

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

CASE No.: 2012-CP-32-3428

APPELLATE CASE No.: 2014-000091

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

v.

James Spencer, *Pro Se*, Appellant

**INITIAL INFORMAL BRIEF OF
PRO SE APPELLANT**

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STATEMENT OF ISSUES ON APPEAL

- I. THE JUDGE ERRED IN OVERRULING STANDING ORDERS BY A JUDGE ON THE SAME LEVEL THIS INCLUDED THE ORDER THAT THE PLAINTIFFS BE ALLOWED TO CONDUCT DISCOVERY IN THE PROCEEDING AND THAT THE DEFENDANT RETURN THE REMAINING LITIGATION FUNDS TO ENABLE THE *PRO SE* PLAINTIFF TO HIRE AN EXPERT WITNESS AND AN ATTORNEY PRIOR TO ANY HEARINGS BEING HELD ON DEFENDANTS' MOTIONS TO DISMISS. JUDGE ADDY NOT COMPLYING WITH THE STANDING ORDERS OF JUDGE BARBER CLEARLY PREJUDICED THE CASE AGAINST THE *PRO SE* LITIGANT.

- II. THE JUDGE ERRED IN DISMISSING THE CLAIM OF LEGAL MALPRACTICE AGAINST DEFENDANTS BASED ON THE LACK OF AN EXPERT WITNESS AS THIS REVERSED AN EARLIER RULING BY A JUDGE ON THE SAME LEVEL AND VIOLATED SOUTH CAROLINA LAW SINCE THIS CASE DOES NOT REQUIRE AN EXPERT WITNESS.

- III. THE JUDGE ERRED BY DISMISSING ALL OTHER PENDING MOTIONS WITHOUT REVIEW WHEN THESE MOTIONS CLEARLY SHOULD HAVE BEEN HEARD BEFORE THE DEFENDANTS' MOTIONS TO DISMISS THE LEGAL MALPRACTICE CAUSE OF ACTION UNDER PRIOR COURT ORDER. THIS RESULTED IN JUDGE ADDY NOT REVIEWING PENDING MOTIONS INCLUDING DISCOVERY THAT WOULD HAVE IMPACTED THE MERITS OF DISMISSING THE LEGAL MALPRACTICE CAUSE OF ACTION.

- IV. THE JUDGE ERRED IN ALLOWING THE STATUTE OF LIMITATIONS TO BE USED TO PROTECT THE DEFENDANTS WHEN FRAUD ON THE COURT INVOLVING THE DEFENDANTS STAYED THE APPLICABILITY OF THE STATUTE OF LIMITATIONS.

- V. THE JUDGE ERRED IN NOT DISMISSING THE UNREPRESENTED AND ABSENT PLAINTIFF, SOUTHERN HOLDINGS, INC., FROM BEING A PARTY IN THE LAWSUIT AS IT WAS EFFECTIVELY BEING TRIED *IN ABSENTIA* AND IN VIOLATION OF SOUTH CAROLINA LAW.

VI. THE JUDGE ERRED IN NOT DISMISSING THE UNREPRESENTED AND ABSENT PLAINTIFF, THE ESTATE OF DORIS HOLT, FROM BEING A PARTY IN THE LAWSUIT AS IT WAS EFFECTIVELY BEING TRIED *IN ABSENTIA* AND IN VIOLATION OF SOUTH CAROLINA LAW.

VII. THE JUDGE ERRED IN ALLOWING AMANDA DUDGEON AND HER LAW FIRM TO REPRESENT DEFENDANT RAKOWSKY BASED ON HER ACTIVE PARTICIPATION IN CONCEALING INFORMATION DOCUMENTING RAKOWSKY'S FRAUD ON THE COURT IN THE UNDERLYING CASE, AND HIS BREACH OF FIDUCIARY DUTY AND HIS BREACH OF CONTRACT.

VIII. THE JUDGE ERRED BY REVIEWING ONLY THE LEGAL MALPRACTICE CLAIM AND FAILED BOTH TO REVIEW AND ADDRESS THE INDEPENDENT CLAIMS OF BREACH OF FIDUCIARY DUTY AND THE CLAIM FOR BREACH OF CONTRACT.

STATEMENT OF THE CASE

This appeal is on underlying actions for breach of contract, breach of fiduciary duty and legal malpractice filed on August 15, 2011 (“*August 2011 case*”). Defendants in this action are John R. Rakowsky, Attorney at Law, (“Rakowsky”) and Adrian L. Falgione, Attorney at Law, individually and doing business as The Law Offices of Adrian Falgione, LLC, (“Falgione”). The complaint and summons were served on both Defendants on September 15, 2011. Rakowsky responded by filing a motion to dismiss on November 2, 2011. Falgione responded by filing a motion to dismiss on November 4, 2011.

Rakowsky had previously filed an Interpleader action on September 14, 2008, Case No. 2008-CP-40-6656, that was still pending before the same Richland County Circuit Court involving the same parties. That lawsuit involved remaining litigation funds that were advanced to Rakowsky for the personal use of Plaintiff Spencer and the litigation of the various lawsuits by *Pro Se* litigant Spencer. Rakowsky knew that the individual *Pro Se* litigants were both indigent and *one hundred percent medically disabled*.¹ By Rakowsky withholding all the remaining litigation funds, the indigent *Pro Se* litigants were forced to litigate both actions without counsel.

¹ The *Pro Se* Plaintiffs’ disabilities were the direct result of the physical battery by the Defendants, a cause of action and a basis for damages in the underlying lawsuit for which Rakowsky served as Plaintiffs’ counsel, South Carolina Federal District Court Case No. 4:02-CV-01859-RBH.

The Honorable James R. Barber III, Chief Administrative Judge, due to the common parties in both the *August 2011 case* and Interpleader case and the emanation of both cases from South Carolina Federal District Court Case No. 4:02-CV-01859-RBH, held a hearing on both cases simultaneously on May 7, 2012.

Judge Barber at the hearing made several rulings pertaining to the *August 2011 case* including the issuance of a scheduling Order. These rulings included, but were not limited to, the following:

A. Judge Barber ordered that the interpleader case was to be litigated first so the remaining litigation funds could be turned over to the *Pro Se* litigants. Judge Barber stated he would then disperse the funds to the indigent *Pro Se* litigants so they could hire a lawyer to litigate the *August 2011 case* action on their behalf.

(ROA², May 7, 2012 Hearing Transcript; Tr. P.32, lines 7-25, P. 34, lines 1-19, P. 48, lines 2-10, P. 9, lines 20-25, P. 10, lines 1-25, P. 11, 1-6, P. 38, lines 3-25, P.39, lines 1-25, P. 40, lines 1-11.)

B. Judge Barber ruled that the Plaintiffs would be given the time to hire an expert witness, if one was needed, and hire a lawyer before there would be a hearing on the Defendants' motion to dismiss regarding an expert witness.

In that regard, Judge Barber ruled that he was extending the time allowed to

² Each ROA references specific transcript in the informal Brief Exhibit Appendix that is part of the Record on Appeal.

produce an expert report to the Plaintiffs until after Plaintiffs secured a lawyer and their lawyer determined if an expert was needed in the *August 2011 case*, before the motion to dismiss regarding the issue on the lack of an expert report was heard. **(ROA, May 7, 2012 Hearing Transcript; Tr. P. 51, lines 24-25, Tr. P. 52, lines 1-4, lines 13-18.)**

C. Judge Barber ruled that discovery was to be ongoing in the *August 2011 case* as confirmed by Defendants' counsels on the Court record. Judge Barber ruled that discovery in the *August 2011 case* would continue to be ongoing for at least the next six months from the date of the May 7, 2012 until the hearing and that he was going to get it tried by October 2012. **(ROA, May 7, 2012 Hearing Transcript; Tr. P., 41, Line 25, P., 42, Line 1 & 5-7 & 10-22, P. 56, lines 16-25, Tr. P. 57, lines 1-4.)**

D. Judge Barber ruled the first hearing to be held in the *August 2011 case* would be on the *Pro Se* Plaintiffs' motion regarding the disqualification of Rakowsky's counsel (Amanda Dudgeon and her law firm). Judge Barber ruled and this would be the only issue heard during the hearing due to health concerns regarding the capability and capacity of the 100% disabled *Pro Se* litigant Spencer. He also ruled on standards to be met during the ongoing discovery due to Spencer's health. **(ROA, May 7, 2012 Hearing Transcript; Tr. P. 40, lines 13-25, Tr. P. 41, lines 1-9, Tr. P. 57, lines 11-**

25, Tr. P. 58, lines 1-2.)

E. Judge Barber ruled that a hearing in the *August 2011 case* regarding the Defendants' motion to dismiss due to lack of an expert witness will be deferred until the *Pro Se* Plaintiffs can get an attorney [after the remaining litigation money was returned by Rakowsky in the interpleader case].

(ROA, May 7, 2012 Hearing Transcript; Tr. P. 52, lines 13-18.)

F. When *Pro Se* Plaintiffs raised the issue of the tardiness of a response from the Defendants regarding a default judgment, Judge Barber stated that the *August 2011 case* would not be dismissed on any technicality. Judge Barber ruled that the *August 2011 case* would be heard before a jury on the merits of the claims and no technicality on either side would be allowed to dismiss this case. *(ROA, May 7, 2012 Hearing Transcript; Tr. P. 45, lines 22-25, P. 46, lines 1-12.)*

G. Judge Barber ruled that both cases were to be completed by the end of the year 2012, as he was Chief Judge he would make an exception and personally handle the nonjury interpleader action so "they" [the *Pro Se* litigants] can get their money back to hire a lawyer. We can conclude this thing, "both cases," this year [2012]. *(ROA, May 7, 2012 Hearing Transcript; P. 48, lines 2-10.)*

H. Judge Barber instructed the Defendant's counsels to draft the Orders he

issued during the hearing and for Defendants to “run the draft by” the *Pro Se* Plaintiffs for their input prior to submission, Defendants’ counsels stated they would comply on the record. (*ROA, May 7, 2012 Hearing Transcript; P. 38, lines 3-25, P. 39, lines 1-25, P. 40, lines, 1-12, P. 61, lines 7-18, P. 67, lines 2-6.*)

- I. However, subsequent to the hearing the Defendants’ counsels in both cases refused to draft the Orders issued by Judge Barber.
- J. Defendants’ counsels, in the alternative filed a motion to change the venue of the *August 2011 case*. The action was moved from Richland County to Lexington County, irrespective of the disability of the individual *Pro Se* litigants, which clearly restricted their ability to travel, based on the Defendants claim they had a right to have the case heard in the County they resided for their convenience. The *Pro Se* Plaintiffs argued, to no avail, that because Rakowsky was the Chief City Judge in Lexington he would have an unfair advantage in that venue.
- K. *Pro Se* Plaintiff Spencer, a non-attorney, attempted to amend the complaint in the *August 2011 case*, as he was not allowed under South Carolina law to represent a former corporate entity, Southern Holdings, nor the entity of the estate of Doris Holt. See Informal Brief Exhibit Appendix, Exhibit 2.
- L. The *Pro Se* litigant filed an expedited [Emergency] motion on July 30, 2012,

to stay the hearing scheduled on August 1, 2012 until Rakowsky complied with the standing Order by Judge Barber issued on May 7, 2012. That order determined that prior to the next hearing in the *August 2011 case* the remaining litigation fees to enable the indigent and disabled *Pro Se* litigants to hire a legal counsel were to be released by Rakowsky. See Informal Brief Exhibit Appendix, Exhibit 3.

M. Contrary to Judge Barber's standing Order, a hearing was held before Judge Goldsmith, from the 6th Judicial Circuit, on August 1, 2012 concerning a change of venue for the *August 2011 case* while Judge Barber was on a prolonged vacation. Judge Goldsmith opened the hearing admitting he had not seen the case file. See Informal Brief Exhibit Appendix, Exhibit 4.

N. Mr. Falgione's Counsel, Ben Bruner, mailed the proposed order for a change of venue to the *Pro Se* litigants on August 1, 2012. See Informal Brief Exhibit Appendix, Exhibit 5.

O. On August 1, 2012, Judge Goldsmith granted the Defendants' motion request to change venue for the *August 2011 case* to Lexington County, South Carolina. See Informal Brief Exhibit Appendix, Exhibit 6.

P. *Pro Se* Plaintiffs filed a timely 59(e) motion for reconsideration on August 30, 2012. See Informal Brief Exhibit Appendix, Exhibit 4.

Q. *Pro Se* Plaintiffs requested Judge Goldsmith to wait for the transcript of the

hearing on May 7, 2012, documenting the standing Orders by Judge Barber before he made his ruling on the 59(e). See Informal Brief Exhibit Appendix, Exhibit 7.

R. Ms. Weissenstein and her law firm, Ballard, Watson, Weissenstein, Attorneys at Law, became counsels of record for both Defendants' without giving proper notice in the *August 2011 case* at some unknown date after the venue was changed to Lexington County, South Carolina. See Informal Brief Exhibit Appendix, Exhibit 8.

