

87871

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Circuit Court  
The Honorable Daniel D. Hall, Circuit Court Judge

Case No. 2015-CP-10-4166  
Appellate Case No. 2018-001125

**RECEIVED**  
SEP 19 2018  
SC Court of Appeals

Theodore Wagner,

Appellant,

versus

Designa Print and Mike Davis including anyone who is Complicit or  
Enabled protecting Mike Davis,

Appellant.

MOTION TO STRIKE AND FOR EXTENSION OF DEADLINE FOR  
APPELLANT'S INITIAL BRIEF UNTIL AFTER THE COURT OF APPEALS  
HAS RULED ON THE MOTION TO STRIKE

Pursuant to Rules 209, 210 and 240 of the South Carolina Appellate Court Rules (SCACR), Respondent, Mike Davis, respectfully moves (1) to strike the Designation of Matter to Be Included in The Record on Appeal, dated August 31, 2018 (hereafter, "Designation") filed by Appellant, Theodore Wagner, (2) to strike all materials provided and referenced herein, including those in Appellant's Brief referenced in Appellant's Designation, and (3) for an extension of the deadline for serving and filing Respondent's initial brief and designation of matter to be included in the record on appeal until after the Court of Appeals has ruled on this motion to strike, and in support of this motion states as follows:

The South Carolina Appellate Court Rules dictate what may and may not be included in a designation of matter and in the record on appeal. The rules specify that "the Designation may only propose to include portions of the transcript, pleadings, orders, exhibits, or other materials which may be properly included in the Record on Appeal [See Rule 210(c)]." See Rule 209(b), SCACR. The rules further mandate that "[t]he Record shall not, however, include matter which was not presented to the lower court or tribunal." See Rule 210(c), SCACR; see also Jean Hoefer Toal et al., *Appellate Practice in South Carolina*, at 131 (2d ed. 2002) ("the record must not include matter not presented to the lower court or tribunal"), citing *Cobb v. Benjamin*, 325 S.C. 573, 482 S.E2d 589 (Ct.App. 1997), and *Reed v. Becka*, 333 S.C. 676, 511 S.E.2d 396 (Ct. App. 1999).

The Appellant includes several Exhibits to his Designation and Brief, that are either: not relevant, not subject of the appeal, or deal solely with a previous investigation and conviction of the Appellant that were not heard or ruled on by the lower court in this matter. The Respondent moves to strike every exhibit presented by the Appellant, including any materials found on compact disc provided to the Court of Appeals, besides Exhibit 5-1, which is the Circuit Court's

Order dismissing the matter. At the hearing disposing this matter at the lower court, no rulings on evidence were made. The only matters submitted to the Circuit Court at the disposition of this matter at the trial level were Subpoenas issued by the Appellant and Respondent's Motion to Quash those subpoenas, which Appellant has not included in his Designation. The Court also made its rulings based off of the filings of either party. The Appellant is now attempting to submit evidence in support of his appeal, that have had no rulings of authenticity, nor opportunity of the Respondent to object to and have a ruling made under the Rules of Evidence. The Appellant is otherwise trying to put forward evidence that would be presented at his case in chief, as well as trying to submit evidence of a prior criminal case against him, which would not be relevant to his case at the court of original jurisdiction, but here, are not proper for appellate review.

Appellant's designation filed simultaneously with Appellant's initial brief lists an item that was not brought before the lower court for a ruling. Appellant presents, an item referenced as "Constitutional Challenge of the Truth and any Law that Oppresses that Constitutional Right". See Designation p. 1. Appellant's initial brief makes numerous references to this document, which was never brought before the Court, is addressed to South Carolina Attorney General Wilson, was never responded to by Attorney General Wilson, does not have anything to do with the Appellant's case with the Respondent, and is not properly made part of this appeal. Respondent asks this exhibit be stricken from this appeal.

