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Aug 07 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

Jessica A. Salvini, Circuit Court Judge

Case No. 2021-CP-39-00329
Court of Appeals Case No. 2025-001327

Michael and Mary Smith

Appellants,

v.

King Asphalt, Inc.

Respondent.

MOTION TO ACCEPT REPLY AS TIMELY FILED

Michael Smith
Mary Smith
Appellants, pro se
220 Stancil Street
Easley, SC 29640
MichaelDSmith@housemail.com

Opposing Counsel of Record:
Catharine Garbee Griffin Esq.
Baker, Ravenel & Bender LLC
3710 Landmark Drive, Suite 400
Columbia, S.C. 29204
CGriffin@brblegal.com

MOTION TO ACCEPT REPLY AS TIMELY FILED

Appellants, appearing pro se, respectfully move the Court to accept their Reply to Respondent's Return to the Motion to Proceed In Forma Pauperis ("IFP") as timely filed. This motion is supported by the attached Appellant's affirmation of service of Respondent's Return by US Mail on July 30, 2025 and denial of service by email (Exhibit A), screenshot of MichaelDSmith@housemail.com email inbox (Exhibit B), Respondent's mailing envelope with postmark (Exhibit C), Respondent's Certificate Of Service of July 24, 2025 (Exhibit D), the Appellate Court's directive granting electronic (email) service July 17, 2025 (Exhibit E), The Supreme Court of South Carolina (Re: Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules (As Amended April 24, 2024) (Exhibit F), and the facts below:

FACTUAL AND PROCEDURAL GROUNDS

1. Request and Order for Electronic Service:

- On July 11, 2025, Appellants filed a Request for Electronic Service with the Court and served a copy on Respondent's counsel via email the same day.
- The Court of Appeals granted this request on July 17, 2025, and notified Appellants by email (Exhibit E) that electronic service would be used for this appeal. The order was explicit and binding on all parties under Rule 262, SCACR.

2. Respondent's Claimed Service Did Not Occur:

- Respondent's Certificate of Service, dated July 24, 2025, asserts service of their Return to Appellants' IFP Motion by both email and U.S. Mail on that date (Exhibit D, attached).

- Appellants never received any such email (at MichaelDSmith@housemail.com) on or after July 24, 2025, despite checking all folders—including spam. (Exhibit A, attached) corroborated by (Exhibit B, attached)
- The first and only receipt of Respondent’s Return was via U.S. Mail, in an envelope metered July 24 and **USPS postmarked July 25, 2025** (Exhibit C, attached), which was retrieved from Appellant’s mailbox July 30, 2025.

3. Prompt Action and Timeliness:

- Appellants filed their Reply on August 4, 2025, **within five days of actual receipt** as allowed by Rule 240(f), SCACR, excluding weekends and holidays per appellate time rules.
- Appellants were entitled to expect electronic service under the Court’s July 17 order (not an indeterminate method of service via US Mail) and acted diligently and in good faith immediately upon actual receipt.

ARGUMENT

- Under Rule 262 and Rule 240, SCACR, service by email is effective only if the document is actually received (see Rule 262(b), SCACR, and administrative order of April 24, 2024 (Exhibit F attached)). Mere assertion in a certificate of service does not create legal effectiveness absent actual transmission and delivery to the correct, court-designated email address.
- Respondent’s failure to effect proper email service—as required by Court order—constitutes a procedural defect, not a failing by Appellants.

- The attached affidavit and envelope corroborate that Appellants acted promptly upon first notice.

PRAYER FOR RELIEF

Appellants, as self-represented litigants, have acted in good faith and exercised reasonable diligence at every stage. South Carolina appellate courts have long resolved procedural uncertainties in favor of preserving substantive rights, particularly where no actual prejudice to the opposing party is demonstrated.

WHEREFORE, Appellants respectfully request that the Court:

- (1) Accept their Reply as timely filed and consider it on the merits as though served on the date of first actual receipt by US Mail on July 30, 2025;
- (2) Grant such other relief as justice or the Court's inherent authority under Rule 263(b), SCACR, may require.

