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IN THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

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APPEAL FROM RICHLAND COUNTY

SEP 19 2016

Court of Common Pleas

SC Court of Appeals

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

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

Willie J. Riley .....Appellant.

vs.

Dennis Wayne  
Catoe.....Respondent.

RESPONDENT'S MOTION TO STRIKE  
APPELLANT'S FINAL BRIEF AND DISMISS APPEAL

Pursuant to Rules 211, 240, 260(a), and 267 of the South Carolina Appellate Court Rules, Respondent Dennis Wayne Catoe hereby moves for an Order striking Appellant Willie J. Riley's Final Appellant's Brief and dismissing this appeal. Respondent moves for this relief upon the following grounds:

Procedural History

Throughout this appeal, Appellant has repeatedly failed to comply with this Court's Rules and Orders, has caused the appeal to be delayed, and has caused Respondent to incur additional expenses. On February 16, 2016, Respondent first filed a Motion to Compel, or in the Alternative, Motion to Dismiss where Appellant failed to

serve the Record on Appeal by the required deadline of January 21, 2016. By order filed April 27, 2016, this Court ordered Appellant to serve the Record on Appeal within twenty (20) days of the date of the order.

However, when Appellant served the Record on Appeal upon Respondent on May 16, 2016, Respondent observed that Appellant had failed to include Respondent's designated material in the Record. Therefore, on May 26, 2016, Respondent filed a Motion to Supplement the Record on Appeal. This Court granted Respondent's motion on June 10, 2016 and ordered that the Supplemental Record on Appeal be served and filed within twenty (20) days of the date of the order.

Respondent, at his own expense, prepared the Supplemental Record on Appeal and filed and served it on June 30, 2016. Pursuant to this Court's June 10, 2016 Order, Final Briefs were due twenty (20) days from the date of service of Respondent's Supplemental Record on Appeal. The deadline to file and serve Final Briefs was therefore July 20, 2016. Respondent filed his Final Brief on July 20, 2016.

Appellant, however, did not file his Final Brief by this July 20, 2016 deadline. This Court accordingly sent a letter to Appellant on August 25, 2016 advising Appellant that the time for serving and filing his Final Brief had expired and ordering that within ten (10) days from the date of the Court's letter, Appellant must file his Final Brief along with a motion requesting permission to serve and file his Final Brief outside of the deadlines set by Rule 211, SCACR. The letter further advised that Appellant's appeal would be dismissed if no motion was made within ten (10) days from the date of the Court's letter. Appellant's Final Brief and motion were due September 6, 2016.

Appellant did not serve his Motion to File Final Brief After Deadline and his

corresponding Final Brief until September 7, 2016, after the expiration of the deadline set by this Court. When he purportedly served his Motion to File Final Brief After Deadline upon Respondent, he did not include a copy of the Motion and served only the Proof of Service Certificate, although Respondent acknowledges he was able to subsequently obtain a copy of the Motion on the Court's C-Track Public Access Docket.

The Final Brief served and filed by Appellant is an entirely different brief from the Initial Brief served and filed by Appellant and contains new arguments. See Appellant's Initial Brief attached hereto as **Exhibit "A"** and Appellant's Final Brief attached hereto as **Exhibit "B."** The Final Brief received by Respondent was not bound with a blue cover in accordance with Rule 267(d) and (e), SCACR and did not contain a certificate of compliance pursuant to Rule 211(a), SCRCP.

On September 9, 2016, this Court sent another letter to Appellant advising that he had not submitted the required filing fee for his Motion to File Final Brief After Deadline and ordered Appellant to correct this deficiency within ten (10) days of the date of the Court's letter.

### Argument

**I. This Court should strike Appellant's Final Brief because it does not comply with the requirements of the South Carolina Appellate Court Rules.**

The Final Brief served and filed by Appellant fails to comply with the requirements of Rules 211 and 267 of the South Carolina Appellate Court Rules. Respondent accordingly requests this Court to strike Appellant's Final Brief.

