

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM FLORENCE COUNTY  
Circuit Court

Thomas A. Russo, Circuit Court Judge

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Appellate Case No.2018-00001144

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**RECEIVED**  
JAN 24 2019  
SC Court of Appeals

In the Matter of: Estate of Thomas G. Moore

Michael Dennis Moore, .....Appellant,

v.

Thomas Paul Moore, Francine Laura Lawhon,  
Linda Kaye Moore, Phillip Frederick Moore, ..... Respondents.

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RESPONDENT THOMAS PAUL MOORE'S MOTION  
TO DISMISS RESPONDENT PHILLIP FREDERICK  
MOORE'S CROSS-APPEAL

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Pursuant to Rule 240, SCACR, Respondent Thomas Paul Moore, ("Respondent Moore") moves to dismiss the instant purported initial brief filed by Respondent Phillip Frederick Moore ("Cross-Appellant Phillip"). The specific grounds supporting dismissal are as follows:

1. Cross-Appellant Phillip timely filed a purported initial brief and designation of matter on January 14, 2019.
2. Cross-Appellant Phillip's purported initial brief seeks reversal of the lower court's findings regarding the issue of the doctrine of integration.
3. Cross-Appellant Phillip's purported initial brief is not a properly presented

respondent's brief, but rather a cross-appeal, which seeks reversal of the lower court's findings.

4. Cross-Appellant Phillip failed to timely file necessary documents and otherwise comply with requirements to bring a cross-appeal as set forth in the South Carolina Rules of Appellate Procedure. Cross-Appellant Phillip has not filed a Notice of Appeal, as required by Rule 203(c), SCACR, nor has he taken any other action to properly institute a cross-appeal. As such, the purported initial brief is fatally flawed.

5. Respondent Moore moves to dismiss Cross-Appellant Phillip's purported initial brief on the grounds that it is properly viewed as an untimely cross-appeal.

6. In light of Cross-Appellant Phillip's disregard for this Court's filing deadlines, as well as the South Carolina Appellate Court Rules, Respondent Moore has been prejudiced in his ability to respond fully and efficiently to Cross-Appellant Phillip's allegations and arguments. As such, and on this basis, Respondent Moore submits that he is entitled to an Order from this Court dismissing Cross-Appellant Phillip's purported initial brief and designation of matter with prejudice, and he so moves.

#### **CONCLUSION**

For the reasons stated herein, Respondent respectfully moves this Court for an Order dismissing Cross-Appellant Phillip's purported initial brief and designation of matter with prejudice.

January 24, 2019  
Florence, SC



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ATTORNEYS FOR RESPONDENT  
THOMAS P. MOORE

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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RESPONDENT THOMAS PAUL MOORE'S MEMORANDUM OF LAW  
IN SUPPORT OF RESPONDENT THOMAS PAUL MOORE'S  
MOTION TO DISMISS RESPONDENT  
PHILLIP FREDERICK MOORE'S CROSS-APPEAL

---

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ATTORNEYS FOR RESPONDENT  
THOMAS P. MOORE

### **Procedural Background and History**

Appellant Michael Dennis Moore (“Appellant”) timely filed a Notice of Appeal on June 18, 2018, appealing the order of the Honorable Thomas A. Russo dated April 25, 2018 and filed May 8, 2018. By letter to the Court of Appeals dated, September 17, 2018, Respondent Phillip Frederick Moore (“Cross-Appellant Phillip”) requested directions regarding what forms or pleadings should be filed with the Court of Appeals. The Honorable V. Clair Allen, Deputy Clerk of Court for the Court of Appeals responded on October 9, 2018 with information regarding the Appellate Court Rules and Forms. Thereafter, Appellant filed a motion for and obtained an Order, dated September 28, 2018 extending the time for serving and filing Appellant’s initial brief and designation of matter to November 5, 2018. Subsequently, Appellant’s initial brief was timely filed on October 30, 2018. Thus, the deadline for serving Respondents’ initial briefs was Thursday, November 29, 2018.

