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**THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

APPEAL FROM SPARTANBURG COUNTY
The Honorable Roger L. Couch, Circuit Court Judge

Case No. 2006-CP-42-0108

M. Dubose Medlock, Jr., M.D.....Appellant,

v.

Laurens County Healthcare System.....Respondent.

MOTION TO DISMISS

COMES NOW the Respondent, and pursuant to Rules 240 and 260(a), SCACR, hereby moves for an order dismissing the above-captioned appeal due to Appellant’s failure to comply with the South Carolina Appellate Court Rules. In addition to the matters discussed in the memorandum below, this motion is further supported by the Affidavit of Counsel filed contemporaneously herewith, the Exhibits attached hereto, and applicable law.

BACKGROUND

This matter was commenced in the Circuit Court on January 11, 2006. It was tried without a jury on April 4, 2012, before the Honorable Roger L. Couch. Judge Couch issued an order in favor of Respondent on June 18, 2012. Appellant’s Motion to Reconsider was denied on August 26, 2013. On September 24, 2013, Appellant filed a Notice of Appeal.

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FEB 26 2015

SC Court of Appeals

This Court has already once dismissed Appellant's appeal as a result of Appellant's failure to file an Initial Brief and Designation of the Matter as required by Rules 208(a) and 209(a), SCACR. (**Exhibit 1** – Order of Dismissal). Appellant then filed a motion to reinstate the appeal and requested leave to file his initial brief out of time. (**Exhibit 2** – Motion to Reinstate). On October 15, 2014, this Court reinstated the appeal, ordering Appellant to file and serve his Initial Brief and Designation of Matter within 30 days. (See **Exhibit 3** – Order Reinstating Appeal). Appellant's Initial Brief and Designation of Matter were not filed until December 10, 2014, some 53 days later. (See **Exhibit 4** – Certificate of Service for Appellant's Initial Brief).

The last filing in this appeal was made by Respondent, when it timely filed and served its Initial Respondent's Brief and Designation of Matter on January 14, 2015. (See **Exhibit 5** – Respondent's Affidavit of Service). Since then, Appellant declined to file a Reply Brief and, further, has failed to file and serve the Record on Appeal as required by the South Carolina Appellate Court Rules, which are overdue. Appellant has neither requested an enlargement of time to do so nor leave from this Court to file and serve the Record out of time.

ARGUMENT

Rule 211, SCACR requires the Appellant to serve Respondent with a copy of the Record on Appeal within thirty (30) days after service of the last brief. Because Appellant elected not to file a Reply Brief, the "last brief" served in this appeal was Respondent's Initial Brief, served on January 14, 2015. Accordingly, Rule 211 required Appellant to serve the Record on Appeal no later than February 16, 2015.¹ As of the date of this Motion, Appellant still has not served the Record on Appeal, nor requested additional time from this Court to do so. (**Exhibit 6** – Affidavit

¹ Pursuant to Rule 263(a), SCACR, the computation of time shall not include the day of the act, but shall start on the following day, in this case January 15, 2015. If the last day falls on a Saturday or Sunday it shall be extended to the first day which is neither a Saturday nor Sunday. Thus, 30 days from January 15, 2015, was February 14, 2015, a Saturday, making the service of the Record due by Monday, February 16, 2015.

of Attorney Thomas J. Rode).

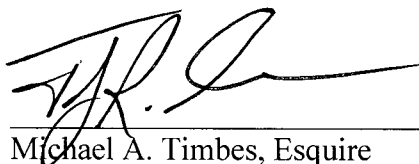
Rule 260(a), SCACR, provides for involuntary dismissal as the remedy for failure to timely serve, *inter alia*, the Record on Appeal, stating: “Whenever it appears that an appellant or a petitioner has failed to comply with the requirements of these Rules, the clerk shall issue an order of dismissal.” Rule 260(a), SCACR. Dismissal of this appeal, for the second time, is warranted.