Respectfully submitted,

/s/ Michael Smith August 7, 2025
Michael Smith, Appellant, pro se

/s/ Mary Smith August 7, 2025
Mary Smith, Appellant, pro se

220 Stancil Street
Easley, SC 29640
MichaelDSmith@housemail.com
Dated: August 7, 2025

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM PICKENS COUNTY
Court of Common Pleas

Jessica A. Salvini, Circuit Court Judge

Case No. 2021-CP-39-00329
Court of Appeals Case No. 2025-001327

Michael and Mary Smith

Appellants,

v.

King Asphalt, Inc.

Respondent.

AFFIRMATION REGARDING RECEIPT OF RESPONDENT'S RETURN

Michael Smith
Mary Smith
Appellants, pro se
220 Stancil Street
Easley, SC 29640
MichaelDSmith@housemail.com

Opposing Counsel of Record:
Catharine Garbee Griffin Esq.
Baker, Ravenel & Bender LLC
3710 Landmark Drive, Suite 400
Columbia, S.C. 29204
CGriffin@brblegal.com

AFFIRMATION REGARDING RECEIPT OF RESPONDENT’S RETURN

(In Support of Motion to Accept Reply as Timely Filed)

We, Michael Smith and Mary Smith, affirm as follows:

1. We are the pro se appellants in this action.
2. On July 24, 2025, Respondent’s Certificate of Service claimed service of Respondent’s Return to Appellants’ Motion to Proceed In Forma Pauperis (“Return”) by both email and U.S. Mail (see Exhibit D).
3. We did not receive Respondent’s Return by email at our address, MichaelDSmith@housemail.com, at any time on or after July 24, 2025. We have checked our inbox, spam, and trash folders for that period and confirm no such email was received.
4. The first and only service we received was via U.S. Mail, in an envelope bearing a postal meter date of July 24, 2025, but an official USPS postmark dated July 25, 2025 (see Exhibit C), which we retrieved from our mailbox on July 30, 2025.
5. Due to health limitations, we do not check our mailbox daily and have relied on the Court’s July 17, 2025, order (see Exhibit E) requiring electronic service as the official method for this appeal.
6. Upon actual receipt of Respondent’s Return by mail on July 30, 2025 (see Exhibit A), we acted promptly and filed our Reply on August 4, 2025, within five days—excluding weekends—in accordance with applicable appellate rules.
7. At all times, we have acted in good faith and with diligence upon actual notice.

We affirm under penalty of perjury that the above statements are true and correct. We certify that the foregoing statements made by us are true. We are aware that if any of the foregoing statements made by us are willfully false, we are subject to punishment by contempt.

Respectfully,

/s/ Michael Smith August 7, 2025

Michael Smith
Appellant, pro se

/s/ Mary Smith August 7, 2025

Mary Smith
Appellant, pro se

220 Stancil Street
Easley, S.C. 29640
MichaelDSmith@housemail.com

Dated: August 7, 2025

Compose E-mail

 Delete
 Spam
 Reply
 Forward
 Move

Sort

Search

Unread E-mails

Favorites

Inbox

Display additional folders

Trash

Spam

Sent

Drafts

+ New folder

+ Add e-mail account

Favorite Contacts

Griffin, Catharine G.

