

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

James J. Corbett, Special Referee

Appellate Case No. 2014-001280

RECEIVED

AUG 06 2014

SC Court of Appeals

173122

Glen K. LaConey, successor in interest of
Lynn G. Yacoubian,

Appellant,

v.

Xavier Troy Smith,

Respondent.

**MOTION TO DISMISS
FOR FAILURE TO SERVE INITIAL BRIEF**

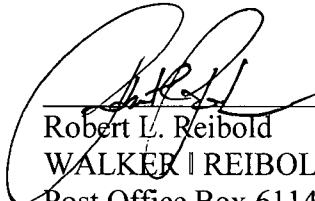
Pursuant to Rules 208 and 260, SCACR, Respondent Xavier Troy Smith ("Smith") hereby moves to dismiss the above-captioned appeal because Appellant Glen LaConey has failed to serve an Initial Brief or Designation of Matter to be included in the Record on Appeal as required by the appellate court rules.

Where, as here, no transcript is ordered, an appellant must serve an initial brief and file proof of service within thirty (30) days after serving the notice of appeal.¹ The Notice of Appeal was served on June 12, 2014. Appellant was therefore required to file and serve his initial brief no later than July 12, 2014. That deadline has come and gone without any action on the part of the Appellant, and, accordingly, the appeal should be dismissed.

¹ This appeal arises from the dismissal of supplemental proceedings for a variety of reasons, including the special referee's determination that Appellant had engaged in the unauthorized practice of law.

This motion is based upon the brief filed in connection herewith and applicable law.

Respectfully submitted,



Robert L. Reibold
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ATTORNEYS FOR RESPONDENT
XAVIER T. SMITH

August 4, 2014

THE STATE OF SOUTH CAROLINA
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Appellate Case No. 2014-001280

Glen K. LaConey, successor in interest of
Lynn G. Yacoubian,

Appellant,

v.

Xavier Troy Smith,

Respondent.

**BRIEF IN SUPPORT OF RESPONDENT'S MOTION TO DISMISS
FOR FAILURE TO SERVE INITIAL BRIEF**

This appeal arises from the dismissal of supplemental proceedings instituted by Appellant against Respondent Xavier T. Smith ("Smith"). The Special Referee, to whom the case was referred, dismissed the proceedings on the grounds that: (1) Appellant was engaged in the unauthorized practice of law; (2) the judgment against Smith was void; and (3) the purported assignment of judgment to Appellant was invalid, depriving Appellant of any standing to pursue supplemental proceedings. Appellant filed and served his Notice of Appeal on June 12, 2014. However, there has been no activity of any kind since that date. Smith hereby submits this brief in support of his Motion to Dismiss the above-captioned appeal.

Rule 208 provides in pertinent part that the appellant's initial brief must be filed and served "[w]ithin thirty (30) days after receiving the transcript, or, if no transcript is ordered,

within thirty (30) days after serving the notice of appeal.” Rule 208(a)(1), SCACR. It further states that:

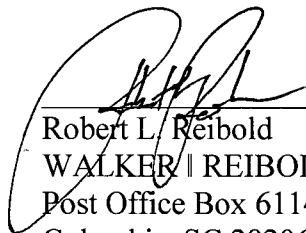
[u]pon the failure of the appellant to file and serve his brief within the time prescribed, the clerk of the appellate court *shall sign an order dismissing the appeal*, and the appeal shall not be reinstated except as provided by Rule 260.

Rule 208(a)(4), SCACR (emphasis added). Dismissal is therefore mandatory where an appellant does not timely file his or her initial brief.

Appellant has not ordered a transcript. Appellant did not retain the services of a court reporter for the merits hearing, and as a result, it is impossible to order a transcript of the merits hearing. Additionally, Appellant has not furnished the Court or counsel with copies of any correspondence reflecting any attempt to order the transcript of the initial September 13, 2013 hearing, as required by Rule 207(a)(1), SCACR.¹

Appellant served his Notice of Appeal on June 12, 2014. Because he did not, and largely could not, order a transcript, he had to serve his initial brief and file proof of service no later than July 14, 2014.² That deadline has expired without the service of an initial brief or the filing of a proof of service. Smith therefore respectfully requests that the appeal be dismissed.

Respectfully submitted,



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ATTORNEYS FOR RESPONDENT
XAVIER T. SMITH

August 4, 2014

¹ This transcript is largely irrelevant. The Special Referee granted the parties time to conduct discovery prior to the merits hearing, but made no other substantive rulings at the time.

² The initial 30 day period to serve the initial brief expired on July 12, 2014. However, July 12th was a Saturday, and Appellant's time to file was therefore extended to the following Monday, July 14, 2014.

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v.

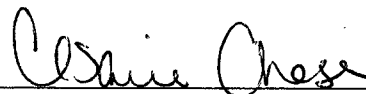
Xavier Troy Smith,

Respondent.

PROOF OF SERVICE

I hereby certify that I have served Respondent's Motion to Dismiss for Failure to Serve Initial Brief and Brief in Support of Respondent's Motion to Dismiss for Failure to Serve Initial Brief on August 4, 2014, addressed to the Pro Se Appellant at the following:

Glen K. LaConey
9401 Wilson Boulevard - #68
Columbia, SC 29203



Cesaire N. Chase – Legal Assistant
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Reply to Columbia Office

August 4, 2014

The Honorable Jenny Abbott Kitchings
Clerk – SC Court of Appeals
1015 Sumter Street
Columbia, SC 29201

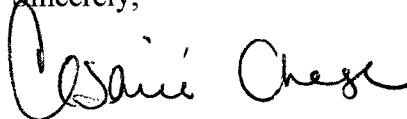
Re: Appellate Case No.: 2014-001280
Glen K. LaConey, successor in Interest of Lynn G. Yacoubian v. Xavier T. Smith
Civil Action No.: 2003-CP-40-4186
Judgment Roll No.: 258732

Dear Ms. Kitchings:

Enclosed please find an original and seven copies of Respondent Xavier T. Smith's Motion to Dismiss for Failure to Serve Initial Brief, Brief in Support of Motion to Dismiss for Failure to Serve Initial Brief, Proof of Service and a check in the amount of \$25.00 made payable to the "Clerk of Court – SC Court of Appeals" for filing in connection with the above-referenced matter. Please time-stamp one of the copies and return same in the self-addressed stamped envelope provided.

Thank you for your assistance with this matter.

Sincerely,



Cesaire N. Chase
Legal Assistant

:cnc

Enclosures

cc: Glen K. LaConey

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SC Court of Appeals

Columbia, SC 29260

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SC Court of Appeals

**The Honorable Jenny Abbott Kitchings
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1015 Sumter Street
Columbia, SC 29201**



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