

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT
H.W. Funderburk, Jr., Administrative Law Court Judge

Appellate Case No. 2017-002455
Case No. 16-ALJ-30-0410-CC

RECEIVED
JUN 01 2018
SC Court of Appeals

Wayne's Automotive Center, Inc., Appellant-Respondent,

v.

South Carolina Department of Public Safety, Respondent-Appellant.

**MOTION TO ACCEPT
FILING OUT OF TIME**

The Respondent-Appellant South Carolina Department of Public Safety respectfully moves this Court to accept the Initial Appellant's Brief of Respondent-Appellant and the Respondent-Appellant's Designation of Matter to be Included in the Record on Appeal for filing one day out of time.

The Respondent-Appellant's motion is based on the following grounds:

1. The Initial Appellant's Brief of Respondent-Appellant and Respondent-Appellant's Designation of Matter to be Included in the Record on Appeal were due to be filed by May 29, 2018.

2. The undersigned counsel for the Respondent-Appellant was unable to complete the preparation of the Initial Appellant's Brief of Respondent-Appellant and Respondent-Appellant's Designation of Matter to be Included in the Record on Appeal by the deadline, because he was involved in a ten-hour Rule 30(b)(6) deposition in a federal class action on that date (May 29, 2018). In addition, the undersigned counsel had another appellate brief due in the South Carolina Supreme Court on that same date.

3. The undersigned counsel consulted with opposing counsel who kindly consented to the one-day extension by email correspondence (see attached).

WHEREFORE, the Respondent-Appellant South Carolina Department of Public Safety respectfully requests that the Court accept the filing of the Initial Appellant's Brief of Respondent-Appellant and Respondent-Appellant's Designation of Matter to be Included in the Record on Appeal one day out of time.

LINDEMANN, DAVIS & HUGHES P.A.

BY: 

ANDREW F. LINDEMANN #13030
5 Calendar Court, Suite 202
Post Office Box 6923
Columbia, South Carolina 29260
(803) 881-8920

-AND-

MARCUS K. GORE, #73647
General Counsel
South Carolina Department of Public Safety
Post Office Box 1993
Blythewood, South Carolina 29016
(803) 896-7780

*Counsel for Respondent-Appellant
South Carolina Department of Public Safety*

May 30, 2018

Andrew Lindemann

From: Ray Lark <relark@AustinRogersPA.com>
Sent: Tuesday, May 29, 2018 9:00 PM
To: Andrew Lindemann
Cc: Marc Gore; Margaret Duncan
Subject: RE: Wayne's

Okay.

Sent via the Samsung GALAXY S[®]4, an AT&T 4G LTE smartphone

----- Original message -----

From: Andrew Lindemann <Andrew@LDH-Law.com>
Date: 05/29/2018 8:35 PM (GMT-05:00)
To: Ray Lark <relark@AustinRogersPA.com>
Cc: Marc Gore <marcusgore@scdps.gov>, Margaret Duncan <mkduncan@AustinRogersPA.com>
Subject: Re: Wayne's

That's fine. Thanks

Sent from my iPhone

On May 29, 2018, at 8:34 PM, Ray Lark <relark@AustinRogersPA.com> wrote:

Okay until tomorrow, May 30, provided you do not review-- or get input from Marc, etc. who has reviewed--our stuff hand delivered today in doing so. Agreed? Ray

Raymon E. Lark, Jr.
Shareholder & Vice President
Austin & Rogers, P.A.
508 Hampton Street, Suite 203
Columbia, SC 29201
803/256-4000
803/252-3679 (fax)
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From: Andrew Lindemann [<mailto:Andrew@LDH-Law.com>]

Sent: Tuesday, May 29, 2018 8:08 PM

To: Ray Lark <relark@AustinRogersPA.com>

Subject: Wayne's

Importance: High

Ray:

I have a huge favor to ask. I just got out of a 30(b)(6) deposition of s state agency that started at 10 this morning. I am just beat but I still need to finish my appellant's brief tonight. Will you agree to a one day extension so that I can file it tomorrow one day out of time? I had another appellate brief due in the Supreme Court today as well, but I at least got that one finished and filed. I would appreciate the courtesy.

Thanks.

Andrew

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CERTIFICATE OF SERVICE

The undersigned employee of Lindemann, Davis & Hughes, P.A., counsel for the Respondent-Appellant South Carolina Department of Public Safety, does hereby certify that service of the **Motion to Accept Filing Out of Time, Initial Appellant's Brief of Respondent-Appellant** and **Respondent-Appellant's Designation of Matter to be Included in the Record on Appeal** in the above-captioned matter was made upon all counsel of record by placing copies in the United States Mail, first class postage prepaid, at the below listed addresses clearly indicated on said envelopes this the 30th day of May 2018:

Raymon E. Lark, Jr., Esquire
Austin & Rogers, P.A.
Post Office Box 11716
Columbia, South Carolina 29211

Marcus K. Gore, Esquire
General Counsel
South Carolina Department of Public Safety
Post Office Box 1993
Blythewood, South Carolina 29016



LINDEMANN, DAVIS & HUGHES, P.A.

Attorneys at Law

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*Also admitted in North Carolina
†Certified Mediator

May 30, 2018

Direct Dial (803) 881-8921
Email: andrew@ldh-law.com

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

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SC Court of Appeals

RE: Wayne's Automotive Center, Inc. v. South Carolina Department of Public Safety
Appellate Case Number: 2017-002455
ALC Docket Number: 16-ALJ-30-0410-CC
Our File Number: 107.10114

Dear Ms. Kitchings:

Please find enclosed for filing the original and seven copies of the **Motion to File Out of Time**, along with my firm's \$25.00 check for the filing fee, as well as the originals and one copy each of the **Initial Appellant's Brief of Respondent-Appellant** and **Respondent-Appellant's Designation of Matter to be Included in the Record on Appeal** in the above referenced matter. Please file the originals and return a clocked-in copy of each document to me in the enclosed envelope. By copy of this letter, I am serving copies on all counsel of record.

Thank you for your assistance in this matter.

Sincerely,

LINDEMANN, DAVIS & HUGHES, P.A.



Andrew F. Lindemann

AFL/jmb
Enclosures

The Honorable Jenny Abbott Kitchings
May 30, 2018
Page Two

cc: (w/ Enclosures)

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Marcus K. Gore, Esquire
General Counsel
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