Rule 211(b) provides that "[t]he final brief(s) shall be identical to the brief(s) previously served under Rule 208" except for references to the Record on Appeal and for the correction of obvious typographical errors and misspellings which were contained in

the initial brief. Rule 211(b)(2) mandates that “[n]o other changes may be made.”

Rule 211(a) further provides that the party must file with the clerk a certificate that his final brief complies with the requirements of Rule 211(b). In addition, under Rule 267(d) and (e), the final brief of appellant must be bound and the cover of the brief shall be blue.

The Final Brief served by Appellant upon Respondent did not meet these above-referenced requirements. The Final Brief is an entirely new and different brief from the Initial Brief served on November 23, 2015 by Appellant. See Exhibits “A” and B. The Final Brief did not contain a Certificate of Compliance as required by Rule 211(a). The Final Brief served by Appellant on Respondent was not bound and did not contain a blue cover. The Final Brief served and filed by Appellant failed to meet any of the material requirements for a Final Brief.

Where Appellant has served and filed a Final Brief containing new and different arguments from that in his Initial Brief and which fails to meet the requirements under the Appellate Court Rules for final briefs, this Court should strike Appellant’s Final Brief.

**II. Respondent further requests that this Court dismiss the appeal due to Appellant’s repeated failure to comply with the South Carolina Appellate Court Rules.**

Respondent further moves this Court, pursuant to Rule 260(a), SCACR, to dismiss Appellant’s appeal because he has repeatedly failed to comply with the requirements of the South Carolina Appellate Court Rules. Throughout this appeal, Appellant has been dilatory in his responsibilities as the Appellant by failing to perfect his appeal. Appellant’s failures to comply with this Court’s Rules and Orders have been

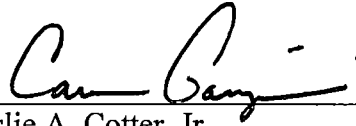
numerous: (1) he failed to timely serve the Record on Appeal; (2) he then failed to include Respondent's designated material in the Record on Appeal that he eventually served forcing Respondent to prepare, at Respondent's own additional expense, a Supplemental Record on Appeal; (3) he did not file his Final Brief by the required deadline of July 20, 2016, prompting this Court to issue an order requiring Appellant to serve and file his Final Brief and a motion requesting permission to serve and file his Final Brief outside of the deadlines by September 6, 2016; (4) he did not serve and file his Final Brief and Motion until September 7, 2016; (5) he did not serve a copy of his Motion to File Final Brief After Deadline upon Respondent; and (6) his Final Brief fails to adhere to the requirements of the Appellate Court Rules because it is entirely different than his Initial Brief, does not contain a Certificate of Compliance, was not bound, and did not contain the required blue cover.

Appellant's repeated failures to comply with this Court's Rules and Orders have significantly delayed this appeal and have caused Respondent to incur additional expenses throughout the appeal. Therefore, Respondent requests that in addition to striking Appellant's Final Brief, this Court also dismiss Appellant's appeal.

**Conclusion**

For the reasons set forth herein, Respondent respectfully requests this Court to issue an order striking Appellant's Final Brief and dismissing the appeal.

Respectfully submitted,



\_\_\_\_\_  
Leslie A. Cotter, Jr.  
Carmen V. Ganjehsani  
RICHARDSON PLOWDEN & ROBINSON, P.A.  
1900 Barnwell Street  
Columbia, South Carolina 29201  
803-771-4400  
*Attorneys for Respondent*

September 19, 2016.  
Columbia, South Carolina

**EXHIBIT "A"**

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

Court of Common Pleas

J. Ernest Kinard, Jr., Circuit Court Judge

Tanya A. Gee, Circuit Court Judge

Appellant Case No. 2015-001627

Case No: 2013-CP-40-05675

Dennis Wayne Catoe, and Does

Respondent,

v.