S. The legal teams for Rakowsky and Falgione from both the Interpleader case and the *August 11 case* had been merged and allowed the coordination of the efforts for their clients in both cases, according to records from the Clerk of Court of Lexington County once the venue was moved to Lexington County, South Carolina. The *Pro Se* Appellant only became aware of this merger and coordinated of actions (e.g. refusal to release the uncontested litigation funds in the interpleader case despite the standing order of Judge Barber, so the individual *Pro Se* litigants could not obtain counsel in the *August 11 case*) or non-actions in both cases when Judge Addy's Order was issued on August 19, 2013. See Informal Brief Exhibit Appendix, Exhibit 9.

T. Despite Judge Barber's standing Orders regarding discovery being ongoing, Rakowsky and Falgione refused to cooperate. The individual *Pro Se*

litigants on December 27, 2012 notified the court that the Defendants were not complying with the standing orders of Judge Barber. See Informal Brief Exhibit Appendix, Exhibit 10.

U. Despite the standing orders issued by Judge Barber regarding the release of the remaining litigation funds to the *Pro Se* Appellants and the fact that no hearing was to be held until the Plaintiff/Appellants obtained counsel with these litigation funds, a motions hearing was noticed for the *August 2011 case* received by the *Pro Se* Plaintiff on June 3, 2013 and held on June 5, 2013, in Laurens County, South Carolina with the Honorable Judge Addy presiding. See Informal Brief Exhibit Appendix, Exhibit 11.

V. Realizing this case was moving forward despite the standing orders of Judge Barber, *Pro Se* litigant James Spencer, filed an expedited [Emergency] motion to amend the complaint on June 3, 2013 to remove entities, Southern Holdings, Inc. and the Estate of Doris Holt since he could not represent as a layperson under South Carolina law and to incorporate previously concealed information by the Defendants that had recently come to light.

W. Judge Addy, held the hearing and documented on the court record at the beginning of the June 5, 2013 hearing he virtually had no idea what the background of this case was nor what the issues were that he was supposed

to deal with as he asked “*what [issues] are we dealing with*” and stated “*I know this is a -- there’s an underlying medical malpractice action which apparently had been settled --- (Off the record briefly) --- legal malpractice. Okay. I’m sorry. Sorry.*” --- He revealed on the court record that his knowledge of the case came from, “Judge Griffith’s clerk did prepare a brief overview.” **(ROA, June 5, 2013 Hearing Transcript; P. 7, lines 5-17.)**

The motions hearing before Judge Addy on June 5, 2013 was on the Plaintiffs’ motion to disqualify, due to a conflict of interest, Rakowsky’s counsel, Amanda Dudgeon, and her firm from representing Rakowsky. The hearing, in direct conflict Judge Barber’s standing orders, also was on the motions filed by the Defendants to dismiss the legal malpractice cause of action against Rakowsky and Falgione. Judge Addy ruled against the motion to disqualify Amanda Dudgeon and her law firm at the hearing on June 5, 2013. Reversing his earlier position during the hearing that he was to deal with the outstanding motions, in closing the hearing, he admitted he was unprepared for the hearing. Judge Addy stated, if he decided not to dismiss the case legal malpractice cause of action, “we will reconvene, and address those, since those relate to the actual merits and I would need to wade in a little bit deeper on this case factually in order to be able to rule intelligently as to those matters.” **(ROA, June 5, 2013 Hearing Transcript;**

P. 64, lines 16-19.) Failure to review the outstanding motions in the manner ruled by Judge Barber clearly prejudiced the case against the *Pro Se* Plaintiffs. The discovery denied them and the medical considerations for the holding of hearings regarding the disabled and indigent *Pro Se* Plaintiffs both took the *Pro Se* Plaintiff by surprise and the *Pro Se* Plaintiff was unprepared to litigate once again previously litigated and ruled upon matters.

Again, due to the continuing failure, by Judge Addy, to comply with standing Orders by Judge Barber, *Pro Se* Plaintiff Spencer moved for a mistrial on June 5, 2013. Judge Addy immediately denied the motion during the hearing. (*ROA, June 5, 2013 Hearing Transcript; P. 65, lines, 23-25, P.66, lines, 1-13.*)

Judge Addy ruled on August 19, 2013, in favor of the two motions from Rakowsky and Falgione respectfully to dismiss the legal malpractice cause of action against Rakowsky and Falgione. Timely post-trial motions were filed and denied by order dated December 4, 2013. This appeal followed.

STATEMENT OF THE FACTS

Pro Se Appellant James Spencer with six other Plaintiffs with various causes of action and claims filed a lawsuit on May 29, 2002 in South Carolina Federal District Court Case No. 4:02-CV-01859-RBH. Defendant Rakowsky made notice of appearance as counsel for each of the seven independent Plaintiffs on December

3, 2002, under seven representation contracts each requiring the written approval of each of the seven Plaintiffs before any settlement could be agreed to by any Plaintiffs' counsel. Rakowsky hired Ron Serota, Esquire, from Nevada, who made his notice of appearance as counsel on July 7, 2005³ and Defendant Falgione⁴ a friend of Rakowsky from Lexington, SC. Falgione made his notice of appearance as counsel on November 16, 2006. Both Falgione and Ron Serota represented each of the seven independent Plaintiffs under seven individual contracts. All three were required to abide by the 407 1.8 (g) and 83.1.08 of the local federal rules of civil procedure.⁵

On March 26, 2007, Rakowsky and Falgione had disagreements with Co-counsel Ron Serota that came to a head with the filing of Dkt. # 367⁶ a motion asking Ron Serota be dismissed from the case and gagged. On April 30, 2007, the Court ordered in Dkt. # 410 that Ron Serota turn over legal documents and his work papers on the case to Rakowsky as Rakowsky and Falgione had forced Ron Serota off the Plaintiffs' legal team. This occurred eight days before the May 8, 2007 evidentiary hearing and nine days before the case was scheduled to go to trial

³ Replaced Plaintiffs' Counsel Charles F Cooper, who died during the pendency of the case

⁴ Replaced Plaintiffs' Counsel James Cooper, who withdrew because of illness after the death of his brother Charles Cooper

⁵ Under South Carolina Local Federal Rule 83.1.08, when the same counsel or counsels represent more than one party, an informed agreement of written consent signed by each represented party is required, stating the terms of the settlement and the distribution of the settlement when an aggregate settlement is involved before a settlement can be agreed to.

⁶ All referenced ECF documents herein are in the accompanying Informal Brief Appendix

before a jury on May 9, 2007.

It should be noted that after the date of May 3, 2007, the record is disputed among the Officers of the Court including the presiding Judge R. Bryan Harwell. The discovery ordered by Judge Barber (emphasis added) in both the related interpleader case and the August 2011 case, has been one sided as both Rakowsky and Falgione have refused to cooperate in any manner. Motions to compel have been filed but have never been addressed by any judge and Judge Addy openly left them pending. Furthermore, the presiding Judge in the Federal District Court, Judge Harwell has refused all motions by the Plaintiffs in that case to clarify the record (July 12, 2007 (ECF # 519), January 30, 2008 (ECF #. 582), August 5, 2008 (ECF # 659), and September 29, 2008 (Dkt. # 719).

On May 8, 2007, an evidentiary hearing was held before presiding Judge Harwell. The Plaintiffs were not allowed to attend. The court reporter, Vince Rolland, documented it lasted for forty-eight minutes before it was adjourned to Judge's chambers without the presence of the court reporter. There it lasted for a period of sixty-seven minutes. At that point, according to Vince Rolland, a woman came out of the judge's chambers and announced in the courtroom that "everything was over," Mr. Rolland then turned off his camera/recorder. (Dkt # 639-5) Only a few pieces of evidence on medical damage expenses was discussed on the record representing a few thousand dollars was discussed as possibly being untimely

according to the transcript. This was an insignificant amount of damages considering the damages were documented to be in excess of thirty six million dollars. Further, the damages discussed as possibly being denied by the court affected only a couple of the Plaintiffs. (Dkt # 481)

According to officers of the court Rakowsky, Falgione and Andrew Lindemann ("Lindemann") (lead counsel for the Government Defendants), all the evidence was reviewed, and the majority and the vast majority of the Plaintiffs' evidence on conspiracy and the associated damages were dismissed by Judge Harwell while all of the Defendants' evidence was left intact. These three lawyers also claimed that Judge Harwell ordered the unrepresented and absent Defendants Ancil Garvin and David Smith dismissed from the case as part of a settlement, he imposed. (Dkt # 492) (Dkt #486) Judge Harwell fifteen months later disagreed with both these claims by the three officers of the court on August 13, 2008. (Dkt #668, P. 5, P.6) Mr. Lindemann claimed the case was settled on May 9, 2007 along with Falgione and Judge Harwell. Rakowsky claimed in a sworn affidavit he put on the court record on May 16, 2014, in the interpleader case, stated the settlement agreement was completed during the closed-door evidentiary hearing on May 8, 2007. See Informal Brief Exhibit Appendix, Exhibit 12.

Officer of the Court E Glenn Elliott claimed the settlement terms were discussed on May 8, 2007 during the evidentiary hearing behind the closed doors

(Dkt #491). Judge Harwell disagreed with that claiming there were only informal discussions regarding evidentiary matters in chambers between counsels on May 8, 2007. (Dkt. # 668)

Plaintiffs filed documents with the court on June 1, 2007, on a *Pro Se* basis, within twenty-four hours after the May 8, 2007 and May 9, 2007 hearings transcripts being released, stating they did not give authority to settle the case to Rakowsky and Falgione. See Informal Brief Exhibit Appendix, Exhibit 13. Rakowsky and Falgione claimed the entire situation was due to the mistakes made by former counsels Mr. Serota and Michael Goldberg who they were going to sue on behalf of the Plaintiffs. The lay, indigent, and disabled Plaintiffs sought clarification from the court through a series of motions for clarification (July 12, 2007 (ECF # 519), January 30, 2008 (ECF # 582), August 5, 2008 (ECF # 659), and September 29, 2008 (ECF # 719)). All these motions for clarification went unanswered.

The motions of clarification sought the specifics of what happened at the evidentiary hearing and how the alleged settlement occurred. Judge Harwell ruled that it was in his sole discretion as to whether to hold or not hold a plenary hearing on whether or not there was a legal settlement authorized by the Plaintiffs and refused to answer motions to clarify what he stated he did not agree with in Dkt #510 concerning the Plaintiffs' counsels' claims in Dkt. # 486. All the *Pro Se*

Plaintiffs were not in attendance at the May 8, 2007 hearing and two were absent on the May 9, 2007 hearing. The *Pro Se* Plaintiffs believed that Rakowsky and Falgione were being truthful that no agreement was final until a unanimous agreement was reached, put in writing, and executed by every Plaintiff individually and that Rakowsky and Falgione were being truthful about the results of the evidentiary hearing behind closed doors on May 8, 2007. It was not until the issuance of Dkt. # 668 on August 13, 2008, that the Federal District Judge had been covering up the apparent truth about the dismissal of the unrepresented and absent Defendants being ordered by the Judge Harwell on May 9, 2007. It was not until August 13, 2008, that the *Pro Se* Plaintiffs found out that Judge R. B. Harwell had concealed the fact he knew that the evidence being considered for dismissal amounted to no more than a few thousand dollars instead of the over thirty million dollars of documented damages that were claimed by Rakowsky and Falgione. It was also at this point that the *Pro Se* Plaintiffs realized Rakowsky and Falgione had no intention of following through with a lawsuit for malpractice against Mr. Serota and Michael Goldberg who they claimed were responsible for the actions of the Judge Harwell regarding the dismissal of the evidence and over thirty million dollars in monetary damages. Judge Harwell finally confirmed over fifteen months after the settlement was imposed either on May 8, 2007 or on May 9, 2007, depending on which story by which officer of the court one chooses to believe, that

the statements made on the court record by Rakowsky, Falgione and Lindemann were inconsistent with what the court put forth as the truth. As of August 13, 2007, what happened during the hearings on May 8, 2007 and May 9, 2007 is unclear, and all officers of the court present refuse to answer discovery questions and/or motions to clarify.

Furthermore, in order for the underlying case to have been properly settled the Defendants were required to abide by the 407 1.8 (g) and 83.1.08 of the local federal rules of civil procedure, see footnote 4 herein. The *Pro Se* Plaintiff has never been allowed to conduct the discovery ordered by Judge Barber, in this case to determine why these required rules were not followed regarding the Plaintiffs causes of actions claims including, but not limited to, the breach of contract claim. Further, Judge Addy's rulings overruled the discovery Judge Barber ordered and thereby prevented discovery on why Rakowsky provided the *Pro Se* Plaintiffs with his ECF federal passcodes and as he had lawyers withdraw from representing the Plaintiffs had the Plaintiffs draft and submit pleadings in this case. Rakowsky claimed he did this so that he and Falgione could prepare for trial. However, the trial that never occurred for reasons unknown by the *Pro Se* Plaintiff as Judge Addy overruled Judge Barber regarding discovery by ignoring the Plaintiff's pending motions by dismissing the legal malpractice cause of action and both ignoring the other causes of action in the case and also overruling Judge Barber's

standing orders.

