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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

NOV 19 2015

SC Court of Appeals

James B. Jackson, Jr., Master in Equity

Case No. 2015-001112

South Carolina Federal Credit Union,

Respondent

v.

Dorothy Harley Sistrunk aka Dorothy
Harley-Sistrunk aka Dorothy A. Harley
aka Dorothy Sistrunk

Appellant.

**APPELLANT'S MOTION TO EXTEND TIME
TO FILE THE RECORD ON APPEAL TO DECEMBER 4, 2015**

November 18, 2015

Dorothy Harley Sistrunk
423 Bayne Street
Orangeburg, South Carolina 29115
Ph: (803) 268-0716
Fx: (803) 534-6727

Moore & Van Allen, PLLC
Reid E. Dyer
78 Wentworth Street
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Charleston, SC 29401-1428
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Attorneys for Respondent

Comes now the Appellant, Dorothy Harley Sistrunk, to file a Motion to Extend Time to *File the Record on Appeal to December 4, 2015* i.e., South Carolina Federal Credit Union, Respondent v. Dorothy Harley Sistrunk, Appellant (Refer to the cover for aka's if needed) - Case No. 2015-001112.

**WHY A MOTION TO EXTEND
TIME TO DECEMBER 4, 2015 IS NEEDED**

1. The first reason why a motion to extend time to December 4, 2015 is needed is because the Appellant was waiting for some indication from the Appellate court relative to the Reply Brief that was filed on October 16, 2015. Not being familiar with Appellate procedure, the Appellate was expecting a letter from the Court to file the Record on Appeal. {See Attached Exhibit P}

2. **Reason #2:** After waiting for two weeks, the Appellate decided to send the Clerk of court a letter as to what to do relative to the Record on Appeal. The letter was mailed and dated on November 3, 2015. {See Attached Exhibit P}

Rule 240(b), SCACR clearly states in pertinent parts; “[U]nless otherwise provided by these Rules, **or ordered by the appellate court**, the time limits imposed by these Rules shall not be stayed by the filing of a motion or petition.” [Boldness and Underlining added for emphasis]

3. **Reason #3:** After waiting for a reply from the Clerk of Court as to what to do, because I did not receive any indication from the Appellate Court or the Clerk of Court as to what to do; on Monday, November 16, 2015, I called the Clerk of Court and was simply told to follow the Rules. **This would have been brilliant information if the Appellant was told which Rule to follow.**

4. **Reason #4:** Like all of you, I am also a government employee and like any employee, I must show my supervisor a legitimate reason to be excused from work to do what is necessary to continue this case. These indications from the Court, and/or the

Clerk of Court have been instrumental and very important to my work record, i.e., hearing dates, filing dates and/or filing deadlines. {See Attached Exhibit 391}

5. When it comes to “Reply Briefs”, the record is clear that these “Briefs” are considered; even though timelines for consideration are not recorded in the history. The following are just a few of the hundreds of case file examples relative to “Reply Briefs”.

(a) *Glasscock, Inc. v. US Fidelity & Guar.*, 557 SE 2d 689 (Ct. App. 2001) “[A]dditionally, even though USF & G more fully addressed the issue in its reply brief, an argument made in a reply brief cannot present an issue to the appellate court if it was not addressed in the initial brief. See *Jackson v. Bi-Lo Stores, Inc.*, 313 S.C. 272, 277, 437 S.E.2d 168, 171 (Ct.App.1993) (“The partners make several new arguments relating to estoppel and ratification in their reply brief. However, these arguments are not properly before this Court because an appellant cannot make new arguments for reversal in a reply brief.”) (citation omitted). Accordingly, we find that USF & G’s argument was not properly presented to this Court and is deemed abandoned.”

(b) *Bochette v. Bochette*, 386 SE 2d 475 (Ct. App. 1989) “[M]r. Bochette attempted to advance in oral argument before this court and in his reply brief other contentions concerning transmutation not argued in his appellant’s brief; however, we need not consider these contentions, even though they were embraced by an exception. An appellant may not use either oral argument or the reply brief as a vehicle to argue issues not argued in the appellant’s brief. See *Animal Protection Society of Durham, Inc. v. State of North Carolina*, 95 N.C. App. 258, 382 S.E. (2d) 801 (1989) (a reply brief cannot be used to raise new matters); 5 C.J.S. *Appeal & Error* Sec. 1324(1) at 329 (1958) (“A matter raised for the first time in oral argument or in the reply brief will not be considered by the appellate court.”)

