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Jan 07 2025

SC Court of Appeals

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ALLENDALE COUNTY
Court of Common Pleas

Brooks P. Goldsmith, Circuit Court Judge

Case Number: 2023-001281

Marcus Riley, Appellant,

v.

Dorothy Riley, individually and Dorothy Riley in her role as Personal Representative of
the Estate of Marion F. Riley, Jr..... Respondent.

**RESPONDENT’S
MOTION FOR SANCTIONS
(Rule 269, SCACR)**

This Motion for Sanctions is being made by Respondent pursuant to Rule 269, SCACR. The basis for this Motion is Appellant’s repeated violations of the Rules of Appellate Procedure throughout the course of this Appeal, and this Court’s dismissal of this Appeal, in favor of Respondent.

On or about January 11, 2024, Appellant filed documents purporting to be the Designation of Matter, Record on Appeal, and Final Brief of Appellant (along with a Certificate of Compliance with Rule 211(b), SCACR). The documents provided by Appellant failed to comply with the South Carolina Appellate Court Rules. Respondent was compelled to file a Motion to Strike and Motion to Reform and craves reference to these Motions filed with the

Court on January 17, 2024. On January 31, 2024, and February 2, 2024, Appellant filed two separate Amended Records on Appeal, still containing numerous deficiencies. The documents provided by Appellant failed to comply with the South Carolina Appellate Court Rules. Respondent was compelled to file a Motion to Reform, and craves reference to this Motion; and, craves reference to the Order of this Court dated February 9, 2024, striking the Appellant's Designation of Matter filed on January 11, 2024; striking the Record on Appeal filed on January 11, 2024; and, striking the Recording on Appeal filed on January 31, 2024.

On April 18, 2024, Appellant filed another Amended Record on Appeal, still containing numerous deficiencies. The documents provided by Appellant failed to comply with the South Carolina Appellate Court Rules. Respondent was compelled to file a Motion to Dismiss and craves reference to this Motion filed with the Court on April 29, 2024. Thereafter, on or about May 16, 2024, Appellant, again, filed an Amended Record on Appeal, still containing numerous deficiencies. Respondent renewed its Motion to Dismiss and craves reference to this Motion filed with the Court on June 19, 2024. By Order of this Court dated July 1, 2024, Appellant was ordered to file and serve an Amended Record on Appeal that complied with Rule 210(c), SCACR, within twenty days. On July 22, 2024, Appellant, again, filed an Amended Record on Appeal, still containing deficiencies. Respondent renewed its Motion to Dismiss, again, and craves reference to this Motion filed with the Court on July 26, 2024. By Order of this Court dated September 3, 2024, in which the Court stated the Fourth Amended Record on Appeal still failed to include at least one item that was designated, Appellant was ordered to file and serve a Fifth Amended Record on Appeal in compliance with Rule 210(c), SCACR, within thirty days. A correct and final version of the Record on Appeal was filed by Appellant on October 4, 2024, after at least five attempts.

On October 22, 2024, Appellant filed a document purporting to be his Final Brief, along with a Certificate of Compliance with Rule 211(b), SCACR. This Final Brief was a different brief, containing new case citations, new content, new statements of the issues on appeal, and an entirely new conclusion(s). The brief expanded from five (5) pages of written text to ten (10) pages of written text. Appellant, for the second time, failed to comply with Rule 211(b), SCACR when filing a Final Brief. Respondent was compelled to file a Motion to Strike and craves reference to this Motion filed with the Court on October 25, 2024; and, craves reference to the Order of this Court dated November 26, 2024, striking Appellant's Final Brief dated October 22, 2024, and instructing Appellant to file a Final Brief within twenty days, in compliance with Rule 211(b), SCACR. Inexplicably, Appellant never filed a new Final Brief, and, by Order of this Court dated December 20, 2024, this Appeal was dismissed.

