

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

May 14 2020

SC Court of Appeals

APPEAL FROM RICHLAND COUNTY
ROBERT E HOOD, CIRCUIT COURT JUDGE
Case No. 2019-CP-40-02126

B&B Attorneys, LLC,..... Plaintiffs,

vs.

Overture Eroica Walker, Stoney & Walker, LLC.,
Joy Stoney, and Stoney Law Firm, LLC,..... Defendants

and

Overture Eroica Walker, and
Stoney & Walker, LLC,..... Third-Party Plaintiffs,

vs.

Beth Bernstein and Lowell Bernstein Respondents,

Of Whom Overture Eroica Walker, Stoney & Walker, LLC,
are the Appellants.

MOTION TO ACCEPT UPDATE ON TRANSCRIPT REQUEST OUT OF TIME

Appellants Overture Eroica Walker and Stoney & Walker, LLC (“Appellants”) filed a notice of appeal on January 24, 2020. A Transcript Request Form was completed on January 27, 2020. **Exhibit A.** This transcript request was provided to the court reporter via email on January 28, 2020, who responded several days later with notice of her retirement. She indicated that she would forward the request along to Court Administration, and in response, our office was contacted on February 3 with a request for

a copy of the original transcript request. The form was provided exactly ten minutes after it was requested that same day. Within another hour, our office was advised that the request was being “sent to a court reporter who will provide you with an estimate cost and delivery date.” Hearing nothing further for an extended time thereafter, our office again inquired about the status of the transcript request by sending an email to transcripts@sccourts.org on April 28, 2020. The email response received the following date indicated “I will check with the court reporter to see where they are with these records.” The referenced communications are all included on the enclosed **Exhibit B** attached to this motion.

Earlier today, May 8, 2020, we received contact from the Clerk of Court’s office, inquiring as to the failure to respond to an inquiry dated April 24, 2020 regarding the transcript. That call was the first notice we had received regarding the April 24, 2020 correspondence. As reflected in the email exchange enclosed on Exhibit B, had we received notice we would have timely responded to a communication from the clerk’s office.

Upon reliance on indications received, as shown on Exhibit A, that our requests were being noted and that arrangements for a replacement court reporter being assigned to prepare the requisite transcript in the above-captioned matter, our office did not prepare and submit any notice of a failure to receive the transcript per Rule 207(a)(5), SCACR. To the extent that was an obligation missed by Appellants, it was in good faith and we respectfully submit it was a failure for which good cause exists to excuse.

Accordingly, Appellants respectfully move this Court for relief in the form of either:

- (A) recognition of this pleading as sufficient compliance with any requisite notice required of Appellant pursuant to Rule 207(a)(5), SCACR regarding the current failure to have received the requested transcript in this matter; or
- (B) an extension of time of ten days in which to notify the proper recipients pursuant to Rule 207(a)(5), SCACR of Appellant's non-receipt of the requested transcript.

Respectfully submitted,



Desa Ballard

Harvey M. Watson III

BALLARD & WATSON
Post Office Box 6338
West Columbia, South Carolina 29171
Telephone 803.796.9299
desab@desaballard.com
harvey@desaballard.com

ATTORNEYS FOR APPELLANT

May 8, 2020



Transcript Request Form

Pursuant to Rule 207 and 607 of the South Carolina Appellate Court Rules, the transcribed paper copy is the official record of court proceedings. You may request a transcript by completing this form and emailing it to the Court Reporter and to South Carolina Court Administration at transcripts@sccourts.org. Click [here](#) for instructions on how to find the court reporter's email and mailing addresses. Once the court reporter receives your request, it will be processed pursuant to Rule 207 and 607 of the SCACR. Rule 607(h) governs the fees for transcripts, which are not provided for free or at reduced rates to any party. Please send by mail a money order or certified bank check to the court reporter in order to obtain the transcript. Some court reporters may accept personal checks. Please check with the court reporter to see if this option is available. Once your request is received, you will receive a copy of this form with the bottom portion completed. Please promptly submit your payment in order for the transcript to be provided. If you need to cancel the transcript request for any reason, you are responsible for paying for the pages of the transcript that have already been completed at the time of the cancellation.