(c) *Fields v. Melrose Ltd. Partnership*, 439 SE 2d 283 n. 3 (Ct. App. 1993) “[I]n their reply brief, the Fieldses do make a one sentence, conclusory argument without supporting authority on the “puffing” issue. This does not avail them for two reasons: (1) an appellant may not use the reply brief to argue issues not argued in his brief in chief; and (2) an issue is deemed abandoned on appeal and, therefore, not presented for review, if it is argued in a short, conclusory statement without supporting authority. *Bochette v. Bochette*, 300 S.C. 109, 386 S.E.2d 475 (Ct.App.1989);”

(d) Lister v. NationsBank, 494 SE 2d 449 (Ct. App. 1997) “[I]n its reply brief, Avis avers for the first time that due process would require no punitive damages be awarded because the event occurred in Aruba. However, an appellant may not use the reply brief to argue issues not argued in the appellant's initial brief. Rule 207(b)(1)(B), SCACR; Rule 210(b), SCACR; *Sloan Constr. Co. v. South Carolina Bd. of Health and Envtl. Control*, 285 S.C. 523, 331 S.E.2d 345 (1985); *State v. Wakefield*, 323 S.C. 189, 473 S.E.2d 831 (Ct.App.1996). *See also* 4 C.J.S. *Appeal and Error* § 619 (1993) (“A point raised for the first time in the reply brief will not be considered by the appellate court.”). Consequently, we need not address this issue.”

(e) Cowiche Canyon Conservancy v. Bosley, 828 P. 2d 549 (Wash: S. Ct. 1992) “[P]rivate plaintiffs claim, for the first time in their reply brief, that an assignment from the Clarks is in the Clerk's Papers and defendant should be estopped to deny its existence. An issue raised and argued for the first time in a reply brief is too late to warrant consideration. *In re Marriage of Sacco*, 114 Wn.2d 1, 5, 784 P.2d 1266 (1990). That the issue existed earlier is obvious from finding of fact 22.”

(f) Zamani v. Carnes, 491 F. 3d 990 (9th Cir. 2007) “[C]arneses had raised in their reply brief: namely that the Zamanis' claims were barred by the litigation privilege. The Carneses moved for reconsideration on this issue, but the district court denied the motion for reconsideration because the Carneses failed to raise their litigation privilege argument in their opening brief. This appeal followed.”

6. Surely, it is not necessary to take several days, weeks or months to cite every case in America's judicial system; in which, an Appeals court referred to a “Reply Brief”. The above referenced cases and excerpts from South Carolina's Appellate Court do not include the hundreds of other cases from the 49 other State Appellate Courts and the federal District and/or Appeals Courts.

7. Perhaps now the Court can understand this matter from a Pro Se Litigant's point of view; especially, what to do after the “Reply Brief” is filed. Should the Appellant wait for a decision? There is no Rule in South Carolina's Appellate Procedure that tells a litigant; with specificity and particularity, what to do. This is why the Appellant waited for an indication or Order from the Court. {See Attached **Exhibit 398**}

7. According to what the Appellant has learned from Illinois' Appellate Court and from Columbia's printers; that is relative to another case before the Appellate Court, [**Re: Case No. 2014-001683**] the Appellant must do the following:

- Go to the Clerk of the Lower and make sure all documents, papers, and exhibits that are included in the Record on Appeal have been or stamped by the Clerk of Court – {**See Attached Exhibit 369**}
- Assemble the Record on Appeal pursuant to Rule 210(c)-(f), SCACR – Columbia Printers
- Take these records to a printer for numbering if they are not numbered by the Clerk of Court. – Columbia Printers.
- Write an index and add it to the Court's Records that have been previously numbered. – Columbia Printers
- “[f]ile with the clerk of the appellate court fifteen (15) copies of the Record on Appeal no later than the date his brief(s) are due under Rule 211. As provided by Rule 267(d), one copy filed with the appellate court shall be filed unbound.” - Rule 210(b), SCACR

8. **Reason #5:** After the Appellant's conversation with the Clerk of the Appellate Court's representative or Clerk, the Appellant discovered the Record on Appeal was due on November 19, 2015. The Appellant could not possibly arrange for the time off to do all that is required to file the Record.

9. The Appellant is not a full time judge or a paid attorney. Therefore, without a verifiable illness, family emergency, doctor's appointment, a verifiable transportation problem or a Court Order; like [**Exhibits 391 and 398**], so that Appellant's supervisor can authorize the use of Annual Leave, the Appellant would be abusing the system.

10. This is why documents from the Court are vital to this entire appeals process for working people with jobs, whose job, is not the profession itself. Lower level State employees do not enjoy the privileges or protection of a judge when it comes to our jobs.

