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JAN 26 2016

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA

In the South Carolina Court of Appeals

APPEAL FROM THE RICHLAND COUNTY  
COURT OF COMMON PLEAS

TANYA GEE, CIRCUIT COURT JUDGE

Appellate Case No. 2015-002367

ORLANDO I. BROWN, PRO SE,.....Appellant.

v.

THE STATE OF SOUTH CAROLINA.....Respondent.

**RESPONDENT'S MOTION TO FILE INITIAL BRIEF AND  
DESIGNATION OF MATTER TO BE INCLUDED  
IN THE RECORD ON APPEAL OUT OF TIME**

Pursuant to Rules 240 and 263(b) of the South Carolina Appellate Court Rules, Respondent hereby moves for leave to file its Initial Brief and Designation of Matter to be Included in the Record on Appeal out of time due to the fact that the Respondent did not receive a copy of the Appellant's Initial Brief and, as a result, did realize the time period for submission of Respondent's Initial Brief and Designation of Matter to be Included in the Record on Appeal had begun and ultimately expired. This is the sole cause of the Respondents' failure to timely file a copy of its Initial Brief.

The Grounds for this motion are as follows:

- 1) On November 5, 2015, the Appellant filed his Notice of Appeal and Initial Brief and a

copy of was served upon counsel for the Respondent. This filing of the Appellant's Initial Brief was premature.

2) By Letter of V. Claire Allen, Deputy Clerk of The South Carolina Court of Appeals, dated November 20, 2015 (a copy of which is attached as Exhibit A), the Appellant's Initial Brief was returned the Appellant due to the premature nature of the filing.

3) Additionally, there were defects with the Notice of Appeal that were addressed via letter to the Appellant from Jenny Abott Kitchings, Clerk of The South Carolina Court of Appeals, dated November 19, 2015 (a copy of which is attached as Exhibit B). These issues, while not directly related the Respondent's failure to timely file its Initial Brief, illustrate the procedural complexity and confusion that have been present in this Appeal.

4) After receiving the November 20, 2015 letter from the Court negating the original filing of the Appellant's Initial Brief, the Respondent awaited service of a re-filed Appellant's Initial Brief, which would start the time period in which the Respondent had to file and serve its Initial Brief. As of the date of this Motion, the Respondent has not been served with or received a copy of the Appellant's Initial Brief other than the original filing which was negated by the court due to its premature nature.

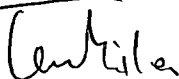
5) The first notice that the Respondent received indicating that an additional Initial Brief had been filed by the Appellant in this matter was Letter of V. Claire Allen, Deputy Clerk of The South Carolina Court of Appeals, dated January 21, 2016 (a copy of which is attached as Exhibit C), instructing the Appellant to proceed with filing his Final Brief and no Initial Brief had been from the Respondent.

6) Upon receiving this letter on January 25, 2016, the undersigned contacted the case worker at the Court of Appeals and was informed that the Appellant had previously re-filed an Initial Brief which included a Certificate of Service attesting to a copy being served upon the Respondent.

Despite this purported service, the Respondent has not yet received a copy of the re-filed Initial Brief of the Appellant and, therefore, has not been able to prepare or file an Initial Brief and Designation of Matter to be Included in the Record on Appeal.

WHEREFORE, Respondent, pursuant to Rule 263(b) of the South Carolina Appellate Court Rules, requests that this Court grant it leave to file its Initial Brief and Designation of Matter to be Included in the Record on Appeal out of time and, in the event this motion is granted, that be allowed ten (10) days following receipt of the Order granting this Motion in which to file its Initial Brief and Designation of Matter to be Included in the Record on Appeal.

Respectfully submitted,



---

Temus C. Miles, Jr.  
McKay, Cauthen, Settana & Stublely, P.A.  
Post Office Box 7217  
Columbia, SC 29202  
803-256-4645  
Attorney for the Respondent

Columbia, South Carolina  
January 26, 2016

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THE STATE OF SOUTH CAROLINA

In the South Carolina Court of Appeals

APPEAL FROM THE RICHLAND COUNTY  
COURT OF COMMON PLEAS

TANYA GEE, CIRCUIT COURT JUDGE

Appellate Case No. 2015-002367

ORLANDO I. BROWN, PRO SE,.....Appellant.

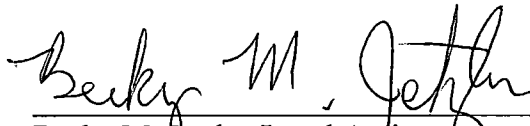
v.

THE STATE OF SOUTH CAROLINA.....Respondent.

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on January 26, 2016, a copy of the foregoing **RESPONDENT'S MOTION TO FILE INITIAL BRIEF AND DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL OUT OF TIME** was duly served on opposing counsel by depositing same in the United States Mail, certified/return receipt requested, first-class, postage prepaid, addressed as follows:

Orlando Brown  
440 Rimer Pond Road  
Blythewood, SC 29016



Becky M. Jetzke, Legal Assistant to:  
Daniel R. Settana, Jr.  
Temus C. Miles, Jr.  
McKay, Cauthen, Settana & Stublely, PA  
P.O. Drawer 7217  
Columbia, SC 29202  
(803) 256-4645  
Attorneys for Respondent



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SC Court of Appeals

## The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

V. CLAIRE ALLEN  
DEPUTY CLERK

POST OFFICE BOX 11629  
COLUMBIA, SOUTH CAROLINA 29211  
1220 SENATE STREET  
COLUMBIA, SOUTH CAROLINA 29201  
TELEPHONE: (803) 734-1890  
FAX: (803) 734-1839  
[www.sccourts.org](http://www.sccourts.org)

November 20, 2015

Orlando Ira Brown  
440 Rimer Pond Road  
Blythewood SC 29016

Re: Orlando Ira Brown v. State of SC  
Appellate Case No. 2015-002367

Dear Mr. Brown:

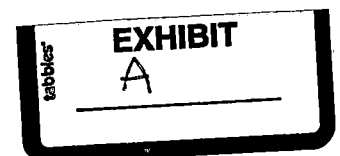
We are returning your appellant's initial brief as it is not needed at this time. Please consult the Rules 207, 208 and 209 of the South Carolina Appellate Court Rules, (SCACR) regarding ordering the transcript and filing the initial brief and designation of matter. Here is a link to the SCACR:  
<http://www.judicial.state.sc.us/courtReg/index.cfm>.

