

5  
THE STATE OF SOUTH CAROLINA  
In the Court Of Appeals

RECEIVED

Feb 24 2023

SC Court of Appeals

\_\_\_\_\_  
APPEAL FROM ORANGEBURG  
\_\_\_\_\_

The Honorable Edgar W. Dickson  
\_\_\_\_\_

Appellate Case No. 2020-000451  
\_\_\_\_\_

Rufus Rivers and Merle Rivers  
pro se

Appellants

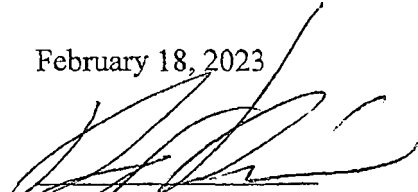
VS.

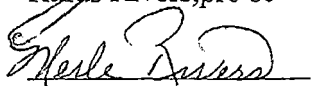
James Smith, Jr.

Respondent

APPELLANTS' RECORD ON APPEAL.  
(SUPPLEMENT)

February 18, 2023

  
Rufus Rivers, pro se

  
Merle Rivers, pro se

Attorneys For Respondent.  
Kathleen McDaniel, Esq.  
Sarah J.M. Cox, Esq.  
P.O. Box 1929 Columbia, SC  
29202

1429 Legrand Smoak Street  
Cordova, SC 29039  
803-218-9573

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- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

James Smith, Jr.  
66 Thomas St  
Brentwood, NY 11717



9590 9402 3325 7227 4500 02

2. Art

7018 0360 0000 3392 7807

A. Signature

*James Smith, Jr.*

- Agent
- Addressee

B. Received by (Printed Name)

JAMES SMITH, JR.

C. Date of Delivery

8/14/18

D. Is delivery address different from item 1? If YES, enter delivery address below:

- Yes
- No

3. Service Type

- Adult Signature
- Adult Signature Restricted Delivery
- Certified Mail®
- Certified Mail Restricted Delivery
- Collect on Delivery
- Collect on Delivery Restricted Delivery

- Priority Mail Express®
- Registered Mail™
- Registered Mail Restricted Delivery
- Return Receipt for Merchandise
- Signature Confirmation™
- Signature Confirmation Restricted Delivery

PS Form 3811, July 2015 PSN 7530-02-000-9053

Domestic Return Receipt

U.S. Postal Service™  
CERTIFIED MAIL® RECEIPT  
Domestic Mail Only

For delivery information, visit our website at [www.usps.com](http://www.usps.com)®.

BRENTWOOD, NY 11717

Certified Mail Fee	\$3.45	
Extra Services & Fees (check box, and fee as applicable)		
<input type="checkbox"/> Return Receipt (hardcopy)	\$0.00	
<input type="checkbox"/> Return Receipt (electronic)	\$0.00	
<input type="checkbox"/> Certified Mail Restricted Delivery	\$0.00	
<input type="checkbox"/> Adult Signature Required	\$0.00	
<input type="checkbox"/> Adult Signature Restricted Delivery	\$0.00	
Postage	\$1.42	
Total Postage and Fees	\$7.87	

Postmark Here

0813/2018

Sent to: James Smith, Jr.  
Street and Apt. No. or PO Box No.: 66 Thomas Street  
City, State, ZIP+4®: Brentwood, NY 11717

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

7018 0360 0000 3392 7807

Exhibit

CLERK OF COURT  
ORANGEBURG, SC

2018 JUL 30 AM 9:10

FILE FOR RECORD  
WILLIAM B. CLARK

ATTEST: *William B. Clark*  
CLERK OF COURT  
ORANGEBURG COUNTY

N.  
2  
Elements of Common Landlord-Tenant Problems  
(SC Magistrate Benchbook)

## 1. Generally

The relationship of landlord and tenant is always based upon a contract, whether oral or written, which determines the rights and responsibilities each party has and owes to the other.

Usually, the agreement between the parties takes the form of a lease, by which the tenant gains possession and use of the premises during the term of the lease, and in which the terms of the landlord-tenant relationship are spelled out.

Tenancies may be for a specific term of period of time (for a year), or for a periodic term and are automatically renewable (month to month), or tenancies may be at will (in which the lease stands so long as the parties desire it to or until such time as they wish to end it).