Michelle H. Broom

t k

ctappfilings@sccourts.org

the Honorable Jessica Salvini

jsalvinilc@sccourts.org

Premium Upgrade

Cloud Upgrade

Help

Settings

Terms and Conditions Privacy Policy

Help Center Data Collection

From	Date
<input checked="" type="checkbox"/> Singleton, Mary C.	8/5/2025
Michael and Mary Smith v. King Asphalt, Inc.	
<input type="checkbox"/> Court Of Appeals Filings	8/5/2025
RE: APPELLANTS' REPLY TO RESPONDE...	
<input type="checkbox"/> Court Of Appeals Filings	7/29/2025
RE: Attachment for filing - Motion for Ex...	
<input type="checkbox"/> Singleton, Mary C.	7/17/2025
Michael and Mary Smith v. King Asphalt, Inc.	
<input type="checkbox"/> Court Of Appeals Filings	7/15/2025
RE: For Filing - Smith v. King Asphalt, I...	
<input type="checkbox"/> Court Of Appeals Filings	7/14/2025
RE: Request for Electronic Service for S...	
<input type="checkbox"/> Singleton, Mary C.	7/10/2025
Michael and Mary Smith v. King Asph...	
<input type="checkbox"/> Michelle H. Broom	6/24/2025
Re: apeel cort tole me \$\$ wuz 4 them	
<input type="checkbox"/> Michelle H. Broom	6/23/2025
Re: apeel cort tole me \$\$ wuz 4 them	
<input type="checkbox"/> Michelle H. Broom	6/2/2025
Re: Smith v Economou 39-00329	
<input type="checkbox"/> Michelle H. Broom	5/14/2025
Re: Smith v Economou 39-00329	
<input type="checkbox"/> Michelle H. Broom	5/14/2025
Re: Smith v Economou 39-00329	
<input type="checkbox"/> Salvini, Jessica Secret...	4/25/2025
RE: Motion for Leave to File Surreply - S...	
<input type="checkbox"/> Michelle H. Broom	4/21/2025
Re: Smith v Economou 39-00329	
<input type="checkbox"/> Griffin, Catharine G.	4/18/2025
Fwd: Received Notice: Your filing, Re: 2...	
<input type="checkbox"/> Griffin, Catharine G.	4/18/2025
RE: Smith v. King Asphalt, Inc. - 202...	

Michael and Mary Smith v. King Asphalt, Inc. (2025-001327)

From: Singleton, Mary C.

8/5/2025 at 3:48 PM

PDF Smith v. King - ...

Dear Counsel, Mr. Smith, and Ms. Smith:

Attached please find correspondence from the Court of Appeals. Any parties not included in this email will receive the attached correspondence by US Mail.

Do not respond to this email. Send all correspondence to ctappfilings@sccourts.org.

Sincerely,

Caitlyn Singleton

Senior Appeals Specialist

South Carolina Court of Appeals

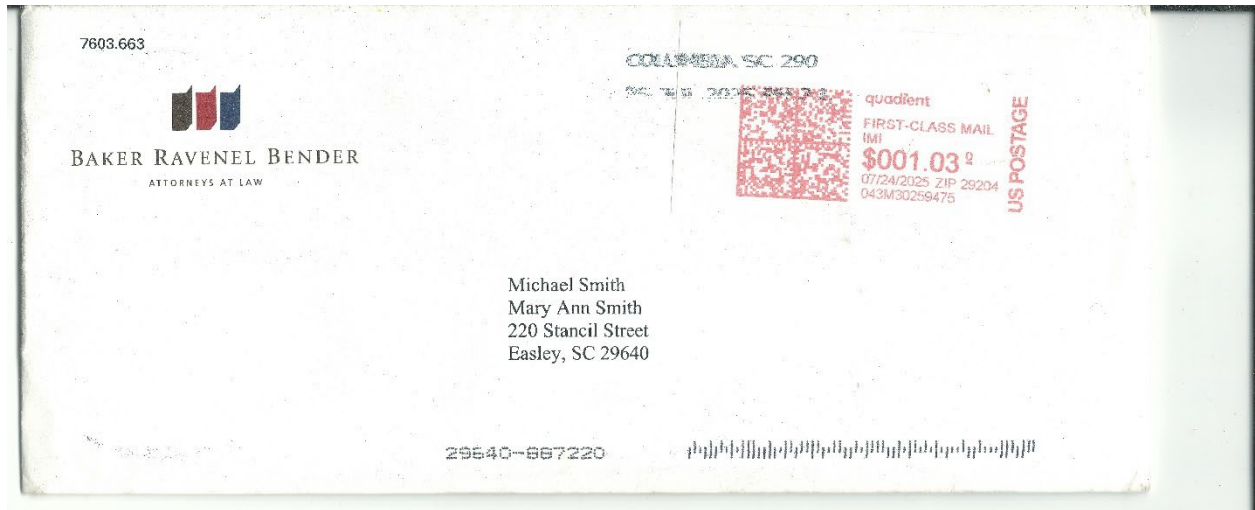
1220 Senate Street

Columbia, SC 29201

Filings: ctappfilings@sccourts.org

Phone: (803) 734-1890

Type quick response here ... Reply instantly



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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM PICKENS COUNTY
Court of Common Pleas
C/A No. 2021-CP-39-00329
Jessica A. Salvini, Circuit Judge

Appellate Case No. 2025-001327

Michael and Mary Smith..... Appellants,

v.

