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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE
ADMINISTRATIVE LAW COURT
S. Phillip Lenski, Administrative Law Judge

Docket No. 21-ALJ-22-0116-AP
Appellate Case No. 2021-001462

Katrina Daniels,

Appellant,

v.

South Carolina Department of Employment
and Workforce and 4056 LLC

Respondents.

**APPELLANT’S RESPONSE TO RESPONDENT’S MOTION TO
DISMISS**

Appellant, Katrina Daniels, respectfully requests that the Court dismiss Respondent’s Motion to Dismiss the Appellant’s appeal.

I. Factual Background

This case is on appeal to this Court from a final decision of the Department’s Appellate Panel dated March 31, 2021. The Department’s Appellate dismissed the employer’s first appeal on May 5, 2020. The employer appealed again. The Department’s Appellate Tribunal ruled in the Appellant’s favor on October 7, 2020. The employer requested another hearing because she was not present. On January 28, 2021, the Appellate ruled in the employer’s favor. On February 9, 2021 and March 28, 2021, the Appellant was granted Double Affirmation approval. On March 31, 2021, the Panel confirmed the January 28, 2021 decision. On April 22, 2021, the Appellant appealed the Panel’s decision to the Administrative Law Court (ALC). On May 20, 2021, the

Respondent requested an extension of time to file the Record on Appeal, on June 14, 2021, the Respondent filed the Record on Appeal. On June 21, 2021, the Appellant filed a Motion for an Order to Supplement the Record on Appeal. On June 29, 2021, the Respondent filed a Response asking the Court to deny Appellant's Motion. Appellant filed a reply to this response on July 16, 2021. The Court issued an Order Denying Appellant's Motion to Supplement the Record on Appeal on July 28, 2021 but stated, "Nothing in this order should be read as limiting the Appellant's ability to argue the assignments of error in the proffered documents. The Appellant may fully discuss any perceived errors and supporting authority in her brief to this court." The Appellant's brief was mailed on August 13, 2021. The Respondent's brief was mailed on October 6, 2021. The Appellant's Reply Brief was mailed on October 13, 2021. The Court's final order affirming the decision of the Department was affirmed on October 21, 2021. On October 29, 2021, the Appellant submitted a Motion for Reconsideration. On November 8, 2021, the Respondent filed a Response in Opposition to the Appellant's Motion to Reconsider the Final Order. On November 12, 2021, the Appellant filed the Appellant's Response to Respondent's Opposition to the Motion for Reconsideration. On November 12, 2021, the ALC judge denied the Appellant's Motion for Rehearing [Reconsideration] before receiving the Appellant's Response to the Respondent's Opposition, which had been timely submitted.

To clarify, the Appellant had respectfully requested that the Motion for Reconsideration be granted due to a manifest error of fact after receiving the Final Order dated October 13, 2021. The Court erroneously misconstrued that, "The offer was suitable for the Appellant, but she refused the offer because she had moved at the end of the school semester" and "based on the foregoing", the Court hereby ordered the final decision. (Exhibit 1, Exhibit 2).

The Respondent failed to counter, refute, or acknowledge the most important issues raised in the Motion for Reconsideration, but instead stated that "the points Appellant has

addressed in her Motion are manifestly without merit and do not require the court to address them. Id.” (Exhibit 3).

The Appellant, to clarify and rebut the opposition, sent a response to the Respondent’s opposition which clearly stated that the Appellant did not move home after the semester ended (as erroneously indicated in the Final Order) but went back home DURING the semester, in March 2020, only two months into the semester, following the directive of the college’s President, who was following the Executive Order of the Governor, due to Government issued Emergency Orders resulting from the severe magnitude of the COVID-19 Pandemic due to no fault of her own. Additionally, based on the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020, the Appellant should not be denied Pandemic Unemployment Assistance (PUA) benefits *if* a job was available as specifically detailed in the Motion for Reconsideration (despite that there was no work available for the Appellant (confirmed, in writing, by the employer). These Federal provisions were put into place to protect and qualify those who have been negatively affected as a result of the COVID-19 pandemic, which the Appellant was amongst those (https://wdr.doleta.gov/directives/attach/UIPL/UIPL_16-20.pdf, I-5) and posted on SC DEW’s website (http://www.scdew.gov/docs/default-source/covid-faq/ui-during-covid-9ff7d0f61e4a043d5897c292cdeb32df2.pdf?sfvrsn=2d8ce19_0 page 18). This evidence was presented in the lower hearings, presented in the brief to the ALC, and respectfully presented again in the Motion for Reconsideration, but were repeatedly not taken into consideration. (Exhibit 4, Exhibit 5).

II. Deadline for Service Was Properly Met and the Appellant Timely Filed

Since the Appellant had not received a response from the Judge, and her Response to the Respondent’s Opposition to the Motion for Reconsideration was timely sent by US mail on November 12, 2021, the Appellant had contacted the ALC on or about Friday, December 9, 2021

to ensure that her response had been received and was properly filed with the Court. The Appellant was told that since the Judge made a final order on November 12, 2021 (the same day that the court had received the Respondent's Opposition Response, as all mail is quarantined, and thereby disregarding and not considering the timely response of the Appellant's response to the Respondent's Opposition mailed on the same day) the case is considered closed and can no longer be heard by the ALC. The ALC Clerk of Court indicated under the State of South Carolina ALC Filed stamp that the Appellant's Response was "Received after the 'Order Denying Appellant's Motion' was issued." (Exhibit 4). The Appellant was instructed that she must, instead, appeal to the South Carolina Court of Appeals. The Appellant would have 30 days to do so, and since the 30th day fell on a Sunday, the Appeal must be filed on or before December 13, 2021. The Respondent concurs that the December 13, 2021 deadline is correct, without dispute, in the Respondent's January 11, 2022 Motion to Dismiss document. (Exhibit 9).

The ALC Clerk of Court had advised Appellant that the rules for each court are different and kindly provided the Appellant with the phone number for the South Carolina Court of Appeals in order for the Appellant to receive instructions on how to properly file her appeal with this Court.

The Appellant, after receiving and abiding by the rules and regulations for this Court, properly filed her appeal on December 13, 2021, and therefore had filed her appeal before this Court on time.

III. E-mail Filing is a Permitted Methods of Service for this Court

Appellant received and complied to the rules, procedures and practices given by this Court, including the ability to file by e-mail due to the special provisions implemented by the Court as a result of the COVID-19 pandemic.

The Supreme Court of South Carolina Memorandum, dated December 16, 2020,
Amended Order Regarding the Operation of the Trial Courts During the Coronavirus Emergency
is as follows:

“(a) **Purpose.** The purpose of this order is to provide guidance on the continued operation of the trial courts during the current coronavirus (COVID-19) emergency. The measures contained in this order are intended to allow essential operations to continue while minimizing the risk to the public, litigants, lawyers and court employees. In the past, the South Carolina Judicial Branch has shown great resilience in responding to hurricanes, floods, and other major disasters, and this Court is confident that the same will be true in this emergency. This emergency, however, differs from these prior emergencies in many aspects. The current emergency will significantly impact every community in South Carolina while the prior emergencies, although potentially horrific for the individuals and communities directly impacted, did not. The impact of the prior emergencies could be minimized or avoided by traveling away from the site of the disaster; this is not the case for the current emergency. Further, in the prior emergencies, the circumstances giving rise to the emergency involved a single event with a beginning and a predictable end. This is not the case for the coronavirus, and even conservative estimates indicate the direct impacts of this pandemic will continue for many months.” (Exhibit 6).

(15) **Optional Filing Methods.** During this emergency, clerks of the trial courts may, at their option, permit documents to be filed by electronic methods such as fax and email. If the clerk elects to do so, the clerk will post detailed information on the court's website regarding the procedure to be followed, including any appropriate restrictions, such as size limitations, which may apply. Documents filed by one of these optional filing methods shall be treated as being filed when received by the clerk of court and a document received on or before 11:59:59 p.m., Eastern Standard Time, shall be considered filed on that day. These optional filing methods shall not be used for any document that can be e-filed under the South Carolina Electronic Filing Policies and Guidelines. If a trial court does not have a clerk of court, the court shall determine whether to allow the optional filing methods provided by this provision.” (Exhibit 6).

The Supreme Court of South Carolina Memorandum dated August 25, 2021 (also referenced by the Respondent in the Respondent’s Motion to dismiss) clearly states the following:

“(c) **Methods of Electronic Service and Filing.** The Appellate Coronavirus Order included methods for the electronic service and filing of documents. These methods have proved very beneficial to both the litigants and the Appellate Courts, and Rule 262, SCACR, has been amended to allow this Court to establish electronic methods of service and filing. By separate order issued today, this Court has specified the permissible methods of electronic service and filing under Rule 262, SCACR.”

“(e) Signatures on Documents Filed With the Appellate Courts. Rule 267(b), SCACR, has been amended to allow a lawyer or self-represented litigant to sign a document using "s/ [typed name of person]," a signature stamp, or a scanned or other electronic version of the person's signature.” (Exhibit 7).

Abiding by the rules of the Court, Appellant properly filed the appeal, by e-mail, to DEW (using the e-mail addresses previously given by DEW to the Appellant and the ALC Court, to the ALC Clerk of Court, and to this Court using the e-mail ctappfilings@sccourts.org provided by South Carolina Appeals Court. The Notice of Appeal was received and filed with this Court and an Appellate Case Number was assigned. (Exhibit 8).

IV. Pending Motion to Amend:

The Appellant had contacted the Court with questions, after receiving a letter dated December 16, 2021, from the Deputy Clerk which verified receipt of the Notice of Appeal, assigned an Appellate Case Number to the case, and advised that the title in the above matter had been changed to include “4056 LLC” requesting that all *future* records in this matter should be changed to reflect this title.

The Appellant listed the South Carolina Department of Employment and Workforce (SC DEW) in the title (after confirming with the Court) since SC DEW is representing the employer in this case. Page eight of the electronically submitted Respondent’s Motion to Dismiss submitted on January 11, 2022 verifies the relationship of SC DEW’s attorney to the employer as under the DEW’s Attorney’s signature in bold letters is written “Attorney for Respondent” (Exhibit 9). Also, even SC DEW, in a letter written by SC DEW that accompanied the Record on Appeal served to the ALC and the Respondent on June 14, 2021 case titled for this case was also referenced as follows: Katrina Daniels v. SCDEW. (Exhibit 10). Please be advised, the Appellant recently discovered that DEW’s Record on Appeal did not properly redact her Social

Security Number from the record, has asked ALC to please redact, and is now asking SC DEW to please do the same.

According to Federal Rules of Civil Procedure > Title II. COMMENCING AN ACTION; SERVICE OF PROCESS, PLEADINGS, MOTIONS, AND ORDERS > Rule 5.

Serving and Filing Pleadings and Other Papers

“(b) Service: How Made.

(1) *Serving an Attorney*. If a party is represented by an attorney, service under this rule must be made on the attorney unless the court orders service on the party.”

(https://www.law.cornell.edu/rules/frcp/title_II), (https://www.uscourts.gov/sites/default/files/federal_rules_of_civil_procedure_-_dec_1_2019_0.pdf, page 29). (Exhibit 11).

The Appellant also addressed that the employer’s business name is Spill the Beans DBA 4056 Main, LLC. It appears that the Administrative Law Court made a clerical error in the Final Orders, as the Final Orders lists 4056 LLC in the title, not the legal name of 4056 Main, LLC. The Appellant, seeking clarification from this Court on how to proceed, filed a Motion to Amend on December 22, 2021. Please note: The Appellant did not file for unemployment until after the employer gave permission to do so. According to DEW, the Appellant did not qualify for unemployment. The Appellant only qualified for Pandemic Unemployment Assistance (PUA). The Federal government, through the CARES Act of 2020, expanded unemployment insurance (UI) benefits in connection with COVID-19, for cases such as these, by temporarily altering the benefit eligibility requirements and extending coverage to individuals who would not normally qualify and which also relieved S.C. employers from the direct charging of these COVID-19 UI benefits to their UI accounts. Thus, the employer is not affected by the disbursement of PUA benefits to the Appellant as these funds are Federally funded and do not come from the employer’s UI account.

According to Federal Rules of Civil Procedure 2021 Edition < Title II – Appeal from a Judgment or Order of a District Court >Rule 4. Appeal as of Right-When Taken (a) Appeal in a Civil Case

“(5) Motion for Extension of Time.

(A) The district court may extend the time to file a notice of appeal if:

(i) a party so moves no later than 30 days after the time prescribed by this Rule 4(a) expires; and

(ii) regardless of whether its motion is filed before or during the 30 days after the time prescribed by this Rule 4(a) expires, that party shows excusable neglect or good cause.” (<https://www.federalrulesofappellateprocedure.org/title-ii/rule-4/>). (Exhibit 12).

The Appellant did serve a Motion for Extension of Time on December 22, 2021, the same date that the Motion to Amend was filed. The Appellant also served, in good faith, all correspondence to the employer on December 22, 2021, while the Appellant awaits directions from the Court, just in case the employer is required not only to be listed in the title but also served all correspondence (despite that DEW is acting as the employer’s attorney), which under the above Appellate Procedure Rules, had been submitted timely. (Exhibit 13).

According to Federal Rules of Civil Procedure 2021 Edition < Title II – Appeal from a Judgment or Order of a District Court >Rule 3. Appeal as of Right-When Taken According to Rule:

“(c) Contents of the Notice of Appeal.

(4) An appeal must not be dismissed for informality of form or title of the notice of appeal, or for failure to name a party whose intent to appeal is otherwise clear from the notice (<https://www.federalrulesofappellateprocedure.org/title-ii/rule-3/>). (Exhibit 14).

For all the above aforementioned reasons, the Appellant respectfully request that the Court deny the Respondent’s Motion to Dismiss. The Appellant filed and served a timely appeal following all rules and regulations set forth by this Court. The Appellant is pro se with no prior knowledge of court proceedings and is trying to be very diligent to make sure she is

adhering and following all rules set forth by this Court. In the Courts Memorandum as amended on November 23, 2021 states,

“This Court is extremely grateful for the patience and cooperation exhibited by the litigants appearing before this Court and the South Carolina Court of Appeals during the coronavirus pandemic. Further, this Court specifically commends the members of the South Carolina Bar and the staffs of both Appellate Courts for their professionalism and dedication in rapidly adjusting to new appellate practices and procedures necessitated by the pandemic, including electronic filing and service, WebEx oral arguments and working remotely.” (Exhibit 6).

The Respondent has continually tried to get this case dismissed and has continually dismissed all rules and regulations set forth during this pandemic, including the CARES Act of 2020 and the ability, approved by this Court, to file by e-mail. The Appellant was going to file both by postage paid US mail and e-mail to appease the Respondent, but this request would incur further undue hardships to the Appellant in addition to the time and effort to address this Motion to Dismiss, including additional and unnecessary costs to serve by US postage prepaid mail, and safety to do so due to the conditions of the roads being laden with snow and ice and unnecessary possible COVID exposure because the Respondent is unwilling to accept the COVID-19 provisions that the Court has put in place. The US mail has also been adversely affected by COVID-19. As an example, a time sensitive document that SC DEW sent to the Appellant on January 5, 2022 to notify the Appellant of an upcoming hearing, was not received until January 12, 2022, after commencement of the hearing took place. Additional mail sent to the Appellant on December 7, 2021 and December 12, 2021 (one with a tracking number) has, to date, not been received by the Appellant, over a month later. The Appellant is appreciative of the provisions that the Court has put in place, is aware that e-mailing is a better, safer, and faster alternative, and, unless the court deems otherwise, would like to continue to file by e-mail. The Appellant (who had endured many hardships during these unprecedented times) is respectively requesting the Court to please allow her case to be fairly heard, to kindly allow her

a chance to cure if the Appellant (unknowingly and unintentionally, due to her lack of knowledge of legal proceedings) files something incorrectly, and is asking the Respondent to please allow this case to be fairly decided by this Court without further delays or continuous motions of dismissal and objections that the Appellant has had to address. (Exhibit 3, Exhibit 4, Exhibit 9, Exhibit 15, Exhibit 16, Exhibit 17, Exhibit 18).

With sincere appreciation.

Respectfully submitted,
s/ Katrina Daniels
Katrina Daniels
3439 Fallowbrook Forest
York, SC 29745
803-810-4498
katrina.daniels16@gmail.com/
jjdaniels36@gmail.com

January 20, 2022

Appellant

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Katrina Daniels,

Appellant,

v.

South Carolina Department of Employment
and Workforce and 4056 LLC,

Respondents.

Docket No. 21-ALJ-22-0116-AP

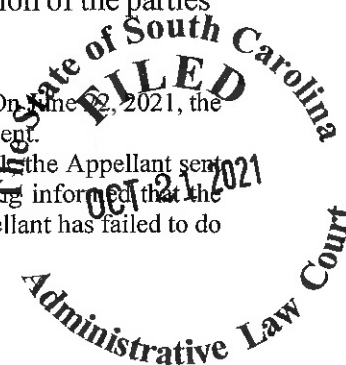
FINAL ORDER

This matter is before the Administrative Law Court (ALC or court) pursuant to a Notice of Appeal filed on April 22, 2021, by Katrina Daniels (Appellant). The Appellant seeks review of the South Carolina Department of Employment and Workforce (Department or Respondent) Appellate Panel's decision affirming the Appeal Tribunal's decision holding her ineligible for benefits effective May 10, 2020, upon a finding that she refused an offer of suitable work without good cause.

On June 14, 2021, the Department filed the Record on Appeal (ROA). On June 21, 2021, the Appellant filed a Motion to Supplement the Record on Appeal with additional documents.¹ On June 29, 2021, the Department filed a response to the Appellant's motion, asking the court to deny the motion. On July 16, 2021, the Appellant filed her reply to the Department's response, which included reference to additional documents.² On July 28, 2021, the court issued an Order denying the Appellant's motion to supplement the record on appeal. On August 13, 2021, the Appellant filed her brief. On September 2, 2021, the Department filed a Motion to Dismiss for Appellant's Repeated Disregard of the Rules and the Order of this Court. On September 7, 2021, the Appellant filed the Appellant's Response to Respondent's Motion to Dismiss. On September 16, 2021, the court denied the Respondent's Motion to Dismiss. On October 6, 2021, the Department filed its brief. On October 13, 2021, the Appellant filed her reply. After careful consideration of the parties'

¹ The additional documents were not included with the Appellant's motion filed with the court. On June 22, 2021, the Appellant's father electronically contacted the court and forwarded the documents as an attachment.

