

LAW OFFICES OF FLEET FREEMAN, LLC

FLEET FREEMAN

TELEPHONE: (843) 216-0009  
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E-MAIL: [ffreeman@fflawfirm.com](mailto:ffreeman@fflawfirm.com)

January 11, 2012

The Honorable Daniel E. Shearouse  
The South Carolina Supreme Court  
P. O. Box 11330  
Columbia, SC 29211

Re: Robert B. Shealy, Jr. v. Paul E. Shelton Revocable Trust  
Case Tracking No. 2011-201386

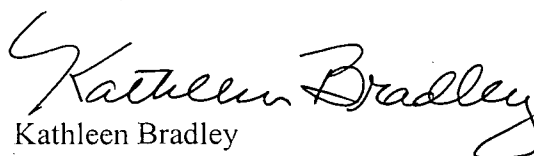
Dear Mr. Shearouse:

Enclosed is an original and seven (7) copies of a Return to Appellant's Petition for Writ of Certiorari and the original and seven (7) copies of a Certificate of Service for same.

Please return one clocked copy of each of these documents in the envelope provided.

Thank you for your assistance in this matter.

Sincerely,

  
Kathleen Bradley

KB/p

Enclosures

cc: Stephan V. Futeral, Esquire  
Thomas C. Nelson, Esquire  
SC Court of Appeals  
Shirley A. Huggins, Personal Representative

941 HOUSTON NORTHCUTT BLVD. • SUITE 204 • POST OFFICE BOX 1123  
MOUNT PLEASANT, SOUTH CAROLINA 29465-1123

**RECEIVED**

JAN 12 2012

**S.C. SUPREME COURT**

pm 1-11-12



THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Mikell Ross Scarborough, Master-In-Equity

---

Case No. 06-CP-10-991

---

**RECEIVED**

JAN 00 2012

**S.C. SUPREME COURT**

Robert B. Shealy, Jr., ..... Appellant,

v.

The Paul E. Shelton Revocable Trust, ..... Respondent.

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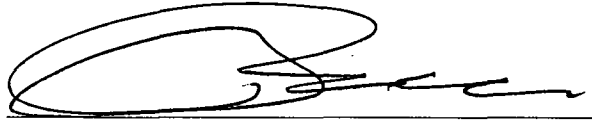
**MOTION FOR ENLARGEMENT OF TIME TO FILE RETURN TO APPELLANT'S  
PETITION FOR WRIT OF CERTIORARI**

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Respondent, by and through the undersigned counsel, respectfully moves this court for an Order extending the time for the filing of respondent's return to appellant's petition for writ of certiorari to January 13, 2012. The present deadline for filing is January 4, 2012.

Counsel for respondent has been without internet access since December 26, 2011 despite repeated promises of the service providers to provide such access beginning December 27, 2011. Without access to the internet, respondent's counsel is unable to properly research, prepare and file its return to appellant's petition.

LAW OFFICES OF FLEET FREEMAN, LLC



Fleet Freeman  
S.C. Bar No. 10435  
941 Houston Northcutt Boulevard, Suite 204  
Mount Pleasant, SC 29464  
(843) 216-0009  
(843) 216-1914 Facsimile  
[ffreeman@fflawfirm.com](mailto:ffreeman@fflawfirm.com)  
Attorneys for Respondent

Dated: January 3, 2011

Other Counsel of Record:  
Stephan V. Futeral  
S.C. Bar No. 66427  
Thomas C. Nelson  
S.C. Bar No. 71178  
P. O. Box 1543  
Mount Pleasant, SC 29465-1543  
Attorneys for Appellant  
(843) 284-5500  
(843) 284-5501 Facsimile

THE STATE OF SOUTH CAROLINA  
In The South Carolina Supreme Court

---

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Mikell Ross Scarborough, Master-In-Equity

---

Case No. 06-CP-10-991

---

Robert B. Shealy, Jr., ..... Appellant,

v.

The Paul E. Shelton Revocable Trust, ..... Respondent.

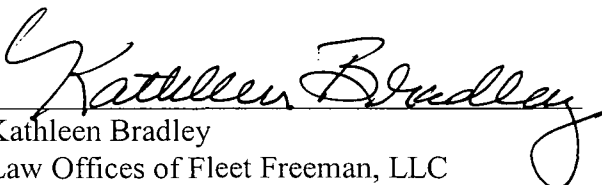
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CERTIFICATE OF SERVICE

---

Kathleen Bradley, of The Law Offices of Fleet Freeman, LLC, certifies that a copy of respondent's Motion for Enlargement of Time to File Return to Appellant's Petition for Writ of Certiorari was served on counsel for appellant by placing same in the United States Mail in Mount Pleasant, South Carolina, first class postage prepaid, on January 3, 2012, addressed as follows:

Stephan V. Futeral, Esquire  
Thomas C. Nelson, Esquire  
Futeral Law Firm  
P. O. Box 1543  
Mt. Pleasant, SC 29465-1543

  
Kathleen Bradley  
Law Offices of Fleet Freeman, LLC  
Counsel for Respondent  
941 Houston Northcutt Boulevard, Suite 204  
Mount Pleasant, SC 29464  
(843) 216-0009  
(843) 216-1914 Facsimile

Dated: January 3, 2012

LAW OFFICES OF FLEET FREEMAN, LLC

FLEET FREEMAN

TELEPHONE: (843) 216-0009  
FACSIMILE: (843) 216-1914  
E-MAIL: [ffreeman@fflawfirm.com](mailto:ffreeman@fflawfirm.com)

January 3, 2012

The Honorable Daniel E. Shearouse  
The South Carolina Supreme Court  
P. O. Box 11330  
Columbia, SC 29211

**RECEIVED**

JAN 03 2012

Re: Robert B. Shealy, Jr. v. Paul E. Shelton Revocable Trust  
Case Tracking No. 2011-201386

**S.C. SUPREME COURT**

pm 1-3-12

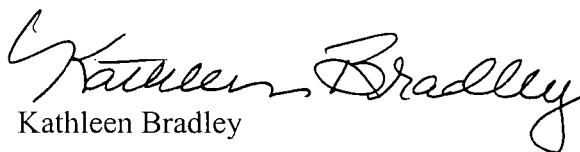
Dear Mr. Shearouse:

Enclosed is an original and seven (7) copies of a Motion for Enlargement of Time to File Return to Appellant's Petition for Writ of Certiorari and the original and seven (7) copies of a Certificate of Service for same.

