

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

**RECEIVED**  
SEP 08 2017  
SC Court of Appeals

APPEAL FROM THE RICHLAND COUNTY CIRCUIT COURT  
L. CASEY MANNING, Richland County Circuit Court Judge

Appellate Case No. 2017-000617  
Case No. 2016-CP-40-00946

South Carolina Public Interest Foundation, and William B. DePass, Jr.,  
individually, and on behalf of all others similarly situated..... Appellants,

v.

The City of Columbia, Richland County, and Fairfield County..... Respondents.

**RESPONDENTS RICHLAND COUNTY AND FAIRFIELD COUNTY'S  
RETURN TO MOTION TO REINSTATE THE APPEAL**

**1. PROCEDURAL BACKGROUND**

The Court of Appeals in a directive to the South Carolina Public Interest Foundation (“Foundation”) and William B. DePass, Jr (“DePass”) (collectively “Appellants”) stated:

Within ten days of the date of this letter [April 7, 2017], you must file a copy of the letter showing that you have ordered the transcript directly from the court reporter, along with a motion requesting permission to order the transcript outside of the filing deadlines set by Rule 207 of the South Carolina Appellate Court Rules.”

See Exhibit A.

By email from Counsel for Appellants to Counsel for City of Columbia (“Columbia”), Richland County (“Richland”), and Fairfield County (“Fairfield”) (collectively “Respondents”), Counsel for Appellants asked Respondents if the transcript should be included in the Record on Appeal. (Exhibit B). Columbia, Richland, and

Fairfield believed the transcript would be of value to the Court and requested Appellants include the transcript in the Record on Appeal. See Exhibit C.

Counsel for Foundation and DePass agreed to order the transcript (see Exhibit D) and on April 13, 2017, Counsel for Foundation and DePass placed the order for the transcript. See Exhibit E.

However, from the request for the transcript, over 90 days passed during which Appellants' Counsel knew no transcript had been received and knew Appellants had failed to file the Record on Appeal. Given the extensive passage of time and the lack of action by the Appellants, on July 18, 2017, the Court of Appeals notified Counsel for Appellants stating:

Our records reflect that the time for serving the record on appeal has expired. Within ten days of the date of this letter, you must serve the record on appeal along with a motion requesting permission to serve the record on appeal outside of the filing deadlines set by Rule 210 of the South Carolina Appellate Court Rules. Your appeal will be dismissed if no motion is made within ten days of the date of this letter.

See Exhibit F.

Despite the July 18, 2017, letter from the Court giving Appellants a second opportunity, Appellants allowed the mandatory ten day period to pass without taking any action.<sup>1</sup> Despite clear instructions, Appellants not only failed to file the Record on Appeal, they did not even move to request permission to serve the record on appeal outside of the filing deadlines. Far beyond the ten day requirement, Appellants so flouted the Court of Appeals' Order that over 30 days passed with no action taken by Appellants.

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<sup>1</sup> Appellants' Motion to Reinstate claims Appellants "wrote the Court" on July 24, 2017. Writing and mailing are different concepts. Richland and Fairfield Counties received no copy of that letter. The records of the Court of Appeals show the Court received no such letter. Accordingly, taking Appellants at their word—which we have every reason to believe is fully warranted knowing the unquestioned veracity of Counsel for Appellants—the evidence and statements show Appellants wrote the letter on July 24, 2017 but—for reasons unknown—failed to deliver or serve the letter either to Respondents or the Court.

Finally, essentially with no options left to the Court given the lack of response by the Appellants to a direct order, the Court on August 25, 2017, dismissed the appeal. Exhibit G.

2. ARGUMENT AND ANALYSIS

a. Appellants, Having Flouted a Direct Order of this Court, Cannot Be Rewarded by Having Their Appeal Reinstated

The Court in its July 18, 2017 letter gave the Appellants a direct order—within ten days “you must serve . . . a motion requesting permission to serve the record on appeal outside of the filing deadlines set by Rule 210.” (See Exhibit F). Appellants ignored that Order. They filed nothing.<sup>2</sup> More than 30 days passed with no action taken by Appellants. An appellant should not be rewarded for flouting orders of this Court. *See Fann v. State Highway Dep't of S.C.*, 160 S.C. 156, 159 S.E. 617, 617 (1931) (“[I]n that no effort was made to secure . . . an extension of time for perfecting the appeal . . . this negligence on the part of the appellant, [requires] the motion to reinstate the appeal [be] refused.”).

