

85635

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

The Honorable J.C. Nicholson, Jr., Circuit Court Judge

Case No.: 2016-CP-10-1849  
Appellate Court Case No. 2017-001620

**RECEIVED**  
JAN 11 2018  
SC Court of Appeals

Robert N. Baty.....Appellant,

v.

Lydia B. Welling ..... Respondent.

**RESPONDENT LYDIA B. WELLING’S MOTION TO DISMISS APPEAL**

Respondent Lydia B. Welling, by and through her undersigned counsel, moves for dismissal of Appellant Robert N. Baty’s appeal for failure to comply with South Carolina Appellate Court Rule 208(a).

**I. BACKGROUND / PROCEDURAL HISTORY**

This case originated out of a May 6, 2013 automobile accident. In responding to Appellant’s Complaint filed in the lower Court, Respondent Welling filed a Motion to Dismiss for lack of proper service. A hearing on Welling’s Motion to Dismiss was held on January 26, 2017 in front of the Honorable J.C. Nicholson, Jr. Respondent Welling was dismissed from this action by Order signed March 9, 2017 and filed March 14, 2017. On March 24, 2017, Appellant sent for filing a one sentence Motion for Reconsideration pursuant to South Carolina Rule of

Civil Procedure 59(e). Appellant's Memorandum in support of their Motion for Reconsideration was sent to opposing counsel and The Honorable J.C. Nicholson, Jr. on April 3, 2017. A hearing on Appellant's Motion for Reconsideration was held on June 12, 2017. The Honorable J.C. Nicholson, Jr. signed an Order, dated July 5, 2017, denying Respondent's Motion for Reconsideration. On July 25, 2017, Appellant sent their Notice of Appeal for filing.

## **II. ARGUMENT IN SUPPORT OF MOTION TO DISMISS THE APPEAL**

Respondent Welling moves for dismissal of this appeal as the Appellant failed to meet the brief submission deadline under South Carolina Appellate Court Rule 208(a). Appellate Court Rule 208(a) mandates that, "Within thirty (30) days after receiving the transcript [. . .] appellant shall serve one copy of his brief on all parties to the appeal, and file with the clerk of the appellate court one copy of the brief with proof of service." The Appellant knowingly failed to meet the deadline set forth.

The Clerk for the Court of Appeals sent several letters to the parties following the Notice of Appeal. On August 9, 2017, the Clerk sent a letter stating the time to order hearing transcripts had expired. On August 14, 2017, Appellant provided the Court and Respondent copies of their letters to the two respective court reporters, dated August 3, 2017, requesting the hearing transcripts from January 26, 2017 and June 12, 2017 (Exhibit A). In response to the Court's requirement the requests for transcripts be provided to Court Administration, the Appellant resent the letters to Court Administration in a letter dated September 15, 2017 (Exhibit B).

On October 9, 2017, the Court sent a letter to the Appellant stating that they had not yet received the transcripts. In response, the Appellant provided the transcripts to the Court in a letter dated October 12, 2017 (Exhibit C). The January 26, 2017 transcript was signed/certified

by the court reporter on August 11, 2017. The June 12, 2017 transcript was signed/certified by the court reporter on August 8, 2017.

Appellant then sent and served their initial brief for filing on November 10, 2017, one day before the purported thirty (30) day expiration after their October 12<sup>th</sup> letter transmitting the transcripts to the Court, but not within thirty (30) days from the date they actually received the transcripts.

Upon email correspondence with Joy Rueger, the court reporter for the January 26, 2017 hearing, it was confirmed that she sent Appellant the hearing transcript via two-day priority mail on August 22, 2017 (Exhibit D). Correspondence with Phyllis H. Norton, the court reporter for the June 12, 2017 hearing, confirmed that transcript was sent to Appellant on August 9, 2017 via e-mail (Exhibit E).

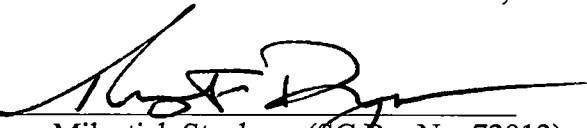
Assuming the two day mail arrived on or about August 24, 2017, Appellant was required to file their initial brief no later than September 25, 2017. Not only did Appellant significantly miss the deadline to file their brief, by 46 days, but Appellant corresponded with Court Administration transmitting their letters requesting the transcripts to the Court and opposing counsel while already in possession of the transcripts.

