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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM AIKEN COUNTY
Circuit Court

Doyet A. Early, Circuit Court Judge

Case No. 2009-CP-02-2460

Julie Tuten, Respondent.

v.

David Charles Joel, individually
and doing business as Joel &
Associates P.A., and/or Joel
& Associates, David C. Joel,
Attorney at Law, P.C., doing
business as Joel & Associates,
and Heather A. Glover, Appellant,

MOTION TO DISMISS APPEAL

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AUG 14 2012
SC Court of Appeals

The Respondent Julie Tuten, by and through her undersigned counsel, hereby moves this Court, under the provisions of Rule 224, SCACR, to dismiss this appeal.

The basis of such motion, is the failure of the Appellant, to comply with the provisions of Rule 203(d)(1)(B), specifically, the failure to file any notice of the appeal with the lower court, being the Court of Common Pleas for Aiken County.

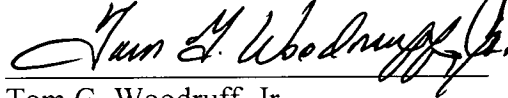
In support of this motion, the Respondent would cite as authority, Rule 231, SCACR, which provides the clerk shall dismiss the appeal of a party who fails to comply with the Rules. Further, timeliness of an appeal is a jurisdictional matter. *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 17, 602 S.E.2d 772, 776 (2004). An appellant's failure to comply with the procedural rules for appeal deprives the court of appellate jurisdiction but not of subject matter jurisdiction. *State v. Brown*, 358 S.C. 382,387, 596 S.E.2d 39,41 (2004).

As to the timing of this motion, the Respondent would show the transcript in this case has not been prepared, and e-mail correspondence between the Court Reporter and counsel for the Appellant and the Respondent, is presently not due until September 8, 2012.

The Respondent is seeking dismissal of this appeal, for the reason set forth above.

Respectfully submitted,

WOODRUFF LAW OFFICES, LLC



Tom G. Woodruff, Jr.

220 Richland Avenue, West

Post Office Box 2783

Aiken, South Carolina 29802-2783

Phone: 803-649-1910

Attorney for Respondent

August 14, 2012

STATE OF SOUTH CAROLINA)
)
COUNTY OF AIKEN) **AFFIDAVIT**

PERSONALLY appeared before me the Deponent, who being first duly sworn,
states and declares, as follows:

- 1) **I am over the age of eighteen (18) years, and I am competent to make this affidavit.**

- 2) **I am making this affidavit for a Motion to Dismiss Appeal, filed with the South Carolina Court of Appeals, on Tuten v. Joel, et al, at Case No.: 2009-CP-02-2460.**

- 3) **I have searched the records of the Aiken County Clerk of Court and the Notice of Appeal for this case, was never filed with the Clerk of Court for Aiken County, South Carolina.**


- 4) **The transcript in this case has not been delivered, and is not presently due from the court reporter, until September 8, 2012.**

Further, the deponent sayeth not.



TOM G. WOODRUFF, JR.

SWORN to before me, this
14th day of August, 2012.



Notary Public for South Carolina
My Comm. Exp.: 11-20-17.

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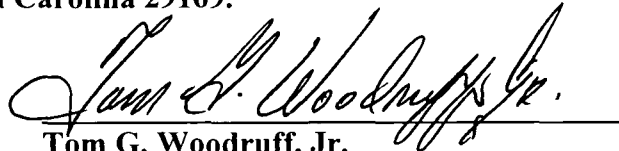
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SC Court of Appeals

PROOF OF SERVICE

I certify that I have served the Motion to Dismiss Appeal on David Charles Joel by depositing a copy in the United States Mail, postage prepaid, on August 14, 2012, addressed to his attorneys of record, Desa Ballard and Harvey M. Watson, III, 226 State Street, West Columbia, South Carolina 29169.

August 14, 2012



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