Cross-Appellant Phillip obtained counsel and on November 2, 2018, a notice of appearance was filed. By Order, filed on December 17, 2018, Cross-Appellant Phillip obtained an extension of time to file and serve his initial brief and designation of matter. The Order created a new deadline of January 13, 2019 with respect to Cross-Appellant Phillip only. Thereafter, Cross-Appellant Phillip filed an initial brief and designation of matter on January 16, 2019.

Respondent Moore now moves to dismiss Cross-Appellant Phillip’s initial brief on the grounds that it is not a properly presented respondent’s initial brief, but rather a cross-appeal which seeks reversal of the lower court’s findings. Respondent Moore seeks dismissal on the grounds that Cross-Appellant Phillip failed to timely file necessary documents and otherwise comply with requirements set forth in the South Carolina Rules of Appellate Procedure to bring a cross-appeal.

**I. The Court of Appeals should dismiss the cross-appeal because Cross-Appellant Phillip has failed to timely serve and file a notice of appeal in compliance with Rule 203(c), SCACR, and, therefore, this Court lacks jurisdiction to consider the appeal.**

Cross-Appellant Phillip failed to timely serve Respondent Moore with a notice of appeal in compliance with Rule 203, SCACR. Accordingly, this cross-appeal should be dismissed.

Rule 203(a), SCACR states that appeals to the appellate courts of this State are initiated by an aggrieved party serving filing a notice of appeal in compliance with the SOUTH CAROLINA APPELLATE COURT RULES. Rule 203(c), SCACR clearly states that a respondent may institute a cross-appeal challenging a lower court's findings, by filing a notice of appeal and serving it on all adverse parties. Appeals from the Probate Court require that "notice of intention to appeal to the circuit court must be filed in the office of the circuit court and in the office of the probate court and a copy served on all parties not in default within ten days after receipt of written notice of the appealed from order, sentence, or decree of the probate court." S.C. Code Ann. §62-1-308(a) (2014).

The requirement of timely service is jurisdictional. *Elam v. South Carolina Dep't of Transp.*, 361 S.C. 9, 14-15, 602 S.E.2d 772, 775 (2004). If a party misses this service deadline, "the appellate court lacks jurisdiction to consider the appeal" and lacks the authority or discretion to, "rescue" the delinquent party by extending or ignoring the deadline for service of the notice." *Id.*

Cross-Appellant Phillip's purported initial brief seeks to overturn the lower court's ruling regarding the doctrine of integration and its application in this case. As such, the purported initial brief is not properly viewed as a respondent's brief, but rather as a cross-appeal.

However, Cross-Appellant Phillip has not complied with the affirmative requirements of a notice of appeal pursuant to Rule 203(c), SCACR, which would allow him to bring a cross-appeal. Cross-Appellant Phillip has not filed or served any document which could be reasonably

construed to be a notice of appeal.

Moreover, Rule 203(e), SCACR requires all notices of appeal to be substantially in the form designated by Appendix C, Part II, SCACR. To that end, this Court has made the SOUTH CAROLINA APPELLATE COURT RULES, including the Appendices thereto, available to the public on the Court's website.<sup>1</sup> Cross-Appellant Phillip had access to the form of a notice of appeal that is compliant with Rule 203, SCACR. In fact, by letter to the Court of Appeals dated, September 17, 2018, Cross-Appellant Phillip requested directions regarding what forms or pleadings should be filed with the Court of Appeals. The Honorable V. Clair Allen, Deputy Clerk of Court for the Court of Appeals responded on October 9, 2018 with information regarding the Appellant Court Rules and Forms. However, Cross-Appellant Phillip chose not to follow the guidelines of Appendix C, Part II, SCACR or the commands of Rule 203(c), SCACR when setting forth their cross-appeal, and, as such, his purported initial brief contains fatal flaws.

Cross-Appellant Phillip failed to serve Respondent Moore with a notice of appeal within the service deadline of Rule 203(b)(1), SCACR. Accordingly, the jurisdiction of this Court has not been invoked and the cross-appeal raised within Cross-Appellant Phillip's purported initial brief cannot be reviewed by this Court. As such, this purported initial brief containing a cross-appeal should be dismissed. *See Elam v. South Carolina Dep't. of Transp.*, 361 S.C. at 14-15, 602 S.E.2d at 775.