Please return one clocked copy of each of these documents in the envelope provided. Enclosed is our firm's check in the amount of \$25 for filing the above.

Thank you for your assistance in this matter.

Sincerely,

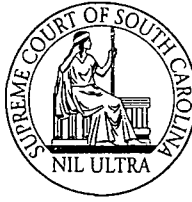
  
Kathleen Bradley

KB/p

Enclosures

cc: Stephan V. Futeral, Esquire  
Thomas C. Nelson, Esquire  
SC Court of Appeals  
Shirley A. Huggins, Personal Representative

check # 11498  
\$2500



# The Supreme Court of South Carolina

DANIEL E. SHEAROUSE  
CLERK OF COURT

BRENDA F. SHEALY  
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330  
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

December 20, 2011

Thomas C. Nelson, Esquire  
Futeral & Nelson, LLC  
2nd Floor  
1004 Anna Knapp Blvd.  
Mt. Pleasant, SC 29464

Re: Shealy, Robert B. v The Paul T. Shelton

Dear Mr. Nelson:

The following Order has been endorsed on your Motion for Enlargement of Time or to file Petition for Writ of Certiorari and Appendix out of time in the above entitled case on appeal.

“Motion Granted.

s/ Jean H. Toal C.J.  
For the Court

December 20, 2011.”

Please be advised that the Return to the Petition for Writ of Certiorari will be due fifteen (15) days from the date of this letter.

Very truly yours,



CLERK

DES/lda

cc: Fleet Freeman, Esquire  
The Honorable Tanya Gee

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

---

**RECEIVED**

DEC 15 2011

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

**S.G. SUPREME COURT**

Mikell Ross Scarborough, Master-in-Equity

---

Case No. 2006-CP-10-991

---

Robert B. Shealy, Jr., ..... Petitioner,

v.

The Paul E. Shelton Revocable Trust, ..... Respondent.

---

**MOTION FOR ENLARGEMENT OF TIME OR TO FILE PETITION FOR WRIT OF  
CERTIORARI AND APPENDIX OUT OF TIME**

---

Petitioner respectfully requests this Court enlarge the time for Petitioner to file his Petition for a Writ of Certiorari or to allow Petitioner to file his Petition for a Writ of Certiorari and Appendix out of time.

The Petition for a Writ of Certiorari and Appendix were to be filed and served on November 23, 2011. "Filing may be accomplished by . . . depositing the document in the U.S. mail, properly addressed to the clerk, with sufficient first class postage attached." Rule 262(a)(2), SCACR. "Service upon the attorney . . . shall be made . . . by mailing it to him at his last known address . . . ." Rule 262(b), SCACR. Here Petitioner deposited his documents with Federal Express overnight on November 23, 2011, which was the day before Thanksgiving.

These documents were received by this Court and by opposing counsel on the next day that this Court's and opposing counsel's offices were open, Monday, November 28, 2011.

Now, Respondent's motion to dismiss seeks to have this case decided on a technicality instead of the merits simply because Petitioner used Federal Express overnight delivery instead of depositing the same with the United States Postal Service. Respondent is not prejudiced by Petitioner's manner of delivery because Respondent's counsel likely received the petition the same day he would have if Petitioner had used the United States Mail for delivery. If anything, Petitioner utilized a generally *more* reliable manner of delivery than the United States Mail.

"The time prescribed by these Rules for performing any act except the time for serving the notice of appeal under Rules 203 and 243 may be extended or shortened by the appellate court . . . ." Rule 263(b), SCACR. Accordingly, Petitioner respectfully requests that this Court grant Petitioner's Motion for Enlargement or to File Out of Time the Petition for Writ of Certiorari and Appendix and accept the Petition for a Writ of Certiorari received by the Court and by opposing counsel on November 28, 2011 as timely filed and served.

Respectfully submitted,

FUTERAL & NELSON, LLC



Stephan V. Futeral

S.C. Bar ID 66427

Thomas C. Nelson, Esquire

S.C. Bar ID 71178

Post Office Box 1543

Mt. Pleasant, South Carolina 29465-1543


Telephone (843) 284-5500

Facsimile (843) 284-5501

email to: [sfuteral@charlestonlaw.net](mailto:sfuteral@charlestonlaw.net)

Attorneys for Petitioner

GRANTED.



C.J.  
FOR THE COURT

December 20, 2011

Dated: 12/13/11

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

**RECEIVED**

DEC 15 2011

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

**S.C. SUPREME COURT**

Mikell Ross Scarborough, Master-in-Equity

Case No. 2006-CP-10-991

Robert B. Shealy, Jr., .....Petitioner,

v.

The Paul E. Shelton Revocable Trust, .....Respondent.

**PROOF OF SERVICE FOR MOTION FOR ENLARGEMENT OF TIME OR TO FILE  
PETITION FOR WRIT OF CERTIORARI AND APPENDIX OUT OF TIME**

I hereby certify that I have served the Motion for Enlargement of Time or to File Petition for Writ of Certiorari and Appendix Out of Time on counsel for Respondent by depositing a copy of the same in the U.S. Mail, postage pre-paid, on December 13, 2011, addressed as follows:

Fleet Freeman  
Post Office Box 1123  
Mount Pleasant South Carolina 29465-1123

FUTERAL & NELSON, LLC



Thomas C. Nelson, Esquire  
S.C. Bar ID 71178  
Post Office Box 1543  
Mt. Pleasant, South Carolina 29465-1543  
Telephone (843) 284-5500 ext. 226  
Facsimile (843) 284-5501 sub. 226  
email to: tnelson@charlestonlaw.net  
Attorney for Petitioner

Dated: 12/13/11

LAW OFFICES OF FLEET FREEMAN, LLC

FLEET FREEMAN

TELEPHONE: (843) 216-0009  
FACSIMILE: (843) 216-1914  
E-MAIL: [ffreeman@fflawfirm.com](mailto:ffreeman@fflawfirm.com)

December 15, 2011


The Honorable Daniel E. Shearouse  
The South Carolina Supreme Court  
P. O. Box 11330  
Columbia, SC 29211

Re: Robert B. Shealy, Jr. v. Paul E. Shelton Revocable Trust  
Case Tracking No. 2011-201386

Dear Mr. Shearouse:

This letter is to confirm my understanding that, in accordance with SCACR Rule 240(b), a response to the Petition for a Writ of Certiorari filed in this case is not due until the Motion to Dismiss the Petition, filed by respondents on December 2, 2011, has been decided upon.

