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THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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DEC 01 2015

SC Court of Appeals

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

Robert E. Hood, Circuit Court Judge

Case No. 2014-CP-40-2209

James and Marietta Chaffin, ..... Appellants,

v.

Richland County Sheriff's Department,  
Deputy Brian Metz, Investigator Roy  
Livingston, Tallie and Devra Lackey,  
individually and as the Parents to  
the Minor Child, ..... Respondents.

MOTION TO DISMISS

In light of Appellants' repeated failure to comply with the South Carolina Appellate Court Rules and this Court's directives, Respondents Tallie and Devra Lackey, individually and as the Parents to the Minor Child, respectfully request that this Court enter an order dismissing Appellants' appeal.

**Procedural History**

On August 17, 2015, Appellants filed a Notice of Appeal in this Court. The Notice of Appeal: (1) failed to comply with the South Carolina Supreme Court's April 4, 2014 Order regarding personal identifiers, (2) failed to include a copy of the relevant orders from the court below; and (3) was not served on Investigator Roy Livingston. Accordingly, on

August 24, 2015, this Court sent Appellants a deficiency letter requesting those items be corrected within ten days. Eleven days later, Appellants filed an Amended Notice of Appeal. The undersigned did not oppose that untimely filing or request dismissal at that time.

On September 15, 2015, this Court sent Appellants a letter notifying them that the time period for order a transcript had expired. Again, the Court gave Appellants ten days to order the transcript and file a motion to order the transcript out of time. On September 24, 2015, Appellants filed a Petition to Request Transcript Out of Time (“the Petition”) and sent the Court a letter purporting to order the transcript from the court below.<sup>1</sup> On October 1, 2015, this Court again sent Appellants a deficiency letter as the requisite \$25 filing fee was not included with the Petition. Believing that Appellants would make appropriate arrangements to procure the transcript in a timely manner, the undersigned did not oppose the Petition. Accordingly, this Court granted the Petition on October 27, 2015.

As of December 1, 2015, no transcript has been received, nor has this Court received an extension request from the court reporter, Wendy Derrick. *See* Rule 207(2), SCACR (requiring a court reporter to deliver a transcript within sixty days). The reason the transcript has not been received, however, is that Appellants never *requested* the transcript from Ms. Derrick. Despite the dictates of Rule 207(a) and this Court’s September 15, 2015 deficiency letter,<sup>2</sup> Appellants merely wrote a letter to Court Administration

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<sup>1</sup> In actuality, as detailed below, the letter was sent to Court Administration rather than directly to the court reporter.

<sup>2</sup> This Court’s September 15, 2015 deficiency letter clearly directed Appellants to “file a copy of the letter showing that you have ordered the transcript *directly from the court reporter.*”

requesting a copy of the transcript and noting that Ms. Derrick was no longer listed as an active court reporter. A cursory internet search, however, reveals that Ms. Derrick's contact information is readily available on the South Carolina Judicial Department website and calendar. (*See* Calendar and Contact Information, attached as Ex. A).

### **Argument**

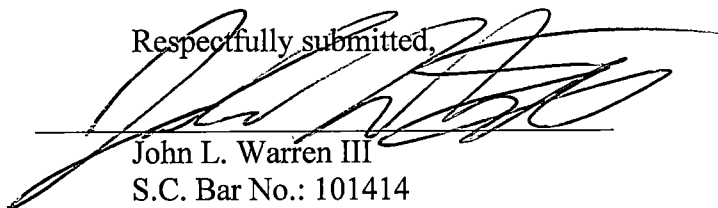
“[T]he South Carolina Appellate Court Rules are not mere technicalities but provide the parties and this Court with an orderly mechanism through which to guide appeals in this State.” *Henning v. Kaye*, 307 S.C. 436, 437, 415 S.E.2d 794, 794 (1992). “It is incumbent upon counsel to provide material that complies with the Rules and facilitates appellate review.” *Id.* In the case at bar, Appellants have violated the Appellate Court Rules in numerous ways. In an effort to be both civil and reasonable, the undersigned did not oppose the Petition and has remained silent as to Appellants' rule violations.

