

## Allen, Claire

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**From:** Tom Davis <tdavis@harveyandbattey.com>  
**Sent:** Monday, March 17, 2014 2:31 PM  
**To:** Carter, Elizabeth A.  
**Cc:** Allen, Claire; Matthew McAlhaney; Young, Constance (cyoung@jahlaw.com); rolaynevolpe@gmail.com  
**Subject:** Bank of the Ozarks v. City Loft, LLC, et al. (Appellate Case No. 2013-002527)  
**Attachments:** City Loft -- letter advising consolidation of appeals.pdf; City Loft -- volpe letter.pdf

Ms. Carter,

In a letter dated March 10, 2014, Claire Allen, deputy clerk for the SC Court of Appeals, asks Matthew S. McAlhaney, one of the appellants in Appellate Case No. 2013-002527, for an update on the status of the transcript in the referenced appeal. I represent City Loft, LLC, the other appellant in the case, and I provide this summary of the transcript's status since, per Ms. Allen's letter dated December 13, 2013, City Loft's and Mr. McAlhaney's appeals are being considered as a single appeal. Copies of all correspondence referenced in this summary are either attached or reprinted below.

On November 15, 2013, per Appellate Rule 203(b)(1), I served a notice of appeal on counsel for the respondent. On November 25, 2013, per Appellate Rule 203(d)(1)(B), I filed the notice of appeal with the clerk of the lower court and the clerk of the appellate court, along with a copy of the appealed order and proof of service, and paid the filing fee. Contemporaneous with filing the notice of appeal, and per Appellate Rule 207(a)(1), I wrote Judge McDonald's court reporter to make arrangements for the furnishing of the transcript.

On December 2, 2013, Ms. Allen advised me via email that the request for the transcript should be sent directly to Rolayne Volpe at a specified address in Summerville, and the following day I made that direct written request. Per Appellate Rule 207(a)(2), my understanding was that Ms. Volpe had 60 days from December 2, 2013, that is, until February 1, 2014, to prepare and remit the transcript.

Appellate Rule 207(a)(5) requires me to advise court administration within ten (10) days if the transcript has not been received within the allotted time, so I emailed Ms. Volpe on February 10 inquiring about the transcript's status and asking if she intended to file for an extension. Ms. Volpe advised via email that same day that the transcript had not been completed since she had not received a deposit. I replied via email that same day advising I didn't know a deposit was required (in a previous email dated December 18, 2013, I had asked her to send me an invoice for the amount due) and inquiring as to the deposit amount so that it could be immediately remitted. Ms. Volpe replied that same day via an emailed letter advising the deposit due was \$139.75, and I remitted payment to her the following day.

Ms. Volpe advises in her February 10 letter that she considers the transcript due within 60 days of her receipt of the deposit. Since I mailed the deposit to her on February 11, and assuming she received the deposit the following day, the transcript is due on April 13, 2014. By copy of this email I am asking Ms. Volpe if this is her understanding of this situation.

Tom Davis  
Attorney for the Appellant City Loft, LLC

**From:** Rolayne Volpe [mailto:rolaynevolpe@gmail.com]  
**Sent:** Tuesday, February 11, 2014 9:46 AM  
**To:** Tom Davis  
**Subject:** RE: Transcript of hearing on November 6, 2012

Thank you, sir. Stay warm!

~ Rolayne

On Feb 11, 2014 9:44 AM, "Tom Davis" <tdavis@harveyandbattey.com> wrote:

Ms. Volpe, per yesterday's yesterday, I am remitting to you today a check for \$139.75 to cover the cost of the transcript. Thanks. Tom

**From:** Tom Davis  
**Sent:** Monday, February 10, 2014 5:17 PM  
**To:** 'Rolayne Volpe'  
**Subject:** RE: Transcript of hearing on November 6, 2012

Thanks. I didn't realize a deposit was required. Tell me what it is and I will remit it immediately. Tom

**From:** Rolayne Volpe [mailto:rolaynevolpe@gmail.com]  
**Sent:** Monday, February 10, 2014 4:26 PM  
**To:** Tom Davis  
**Subject:** Re: Transcript of hearing on November 6, 2012

Mr. Davis:

This transcript has not been put on my list because I haven't received the deposit funds. This is the transcript order that was a little mixed up because of different letters or different dates. I can't remember right off at this minute.