Respondent respectfully requests this Court for an Order of Sanctions against Appellant for his repeated violations of the South Carolina Rules of Appellate Procedure. For the majority of this Appeal, Respondent has been compelled to respond to and address Appellant's deficient filings and blatant violations of the Rules of Appellate Procedure, unfairly costing Respondent thousands of dollars in unnecessary attorney fees. Appellant was graciously given numerous extensions of time by this Court on various filing requirements, culminating in the end to a dismissal of his Appeal for an apparent indifference to his case. Appellant has signed two Rule 211(b), SCACR, Certifications, neither of which complied with the language of the rule, the most recent being an open and obvious violation. Appellant's botched attempt at this appeal has had the equivalent effect of a frivolous appeal taken solely for the purposes of delay.

Appellant's violations of the Rules of Appellate Procedure are sanctionable and sanctions are warranted in this matter, in the form of unnecessary attorney fees, costs, and expenses

incurred by Respondent. Respondent attaches hereto and incorporates herein an Affidavit of Attorney Fees (Exhibit 1); a Redacted Log of Time Entries (Exhibit 2); and, a Spreadsheet of Time Entries (Exhibit 3), fees and expenses of which were incurred in filing motions in response to Appellant's violations of the filing requirements. Appellant respectfully requests this Court to issue sanctions against appellant in the amount of \$3,603.75, or some other amount that is just and equitable considering the circumstances.

Respectfully Submitted,

NESS & JETT, LLC

/s/ R. Aaron Ness

R. Aaron Ness, S.C. Bar #102331

Alison Dennis Hood, S.C. Bar #77128

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ATTORNEYS FOR RESPONDENT

January 7, 2025
Bamberg, South Carolina

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SC Court of Appeals

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APPEAL FROM ALLENDALE COUNTY
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EXHIBIT 1
AFFIDAVIT OF ATTORNEY FEES

PERSONALLY appeared before me R. Aaron Ness, who, being duly sworn, states as follows:

1. I am an Attorney and Partner at the law firm of Ness & Jett, LLC.
2. I was admitted to the South Carolina Bar in 2015, and I am also admitted to the United States District Court for the District of South Carolina, the United States Court of Appeals for the Fourth Circuit, and the Supreme Court of the United States of America.
3. I am the primary attorney for Dorothy Riley, individually and Dorothy Riley in her role as Personal Representative of the Estate of Marion F. Riley, Jr, in this action. Alison D. Hood, Esq. is co-counsel for Respondent. By agreement with our client, our hourly rate in this matter is \$250.00, which I assert to be a reasonable rate.
4. I am informed and believe that under the laws of this state, several factors should be

considered in determining the reasonableness of a fee, including time and labor required, complicating factors in the litigation, skills requisite to perform the service required, fees customarily charged in the locality, the amount involved and the results obtained, nature and length of the professional relationship with the client, the experience, reputation and ability of the lawyer or lawyers performing the services, the extent to which other work has been precluded, and the time limitations imposed by the client should also be considered.

5. I am informed and believe this instant action justifies an award of a reasonable, equitable, and justifiable attorney's fee of \$3,603.75. For a log of time entries, see Exhibit 2. For a spreadsheet of these time entries showing a final calculated total, see Exhibit 3. The time reflected in the exhibits was necessitated by the repeated non-compliance of Appellant's counsel with the rules of this Court, requiring greater time than would have been expended otherwise.

SWORN to before me this 7th)
day of January, 2025)
Amber P. Wallis (L.S.))
Amber P. Walling)
Notary Public for South Carolina)
My Commission Expires: 10/18/33)



R. Aaron Ness

Exhibit 2

ITEM	DATE	HRS.	RATE	TOTAL	BILLED BY
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Review/analyze Review new Court Order from SC Court of Appeals	11/26/2024	0.1	\$250.00	\$25.00	AN
Work on File Revise Respondent's Motion to Strike; Draft Letter to SC Court of Appeals; Draft Proof of Service; Email to SC Court of Appeals	10/25/2024	0.75	\$250.00	\$187.50	AN
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Draft/revise receipt of filing from appellant; drafting response motion; reviewing initial brief with final filed one	10/23/2024	0.6	\$250.00	\$150.00	ADH

