

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Ralph King Anderson, III, Judge

Appellate Case No. 2012-212844

John Ray and Sherry Ray,

Appellants,

v.

S.C. Department of Revenue,

Respondent.

REPLY BRIEF OF APPELLANTS

RECEIVED
MAY 13 2013
SC Court of Appeals

J. William Ray
P. O. Box 8535
Greenville SC 29604-8535
(864) 313-5332
PRO SE/ATTORNEY FOR APPELLANTS

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REPLY STATEMENT OF THE CASE

The pro se Appellants ("Rays") are individual citizens. The S. C. Department of Revenue ("DOR" or "the Respondent") is a state agency, as is the Administrative Law Court ("ALC"). On May 11, 2012, a Contested Case was filed by the Rays and discovery pursuant to the Rules of the ALC was served. While admitting discovery was proper and needed by both parties (R. p.) DOR refused disclosure of its witnesses and experts (if any), testimony subject matter, and copies of its documents, including those which might be beneficial to the Rays. No order ensued requiring the exchange of any such information or evidence outside the standard Rules of discovery. Rules 17A(4) and 27(A), (B) & (C), Rules of the ALC. More regrettably, the tribunal gave its approval to DOR discovery misconduct by granting Summary Judgment. This appeal necessarily followed.

STATEMENT OF FACTS NOW CONFIRMED BY DOR

The following slightly truncated version of the procedural history, with minimally added events (some of which are only now disclosed by DOR in the midst of this appeal), is necessary to call attention to DOR's and the tribunal's disregard of Rules, procedures, and time allowances.

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On **May 11, 2012**, the Rays timely filed and served their pro se signed Request for a Contested Case Hearing giving only a general synopsis (i.e., "brief statement", as directed) of facts in a tiny form space and noting the applicability of "no less than" judicial estoppel, in pari delicto, laches, waiver, etc. That filed submission was signed by a pro se party. (R. p.).

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Neither DOR nor the tribunal requested more expansive details or supplemented "pleadings", as allowed by the Rules of the Administrative Law Court.

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Also on **May 11, 2012**, pursuant to Rules 33 and 34, SCRCP, and Rule 21 of the Administrative Law Court, the Rays separately served Rule 33 "standard" interrogatories and document production requests. (R. p.). Due to a history of information sandbagging by DOR throughout (App. Brief), the undersigned concedes the overlap of several requests.

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In the Interrogatories, for reasons apparent from the Record and the Appellants' Brief, the Rays specifically requested contact information for former DOR employee Will Revson and copies of any statements from him and DOR employee Stokes. (R. p.).

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On **May 23, 2012**, a Notice of Case Assignment was issued. (R. p.).

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Not a single Interrogatory answer was provided, not a single document was produced, however, no objection (formal or informal) was raised by DOR until now. (Res. Brief p.). No extension of time was requested. No protective order was sought by DOR. No claim of privilege was made. (R. p.).

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On or about **June 15, 2012** (as disclosed to the Rays only in proceedings here; see DOR Return to Motion), DOR began a regrettable series of hand-deliveries directly to the tribunal, while tardily posting copies by standard mail to the Rays which consistently failed to arrive until some three to four (3-4) days after submission to the tribunal. (R. p.). (Cf. Rule 5(b)(3), SCRCP: service on counsel by "same time", "same means"; and Rule 16(e), SCRCP: "any briefs and memoranda submitted in support of pending motions" ... "same time", "same means"; and ALC Rule 29A(8) "same time", "same method".).

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On that date, thirty-five (35) days after discovery service by the Rays, DOR submitted its Prehearing Statement. In that Statement, DOR failed to identify a single witness, using only the

terms “a representative” and “any further witness”. (R. p.). However, therein DOR confirmed the propriety of discovery and made no objection to that which was then pending. (R. p.).

