

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

74468

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

The Honorable Frank R. Addy, Jr. Circuit Court Judge

RECEIVED

DEC 15 2014

APPELLATE CASE NO.: 2014-000091

SC Court of Appeals

John R. Rakowsky, Respondent
Adrian Falgione, Respondent

v.

James Spencer, *Pro Se*, Appellant

Omnibus Motions for, Clarification,
Continuation and
Recusal of Judge Stephanie McDonald

INTRODUCTION

Appellant James Spencer, *Pro Se*, requests clarification as to the status of the motion he filed for continuation on October 29, 2014, and the status of the motion filed for appearance, continuation and joinder filed on October 27, 2014, by Michael Sribnick, Esquire representing the estate of Doris Holt and the interests of Southern Holdings Inc. Without this information the *Pro Se* Appellant is not able to proceed as he is not sure of the status of the case which will dictate the filings necessary.

Furthermore, as of this past week it has become medically necessary for Appellant to be operated on to restore his vision so he can participate as a *pro se* litigant. Appellant had originally tried to use medication and lay third parties to assist, however, without knowing the status of the case this combination of events has made it problematic to move forward. The date of the operation is to be determined by the eye surgeon early this coming week. Appellant has no choice but to humbly ask this court for an extension of time to present his informal brief until the operation on each eye has taken place which should be completed by January 7, 2014. Barring any unforeseeable complications, allowing recovery time and time to write the informal brief, the continuance requested is up to and including January 30, 2015.

Finally, it has come to the Appellant's attention that Appellate Judge Stephanie McDonald has a conflict of interest in this case since she was a litigator in the case involving the alleged legal malpractice by the Appellees in federal district court. Therefore, the Appellant respectfully requests Her Honor to recuse herself from any involvement in this matter.

DISCUSSION

REQUEST FOR CLARIFICATION:

The *Pro Se* Appellant must know the status of both his own request for expansion and the status of the request for joinder by the Estate of Doris Holt, and the interests of the corporate entity Southern Holdings Inc.

The *Pro Se* Appellant tried on several occasions to gain the consent of the Appellees to remove the Estate of Doris Holt and the interests of the corporate entity from the underlying case as he was legally not allowed to represent either entity under South Carolina law. This matter was before the presiding judge and was left open as no decision was rendered on this issue in an apparent oversight.

The *Pro Se* Appellant would have to address this matter if this Honorable Court does not allow counsel for these two entities into this proceeding. The appearance motion for these two entities was submitted on October 27, 2014, which is pending before the court. The decision by this Honorable court on this matter will dictate the content of the Informal Brief by the *Pro Se* Appellant.

REQUEST FOR CONTINUATION:

The Appellant has been attempting to solve the medical problems that have been worsening since he became a victim of torture, a cause of action in the underlying case, the alleged mishandling of which led to the present malpractice action. The *Pro Se* Appellant is now faced with risking permanent blindness due to complications of his disability if he does not immediately address this condition through undertaking two eye operations. A continuation is therefore necessary to limit further injury to the victim by not granting this necessary extension so he can undertake the operations and allow this Honorable Court to rule on the two pending motions so the Appellant can then properly proceed based on the court's decisions.

REQUEST FOR RECUSAL:

The Honorable Judge Stephanie McDonald was a counsel of record in the underlying case of, Southern Holdings, Inc., et al., vs. Horry County, et al. South Carolina Federal District Court Case No.4:02-CV-01859 RBH. Her Honor, therefore, has a conflict of interest regarding the case at bar. On May, 2014, she was elected by the General Assembly of the state of South Carolina to the Court of

Appeals, Seat 7, to fill the seat vacated upon the retirement of the Honorable Daniel F. Pieper.

GENERAL CONSIDERATIONS

- This is a necessary expansion of the first extension requested by the Appellant in this case.
- No briefs have been filed in this captioned matter before the Appellate Court.
- The clarification is necessary prior to the filing of the brief by the *Pro Se* Appellant.
- This motion is filed within the time period of the first motion for expansion still pending before the court.
- There will be no prejudice to any party by this extension to the initial motion for expansion still pending before the court.

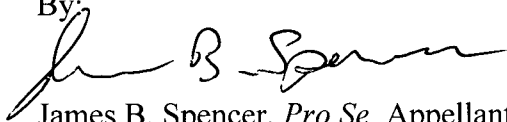
CONCLUSION

THEREFORE, for the foregoing reasons the Appellant humbly moves for leave of the Appellate Court for an expansion of time up to and including January 30, 2015 for the Appellant to file his Informal initial brief to allow him to be able to participate in his the

legal process with adequate eyesight since he has no other means to deal effectively in this matter as he is indigent and cannot afford legal counsel. Furthermore his medical problems will worsen unless he has the operations immediately. The Appellant cannot both physically be blind and legally file a brief in the blind which he would be doing without knowledge of the outcome of the defining rulings pending on the motions before this Honorable Court.

This 15th day of December, 2014.

By:

A handwritten signature in black ink, appearing to read "James B. Spencer". The signature is written in a cursive style with a large, prominent "B".

James B. Spencer, *Pro Se*, Appellant
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PROFF OF SERVICE

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

Documents served: Omnibus Motions for, Clarification, Continuation and Recusal of Judge Stephanie McDonald.

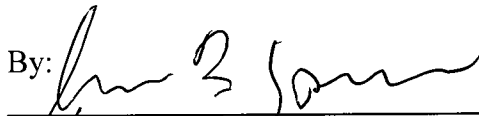
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