ARGUMENT

ISSUE ONE

I. THE JUDGE ERRED IN OVERRULING STANDING ORDERS BY A JUDGE ON THE SAME LEVEL. THIS INCLUDED THE ORDER THAT THE PLAINTIFFS BE ALLOWED TO CONDUCT DISCOVERY IN THE PROCEEDING AND THAT THE DEFENDANT RETURN THE REMAINING LITIGATION FUNDS TO ENABLE THE *PRO SE* PLAINTIFF TO HIRE AN EXPERT WITNESS AND AN ATTORNEY PRIOR TO ANY HEARINGS BEING HELD ON DEFENDANTS' MOTIONS TO DISMISS. JUDGE ADDY NOT COMPLYING WITH THE STANDING ORDERS OF JUDGE BARBER CLEARLY PREJUDICED THE CASE AGAINST THE *PRO SE* LITIGANT.

There is a "a long-standing rule in this State that one judge of the same court cannot overrule another." *Tisdale v. Amer. Life Ins. Co.* 216 S.C. 10, 56 S.E. 2d 580 (1950); *Dankins v. Robbins*, 203 S.C. 199, 26 S.E. 2d 689 (1943)".

Judge Addy verified on the record that his only knowledge on this case came from materials sent to him described as "most of the materials which had been provided to him [Judge Griffith]" who recused himself from this case due to a conflict of interest. (*ROA, June 5, 2013 Hearing Transcript; P. 5, lines 1-9*). The known materials provided to Judge Griffith were from Rakowsky's counsel Amanda Dudgeon, which she admitted on the court record she had provided to Judge Griffith (*ROA, June 5, 2013 Hearing Transcript; Tr. P. 7, lines*

10 - 25).

When Judge Addy opened the hearing, he stated he was operating under the understanding gained from an overview provided by Judge Griffith's clerk. Furthermore, which Judge Addy identified the action before him as from a "medical malpractice action" (*emphasis added*) (ROA, June 5, 2013 *Hearing Transcript; P. 7, lines 5-9, P. 8, lines 1-25 and P. 9, lines 1-20*).

The *Pro Se* Plaintiff has no idea what was in this overview and what information had been provided to Judge Addy. Judge Griffith recused himself and neither he nor his clerk ever heard any motions nor had access to the transcript of the May 7, 2012 hearing that contains the standing verbal orders of Judge Barber in this case. Judge Addy failed to incorporate the standing orders in his actions and decisions during the hearing and in his subsequent order. However, South Carolina law is quite clear and Judge Addy not being aware of the standing orders by not reviewing the complete case history does not preclude the applicability of the standing orders by the issuing judge. South Carolina law is quite clear on the applicability of the Judge Barber's oral orders:

"Furthermore, the fact that the order in the prior proceeding was never reduced to writing is not dispositive of the issue. An oral order compelling arbitration was issued by the court and is acknowledged in a letter by then-counsel for RDC...A judge may bind the parties with an oral order dictated into the record. Lane v. Williamson, 414 S.E.2d 177 (Ct. App. 1992). Once such an order is put into operation, absent a written

order
contradicting it, the court is bound by it."

**Hilton Head Resort Four Seasons Ctr. Horizontal
Property Regime Council of Co-Owners v. Resort Inv.
Corp., 311 S.C. 394, 401 (S.C. Ct. App. 1993)**

Judge Barber ruled the parties were to continue discovery in this case (See paragraph "C" herein above). The Defendants refused to comply and the *Pro Se* Plaintiff filed a motion to compel that was pending. Judge Barber ruled that the remaining litigation funds were to be turned over to the *Pro Se* litigants prior to a hearing on the motions to dismiss so they could hire a lawyer and an expert to represent them (See paragraphs "A" & "G" herein above).

ISSUE TWO

II. THE JUDGE ERRED IN DISMISSING THE CLAIM OF LEGAL MALPRACTICE AGAINST DEFENDANTS BASED ON THE LACK OF AN EXPERT WITNESS AS THIS REVERSED AN EARLIER RULING BY A JUDGE ON THE SAME LEVEL AND VIOLATED SOUTH CAROLINA LAW SINCE THIS CASE DOES NOT REQUIRE AN EXPERT WITNESS.

Judge Barber ruled in open court that no expert witness was required in this proceeding by the *Pro Se* litigants until after the remaining litigation funds were turned over to the disabled *Pro Se* litigants by Rakowsky. Judge Barber ruled that prior to a hearing on the motions to dismiss on the lack of an expert witness this was to occur so they could economically hire a lawyer and an expert to represent them (See paragraphs "A" & "G" herein above). Judge Addy not knowing and

following the standing orders of Judge Barber clearly disadvantaged the *Pro Se* Plaintiffs when he prematurely had a hearing and made a ruling without complying with Judge Barber's standing Order for Rakowsky to return the residual litigation funds. Without these funds, the indigent and disabled *Pro Se* litigant was wrongfully prevented from hiring a counsel and an expert before a hearing was to occur on the motions to dismiss for lack of an expert witness.

Further, the *Pro Se* Plaintiff intends through legal counsel that Rakowsky admitted in the present case that he committed malpractice when he filed his interpleader action. The law in this jurisdiction is quite clear that when a defendant admits to malpractice no expert witness is required to substantiate the admission. It stands on its own and would also be subject to being a common knowledge case. Rakowsky claimed he did not know who the litigation funds belonged to among the Plaintiffs as a basis for the interpleader action, but he is required to keep records of under the Rule 417 and under South Carolina Rule 1.15, safekeeping property. By filing the interpleader case regarding the residual litigation funds, he is admitting to the failure to maintain the proper records. If he had the proper records he would be aware of to whom the funds belonged. The attorney admission in this regard qualifies for the common knowledge exception under SC Code Ann 15-36-100.

Furthermore, when Judge Harwell stated on August 13, 2008 in order ECF

#668 that he did not review the evidence Rakowsky and Falgione claimed Judge Harwell ruled against clearly this misstatement or untruth would fall the under common knowledge exclusion under SC Code Ann 15-36-100 (c)(2). The South Carolina Supreme Court ruled:

"Expert testimony is not necessary to prove negligence or causation so long as lay persons possess the knowledge and skill to determine the matter at issue. Expert testimony is not required to prove proximate cause if the common knowledge or Experience of a layperson is extensive enough."

O'Leary-Payne v. R.R. Hilton Head, II, Inc., 371 S.C. 340 (S.C. Ct. App. 2006)

ISSUE THREE

III. THE JUDGE ERRED BY DISMISSING ALL OTHER PENDING MOTIONS WITHOUT REVIEW WHEN THESE MOTIONS CLEARLY SHOULD HAVE BEEN HEARD BEFORE THE DEFENDANTS MOTIONS TO DISMISS THE LEGAL MALPRACTICE CAUSE OF ACTION UNDER PRIOR COURT ORDER. THIS RESULTED IN JUDGE ADDY NOT REVIEWING MOTIONS INCLUDING DISCOVERY THAT WOULD HAVE IMPACTED THE MERITS OF DISMISSING THE LEGAL MALPRACTICE CAUSE OF ACTION.

Judge Addy failed to address the pending motions that should have been heard prior to the motion to dismiss as they pertained to Judge Barber's standing orders and the Defendants refusal to comply with the discovery including depositions ordered by Judge Barber. See paragraph "C" above herein. These

pending motions included Falgione's Motion to quash his subpoena for deposition, Rakowsky's motion to quash his subpoena for deposition, the *Pro Se* Plaintiffs motion to compel discovery, the *Pro Se* Plaintiffs Expedited [Emergency] motion to stay the hearing before Judge Addy on any motion to dismiss until Defendants complied with Judge Barber's orders regarding discovery, and the turning over of funds to acquire legal counsel and expert witness and the *Pro Se* Plaintiffs Motion to Amend Complaint to bring it into proper form.

ISSUE FOUR

IV. THE JUDGE ERRED IN ALLOWING THE STATUTE OF LIMITATIONS TO BE USED TO PROTECT THE DEFENDANTS WHEN FRAUD ON THE COURT INVOLVING THE DEFENDANTS STAYED THE APPLICABILITY OF THE STATUTE OF LIMITATIONS.

In this case, the plaintiffs lacked knowledge of the facts of the truth in question and the presiding judge in the underlying case did not dispute the evidentiary rulings reported by the defendants, allegedly made behind closed chambers doors, until August 13, 2008.

Prior to August 13, 2008, the defendants claimed their withdrawal from the case would not affect them going after the lawyers responsible for the legal malpractice, actually referred to by the judge in Order No. 510 and that they were bound by their prior statement of commitment to remedy the legal malpractice acts, through a malpractice lawsuit they would bring against the guilty attorneys.⁷

⁷ See May 17, 2007 (Dkt. # 486), the letter by plaintiff John Rakowsky, which was entered in Federal District Court without dispute of its authenticity, notwithstanding Ms. Dudgeon's knowingly baseless allegations before Judge Addy of its lack of authenticity during the hearing on June 5, 2013 (*ROA, June 5, 2013 Hearing Transcript; Tr. P. 41, lines 11-15.*)

Defendants never waived their commitment, both oral and in writing⁸ and the plaintiffs were assured they could rely on the defendants' commitment to pursue the guilty attorneys', separate from the defendants' statements withdrawing from the case, until after the August 13, 2008, confirmation by presiding judge, in the underlying case.

South Carolina has laws in place to make sure such legal inequities are remedied through the law of equitable estoppel.

"The doctrine of equitable estoppel applies when the statute of limitations has run and the defendant asserts the running of the statute of limitations as a defense. The defendant is estopped from benefitting from the statute of limitations as a defense where the defendant has acted in such a manner as to induce the plaintiff to delay in timely filing a cause of action. This conduct may be either an express representation that the claim will be settled without litigation or actions suggesting that a lawsuit is unnecessary. The party asserting equitable estoppel bears the burden of establishing all the elements. To establish equitable estoppel, the party claiming estoppel must prove that he or she (1) lacked knowledge and means of obtaining knowledge of the truth of the facts in question; and (2) relied upon the conduct of the party to be estopped. The party claiming estoppel must also establish that the party to be estopped (1) acted in a way amounting to a false representation or concealment of material facts; (2) intended such conduct to be acted upon by the other party; and (3) possessed knowledge, either actual or constructive, of the true facts." Kelly v. Logan, Jolley, & Smith, L.L.P., 383 S.C. 626 (S.C. Ct. App. 2009)

Further,

"Equitable estoppel operates to deny a party the right to plead or prove an otherwise important fact. The elements of estoppel as to the party estopped are (1) conduct by the party estopped which amounts to a false representation or concealment of material

⁸ Dkt. #486

facts; (2) the intention that such conduct shall be acted upon by the other party; and (3) knowledge, actual or constructive, of the true facts. As to the party claiming estoppel, the elements are (1) lack of knowledge and of the means of knowledge of the truth as to the facts in question; and (2) reliance upon the conduct of the party estopped." *Maier v. Tietex Corp.*, 331 S.C. 371 (S.C. Ct. App. 1998)

Finally, the South Carolina Supreme Court decisions regarding the application of the doctrine of equitable estoppel has determined its further applicability to this case, regarding the tolling of the statute of limitations. On July 29, 2009, plaintiff Doris Holt, Jim Spencer's mother, was taken into so called "protective custody" by the South Carolina Department of Social Services (DSS). The agency initially alleged physical abuse by Spencer against his mother he had taken care of for thirty years and held her at an unknown location. Spencer legally fought to gain Intervenor status and the agency admitted on the court record, the physical abuse allegations against Spencer were found to be baseless.

Spencer was warned by Princess Hodges of DSS and other unidentified individuals, as he reported to the Columbia police department at the time, that he would never see his mother again if he brought any lawsuits against Judge John Rakowsky, et al., as that would prove to DSS that Spencer did not have his mother's best interest in mind. As litigation to legally gain her release was ongoing, Doris Holt continued to be held against her will, until her death from starvation and malnutrition on February 19, 2011.

From July 29, 2009, to February 19, 2011, Doris Holt was not allowed to sign papers of any nature and the majority of the time she was held in isolation at unknown locations. Governor Sanford's office intervened and helped Spencer find his mother who had been wrongfully hidden from him for close to two years. However, as he continued to fight in the courts to gain her freedom DSS and third

parties still prohibited his mother from signing any documents to the day of her death on February 19, 2011. Under these exigencies, both plaintiffs Spencer and Doris Holt were physically prevented through real and acted upon threats from filing a lawsuit in this case. Therefore, the statute of limitations should be tolled. The Supreme Court of South Carolina has found,

"The equitable power of a court is not bound by cast-iron rules but exists to do fairness and is flexible and adaptable to particular exigencies so that relief will be granted when, in view of all the circumstances, to deny it would permit one party to suffer a gross wrong at the hands of the other."