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On **June 19, 2012**, the Appellants filed and served their Prehearing Statement with the Administrative Law Court. It noted, among other things, that the Appellants would argue no less than various forms of Estoppel, waiver, laches, in pari delicto/unclean hands, gross negligence, and DOR’s failure to comply with DOR’s own published procedures. That submission was signed by a pro se party. (R. p.).

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Notably, included in that statement was a clearly stated notation that discovery had already been served, was past due, and that discovery motions and subpoenas might prove necessary. (R. p.).

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Abundantly clear in that **June 19, 2013** document, was a mailing address, an email address, and a 24/7/365 phone number. (R. p.).

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On **June 25, 2012**, exactly forty-five (45) days following service of discovery, the undersigned received a loose leaf, unstapled, unstamped document entitled Motions for Summary Judgment and to **Extend Deadline for Discovery Responses**. (R. p.) (emphasis added).

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It is only now confirmed that the DOR Motion had been “hand delivered” to the tribunal three (3) days earlier. (R. p.). (It is also only disclosed here (February 11, 2013, DOR Return to Motion, Exhibit B) that the hand delivered DOR Motion was submitted after a Notice of Hearing on the merits was issued, but not served upon the Rays). (R. p.).

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The DOR Motion was not supported by Affidavit or other authentication. It bore no signature other than that of DOR's chosen attorney. (R. p.).

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DOR specifically, and accurately, noted that its Motion was brought pursuant to "Rule 56, SCRCF".

Moreover, it conceded that discovery responses were, at least, due. (R. p.).

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Perhaps most importantly, in its Motion, on **June 22, 2012**, DOR admitted that, in the absence of Summary Judgment, it would be necessary for DOR to respond to pending discovery. (R. p.).

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No notice of Summary Judgment Motion hearing or non-hearing was given by any source.

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No notice of a merits hearing was provided by the tribunal, the Administrative Law Court or DOR.

(R. p. ; Rays' Court of Appeals Motion to Strike, dated February 1, 2013, ¶ 7c; Rays' Reply to DOR's Return to Motion, dated February 14, 2013, ¶ 1).

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With no notice from DOR or the Administrative Law Court or knowledge otherwise, on **July 7, 2012**, the undersigned notified the Administrative Law Court and counsel for DOR of his anticipated **July 27-31, 2012** absence. (R. p.).

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On **July 26, 2012**, the tribunal issued the order under appeal granting Summary Judgment, oddly coinciding with the announced absence of the Rays, but confirming an accurate mailing address for the Rays and bringing into greater question the absence of service of the Notice of Hearing. (R. p.).

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As of the date of that Order, July 26, 2012, the underlying Contested Case was a scarcely seventy-six (76) days (2 ½ months) old and the ALC Rule 21A window for discovery had twenty-six (26) days remaining. (R. p.).

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The Order of July 26, 2012, fully *sua sponte*, abrogates the protections of Rule 56, SCRCPC; raises ALC Rule 19A, also fully *sua sponte*; and, in the same manner, gratuitously (and erroneously) supports its ruling by finding that the Medical University is solely a graduate school. (R. p.). At no point in the order under appeal did the tribunal address the refusal of DOR to allow any discovery while admitting that discovery was proper and necessary. (R. p.).

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On **July 27, 2012**, the undersigned personally reviewed all mail prior to his departure.

The Order was not delivered on July 27, 2012. (R. p.).

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During the period **July 28-30, 2012**, in the midst of the announced absence of the undersigned and acknowledging an accurate mailing address for the Appellants, the Summary Judgment Order arrived. (R. p.).

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The Order under appeal was retrieved from the P. O. Box of the undersigned on June 30, 2012, and was reviewed for the first time upon his return on the evening of **July 31, 2012**. (R. p.).

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On **August 3, 2012**, the Appellants filed and served their Motion for Reconsideration. (R. p.).

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On **August 8, 2012**, confirming an accurate email address for the Appellants, the tribunal requested that the Appellants' Motion for Reconsideration be resubmitted via email in WORD format. (R. p.).

