

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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**RECEIVED**  
MAY 12 2015  
SC Court of Appeals

APPEAL FROM MARLBORO COUNTY  
Paul M. Burch, Circuit Court Judge

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Case No. 2012-CP-34-0046

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Ricky Edmond Blue, Jr.,..... Appellant,

v.

City of Bennettsville, Larry McNeill,  
and Walter Covington, ..... Respondents.

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**MEMORANDUM IN SUPPORT OF  
MOTION TO DISMISS APPEAL**

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The Respondents have filed a motion pursuant to Rule 260(a), SCACR, to dismiss the Appellant's appeal based upon the Appellant's failure to timely procure the hearing transcript needed for this appeal and for generally failing to take the steps required to prosecute and perfect his appeal.

Rule 207, SCACR, governs the ordering of transcripts required for an appeal. Rule 207(a) requires that in appeals from the Court of Common Pleas, "the transcript must be ordered within ten (10) days after the date of service of the notice of appeal."

Rule 207(a), SCACR. Rule 207(a) further requires that the appellant "shall, within the time provided for ordering the transcript, make satisfactory arrangements (including agreement regarding payment for the transcript), in writing with the court reporter for furnishing the transcript." Rule 207(a), SCACR.

The Appellant has not complied with Rule 207. The Clerk of Court, in fact, forwarded a letter dated April 20, 2015, to the Appellant's counsel directing the Appellant to "file a copy of the letter showing that you have ordered the transcript directly from the court reporter, along with a motion requesting permission to order the transcript outside of the filing deadlines set by Rule 207 of the South Carolina Appellate Court Rules." That letter further states: "Your appeal will be dismissed if no motion is made within ten (10) days of the date of this letter." *See*, Letter dated April 20, 2015 (copy attached).

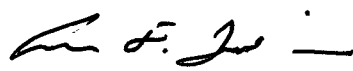
By letter dated April 23, 2015, the Appellant's counsel responded by advising the Court that (1) he has not been retained by the Appellant to represent him in this appeal; (2) the Appellant was informed of the requirement that the transcript be ordered; and (3) that the Appellant has not directed or authorized counsel to order the transcript. *See*, Letter dated April 23, 2015 (copy attached).

As of the present date of May 8, 2015, the Appellant has still neither ordered the transcript nor filed a motion to do so out of time as directed by the Clerk of Court in the April 20, 2015 letter. More than ten days have now passed since that letter was sent, and the appeal has not been dismissed as per the Clerk's letter.

Consequently, the Respondents are proceeding with this motion to dismiss the appeal based upon the Appellant's disinterest in prosecuting this appeal. It is well settled that the appellant has a duty to meet the requirements of the Appellate Court Rules and to diligently prosecute the appeal that he has filed. See, *State v. Adams*, 244 S.C. 323, 137 S.E.2d 100 (1964) (recognizing that the moving party in an appeal has a duty to prosecute the appeal with due diligence and have it promptly disposed of). Given the Appellant's refusal to comply with Rule 207, SCRPC, despite being warned by the Court and so advised by his counsel, the Court is therefore respectfully requested to dismiss that appeal consistent with the Clerk's April 20, 2015 correspondence and based upon the Appellant's failure to prosecute.

Respectfully submitted,

DAVIDSON & LINDEMANN, P.A.

BY: 

ANDREW F. LINDEMANN  
JUSTIN T. BAGWELL  
1611 Devonshire Drive  
Post Office Box 8568  
Columbia, South Carolina 29202  
(803) 806-8222

*Counsel for Respondents*

Columbia, South Carolina

May 8, 2015



## The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

V. CLAIRE ALLEN  
DEPUTY CLERK

POST OFFICE BOX 11629  
COLUMBIA, SOUTH CAROLINA 29211  
1220 SENATE STREET  
COLUMBIA, SOUTH CAROLINA 29201  
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FAX: (803) 734-1839  
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April 20, 2015

Mr. Kenneth Ray Moss, Esquire  
628A Sea Mountain Highway  
North Myrtle Beach SC 29582

Re: Ricky Blue v. City of Bennettsville  
Appellate Case No. 2015-000587

Dear Counsel:

Our records reflect that the time for ordering the transcript has expired. Within ten (10) days of the date of this letter, you must file a copy of the letter showing that you have ordered the transcript directly from the court reporter, along with a motion requesting permission to order the transcript outside of the filing deadlines set by Rule 207 of the South Carolina Appellate Court Rules. Your appeal will be dismissed if no motion is made within ten (10) days of the date of this letter.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Jenny A. Kitchings".