King Asphalt, Inc.,..... Respondent,

PROOF OF SERVICE

I certify that on July 24, 2025, I served the respondent King Asphalt’s Return to Appellants’ Motion and Affidavit to Proceed *in Forma Pauperis* by email and US Mail on the *pro se* appellants Michael and Mary Smith, addressed as follows:

Michael and Mary Smith
220 Stancil Street
Easley, SC 29640
MichaelDSmith@housemail.com

s/Teresa Kowalewski

Columbia, South Carolina
July 24, 2025



The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

CATHERINE S. HARRISON
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1220 SENATE STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

July 17, 2025

Michael Smith
220 Stancil Street
Easley SC 29640

Mary Smith
220 Stancil Street
Easley SC 29640

Re: Michael and Mary Smith v. King Asphalt, Inc.
Appellate Case No. 2025-001327

Dear Mr. Smith and Ms. Smith:

We are in receipt of your request for electronic service filed on July 11, 2025. Your request is granted. We will email all outgoing correspondence to michaeldsmith@housemail.com. Furthermore, we received your email correspondence regarding electronic filing. You may utilize ctappfilings@sccourts.org for any electronic filings with the Court.

Very truly yours,

A handwritten signature in blue ink that reads "Jenny A. Kitchings". The signature is fluid and cursive.

CLERK

cc: Catharine Garbee Griffin, Esquire

The Supreme Court of South Carolina

Re: Methods of Electronic Filing and Service Under Rule
262 of the South Carolina Appellate Court Rules (As
Amended April 24, 2024)

Appellate Case No. 2020-000447

ORDER

(a) Purpose. Pursuant to Rule 262(a)(3) and (c)(3) of the South Carolina Appellate Court Rules (SCACR), this Court may by order establish methods for the electronic filing and service of documents. For the purpose of this order, "Appellate Court" means the Supreme Court of South Carolina or the South Carolina Court of Appeals.

(b) Electronic Methods of Filing. Filings with an appellate court may be made electronically using the methods listed below.

(1) Electronic Filing by Lawyers. Lawyers who are licensed to practice law in South Carolina may utilize OneDrive for Business to electronically submit documents for filing with the Supreme Court and the Court of Appeals, and *lawyers are strongly encouraged to use this method of filing*. More information about this method, including registration and filing instructions, is available in the Attorney Information System (<https://ais.sccourts.org/AIS>) under the tab "Appellate Filings." A document filed by this method must be in Adobe Acrobat portable document format (.pdf).

(2) Filing by E-mail. Filings may be made by e-mail. For the Supreme Court, the e-mail shall be sent to suptctfilings@sccourts.org; for the Court of Appeals, the e-mail shall be sent to ctappfilings@sccourts.org. This method may not be suitable for large documents, and if it becomes necessary to split a document into multiple parts, the e-mail shall identify the part being sent (i.e., Record on Appeal, Part 1 of 4). A document filed by this method must

be in Adobe Acrobat portable document format (.pdf). Filers shall not utilize any other file format or a file-sharing service when e-mailing documents for filing. The clerk of the appellate court may reject any document submitted by e-mail in a format other than .pdf or using a file-sharing service.

(3) Faxing Documents. A document may be filed by an electronically transmitted facsimile copy.¹ While this method is well suited for relatively small documents, depending primarily upon the limitations of the sending fax machine, it may not be possible to send large documents, such as a record on appeal, in a single transmission. If it becomes necessary to split a document into multiple parts to make the fax transmission, a separate cover sheet should be used on each part to identify the document (i.e., Brief of Appellant, Part 1 of 4). In the event the facsimile copy is not sufficiently legible, the clerk of the appellate court may require the party to provide a copy by mail.

(c) Filing Date and Payment of Fees for Documents Filed Electronically.