b. Appellants Cannot Be Allowed a Reinstatement of Their Appeal When Appellants Ignore Plain Instructions

Appellants’ filing deadlines are set by Rule 210. Appellants were explicitly told their “appeal will be dismissed if no motion is made within ten days.” (See Exhibit F). This Court will deny reinstatement when the Court’s instructions plainly place Appellants on notice of their duties and those duties are ignored. *Brewton v. Inter-Carolinas Motor Bus Co.*, 167 S.C. 151, 166 S.E. 85, 85 (1932) (“it becomes necessary to refuse reinstatement when counsel fail to follow plainly declared rules of the court . . .

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<sup>2</sup> The Court did not instruct Appellants to write a letter to the Court, especially not a letter for which the evidence shows no receipt by either the Court or the Respondents. Rather, the Court specifically directed Appellants to serve both the Respondents and the Court with the required Motion. Appellants failed to do so.

concerning appeals.”). The duties to file the Record on Appeal are set by Rule 210. The Court waited for either the Record on Appeal or a Motion requesting serving outside of the filing deadlines. Appellants filed neither. No reinstatement is warranted.

c. Appellants Provide None of the Basis for Allowing Reinstatement of the Appeal

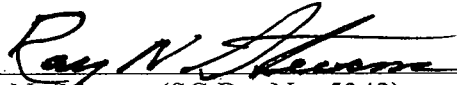
Hornbook foundations for reinstatement require the Motion to Reinstate “set out the grounds for reinstatement, show probable error in the dismissal, . . . and be accompanied by affidavits or other proof of good cause for vacating the order of dismissal. *5 C.J.S. Appeal and Error*, § 776. The only ground given by Appellants for reinstatement is “Appellants have not received a Transcript of Record.”

Not having a transcript merely attempts to explain why the Record on Appeal was not filed. The lack of a transcript forms no basis for a failure to request permission to serve the record on appeal outside of the filing deadlines set by Rule 210. Further, Appellants give no basis explaining why the July 18, 2017 Order was ignored. Accordingly, Appellants have not satisfied its duty of demonstrating why the dismissal was improper.

3. Conclusion

For the foregoing reasons, the Motion to Reinstate Appeal and Motion for Enlargement of Time to file Record should be denied.

*[SIGNATURE PAGE FOLLOWS]* ,



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Ray N. Stevens (SC Bar No. 5342)  
Ray E. Jones (SC Bar No. 11322)  
Parker Poe Adams & Bernstein LLP  
1221 Main Street, Suite 1100 (29201)  
Post Office Box 1509  
Columbia, South Carolina 29202  
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raystevens@parkerpoe.com  
rayjones@parkerpoe.com

*Attorneys for Respondents  
Richland County and Fairfield County*

September 8, 2017

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

**RECEIVED**

SEP 08 2017

APPEAL FROM THE RICHLAND COUNTY CIRCUIT COURT  
L. CASEY MANNING, Richland County Circuit Court Judge

**SC Court of Appeals**

Appellate Case No. 2017-000617  
Case No. 2016-CP-40-00946

South Carolina Public Interest Foundation, and William B. DePass, Jr.,  
individually, and on behalf of all others similarly situated..... Appellants,

v.

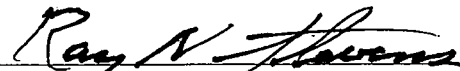
The City of Columbia, Richland County, and Fairfield County..... Respondents.

**PROOF OF SERVICE**

The undersigned certifies that on September 8, 2017, s/he caused a copy of the  
**RESPONDENTS RICHLAND COUNTY AND FAIRFIELD COUNTY'S RETURN TO MOTION TO  
REINSTATE THE APPEAL** to be served upon all parties of record by depositing a copy of  
the same in the United States Mail, postage prepaid, addressed as follows:

James G. Carpenter, Esquire  
The Carpenter Law Firm, PC  
819 East North Street  
Greenville, South Carolina 29601

Burnet Maybank III, Esquire  
Nexsen Pruet, LLC  
1230 Main Street, Suite 700  
Columbia, South Carolina 29201