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By order dated **August 21, 2012**, the Appellants' Motion was denied. A copy was provided to the undersigned, by email only, on that same date. (R. p.).

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Only then, on **August 21, 2012**, did the time specifically afforded by the Rules of the ALC for discovery and confirmed as applicable by all parties (90 days from the May 23, 2012 Notice of Case Assignment) expire. (R. p.); ALC Rule 21A.

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This appeal was served the next day and received for filing on **August 24, 2012**, less than thirty (30) days after issuance of the Summary Judgment Order. (R. p.).

Summary of Most Important Dates

Discovery in the matter before the tribunal was promptly served on May 11, 2012. (R. p.). The tribunal (as disclosed to the Rays only in proceedings here; DOR Return to Motion), 30 days into the minimum 90 days afforded for discovery (Rule 21A, Rules of the ALC) and despite its notice and knowledge of pending discovery (R. p.), on June 22, 2012 set a merits hearing. (R. p.). Only thereafter, DOR submitted a Summary Judgment Motion including its admission that discovery was outstanding and that, if Summary Judgment was denied, DOR would have to proceed with discovery disclosures. (R. p.). On July 26, 2012, 64 days into the 90-day minimum allowed for discovery, the tribunal issued its Summary Judgment Order. (R. p.). On August 21, 2012: 102 days after the case was filed, on the 90th day of the discovery window, and with a reiteration of the discovery issues before it (R. p.), the tribunal issued its refusal to reconsider its grant of Summary Judgment. (R. p.).

DOR MISPERCEPTIONS

Base on the arguments and bare assertions of its brief, DOR adopts positions that contradict South Carolina law and precedent and do not square with its own conduct. Several such items constitute new matter and, due to their obvious inaccuracy, the Rays can only conclude that they are based in misperceptions of fact and law and they reply as follows.

Misperception I: The Administrative Law Court is NOT empowered to modify the Rules of Civil Procedure, promulgated by the Supreme Court, and is NOT entitled to disregard the limits upon Administrative Law Courts imposed by statute

The Rules of the Administrative Law Court are not comprehensive. In fact, the text of the Rules themselves concede as much. ALC Rule 68; (R. p.). Further, those Rules are even self-contradictory in some respects (cf. Rule 29D entitled and providing for a “Motion for Reconsideration” and Rule 65 prohibiting “motions for reconsideration”).

Although not especially brief (compared to the Criminal, Probate, Family Court and Magistrates Rules), the ALC rules do not provide for or even address Summary Judgment. Moreover, aside from a single Rule 71D(1) reference to the fee to be charged, the phrase “Summary Judgment” does not even appear in the ALC rules.

However, Rule 68 the ALC rules provides, in its entirety, that:

“The South Carolina Rules of Civil Procedure and the South Carolina Appellate Court Rules may, in the discretion of the presiding administrative law judge, be applied in proceedings before the Court to resolve questions not addressed by these rules.” (R. p.).

While discretion is given to as to which Rule of the SCRCPP the tribunal may choose (the tribunal could have properly refused to even countenance the DOR Summary Judgment), notably absent from Rule 68 is any provision for modifying Rule 56, or any Rule of Civil Procedure in any fashion. (R. p.).

Very notably, and properly, DOR has cited no such authority. Consequently, it is undisputed that the tribunal “may ... appl[y]” Rule 56. However, nothing in the Rule or the Record or the DOR brief asserts that a tribunal is empowered to do other than implement Rule 56 (as written and construed by the appellate courts). To accept the DOR argument that the tribunal properly “applied” Rule 56, SCRCP, is to accept an assertion that a non-judicial executive branch agency (infra) can modify the rules of this Court and the Supreme Court as it sees fit. DOR protestations notwithstanding, ALC Rule 68 does not provide for that usurpation of judiciary authority and it cannot reasonably be so construed.

