

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

69230

Appeal from Beaufort County  
Roger M. Young, Circuit Court Judge

Case No. 2010-CP-07-4146

Ron Orlosky in his capacity as Personal Representative of  
The Estate of Debora L. Orlosky and in his capacity as trustee  
of the Debora Laura Orlosky Revocable Trust..... Respondent

v

The Law Office of Jay A. Mullinax, LLC, .....Appellant

**RESPONDENTS MOTION FOR CLARIFICATION  
AND MEMORANDUM IN SUPPORT**

Pursuant to Rule 240, SCACR, Respondent Ron Orlosky, by and through his undersigned counsel, hereby moves for a clarification of the Court’s Order of June 6, 2013 denying Respondent’s Motion to Dismiss and its accompanying cover letter setting forth options with respect to the procedures to be followed in this matter.

**MEMORANDUM IN SUPPORT**

**BACKGROUND**

On April 20, 2012 a Beaufort County Jury returned a verdict in favor of Respondent and against Appellant in the amount of \$80,000.00 actual damages. On April 26, 2012 Appellant filed post-trial motions for Directed Verdict, Relief from Judgment

**RECEIVED**  
JUL 26 2013

**SC Court of Appeals**

To Alter or Amend Judgment, and for a New Trial Absolute or New Trial Nisi Remittitur which were denied on May 17, 2012. Appellant filed the Notice of Appeal on June 18, 2012, and on June 25, 2012 he requested the transcript from the court reporter . Also on June 25 Appellant sent a letter to the Beaufort County Clerk of Court in which it is acknowledged that the reporter was no longer employed by the Court.. This letter too was provided to Respondent's counsel and to the Clerk of the Court of Appeals.

Thereafter, on September 19, 2012, October 1, 2012, February 8, 2013, and February 15, 2013 Respondent wrote to Appellant in an attempt to communicate with Appellant to determine the status of the appeal or any extension which may have been granted the court reporter to deliver the transcript. Appellant failed to respond to any of these inquiries, and ignored Respondent's letters. On March 21, 2013, and at the request of the Beaufort County Probate Court, Michael L.M. Jordan, Esquire contacted the Clerk of the Court of Appeals to ascertain the status of this case since The Estate of Debora Orlosky which he represents has not been able to be closed as a result of and pending the outcome of this appeal. Subsequently, the Court communicated with Appellant on March 25, 2013, and on March 29, 2013 Appellant again advised that it had not received the transcript. In its communication with the Court, Appellant failed to mention anything about the inability to contact the court reporter or the fact that transcripts are not available.

Respondent then moved to dismiss the Appeal, and on June 6, 2013 the court denied that Motion. In the Court's cover letter, a copy of which is attached hereto as **Exhibit A**, the court set forth certain options for the parties as follows:

- (1) “If the parties would like to proceed without the transcript, then written consent from all the parties must be provided to this Court and the appellant’s initial brief and designation of matter must be filed and served no more than thirty (30) days from the date of this letter.”
- (2) “If the parties would like **the matter remanded back to the circuit court in order to reconstruct the record**, then a motion must be filed no more than fifteen (15) days from the date of this letter.” [emphasis added]

Following receipt of this letter and the Court’s Order, Appellant filed a Motion to Remand to Circuit Court, a copy of which is attached as **Exhibit B**. Respondent, understanding only that appellant had selected Option # 2 presented by the Court, did not oppose the Motion.

Also following receipt of the Court’s Order, Respondent’s counsel contacted Court Administration and was advised that material from the trial recorded by the original reporter had been sent to Mrs. Harriet P. Bennett of Summerville., SC.<sup>1</sup> Upon contacting Ms. Bennett, she advised that she did indeed have the discs, that one disc appeared to be blank, and the other contained the complete case presented by the Appellant beginning with Appellant’s own testimony.

**She further advised that she had contacted Appellant’s office months before to advise that she was in the possession of the material, but that she had never received a response from Appellant.** Upon learning of the existence of this material,

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<sup>1</sup> Mrs. Bennett is apparently a retired reporter who assists Court Administration by transcribing matters where the trial court reporter is no longer available to do so.