Ray N. Stevens (SC Bar No. 5342)  
Ray E. Jones (SC Bar No. 11322)  
Parker Poe Adams & Bernstein LLP  
1221 Main Street, Suite 1100 (29201)  
Post Office Box 1509  
Columbia, South Carolina 29202  
Telephone: 803.255.8000  
Facsimile: 803.255.8017  
raystevens@parkerpoe.com  
rayjones@parkerpoe.com  
*Attorneys for Respondents  
Richland County and Fairfield County*

# Exhibit A

To Return to Motion to Reinstate the Appeal



## 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)

April 07, 2017

Mr. James G. Carpenter, Esquire  
The Carponter Law Firm, PC  
819 E. North St.  
Greenville SC 29601

Re: SC Public Interest Foundation v. The City of Columbia  
Appellate Case No. 2017-000617

Dear Counsel:

Our records reflect that the time for ordering the transcript has expired. Within ten days of the date of this letter, you must file a copy of the letter showing that you have ordered the transcript directly from the court reporter, along with a motion requesting permission to order the transcript outside of the filing deadlines set by Rule 207 of the South Carolina Appellate Court Rules. Your appeal will be dismissed if no motion is made within ten days of the date of this letter.

Very truly yours,

*Jenny Abbott Kitchings*

CLERK

cc: Burnet Rhett Maybank, III, Esquire  
Ray Nelson Stevens; Esquire

# Exhibit B

To Return to Motion to Reinstate the Appeal

Request to Respondents on Including a Transcript

**From:** James Carpenter [mailto:james.carpenter@carpenterlawfirm.net]

**Sent:** Wednesday, April 12, 2017 11:13 AM

**To:** Stevens, Ray N.; 'Maybank, Burnet R. III'

**Subject:** Multicounty Business and Industrial Park Case Transcript

Gentlemen,

As you probably know, I received a letter from the Court of Appeals about ordering the transcript. I called and talked to the deputy clerk and told her I didn't see any need for a transcript, that all we had was oral argument, which didn't seem to me to be that enlightening. She said we needed to have an agreement among counsel if we were going to order less than a full transcript or no transcript.

Do you all agree with me that we don't need a transcript?

Thanks,

Jim

The Carpenter Law Firm, P.C.

819 East North Street

Greenville, SC 29601

Telephone: (864) 235-1269

Facsimile: (864) 331-3083

Mobile: (864) 380-4880

[www.carpenterlawfirm.net](http://www.carpenterlawfirm.net)



WHEN IT'S WORTH FIGHTING FOR!

# Exhibit C

To Return to Motion to Reinstate the Appeal

Transcript Notice To Appellants

**From:** Stevens, Ray N.

**Sent:** Wednesday, April 12, 2017 6:05 PM

**To:** 'James Carpenter'

**Cc:** 'Maybank, Burnet R. III'

**Subject:** RE: Multicounty Business and Industrial Park Case Transcript

Jim,

Both the City and Counties have discussed it. We have no desire to create a problem for you, but think a transcript is appropriate.

Getting the transcript is the norm (even in a summary judgment proceeding) since it lets the Court understand what happened below. We don't want to create the possibility of a judge at the Court of Appeals wondering about what went on at the trial level and then have no transcript to review.

If you need our consent to getting an extension of time in which you can order the transcript, no problem—we have no issue with that.

Thanks, Ray

# Exhibit D

To Return to Motion to Reinstate the Appeal

Commitment to Order Transcript

**From:** James Carpenter [<mailto:james.carpenter@carpenterlawfirm.net>]

**Sent:** Thursday, April 13, 2017 9:43 AM

**To:** Stevens, Ray N.

**Cc:** 'Maybank, Burnet R. III'

**Subject:** RE: Multicounty Business and Industrial Park Case Transcript

Ok I'll order one. Was there just one hearing?

Jim

**From:** Stevens, Ray N.

**Sent:** Thursday, April 13, 2017 10:28 AM

**To:** 'James Carpenter'

**Cc:** 'Maybank, Burnet R. III'

**Subject:** RE: Multicounty Business and Industrial Park Case Transcript

Jim,

Yep—just the summary judgment hearing. The other meetings with Judge Manning were never on the record so we have no transcript for those.