Yet, the tribunal below, without any support and in contradiction of its earlier findings (R. p.), departs from the strictures of a “plain language” reading of ALC Rule 68 to declare itself free from the burden of having to “adopt” all of the provisions of Rule 56, SCRCP. In short, the tribunal states without reservation that it is empowered to modify the Rules of Civil Procedure, or “adopt” only those portions that it singularly feels useful on any given day.

The reasoning for such a limit apparently escapes DOR, but is abundantly clear. The Administrative Law Courts, created by the General Assembly, are an “agency” of the executive branch of state government, exactly like DOR. S.C. Code § 1-23-500. As an agency, the Administrative Law “Court” has no authority to promulgate Rules for any court other than its own. It has no authority to sit in review or modify such Rules prior to implementation. Those powers are restricted exclusively to the Supreme Court and the General Assembly. Article V, § 4A, South Carolina Constitution.

The Supreme Court briefly addressed the powers of the Administrative Law Courts over a decade ago. “... ALJs ... must follow the [rules] **as written**” until the propriety or impropriety thereof is determined **judicially**. *Great Games, Inc. v. S.C. Department of Revenue*, 339 S.C. 79, 85, 529 S.E.2d 6, 9 (2000) (emphasis in original). Moreover, the very statutory scheme that brought the Administrative Law Courts into existence provides that rules are not implemented at

individual tribunal discretion (S.C. Code §1-23-650(B)(2)) and, under any conditions, any and all ALC rules must be fully “consistent with the rules of procedure governing civil actions in courts of common pleas”. S.C. Code §1-23-650(B)(1); emphasis added.

Moreover, apparently the tribunal applies Rule 19A selectively. For example, here, the tribunal did not apply the same 10-day time limit to DOR. (R. p.). For another example of tribunal inconsistency and refusal to implement “plain language”, see *Duke Energy Carolinas, LLC v. South Carolina Department of Health & Environmental Control*, Op. No. 5062 (Ct.App. May 1, 2013): the asserted 10-day “rule” was not applied by this same tribunal to DHEC’s response to Duke’s Summary Judgment Motion; a Summary Judgment hearing was actually noticed and was held; Summary Judgment was awarded to Duke; even non-responding Conservation Groups were allowed to participate in a Motion for Reconsideration; and the Court of Appeals reversed the tribunal’s award of Summary Judgment. The Court of Appeals held that this same tribunal had “erred in finding, as a matter of law, that [plain language limitations in a regulatory scheme] had no application ...”. Interestingly, the Court of Appeals noted that estoppel (no specific version is listed in the opinion) and waiver (also cited by the Rays, R. p.) had been raised but that the misapplication of a plain language regulation was sufficient for reversal and rendered those points unnecessary to address in the Opinion.

Misperception Conclusion

DOR specifically requested and the tribunal chose to use Rule 56, SCRCP in this matter. Having done so, it was reversible error for the tribunal: a) to depart from and disregard the “plain language” of Rule 56; b) to “adopt” a rule for itself that was not subjected to majority ALC approval; and c) to interpret and administer Rule 56 in such a way as to be fully “[in]consistent with the rules of procedure [used] in the courts of common pleas”. It is reversible error for any lower court to determine that plain language limitations on procedure have “no application” in the matters before it. *Duke Energy Carolinas, LLC*.

Misperception II: ALC approval of DOR's complete and total refusal to respond to any discovery does NOT equate to the disallowance of further discovery

Discovery is allowed in the Administrative Law Court. ALC Rules 21 and 68. DOR admits to receipt of seven (7) of the eight Rule 33, SCRCP, "standard" Interrogatories. ALC Rule 21A. (R. p. ; Res. Brief pp.). Moreover, DOR admits that no less than forty-two (42) days had passed subsequent to discovery service and the hand delivery of its Summary Judgment Motion to the tribunal. (R. p. ; Res. Brief pp.). In fact, DOR was so much aware of its willful non-disclosure, that it admitted its tardiness and disregard in its Motion. (R. p.).

