the Court via an Order dated November 19, 2019 that the case had been dismissed. The November 19, 2019 Order referenced a deficiency letter purportedly sent to counsel from the Court dated October 21, 2019.
6. Upon timely receipt of the November 19, 2019 Order, Appellant's counsel immediately contacted the Court to inquire regarding the substance of the October 21, 2019 letter as counsel's records did not reflect receipt of the October 21, 2019 deficiency letter.
7. The Clerk's office informed Appellant's counsel that the letter of October 21, 2019 was simply referencing a change needing to be made to the caption of the notice of Appeal and not any substantive changes to the Appeal documentation filed by Appellant.
8. Appellant's counsel is informed and believes that if this Court allows Appellant to reinstate her appeal Respondent will not be prejudiced in anyway as there are no substantive changes to the Appeal as the deficiency relates only to an amendment to the caption of the notice of Appeal.

**Wherefore**, Appellant's counsel respectfully requests that this Honorable Court reinstate Appellant's appeal and allow Appellant to amend the caption of her notice of appeal. Respondents will not be prejudiced by the reinstatement of this Appeal nor by Appellant's

amendment of the notice of appeal. Appellant respectfully requests that this appeal then be allowed to timely proceed in accordance with the applicable rules of this Court.

Respectfully Submitted,



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Donald Gist  
Aaron Wallace  
Gist Law Firm, PA  
4400 North Main Street (29203)  
Post Office Box 30007  
Columbia, South Carolina 29230  
Tel. (803) 771-8007  
Fax: (803) 771-0063  
Email: [aaronwallace.gistlawfirm@gmail.com](mailto:aaronwallace.gistlawfirm@gmail.com)

November 21, 2019

**THE SOUTH CAROLINA COURT OF APPEALS**

Coleen R. Kennedy, Appellant

v.

South Carolina Technical College System & Horry-Georgetown Technical, College, Respondents.

Appellate Case. No. 2019-001749

The Honorable Benjamin H. Culbertson  
Horry County  
Trial Case No. 2018CP2601696

**RECEIVED**

NOV 21 2019

SC Court of Appeals

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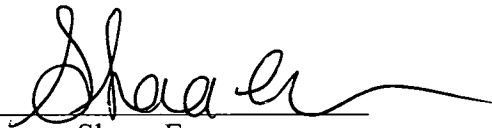
Motion to Reinstate Appeal Pursuant to SCACR 240 and 260

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**CERTIFICATE OF SERVICE**

I, the undersigned employee of the Gist Law Firm, P.A., attorneys for the Appellant in the above action, do hereby certify that I have served the foregoing, Motion to Reinstate Appeal Pursuant to SCACR 240 and 260 on Counsel for Appellee by causing a copy of the same to be personally deposited in a United States Postal service mailbox, postage prepaid, with the return address clearly visible, addressed to the attorneys for Appellee as indicated below.

**Bob J. Conley, Esquire**  
**Emmanuel J. Ferguson, Sr., Esquire**  
**Cleveland & Conley, LLC**  
**171 St. #310**  
**Charleston, SC 29401**



Shana Evans  
Paralegal

November 21, 2019

IN THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM HORRY COUNTY  
Court of Common Pleas

Honorable Benjamin Culbertson, Circuit Court Judge

Case No. 2019-001749

**RECEIVED**

**Jul 27 2020**

**SC Court of Appeals**

Colleen Kennedy,

Appellant,

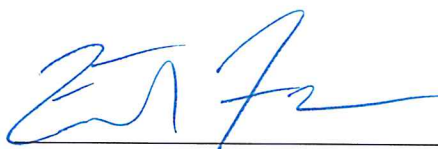
v.

South Carolina Technical College System & Horry-Georgetown Technical College,

Respondents.

**PROOF OF SERVICE**

I hereby certify that I have served Respondents' Return to Appellant's Motion to Reinstate Appeal<sup>1</sup> on Colleen Kennedy by depositing a copy of it in the United States Mail, postage prepaid, on July 27, 2020, addressed to her attorneys of record, Donald Gist and Aaron Wallace, at their office at P.O. Box 30007, Columbia, SC 29230.



Caroline Cleveland (SC Bar# 64253)  
Bob J. Conley (SC Bar # 12243)  
Emmanuel J. Ferguson (SC Bar# 81431)  
CLEVELAND & CONLEY, LLC  
171 Church Street, Suite 310  
Charleston, SC 29401  
Telephone: (843)577-9626

<sup>1</sup> Appellant's Motion to Reinstate Appeal filed July 17, 2020.

Facsimile: (843)577-6672  
[ccleveland@clevelandlaborlaw.com](mailto:ccleveland@clevelandlaborlaw.com)  
[bconley@clevelandlaborlaw.com](mailto:bconley@clevelandlaborlaw.com)  
[eferguson@clevelandlaborlaw.com](mailto:eferguson@clevelandlaborlaw.com)

ATTORNEYS FOR RESPONDENTS

July 27, 2020