Thanks, Ray

# Exhibit E

To Return to Motion to Reinstate the Appeal

Counsel for Foundation and DePass Order the Transcript

**From:** James Carpenter [mailto:james.carpenter@carpenterlawfirm.net]  
**Sent:** Thursday, April 13, 2017 4:24 PM  
**To:** EHarris@SCCourts.org  
**Cc:** Stevens, Ray N.; 'Maybank, Burnet R. III'  
**Subject:** Transcript order, civil action number 2016-CP-40-00946

Elizabeth,

Thanks for calling me. Please provide a transcript of the summary judgment argument that occurred January 17, 2017, before Judge Manning in the civil action called *South Carolina Public Interest Foundation and William DePass v. The City of Columbia, Richland County, and Fairfield County*, civil action number 2016-CP-40-00946.

I understand counsel for the Defendants will have to pay for their own copies of the transcript.

Thank you very much.

Jim

The Carpenter Law Firm, P.C.  
819 East North Street  
Greenville, SC 29601  
Telephone: (864) 235-1269  
Facsimile: (864) 331-3083  
Mobile: (864) 380-4880  
[www.carpenterlawfirm.net](http://www.carpenterlawfirm.net)



WHEN IT'S WORTH FIGHTING FOR!

# Exhibit F

To Return to Motion to Reinstate the Appeal



## 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)

July 18, 2017

Mr. James G. Carpenter, Esquire  
The Carponter Law Firm, PC  
819 E. North St.  
Greenville SC 29601

Re: SC Public Interest Foundation v. The City of Columbia  
Appellate Case No. 2017-000617

Dear Counsel:

Our records reflect that the time for serving the record on appeal has expired. Within ten days of the date of this letter, you must serve the record on appeal along with a motion requesting permission to serve the record on appeal outside of the filing deadlines set by Rule 210 of the South Carolina Appellate Court Rules. Your appeal will be dismissed if no motion is made within ten days of the date of this letter.

Very truly yours,

*V. Claire Allen, Deputy*

CLERK

cc: Burnet Rhett Maybank, III, Esquire  
Ray Nelson Stevens, Esquire

# Exhibit G

To Return to Motion to Reinstate the Appeal

# The South Carolina Court of Appeals

South Carolina Public Interest Foundation, and William B. DePass, Jr., individually, and on behalf of all others similarly situated, Appellants,

v.

The City of Columbia, Richland County, and Fairfield County, Respondents.

Appellate Case No. 2017-000617

The Honorable L. Casey Manning  
Richland County  
Trial Court Case No. 2016CP4000946

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## ORDER

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Appellants have failed to serve the Record on Appeal, as required by Rule 210 of the South Carolina Appellate Court Rules and this Court's letter dated July 18, 2017. Accordingly, this appeal is dismissed. The remittitur will be sent as provided by Rule 221(b), SCACR.

FOR THE COURT

BY V. Claire Allen, Deputy  
CLERK

Columbia, South Carolina

cc:

James G. Carpenter, Esquire  
Burnet Rhett Maybank, III, Esquire  
Ray Nelson Stevens, Esquire

**FILED**  
August 25, 2017 S.



**Ray N. Stevens**  
*Partner*  
Telephone: 803.255.8000  
Direct Fax: 803.255.8017  
raystevens@parkerpoe.com

Atlanta, GA  
Charleston, SC  
Charlotte, NC  
Columbia, SC  
Greenville, SC  
Raleigh, NC  
Spartanburg, SC

September 8, 2017

**Via Hand Delivery**

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

RE: *South Carolina Public Interest Foundation and William B. DePass, Jr. v. The City of Columbia, Richland County and Fairfield County*  
*Appellate Case No.: 2017-000617*  
*Case No.: 2016-CP-40-00946*

Dear Ms. Kitchings:

Enclosed are one original and six copies of the Respondents Richland County and Fairfield County's Return to Motion to Reinstate the Appeal.

Please file the original and return a clocked copy via our courier. By copy of this letter to all counsel of record, we are providing them with a copy of same.

With kind regards, I am

Sincerely,

  
Ray N. Stevens

RNS  
Enclosures

cc: James G. Carpenter, Esquire (w/enc.) (via U.S. Mail)  
Burnet Maybank, III, Esquire (w/enc.) (via U.S. Mail)

**RECEIVED**

SEP 08 2017

**SC Court of Appeals**

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