Now, in its brief, DOR glosses over the fact that a refusal of ALL discovery impacts the propriety of a Summary Judgment Motion and its award. In attempted support of its blatant disregard, DOR cites several cases, all distinguishable. (Res. Brief p.). DOR fails to point out that every case it cites speaks specifically to "**further**" discovery (emphasis mine). In each case to which DOR makes reference, some discovery had been allowed and completed prior to Summary Judgment. Here, there was no request for "further" discovery – here there was no response at all. No objection, no request of the Appellants for an extension of time, no request or motion for a limit, no consultation by DOR prior to its motion. Simply stated, DOR made absolutely no response and, despite the advancement of a Summary Judgment Motion, the tribunal approved the complete lack of disclosure. (R. p.).

Further, all of the cases cited by DOR had been ongoing for some time. Some had been the subject of lengthy proceedings and prior hearings. It appears some had been allowed to languish by complacent attorneys. In contrast to this case, none of the discovery cases that DOR urges upon this Court had denied all discovery, none had willful refusal to disclose any witnesses or documents approved by the presiding Judge, and none had been ended by Summary Judgment in less than eighty (80) days since initiation despite the diligent efforts of the complaining party.

Interestingly, it is only now and only here that DOR raises a claim that the Rays' discovery was "burdensome" or "outside the scope". (Res. Brief p.). As to whether Rule 33, SCRCP, "standard" Interrogatories are burdensome or outside the scope, that is an issue that DOR is free to bring before the Supreme Court in its original jurisdiction, if it truly feels itself oppressed. DOR made no such argument to the tribunal and, to the knowledge and research of the undersigned, DOR has never advanced that position to the Administrative Law Court for majority approval. S.C. Code §1-23-650(B)(2). Instead, the more reasonable conclusion from this newly stated concern is that DOR needs to avoid all disclosure to preserve its claims.

DOR, again, only here, disingenuously asserts that the Rays failed to preserve the discovery issue "because they did not move for a **continuance**". (Res. Brief p. 17-18; emphasis mine). First, it could not have possibly escaped DOR's notice that the Rays raised the issue of complete discovery non-compliance multiple times below in their Motion to Reconsider. (R. p.). Moreover, conceding its complete non-compliance, DOR sought relief by seeking additional time. (R. p.). Finally, in the Rules and the experience of the undersigned, "continuance" refers to the postponement of a hearing or trial. Rule 40(b) &(i), SCRCP; Rule 7, SCRCrimP; Rule 601, SCACR. By DOR concession, no notice of Summary Judgment hearing was given to any party and no notice that a ruling without hearing was to be held was given to any party. Moreover, no hearing took place. Therefore, the DOR assertion that the discovery issue was not preserved due to a lack of "continuance" request is unfounded and transparent.

Finally, without prompting or duress, DOR conceded that if it were not awarded Summary Judgment, it would have to proceed with discovery. (R. p.). In an Opinion from earlier this year, that alone was sufficient to withstand Summary Judgment. *Cunningham v. Anderson County*, Op. No. 5072 (Ct.App. February 27, 2013).

Misperception Conclusion

The Supreme Court has held in recent years that "Where cross motions for summary

judgment are filed, the parties concede the issue before us should be decided as a matter of law." *Wiegand v. U.S. Auto. Ass'n*, 391 S.C. 159; 163, 705 S.E.2d 432, 434 (2011). Here, both parties agreed that, at a minimum "limited discovery as allowed by ALC Rule 21" was required. (R. p.). By that concession, especially in the face of its willfully and tardy responses to pro se standard discovery inquiries (R. p.), DOR has established that the matter before the tribunal was not ripe for adjudication and DOR has failed to even allege a lack of prejudice to the Rays, which is its duty under the circumstances. *Downey v. Dixon*, 294 S.C. 42, 46, 362 S.E.2d 317, 319 (Ct.App. 1987). To conclude the underlying case as the tribunal did, was reversible error.