### CONCLUSION

For the aforementioned reasons, this Court should dismiss Cross-Appellant Phillip's purported initial brief and designation of matter with prejudice.

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<sup>1</sup> Respondents would note the Court's website is located at <http://www.judicial.state.sc.us/appeals>.

Respectfully submitted,

**TURNER PADGET GRAHAM & LANEY, P.A.**



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ATTORNEYS FOR RESPONDENT  
THOMAS P. MOORE

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM FLORENCE COUNTY  
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**RESPONDENT THOMAS PAUL MOORE'S MOTION TO DISMISS  
RESPONDENT PHILLIP FREDERICK MOORE'S CROSS-APPEAL AND  
SUPPORTING MEMORANDUM OF LAW**

**and**

**RESPONDENT THOMAS PAUL MOORE'S MOTION TO DISMISS  
RESPONDENTS LINDA KAYE MOORE AND FRANCINE LAURA  
LAWHON'S CROSS-APPEAL AND SUPPORTING MEMORANDUM OF  
LAW**

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**CERTIFICATE OF SERVICE**

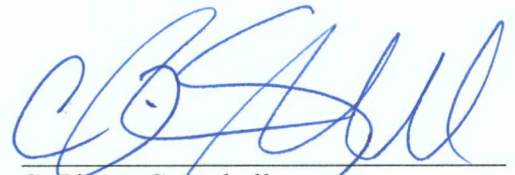
I certify that I have served the above entitled Motions and this Certificate of Service on January 24, 2019, via Hand-Delivery, to the Deputy Clerk, South Carolina Court of Appeals, 1220 Senate Street, Columbia, SC 29201 and by depositing a copy of same in the United States Mail, postage prepaid, addressed to the following:

Norwood DuRant, Jr., Esquire  
Law Offices of N. David DuRant  
P.O. Box 14722  
Surfside Beach, SC 29587  
Attorney for Appellant

James R. Snell, Jr., Esquire  
Vicki Koutsogiannis, Esquire  
Law Office of James R. Snell, Jr., LLC  
123 Harmon Street  
Lexington, SC 29072  
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Linda K. Moore  
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THOMAS P. MOORE

# Turner | Padget

REPLY TO:

**C. Pierce Campbell**

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January 24, 2019

***Via Hand-Delivery***

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

**RECEIVED**  
JAN 24 2019  
SC Court of Appeals

Re: Michael Dennis Moore v. Thomas Paul Moore, Francine Laura Lawhon, Linda Kay Moore, and Phillip Frederick Moore  
Appellate Case No.: 2018-001144  
TPGL File No.: 13272.101

Dear Ms. Kitchings:

Enclosed please find the original and one copy of the following for filing in the above case:

1. Respondent Thomas Paul Moore's Motion to Dismiss Respondent Phillip Frederick Moore's Cross-Appeal and Supporting Memorandum of Law;
2. Respondent Thomas Paul Moore's Motion to Dismiss Respondents Linda Kaye Moore and Francine Laura Lawhon's Cross-Appeal and Supporting Memorandum of Law, and
3. Certificate of Service.

## Turner | Padgett

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South Carolina Court of Appeals  
Re: Moore Estate  
January 24, 2019  
Page 2

Please file the originals with the Court, file-stamp the copies for us and return them to our courier. Our check in the amount of \$100 is also enclosed for the requisite filing fees (\$50 for each Motion). We are serving copies of the Motions and Supporting Memorandums of Law on all parties of record via United States mail. Thank you for your assistance in this matter.

Sincerely,

TURNER PADGETT GRAHAM & LANEY P.A.

  
C. Pierce Campbell

CPC/met  
Enclosures

cc(w/encs): Norwood D. DuRant, Jr., Esq.  
James R. Snell, Jr., Esq.  
Thomas P. Moore  
Francine M. Lawhon  
Linda K. Moore