Requestor's Information			
Full Name <u>Harvey M. Watson III</u>	Phone Number <u>803-796-9299</u>	Email Address <u>harvey@desaballard.com</u>	
Mailing Address <u>PO Box 6338</u>	City <u>West Columbia</u>	State <u>SC</u>	Zip Code <u>29171</u>
Transcript Information			
Docket Number <u>2019-CP-40-02126</u>	Case Caption (i.e. State v. John Doe or Smith v. Smith) <u>B&B Attorneys, LLC v. Overture Eroica Walker, et al.</u>		
Date(s) of Proceeding <u>September 25, 2019</u>	Circuit <input checked="" type="checkbox"/> Family <input type="checkbox"/>	County <u>Richland</u>	
Presiding Judge <u>Judge Robert E. Hood</u>	Expedited Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>		
Court Reporter(s) <u>Bonnie Kelly</u>	Opposing Counsel <u>James E. Smith, Jr.</u>		

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Requestor's Signature: Harvey M. Watson III
January 27, 2020
(Typed name will serve as signature)

Date:

Note: If you are ordering a transcript pursuant to Rule 207(a)(1), SCACR, you must contemporaneously furnish all parties, the Office of Court Administration, and the clerk of the appellate court with copies of all correspondence with the court reporter.

For Court Reporter Use Only			
Full Name _____	Date Received _____	Email Address _____	
Notice of Estimate to Requestor Party Date: _____ Number of Pages: _____ Estimated Amount _____			
Mailing Address for Payment _____	City _____	State _____	Zip Code _____



From: Transcripts <transcripts@sccourts.org>
Sent: Wednesday, April 29, 2020 3:59 PM
To: Beth Cogan
Subject: RE: (B&B Attorneys, LLC v. Overture Eroica Walker, et al. 2019-CP-40-02126) Transcript Request

I will check with the court reporter to see where they are with these records.

From: Beth Cogan <Beth@desaballard.com>
Sent: Tuesday, April 28, 2020 10:20 AM
To: Transcripts <transcripts@sccourts.org>
Subject: FW: (B&B Attorneys, LLC v. Overture Eroica Walker, et al. 2019-CP-40-02126) Transcript Request

Good morning,
We haven't received any communications since the email below on February 3rd. Can you please advise the status of the transcript?

Kindest Regards,
-Beth

Beth Cogan, Paralegal
Ballard & Watson, Attorneys at Law
Post Office Box 6338
West Columbia, South Carolina 29169
803.796.9299
803.796.1066 Facsimile
beth@desaballard.com
www.desaballard.com

From: Transcripts <transcripts@sccourts.org>
Sent: Monday, February 3, 2020 10:48 AM
To: Beth Cogan <Beth@desaballard.com>
Subject: RE: (B&B Attorneys, LLC v. Overture Eroica Walker, et al. 2019-CP-40-02126) Transcript Request

Your request was received, it will be sent to a court reporter who will provide you with an estimated cost and delivery date.

From: Beth Cogan <Beth@desaballard.com>
Sent: Monday, February 3, 2020 9:58 AM

To: Transcripts <transcripts@sccourts.org>
Subject: RE: (B&B Attorneys, LLC v. Overture Eroica Walker, et al. 2019-CP-40-02126) Transcript Request

Please see attached. Let me know if you need anything further.

-B

From: Transcripts <transcripts@sccourts.org>
Sent: Monday, February 3, 2020 9:48 AM
To: Beth Cogan <Beth@desaballard.com>
Subject: RE: (B&B Attorneys, LLC v. Overture Eroica Walker, et al. 2019-CP-40-02126) Transcript Request

Could you please send the original request so we can further assist you.

From: Kelly, Bonnie <bkelly@sccourts.org>
Sent: Friday, January 31, 2020 12:16 PM
To: Beth Cogan <Beth@desaballard.com>; Transcripts <transcripts@sccourts.org>
Cc: James@JamesSmithPA.com; paul@reevesandlyle.com; Harvey Watson <harvey@desaballard.com>; Transcripts <transcripts@sccourts.org>
Subject: Re: (B&B Attorneys, LLC v. Overture Eroica Walker, et al. 2019-CP-40-02126) Transcript Request

I am retired as of today, Jan. 31, 2020. I am forwarding this request to Ct. Adm. for them to handle for you.