CONCLUSION

Pursuant to Rules 210 and 260(a) of the South Carolina Appellate Court Rules, and for the reasons stated above, this Honorable Court should issue an Order dismissing the above-captioned matter with prejudice.

Respectfully submitted,

THURMOND KIRCHNER TIMBES & YELVERTON, P.A.



Michael A. Timbes, Esquire
Matthew E. Yelverton, Esquire
Thomas J. Rode, Esquire
15 Middle Atlantic Wharf, Suite 101
Charleston, South Carolina 29401
Phone: (843) 937-8000
Facsimile: (843) 937-4200
Email: mtimb@tktylawfirm.com
Email: myelverton@tktylawfirm.com
Email: trode@tktylawfirm.com

Attorneys for Respondent

This 24th day of February, 2015.
Charleston, South Carolina

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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FEB 26 2015

APPEAL FROM SPARTANBURG COUNTY
The Honorable Roger L. Couch, Circuit Court Judge

SC Court of Appeals

Case No. 2006-CP-42-0108

M. Dubose Medlock, Jr., M.D.....Appellant,

v.

Laurens County Healthcare System.....Respondent.

AFFIDAVIT OF ATTORNEY THOMAS J. RODE

COMES NOW the undersigned Affiant, Thomas J. Rode, who first duly sworn,
does swear and affirm under penalty of perjury as follows:

1. I am over the age of 18 and competent to make this affidavit.
2. I am an attorney licensed to practice law in the state of South Carolina and authorized to appear before all state and federal courts in South Carolina.
3. I am an associate attorney in the law firm of Thurmond Kirchner Timbes & Yelverton, P.A., which is retained as counsel to represent the Respondent in this matter.
4. I have personal knowledge of the facts and matters stated and described herein.

5. On January 14, 2015, the Respondent served Appellant with a copy of its Initial Respondent's Brief as required by Rule 208(a)(2) of the South Carolina Appellate Court Rules. This was the last brief served in this appeal.

6. As of the date of this affidavit, Appellant has served neither a Reply Brief nor the Record on Appeal upon Respondent's counsel.

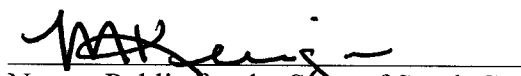
FURTHER THE AFFIANT SAYETH NOT.



THOMAS J. RODE
SC Bar No. 77480
THURMOND KIRCHNER TIMBES & YELVERTON, P.A.
15 Middle Atlantic Wharf, Suite 101
Charleston, South Carolina 29401
Phone: (843) 937-8000
Fax: (843) 937-4200
Email: trode@tktylawfirm.com

Attorney for Respondent

Sown to and subscribed before me,



Notary Public for the State of South Carolina

This 24th day of February, 2015.

My commission expires 11/16/20.

EXHIBIT 1

Court of Appeals' August 14, 2014 Order of Dismissal

FILED
2014-08-14

The South Carolina Court of Appeals

Laurens County Healthcare System, Respondent,

v.

M. Dubose Medlock, Jr. MD, Appellant.

Appellate Case No. 2013-002201

ORDER

Appellant has failed to serve and file his initial brief and designation of matter as required by Rules 208(a) and 209(a) of the South Carolina Appellate Court Rules and to correct the deficiencies on the transcript-received letter dated April 1, 2014, as requested in the Court's letter of April 21, 2014. Accordingly, this matter is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.