CLERK

cc: William H. Davidson, II, Esquire  
Justin Tyler Bagwell, Esquire  
Andrew F. Lindemann, Esquire

# WRIGHT, WORLEY, POPE, EKSTER & MOSS, PLLC

ATTORNEYS AT LAW  
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MARTHA HENLEY SLEDGE (Retired)

D.F. McGOUGAN, JR.  
(1921 - 1994)

OTHER OFFICES  
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SUPPLY, NC  
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TABOR CITY, NC

\*licensed only in SC  
\*\*licensed in NC & SC  
\*licensed in NC, DC & SC  
\*DRC-Certified Family Financial Mediator  
\*Of Counsel

April 23, 2015

## VIA FACSIMILE AND FIRST CLASS MAIL

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

Re: Ricky Edmond Blue, Jr., Appellant, v. City of Bennettsville, a South Carolina Municipal Corporation, Larry McNeill and Walter Covington, Respondents  
Civil Action No. 2012-CP-34-00046  
Appellate Case No. 2015-000587  
Our file no. SC-5477-001

Dear Ms. Kitchings:

I represented the Appellant in the above referenced civil action and filed the Notice of Appeal on his behalf. Through written correspondence I have communicated to Mr. Blue the Rule 207 requirements. Please be advised that Mr. Blue has failed to communicate with me or authorize me to Order a copy of the transcript, and I have not been retained by Mr. Blue to represent him in this appeal. Therefore and accordingly, I will not be providing a copy of the transcript.

With kindest regards, I am

Sincerely yours,

  
Kenneth R. Moss, SC Bar #15520

KRM/cd

cc: Ricky Edmond Blue, Jr. (via U.S. Mail only)  
William H. Davidson, Esq. (via U.S. Mail only)  
Justin T. Bagwell, Esq. (via U.S. Mail only)  
Andrew F. Lindemann, Esq. (via U.S. Mail only)

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Case No. 2012-CP-34-0046

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Ricky Edmond Blue, Jr.,..... Appellant,

v.

City of Bennettsville, Larry McNeill,  
and Walter Covington, ..... Respondents.

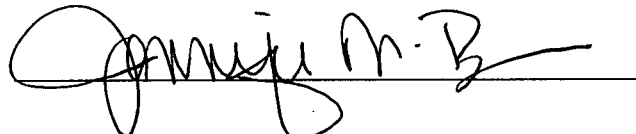
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**CERTIFICATE OF SERVICE**

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The undersigned employee of Davidson & Lindemann, P.A., counsel for the Respondents, does hereby certify that service of the **Motion to Dismiss Appeal** and **Memorandum in Support of Motion to Dismiss Appeal** in the above-captioned matter was made upon all counsel of record by placing a copy in the United States Mail, first class postage prepaid, at the below listed address clearly indicated on said envelope this the 8th day of May 2015:

Kenneth R. Moss, Esquire  
Wright, Worley, Pope,  
Ekster & Moss, PLLC  
628A Sea Mountain Highway  
North Myrtle Beach, South Carolina 29582



DAVIDSON & LINDEMANN, P.A.

ATTORNEYS AND COUNSELLORS AT LAW

1611 Devonshire Drive, Second Floor  
Post Office Box 8568  
Columbia, South Carolina 29202-8568  
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William H. Davidson, II  
Andrew F. Lindemann\*  
James M. Davis, Jr.†  
Robert D. Garfield  
Michael B. Wren

\*Also Admitted In North Carolina  
†Certified Mediator

May 8, 2015

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Daniel C. Flippo  
Joel S. Hughes  
Justin T. Bagwell  
David A. DeMasters  
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Todd R. Flippin

Of Counsel  
Kenneth P. Woodington

Writer's Email: [alindemann@dml-law.com](mailto:alindemann@dml-law.com)

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

RE: Ricky Edmond Blue, Jr. v. City of Bennettsville, Larry McNeill, and Walter Covington  
Appellate Tracking Number: 2015-000587  
Civil Action Number: 2012-CP-34-0046  
Claim Number: SF-12-0195  
Our File Number: 321.8950

Dear Ms. Kitchings:

Please find enclosed for filing the originals and seven copies each of the **Motion to Dismiss Appeal** and **Memorandum in Support of Motion to Dismiss Appeal** in the above referenced matter. Please file the originals and return a clocked-in copy of each document to me in the enclosed envelope. I have also enclosed my firm's \$25.00 check for the filing fee.

By copy of this letter, I am serving copies on all counsel of record.

Thank you for your assistance in this matter.

Sincerely,

DAVIDSON & LINDEMANN, P.A.



Andrew F. Lindemann

AFL/jmb  
Enclosures

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The Honorable Jenny Abbott Kitchings  
May 8, 2015  
Page Two

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cc: (w/ Enclosures)

Kenneth R. Moss, Esquire  
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Ekster & Moss, PLLC  
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North Myrtle Beach, South Carolina 29582