The lease usually provides for specific aspects of the landlord-tenant relationship such as subleasing, means of notice, termination, rent payments, and responsibility for repair and maintenance.

If the tenant fails to pay the rent, the landlord can terminate the lease, force the tenant to vacate the premises, and recover any rent due.

## 2. Jurisdiction of Magistrates

Magistrates have concurrent jurisdiction with the Circuit Court as to those landlord-tenant matters which may be brought pursuant to the provisions of Chapters 33 to 41 of Title 27 of the Code, regardless of the dollar-amount in controversy. § 22-3-10 (10). The magistrate court will retain jurisdiction in cases involving landlord/tenant and the possession of land even when any counterclaim exceeds the civil jurisdictional limit of \$7,500.00. § 22-3-10 (12). In cases that do not fall under § 22-3-10 (12), the initial claim and counterclaim must be transferred to the Court of Common Pleas. § 22-3-30. In an ejectment proceeding brought pursuant to § 27-37-20, in the absence of a summons and complaint being filed, please be reminded that the remedy or relief is limited to ejectment (and does not include other claims or causes of action for damages, such as monetary damages, back rent, damage to the landlords' property, etc.). Possession of property must be in dispute for the case to fall under § 22-3-10 (10) and (12). *Mosseri v. Austin's at the Beach, Inc.*, Op. No. 4215 (S.C. Ct. App. Filed March 12, 2007). If a summons and complaint is filed along with an action for ejectment, damages referenced above and pursuant to § 22-3-10 (10) and (12) may be pursued by a landlord.

As to any action brought in a magistrate's court for past due rent not brought as an action for distraint or ejectment, such action must be brought pursuant to one of the jurisdictional grants of authority, other than that as to landlord-tenant matters, provided by S.C. Code Ann. § 22-3-10. As to such an action, the general \$7,500.00 monetary limitation on a magistrate's jurisdiction would apply.

As to any action brought in a magistrate's court to recover sums due under an acceleration clause in a lease, such action must be brought pursuant to one of the jurisdictional grants of authority, other than as to landlord-tenant matters, provided by § 22-3-10. As to such an action, the general \$7,500.00 monetary limitation on a magistrate's jurisdiction would apply. See Op. Att'y Gen. dated January 14, 1982.

While all of the chapters related to landlord/tenant referenced above are important, special attention should be given Chapter 37, Ejectment of Tenants, Chapter 39, Rent, and Chapter 40, South Carolina Residential Landlord and Tenant Act (SCRLTA). When dealing with mobile homes or trailers, reference should be made to the Manufactured Home Park Tenancy Act found in Chapter 47 of Title 27 of the Code.

### 3. Eviction or Ejectment

#### a. Generally

A landlord may bring an action of ejectment against a tenant in these situations: (1) when the tenant fails or refuses to pay the rent when due, (2) when the term of tenancy or occupancy ends, or (3) when the terms or conditions of the lease are violated. (See § 27-37-10).

Provisions in the SCRLTA provide the following additional grounds for a residential ejectment: noncompliance with the rental agreement, §27-40-710; failure to pay rent, §27-40-710; noncompliance affecting health and safety, §27-40-720; and absence, nonuse and abandonment, §27-40-730. Always consult the statute before acting. For specific grounds for ejectment under the Manufactured Home Park Tenancy Act, see §27-47-530.

Once an action for ejectment is begun for failure to pay rent, the landlord is under no obligation to accept past rent if offered by the tenant.

#### b. Commencing Ejectment

The procedure of ejectment commences upon the filing of an application for ejectment with any magistrate having territorial jurisdiction over the area in which the premises are located. (§ 27-37-20). The magistrate must determine whether a landlord-tenant relationship exists and what rent, if any, is due.

The magistrate should, upon making a determination that rent is due, issue a written rule requiring the tenant to vacate the premises or to show cause within ten days why he should not be ejected. (§ 27-37-20). The rule should be personally served on the tenant whenever possible. Special rules for service of process are set out in § 27-37-30. Section 27-37-30 authorizes service of the Rule to Show Cause by posting and mailing after two prior attempts to serve the rule have been unsuccessful, and provides specific procedures for service prior to posting and for mailing. Section 27-37-30, as amended, provides alternative methods of service of rules to show cause in ejectment proceedings.

Subsection (A), as amended, provides that service of the rule to show cause should initially be attempted "in the same manner as is provided by law for the service of the summons. . . ." Those methods are personal service, certified mail, and publication. See Rule 4, SCRPC.

