

90009

STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM SUMTER COUNTY  
Court of Common Pleas

Thomas E. Player, Jr., Special Referee  
Case No. 2013-CP-43-153  
Appellate Case No. 2018-001277

**RECEIVED**  
JUN 12 2019  
SC Court of Appeals

Donna Erickson,

Respondent,

v.

Felicia Ruff,

Appellant.

RESPONDENT'S MOTION TO DISMISS APPEAL AND FOR SANCTIONS

Respondent Donna Erickson respectfully moves this Court for an Order dismissing the appeal of Appellant Felicia Ruff, with prejudice, pursuant to Rule 260(a), SCACR. In addition, Respondent requests that sanctions be assessed against Appellant pursuant to Rule 269, SCACR. The grounds for this motion are set forth herein.

The litigation between the parties has been ongoing since 2013. This purported appeal was filed almost one year ago, and Appellant has repeatedly failed to comply with the Rules of Appellate Practice. Rule 260(a), SCACR provides that “[w]henever it appears that an appellate or petitioners has failed to comply with the requirements of these Rules, the clerk shall issue an order of dismissal, which shall have the same force and effect as an order of the appellate court.” (emphasis added). In addition, Rule 269, SCACR, states:

Where an appeal, petition, motion or return is frivolous or taken solely for the purposes of delay, or ***is not in compliance with these Rules***, the appellate court may upon its own motion or that of a party, after ten (10) days notice, impose upon offending attorneys or parties such sanctions as the circumstances of the case and discouragement of like conduct in the future may require.

Id. (emphasis added). This Court has noted that:

[T]he South Carolina Appellate Court Rules are not mere technicalities but provide the parties and this Court with an orderly mechanism through which to guide appeals in this State. It is incumbent upon counsel to provide material that complies with the Rules and facilitates appellate review.

Henning v. Kaye, 307 S.C. 436, 437, 415 S.E.2d 794, 794 (1992).<sup>1</sup>

From the initiation of this appeal, Appellant has failed to comply with the rules. The notice of Appeal, filed July 9, 2018, was deficient in that, as the Court noted in its first deficiency letter, Appellant failed to submit the \$100.00 filing fee, failed to include a proof of service, and failed to include proof that the notice had been filed with the lower court (Exhibit 1). On July 20, 2018, this Court sent a second deficiency notice to Appellant regarding her continued failure to pay the filing fee (Exhibit 2). Appellant also failed to notify the Court within the required ten days whether she had ordered the transcript or submit a certification that no transcript was needed, and only provided such letter after the Court issued a deficiency letter (Exhibit 3).

On July 30, 2018, Appellant filed a purported motion for extension of time in which to file her brief. However, again, the motion had multiple deficiencies, including failure to include proof of service, failure to provide grounds for the motion, and failure to sign the motion (Exhibit 4).

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<sup>1</sup> While the Appellant here is appearing *pro se*, unlike the party in the Henning case, she has been afforded multiple opportunities to comply with the rules and has failed to do so. Also, it has been more than one year since Appellant filed the Notice of Appeal and she has had ample opportunity to secure counsel but has opted not to do so.

On September 19, 2018 – more than two months after the filing of the notice of appeal – Appellant had still not paid the filing fee, which had been requested by the Clerk’s office on at least three occasions (Exhibit 5). At one point, the appeal was dismissed and Appellant sought to reinstate her appeal, but failed to submit the required filing fee for the motion (Exhibit 6). On December 12, 2018 – five months after the purported appeal was filed – this Court issued an order reinstating the appeal and ordered Appellant to submit her brief and designations, in compliance with the South Carolina Appellate Court Rules, within thirty days (Exhibit 7).

Since that time, Appellant has attempted three different times to submit an initial brief and designation of record. None of the briefs submitted by Appellant have met the requirements of Rule 208, SCACR, and after each purported filing, the Court has issued deficiency letters (collectively Exhibit 8). The most recent deficiency letter (dated May 22, 2019) states that the Appellant’s Initial Brief has not been signed and that if the deficiency has not been cured within ten days, the appeal will be dismissed. As of the date of this filing, it has been more than twenty days, and Appellant has failed to cure the deficiency. Thus, this appeal should be dismissed, with prejudice and without right to seek reinstatement. Appellant has had multiple opportunities to perfect her appeal and has been warned of the need to comply with the Rules of Appellate Court but has completely failed to do so.

