

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
In the Court of Common Pleas

Doyet A. Early, III, Presiding Judge

71696

Case No. 2013-001909

William R. Ferrara Appellant,

v.

Michael E. Hunt, Sheriff of Aiken County; Aiken County Sheriff's Department; Charles Cain in his individual capacity as Deputy Sheriff; and Aiken County Sheriff's Department Respondents.

**NOTICE OF MOTION AND MOTION TO ACCEPT RESPONDENT CAIN'S INITIAL
BRIEF AND DESIGNATION OF MATTER**

RECEIVED

MAR 25 2014

SC Court of Appeals

Respondent Charles Cain hereby moves for an Order, pursuant to Rule 263(b), SCACR, to enlarge the time for the filing of his initial brief and designation of matter and to accept the previously filed initial brief and designation of matter upon the following grounds;

Counsel for Respondent Cain did not receive notice of the filing of Appellant's initial brief until December 24, 2013 when he was contacted by counsel for Respondent Hunt from the parallel appeal of Ferrara v. Hunt, 2013-00826. At that time, Counsel for Respondent Cain was on vacation and unable to file a motion to enlarge or any other pleading with the Court. Counsel filed a motion to enlarge at his first opportunity upon return and hand-delivered a letter and filing fee on December 30, 2014 to the Court of Appeals. Counsel for Defendant Hunt did not file an objection to this requested extension.

Due to work engagements and the inclement weather, Counsel for Respondent Cain filed a second request for an additional thirty-day extension on January 30, 2014. The request was hand-delivered to the Court with a twenty-five dollar motion fee on January 30, 2014. Counsel for Appellant specifically indicated that he had no objection to the requested extension.

Counsel for Respondent Cain received the Court's letter of January 31, 2014 indicating that a formal motion was required and was due on or before February 10, 2014. On February 10, 2014, Counsel for Respondent Cain timely filed a formal motion with the Court requesting the deadline for Respondent's initial brief be extended to February 28, 2014. In that motion, Respondent Cain noted, among other grounds, that he had not been served with the Appellant's brief and, therefore, the time for filing for Respondent's brief had not yet started. Respondent Cain subsequently filed his initial brief and designation of matter on February 28, 2014.

Unknown to counsel for Respondent Cain, the Court issued an Order on February 25, 2014, indicating that a formal motion on behalf of Respondent Cain had not been received by the Court and that the Court would consider the appeal without a review of Respondent Cain's initial brief. This Order was apparently issued without an understanding or acknowledgment of the prior correspondence on this issue or the timely filing of the formal motion by counsel for Respondent Cain on February 10, 2014.

Rule 263(b), SCACR provides that the Court may extend the time for performing any act except for the filing of a notice of appeal pursuant to Rule 203 and 243. As such, the Court is within its authority to grant Respondent's requested motions for extension as well as the alternative request to accept the Respondent's brief out of time.

Rule 208(a)(2), SCACR provides that respondent shall serve and file his brief "[w]ithin thirty (30) days after service of appellant's brief." In this case, counsel for Respondent Cain has not been served with a copy of Appellant's initial brief. It was only after being contacted by counsel for Respondent Hunt, in a separate appellate number but the same underlying civil case, that counsel for Respondent Cain became aware of the filing of an initial brief by Appellant.¹ Counsel, as soon as possible, filed a request for an extension of time, despite having not been served with the initial brief on file with the Court. A second request for extension was filed with the Court upon the reopening of the Court following its closure for inclement weather.

Counsel for Respondent Cain hereby requests that the Court grant the instant motion to file out of time and alternatively his previously requested extensions and make his responsive

¹ Appellant has separately filed two notices of appeal regarding the dismissal of the underlying civil action. The companion appeal is 2013-00826.

brief and designation of matter due on or before February 28, 2014 as requested in his correspondence of January 30, 2014 and the subsequent formal motion filed with the Court. Respondent Cain further requests that the Court alternatively accept the Respondent's brief and designation of matter out of time.

For these reasons and any others that may be properly presented to the Court in any hearing in regard to this motion, Respondent Cain requests that the Court grant the motion to accept Respondent Cain's Initial Brief and Designation of Matter and extend his deadline for filing an initial responsive brief and designation of matter.

MBR Law, LLC



Counsel for Respondent Cain
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803 753-1432 (voice)
803 419-9614 (facsimile)

Columbia, South Carolina
March 24, 2014

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
In the Court of Common Pleas

Doyet A. Early, III, Presiding Judge

Case No. 2013-001909

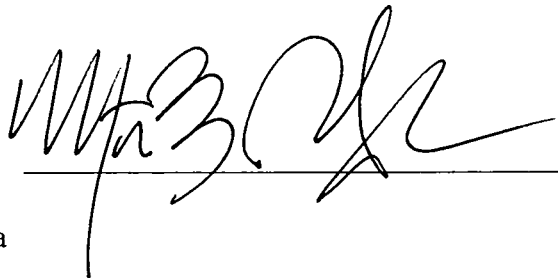
William R. Ferrara Appellant,

v.

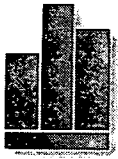
Michael E. Hunt, Sheriff of Aiken County; Aiken County Sheriff's Department; Charles Cain in his individual capacity as Deputy Sheriff; and Aiken County Sheriff's Department Respondents.

PROOF OF SERVICE

The undersigned employee of MBR Law, LLC, hereby certifies that I have served the **RESPONDENT CAIN'S NOTICE OF MOTION AND MOTION TO ACCEPT RESPONDENT CAIN'S INITIAL BRIEF AND DESIGNATION OF MATTER** on counsel for Appellant Ferrara by depositing a copy of it in the United States Mail, postage prepaid, on March 25, 2014, addressed to his attorneys of record, John Bradley and S. Jahue Moore at Post Office Box 5709, West Columbia, South Carolina 29171.



Columbia, South Carolina
March 25, 2014



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March 25, 2014

VIA HAND DELIVERY

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
Edgar Brown Building
1205 Pendleton Street
Columbia, South Carolina 29201

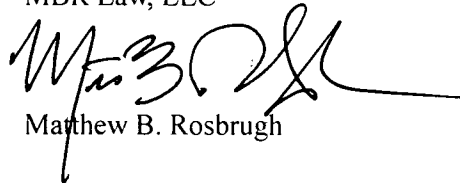
RE: William Ferrara v. Michael E. Hunt, Sheriff of Aiken County; and Charles Cain in his individual capacity
as Deputy Sheriff
SCCA Case Number: 2013-001909
Civil Action Number: 09-CP-02-1529
Date of Incident: July 13, 2006
Claim Number: 1-0801692-001

Dear Ms. Kitchings,

Please find enclosed for filing an original and two copies of the NOTICE OF MOTION AND MOTION TO ACCEPT RESPONDENT CAIN'S INITIAL BRIEF AND DESIGNATION OF MATTER in the above-captioned matter. By copy of this correspondence, I am serving same upon counsel for Appellant.

Sincerely,

MBR Law, LLC



Matthew B. Rosbrugh

cc: Andrew F. Lindemann, Esquire (via email only)
S. Jahue Moore, Esquire

RECEIVED
MAR 25 2014
SC Court of Appeals