**B.****Magistrate Law in Civil Actions****1. Jurisdiction**

In South Carolina, jurisdiction, or the basic authority of a judge to hear and exercise judgment of a matter, is based upon three considerations: territorial jurisdiction, subject matter jurisdiction, and the amount in controversy.

Territorial jurisdiction for each magistrate extends throughout the county in which he is appointed in both civil or criminal matters. Before the opinion of the S.C. Supreme Court in *Ex re Daniel R. McLeod v. Roger A. Crowe*, 272 S.C. 41, 249 S.E.2d 772 (1978), district jurisdiction between magistrates was allowed, but as of *McLeod v. Crowe*, *supra.*, all magistrates now constitutionally possess "uniform county wide jurisdiction."

To understand the latter two determinations of jurisdiction, subject matter jurisdiction and amount in controversy, one must look to S.C. Code Ann. §§ 22-3-10, and 22-3-20. Section 22-3-10, as limited by § 22-3-20, sets out magisterial jurisdiction over fourteen areas of civil subject matter as follows:

In most of the above matters, for the magistrate to have jurisdiction over the amount of the contract, bond or judgment, the extent of damages, or the value of the property or dispute must not exceed the \$7,500.00 limitation imposed by § 22-3-10. In cases involving liens, the magistrate's jurisdictional dollar amount may be further restricted by the lien statute itself. Section 22-3-20 further limits a magistrate's jurisdiction by prohibiting his hearing civil cases in which the State is a party, except actions for penalties not exceeding \$100, and for disputes as to title in real property matters except as provided in §§ 22-3-1110 - 22-3-1180. Jurisdiction may not be waived or conferred upon the magistrate by consent of the parties or by order of a higher court.

As a rule, magistrates need not make a determination themselves of the amount in controversy for the purpose of determining their jurisdiction, since jurisdiction is determined by the amount claimed by the plaintiff and not the amount actually due. It should also be understood that if a defendant makes a counterclaim against the plaintiff in an amount in excess of \$7,500.00, then the initial claim and counterclaim must be transferred to the Court of Common Pleas for that judicial circuit as required by § 22-3-30.

## 2. Venue

Venue and jurisdiction are easily confused, but are in reality terms of quite different meaning. "Jurisdiction" of the court refers to the inherent power of the court to hear a case, whereas "venue" describes the particular county in which a court with jurisdiction may hear and determine an action. Once the propriety of jurisdiction, as discussed previously, has been determined, the magistrate must turn his attention to venue. Generally, for venue to be proper, the action must have been brought before the magistrate with territorial jurisdiction over the area of the residence of at least one defendant. (Rule 4, SCRMC). Remembering that a magistrate's territorial jurisdiction may only be county-wide, the residence of the defendant must fall within that magistrate's territorial responsibility for the action to be properly begun. The defendant's place of residence, and not the occurrence of the matters in controversy, is generally the key to venue in civil cases. (See also §§ 15-7-10 and 15-7-20). However, §15-7-30 and Rule 4(a), SCRMC, provides that a case may not only be filed in the defendant's place of residence, but also in the county where the most substantial part of the alleged act or omission giving rise to the cause of action occurred. While a civil filing in a county where the defendant does not reside may be problematic in terms of service and summoning witnesses, such filings should be accepted.

Rule 4(b), SCRMC, provides that a civil action may be filed in any magistrate court in the County in which the plaintiff resides or where the cause of action arose when the defendant does not reside in this State and jurisdiction is based upon §36-2-803, the long arm statute. Courts employ a due process analysis to determine whether specific jurisdiction and venue over a non-resident defendant pursuant to the long arm statute is proper. Courts apply a two-pronged analysis when determining whether a defendant possesses due process minimum contacts with the forum state such that maintenance over the suit specific to a courts specific jurisdiction does not offend traditional notions of fair play and justice. The court must (1) find that the defendant has the requisite minimum contacts with the forum, without which, the court does not have the power to adjudicate the action, and (2) find the exercise of jurisdiction is reasonable or fair. §36-2-803 provides a criterion to make a minimum contacts determination. Pursuant to the long arm statute, a court may exercise personal jurisdiction over a person who acts directly or by an agent as to a cause of action arising from the person's: (1) transacting any business in this State; (2) contracting to supply services or things in the State; (3) commission of a tortious act in whole or in part in this State; (4) causing tortious injury or death in this State by an act or omission outside this State if he regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this State; (5) having an interest in, using, or possessing real property in this State; (6) contracting to insure any person, property, or risk located within this State at the time of contracting; (7) entry into a contract to be performed in whole or in part by either party in this State; or (8) production, manufacture, or distribution of goods with the reasonable expectation that those goods are to be used or consumed in this State and are so used or consumed.

