

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM LANCASTER COUNTY
Court of Common Pleas
Brian Gibbons, Circuit Court Judge

Appellate Case No. 2017-000423
Case No. 2016-CP-29-1418

RECEIVED

OCT 31 2017

S.C. SUPREME COURT

Jackie Harris Appellant,

v.

Lancaster County Election Commission, Lancaster Municipal Election Commission
And Linda Blackmon-Brace Respondents.

**RESPONDENT LANCASTER COUNTY ELECTION COMMISSION'S MOTION
TO ELARGE THE TIME IN WHICH TO FILE ITS RETURN TO THE
MOTION FOR COSTS OF RESPONDENT LINDA BLACKMON-BRACE**

Pursuant to Rule 240(e), Respondent Lancaster County Election Commission hereby moves the Court for an enlargement of the time in which to file its Return to Respondent Blackmon-Brace's Motion for Costs. For the reasons set forth below, Respondent respectfully requests that the Court grant its motion.

BACKGROUND

On Friday, October 13, 2017, Respondent Blackmon-Brace filed with this Court her Motion for Costs. Her counsel's Proof of Service indicates that all parties were served that same day. Whether or not the USPS began the sorting and distribution of the mailing on that day is unknown. However, I do know that the letter containing the Motion was received by counsel for the Lancaster County Elections Commission (LCEC) on Tuesday, October 17, 2017 at 11:15AM following delivery of the letter that same day to the Lancaster Post Office.

On Wednesday, October 25, 2017, Respondent LCEC filed with the Court, via USPS, its Return to the Motion along with the appropriate Proof of Service. On Friday, October 27, 2017, counsel for LCEC received a copy of Respondent Blackmon-Brace's counsel's letter to the Court

indicating that LCEC had failed to timely file a Return within ten (10) days from the date of service thereof (Motion for Costs). Accompanying that letter was the Form 17 affidavit of Robert E. Tyson, Jr. wherein he seeks from LCEC and Appellant Harris detailed costs.

ARGUMENT

Rule 240(e) contains two (2) provisions that support LCEC's motion, namely:

1. **“The court may in its discretion enlarge...the time for filing the return” and;**
2. **“Failure of a party to timely file a return may be deemed a consent by that party to the relief sought in the motion.”**

Both provisions noted above contain the word “may”, thereby indicating some level of equity in, not only the Court's decision on whether to grant Respondent LCEC's Motion to Enlarge, but also the Court's decision on whether Respondent LCEC has consented to the Motion for Costs. Without the Court even considering the merits of Respondent's Return, the filing itself provides evidence to the Court that Respondent LCEC has not given its consent. Should the Motion to Enlarge be granted, a review of the Return will detain the reasons why no consent would have ever been offered voluntarily.

So that there will be no question, Respondent LCEC's counsel, the undersigned, acknowledges his error in properly recognizing the computation requirements of Rule 263(a).

CONCLUSION

Respondent Blackmon-Brace's Motion for Costs contains several issues that, when considered collectively, merit the Court's favorable consideration of this Motion to Enlarge, namely:

1. The request for attorney fees exceeds the One Thousand (\$1,000.00) Dollar amount that set in Rule 222. Only in the “most extraordinary of circumstances” are additional costs allowed. Respondent. Should not Respondent LCEC's Return be accepted and the points noted therein considered prior to the Court's finding that most extraordinary circumstances existed so as to merit fees that are 350% greater than Rule 222's normal allowance?
2. The Motion for Costs sought by Respondent Blackmon-Brace against Respondent LCEC is a request, not against the losing Appellant as would be sought routinely, but, rather, a request against a quasi-judicial co-Respondent that had no standing to appeal its own decision and, in fact, did not act as an Appellant regardless of Respondent Blackmon-Brace's accusation.
3. Respondent Blackmon-Brace suggested that additional fees are merited because Respondent LCEC's Reply was frivolous. Is asking this Court to weigh an arbitrary 48 hour time period mandated by state law against the lack of due process provided to the Appellant, the Respondent Blackmon-Brace and the Lancaster County Elections Commission itself frivolous? This Court has ruled that the Reply was procedurally

unacceptable and Respondent LCEC accepts that decision. That ruling does not in and of itself convert the pleading to one of frivolousness.

The Lancaster County Election Commission requests that the Motion to Enlarge Time be granted and that the Return to the Motion for Costs be accepted and approved.

Respectfully submitted,

Lancaster County Election Commission



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October 30, 2017

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PROOF OF SERVICE

I, the undersigned, attorney for Respondent Lancaster County Election Commission, certify that I have served a copy of the Motion to Enlarge Time in which to file its Return to the Motion for Costs of Respondent Linda Blackmon-Brace upon the parties by depositing a copy in the United States Mail, postage prepaid, on October 30, 2017, addressed as follows:

Robert E. Tyson, Jr., Esquire
Post Office Box 11449
Columbia, South Carolina 29211

Elizabeth A. Hyatt, Esquire
Post Office Box 2253
Lancaster, South Carolina 29721


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