Sincerely,



Fleet Freeman

**RECEIVED**

DEC 19 2011

**S.C. SUPREME COURT**

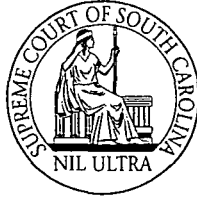
FF/kb

cc: South Carolina Court of Appeals  
Stephan V. Futeral, Esq.  
Thomas C. Nelson, Esq.  
Shirley A. Huggins, Personal Representative, Estate of Paul E. Shelton

**RECEIVED**

DEC 19 2011

**S.C. SUPREME COURT**



# The Supreme Court of South Carolina

DANIEL E. SHEAROUSE  
CLERK OF COURT

BRENDA F. SHEALY  
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330  
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

December 20, 2011

Thomas C. Nelson, Esquire  
Futeral & Nelson, LLC  
2nd Floor  
1004 Anna Knapp Blvd.  
Mt. Pleasant, SC 29464

Re: Shealy, Robert B. v The Paul T. Shelton

Dear Mr. Nelson:

The following Order has been endorsed on your Motion for Enlargement of Time or to file Return to Motion to Dismiss Out of Time in the above entitled case on appeal.

“Motion Granted.

s/ Jean H. Toal C.J.  
For the Court

December 20, 2011.”

Please be advised that by copy of this letter we are advising all interested parties of the action by the Court.

Very truly yours,



CLERK

DES/lda

cc: Fleet Freeman, Esquire  
The Honorable Tanya Gee

**RECEIVED**

DEC 15 2011

**S.C. SUPREME COURT**

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Mikell Ross Scarborough, Master-in-Equity

Case No. 2006-CP-10-991

Robert B. Shealy, Jr., ..... Petitioner,

v.

The Paul E. Shelton Revocable Trust, ..... Respondent.

**MOTION FOR ENLARGEMENT OF TIME OR TO FILE RETURN TO MOTION TO  
DISMISS OUT OF TIME**

Petitioner respectfully requests this Court enlarge the time for Petitioner to file his Return to Motion to Dismiss or to allow Petitioner to file his Return to Motion to Dismiss out of time.


Petitioner's Return was due on December 12, 2011. Due to a mistake in calendaring and believing December 13, 2011 to be the due date, Petitioner's counsel did not begin preparing the Return until the evening of December 12, 2011. At that time, Petitioner's counsel realized that the Return was due that day.

Now, on December 13, 2011, Petitioner submits his Return, along with this Motion for Enlargement of Time or to File Return to Motion to Dismiss Out of Time. Respondent is not prejudiced by receiving the Return one day later due to oversight by Petitioner's counsel. It is well within this Court's authority to extend the time for the Return by one day. Petitioner

respectfully requests this Court accept his Return as timely and to consider it when deciding Respondent's Motion to Dismiss.

Respectfully submitted,

FUTERAL & NELSON, LLC



Stephan V. Futeral

S.C. Bar ID 66427

Thomas C. Nelson, Esquire

S.C. Bar ID 71178

Post Office Box 1543

Mt. Pleasant, South Carolina 29465-1543

Telephone (843) 284-5500

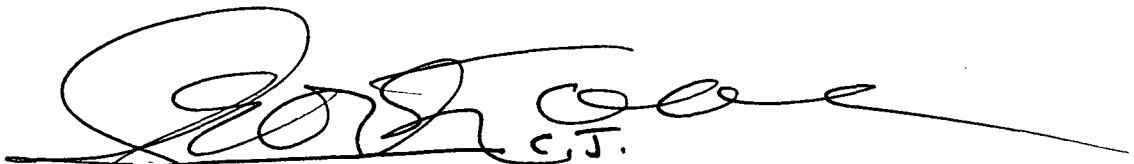
Facsimile (843) 284-5501

email to: [sfuteral@charlestonlaw.net](mailto:sfuteral@charlestonlaw.net)

Attorneys for Petitioner

Dated: 12/13/11

GRANTED.



C.J.  
For THE COURT

December 20, 2011

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

**RECEIVED**

DEC 15 2011

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

**S.C. SUPREME COURT**

Mikell Ross Scarborough, Master-in-Equity

Case No. 2006-CP-10-991

Robert B. Shealy, Jr., ..... Petitioner,

v.

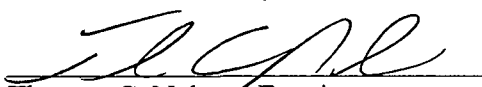
The Paul E. Shelton Revocable Trust, ..... Respondent.

**PROOF OF SERVICE FOR MOTION FOR ENLARGEMENT OF TIME OR TO FILE  
RETURN TO MOTION TO DISMISS OUT OF TIME**

I hereby certify that I have served the Motion for Enlargement of Time or to File Return to Motion to Dismiss Out of Time on counsel for Respondent by depositing a copy of the same in the U.S. Mail, postage pre-paid, on December 13, 2011, addressed as follows:

Fleet Freeman  
Post Office Box 1123  
Mount Pleasant South Carolina 29465-1123

FUTERAL & NELSON, LLC



Thomas C. Nelson, Esquire

S.C. Bar ID 71178

Post Office Box 1543

Mt. Pleasant, South Carolina 29465-1543

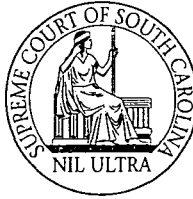
Telephone (843) 284-5500 ext. 226

Facsimile (843) 284-5501 sub. 226

email to: [tnelson@charlestonlaw.net](mailto:tnelson@charlestonlaw.net)

Attorney for Petitioner

Dated: 12/13/11



# The Supreme Court of South Carolina

DANIEL E. SHEAROUSE  
CLERK OF COURT

BRENDA F. SHEALY  
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330  
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

December 20, 2011

Fleet Freeman, Esquire  
Law Offices of Fleet Freeman, LLC  
Fleet Freeman, LLC  
941 Houston Northcutt Blvd.  
Ste. 204  
Mt. Pleasant, SC 29464

Re: Shealy, Robert B. v The Paul T. Shelton

Dear Mr. Freeman:

The following Order has been endorsed on your Motion to Dismiss in the above entitled case on appeal.

“Motion denied.

s/ Jean H. Toal C.J.  
For the Court

December 20, 2011.”

Please be advised that by copy of this letter we are advising all interested parties of the action by the Court.