² The additional documents were also not included with the Appellant's reply. On July 16, 2021, the Appellant sent another electronic message with the additional documents as attachments. Again, despite being informed that the court required actual (not electronic) copies of the documents to be filed with the court, the Appellant has failed to do so.



briefs, the record, and the applicable law, the court finds that substantial evidence in the record supports the Panel's determination. Accordingly, the Panel's decision is affirmed.

BACKGROUND

The Appellant filed an initial application for Pandemic Unemployment Assistance (PUA) benefits on April 26, 2020 and was initially held eligible for benefits effective March 8, 2020. The claims adjudicator's determination, mailed June 12, 2020, found the Appellant indefinitely ineligible for benefits effective May 10, 2020, because she refused an offer of suitable work without good cause. The Appellant appealed and a hearing was held on October 7, 2020. The Employer was not in attendance at the hearing. The Appeal Tribunal decision mailed on October 14, 2020, reversed the claims adjudicator's June 12, 2020 determination, and found the Appellant eligible to receive benefits. The Employer filed an appeal to the Appellate Panel (Panel) and the Panel remanded the case back to the Appeal Tribunal for a hearing regarding the Employer's absence from the October 7, 2020 hearing. On January 19, 2021, the Appeal Tribunal issued a decision finding that the Employer was not afforded a fair opportunity for a hearing and ordered a new hearing on the merits. On January 28, 2021, the Appeal Tribunal held a hearing, and in a determination mailed February 9, 2021, found the Appellant ineligible for benefits effective May 10, 2020, upon a finding that the Appellant refused to accept a suitable offer of work. The Appellant appealed to the Appellate Panel and on March 31, 2021, the Panel issued its decision affirming the Appeal Tribunal's decision finding her ineligible for benefits effective May 10, 2020, because she refused an offer of suitable work without good cause. On April 22, 2021, the Appellant appealed to this court.

STANDARD OF REVIEW

The Department is an "agency" under the Administrative Procedures Act (APA). *See Gibson v. Florence Country Club*, 282 S.C. 384, 386, 318 S.E.2d 365, 367 (1984) (finding that the Employment Security Commission, a predecessor of the Department, was an agency within the meaning of the APA). Accordingly, the APA's appellate standard governs appeals from decisions of the Department. *See* S.C. Code Ann. §§ 1-23-380 & 1-23-600(D). This court's review in appellate cases is limited to the record. S.C. Code Ann. § 1-23-380(4). Additionally, the court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact but may modify or reverse the decision of the agency when substantial rights of the appellant have been prejudiced. S.C. Code Ann. § 1-23-380(5). Substantial rights of the

appellant are prejudiced when, among other things, the agency's decision, including the agency's findings, inferences, and conclusions, are clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record. *Id.* However, the party challenging an agency action on appeal has the burden of proving convincingly that the agency's decision is not supported by substantial evidence. *Waters*, 321 S.C. at 226, 467 S.E.2d at 917 (citation omitted).

In applying the substantial evidence rule, the factual findings of the administrative agency are presumed to be correct. *Rodney v. Michelin Tire Corp.*, 320 S.C. 515, 519, 466 S.E.2d 357, 359 (1996) (citing *Kearse v. State Health & Human Servs. Fin. Comm'n*, 318 S.C. 198, 200, 456 S.E.2d 892, 893 (1995)); 73A *C.J.S. Public Administrative Law and Procedure* § 497 (2015). A reviewing court is prohibited from substituting its judgment for that of the agency as to the weight of the evidence on questions of fact for which there is room for a difference of intelligent opinion. *See Byerly Hosp. v. S.C. State Health & Human Servs. Fin. Comm'n*, 319 S.C. 225, 229, 460 S.E.2d 383, 386 (1995) (citation omitted); *Grant*, 319 S.C. at 353, 461 S.E.2d at 391 (citation omitted). As such, "[a] reviewing court will not overturn a finding of fact by an administrative agency 'unless there is no reasonable probability that the facts could be as related by a witness upon whose testimony the finding was based.'" *Sea Pines Ass'n for Prot. of Wildlife, Inc. v. S.C. Dep't of Nat. Res.*, 345 S.C. 594, 603-04, 550 S.E.2d 287, 292 (2001) (quoting *Lark*, 276 S.C. at 136, 276 S.E.2d at 307).

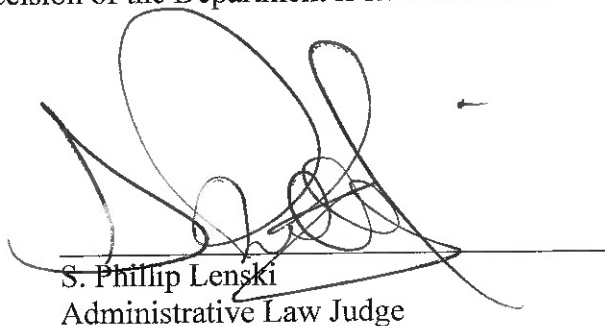
DISCUSSION

The Appellant worked part-time for the Employer's coffee and ice cream shop while attending Clemson University. The Employer closed on March 20, 2020 due to the Covid-19 health emergency. On May 14, 2020, the Employer emailed all staff asking which of them would return to work. The Appellant had left town in March 2020, at the end of the semester. She responded to her Employer that she was looking for full-time employment where she was currently living, to pay for her college residence expenses. She also indicated that she was anticipating returning to her internship in Charlotte later in the summer. The Appellant had secured a summer internship in Charlotte, North Carolina, however, the commencement of the internship was postponed due to the pandemic.

An insured worker is ineligible for benefits if the Department finds that he or she has failed, without good cause to accept available suitable work when offered to him or her by an employer. S.C. Code Ann. § 41-35-120(5)(a)(i)(B). The record establishes that the Employer offered the

Appellant an opportunity to return to work under circumstances similar to her previous employment as a part-time employee. The offer was suitable for the Appellant, but she refused the offer because she had moved at the end of the school semester. Therefore, based on the foregoing,

IT IS HEREBY ORDERED that the decision of the Department is **AFFIRMED**.
AND IT IS SO ORDERED.



S. Phillip Lenski
Administrative Law Judge

October 21, 2021
Columbia, South Carolina

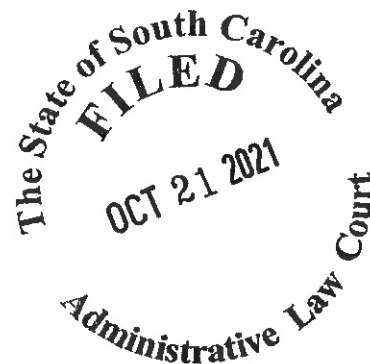
CERTIFICATE OF SERVICE

I, Erika S. Easler, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).

A handwritten signature in black ink, appearing to read 'Erika S. Easler', written over a horizontal line.

Erika S. Easler
Judicial Law Clerk

October 21, 2021
Columbia, South Carolina



Katrina Daniels
3439 Fallowbrook Forest
York, SC 29745

October 29, 2021

The Honorable Phillip Lenski
South Carolina Administrative Law Court
Edgar A. Brown Building
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201

RE: Katrina Daniels v. SCDEW and 4056 Main LLC
Case No: 21-ALJ-22-0116-AP

Dear Judge Lenski:

Enclosed please find the Appellant's Motion for Reconsideration in the above referenced case along with the Proof of Service served to the other parties.

With kindest regards, I remain,

Yours truly,



Katrina Daniels
Appellant



STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Katrina Daniels,	)	Docket No. 21-ALJ-22-0116-AP
)	
Appellant,)	
)	
v.	)	APPELLANT’S MOTION FOR
	)	RECONSIDERATION
4056 Main, LLC, & South Carolina)	
Department of Employment and Workforce)	
)	
Respondents.)	
)	

Appellant, Katrina Daniels, respectfully requests a reconsideration regarding the final decision of the Court under the provisions of the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020.

This case is on appeal to this Court from a final decision of the Department’s Appellate Panel (Panel) dated March 31, 2021. The Department’s Appellate dismissed the employer’s first appeal on May 5, 2020. The employer appealed again. The Department’s Appellate Tribunal (Appellate) ruled in the Appellant’s favor on October 7, 2020. The employer requested another hearing because she was not present. On January 28, 2021, the Appellate ruled in the employer’s favor. On February 9, 2021 and March 28, 2021, the Appellate was granted Double Affirmation approval by the Department. On March 31, 2021, the Panel confirmed the January 28, 2021 decision. On April 22, 2021, the Appellant appealed the Panel’s decision to the Administrative Law Court (ALC). On June 14, 2021, the Department filed the Record on Appeal. On June 21, 2021, the Appellant filed a “Motion for an Order to Supplement the Record on Appeal.” On June 29, 2021, the Respondent filed a Response asking the Court to deny Appellant’s Motion. Appellant filed a reply to this response on July 16, 2021. The Court issued an Order Denying Appellant’s Motion to Supplement the Record on Appeal on July 28, 2021. The Respondent’s brief was mailed on October 6, 2021. The Appellant’s Reply Brief was mailed on October 13, 2021. The Court’s final order affirming the decision of the Department was affirmed on October 21, 2021.



According to the provisions of the CARES Act (as posted on SC DEW's website) a person is eligible to receive PUA benefits based on 10 criteria. Since the place of employment was closed as a direct result of COVID-19, and since she would have been unable to reach the new job as a direct result of COVID-19, the Appellant qualifies under this act (http://www.scdew.gov/docs/default-source/covid-faq/ui-during-covid-19ff7d0f61e4a043d5897c292cdeb32df2.pdf?sfvrsn=2d8ce19_0 page 18).

According to the Employment and Training Administration Advisory System of the U.S. Department of Labor, Classification: Unemployment Insurance, the definition of the latter criteria is that:

“g) The individual was scheduled to commence employment and does not have a job or is unable to reach the job as a direct result of the COVID-19 public health emergency. For example:

- An individual is unable to reach his or her job because doing so would require the violation of a state or municipal order restricting travel that was instituted to combat the spread of the coronavirus or the employer has closed the place of employment.
- An individual does not have a job because the employer with whom the individual was scheduled to commence employment has rescinded the job offer as a direct result of the COVID-19 public health emergency.”

(https://wdr.doleta.gov/directives/attach/UIPL/UIPL_16-20.pdf, I-5).

The Appellant's university, responding to Governor Henry McMaster's order to close all public schools, including colleges and universities, had sent out many correspondences in response to this unprecedented Global Pandemic. On March 12, 2020, Clemson's President Clements stated, “We encourage students who can do so to remain at home or away from campus as we seek to reduce the density of the campus population.” On March 20, 2020, University Relations sent out a COVID-19 update to all staff and students, stating in bold lettering, “**We are urging students who do not need to return to the area or to campus to stay away while campus is operating in online instruction mode.**” Yet another correspondence was received from the University's Dean, Leslie Hossfeld, PhD, on March 23, 2020 stating,

“These are unprecedented times; none of us have ever experienced anything like this. Please follow the guidelines sent out by Provost Jones requesting everyone remain at home. This follows from the Executive Order of the Governor and a directive from President Clements.”

The Appellant returned home, as the college directed, only *halfway* through the semester. As the COVID pandemic surged, the college, under the Governor's orders continued with online learning for the rest of the Spring semester of 2020, the Fall semester of 2020, the Spring semester of 2021, and the summer semester of 2021. It wasn't until one and a half years later, in the Fall of 2021 (with strict adherence to regulations requiring the wearing of masks, proof of COVID vaccinations, and weekly COVID testing) that the college discontinued long distance learning (except for certain circumstances, such as being quarantined for COVID).

With Executive Order No. 2020-21, SC Governor Henry McMaster, mandated a "Stay-At-Home-Order" on April 6, 2020, effective starting Tuesday, April 7, 2020, at 5:00 p.m. On April 27, 2020, outlined in Section 2B Executive Order 2020-29, the Governor directed continued closure of public schools and in Section 2D he restricted on-campus services and activities and continue with "virtual and remote learning." On May 3, 2020, Executive Order 2020-31 Section 1 states,

"B. I hereby urge any and all residents and visitors of the State of South Carolina to limit social interaction, practice 'social distancing' in accordance with CDC guidance, and take every possible precaution to avoid potential exposure to, and to slow the spread of, COVID-19, and further encourage residents and visitors of the State of South Carolina to limit their movements outside of their home, place of residence, or current place of abode (collectively, 'Residence'), except as specified by this Order, for purposes of engaging in Essential Business, Essential Activities, or Critical Infrastructure Operations, as set forth below and as such terms are further defined herein."

"All remaining provisions of Executive Order No. 2020-21, as amended by Executive Order No. 2020-28 and extended by Executive Order No. 2020-29, shall remain in effect for the duration of the State of Emergency unless and until otherwise modified, amended, or rescinded by subsequent Order."

The enforcement of the Executive Orders (such as noted on Executive Order 2020-35 on May 12, 2020) Section 5 states:

"B. Pursuant to section 16-7-10(A) of the South Carolina Code of Laws, any individual who 'refuse[s] to disperse upon order of a law enforcement officer,' 'wilfully fail[s] or refuse[s] to comply with any lawful order or direction of any law enforcement officer,' or otherwise violates any provision of any Order issued by the undersigned in connection with the State of Emergency 'is guilty of a misdemeanor and, upon conviction, must be fined not more than one hundred dollars or imprisoned for not more than thirty days.'"

Section 1 states:

"H. I hereby declare that the provisions of the following Orders shall remain in full force and effect for the duration of the State of Emergency declared herein, unless otherwise modified, amended, or rescinded below or by prior or future Order: Executive Order Nos. 2020- 09, 2020-

10, 2020-11, 2020-12, 2020-13, 2020-16, 2020-18, 2020-21, 2020-22, 2020-25, 2020- 28, 2020-30, 2020-31, 2020-33, and 2020-34.”

The television showed empty highways, with signs flashing “Stay Home, Limit Travel, Save Lives.” Local and State Executive orders prevented citizens from visiting nursing homes, hospitals, going to church, or attending family funerals. At that time, three of the Appellant’s family members, three friends of the family, two neighbors, and two co-workers had passed away. The Appellant’s family is at high risk with asthma, COPD, and her brother had a pneumothorax (his lung collapsed). These Executive Orders should not be taken lightly.

Due to the COVID pandemic, the employer’s business closed. In May of 2020 and with many uncertainties, the business tried to open hoping to offer limited hours to only a selected group of employees (those who were approved to work that summer, before COVID, of which the Appellant was not amongst those) as the small, confined dining area had to, by law, remain closed. As directed by the College, who was directed by the Governor, the Appellant went home and stayed home to continue with virtual and remote learning (as mandated by the Governor) in the middle of the college semester (a three-hour drive with traffic one way from the college and from the employer who had laid the Appellant off due to COVID).

Since the Appellant went back home, as directed, with good cause (based on a standard of reasonableness **S.C. Code Regs. § 47-23 A1**) and as a result of state and local mandates, travel restrictions, Stay-At-Home order, curfews, road blocks, and penalties facing anyone who disregards these executive orders, along with the CARES Act (which the Federal government expanded unemployment insurance (UI) benefits in connection with COVID-19, for cases such as these, by temporarily altering the benefit eligibility requirements and extending coverage to individuals who would not normally qualify and which also relieved S.C. employers from the direct charging of these COVID-19 UI benefits to their UI accounts) that holds the Appellant eligible for PUA benefits under COVID regulations, the Appellant is respectfully asking the Court for reconsideration.

Respectfully submitted,



Katrina Daniels (Appellant)

October 29, 2021

From: **Leslie Hall Hossfeld** <lhossfe@clemson.edu>

Date: Mon, Mar 23, 2020 at 9:40 AM

Subject: **Message from the Dean**, Monday, March 23, 2020

To: Cbshs_undergrad-l@lists.clemson.edu <Cbshs_undergrad-l@lists.clemson.edu>, cbshs_grad-l@lists.clemson.edu <cbshs_grad-l@lists.clemson.edu>



CBSHS Students,

A very big thank you to all of you as we transition to online learning for the rest of the semester. I know this is a very stressful time for everyone and I appreciate you being adaptable and helping to make this as seamless as possible given these unusual and challenging circumstances.

The CBSHS leadership has been working steadily to make sure faculty, staff and students have the resources they need to finish out the remainder of the semester with minimal interruptions. We understand the challenges that go along with online learning, so it is more important now than ever to communicate your needs to your instructors and professors.

These are unprecedented times; none of us have ever experienced anything like this. Please follow the guidelines sent out by Provost Jones requesting everyone remain at home. This follows from the Executive Order of the Governor and a directive from President Clements.

Our faculty and staff are committed to creating a calm and supportive environment for you as we move forward. Staying put, staying at home, using technology, and practicing social distancing are priorities for all of us.

I greatly appreciate all of you and your commitment to our college and to Clemson University.

With thanks,

Leslie

LESLIE HOSSFELD, PhD CLEMSON UNIVERSITY

Dean

College of Behavioral, Social and Health Sciences

Building People and Communities

P.O. Box 8597
Columbia, SC 29202
dew.sc.gov



Henry McMaster
Governor

G. Daniel Ellzey
Executive Director

P.O. Box 8597
Columbia, South Carolina 29202
(803) 737-0395
FAX (803) 737-0124

November 8, 2021

The Honorable Phillip Lenski
South Carolina Administrative Law Court
Edgar A. Brown Building
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201

Re: Katrina Daniels v. SCDEW and 4056 Main LLC
Case No: 21-ALJ-22-0116-AP

Dear Judge Lenski:

Enclosed is the Response in Opposition to Appellant's Motion to Reconsider This Court's Final Order in the above referenced case. Also enclosed is a Proof of Service to the other parties

With kind regards, I am

Sincerely Yours,

A handwritten signature in cursive script that reads "Kristi Chesley".

Kristi Chesley
Administrative Legal Assistant for
Ben Cook
Attorney for South Carolina Department of
Employment and Workforce



STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Katrina Daniels,

Appellant,

v.

South Carolina Department of
Employment and Workforce and
4056 Main LLC,

Respondent.