11. As already stated, there is nothing in the Rules relative to a course of action after the "Reply Brief" is filed. Rule 208(a)(3), SCACR, simply states the following in relevant parts.

"[A]n appellant may file and serve a brief in reply to the brief of respondent. If a reply brief is prepared, appellant shall, within ten (10) days after service of respondent's brief, serve one copy of the reply brief on all parties to the appeal and file with the clerk of the appellate court one copy of the reply brief with proof of service."

12. The final statements relative to the "Reply Brief" can be found in Rules 208(b)(3) & (5), and Rule 267(e), SCACR that states the following in pertinent parts;

Rule 208(b)(3), SCACR, "[A]ll reply briefs shall contain a table of contents, with page references, and a table of cases (alphabetically arranged), statutes, and other authorities cited, with references to the pages of the reply brief where they are cited."

Rule 208(b)(5), SCACR, "[E]xcept in cases in which a sentence of death has been imposed, principal briefs shall not exceed fifty (50) pages, and reply briefs shall not exceed twenty-five (25) pages."

Rule 267(e), SCACR, "[C]overs of the Record on Appeal and briefs shall be of a material not less than 50 pound weight and not glassine. The cover of the Record on Appeal shall be white; that of the brief of appellant blue; that of respondent red; that of an intervenor or amicus curiae green; and that of any reply brief gray."

CONCLUSION

For all the reasons stated above, the Appellate Court should grant the Appellant's Motion to Extend Time to December 4, 2015 to assemble and file the Record on Appeal.

November 18, 2015

Respectfully submitted,

/s/ Dorothy Harley Sistrunk
Dorothy Harley Sistrunk
423 Bayne Street
Orangeburg, South Carolina 29115
(803) 268-0716

Notice: Since statements of fact are being made and pursuant to 28 USC §1621 this motion will be verified.

NOTARY CERTIFICATION

IN WITNESS WHEREOF, The undersigned, being duly *SWORN*, declares under the *PENALTY OF PERJURY* that the facts in her "Motion to Extend Time to December 4, 2015 to File the Record on Appeal" are true and correct. When it comes to matters stated therein that are based upon information and/or belief; as to those matters, she believes them to be true. Accordingly, based on the stated facts; Re: Appellate Case No. 2015-001112 and Civil Action Case No. 2011-CP-38-1392, will sign, seal and execute her attestations on this 18 day of November in the year 2015 in the City and County of Orangeburg, in the State of South Carolina.

Rule 11(c), SCRPC clearly states in pertinent parts; "[A]ffidavits or verifications authorized or permitted under these Rules shall be written statements or declarations by a party or his attorney of record or of a witness, sworn to or affirmed before an officer authorized to administer oaths, that the affiant knows the facts stated to be true of his own knowledge, except as to those matters stated on information and belief and as to those matters that he believes them to be true."

Appellant's Signature: Dorothy Harley Sistrunk

Notary's Signature as Witness (1): Kim L. Patten

Signed, Sealed, Executed and Delivered in the Presence of:

**STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG**

On Nov. 18, 2015 before me appeared Dorothy Sistrunk and proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she is executing the same in her authorized capacity, and by her signature on her "Motion to Extend Time to December 4, 2015 to file the Record on Appeal" and this Notary Certification presents this document to the Appellate Court.

WITNESS My Hand and Official Seal.

Notary's Signature Kim L. Patten

Commission Expires 10-17-24



 **Dorothy Sistrunk**

423 Bayne Street • Orangeburg, SC 29115 • Ph: 803-268-0716 • Fx: 803-534-6727

What To Do Next?

November 3, 2015

The Honorable Jenny Abbot Kitchings Clerk of Court
& Deputy Clerk of Court V. Claire Allen
South Carolina Court of Appeals
POB 11629
Columbia, SC 29211

RE: South Carolina Federal Credit Union, Respondent v. Dorothy Harley Sistrunk,
Appellant – Case No. 2011-CP-38-1392 / 2015-001112

Ms. Kitchings and/or Ms. V. Claire Allen

I am not sure what to do next. As you know I sent in my “Reply Brief”. Do I wait for a decision on the “Reply Brief”? Is the Court going to contact me when to send in my Record on Appeal? Or do I just send it in? I do not want to be dilatory relative to these matters. Some guidance from the Court would be helpful at this point. Since this is an inquiry, no copy will be sent to the Respondent, South Carolina Federal Credit Union.

Thank you.