When jurisdiction over a person is based solely upon §36-2-803, the long arm statute, only a cause of action arising from acts enumerated in 1 through 8 above may be asserted against the non-resident defendant. For further information on the application of the long arm statute, see Power Products and Services Co., Inc. v. Cozmo, 379 S.C. 423, 665 S.E.2d. 660 (Ct. App. 2008) and Aviation Associates and Consultants, Inc. v. Jet Time, Inc., 303 S.C. 502, 402 S.E.2d. 177 (1991).

Rule 4(a), SCRMC, also provides that a civil action against a domestic corporation may be filed in the County where such corporation shall have its principal place of business.

230

STATE OF SOUTH CAROLINA )  
COUNTY OF ORANGEBURG )

2018CV3810702780  
CIVIL CASE NUMBER  
IN THE MAGISTRATES COURT

3792

FILED FOR RECORD  
WINNIPA B. CLARK

2018 NOV 21 PM 3:13

CLERK OF COURT  
ORANGEBURG, SC

COSO COURT REPORTER

James F. Smith Jr )  
Attorney Kathleen M McDaniel )  
Post Office Box 1929 )  
Columbia, SC 29202 )  
(803) 850-0912 )

PLAINTIFF(S)

VS.

Rufus & Merle Rivers )  
1429 Legrand Smoak Street )  
Cordova, SC 29039 )

DEFENDANT(S)

RULE TO VACATE OR SHOW CAUSE  
(Eviction)

TO [Defendant(s)]: [Landlord] is asking this Court to evict you from the property located at 1429 Legrand Smoak Street, Cordova, SC 29039 because they say that:

- You have failed to pay rent when due or demanded in the amount of \$\_\_\_\_\_.
- The terms of your tenancy or occupancy have ended.
- You have violated the terms or conditions of your lease by:

You, Rufus & Merle Rivers, the defendant and lessee of the premises listed above, and all others are ordered to vacate the premises immediately pursuant to S.C. Code of Laws Section 27-37-10 OR to contact Central Region Magistrate located at 1540 Ellis Avenue, Orangeburg, SC 29115, PHONE: (803) 533-5843 within ten (10) days of receiving this notice, for the purpose of scheduling a hearing to show why you should not be evicted from these premises.

FAILURE TO VACATE THE PREMISES OR RESPOND WITHIN TEN (10) DAYS MAY RESULT IN THE ISSUANCE OF A WRIT OF EJECTMENT.

Dated: August 20, 2018

*Regina D. Doremus*  
MAGISTRATE JUDGE

Personally appeared before me, the undersigned deponent who, being duly sworn, says that s/he is a person over 18 years of age not a party or attorney in this action and that s/he attempted to serve the Rule to Vacate or Show Cause on [Defendant(s)] on the following dates/times:

	DATE	TIME	INITIALS	DATE OF SERVICE	TIME OF SERVICE	SETTLED/DATE	VACANT/DATE
1.							
2.							
3.							

SWORN to and Subscribed before me  
This 24 Day of August, 2018 )  
*Melissa G. Brubaker* )  
NOTARY PUBLIC OR JUDGE )

*[Signature]*  
SIGNATURE OF SERVER  
*Frader*

On \_\_\_\_\_, I deposited a copy of this document in the United States Mail in an envelope addressed to the Defendant(s) above with first class postage affixed thereto.

Rule to Vacate or Show Cause

*Rufus Rivers*

**SECTION 22-3-20.** Civil actions in which magistrate has no jurisdiction.

No magistrate shall have cognizance of a civil action:

- (1) In which the State is a party, except an action for a penalty and not exceeding one hundred dollars; or
- (2) When the title to real property shall come in question, except as provided in Article 11 of this chapter.