Docket No: 21-ALJ-22-0116-AP

**RESPONSE IN OPPOSITION
TO APPELLANT'S MOTION
TO RECONSIDER THIS COURT'S
FINAL ORDER**

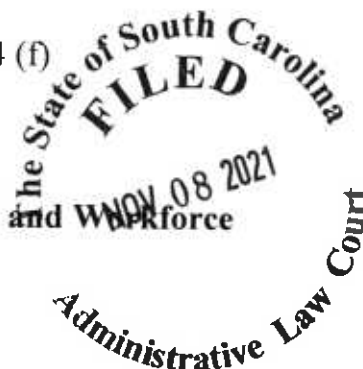
Respondent the South Carolina Department of Employment and Workforce (Department), through its undersigned counsel, hereby stands in opposition to Appellant's Motion for Reconsideration filed October 29, 2021, and respectfully requests that this Court deny the motion and uphold its prior Final Order issued October 21, 2021. Appellant has not properly identified any points which have been overlooked or misapprehended by this Court. *See* SCALC Rule 40. The points Appellant has addressed in her Motion are manifestly without merit and do not require this Court to address them. *Id.*



Benjamin T. Cook (S.C. Bar # 102216)
S.C. Department of Employment and Workforce
P.O. Box 8597
Columbia, SC 29202
(803) 737-0395 (p); (803)737-0124 (f)
legal@dew.sc.gov

Attorney for Respondent
S.C. Department of Employment and Workforce

November 8, 2021.



STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Katrina Daniels,)
Appellant,)
vs.)
South Carolina Department of)
Employment and Workforce and 4056)
Main LLC,)
Respondent (s).)

Docket Number: 21-ALJ-22-0380-AP

PROOF OF SERVICE

I hereby certify that I have served the Response in Opposition to Appellant’s Motion to Reconsider This Court’s Final Order in the above-captioned matter by depositing it in the United States Mail, postage prepaid, on November 8, 2021 to the below named parties at their addresses of record:

Katrina Daniels
3439 Fallowbrook Forest
York SC 29745

4056 Main LLC
404 Oak St
Clemson SC 29631

November 8, 2021

Kristi Chesley

Kristi Chesley
Legal Assistant to Ben Cook
SC Department of Employment and Workforce
Post Office Box 8597
Columbia, SC 29202
803.737.0395 (phone)
803.737.0124 (fax)
legal@dew.sc.gov



Katrina Daniels
3439 Fallowbrook Forest
York, SC 29745

November 12, 2021

The Honorable Phillip Lenski
South Carolina Administrative Law Court
Edgar A. Brown Building
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201

RE: Katrina Daniels v. SCDEW and 4056 Main LLC
Case No: 21-ALJ-22-0116-AP

Dear Judge Lenski:

Enclosed please find the Appellant's Response to Respondent's Opposition of the Motion for Reconsideration in the above referenced case along with the Proof of Service served to the other parties.

With kindest regards, I remain,

Yours truly,



Katrina Daniels
Appellant



STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Katrina Daniels,)
)
Appellant,)
)
v.)
)
4056 Main, LLC, & South Carolina)
Department of Employment and Workforce)
)
Respondents.)
_____)

Docket No. 21-ALJ-22-0116-AP

**APPELLANT’S RESPONSE TO
RESPONDENT’S OPPOSITION OF THE
MOTION FOR RECONSIDERATION**

Appellant, Katrina Daniels, respectfully requests that the Motion for Reconsideration be granted. In the Court’s Final Order, issued October 21, 2021, the Court erroneously misconstrued that, “The offer was suitable for the Appellant, but she refused the offer because she had moved at the end of the school semester.” The Court stated, “based on the foregoing”, the Court hereby ordered the final decision.

The Respondent failed to counter, refute, or acknowledge the most important issues raised in the Motion for Reconsideration.

To clarify and rebut the opposition, the Appellant did *not* move home after the semester ended but went back home DURING the semester, in March 2020, only two months into the semester, following the directive of the college’s President, who was following the Executive Order of the Governor, due to Government issued Emergency Orders resulting from the severe magnitude of the COVID -19 Pandemic.

Based on the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020, the Appellant qualifies and should not be denied PUA. The employer’s business had closed due to COVID and all employees were laid off. The business was *hoping* to start to offer limited hours (but could not guarantee work) to only a selected group (of which the employer confirmed that the Appellant was not amongst those, both in writing and in the ROA). The employer’s dining area remained closed and could only operate with a skeleton crew (1-2 employees, out of 27) with minimal hours and days (*only* if there were enough sales to support this rehire) to serve ice cream through a walk-up window. At this time, there was emergency state and local mandates, travel



restrictions, Stay-At-Home order, curfews, roadblocks, and penalties facing anyone who disregards these Executive Orders. The Appellant complied with the regulations set forth by the college and the Governor directing students to leave the area and to go home and stay home – as all schools, universities and colleges had shut down and, in accordance with the Executive Orders, were resorting to virtual remote learning only. The Appellant's home is 3 hours away (each way) from the university and the employer. According to the Federal CARES Act of 2020, (acknowledged on SC DEW's website), an employee qualifies for PUA benefits if an employee was laid off due to COVID and does not qualify for unemployment and if "An individual is unable to reach his or her job because doing so would require the violation of a state or municipal order restricting travel that was instituted to combat the spread of the coronavirus." (https://wdr.doleta.gov/directives/attach/UIPL/UIPL_16-20.pdf, I-5). Therefore, the Appellant should not be denied PUA benefits.

Due to this manifest error of fact, based on the foregoing, as detailed with affirmation in the Motion for Reconsideration, the Appellant is respectfully asking his Honor for reconsideration, as she did not move (by her own fruition) at the end of the semester, but during the semester as a direct result of the COVID-19 Pandemic and in accordance with the Government's Executive Orders set forth.

Respectively submitted,



Katrina Daniels (Appellant)

November 12, 2021

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Katrina Daniels,	)	Docket No. 21-ALJ-22-0116-AP
)	
Appellant,)	
)	
v.	)	PROOF OF SERVICE
)	
4056 Main, LLC, & South Carolina)	
Department of Employment and Workforce)	
)	
Respondents.)	
)	

I hereby certify that I have served the Appellant’s Response to Respondent’s Opposition of the Motion for Reconsideration in the above referenced case by depositing it in the United States Mail, postage prepaid on the 12th of November, 2021, to the below named parties at their address of record:

The Honorable Phillip Lenski
South Carolina Administrative Law Court
Edgar A. Brown Building
1205 Pendleton Street, Suite 224
Columbia, SC 29201

Ben Cook
Office of General Counsel – SCDEW
PO Box 8597
Columbia, SC 29202

4056 Main LLC
404 Oak Street
Clemson SC, 29631

November 12, 2021

Katrina Daniels
Appellant
3439 Fallowbrook Forest
York, SC 29745
katrina.daniels16@gmail.com
803-810-4498



**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Katrina Daniels,

Appellant,

v.

South Carolina Department of Employment
and Workforce and 4056 LLC,

Respondents.

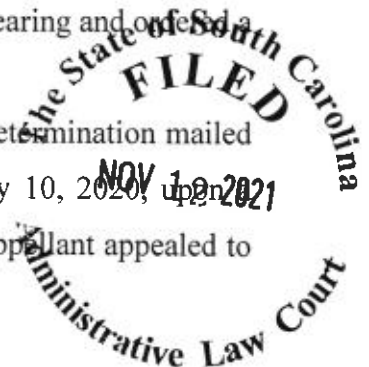
Docket No. 21-ALJ-22-0116-AP

**ORDER DENYING
APPELLANT'S MOTION**

This matter is before the Administrative Law Court (ALC or court) pursuant to a Notice of Appeal filed on April 22, 2021, by Katrina Daniels (Appellant). The Appellant seeks review of the South Carolina Department of Employment and Workforce (Department or Respondent) Appellate Panel's decision affirming the Appeal Tribunal's decision holding her ineligible for benefits effective May 10, 2020, upon a finding that she refused an offer of suitable work without good cause.

The Appellant filed an initial application for Pandemic Unemployment Assistance (PUA) benefits on April 26, 2020 and was initially held eligible for benefits effective March 8, 2020. The claims adjudicator's determination, mailed June 12, 2020, found the Appellant indefinitely ineligible for benefits effective May 10, 2020, because she refused an offer of suitable work without good cause. The Appellant appealed and a hearing was held on October 7, 2020. The Employer was not in attendance at the hearing. The Appeal Tribunal decision mailed on October 14, 2020, reversed the claims adjudicator's June 12, 2020 determination, and found the Appellant eligible to receive benefits. The Employer filed an appeal to the Appellate Panel (Panel) and the Panel remanded the case back to the Appeal Tribunal for a hearing regarding the Employer's absence from the October 7, 2020 hearing. On January 19, 2021, the Appeal Tribunal issued a decision finding that the Employer was not afforded a fair opportunity for a hearing and ordered a new hearing on the merits.

On January 28, 2021, the Appeal Tribunal held a hearing, and in a determination mailed February 9, 2021, found the Appellant ineligible for benefits effective May 10, 2020, upon a finding that the Appellant refused to accept a suitable offer of work. The Appellant appealed to



the Appellate Panel and on March 31, 2021, the Panel issued its decision affirming the Appeal Tribunal's decision finding her ineligible for benefits effective May 10, 2020, because she refused an offer of suitable work without good cause. On April 22, 2021, the Appellant appealed to this court. After careful consideration of the parties' briefs, the record, and the applicable law, this court found that substantial evidence in the record supported the Department's determination and on October 21, 2021 this court issued its Final Order, affirming the Department's decision.

On October 29, 2021, the Appellant filed a Motion for Reconsideration¹ with the court requesting the court reconsider its Final Decision because the Appellant's place of employment was closed as a result of Covid-19 and since the Appellant would have been unable to reach the new job as a direct result of Covid-19, she qualifies for Pandemic Unemployment Assistance. On November 8, 2021, the Department filed a response requesting the court deny the Appellant's motion because the Appellant has not properly identified any points which have been overlooked or misapprehended by the court. In accordance with ALC Rule 40, a motion for rehearing must state with particularity the points supposed to have been overlooked or misapprehended by the court, which the Appellant fails to do in her motion. Therefore, based on the foregoing,

IT IS HEREBY ORDERED that the Appellant's Motion for Rehearing is **DENIED**.
AND IT IS SO ORDERED.



S. Phillip Lenski
Administrative Law Judge

November 12, 2021
Columbia, South Carolina

¹ Although the Appellant filed a Motion for Reconsideration, in accordance with ALC Rule 40, the court will address the Appellant's motion as a Motion for Rehearing.

CERTIFICATE OF SERVICE

I, Erika S. Easler, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof, in the United States mail, postage paid, or by electronic mail to the address provided by the party(ies) and/or their attorney(s).



Erika S. Easler
Judicial Law Clerk

November 12, 2021
Columbia, South Carolina



Court News ...

The Supreme Court of South Carolina

DONALD W. BEATTY
CHIEF JUSTICE

POST OFFICE BOX 3543
SPARTANBURG, SOUTH CAROLINA 29304-3543

MEMORANDUM

TO: Circuit Court Judges
Family Court Judges
Probate Court Judges
Summary Court Judges

FROM: Chief Justice Beatty

RE: Amended Order Regarding the Operation of the Trial Courts During the
Coronavirus Emergency

DATE: December 16, 2020

Enclosed is an Amended Order Regarding the Operation of the Trial Courts During the Coronavirus Emergency. This order was filed by the Supreme Court of South Carolina today.

I do want to emphasize that this Amended Order should not be interpreted as having any impact on my decisions to stop the commencement of jury trials after December 4, 2020, and to delay the selection of new grand jurors. As indicated by footnote 3 of the Amended Order, I will continue to issue additional guidance and instructions as may be necessary to either expand or restrict trials and other activities as this pandemic progresses.

Enclosure

2020-12-16-01

The Supreme Court of South Carolina

RE: Operation of the Trial Courts During the Coronavirus
Emergency
(As Amended December 16, 2020)¹
Appellate Case No. 2020-000447

ORDER

(a) Purpose. The purpose of this order is to provide guidance on the continued operation of the trial courts during the current coronavirus (COVID-19) emergency. The measures contained in this order are intended to allow essential operations to continue while minimizing the risk to the public, litigants,

In the past, the South Carolina Judicial Branch has shown great resilience in responding to hurricanes, floods, and other major disasters, and this Court is confident that the same will be true in this emergency. This emergency, however, differs from these prior emergencies in many aspects. The current emergency will significantly impact every community in South Carolina while the prior emergencies, although potentially horrific for the individuals and communities directly impacted, did not. The impact of the prior emergencies could be minimized or avoided by traveling away from the site of the disaster; this is not the case for the current emergency. Further, in the prior emergencies, the circumstances giving rise to the emergency involved a single event with a beginning and a predictable end. This is not the case for the coronavirus, and even conservative estimates indicate the direct impacts of this pandemic will continue for many months.

In light of the extraordinary challenges presented by the current emergency, this Court finds it necessary to supplement and, in some situations, to alter significantly, the current practices regarding the operation of the trial courts. In the event of a conflict between this order and the South Carolina Rules of Civil Procedure (SCRCP), the South Carolina Rules of Criminal Procedure (SCRCrP), the South Carolina Rules of Family Court (SCRFC), the South Carolina Rules of Probate Court (SCRPC), the South Carolina Rules of Magistrates Court (SCRMC), the South Carolina Court-Annexed Alternative Dispute Resolution Rules (SCADR), South Carolina Rules of Evidence (SCRE) or any other rule or administrative order regarding the operation of a trial court, this order shall control.

(b) Terminology. The following terminology is used in this order.

(1) Judge: a judge of the circuit court, family court, probate court, magistrate court and municipal court, including masters-in-equity and special referees.

(2) Remote Communication Technology: technology such as video conferencing and teleconferencing which allows audio and/or video to be shared at differing locations in real time.

(3) Summary Court: the magistrate and municipal courts.

(4) Trial Court: the circuit court (including masters-in-equity court), family court, probate court, magistrate court and municipal court.

(c) General Guidance. This section provides general guidance applicable to all trial courts or to several court types, and later sections will provide guidance that is limited to one court type. While this order remains in effect, the following general guidance shall apply:

(1) Jury Trials. If done in accordance with a plan approved by the Chief Justice,² jury selections and jury trials may be conducted. These plans should adhere to the guidance contained in section (c)(3) below.

(2) Non-Jury Trials and Hearings. Subject to the guidance provided in section (c)(3) below, non-jury trials and hearings may be conducted.

(3) General Guidance Regarding Trials and Hearings.

(A) Remote Non-Jury Trials and Hearings. Except as may be restricted by any constitutional provision, statutory provision or other provision of this order, a non-jury trial or a hearing on a motion or other matter, including a first appearance in a criminal case, may be conducted using remote communication technology to avoid the need for a physical appearance by any party, witness or counsel.

(B) In-Person Trials and Hearings.³ An in-person trial or hearing may be conducted if a judge determines (1) it is appropriate to conduct an in-person trial or hearing and (2) the trial or hearing can be safely be conducted. If an in-person trial or hearing is held, the following will apply:

(i) Start and end times for trials and hearings must be staggered to minimize the number of persons who will be present at the same time in the courtroom or hearing room, and the waiting rooms, hallways or other common areas which support the courtroom or hearing room.

(ii) Unless the judge authorizes another person to attend, attendance at the trial or hearing shall be limited to the attorneys or parties in the matter, necessary witnesses and necessary court staff. In the event the matter has numerous counsel or parties, the judge may further limit attendance as may be necessary to safely conduct the hearing.

(iii) Except as restricted by constitutional or statutory provision, a judge may allow a party to appear or a witness to testify using remote communication technology. As an example, allowing a person who is at a heightened risk from COVID-19 due to age or serious underlying medical condition to appear or testify remotely might be an appropriate accommodation if requested by that person.

(iv) Except when necessary for the proceeding (such as handing an exhibit to the judge or opposing counsel, or counsel consulting with their client), all persons in the courtroom or hearing room must maintain at least six feet of distance from other persons in the room. Masks must be worn by all persons as specified by order of the Chief Justice dated July 30, 2020.⁴ To ensure social distancing can be maintained, it is recommended the maximum number of persons not exceed one person per 113 square feet of space in the courtroom or hearing room. This area may be reduced if plexiglass shields are being used, but the six foot distancing set forth above should be maintained.

(v) Efforts should be made to sanitize the witness stand and/or podium between witnesses and presentation by counsel. Further, before a subsequent trial or hearing is held, the courtroom or hearing room surfaces which may have been touched by participants in the prior matter, including door handles, should be sanitized.

(4) Minimizing Hearings on Motions. While the practice has been to conduct hearings on virtually all motions, this may not be possible during this emergency. If, upon reviewing a motion, a judge determines that the motion is without merit, the motion may be denied without waiting for any return or other response from the opposing party or parties. In all other situations except those where a motion may be made on an ex parte basis, a ruling shall not be made until the opposing party or parties have had an opportunity to file a return or other response to the motion. A trial judge may elect not to hold a hearing when the judge determines the motion may

readily be decided without further input from the lawyers. If a hearing is held, the hearing shall be conducted in the manner specified by (c)(3) above. Consent motions should be decided without a hearing; in the event a party believes that the order issued exceeds the scope of the consent, the party must serve and file a motion raising that issue within ten (10) days of receiving written notice of entry of the order.

(5) Determination of Probable Cause Following Warrantless Arrest. When a warrantless arrest has occurred, the arresting officer shall provide the appropriate judge with an affidavit or a written statement with the certification provided by section (c)(16) below setting forth the facts on which the warrantless arrest was made within eight (8) hours of the arrest. The judge shall consider this affidavit or written statement with the certification and, if appropriate, may have the officer or others supplement the affidavit or written statement with the certification with sworn testimony given over the telephone or other remote communication technology. The judge may administer any necessary oath using the telephone or other remote communication technology. If the judge finds a lack of probable cause for the arrest, the defendant shall be released. The goal is to have this determination of probable cause be made within twenty-four (24) hours of the arrest. Only in the most extraordinary and exceptional circumstances should this determination not be made within forty-eight (48) hours of the arrest. If this determination is not made within forty-eight (48) hours after arrest, the judge making the determination shall explain in writing the facts and circumstances giving rise to this delay, and a copy of this explanation shall be provided to the Office of Court Administration.

