

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

Frank R. Addy, Jr. Circuit Court Judge

---

**Case No. 2012-CP-32-3428**

---

John R. Rakowsky, Respondent  
Adrian Falgione, Respondent

v.

James Spencer, Appellant

---

MOTION FOR APPELLANT TO  
PROCEED *IN FORMA PAUPERIS*

---

**RECEIVED**

JAN 13 2014

**SC Court of Appeals**

## INTRODUCTION

**NOW COMES THE APPELLANT**, on a *Pro Se* basis and moves the Appellate Court that based on Appellant's destitute economic circumstances the Appellant be designated *In forma pauperis* so Appellant can access legal system despite his poverty. Such status is required so the indigent, one hundred percent medically disabled Appellant is not economically denied full and fair access to the judicial system.

## BACKGROUND

Appellant was allowed by the Court of Common Pleas in Lexington County *In Forma Pauperis* status in the underlying case. Appellant's economic status has only worsened since he was granted *In Forma Pauperis* status in the Lexington County Court of Common Pleas. **(See Affidavit attached hereto).**

## DISCUSSION

Given the circumstances regarding the (1) *Pro Se* Appellant's indigent status, (2) *Pro Se* Appellant's the inability to pay Court fees, and (3) the fact that *Pro Se* Appellant asked *In Forma Pauperis* status in writing on a timely basis based, the Court should liberally construe the *Pro Se* Appellants Motion as a proper request.

On August 16, 2002, The Honorable Chief Justice Jean H. Toal, issued a memorandum stating that indigents are exempt from the Court fees including charge for a motion. Appellant is an indigent and, therefore, should be allowed access to the legal system despite being an indigent.

### **ARGUMENT AND LEGAL BASIS**

The South Carolina Court of Appeals has long held that individuals not be prevented from access to the legal system to through the discriminate use of Court costs. In Harrison v. Harrison the South Carolina Court of Appeals held:

“The United States Supreme Court stated in Boddie: due process requires, at a minimum, that absent a countervailing **state interest of overriding significance, persons forced to settle** their claims of right and duty through the judicial process must be given a meaningful opportunity to be heard.”

Harrison v. Harrison, 373 S.C. 524, 525 (S.C. Ct. App. 2007)

The United States Supreme Court has long held it would be contrary to the policy established by the United States Supreme Court that individuals be economically prevented from pursuing justice in the courts, in Boddie v. Connecticut:

“Thus, the Court held that a state could not, consistent with the obligations imposed on it by the Due Process Clause of the Fourteenth Amendment, pre-empt the right to dissolve

this legal relationship without affording all citizens access to the means it had prescribed for doing so.”

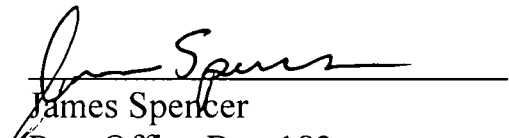
Boddie v. Connecticut, 401 U.S. 371 (U.S. 1971)

### CONCLUSION

**THEREFORE**, Appellant moves the Appellate Court to wave any and all filing fees and Court Fees during the duration of this appeal so Appellant can attempt to pursue his legal rights by granting the Appellant the Status to Proceed In forma Pauperis forthwith in the interests of justice.

This January 8, 2014,

By:

  
James Spencer  
Post Office Box 183  
Columbia, South Carolina 29212  
Appellant

STATE OF SOUTH CAROLINA, )

IN THE COURT OF APPEALS

James Spencer, )

Appellant, )

v. )

John R. Rakowsky, Adrian Falgione, )

and The Law Offices of Adrian )

Falgione, LLC )

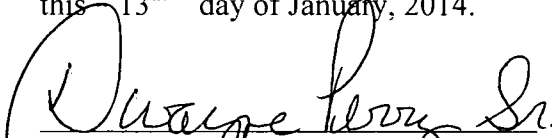
Respondents )

**AFFIDAVIT TO  
PROCEED IN FORMA PAUPERIS**

FILE NO. 2011—CP-40-5384

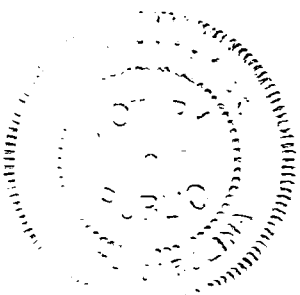
I, James B. Spencer, being duly sworn, state that I am a Plaintiff and that I do not have funds available to pay the costs of filing and service in the present matter. I hereby request that the complaint be filed and service made without costs.

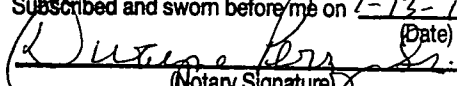
Sworn to and Subscribed before me )  
this 13<sup>th</sup> day of January, 2014. )

  
Notary Public for South Carolina )

  
Signature of Appellant )

My Commission Expires: )



State of SC County of Lexington  
Subscribed and sworn before me on 1-13-14  
(Date)  
  
(Notary Signature)

My Commission Expires August 21, 2014

**CERTIFICATE OF SERVICE**

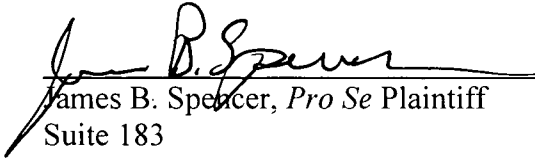
The undersigned hereby certifies that on January 13, 2014, the document described below, was(were) served on all parties of record in this case by mailing a copy, by US mail.

Documents served: **MOTION TO APPELLANT TO PROCEED, *IN FORMA PAUPERIS***

Parties Served:

Amanda K. Dudgeon  
Carlock, Copeland & Stair, LLP  
40 Calhoun Street, Suite 400  
Charleston, South Carolina 29401  
Attorneys for John Rakowsky

Bruner, Powel, Wall & Mullins, LLC  
1735 St. Julian Place, Suite 200  
Post Office Box 61110  
Columbia, South Carolina 29260-1110

  
James B. Spencer, *Pro Se* Plaintiff  
Suite 183  
7001 Saint Andrews Road  
Columbia, SC 29212  
(803) 414-0889

**RECEIVED**

JAN 13 2014

**SC Court of Appeals**