

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 RESPONDENTS LINDA KAYE  
MOORE AND FRANCINE LAURA LAWHON'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 Respondents Francine Laura Lawhon and Linda Kaye Moore (collectively "Cross-Appellants"). The specific grounds supporting dismissal are as follows:

1. Cross-Appellants filed a purported initial brief and designation of matter on January 14, 2019. The brief and designation of matter were never served on Respondent Moore; instead, they were discovered by his counsel on the online court docket system
2. The deadline for Cross-Appellants to file an initial brief and designation of

matter was Thursday, November 29, 2018.

3. Cross-Appellants did not obtain an extension of time in which to file their initial brief and designation of matter.

4. As a result, Cross-Appellants' purported initial brief and designation of matter are untimely and Respondent Moore now moves to dismiss Cross-Appellants' purported initial brief and designation of matter, on such grounds.

5. Furthermore, Respondent Moore moves to dismiss Cross-Appellants' purported 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. As such, it was not properly filed pursuant to the South Carolina Appellate Court Rules. Respondent Moore seeks dismissal of the purported initial brief on the grounds that Cross-Appellants 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.

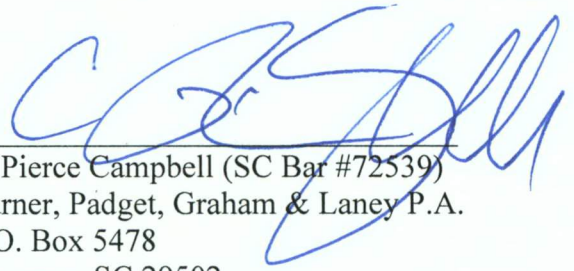
6. In light of Cross-Appellants' disregard for this Court's filing deadlines, as well as the South Carolina Appellate Court Rules, Respondent Moore has been prejudiced in his ability to respond fully and efficiently to Cross-Appellants' allegations and arguments. As such, and on this basis, Respondent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

*Signature on following page*

January 24, 2019  
Florence, SC



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ATTORNEYS FOR RESPONDENT  
THOMAS P. MOORE

THE STATE OF SOUTH CAROLINA  
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RESPONDENT THOMAS PAUL MOORE'S MEMORANDUM OF LAW  
IN SUPPORT OF RESPONDENT THOMAS PAUL MOORE'S  
MOTION TO DISMISS RESPONDENTS LINDA KAYE MOORE  
AND FRANCINE LAURA LAWHON'S CROSS-APPEAL

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ATTORNEYS FOR RESPONDENT  
THOMAS P. MOORE

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### **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 (“Respondent 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.

Respondent Phillip obtained counsel and on November 2, 2018, a notice of appearance was filed. By Order, filed on December 17, 2018, Respondent 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 Respondent Phillip only. Thereafter, Respondents Francine Laura Lawhon and Linda Kaye Moore (collectively “Cross-Appellants”) filed an initial brief and designation of matter on January 14, 2019.

Respondent Moore now moves to dismiss Cross-Appellants’ initial brief on the grounds that it is untimely and 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-Appellants 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. Further, the brief was not served on Respondent Moore. Respondent Moore’s counsel discovered the filing by reviewing the Court of Appeals online docket system.

**I. The Court of Appeals should dismiss this cross-appeal because Cross-Appellants have failed to timely serve Respondent Moore with a designation of matter to be included in the record on appeal pursuant to Rule 209, SCACR.**

Cross-Appellants have failed to timely serve Respondent Moore with a designation of matter to be included in the record on appeal pursuant to Rule 209, SCACR. Accordingly, this appeal should be dismissed.

Rule 209(a), SCACR states that at the same time Cross-Appellants serves their initial brief(s) under Rule 208, SCACR, they shall also serve on all parties to the appeal a designation of matter to be included in the record on appeal (the "Designation of Matter"). Rule 209, SCACR commands that a Designation of Matter be timely served upon respondents, and that the Designation of Matter set forth with specificity the parts of the transcript, pleadings, orders, exhibits, or other materials Cross-Appellants will include in their record on appeal. Pursuant to Rule 208(a)(2), SCACR, Cross-Appellants had thirty (30) days after service of the Appellant's initial brief, in which to serve respondent's initial brief and Designation of Matter.

Appellant's initial brief was filed and served on October 30, 2018. Thus, the deadline for serving respondents' initial briefs was thirty (30) days thereafter, on Thursday, November 29, 2018. Cross-Appellants did not make a motion for nor did they obtain an extension of time in which to file their initial brief and Designation of Matter. Cross-Appellants filed their purported initial brief and Designation of Matter on January 14, 2019. Cross-Appellants have simply missed the deadline in which to file an initial brief and designation of matter by more than a month.

