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**Mar 02 2021**

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM ANDERSON COUNTY  
Court of Common Pleas

R. Lawton McIntosh, Judge

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Case No. 2015-CP-04-00667  
Appellate Case No. 2020-000070

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Ex Parte: Donald L. Smith,  
In Re: Greg Battersby,

Appellant,  
Plaintiff

v.

J. Kirkman Moorehead, Krause, Moorhead &  
Draisen, P. A., All State Insurance Company,  
And Allstate Northbrook Indemnity Company,

Defendants,

J. Kirkman Moorehead, Krause, Moorhead &  
Draisen, P. A.,

Respondents.

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**MOTION FOR EXTENSION OF TIME TO FILE  
INITIAL BRIEF OF APPELLANT AND DESIGNATION OF MATTER  
TO BE INCLUDED IN THE RECORD ON APPEAL**

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On February 14, 2021, Ms. Vivian Cross, the court reporter tasked to transcribe the April 21, 2016 hearing for the related case *Gregg Battersby v. J. Kirkman Moorhead, et al.*, C.A. No. 2015-CP-04-00667, communicated her inability to produce the transcript due to the irreparable condition of her computer's hard drive. Under Rule 208(a)(3) of the South Carolina Appellate Court Rule in relation to Rule 6 of the Rules on Civil Procedure, Appellant has until March 14, 2021 to file his Initial Brief.

Due to the complexity of the facts and issues involved in this present case, Appellant prays for additional time of ten (10) days from March 14, 2021, or until March 28, 2021 to review the case files in the Circuit Court. Appellant seeks this extension of time to be able to prepare a cogent and succinct brief to aid this Court in its analysis of the issues presented.

This request is not sought for delay but so that justice may be done. Appellant prays the lack of resulting prejudice to opposing counsel will allow the Court to grant this Motion.

Respectfully submitted by,

**s/Donald L. Smith**

Donald L. Smith (Bar No. : 6699)

Attorney for Appellant

122 N. Main Street

Anderson, SC 29621

Telephone: (864) 642-9284

Facsimile: (864) 642-9285

[attorneydonaldsmith@gmail.com](mailto:attorneydonaldsmith@gmail.com)

Anderson, South Carolina  
March 2, 2021.



Aisa Ford <aisaford0302@gmail.com>

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**Re: Battersby**

2 messages

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**Don Smith** <attorneydonaldsmith@gmail.com>

Mon, Nov 23, 2020 at 5:48 PM

To: Vivian Cross <crossv697@aol.com>, Aisa Ford <aisaford0302@gmail.com>

Yes, ma'am. Thank you very much for the update.

On Mon, Nov 23, 2020 at 2:13 PM Vivian Cross <[crossv697@aol.com](mailto:crossv697@aol.com)> wrote:

Don,

I have sat the June 2015 hearing aside. I have the October 2, 2015 hearing done. Going to move on to the April 21, 2016 one in hopes I can become attuned to voices.

Vivian

Sent from my iPhone

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**Donald L. Smith**

**Attorney Office of Donald Smith**

122 N. Main St.

Anderson SC 29621

Telephone: (864) 642-9284

Facsimile: (864) 642-9285

[attorneydonaldsmith@gmail.com](mailto:attorneydonaldsmith@gmail.com)

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**Don Smith** <attorneydonaldsmith@gmail.com>

Wed, Dec 9, 2020 at 1:24 PM

To: Vivian Cross <crossv697@aol.com>, Aisa Ford <aisaford0302@gmail.com>

Vivian:

The Court of Appeals has contacted me again regarding the missing transcripts. I believe the October 2nd hearing and April 21st hearings are all that is missing from my transcript requests. Diane Marcengill took care of the June hearings. I hope you and yours are well and somewhat prepared for the holiday season.

