

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

Sep 23 2026

APPEAL FROM GREENVILLE COUNTY
COURT OF COMMON PLEAS

SC Court of Appeals

Hon. Vernon F. Dunbar

Case No. 2026-001466

MOTION TO ACCEPT APPELLANTS' INITIAL BRIEF AND DESIGNATION OF
MATTER TO BE INCLUDED IN RECORD ON APPEAL OUT OF TIME

William R. McKibbon III and Anne McKibbon,.....Appellants,

v.

Greenville County Planning Commission,
Red Oak Developers, LLC, and Irvin H. Philpot III.....Respondents.

Respectfully submitted,

s/William R. McKibbon III

SC Bar 68454

220 N. Main St., Ste 500

Greenville, SC 29601

864-787-2197

wmckibbon@aldridgepate.com

Attorney for Appellants

**MOTION TO ACCEPT APPELLANTS' INITIAL BRIEF AND DESIGNATION OF
MATTER TO BE INCLUDED IN RECORD ON APPEAL OUT OF TIME**

Appellants William R. McKibbon, III and Anne McKibbon, and pursuant to Rules 263(b) and 208(a)(4), South Carolina Appellate Court Rules, respectfully move this Court for an Order accepting Appellants' Initial Brief and Designation of Matter to be Included in the Record on Appeal, filed September 21, 2026, out of time. In support of this Motion, Appellants show the Court as follows:

1. This matter comes before the Court related to a dispute involving Appellants' personal residence and a conflict with a proposed development on adjacent property as it pertains to the Greenville County Planning Commission's approval, which is now challenged by the Appellants.
2. Appellants' Initial Brief was due Friday, September 18, 2026.
3. Through a clerical calendaring error, counsel calendared the due date as September 19, 2026. Counsel believed in good faith that September 19 was the applicable filing deadline. Should the Court desire further evidence of that good faith belief, Appellant Will McKibbon attended a college dinner reunion on Friday evening at his college alma mater out of town and indicated to several friends at that event about having to complete the drafting of the appellate brief because the due date McKibbon would have to file no later than Monday, the 21st, which is what occurred. If Appellants had not operated under an honest mistake and genuine belief that counsel's calendar was accurate, counsel would not have attended the reunion dinner out of town at his college. Should the Court so desire, Appellants can supplement this Motion with affidavits from attendees who were told this, as true indicia of Appellants' honest error resulting from inadvertent mis-calendaring.

4. September 19, 2026 was a Saturday. Acting on the good-faith belief that the deadline fell on that date, counsel filed Appellants' Initial Brief on Monday, September 21, 2026, the next business day.
5. At the time the Initial Brief was filed, counsel did not know or believe that the filing was untimely. Quite the contrary, he reported to his wife (co-appellant) that "we got everything filed on time and we'll now await the respondents' brief, which will be due in about a month." Counsel first became aware that the brief had been filed a day beyond the deadline upon September 22, 2026, upon receipt of correspondence from the Court of Appeals, which came as a surprise. Counsel then searched back in his correspondence and did in fact confirm the original letter from the Court setting September 18 as the due date for the Initial Brief. It is unknown precisely how Appellant or staff mis-calendared the date, but Appellants' counsel has been proceeding in good faith and belief with Saturday the 19th as the due date.
6. The delay in filing was very brief, inadvertent, and the product of a clerical calendaring error rather than disregard of the Court's rules or deadlines. Appellants acted promptly once the matter was brought to counsel's attention on Tuesday, September 22 via emailed correspondence. Appellants pray the Court, in its broad discretion, to allow the filing out of time.
7. Rule 263(b), SCACR, authorizes the appellate court to extend the time prescribed by the Appellate Court Rules for performing any act other than service of a notice of appeal. Rule 208(a)(4), SCACR, addresses an appellant's failure to timely file an initial brief, and Rule 260(a), SCACR, permits reinstatement upon good cause shown if dismissal has occurred.
8. South Carolina appellate authority recognizes that the determination of good cause requires the exercise of discretion in light of the circumstances presented. *See Jordan v.*

Hartford Financial Group, Inc., 435 S.C. 501, 504–07, 868 S.E.2d 400, 402–03 (Ct. App. 2021).

