

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM OCONEE COUNTY

Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Appeal #2020-001279

Martha “Linda” Lusk, Ph.D.....Appellant

v.

Jamie L. Verderosa.....Respondent

RETURN TO MOTION TO DISMISS

Respondent has asserted that Appellant filed her Petition for Certiorari a day late.

Specifically, Respondent asserts that “[t]he South Carolina Court of Appeals finally decided the Petition for Rehearing by no later than Monday, August 24, 2020, which was the date its Order denying the Petition for Rehearing was filed. Starting from the day after August 24, 2020, thirty (30) days thereafter was Wednesday, September 23, 2020. The Petitioner did not file her Petition for Writ of Certiorari until Thursday, September 24, 2020. The Petitioner failed to file her Petition for Writ of Certiorari on time. Because her Petition was filed after the required deadline established in Rule 242(c), her Petition for a Writ of Certiorari should be dismissed.”

Respondent’s view of the rules is simply wrong. SCRAP Rule 242(c) provides that “A petition for writ of certiorari shall be served on opposing counsel and filed with proof of service with the Clerk of the Court of Appeals and the Clerk of the Supreme Court within thirty (30) days after the petition for rehearing or reinstatement is finally decided by the Court of Appeals.” *Id.* (Emphasis added) SCRAP Rule 263(a) holds that “In computing any period of time prescribed or allowed by these Rules, by order of

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court, or by any applicable statute, **the day of the act, event, or default after which the designated period of time begins to run is not to be included.**” *Id.* (Emphasis added)

Respondent apparently is counting August 25, 2020, as “day 1” after August 24, 2020. However, under SCRAP Rule 263(a) if you are NOT supposed to count the day of the event, 1 day later (August 25, 2020) can NOT be “day 1.” Rather, it would be the day you **start** counting and, thus, August 26, 2020 would be **one day later**. As such, **the 30th day after** was September 24, 2020 – the day appellant filed her writ. (See attached calendar for a visual demonstration of this, attached hereto as **Exhibit A**).

Accordingly, Respondent’s Motion to Dismiss should be DENIED and Respondent should be required to respond to Appellant’s Writ of Certiorari.

Respectfully submitted,

s/Candy M. Kern, Esq.

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