In addition to failing to cure the deficiency described in the Court’s May 22, 2019 letter, Appellant’s purported Initial Brief, filed April 26, 2019, completely fails to comply with the requirements of Rule 208, SCACR, as described below:

- Appellant’s Initial Brief fails to include a Table of Cases (Rule 208(b)(1)(A));

- The Standard of Review portion of Appellant’s Initial Brief fails to include “the applicable standard of review with citations to relevant case law establishing the standard.” (Rule 208(b)(1)(D));
- Appellant’s Initial Brief does not contain an Argument section, as described by Rule 208(b)(1)(E):

The brief shall be divided into as many parts as there are issues to be argued. At the head of each part, the particular issue to be addressed shall be set forth in distinctive type, followed by discussion and citations of authority. A party may also include a separate statement of facts relevant to the issues presented for review, with reference to the record on appeal, which may include contested matters and summarize the party's contentions.

Appellant’s Initial Brief included headings in the Argument section but those headings were repeated verbatim from the headings in the sample brief included as Form 13 in the South Carolina Rules of Appellate Procedure. Those headings have absolutely no relation to this case. Appellant has failed to include an actual argument of any kind below those headings and she has failed to cite to any authority or to the record on appeal. In Lawson v. Mills, the court dismissed an appeal for similar deficiencies, stating:

Appellant's exceptions and brief were obviously prepared with virtually no regard for the rules of this Court. Not one of his exceptions clearly or fully complies with Supreme Court Rule 4, sec. 6. His brief does not fully comply with Supreme Court Rule 8, Sec. 2, and totally disregards Rule 8, Sec. 3. The appeal is, accordingly, dismissed for failure to comply with the rules of this Court.


Lawson v. Mills, 259 S.C. 308, 309, 191 S.E.2d 637, 637 (1972)(decided under a prior, but similar, set of rules before the creation of the South Carolina Court of Appeals).

Because Appellant has completely and repeatedly disregarded the South Carolina Rules of Appellate Procedure, this appeal should be dismissed with prejudice and without leave to petition

for reinstatement. While Rule 260, SCACR, is silent on whether a case should be dismissed with or without prejudice, Rule 269 allows this Court to impose sanctions on a party for noncompliance with the rules. The sanctions may include those that the “circumstances of the case and discouragement of like conduct in the future may require.” Rule 269, SCACR. It has been almost one year since Appellant attempted to appeal this matter and she has failed to comply with the Rules at almost every instance. There have been at least nine letters from this Court outlining the deficiencies of Appellant’s filings. Respondent submits that these actions support sanctions of dismissal with prejudice and without leave for reinstatement. In addition, Respondent requests that Appellant be sanctioned \$550.00, to be paid to Respondent as reimbursement for the attorneys’ fees and costs incurred in filing this motion.

**CONCLUSION**

Respondent Donna Erickson respectfully requests that this Court dismiss the appeal of Appellant Felicia Ruff, with prejudice and without leave to petition for reinstatement. Respondent further requests that this Court assess sanctions against Appellant in the amount of \$550.00 for attorneys’ fees and costs incurred in filing this motion, to be paid to Respondent through her counsel.