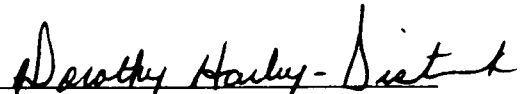
/s/ 
Dorothy Harley Sistrunk

Exhibit P

Chicago Daily Law Bulletin®

Volume 160, No. 41

How to compile a record on appeal

In our last column ("Filing a notice of appeal and docketing statement for the court," Jan. 27), we discussed the initial steps in perfecting an appeal to the Illinois Appellate Court — the filing of the notice of appeal, which confers jurisdiction upon the reviewing court, and the docketing statement, which provides the reviewing court with general information about the case.

Now we turn to compiling the record on appeal.

The burden rests with the appellant to create a complete record on appeal. If information is missing from the record, the appellate court can presume that the missing material supports the trial court's decision. Moreover, the appellant's failure to timely file the record on appeal can result in the dismissal of the case.

Alternatively, the appellate court can affirm the judgment from which the appeal is sought. However, the appellant's failure to timely file the record on appeal does not deprive the appellate court of jurisdiction to hear the matter; therefore, the appellate court can choose to consider the appeal on its merits.

Illinois Supreme Court Rule 321 provides that the record on appeal shall consist of the judgment appealed from, the notice of appeal and the entire original common-law record, unless the parties stipulate for, or the trial or appellate court orders, less.

The common-law record includes every document filed; every judgment and order entered; and any documentary exhibits offered and filed by any party. The appellate court, upon motion, can also order that other exhibits be included in the record. The record on appeal also includes any report of proceedings prepared in accordance with the court rules.

As discussed in our last column, the docketing statement requires that the attorney for the appellant certify that he or she made both a written request to the clerk of the circuit court to prepare the record on appeal and a written request to the court reporting personnel to prepare the transcripts of the proceedings in the trial court.

With regard to the preparation of the record on appeal in the 1st District Appellate Court, the Cook County circuit clerk website contains a "Request to Prepare a Record on Appeal" form. The appellant shall file the form as well as a deposit of \$110 in Room 801 of the Daley Center and attach a copy of the completed form to the docketing statement.

In all other appellate court districts, the appellant shall write a letter to the appeals clerk in the circuit clerk's office requesting that the record on appeal be prepared. The appellant shall then attach a copy of the letter to the docketing statement.

With respect to the report of proceedings, Illinois Supreme Court Rule 323 provides that it may include evidence, oral rulings of the trial judge, a brief statement of the trial judge of the reasons for the decision and any other proceedings that the party submitting it desires to have incorporated in the record on appeal.

With regard to the preparation of the transcripts, in any appellate court district, the appellant can write a letter to the court reporting personnel setting forth the dates of the hearings that need to be transcribed. The court reporter will then directly transmit the original transcripts to the circuit clerk for inclusion with the record on appeal.

However, it is good practice to speak directly with the court reporter to verify that he or she plans to send the transcripts to

ON APPEAL



**MICHELE M. JOCHNER
AND SHANNON R. BURKE**

Michele M. Jochner is a partner at Schiller, DuCanto & Fleck LLP, after previously serving as a judicial law clerk to Illinois Supreme Court Justices Charles E. Freeman and Mary Ann G. McMorrow. She can be reached at mjochner@sdflaw.com. Shannon Burke is a Chicago attorney and may be reached at burkeshr@yahoo.com.

the circuit clerk. If the appellant already has the transcripts in his or her possession, or the court reporter sends the transcripts directly to the appellant's attorney rather than to the circuit clerk, the parties can stipulate or the court can order that the transcripts be included in the record on appeal.

The appellant shall then take the stipulation or court order and the transcripts to the circuit clerk so that the appeals clerk can prepare the transcripts for inclusion in the record on appeal.

Although the docketing statement expressly requires that the appellant verify that he or she has requested that the clerk prepare the record on appeal and that the court-reporting personnel prepare the transcripts, there is one more component of the record that the appellant must compile — the exhibits.

If the trial court maintained possession of the exhibits, the appellant must arrange to have the exhibits sent to the circuit clerk so that the appeals clerk can include the exhibits in the record on appeal. If either of the parties maintained possession of the exhibits, the parties can stipulate or the court can order that the exhibits be included in the record on appeal.

The appellant shall then take

the exhibits, along with the stipulation or court order, to the circuit clerk so that the appeals clerk can include the exhibits in the record on appeal.

After the circuit clerk compiles the record on appeal, the clerk will notify the appellant that the record is available. The appellant must arrange to have the record on appeal timely filed with the appellate court.

Illinois Supreme Court Rule 325 provides various alternatives for the transmission of the record on appeal. Upon payment of fees and costs, the circuit clerk shall transmit the record to the reviewing court or, upon request, deliver it to the appellant for transmission.