ITEM	DATE	HRS.	RATE	TOTAL	BILLED BY
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Review/analyze Review of Appellant's Final Brief	10/22/2024	0.5	\$250.00	\$125.00	AN
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Communicate (other external) emails on fifth amended ROA; re- sending exhibits	10/2/2024	0.2	\$250.00	\$50.00	ADH
Communicate (outside counsel) ltr from the court; emails with Aaron on response	9/3/2024	0.3	\$250.00	\$75.00	ADH
Review/analyze reviewing response to motion	8/20/2024	0.3	\$250.00	\$75.00	ADH

ITEM	DATE	HRS.	RATE	TOTAL	BILLED BY
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
<p>Work on File</p> <p>Review email from ADH; Final revisions to Renewed Motion to Dismiss; Draft Letter to SC Court of Appeals; Draft Proof of Service; Email to SC Court of Appeals; Instructions to Paralegal</p>	7/26/2024	1	\$250.00	\$250.00	AN
<p>Draft/revise</p> <p>drafting motion on record on appeal</p>	7/26/2024	1	\$250.00	\$250.00	ADH
<p>Work on File</p> <p>Review emails and Fourth (4th) Amended Record on Appeal; TC w/ Co-Counsel</p>	7/25/2024	0.25	\$250.00	\$62.50	AN
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
<p>Communicate (other external)</p> <p>email from Jenkins on exhibits; response</p>	7/17/2024	0.2	\$250.00	\$50.00	ADH

ITEM	DATE	HRS.	RATE	TOTAL	BILLED BY
<p>Review/analyze Review Email and Order dated July 1, 2024, from SC Court of Appeals</p>	7/1/2024	0.1	\$250.00	\$25.00	AN
<p>Email Email to SC Court of Appeals w/ Correspondence, Renewed Motion to Dismiss, and Proof of Service</p>	6/19/2024	0.1	\$250.00	\$25.00	AN
<p>Work on File Review Renewed Motion; Emails w/in Firm re renewed motion; Instructions to Paralegal</p>	6/18/2024	0.25	\$250.00	\$62.50	AN
<p>[REDACTED]</p>	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
<p>Review/analyze Review and revise correspondence to SC Court of Appeals, and Certificate of Service</p>	6/18/2024	0.1	\$250.00	\$25.00	AN
<p>Draft/revise drafting motion re: 3rd amended record on appeal; checking status with the court on c-track</p>	6/17/2024	0.8	\$250.00	\$200.00	ADH
<p>[REDACTED]</p>	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

ITEM	DATE	HRS.	RATE	TOTAL	BILLED BY
Communicate (other external) email to Jenkins on exhibits and ROA; email from Jenkins	5/1/2024	0.2	\$250.00	\$50.00	ADH
██████████	██████████	█	██████	██████	████
██████████	██████████	█	██████	██████	████
Draft/revise drafting motion to dismiss; email with Jenkins	4/29/2024	0.5	\$250.00	\$125.00	ADH
████████████████████ ██████████ ████████████████████ ████████████████████ ██████████	██████████	█	██████	██████	████
Draft/revise working on final appeal; problem with ROA; conf. with Aaron	4/26/2024	0.5	\$250.00	\$125.00	ADH
Communicate (other external) working on final brief; email to Jenkins on problems in ROA	4/26/2024	0.9	\$250.00	\$225.00	ADH
████████████████████ ████████████████████	██████████	█	██████	██████	████

ITEM	DATE	HRS.	RATE	TOTAL	BILLED BY
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Review/analyze reviewing order from the court on revision to ROA	2/12/2024	0.2	\$250.00	\$50.00	ADH
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Review/analyze Review Motion to Reform Amended Record on Appeal drafted by ADH	2/7/2024	0.25	\$250.00	\$62.50	AN
Work on File 1.) Draft Letter to SC Court of Appeals; 2.) Draft Proof of Service; 3.) Finalize Motion to Reform Amended Record on Appeal; 4.) Email to SC Court of Appeals w/ Documents for E-Filing; 5.) Email instructions to paralegals.	2/7/2024	0.5	\$250.00	\$125.00	AN