  
Ariail E. King, SC Bar 8952  
David L. Paavola, SC Bar 100714  
LEWIS BABCOCK L.L.P.  
P.O. Box 11208  
Columbia, South Carolina 29211  
(803)771-8000

Attorneys for Respondent Donna Erickson

June 12, 2019



# The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

V. CLAIRE ALLEN  
DEPUTY CLERK

POST OFFICE BOX 11629  
COLUMBIA, SOUTH CAROLINA 29211  
1220 SENATE STREET  
COLUMBIA, SOUTH CAROLINA 29201  
TELEPHONE: (803) 734-1890  
FAX: (803) 734-1839  
www.sccourts.org

July 11, 2018

Felicia Ruff  
1455 Hidden Oaks Drive  
Wedgefield SC 29168

Re: Donna Erickson v. Felicia Ruff  
Appellate Case No. 2018-001277

Dear Ms. Ruff:

Upon reviewing your notice of appeal, the following deficiencies have been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within ten (10) days of the date of this letter or your appeal will be dismissed:

- The required filing fee has not been submitted. The correct filing fee is \$100.00.
- A proof of service has not been provided. You must serve and file a proof of service substantially in the format shown by Form 7 in Appendix C to part II of the SCACR.
- You must provide proof that you have filed the notice of appeal with the lower court clerk of court, as required by Rule 203, SCACR.

Very truly yours,

*V. Claire Allen, Deputy*

CLERK

cc: Joseph King Coffey, Esquire





# The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

V. CLAIRE ALLEN  
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July 20, 2018

Felicia Ruff  
1455 Hidden Oaks Drive  
Wedgefield SC 29168

Re: Donna Erickson v. Felicia Ruff  
Appellate Case No. 2018-001277

Dear Ms. Ruff:

The Court is in receipt of your materials, filed July 18, 2018, which we construe as your attempt to correct the notice of appeal deficiencies outlined in the Court's letter of July 11, 2018. Please be advised that the deficiencies must be corrected in their entirety before this appeal can proceed. Within ten (10) days of the date of this letter, you must provide the \$100.00 notice of appeal filing fee, or your appeal will be dismissed.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Jenny A. Kitchings".

CLERK

cc: Joseph King Coffey, Esquire





# The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

V. CLAIRE ALLEN  
DEPUTY CLERK

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July 26, 2018

Felicia Ruff  
1455 Hidden Oaks Drive  
Wedgefield SC 29168

Re: Donna Erickson v. Felicia Ruff  
Appellate Case No. 2018-001277

Dear Ruff:

Our records reflect that the time for ordering the transcript has expired. Within ten (10) days of the date of this letter, you must file a copy of the letter showing that you have ordered the transcript directly from the court reporter, along with a motion requesting permission to order the transcript outside of the filing deadlines set by Rule 207 of the South Carolina Appellate Court Rules. Your appeal will be dismissed if no motion is made within ten (10) days of the date of this letter.

Very truly yours,

*V. Claire Allen, Deputy*

CLERK

cc: Joseph King Coffey, Esquire





## The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

V. CLAIRE ALLEN  
DEPUTY CLERK

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July 31, 2018

Felicia Ruff  
1455 Hidden Oaks Drive  
Wedgfield SC 29168

Re: Donna Erickson v. Felicia Ruff  
Appellate Case No. 2018-001277

Dear Ms. Ruff:

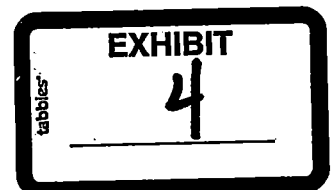
Upon reviewing your motion for an extension, the following deficiencies have been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within ten (10) days of the date of this letter or your motion will not be considered:

- A proof of service has not been provided. You must serve and file a proof of service substantially in the format shown by Form 7 in Appendix C to part II of the SCACR.
- The document has not been signed as required by Rule 267(b), SCACR.
- Your motion does not comply with Rule 240(c), SCACR. Specifically, you have not stated the grounds for the motion. You must file an amended motion that specifically states what you are seeking an extension of time for, within ten days.

Very truly yours,

*V. Claire Allen, Deputy*  
CLERK

cc: Joseph King Coffey, Esquire





# The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

V. CLAIRE ALLEN  
DEPUTY CLERK

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www.sccourts.org

September 19, 2018

Felicia Ruff  
1455 Hidden Oaks Drive  
Wedgfield SC 29168

Re: Donna Erickson v. Felicia Ruff  
Appellate Case No. 2018-001277

Dear Ms. Ruff:

The Court is in receipt of your correspondence filed September 17, 2018, which we construe as your response to the Court's order dated August 13, 2018. Please be advise that you must submit the notice of appeal filing fee of \$100.00 and serve and file your appellant's initial brief and designation of matter that comply with Rule 208 and 209, SCACR, for content, and Rule 267, SCACR, for form of papers, within ten (10) days or your appeal will be dismissed.