FOR THE COURT

BY *V. Claire Allen, Deputy*
CLERK

Columbia, South Carolina

cc:

Aaron J. Kozloski, Esquire

Matthew Evert Yelverton, Esquire

FILED

8/14/14

EXHIBIT 2

Appellant's Motion to Reinstate Appeal

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE COURT OF COMMON PLEAS
SPARTANBURG COUNTY

Roger L. Couch, Circuit Judge, Seventh Judicial Circuit

Common Pleas Case No. 2006-CP-42-0108

M. Dubose Medlock, Jr., M.D. *Appellant,*

~ vs. ~

Laurens County Healthcare System *Respondent.*

**MOTION TO REINSTATE APPEAL & GRANT
LEAVE TO FILE INTIAL BRIEF OUT OF TIME**

Appellant respectfully moves the Court to reinstate the presently dismissed appeal on grounds that the case has languished excessively in the lower court through no fault of the parties; the case was filed in January 2006, and eventually tried in April, 2012; that reinstatement will not prejudice the plaintiff-respondent; and that the present delay in briefing is attributable solely to personal difficulties suffered by defense counsel flowing from the sudden and untimely death of his wife.

For the Appellant:

Aaron J. Kozloski, Esq.
Capitol Counsel, LLC
P.O. Box 1996, Lexington, SC 29071
803-465-1400, Fax 888-513-6021
E-mail: aaron@capitolcounsel.us
Counsel for Appellant

August 27, 2014
Lexington, South Carolina

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE COURT OF COMMON PLEAS
SPARTANBURG COUNTY

Roger L. Couch, Circuit Judge, Seventh Judicial Circuit

Common Pleas Case No. 2006-CP-42-0108

M. Dubose Medlock, Jr., M.D. *Appellant,*

~ vs. ~

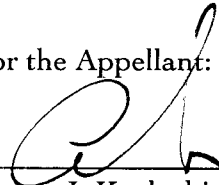
Laurens County Healthcare System *Respondent.*

CERTIFICATE OF SERVICE

The Motion to Reinstate was served upon Counsel for the Respondent by first class mail , on August 27, 2014 at the following address:

Matthew E. Yelverton, Esq.
THURMOND KIRCHNER TIMBES & YELVERTON, P.A.
15 Middle Atlantic Wharf, Suite 101, Charleston, South Carolina 29401.

For the Appellant:



Aaron J. Kozloski, Esq.
Capitol Counsel, LLC
P.O. Box 1996, Lexington, SC 29071
803-465-1400, Fax 888-513-6021
E-mail: aaron@capitolcounsel.us
Counsel for Appellant

August 27, 2013
Lexington, South Carolina

EXHIBIT 3

Court of Appeals' October 15, 2014 Order Reinstating Appeal

The South Carolina Court of Appeals

Laurens County Healthcare System, Respondent,

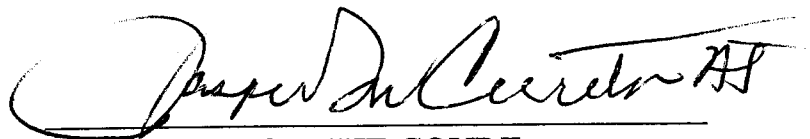
v.

M. Dubose Medlock, Jr. MD, Appellant.

Appellate Case No. 2013-002201

ORDER

This appeal was dismissed due to Appellant's failure to serve and file Appellant's initial brief and designation of matter. Appellant's petition to reinstate is granted. Appellant shall serve and file Appellant's initial brief and designation of matter within thirty days. No extensions will be granted absent a showing of extraordinary circumstances.



FOR THE COURT

Columbia, South Carolina

cc:

Aaron J. Kozloski, Esquire
Matthew Evert Yelverton, Esquire
M. Hope Blackley

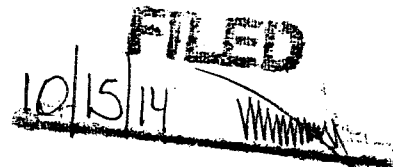


EXHIBIT 4

Certificate of Service for Appellant's Initial Brief

STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM THE COURT OF COMMON PLEAS
SPARTANBURG COUNTY

Roger L. Couch, Circuit Judge, Seventh Judicial Circuit

Common Pleas Case No. 2006-CP-42-0108

M. Dubose Medlock, Jr., M.D. *Appellant,*

~ vs. ~

Laurens County Healthcare System *Respondent.*

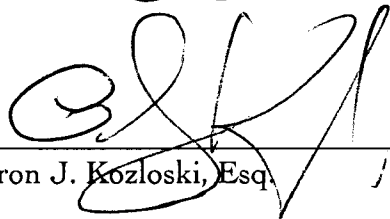
CERTIFICATE OF SERVICE

Aaron J. Kozloski, Esq.
Capitol Counsel, LLC
P.O. Box 1996, Lexington, SC 29071
803-465-1400, Fax 888-513-6021
E-mail: aaron@capitolcounsel.us
Counsel for Appellant

The Initial Brief of Appellant and Appellant's Designation of Material for the Record were served upon counsel for Respondent by first class mail on the date below, addressed to:

Matthew E. Yelverton, Esq.
Thurmond Kirchner Timbes & Yelverton, PA
15 Middle Atlantic Wharf, Ste. 101
Charleston, SC 29401

COPY



Aaron J. Kozloski, Esq.

December 10, 2014
Lexington, South Carolina

EXHIBIT 5

Affidavit of Service for Respondent's Initial Brief

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
The Honorable Roger L. Couch, Circuit Court Judge

Case No. 2006-CP-42-0108

M. Dubose Medlock, Jr., M.D.Appellant,

v.

Laurens County Healthcare SystemRespondent.

AFFIDAVIT OF SERVICE

I, Moira W. Kerrigan, an employee of Thurmond Kirchner Timbes & Yelverton, P.A., attorneys for the Respondent, do hereby certify that I have on this date served via U.S. Mail, Facsimile, and E-Mail, a true and correct copy of the Respondent's Initial Brief and


Designation of Matter:

FOR THE APPELLANT:
Aaron J. Kozloski, Esquire
CAPITOL COUNSEL, LLC
Post Office Box 1996
Lexington, South Carolina 29071
Phone: (803) 465.1400
Facsimile: (888) 513.6021
Email: aaron@capitolcounsel.us

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JAN 14 2015

SC Court of Appeals

By: 
Moira W. Kerrigan
Paralegal to Michael A. Timbes

January 12, 2015
Charleston, South Carolina

EXHIBIT 6

Affidavit of Attorney Thomas J. Rode

**THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

APPEAL FROM SPARTANBURG COUNTY
The Honorable Roger L. Couch, Circuit Court Judge

Case No. 2006-CP-42-0108

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SC Court of Appeals

M. Dubose Medlock, Jr., M.D.....Appellant,

v.

Laurens County Healthcare System.....Respondent.

AFFIDAVIT OF ATTORNEY THOMAS J. RODE

COMES NOW the undersigned Affiant, Thomas J. Rode who first duly sworn, does swear and affirm under penalty of perjury as follows:

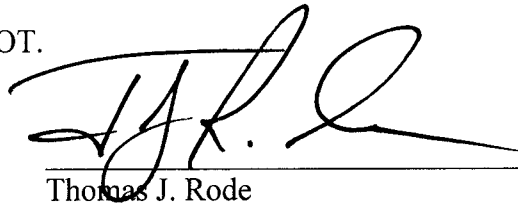
1. I am over the age of 18 and competent to make this affidavit.
2. I am an attorney licensed to practice law in the state of South Carolina.
3. I am an attorney in the law firm of Thurmond Kirchner Timbes & Yelverton, P.A., and authorized to appear before all state and federal courts in South Carolina.
4. My law firm has been retained as counsel to represent the above-named Respondent in this matter.
5. I have personal knowledge of the facts and matters stated and described herein.

6. On January 14, 2015, the Respondent served upon the Appellant, a copy of its Initial Respondents Brief as required by Rule 208(a)(2) of the South Carolina Appellate Court Rules.

