

ELIZABETH FRANKLIN-*Best*

APPELLATE AND FEDERAL CRIMINAL LAW

**RECEIVED**

South Carolina Court Administration  
Tonnya K. Kohn, State Court Administrator  
Calhoun Building  
1220 Senate Street, Suite 200  
Columbia, South Carolina 29201-3739

JUN 28 2023

SC Court of Appeals

June 26, 2023

Re: *Transcript request for State v. Randy Lee Flower*, Case No. 2023-000126

Dear Ms. Kohn,

Mr. Flower was convicted in Greenville County on January 17, 2023. The notice of appeal was timely filed January 24, 2023. On March 3, 2023, the Office of Indigent Defense, Appellate Division, ordered the transcript from Ms. Hollie Jenkins. On June 5, 2023, Ms. Jenkins was granted an extension with a due date of July 3, 2023. On June 22, 2023, I filed a motion in the South Carolina Court of Appeals to be substituted as counsel in this matter. As of the date of this letter, that motion is pending in the Court. On June 22, 2023, according to Ms. Jenkins, OID cancelled their request for the transcript. On June 16, 2023, my paralegal reached out to Ms. Jenkins and ordered a copy of the transcript (as we notified the Court in our motion to substitute counsel). On June 22, 2023, we were notified by Ms. Jenkins that we would now be responsible for the full price of the transcript (\$3,952.50) and that upon receipt of our check, Ms. Jenkins would then have an additional 60 days to prepare the transcript. A check for the requested amount was sent to Ms. Jenkins on Friday, June 23, 2023. I am informed by Ms. Jenkins that it is the policy in our state for court reporters to be allowed additional 60-day extensions whenever (I guess) there is a substitution in counsel.

To the extent that Ms. Jenkins is correct, and it is the policy of Court Administration to allow additional 60-day delays upon the substitution of counsel, I would like to raise my concerns. As someone who has practiced appellate law in South Carolina since 2008, I believe I have some insight into the functioning of our system. I am fully aware that many participants in our system are experiencing backlogs, especially in light of the COVID-19 pandemic, but our firm takes very seriously its obligations to our clients to move their cases as expeditiously through the system as we can. We very, very rarely request continuances because we prioritize our direct appeal cases. I routinely tell clients and potential clients that it may be 2-3 years before we have a decision from the Court of Appeals and, if we seek certiorari in the South Carolina Supreme Court, we could be litigating the case for an additional 2-3 years. Given the anxiety that all recently convicted defendants and their families experience, we let them know that we will do our very best to get

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pleadings filed as quickly as we can. In all candor, our clients very much appreciate our commitment to getting these cases filed quickly because they understand this process can be lengthy.

A policy of allowing an additional 60-day delay for no other reason than counsel has been substituted contributes to the backlog in our court system and without any legitimate purpose. If Ms. Jenkins needs an additional extension because she cannot complete the transcript by July 3, 2023, I have no objection. But to delay the production of a transcript for two months for no other reason than that a defendant has retained private counsel is bad policy. In this case, it would mean a transcript ordered at the beginning of March would not be due until the beginning of September. And then, if not completed by the conclusion of that additional 60 days, Ms. Jenkins could request an additional extension, as she informed me. Why should my client and his family move to the back of the line simply because they elected to retain counsel? The policy as it currently exists punishes defendants who retain counsel which, simply, is not fair.

This policy also invites gamesmanship into the system. Going forward, I should probably inform my clients that I will only file a motion to substitute counsel after a transcript has been delivered to OID (and without the additional 60-day delay). In that case, there's no question but that we would be entitled to a "copy" priced transcript. Of course, the benefit of this is that a court reporter will be paid twice—once by the State for the initial copy and then an additional copy fee. But this makes no sense. There is no reason why retained counsel should delay in requesting the Court grant a motion to substitute counsel. Once an attorney is retained, that information should immediately be made known to relevant parties. Transparency is a trait that should be encouraged in this system as we all work together to ensure the orderly functioning of our appellate system. This policy of allowing an additional 60-day delay upon the substitution of counsel does not promote that value and actively undermines it.

I am respectfully requesting that you revisit this policy of the additional 60-day delay when there has been a substitution of counsel. It invites unnecessary delay and lack of transparency in our appellate court system and serves no legitimate purpose.

Sincerely,

*Elizabeth Franklin-Best*

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Elizabeth Franklin-Best

cc: Randy Flower  
Jenny Abbott Kitchings, Clerk of Court, South Carolina Court of Appeals  
Patricia A. Howard, Clerk of Court, South Carolina Supreme Court  
Hollie Jenkins, Court Reporter

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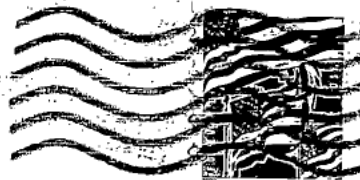
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