### **III. CONCLUSION**

For all the reasons stated above, Respondent Welling respectfully moves for the dismissal of this appeal with prejudice for Appellant's knowing failure to comply with South Carolina Rule of Appellate Procedure 208(a).

Respectfully Submitted,

ANDERSON REYNOLDS & STEPHENS, LLC

By:   
Shanna Milcetic Stephens (SC Bar No. 72012)  
Thomas F. Drazan (SC Bar No. 101180)

Post Office Box 87

Charleston, South Carolina 29402

(843) 723-0185 - office

(843) 405-0313 – facsimile

[sstephens@arlawsc.com](mailto:sstephens@arlawsc.com)

[tdrazan@arlawsc.com](mailto:tdrazan@arlawsc.com)

**Attorneys for Respondent Lydia B. Welling**

Charleston, South Carolina

Dated: January 8, 2018

(888) 800-BILL  
**GREENI**

law firm llc

August 14, 2017

RECEIVED  
8/16/17  
WP

SC Court of Appeals  
PO Box 11629  
Columbia, SC 29211

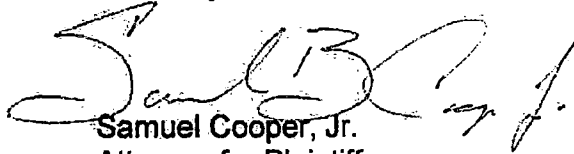
RE: Robert N. Baty v. Lydia B. Welling and Amanda L. Lockman  
Appellate Case no. 2017-001620  
CP Case No.: 2015-CP-10-1849

Dear Madam Clerk

Attached with this letter are copies of my letters to the Court reporters requesting the transcripts from both the original motion hearing and the motion to reconsider. Both request were made on August 3, 2017. A motion requesting permission to Order Transcripts outside of the filing deadline of Rule 207 will follow.

If you have any questions, please contact me at (843) 266-6875.

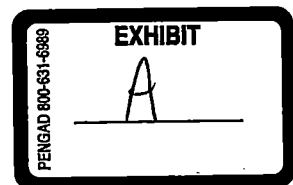
Sincerely,



Samuel Cooper, Jr.  
Attorney for Plaintiff

CC: Shana M. Stephens ✓  
Christy Fargnoli

William A. Green | Samuel B. Cooper, Jr. | Keith Robinson | Bradd W. Bunce  
Eric D. Saleme | Richard T. Vriesinga | B. Parker Green | Jason LeBaron | David R. Schlosser, II  
Charleston 3511 Rivers Avenue | P.O. Box 70306 | N. Charleston, SC 29415 | 843.747.2455 | Fax 843.554.4496  
Columbia 2821 Millwood Avenue | P.O. Box 1698 | Columbia, SC 29202 | 803.771.2455 | Fax 803.771.2465



(843) 266-6111  
**GREEN**  
law firm llc

August 3, 2017

Phyllis Norton  
636 Long Point Road  
Unit G, #74  
Mt. Pleasant, SC 29464

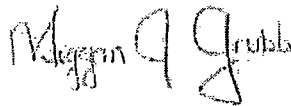
RE: Robert N. Baty v. Lydia B. Welling and Amanda L. Lockman  
Case No.: 2016-CP-10-1849

Dear Ms. Norton:

Our firm represents the plaintiff in the above-referenced matter. Please allow this letter to serve as our request for a copy of the transcript of the hearing that was held on 6/12/2017 in front of Honorable J.C. Nicholson.

If you have any questions, please contact me at (843) 266-6875 or [Meggan@bill-green.com](mailto:Meggan@bill-green.com).

Sincerely,



Meggan J. Grubb  
Litigation Paralegal for  
Samuel B. Cooper, Jr., Esq.

CC: Christy Fagnoli, Esq.  
Shanna Stephens, Esq.