Very truly yours,

CLERK

DES/lda

cc: Thomas C. Nelson, Esquire  
The Honorable Tanya Gee

THE STATE OF SOUTH CAROLINA  
In the SUPREME COURT

**RECEIVED**

DEC 6 2011

**S.C. SUPREME COURT**

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Mikell Scarborough, Master-In-Equity

Case No. 06-CP-10-991

Robert B. Shealy, Jr. .... Appellant

v.

The Paul E. Shelton Revocable Trust ..... Respondent

MOTION TO DISMISS

Respondent respectfully moves the Court for an Order dismissing appellant's Petition for Writ of Certiorari on the grounds set forth herein.

Appellant's Petition for Rehearing was denied by Order of the Court of Appeals on September 21, 2011. Pursuant to Rule 242, SCACR, appellant was required to file his Petition for Writ of Certiorari within 30 days thereafter, or by October 21, 2011. On October 21, 2011, appellant sought and received an extension of time from the Supreme Court to file his Petition by November 23, 2011. Thus, his Petition for Writ of Certiorari was required to be filed with the Clerk of the Supreme Court and served on counsel for respondent no later than November 23, 2011.

On November 23, 2011, appellant sent his petition to the Clerk of the Supreme Court by Federal Express and attempted service on counsel for respondent in the same manner. The

petition was actually received by the Clerk of the Supreme Court on November 28, 2011, the same day the service copy was received by counsel for respondent. Appellant's Certificate of Service filed with the Supreme Court reflects his attempt to file and serve by Federal Express on November 23, 2011. The Certificate does not reflect that the Petition was placed in the U. S. Mail as required by the Rule.

Appellant's petition was not timely filed or served for the following reasons: 1) it was received in the office of the Clerk of the Supreme Court on November 28, five (5) days past the deadline for filing under Rule 242, SCACR (c); 2) filing with the clerk of court and service on respondent's counsel was improperly accomplished in violation of Rule 262, SCACR. Rule 262 requires, in paragraph (a)(1), delivering the document to the clerk of the appellate court; or as in (a)(2), depositing the document in the U.S. Mail, properly addressed to the clerk, with sufficient first class postage attached. Service on respondent's counsel was likewise ineffective because the Petition was not served in accordance with Rule 262(b) as follows:

. . . Service upon the attorney or upon a party shall be made by delivering a copy to him or by mailing it to him at his last known address or, if no address is known, by leaving it with the clerk of court. Delivery of a copy within this Rule means: handing it to the attorney or the party; or leaving it at his office with his clerk or other person in charge thereof; or, if there is no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served is has no office, leaving a copy at his dwelling place or usual place of abode with some person of suitable age and discretion then residing therein. Service by mail is complete upon mailing.

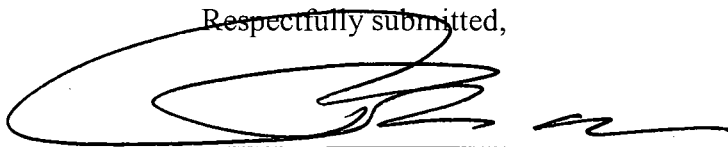
Filing and service not in accordance with Rule 262 is ineffective:

Service by private delivery services (e.g. FedEx, UPS, etc.) is not complete unless and until the document is delivered to the party to be served or, in the case of filing, to the clerk of court. Merely giving the notice of appeal to a third party for mailing does not amount to service on the addressee. *Southbridge Properties, Inc. v. Jones*, 292 S.C. 198, 355 S.E.2d 535 (1987).

*Appellate Practice in South Carolina*, page 157.

For these reasons, respondent's motion to dismiss should be granted and a remittitur issued to the trial court.

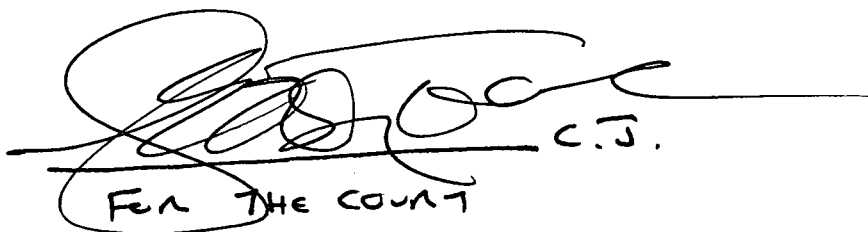
Respectfully submitted,



Fleet Freeman  
SC Bar No. 10435  
Law Offices of Fleet Freeman, LLC  
941 Houston Northcutt Blvd, Suite 204  
Mount Pleasant, SC 29464  
(843) 216-0009  
(843) 216-1914 Facsimile  
[ffreeman@fflawfirm.com](mailto:ffreeman@fflawfirm.com)  
Attorneys for Respondent

December 2, 2011

MOTION DENIED.



C.J.  
FOR THE COURT

December 20, 2011

THE STATE OF SOUTH CAROLINA  
In The South Carolina Supreme Court

---

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Mikell Ross Scarborough, Master-In-Equity

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Case No. 06-CP-10-991

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Robert B. Shealy, Jr., ..... Appellant,

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The Paul E. Shelton Revocable Trust, ..... Respondent.

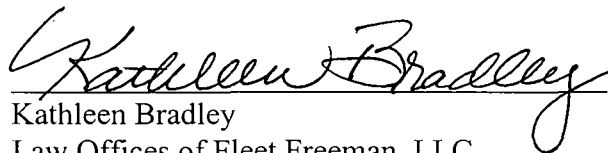
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CERTIFICATE OF SERVICE

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Kathleen Bradley, of The Law Offices of Fleet Freeman, LLC, certifies that a copy of respondent's Motion to Dismiss was served on counsel for appellant by placing same in the United States Mail in Mount Pleasant, South Carolina, first class postage prepaid, on December 2, 2011, addressed as follows:

Stephan V. Futeral, Esquire  
Thomas C. Nelson, Esquire  
Futeral Law Firm  
P. O. Box 1543  
Mt. Pleasant, SC 29465-1543



Kathleen Bradley  
Law Offices of Fleet Freeman, LLC  
Counsel for Respondent  
941 Houston Northcutt Boulevard, Suite 204  
Mount Pleasant, SC 29464  
(843) 216-0009  
(843) 216-1914 Facsimile

Dated: December 2, 2011

**RECEIVED**

DEC 15 2011

**S.C. SUPREME COURT**

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Mikell Ross Scarborough, Master-in-Equity

---

Case No. 2006-CP-10-991

---

Robert B. Shealy, Jr., ..... Petitioner,

v.