Respondent's counsel wrote to Appellant requesting that he order the available transcript material from Mrs. Bennett. (See letter attached as **Exhibit C**). Appellant wrote to Mrs. Bennett on July 3, 2013, but did not order any part of the transcript. On July 5, 2013 she responded to Appellant's letter, and again recited the fact that she was in possession of the discs, and had previously attempted to contact him. Copies of Mr. Mullinax's letters and of Mrs. Bennett's response are attached hereto as **Exhibit D**

Since Mr. Mullinax had declined to order the transcription of the material in Mrs. Bennett's possession, Respondent wrote to Mrs. Bennett on July 18, 2013 requesting that she provide him with a copy of the transcript of the material she had. Copies of the letter which is attached as **Exhibit E** were sent to Appellant and to Court Administration as required by the rules. In response, Appellant wrote to Mrs. Bennett on July 19, 2013 stating that he would "adamantly object" to her producing "any of the transcript" at this time.

In Appellant's latest letter, which is also attached, he seems to threaten that if she releases or produces any portion of the record without "contemporaneous Court authorization," she should expect "motions" to be filed. Also in his letter, attached as **Exhibit F**, Appellant recites that his pending motion is one to "remand this case to the Circuit Court for a retrial."

This characterization of Appellant's intentions is highly surprising to Respondent who believed that the Appellant's Motion was made pursuant to this Court's letter setting forth the option of remanding to the circuit court to "reconstruct the record." This Court's letter made no mention of a new jury trial as an option.

## DISCUSSION

Candidly, Respondent is uncertain until and unless the existing Record is transcribed, just how much of the Record is intact. Further, Respondent is uncertain of what matters, if any, are necessary for the Trial Judge to reconstruct based on his notes and memory, absent a review of this material. It is the Appellant's duty to order the transcript pursuant to Rule 207(a)(1), SCACR, but the Appellant is actively avoiding that duty.

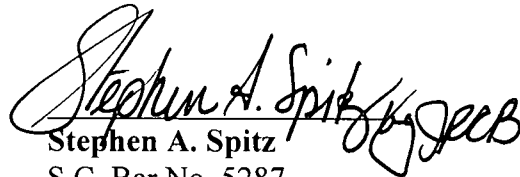
Respondent believes that Appellant's instructions to Mrs. Bennett and his position regarding the production of the trial transcript are based on an incorrect interpretation of the June 6, 2013 Order of this Court and the accompanying correspondence setting forth the parties alternatives. Uncertain as to how to proceed given the Appellant's adamant refusal to have any part of the existing Record transcribed, we turn to this Court for some possible clarification. Also, and given the Appellant's statement that his Motion is for "remand for retrial" rather than one of the options presented by this Court, Respondent would like the opportunity to respond to Appellant's Motion in light of what are apparently Appellant's actual intentions.

In the alternative, if this Honorable Court so instructs us, we can have this entire matter taken up by the Lower Court itself. In either event, it does seem odd (to say the least) to disregard a part (or perhaps substantially all of the Record - without it at least being transcribed for this Court's or the Lower Court's consideration). It is particularly odd that the Appellant is opposed to producing the transcript since the Court reporter advises that all of the Appellant's case and testimony is available.

## CONCLUSION

Respondents' counsel is happy to do whatever the Court suggests, including have a mini-hearing on this entire matter, if needed.

Very Respectfully Submitted,

A handwritten signature in black ink that reads "Stephen A. Spitz" followed by a stylized flourish that appears to be "JECB".

**Stephen A. Spitz**  
S.C. Bar No. 5287  
1134 Clearspring Drive  
Charleston, S.C. 29412  
Phone: 843-795-9552  
Email: [sc.spitz@prodigy.net](mailto:sc.spitz@prodigy.net)

**John R.C. Bowen, S.C. Bar No. 791**  
[john@laughlinandbowen.com](mailto:john@laughlinandbowen.com)  
Laughlin & Bowen, P.C.  
Post Office Drawer 21119  
Hilton Head Island, South Carolina 29925  
(843) **Add Phone Number**

Attorneys for Respondent

July 24, 2013  
Hilton Head Island, South Carolina

# **EXHIBIT A**



## The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

V. CLAIRE ALLEN  
DEPUTY CLERK

POST OFFICE BOX 11629  
COLUMBIA, SOUTH CAROLINA 29211  
1015 SUMTER STREET  
COLUMBIA, SOUTH CAROLINA 29201  
TELEPHONE: (803) 734-1890  
FAX: (803) 734-1839  
[www.sccourts.org](http://www.sccourts.org)