Hooper v. Ebenezer Senior Servs. & Rehab. Ctr., 2009 S.C. LEXIS 559 (S.C. 2009)

Further the South Carolina Court of Appeals found,

"It has been observed that equitable tolling typically applies in cases where a litigant was prevented from filing suit because of an extraordinary event beyond his or her control. The equitable power of a court is not bound by cast-iron rules but exists to do fairness and is flexible and adaptable to particular exigencies so that relief will be granted when, in view of all the circumstances, to deny it would permit one party to suffer a gross wrong at the hands of the other. Equitable tolling may be applied where it is justified under all the circumstances."

Magnolia North Prop. Owners' Ass'n v. Heritage Cmty., Inc., 397 S.C. 348 (S.C. Ct. App. 2012)

Finally, the *Pro Se* litigants believed the Defendants assertions that unless they were polled by the court or executed a settlement agreement which was applicable in this specific case under South Carolina Federal Local Rule 83.1.08 and Rule 407 1.8 (g) the Judge Harwell could not legally impose a settlement. The

Plaintiffs had no idea that the Judge would refuse to hold the required plenary hearing and had no idea the evidence was not reviewed in camera as maintained by the Defendants and as confirmed by the presiding judge through his actions until August 13, 2008 and the issuance of Dkt # 668. At that date the Plaintiffs finally knew the federal judge had been covering up for Defendants regarding being untruthful at what happened during the evidentiary hearing behind closed doors. The Pro Se Plaintiffs believed in the system and had no reason to doubt the actions of the presiding judge at that point, until he finally revealed the truth on August 13, 2008. This is the actual date the statute of limitations started running. The average person would not believe a Federal District Judge would take such obviously bias actions and therefore there was no basis for the Plaintiffs to file a malpractice action until the judge revealed the truth on August 13, 2008.

ISSUE FIVE

V. THE JUDGE ERRED IN NOT DISMISSING THE UNREPRESENTED AND ABSENT PLAINTIFF, SOUTHERN HOLDINGS, INC., FROM BEING A PARTY IN THE LAWSUIT AS IT WAS EFFECTIVELY BEING TRIED *IN ABSENTIA* AND IN VIOLATION OF SOUTH CAROLINA LAW.

Judge Addy's refusal to remove Southern Holdings from the complaint as the *Pro Se* litigant was in violation of South Carolina law. The motion to amend the complaint to comply with the law was left pending by Judge Addy. The *Pro Se*

litigant was not provided the funds necessary to hire an attorney, as Judge Barber ordered the Defendants to do. Therefore, Southern Holdings had to be removed as a party from the complaint. Judge Addy's refusal to review the pending motions allowed the wrongful and unlawful participation *in absentia* of the entity formerly known as Southern Holdings, Inc. as a party, in this case. However, South Carolina law is clear on this point:

“In *State v. Wells*, 191 S.C. 468, 5 S.E.2d 181 (1939), this Court held that a corporation must act through licensed attorneys in legal matters. That holding was modified in *In re Unauthorized Practice of Law*, 309 S.C. 304, 422 S.E.2d 123 (1992), in which the Court held a non-lawyer, officer, agent, or employee may represent a business entity pursuant to S.C. Code Ann. § 40-5-80 (1986) in civil magistrate's court proceedings. The Court stated further that the magistrate shall require a written authorization from the entity's president, chairperson, general partner, owner or chief executive officer. Finally, in *Renaissance Enters., Inc. v. Summit Teleservices, Inc.*, *supra*, the Court held a non-lawyer cannot represent a corporation in circuit or appellate courts and once again held that a corporation may appear *pro se* only in magistrate's court.”

Sharon Brown, Administratrix of the Estate of Ronnie Lee Brown, Appellant, v. Suzanne E. Coe. 365 S.C. 137; 616 S.E.2d 705; 2005

ISSUE SIX

- VI. THE JUDGE ERRED IN NOT DISMISSING THE UNREPRESENTED AND ABSENT PLAINTIFF, THE ESTATE OF DORIS HOLT, FROM BEING A PARTY IN THE LAWSUIT AS IT WAS EFFECTIVELY BEING TRIED *IN ABSENTIA* AND IN VIOLATION OF SOUTH CAROLINA LAW.

Judge Addy's refusal to remove the Estate of Doris Holt from the complaint as a *Pro Se* litigant was in violation of South Carolina law. The motion to amend the complaint to comply with the law was left pending by Judge Addy. The estate of Doris Holt has multiple parties with claims filed against it. This precludes the *Pro Se* litigant from representing the estate. The *Pro Se* litigant was not provided the funds necessary to hire an attorney, as Judge Barber ordered the Defendants to do from the remaining litigation funds Rakowsky was withholding. Therefore, the Estate of Doris Holt had to be removed from the complaint. Judge Addy's refusal to review the pending motions allowed the wrongful and unlawful *in absentia* participation of the Estate of Doris Holt, in this case. However, South Carolina law is clear on this point:

"The South Carolina Constitution provides this Court with the duty to regulate the practice of law in this state. *S.C. Const. art. V, § 4*; see also *S.C. Code Ann. § 40-5-10* (2001). South Carolina, like other jurisdictions, limits the practice of law to licensed attorneys. *In re Lexington County Transfer Court*, 334 S.C. 47, 512 S.E.2d 791 (1999). "No person may practice or solicit the cause of another in a court of this State unless he has been admitted and sworn as an attorney." *S.C. Code Ann. § 40-5-310* (2001). The generally understood definition of the practice of law embraces the preparation of pleadings, and other papers incident to actions and special proceedings, and the management of such actions and proceedings on behalf of clients before judges and courts. *Doe v. McMaster*, 355 S.C. 306, 585 S.E.2d 773 (2003); *State v. Despain*, 319 S.C. 317, 460 S.E.2d 576 (1995); *In re Duncan*, 83 S.C. 186, 65 S.E. 210 (1909).

"The adjudicative power of the Court carries with it the inherent power to control the order of its business to safeguard the rights of litigants." *Renaissance Enters., Inc. v. Summit Teleservices, Inc.*, 334 S.C. 649, 651, 515 S.E.2d 257, 258 (1999) (citing *Williams v.*

Bordon's, Inc., 274 S.C. 275, 262 S.E.2d 881 (1980)). "The goal of the prohibition against the unauthorized practice of law is to protect the public from incompetent, unethical, or irresponsible representations." *Id.*"

Sharon Brown, Administratrix of the Estate of Ronnie Lee Brown, Appellant, v. Suzanne E. Coe. 365 S.C. 137; 616 S.E.2d 705; 2005

ISSUE SEVEN

VII. THE JUDGE ERRED IN ALLOWING AMANDA DUDGEON AND HER LAW FIRM TO REPRESENT DEFENDANT RAKOWSKY BASED ON HER ACTIVE PARTICIPATION IN CONCEALING INFORMATION DOCUMENTING RAKOWSKY'S FRAUD ON THE COURT IN THE UNDERLYING CASE AND HIS BREACH OF FIDUCIARY DUTY AND HIS BREACH OF CONTRACT.

During the hearing on June 5, 2013, Ms. Dudgeon claimed that she did not represent Spencer in the litigation by LawMax against Rakowsky and Spencer through the American Arbitration Association ("AAA"). Further, she claimed that the LawMax litigation just went away to the benefit of Spencer, without any settlement agreement or payment to LawMax.⁹

⁹ LawMax in its contract for funds advanced to John Rakowsky, for the non-lawyer costs of the underlying lawsuit, sued John Rakowsky for his misstatements and mishandling of the case and James Spencer as a beneficiary of those funds through the contract's arbitration provision. The LawMax contract was negotiated and executed by John Rakowsky. Arbitration Case No: 13-194-01700-07.

Dudgeon produced an email, purportedly from AAA, and claimed, based on that email, that a document Spencer presented to your Honor had not been authenticated.¹⁰

Dudgeon further claimed she did not have an affidavit as to the authenticity of the document from AAA, presented by the plaintiffs, because the document presented by Spencer to the court had never been produced to her.

Facts:

Dudgeon was untruthful with the court, as she received the document in question in the original filing by the plaintiffs, on **March 27, 2012**. Therefore, Dudgeon had plenty of time to obtain an affidavit from AAA, if such was actually obtainable.

Dudgeon produced AAA documents on the AAA litigation, purportedly indicating that copies had been sent to Spencer and Spencer represented himself. However, the letter dated August 16, 2008, is not properly addressed to Spencer, as Spencer has never lived in Columbus, SC and never received the correspondence. Spencer was subsequently no longer listed to receive mailings and January 29, 2008 letter) was eliminated from all documents (and Dudgeon's firm, either through representation or by defacto, as Dudgeon claimed to your Honor, "cleared up" the legal matter for Spencer, without Spencer's knowledge, with LawMax giving up all claims¹¹ against Rakowsky and Spencer.¹² None of the parties advised Spencer that such litigation existed.

¹⁰ Ms. Dudgeon failed to provide this purported email to the plaintiffs prior to the hearing, as she was required to do, to allow for a proper review and authentication by Plaintiffs the Judge Addy erred in allowing its admission.

¹¹ Based upon information and belief there appears to have been be a settlement agreement involving LawMax, Rakowsky that includes a confidentially clause. Further, logic dictates if

Tellingly, on December 28, 2011, Dudgeon's firm interfered with the production of documents subpoenaed in the Interpleader case, in which they had no representation.¹³ ROA Exhibit page 66 is a letter from Pattison, Simpson, Ginsburg & Griffin, PC, LawMax's outside legal counsel. The letter states that LawMax would not release the subpoenaed information on payments made in settlement of and any settlement agreement for John Rakowsky, regarding the AAA litigation. Pattison, Simpson, et al, said it would not release the information because of objections from the opposing counsels' law firm, in Case No: 2008-CP-40-6656.¹⁴ Ms. Dudgeon's law firm was the firm cited by Pattison Simpson, et al., for refusing the subpoena (Note who was copied on the letter, Andrew Countryman, a partner and co-counsel of Ms. Dudgeon in the present case).

In conclusion, the facts require that discovery begin, as ordered by Judge Barber, so the plaintiffs and the court can make a proper reasoned decision, based on all the evidence, not just the evidence Bruner/Dudgeon wants the court to see. The pending motion to dismiss should be denied and discovery, as ordered by Judge Barber, on May 7, 2012, must proceed.

(ROA, May 7, 2012 Hearing Transcript; P., 41, Line 25, P., 42, Line 1 & 5-7 & 10-22, P. 56, Lines 24-25 and P. 57, Lines 1-4)

ISSUE EIGHT

VIII. THE JUDGE ERRED BY REVIEWING ONLY THE LEGAL

Spencer had received the documents that a party to this litigation should have received; there would be no reason why these subpoenaed documents would be withheld from Spencer by LawMax and Dudgeon's firm!

¹² If that was indeed the case, John Rakowsky wrongfully listed LawMax as having a claim in his 2008 Interpleader action he filed long after the AAA litigation was concluded. The only rationale for this would be to conceal the settlement with AAA.

¹³ Case No: 2008-CP-40-6656.

¹⁴ The other reasons stated in the letter for non-compliance are not valid as the subpoena was in accordance with New York and South Carolina law and executed by the proper officials.

MALPRACTICE CLAIM AND FAILED BOTH TO REVIEW AND ADDRESS THE INDEPENDENT CLAIMS OF BREACH OF FIDUCIARY DUTY AND THE CLAIM FOR BREACH OF CONTRACT.

The Judge failed to address the separate issues regarding breach of fiduciary duty and breach of contract in the complaint. (See Complaint, Exhibit "14" in the Informal Brief Appendix.) There is simply no mention of either of these claims during the hearing on June 5, 2013, nor in his order issued on August 19, 2013.

The South Carolina Supreme Court has ruled that there has to be a basis to dismiss a cause of action:

"Under S.C. R. Civ. P. 12(b)(6), a party may move to dismiss a complaint against him based on a failure to state facts sufficient to constitute a cause of action. In considering a motion to dismiss under Rule 12(b)(6), the trial court must base its ruling solely on the allegations set forth in the complaint. Such a motion may not be sustained if the facts alleged and the inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case. The question is whether, in the light most favorable to the plaintiff and with every doubt resolved in his behalf, the complaint states any valid claim for relief."

Cole Vision Corp. v. Hobbs, 394 S.C. 144 (S.C. 2011)

Further:

"RFT argues for the first time on appeal that one difference between its two claims was that malpractice normally requires expert testimony on the attorney's standard of care and breach, while the breach of fiduciary duty claim requires no expert testimony, so the jury could have not believed RFT's experts and still found for it on a breach of fiduciary duty claim."

