

STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas  
Jocelyn Newman, Circuit Court Judge

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Appellate Case No.: 2018-001347

THE CITY OF COLUMBIA,

APPELLANT,

V.

EDWARD HUFFMAN,

RESPONDENT

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RESPONDENT'S REPLY TO APPELLANT'S "RESPONSE" TO MOTION TO DISMISS

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Counsel for Respondent Edward Huffman previously filed a Motion seeking to dismiss this appeal for 1) Appellant's failure to timely file; and 2) Appellant's failure to timely serve the appeal. Counsel for Appellant served a "Response" on August 20, 2018, to which Counsel for Respondent submits this Reply pursuant to 240(f) of the South Carolina Appellate Court Rules (SCACR).

**Failure to Timely File**

1. Counsel for Appellant argues in his Response that the time to file a Notice of Appeal under SCACR 203(b)(1) is not only "stayed" upon the filing of a 59(e) Motion but "started over." In support of this argument, Appellant cites to South Carolina Rule of Civil Procedure 59(f). This Rule states, "The time for appeal for all parties shall be *stayed* by a timely motion under this Rule

  
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and shall run from the receipt of written notice of entry of the order granting or denying such motions.” [emphasis added]

2. Merriam-Webster’s online law dictionary defines “stay” as “to temporarily *suspend* or prevent by judicial or executive order.” [emphasis added] Respondent submits herein that “suspending” Appellant’s time to appeal does not inherently contain the additional component of “re-starting” the time to appeal.

3. Thus, Respondent contends the nine (9) days that immediately followed written notice of entry of the Order denying the appeal to the Circuit Court count toward Appellant’s time to appeal the decision, rendering Appellant’s filing untimely and necessitating dismissal of same.

#### **Failure to Timely Serve**

1. Appellant acknowledges the Notice of Appeal was not timely mailed to Counsel for Respondent, however Appellant maintains this should not be deemed to be improper service of the Notice of Appeal since Appellant timely mailed the Notice *somewhere*.

2. While SCACR 262(b) states that “service by mail is complete upon mailing,” it simply cannot be that mailing the Notice of Appeal to an address in a completely different city (as Appellant did in this case) constitutes proper service. Surely, “mailing,” as it is used in SCACR 262(b), must imply “mailing to the correct address.” To conclude otherwise would open the proverbial “Pandora’s box” of where to draw the line to excuse improper service of a Notice. The spirit and purpose of the rule requiring *timely* service of the Notice is to provide litigants with some certain understanding of when they can rest assured that a court’s ruling has become final. To excuse the requirement of timely service in this manner would flout that purpose.

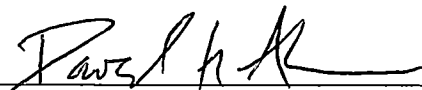
3. Because Appellant’s Response does not dispute Respondent’s contention in the Motion to Dismiss that Appellant never hand-delivered the Notice of Appeal, Respondent

assumes Appellant concedes the Notice was not actually hand-delivered to Counsel for Respondent's office, as was initially claimed by Appellant's "Proof of Service" filed with the Notice of Appeal.

4. Thus, Respondent contends that the appeal was served untimely, not only due to the mailing deficiency, but also due to the timing calculation as described in the above section "Failure to Timely File." Respondent reiterates that SCACR 263(b) makes it clear "the time for serving the notice of appeal" may not "be extended or shortened by the appellate court, or by any judge or justice thereof."

WHEREFORE, the undersigned counsel respectfully requests this Court to dismiss this appeal based on the above circumstances.

**THE ALLEN LAW FIRM, P.A.**

  
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West Columbia, South Carolina  
August 23, 2018

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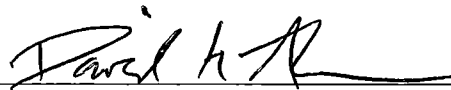
RESPONDENT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Respondent's Reply to Appellant's Response to Motion to Dismiss in the above referenced case has been served upon opposing counsel, Steven J. Luckie, Esquire this 23<sup>rd</sup> day of August, 2018 by mailing it to his last-known address, to wit:

Steven J. Luckie, Esquire  
Office of the City Attorney  
P.O. Box 667  
Columbia, SC 29202

**THE ALLEN LAW FIRM, P.A.**



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West Columbia, South Carolina  
August 23, 2018

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August 23, 2018

V. Claire Allen  
Deputy Clerk of Court  
S.C. COURT OF APEALS  
VIA HAND DELIVERY

Re: *The City of Columbia v. Edward Huffman*  
Appellate Case No.: 2018-001347

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AUG 23 2018

SC Court of Appeals

Dear Deputy Clerk:

Enclosed please find an original and six (6) copies of a Reply to Appellant's "Response" to Motion to Dismiss in the above-referenced matter. I respectfully ask that you file this Reply and return the remaining clocked-copies to me in the pre-paid, pre-addressed envelope provided for your convenience.

By copy of this letter, I am serving the Counsel for Appellant with same. A certificate of service is attached, as well.

Please do not hesitate to contact me should you have any questions or concerns. Thank you very much for your assistance in this matter.

Sincerely,

David K. Allen

DKA/idi  
Enclosures

cc: Steven J. Luckie, Esquire (w/ encl.) (via U.S. Mail)  
Mr. Edward Eric Huffman (w/ encl.) (via U.S. Mail)