Willie J. Riley

Appellant

INITIAL BRIEF OF APPELLANT

*Willie J. Riley*

Willie J. Riley

84 Wild Indigo Ct.

Columbia, SC 29229

(803) 414-5501

Pro Se Appellant

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SC Court of Appeals

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- b. Appellant Riley never received a letter from William Booth III... ..pg 3
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STATEMENT OF ISSUES

III. Did the Judge Err in granting a Summary Judgement, based on the expiring of the Statute of limitations.

- a. Respondent Catoe, Catoe told Appellant Riley,
- b. Appellant Riley had no control,
- c. Appellant Riley believes that the case should have been tolled,
- d. Appellant Riley believes that the case should have been tolled based, on the Judge retiring,

IV. Did the Judge Err in the start date of the running of the statute of limitation.

- a. Mr. William Booth III, never took the case,
- b. Appellant Riley never received a letter from William Booth III,
- c. Appellant Riley first time seeing those letters,

## STATEMENT OF THE CASE

This case was brought by Appellant Willie Riley against Respondent Dennis Wayne Catoe, and others, seeking damages for a defective title in a real estate transaction, which Respondent Dennis Wayne Catoe was the closing attorney that handle the real estate transaction. Respondent Dennis Wayne Catoe, was also the one that was responsible for the title search and also provided the title insurance for the property.

Appellant Willie Riley purchased the real estate property after receiving a clear title report from Respondent Dennis Wayne Catoe on July 29, 2008 for the purchased amount of (\$3,800.00) Three thousand and eight hundred dollars, with the intent of tearing down the old house on the property and rebuilding a new one, after expecting the home and the attempt to save the old structure. Appellant Willie Riley started to do rehab on the property. Nine months into the rehab Appellant Willie Riley was approached by a Gentleman who stated Appellant was working on the wrong house. Appellant Willie Riley went straight to Respondent Dennis Wayne Catoe's office and told Respondent Dennis Wayne Catoe what was told to Appellant Willie Riley, since Respondent Dennis Wayne Catoe was the attorney that was responsible for the title search and also the attorney that handles the real estate closing. To Appellant Riley's surprise Respondent Catoe, told Appellant Riley to ignore the gentleman and if Appellant Riley had any more concern to seek another attorney for help.

Appellant Riley did what was told to him by Respondent and search for another attorney to look into the matter. Appellant Riley called several attorneys but most of them wanted upfront fees to look into the case, not sure if there was a real problem, Appellant Riley search for attorney to just look into without upfront cost. Appellant Riley, called Attorney William E. Booth III, Mr. Booth agreed to look over it, but would not take the case until he had all the information. Appellant Riley met with Mr. Booth, Mr. Booth looked over the title but could not give Appellant Riley advice if there was a problem without having more information. Mr. Booth phone the Respondent Catoe, to schedule a meeting and to check over the title search report. Respondent Catoe agreed to a meeting which was attended by Appellant Riley, Mr. Booth, Respondent Catoe and Mr. Vince who performed the title search for Respondent Catoe.

At the meeting Respondent Catoe, apologized for his response, stating he had surgery and was not himself. Respondent Catoe then stated he would continue to look into the matter and resolve any issues with the title stating it should take a few months to go back in front of the Judge and fix the matter. Mr. Booth never was able to retain the files to determine if there was a problem. After the meeting, Respondent Catoe filed the papers with the Courts and a hearing was scheduled August 2, 2010, but had to be continued due to the Judge having to go to the Doctor until October 6, 2010. On November 3, 2010 an order was issued that the property be joint ownership with the gentleman who stated Appellant was working on the wrong piece of property. On April 26, 2011 a hearing was heard for a Motion to reconsider and it was denied, but an amended order was issued. The case was appealed and heard on, which the case reversed and remand. Due to the Judge retiring, a new judge had to hear the case and a new hearing was scheduled on April 24, 2013 and an order granting Appellant the property with a cost of appeals attached to the title. After the last order Appellant Riley file a complaint against Respondent Catoe for negligence in handling Appellant Riley real estate transaction, seeking damages for lost of use of the property, damages that was caused to the property based on the time it took the litigations to produce a title which still was not clear.