(6) Preliminary Hearings in Criminal Cases. Preliminary hearings may be conducted in-person or by remote communication technology subject to the requirements specified by section (c)(3) above. However, a preliminary hearing conducted by remote communication technology will not be conducted over the objection of the defendant. In the event a defendant objects to a preliminary hearing being conducted using remote communication technology, and the judge determines that an in-person hearing cannot safely be conducted, the preliminary hearing may be continued until such time as the judge determines an in-person hearing can be safely conducted.

(7) Remote Administration of Oaths. Where this order authorizes a hearing, trial or other matter to be conducted using remote communication technology, any oath necessary during that hearing, trial or other matter may be administered by the same remote communication technology. While it is

preferable that the person administering the oath have both audio and visual communication with the person taking the oath, the oath may be administered if only audio communication is available, provided the person administering the oath can reasonably verify the identity of the person taking the oath. Notaries who are authorized to administer oaths may administer oaths utilizing remote communication technology in the case of depositions. Nothing in this order shall be construed as authorizing remote administration of oaths for any other purpose than those contained in this order.

(8) Scheduling Orders.

(A) Scheduling Orders Issued Prior to April 3, 2020. Under a prior version of this order, all deadlines under scheduling orders issued prior to April 3, 2020, were stayed, retroactive to March 13, 2020. Forty-five (45) days following the date on which the Governor lifts or rescinds the emergency orders relating to the coronavirus emergency, this stay shall end.

(B) Scheduling Orders Issued On or After April 3, 2020. A new or amended scheduling order issued on or after April 3, 2020, will not be subject to any stay under this order. Both the decision to issue such an order and the terms of that order must consider the impact the emergency has on the ability of the parties and counsel to proceed. Judges are encouraged to seek input from the parties and counsel before issuing a new or amended scheduling order.

(9) Extensions of Time and Forgiveness of Procedural Defaults.

(A) Extensions of Time. Due to the increased need for extensions at the start of this emergency, the filing fees for a motion for an extension of time were waived, and the due dates for trial court filings due on or after April 3, 2020 were automatically extended for thirty (30) days. That need has now decreased.⁶ Accordingly, the filing fee waiver shall not apply to any motions for extensions filed on or after January 16, 2021. Further, the automatic extension shall not apply to any action or event due on or after January 16, 2021.

(B) Forgiveness of Procedural Defaults Since March 13, 2020, to April 3, 2020. In the event a party to a case or other matter pending before a trial court was required to take certain action on or after March 13, 2020, but failed to do so, that procedural default was forgiven, and the required action was required to be taken by May 4, 2020. If a dismissal or other adverse action has been taken, that adverse action was to be rescinded.

(C) Extensions by Consent. The provision in Rule 6(b), SCRPC, which permits the granting of only one extension of time by agreement of counsel, is suspended. Counsel may agree to further extensions of time without seeking permission from the court, and parties are strongly encouraged to do so upon request.

(D) Limitation. The provisions of (A) thru (C) above shall not extend or otherwise affect the time for taking action under Rules 50(b), 52(b), 59, and 60(b), SCRCP, or Rule 29, SCRCrimP. Further, these provisions do not extend or otherwise affect the time for the serving of a notice of appeal under the South Carolina Appellate Court Rules, or the time to appeal from a lower court to the circuit court.

(10) Alternatives to Court Reporters and Digital Courtrooms. A trial or hearing in the court of common pleas (including the master-in-equity court), the court of general sessions or the family court is usually attended by a court reporter (before the master-in-equity this is usually a private court reporter) or is scheduled in one of the digital courtrooms with a court reporter or court monitor. While every effort will be made to continue these practices, this may not be possible as this emergency progresses. In the event such resources are not reasonably available, a trial or hearing authorized under this order may proceed if a recording (preferably both audio and video) is made. The judge shall conduct the proceedings in a manner that will allow a court reporter to create a transcript at a later date. This would include, but is not limited to, making sure the names and spelling of all of the persons speaking or testifying are placed on the record; ensuring exhibits or other documents referred to are clearly identified and properly marked; controlling the proceeding so that multiple persons do not speak at the same time; and noting on the record the start times and the time of any recess or adjournment.

(11) Courthouses.

(A) Filings. To the extent possible, courthouses should remain open to accept filings and payments, and to report criminal information to the South Carolina Law Enforcement Division and the National Crime Information Center. For the acceptance of documents or payments submitted by delivery to the courthouse, this may be accomplished by providing access to a portion of the courthouse even if the rest of the courthouse is closed to the public; providing an alternate location where the documents or payments may be delivered; or by providing a drop box where filings may be deposited. Adequate signage should be provided at the courthouse to alert persons about how to make filings by delivery, and this information should also be posted to the court's website, if available.

(B) Closure. In the event of the closure of a courthouse, information about the closure shall be provided by signage at the courthouse, and on the court's website if available.

(C) Quarantine of Incoming Paper Documents. To protect the safety of the staff of the trial courts, incoming paper documents, whether delivered or mailed to the trial court, may be quarantined for a period of up to forty-eight (48) hours once the documents are physically received by the trial court.⁷ Once the quarantine period has ended, these documents will be file stamped with the date on which they were received, and court staff will then process the documents.

(D) Entrance Screening and Protective Masks. All persons entering a courthouse shall be screened for fever and shall wear a protective mask while in the courthouse as required by the order of the Chief Justice dated July 30, 2020.⁸

(12) Statute of Limitations, Repose and Other Similar Statutes. This Court is aware this emergency has already affected the ability of litigants to commence legal actions and this adverse impact will most likely increase significantly as this pandemic progresses. The Judicial Branch has raised this concern to the leadership of the General Assembly as this issue relates to the statute of limitations, statutes of repose and similar statutes such as S.C. Code Ann. § 15-36-100. While this Court has recognized the existence of judicial authority to toll a statute of limitations in other situations, it would be inappropriate for this Court to consider at this time what relief, if any, may be afforded to a litigant who is unable to file a civil action or take other actions under these statutory provisions due to this emergency.

(13) Service Using AIS Email Address. A lawyer admitted to practice law in this state may serve a document on another lawyer admitted to practice law in this state using the lawyer's primary email address listed in the Attorney Information System (AIS).⁹ For attorneys admitted pro hac vice, service on the associated South Carolina lawyer under this method of service shall be

construed as service on the pro hac vice attorney; if appropriate, it is the responsibility of the associated lawyer to provide a copy to the pro hac vice attorney. For documents that are served by email, a copy of the sent email shall be enclosed with the proof of service, affidavit of service, or certificate of service for that document. This method of service may not be used for the service of a summons and complaint, subpoena, or any other pleading or document required to be personally served under Rule 4 of the South Carolina Rules of Civil Procedure, or for any document subject to mandatory e-filing under Section 2 of the South Carolina Electronic Filing Policies and Guidelines. In addition, the following shall apply:

(A) Documents served by email must be sent as an attachment in PDF or a similar format unless otherwise agreed by the parties.

(B) Service by email is complete upon transmission of the email. If the serving party learns the email did not reach the person to be served, the party shall immediately serve the pleading or paper by another form of service in Rule 5(b)(1), SCRCP, or other similar rule, together with evidence of the prior attempt at service by email.

(C) In those actions governed by the South Carolina Rules of Civil Procedure, Rule 6(e), SCRCP, which adds five days to the time a party has the right or is required to do some act or take some proceedings within a prescribed period after the service of a notice or other paper upon him and the notice or paper is served upon him by mail, shall also apply when service is made by email under this provision.

(D) Lawyers are reminded of their obligation under Rule 410(g), SCACR, to ensure that their AIS information is current and accurate at all times.

(14) Signatures of Lawyers on Documents. A lawyer may sign documents using "s/[typed name of lawyer]," a signature stamp, or a scanned or other electronic version of the lawyer's signature. Regardless of form, the signature shall still act as a certificate under Rule 11, SCRCP, that the lawyer has read the document; that to the best of the lawyer's knowledge, information, and belief there is good ground to support it; and that the document is not interposed for delay.

(15) Optional Filing Methods. During this emergency, clerks of the trial courts may, at their option, permit documents to be filed by electronic methods such as fax and email. If the clerk elects to do so, the clerk will post detailed information on the court's website regarding the procedure to be followed, including any appropriate restrictions, such as size limitations, which may apply. Documents filed by one of these optional filing methods shall be treated as being filed when received by the clerk of court and a document received on or before 11:59:59 p.m., Eastern Standard Time, shall be considered filed on

that day. These optional filing methods shall not be used for any document that can be e-filed under the South Carolina Electronic Filing Policies and Guidelines. If a trial court does not have a clerk of court, the court shall determine whether to allow the optional filing methods provided by this provision.

(16) Certification in Lieu of Affidavit. If a statute, court rule or other provision of law requires an affidavit to be filed in an action, the requirement of an affidavit may be satisfied by a signed certification of the maker stating, "I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment by contempt."

(17) Arrest and Search Warrants. Due to this emergency, it may not be possible for an officer seeking an arrest warrant or a search warrant to appear before the judge to be sworn and sign the warrant. Therefore, a judge may use the procedures provided in section (c)(7) above to remotely administer the oath to the officer and, if appropriate, the judge may take sworn testimony using remote communication technology to supplement the allegations in the warrant. The judge shall make a notation on the warrant indicating the oath was administered remotely and the officer was not available to sign the warrant in the presence of the judge. If probable cause is found, the judge shall sign the warrant and return the warrant to the officer for execution. While the officer may sign the warrant when it is returned, the failure to do so shall not affect the validity of the warrant. The warrant may be transmitted to the judge and returned to the officer by e-mail, fax or other electronic means. For the purpose of this section, the term "search warrant" shall also include applications under South Carolina Homeland Security Act, S.C. Code Ann. §§ 17-30-10 to -145.

(18) Discovery. Depositions and other discovery matters may be conducted using remote communication technology.

(d) Court of General Sessions. The following additional guidance is provided regarding the Court of General Sessions:

(1) Rule 3(c), SCRCrimP. Based on this emergency, the ninety (90) day period provided by Rule 3(c), SCRCrimP, is hereby increased to one-hundred and twenty (120) days.

(2) County Grand Juries. The Solicitor or the Attorney General is hereby authorized to present an indictment to the grand jury using remote communication technology such as video conferencing and teleconferencing, and any necessary oath may be administered using this same remote communication technology pursuant to (c)(7) above. County grand juries may convene in-person so long as the Chief Judge for Administrative Purposes determines grand jurors can be safely distanced and equipped with protective gear, and meeting rooms and courtrooms sanitized. To help ensure appropriate social distancing can be maintained, a minimum of 113 square feet of space per person should be available during any grand jury proceedings, including deliberations.

(3) Guilty Pleas. Guilty pleas may be conducted as specified by section (c)(3) above. However, a guilty plea by remote communication technology will not be conducted unless both the defendant and prosecutor consent. If the defendant will participate by remote communication technology, the trial court must make a determination that the defendant is knowingly and intelligently waiving his right to be physically present for the plea. If the defendant's counsel will participate by remote communication technology, the trial court must determine that the defendant is knowingly and intelligently waiving any right to have counsel physically present, and the court must ensure that the defendant has the ability to consult privately with counsel during the plea proceeding as may be necessary.

(e) Court of Commons Pleas. The following additional guidance is provided regarding the Court of Common Pleas, including the Master-in-Equity Courts:

(1) Isolation and Quarantine Orders. As this pandemic continues, it is possible the provisions of the South Carolina Emergency Health Powers Act, S.C. Code Ann. §§ 44-4-100 to 44-4-570, may be triggered as it relates to isolation and quarantine orders. Therefore, the Chief Judges for Administrative Purposes for Common Pleas should familiarize themselves with the procedures for judicial review and petitions under that Act, most notably section 44-5-540, and begin to formulate a strategy to meet the timelines specified in that statute for judicial action.

(2) Procedural Guidance Regarding Filing. While the trial court case management system does not have a case type and subtype for these matters, the clerks of court should use "Nature of Action Code 699 (Special/Complex Other)" for these matters, and these matters will be exempt from any ADR requirement. Detailed instructions for attorneys to Electronically File in these cases are available at <https://www.sccourts.org/efiling/ARGs/ARG-26%20Quarantine%20Petitions.pdf>. It is also anticipated that all of these hearings will be conducted using remote communication technology. In coordination with the Pro Bono Program of the South Carolina Bar, a list of lawyers willing to serve as counsel for individuals or groups of individuals who are or are about to be isolated and quarantined under section 44-5-540(F), has been compiled.

(f) Family Court. The following additional guidance is provided regarding the Family Court:

(1) Granting of Uncontested Divorces. The Family Court may grant an uncontested divorce without holding a hearing where:

(A) The parties submit written testimony in the form of affidavits or certifications of the parties and corroborating witnesses that address jurisdiction and venue questions, date of marriage, date of separation, the impossibility of reconciliation and the alleged divorce grounds.

(B) The written testimony must include copies of the parties' and witnesses' state-issued photo identifications.

(C) Any decree submitted by any attorney shall be accompanied by a statement, as an officer of the court, that all counsel approve the decree and that all waiting periods have been satisfied or waived by the parties.

(D) Should either party request a name change in connection with a request for divorce agreement approval, that party shall submit written testimony to the Family Court in the form of an affidavit or certification addressing the appropriate questions for name change and the name which he or she wishes to resume. This relief shall be included in any proposed Order submitted to the Court for approval at the time of the submission of the documents related to the relief requested.

(2) Approval of Settlement Agreements and Consent Orders without a Hearing.

(A) General Orders. Consent orders resolving all matters, regardless of whether filed or heard prior to or after the declaration of this public health emergency, may be issued without the necessity of holding a hearing. Examples include consent orders resolving motions to compel, discovery disputes, motions to be relieved as counsel, or consent Orders appointing a Guardian ad Litem or addressing Guardian ad Litem fee caps. Any proposed order or agreement must be signed by the parties, counsel for the parties, and the Guardian ad Litem, if one has been appointed.

(B) Temporary Orders. Temporary consent orders resolving all matters, regardless of whether filed or heard prior to or after the declaration of this public health emergency, may be issued without requiring a hearing. Any proposed order or agreement must be signed by the parties, counsel for the parties, and the Guardian ad Litem, if one has been appointed, and may be submitted and issued without the necessity of filing supporting affidavits, financial declarations or written testimony.

(C) Final Orders. Final consent orders approving final agreements in all matters, regardless of whether filed or heard prior to or after the declaration of this public health emergency, may be issued without requiring a hearing. These final consent orders include marital settlement agreements, custody and visitation settlement agreements and enforcement agreements. Any proposed order or agreement must be signed by the parties, counsel for the parties, and the Guardian ad Litem, if one has been appointed.

These Consent Orders shall be submitted together with all of the following:

- (i)** The final agreement, such as a marital settlement agreement, signed by the attorneys and the parties.
- (ii)** Updated signed Financial Declarations for each party.
- (iii)** An affidavit or certification from the Guardian ad Litem, if one has been appointed, addressing the best interests of the children.
- (iv)** Written testimony of all parties in the form of affidavit or certification addressing and answering all questions the Family Court would normally ask the parties on the record, including but not limited to affirmations from the parties that:

- a. The party has entered into the Agreement freely and voluntarily, understands the Agreement, and desires for the Agreement to be approved by the Court, without the necessity of a hearing.
- b. Setting forth the education level obtained by the party, the employment status of the party and the health of the party.
- c. There are no additional agreements, and neither party has been promised anything further than that set out in the Agreement.
- d. The party fully understands the financial situation of each of the parties, the underlying facts, terms and effect of the Agreement.
- e. The party has given and received full financial disclosure.
- f. The party has had the benefit of an experienced family law attorney.
- g. The party has had the opportunity to ask any questions relating to procedures and the effect of the Agreement.
- h. The party is not acting under coercion or duress, and the party is not under the influence of any alcohol or drug.
- i. That the Agreement is fair and equitable, it was reached by the parties through arms-length negotiations by competent attorneys and the agreement represents some sacrifices and compromises by each party.
- j. The Agreement is in the best interests of the children, if there are any.
- k. That the parties have entered into a marital settlement agreement in full and final settlement of all issues arising from the marriage which have been raised or which could have been raised in the proceeding, other than issues relating to grounds for divorce.
- l. The party is aware of the applicable contempt sanctions associated with non-compliance.

(D) Consent Orders under S.C. Code Ann. § 63-7-1700(D). Where all the parties consent and the Family Court determines a child may be safely maintained in the home in that the parent has remedied the conditions that caused the removal, and the return of the child to the child's parent would not cause an unreasonable risk of harm to the child's life, physical health, safety, or mental well-being, the Family Court may order the child returned to the child's parent without holding a hearing.

(3) Hearings Generally. With respect to all contested hearings in family court, including agency matters and private actions, both temporary and permanent, all hearings should be conducted in accordance with section (c)(3) of this order.

(4) Execution of Bench Warrants. While the Chief Justice temporarily suspended the execution of bench warrants for non-payment of child support and alimony, that suspension has expired. Therefore, bench warrants issued by the family court shall be promptly executed by appropriate law enforcement personnel.

(g) Probate Court. The following additional guidance is provided:

Certification in Lieu of Affidavit. In the probate court, the certificate in section (c)(16) may also be used for a marriage license application under S.C. Code Ann. § 20-1-230, including any application which may be submitted electronically, or for any of the probate court forms available at <https://www.sccourts.org/forms/> which are either an affidavit or require an oath or affirmation to be administered.

(h) Summary Court. The following additional guidance is provided regarding the Summary Courts:

(1) Bond Hearings in Criminal Cases. Bond hearings shall be conducted in the manner specified by section (c)(3) above. The frequency of these bond hearings shall be specified by the Chief Justice.¹¹ In addition to the normal factors for determining whether the defendant will be required to post a bond or will be released on a personal recognizance, the judge should consider the need to minimize the detention center population during this emergency. Further, judges should consider home detention or other options to help reduce detention center population. The summary court shall uphold victims' rights in accordance with the South Carolina Constitution, including seeking to ensure that a victim advocate/notifier is available for all bond hearings, subject to the rights of the defendant under the United States Constitution and the South Carolina Constitution.