*Bonnie H. Kelly, CVR
Official Court Reporter
5th Circuit - At-large*

From: Beth Cogan <Beth@desaballard.com>
Sent: Tuesday, January 28, 2020 10:05:24 AM
To: Transcripts; Kelly, Bonnie
Cc: James@JamesSmithPA.com; paul@reevesandlyle.com; Harvey Watson
Subject: (B&B Attorneys, LLC v. Overture Eroica Walker, et al. 2019-CP-40-02126) Transcript Request

***** EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. ***

Good morning,
Please see the attached transcript request for the above-referenced matter. We look forward to hearing from you soon.

Kindest Regards,
-Beth

Beth Cogan, Paralegal
Ballard & Watson, Attorneys at Law
Post Office Box 6338

West Columbia, South Carolina 29169
803.796.9299
803.796.1066 Facsimile
beth@desaballard.com
www.desaballard.com

~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

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APPEAL FROM RICHLAND COUNTY  
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B&B Attorneys, LLC,..... Plaintiff,

vs.

Overture Eroica Walker, Stoney & Walker, LLC.,  
Joy Stoney, and Stoney Law Firm, LLC,..... Defendants

and

Overture Eroica Walker, and  
Stoney & Walker, LLC,..... Third-Party Plaintiffs,

vs.

Beth Bernstein and Lowell Bernstein ..... Respondents

Of Whom Overture Eroica Walker, Stoney & Walker, LLC,  
are the ..... Appellants.

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**PROOF OF SERVICE**

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I, Beth Cogan, an employee of Ballard & Watson, Attorneys at Law, do hereby certify that on May 8, 2020, I served a copy of the **Motion to Accept Update on Transcript Request Out of Time** in the above-captioned case on the following individuals by electronic mail addressed as follows:

**James E. Smith, Jr., Esquire**  
**james@jamesmithpa.com**

**Paul Reeves, Esquire**  
**paul@reevesandlyle.com**

  
Beth Cogan, Paralegal

May 8, 2020  
West Columbia, South Carolina

**From:** [Beth Cogan](#)  
**To:** [paul@reevesandlyle.com](mailto:paul@reevesandlyle.com); [James@JamesSmithPA.com](mailto:James@JamesSmithPA.com)  
**Cc:** [Harvey Watson](#)  
**Subject:** B&B Attorneys LLC v. Overture Walker - 2020-000124  
**Date:** Friday, May 8, 2020 4:59:32 PM  
**Attachments:** [2020.5.8 Ltr to COA encl Motion to accept update out of time.pdf](#)  
[2020.5.8 Ltr to COA re transcript not received.pdf](#)

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Good afternoon,

Please see the attached Motion to Accept Update on Transcript Request Out of Time. Also attached is a letter updating the court on the status of the transcript. Let us know if you have any questions or concerns.

Enjoy your weekend.

Kindest Regards,

-Beth

Beth Cogan, Paralegal  
Ballard & Watson, Attorneys at Law  
Post Office Box 6338  
West Columbia, South Carolina 29169  
803.796.9299  
803.796.1066 Facsimile  
[beth@desaballard.com](mailto:beth@desaballard.com)  
[www.desaballard.com](http://www.desaballard.com)

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**Ballard & Watson**  
Attorneys at Law  
PERSISTENT. UNWAVERING.

Desa Ballard  
Harvey M. Watson III

Post Office Box 6338 | West Columbia, SC 29171  
226 State Street | West Columbia, SC 29169  
ph 803.796.9299 | fx 803.796.1066 | [desaballard.com](http://desaballard.com)

May 8, 2020

*Via U.S. Mail and Facsimile* (803-734-1839)  
Honorable Jenny Abbott Kitchings  
South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, South Carolina 29211

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**May 14 2020**  
**SC Court of Appeals**

Re: *B&B Attorneys, LLC v. Overture Eroica Walker*  
Appellate Case No.: 2020-000124

Dear Ms. Kitchings:

Enclosed for filing is an original and one copy of a Motion to Accept Update on Transcript Request Out of Time in the referenced matter. Also, enclosed is our check for \$50.00 for the filing fee for said motion

With warm personal regards, I am,

Sincerely yours,

Harvey M. Watson III  
[harvey@desaballard.com](mailto:harvey@desaballard.com)

cc: *Via Email*  
Paul Reeves, Esquire  
James E. Smith, Jr., Esquire  
Overture Walker, Esq. (via email)