

# The South Carolina Court of Appeals

Capitalbank, Respondent,

v.

Garnet J. Borrer, Appellant.

Appellate Case No. 2011-205107

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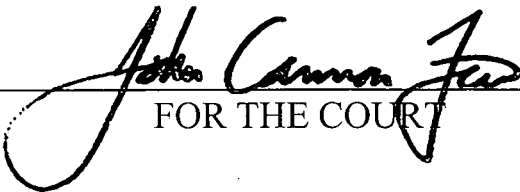
## ORDER

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Respondent has filed a motion to dismiss due to Appellant's failure to timely serve Appellant's Initial Brief and Designation of Matter. Respondent also notes that Appellant filed the brief prior to ordering the transcript. Appellant filed a return, admitting he had not ordered the transcript at the time the brief was filed. Appellant explains that he mistakenly ordered the transcript from the wrong court reporter, but he has now ordered the transcript upon learning the name of the correct court reporter. Respondent filed a reply with exhibits indicating Appellant made misrepresentations to this Court regarding the true status of the transcript and this appeal. Specifically, Respondent attached correspondence from the court reporter showing Appellant has been in contact with the correct court reporter since December 2011 and did not order the transcript until August 16, 2012, after he filed his return to the motion to dismiss.

This Court has granted Appellant an unusual level of flexibility throughout the course of this appeal. However, because of Appellant's lengthy history of abusing this Court's flexibility and disregarding this Court's rules and orders, we are convinced this appeal must now be dismissed. We note that in direct contravention to this Court's rules, Appellant failed to order the transcript in this matter until eight months had passed from the filing of the notice of appeal. *See* Rule 207(a)(1), SCACR (providing the transcript must be ordered within ten days after the date of service of the notice of appeal). In addition to making misrepresentations regarding the ordering of the transcript, Appellant violated this Court's rules and June 25, 2012 order by failing to timely serve Respondent with

the initial brief and by filing an initial brief without having ordered the transcript. See Rule 208(a), (b)(4), SCACR (providing that initial briefs must be timely served on opposing parties and must contain references to the transcript or other materials to support the salient facts alleged). Accordingly, Respondent's motion to dismiss is granted.

  
FOR THE COURT C.J.

Columbia, South Carolina

cc:

Henry W. Brown

Christopher Lance Sheek

**FILED**  
cc 9/28/12