June 06, 2013

Mr. Jay Anthony Mullinax  
2 Park Lane, Ste. 303  
Hilton Head Island SC 29928

Mr. John R.C. Bowen  
PO Drawer 21119  
Hilton Head Island SC 29925-1119

Re: Ron Orlosky v. The Law Office of Jay Mullinax  
Appellate Case No. 2012-212331

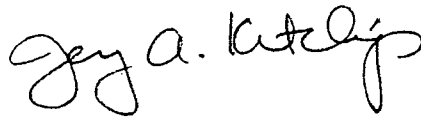
Dear Counsel:

Please see the attached order regarding the motion to dismiss. All parties are advised that this matter is no longer held in abeyance.

If the parties would like to proceed without the transcript, then written consent from all the parties must be provided to this Court and the appellant's initial brief and designation of matter must be served and filed no more than thirty (30) days from the date of this letter.

If the parties would like the matter remanded back to the circuit court in order to reconstruct the record, then a motion must be filed no more than fifteen (15) days from the date of this letter.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Jey A. Kalyan".

CLERK

cc: South Carolina Court Administration

# The South Carolina Court of Appeals

Ron Orlosky in his capacity as Personal Representative  
of The Estate of Debora L. Orlosky, and in his capacity  
as trustee of the Deborah Laura Orlosky Revocable Trust,  
Respondent,

v.

The Law Office of Jay A. Mullinax, LLC., Appellant.

Appellate Case No. 2012-212331

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## ORDER

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After careful consideration, Respondent's motion for involuntary dismissal is denied.

  
FOR THE COURT

Columbia, South Carolina

**FILED**  
JG. 6-6-13

cc:

Jay Anthony Mullinax  
John R.C. Bowen

# **EXHIBIT B**

IN THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM BEAUFORT COUNTY

Roger M. Young, Circuit Court Judge

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Case No. 2012-212331

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Ron Orlosky in his capacity as Personal  
Representative of The Estate of Debora  
L. Orlosky and in his capacity as trustee  
of the Debora Laura Orlosky Revocable  
Trust

Respondent

v.

The Law Office of Jay A. Mullinax, LLC

Appellant

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APPELLANT'S MOTION TO REMAND TO CIRCUIT COURT AND MEMORANDUM IN  
SUPPORT

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Pursuant to South Carolina Appellate Court Rule 240, Appellant, The Law Office of Jay A. Mullinax, LLC, by and through undersigned counsel, hereby responds to the South Carolina Court of Appeal's letter dated June 06, 2013 and requests that the matter of Ron Orlosky v. The Law Office of Jay Mullinax, identified as Case No.: 2012-212331 be remanded back to the circuit court in order to reconstruct the record.

## MEMORANDUM IN SUPPORT

### BACKGROUND

On July 29, 2010, Defendant filed a creditor's claim in the Beaufort County Probate Court for the outstanding balance Plaintiff owed Defendant, plus a statutory 8.75% interest rate. On August 20, 2010, three weeks after Defendant filed the creditor's claim against the Plaintiff, Plaintiff filed suit in the Beaufort County Circuit Court against Defendant for breach of contract seeking damages of \$29,751.68 (plus interest) and (\$89,253.00 treble damages) for unfair trade practices. Defendant's creditor's claim against Plaintiff filed on July 29, 2009 was subsequently removed to Circuit Court and the Defendant's claim and the Plaintiff's suit were essentially merged and resulted in a jury trial. The Court disallowed the claim for unfair trade practices.

On April 20, 2012, a Beaufort County Jury returned a verdict in favor of Respondent and against Appellant in the amount of \$80,000.00 actual damages. On April 26, 2012 Appellant filed post-trial motions for Directed Verdict, Relief from Judgment To Alter or Amend Judgment, and for a New Trial Absolute of New Trial Nisi Remittitur which were denied on May 17, 2012, but the Court stayed the judgment based on post-trial motions, pending Appeal.

