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Dec 17 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY

Court of Common Pleas

J. Derham Cole, Circuit Court Judge

Case No. 2020-CP-42-00055

Appellate Case No. 2024-001239

Dr. Lad Santiago,

Appellant.

v.

Stephen N. Garcia, as Attorney for

Oscar Avila Hernandez, et.al.,

Respondents.

**APPELLANT'S MOTION TO STRIKE
RESPONDENTS' ATTORNEY'S FINAL BRIEF
DUE TO UNTIMELY FILING**

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Pro Se for Appellant

Attorney for Respondents

COMES NOW, Appellant, Dr. Lad Santiago, pursuant to **Rule 240, Motion and Petitions Generally**, of the South Carolina Appellate Court Rules, and moves this Honorable Court to enter an Order striking **Respondents' Attorney's Final Brief**, stating in support therefor as follows:

This motion requests that this Honorable Court decide the appeal based solely on Appellant's Brief due to Respondents' Attorney's failure to file a Final Brief, timely. Appellant, Dr. Lad Santiago, respectfully moves the Court pursuant to **Rule 208(a)(4), South Carolina Appellate Court Rules (SCACR)**, to decide this appeal based solely on Appellant's filed final briefs and to treat Respondents' Attorney's failure to file a timely final brief as a waiver of all issues that Respondents and Respondents' Attorney could have raised.

PROCEDURAL HISTORY

1. Appellant timely filed his Final Brief and his Final Reply Brief on December 01, 2025, in compliance with Rule 208, SCACR, with notification to the Court on November 25, 2025 that these documents were being transmitted to the Court via the US Postal Service.
2. Respondents' Attorney's Final Brief was due on October 15, 2025, pursuant to the briefing schedule issued by the Court. This is based upon Rule 211 of the SCACR which stipulates that the final briefs are due 20 days after the service of the Record on Appeal. The Record on Appeal was filed with the Court on September 26, 2025.
3. Respondents' Attorney failed to file a final brief timely and did not file it until November 25, 2025 (**41** days beyond the due date).
4. Furthermore, Respondents' Attorney did not seek any leave of Court for an extension of time or to file out of time.

5. The period for Respondents' Attorney's filing expired on October 15, 2025.

LEGAL STANDARD

Rule 208(a)(4), SCACR, expressly provides:

“(4) Failure to File. Upon the failure of the appellant to file and serve his brief within the time prescribed, the clerk of the appellate court shall sign an order dismissing the appeal, and the appeal shall not be reinstated except as provided by Rule 260. *Upon the failure of respondent to timely file a brief, the appellate court may take such action as it deems proper.*” (Emphasis added).

The Respondents' Attorney should not be extended and granted any partiality because of professional collegiality as it appears to have occurred at the Court of Common Pleas of Spartanburg County. Furthermore, as to the matter at hand, Respondents' Attorney's actions have demonstrated gross disregard for and disrespect to this Honorable Court; committed nonetheless by an officer of the Court, who has grossly disregarded the rules on timeliness and has failed to seek leave of Court. Notwithstanding his proper role and position as an officer of the Court, his actions appear to connote that the SCACR rules do not apply to him because of his status as an attorney and as an officer of the Court; an extremely biased and baseless position for the Respondents' Attorney to assume.

As per the Federal Rules of Appellate Procedure, Rule 31(c), “(c) Consequence of Failure to File. If an appellant fails to file a brief within the time provided by this rule, or within an extended time, an appellee [respondent] may move to dismiss the appeal. An appellee [respondent] who fails to file a brief will not be heard at oral argument unless the court grants permission.” *See: Fed. R. App. P. 31.* This rule substantiates that there are consequences with regard to the failure to file a brief. However, it would stand to reason that similar consequences would be warranted for filing a brief substantially untimely, as has occurred in this case.

Unlike an Appellant's failure to file a brief, which mandates dismissal, the Respondents' Attorney's failure to *timely* file his final brief gives this Court **broad discretion** to decide the case on the appellant's arguments alone.

South Carolina Appellate Courts have held that a Respondents' Attorney's failure to file a brief could potentially constitute a waiver and permit the Court to grant relief based solely on the appellant's showing, which is hereby supported by the following:

1. Rule 208(a)(4): “(4) Failure to File. Upon the failure of the appellant to file and serve his brief within the time prescribed, the clerk of the appellate court shall sign an order dismissing the appeal, and the appeal shall not be reinstated except as provided by Rule 260. Upon the failure of respondent to timely file a brief, the appellate court may take such action as it deems proper.” *See: <https://www.sccourts.org/resources/judicial-community/court-rules/appellate/rule-208/>* Courts interpret this rule flexibly but strictly. If a respondent fails to timely file his final brief, he could potentially lose his opportunity to present his side, should the Court deem it proper to take such action; thus, potentially impacting the consequences significantly.