RFT Mgmt. Co., L.L.C. v. Tinsley & Adams L.L.P., 399 S.C. 322,
337 (S.C. 2012)

CONCLUSION

The *Pro Se* Appellant for the reasons stated above prays this Honorable Court will remand this case back for litigation under the Orders established by the Honorable Judge Barber and under a truly independent judge commencing with discovery including depositions. Further, the *Pro Se* Plaintiff request sanctions against the Defendants for their actions. Actions that included, but were not limited to, falsely misrepresenting and denying standing Orders and thereby wasting the court's and indigent *Pro Se* litigants' resources by retrying issues already decided until they came out in Defendants' favor and additionally ignoring the standing orders addressing the *Pro Se* litigants serious medical limitations. The *Pro Se* litigant requests sanctions consisting of an amount equivalent to attorney and expert fees for the indigent and disabled *Pro Se* litigant to hire legal representation and an expert witness to complete this case.

The *Pro Se* litigant humbly requests the unrepresented entities in this action be properly removed from the complaint as they were not legally represented in these matters, should not been part of this litigation without legal representation nor legal standing as parties to this action under the law.

Submitted this March 7, 2015

By:

A handwritten signature in black ink, appearing to read "James Spencer". The signature is fluid and cursive, with a large initial "J" and "S".

James Spencer, Appellant, *Pro*

Se

Box 183

7001 Saint Andrews Road

Columbia, SC 29212

Informal Brief Exhibit Appendix

Record on Appeal

APPELLATE CASE No.: 2014-000091

**INITIAL INFORMAL BRIEF OF
PRO SE APPELLANT**

1 dollars -- who has the claim on that?

2 MR. SPENCER: The only people who have a claim on
3 that are the defendants.

4 THE COURT: Give me the names.

5 MR. SPENCER: The three defense (sic) are Irene
6 Santacroce, Rodney Lail, and myself.

7 THE COURT: All right. Do you dispute that that
8 there is a \$9,000 ---

9 MS. WEISSENSTEIN: Your Honor, the other possible
10 claimants have all defaulted, so we have disputed
11 paying anything to anyone without a court order.

12 THE COURT: I understand that, but if you can all
13 agree that 9,000 some odd dollars should go to these
14 defendants for some reason, we'll sign a consent order
15 and put the \$54,000, pay it into trust and we'll argue
16 about who gets that.

17 MS. WEISSENSTEIN: Your Honor, a consent order
18 that firmly releases my client from any kind of
19 liability as to the payment of that 9,500 whatever
20 dollars will be okay, but without an order, we're just
21 not going to pay these people any money.

22 THE COURT: Well, I know, but the best you're
23 going to get ---

24 MS. WEISSENSTEIN: I'm sorry.

25 THE COURT: The best you're going to get on the

1 interpleader action is permission for the court to
2 hold the money as opposed to you. There will not be
3 any action on the interpleader action as to who is
4 entitled to what. Just to pay the money into the
5 court. Do you understand that?

6 MS. WEISSENSTEIN: I do, sir.

7 THE COURT: And then there's going to be --- I
8 guess, I don't have the pleading. Somebody is making
9 a claim for that money.

10 MS. WEISSENSTEIN: Yes, sir.

11 THE COURT: Be it Mr. Spencer, Mr. Rakowsky,
12 somebody is making a claim for the money. They say,
13 being the defendants in the interpleader action, say
14 there's \$9,500 for lack of a different --- that is not
15 disputed and it should go to them. There is a dispute
16 as to the other \$54,000. Who gets that? Well, you
17 know, if, in fact, they should get it, we might as
18 well give it to them. If you can't, here is what's
19 going to happen. I'm going to order the money be paid
20 at some point in time into the court. There's no
21 reason for them to hold when the court can hold it.
22 And then we're going to have to set up some process
23 for determining who gets \$64,000.

24 MR. SPENCER: Your Honor, it's my understanding
25 that according to the law that if the money is not in

1 who --- so the only --- did Horry County file ---

2 MR. LINDEMANN: Your Honor, I'm Andrew Lindemann
3 for Horry County. We have no claim to any of the
4 \$63,000 ---

5 THE COURT: So you don't have a claim.

6 MR. LINDEMANN: No, sir.

7 THE COURT: So y'all are three of the defendants,
8 right? And who else did you say?

9 MS. WEISSENSTEIN: Your Honor, beside Horry
10 County, there was Marguerite Stephens and Ricky
11 Stephens; they never made an appearance.

12 THE COURT: All right. So. They were are in
13 default.

14 MS. WEISSENSTEIN: Well, they filed an answer
15 signed by Mr. Spencer, but they never actually ---

16 THE COURT: Well, he can't represent them, so
17 they are in default. Where are these people,
18 Mr. Spencer?

19 MR. SPENCER: Your Honor, first of all, I did not
20 --- they filed their own answer and they asked that
21 their rights today, money be turned over. We all
22 signed the same motion October 2008. The money be
23 turned over. They are in default. They have no claims
24 on the money.

25 THE COURT: They're out of the case.

1 MS. WEISSENSTEIN: He is a claimant, yes.
2 Mr. Falgione is a defendant in the interpleader case,
3 so they're claiming to the \$55,000.

4 THE COURT: I'm not talking about the \$55,000.
5 I'm talking about the \$9,500.

6 MS. WEISSENSTEIN: Neither Mr. Falgione nor
7 Mr. Rakowsky have a claim to that.

8 THE COURT: All right. So. They can waive any
9 claim to that.

10 MS. WEISSENSTEIN: Yes.

11 THE COURT: And then they can get up and tell me
12 why it is they're entitled to the money and if that's
13 the only evidence in front of me and there will be a
14 record, then I'll sign an order giving them the money.
15 I assume these folks want to use some of this money to
16 prosecute this action. Maybe not. Maybe they want to
17 go have a party. Let's not waste time. Let's get to
18 the bottom of this.

19 MS. WEISSENSTEIN: Yes, sir, absolutely.

20 THE COURT: The bottom of this is you've got
21 \$55,000 of which these two gentleman may have some
22 claim to.

23 MS. WEISSENSTEIN: Yes, sir.

24 THE COURT: And that's all they claim. Nobody
25 else is making a claim to the \$55,000 but these folks.

1 MR. SPENCER: Yes, sir, and that counterclaim has
2 no claim on that. All we've asked for from day one is
3 the \$9,855.85 that we put in. That's all we asked
4 for.

5 THE COURT: What does the counterclaim ask for?

6 MR. SPENCER: The counterclaim goes into the ---

7 THE COURT: The division of the \$55,000?

8 MR. SPENCER: Yes, sir. It goes into that and it
9 goes into other areas that we're making claims on and
10 part of the counterclaim that they have, and she knows
11 quite well, I would assume that they know quite well.

12 THE COURT: I don't know.

13 MR. SPENCER: That there is no claim on the
14 \$9,855.

15 THE COURT: Ms. Santacroce is not available to go
16 to a hearing until after June 1, so I'm going to
17 schedule a hearing on this --- are you all agreeable
18 to everybody consent to the money being paid into the
19 court?

20 MR. SPENCER: As far as ---

21 THE COURT: Taking it from their trust account
22 paying it to the court, have the court hold it.

23 MR. SPENCER: I don't have a problem with that.

24 THE COURT: Ms. Santacroce, do you have any
25 problem with it?

1 MS. SANTACROCE: No.

2 MR. LAIL: No, sir.

3 THE COURT: All right. Prepare an order and in
4 that order say that no funds will be held until it is
5 determined by the court who is to receive what and
6 that the court will immediately schedule, as soon as
7 it can after June 1, a hearing to determine whether
8 these three defendants or any of the named defendants
9 are entitled to any --- or any of the parties are
10 entitled to the \$9,500, whatever that amount is, and I
11 will schedule that sometime after June 1st, and if
12 y'all don't want any of that, do a waiver, Horry
13 County, if Mr. Rakowsky and Mr. Falgione are not
14 making any claim to that, let them do a waiver without
15 denying anybody else's interest in the money. You
16 know, they can protect themselves in that regard.
17 Then we'll have a hearing. Do you think we can do it
18 in an hour?

19 MR. SPENCER: I would assume less than that.

20 THE COURT: All right. We'll have a hearing,
21 I'll hear it. Then we'll come up here and decide
22 whether they're entitled to \$9,500.

23 Now, you need to let us know. If the court is
24 going to issue a separate check to each party, then we
25 will need to know each amount.

1 MR. SPENCER: In our proposal, from day one, to
2 put that into one trust account and everybody has
3 agreed to that. That motion has been before the court
4 since ---

5 THE COURT: Well, I'm not sure what one trust
6 account.

7 MR. SPENCER: We've all named a trust account, a
8 lawyer to be paid into.

9 THE COURT: And who is that?

10 MS. SANTACROCE: It's James T. Young.

11 THE COURT: Where is he?

12 MS. SANTACROCE: He's with Singleton Burroughs &
13 Young out of Conway, South Carolina.

14 THE COURT: Can you get something from him saying
15 that he is agreeable to accept those funds if the
16 court orders it and hold those funds in trust on
17 behalf of whoever ---

18 MS. SANTACROCE: Yes.

19 THE COURT: All right. Get something and bring
20 that to the hearing ---

21 MS. SANTACROCE: Okay.

22 THE COURT: --- saying that if the court
23 authorized the payments to y'all for your claims for
24 the \$9,500, that you're authorizing it be paid to him
25 and he will hold it in trust for your use and benefit.

1 MS. SANTACROCE: That's correct.

2 THE COURT: And you all need to figure out what
3 you need to do with him in order to be able to
4 authorize the expenditure of that money or authorize
5 the payment to you.

6 MS. SANTACROCE: Right. Yes, sir.

7 THE COURT: All right. So we'll get rid of that
8 and then we'll have a hearing sometime after
9 August 15th to decide what happens to the \$55,000,
10 \$54,000.

11 MS. WEISSENSTEIN: Yes, sir.

12 THE COURT: All right.

13 Lawsuit number two, when was that filed,
14 Mr. Spencer?

15 MR. SPENCER: That was filed in August of 2011.

16 THE COURT: All right.

17 Now, we know in that suit we have a motion to
18 exclude.

19 MS. DUDGEON: Yes, Your Honor, Mandy Dudgeon, for
20 Mr. Rakowsky. There is motion to disqualify.

21 THE COURT: That's the first thing we need to
22 hear. We're going to hear it. Now, Mr. Spencer the
23 doctors have asked --- they tell me that he can start
24 and will be able to hold hearings, but not more than
25 one a day.

1 MS. DUDGEON: We'll be prepared immediately after
2 June 1st to handle that.

3 THE COURT: We're not going to have this hearing
4 on the same day we would have your hearing.

5 MS. DUDGEON: I understand.

6 THE COURT: We'll have to figure all that out.
7 I'd like to give Mr. Spencer is couple of days between
8 hearings to catch his breath and recoup, so that will
9 have to be the first hearing.

10 Then there was another motion that we heard that
11 was ---

12 MS. DUDGEON: There's two motion to dismiss, one
13 on behalf of each of the defendants and that's all
14 that I know that is pending, Your Honor.

15 MR. BRUNER: Yes, that's correct, Your Honor.
16 Ben Bruner here for Mr. Falgione and his firm. We have
17 a motion to dismiss that we filed last November, the
18 day after Ms. Dudgeon's firm. We amended our motion
19 later, I believe, if it matters, both our amended
20 motion and our original motion are appearing as two
21 separate items on the docket, but the amended one is
22 the only one we need heard. We simply request that
23 it's heard as soon as possible ---

24 THE COURT: All right.

25 MR. BRUNER: --- so we can pursue discovery

1 before this cases pops up on the trial roster.

2 THE COURT: Let's assume that the case is not
3 dismissed. What discovery has to be done?

4 MS. DUDGEON: Your Honor, probably ---

5 THE COURT: Who would you want to depose?

6 MS. DUDGEON: Well, at least all the actual
7 plaintiffs ---

8 THE COURT: I mean, I don't know who the
9 plaintiffs are. Mr. Spencer would be one ---

10 MS. DUDGEON: I would say there would be at least
11 five depositions. It also depends if they have an
12 expert, but at least five depositions.

13 THE COURT: All right. Mr. Spencer, who are you
14 all going to want to depose in that lawsuit --- or
15 Ms. Santacroce?

16 MR. SPENCER: There will be about six
17 depositions.

18 THE COURT: All right. Tell me who you're
19 thinking about at this time, Rakowsky and Falgione?

20 MR. SPENCER: At this time it would be Rakowsky
21 and Falgione would be two of the people. And, there
22 will be ---

23 THE COURT: All right. How about let's --- do you
24 think it's possibility to combine the discovery in
25 these two cases so they don't have to take their

1 believe, somebody filed a motion of default where I
2 said the service was not sufficient service because it
3 doesn't meet the rule as to specificity as to this.
4 SAPBLTS about is that correct.

