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STATE OF SOUTH CAROLINA
In The Court of Appeals

Appeal From Charleston County

R. Markley Dennis, Jr., Circuit Court Judge

Appellate Case No. 2014-002725

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OCT 07 2015

SC Court of Appeals

Clark D. Thomas, Appellant,

V.

Evening Post Publishing Co.,
d/b/a The Post and Courier,
Glenn Smith, Officially
and Individually, Respondent.

**MOTION TO STRIKE
FINAL BRIEF OF RESPONDENTS,
AND REMAND CASE TO LOWER COURT
FOR TRIAL BY JURY**

Pursuant to Rules 211(a), 240, 263, SCACR, Clark D. Thomas, *pro se*, Appellant in the above-captioned *Appeal*, respectfully requests that this Court strike the *Final Brief of Respondents*, and remand case to lower court for trial by jury. This *Motion* is based on one or more of the following grounds:

INTRODUCTION

This matter comes before this Court in the interest of the above-captioned *Appeal* Thomas filed on December 29, 2014. Thomas is seeking relief from the lower court's *Order* granting Respondents' motion for summary judgment in an action for libel and the intentional infliction of emotional distress he filed on September 17, 2013. Thomas filed a motion to proceed *in forma pauperis* on December 29, 2014, that this Court denied in the *Order* filed on February 4, 2015. Thomas then paid the filing fee of \$100.00, and filed a motion to relax the appellate court filing requirements on February 17, 2015, that was granted by this Court in the *Order* filed on April 3, 2015.

On July 6, 2015, Thomas filed his initial brief and designation of matter; and Respondents filed their initial brief and designation of matter on July 13, 2015. On July 22, 2015, Thomas timely mailed to this Court for filing his initial reply brief that was subsequently clock-stamped on July 24, 2015. Thomas then served Respondents with the record on appeal on August 14, 2015; and on August 20, 2015, Thomas timely served Respondents with his final brief and final reply brief, and filed same in this Court with the record on appeal. And 25-days after having been served with their copy of the record on appeal, Respondents filed their untimely final brief on September 8, 2015. This *Motion* follows:

I.

Preceding Decisions

Thomas was also a *pro se* litigant when perfecting his appeal of the family court's decisions in an action he filed for divorce, Appellate Case No. 2012-213714. In that case, Thomas moved the Supreme Court (1) for certification; (2) to resolve significant inaccuracies in

the record; and (3) that after their order on this motion was filed, that a 90-day extension of time be granted to enable him to timely file his initial brief and designation of matter. Thomas also paid the \$25.00 filing fee to file a motion in this Court requesting that his appeal be held in abeyance to establish a deadline for filing his initial brief and designation of matter. In other words, Thomas was ensuring that he could timely file the documents required in this Court should the Supreme Court deny his motion for certification.

To that end, this Court ignored Thomas's paid motion to hold his appeal in abeyance, and filed an order of dismissal grounded on his failure to file his initial brief and designation of matter. What's more, within 15-days of having received that notification, Thomas filed his initial brief, designation of matter and, at a cost of nearly \$2,000, Thomas filed 14-binded copies and one unbinded copy of a record on appeal consisting of 995 pages that was not even due yet. However, this Court denied Thomas's motion to reinstate his appeal and, 21-days later and without prior notice, this Court destroyed all 30 volumes of that record on appeal.

Current Circumstances

Rule 211(a), SCACR, stipulates that final briefs *shall* be served within 20-days of service of the record on appeal. "Use of word 'shall' ... indicates the provision is mandatory." (Internal quotation marks in original). Calhoun v. Calhoun, 529 S.E.2d 14, 18 (S.C. 2000). And Rule 263(b), SCACR, sets forth that a filing deadline can be extended by any judge in the appellate court. In the case at bar, Thomas served Respondents with the record on appeal on August 14, 2015. However, Respondents unilaterally extended the time to serve Thomas with their final brief by five days when they mailed it to him it on September 8, 2015. (See p. 6). And Respondents do not have a motion for a time extension pending before this Court.

Due Process & Equal Protection

Thomas has fully complied with the appellate court rules during the course of perfecting this *Appeal*. And when his status of incarceration precluded his ability to comply, Thomas moved this Court to relax the conflicting requisites. However, this Court *most probably* would have dismissed this *Appeal* if Thomas had taken it upon himself to bend the rules to his liking. In other words, Respondents should also be required to follow the rules. “[D]ue process demands impartiality on the part of those who function in judicial and quasi-judicial capacities.” (Citation omitted). State v. Langford, 735 S.E.2d 471, 479 (S.C. 2012). Therefore, the final brief of Respondents in the case *sub judice* should be stricken from the record, and this case should be remanded to lower court for trial by jury.

Furthermore, in light of the circumstances involved in this Court’s *sua sponte* decision to dismiss Thomas’s appeal in the matter of his divorce, the denial of this motion in the instant case is to hold Thomas to a much higher standard than the learned counsel for Respondents. “[We] do not impose on persons unlearned in the law the same high standards of the legal art that they might place on members of the legal profession.” Pollard v. United States, 352 U.S. 354, 363 (1957)

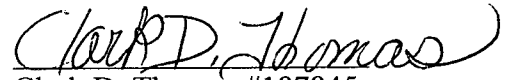
II.