2. Turner v. Santee Cement Carriers, Inc., 277 S.C. 91, 282 S.E.2d 858 (1981). “Respondent Turner did not file a brief with this Court.¹ Her failure to do so allows this Court to take such action upon the appeal as it deems proper. This failure alone would justify reversal; however, we simply consider it as an additional ground.” *See: Turner v. Santee Cement Carriers, Inc., 277 S.C. 91, 96, 282 S.E.2d 858, 860 (1981).*

The above applies Rule 208(a)(4) to affirm that the **Court may accept the Appellant's statement of issues and arguments as uncontested** when Respondent submits no brief.

However, this Honorable Court could consider applying the aforementioned principle as stated

herein for a Final Brief submitted untimely to this Honorable Court by the Respondents' Attorney; a breach and disregard of the rules committed by the Respondents and the Respondents' Attorney without good cause and explanation, and without proper leave of court.

ARGUMENT

Respondent has jeopardized his obligation to participate in the appellate briefing process. The failure:

1. waived all arguments Respondents' Attorney could have raised, due to his untimely filing,
2. waived rebuttal to the Appellant's legal arguments because of Respondents' Attorney's untimely filing, and
3. delayed the appellate process without justification.

Respondent's failure to file timely prejudices the Appellant greatly, because now the Appellant must make a motion regarding the Respondents' Attorney's untimely filing, which was 41 days beyond the due date. This untimely filing is a great disrespect to this Honorable Court and the Court rules, and disrespectful to the Appellant.

In an attempt to explain, please note the following. It is clear that the Respondents' Attorney sought to undermine the Appellant's legitimate Motion for an Extension of Time for extraordinary circumstances (that Appellant filed on October 27, 2025), that prevented him from filing his final briefs. The Respondents' Attorney filed his Return to the Appellant's Motion on October 28, 2025. Respondents' Attorney filed his Return to falsely controvert the Appellant's legitimate Motion, positing outlandish and unfounded reasons for his baseless position. This was in essence a frivolous and a dilatory procedural tactic to undermine and derail the wheels of justice. He pursued this course of action, although he was ultimately unsuccessful in achieving his devious objective,

as the Court granted the Appellant's Motion; the Respondents' Attorney's hopes were to seek an end to the Appellant's appeal, as supported by the following statement contained within his Return filing, on page 3 as is quoted: "**WHEREFORE**, Respondents pray for an order from this Honorable Court denying the Appellant's Motion to for Extension, enforcing the original deadline of October 27, 2025, *dismissing the Appellant's Appeal*, [emphasis added] for attorney's fees and costs, and for any further relief the Court deems just and proper." This frivolous action and dilatory maneuver unnecessarily created more work for the Court and use of its valuable resources, and also created more work for the Appellant, especially given his health conditions. In fact, this action was inappropriate, out of context, and an extreme maneuver and request on the part of the Respondents' Attorney.

Instead of the Respondents' Attorney spending his time constructing an illegitimate stratagem to undermine the Appellant's legitimate Motion of October 27, 2025, it is the Appellant's opinion that the Respondents' Attorney should have spent that time on preparing and filing his final brief, timely, and not 41 days late. This course of action by the Respondents' Attorney has caused a greater dilatory effect, a waste of the Court's time and resources, greatly prejudices the Appellant, and undermines the efficient course of justice. Furthermore, he spent time clandestinely seeking information for the purposes of undermining and disparaging the Appellant's character, and deprecating the Appellant's legitimate motion; a devious stratagem at best.

The Respondents' Attorney's frivolous actions and filings caused great harm and distress to the Appellant and delay to the processing of this case; an *abuse of process*. More unnecessary work was created for this Honorable Court and also for the Appellant, as a result.

Now, the Appellant is compelled to file this Motion regarding Respondents' Attorney's untimely filing of his final brief as it is grossly late and demands a response from the Appellant to bring it to the attention of this Honorable Court.

The Respondents' Attorney's late filing prejudices the Appellant in the following ways:

- (1) It takes time away from the Appellant, who is now compelled to note Respondents' failings;
- (2) It adds undue physical, mental and emotional stress to the Appellant in a sinister manner;
- (3) It prevents the Appellant from addressing other matters, as his time is necessarily focused on this current Motion;
- (4) It also delays the Court in addressing this case, as the Court must now deliberate upon the Respondents' attorney's grave tardiness in his untimely filing;
- (6) It adds increased costs to the Court and to the Appellant;
- (7) It also affects the management of the case in an unexpected manner;
- (8) It brings new issues and the request or demand for new and appropriate review and analysis of Respondents' Attorney's untimely final brief that the Appellant did not anticipate;
- (9) Upon discovery of breaches contained within the Respondents' Attorney's untimely final brief, it requires the notification and request for correction to the Court of those infractions, which are noted hereafter within this document;
- (10) The Appellant may lose the opportunity to present issues and to have them corrected, that could be influential in the case;
- (11) It gives the Respondents' Attorney a tactical advantage by running down the Court calendar and expending time and tarnishing and compromising the judicial procedural process so as to cause injury to the Appellant who deserves a timely, proper and just review by the Court, one that is not tainted by the Respondents' Attorney's untimely filing.