5 THE COURT: I already addressed that issue.

6 MS. DUDGEON: Your Honor addressed in the status
7 conference ---

8 MS. SANTACROCE: Yes, I know, but what I'm saying
9 is that we sent a supplement when I got the ---

10 THE COURT: A supplement --- what?

11 MS. SANTACROCE: --- the process server to redo
12 what they should have done.

13 MR. BRUNER: Your Honor, my understanding is that
14 it was Mr. Lail's wife that's reported to have served
15 my client at the September 15th hearing at the
16 interpleader case. Your Honor did address that. We
17 had a court reporter there at the last hearing. I
18 don't think that that's before the court right now.
19 If it is ---

20 THE COURT: I've already determined that based on
21 what is filed --- you know, one of the things with a
22 lawsuit, you don't get to go back and redo things
23 because they didn't get done right the first time.

24 MS. SANTACROCE: Well, in all the cases I've been
25 in, Your Honor, and that's been quite a few since

1 2008, the other side is always sending supplement
2 this, supplement that, so my experience as a pro se
3 litigant, I thought it was okay, so I straightened it
4 out and I resubmitted it.

5 THE COURT: I already ruled. I determined there
6 is no default because there is no appropriate
7 affidavit showing anybody was served. I mean, it
8 wasn't even something you'd have a hearing on.

9 MR. BRUNER: I believe that ---

10 THE COURT: If it's an entry of default, you
11 would normally file, send me an affidavit of service,
12 an affidavit of nonmilitary service, a copy of
13 the --- I don't know, whatever else you may have.

14 MS. SANTACROCE: Yeah, and you did say that on
15 the phone.

16 THE COURT: I would review the facts and either
17 sign the default or deny the default. In this
18 instance you sent it, I pulled the file and I reviewed
19 it, the affidavit that you --- whoever filed your
20 affidavit of service was clearly deficient under the
21 rule, so I denied the entry of default and that's
22 where it is. We don't go back and redo it again, but
23 we're not trying this case on the default. We're
24 trying this case on the merits of the case. If you
25 all are entitled to money against them, you're going

1 make yourself available.

2 THE COURT: Let me tell you, there is very little
3 benefit to being the administrative Judge, but one of
4 them is you don't do nonjury. I'm going to do the
5 interpleader action because I think they need to get
6 their monies and get on with this litigation so they
7 can hire their lawyer. We can bring this thing to a
8 conclusion this year, both cases, all right? We've
9 got a term of nonjury, I think the 4th of this month,
10 of June.

11 MS. DUDGEON: We could fit two motions in one
12 week.

13 THE COURT: We may try to do that and then the
14 following week hear this interpleader action and then
15 if the motions to dismiss are denied, and he's
16 granted, they're granted the funds, they can go get
17 their lawyer and then we will have a status conference
18 with their lawyer to determine ---

19 MS. DUDGEON: A scheduling order.

20 THE COURT: --- a scheduling order.

21 MR. SPENCER: Your Honor, we're trying to get the
22 funds to obtain a lawyer, which they're --- one of the
23 objections they raise is that we don't have an expert
24 witness which requires fund from the lawyer, so they
25 were trying to schedule it before we get the funds for

1 THE COURT: I don't know what the purpose of the
2 statute is. I wasn't up there when they passed the
3 statute, but ---

4 MS. DUDGEON: To avoid (unintelligible).

5 MR. BRUNER: Your Honor, the reason why ---

6 THE COURT: Then I'll just hold off on scheduling
7 your motions for a while.

8 MR. BRUNER: I don't know that it's something to
9 cure, is the point.

10 THE COURT: I don't know whether it is or not,
11 but at least they have a lawyer that might say
12 Mr. Spencer, unfortunately, you don't have an expert
13 and didn't have one when you needed one and I can't
14 help you.

15 MS. DUDGEON: Your Honor.

16 MR. BRUNER: I'm just saying that, respectfully,
17 Your Honor, that they have had plenty of time to go
18 talk to lawyers and we all know there are two law
19 school putting out lawyers in this state, now.

20 THE COURT: Mr. Bruner, they haven't had a dime
21 because we've been sitting up here arguing about
22 \$9,500, apparently. It should have been resolved a
23 year ago.

24 MS. DUDGEON: Your Honor, are you proposing that
25 we have a motion to dismiss on all grounds except the

1 expert ---

2 THE COURT: We'll hear from them, but it may be a
3 month or two after they have the interpleader, the
4 \$9,500 case.

5 MS. DUDGEON: Your Honor I'll take what I can
6 get. I'll argue whatever motion I'm allowed to argue
7 as soon as I can.

8 THE COURT: And I hope to be there.

9 MS. DUDGEON: It's a good point, but I hope to
10 be.

11 THE COURT: How about that, Mr. Spencer?

12 MR. SPENCER: Sir?

13 THE COURT: Schedule the hearing on the motion to
14 dismiss on the grounds that one, you didn't file
15 within the statute of limitations and two, deficient
16 service, the issue of whether you had an expert,
17 needed an expert or met the expert requirement, we
18 will defer until you can get an attorney.

19 MR. SPENCER: Your Honor, I'd like to have an
20 attorney on those issues and it --- the second part is
21 that I've been waiting for their --- the ruling on the
22 entry for default.

23 THE COURT: I told you that on the phone.

24 MR. SPENCER: You said that the affidavit was
25 incorrect. We remedied the affidavit being incorrect,

1 hearing on the \$9,500 early on, and if you all are
2 agreeable to hold it sooner than that, I'm not going
3 to be here the 28th or the 14th. I'll just have to
4 figure it out, but we all know we're going to try to
5 get those cases resolved this year.

6 MR. SPENCER: Yes, sir.

7 THE COURT: We need to put an end to them.

8 MR. SPENCER: Agreed.

9 THE COURT: We're going to --- Mr. Spencer, Ms.
10 Santacroce, you'll need to start figuring in your
11 minds whether you're represented or not represented,
12 who it is you want to depose so that we can come up
13 with a schedule at some point in time to move this
14 case along. I would like to try to maybe try this
15 case --- when was it filed?

16 MS. DUDGEON: It was filed in August. We
17 answered in November because we saw that it had been
18 filed.

19 THE COURT: All right. So August, it would be
20 coming up on 12 months. I'd like to see about trying
21 to get it tried by October. That would give y'all six
22 months or so to do whatever discovery you need to do
23 and put it all out there.

24 MS. DUDGEON: Your Honor, can we continue with
25 discovery during this time?

1 THE COURT: Sure.

2 MS. DUDGEON: Or is it also ---

3 THE COURT: Sure.

4 MS. DUDGEON: Okay. I just wanted to confirm.

5 MR. BRUNER: Well, specifically, Your Honor, I
6 know Mr. Spencer's health is an issue.

7 THE COURT: Well, he's not required to do
8 anything until June 1st.

9 MR. BRUNER: Okay.

10 THE COURT: Other than come to a status
11 conference. I asked the doctors if he can come to a
12 status conferences and he said yes.

13 MR. BRUNER: Okay.

14 THE COURT: If you schedule depositions, my
15 suggestion is, unless he consents to it, don't
16 schedule more than one deposition a day, and I would
17 spread them out to some extent. I know that costs you
18 more money because you have to drive --- are you in
19 Charleston?

20 MS. DUDGEON: Yes, Your Honor.

21 THE COURT: Then drive up from Charleston. I've
22 talked to his doctor in Charleston, his doctor here,
23 and they both are on the same page. I told them I
24 would do what I could to help them, but apparently a
25 big stressor in his life is this litigation, so there

1 is some benefit to moving on that and getting him
2 beyond that stressor.

3 MS. DUDGEON: Your Honor, do you think there is
4 any problem to at least getting a motion to
5 disqualify, since that is first in my case on the
6 list?

7 THE COURT: I'll get to that in a second.

8 MS. DUDGEON: I did present a proposed order, but
9 I don't know if you've had a chance to review it. It's
10 just ---

11 THE COURT: I didn't see it.

12 MS. DUDGEON: It was just from the status
13 conference where you continued Mr. Spencer's
14 outstanding motions and you granted --- I mean, you
15 denied the motion to disqualify from Ms. Santacroce.
16 You had asked that I prepare an order that walked
17 through kind of the time line of events.

18 THE COURT: When did you send this?

19 MS. DUDGEON: Very late.

20 THE COURT: Very late?

21 MS. DUDGEON: Friday morning.

22 THE COURT: Well, see, I was out of town.

23 MS. DUDGEON: I know and I apologize for that,
24 but if you can review it, I can make any changes.

25 It's lengthy because you asked us to go through the

1 what condition, what was going on with Mr. Spencer
2 first.

3 THE COURT: Well, you know, it doesn't matter.

4 MS. DUDGEON: It was just motions to disqualify
5 and you said it could actually be changed later.

6 THE COURT: If Mr. Spencer gets them
7 disqualified, they're disqualified regardless of
8 whether you do or don't. I assume you all have the
9 same reason, right?

10 MR. SPENCER: Yes, sir.

11 THE COURT: All right.

12 MR. SPENCER: Your Honor, in the future, could
13 you have opposing counsel submit these proposed orders
14 to us in a timely basis so we have them and can ---

15 THE COURT: I don't know what that means, a
16 timely basis.

17 MR. SPENCER: Well, I mean ---

18 THE COURT: Here is what I require, and I can
19 tell you that it's not been done on either side. I
20 know that Ms. Santacroce sends me all of the kinds of
21 stuff and talks to my law clerk and nobody else is
22 copied.

23 MS. SANTACROCE: Yeah, ever since you told me
24 that on the phone, yes, sir, I did.

25 THE COURT: Well, here is --- we're not

1 MS. DUDGEON: Thank you.

2 THE COURT: All right. Anybody that I've asked
3 to do an order, do it and get it to me within seven
4 days. Again submit it to Mr. Spencer, Mr. Lail, and
5 Ms. Santacroce.

6 MS. DUDGEON: Yes, sir.

7 THE COURT: All right. Have a nice day. Thank
8 you for coming.

9 MS. SANTACROCE: Thank you, Judge.

10 THE COURT: Stay in touch.

11 MS. SANTACROCE: Your Honor.

12 THE COURT: Are there good days and bad days that
13 you can or can't be up here when I'm scheduling this
14 hearing on the \$9,500? I assume you would like to be
15 here for that day.

16 MS. SANTACROCE: I would like to, yes.

17 THE COURT: Are there certain days that are
18 easier to get here than not?

19 MS. SANTACROCE: No sir. I don't have any money
20 to drive up all the time either.

21 THE COURT: Well, we'll not --- we will attempt
22 to minimize that. Actually, in some things I don't
23 have a problem with your being on the telephone. The
24 problem is we don't have a speakerphone here in the
25 courtroom.

1 TRANSCRIPT OF RECORD

2 (Whereupon, the proceeding was commenced at 9:40 a.m.)

3 THE COURT: All right. If we may, let's go ahead and
4 go on the record. I think that we're assembled in a
5 Lexington County case, Case No. 12-CP-32-3428. Is it *James*
6 *Spencer v. John R. Rakowsky, Adrian Falgione, et al.*? Is
7 that correct?

8 MS. DUDGEON: Yes, Your Honor.

9 THE COURT: All right.

10 MR. BRUNER: Yes, Your Honor.

11 THE COURT: Let me get the names of everybody and who
12 they are representing, if I could, please.13 MS. DUDGEON: Thank you, Your Honor. Mandi Dudgeon
14 here for the defendant, John Rakowsky.15 MR. BRUNER: Your Honor, I'm Ben Bruner, and I
16 represent Mr. Falgione and his law firm.

17 THE COURT: All right. And, yes, sir?

18 MR. SPENCER: James Spencer, pro se.

19 THE COURT: All right. Thank you, Mr. Spencer. And
20 this is a ---

21 MR. SPENCER: He's ---

22 THE COURT: --- friend of yours or ---

23 MR. SPENCER: No. He's helping me because of -- I've
24 got a ---

25 THE COURT: Okay. Very good.

1 MR. SPENCER: --- problem.

2 THE COURT: One housekeeping matter that I do need to
3 take care of before we proceed: I only received Judge
4 Griffith's letter last week. And I received a copy of the
5 -- most of the materials which had been provided to him.
6 And the letter that I'm talking about is dated May the
7 30th, in which Judge Griffith informed Ms. Dudgeon --
8 Dudgeon, Mr. Bruner, and Mr. Spencer that he was recusing
9 himself from further action on the case.

10 The letter also indicated that I would be able to hear
11 these motions -- or the pending motions today. And in that
12 material that I reviewed yesterday, it included the order
13 of Judge Toal -- Justice Toal, rather -- dated January 17th
14 of this year, which appointed Judge Griffith as chief judge
15 for administrative purposes to hear this particular matter.
16 Apparently, Judge McMahon and Keesley had conflicts on
17 hearing the case.