However, a review of the letter submitted by Appellants to this Court makes clear that, to this day, Appellants have still not properly ordered the transcript in this case. Almost three-and-a-half months have elapsed since the Notice of Appeal has been filed in this case. Yet, we are still *at least* sixty days away from briefing even beginning assuming Appellants were to order the transcript today. While everyone in this State is statutorily provided with a direct appeal from a final judgment of the Court of Common Pleas, the Appellate Court Rules impose certain restrictions upon parties that must be followed in order to provide for the orderly dispensation of justice. In short, Appellants have failed to comply with the basic rules governing procedure in this case.

For the reasons stated above, this Court should dismiss Appellants' appeal for failure to comply with the rules.

December 1, 2015

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John L. Warren III", is written over a horizontal line.

John L. Warren III  
S.C. Bar No.: 101414  
John S. Simmons  
S.C. Bar No.: 10260  
Derek A. Shoemake  
S.C. Bar No.: 78398  
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Columbia, SC 29201  
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Fax: (803) 254-8874

Attorneys for Respondents Tallie and  
Devra Lackey, Individually and as  
the Parents to the Minor Child

# EXHIBIT A

## Terms of Circuit and Family Court July 2014

**Holiday:  
Fri Jul 04, Independence Day**

Circuit Number	7/7/2014	7/14/2014	7/21/2014	7/28/2014
<b>5</b>	General Sessions Richland Newman, Clifton  <b>AMBROZIAK</b>  General Sessions Richland Barber, James  <b>HELMS</b>  General Sessions Kershaw Benjamin, DeAndrea  <b>MCCURDY 7, 8, 9, 10</b> <b>NO CR NEEDED 11</b>  Common Pleas/Common Pleas Nonjury Richland Lee, Alison  <b>HARRIS 7, 8</b> <b>NO CR NEEDED 9, 10, 11</b>  Administrative Week Manning, L.  General Sessions Non- Jury 7 Barber, James  <b>HELMS 7</b>	General Sessions Richland Cooper, G. Thomas  <b>REED 14, 15, 16, 17</b> <b>NO CR NEEDED 18</b>  General Sessions Non- Jury Hood, Robert  <b>AMBROZIAK 14, 15, 16,</b> <b>17</b> <b>NO CR NEEDED 18</b>  Common Pleas/Common Pleas Nonjury Richland Lee, Alison  <b>KELLY</b>  Common Pleas Non- Jury/PCR Manning, L.  <b>HOLMES</b>  Common Pleas/Common Pleas Nonjury Kershaw Welmaker, G.  <b>HOLSTON 14</b> <b>NO CR NEEDED 15, 16</b> <b>NEVERS 17</b> <b>MCCURDY 18</b>	Common Pleas/Common Pleas Nonjury Richland Benjamin, DeAndrea  <b>MCCURDY</b>  Common Pleas Non- Jury Hood, Robert  <b>DERRICK 21, 22</b> <b>PANTSARI 23, 24, 25</b>  Common Pleas/Common Pleas Nonjury Richland Manning, L.  <b>HOLMES 21, 22, 23, 24</b> <b>NO CR NEEDED 25</b>  General Sessions Richland Cole, J.  <b>MOFFITT 21 pm</b> <b>NO CR NEEDED 22</b> <b>THUEME 23 am</b> <b>NO CR NEEDED 24, 25</b>  General Sessions Richland Jefferson, Deadra  <b>SULLIVAN 21, 22</b> <b>AMBROZIAK 23</b> <b>SINGLETERY 24</b> <b>AMBROZIAK 25</b>  General Sessions Non-	General Sessions Richland Cooper, Thomas W.  <b>GREEN</b>  Common Pleas/Common Pleas Nonjury Richland Manning, L.  <b>HARRIS 28 am</b> <b>HARRIS 29 pm, 30, 31</b> <b>am</b> <b>NO CR NEEDED 1</b>  General Sessions Richland Barber, James  <b>HOLMES 28</b> <b>NO CR NEEDED 29, 30,</b> <b>31, 1</b>  General Sessions Kershaw Hood, Robert  <b>AMBROZIAK</b>  Common Pleas Non- Jury 30 Hood, Robert  <b>AMBROZIAK 30</b>  General Sessions Non- Jury 31, 1 Hood, Robert  <b>AMBROZIAK 31, 1</b>