The Paul E. Shelton Revocable Trust, ..... Respondent.

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**RETURN TO MOTION TO DISMISS**

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Petitioner, pursuant to Rule 240, SCACR and in Return to Respondent’s Motion to Dismiss, submits that the Petition for a Writ of Certiorari was timely filed or that Petitioner is entitled to an extension. Specifically, Petitioner filed his petition by depositing the same with Federal Express on November 23, 2011,<sup>1</sup> the due date previously set by this Court. Copies of the Federal Express Airbills are attached hereto as Exhibit A.

Respondent claims that service is ineffective pursuant to Southbridge Properties, Inc. v. Jones, 292 S.C. 198, 355 S.E.2d 535 (1987). However, Southbridge involved the service of a notice of intent to appeal, not a petition for writ of certiorari. “The service of a notice of appeal is a jurisdictional requirement, and the time for service may not be extended by this court.” Hill

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<sup>1</sup> November 23, 2011 was the day before Thanksgiving. Respondent’s emphasis on the petition being received by the Clerk of the Supreme Court and by Respondent’s counsel “five (5) days past the deadline for filing” may be misleading because November 28, 2011 was the next day this Court’s and counsel’s offices were open.

v. S.C. Dep't of Health & Env'tl. Control, 389 S.C. 1, 698 S.E.2d 612 (2010). No such requirement exists regarding a Petition for a Writ of Certiorari. Therefore, even if the Petition for a Writ of Certiorari was untimely filed and served, it is only by one business day, and the time for such petition may be extended by this Court. Petitioner craves reference to the Motion for Enlargement of Time or to File Petition for Writ of Certiorari Out of Time that Petitioner is simultaneously filing with this Return.

Despite filing the Motion for Enlargement of Time or to File Petition for Writ of Certiorari Out of Time in an abundance of caution, Petitioner requests that this Court consider his petition as timely filed and served. In Southbridge, the appellant left the a notice of intent to appeal with National Mail Services, a private company which takes mail and packages to the United States Post Office for its customers. Due to a delay by National Mail Services, the notice of appeal was not deposited with the United States Postal Service until three (3) days after the service deadline, and this Court found the service to be untimely.

Here, Petitioner left the package with Federal Express for overnight delivery. Unlike National Mail Services in Southbridge, Federal Express is not a mere courier between a sender and the United States Post Office. Instead, Federal Express is a company that delivers mail and packages directly to the recipient. Petitioner respectfully requests this Court deem delivery by Federal Express overnight delivery to be in compliance with Rule 262(b), SCACR because Federal Express overnight is generally *more* reliable than standard United States Mail and practically ensures that the items will be received by the recipient the day after they are sent. Further, unlike the United States Postal Service, Federal Express provides tracking numbers for all packages so that lost or delayed packages may be investigated.

Respondent's motion to dismiss seeks to have this case decided on a technicality instead of the merits simply because Petitioner used Federal Express overnight delivery instead of depositing the same with the United States Postal Service. Unlike Southbridge, this Court is not divested of jurisdiction to decide this matter. Petitioner respectfully requests that this Court deny Respondent's motion by either (1) granting Petitioner's Motion for Enlargement or to File Out of Time the Petition for Writ of Certiorari or (2) holding that the petition was timely filed and served.

Respectfully submitted,

FUTERAL & NELSON, LLC



Stephan V. Futeral

S.C. Bar ID 66427

Thomas C. Nelson, Esquire

S.C. Bar ID 71178

Post Office Box 1543

Mt. Pleasant, South Carolina 29465-1543

Telephone (843) 284-5500

Facsimile (843) 284-5501

email to: [sfuteral@charlestonlaw.net](mailto:sfuteral@charlestonlaw.net)

Attorneys for Petitioner

Dated: 12/13/11

EXHIBIT A

# FedEx Express US Airbill

FedEx Tracking Number

8706 7928 5036

**1 From** Please print and press hard.  
 Date 11/23/11 Sender's FedEx Account Number 3203-7442-1  
SENDER'S FEDEX ACCOUNT NUMBER ONLY

Sender's Name Thomas C. Nelson Phone (843) 284-5500

Company FUTERAL & NELSON LLC

Address 1004 ANNA KNAPP EXT STE 2

City MOUNT PLEASANT State SC ZIP 29464-5424

**2 Your Internal Billing Reference** Shealy First 24 characters will appear on invoice. OPTIONAL

**3 To**  
 Recipient's Name Daniel Shearouse Phone ( )

Company SC Supreme Court  HOLD Weekday Print FedEx location address below. NOT available for FedEx First Overnight.  HOLD Saturday Print FedEx location address below. Available ONLY for FedEx Priority Overnight and FedEx 2Day to select locations.

Address 1231 Gervais St.  
We cannot deliver to P.O. boxes or P.O. ZIP codes.

Address Print FedEx location address here if HOLD option is selected.

City Columbia State SC ZIP 29211

0409153938



**Find drop-off locations at fedex.com**  
 Simplify your shipping. Manage your account. Access all the tools you need.

MURALS  
 Form ID No. **0215**  
 Sender's Copy

**4a Express Package Service** \* To most locations. Packages up to 150 lbs.  
 FedEx Priority Overnight Next business morning.\* Friday shipments will be delivered on Monday unless SATURDAY Delivery is selected.  FedEx Standard Overnight Next business afternoon.\* Saturday Delivery NOT available.  FedEx First Overnight Earliest next business morning delivery to select locations.\* Saturday Delivery NOT available.

FedEx 2Day Second business day.\* Thursday shipments will be delivered on Monday unless SATURDAY Delivery is selected.  FedEx Express Saver Third business day.\* Saturday Delivery NOT available.

**4b Express Freight Service** \*\* To most locations. Packages over 150 lbs.  
 FedEx 1Day Freight Next business day.\*\*\* Friday shipments will be delivered on Monday unless SATURDAY Delivery is selected. CALL 1.800.532.0607  
FedEx 1Day Freight Booking No.

FedEx 2Day Freight Second business day.\*\*\* Thursday shipments will be delivered on Monday unless SATURDAY Delivery is selected.  FedEx 3Day Freight Third business day.\*\* Saturday Delivery NOT available.