When filed using one of the methods specified in (b) above, a document transmitted and received by 11:59:59 p.m., Eastern Standard Time, shall be considered filed on that day. If a filing fee is required for the document, a check or money order for the fee must be mailed or delivered to the appellate court within five days of the filing; the case name and the Appellate Case Number, if known, should be listed on the check or money order.

(d) Electronic Service Using AIS E-mail Address.

(1) Service on Another Lawyer. A lawyer admitted to practice law in South Carolina may serve a document on another lawyer admitted to practice law in South Carolina using the lawyer's primary e-mail address listed in the Attorney Information System (AIS). Documents must be e-mailed as an attachment in .pdf. In the absence of consent, a lawyer serving a document by e-mail may not utilize another file format or a file-sharing service. For documents that are served by e-mail, a copy of the sent e-mail shall be enclosed with the proof of service, affidavit of service, or certificate of service for that document. Lawyers are reminded of their obligation under

¹ The fax number for the Supreme Court is 803-734-1499. The fax number of the Court of Appeals is 803-734-1839.

Rule 410(g), SCACR, to ensure that their AIS information is current and accurate at all times.²

(2) Service by an Appellate Court. An appellate court may send an order, opinion or other correspondence to a lawyer admitted to practice law in South Carolina using that lawyer's primary e-mail address in AIS. A self-represented litigant may request the appellate court serve the litigant by e-mail under this provision. Any request must be in writing and must include the e-mail address for service. It is the responsibility of the self-represented litigant to immediately inform the appellate court of any change in e-mail address.

(3) Service on Persons Admitted Pro Hac Vice. For attorneys admitted pro hac vice under Rule 404, SCACR, service on the associated South Carolina lawyer using an electronic method permitted by this order shall be construed as service on the pro hac vice attorney; if appropriate, it is the responsibility of the associated lawyer to provide a copy to the pro hac vice attorney.

(4) Service of the Notice of Appeal. In addition to other methods of service, a party may serve a notice of appeal in accordance with the provisions of any Electronic Filing Policies and Guidelines, or other similar rules established by Order of this Court, that permit the electronic filing and service of documents in a court specified in Rule 203, SCACR. *See* Rule 203(d)(1), SCACR (requiring the notice of appeal be filed with the clerk of the lower court). The party shall file a copy of a Notice of Electronic Filing (NEF), or other similar document, as proof of service of the notice of appeal.

s/ Donald W. Beatty _____ C.J.

s/ John W. Kittredge _____ J.

s/ John Cannon Few _____ J.

² The primary AIS e-mail address for lawyers admitted to practice in South Carolina may be obtained using the search function at <https://www.sccourts.org/attorneys/dspSearchAttorneys.cfm>. Lawyers may update their AIS information at <https://ais.sccourts.org/AIS>.

s/ George C. James, Jr. J.

s/ D. Garrison Hill J.

Columbia, South Carolina
April 24, 2024

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CERTIFICATE OF SERVICE

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Opposing Counsel of Record:
Catharine Garbee Griffin Esq.
Baker, Ravenel & Bender LLC
3710 Landmark Drive, Suite 400
Columbia, S.C. 29204
CGriffin@brblegal.com

CERTIFICATE OF SERVICE

I hereby certify that a copy of **MOTION TO ACCEPT REPLY AS TIMELY FILED w/ attached exhibits A, B, C, D, E, F, AFFIRMATION REGARDING RECEIPT OF RESPONDENT’S RETURN** in **Michael and Mary Smith v. King Asphalt, Inc.**, Case No. 2021-CP-39-00329 **Court of Appeals Case No. 2025-001327** was served upon the following counsel of record:

Catharine Garbee Griffin, Esq.
Baker, Ravenel & Bender, LLP
3710 Landmark Drive, Suite 400
Columbia, SC 29204
CGriffin@brblegal.com

The document was served via the following methods:

By Email to: CGriffin@brblegal.com
Date of email service: August 7, 2025

To the above address by First Class U.S. Mail with correct postage attached,
Date of Mailing: August 7, 2025

Respectfully submitted,

/s/ Michael Smith August 7, 2025
Michael Smith Date
Appellant, pro se
220 Stancil Street
Easley, S.C. 29640
MichaelDSmith@housemail.com