**HISTORY:** 1962 Code Section 43-52; 1952 Code Section 43-52; 1942 Code Section 264; 1932 Code Section 264; Civ. P. '22 Section 220; Civ. P. '12 Section 87; Civ. P. '02 Section 78; 1870 (14) 81; 1873 (15) 496.

ARTICLE 11

Proceedings When Title to Real Estate is Involved

**SECTION 22-3-1110.** Defense of questionable title in defendant's answer.

When the title to real property shall come in question in an action brought in a court of a magistrate the defendant may, either with or without other matter of defense, set forth in his answer any matter showing that such title will come in question. Such answer shall be in writing, signed by the defendant or his attorney, and delivered to the magistrate. A copy of such answer shall be served on the plaintiff or his attorney.

HISTORY: 1962 Code Section 43-151; 1952 Code Section 43-151; 1942 Code Section 265; 1932 Code Section 265; Civ. P. '22 Section 221; Civ. P. '12 Section 88; Civ. P. '02 Section 79; 1870 (14) 82; 1972 (57) 2452.

**SECTION 22-3-1120.** Written undertaking by defendant in cases where title to real property will come in question.

At the time of answering the defendant shall deliver to the magistrate a written undertaking, executed by at least one sufficient surety and approved by the magistrate, to the effect that if the plaintiff shall within twenty days thereafter deposit with the magistrate a summons and complaint in an action in the circuit court for the same cause the defendant will within twenty days after such deposit give an admission in writing to the service thereof.

**SECTION 22-3-1130.** Action discontinued upon delivery of undertaking; costs.

Upon the delivery of the undertaking to the magistrate the action before him shall be discontinued and each party shall pay his own costs. The costs so paid by either party shall be allowed to him if he recover costs in the action to be brought for the same cause in the circuit court. If no such action be brought within thirty days after the delivery of the undertaking the defendant's costs before the magistrate may be recovered of the plaintiff.

HISTORY: 1962 Code Section 43-153; 1952 Code Section 43-153; 1942 Code Section 267; 1932 Code Section 267; Civ. P. '22 Section 223; Civ. P. '12 Section 90; Civ. P. '02 Section 81; 1870 (14) 84.

## CITATIONS

**COLEMAN V. DANIEL, 261 S.C. 198 (S.C. 1973)**

**BRUCE V. DURNEY, Op.No. 3208 (S.C.App. Ct. FILE July 3, 2000)**



**ORANGEBURG COUNTY  
CENTRAL REGION  
MAGISTRATE COURT**



1540 Ellis Avenue  
P.O. Box 9000  
Orangeburg, South Carolina 29116  
Phone: (803) 533-5843  
Fax: (803) 516-4011  
Judge Stephanie McKune-Grant

October 18, 2018

VIA CERTIFIED MAIL 7006 0100 0005 3013 1252  
Kathleen M. McDaniel, Esquire  
Attorney for James F. Smith, Jr.  
Post Office Box 1929  
Columbia, South Carolina 29202

Dear Attorney McDaniel:

As representative for your client Mr. James F. Smith, Jr., this letter is to advise you that a Notice of Appeal has been filed in the First Judicial Circuit Court of Common Pleas and delivered to my office regarding my judgement in the matter of James F. Smith, Jr. vs. Rufus and Merle Rivers issued on October 17, 2018.

Please notify my office immediately if you have any motion concerning the appropriate amount of an appeal bond.

I Am,

Stephanie McKune-Grant  
Magistrate  
County of Orangeburg

CC: VIA CERTIFIED MAIL 7006 0100 0005 3013 1276  
Rufus and Merle Rivers  
1429 Legrand Smoak Street  
Cordova, South Carolina 29039

STATE OF SOUTH CAROLINA

COUNTY OF ORANGEBURG

James F. Smith, Jr.,

Plaintiff,

Rufus Rivers and Merle Rivers,

Defendants.

) IN THE MAGISTRATE'S COURT

)

)

C/A no. 2018CV3810702780

)

)

)

)

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)

AFFIDAVIT OF  
CONNIE GASTON

Personally appeared before me Connie Gaston, who, first being duly sworn,

says as follows:

FILED FOR RECORD  
WANDA B. CLARK  
2018 NOV 21 PM 3:15  
CLERK OF COURT  
ORANGEBURG, SC

1. My name is Connie Gaston.

2. This affidavit is based upon my personal knowledge and expertise.

3. I am over 18 years old.

4. I have worked in rental property management since 2011.

5. I am currently employed as a rental property manager with Century 21 The Moore Group in Orangeburg, South Carolina.

6. In my job in rental property management, I have facilitated leases between residential tenants and landlords, determined rental rates for residential property, and handled residential evictions.