Very truly yours,

*V. Claire Allen, Deputy*

CLERK

cc: Joseph King Coffey, Esquire





# The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

V. CLAIRE ALLEN  
DEPUTY CLERK

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October 30, 2018

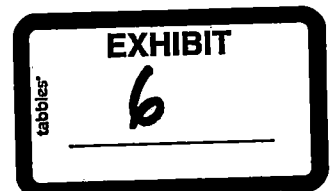
Felicia Ruff  
1455 Hidden Oaks Drive  
Wedgefield SC 29168

Re: Donna Erickson v. Felicia Ruff  
Appellate Case No. 2018-001277

Dear Ms. Ruff:

Upon reviewing your correspondence received October 26, 2018, which the Court construes as a motion to reinstate the appeal, the following deficiencies have been noted under the South Carolina Appellate Court Rules (SCACR), and must be corrected in their entirety within ten (10) days of the date of this letter or the remittitur will be sent:

- The accompanying proof of service is not in compliance with the SCACR. Your proof of service should be substantially in the format shown by Form 7 in Appendix C to part II of the SCACR. The proof of service you have provided states that you have served the "notice of appeal". You must provide proof of service for the motion you are filing.
- The required filing fee has not been submitted. The correct filing fee for a motion is \$50.00.



Very truly yours,

*V. Claire Allen, Deputy*

CLERK

cc: Joseph King Coffey, Esquire

# The South Carolina Court of Appeals

Donna Erickson, Respondent,

v.

Felicia Ruff, Appellant.

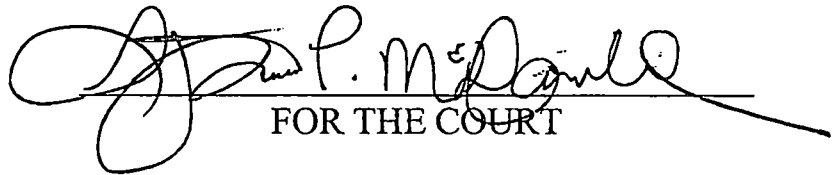
Appellate Case No. 2018-001277

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## ORDER

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Appellant's petition to reinstate is granted. Within thirty days of the date of this order, Appellant shall serve and file an initial brief and designation of matter that comply with Rule 208 and Rule 209 of the South Carolina Appellate Court Rules.

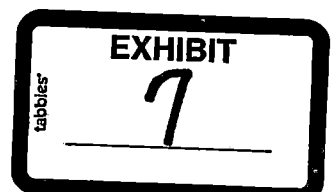
  
FOR THE COURT

Columbia, South Carolina

cc:  
Felicia Ruff  
Joseph King Coffey, Esquire

**FILED**

December 13, 2018





# The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

V. CLAIRE ALLEN  
DEPUTY CLERK

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February 28, 2019

Felicia Ruff  
1455 Hidden Oaks Drive  
Wedgefield SC 29168

Re: Donna Erickson v. Felicia Ruff  
Appellate Case No. 2018-001277

Dear Ms. Ruff:

Upon reviewing your appellant's initial brief, the following deficiencies have been noted under the South Carolina Appellate Court Rules (SCACR), and each deficiency must be corrected within ten (10) days of the date of this letter or this appeal will be dismissed:

- The caption must be identical to the caption given below:

Donna Erickson, Respondent,

v.

Felicia Ruff, Appellant.

- The reference to Rule 267 at the bottom of the title page should not be part of the title page.
- Our records indicate that the judge for the order being challenged on appeal is Thomas E. Player Jr., not George E. Brown.



- Only the Court of Appeals should be listed on the top of the title page, as this case is not before the Supreme Court.
- The brief must be double spaced as required by Rule 267(c), SCACR.