August 3, 2017

Joyce C. Rueger  
PO Box 1472  
Johns Island, SC 29457

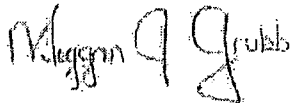
RE: Robert N. Baty v. Lydia B. Welling and Amanda L. Lockman  
Case No.: 2016-CP-10-1849

Dear Ms. Rueger:

Our firm represents the plaintiff in the above-referenced matter. Please allow this letter to serve as our request for a copy of the transcript of the hearing that was held on 1/26/2017 in front of Honorable J.C. Nicholson.

If you have any questions, please contact me at (843) 266-6875 or [Meggan@bill-green.com](mailto:Meggan@bill-green.com).

Sincerely,



Meggan J. Grubb  
Litigation Paralegal for  
Samuel B. Cooper, Jr., Esq.

CC: Christy Fagnoli, Esq.  
Shanna Stephens, Esq.

(888) 800-BILL  
**GREENI**  
law firm llc

9/15/17  
UP

September 15, 2017

The Office of Court Administration  
1220 Senate Street  
Suite 201  
Columbia, SC 29201

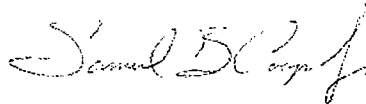
RE: Robert N. Baty v. Lydia B. Welling  
Case No.: 2017-001620

Dear Sir or Madam:

Enclosed please find copies of the correspondence sent to court reporters, Joyce C. Rueger and Phyllis Norton, on August 3, 2017 requesting copies of hearing transcripts for the above-referenced matter.

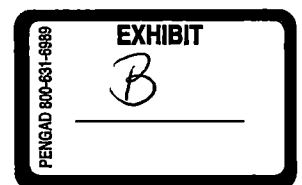
If you have any questions, please contact me at (843) 266-6875.

Sincerely,



Samuel Cooper, Jr.  
Attorney for Plaintiff

CC: Shana M. Stephens, Esq. ✓  
Johnny Stewart, Esq.  
Claire Allen, SC Court of Appeals



(888) 800-BILL

**GREEN**

law firm llc

August 3, 2017

Phyllis Norton  
636 Long Point Road  
Unit G, #74  
Mt. Pleasant, SC 29464

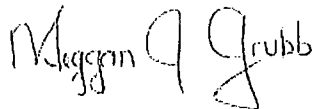
RE: Robert N. Baty v. Lydia B. Welling and Amanda L. Lockman  
Case No.: 2016-CP-10-1849

Dear Ms. Norton:

Our firm represents the plaintiff in the above-referenced matter. Please allow this letter to serve as our request for a copy of the transcript of the hearing that was held on 6/12/2017 in front of Honorable J.C. Nicholson.

If you have any questions, please contact me at (843) 266-6875 or [Meggan@bill-green.com](mailto:Meggan@bill-green.com).

Sincerely,



Meggan J. Grubb  
Litigation Paralegal for  
Samuel B. Cooper, Jr., Esq.

CC: Christy Fagnoli, Esq.  
Shanna Stephens, Esq.



(888) 800-BILL

# GREEN

law firm llc

October 12, 2017

The Office of Court Administration  
1220 Senate Street  
Suite 201  
Columbia, SC 29201

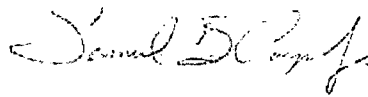
RE: Robert N. Baty v. Lydia B. Welling  
Case No.: 2017-001620

Dear Sir or Madam:

Enclosed please find copies of the hearing transcripts for hearing dates 1/26/17 and 6/12/17 regarding the above-referenced matter.

If you have any questions, please contact me at (843) 266-6875.

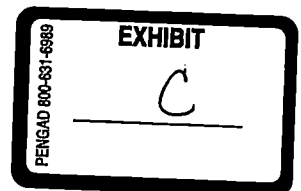
Sincerely,



Samuel Cooper, Jr.  
Attorney for Plaintiff

CC: Shana M. Stephens, Esq.  
Johnny Stewart, Esq.  
Claire Allen, SC Court of Appeals

William A. Green | Samuel B. Cooper, Jr. | Keith Robinson | Bradd W. Bunce  
Eric D. Saleme | B. Parker Green | Jason LeBaron | Brian R. Holmes | Julian A. Ferguson  
Charleston 3511 Rivers Avenue | P.O. Box 70306 | N. Charleston, SC 29415 | 843.747.2455 | Fax 843.554.4496  
Columbia 2821 Millwood Avenue | P.O. Box 1698 | Columbia, SC 29202 | 803.771.2455 | Fax 803.771.2465