(2) Transmission of Warrants for General Sessions Offenses. Warrants for general sessions offenses shall continue to be forwarded to the clerk of the court of general sessions as provided for Rule 3, SCRCrimP. As to an arrest warrant for a defendant who is already in the custody of the South Carolina Department of Corrections, or a detention center or jail in South Carolina, this Court hereby authorizes these defendants to be served with the warrant by mail. Therefore, if it is determined that the defendant is already in custody, the judge shall annotate the warrant to reflect that a copy has been mailed to the defendant, mail a copy of the annotated warrant to the defendant, and immediately forward the annotated warrant and any allied documents to the clerk of the court of general sessions for processing under Rule 3, SCRCrimP.

If the defendant is incarcerated at the South Carolina Department of Corrections, the judge shall also transmit a copy of the annotated warrant to the Office of General Counsel at the South Carolina Department of Corrections.

(3) Guilty Pleas. For offenses within the jurisdiction of the summary court (including those cases transferred to the summary court pursuant to S.C. Code Ann. § 22-3-545), guilty pleas may be conducted as specified by section (c)(3) above. However, a guilty plea by remote communication technology will not be conducted unless both the defendant and prosecutor consent. If the defendant will participate by remote communication technology, the trial court must make a determination that the defendant is knowingly and intelligently waiving his right to be physically present for the plea. If the defendant's counsel will participate by remote communication technology, the trial court must determine that the defendant is knowingly and intelligently waiving any right to have counsel physically present, and the court must ensure that the defendant has the ability to consult privately with counsel during the plea proceeding as may be necessary. A defendant charged with criminal offenses, traffic violations, ordinance violations, and administrative violations within the jurisdiction of the summary courts may plead guilty by affidavit or certification. This procedure may only be utilized by persons represented by an attorney and desiring to plead guilty where the charge does not carry imprisonment as a possible punishment or where the prosecutor or prosecuting law enforcement officer and defense attorney have agreed that the recommended sentence will not result in

jail time. If applicable, the prosecutor or prosecuting law enforcement officer must comply with the Victims' Bill of Rights under Article I, § 24 of the South Carolina Constitution.¹²

(i) Effective Date and Revocation of Prior Orders and Memoranda.

This order is effective immediately. Unless extended, this order shall be rescinded in ninety (90) days. This order replaces the following orders and memoranda previously issued.

(1) Memoranda of the Chief Justice dated March 16, 2020, which are labeled as "Trial Courts Coronavirus Memo," and "Summary Courts Coronavirus Memo."

(2) Order dated March 18, 2020, and labeled "Statewide Family Court Order."

(3) Order dated May 29, 2020, entitled "County Grand Juries."

1 This order was initially filed on April 3, 2020, and has been amended three times. On April 14, 2020, changes were made to sections (c)(5) and (c)(8). On April 22, 2020, section (c)(17) was added. This latest order amends sections (c)(1), (c)(2) (c)(3), (c)(4), (c)(6), (c)(8), (c)(9), (d)(2), (d)(3), (f)(1)(C), (h)(1), (h)(2), (h)(3), and (i), and added new sections (c)(11)(D), (c)(18), (f)(4) and (i)(3).

2 To obtain approval of a plan, the plan should be submitted to the Office of Court Administration. Since the plan will have to address courtroom and other facility specific information, a separate plan will need to be submitted for the circuit court in each county. Further, a separate plan will need to be submitted by each magistrate, municipal and probate court. Court Administration should be contacted to obtain additional advice and assistance regarding the content and requirements that should be addressed in any plan.

3 The guidance in this order is, of course, subject to such additional orders and directions as the Chief Justice may prescribe as the administrative head of the unified judicial system under Article V, § 4, of the South Carolina Constitution. As it relates to live hearings or trials, the ability to safely conduct live proceedings will undoubtedly vary significantly over time, and we are confident the Chief Justice will provide the trial courts with additional guidance and instructions as may be necessary to either expand or restrict live proceedings as this pandemic progresses.

4 This order is available at <https://www.sccourts.org/whatsnew/displaywhatsnew.cfm?indexID=2523>.

5 If a preliminary hearing is not held before the defendant is indicted by the grand jury, a preliminary hearing will not be held. Rule 2(b), SCRCrimP.

6 As explained by the order of April 3, 2020, the automatic extension was intended to give "lawyers and self-represented litigants appearing before the trial courts ... time to take actions to protect themselves and their families." Since sufficient time has been provided for this to occur, and most lawyers and litigants have been able to adjust to working remotely, this automatic extension is no longer warranted.

7 One scientific study has reported that the coronavirus can live for up to 24 hours on cardboard. <https://www.medrxiv.org/content/10.1101/2020.03.09.20033217v1.full.pdf>

8 This order is available at <https://www.sccourts.org/whatsnew/displaywhatsnew.cfm?indexID=2523>.

9 The email addresses for lawyers admitted in South Carolina can be accessed utilizing the Attorney Information Search at: <https://www.sccourts.org/attorneys/dspSearchAttorneys.cfm>. _

10 See Orders of the Chief Justice dated May 7, 2020 and June 5, 2020 (available at <https://www.sccourts.org/whatsnew/displaywhatsnew.cfm?indexID=2510> and <https://www.sccourts.org/whatsnew/displaywhatsnew.cfm?indexID=2497>).

11 Currently, the Chief Justice has directed bond hearings be held twice a day. See Memorandum of the Chief Justice dated September 25, 2020 (available at <https://www.sccourts.org/whatsnew/displaywhatsnew.cfm?indexID=2530>).

12 This language regarding pleas by affidavit or certification incorporates language from a May 7, 2020, order of the Chief Justice (available at <https://www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2020-05-07-01>).

s/Donald W. Beatty_____C.J.

s/John W. Kittredge_____J.

s/Kaye G. Hearn_____J.

s/John Cannon Few_____J.

s/George C. James, Jr._____J.

Columbia, South Carolina
April 3, 2020

As Amended December 16, 2020

Court News ...

2021-08-25-01

The Supreme Court of South Carolina

RE: Recission of Order Relating to the Operation of the Appellate Courts During the Coronavirus Emergency

Appellate Case No. 2020-000447

ORDER

On March 20, 2020, the Court issued an order entitled "Operation of the Appellate Courts During the Coronavirus Emergency" (hereinafter referred to as "Appellate Coronavirus Order"). This order was subsequently amended on May 29, 2020.

Based on the discussion that appears below, the Appellate Coronavirus Order is hereby rescinded, effective immediately.

As to motions for extensions, the clerks of the Supreme Court of South Carolina and the South Carolina Court of Appeals¹ may continue to process motions for extensions without the filing fee required by Rule 240(d) of the South Carolina Appellate Court Rules (SCACR) until September 9, 2021.

In deciding to rescind the Appellate Coronavirus Order in its entirety, this Court has taken into consideration the following:

(a) Authority of the Chief Justice to Impose Mitigation Measures. As the Chief Justice has done throughout the coronavirus pandemic, this Court is confident that the Chief Justice will continue to issue administrative orders or other guidance relating to the operation of the Appellate Courts as may be appropriate to minimize the risk posed by the coronavirus. This includes placing restrictions or conditions on the entry or use of the Supreme Court and Calhoun Buildings.

(b) Use of Remote Communication Technology. During the coronavirus pandemic, the Appellate Courts used WebEx to conduct oral arguments and hearings. Based on this experience, Rules 218 and 240(h), SCACR, have been amended to allow oral arguments and hearings to be conducted using remote communication technology, including the remote administration of any necessary oath or affirmation.

(c) Methods of Electronic Service and Filing. The Appellate Coronavirus Order included methods for the electronic service and filing of documents. These methods have proved very beneficial to both the litigants and the Appellate Courts, and Rule 262, SCACR, has been amended to allow this Court to establish electronic methods of service and filing. By separate order issued today, this Court has specified the permissible methods of electronic service and filing under Rule 262, SCACR.

(d) Outgoing Correspondence to Persons Admitted to Practice Law in South Carolina. The Appellate Coronavirus Order allowed the Appellate Courts to send correspondence (including letters, orders and opinions) to lawyers admitted to practice law in South Carolina using their primary e-mail addresses in the Attorney Information System. The order referenced in (c) above will allow this practice to continue.

(e) Signatures on Documents Filed With the Appellate Courts. Rule 267(b), SCACR, has been amended to allow a lawyer or self-represented litigant to sign a document using "s/ [typed name of person]," a signature stamp, or a scanned or other electronic version of the person's signature.

(f) Reduction of Copies to Be Filed. Pursuant to Rule 267(f), SCACR, this Court has today issued an order reducing the number of paper copies required to be filed with the Appellate Courts.

This Court is extremely grateful for the patience and cooperation exhibited by the litigants appearing before this Court and the South Carolina Court of Appeals during the coronavirus pandemic. Further, this Court specifically commends the members of the South Carolina Bar and the staffs of both Appellate Courts for their professionalism and dedication in rapidly adjusting to new appellate practices and procedures necessitated by the pandemic, including electronic filing and service, WebEx oral arguments and working remotely.

s/Donald W. Beatty_____C.J.

s/John W. Kittredge_____J.

s/Kaye G. Hearn_____J.

s/John Cannon Few_____J.

s/George C. James, Jr._____J.

Columbia, South Carolina
August 25, 2021

1 These Courts will be referred to as "Appellate Courts" in this order.



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
CHIEF DEPUTY CLERK

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December 16, 2021

Katrina Daniels
3439 Fallowbrook Forest
York SC 29745

Re: Katrina Daniels v. SCDEW
Appellate Case No. 2021-001462

Dear Ms. Daniels:

This Court has received your notice of appeal, and the case has been assigned the appellate case number that appears above. Please use this number on all future correspondence relating to this matter.

All parties to this matter are advised that all filings must comply with the requirements of Rule 267 of the South Carolina Appellate Court Rules (SCACR). The SCACR are available online at www.sccourts.org/courtreg. Additionally, any filings submitted by counsel admitted in South Carolina must include counsel's bar number.

The attention of the parties is directed to the order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. The order can be found at www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2014-04-15-02. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will *not* review filings for redaction or to determine if materials should be sealed.

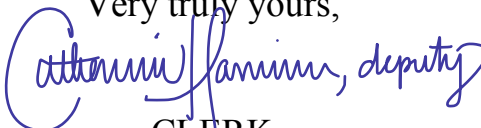
This is to advise that the title in the above matter has been changed to read as follows:

Katrina Daniels, Appellant,

v.

**South Carolina Department of Employment and Workforce and 4056 LLC,
Respondents.**

All future records in this matter should be changed to reflect this title. If you have any questions, please do not hesitate to contact this office.

Very truly yours,

CLERK

cc: Benjamin Thomas Cook, Esquire

RECEIVED

Jan 11 2022

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

S. Phillip Lenski, Administrative Law Judge

Docket No. 21-ALJ-22-0116-AP

Appellate Case No. 2021-001462

Katrina Daniels,

Appellant

v.

South Carolina Department of Employment and Workforce and 4056
LLC,

Respondents

**MOTION TO DISMISS FOR LACK OF
APPELLATE JURISDICTION**

Respondent the South Carolina Department of Employment and Workforce (the Department) hereby respectfully moves this Court to dismiss Appellant’s appeal because this Court lacks appellate jurisdiction due to Appellant’s failure to timely serve her notice of appeal on either the Department or 4056 Main, LLC, in this case within thirty (30) days of her receipt of the Administrative Law Court’s (ALC) order denying her motion for rehearing. This motion is made on the following grounds.

I. Factual Background

This case originated as an appeal by Appellant from a decision by the Department's Appellate Panel (Panel) denying Appellant unemployment benefits because she refused a reasonable offer of work from 4056 Main, LLC. The ALC issued its final decision in this case on October 21, 2021, affirming the Panel decision and upholding the denial of benefits. (Exhibit 1). Following a petition for rehearing filed by Appellant, the ALC issued an order denying rehearing on November 12, 2021. (Exhibit 2). That decision was sent to Appellant via email on November 12, 2021. (Exhibit 3). Additionally, Appellant admits to receiving a copy of that decision in the mail on November 15, 2021. (Exhibit 4). On December 13, 2021, Appellant sent an email with various attachments to ctappfilings@sccourts.org, Legal@dew.sc.gov, KChesley@dew.sc.gov, and jshealy@scalc.net. (Exhibits 5 and 6). On December 22, 2021, Appellant sent another email with various attachments to ctappfilings@sccourts.org, Legal@dew.sc.gov, KChesley@dew.sc.gov, and andee.osell@gmail.com. (Exhibits 7 and 8). Appellant identifies "andee.osell@gmail.com" as the email address of her former employer, 4056 Main, LLC, a party to the ALC case in this matter. (Exhibit 9). As of the date of this motion, the Department has not received service of a notice of appeal by either personal delivery, or by delivery through the U.S. mail. (Exhibit 10).

II. Deadline for Service

S.C. Code Ann § 1-23-610(A)(1) states:

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.

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

Appeals From Administrative Tribunals. When a statute allows a decision of the administrative law court or agency (administrative tribunal) to be appealed directly to the Supreme Court or the Court of Appeals, the notice of appeal shall be served on the agency, the administrative law court (if it has been involved in the case) and all parties of record within thirty (30) days after receipt of the decision. If a timely petition for rehearing is filed with the administrative tribunal, the time to appeal for all parties shall be stayed and shall run from receipt of the decision granting or denying that motion. If a decision indicates that a more full and complete decision is to follow, a party need not appeal until receipt of the more complete decision.

Per Rule 263(b), SCACR, the timelines for service may not be extended by the appellate court:

Extending and Diminishing Time Prescribed by These Rules. The time prescribed by these Rules for performing any act except the time for serving the notice of appeal under Rule 203 and 243 may be extended or shortened by the appellate court, or by any judge or justice thereof. The time prescribed by these Rules for performing any act or taking any action may not be extended by agreement of the parties.

The ALC issued its decision on November 12, 2021, and transmitted a copy of that decision to Appellant the very same day. (Exhibits 3 and 4). As a result, Appellant had thirty (30) days from her receipt of the ALC decision on November 12, 2021, to properly file and serve the notice of appeal on the Department, the ALC, and all parties of record. *See* § 1-23-610(A)(1); *see also* Rule 203(b)(6), SCACR. Thirty (30) days from November 12, 2021, would have been December 12, 2021; however December 12, 2021, was a Sunday, therefore Rule 263(a), SCACR extended the deadline to Monday, December 13, 2021.

III. Permitted Methods of Service

Rule 262(c), SCACR provides:

Service. Whenever under these Rules service is required or permitted to be made upon a party represented by an attorney the service shall be made upon the attorney unless service upon the party is ordered by the appellate court. Service upon the attorney or upon a party shall be made by:

- (1) Delivering a copy to the person, in which case service is complete upon delivery. Delivery of a copy under this provision means: handing it to the attorney or to the party; or leaving it at the office of that person with a clerk or another person in charge thereof; or, if there be no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving a copy at the person's dwelling place or usual place of abode with some person of suitable age and discretion then residing therein;
- (2) Depositing a copy in the U.S. mail, properly addressed to the person at that person's last known address with sufficient first class postage attached, or, if no address is known, by leaving it with the clerk of the appellate court. Service by mail is complete upon mailing; or,
- (3) Serving a copy on the person by electronic means in a manner provided by order of the Supreme Court of South Carolina.

The Supreme Court of South Carolina, by Order dated August 25, 2021, has provided for service by electronic means under very limited circumstances:

(d) Electronic Service Using AIS E-mail Address.

(1) Service on Another Lawyer. A lawyer admitted to practice law in South Carolina may serve a document on another lawyer admitted to practice law in South Carolina using the lawyer's primary e-mail address listed in the Attorney Information System (AIS). For documents that are served by e-mail, a copy of the sent e-mail shall be enclosed with the proof of service, affidavit of service, or certificate of service for that document. Lawyers are reminded of their obligation under Rule 410(g), SCACR, to ensure that their AIS information is current and accurate at all times.

(2) Service by an Appellate Court. An appellate court may send an order, opinion or other correspondence to a person admitted to practice law in South Carolina using that lawyer's primary address in AIS.

(3) Service on Persons Admitted Pro Hac Vice. For attorneys admitted pro hac vice under Rule 404, SCACR, service on the associated South Carolina lawyer using an electronic method permitted by this order shall be construed as service on the pro hac vice attorney; if appropriate, it is the responsibility of the associated lawyer to provide a copy to the pro hac vice attorney.

RE: Methods of Elec. Filing and Serv. Under Rule 262 of the S.C. Appellate Court Rules, S.C. Sup. Ct. Order dated August 25, 2021 (Davis Adv. Sh. No. 30). Appellant Katrina Daniels is neither a lawyer admitted to practice law in South Carolina, nor is she an appellate court. (Exhibit 9). Further, no attorneys have been admitted pro hac vice in this case. As a result, neither the Appellate Court Rules, nor order of the Supreme Court permit Appellant to serve a notice of appeal by email on either the Department or any other parties to the case. Because Appellant is not authorized by rule or order of the Supreme Court to serve by electronic means, her only permissible methods for service were either personal delivery or delivery through the U.S. mail. *See* Rule 262(c), SCACR. As of the date of this motion, Appellant has neither personally delivered a copy of her notice of appeal in this case, nor has she delivered a copy of her notice of appeal through the U.S. mail. (Exhibit 10).

Also, the date of this motion is well past the deadline for serving the notice of an appeal in this case. Thus, any attempt by Appellant to properly serve either the Department or 4056 Main, LLC, at this late date would be untimely and could not confer appellate jurisdiction upon this Court.

IV. Timely Service as Jurisdictional Requirement

“The Court of Appeals shall have such jurisdiction as the General Assembly shall prescribe by general law.” S.C. Const. art. V, § 9.

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 (30) days after the party receives the final decision and order of the administrative law judge.

§ 1-23-610(A)(1). “[T]he question of compliance with rules, regulations, and statutes governing an appeal is one of appellate jurisdiction” *Allison v. W.L. Gore & Assoc.*, 394 S.C. 185, 188, 714 S.E.2d 547, 549 (2011). “Service of the notice of intent to appeal is a jurisdictional requirement, and this Court has no authority to extend or expand the time in which the notice of intent to appeal must be served.” *Mears v. Mears*, 287 S.C. 168, 169, 337 S.E.2d 206, 207 (1985); *see also Elam v. S.C. Dept. of Transp.*, 361 S.C. 9, 14-15, 602 S.E.2d 772, 775 (2004) (“The requirement of service of the notice of appeal is jurisdictional, *i.e.*, if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to ‘rescue’ the delinquent party by extending or ignoring the deadline for service of the notice.”). “[T]he failure of a party to serve the notice of appeal within thirty days after receiving written notice of the entry of the order divests this court of jurisdiction and requires the dismissal of the appeal.” *Wells Fargo Bank, N.A. v. Fallon Properties S.C., LLC*, 413 S.C. 642, 647, 776 S.E.2d 575, 578 (Ct.App.2015) (citing *Canal Insurance Co. v. Caldwell*, 338 S.C. 1, 5, 524 S.E.2d 416, 418 (Ct.App.1999)).