Very truly yours,

*V. Claire Allen, Deputy*

CLERK

cc: Joseph King Coffey, Esquire



# The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

V. CLAIRE ALLEN  
DEPUTY CLERK

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April 15, 2019

Felicia Ruff  
1455 Hidden Oaks Drive  
Wedgefield SC 29168

Re: Donna Erickson v. Felicia Ruff  
Appellate Case No. 2018-001277

Dear Ms. Ruff:

We are in receipt of your appellant's initial brief, filed on March 12, 2019, which is presumed to be a response to this Court's letter dated February 28, 2019. Please be advised that the deficiencies outlined in this Court's letter of February 28 must be corrected in their entirety before this appeal can proceed. Specifically, the brief must be double spaced as required by Rule 267(c) of the South Carolina Appellate Court Rules (SCACR). Please be advised that proof of service must also be provided for the amended appellant's initial brief. You must serve and file an amended appellant's initial brief within ten (10) days from the date of this letter. This is the Court's second request for these corrections. Failure to comply with the Court's request within ten (10) days of the date of this letter will result in the dismissal of this appeal.

Very truly yours,

Handwritten signature of Jenny Abbott Kitchings in cursive script.  
CLERK

cc: Joseph King Coffey, Esquire



# The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

V. CLAIRE ALLEN  
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May 22, 2019

Felicia Ruff  
1455 Hidden Oaks Drive  
Wedgfield SC 29168

Re: Donna Erickson v. Felicia Ruff  
Appellate Case No. 2018-001277

Dear Ms. Ruff:

Upon reviewing your amended appellant's initial brief, the following deficiency has been noted under the South Carolina Appellate Court Rules (SCACR), and this deficiency must be corrected within ten (10) days of the date of this letter or this appeal will be dismissed:

- The document has not been signed as required by Rule 267(b), SCACR.

Very truly yours,

*V. Claire Allen, Deputy*

CLERK

cc: Joseph King Coffey, Esquire

STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM SUMTER COUNTY  
Court of Common Pleas

Thomas E. Player, Jr., Special Referee  
Case No. 2013-CP-43-153  
Appellate Case No. 2018-001277

RECEIVED  
JUN 12 2019  
SC Court of Appeals

Donna Erickson,

Respondent,

v.

Felicia Ruff,

Appellant.

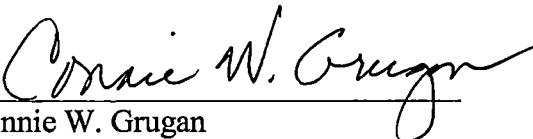
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PROOF OF SERVICE

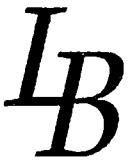
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I, Connie W. Grugan, legal assistant to the law firm of Lewis Babcock L.L.P., hereby certify that I have served Respondent's Motion to Dismiss Appeal and for Sanctions upon Appellant Felicia Ruff, *pro se*, by mailing a copy of same, postage prepaid and return address clearly indicated, to the following address:

Ms. Felicia Ruff  
1455 Hidden Oaks Drive  
Wedgfield, South Carolina 29168

  
\_\_\_\_\_  
Connie W. Grugan

This 12th day of June, 2019



LAW OFFICES OF  
**LEWIS  
BABCOCK**  
L.L.P.

**ARIAIL E. KING**  
ATTORNEY AT LAW

Post Office Box 11208  
Columbia, South Carolina 29211  
o. 803-771.8000 f. 803-733-3534  
AEK@lewisbabcock.com

June 12, 2019

**RECEIVED**  
JUN 12 2019  
SC Court of Appeals

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

Re: Donna Erickson v. Felicia Ruff, Appellate Case No. 2018-001277  
Our File No. 19-116

Dear Ms. Kitchings:

Enclosed please find the original and seven copies of Respondent's Motion to Dismiss Appeal and for Sanctions in regard to the above-referenced matter for filing with your office, along with a filing fee in the amount of \$50.00. Please return a clocked copy via our courier.

Sincerely yours,

Ariail E. King

AEK:cg

Enclosure

cc: Ms. Felicia Ruff, *pro se*