7. The above-named Appellant has failed to serve upon the Respondent, myself, or Thurmond Kirchner Timbes & Yelverton, P.A., a Reply Brief as permitted by the South Carolina Appellate Court Rules

8. The above-named Appellant has failed to serve upon the Respondent, myself, or Thurmond Kirchner Timbes & Yelverton, P.A., a copy of the Record on Appeal as required by the South Carolina Appellate Court Rules.


FURTHER THE AFFIANT SAYETH NOT.



Thomas J. Rode
Bar no. 77480
THURMOND KIRCHNER TIMBES & YELVERTON, P.A.
15 Middle Atlantic Wharf, Suite 101
Charleston, South Carolina 29401
Phone: (843) 937-8000
Fax: (843) 937-4200

Attorney for Respondent

Sown to and subscribed before me,


Notary Public

This 23rd day of February, 2015.

My commission expires 11/16/20.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
The Honorable Roger L. Couch, Circuit Court Judge

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FEB 26 2015

Case No. 2006-CP-42-0108

SC Court of Appeals

M. Dubose Medlock, Jr., M.D.....Appellant,

v.

Laurens County Healthcare System.....Respondent.


AFFIDAVIT OF SERVICE

I, Moira W. Kerrigan, an employee of Thurmond Kirchner Timbes & Yelverton, P.A., attorneys for the Respondent, do hereby certify that I have on this date served via U.S. Mail, Facsimile, and E-Mail, a true and correct copy of the Respondent's Motion to Dismiss:

FOR THE APPELLANT:

Aaron J. Kozloski, Esquire
CAPITOL COUNSEL, LLC
Post Office Box 1996
Lexington, South Carolina 29071
Phone: (803) 465.1400
Facsimile: (888) 513.6021
Email: aaron@capitolcounsel.us

By: _____


Moira W. Kerrigan
Paralegal to Thomas J. Rode

February 24, 2015
Charleston, South Carolina

THURMOND KIRCHNER TIMBES & YELVERTON, P.A.
ATTORNEYS & COUNSELORS AT LAW

15 MIDDLE ATLANTIC WHARF, SUITE 101
CHARLESTON, SOUTH CAROLINA 29401

Paul R. Thurmond
Jesse A. Kirchner
Michael A. Timbes *
Matthew E. Yelverton **
Christopher P. Deters
David L. Barnes, Jr.
Thomas J. Rode
Christopher C. Romeo **
Matthew S. Byzet

Phone: 843-937-8000
Fax: 843-937-4200
www.tktylawfirm.com

* Also admitted in Georgia
** Also admitted in North Carolina

February 24, 2015

VIA U.S. MAIL

The Honorable Jenny Abbott Kitchings
Clerk of Court, South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

Re: *Case Tracking No. 2006CP420108*
M. Dubose Medlock, Jr., M.D. v. Laurens County Healthcare System
Appellate Case No. 2013-002201

Dear Ms. Kitchings:

This firm represents the Respondent in connection with the above appeal. Enclosed for filing, please find the original and seven (7) copies of the following:


- (1) Respondent's Motion to Dismiss;
- (2) Affidavit of Service of Motion to Dismiss; and
- (3) this firm's check in association with the motion filing fee.

After filing the originals, kindly return any extra file-stamped copies to me in the enclosed self-addressed envelope provided for your convenience. Should you have any questions or concerns, please do not hesitate to contact me.

With kindest regards, I remain

Very truly yours,

THURMOND KIRCHNER TIMBES & YELVERTON, P.A.



Moira W. Kerrigan
Paralegal to Thomas J. Rode

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FEB 26 2015

cc: Aaron J. Kozloski, Esquire
Matthew E. Yelverton, Esquire

SC Court of Appeals



First Class Mail

IER TIMBES & YELVERTON, P.A.
 YS & COUNSELORS AT LAW
 ATLANTIC WHARF, SUITE 101
 ON, SOUTH CAROLINA 29401

Abbott Kitchings
 Carolina Court of Appeals

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