Sincerely,

Don

[Quoted text hidden]

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**FORM 7  
PROOF OF SERVICE**

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In The Court of Appeals

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APPEAL FROM ANDERSON COUNTY  
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Case No. 2015-CP-04-00667  
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In Re: Greg Battersby,

Appellant,  
Plaintiff

v.

J. Kirkman Moorehead, Krause, Moorhead &  
Draisen, P. A., All State Insurance Company,  
And Allstate Northbrook Indemnity Company,

Defendants,

J. Kirkman Moorehead, Krause, Moorhead &  
Draisen, P. A.,

Respondents.

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**PROOF OF SERVICE**

Pursuant to Supreme Court of South Carolina's Amended Order 2020-05-29-02, I certify that I have served a copy of Appellant's Report of Status of Transcript Request, Motion for Extension of Time to File Initial Brief of Appellant and Designation of Matter to Be Included in the Record on Appeal, and Proof of Service of same, upon The Honorable Jenny Abbott Kitchings, Clerk of South Carolina Court of Appeals and the Respondents, by and through their respective counsel of record, via electronic mail in the addresses as follows:

Ms. Jenny Abbott-Kitchings

[ctappfilings@sccourts.org](mailto:ctappfilings@sccourts.org)

Attorney for Respondents

Mr. Steven M. Krause, Esquire

[steve@krauselaw.org](mailto:steve@krauselaw.org)

Mr. Timothy Alan Nowacki, Esquire

[tim@theclardylawfirm.com](mailto:tim@theclardylawfirm.com)

Office of Court Administration

[transcripts@sccourts.org](mailto:transcripts@sccourts.org)

The above-mentioned documents have been served on March 2, 2021.

**s/Donald L. Smith**

Donald L. Smith (Bar No. : 6699)

Attorney for Appellant

122 N. Main Street

Anderson, SC 29621

Telephone: (864) 642-9284

Facsimile: (864) 642-9285

[attorneydonaldsmith@gmail.com](mailto:attorneydonaldsmith@gmail.com)

Anderson, South Carolina

March 2, 2021.

**FORM 8**  
**LETTER TO THE APPEALS COURT CLERK**  
**FILING REPORT OF STATUS OF TRANSCRIPT REQUEST**

March 2, 2021

The Honorable Jenny Abbott Kitchings  
Clerk of Court South Carolina Court of Appeals  
Post Office Box 11629  
Columbia SC 29211

**RECEIVED**  
**Mar 02 2021**  
SC Court of Appeals

**RE: Ex Parte: Donald L. Smith (In Re: Battersby v. Kirkman)**  
**Appellate Case No. 2020-000070**

Dear Ms. Kitchings:

On February 14, 2021, Appellant received a letter from Ms. Vivian Cross informing the office that she was unable to transcribe the April 21, 2016 hearing. Ms. Cross encountered fatal corruption within her computer's hard drive containing the audio account of the hearing. Thus, she was prevented from creating the transcript. She was unable to find any computer specialist capable of salvaging the hard drive. Attached is the latest correspondence with the undersigned counsel and Ms. Cross on this matter.

In light of this matter, Appellant respectfully requests this Court to grant him an additional ten (10) days from March 14, 2021 or until March 24, 2021 to submit his Initial Brief of Appellant and Designation of Matter to be Included on the Record on Appeal. Please find enclosed the following documents for filing:

1. Motion for an Extension of Time to File Appellant's Initial Brief and Designation of Matter to Be Included in the Record on Appeal;
2. Letter from Ms. Vivian Cross indicating an inability to produce a transcript; and
3. Proof of Service for same.

Sincerely,

*s/Donald L. Smith*  
Donald L. Smith, (Bar#6699)  
Attorney for Appellant  
122 N. Main Street  
Anderson SC 29621  
Telephone: (864) 642-9284  
Facsimile: (864) 642-9285  
[attorneydonaldsmith@gmail.com](mailto:attorneydonaldsmith@gmail.com)

cc: Mr. Steven M. Krause, Esquire  
Mr. Timothy Alan Nowacki, Esquire