

**IN THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS**

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APPEAL FROM RICHLAND COUNTY

Court of Common Pleas

J. Ernest Kinard, Jr., Circuit Court Judge  
Tanya A. Gee, Circuit Court Judge

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Civil Action No.: 2013-CP-40-05675  
Appellate Case No.: 2015-001627

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**RECEIVED**

FEB 16 2016

**SC Court of Appeals**

Willie J. Riley .....Appellant,

vs.

Dennis Wayne Catoe.....Respondent.

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**MEMORANDUM IN SUPPORT OF MOTION TO COMPEL, OR IN THE  
ALTERNATIVE, MOTION TO DISMISS**

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## INTRODUCTION

In the instant appeal, Appellant and Respondent have each filed their Initial Briefs and Designation of Matters to be included on the Record on Appeal. However, Appellant has failed to serve the Record on Appeal. Therefore, neither party has filed Final Briefs in this matter and the appeal is at a standstill. Accordingly, Respondent moves this Honorable Court for an Order compelling Appellant to serve and file a Record on Appeal in accordance with the Appellate Court Rules; or, in the alternative, dismiss the instant appeal for Appellant's failure to perfect the same.

## RELEVANT BACKGROUND

This appeal arises from the grant of summary judgment in favor of Respondent. Appellant's complaint alleged legal malpractice on the part of Respondent, in connection with a real estate closing which occurred in 2008.

## ARGUMENT

### **I. APPELLANT MUST BE COMPELLED TO COMPLY WITH THE SOUTH CAROLINA APPELLATE COURT RULES REGARDING THE SERVICE AND FILING OF THE RECORD ON APPEAL.**

Pursuant to Rule 210(a), SCACR, the Record on Appeal must be served within thirty days after service of the last brief. The rule further provides that the Appellant shall serve a copy of the Record on Appeal on each party who has served a brief. Rule 210, SCACR. In addition, Proof of Service of the Record on Appeal shall be immediately filed with the Clerk of the Appellate Court. Appellant's Initial Brief was filed on November 23, 2015. Respondent's Initial Brief was filed on December 22, 2015. Appellant did not file a Reply Brief. Accordingly, under the Appellate Court Rules, the Record on Appeal was due to be served on or about January 21, 2016.

On January 6, 2016, this Court provided Mr. Riley with correspondence indicating that the Court would be returning materials Mr. Riley submitted to the Court which appeared to be

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part of his Designation of Matter to be Included in the Record on Appeal. On January 28, 2016, this Court provided Mr. Riley and the undersigned counsel with the “unbound originals” letter regarding instructions as to the filing of the Record on Appeal. As of yet, and despite the above-referenced reminder by the Court, Mr. Riley has failed to file or serve the Record on Appeal in this matter, which is long past due.

Appellant’s failure to serve and file the Record on Appeal has left this appeal in limbo as neither party can prepare their Final Briefs for filing, such that this Court may proceed with its analysis of the issues on appeal. Therefore, Respondent requests this Court issue an order compelling Appellant to file a Record on Appeal in accordance with the South Carolina Appellant Court Rules.

**II. IN THE ALTERNATIVE, RESPONDENT REQUESTS THAT THIS COURT DISMISS THE APPEAL DUE TO APPELLANT’S FAILURE TO PERFECT THE APPEAL.**

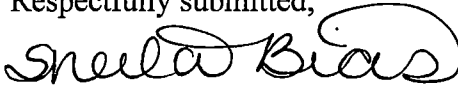
The Record on Appeal in this matter was due to be served on January 21, 2016—almost on month ago. However, Appellant has been dilatory in his responsibilities as the Appellant by failing to perfect his appeal. Appellant’s failure to file and serve a Record on Appeal has created a roadblock in the resolution of this appeal. In addition, Appellant’s failure to file and serve a Record on Appeal is in contravention to the South Carolina Appellate Court Rules. Therefore, Respondent would request that this Court issue an order dismissing Appellant’s appeal for his failure to perfect and/or prosecute his appeal.

**CONCLUSION**

Based on the foregoing, Respondent respectfully requests this Court issue an order compelling Appellant’s filing and service of the Record on Appeal in accordance with the South Carolina Appellate Court Rules. In the alternative, Respondent requests that this Court dismiss the appeal for Appellant’s failure to perfect it.

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AMB

Respectfully submitted,



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Leslie A. Cotter, Jr., Esquire

Sheila M. Bias, Esquire

Richardson Plowden & Robinson, P.A.

1900 Barnwell Street

Columbia, South Carolina

803-771-4400

*Attorneys for Respondent*

February 16, 2016  
Columbia, South Carolina

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IN THE COURT OF APPEALS

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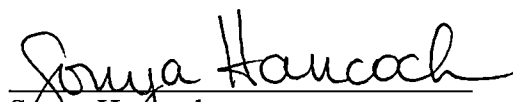
vs.

Dennis Wayne Catoe.....Respondent.

CERTIFICATE OF SERVICE

I, the undersigned, an employee of Richardson, Plowden & Robinson, P.A., attorneys for Respondents, do hereby certify that I have this date served the foregoing *Memorandum in Support of Motion to Compel, or In The Alternative, Motion to Dismiss* by personally depositing a copy of same in a United States Postal Service mailbox, postage paid, addressed to the following:

Willie J. Riley  
84 Wild Indigo Court  
Columbia, South Carolina 29229  
**Pro-se Appellant**

  
Sonya Hancock

Dated: February 16, 2016

February 16, 2016

**Via Hand Delivery**

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

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**SC Court of Appeals**

Re: Willie J. Riley v. Dennis Wayne Catoe  
Appellate Case No.: 2015-001627  
C/A No.: 2013-CP-40-05675  
RPR File No.: 101-2630

Dear Ms. Kitchings:

As Counsel for Respondent, Dennis Wayne Catoe, I have enclosed for filing an original *Motion to Compel, Or In The Alternative, Motion to Dismiss*, as well as the *Memorandum in Support of Motion to Compel, Or In The Alternative, Motion to Dismiss*, in the above referenced matter, along with our original Certificates of Service for each. I have also enclosed seven (7) additional copies of same for the Court and request that one (1) filed, stamped copy be returned to our courier.

We are this day serving a copy of our *Motion to Compel, Or In The Alternative, Motion to Dismiss* and *Memorandum in Support of Motion to Compel, Or In The Alternative, Motion to Dismiss* on the *Pro-se* Appellant.

Thank you for your assistance.

With regards, I am,

Sincerely,



Sheila M. Bias  
SC Bar # 10005

SMB/smh  
Enclosures

cc: Willie J. Riley, *Pro-se* Appellant (via U.S. Mail and email at [jriley3000@gmail.com](mailto:jriley3000@gmail.com))  
Leslie A. Cotter, Jr., Esquire (via email only at [lcotter@richardsonplowden.com](mailto:lcotter@richardsonplowden.com))