18 I contacted court administration because I was a
19 little concerned about the -- what was in the body of the
20 order. It basically indicated that Judge Griffith had been
21 appointed. Judge Griffith had been under the impression,
22 based on a conversation I had with him last night, that
23 because he was chief judge for administrative purposes, he
24 could appoint this matter or assign this matter to me or
25 some other judge.

1 THE COURT: All right.

2 MR. BRUNER: Yes ---

3 THE COURT: Very good.

4 MR. BRUNER: --- Your Honor.

5 THE COURT: If you could, bring me up to speed a
6 little bit on what we are dealing with. Judge Griffith's
7 clerk did prepare a brief overview. I know that this is a
8 -- there's an underlying medical malpractice action which
9 apparently had been settled ---

10 (Off the record briefly.)

11 THE COURT: --- legal malpractice. Okay. I'm sorry.
12 Sorry.

13 MS. DUDGEON: Your Honor ---

14 THE COURT: Correct.

15 MS. DUDGEON: --- I'd be happy to give you a quick
16 overview.

17 THE COURT: Please.

18 MS. DUDGEON: Again, Mandi Dudgeon for John Rakowsky.
19 This -- we're here on a legal malpractice action. The
20 underlying action was a 1983 action arising out of a 2000
21 traffic stop and a lawsuit against Horry County and various
22 other entities. That lawsuit, which I will call the
23 "underlying lawsuit," was filed in 2006. So we are here on
24 a legal malpractice action filed in 2011.

25 We have about, I believe eight ---

1 (Whereupon, Ms. Dudgeon and Mr. Bruner conferred.)

2 MS. DUDGEON: I'm sorry. 2000 -- no. This -- this
3 legal malpractice action was filed in 2011. We have about
4 eight motions before the Court today. I have a list from
5 the last time we were in front of Judge Griffith, if that
6 would -- if you don't already have a list, I have one.

7 THE COURT: I don't have that list, I believe.

8 MS. DUDGEON: I didn't bring extra copies, but I'm
9 happy to let Mr. Spencer look at the list ---

10 THE COURT: Sure.

11 MS. DUDGEON: --- first.

12 THE COURT: My clerk has one. I don't have a hard
13 copy. So if you could hand one up to me, that'd be
14 helpful.

15 MS. DUDGEON: It -- it does not include two most
16 recently filed motions, but we'll get there when we get
17 there; at least includes the first seven.

18 May I approach?

19 THE COURT: Please. Thanks.

20 MS. DUDGEON: And I also have the materials related to
21 those motions in the event you don't have the file. And
22 Mr. Bruner just advised me that I had the wrong date. The
23 underlying suit was filed in 2002, not 2006.

24 THE COURT: Okay. All right. And apparently,
25 according to the motions, we're dealing with Defendant

1 Rakowsky's and Falgione's -- if I am mispronouncing these,
2 I ---

3 MR. BRUNER: No, you're ---

4 THE COURT: --- apologize ---

5 MR. BRUNER: --- not ---

6 THE COURT: --- so ---

7 MR. BRUNER: --- Your Honor.

8 MS. DUDGEON: You -- you have it right.

9 THE COURT: --- if -- if I'm slaughtering these names
10 ---

11 MS. DUDGEON: That's okay.

12 THE COURT: --- I'm sorry. But those, it would
13 appear, need to be taken up first. Is that y'all's
14 understanding or ---

15 MS. DUDGEON: It is. But, Your Honor, one -- one
16 matter: Mr. Spencer filed a motion to disqualify me right
17 before our hearing was scheduled for last March. And he
18 has been making some allegations that I am unethically
19 involved in this case. So I would like that motion to be
20 heard first.

21 THE COURT: That's probably prudent.

22 Mr. Spencer, the motion to disqualify Ms. Dudgeon,
23 I'll be inclined to hear that first, if -- if that's okay
24 with you, sir.

25 MR. SPENCER: That's -- certainly.

1 sufficiency of the affidavit or the qualifications of this
2 expert are a whole nother issue, which I don't think is
3 before the Court. But it -- it contains mostly a
4 recitation of the rules of professional conduct and some
5 allegations that are simply just not true.

6 But it doesn't change the fact that the plaintiffs did
7 not have supporting expert opinion in August of 2011 when
8 they filed this suit. Again, this affidavit is in 2013.
9 And it is untimely and, really, is not for the -- for the
10 Court's consideration.

11 As to the letter that's been presented, I -- I can't
12 confirm if it's a letter. I -- there's a similar letter
13 that I've seen at some point. I cannot confirm right now
14 if that's accurate. It looks like a different letterhead;
15 I'm not sure.

16 But it doesn't contain an admission. It's not
17 attached to the complaint. And it's not alleged in the
18 complaint that my clients admitted to -- my client admitted
19 to anything or that Mr. Falgione did.

20 And I believe it's outside the scope of Rule 12. I --
21 I know that's a diatribe of objections. But I did want to
22 note them for the record.

23 MR. BRUNER: Your Honor, we -- we join in those
24 objections. I also want to note that the plaintiffs never
25 filed a motion to file this expert affidavit out of time.

1 THE COURT: All right. Here's what I'm going to do:
2 We've been at this for two hours. The remaining motions,
3 as I see it, relate primarily to discovery issues, timing
4 issues, motions to quash. That's what we've got left.

5 I will be taking the matter under advisement. Upon
6 receipt by the powers that be of authority to rule, I will
7 issue a ruling on this issue.

8 Depending upon what I do after reviewing this, we may
9 reconvene to address any other discovery issues, where the
10 -- the remaining motions: namely, Motions 4 through 7 --
11 defendant -- the defendant's motion to compel discovery
12 responses, plaintiffs' motion to compel and stay hearing,
13 defendant's motion -- and the two defendants' motions to
14 quash.

15 So if I do not grant the defendants' motions to
16 dismiss, we will reconvene and address those, since those
17 relate to the actual merits and I would need to wade in a
18 little bit deeper on this case factually in order to be
19 able to rule intelligently as to those motions.

20 MR. SPENCER: Your Honor, there's ---

21 THE COURT: Yes, sir.

22 MR. SPENCER: --- two other motions that have
23 presented before the Court.

24 THE COURT: Right. That's what I was just talking
25 about.

1 MR. SPENCER: Okay.

2 THE COURT: That -- I was going to hold those in
3 abeyance, based upon -- because if the case is dismissed,
4 it ---

5 MR. SPENCER: Well, it had to do with the parties to
6 ---

7 THE COURT: Oh.

8 MR. SPENCER: --- the case.

9 THE COURT: To amend the complaint? We'll -- we'll
10 cross that bridge if we come to it. If -- if the matter is
11 not resolved through this hearing, I'm going to need to get
12 a -- a lot more up to speed on the other motions.

13 My understanding, in all candor, concerning the
14 hearing today was that I was dealing solely with the
15 motions to dismiss and that we weren't going to be taking
16 up these other matters. So I have not had a chance to --
17 to review those as -- as thoroughly as I would to get as
18 involved in the file as I would need to be to address
19 discovery disputes.

20 MR. SPENCER: And, Your Honor, I'd like to also make a
21 motion ---

22 THE COURT: Sure.

23 MR. SPENCER: --- under 59(b) that -- that this --
24 because of the fact that they merged these two hearings,
25 they tied these orders together of both these cases under

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
Case No. 2011--CP-40-5384

James Spencer, individually, on)
 behalf of the Estate of Doris Holt)
 and on behalf of Southern Holdings,)
 and Irene Santacroce,)
)
 Plaintiffs,)
)
 v.)
)
 John R. Rakowsky, Adrian L.)
 Falgione, and The Law Offices of)
 Adrian Falgione, LLC)
)
 Defendants.)

RICHLAND COUNTY
 FILED
 2012 JUL 30 PM 2:30
 JEANETTE W. McBRIDE
 C.C.P. & G.S.

**Expedited Motion to Compel and to Stay hearings in the Above Captioned
 Case until the Court Rules on this Motion to Compel the Defendants to
 Comply with this Court's Previous Orders**

WHEREFORE, on May 7, 2012, the Honorable Judge Barber, the Chief Administrative Judge, ordered that the next hearing in this proceeding would not occur until Defendant John Rakowsky has released the uncontested litigation funds and that Judge Barber has subsequently held a hearing and both released such funds to the Plaintiffs in this matter, and that the Court subsequently has also

provided time for Plaintiffs to secure representative counsel (See Attached Affidavit).

Whereas, Defendant John Rakowsky has not complied with the Court Orders issued on May 7, 2012 and Judge Barber has been unavailable since July 19, 2012 and, therefore, cannot correct this oversight,

Whereas Judge Barber on September 15, 2011, issued an Order in which by he cited, "There is a long-standing rule in this State that one judge of the same court cannot overrule another." *Tisdale v. Amer. Life Ins. Co.*, 216 S.C. 10, 56 S.E. 2d 580 (1950); *Dinkins v. Robbins*, 203 S.C. 199, 26 S.E. 2d 689 (1943).

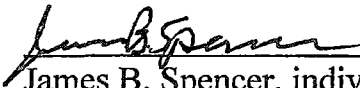
If the hearing is allowed to proceed on August 1, 2012, this will completely contradict the long standing policy as stated immediately above by Judge Barber and the following of long standing policy will turn the jurisdictional rules backwards toward judicial anarchy in the State of South Carolina. Thus the Plaintiffs humbly move the Court to order that:

1. The August 1, 2012 hearing is delayed until defendant John Rakowsky has complied with the Order of Judge Barber entered on May 7, 2012, to release the uncontested litigation funds and the Plaintiffs' have thereby been allowed to secure counsel, per Judge Barber's court Orders issued on May 7, 2012;

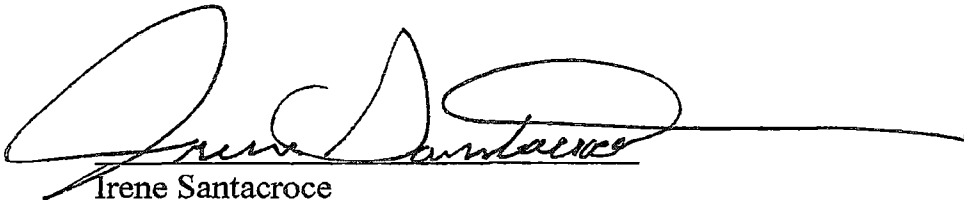
2. This hearing be delayed until the transcript of the May 7, 2012 hearing in this matter is available which documents Judge Barber's rulings on that date. This transcript has been on order by the Plaintiffs for several weeks;
3. Defendant John Rakowsky is assessed the costs associated with the filing of this motion to compel his compliance with Judge Barber's Order's issued on May 7, 2012.

Submitted this 30th day of July, 2012,

By,



James B. Spencer, individually and on behalf of the
Estate of Doris Holt and as interim Administrator
of Southern Holdings Co.,
PMB 183, 7001 Saint Andrews Road
Columbia, SC 29212
(803) 414-0889
JamesBSpencer@sc.rr.com



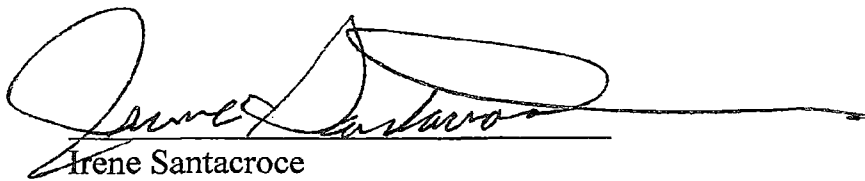
Irene Santacroce
205 Deer Trace Circle
Myrtle Beach, SC 29588
(843) 455-0891

CERTIFICATE OF COMPLIANCE

I, Irene Santacroce, *Pro Se*, do hereby certify that the foregoing Motion to Compel and to Stay any hearings on these matters until the Court Rules on the Motion to Compel the Defendants to Comply with its Previous Orders has this day been served on the following person(s) by either mail, fax or electronic transfer a true and correct copy, as follows:

Andrew A. Countryman, Esquire
Amanda K. Dudgeon, Esquire
Carlock, Copeland and Stair, LLP
40 Calhoun Street, Suite 400
Charleston, SC 29401
Email: Adudgeon@CarlockCopeland.com

Benjamin C. Bruner, Esquire
Bruner, Powell, Wall & Mullins, LLC
1735 St. Julian Place, Suite 200
P.O. Box 61110
Columbia, SC 29260-1110
Email: BBRUNER@brunerpowell.com



Irene Santacroce
205 Deer Trace Circle
Myrtle Beach, SC 29588
(843) 455-0891

RICHLAND COUNTY
FILED
2012 JUL 30 PM 2:30
JEANETTE W. McBRIDE
C.C.P. & G.S.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
Case No. 2011--CP-40-5384

James Spencer, individually, on)
behalf of the Estate of Doris Holt)
and on behalf of Southern Holdings,)
and Irene Santacroce,)

Plaintiffs,)

v.)