Very truly yours,

*V. Claire Allen, Deputy*

CLERK

cc: Richard Eugene Marsh, III, Esquire





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The South Carolina Court of Appeals

JAN 26 2016

SC Court of Appeals

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org

JENNY ABBOTT KITCHINGS  
CLERK  
V. CLAIRE ALLEN  
DEPUTY CLERK

November 19, 20

9-463

Orlando Ira Brown  
440 Rimer Pond Road  
Blythewood SC 29016

Re: Orlando Ira Brown v. State of SC  
Appellate Case No. 2015-002367

Dear Counsel:

Upon reviewing your notice of appeal, the following deficiencies have been noted under the South Carolina Appellate Court Rules (SCACR), and must be corrected within ten (10) days of the date of this letter or your appeal will be dismissed:

- The notice of appeal is not accompanied by the order(s) and/or judgment(s) challenged on appeal. Neither order provided was signed on September 30, 2015 as stated on your notice of appeal. One was dated October 13, 2015. And the Form 4 was neither dated nor signed.

Very truly yours,

*Jenny Abbott Kitchings*

CLERK

cc: Richard Eugene Marsh, III, Esquire





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SC Court of Appeals

## The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

V. CLAIRE ALLEN  
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January 21, 2016

Orlando Ira Brown  
440 Rimer Pond Road  
Blythewood SC 29016

Re: Orlando Ira Brown v. State of SC  
Appellate Case No. 2015-002367

Dear Mr. Brown:

Please be advised our records indicate that the respondent has not served and filed an initial brief and designation of matter. Therefore, you should proceed to serve and file your final brief and file the record on appeal, as provided in Rules 210(b) and 211(a) of the South Carolina Appellate Court Rules, within twenty (20) days of the date of this letter.

Very truly yours,

*V. Claire Allen, Deputy*

CLERK

cc: Richard Eugene Marsh, III, Esquire



Julius W. McKay, II  
Mark D. Cauthen  
Daniel R. Settana, Jr.  
M. Stephen Stubley  
Janet Brooks Holmes  
Peter P. Leventis, IV\*  
Kelli L. Sullivan\*  
George D. Gallagher\*  
Temus C. Miles, Jr.  
David M. Bornemann  
Brandon P. Jones  
James E. L. Fickling+  
Richard E. Marsh, III  
Charles A. Kinney, Jr.+  
Erica E. Loudin

Of Counsel:  
C. E. Hardin, Jr.

Law Offices  
**McKAY, CAUTHEN, SETTANA & STUBLEY, P.A.**

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Columbia, South Carolina 29201

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\*S.C. Certified Mediator  
+ Also licensed in N.C.

January 26, 2016

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SC Court of Appeals

**VIA HAND DELIVERY**

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
1220 Seant Street  
Columbia, SC 29201


RE: Orlando I. Brown v. State of South Carolina  
Appellate Case No. 2015-002367  
Our File No.: 9-463

Dear Ms. Kitchings:

Enclosed herewith please find the original and seven (7) of Respondent's Motion to File Initial Brief and Designation of Matter to be Included in the Record of Appeal out of Time. I request that you return a stamped and filed copy with my courier. As described in greater detail in the Motion, the Appellant has been instructed by the Court to prepare and submit his Final Brief given a lack of submission of an Initial Brief from the Respondent. Accordingly, this Motion is of the most urgent nature, and I request consideration before the Court be expedited.

Should you have any questions or concerns regarding this matter, please contact me at my direct dial: (803) 705-2149.

Sincerely,

  
Temus C. Miles, Jr.

TCM/bmj  
Enclosures

cc: Orlando Brown (via certified mail, return receipt requested)

Julius W. McKay, II  
Mark D. Cauthen  
Daniel R. Settana, Jr.  
M. Stephen Stubley  
Janet Brooks Holmes  
Peter P. Leventis, IV\*  
Kelli L. Sullivan\*  
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\*S.C. Certified Mediator  
+ Also licensed in N.C.

Of Counsel:  
C. E. Hardin, Jr.

January 26, 2016

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**VIA HAND DELIVERY**

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
1220 Seant Street  
Columbia, SC 29201

RE: Orlando I. Brown v. State of South Carolina  
Appellate Case No. 2015-002367  
Our File No.: 9-463

Dear Ms. Kitchings:

I am writing to advise the Court that I, Temus C. Miles, Jr., am appearing as additional counsel of record for the Respondent State of South Carolina. I request that my name be added along with Richard E. Marsh, III as counsel for the Respondent and that I be copied on further documents and correspondence regarding this appeal. I further request that Appellant also copy me on future documents and correspondence.

Should you have any questions or concerns regarding this request, please contact me at my direct dial: (803) 705-2149.

Sincerely,



Temus C. Miles, Jr.

TCM/bmj

cc: Orlando Brown (via certified mail, return receipt requested)