**5 Packaging** \* Declared value limit \$500.  
 FedEx Envelope\*  FedEx Pak\* Includes FedEx Small Pak, FedEx Large Pak, and FedEx Sturdy Pak.  FedEx Box  FedEx Tube  Other

**6 Special Handling and Delivery Signature Options**  
 SATURDAY Delivery NOT available for FedEx Standard Overnight, FedEx First Overnight, FedEx Express Saver, or FedEx 3Day Freight.

No Signature Required Package may be left without obtaining a signature for delivery.  Direct Signature Someone at recipient's address may sign for delivery. Fee applies.  Indirect Signature If no one is available at recipient's address, someone at a neighboring address may sign for delivery. For residential deliveries only. Fee applies.

**Does this shipment contain dangerous goods?**  
 One box must be checked.  
 No  Yes As per attached Shipper's Declaration.  Yes Shipper's Declaration not required.  Dry Ice Dry ice, 9, UN 1845 x \_\_\_\_\_ kg  
Dangerous goods (including dry ice) cannot be shipped in FedEx packaging or placed in a FedEx Express Drop Box.  Cargo Aircraft Only

**7 Payment Bill to:** Enter FedEx Acct. No. or Credit Card No. below.  
 Sender Acct. No. in Section 1 will be billed.  Recipient  Third Party  Credit Card  Cash/Check  
 FedEx Acct. No. \_\_\_\_\_ Exp. Date \_\_\_\_\_  
 Credit Card No. \_\_\_\_\_

Total Packages \_\_\_\_\_ Total Weight \_\_\_\_\_ lbs \$ \_\_\_\_\_ 00  
 Total Declared Value† \_\_\_\_\_

†Our liability is limited to \$100 unless you declare a higher value. See back for details. By using this Airbill you agree to the service conditions on the back of this Airbill and in the current FedEx Service Guide, including terms that limit our liability.

553

PULL AND RETAIN THIS COPY BEFORE AFFIXING TO THE PACKAGE. NO POUCH NEEDED.

**FedEx** US Airbill  
Express

FedEx  
Tracking  
Number

8706 7928 5025

MUR 13  
Form ID No. 5  
0215  
Sender's Copy

**1 From** Please print and press hard.  
Date 11/23/11 Sender's FedEx Account Number 3203-7442-1 SENDER'S FEDEX ACCOUNT NUMBER ONLY

Sender's Name Thomas C. Nelson Phone (843) 284-5500

Company FUTERAL & NELSON LLC

Address 1004 ANNA KNAPP EXT STE 2

City MOUNT PLEASANT State SC ZIP 29464-5424

**2 Your Internal Billing Reference** Shealy OPTIONAL  
First 24 characters will appear on invoice.

**3 To**  
Recipient's Name The Honorable Jeanette Barber Phone ( )

Company SC Court of Appeals HOLD Weekday  Print FedEx location address below NOT available for FedEx First Overnight. HOLD Saturday  Print FedEx location address below. Available ONLY for FedEx Priority Overnight and FedEx 2Day to select locations.

Address 1015 Sumter Street  
We cannot deliver to P.O. boxes or P.O. ZIP codes.

Address \_\_\_\_\_  
Print FedEx location address here if HOLD option is selected.

City Columbia State SC ZIP 29201

0409153938

 **Ship and track packages at fedex.com**  
Simplify your shipping. Manage your account. Access all the tools you need.

**4a Express Package Service** \* To most locations. Packages up to 150 lbs.  
 FedEx Priority Overnight Next business morning.\* Friday shipments will be delivered on Monday unless SATURDAY Delivery is selected.  
 FedEx Standard Overnight Next business afternoon. Saturday Delivery NOT available.  
 FedEx First Overnight Earliest next business morning delivery to select locations.\* Saturday Delivery NOT available.  
 FedEx 2Day Second business day.\* Thursday shipments will be delivered on Monday unless SATURDAY Delivery is selected.  
 FedEx Express Saver Third business day.\* Saturday Delivery NOT available.

**4b Express Freight Service** \*\* To most locations. Packages over 150 lbs.  
 FedEx 1Day Freight Next business day.\*\* Friday shipments will be delivered on Monday unless SATURDAY Delivery is selected. CALL 1.800.332.8907  
 FedEx 2Day Freight Second business day.\*\* Thursday shipments will be delivered on Monday unless SATURDAY Delivery is selected.  
 FedEx 3Day Freight Third business day.\*\* Saturday Delivery NOT available.

**5 Packaging** \* Declared value limit \$500.  
 FedEx Envelope\*  FedEx Pak\* Includes FedEx Small Pak, FedEx Large Pak, and FedEx Sturdy Pak.  FedEx Box  FedEx Tube  Other

**6 Special Handling and Delivery Signature Options**  
 SATURDAY Delivery NOT available for FedEx Standard Overnight, FedEx First Overnight, FedEx Express Saver, or FedEx 3Day Freight.  
 No Signature Required Package may be left without obtaining a signature for delivery.  
 Direct Signature Someone at recipient's address may sign for delivery. Fee applies.  
 Indirect Signature If no one is available at recipient's address, someone at a neighboring address may sign for delivery. For residential deliveries only. Fee applies.  
Does this shipment contain dangerous goods?  
 No  Yes As per attached Shipper's Declaration.  Yes Shipper's Declaration not required.  Dry Ice 9, UN 1845 x \_\_\_\_\_ kg  
Dangerous goods (including dry ice) cannot be shipped in FedEx packaging or placed in a FedEx Express Drop Box.  Cargo Aircraft Only

**7 Payment Bill to:**  
 Sender Acct. No. in Section 1 will be billed.  Recipient  Third Party  Credit Card  Cash/Check  
FedEx Acct. No. \_\_\_\_\_ Exp. Date \_\_\_\_\_  
Credit Card No. \_\_\_\_\_

Total Packages 1 Total Weight \_\_\_\_\_ lbs. Total Declared Value! \_\_\_\_\_ \$ \_\_\_\_\_ 00

\*Our liability is limited to \$100 unless you declare a higher value. See back for details. By using this Airbill you agree to the service conditions on the back of this Airbill and in the current FedEx Service Guide, including terms that limit our liability.

553

PULL AND RETAIN THIS COPY BEFORE AFFIXING TO THE PACKAGE. NO POUCH NEEDED.