Appellant filed the Notice of Appeal on June 18, 2012, and requested the transcript from the court reporter and from the Beaufort County Clerk of Court on June 25, 2012. The transcript was unattainable. Appellant complied with all other post-trial Rules and the Respondent filed a Motion to Dismiss the Appeal alleging Appellant failed to comply with the Rules. The Court of Appeals dismissed the Respondent's motion and advised the parties of two options: (1) If the parties would like to proceed without the transcript, then written consent from all the parties must be provided to the Court and the Appellant's initial brief and designation of matter must be

served and filed no more than thirty (30) days from the date of the Court of Appeal's letter dated June 06, 2013; or (2) If the parties would like the matter remanded back to the circuit court in order to reconstruct the record, then a motion must be filed no more than fifteen (15) days from the date of this the Court of Appeal's letter dated June 06, 2013. Appellant files this motion to remand the case to the Circuit Court to reconstruct the record, one of the two options provided by the court.

### DISCUSSION

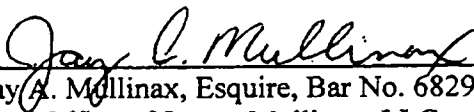
Based on the Court of Appeal's letter dated June 06, 2013, the Court of Appeals granted two options: (1) If the parties would like to proceed without the transcript, then written consent from all the parties must be provided to the Court and the Appellant's initial brief and designation of matter must be served and filed no more than thirty (30) days from the date of the Court of Appeal's letter dated June 06, 2013; or (2) If the parties would like the matter remanded back to the circuit court in order to reconstruct the record, then a motion must be filed no more than fifteen (15) days from the date of this the Court of Appeal's letter dated June 06, 2013. The Appellant reviewed the options presented and chooses the option to remand the matter back to the circuit court in order to reconstruct the record, or alternatively, for the circuit court to simply conclude that the record could not be reconstructed with the specificity to support meaningful appellate review.

### CONCLUSION

The Appellant requests that this matter be remanded back to the circuit court in order to reconstruct the record, or alternatively, for the circuit court to simply conclude that the record could not be reconstructed with the specificity to support meaningful appellate review. If a

transcript is altogether inaccurate and no adequate record of what transpired at trial can be reconstructed, the Appellant requests that the court remands for a new trial.

June 18<sup>th</sup>, 2013

  
Jay A. Mullinax, Esquire, Bar No. 68293  
Law Office of Jay A. Mullinax, LLC  
2 Park Lane, Suite 303  
Hilton Head Island, SC 29928  
(843) 785-6101

IN THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM BEAUFORT COUNTY

Roger M. Young, Circuit Court Judge

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Case No. 2012-212331

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Ron Orlosky in his capacity as Personal  
Representative of The Estate of Debora  
L. Orlosky and in his capacity as trustee  
of the Debora Laura Orlosky Revocable  
Trust

Respondent

v.

The Law Office of Jay A. Mullinax, LLC

Appellant

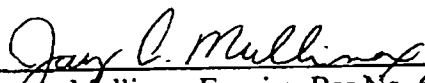
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CERTIFICATE OF SERVICES

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I certify that I have served the Appellant's Motion to Remand to Circuit Court and Memorandum in Support on Ron Orlosky by depositing a copy of it in the United States Mail, postage prepaid, addressed to his attorney of record, John R. C. Bowen, Esquire, Laughlin & Bowen, P.C., P.O. Drawer 21119, Hilton Head Island, SC 29925, Attorney for Respondent.

June 18<sup>th</sup>, 2013

  
Jay A. Mullinax, Esquire, Bar No. 68293  
Law Office of Jay A. Mullinax, LLC  
2 Park Lane, Suite 303  
Hilton Head Island, SC 29928  
(843) 785-6101

# EXHIBIT C

**LAUGHLIN & BOWEN. P.C.**

P.O. Drawer 21119  
Hilton Head Island, South Carolina 29925  
WWW.LAUGHLINANDBOWEN.COM

Drew A. Laughlin  
John R.C. Bowen\*  
Jeanne S. Cerrati\*\*  
\*Admiralty Law  
\*\*Admitted in CA and SC

Telephone  
(843)689-5700  
Facsimile  
(843)689-9300  
Sender's E-Mail

john@laughlinandbowen.com

June 18, 2013

**VIA COURIER & FACSIMILE TO: 843-785-6104**

Mr. Jay A. Mullinax  
The Law Office of Jay A. Mullinax, LLC  
2 Park Lane, Ste 303  
Hilton Head Island, SC 29928

