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Mar 11 2025

SC Court of Appeals

From: dwhitt2001
To: [Amy H. Wooten](mailto:Amy.H.Wooten)
Cc: [Michelle C. Howard](mailto:Michelle.C.Howard); [Paul A. Fanning](mailto:Paul.A.Fanning)
Subject: RE: Record on Appeal
Date: Wednesday, February 26, 2025 10:32:37 AM

Hi Amy,

I have reviewed Rule 212, and I consent to you filing an Appendix at a time of your choice.

Regards,
Randy Whitt

Sent from my Verizon, Samsung Galaxy smartphone

----- Original message -----

From: "Amy H. Wooten" <AHWooten@wardandsmith.com>
Date: 2/25/25 11:56 AM (GMT-05:00)
To: dwhitt2001@aol.com
Cc: "Michelle C. Howard" <MCHoward@wardandsmith.com>, "Paul A. Fanning" <PAF@wardandsmith.com>
Subject: RE: Record on Appeal

Good morning Randy,

Your understanding and consent are very much appreciated. I do not think what we have sought consent for implicates Rule 263(b). To clarify, we're not seeking leave to file a Designation of Matter to be Included in the Record on Appeal under Rule 209; rather, we have sought consent to supplement the Record on Appeal under Rule 212(b) through the submission of supplemental materials in an Appendix to the Record on Appeal in accordance with Rule 212(c). My read of Rule 212(b) is that it permits the parties, by written consent of all attorneys of record to the appeal, to supplement the Record on Appeal at any time before argument commences. Since Rule 212(b) permits supplementation of the existing Record on Appeal at any time before argument commences, provided there is written consent of all attorneys of record to the appeal, the parties are not extending a time prescribed by the appellate rules in contravention of Rule 263(b) by supplementing the Record on Appeal through the filing of supplemental materials in an Appendix to the Record on Appeal at this time. Under Rule 212(c), we would be responsible for compiling, serving, and filing the Appendix to the Record on Appeal, as the party who proposed supplementing the Record. I've attached, for ease of reference, a copy of Rule 212. Do we still have your consent to supplement the Record on Appeal in accordance with Rule 212? If not, I wanted to let you know, so that we're all on the same page, that we do not plan to move the Court for leave to supplement the Record. We do not view the items, which were included as part of the general factual background of the case, as material to the Court's understanding or resolution of the issues presented on appeal. However, we will note in the Final Brief that prior to its submission, Respondent requested Appellants' consent to supplement the Record on Appeal, and that Appellants withheld their consent to the

supplementation and further that if the Court believes that the undesignated material is pertinent to its resolution of the appeal, it may use Rule 212(a) to supplement the record *sua sponte*. Please let me know if we still have your consent to supplement the Record on Appeal in accordance with Rule 212 and thank you again for your understanding and consideration.

Best,

Amy



Amy H. Wooten
Attorney

Ward and Smith, P.A.

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From: dwhitt2001@aol.com <dwhitt2001@aol.com>

Sent: Tuesday, February 25, 2025 10:46 AM

To: Amy H. Wooten <AHWooten@wardandsmith.com>

Cc: Michelle C. Howard <MCHoward@wardandsmith.com>; Paul A. Fanning <PAF@wardandsmith.com>

Subject: Re: Record on Appeal

Good morning Amy,

I am sympathetic and do not intend to contest the relief you seek.

However, my consent is going to be of limited use because Appellate Rule 263(b) provides in part: "The time prescribed by these Rules for performing any act or taking

any action may not be extended by agreement of the parties."

I think you are going to have to file a motion to allow late filing of the designation of matter.

It will be helpful if you also include a request to set new deadlines for filing the amended record on appeal and final briefs.

Regards,

Randy Whitt

On Friday, February 21, 2025 at 04:30:17 PM EST, Amy H. Wooten <ahwooten@wardandsmith.com> wrote:

Thank you, Randy. In conjunction with preparing Respondent's Final Brief, we have identified a handful of items that are referenced and cited to in Respondent's Initial Brief that are not included in the Record on Appeal. We determined that those items correspond to documents that were denoted in Respondent's designation of matter to be included in the record on appeal that was prepared and intended for filing contemporaneously with the filing of Respondent's Initial Brief but was not filed. We write to request your written consent to supplement the Record on Appeal in accordance with Rule 212 to include those items, each of which reflects matter that was before the lower court during the course of the case.

The following are the specific items that we request your consent to include in the Record on Appeal as supplemental materials:

- Respondent's Motion for Show Cause Order and to Exclude Evidence filed on September 15, 2023;
- Order granting Respondent's Motion for Show Cause Order and to Exclude Evidence entered on November 29, 2023;

- Defendant's Motions for Reconsideration and to Set Aside dated March 9, 2023 (Cody Gunter), March 13, 2023 (Matt Rush and Cody Gunter), and March 20, 2023 (Trust and Estate);
- Orders denying Defendant's Motions for Reconsideration and to Set Aside entered on June 16, 2023 (Cody Gunter and Matt Rush), July 27, 2023 (Trust and Estate), and August 1, 2023 (Cody Gunter);
- Cody Gunter's Motion to Dismiss and for Summary Judgment filed September 18, 2023;
- Matt Rush's Motion for Summary Judgment filed October 26, 2023; and
- Orders denying Defendants' motions to dismiss and for summary judgment entered on November 29 2023 (Cody Gunter and Matt Rush).

We appreciate your consideration of this request and ask that you please let us know by 11 a.m. on Wednesday, February 26, if you will grant the requested consent.

Thank you,

Amy



Amy H. Wooten
Attorney

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From: dwhitt2001@aol.com <dwhitt2001@aol.com>

Sent: Monday, February 10, 2025 6:14 PM

To: Amy H. Wooten <AHWooten@wardandsmith.com>; Paul A. Fanning <PAF@wardandsmith.com>; Michelle C. Howard <MCHoward@wardandsmith.com>

Subject: Record on Appeal

Good Evening,

attached and served upon you is the Record on Appeal, which I have broken into multiple parts because of its size.

Regards,

Randy Whitt