Misperception III: Attorney statements/arguments do NOT qualify as "evidence"

DOR has offered no cases in refutation of the longstanding precept that statements and argument of counsel are not evidence. Here, the tribunal misapplied *Higgins v. Medical University of South Carolina*, 326 S.C. 592 at 599, 486 S.E.2d 269 at 272 (Ct.App. 1997) and DOR compounds that error in its arguments. (Res. Brief p.).

Noting, with emphasis in the Order under appeal, that it must consider **all** of the evidence (R. p.), the tribunal fully disregarded the *Higgins* limits: "... statements of the attorneys, whether made during argument or in written briefs or memoranda, ordinarily may not be considered by the court [as evidence] in determining whether a genuine issue of material fact exists." *Higgins* at 599. That rule is decades old in South Carolina jurisprudence. *McManus v. Bank of Greenwood*, 171 S.C. 84 at 89, 171 S.E. 473 at 475 (1933) ("This court has repeatedly held that statements of fact appearing only in argument of counsel will not be considered [as evidence]"). Yet, only that DOR attorney written statement, i.e. non-evidence, was before the tribunal.

In stark contrast to the DOR attorney-only statements, the tribunal had several documents in its file submitted and signed by the pro se Appellants. (R. p.). It had several pro se authenticated documents before it. (R. p.). Each raised the issues of estoppel and waiver and plain language arguments. (R. p.). Any one, but certainly all such party-signed documents were sufficient to

withstand Summary Judgment by clearly providing a scintilla, and more, of opposing evidence. *Bishop v. City of Columbia*, Op. No. 5077 (Ct.App. January 23, 2013); *Duke Energy Carolinas*.

Misperception Conclusion

The tribunal conceded that it must consider the evidence. As a matter of longstanding precedent, there was no evidence before the tribunal except that favoring the Rays. To conclude that Summary Judgment was proper was both an error of law and an abuse of discretion.

DOR Misperception IV: The Rays, who received NO notice prior to the July 28-30, 2012 mail delivery of the Summary Judgment Order, "should have known" of the hearing date

DOR erroneously argues at pp. 14 and footnote 4 of its brief that the Appellants raise an issue here that was not raised below. DOR raised "notice" as new matter in its brief, and then asserts that this Court cannot review the abject absence of such notice to the Rays. A cursory review of the Record reveals how self-servingly fallacious that claim to be.

In no less than three (3) places in separate arguments in the Ray Motion to Reconsider below, the Appellants note the absence of any notice to them. (R. p.). DOR failed to dispute that absence until responding to a Motion, here, some six (6) months following appeal perfection. The inconvenience to DOR of its easily contradicted assertion notwithstanding, adequate notice, most especially notice of a hearing, is an integral part of any judicial determination, minimal due process, and is part and parcel of the precepts and timeline of the Rule. Rule 56(c), SCRCF.

Finally, it is clear that the Administrative Law Court, the tribunal, and DOR had the Rays' mailing address. (R. p.). Yet, the Notice of Hearing upon which DOR relies was not sent by standard mail from the tribunal to the Rays, as all other documents had been sent to that time. (R. p.). Also, the tribunal had the Rays' email address (R. p.), yet it chose not to send the Notice via email. In fact, no such notice was received from the tribunal, at all. Consequently, in order to keep the tribunal fully apprised of possible conflicts, the Rays' continued to update their

documents. (R. p.). Oddly, that submission raised no question with the tribunal, not even enough for a clarification-seeking phone call. (R. p.).

Misperception Conclusion

In addition, the Notice is nowhere mentioned in the DOR Summary Judgment Motion, or either of the orders issued by the tribunal, or the DOR Return in Opposition to Motion. (R. p.). Only now, DOR attempts to make that phantom Notice into an argument about issue preservation (Res. Brief p.) when it is undisputed that DOR never called attention to the Notice until this appeal was well under way and, only then, in response to a Motion to Strike.