# FedEx Express US Airbill

FedEx Tracking Number

8706 7928 5047



**1 From** Please print and press hard.  
 Date 11/23/11 Sender's FedEx Account Number 3203-7442-1  
SENDER'S FEDEX ACCOUNT NUMBER ONLY

Sender's Name Thomas C. Nelson Phone ( 843 ) 284-5500

Company FUTERAL & NELSON LLC

Address 1004 ANNA KNAPP EXT STE 2  
Dept./Floor/Suite/Room

City MOUNT PLEASANT State SC ZIP 29464-5424

**2 Your Internal Billing Reference** Shealy  
First 24 characters will appear on invoice. OPTIONAL

**3 To**  
 Recipient's Name Fleet Freeman, Esq. Phone ( )

Company \_\_\_\_\_  
HOLD Weekday Print FedEx location address below. NOT available for FedEx First Overnight. HOLD Saturday Print FedEx location address below. Available ONLY for FedEx Priority Overnight and FedEx 2Day to select locations.

Address 941 Houston Northcutt Blvd. Ste 204  
We cannot deliver to P.O. boxes or P.O. ZIP codes. Dept./Floor/Suite/Room

Address \_\_\_\_\_  
Print FedEx location address here if HOLD option is selected.

City Mt. Pleasant State SC ZIP 29464

0409153938

**Schedule a pickup at fedex.com**  
 Simplify your shipping. Manage your account. Access all the tools you need.

**4a Express Package Service** \* To most locations. Packages up to 150 lbs.  
 FedEx Priority Overnight Next business morning.\* Friday shipments will be delivered on Monday unless SATURDAY Delivery is selected.  
 FedEx Standard Overnight Next business afternoon.\* Saturday Delivery NOT available.  
 FedEx First business morning Earliest next business morning delivery to select locations.\* Saturday Delivery NOT available.  
 FedEx 2Day Second business day.\* Thursday shipments will be delivered on Monday unless SATURDAY Delivery is selected.  
 FedEx Express Saver Third business day.\* Saturday Delivery NOT available.

**4b Express Freight Service** \*\* To most locations. Packages over 150 lbs.  
 FedEx 1Day Freight Next business day.\*\* Friday shipments will be delivered on Monday unless SATURDAY Delivery is selected. CALL 1.800.332.0607  
FedEx 1Day Freight Booking No.  
 FedEx 2Day Freight Second business day.\*\* Thursday shipments will be delivered on Monday unless SATURDAY Delivery is selected.  
 FedEx 3Day Freight Third business day.\* Saturday Delivery NOT available.

**5 Packaging** \* Declared value limit \$500.  
 FedEx Envelope\*  FedEx Pak\* Includes FedEx Small Pak, FedEx Large Pak, and FedEx Sturdy Pak.  FedEx Box  FedEx Tube  Other

**6 Special Handling and Delivery Signature Options**  
 SATURDAY Delivery NOT available for FedEx Standard Overnight, FedEx First Overnight, FedEx Express Saver, or FedEx 3Day Freight.  
 No Signature Required Package may be left without obtaining a signature for delivery.  
 Direct Signature Someone at recipient's address may sign for delivery. Fax: any./cc:.  
 Indirect Signature If no one is available at recipient's address, someone at a neighboring address may sign for delivery. For residential deliveries only. Fee applies.  
**Does this shipment contain dangerous goods?**  
One box must be checked.  
 No  Yes As per attached Shipper's Declaration.  Yes Shipper's Declaration not required.  Dry Ice Dry ice, 9 UN 1845 \_\_\_\_\_ x \_\_\_\_\_ kg  
 Dangerous goods (including dry ice) cannot be shipped in FedEx packaging or placed in a FedEx Express Drop Box.  Cargo Aircraft Only

**7 Payment Bill to:**  
 Sender Acct. No. in Section 1 will be billed.  Recipient  Third Party  Credit Card  Cash/Check  
Enter FedEx Acct. No. or Credit Card No. below. FedEx Acct. No. Credit Card No. Exp. Date

Total Packages \_\_\_\_\_ Total Weight \_\_\_\_\_ lbs. Total Declared Value† \_\_\_\_\_ \$ \_\_\_\_\_ 00

†Our liability is limited to \$100 unless you declare a higher value. See back for details. By using this Airbill you agree to the service conditions on the back of this Airbill and in the current FedEx Service Guide, including terms that limit our liability.

553

PULL AND RETAIN THIS COPY BEFORE AFFIXING TO THE PACKAGE. NO POUCH NEEDED.

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Mikell Ross Scarborough, Master-in-Equity

Case No. 2006-CP-10-991

RECEIVED

DEC 15 2011

S.C. Supreme Court

Robert B. Shealy, Jr., ..... Petitioner,

v.

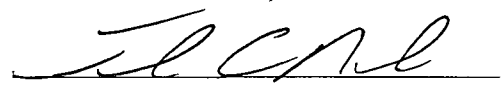
The Paul E. Shelton Revocable Trust, ..... Respondent.

**PROOF OF SERVICE FOR RETURN TO MOTION TO DISMISS**

I hereby certify that I have served the Return to Motion to Dismiss on counsel for Respondent by depositing a copy of the same in the U.S. Mail, postage pre-paid, on December 13, 2011, addressed as follows:

Fleet Freeman  
Post Office Box 1123  
Mount Pleasant South Carolina 29465-1123

FUTERAL & NELSON, LLC



Thomas C. Nelson, Esquire  
S.C. Bar ID 71178  
Post Office Box 1543  
Mt. Pleasant, South Carolina 29465-1543  
Telephone (843) 284-5500 ext. 226  
Facsimile (843) 284-5501 sub. 226  
email to: tnelson@charlestonlaw.net  
Attorney for Petitioner

Dated: 12/13/11



Attorneys Serving the Lowcountry

RECEIVED

DEC 15 2011

S.C. SUPREME COURT

pm 12-13-11

December 13, 2011

The Honorable Daniel E. Shearouse  
South Carolina Supreme Court  
1231 Gervais Street  
Columbia, South Carolina 29211

RE: Robert B. Shealy, Jr. v. Paul E. Shelton Revocable Trust  
Case Tracking No: 2009128448  
Case No.: 06-CP-10-0991

Dear Mr. Shearouse:

Please find enclosed the following:

1. An original and seven (7) copies of the Return to Motion to Dismiss
2. An original and one (1) copy of the Proof of Service for Return to Motion to Dismiss
3. An original and seven (7) copies of a Motion for Enlargement of Time or to File Petition for Writ of Certiorari and Appendix Out of Time
4. An original and one (1) copy of the Proof of Service for Motion for Enlargement of Time or to File Petition for Writ of Certiorari and Appendix Out of Time
5. An original and seven (7) copies of a Motion for Enlargement of Time or to File Return to Motion Dismiss Out of Time
6. An original and one (1) copy of the Proof of Service for Motion for Enlargement of Time or to File Return to Motion Dismiss Out of Time

Please return one clocked copy of each of these documents to my office in the envelope provided and file the remainder. I have enclosed two of my firm's checks in the amounts of \$25.00 each to satisfy the filing fees for numbers 3 and 5 in the list above.

