

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From The Richland County
Court of Common Pleas From Orders of
Honorable G. Thomas Cooper, Jr.,
Fifth Judicial Circuit Court Judge

RECEIVED

OCT 23 2015

SC Court of Appeals

Appellate Case No.: 2015-000740

Case No.(s): 2013-CP-40-03078
2007-CP-40-03742

Subsequent Interlocutory Orders of (Former) Circuit Court Judge,
Honorable J. Michelle Childs:

Case No.(s): 2007-CP-40-03742
2009-CP-40-02442

Subsequent Interlocutory Order of Circuit Court Judge,
Honorable De Andrea Gist Benjamin:

Case No.: 2009-CP-40-02442

Clarence S. Gregory, Appellant,

Verses

Riley Pope & Laney, LLC, Law Firm, Attorney(s) and Counselor(s)
at Law; Individually and Individually named, Theodore D. Riley,
T. Lowndes Pope, LeRoy Free Laney, Nikole H. Boland, Of Whom
All are sued In Their Individual and Professional Capacities,
Riley Pope & Laney, Limited Liability Contractor(s)(LLC);

AND

Heath McAlvin Stewart, III, Individually and Individually named,
Of Whom, Formerly Employed with, Riley Pope & Laney, LLC, Law
Firm, An Agent Attorney Is Sued In His Individual and

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Professional Capacities, Et Al.;

All Whom are named as Defendants,

Of Which, Riley Pope & Laney, LLC, Is The Respondent.

APPELLANT'S NOTICE AND MOTION TO STRIKE RESPONDENT'S
MOTION FOR EXTENSION OF TIME TO FILE AND SERVE INITIAL
BRIEF AND DESIGNATION OF MATTER TO BE INCLUDED IN THE
RECORD ON APPEAL AND MOTION TO RESCIND/OR VOID THE
DEPUTY CLERK'S ORDER OF GRANTING RESPONDENT'S MOTION

COMES NOW, the Appellant, by way through pro'se, and do hereby, respectfully moves pursuant to the S.C. Appellate Court Rules, Rule(s) 208 (a)(1),(2) and (4), Rule 240 (a),(b), (c) (3), (e),(f) and (g); Rule 260 (a), Rule 262 (a),(1)(2), (b), Rule 263 (b), and Rule 267 (f), SCACR, for an Order to Strike the Respondent's Motion for Thirty (30) day extension of time to file and serve Initial Brief and Designation of Matter to be Included in the Record on Appeal and for an Order to Rescind and/or Void the respective Deputy Clerk's Order, granting the Respondent's aforesaid motion.

The grounds for and in support of this motion are set forth herein and are of good cause, and accompanied with Appellant's Memorandum of Law, Affidavit in support and other relevant materials in support of Appellant's said motion, as follows:

1). That, Appellant served and filed his Initial Brief And Designation of Matter To Be Included in the Record on Appeal, on/or about, August 24, 2015, under Rule 208 (a), (1), SCACR;

2). That, Appellant enclosure of his Initial Brief and Designation of Matter, attached a pre-paid envelope requesting the respective Clerk of Court to return to Appellant a clocked-stamped & Filed copy, which was enclosed, on/or about, August 24, 2015;

3). That, as of this date October 12, 2015, the Clerk's office has not returned to Appellant a filed copy of his Initial Brief, Designation of Matter, Certificate of Service;

4). That, on/or about, September 23, 2015, Respondents' counsel, Damon C. Wlodarczyk, appeared at the S.C. Court of Appeals Clerk's office and by via hand-delivered served and filed Motion for Extension of Time to file and serve Initial Brief and Designation of Matter, requesting for thirty (30) days extension of period, under Rule 263 (b), SCACR, on the dead-line date timeframe, as required under Rule 208 (a) (2), SCACR;

5). That, on/or about, September 28, 2015, Appellant received Respondents' Motion for Extension of time to file and serve Initial Brief and Designation of Matter, from the Broad River Correctional Facility Mailroom, by Staff, Ms. Susan F. Frye;

6). That, on/or about, September 29, 2015, Appellant filed and served Notice/Motion/Affidavit to oppose (Return to Motion) Respondents' counsel Motion for extension of time, etc., as required under Rule 240 (e), SCACR, within ten (10) days from the date of service thereof;

7). That, on/or about, September 30, 2015, Appellant learned from Rule 240 (e), SCACR, that it was a "Return to Motion,"

and Appellant need not to file a motion to oppose, thereby Appellant filed and served a Amended Returned-Reply, Opposing the Respondents' counsel motion to extend time;

8). That, during the same time and within the time-frame as required for any opposing party to file and serve their "Return," Rule 240 (e), SCACR, the Deputy Clerk of Court, Honorable V. Claire Allen, granted Respondent's Counsel said Motion for extension of time, by Order, on/or about, September 30, 2015, extending Respondent's time to file and serve Initial Brief and Designation of Matter, until October 23, 2015;

9). That, the Deputy Clerk, respective V. Claire Allen, did not have Appellant's "Return To Motion" because it had not reached their office, it was in the service of the post office, and the Deputy Clerk, Allen, "pre-maturely" and inadvertently erred, and have not reviewed or consider the opposing facts and affidavit of Appellant's Return;

10). That, in the Appellant's Return to Respondent's Motion, which was filed with the Clerk's office, Appellant enclosed a letter of request for the Clerk's to return a filed copy in the pre-paid envelope, which was served on/or about, September 30, 2015, but as of this date, October 15, 2015, Appellant have not received a returned filed copy;

