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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

RECEIVED

The Hon. Daniel D. Hall, Circuit Court Judge
S. Jackson Kimball, Special Circuit Court Judge

FEB 26 2016

SC Court of Appeals

Appellate Case No.: 2015-002460

Morningstar Fellowship Church,

Appellant-Respondent,

v.

York County, South Carolina

Respondent-Appellant.

**MOTION TO FILE RESPONDENT-APPELLANT'S
INITIAL APPEAL BRIEF OUT OF TIME AND FOR
EXTENSION OF DEADLINES TO FILE RESPONDENT'S
INITIAL BRIEFS**

Respondent-Appellant ("York County") moves, pursuant to Rules 240 and 263 S.C.A.C.R., for an order permitting York County to file its Initial Appeal Brief out of time and for an order extending the time for York County to file both its Initial Appeal Brief and its Initial Response Brief until Friday, April 15, 2016. The bases for this motion follow:

1. Appellant-Respondent ("Morningstar") served its notice of appeal on November 12, 2015.
2. York County served its notice of cross-appeal on November 17, 2015.

3. On January 6, 2016, Morningstar, as primary appellant, notified the Clerk of Court that it had received the transcript of proceeding for this appeal. The appellate record indicates that Morningstar's notice was received by the Clerk of Court on January 8, 2016.

4. Rule 206 S.C.A.C.R. provides, in relevant part, "upon receipt of notification that the primary appellant has received the transcript of proceeding, the clerk of the appellate court shall establish a briefing schedule."

5. Based upon Counsel's reading of Rule 206 S.C.A.C.R., Counsel anticipated that the Clerk's office would issue a briefing schedule establishing deadlines and a sequence for the submission of all briefs. However, the Clerk's Office did not issue a briefing schedule.

6. Morningstar served its Initial Brief on February 16, 2016.

7. On February 24, 2016, undersigned Counsel contacted the Clerk of Court to determine when York County's Initial Appeal Brief was due under the clerk's briefing schedule. The Clerk informed Counsel that York County's Initial Appeal Brief and its Designation of Matter (as to its cross-appeal) should have been filed at the same time as Morningstar's Initial Brief (i.e. - on or before February 16, 2016).

8. In light of the provisions of Rule 206 (and Counsel's apparent misinterpretation of those provisions), Counsel requests an opportunity to file York County's Initial Appeal Brief out of time. Counsel requests this extension in order to properly preserve York County's position on its appeal. Counsel is informed and believes that Morningstar will not be prejudiced by any extension of the briefing schedule.

9. Counsel also requests an extension of time through April 15, 2016 to file and serve York County's Initial Response Brief, as well as its Initial Appellant's Brief (as to its cross-appeal).

Counsel certifies, that prior to filing this motion, he consulted with Counsel for Morningstar. Based upon that consultation, Counsel is informed and believes that Morningstar consents to an extension of the deadline for York County to file its Initial Response Brief, but does not consent to York County's motion to file its Initial Appeal Brief out of time.

February 25, 2016



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Attorneys for Appellant-Respondent

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In The Court of Appeals

APPEAL FROM YORK COUNTY
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S. Jackson Kimball, Special Circuit Court Judge

FEB 26 2016

Court of Appeals

Case No.: 2013-CP-46-00246

Morningstar Fellowship Church,

Appellant-Respondent,

v.

York County, South Carolina

Respondent-Appellant.

PROOF OF SERVICE

The undersigned certifies that he has served this Motion to File Respondent's Initial Brief Out of time on the Appellant-Respondent by depositing a copy of it in the Mail, Via Federal Express, postage prepaid, on February 25, 2016, addressed to its attorney of record, Richard B. Fennell, James, McElroy & Diehl, PA, 600 South College Street, Charlotte, North Carolina 28202.

February 25, 2016



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4826-8470-5067, v. 1
5-7207-9918, v. 1



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February 25, 2016

The Honorable Jenny Abbott Kitchings
Clerk of Court
SC Court of Appeals
PO Box 11629
Columbia, SC 29211

RECEIVED
FEB 26 2016
SC Court of Appeals

RE: Morningstar Fellowship Church vs. York County
Appellate Case No.: 2015-002460

Dear Ms. Kitchings:

Enclosed for filing, please find a Respondent-Appellant's Motion in connection with the above case. I have also enclosed a check in the amount of \$25.00 to cover the filing fee.

Please return clocked-in copies of each of the above-documents in the envelope provided.

By copy of this letter to all other counsel of record, I have enclosed a copy of the Motion to File Out of Time.

Thank you for your cooperation in this matter.

Sincerely,

L. Melia Sweatt
Paralegal

/lms
Enclosures
cc:

Richard B. Fennell
James, McElroy & Diehl, PA
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Dan Ballou
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FEB 26 2016
The Honorable Jenny Abbott Kitchings
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PO Box 11629
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SC COURT OF APPEALS
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COLUMBIA SC 29201

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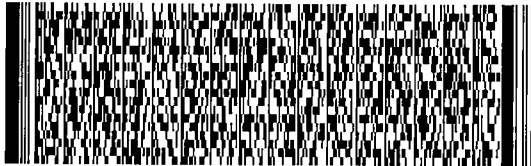
FEB 26 2016

SC Court of Appeals

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