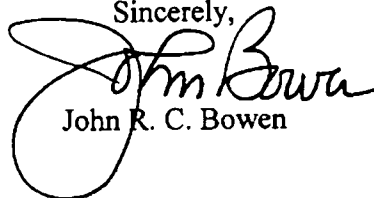
RE; Orlosky v. Mullinax  
Appellate Case No.: 2012-212331

Dear Mr. Mullinax:

Tonight I received a call from Ms. Harriet Bennett, a retired Court Reporter from Summerville to whom I was referred by Court Administration. Ms. Bennet stated that she was in possession of the discs from the above trial, that some of the proceedings appeared to be missing from the discs; but that she could reproduce several hundred pages, including all of your trial testimony. She further advised that she had informed you of this some time ago, but that you had not asked her to reproduce any of the transcript. I am very surprised and disappointed that you did not advise me or the Court of the existence of this material.

Please consider this as my formal request for you to contact Ms. Bennett and obtain from her the Trial Transcript or so much of it as she is able to reproduce. Please do not hesitate to contact me if you have any questions. In the meantime, and with kind regards, I am

Sincerely,



John R. C. Bowen

JRCB/sv

cc:

Mr. Ronald Orlosky (via e-mail)  
Stephen A. Spitz, Esquire

# **EXHIBIT D**

HARRIET P. BENNETT  
46 Regency Oaks Drive  
Summerville, S.C. 29485

July 5, 2013

Jay A. Mullinax, Esq.  
Law Office of Jay A. Millinax  
Two Park Lane, Suite 303  
Hilton Head Island, S.C. 29928

IN RE: Ron Orlosky v. The Law Office  
of Jay A. Mullinax

Dear Mr. Mullinax:

I received your letter of July third concerning the record in the above matter, and stating that you are unaware of my existence in this case. I am a retired Circuit Court Reporter, having assisted Court Administration since my retirement with producing transcripts of records of other reporters as needed.

Several months ago Court Administration sent to me a good number of records on cases taken by Debbie Everett which had not been produced. She was no longer employed by Court Administration, and they asked that I let them know what records could be produced of the material they had received from her.

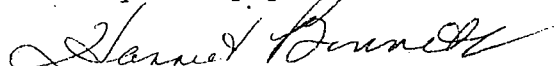
They asked that I scan the material and advise them concerning the status of the transcripts, which I did. I was then asked to produce what transcripts I could from that material.

At that time I called your office to advise that I had two discs in this case, one of which was blank, and the other only contained the Defense portion of the case, beginning when you yourself took the stand.

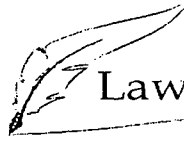
I never received any reply from you but did have some communication from Mr. John Bowen who learned I had this material. At that time, I called your office and left the same message I had before, which is what your letter was in reply to.

I will await further word, but I did want to explain this to you.

Very truly yours,



copy to Desiree Allen, Court Admin  
✓ John R. C. Bowen, Esq.



Law Office of Jay A. Mullinax, LLC

2 PARK LANE, SUITE 303  
HILTON HEAD ISLAND, SC 29928

July 3, 2013

VIA U.S. POSTAL SERVICE

Mrs. Harriett P. Bennett  
46 Regency Oaks Drive  
Summerville, SC 29485

Re: Ron Orlosky v. The Law Office of Jay A. Mullinax

Dear Mrs. Bennett:

I am following up with you in regard to your telephone message of July 1, 2013, concerning the above referenced case. I recently was informed that that you may have some information about documents related to the case. As you may know, I am unaware of your relationship to the case or the parties. Additionally, I am unaware of any previous communication between us and have only recently become aware of your existence.

Please be advised that a motion is currently pending in the South Carolina Court of Appeals that will determine the future actions of the parties. Once the Court of Appeals rules on the motion, we may follow up with you concerning your information. In the interim, we will await the decision of the Court of Appeals, who has jurisdiction in this matter.

For your reference, I have enclosed a copy of recent correspondence we received from Mr. Bowen, opposing counsel in the above referenced matter. In his correspondence, Mr. Bowen expressly states that you and I have previously communicated. As mentioned above, I am unaware of any previous communication between us and until I received the enclosed correspondence from Mr. Bowen, I was unaware of your existence. If I am mistaken, please advise me of the same.

Thank you for your assistance in this matter.