Prayer for Relief

In light of the foregoing facts and binding authorities, this Court should strike the *Final Brief of Respondents*, and remand this case to lower court for trial by jury in order that Thomas may enjoy his right to due process and equal protection of the laws as guaranteed by the Fourteenth Amendment to the United States Constitution and South Carolina law.

WHEREFORE, Appellant prays that this Court grant the relief requested; and, for such other relief as this Court deems just and proper.

Respectfully submitted,



Clark D. Thomas #187845
BRCI / Moultrie A-2087
4460 Broad River Road
Columbia, SC 29210

October 2, 2015
Columbia, SC

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BAKER RAVENEL BENDER
ATTORNEYS AT LAW

MLT 2087

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**BRCI
MAILROOM**

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**AFFIDAVIT
OF
CLARK D. THOMAS**

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NOW COMES Clark D. Thomas, Appellant in the above-captioned *Appeal*, and states, under oath, the following:

1. Pursuant to Rule 240(c)(3), SCACR, the facts I have stated by virtue of this *Motion* are true and correct to the best of my knowledge and belief.

Further affiant sayeth naught.

SUBSCRIBED AND SWORN TO before me

This 2nd day of October, 2015

Melanie T. Lucius (L.S.)

Notary Public for South Carolina

My Commission Expires: February 18, 2024.

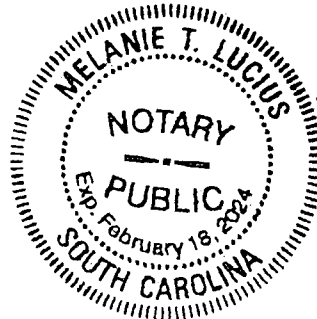
Clark D. Thomas

Clark D. Thomas #187845

BRCI / Moultrie A-2087

4460 Broad River Road

Columbia, SC 29210



CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the document listed below has been sent
by U.S. Mail to:

Jay Bender, Esquire
P.O. Box 8057
Columbia, South Carolina 29202.

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SC Court of Appeals

1. *Motion to Strike Final Brief of Respondents, and Remand Case to Lower Court for Trial by Jury.*

Clark D. Thomas
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October 2, 2015
Columbia, SC

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SC Court of Appeals

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

Re: Clark D. Thomas v. Evening Post Publishing Co., et. al.
Trial Case No. 2013-CP-10-5444
Court of Appeals Case No. 2014-002725

Dear Ms. Kitchings:

Please accept my check in the amount of \$25.00 for filing my motion. Also, please clock-stamp the original document listed below, and return the clock-stamped copies to me in the SASE provided:

1. *Motion to Strike Final Brief of Respondents, and Remand Case to Lower Court for Trial by Jury*; and,
2. Copies (2).

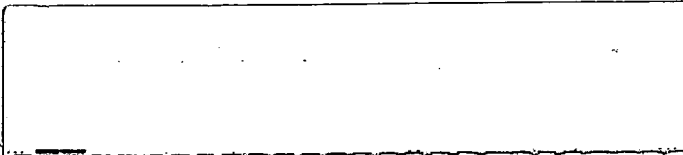
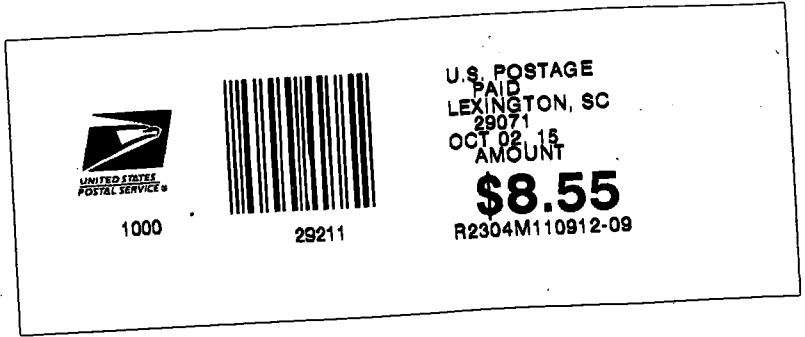
With kindest regards,
I am



Clark D. Thomas

cc: Jay Bender, Esquire

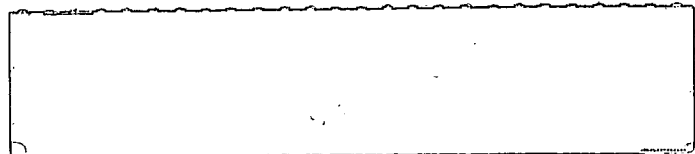
Clark D. Thomas #187845
BRCI/Mattie A. 2087
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Columbia, SC 29210



RETURN RECEIPT
REQUESTED

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SC Court of Appeals

The Honorable Penny A. Kitchings
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211



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