## Thomas Drazan

---

**From:** Rueger, Joyce <jrueger@sccourts.org>  
**Sent:** Thursday, December 07, 2017 8:35 AM  
**To:** Thomas Drazan  
**Subject:** Re: 2016-CP-10-01849, Baty vs. Welling and Lockman

The date the transcript was mailed is the date when I received payment, in this case on the 22nd. The date on the certificate page is obviously when the transcript was actually produced. That's why the dates are different.

The cost for a copy is \$23.15. If you will mail me a check in that amount I'll be happy to mail one out to you. Thanks.

Joy Rueger, CVR-M  
Official Circuit Court Reporter  
9th Judicial Circuit  
P.O. Box 1472  
Johns Island, SC 29457

---

**From:** Thomas Drazan <tdrazan@arlawsc.com>  
**Sent:** Wednesday, December 6, 2017 7:10 PM  
**To:** Rueger, Joyce  
**Subject:** Re: 2016-CP-10-01849, Baty vs. Welling and Lockman

Thank you very much, just to confirm it was August 22nd, you had signed the certificate on August 11th.

I just want to clarify for our records, it is of little consequence for timing matters. Thank you again for running this down for me I very much appreciate it and if you could give me a price on a copy I would greatly appreciate it.

Tom

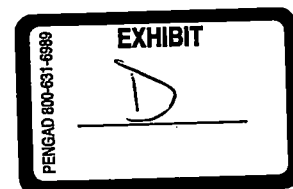
Thomas Drazan  
410-491-1250

Sent from my mobile device, please excuse any typographical errors.

On Dec 5, 2017, at 1:33 PM, Rueger, Joyce <jrueger@sccourts.org<mailto:jrueger@sccourts.org>> wrote:

The certified transcript was mailed to Mr. Cooper via 2-day priority mail on August 22, 2017. There was no enclosure letter; only the invoice for his records.

Joy Rueger, CVR-M  
Official Circuit Court Reporter  
9th Judicial Circuit



P.O. Box 1472  
Johns Island, SC 29457

---

From: Thomas Drazan <tdrazan@arlawsc.com<mailto:tdrazan@arlawsc.com>>  
Sent: Tuesday, December 5, 2017 1:27 PM  
To: Rueger, Joyce  
Subject: RE: 2016-CP-10-01849, Baty vs. Welling and Lockman

Mrs. Rueger,

The timing of certain deadlines begin at the receipt of your transcript. This information is necessary for my client to calculate deadlines related to the appeal. If this presents a problem please let me know as soon as possible or feel free to give me a call with questions at 843-723-0185.

Thank you,

Thomas F. Drazan

Street Address: 37 1/2 Broad Street, Charleston, SC 29401 Mailing Address: P.O.Box 87 Charleston, SC 29402  
Email address: tdrazan@arlawsc.com<mailto:tdrazan@arlawsc.com> phone 843-723-0185 fax 843-723-0977

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-----Original Message-----

From: Rueger, Joyce [mailto:jrueger@sccourts.org]  
Sent: Tuesday, December 05, 2017 1:09 PM  
To: Thomas Drazan <tdrazan@arlawsc.com<mailto:tdrazan@arlawsc.com>>  
Subject: Re: 2016-CP-10-01849, Baty vs. Welling and Lockman

May I ask why you want this information?

Joy Rueger, CVR-M  
Official Circuit Court Reporter  
9th Judicial Circuit  
P.O. Box 1472  
Johns Island, SC 29457

---

From: Thomas Drazan <tdrazan@arlawsc.com<mailto:tdrazan@arlawsc.com>>  
Sent: Tuesday, December 5, 2017 12:10 PM  
To: Rueger, Joyce  
Cc: Shanna Stephens; samuelbeverly@bill-green.com<mailto:samuelbeverly@bill-green.com>; meggan@bill-green.com<mailto:meggan@bill-green.com>;  
jstewart@clawsonandstaubes.com<mailto:jstewart@clawsonandstaubes.com>;  
mgreen@clawsonandstaubes.com<mailto:mgreen@clawsonandstaubes.com>; Laura Phillips  
Subject: 2016-CP-10-01849, Baty vs. Welling and Lockman

Mrs. Rueger,

You had previously provided a certified transcript for 2016-CP-10-01849, Baty vs. Welling and Lockman to Plaintiff's counsel. The transcript was for a hearing on January 26, 2017. Your certification reference number is #081117. As counsel for Welling I was wondering if you could provide us with the date you sent the certified transcript and a copy of the enclosure letter transmitting it to Plaintiff for our records.