11). That, under Rule 240 (a), (c) (3), SCACR, Motions And Petitions Generally, the Rule requires for "motions for extension of time, of paragraph (c) (3), requires and mandatory language "shall" and not discretionary language, in pertinent parts,

provides (3), "Where the Record on Appeal or Appendix has "not" been filed, or where the "facts" relied upon in support of the motion are not contained in the Record on Appeal or Appendix, "the parties "shall" file affidavits and other documents in support of their positions." Rule 240 (c) (3), SCACR;

12). That, on/or about, September 23, 2015, Respondent's counsel said "motion for extension of time," was filed by the Clerk's office without attaching or filing an "affidavits or other documents in support of their positions, and such acts of both parties, the Clerk and Respondents' are in violation with the mandated language of Rule 240 (c) (3), and (g), SCACR, and Rule 260 (a), SCACR, Rule 267 (f), SCACR;

13). That, under the provision of Rule 260 (a), SCACR, it provides in pertinent parts, (a) Involuntary Dismissal and Reinstatement;

"Whenever it appears that an appellant or a petitioner has "failed" to comply with the requirements of these Rules, the "Clerk of Court" "shall" issue an order of dismissal, which "shall" have the same force and effect as an order of the Appellate Court, etc.;"

14). That, under the provision of Rule 267 (f), Compliance. Which provided, "The Clerk of the Appellate Court "shall" insure compliance with this Rule before "accepting any papers for filing;" This language of the Rule is mandatory and not discretionary, even for the Respondents in this matter;

15). That, based upon information and belief, on/or about, Thursday afternoon, the Clerk of Court, Honorable Jerry A. Kitchings, asserted that they (Clerk's Office) does not require the Respondents' or parties to file affidavits since the motion stated the facts and grounds upon which supports the basis of their said motion;

16). That, the Clerk's duties and responsibilities are of a ministerial in nature, when it is absolute, certain and imperative, in civil action and protects safeguard of procedural due process, regarding mandated languages in Rules of Court;

17). That, on/or about, October 08, 2015, based upon information and belief, the Respondent's Clerk/Secretary, of the Riley Pope & Laney, LLC, Law Firm, asserted that their office were open for public service on/or about, Friday, October 02, 2015, and throughout Friday, October 09, 2015, under the condition of the weather;

18). That, Respondents' had a reasonable time of an opportunity to serve and file their "Reply" to Appellant's Return to their (Respondent's Motion), under the provisions of Rule 240 (f), SCACR, which requires a mandatory duty to act or perform is not discretionary;

19). Rule 240 (f), SCACR, provides: "The moving party "shall" have five (5) days from the date of service of a "return" to file an original and six (6) copies of a reply with the Clerk and serve on all parties a copy of the reply. The provisions of Rule 240 (c) apply to a reply."

20). That, based upon information and belief, the U.S. Post Office were open for public service on/or about, September 28, 2015, through October 09, 2015;

21). That, Respondents' had an mandatory duty, under the provisions of Rule 240 (f), SCACR, to file and serve their "Reply to Appellant's Return, within five (5) days, but failed to comply with the mandated Rule;

22). That, the Clerk of Court Honorable Jerry A. Kitchings and Deputy Clerk, Honorable V. Claire Allen, are both public officials under the statutory laws and both Clerk's duties and responsibilities are ministerial and they failed to perform and their failure, substantially violated Appellant's procedural due process which constitutionally calls for procedural "protection" by making a decision and determination, and granting Respondents' an Order, before reviewing and considering the procedural facts and affidavit of Appellant's Return to Respondent's said motion, on/or about, September 30, 2015;

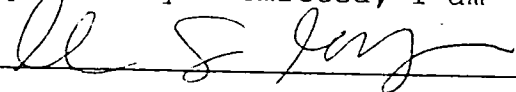
23). That, the respective Deputy Clerk, Allen inadvertently erred, denied and deprived Appellant of an equal protection of a "opportunity" to adequately respond to oppose a view before a order was made, which denied Appellant a meaningful opportunity to be heard and present his objections.

WHEREFORE, for these foregoing reasons herein mention and supportive affidavit and memorandum, Appellant's prays for an Order of this Court to strike Respondents' Motion and Rescind/and

or Void the Order, which granted Respondents' thirty (30) days extension of time to file and serve their (Respondent's) Initial Brief and Designation of Matter.

For a further Order, since Respondents' counsel failed to timely file their Responsive Brief and the Clerk's office failed to issue an order of dismissal, exercising discretionary measure in behalf of the Respondents' counsel, rather exercising their ministerial duty under the mandatory language within the S.C. Appellate Court Rules, Appellant respectfully request and prays that this Court dismiss Respondents' argument and case, and remand the case to the lower court for the relief sought by the Appellant.

Richland County,
Columbia, South Carolina
29210-4012
October 12, 2015

Respectfully Submitted, I am
s/ 
CLARENCE S. GREGORY, #227394
C/o BROAD RIVER CORRECTIONAL INST.
MURRAY UNIT, B-WING RM. 234
4460 BROAD RIVER ROAD
COLUMBIA, SOUTH CAROLINA 29210-

APPELLANT PRO' SE

APPELLANT'S NOTICE/MOTION/AFFIDAVI
TO STRIKE RESPONDENT'S MOTION
FOR EXTENSION OF TIME/MOTION FOR
AN ORDER TO RESCIND/VOID ORDER

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