Given the absence of a timely filed brief, which was not filed until November 25, 2025 (41 days beyond the due date), and the lack of any motion on the Respondents' Attorney's part for extension or explanation, and his failure to take leave from the Court to do so, the Court is fully empowered under Rule 208(a)(4), SCACR, and assumably controlling precedent to decide the appeal as presented by the Appellant, solely.

Such action by this Honorable Court would promote judicial economy, discourage further dilatory behavior, avoid further prejudice to Appellant, and adhere to the uniform practice of South Carolina appellate court process in respondent-default situations.

Should this Honorable Court choose to allow the Respondents' Attorney's final brief, then specific modifications to his brief are required in order for it to be in compliance with this Court's dictates, and not be prejudicial to the Appellant. Infractions in the final brief committed by the Respondents' Attorney, are hereby noted below.

Apparently, the Respondents' Attorney failed to delete the following sentence from page 6 of his final brief: "At the same time, Plaintiff/Appellant filed a Bar Complaint against the undersigned counsel, however, the Bar Complaint was subsequently dismissed without any finding of ethical violations." The inclusion of this statement is improper and should not be included as it is not relevant to this case and was not a part of the record in the Circuit Court. Furthermore, because this statement was supported by, and acts in concert with the reference in the Record on Appeal, and since this reference has since been deleted by this Court's Order of August 14, 2025, it stands to reason that this statement should be stricken as well from the Respondents' Attorney's final brief. Apparently, the Respondents' Attorney chose to keep this sentence in the narrative of his final brief to defy the intent of the Court Order and give life to its essence once more.

Additionally, the Respondents' Attorney is in violation of Rule 211(b)(2), **Correction of Typographical Errors and Misspellings**. The Rule states: "The party may correct obvious typographical errors and misspellings which were contained in the initial brief. No other changes may be made." *See: <https://www.sccourts.org/resources/judicial-community/court-rules/appellate/rule-211/>*

The following are excerpts wherein the Respondents' Attorney committed these violations: The Respondents' Attorney changed the wording in his final brief in the following locations: page 14 at the first line wherein he added the words: ". . . in his Amended Complaint . . ."; page 19 at the bottom wherein he added the words: ". . . Motion to Dismiss . . ."; page 20 near the top wherein he added the words: ". . . regarding the issues of statute of limitations and breach of fiduciary duty respectively . . ."; page 21 in the lower half of the page wherein he added the words: ". . . a request for . . ."

It is the hope of the Appellant that this Honorable Court would insist that the Respondents' Attorney restore the original wording and phrases to his final brief as it originally appeared in his initial brief, should the final brief be allowed.

REQUEST FOR RELIEF

For these reasons, Appellant respectfully requests and prays for an Order that this Honorable Court:

1. Proceed to decide this Appellate Court Case, No. 2024-001239, based solely on Appellant's previously filed final briefs, pursuant to Rule 208(a)(4), SCACR;
2. Treat Respondents' Attorney's failure to file a final brief timely, and his other infractions noted heretofore as a waiver of all of the Respondents' and the Respondents' Attorney's issues and arguments; and

3. Grant such other and further relief as the Court deems appropriate.

Respectfully submitted,

/s/Dr. Lad Santiago

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5041 North Blackstock Road
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(864)576-2983
Pro Se for Appellant

Dated December 17, 2025

THE STATE OF SOUTH CAROLINA

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Dr. Lad Santiago,

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v.

Stephen N. Garcia, as Attorney for
Oscar Avila Hernandez, et.al.,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 17th day of December, 2025, he served counsel for the Respondents with a copy of Appellant's Motion to Strike Respondents' Attorney's Final Brief Due to Untimely Filing in this matter by mailing a copy of the same by the United States Mail to the following address:

Stephen N. Garcia, Esquire
604 Pettigru Street
Greenville, South Carolina 29601

/s/ Dr. Lad Santiago

Dr. Lad Santiago
5041 N. Blackstock Rd.
Spartanburg, SC 29303

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SC Court of Appeals

Dr. Lad Santiago
5041 North Blackstock Road
Spartaburg, South Carolina 29303

December 17, 2025

The Honorable Jenny Abbott Kitchings, Clerk
South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

RE: Dr. Lad Santiago, Appellant v. Oscar Avila Hernandez, et.al., Respondents
Appellate Case No. 2024-001239

Dear Ms. Kitchings:

Attached for filing is the Appellant's Motion to Strike Respondents' Attorney's Final Brief Due to Untimely Filing.

Also enclosed is the Certificate of Service of filing this same document on the Respondents' attorney, Stephen N. Garcia.

A check in the amount of \$50.00 will be mailed to the Court.

Please confirm receipt of this filing.

Sincerely,

/s/ Dr. Lad Santiago

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