If you have any questions or we need to provide anything to you to complete this request please do not hesitate call me at 843-723-0185.

Thank you,

Thomas F. Drazan

[Description: Description: C:\Users\janderson\AppData\Local\Microsoft\Windows\Temporary Internet Files\Content.Word\12.andersonlogo\_final\_hi\_res.png]  
Street Address: 37 1/2 Broad Street, Charleston, SC 29401 Mailing Address: P.O.Box 87 Charleston, SC 29402  
Email address: tdrazan@arlawsc.com<mailto:tdrazan@arlawsc.com><mailto:tdrazan@arlawsc.com> phone 843-723-0185 fax 843-723-0977

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## Thomas Drazan

---

**From:** Thomas Drazan  
**Sent:** Wednesday, December 06, 2017 5:31 PM  
**To:** Laura Phillips; Shanna Stephens  
**Subject:** FW: 2016-CP-10-01849, Baty vs. Welling and Lockman; Hearing June 12, 2017  
**Attachments:** image001.jpg

-----Original Message-----

**From:** Norton, Phyllis H. [mailto:pnorton@sccourts.org]  
**Sent:** Wednesday, December 06, 2017 5:11 PM  
**To:** Thomas Drazan <tdrazan@arlawsc.com>  
**Subject:** Re: 2016-CP-10-01849, Baty vs. Welling and Lockman; Hearing June 12, 2017

The hearing for this transcript was held June 12, 2017. The transcript was ordered by letter dated August 3, 2017. The transcript was provided August 9, 2017 via email. If you would like to order a copy of the transcript the cost would be \$11.25.

If you need additional information, please let me know.

Phyllis

Phyllis Norton, CVR-Master  
Court Reporter, 9th Circuit  
636 Long Point Road, Unit G, #74  
Mt. Pleasant, SC 29464

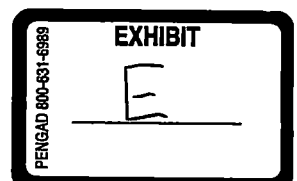
---

**From:** Thomas Drazan <tdrazan@arlawsc.com>  
**Sent:** Monday, December 4, 2017 6:50 PM  
**To:** Norton, Phyllis H.  
**Cc:** Shanna Stephens; samuelbeverly@bill-green.com; meggan@bill-green.com; jstewart@clawsonandstaubes.com; mgreen@clawsonandstaubes.com; Laura Phillips  
**Subject:** 2016-CP-10-01849, Baty vs. Welling and Lockman

Mrs. Norton,

You had previously provided a certified transcript for 2016-CP-10-01849, Baty vs. Welling and Lockman to Plaintiff's counsel. Your certification reference number is #080817. As counsel for Welling I was wondering if you could provide us with the date you sent the certified transcript and a copy of the enclosure letter transmitting it for our records.

If you have any questions or we need to provide anything to you to complete this request please do not hesitate call me at 843-723-0185.



Thank you,

Thomas F. Drazan

[Description: Description: C:\Users\janderson\AppData\Local\Microsoft\Windows\Temporary Internet Files\Content.Word\12.andersonlogo\_final\_hi\_res.png]

Street Address: 37 1/2 Broad Street, Charleston, SC 29401 Mailing Address: P.O.Box 87 Charleston, SC 29402

Email address: tdrazan@arlawsc.com<mailto:tdrazan@arlawsc.com> phone 843-723-0185 fax 843-723-0977

**Confidentiality Notice:**

This message is intended exclusively for the individual or entity to which it is addressed. This communication may contain information that is proprietary, privileged, confidential or otherwise legally exempt from disclosure. If you are not the named addressee, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you have received this message in error, please notify Thomas Drazan immediately either by phone (843-723-0185) or reply to this e-mail and delete all copies of this message.