DOR Misperception V: Other inconsistencies that the DOR brief fails to accurately state

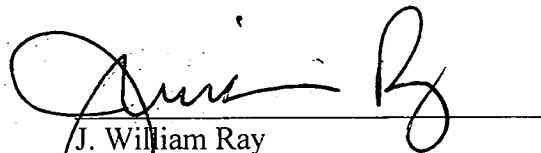
- A. DOR points out that a Notice of Hearing was issued and filed on June 22, 2012. It is a notable coincidence that June 22, 2012 is the same exact date that DOR alleges to have hand delivered its Summary Judgment Motion directly to the tribunal. (Res. Brief p. 4; R. p.).
- B. It is troubling, and unexplained, that DOR chose a different, and delayed, method of service upon the Rays. Presumably, that is why (with a single exception) DOR is unable to produce documents for the Record that bear a filing date. (R. p.).
- C. It is also noteworthy that the date (now known) to be set for the merits hearing was less than ninety (90) days after the case was initiated (May 11, 2012 case initiation to August 8, 2012 scheduled date). Further, the merits hearing was set for a time only seventy-seven (77) days after the Notice of Assignment (R. p.), allegedly without prompting from any source. However, the ALC Rules provide for no less than a ninety (90) full day interim, absent a **motion** to curtail time. ALC Rule 21A (emphasis added).

CONCLUSION

DOR conceded that discovery was needed and admitted that it was incomplete (R. p.). So, discovery made Summary Judgment moot, not vice versa as the tribunal ruled. In the same legislation that birthed the ALC, the tribunal was explicitly prohibited from blazing new procedural paths or applying any Rule of Procedure in a fashion inconsistent with the Courts of Common Pleas. Supreme Court directives mandated that the tribunal apply Rule 56 as written. Because the legislature and judiciary confirm that DOR and the Administrative Law Courts are both agencies of the executive branch, the tribunal was under a burden of self-scrutiny to avoid the appearance of impropriety in its ruling and inaccurate findings (R. p.), much of which was *sua sponte*.

Respectfully, the tribunal failed to approach a number of the standards required of it under the statutes, precedent, and Rule 56. Also respectfully, the Order under appeal should be vacated, the tribunal's decision reversed, and this case remanded to the Administrative Law Court with a directive that proper discovery responses be required of DOR within a reasonable time thereafter and that, only after full and detailed disclosure is made by DOR, a merits hearing in this matter move forward in the ordinary course and with proper and confirmed notice to all parties.

Respectfully submitted,



J. William Ray
P. O. Box 8535
Greenville SC 29604-8535
(864) 313-5332
PRO SE/ATTORNEY FOR APPELLANTS

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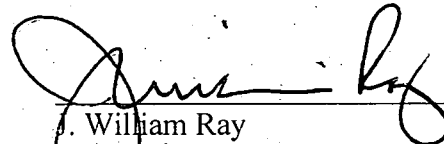
v.

S.C. Department of Revenue,

Respondent.

CERTIFICATE OF COUNSEL

The undersigned counsel for the Appellants hereby certifies that this Reply Brief complies with Rule 211(b), SCACR.



J. William Ray
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PROOF OF SERVICE

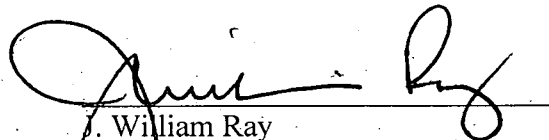
I, J. William Ray, do hereby certify that a copy of the initial Reply Brief of Appellants in the above captioned case has been duly served on the Respondent by placing the same in an envelope, with adequate prepaid postage affixed thereto, addressed as shown below, and properly depositing such copy of it in the United States Mail.

Benjamin J. Tripp
Attorney for the Respondent S.C. Department of Revenue
P. O. Box 12265
Columbia, SC 29211

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MAY 13 2013

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J. William Ray
P. O. Box 8535
Greenville SC 29604-8535
(864) 313-5332

PRO SE/ATTORNEY FOR APPELLANTS

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