Appellant admitted she did not even attempt to serve 4056 Main, LLC, until December 22, 2021, well after her deadline for service had passed. *See* Exhibits 7, 8, and 9. Further, Appellant has only ever attempted to accomplish service on any party to this case by email and has made no attempt to serve either the Department or 4056 Main, LLC, by either personal service or by service through the U.S. mail. *See* Exhibits 5, 6, 7, and 8. Appellant is a *pro se* litigant and is not permitted by either the Rules of this Court or Order of the Supreme Court to serve by electronic means. *See* Rule 262(c), SCACR; *see also RE: Methods of Elec. Filing and Serv. Under Rule 262 of the S.C. Appellate Court Rules*, S.C. Sup. Ct. Order dated August 25, 2021 (Davis Adv. Sh. No. 30). As a result, any attempted service through email is ineffective and does not confer jurisdiction on this Court.

In order to grant this Court appellate jurisdiction over an appeal from the ALC's decision in this case, Appellant was required to serve her notice of appeal on both the Department and 4056 Main, LLC, by either personal service or service through the U.S. mail on or before December 13, 2021. *See* § 1-23-610(A)(1); *see also* Rule 203(b)(6), SCACR; *see also* Rule 262(c), SCACR; *see also RE: Methods of Elec. Filing and Serv. Under Rule 262 of the S.C. Appellate Court Rules*, S.C. Sup. Ct. Order dated August 25, 2021 (Davis Adv. Sh. No. 30); *see also Mears*, 287 S.C. at 169, 337 S.E.2d at 207 (1985); *see also Elam*, 361 S.C. at 14-15, 602 S.E.2d at 775 (2004). Appellant has not timely served the notice of appeal on the Department or 4056 Main, LLC, her deadline for service has passed, and, as a result, this Court lacks jurisdiction and must dismiss Appellant's appeal.

[Signature on Following Page]

Respectfully Submitted,



Benjamin T. Cook (Bar # 102216)
SC Department of Employment and Workforce
Post Office Box 8597
Columbia, SC 29202
(803) 737-0395 (phone)
(803) 737-0124 (fax)
Legal@dew.sc.gov

January 11, 2022

Attorney for Respondent
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Governor

G. Daniel Ellzey
Executive Director

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June 14, 2021

The Honorable Phillip Lenski
South Carolina Administrative Law Court
Edgar A. Brown Building
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201

Re: Katrina Daniels v. SCDEW
Case No: 21-ALJ-22-0116-AP

Dear Judge Lenski:

Enclosed is the Record on Appeal in the above referenced case. An electronic copy has been sent to your clerk, Ms. Easler today. Also enclosed is a Proof of Service to the other parties

With kind regards, I am

Sincerely Yours,

Ann Buchmaier
Administrative Legal Assistant for
Ben Cook
Attorney for South Carolina Department of
Employment and Workforce

(E) a written notice, appearance, demand, or offer of judgment, or any similar paper.

(2) *If a Party Fails to Appear.* No service is required on a party who is in default for failing to appear. But a pleading that asserts a new claim for relief against such a party must be served on that party under Rule 4.

(3) *Seizing Property.* If an action is begun by seizing property and no person is or need be named as a defendant, any service required before the filing of an appearance, answer, or claim must be made on the person who had custody or possession of the property when it was seized.

(b) SERVICE: HOW MADE.

(1) *Serving an Attorney.* If a party is represented by an attorney, service under this rule must be made on the attorney unless the court orders service on the party.

(2) *Service in General.* A paper is served under this rule by:

(A) handing it to the person;

(B) leaving it:

(i) at the person's office with a clerk or other person in charge or, if no one is in charge, in a conspicuous place in the office; or

(ii) if the person has no office or the office is closed, at the person's dwelling or usual place of abode with someone of suitable age and discretion who resides there;

(C) mailing it to the person's last known address—in which event service is complete upon mailing;

(D) leaving it with the court clerk if the person has no known address;

(E) sending it to a registered user by filing it with the court's electronic-filing system or sending it by other electronic means that the person consented to in writing—in either of which events service is complete upon filing or sending, but is not effective if the filer or sender learns that it did not reach the person to be served; or

(F) delivering it by any other means that the person consented to in writing—in which event service is complete when the person making service delivers it to the agency designated to make delivery.

(3) *Using Court Facilities.* [Abrogated (Apr. 26, 2018, eff. Dec. 1, 2018.)]

(c) SERVING NUMEROUS DEFENDANTS.

(1) *In General.* If an action involves an unusually large number of defendants, the court may, on motion or on its own, order that:

(A) defendants' pleadings and replies to them need not be served on other defendants;

(B) any crossclaim, counterclaim, avoidance, or affirmative defense in those pleadings and replies to them will be treated as denied or avoided by all other parties; and

(C) filing any such pleading and serving it on the plaintiff constitutes notice of the pleading to all parties.

(2) *Notifying Parties.* A copy of every such order must be served on the parties as the court directs.

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Rule 4. Appeal as of Right —When Taken

(a) Appeal in a Civil Case.

(1) *Time for Filing a Notice of Appeal.*

(A) In a civil case, except as provided in Rules 4(a)(1)(B), 4(a)(4), and 4(c), the notice of appeal required by [Rule 3](#) must be filed with the district clerk within 30 days after entry of the judgment or order appealed from.

(B) The notice of appeal may be filed by any party within 60 days after entry of the judgment or order appealed from if one of the parties is:

- (i) the United States;
- (ii) a United States agency;
- (iii) a United States officer or employee sued in an official capacity; or
- (iv) a current or former United States officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on the United States' behalf – including all instances in which the United States represents that

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person when the judgment or order is entered or files the appeal for that person.

(C) An appeal from an order granting or denying an application for a writ of error coram nobis is an appeal in a civil case for purposes of Rule 4(a).

(2) *Filing Before Entry of Judgment.* A notice of appeal filed after the court announces a decision or order—but before the entry of the judgment or order—is treated as filed on the date of and after the entry.

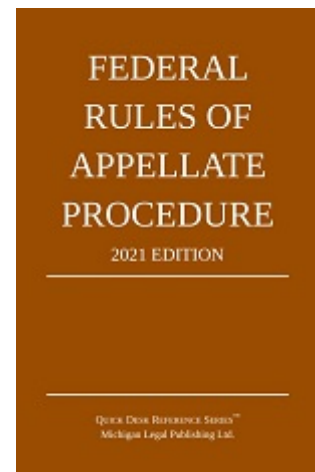
(3) *Multiple Appeals.* If one party timely files a notice of appeal, any other party may file a notice of appeal within 14 days after the date when the first notice was filed, or within the time otherwise prescribed by this Rule 4(a), whichever period ends later.

(4) *Effect of a Motion on a Notice of Appeal.*

(A) If a party files in the district court any of the following motions under the [Federal Rules of Civil Procedure](#)—and does so within the time allowed by those rules—the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion:

- (i) for judgment under [Rule 50\(b\)](#);
- (ii) to amend or make additional factual findings under [Rule 52\(b\)](#), whether or not granting the motion would alter the judgment;
- (iii) for attorney’s fees under [Rule 54](#) if the district court extends the time to appeal under [Rule 58](#);
- (iv) to alter or amend the judgment under [Rule 59](#);
- (v) for a new trial under [Rule 59](#); or

◦ [Title VII – General Provisions](#)



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(vi) for relief under [Rule 60](#) if the motion is filed no later than 28 days after the judgment is entered.

(B)

(i) If a party files a notice of appeal after the court announces or enters a judgment—but before it disposes of any motion listed in Rule 4(a)(4)(A)—the notice becomes effective to appeal a judgment or order, in whole or in part, when the order disposing of the last such remaining motion is entered.

(ii) A party intending to challenge an order disposing of any motion listed in Rule 4(a)(4)(A), or a judgment's alteration or amendment upon such a motion, must file a notice of appeal, or an amended notice of appeal—in compliance with [Rule 3\(c\)](#)—within the time prescribed by this Rule measured from the entry of the order disposing of the last such remaining motion.

(iii) No additional fee is required to file an amended notice.

(5) *Motion for Extension of Time.*

(A) The district court may extend the time to file a notice of appeal if:

(i) a party so moves no later than 30 days after the time prescribed by this Rule 4(a) expires; and

(ii) regardless of whether its motion is filed before or during the 30 days after the time prescribed by this Rule 4(a) expires, that party shows excusable neglect or good cause.

(B) A motion filed before the expiration of the time prescribed in Rule 4(a)(1) or (3) may be ex parte unless the court requires otherwise. If the motion is filed after the

expiration of the prescribed time, notice must be given to the other parties in accordance with local rules.

(C) No extension under this Rule 4(a)(5) may exceed 30 days after the prescribed time or 14 days after the date when the order granting the motion is entered, whichever is later.

(6) *Reopening the Time to File an Appeal.* The district court may reopen the time to file an appeal for a period of 14 days after the date when its order to reopen is entered, but only if all the following conditions are satisfied:

(A) the court finds that the moving party did not receive notice under [Federal Rule of Civil Procedure 77\(d\)](#) of the entry of the judgment or order sought to be appealed within 21 days after entry;

(B) the motion is filed within 180 days after the judgment or order is entered or within 14 days after the moving party receives notice under [Federal Rule of Civil Procedure 77\(d\)](#) of the entry, whichever is earlier; and

(C) the court finds that no party would be prejudiced.

(7) *Entry Defined.*

(A) A judgment or order is entered for purposes of this Rule 4(a):

(i) if [Federal Rule of Civil Procedure 58\(a\)](#) does not require a separate document, when the judgment or order is entered in the civil docket under [Federal Rule of Civil Procedure 79\(a\)](#); or

(ii) if [Federal Rule of Civil Procedure 58\(a\)](#) requires a separate document, when the judgment or order is entered in the civil docket under [Federal Rule of Civil](#)

**LETTER TO THE APPELLATE COURT CLERK
FILING THE NOTICE OF APPEAL**

December 13, 2021

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

RE: Katrina Daniels, Appellant, v. South Carolina Department of
Employment, Respondent, Docket No. 21-ALJ-22-0116-AP

Dear Ms. Kitchings:

Enclosed for filing is a Notice of Appeal in the above case along with a
Motion to Proceed Without Cost. Also enclosed are the following:

- (1) Proof of service of the Notice of Appeal and of the Motion to Proceed Without
Cost to the respondent and to the Administrative Law Court, Clerk of Court.
- (2) A copy of the orders dated October 21, 2021 Final Order and
November 21, 2021 Denying Appellant's Motion, which are to be
challenged on appeal.

Sincerely,
s/ Katrina Daniels
Katrina Daniels
3439 Fallowbrook Forest
York, SC 29745
(803) 810-4498
[katrina.daniels16@gmail.com/](mailto:katrina.daniels16@gmail.com)
jjdaniels36@gmail.com
Appellant

cc: Ben Cook
Office of General Counsel – SCDEW
PO Box 8597
Columbia, SC 29202
(803) 737-0395
Respondent

Katrina Daniels
3439 Fallowbrook Forest
York, SC, 29745
December 22, 2021

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

RE: Katrina Daniels, Appellant, v. South Carolina Department of
Employment and Workforce and 4056 LLC, Respondents,
Docket No. 21-ALJ-22-0116-AP
Appellate Case No. 2021-001462

Dear Ms. Kitchings:

Enclosed for filing is a Motion for Extension of Time and a Motion to Amend in the above case. Also enclosed are the following:

- (1) Proof of service of the Motion for Extension of Time and of the Motion to Amend to the South Carolina Department of Workforce and 4056 Main, LLC, Respondents.
- (2) Proof of service (on the same Proof of Service aforementioned) of the Notice of Appeal and of the Motion to Proceed Without Cost, the December 13, 2021 Letter to the Administrative Law Court, Clerk of Court, A copy of the orders dated October 21, 2021 Final Order and November 21, 2021 Denying Appellant's Motion, which are to be challenged on appeal, which were initially served to the South Carolina Department of Workforce and the Administrative Law Court, Clerk of Court, Ms. Jana Shealy (jshealy@scal.net) to include the employer, 4056 Main, LLC, on December 22, 2021.

Sincerely,
s/ Katrina Daniels
Katrina Daniels
3439 Fallowbrook Forest
York, SC 29745
(803) 810-4498
[katrina.daniels16@gmail.com/](mailto:katrina.daniels16@gmail.com)
jjdaniels36@gmail.com
Appellant

cc: Ben Cook
Office of General Counsel – SCDEW
PO Box 8597
Columbia, SC 29202
(803) 737-0395
Respondent

Andee O'Sell
4056 Main, LLC
404 Oak Street
Clemson, SC 29631
(412) 559-6213
Respondent

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE
ADMINISTRATIVE LAW COURT
S. Phillip Lenski, Administrative Law Judge

Docket No. 21-ALJ-22-0116-AP
Appellate Case No. 2021-001462

Katrina Daniels, Appellant,

v.

South Carolina Department of Employment and Workforce
and 4056 LLC, Respondents.

MOTION FOR EXTENSION OF TIME

Due to family hardships and illness, the Appellant moves the Court for an order to allow for an extension of time to file the initial brief and designation of matter and to hold the appeal in abeyance until the Motion to Proceed Without Cost has been reviewed and ordered by the Court.

December 22, 2021

Respectively submitted,

s/ Katrina Daniels
Katrina Daniels
3439 Fallowbrook Forest
York, SC 29745
803-810-4498
katrina.daniels16@gmail.com/
jjdaniels36@gmail.com
Appellant

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE
ADMINISTRATIVE LAW COURT
S. Phillip Lenski, Administrative Law Judge

Docket No. 21-ALJ-22-0116-AP
Appellate Case No. 2021-001462

Katrina Daniels, Appellant,

v.

South Carolina Department of Employment and Workforce
and 4056 LLC, Respondents.

MOTION TO AMEND

The Appellant had contacted the Court with questions, after receiving a letter from the Deputy Clerk regarding a change in the title to read as follows:

Katrina Daniels, Appellant, v.

South Carolina Department of Employment and Workforce and 4056 LLC, Respondents

Initially, the Appellant only listed the South Carolina Department of Employment and Workforce (SC DEW) as the respondent because SC DEW was representing the employer in this case. The Appellant has changed the title as requested. However, the employer's business name (Spill the Beans) is legally referred to as 4056 Main, LLC. It appears that the Administrative Law Court made an error in the Final Orders, as all other records shows the employer as 4056 Main, LLC, not 4056 LLC. Since Court staff is on vacation, Appellant was asked by another member of the Court to submit this motion for review, to forward the appeal correspondence to the employer, and then to wait for the Court's decision as to whether or not a caption change is required.

The Appellant also had questions concerning filing that contains redacted information which was also presented in the letter received from the Court. SC DEW had

provided the original Record on Appeal and had redacted information, as required. The correspondence from the Court stated that “A filing that contains redacted information may be filed together with a confidential reference list that identifies each item of redacted information and specifies an appropriate identifier that uniquely corresponds to each item listed.” The Appellant, who knows she is responsible to submit the new Record on Appeal, which will include SC DEW’s Record on Appeal, asked if a confidential reference list is required, but in this case, thankfully, is not.

The Appellant is pro se with no prior knowledge of court proceedings, is trying to be very diligent to make sure she is following the rules correctly so that her case can be fairly heard and is appreciative of your services.

December 22, 2021

Respectively submitted,

s/ Katrina Daniels

Katrina Daniels

3439 Fallowbrook Forest

York, SC 29745

803-810-4498

[katrina.daniels16@gmail.com/](mailto:katrina.daniels16@gmail.com)

jjdaniels36@gmail.com

Appellant

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Rule 3. Appeal as of Right— How Taken

(a) Filing the Notice of Appeal.

(1) An appeal permitted by law as of right from a district court to a court of appeals may be taken only by filing a notice of appeal with the district clerk within the time allowed by [Rule 4](#). At the time of filing, the appellant must furnish the clerk with enough copies of the notice to enable the clerk to comply with [Rule 3\(d\)](#).

(2) An appellant's failure to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for the court of appeals to act as it considers appropriate, including dismissing the appeal.

(3) An appeal from a judgment by a magistrate judge in a civil case is taken in the same way as an appeal from any other district court judgment.

(4) An appeal by permission under 28 U.S.C. §1292(b) or an appeal in a bankruptcy case may be taken only in the manner prescribed by [Rules 5](#) and [6](#), respectively.

(b) Joint or Consolidated Appeals.

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(1) When two or more parties are entitled to appeal from a district-court judgment or order, and their interests make joinder practicable, they may file a joint notice of appeal. They may then proceed on appeal as a single appellant.

(2) When the parties have filed separate timely notices of appeal, the appeals may be joined or consolidated by the court of appeals.

(c) Contents of the Notice of Appeal.

(1) The notice of appeal must:

(A) specify the party or parties taking the appeal by naming each one in the caption or body of the notice, but an attorney representing more than one party may describe those parties with such terms as “all plaintiffs,” “the defendants,” “the plaintiffs A, B, et al.,” or “all defendants except X”;

(B) designate the judgment, order, or part thereof being appealed; and

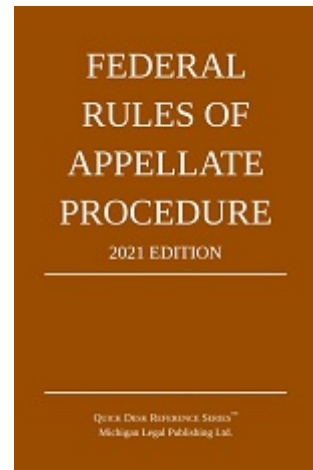
(C) name the court to which the appeal is taken.

(2) A pro se notice of appeal is considered filed on behalf of the signer and the signer’s spouse and minor children (if they are parties), unless the notice clearly indicates otherwise.