7. I have been asked to give an opinion as to the amount of rent that should be charged per month for the occupation of the house located at 1429 Legrand Smoak Street, Cordova, SC 29039.

8. The Orangeburg County tax map number for this property is 0127-00-05-009-000.

9. In order to reach a determination on the amount of rent, I viewed the property through Google Street View.

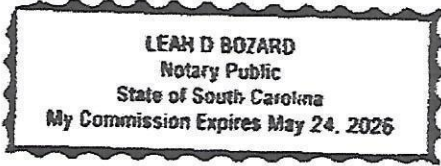
*Exhibit A*

10. The property is located about 6 miles outside the City of Orangeburg in a rural area.
11. The exterior of the house appears to be in excellent condition.
12. I was unable to gain access to view the inside of the house.
13. I am informed by the attorney for James Smith, Jr. that the house contains three bedrooms and two bathrooms.
14. From the Orangeburg County Tax Assessor's records available online I determined the following:
  - a. The house was constructed in 1986.
  - b. The house is 2,016 square feet in size.
  - c. There is a detached shed and detached carport on the property.
15. I also reviewed the deed conveying the property to James Smith, Jr., recorded at Book 01075, page 0331 in the Office of the Orangeburg County Register of Deeds. The property description in the deed states that the property contains two acres of land.
16. I have reviewed the following comparable rental properties:
  - a. 251 Rivelon Rd, 3 bedroom, 2 bathroom mobile home, good condition, \$650 per month
  - b. 206 Mack Rd, 3 bedroom, 2 bathroom, brick home, good condition, \$850 per month
  - c. 1001 Norway Rd, 4 bedroom, 2 bathroom, brick home, fair condition, \$750 per month
17. Based upon the foregoing factors, I have determined that a reasonable rental rate for the property is between \$650-850 per month.

Connie Gaston  
Connie Gaston

Sworn to before me this 2<sup>nd</sup> day of November, 2018

Leah D. Bozard  
Notary Public for South Carolina  
My commission expires: May 24, 2026





ORANGEBURG COUNTY  
CENTRAL REGION  
MAGISTRATE COURT



1540 Ellis Avenue  
Post Office Box 9000  
Orangeburg, South Carolina 29116  
Phone: (803) 533-5843  
Fax: (803) 516-4011  
Judge Stephanie McKune-Grant

November 6, 2018

Rufus and Merle Rivers  
1429 Legrand Smoak Street  
Cordova, South Carolina 29039

RE: James F. Smith, Jr., Plaintiff  
Kathleen McDaniel, Attorney for Plaintiff vs.  
Rufus and Merle Rivers, Defendants  
Case No. 2018CV3810702780

Dear Mr. and Mrs. Rivers:

I am in receipt of your Movant's Motion to Review Appeal Bond Requiring Rental Payments as received by my office on Monday, November 5, 2018.

A Motion Hearing was scheduled on Friday, November 2, 2018 in which you and Mrs. Rivers attended, and were allowed to respond to the motion presented regarding rental payments. A final ruling was made at the conclusion of that hearing.

Your current Movant's Motion to Review Appeal Bond Requiring Rental Payments is respectfully denied.

I Am,

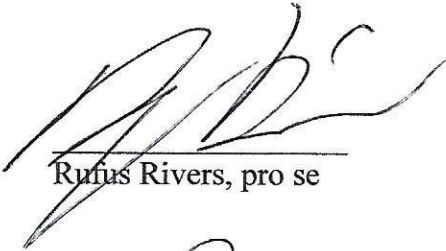
Stephanie McKune-Grant  
Magistrate  
Orangeburg County

CC: Kathleen M. McDaniel, Esquire  
Attorney for James F. Smith, Jr.  
Post Office Box 1929  
Columbia, South Carolina 29202

## CERTIFICATE OF COUNSEL

The undersigned hereby certifies the Supplemental Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

February 14, 2023



Rufus Rivers, pro se

  
Merle Rivers, pro se

**RECEIVED**

**Feb 24 2023**

**SC Court of Appeals**