Alternatively, at the request of any party, the clerk of the trial court shall deliver to the reviewing court a certificate that the record has been prepared and certified in the form required for transmission to the reviewing court. The timely filing of the certificate in the reviewing court shall be considered the filing of the record on appeal.

Once the record on appeal or the certificate in lieu of the record has been filed, the clerk of the reviewing court shall provide notice of filing to all parties to the appeal.

Stay tuned for our discussion of the next step in the appellate process: the filing of briefs.

Exhibit 360

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

James B. Jackson, Jr., Master in Equity

Case No. 2015-001112

South Carolina Federal Credit Union

Respondent,

v.

Dorothy Harley Sistrunk a/k/a
Dorothy Harley-Sistrunk a/k/a
Dorothy A. Harley a/k/a
Dorothy Sistrunk

Appellant.

PROOF OF SERVICE

I certify that I have served a copy the Appellant's Motion to Extend Time to December 4, 2015 by depositing a copy of the Motion to Extend Time with United Parcel Service, postage prepaid, on November 18, 2015, addressed to SCFCU's attorney/s of record listed below.

1/s Dorothy Sistrunk
Dorothy Sistrunk
423 Bayne Street
Orangeburg, South Carolina 29115
(803) 268-0716
Pro Se

cc: Moore & Van Allen, PLLC
Reid E. Dyer
78 Wentworth Street
Office Box 22828 (29413-2828)
Charleston, SC 29401-1428
Ph: 843-579-7045 Fx: 843-579-8754
Attorney/s for Respondent South Carolina Federal Credit Union (SCFCU)



Dorothy Sistrunk

423 Bayne Street • Orangeburg, SC 29115 • Ph: 803-268-0716 • Fx: 803-534-6727

**NOTICE OF MOTION TO
EXTEND TIME TO DECEMBER 4, 2015**

November 18, 2015

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1015 Sumter Street
Post Office Box 11629
Columbia, South Carolina 29211

RECEIVED
NOV 19 2015
SC Court of Appeals

RE: South Carolina Federal Credit Union, Respondent v. Dorothy Harley Sistrunk, Appellant – Case No. 2011-CP-38-1392 / 2015-001112

Dear Ms. Kitchings:

Enclosed is my Motion to Extend Time to *File the Record on Appeal* to December 4, 2015 for reasons stated in the motion. Included are:

- (1) **Proof of Service** that the Motion to Extend Time has been sent to the Respondent, South Carolina Federal Credit Union attorney of record that is listed below. And.....
- (2) My personal check in the amount of \$25.00 is attached for the filing fee of \$25.00.

Thank you for your efforts on my behalf,

Sincerely,

/s/ Dorothy Sistrunk

Dorothy Sistrunk
423 Bayne Street
Orangeburg, South Carolina 29115
(803) 268-0716
Pro Se

cc: Moore & Van Allen, PLLC
Reid E. Dyer
78 Wentworth Street
Office Box 22828 (29413-2828)
Charleston, SC 29401-1428
Ph: 843-579-7045 Fx: 843-579-8754
Attorney/s for Respondent South Carolina Federal Credit Union (SCFCU)

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Time Accepted 11:00	<input type="checkbox"/> AM <input checked="" type="checkbox"/> PM	Return Receipt Fee \$	Live Animal Transportation Fee \$
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The South Carolina Court of Appeals

Wells Fargo Bank, N.A., Respondent,

v.

Dorothy Sistrunk, Appellant.

Appellate Case No. 2014-001683

ORDER

After careful consideration, the motion for an extension of time to serve the record on appeal is granted and Respondent's request to dismiss this appeal is denied. Within thirty days of the date of this order, Appellant shall serve the record on appeal and file a proof of service with this Court. No further extensions will be granted absent a showing of extraordinary circumstances.


FOR THE COURT

Columbia, South Carolina

cc:

Dorothy Sistrunk
Elizabeth Scott Moise, Esquire
Michael J. Anzelmo, Esquire

FILED
9/11/15

Exhibit 398

4

The South Carolina Court of Appeals

Wells Fargo Bank, N.A., Respondent,

v.

Dorothy Sistrunk, Appellant.

Appellate Case No. 2014-001683

ORDER

Appellant has filed a motion to remand this appeal to the circuit court "to obtain rulings on the issues raised in her pleadings." Respondent has filed a return. After careful consideration of the parties' filings, Appellant's motions are denied. Appellant shall serve the record on appeal within twenty days of the date of this order.




FOR THE COURT

Columbia, South Carolina

cc: Dorothy Sistrunk
Elizabeth Scott Moise, Esquire
Michael J. Anzelmo, Esquire

FILED
7/1/15

Exhibit 391