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THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

The Honorable J.C. Nicholson, Jr., Circuit Court Judge

Case No.: 2016-CP-10-1849  
Appellate Court Case No. 2017-001620

**RECEIVED**  
JAN 11 2018  
SC Court of Appeals

Robert N. Baty.....Appellant,

v.

Lydia B. Welling ..... Respondent.

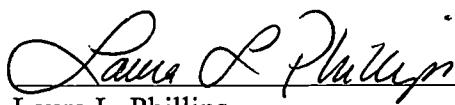
**PROOF OF SERVICE**

The undersigned hereby certifies that on the date indicate below, she served the following counsel with a copy of the Motion to Dismiss by mailing copies of same via United States Mail with first class postage prepared to the following addresses:

Samuel B. Cooper, Jr., Esquire  
Green Law Firm, LLC  
3511 Rivers Avenue  
P.O. Box 70306  
Charleston, SC 29415

Johnny J. Stewart, Esquire  
Clawson and Staubes, LLC  
126 Seven Farms Drive, Suite 200  
Charleston, SC 29492

January 8, 2018  
Charleston, SC

  
\_\_\_\_\_  
Laura L. Phillips  
ANDERSON REYNOLDS & STEPHENS, LLC

# ANDERSON REYNOLDS & STEPHENS, LLC

ATTORNEYS AT LAW  
37 ½ BROAD STREET  
POST OFFICE BOX 87  
CHARLESTON, SOUTH CAROLINA 29402

JONATHAN J. ANDERSON  
LISA A. REYNOLDS  
SHANNA M. STEPHENS  
CURTIS B. MARTIN  
THOMAS F. DRAZAN  
W. COLEMAN LAWRIEMORE

TEL. 843-723-0185  
FAX. 843-405-0313  
email: [sstephens@arslawsc.com](mailto:sstephens@arslawsc.com)

January 8, 2018

**RECEIVED**

JAN 11 2018

SC Court of Appeals

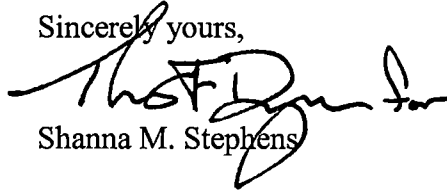
The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
1220 Senate Street (29201)  
P.O. Box 11629  
Columbia, SC 29211

Re: Robert N. Baty v. Lydia B. Welling and Amanda L. Lockman  
Case #: 2016-CP-10-1849  
Appellate Case No.: 2017-001620  
Claim #: 01-B1G7749D-100005  
AR & S #: 20160.26

Dear Ms. Kitchings:

Please find enclosed the original and seven (7) copies of Respondent Lydia B. Welling's Motion to Dismiss in the above-referenced matter. Upon filing, please return one (1) clocked copy of the Motion and Proof of Service to me in the self-addressed, postage paid envelope enclosed. Also enclosed is our firm's check in the amount of \$25.00 for the corresponding fee.

Sincerely yours,



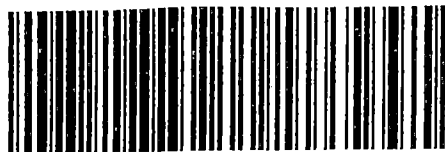
Shanna M. Stephens

SMS/llp  
Enclosure

cc: Samuel B. Cooper, Jr., Esquire  
Johnny J. Stewart, Esquire

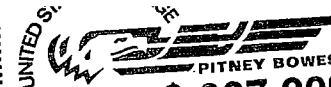
POSTAL SERVICE®

USPS TRACKING #



9114 9999 4431 3214 3770 57

LAB400R Aug. 2013  
7690-17-000-0669



02 1P  
0001981436 JAN 08 2018  
MAILED FROM ZIP CODE 29401

PITNEY BOWES  
\$ 007.20<sup>00</sup>

**ANDERSON REYNOLDS & STEPHENS, LLC**

37 1/2 Broad Street  
Post Office Box 87  
Charleston, S.C. 29402

**RECEIVED**  
JAN 11 2018  
SC Court of Appeals

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
1220 Senate Street (29201)  
P.O. Box 11629  
Columbia, SC 29211