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JAN 15 2015
SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

**APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas**

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

APPELLATE CASE NO.: 2014-000091

**John R. Rakowsky, Respondent
Adrian Falgione, Respondent**

v.

James Spencer, *Pro Se*, Appellant

**Amended Motion
For Continuation and
Recusal of Judge Stephanie McDonald**

THERE IS AN ATTACHMENT TO THIS DOCUMENT.

BACKGROUND

On December 15, 2014, Appellant filed a motion for extension of the due date for his Informal Brief to January 30, 2015, as he had become virtually blind in both eyes and is not able to read or write. Appellant included estimated dates in the pending motion for the non-elective surgery and recovery. This motion is still pending before this Honorable Court.

Subsequently, an Ophthalmologist conducted an extensive examination on December 23, 2014 of the Appellant and confirmed the Optometrist diagnosis that surgery was required in order to restore the Appellant's vision. **Please see attached affidavit.**

Based on the results of the examination non-elective surgery was scheduled on each eye at the earliest possible dates by the surgeon. The dates of surgery were/are January 14, 2015 and February 4, 2015. The post-operative examination is set for February 18, 2015. At that time, or shortly thereafter it is planned for corrective lenses to be prescribed. It is anticipated that Appellant should be able to resume representing himself with the ability to read and write restored to workable levels with the use of appropriate corrective lenses. The medical realities regarding the surgical procedure necessitate that the Appellant amend and replace the December 15, 2014 motion still pending with this Amended replacement

motion. This Amendment reflects the dates of the medical realities clarified through medical examinations and the completed first operation. Therefore, Appellant humbly requests that this Honorable Court allow Appellant to regain his eyesight to be able to conduct his litigation on a *Pro Se* basis as he is indigent and has no alternative

AUTHORITIES

The South Carolina Supreme Court has held, "Specifically, respondent procured an extension of time within which to file a brief upon an affidavit indicating that he was ill and was unable to any substantive work during a certain period of time." ***In re Bishop*, 263 S.C. 289 (S.C. 1974).**

In the case of ***Crosswell v. Association***, 49 S.C. 374; 27 S.E., the Supreme Court found the exercise of the Court's discretion has said that relief would be extended when a party has failed to take some step necessary to perfect his appeal "through excusable inadvertence, or from sickness or other cause beyond his control." ***Rylee v. Marett*, 121 S.C. 366, 376 (S.C. 1922).**

DISCUSSION

REQUEST FOR CONTINUATION:

Appellant had surgery on one eye on January 14, 2015. The surgery on the second eye is scheduled for February 4, 2015. The

post-operative exam is scheduled for February 18, 2015. If all goes well Appellant will then be prescribed eyeglasses and will shortly thereafter be able to function in regard to reading and writing.

The *Pro Se* Appellant is with risking permanent blindness due to complications of his disability if he does not continue the ongoing medical treatment.

Appellant therefore requests an extension up to and including the first week of March to allow time for recovery, obtaining prescription glasses and drafting and typing the brief. The Appellant, therefore, humbly requests up to and including the date of May 9, 2015 to file his Informal Brief.

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.

APPLICATION OF PRIOR FEES:

The filing fees already paid for the pending motion filed on December 15, 2014 be applied to this updated amendment of the December 15, 2015 motion as it replaces that motion.

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.
- This motion is filed within the time period for the of the first motion for expansion granted by this Honorable Court of January 15, 2015
- 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

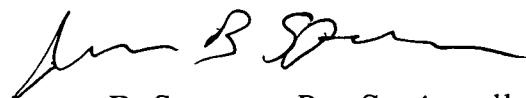
leave of the Appellate Court for an expansion of time up to and including March 9, 2015 for the Appellant to file his Informal initial brief to allow him to be able to participate in the legal process with adequate eyesight.

In regard to the Honorable Appellate Judge Stephanie McDonald, the Appellant requests she withdraw from any deliberations on this case as Her Honor has a conflict of interest. Her Honor was a litigator in the underlying 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 these proceedings.

Finally, that this amendment/replacement document not incur any additional court costs as the document is simply a correction of the motion still pending before this Honorable Court.

This 15th day of January 2015.

By:



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

AFFIDAVIT OF JAMES SPENCER

PERSONALLY APPEARED before me the undersigned James Spencer who after being duly sworn states the following:

I, James Spencer, declare under penalty of perjury:

1. I am over eighteen years old and am qualified to testify.
2. The information in this declaration is based on my personal knowledge.
3. I am currently unable to read and write even with the aide of prescription eyeglasses.
4. My Optometrist confirmed my severe limitations regarding my vision in both eyes and referred me to an Ophthalmologist.
5. On December 23, 2014, the Ophthalmologist confirmed in order to restore my vision I required surgery on both eyes.
6. The earliest date the surgeon could schedule my operations were for January 14, 2015, and February 4, 2015.
7. The post-operative examination is scheduled for February 18, 2015.
8. If there are no complications, I have been told I will receive a new Rx for eyeglasses and be able to return to reading and writing shortly thereafter.

AFFIANT FURTHER SAYETH NAUGHT

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Affiant: James Spencer
James Spencer

Date: 01-13-2015

Sworn and subscribed to before me
this 3 day of January 13, 2015

Henrietta R Woodard
Notary Public for South Carolina



My Commission expires on: 11-04-23

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 and/or delivery by courier on this date January 15, 2015.

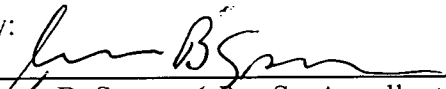
Documents served: Amended Motion for Continuation and Recusal of Judge Stephanie McDonald.

Parties Served:

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