Much of the Appellant's Designation and Brief include "Statement on Issues on Appeal" that are not properly put forward and are prefaced on legal and factual conclusions contained in the "statements" that were not found by the below court, or any Court for that matter. Respondent moves to strike every question presented under Appellant's section titled "Statement

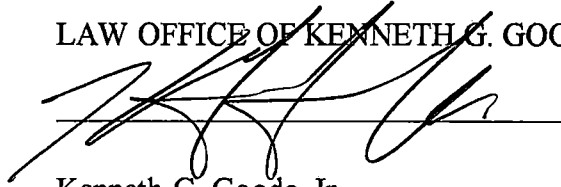
on Issues on Appeal” and ask that the Court require him to properly put forward statements of issues on appeal that are “concise and direct as to each issue” as provided by Rule 208(b)(B) of the SCACR. By way of example, Appellant’s question number 2, under section B of his Designation states: “Once a Judge on the Bench during Court sees Evidence of a Felony Crime that has been Committed and he is holding the Evidence can he Complicity Enable and aid in the Facilitation in the Ongoing Cover up of this Felony Crime?” This statement presented as a question is prefaced on the idea that a Circuit Court Judge had evidence of a felony crime that he/she then engaged in the cover up of some ongoing conspiracy to cover up said felony crime. Presumably Appellant contends in his statement that the Circuit Judge was doing so on behalf of a party before he/she. This question is nothing short of rhetorical and an attempt to put forward this notion that Appellant is the victim of an ongoing conspiracy against him, that he has attempted to establish through numerous lawsuits, including the one against the respondent. It would appear that Appellant’s statements of the issue does not in good faith put forward an issue created during jurisdiction of the lower court for the Appellate Court, and does not warrant a response from the Respondent. Each question presented by the Appellant in his Designation is presented in a similar way, to wit: Appellant’s question one is prefaced on the idea that Appellant’s constitutional challenge was in fact a constitutional challenge, was served correctly, and was appropriately raised in his case for defamation and emotional distress against Respondent. Appellant’s third statement of the issues is prefaced on the conclusion that a Judge involved in his case was involved in criminal conspiracy against him. Appellant’s fourth question suggest he was kicked out of the courtroom by the Trial Judge. Appellant’s fifth question has nothing to do with Respondents case or issues on the present appeal. Appellant’s sixth question is again prefaced on a conclusion that all three branches of government have

conspired to oppress a witness against him. Appellant's seventh question suggest the Court changed his petition for relief, with no evidence to support such a contention. Appellant's eighth question suggest Respondent lied to the Court about receiving medical records, with no proof of delivery besides a letter received by the medical provider, which does not state they provided the medical records to Respondent. Appellant's statements of the issues do not provide legitimate issues for analysis of the lower courts rulings, are largely rhetorical and designed at putting forward factual and legal conclusions never established or supported by the record. We ask that the Appellant's statements of the issues be stricken, all parts referenced in his brief based on his statement of issues be stricken, Appellant be required to redact his brief accordingly, restate issues for review according to Rule 208 and 209 of SCACR, and resubmit his brief with clear and concise issues stated and briefed. It is also Respondent's position that Appellant should be put on notice of the consequences enumerated under Rule 269 of the SCACR of engaging in frivolous filings, undue delay and non-compliance with the Appellate Court Rules.

Lastly, the Respondent would ask to be granted an extension to file his responsive brief, to give time for the Court to make a ruling on this motion. In the event that Court grants Respondent's motion, it would like its time to file its brief adjusted according to the Court's ruling. In the event the Court denies Respondent's motion, the Respondent ask for an extension to file 30 days from the date of denial.

Respectfully Submitted,

LAW OFFICE OF KENNETH G. GOODE, JR., LLC.



Kenneth G. Goode, Jr.