(3) In a class action, whether or not the class has been certified, the notice of appeal is sufficient if it names one person qualified to bring the appeal as representative of the class.

(4) An appeal must not be dismissed for informality of form or title of the notice of appeal, or for failure to name a party whose intent to appeal is otherwise clear from the notice.

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Henry McMaster
Governor

G. Daniel Ellzey
Executive Director

P.O. Box 8597
Columbia, South Carolina 29202
(803) 737-0395
FAX (803) 737-0124

June 29, 2021

The Honorable Phillip Lenski
South Carolina Administrative Law Court
Edgar A. Brown Building
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201

Re: Katrina Daniels v. SCDEW and 4056 Main LLC
Case No: 21-ALJ-22-0116-AP

Dear Judge Lenski:

Enclosed is Response to Appellant's Motion for an Order to Supplement the Record on Appeal in the above referenced case. Also enclosed is a Proof of Service to the other parties

With kind regards, I am

Sincerely Yours,

A handwritten signature in cursive script that reads "Kristi Chesley".

Kristi Chesley
Administrative Legal Assistant for
Ben Cook
Attorney for South Carolina Department of
Employment and Workforce

FILED

JUN 29 2021

SC ADMIN. LAW COURT

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Katrina Daniels,

Appellant,

v.

South Carolina Department of
Employment and Workforce and 4056
Main LLC,

Respondents.

Docket No: 21-ALJ-22-0116-AP

**RESPONSE TO APPELLANT'S
MOTION FOR AN ORDER TO
SUPPLEMENT THE RECORD ON
APPEAL**

Respondent South Carolina Department of Employment and Workforce (the Department) respectfully requests the Court deny Appellant's Motion for an Order to Supplement the Record on Appeal as the items Appellant wishes included in the record are irrelevant to the issue under appeal or are otherwise not properly part of the record.

This case is on appeal to this Court from a final decision of the Department's Appellate Panel (Panel) dated March 31, 2021. The issue of the Panel's decision was Appellant's refusal of an offer of work. By Appellant's own admission, the vast majority of documents Appellant seeks to have included in the record were created or submitted to the Department after the Panel's decision was issued on March 31, 2021. By definition, those documents were not available to the Panel at the time the Panel made its decision and could not have contributed to that decision in any way. Therefore, this Court should deny Appellant's motion as to those documents as they were not presented in the proceeding before the agency. To the extent Appellant is seeking to present any of these documents as additional evidence, the Court should deny the motion as Appellant has made no attempt to show good cause for failing to have presented the evidence before the agency and has

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not sufficiently shown that the documents are material to the matter that is actually before this Court. *See* S.C. Code Ann. § 1-23-380(3) (Supp. 2020).

The document Appellant titles “New Debt \$524 in error” is a Notice of Action Regarding State Income Tax Return(s). That document informed Appellant that the Department intended to submit outstanding debts to the Department of Revenue for collection under the Setoff Debt Collection Act. No issue related to any overpayments or debt collection are properly before this Court as no final decision of the agency relating to those issues has been appealed to this Court. This Court should deny Appellant’s motion as to this document because it is entirely irrelevant to Appellant’s appeal of the Panel’s decision on Appellant’s refusal of an offer of work.

The document Appellant titles “Appeal 4 faxed 2-16-21 copy” appears to be almost exactly the same document as has already been included in the record at pages 246-260. The document already included in the record was the document received by the Department, stored in the Department’s records, and considered by the Panel before making its decision. Appellant alleges that pieces of three pages seem to have been cut off or been printed badly. However, the document presented by Appellant along with their motion has been materially altered from the document received by the Department prior to the Panel’s decision. The page count of Appellant’s document differs from the page count of the document already included in the record (Appellant’s document goes to page number 14, while the version in the record goes to page number 15). Respondent cannot vouch for the content or quality of the document originally transmitted by Appellant on February 17, 2021, other than as the document received and stored in the Department’s records, but the

document presented by Appellant to this Court is manifestly not the same document transmitted on February 17, 2021. Further, the substance of the entire document appears to be Appellant's argumentation rather than any sort of documentary evidence. Appellant will have ample opportunity to make her arguments in Appellant's brief. As a result, any allegedly missing bits and pieces of prior argumentation from Appellant's submissions to the Department are unnecessary to the Court's review of the case. Because the document submitted by Appellant to this Court is manifestly not the document transmitted to the Department and considered by the Panel, and the contents of the document are purely argumentation and not evidentiary in nature, this Court should deny Appellant's motion as to this document.

Respondent respectfully requests that this Court deny Appellant's motion as to all documents presented and referenced in their motion. Respondent has created and filed the record on appeal properly according to the rules of this Court and no supplementation is necessary or proper.

[Signature on Next Page]

Respectfully Submitted,



Benjamin T. Cook (SC Bar # 102216)

SC Department of Employment and
Workforce

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**Attorney for Respondent SC Department of
Employment and Workforce**

June 29, 2021

Katrina Daniels
3439 Fallowbrook Forest
York, SC 29745

July 16, 2021

The Honorable Phillip Lenski
South Carolina Administrative Law Court
Edgar A. Brown Building
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201

RE: Katrina Daniels v. SCDEW and 4056 Main LLC
Case No: 21-ALJ-22-0116-AP

Dear Judge Lenski:

Enclosed is Response to the Respondent's Response to the Appellant's Motion for an Order to Supplement the Record on Appeal in the above referenced case. Also enclosed is a Proof of Service to the other parties.

With kind regards, I am

Sincerely Yours,

A handwritten signature in black ink, appearing to read 'Katrina Daniels', written in a cursive style.

Katrina Daniels
Appellant

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JUL 16 2021

SC ADMIN. LAW COURT

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Katrina Daniels,	)	Docket No. 21-ALJ-22-0016-AP
)	
Appellant,)	
)	
v.	)	RESPONSE TO RESPONDENT'S
	)	RESPONSE TO THE APPELLANT'S
	)	MOTION TO SUPPLEMENT THE
4056 Main, LLC, & South Carolina	)	RECORD ON APPEAL
Department of Employment and Workforce)	
)	
Respondents.)	
_____)	

Appellant respectfully requests the court deny the Respondent, South Carolina Department of Employment and Workforce (Department) requests to deny the Appellant's Motion for an Order to Supplement the Record on Appeal as the issues discussed below are relevant to the issue under appeal and should be properly part of the record.

This case is on appeal to this Court regarding the Tribunal hearings of an alleged refusal of a Bona Fide Offer which led to the final decision of the Department's Appellate Panel (Panel) dated March 31, 2021, as well as the Double Affirmation, which, by the Department's own admission on July 8, 2021, confirmed is part of the issue of the Refusal of Bona Fide Offer that is before the Administrative Law Court (ALC) and which can only be heard by the ALC.

Upon close examination of the Records, all pages between 246-260 are not complete, the bottom or 1/2 of each page are omitted, other portions are illegible, and there are thick black bars on the bottom of all but one of these pages. This document correlates with the Appellant's 32 page "Claimant's Exhibits A-J" [L] which were both timely submitted for the Panel's review, and which are a part of the Appellant's due process. The Respondent alleges that the Appellant's "Appeal 4 faxed 2-16-21" "has been materially altered from the document received by the Department prior to the Panel's decision." The Respondent argued that there is a page number discrepancy and requested the Court to deny the Appellant's motion to supplement the record. By respondent's own admission, the Record on file is what the Panel based their decision on. In response to the Respondent's argument, the Appellant faxed the Application for Leave to Appeal to the Appellate Panel (ROA 245) plus the 15-page Appeal 4 document, as well as the

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faxed in a separate transmission the 32 page "Claimant's Exhibits A-J" [L] on 2/16/21. The Appellant had followed up with the Department, as she has done with every other hearing, to ensure all faxed documents were received and legible. Despite that the Appellant's log showing that all faxes had been successfully transmitted, the Department advised the Appellant that the 16-page document did not transmit successfully. The Appellant refaxed these pages. It wasn't until the 3rd fax transmission, where all pages (the application, the Appeal 4 document, the Exhibits and the cover letter) were faxed together, at one time, that the Appellant received confirmation from the Department that everything faxed was successfully received, that each page was legible, and that the Panel would receive this legible copy for review. The initial fax that did not transmit successfully contained a lot of extra blank spaces and the Appellant deleted the extra spacing, thus eliminating the 15th page and making the document 14 pages in total. Other than spacing, there were no other alterations. This 14-page document had also been uploaded to Appellant's portal. ROA 248 is a clear example that there is a problem with the fax. This page shows only the top horizontal ½ of the last sentence printed and nothing else below it. The date of the fax also shows February 17, 2017 (the year should be 2021) for an appeal that started May 5, 2020. Did the Respondent record one of the two faxes that the Department said did not transmit successfully (despite the Appellant going to great lengths to ensure everything was received and legible)? The Application and Appeal 4 documents (ROA 245-260) indicate a fax record on top of each page, indicating 1-16. The subsequent "Claimant's Exhibits A-J" [L] do not show the fax information at the top of the page. The Application (ROA 245) and the "Claimant's Exhibits A-J" [L] (ROA 261-292) appear to be intact, legible, and with no omission (with the exception of Exhibit F ROA 278-279, which is a three-page document, not a two-page document, but which all 3 pages are included in ROA 110-112). Therefore, the Appellant is respectfully requesting that only a legible and all-inclusive Appeal January 28, 2021 Tribunal Decision (Appeal 4 Faxed February 16, 2021) be included in the record.

The Appellant is also asking for the Double Affirmation to be a part of the records and by the Department's own admission, confirmed by the Department on July 8, 2021, the Double Affirmation is a part of the Bona Fide Offer refusal that is being brought before the ALC and can no longer be addressed by the Department. The Department had informed the Appellant, more than once, that the meaning of Double Affirmation is that the money paid out by the Department

will not have to be paid back regardless of subsequent findings, including that of the Panel's. The Double Affirmation approval was received on February 8, 2021, and March 28, 2021, and was reported in the Appellant's portal *before* the Final Agency's decision, dated March 31, 2021. The Department's adjudicator found the Appellant eligible to receive benefits. The initial appeal by the employer was dismissed by the Tribunal on May 5, 2020, and the subsequent Tribunal hearing on October 7, 2020 was also ruled in the Appellant's favor. After the Appellant filed a case with the ALC, the Department issued a subsequent Tribunal hearing on June 9, 2021 regarding the overpayment of \$10,550 of UI benefits. The Appellant tried to discuss the approval of the Double Affirmation as relevant evidence for this hearing. However, the abbreviated hearing ended abruptly, and the Appellant was not afforded the opportunity to bring up the Double Affirmation approval or the fact that the hearing was for UI overpayment, of which the Appellant had received PUA benefits, but which was included in the Appellant's evidence which was timely submitted before the hearing. The Appellant immediately contacted the Department to ensure that the Double Affirmation Approval and the fact that the funds received are for PUA (as the hearing notice indicated it was for UI), would be considered and would be part of the record, as by the Hearing Officer's own admission during the hearing, she did not have a chance to review the evidence, as she was not aware that this hearing was for a hearing that the Department had previously rescheduled. Since the Double Affirmation was not included in the Hearing Officer's findings, despite notes from Department and references of the timely evidence submitted, Appellant appealed. Appellant was subsequently told by an Officer at the Department that has been with the Department for over 20 years and who is in charge of scheduling the Tribunal hearings, that an appeal for this matter is not pending and will not be heard by the Department. Only an appeal for the Waiver Request, which was denied based on the alleged refusal of suitable work, is pending. Appellant was informed by the Department that the Double Affirmation is not part of the \$10,550 overpayment hearing, but part of the Bona Fide Offer refusal that it being brought before the Administrative Law Court (ALC) and which will be up to the ALC to decide, not the Agency. The Double Affirmation approval, which is part of the Appellant's claim, and, according to the Department's own admission is part of the Bona Fide Offer Refusal in front of the ACL, will negate the \$10,550 overpayment. If the Court rules in the Appellant's favor and substantiates the Double Affirmation that is before the Court, this will negate any further appeals on the overpayment as related to the alleged Refusal of Bona Fide

offer. Therefore, the Appellant is respectfully asking that the Department's Approval of the Double Affirmation, which is reflected in the Appellant's Portal, but was omitted in the initial ROA, be supplemented to the record.

Upon further review of the records, although the findings are reported in the Appellant's portal, the records fail to include the Appellate Decision of May 5, 2020 which was again in the Appellant's favor and which dismissed the original appeal by the employer. This May 5, 2020 Appellate dismissal is relevant to the case, should have been part of the Tribunal records which should have been shared with the Panel and is also relevant to the Double Affirmation which is in front of the court, but is also missing from the original ROA. The Appellant requests that this May 5, 2020 Appellate decision be part of the record.

The Appellant requests that the Pandemic Unemployment Pamphlet on who is eligible to receive unemployment, particularly referring to #5 is also relevant. It states someone is eligible for PUA if "You are unable to reach your place of employment because of a quarantine imposed as a direct result of COVID" – which further discounts the Panel's decision stating that the Appellant refused a Bona Fide offer because she moved out of town which does not constitute good cause. The Appellant wants to make an argument to dismiss the Panel's decision on more than one level – not only was there not a bona fide offer, the reasons why it was not a bona fide offer (including that it has to be a reasonable commute, which it is not and which is part of the description of a bona fide offer) and would also like to dismiss the new findings based on the Panel's decision claiming that the Appellant moved out of town without good cause, when there is a global pandemic and a government ordered stay at home ordinance is in effect.

The Appellant learned for the first time, after the Respondent sent the Records on Appeal, that the employer's alleged claim regarding the refusal of a Bona Fide offer is that **two** offers of work had been made and **two** offers of work had been turned down by the Appellant (ROA 207 Agency Exhibit 1). The Appellant was never notified that the Employer was claiming two offers were made and two offers were rejected nor did the employer submitted any evidence at all to the Appellant, to the Department, or as evidence for any of the subsequential hearing regarding these alleged claims. The Appellant was not privy or aware of this dual claim until after the

Respondent sent the ROA. The May 14, 2020 letter to gauge interest, which the employer sent via e-mail for “hopeful” hours was what the *Appellant* submitted as evidence along with other written correspondence between the employer and the Appellant, starting when the employer gave the Appellant, after being laid off due to COVID, permission to apply for unemployment benefits. The employer provided no evidence at all for any of the hearings. This May 14, 2020 letter that the Appellant submitted, is part of the alleged Bona Fide Offer refusal which was not a Bona Fide Offer or a refusal. In lieu of this new finding, since the Appellant has shown good cause and since this finding is of material matter, the Appellant is requesting that the April 25, 2020 ServSafe Certification work offer e-mailed by employer to the Appellant and the subsequent Appellant’s response to please be a part of the record. This correspondence proves that the request to work and earn 4 hours of wage was not turned down, that the Appellant completed the certification, the employer promised that the 4 hours of work will be paid when the Appellant returns to work, as well as that the employer acknowledged receipt and confirmation that the Appellant completed the ServSafe Certification.

During the hearing, the Employer responded three different times that there was no communication between the employer and the Appellant and alleged that there was no response from the Appellant to the alleged Bona Fide offer. The correspondence between the employer and the Appellant was submitted as evidence for Tribunal hearing one, Tribunal hearing three, and for the Panel’s review (but only included dates and contextual text information written verbatim from the text messages along with e-mails but did not include text screen shots). To supplement the record, the Appellant is asking to allow Correspondence from March – June 2020 (with screen shots of text messages) to be admitted into the Record. This will substantiate the record of correspondence (which was later admitted of being received by the employer in the hearing after stating that the last correspondence of any kind was on the last day of work, March 12, 2020 – the day before the President declared a national emergency) and to prove that the Appellant did respond to the employer, which is also relevant as to whether or not a Bona Fide offer was refused.

SECTION 1-23-320. Notice and hearing in contested case; depositions; subpoenas; informal disposition; content of record. (E) Opportunity must be afforded all parties to respond and present evidence and argument on all issues involved. Since these documents are material to

the matter that is before this court, the Appellant respectfully requests that the Court to approve the supplement to the Record.

The "New Debt \$524 in error" - after waiting over 120 days for the appeal to be heard and after appeal was ruled in Appellant's favor, the once frozen account became unfrozen, and Appellant was eligible to receive benefits. The Department sent out a letter regarding an overpayment in the amount of \$524. The Department discovered the letter was sent out in error and worked on "fixing" the problem. Despite the Department escalating this three times, the Department "fixed" the problem by indicating a minimum payment of \$0 is due. However, they could not eliminate the letters that were being generated regarding a Notice of Action Regarding State Income Tax Return(s). Therefore, the Department asked the Appellant to pay the debt, which is the only other solution to eliminate the notice letter to submit outstanding debt to the Department of Revenue, and then the Department would pay the Appellant back. Due to further complications, this error resulted in a total of \$679.33, to be refunded to the Appellant. This error occurred because of the refusal of an offer of work and the extreme time it took to have the hearing heard before the Tribunal and complications resulting from this alleged Bona Fide refusal after the Appellant's PUA eligibility benefits were upheld. This is also part of the Appellant's appeal filed before the court, as this was not a final decision to be appealed to the court, but another error, per the Department's discovery, that they were attempting to fix as a direct result from the alleged Bona Fide Offer Refusal to correct but was not addressed due to the Panel's final decision and is yet another example of the cumulative errors, as mentioned in the Appellant's appeal to the court, as a result of the alleged Bona Fide offer refusal before the court.

The Department advised Appellant not to file with the ALC, but to instead file an Appeal with the Department due to the Department's cumulative errors and to also contact the Appellant's State Representatives and to file a Waiver Request. The additional documentation requested to be part of the record including the Waiver Request, e-mail to Appeals Help, Correspondence from DEW's Director of Governmental Affairs, Waiver Application, Rescheduled Hearing 6 (Regarding the Overpayment of which the Approval of Double Affirmation could not be heard), the Notice of Appeal to the Appellate Panel, and Determination of Waiver Appeal (denied due to refusal of Bona Fide Offer when Appellant was told a Waiver has nothing to do with a refusal of Bona Fide offer and should not have been denied based on

this, but, nevertheless, it was) was asked to be part of the record, shows the number of errors made by the Department's own admission but as stated by the Respondent, will be allowed to be addressed in the Appellant's brief and therefore can be omitted from the Record unless the Court decides otherwise.

