

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

J. C. Nicholson, Circuit Court Judge

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Consolidated Case Nos. 2010-CP-10-5520; 2010-CP-10-7233;  
2012-CP-10-5559; 2013-CP-10-3733; 2013-CP-10-4176;  
2013-CP-10-4176; 2015 CP-10-5486; 2016-CP-10-1632

Appellate Case No. 2017-001996

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MAR 30 2018  
SC Court of Appeals

John Doe 2 and Jane Doe 4, John Doe 10, Jane Doe 11,  
John Doe 193, Father Doe 194, John Doe 194, John Doe 245  
and Father Doe 245, and John Doe 297 ..... Appellants,

v.

The Bishop of Charleston, a Corporation Sole,  
Robert Gugliemone, The Bishop of Charleston, in his official capacity,  
Rev. Monsignor Martin Laughlin, former Administrator of the  
Diocese of Charleston, in his official capacity, Robert J. Baker,  
former Bishop of Charleston, in his official capacity,  
Lawrence E. Richter, Jr., David K. Haller,  
and Richter and Haller, LLC ..... Respondents.

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**RESPONDENTS/LAWYER DEFENDANTS' SUPPLEMENTAL RESPONSE IN  
OPPOSITION TO APPELLANTS/PLAINTIFF'S MOTION TO REINSTATE APPEAL**

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Defendants / Respondents Lawrence E. Richter, Jr., Richter & Haller, LLC, and David K. Haller (the "Lawyer Defendants") submit this Supplemental Response in opposition to the Motion to Reinstate Appeal filed by Plaintiffs / Appellants ("Plaintiffs") based upon events postdating the Lawyer Defendants' initial Response which demonstrate a continual failure by Appellants to comply with the Rules of Appellate Practice and this Court's directives.

## ARGUMENT

Since filing the Motion to Reinstate these consolidated appeals, Appellants have repeatedly failed to serve the Lawyer Defendants with papers they have filed with the Court of Appeals. By rule, Appellants are required to serve all opposing counsel, including the Lawyer Defendants, with copies of correspondence both with the court reporter and with this Court. *See* Rule 207(a)(1), SCACR (“Appellant shall contemporaneously furnish all counsel of record, the Office of Court Administration, and the clerk of the appellate court with copies of all correspondence with the court reporter.”); Rule 262(a)(2), SCACR (“Any document filed with the appellate court shall be accompanied by proof of service of such document on all parties.”); Rule 262(b), SCACR (“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.”). A lawyer’s communications to a court without the knowledge of opposing counsel are *ex parte*, something explicitly condemned in this State unless specifically authorized by law or court order. *Burgess v. Stern*, 311 S.C. 326, 330, 428 S.E.2d 880, 883 (1993) (“South Carolina case law and rule-making authorities are well synchronized on the prohibition against *ex parte* contacts.”); and Rule 3.5(b), SCRPC (prohibiting an attorney from *ex parte* communications unless authorized to do so by law or court order).

On January 25, 2018, this Court directed Appellants’ counsel to provide a copy of his January 22<sup>nd</sup> letter to opposing counsel. Having investigated the matter, the undersigned certifies that counsel for Richter and Richter & Haller, LLC has not been provided a copy of that letter from Appellants’ counsel as the Court directed.

More recently, Appellants’ counsel set forth a detailed explanation of his actions and inactions in a February 19, 2018 letter to the Court. Although not in the form of a motion, that

letter is in effect a new motion, setting forth new grounds for reinstatement, required to be served on all counsel of record. *See* Rule 240(d), SCACR (requiring that “a copy shall be served upon each party.”). The February 19<sup>th</sup> letter indicates “Counsel of Record” were served copies, but they were not. Having investigated the matter, the undersigned certifies to the Court that counsel for Richter and Richter & Haller, LLC has not been provided a copy of the February 19<sup>th</sup> letter from Appellants’ counsel. Counsel is also informed and believes Appellants’ counsel never provided a copy of that letter to counsel for Haller. Rather, the Lawyer Defendants were first made aware of the February 19<sup>th</sup> letter when they accessed a copy from the Court’s web site. Apparently, the only attorney of record provided a copy of the February 19<sup>th</sup> letter was counsel for the Diocese Defendants.

Appellants’ counsel has provided no allowable excuse for these repeated failures to comply with clear appellate court procedure and with the specific directives of this Court. In his Motion to Reinstate filed on January 22, 2018, Appellants’ counsel certified to this Court that “[n]o brief has been submitted only because no transcript has been received from the court reporter.” In their Response in Opposition to the Motion filed the same day, the Lawyer Defendants made the Court aware that Appellants’ counsel had, in fact, “received” the transcript on November 28, 2017, as evidenced by his written communications with the court reporter. *See Canal Ins. Co. v. Caldwell*, 338 S.C. 1, 5, 524 S.E.2d 416, 418 (Ct. App. 1999) (holding receipt by means other than U.S. Mail sufficient to trigger clock under Rule 203(b)); *see also Wells Fargo Bank, N.A. v. Fallon Props. S.C., LLC*, Op. No. 27773, 2018 S.C. LEXIS 15 (Feb. 28, 2018) (holding receipt by email sufficient under Appellate Court Rules and overruling precedent “to the extent it holds otherwise and interprets ‘receipt of the decision’ to require receipt of the decision by mail or hand delivery in order to trigger the time to appeal under Rule 203(b)(6), SCACR.”). Appellants’ counsel received

a copy of the Lawyer Defendants' opposition, but he *continued* to claim he had not received the transcript. (Letter from Appellants' Counsel to Court, January 22, 2018.)