I will send you an invoice tomorrow morning and email it to you. Once I receive the funds, I'll put the transcript on my list.

Thank you,

Rolayne M. Volpe

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**From:** Tom Davis  
**Sent:** Monday, February 10, 2014 3:17 PM  
**To:** 'rolaynevolpe@gmail.com'  
**Cc:** 'ktraynum@jahlaw.com'; 'cyoung@jahlaw.com'; 'Matthew McAlhaney'  
**Subject:** RE: Transcript of hearing on November 6, 2012

Ms. Volpe,

I am following up on the status of the transcript of a hearing that was held on November 6, 2012, in a case captioned *Bank of Ozarks v. City Loft, LLC, et al.* (Beaufort Common Pleas Case No. 2011-CP-07-1684). More than 60 days have

lapsed since I requested that transcript. Please let me know whether you intend to seek an extension per Rule 207 or, alternatively, when you anticipate remitting a copy of the transcript. Thanks for your attention to this matter.

Tom Davis

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**From:** Tom Davis  
**Sent:** Wednesday, December 18, 2013 10:07 AM  
**To:** 'rolaynevolpe@gmail.com'  
**Subject:** Transcript of hearing on November 6, 2012

Ms. Volpe,

I have received a copy of your recent email to Mr. McAlhaney (below). The "request for the same transcript" you reference is from me as counsel for City Loft, LLC. In addition to providing a quote for preparing the transcript of the hearing on November 6, 2012, could you also provide an estimate of when you think the transcript might be completed? Our firm will pay your invoice upon receipt. The mailing address for remittance of the transcript and your bill is: Harvey & Battey, c/o Tom Davis, Post Office Box 1107, Beaufort, SC 29901. Thank you!

Tom Davis

----- Forwarded message -----

**From:** "Rolayne Volpe" <rolaynevolpe@gmail.com>  
**Date:** Dec 13, 2013 1:29 PM  
**Subject:** Correction!! Not 2013  
**To:** <mattmc01@gmail.com>  
**Cc:**

Dear Mr. McAlhaney:

I'm sitting here writing letters, and the next one after yours is a request for the same transcript, but the date is November 6, 2012, not 2013, as indicated on your letter. So, yes, I was the court reporter present on November 6th, 2012.

I'll get a quote to you very soon.

Sincerely,

Rolayne M. Volpe, CCR, RPR

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**From:** Tom Davis  
**Sent:** Tuesday, December 10, 2013 5:23 PM  
**To:** 'ecarter@sccourts.org'  
**Cc:** 'Terry A. Finger' (tfinger@fingerlaw.com); 'Michael Cerrati'; Matthew McAlhaney  
**Subject:** Bank of Ozarks v. City Loft, LLC, Matthew S. McAlhaney, et al. (Appellate Case No. 2013-002527)

Ms. Carter,

This email confirms our telephone conversation of earlier this afternoon, at which time I inquired about a letter (attached) dated December 6, 2014, sent by Claire Allen, Deputy Clerk for the South Carolina Court of Appeals, to Matthew S. McAlhaney, advising that he had not complied with Rule 207, SCACR, in regard to ordering the transcript from the court reporter and making arrangements for payment of same. I have filed an appeal in the referenced matter

as legal counsel for City Loft, LLC, a company in which Mr. McAlhane has an interest, but I do not represent Mr. McAlhane in connection with the separate appeal he has filed *pro se*.