		DERRICK 21 General Sessions Non-Jury 25 Hood, Robert PANTSARI 25	
Family Court Richland Rucker, John M. Seigler, W. Sitting With  GRAINGER	Family Court Richland Jones, Dorothy Mobley  GRAINGER	Family Court Richland Morris, Dana A.  NO CR NEEDED 21 KOCSIS 22, 23, 24, 25	Family Court Richland Edwards, Tommy B.  JACKSON 28 BROOM 29 JACKSON 30, 31, 1
Family Court Richland Hurley, Michelle M.  KATZ	Family Court Kershaw Morris, Dana A.  KOCSIS	Family Court Richland Taylor, Angela R.  JACKSON	Family Court Richland McFaddin, George M.  SALTERS
Family Court Richland Pincus, Monét S.  KOCSIS	Family Court Richland Newton, Robert E.  SHEALY	Family Court Kershaw Jones, Gwendlyne Y.  MOLLOHAN	Family Court Kershaw Morris, Dana A.  KOCSIS
Family Court 8, 9, 10, 11 Richland Jones, Gwendlyne Y.  MOLLOHAN 8, 9, 10, 11	Family Court Richland Hurley, Michelle M.  KATZ	Family Court Richland Pincus, Monét S.  MCGARRY	Family Court Richland Smithdeal, Joseph C.  PANTSARI 28, 29, 30 NO CR NEEDED 31, 1
	Family Court Richland Armstrong, Robert S.  HARRIS	Family Court 23, 24, 25 Richland Jones, Dorothy Mobley  GRAINGER 23, 24, 25	Family Court Richland White, Thomas Henry  KATZ
	Family Court 17, 18 Richland Vinson, Jerry D.  PANTSARI 17, 18		Family Court 29, 30, 31, 1 Richland Jones, Gwendlyne Y.  MOLLOHAN 29, 30, 31, 1

**Address:**

Wendy Wise Derrick  
Post Office Box 2401  
Leesville, SC 29070

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PROOF OF SERVICE

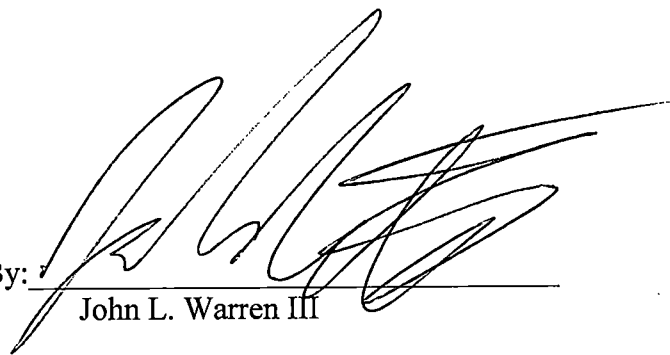
The undersigned hereby certifies that on the date indicated below he served counsel for Appellants James and Marietta Chaffin and Respondents Richland County Sheriffs Department, Deputy Brian Metz, and Investigator Roy Livingston with a copy of the *Motion to Dismiss* by placing copies in the United States Mail, first class postage prepaid, at the below listed addresses clearly indicated on said envelope this the 1st day of December, 2015, addressed as follows:

Robert D. Garfield, Esquire  
Davidson & Lindemann, P.A.  
Post Office Box 8568  
Columbia, South Carolina 29202

Aimee J. Zmroczek, Esquire  
A.J.Z. Law Firm, LLC  
Post Office Box 11961  
Columbia, South Carolina 29211

Roy Livingston  
c/o Richland County Sheriff's Department  
5623 Two Notch Road  
Columbia, SC 29223

By:

A handwritten signature in black ink, appearing to read 'John L. Warren III', written over a horizontal line.

John L. Warren III