ITEM	DATE	HRS.	RATE	TOTAL	BILLED BY
Draft/revise drafting motion to reform (second ROA) with specifics for the Court to see	2/6/2024	0.8	\$250.00	\$200.00	ADH
Review/analyze Review Record on Appeal (Amended) filed by Opposing Attorney.	2/5/2024	0.1	\$250.00	\$25.00	AN
Communicate (outside counsel) reviewing emails from Appellants and producing docs for ROA; two emails with attachments from Public Index	2/2/2024	1	\$250.00	\$250.00	ADH
Communicate (other external) emails with Plaintiff on record on appeal (x3); resending documents for inclusion within ROA	2/1/2024	0.4	\$250.00	\$100.00	ADH
Communicate (other external) review Roa; email to Jenkins	1/31/2024	0.5	\$250.00	\$125.00	ADH
[REDACTED] [REDACTED] [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

ITEM	DATE	HRS.	RATE	TOTAL	BILLED BY
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
<p>Draft/revise drafting motions to response to filings; reviewing filings for errors for motion</p>	1/17/2024	1.5	\$250.00	\$375.00	ADH
<p>Review/analyze Review/revise Motion to Reform and Motion to Strike for ADH; Review/revise Correspondence to SC Court of Appeals; Review/revise Proof of Service; Email to SC Court of Appeals w/ all Filings</p>	1/17/2024	1.5	\$250.00	\$375.00	AN
<p>Review/analyze Review/revise Motion to Reform and Motion to Strike for ADH</p>	1/17/2024	0.1	\$250.00	\$25.00	NJ
<p>Draft/revise Initial Draft of Correspondence to SC Court of Appeals; Initial Draft of Proof of Service</p>	1/17/2024	0.25	\$85.00	\$21.25	APW
<p>Communicate (in firm) TC w/ Alison Hood re: Appellants Final Brief, Motions to Strike, Motion for Extension of Time</p>	1/16/2024	0.33	\$250.00	\$82.50	AN

Exhibit 3

Date	Hourly Time	Hourly Rate	Total
11/26/2024	0.1	\$250.00	\$25.00
10/25/2024	0.75	\$250.00	\$187.50
10/23/2024	0.6	\$250.00	\$150.00
10/22/2024	0.5	\$250.00	\$125.00
10/2/2024	0.2	\$250.00	\$50.00
9/3/2024	0.3	\$250.00	\$75.00
8/20/2024	0.3	\$250.00	\$75.00
7/26/2024	1	\$250.00	\$250.00
7/26/2024	1	\$250.00	\$250.00
7/25/2024	0.25	\$250.00	\$62.50
7/17/2024	0.2	\$250.00	\$50.00
7/1/2024	0.1	\$250.00	\$25.00
6/19/2024	0.1	\$250.00	\$25.00
6/18/2024	0.25	\$250.00	\$62.50
6/18/2024	0.1	\$250.00	\$25.00
6/17/2024	0.8	\$250.00	\$200.00
5/1/2024	0.2	\$250.00	\$50.00
4/29/2024	0.5	\$250.00	\$125.00
4/26/2024	0.5	\$250.00	\$125.00
4/26/2024	0.9	\$250.00	\$225.00
2/12/2024	0.2	\$250.00	\$50.00
2/7/2024	0.25	\$250.00	\$62.50
2/7/2024	0.5	\$250.00	\$125.00
2/6/2024	0.8	\$250.00	\$200.00
2/5/2024	0.1	\$250.00	\$25.00
2/2/2024	1	\$250.00	\$250.00
2/1/2024	0.4	\$250.00	\$100.00
1/31/2024	0.5	\$250.00	\$125.00
1/17/2024	1.5	\$250.00	\$375.00
1/17/2024	0.1	\$250.00	\$25.00
1/17/2024	0.25	\$85.00	\$21.25
1/16/2024	0.33	\$250.00	\$82.50
TOTAL			\$3,603.75

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PROOF OF SERVICE

The undersigned certifies that a copy of RESPONDENT’S MOTION FOR SANCTIONS, and EXHIBITS 1 through 3 have been served upon counsel of record for the Appellant, using his primary email address and mailing address listed in the Attorney Information System.

Respectfully Submitted,

NESS & JETT, LLC

January 7, 2025
Bamberg, South Carolina

/s/ R. Aaron Ness
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