9. The circumstances here closely parallel *Jordan*. There, Hartford’s counsel directed a paralegal to calendar the deadline for an appellate brief. The paralegal mistakenly treated Hartford as the respondent and calendared the brief for May 27 rather than the actual May 12 deadline—a fifteen-day discrepancy. The appeal was dismissed on May 23, and counsel sought reinstatement the next day, explaining that the missed deadline resulted from an honest calendaring mistake. The Court of Appeals reversed and reinstated the appeal. *Jordan*, 435 S.C. at 503–07, 868 S.E.2d at 401–03.
10. In distinguishing cases involving more serious neglect, the *Jordan* Court explained that those cases involved degrees of carelessness and periods of inattention far greater than the calendaring error before it and, significantly, did not involve removing a party from court for failing to timely file a brief at a later stage of a perfected case. *Id* at 435 S.C. at 506, 868 S.E.2d at 403. That distinction applies with particular force here: this appeal was already perfected, the Initial Brief and Designation were actually filed, and the delay resulted from an isolated one-day calendaring error, not prolonged inattention.
11. The facts here present an even narrower calendaring discrepancy than Jordan. Appellants’ deadline was Friday, September 18, 2026, but counsel had inadvertently calendared Saturday, September 19—a difference of only one day. Counsel relied upon that date in good faith and, because September 19 fell on a Saturday, filed the Initial Brief and Designation on Monday, September 21, believing at the time that the filings were timely. Counsel did not knowingly allow a deadline to expire and then seek forgiveness; he had already filed the documents before learning from this Court on September 23 that the deadline had been missed, and he sought relief immediately upon discovering the mistake.

12. *Jordan* also relied upon *Columbia Pools, Inc. v. Galvin*, 288 S.C. 59, 61, 339 S.E.2d 524, 525 (Ct. App. 1986), where an answer was one day late because the client mistakenly gave counsel the wrong date of service. The Court reversed the refusal to grant relief, holding that where there is a good-faith mistake of fact and no attempt to thwart the judicial system, there is a basis for relief. *Id.* The one-day mistake in *Columbia Pools* closely resembles the one-day calendaring error here: in each instance, counsel acted on an honestly mistaken date and would have acted timely had the date relied upon been correct.
13. The Court in *Jordan* further explained that the good-cause standard is intended to permit honest, harmless human mistakes to be excused so that a case may be decided on its merits rather than its procedural missteps. 435 S.C. at 507, 868 S.E.2d at 403. The contemporaneous circumstances set forth above—the statements made by counsel at the Friday evening classmate dinner before the deadline he believed applicable, his statement to his wife immediately after filing that the documents had been filed on time, and his surprise upon receiving this Court’s September 23 correspondence—corroborate that the September 19 date was counsel’s actual good-faith understanding, not an explanation formulated after the fact.
14. Good cause therefore exists here. The Initial Brief and Designation were filed on the first business day following the date counsel had mistakenly calendared; the calendaring discrepancy was only one day; counsel filed while believing in good faith that the filings were timely; the documents were already before the Court before counsel learned of the error; and counsel moved promptly for relief upon learning otherwise. There is no indication of bad faith, intentional delay, disregard of the appellate rules, or any prejudice to Respondents. Under the authorities cited above, these circumstances favor allowing

this perfected appeal to be resolved on its merits rather than imposing dismissal for an isolated and harmless calendaring mistake.

WHEREFORE, Appellants respectfully request that this Court accept the filing of Appellants' Initial Brief and Designation of Matter to be Included in the Record on Appeal filed September 21, 2026, and allow this appeal to proceed. Though it is Appellants' understanding the matter has not yet been dismissed, if the process has moved to the extent an order of dismissal being entered pursuant to Rule 208(a)(4), Appellants alternatively request reinstatement pursuant to Rule 260(a), SCACR, for the good cause shown above.

Respectfully submitted,

s/William R. McKibbon III

S.C. Bar No. 68454

220 N. Main St. Ste. 500

Greenville, SC 29601

864-787-2197

wmckibbon@aldridgepite.com

Attorney for Appellants

APPEAL FROM GREENVILLE COUNTY
COURT OF COMMON PLEAS
Hon. Vernon F. Dunbar

RECEIVED
Sep 23 2026
SC Court of Appeals

Case No. 2026-001466

PROOF OF SERVICE

William R. McKibbon III and Anne McKibbon,.....Appellants,

v.

Greenville County Planning Commission,
Red Oak Developers, LLC, and Irvin H. Philpot III.....Respondents.

I hereby certify that on September 23, 2026, I served the foregoing Motion to Accept Appellants' Initial Brief and Designation of Matter to be included in the Record on Appeal Out of Time upon Respondents, by and through counsel of record where represented, through the South Carolina Appellate Case Management System and by electronic mail to the addresses of record

Andrew F. Lindemann — **andrew@ldlawsc.com**
Attorney for Respondent Greenville County Planning Commission

Matthew K. Johnson — **matt@mkj-law.com**
Attorney for Respondent Red Oak Developers, LLC

Irvin H. Philpot, III — **irv@philpotlawfirm.com**
50 Red Bud Lane, Greenville, SC 29617 — Pro Se Respondent

I so certify:
s/William R. McKibbon III
S.C. Bar No. 68454
220 N. Main St. Ste. 500
Greenville, SC 29601
864-787-2197
wmckibbon@aldridgepite.com
Attorney for Appellants