Very truly yours,

LAW OFFICE OF JAY A. MULLINAX, LLC

Jay A. Mullinax, Esquire

JAM:kem

Cc: John R. C. Bowen  
Stephen A. Spitz, Esquire

# **EXHIBIT E**

**LAUGHLIN & BOWEN. P.C.**

P.O. Drawer 21119  
Hilton Head Island, South Carolina 29925  
WWW.LAUGHLINANDBOWEN.COM

Drew A. Laughlin  
John R.C. Bowen\*  
Jennie S. Cerrati\*\*  
\*Admiralty Law  
\*\*Admitted in CA and SC

Telephone  
(843)689-5700  
Facsimile  
(843)689-9300  
Sender's E-Mail

john@laughlinandbowen.com

July 18, 2013

Mrs. Harriett P. Bennett  
46 Regency Oaks Drive  
Summerville, SC 29485

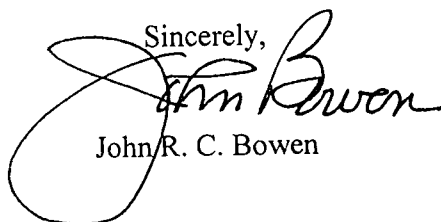
RE: *Ron Orlosky in his capacity as Personal Representative of The Estate of Debora L. Orlosky and in his capacity as trustee of the Debora Laura Orlosky Revocable Trust v. The Law Office of Jay A. Mullinax, LLC,*  
Beaufort County Case No. 2010-CP-07-4146  
Appellate Case 2012-212331

Dear Ms. Bennett:

We represent Ron Orlosky who is the Respondent in the above matter currently on appeal. We understand that you were sent the discs for the above matter by Court Administration, and that they may contain less than the entire trial. We also understand that the Appellant, Mr. Mullinax, has not requested you to produce any portion of the transcript. Therefore, please accept this as a formal request on behalf of the Respondent for you to transcribe those materials which you have received, and to provide me with a copy. Of course, we agree to pay the per page charge for this copy as set forth in the Appellate Court Rules.

Please do not hesitate to contact us should you have any questions. In the meantime, and with kind regards and thanks for your assistance, I am

Sincerely,



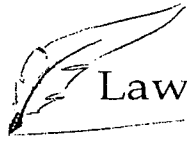
John R. C. Bowen

JRCB/sv

cc:

Ms. Desiree Allen  
Mr. Ronald Orlosky  
Stephen A. Spitz, Esquire  
Jay A. Mullinax, Esquire

# **EXHIBIT F**



Law Office of Jay A. Mullinax, LLC

2 PARK LANE, SUITE 303  
HILTON HEAD ISLAND, SC 29928

July 19, 2013

VIA U.S. POSTAL SERVICE

Mrs. Harriett P. Bennett  
46 Regency Oaks Drive  
Summerville, SC 29485

Re: Ron Orlosky v. The Law Office of Jay A. Mullinax, LLC

Dear Mrs. Bennett:

We are in receipt of a copy of the correspondence sent to you from Mr. Bowen dated July 18, 2013. Please be advised that we have a motion pending in the Court of Appeals to remand this case to the Circuit Court for a retrial. Through no fault of your own, it is our understanding that the Court Reporter failed to provide you a complete record of the trial, and is our understanding that you are only in possession of a portion of the record.

In regard to the motion pending in the Court of Appeals, we would adamantly object to you producing any of the transcript until an order has been granted for the motion. We are of the opinion that any other act would be presumptuous and disrespectful of the Courts of Appeals and the Circuit Court's jurisdiction and control of these matters.

Since you only possess a limited portion of the trial, it would be extremely prejudicial to the Appellant to create a partial transcript because it is considered incomplete and does not reflect a reasonable record of what transpired during the trial. Unless the Court of Appeals states otherwise, there is no reason for the incomplete transcript to be produced and disbursed until the Court has made an order on the pending motion. Thereafter, I anticipate subsequent Court orders and party motions will dictate the custody, control, and disposition of your incomplete records.

If for any reason you intend to release or produce any portion of the record without contemporaneous Court authorization, please advise me and expect motions concerning the aforementioned. Thank you for your assistance in this matter.

Very truly yours,

LAW OFFICE OF JAY A. MULLINAX, LLC

Jay A. Mullinax, Esquire

JAM:kem

Cc: John R. C. Bowen, Esquire  
Stephen A. Spitz, Esquire  
Desiree Allen, Court Admin