It was my understanding that Mr. McAlhane had sent a written request to the court reporter, Rolayne Volpe, contemporaneous with filing and serving his *pro se* notice of appeal, and suspect he might not have provided your office with a copy of that request. In any event, since you are handling the administrative aspects of this appeal for the court, I am advising Mr. McAlhane of his obligation to send you (as well as South Carolina Court Administration and counsel for the respondent) a copy of his written request to the court reporter, and that he must correct that deficiency within ten days of the date of Ms. Allen's letter.

During our conversation you also confirmed receipt of my two written requests for the transcript I have sent on behalf of City Loft, LLC, one dated November 15, 2013, mailed to the court reporter at Judge McDonald's office in Charleston and another dated December 3, 2013, mailed to Rolayne Volpe at her residence in Summerville. You also confirmed that, per Rule 208, SCACR, the initial appellant's brief must be served within 30 days after receiving the transcript and that reminded me of my responsibility to advise you, court administration and counsel for the respondent when the transcript is received.

Two orders are being appealed in this matter: an order of summary judgment as to the appellant's counterclaims executed by Judge McDonald on July 29, 2013, and an order as to the respondent's prayer for foreclosure executed by Judge Mullen on October 28, 2013. After communication with respondent's counsel, only the transcript of the summary judgment proceeding before Judge McDonald has been requested. A request has *not* been made for either the transcript of the foreclosure hearing before Judge Mullen (a written Transcript of Testimony of that hearing has already been filed) or for the transcript of the Rule 59 hearing on Judge McDonald's order of summary judgment (no testimony was provided at the hearing; counsel submitted written briefs).

Rule 207 allows the parties to agree to order less than the full transcript of the proceedings below, and I limited my request to only the summary-judgment hearing after consulting with respondent's counsel. I was advised today, however, that the respondent has retained new appellate counsel, and by copy of this email I am asking the newly retained counsel if they want transcripts of the other hearings included as part of the Record on Appeal. For the reasons stated above I believe only a transcript of the one hearing is necessary, but amenable to including the others.

Thanks again for your assistance and consideration in this matter.

Tom Davis  
HARVEY & BATTEY, P.A.  
Post Office Box 1107  
Beaufort, SC 29901  
(843) 524-3109  
Attorneys for City Loft, LLC

**From:** Allen, Desiree [mailto:DAllen@sccourts.org]  
**Sent:** Tuesday, December 03, 2013 1:12 PM  
**To:** Tom Davis  
**Cc:** Michael Cerrati; Finger, Terry A.  
**Subject:** RE: Bank of Ozarks v. City Loft, LLC

Judge McDonald doesn't have a court reporter. All transcripts should be requested directly from the court reporter. If you will have your assistant call me, I'll be glad to show her how to obtain this information.

**From:** Tom Davis [mailto:tdavis@harveyandbattey.com]  
**Sent:** Tuesday, December 03, 2013 1:08 PM

**To:** Allen, Desiree  
**Cc:** Michael Cerrati; Finger, Terry A.  
**Subject:** RE: Bank of Ozarks v. City Loft, LLC

Ms. Allen,

I previously ordered the transcript by mailing a written request c/o "Court Reporter" to Judge McDonald's office in Charleston, and will renew that request by mailing it to Rolayne Volpe at the Summerville address you have provided. Thanks!

Tom

**From:** Allen, Desiree [<mailto:DAllen@sccourts.org>]  
**Sent:** Monday, December 02, 2013 3:55 PM  
**To:** Tom Davis  
**Subject:** Bank of Ozarks v. City Loft, LLC

Mr. Davis, I am responding to a memo sent to Rosalyn Frierson concerning the transcript in this matter heard on November 6, 2012 before Judge McDonald. Please send your transcript request directly to the court reporter:

**Rolayne Volpe**  
**P.O. Box 342**  
**Summerville, SC 29484**

If you have further questions regarding court reporters and/or transcripts, you may contact me directly. My phone number is 734.1860.

Desiree R. Allen  
[Dallen@sccourts.org](mailto:Dallen@sccourts.org)