Cross-Appellants have failed to comply with the mandatory requirements of the SOUTH CAROLINA APPELLATE COURT RULES, specifically Rule 209, SCACR, and the requirements of this Court. Accordingly, this purported initial brief and Designation of Matter should be dismissed.

**II. The Court of Appeals should dismiss the cross-appeal because Cross-Appellants have failed to timely serve Respondent Moore with an initial brief in compliance with Rule 208, SCACR.**

To the extent that Cross-Appellants' purported respondent's brief, is in fact a respondent's brief, Cross-Appellants have failed to timely serve Respondent Moore in compliance with Rule 208, SCACR. Accordingly, this appeal should be dismissed.

Rule 208(a), SCACR requires respondents to an appeal to serve initial response briefs on all parties to the appeal within thirty (30) days after service of appellant's brief. The SOUTH CAROLINA APPELLATE COURT RULES clearly delineate the process of and the requirements for filing an appeal with this Court, and Cross-Appellants are required to comply with these rules. Rule 203(a), SCACR.

Appellant timely filed his initial brief on October, 30, 2018. As such, Cross-Appellants were required to serve Respondent Moore with their initial brief and designation of matter on or before November 29, 2018. Cross-Appellants filed their purported initial respondent's brief on January 14, 2019. As such, Respondent Moore were not timely served with Cross-Appellants' purported initial brief. Accordingly, this appeal should be dismissed.

**III. The Court of Appeals should dismiss the cross-appeal because Cross-Appellants have 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 cross-appeal.**

Cross-Appellants 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-Appellants’ 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-Appellants have not complied with the affirmative requirements of a notice of appeal pursuant to Rule 203(c), SCACR, which would allow them to bring a cross-appeal. Cross-Appellants have 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-Appellants had access to the form of a notice of appeal that is compliant with Rule 203, SCACR. However, Cross-Appellants 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, their purported initial brief contains fatal flaws.

Cross-Appellants have failed to serve Respondent Moore with a notice of appeal within

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

the service deadline of Rule 203(b)(1), SCACR. Accordingly, the jurisdiction of this Court has not been invoked which would allow this Court to review the cross-appeal raised in Cross-Appellants' purported initial briefs. As such, their 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.

**IV. The Court of Appeals should dismiss this appeal because Cross-Appellants has failed to conform their purported initial brief to Rule 208(b), SCACR.**

Cross-Appellants' purported initial brief fails to conform to the requirements of Rule 208(b), SCACR. Accordingly, this purported initial brief should be dismissed.

Rule 208(b), SCACR clearly commands respondents to include, among other things, a Table of Contents and Cases, and to divide their initial brief into as many parts as there are issues to be argued. Each part is to include a header, in distinctive type, and is to discuss said issue, their argument thereto, and is to cite relevant authority in support of their argument. 208(b), SCACR. For every issue presented in Cross-Appellants' brief, they are required to provide arguments and supporting authority thereto. Any failure of Cross-Appellants to provide arguments and supporting authority as to any issue presented is deemed to be an abandonment of that issue. *First Savings Bank v. McLean*, 314 S.C. 361, 363, 444. S.E. 2d 513, 514 (1994). Cross-Appellants' purported brief does not contain a section that includes a header entitled "Table of Contents" nor does it contain a section entitled "Table of Cases". Furthermore, the contents of the section entitled "Arguments" is merely a bullet point list of illegible points with no segregation of the issues to be argued or citations to any authority.

Cross-Appellants' purported initial brief also contains a numbered section entitled "Statement of Issues on Appeal", which Respondent Moore assume comprises their recitation of the issues on appeal. However, the aforementioned "Arguments" section does not address, in any meaningful or cognizable manner, the numbered items referenced above. Moreover, the

purported initial brief is utterly devoid of any citation to authority. As such, the Respondent Moore is forced to guess as to the purported issues on appeal, Cross-Appellants' arguments thereto, and the authority which Cross-Appellants bases those arguments. Accordingly, this cross-appeal should be dismissed.

### CONCLUSION

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

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  
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Attorney for Phillip Frederick Moore

Linda K. Moore  
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# Turner | Padget

REPLY TO:

**C. Pierce Campbell**

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Writer's Direct Dial: (843) 656-4429  
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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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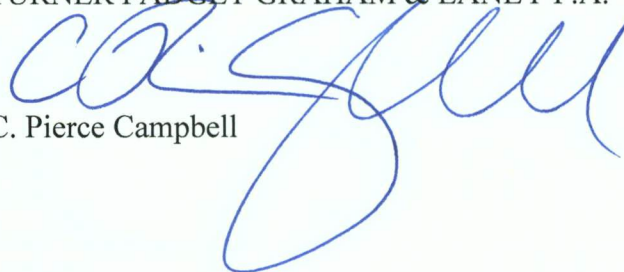
South Carolina Court of Appeals  
Re: Moore Estate  
January 24, 2019  
Page 2

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