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November 19, 2012

The Honorable V. Claire Allen  
South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

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NOV 21 2012

RE: • Phillips, Chris v. Ferez, Frank, *et al.*, Case Tracking # 2012-209587  
• **Appellants' Designation of Matter to be Included in the Record on Appeal**

Dear Ms. Allen:

The Appellants' Designation of Matter to be included in the Record on Appeal was filed with your Court, on or about October 31, 2012. Appellant designated the entire transcript of record below (204 pages), and also designated all seven of Appellants' Exhibits below, to be included in the Record on Appeal. We contacted attorney Stanly L. Myers and informed him that it appeared that a substantial portion of his Designation was made in error and asked him to review the same. Mr. Myers indicated that his Designation of Matter was correct and he declined to make changes to include only those pages of the transcript of record and exhibits actually referred to in Appellants' Initial Brief, consistent with the South Carolina Appellate Court Rule 209 (a),(b) and (c), (see attachment herein, highlighting pertinent parts).

We contacted counsel opposite because he has already filed his Initial Brief and he did not cite to 204 pages of the transcript below, nor did he make reference to all seven exhibits from below. We have never encountered this situation during our practice of the Law and we are seeking your guidance in this matter.

RLW/cas  
cc. Attorney, Stanley L. Myers

Respectfully Submitted,  
AUSTIN & ROGERS, P.A.



Richard L. Whitt



Jefferson D. Griffith, III

## RULE 209

### DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL

**(a) Time to Serve and File.** At the same time a party serves his initial brief(s) under Rule 208, to include a reply brief, he shall also serve on all parties to the appeal a Designation of Matter to be Included in the Record on Appeal which shall set forth with specificity those parts of the transcript, pleadings, orders, exhibits, or other materials which he proposes to include in the record on appeal. One copy of this Designation with proof of service shall immediately be filed with the clerk of the appellate court.

**(b) Content.** The Designation must clearly identify what the party desires to have included in the Record on Appeal, and the Designation may only propose to include portions of the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal [See Rule 210(c) ]. A party shall not include any matter in his Designation which is not relevant to the appeal.

**(c) Certification.** The Designation shall be accompanied by a certificate signed by the party's counsel of record that the Designation contains no matter which is irrelevant to the appeal.