On January 26, 2018 the court reporter wrote Court Administration, with a copy to Appellants' counsel, stating, "The transcript was delivered to Mr. Myers on November 28, 2017 by email *with email confirmation of receipt on the same date.*" Still, however, Appellants' counsel *continued* to deny the transcript had been received. (Letter from Appellants' Counsel to Court, February 8, 2018 ("To date we have not received the transcript.")) The court reporter wrote Appellants' counsel again on February 13, 2018, responding to his repeated claims that the transcript had not been received and explaining yet again that counsel did, in fact, receive the transcript on November 28, 2017. "I asked at that time if you needed a hard copy forwarded by regular mail. On that same date in response you said, 'Thank you very much. The pdf version is fine'." (Letter from Court Reporter to Appellants' Counsel, February 13, 2018.)

Faced with that mounting, indisputable evidence that he did, in fact, receive the transcript on November 28, 2017, Appellants' counsel now claims "that it is true both that Ms. Richardson sent me in November what should have gotten me the transcript and that I did not receive it until it arrived in paper form on February 15." That statement is false even considering the circumstances described in the February 19<sup>th</sup> letter. Counsel merely attempts to obfuscate three critical facts: (i) that he in fact received the transcript on November 28, 2017, (ii) that he *continued* to claim he had not received the transcript despite multiple letters and emails demonstrating otherwise, and (iii) that he continued to violate the Rules of Appellate Practice and this Court's directives by filing papers with the Court without serving copies on opposing counsel.

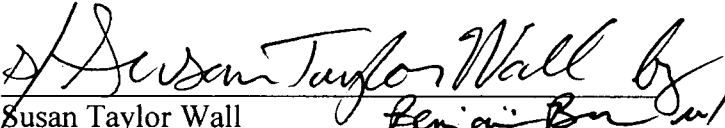
The Rules unequivocally require an appellant to timely file and serve his brief, to serve copies of filings and other papers to opposing counsel, and to follow other directives of the Court.

Appellants have repeatedly failed to do these things, even after filing their Motion to Reinstate, and no explanation they have offered warrants reinstatement under the Rules.

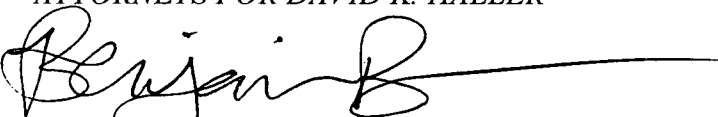
**CONCLUSION**

Repeated failures to follow the South Carolina Appellate Court Rules and this Court's directives do not constitute inadvertent error, nor do they equate to good cause. For these reasons, in addition to those set forth in the Lawyer Defendants' Response in Opposition to the Motion to Reinstate, the motion to reinstate these consolidated appeals should be DENIED.

Respectfully submitted,

  
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March 30, 2018  
Columbia, South Carolina

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

J. C. Nicholson, Circuit Court Judge

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**PROOF OF SERVICE**

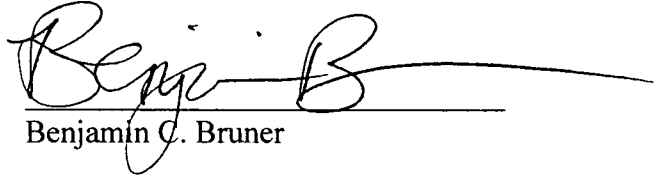
I, Benjamin C. Bruner, counsel for Respondents Lawrence E. Richter, Jr., Richter & Haller, LLC, certify that I have served a copy of the attached **RESPONDENTS/LAWYER DEFENDANTS' SUPPLEMENTAL RESPONSE IN OPPOSITION TO APPELLANTS/PLAINTIFF'S MOTION TO REINSTATE APPEAL** by depositing a copy of it in the U.S. Mail, postage prepaid, on March 30, 2018, addressed to the following:

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*Attorneys for David K. Haller*

March 30, 2018

  
Benjamin C. Bruner

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March 30, 2018

## VIA HAND DELIVERY

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

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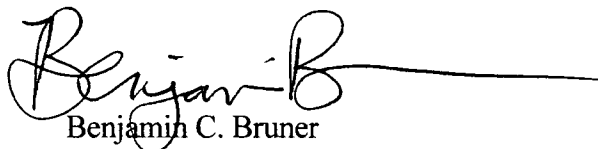
SC Court of Appeals

**RE: *Doe v. The Bishop of Charleston, et al.***  
**Appellate Case No.: 2017-001996**  
**Bruner Powell File No.: 3716134.200**

Dear Ms. Kitchings:

Please find enclosed for filing the original and six (6) copies of the Lawyer Defendants' Supplemental Response in Opposition to Appellants' Motion to Reinstate this appeal.

Sincerely,

  
Benjamin C. Bruner

BCB/gh  
Enclosures

cc: Gregg E. Meyers, Esquire  
Richard S. Dukes, Jr., Esquire  
Brian James Kern, Esquire  
Susan Taylor Wall, Esquire  
Henry Wilkins Frampton, IV, Esquire