Attorney for Respondent

4 Carriage Lane, Suite 204

Charleston, South Carolina 29407

T: 843-754-5985

F: 843-494-5553

Charleston, South Carolina

September 11, 2018

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

---

APPEAL FROM CHARLESTON COUNTY  
Circuit Court  
The Honorable Daniel D. Hall, Circuit Court Judge

---

Case No. 2015-CP-10-4166  
Appellate Case No. 2018-001125

---

**RECEIVED**  
SEP 19 2018  
SC Court of Appeals

THEODORE WAGNER v. DESIGNA PRINT AND MIKE DAVIS INCLUDING ANYONE  
WHO IS COMPLICIT OR ENABLED PROTECTING MIKE DAVIS

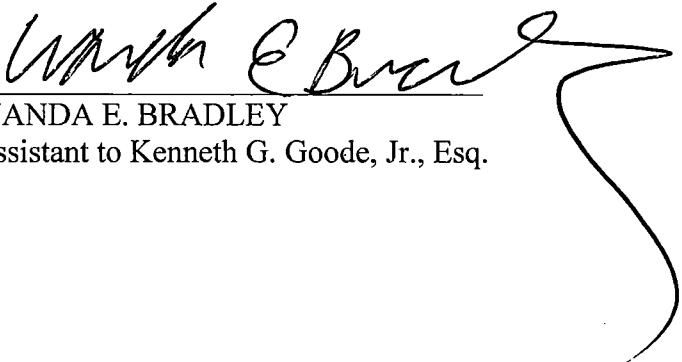
---

**CERTIFICATE OF SERVICE**

---

The undersigned hereby certifies that on this 11th day of September 2018, I provided Appellant, Theodore Wagner, a copy of Respondent's Motion to Strike Appellant's Initial Brief and an Extension of the Deadline for Serving and Filing Respondent's Initial Brief, by mailing a copy USPS to:

Theodore Wagner  
557 East Bay Street  
Charleston, South Carolina 29403

  
WANDA E. BRADLEY  
Assistant to Kenneth G. Goode, Jr., Esq.

KENNETH G. GOODE, JR.

ATTORNEY AT LAW  
4 CARRIAGE LANE, SUITE 204  
CHARLESTON, SOUTH CAROLINA 29407

LAW OFFICE OF KENNETH G. GOODE, JR., LLC  
[KENNY@KGGJLAW.COM](mailto:KENNY@KGGJLAW.COM)

TEL. (843) 754-5985  
FAX (843) 494-5553

September 11, 2018

**RECEIVED**

SEP 19 2018

SC Court of Appeals

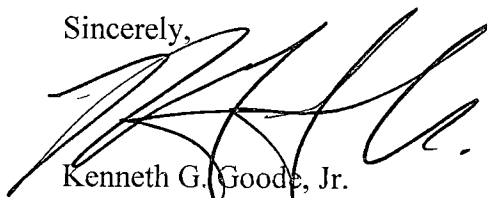
The Honorable Jenny Abbott Kitchings  
South Carolina Court of Appeals  
1220 Senate Street  
Columbia, South Carolina 29201

RE: Theodore Wagner v. Designa Print and Mike Davis Including Anyone who is  
Complicit or Enabled Protecting Mike Davis  
Case No.: 2015-CP-10-4166  
Appellate Case No.: 2018-001125

Dear Ms. Kitchings:

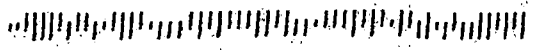
Enclosed for filing please find the original and six copies of the Respondent's Motion to Strike Appellant's Initial Brief and an Extension of the Deadline for Serving and Filing Respondent's Initial Brief as to the above referenced case. Thank you in advance for returning the "filed"-stamped copy to me in the enclosed self-addressed envelope.

Sincerely,

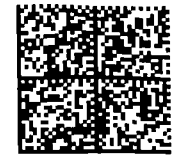


Kenneth G. Goode, Jr.

KGG/web  
w/enclosures



**F**



U.S. POSTAGE  
**\$2.89**  
FCM LG ENV  
29412  
Date of sale  
09/17/18  
06 2S SSK  
11487257

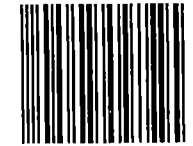
**USPS FIRST-CLASS MAIL®**

SHIP TO:

9.10 oz

C076

1220 SENATE ST  
COLUMBIA, SC 29201-3769



(420) 29201

KGJ LAW  
4 CARRIAGE LANE  
SUITE 204  
CHARLESTON, SC 29407

**RECEIVED**

SEP 19 2018

**SC Court of Appeals**

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