By copy of this letter, I am serving opposing counsel. Should you have any questions, please notify me. Thank you for your kind assistance.

Sincerely,

Thomas C. Nelson

check # 9163  
\$25.00

Check # 1962  
\$25.00

cc: Fleet Freeman, Esquire

Local 843-284-5500 Toll Free 877-913-5500 Fax 843-284-5501

1004 Anna Knapp Blvd., 2nd Floor • Mount Pleasant, South Carolina 29464  
Reply to: P. O. Box 1543 • Mount Pleasant, South Carolina 29465-1543

www.charlestonlaw.net

LAW OFFICES OF FLEET FREEMAN, LLC

FLEET FREEMAN

TELEPHONE: (843) 216-0009  
FACSIMILE: (843) 216-1914  
E-MAIL: [ffreeman@fflawfirm.com](mailto:ffreeman@fflawfirm.com)

December 2, 2011

The Honorable Daniel E. Shearouse  
The South Carolina Supreme Court  
P. O. Box 11330  
Columbia, SC 29211

Re: Robert B. Shealy, Jr. v. Paul E. Shelton Revocable Trust  
Case Tracking No. 2009-128448

Dear Mr. Shearouse:

Enclosed are the original and six copies of respondent's Motion to Dismiss the appellant's Petition for Writ of Certiorari, along with proof of service and a check for filing, in the above captioned matter. Please file the Motion and return a file stamped copy to this office in the enclosed envelope.

Thank you for your assistance in this matter.

**RECEIVED**

DEC 6 2011

S.C. SUPREME COURT

pm 12-3-11

Sincerely,

*Kathleen Bradley*

Kathleen Bradley  
Paralegal

FF/kb

cc: South Carolina Court of Appeals  
Stephan V. Futeral, Esq.  
Thomas C. Nelson, Esq.  
Shirley A. Huggins, Personal Representative, Estate of Paul E. Shelton

Check #11470  
\$2500.



# The Supreme Court of South Carolina

DANIEL E. SHEAROUSE  
CLERK OF COURT

BRENDA F. SHEALY  
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330  
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

November 30, 2011

Thomas C. Nelson, Esquire  
Futeral & Nelson, LLC  
2nd Floor  
1004 Anna Knapp Blvd.  
Mt. Pleasant, SC 29464

Re: Shealy, Robert B. v The Paul T. Shelton  
Case Tracking No. 2011-201386

Dear Mr. Nelson:

This office has received your Petition for Writ of Certiorari and Appendix in the above matter. It has been assigned the Case Tracking Number that appears above. Please use this number on all future correspondence relating to this matter.

I do wish to call the attention of the parties to the attached order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will not review filings for redaction or to determine if materials should be sealed.

Very truly yours,



CLERK

DES/lda

Enclosure

cc: Fleet Freeman, Esquire  
The Honorable Tanya Gee



Attorneys Serving the Lowcountry

November 23, 2011

RECEIVED

NOV 28 2011

The Honorable Daniel E. Shearouse  
South Carolina Supreme Court  
1231 Gervais Street  
Columbia, South Carolina 29211

S.C. Supreme Court  
pm 11-23-11

RE: Robert B. Shealy, Jr. v. Paul E. Shelton Revocable Trust  
Case Tracking No: 2009128448  
Case No.: 06-CP-10-0991

Dear Mr. Shearouse:

Please find enclosed an original and seven (7) copies of Petition For A Writ of Certiorari, an original and one (1) copy of a Proof of Service, and two (2) copies of the Appendix in the referenced matter. Please return one clocked copy each of the Petition for A Writ of Certiorari and Proof of Service to my office in the envelope provided. I have enclosed check number 9125 in the amount of \$100.00 for the filing fee.

By copy of this letter, I am serving opposing counsel and the Court of Appeals with the Petition for Writ of Certiorari and Proof of Service. Should you have any questions, please feel free to contact our office at (843) 284-5500. Thank you for your assistance in this matter.

Sincerely,

Thomas C. Nelson

cc: South Carolina Court of Appeals  
Fleet Freeman, Esquire  
Robert B. Shealy, Jr.

check #9125  
\$100.00

Local 843-284-5500 Toll Free 877-913-5500 Fax 843-284-5501

1004 Anna Knapp Blvd., 2nd Floor • Mount Pleasant, South Carolina 29464  
Reply to: P. O. Box 1543 • Mount Pleasant, South Carolina 29465-1543

www.charlestonlaw.net





Attorneys Serving the Lowcountry

RECEIVED  
OCT 20 2011

SC Court of Appeals

October 19, 2011

South Carolina Supreme Court  
Post Office Box 11330  
1231 Gervais St. 29201  
Columbia South Carolina 29211

RECEIVED

OCT 21 2011

RE: <sup>Pet.</sup> Robert B. Shealy, Jr. v. Paul E. Shelton Revocable Trust  
Case No.: 06-CP-10-0991 <sup>Resp.</sup>  
Matter ID: 9100933

S.C. Supreme Court  
pm 10-19-11

Dear Sir/Ma'am:

Please accept this correspondence as a formal request for a continuance to file a Petition for Writ of Certiorari in the above-referenced case. By our records, our petition is due October 24, 2011. We would kindly request a thirty (30) day extension of this deadline due to other hearings and deadlines which have made it difficult to complete the petition. I have enclosed our firm's check in the amount of \$25.00 to cover the fee for our request.

By copy of this letter, I am serving Fleet Freeman, Esquire, attorney for Defendant, and the South Carolina Court of Appeals.

Thank you for your consideration of this matter.

Sincerely,

*s/ Thomas Nelson*

Thomas Nelson

Check # 9059  
\$ 25.00

TCN/kgf

cc: Fleet Freeman, Esquire  
SC Court of Appeals

Local 843-284-5500 Toll Free 877-913-5500 Fax 843-284-5501

1004 Anna Knapp Blvd., 2nd Floor • Mount Pleasant, South Carolina 29464  
Reply to: P. O. Box 1543 • Mount Pleasant, South Carolina 29465-1543

www.charlestonlaw.net