

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

RECEIVED

JAN 10 2014

APPEAL FROM CHARLESTON COUNTY
COURT OF COMMON PLEAS

S.C. Supreme Court

THE HONORABLE JOHN M. MILLING, CIRCUIT COURT JUDGE

CIVIL ACTION No. 2007-CP-10-896

IRA BANKS, JAMES BELL, AND VERNON HOLMES,.....RESPONDENTS,

v.

ST. MATTHEW BAPTIST CHURCH, AN UNINCORPORATED ASSOCIATION,
AND CLINTON BRANTLEY,
OF WHOM

CLINTON BRANTLEY IS THEPETITIONER.

**PETITIONER'S RETURN TO
RESPONDENTS' MOTION TO FILE OUTSIDE OF TIME**

Pursuant to Rules 222, 240 and 242(j), SCACR, Petitioner Clinton Brantley hereby opposes Respondents' Motion to File Outside of Time ("Motion") in the above-referenced matter. Pursuant to Rules 222(d) and 242(j)(4), SCACR, "[a] party desiring costs to be taxed **shall**, within fifteen (15) days of the issuance of the remittitur, serve and file a motion requesting that costs be assessed under this Rule." Rule 222(d), Rule 242(j)(4) (emphasis added). The use of the term "shall" in a statute or rule means the action or limit is mandatory. *See, e.g., Henderson v. Summerville Ford –Mercury, Inc.*, 405 S.C. 440, 453, 748 S.E.2d 221, 228 (2013) (use of terms such as "shall" or "must" indicate a mandatory action or requirement).

Respondents' counsel has provided no good cause for granting his Motion. The rules regarding filing a motion for appellate costs are not new but, instead, are long-standing and well known to counsel. Even if the deadline to file their Motion for Costs fell within the "Christmas Season Rush," counsel for Respondents has provided no good reason why that motion could not have been filed at some point between December 6 and December 20 – he does not aver that he was out of the country or out of town or even out of his office.

Respondents' Motion for Costs consisted of a one-sentence motion and a simple affidavit regarding costs. The amounts reflected on Respondents' affidavit did not require complex calculations and clearly were known to Respondents long before the remittitur was issued in this case. Thus, there is no reasonable explanation as to why it took Respondents nearly a month to file their Motion for Costs other than that they forgot and missed their deadline. Respondents counsel has offered no good reason to excuse his dilatory delay and this Court's rules and corresponding deadlines should be enforced here.

Therefore, Petitioner requests that this Court deny Respondents' Motion.

CONCLUSION

For all the reasons stated herein, Petitioner Brantley respectfully requests this Court to deny Respondents' Motion to File Outside of Time.

Respectfully submitted,

McANGUS GOUDELICK & COURIE, LLC

January 10, 2014



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PROOF OF SERVICE

I certify that I have served the **Petitioner's Return to Respondents' Motion to File Outside of Time** on Respondents, by depositing a copy of it in the United States Mail, postage prepaid, on the 10th day of January 2014, addressed to all attorneys of record:

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[SIGNATURE ON FOLLOWING PAGE]



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