Appellant Riley first complaint was dismissed on failing to file an expert affidavit with complaint on February 5, 2014 Appellant Riley filed an amended complaint on March 4, 2014. The Respondent Dennis Wayne Catoe filed a Motion for Summary Judgment, based on the statute of limitation and it was granted, order issued, filed April 23, 2015. This appeal followed.

## STATEMENT OF FACTS

Dennis Wayne Catoe was hired by Willie Riley to perform the title search for a real estate purchase.

Dennis Wayne Catoe gave Willie Riley a clear title report to the purchased real estate property.

Willie Riley relied on the clear title report and purchased the property and did rehab work on the property for nine months.

Willie Riley did not have a clear title to the property he bought and still does not.

Dennis Wayne Catoe is responsible for the damages Willie Riley accrue based on the fact that it was determine the title was not clear at the time Willie Riley purchased the property and Dennis Wayne Catoe stated the title was clear.

Willie Riley was not able to use the property based on the title not being cleared or finish the property based on the mitigation law.

## ARGUMENT

- I. Did the judge err in granting Respondent a Summary Judgement, based on the expiring of the statute of limitations?
  - a. Respondent Catoe, told Appellant Riley, he did not have to be concern about the statute of limitations running out because the title insurance was only for \$3800.00 and he would have to file with Respondent Catoe insurance based on the amount of the damages exceeded the title insurance amount.
  - b. Appellant had no control over the courts or the judge decisions to continue the case.
  - c. Appellant Riley, believes that the case should have been tolled for a year on the Reverse of the appeal.
  - d. Appellant Riley, believes that the case should have been tolled based on the judge retiring and a new judge had to be appointed which a new hearing of the case had to be held.
- II. Did the judge err in the start date of the running of the statute of limitations?
  - a. Mr. William Booth III never took the case and never had the files to determine if there was a case against Respondent Catoe.
  - b. Appellant Riley, never received a letter from Mr. William Booth III as stated by Respondent Catoe which was used to determine Appellant Riley start of running of the statute of limitation.
  - c. Appellant Riley first time seeing those letters from William Booth III was when Appellant Riley ask Respondent Catoe for the case files which was in 2013.

Conclusion

The judge decision to grant Respondent Catoe a Summary Judgement is not supported by the evidence and the law. This Court should reverse the judge decision and dismiss the Summary Judgement and return the case to be placed back on the docket for trial.

Respectfully submitted,

---

Willie J. Riley  
84 Wild Indigo Court  
Columbia, SC 29229  
(803) 414-5501  
Pro Se Appellant

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

Court of Common Pleas

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

Appellant Case No. 2015-001627

Case No: 2013-CP-40-05675

Dennis Wayne Catoe, and Does

Respondent,

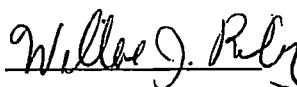
v.

Willie J. Riley

Appellant.

PROOF OF SERVICE

I, Willie J. Riley certify that I have served the foregoing documents on counsel for the Respondent by depositing a copy of them on November 23, 2015, in the United States Mail, postage prepaid to the following address: P. O. Drawer 7788 Columbia, SC 29202 Attn: Leslie A. Cotter., Jr., Shelia M. Bias.