Appellant respectfully request this Court to approve Appellant's motion to supplement the record with the following as these are material to the matter that is before this court:

- Appeal January 28, 2021 Tribunal Decision (Appeal 4 Faxed February 16, 2021)
- Proof of Double Affirmation
- The May 5, 2020 Tribunal decision (which dismisses the employer's appeal)
- The Department's Pandemic Unemployment Assistance Document
- The April 25, 2020 ServSafe Certification offer of work by employer (including the Appellant's Response, and the Employer's Response to the Appellant
- The Correspondence from March - June 2020 (with screenshots)

The Appellant also respectfully requests the Court, at the Court's discretion, to allow the January 13, 2021 New Debt of \$524 to be allowed to be entered into the record as this is not a final decision to be appealed to the court, but another error, per the Department's discovery, that the Department was attempting to fix as a direct result from the alleged Bona Fide Offer Refusal but was not addressed due to the Panel's final decision and is yet another example of the cumulative errors, as mentioned in the Appellant's appeal to the court, as a result of the alleged Bona Fide offer refusal before the court.

Respectively submitted,



Katrina Daniels
Appellant

Dated: July 16, 2021

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Katrina Daniels,	)	Docket No. 21-ALJ-22-0016-AP
)	
Appellant,)	
)	
v.	)	PROOF OF SERVICE
)	
4056 Main, LLC, & South Carolina)	
Department of Employment and Workforce)	
)	
Respondents.)	
_____)	

I hereby certify that I have served the Response to the Respondent's Response to the Appellant's Motion for an Order to Supplement the Record on Appeal in the above-captioned matter by depositing it in the United States Mail, postage prepaid on July 15, 2021 to the below named parties at their address of record:

The Honorable Phillip Lenski
South Carolina Administrative Law Court
Edgar A. Brown Building
1205 Pendleton Street, Suite 224
Columbia, SC 29201

Ben Cook
Office of General Counsel – SCDEW
PO Box 8597
Columbia, SC 29202

4056 Main LLC
404 Oak Street
Clemson SC, 29631

July 16, 2021

Katrina Daniels


FILED

3439 Fallowbrook Forest
York, SC 29745
JUL 16 2021

SC ADMIN. LAW COURT

shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties concerning a pending or impending proceeding....”). Following this Court’s July 28 Order denying Appellant’s Motion, Appellant has repeatedly contacted this Court without including Respondent in her communications, frequently explicitly seeking direct, improper communication with Judge Lenski, and has continued to do so despite this Court stating “numerous times” that “all parties must be included on any correspondence with the court.” *See* Exhibit 1; *see also Burgess*; *see also* § 1-23-360; *see also* Canon 3(B)(7).

On August 13, 2021, Appellant submitted her Brief. Attached to Appellant’s Brief are five exhibits labelled Exhibit A through Exhibit E. (App.Br.31-35). These documents do not appear anywhere in the Record and are among the documents Appellant previously petitioned the Court to have included. By including these documents, Appellant flagrantly disregards both SCALC Rule 36(G), limiting the Court’s review to the Record, and this Court’s prior Order which rebuffed Appellant’s previous attempt to supplement the Record and ruled that the documents were not proper for inclusion. Appellant repeatedly relies on these documents throughout her brief in both an ineffectual attempt to bolster her factual assertions and to seek relief outside the bounds of the issue properly before this Court.

SCALC Rule 38 permits an administrative law judge to “dismiss an appeal or resolve the appeal adversely to the offending party for failure to comply with any of the rules of procedure for appeals, including the failure to comply with any of the time limits provided in these rules or by order of the Court.” Further, the Revised Notes to Rule 38 clarify:

In all cases involving pro se litigants or those without substantial knowledge and experience in administrative matters, the administrative law judge may make reasonable efforts to assure fairness. Nevertheless, such litigants remain responsible for complying with these Rules and all applicable statutes. An administrative law judge may dismiss an appeal or resolve an appeal adversely to the offending party for failure to comply with any of the ALC Rules of Procedure for appeals or for failure to comply with an order of the Court.

This Court has already been more than fair in making allowances for Appellant's lack of experience with ALC procedure, but Appellant has now repeatedly ignored the directions of the Court to include Respondent in all communications with the Court and has directly and unequivocally flouted an Order of the Court denying her attempt to supplement the record. Neither of these violations have anything to do with Appellant's inexperience with ALC procedure nor do these violations require the Court to make any extra efforts to ensure fairness.

Respondent respectfully requests that this Court dismiss Appellant's appeal, pursuant to Rule 38, for her repeated violations of this Court's written rules, her disregard of this Court's express directives, and her blatant attempt to circumvent this Court's written Order. Respondent requests that all deadlines be held in abeyance pending the outcome of this motion.

[Signature on Following Page]

Respectfully Submitted,

A handwritten signature in blue ink that reads "Ben Cook". The signature is written in a cursive style with a horizontal line underneath it.

Benjamin T. Cook (SC Bar # 102216)
SC Department of Employment and
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**Attorney for Respondent SC Department of
Employment and Workforce**

September 2, 2021

Katrina Daniels
3439 Fallowbrook Forest
York, SC 29745

September 7, 2021

The Honorable Phillip Lenski
South Carolina Administrative Law Court
Edgar A. Brown Building
1205 Pendleton Street, Suite 224
Columbia, South Carolina 29201

RE: Katrina Daniels v. SCDEW and 4056 Main LLC
Case No: 21-ALJ-22-0116-AP

Dear Honorable Judge Lenski:

Enclosed please find the Response to the Respondent's Motion to Dismiss in the above referenced case along with the Proof of Service served to the other parties.

With kindest regards, I remain,

Yours truly,



Katrina Daniels
Appellant



STATE OF SOUTH CAROLINA
 ADMINISTRATIVE LAW COURT

Katrina Daniels,	)	Docket No. 21-ALJ-22-0016-AP
)	
Appellant,)	
)	
v.	)	APPELLANT'S RESPONSE TO
	)	RESPONDENT'S MOTION
4056 Main, LLC, & South Carolina	)	TO DISMISS
Department of Employment and Workforce)	
)	
Respondents.)	
)	

Appellant, Katrina Daniels, respectfully requests that the Court dismiss Respondent's motion to dismiss Appellant's appeal.

This case is on appeal to this Court from a final decision of the Department's Appellate Panel (Panel) dated March 31, 2021. The Department's Appellate dismissed the employer's first appeal on May 5, 2020. The employer appealed again. The Department's Appellate Tribunal (Appellate) ruled in the Appellant's favor on October 7, 2020. The employer requested another hearing because she was not present. On January 28, 2021, the Appellate ruled in the employer's favor. On February 9, 2021 and March 28, 2021, the Appellate granted Double Affirmation approval. On March 31, 2021, the Panel confirmed the January 28, 2021 decision. On April 22, 2021, the Appellant appealed the Panel's decision to the Administrative Law Court (ALC). On June 14, 2021, the Department filed the Record on Appeal. On June 21, 2021, the Appellant filed a "Motion for an Order to Supplement the Record on Appeal." On June 29, 2021, the Respondent filed a Response asking the Court to deny Appellant's Motion. Appellant filed a reply to this response on July 16, 2021. The Court issued an Order Denying Appellant's Motion to Supplement the Record on Appeal on July 28, 2021 but stated, "Nothing in this order should be read as limiting the Appellant's ability to argue the assignments of error in the proffered documents. The Appellant may fully discuss any perceived errors and supporting authority in her brief to this court."

The Appellant is trying very hard, with great respect, to file correctly and to adhere to all the rules. Despite many attempts to get legal representation, the Appellant was told by many



firms that they no longer handle Unemployment cases, the case is too complex and involved, the firm cannot get involved at this point, their schedule is full and would not be able to help due to time constraints, or the firm does not deal with appeals at the ALC level. The Appellant did reach out to SC Legal Services, but they were also not able to represent her. The ALC advised the Appellant that one does not need a lawyer to be heard and that the ALC is there to answer questions regarding rules and procedures on how to properly file an appeal, as they are aware that someone pro se would not possess such knowledge. The ALC explained the process: once the Appellant's appeal is received, the Department will have 30 days to produce the Record on Appeal (ROA). In this case, the Department had 60 days to comply. It is the Appellant's responsibility to make sure that the ROA is complete. It is better to have a complete ROA, or else it would be the Appellant's responsibility to submit the additional records along with the brief.

Upon receiving the ROA, the Appellant noticed that the ROA was missing records, and on several pages of the ROA the bottom half of the record did not print out clearly or at all. The Appellant thought it was a simple oversight and notified the Department via voice message. The Department responded via e-mail on June 15, 2021 at 9:08 A.M., stating that the Department did not see any documents that were received between February 18, 2021 and March 31, 2021, the Department does not have a clearer copy available to include, and told the Appellant, "...you are free to make any relevant arguments you wish within the body of your Appellant's Brief to the Court." Some of these records are very important to the case and can be seen in the portal, but for some reason these were omitted from the original ROA.

The Respondent argues that the Appellant and the Appellant's father had previously contacted the court electronically on multiple occasions and attached copies of documents the Appellant sought to have added to the Record. The Appellant has more than one e-mail account and had used the family's joint e-mail on one of the communications, as the Appellant was not able to temporarily send or receive e-mails from the other e-mail account.

The Respondent argues that the staff repeatedly advised Appellant that SCALC Rule 36 required Appellant to submit physical copies of the documents and that the Appellant refused to comply with the requirement. This statement is not true. The Appellant called ALC, explained that the ROA is not complete and missing relevant information, explained that the missing

records are viewable in her portal and are privy to both parties but not included in the Departments Record on Appeal, and asked what the court rules and procedures are for requesting these missing records in order for them to be included in the ROA (as the Appellant is not knowledgeable of these procedures and was not sure what to name the motion). The Appellant could file a Motion for an Order to Supplement the Record on Appeal. The missing Records only needed to be listed by name, but an actual hard copy of the missing records is not required since these records are already available in the portal and accessible to both the employer and the Department. The Department has detailed evidence of certain records, such as the reason for the dismissal of the employer's first appeal by the Appellate on May 5, 2020, and the determination of both the February 9, 2021 and March 28, 2021 Appellant's Double Affirmation approval (which took place before the Panel's final decision of March 31, 2021). The Appellant only has screenshots from her portal as proof that these Appellate decisions were made. The motion (including the list of missing records), the proof, and a cover letter is all that was required to be sent to the applicable parties by the United States Postal Service, as the parties already have access to the missing records in the portal. Although the Court does not file electronically and a hard copy of the proof and the motion is required, Appellant, as a courtesy, could attach these missing records along with a copy of the mailed proof and motion via e-mail to the ALC and the Department.

According to Rule 36: “ (2) Form; Copy of a Document. Each matter must be separately stated. A request to admit the genuineness of a document must be accompanied by a copy of the document unless it is, or has been, otherwise furnished or made available for inspection and copying.”

The Appellant, in good faith, did provide the additional (but not required) courtesy e-mails, in addition to mailing the required hard copies through the United States Postal Service. The Respondent claims that they were not included in any of these communications and the Respondent has not seen these communications. This is not true, as both the court and the Respondent were sent these courtesy e-mails on Monday, June 21, 2021 at 2:06 p.m. and a second courtesy e-mail regarding the Respondent's response to the Motion on Thursday, July 1, 2021 at 10:50 a.m.

The Appellant had 20 days to postmark the completed Brief. The Appellant tried to contact the ALC by phone regarding general procedural questions asking how to send the brief (loose-leaf, paper clipped or bound), whether there is a page limitation (some documentation said no page limit, others said 30 page limit, and yet others said 50 page limit), whether a Table of Contents is required, how to properly cite quotes (if the format "ROA page number II line number" is acceptable), how to address items that the Court is allowing to be addressed but which were not supplemented to the Record (whether to include documents after the brief and, if so, whether to label as exhibits and excluded from the page numbering of the brief or whether the Appellant is only to mention the fact in the brief without requiring additional supportive documentation), and whether it would be courteous to e-mail the brief as well (in addition to mailing the hard copy).

The Appellant was not able to reach the ALC by phone and left a voice message. After over a week had passed, and with the 20 day deadline approaching, the Appellant sent an e-mail with a list of these basic questions. The ALC sent an ALC rules attachment to answer all the Appellant's questions, and copied the Department, but the attachment did not answer any of the Appellant's general procedural questions stated above. Nowhere in the attachment did it state if the brief could be sent loose-leaf, if a paper clip was acceptable, or any of the other filing or procedural questions. Appellant was not aware that she needed to copy the Department on such simple, non-legal, general procedural questions.

The Appellant then corresponded to both the Department and ALC with a "reply all" email informing them both that the ALC rules attachment did not answer these basic questions and asked if either of them would please help to get these questions answered, as the Appellant explained that she could not find any other legal documentation or instructions that answered these questions sufficiently. The Appellant received no further correspondence or documentation from the Respondent, nor was the Appellant privy to any conversation or involvement regarding the Appellant to the other parties prior to this. Therefore, the Appellant also requested to please let his Honor know that the Appellant is making every attempt to do things correctly and to sincerely apologize for any previous misunderstandings, as it was mentioned that the Appellant was notified repeatedly by staff that the missing records needed to be sent. The Appellant asked to please kindly let his Honor know that this was not the case. There was only one

communication received on the same day the first courtesy e-mail was sent stating that a Motion is not filed until the court receives a signed hardcopy, including all attachments, in the mail. The Appellant thought that the attachments were referring to the hard copy of the proof, cover letter, and the motion listing this missing ROA records (not the records themselves because it was confirmed that these records are already available to both the Department and the employer via the portal, and therefore do not need to be included). Since the hard copies were mailed earlier that same day, the Appellant knew the copies would arrive in a few days. If after the Court received the hard copies of the Appellant's request to Supplement the Record on Appeal, mailed June 21, 2021 or after the subsequent documentation mailed by Appellant on July 1, 2021, and advised the Appellant that a hard copy of the records is additionally required, the Appellant would have welcomed the opportunity to cure and would have gladly sent the additional hard copies of the records to all parties, but no written or verbal communication was received. Therefore, the Appellant was not afforded multiple opportunities to comply as the Department alleged. However, the Appellant is grateful that the Court was not limiting the Appellant's ability to argue the assignments of error in the proffered documents and that the Appellant will be allowed to fully discuss any perceived errors and supporting authority in her brief to this court.

The Appellant stated in the aforementioned e-mail, which was sent on Monday, August 2, 2021, at 9:40 p.m., that since so much time and effort has been put into this, she did not want anything to be dismissed based on a technicality and was hopeful someone would kindly address her concerns. No one responded to the questions posed in the e-mail. Instead, the Appellant was advised to put any issues or concerns in writing, file with the court, and serve on the Department. The Appellant reached out to the SC Bar to see if they could help. Appellant was told to call ALC, since they can best answer procedural questions. It appeared the Appellant's questions would remain unanswered, and the due date was rapidly approaching. The Appellant's Brief needed to be submitted in 20 days and it was important that the Appellant adhere to the Court's clearly defined deadline.

Since the Court stated that the "Appellant may fully discuss any perceived errors and supporting authority in her brief to this court" the Appellant filed it loose leaf, with a paper clip, limited the Brief to 30 pages, documented the cases based on examples of how other Briefs had

documented their cases, and added supporting authority as exhibits. The Brief, cover letter and proof was sent to each of the parties by United States Postal Service, on Friday, August 13, 2021, before the 20 day deadline had surpassed.

Contrary to what the Respondent has alleged; the Appellant worked hard to learn the rules and respectfully comply with the ALC procedures. The Appellant is entirely new to this process, admits that she is not sure what the rules are and has gone to great lengths to be mindful and respectful towards abiding by these requirements. The Appellant is grateful for this opportunity, and respectfully asks your Honor to please allow her case to be heard and to dismiss the Respondent's motion as the Appellant acted in good faith and did not flagrantly disrespect the Court rules.

Whenever a civil case is brought by a pro se party, the judges of this court outline proper procedure so that the pro se party will not be deprived of a fair opportunity to present his or her case. See *Roseboro v. Garrison*, 528 F.2d 309, 310 (4 Cir. 1975).

“West Virginia Supreme Court of Appeals explained: The fundamental tenet that the rules of procedure should work to do substantial justice. . . . commands that judges painstakingly strive to insure that no person's cause or defense is defeated solely by reason of their unfamiliarity with procedural or evidentiary rules. . . . Cases should be decided on the merits, and to that end, justice is served by reasonably accommodating all parties, whether represented by counsel or not. This “reasonable accommodation” is purposed upon protecting the meaningful exercise of a litigant's constitutional right of access to the courts. *Blair v. Maynard*, 324 S.E.2d 391 (West Virginia 1984).” *Judicial Conduct Reporter*, Volume 36, NO. 3: Fall 2014
https://www.ncsc.org/_data/assets/pdf_file/0013/15250/jcr-fall-2014.pdf

“Similarly, a justice of the Arizona Supreme Court argued, albeit in dissent: The courts do not treat a litigant fairly when they insist that the litigant — unaided and unable to obtain the services of a lawyer — negotiate a thicket of legal formalities at peril of losing his or her right to be heard. Such a practice manifestly excludes the poor and the unpopular, who may be unable to obtain counsel, from access to justice. * * * Meaningful access requires some tolerance by courts toward litigants unrepresented by counsel. Pro per litigants are by no means exempt from the governing rules of procedure. But neither should courts allow those rules to operate as hidden,

lethal traps for those unversed in law.” Judicial Conduct Reporter, Volume 36, NO. 3: Fall 2014

https://www.ncsc.org/data/assets/pdf_file/0013/15250/jcr-fall-2014.pdf

Respectively submitted,

A handwritten signature in black ink, appearing to read "Katrina Daniels", written in a cursive style.

Katrina Daniels (Appellant)

September 7, 2021

STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT

Katrina Daniels,)
)
Appellant,)
)
v.)
)
4056 Main, LLC, & South Carolina)
Department of Employment and Workforce)
)
Respondents.)
)

Docket No. 21-ALJ-22-0016-AP

PROOF OF SERVICE

I hereby certify that I have served the Response to the Respondent's Motion to Dismiss in the above referenced case by depositing it in the United States Mail, postage prepaid on the 7th of September 2021, to the below named parties at their address of record:

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September 7, 2021



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