

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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**RECEIVED**

OCT 28 2015

APPEAL FROM RICHLAND COUNTY  
Robert E. Hood, Circuit Court Judge

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SC Court of Appeals

Case No. 2013-CP-40-0824R

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Enoch Lemon, Jr., ..... Appellant,

v.

Richland County Sheriff's Department, ..... Respondent.

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

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The Respondent Richland County Sheriff's Department has moved this Court pursuant to Rule 208(a)(4) and Rule 260(a), SCACR, to dismiss the Appellant's appeal based upon the Appellant's failure to timely file his Initial Brief after receipt of the hearing transcript from the court reporter.

By way of background, the Appellant was previously granted an extension to order the hearing transcript out of time. *See*, Order filed May 14, 2015. Thereafter, the Clerk of the Court of Appeals sent a letter dated July 27, 2015, to Appellant's counsel requesting the status of the transcript. Appellant's counsel responded on the following date advising the Court that the transcript had not been received. No further correspondence has been sent by Appellant's counsel regarding the transcript. The Clerk thereupon sent an additional letter dated October 20, 2015, to Appellant's counsel requesting another status update on the transcript.

Respondent's counsel received a copy of the very hearing transcript from court reporter Elizabeth Harris on August 3, 2015. Respondent's counsel has also inquired from Ms. Harris as to the date that she delivered the transcript to Appellant's counsel. By email dated October 23, 2015, Ms. Harris confirmed that she forwarded the transcript on August 2nd and again on August 3rd to Appellant's counsel. (See attached email).

Rule 208(a)(1), SCACR, provides that "[w]ithin thirty (30) days after receiving the transcript ... appellant shall serve one copy of his brief on all parties to the appeal, and file with the clerk of the appellate court one copy of the brief with proof of service." Rule 208(a)(1), SCACR. The Appellant has not served or filed his Initial Brief as of the present date. That Initial Brief was due in early September. No extensions have been sought by the Appellant.

The procedure and sanctions for the failure to file a brief by an appellant are governed by Rule 208(a)(4), SCACR, which provides: "Upon 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.

Based thereon, the Respondent respectfully moves this Court for an order dismissing this appeal.

Respectfully submitted,

DAVIDSON & LINDEMANN, P.A.

BY: 

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ANDREW F. LINDEMANN  
ROBERT D. GARFIELD  
1611 Devonshire Drive  
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Columbia, South Carolina 29202  
(803) 806-8222

*Counsel for Respondent  
Richland County Sheriff's Department*

Columbia, South Carolina

October 26, 2015

## Andrew Lindemann

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**From:** Harris, Elizabeth B. <EHarris@sccourts.org>  
**Sent:** Friday, October 23, 2015 5:25 PM  
**To:** Andrew Lindemann  
**Subject:** RE: Transcript: Lemon v. RCSD

Dear Mr. Lindemann,

I emailed it to her August 2nd and 3rd. I wasn't sure I had the correct address the first time, so I sent it again the next day to be safe.

Cordially,  
Elizabeth Harris

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**From:** Andrew Lindemann <[alindemann@dml-law.com](mailto:alindemann@dml-law.com)>  
**Sent:** Friday, October 23, 2015 12:34 PM  
**To:** Harris, Elizabeth B.  
**Subject:** RE: Transcript: Lemon v. RCSD

Ms. Harris:

Thank you for the transcript that you delivered to me on August 3, 2015. Can you please let me know the date on which you delivered that same transcript to Mary Miles, who represents the Plaintiff?

I am attaching a copy of your invoice so you have the identifying information for this project.

Thank you for your help with this.

Andrew Lindemann

-----Original Message-----

**From:** Harris, Elizabeth B. [<mailto:EHarris@sccourts.org>]  
**Sent:** Monday, August 03, 2015 10:47 AM  
**To:** Jennifer M. Baker  
**Subject:** RE: Transcript: Lemon v. RCSD

And here is your invoice.

Thanks!

Elizabeth

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**From:** Jennifer M. Baker <[jbaker@dml-law.com](mailto:jbaker@dml-law.com)>  
**Sent:** Monday, August 3, 2015 8:02 AM  
**To:** Harris, Elizabeth B.  
**Subject:** RE: Transcript: Lemon v. RCSD

Ms. Harris:

Andrew is on vacation and forwarded me your email. A PDF version of the transcript is all we need.

Thank you,

Jennifer

[\[cid:image001.jpg@01D0CDC2.C67C0370\]](#)

Jennifer Baker

Davidson & Lindemann, P.A.

Paralegal to Andrew F. Lindemann & James M. Davis, Jr.

Email: [jbaker@dml-law.com](mailto:jbaker@dml-law.com)<<mailto:jbaker@dml-law.com>>

Office: 1611 Devonshire Drive - Second Floor, Columbia, SC 29204

Mailing: Post Office Box 8568, Columbia, SC 29202-8568

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From: Andrew Lindemann

Sent: Sunday, August 02, 2015 9:53 PM

To: Jennifer M. Baker

Subject: Fwd: Transcript: Lemon v. RCSD

Sent from my iPhone

Begin forwarded message:

From: "Harris, Elizabeth B." <[EHarris@sccourts.org](mailto:EHarris@sccourts.org)<<mailto:EHarris@sccourts.org>>>

Date: August 2, 2015 at 4:29:15 PM MDT

To: Andrew Lindemann <[alindemann@dml-law.com](mailto:alindemann@dml-law.com)<<mailto:alindemann@dml-law.com>>>

Subject: Transcript: Lemon v. RCSD

Dear Mr. Lindemann,

I have completed the transcript of the May 12, 2014, hearing before Judge Hood. Please advise if you would still like a copy.

If you would prefer an emailed PFD version instead of a hardcopy, I would be glad to provide that. If you would like both the PDF and hardcopy, there will be an additional \$35.00 charge. Just let me know your preference.

Cordially,

Elizabeth Harris, CVR-M

Fifth Judicial Circuit, At-large

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**CERTIFICATE OF SERVICE**

The undersigned employee of Davidson & Lindemann, P.A., counsel for the Respondent, 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 Appellant's counsel by placing copies in the United States Mail, first class postage prepaid, at the below listed address clearly indicated on said envelope this the 26th day of October 2015:

Mary P. Miles, Esquire  
Law Office of Mary P. Miles  
810 Dutch Square Boulevard - Suite 206  
Columbia, South Carolina 29210