Willie J. Riley

84 Wild Indigo Ct.

Columbia, SC 29229

(803) 414-5501

Pro Se Appellant

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SC Court of Appeals

**EXHIBIT "B"**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM RICHLAND COUNTY  
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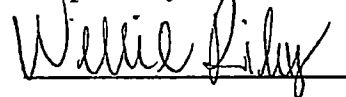
FINAL BRIEF

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How is possible to start the time on the statute of limitations based on a might be you have case. If the law states that in order to file a malpractice suit against an attorney, the suit must be accompanied by an expert affidavit. At the beginning it's just not enough information to obtain one. Mr. Catoe (Respondent) would like you to believe that Mr. Booth should have told Appellant Mr. Riley that there was enough for a case, but Mr. Booth stated he needed the whole case files to determine, one if there was any wrong doing and second who did the wrong doing. I just don't see how the law on one hand states you're not educated or have enough experiences to file a case without an expert affidavit, but you should know when a case have enough information to be filed. Also, it's hard enough and expensive to obtain an expert affidavit, with all the information. I just don't see how it's possible to get an expert to give an affidavit at the start of a case, with minimal information, even Mr. Booth could not make a definite decision based on the information at the time of the June letter which Appellant Mr. Riley had never seen before, until request of the entire files from Respondent Mr. Catoe, after the case was over in 2014.

Appellant Mr. Riley would also like to state that, Appellant Mr. Riley could not afford at that time, the cost of an expert affidavit being that Appellant Mr. Riley just put his savings into rehabbing the house Appellant Mr. Riley just purchased. As a reminder Appellant Mr. Riley was working on the house for around 9 months when Appellant Mr. Riley was approached by Mr. Green the person who stated Appellant Mr. Riley was working on the wrong house.

Respectfully submitted,



Willie J. Riley  
84 Wild Indigo Court  
Columbia, SC 29229  
(803) 414-5501  
Pro Se Appellant

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM RICHLAND COUNTY

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Tanya A. Gee, Circuit Court Judge

Appellant Case No. 2015-001627

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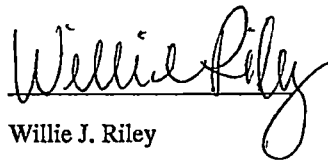
v.

Willie J. Riley

Appellant.

PROOF OF SERVICE

I, Willie J. Riley certify that I have served the Final Brief on counsel for the Respondent by depositing a copy of them on September 7, 2016, in the United States Mail, postage prepaid to the following address: P. O. Drawer 7788 Columbia, SC 29202 Attn: Leslie A. Cotter., Jr., Esquire, Carmen Vaughn Ganjehsan, Esquire.



Willie J. Riley

84 Wild Indigo Ct.

Columbia, SC 29229

(803) 414-5501

Pro Se Appellant

**RECEIVED**  
SEP 07 2016  
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IN THE STATE OF SOUTH CAROLINA  
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Willie J. Riley .....Appellant.

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 *Respondent's Motion to Strike Appellant's Final Brief and Dismiss Appeal* 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**

  
Carmen V. Ganjehsani

Dated: September 19, 2016.

September 19, 2016

**VIA HAND DELIVERY**

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

**RECEIVED**

SEP 19 2016

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:

I am enclosing for filing the original and seven copies of Respondent Dennis Wayne Catoe's Motion to Strike Appellant's Final Brief and Dismiss Appeal, as well as the original and seven copies of Respondent's Return to Appellant's Motion to File Final Brief After Deadline in the above-referenced matter, along with our Certificates of Service. Also enclosed is our firm's check in the amount of \$25.00 to cover the filing fee for the Motion to Strike Appellant's Final Brief and Dismiss Appeal. Please return clocked copies of the Motion and the Return via our courier.

By copy of this letter, we are serving a copy of the Motion and the Return on Willie J. Riley, *Pro Se* Appellant.

If you should have any questions, please do not hesitate to contact me.

Sincerely,



Carmen V. Ganjehsani

CVG

Enclosures

cc: Willie J. Riley, *Pro-se* Appellant (via U.S. Mail)  
Leslie A. Cotter, Jr., Esquire (via email only)