

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM YORK COUNTY  
Court of Common Pleas

S. Jackson Kimball, Special Circuit Court Judge

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Case No. 2012-CP-46-2692  
Appellate Case No. 2012-213352

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RECEIVED

SEP 23 2013

SC Court of Appeals

Paul Sullivan as Personal Representative of the  
Estate of Pauline C. Cook,.....Respondent,

v.

Park Pointe Village, Inc., a wholly owned subsidiary of  
ACTS Retirement-Life Communities, Inc., Neva Lattimer,  
and Marvin Lawrence,.....Appellants.

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**RESPONDENT'S RETURN TO APPELLANTS' MOTION  
FOR EXTENSION OF TIME TO FILE REPLY BRIEF**

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Pursuant to Rule 240(e), SCACR, Respondent's file this return in opposition to Appellants' motion for another extension of time to file their reply brief. Respondent submits an additional extension is not warranted and unnecessarily delays the ultimate resolution of the issues on appeal.

By way of background, this is an appeal from an order of the Circuit Court denying Appellants' motion to compel arbitration. The circuit court entered the order currently on appeal on November 7, 2012. Appellants timely filed their notice of appeal. By letter dated December 20, 2012, Appellants informed the Court that they had received the transcript from the court

reporter. Thereafter, Appellants sought and received at least five extensions of time in which to serve and file their initial brief. Appellants served their initial brief on June 10, 2013.

Respondent served his initial brief on August 9, 2013. Under Rule 208(a)(3), SCACR, Appellants' initial reply brief was due on August 19, 2013. On August 19, 2013, Appellants requested and were later granted a thirty (30) day extension to file their initial reply brief. With this extension, the initial reply brief was due on September 18, 2013. On that same day, Appellants filed another request for extension, this time seeking an additional fifteen (15) days to file their initial reply brief. In their motion, Appellants fail to present any substantive reason to justify their request for more time, beyond the unsupported claim that the extension is "warranted given the complexity of the legal issues involved." Further, Appellants make the unsupported assertion that the additional extension will not prejudice any party.

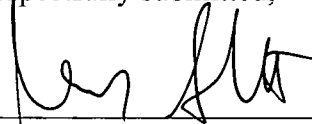
With all due respect to opposing counsel, this request for an additional extension should be denied. Appellants have failed to support any of their requests for extension—now totaling seven or more—with any justification.

Without going into great detail about the facts of the case, Respondent craves reference to Statement of Facts contained in his initial brief filed August 9, 2013; however, in summary, the case involves the death of an elderly resident of an assisted living facility. Many of the potential factual witnesses are likewise elderly and many are in failing health. With each passing day, the potential that these witnesses will be unavailable once this matter is finally adjudicated increases. This fact alone greatly prejudices Respondent. Moreover, Appellants have had more than enough time to fully brief all matters raised in the appeal. Additional time is not warranted under the facts. Appellants had more than six months from the time they received the trial transcript to prepare their initial brief. With this much time, Appellants should have anticipated

every possible argument Respondent might raise in his initial brief. The legal matters involved in the appeal or no more and no less complex than the matters raised in the circuit court. Were this case a criminal or a post-conviction relief matter, Order 2009-03-18-01 would require that Appellants show good cause for their third extension request and any subsequent requests would only be granted in "extraordinary circumstances." (See **Exhibit A**, Supreme Court Order 2009-03-18-1).

For all of these reasons, Respondent opposes Appellants' second request for an extension to file their initial reply brief. No good cause exists to grant the extension and certainly no "extraordinary circumstances" exist to justify the request. To the contrary, the Court should find that Appellants, by their own dilatory actions, have waived the right to file a reply and should not permit a reply.

Respectfully submitted,



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ATTORNEYS FOR RESPONDENT

Columbia, South Carolina  
September 23, 2013

EXHIBIT A

Supreme Court Order  
2009-03-18-1

2009-03-18-01

# The Supreme Court of South Carolina

RE: Extension Requests in Criminal Direct  
Appeals  
and Post-Conviction Relief Certiorari  
Proceedings

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## ORDER

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This Court finds that it is appropriate to establish a uniform policy for processing extension requests by counsel in criminal direct appeals and post-conviction relief (PCR) certiorari proceedings. Accordingly, the following procedures shall apply when an extension is requested in these cases at both this Court and the South Carolina Court of Appeals in both capital and non-capital cases.

(1) One extension of up to thirty (30) days each may be granted for any stage of the appellate proceeding without a showing of good cause.

(2) A second extension request may be granted upon a showing of good cause. The facts supporting good cause shall be set forth in the motion. The signature of the attorney on the motion shall be a certification that the attorney believes that the extension is warranted and that there is good cause to seek the extension.

(3) A third extension may be granted upon a showing of good cause. The facts supporting the good cause shall be set forth in the motion. If filed by the Division of Appellate Defense or the Office of the Attorney General, the motion shall be signed by the attorney involved and his or her immediate supervisor. If filed by a private lawyer, the motion shall be signed by the attorney involved and, if lawyer is not a sole practitioner, by another member of the firm. The signatures on the motion shall be a certification by these attorneys that they believe that the extension is warranted and that there is good cause to seek the extension.

(4) A fourth or subsequent extension may be granted upon a showing of extraordinary circumstances. The motion must contain sufficient facts to show that there are extraordinary circumstances that warrant the extension, and must state what actions are being taken to insure that no further extension will be required. If filed by the Division of Appellate Defense, the motion shall be signed by the attorney involved, and the Executive Director of the Office of Indigent Defense or his or her chief deputy. If filed by the Office of the Attorney General, the motion shall be signed by the attorney involved, and the Attorney General or his or her chief deputy. If filed by a private lawyer, the motion shall be signed by the attorney involved and, if lawyer is not a sole practitioner, by the senior partner or the next most senior partner in the firm. The signatures on the motion shall be a certification by these attorneys that they believe that the extension is warranted and that extraordinary circumstances are present.

(5) Counsel are expected to minimize extension requests, and multiple extensions should

generally be sought only for a stage of the appellate proceeding which involves research or writing by the attorney, such as the preparation of a brief or the preparation of the petition for a writ of certiorari, return or reply in a PCR case.

(6) Nothing in this order shall be construed as preventing the Supreme Court or the Court of Appeals from further restricting extensions in an individual case when warranted, including cases which may be expedited.

IT IS SO ORDERED.

s/Jean H. Toal C.J.

s/John H. Waller, Jr. J.

s/Costa M. Pleicones J.

s/Donald W. Beatty J.

s/John W. Kittredge J.

Columbia, South Carolina  
March 18, 2009

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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Court of Common Pleas

S. Jackson Kimball, Special Circuit Court Judge

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**CERTIFICATE OF SERVICE**

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I, Beth Craft, on behalf of Richard A. Harpootlian, P.A., hereby certify that I served the  
following individual(s), on September 23, 2013, with a copy of the following:

**Document:** Respondent's Return to Appellants' Motion for Extension of Time to File  
Reply Brief.

**Counsel:** **VIA HAND DELIVERY**  
Carmelo B. Sammataro, Esquire  
Turner Padgett Graham & Laney, P.A.  
Bank of America Plaza  
1901 Main Street, 17<sup>th</sup> Floor  
Columbia, SC 29201

  
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Beth Craft