John R. Rakowsky, Adrian L.)
Falgione, and The Law Offices of)
Adrian Falgione, LLC)

Defendants.)

RICHLAND COUNTY
FILED
2012 JUL 30 PM 2:30
JEANETTE W. McBRIDE
C.C.P. & G.S.

DECLARATION OF IRENE SANTACROCE

I, Irene Santacroce 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 attended the hearing before Judge Barber on May 7, 2012.
4. I understood with complete certainty that Judge Barber ruled that no hearings were to be held in Case No. **2011--CP-40-5384** until defendant John Rakowsky has complied with the Order of Judge Barber entered on May 7, 2012, to release the uncontested litigation funds and the Plaintiffs'

have thereby been allowed to secure counsel, per Judge Barber's court Order issued on May 7, 2012;

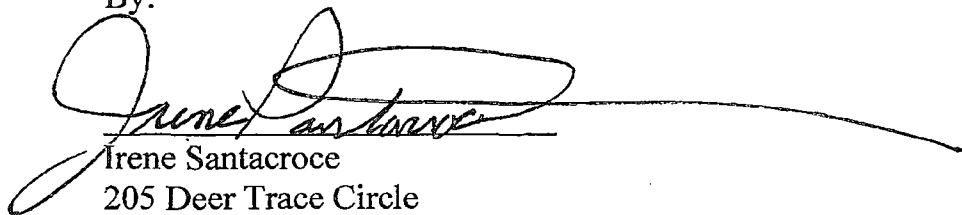
5. I have ordered the transcript of the May 7, 2012 hearing;
6. I have requested a conference with Judge Barber to resolve this issue, however, I just found out he has been on vacation since this matter has come to my attention.

Affiant further sayeth naught.

I DO SOLEMNLY SWEAR AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE ABOVE FOREGOING STATEMENTS ARE TRUE AND CORRECT TO THE BEST OF MY PERSONAL KNOWLEDGE.

This 30th day of July, 2012.

By:


Irene Santacroce
205 Deer Trace Circle
Myrtle Beach, SC 29

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

James Spencer, Estate of Doris Holt
and Irene Santacroce

Plaintiffs,

v.

John R. Rakowsky, Adrian L Falgione, and
The Law Offices of Adrian L. Falgione,

Defendants.

Case No. 2011-CP-40-538

JEANETTE W. McBRIDE
C.P. & G.S.

2012 AUG 30 AM 10:29

RICHLAND COUNTY
FILED

MOTION FOR RECONSIDERATION UNDER RULE 59 (e) SOUTH CAROLINA RULES OF CIVIL PROCEDURE TO CHANGE VENUE TO LEXINGTON, COUNTY

Plaintiff Irene Santacroce and Plaintiff James Spencer request this Honorable Court, under Rule 59 (e) of the South Carolina Rules of Civil Procedure, (SCRPC) to reconsider changing the venue to Lexington County, due to the fact that such a move is improper and will prejudice the outcome of the litigation against the Plaintiffs. This motion is filed within the ten day limit for filing after receipt of the executed Order in the mail under Rule 59 (e) of the SCRPC.

Judge Goldsmith's decision to change venue was based on a lack of relevant information and the information he did have was limited, incorrect and/or false. The Court record will show that Judge Goldsmith was totally unprepared for the hearing and had not reviewed the case file, either before or during the hearing. As the hearing was underway, Judge Goldsmith physically left the hearing to look for the case file and came back with a document he stated he found "laying on

top" of a closed case file." Judge Goldsmith had copies made of the letter and gave copies to the parties present at the hearing.

The letter was nothing more than a proverbial "red herring" as it was both inadmissible and also irrelevant because it does not pertain to this case. The letter clearly states it relates to Case No. 2010-CP-40-5896, the case of "Stewart Buchanan, #69848 v. Robert Brown, in his individual capacity, Sandra S. Bowie, in her individual capacity and David Tatarsky, in his individual capacity."

The only statement that constituted the entire body of letter pertaining to Case No. 2010-CP-40-5896 was, "I have signed all the orders I intended to sign and they will stand." Not only does that statement not negate any previous orders issued by Judge Barber in that case it has nothing to do with the case the hearing was being presided over by Judge Goldsmith. (See Exhibit "A" attached.)

Subsequently, Judge Goldsmith's ruling in this case, is completely inconsistent with the oral rulings and the Scheduling Order issued by Judge Barber, at the previous hearing on the case captioned above held on May 7, 2012.

Judge Goldsmith stated on the Court record he located the case file and the letter lay unattended on top of a case file in Judge Barber's office and he assumed the letter was pertaining to this case. Significantly, Judge Goldsmith didn't review anything else in the case file. So Judge Goldsmith's subsequent rulings were being based on this "red hearing."

Taken in the light least favorable to the Plaintiffs, in this case, the "red hearing" produced by Judge Goldsmith did not negate any of the rulings made by Judge Barber during the May 7, 2012 hearing.

However, Judge Goldsmith's ruling is contra to Judge Barber's rulings on the May 7, 2012 Court record pertaining to this case. In that regard, Judge Barber himself ruled that one Judge cannot overrule another judge. See Judge Barber's Order, dated October, 18, 2011, Case No.: 2008-CP-40-6656¹, where Judge Barber states, "There is a long-standing rule in this State that one judge of the same court cannot overrule another." *Tisdale v. Amer. Life Ins. Co.* 216 S.C. 10, 56 S.E. 2d 580 (1950); *Dankins v. Robbins*, 203 S.C. 199, 26 S.E. 2d 689 (1943)." The *Pro Se* Plaintiffs concur. Therefore, Judge Goldsmith's ruling to change venue must be reversed as it is contradictory to the rulings made by Judge Barber on May 7, 2012.

During the May 7, 2012 hearing, Judge Barber issued the Order for the undisputed litigation funds to be turned over to the Court by June 1, 2012 and issued the scheduling Order for both cases, in an effective joinder of both cases (Case No. 2008-CP-40-6656 and 2011-CP-40-5384) including, but not limited to, the holding of simultaneous depositions.

Also, unknown to Judge Goldsmith, as he was not prepared and had not reviewed the case file, a motion to compel (**See Exhibit "B" attached**) was pending and Judge Barber had Ordered on May 7, 2012, that no other hearings were to take place in case 2011-CP-40-5384 and case 2008-CP-40-6656 until after the interplead uncontested litigation funds were turned over to the *Pro Se* litigants and the *Pro Se* litigants had time to hire counsel and experts for both the cases.

The *Pro Se* Plaintiffs informed Judge Goldsmith of Judge Barber's Orders, issued on May 7, 2012, but opposing counsels Amanda Dudgeon and Ben Bruner disrespected Judge Barber's standing Orders on May 7, 2012 and wrongfully pursued their clients interests knowing this was contrary to prior rulings made by the Court on May 7, 2012 which itself appears to the lay *Pro Se*

¹ Note on May 7, 2012, Judge Barber in a joined hearing of Case No. 2008- CP-40-6656 and 2011-CP-40-5384.

litigants to be a violation of the South Carolina Rules of Professional ethics for lawyers by Mr. Bruner and Ms. Dudgeon.

Opposing Counsels Amanda Dudgeon and Ben Bruner knew that changing the venue to Lexington County where Amanda Dudgeon's client John Rakowsky is the long standing Chief Presiding Municipal Judge holding power county wide and is politically well connected would obviously prejudice the case against the Plaintiffs and chose to ignore the Court's prior rulings on May 7, 2012.

Further, based on Counsel Bruner's false representations, the Court erred in its Order that the Plaintiffs' declarations had no significance, and should not be considered when in fact they carry the same authority as the defendants' affidavits as established by the Federal Courts.²

"an unsworn declaration has the same force and effect as an affidavit if it recites -- as Fadale's declaration does -- that it was executed under penalty of perjury."

Sterling China Co. v. Glass, Molders, Pottery, Plastics & Allied Workers Local No. 24, 357 F.3d 546, 557 (6th Cir. Ohio 2004)

Additionally, Counsel Bruner in order to undermine the Pro Se Plaintiffs' credibility knowingly falsely claimed on the Court record that an Order had been issued by Judge Barber whereby Amanda Dudgeon and her law firms position to represent John Rakowsky, which had

² § 1746. Unsworn declarations under penalty of perjury

"Wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated, in substantially the following form:

(1) If executed without the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date).

(Signature)".

(2) If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date).

(Signature)".

been challenged by the Plaintiffs in a motion filed on March 27, 2012 due to a conflict of interest, had been resolved as the Plaintiffs claims of a conflict of interest were found baseless. This is patently untrue and certainly a violation of ethics by Mr. Bruner and Ms. Dudgeon as she stood by and allowed the false statement on her behalf to go on the Court record unchallenged.

Further Counsel Bruner falsely claimed that engagement contracts had been executed in Lexington County between the Plaintiffs and his client Adrian Falgione. During the hearing on August 1, 2012, the Plaintiffs pointed out this was not true and that Counsel Bruner could not produce one such document as Adrian Falgione was hired by John Rakowsky and no contracts were ever executed between the Plaintiffs and Adrian Falgione.

Through the untruthful statements in Adrian Falgione's affidavit Counsel Bruner was using in the affidavit of Adrian Falgione to establish venue in Lexington County. Counsel Bruner made such a statement without seeing any such contract purportedly executed by the Plaintiffs and Adrian Falgione and without researching the law wrongfully claiming that Plaintiffs' sworn declarations carried no legal weight and the affidavits of the Defendants superseded the meaningless Plaintiffs' declarations. The Court erred and stated it agreed that the Plaintiffs Declarations were legally meaningless and had no legal weight compared to the sworn affidavit of Adrian Falgione.

Therefore, Judge Goldsmith without being prepared and acting on both a red hearing and misinformation provided by opposing counsels Bruner and Dudgeon wrongfully concluded that the change in venue was called for, when in fact, a change in venue to Lexington County was not proper as the vast majority of the work was done in Richland County, South Carolina and Clark County, Nevada and the acts of malpractice occurred outside Lexington County in both Richland County, Florence County and Clark County Nevada. Therefore, under SC §§ 15-7-20 Richland

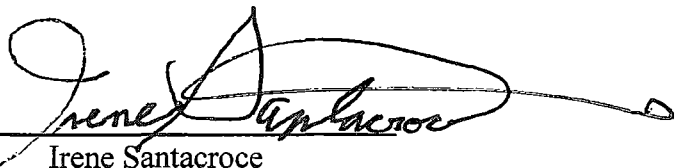
County, SC or Clark County Nevada would be proper venues and Lexington County would be improper under SC §§ 15-7-100 as the Lexington County venue would lead to an impartial trial in that venue given the political position of Defendant Chief Judge John Rakowsky of Lexington County (See Exhibit "C" attached hereto).

Counsel Bruner knew or should have known that Defendant John Rakowsky is a Chief Judge in Lexington County, S.C., yet Mr. Bruner wrongly claimed the Pro Se Plaintiffs were untruthful in footnote #2, on page 4 of his Memorandum in Support of Defendant's, Adrian L. Falgione and the Law Offices of Adrian Falgione, LLC's Motion to Change Venue about John Rakowsky's position as "Chief Judge."

THEREFORE, due to the foregoing the Plaintiffs humbly request the Judge Goldsmith's decision in favor of Defendants motion for a change in venue to Lexington County, based on the forgoing, be reversed and denied with prejudice.

RESPECTFULLY SUBMITTED

This 29th day of August, 2012.

By: 
Irene Santacroce
Pro Se Plaintiff


James Spencer
Pro Se Plaintiff

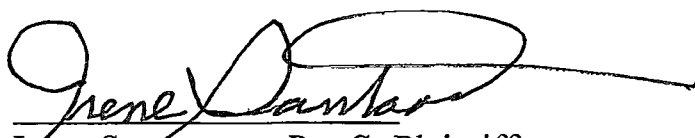
CERTIFICATE OF SERVICE

I, Irene Santacroce, *Pro Se* Plaintiff do hereby certify that the **Motion for Reconsideration and Strike OF THE COURT'S RULING IN REGARD TO THE MOTION TO CHANGE VENUE** has this day been served on the following person(s) by mail, fax or electronic transfer a true and correct copy, as follows:

Amanda K. Dudgeon, Esquire
Andrews A. Countryman, Esquire
Carlock, Copeland and Stair, LLP
40 Calhoun Street, Suite 400
Charleston, SC 29401
(843) 727-0307
Email: Adudgeon@CarlockCopeland.com

Benjamin C. Bruner, Esquire
Burner, Powell, Wall & Mullins, LLC
1735 St. Julian Place, Suite 200
P.O. Box 61110
Columbia, SC 29260-1110
(803) 252-7693
Email: BBruner@BrunerPowell.com

This 29th day of August, 2012.

By: 
Irene Santacroce, *Pro Se* Plaintiff
205 Deer Trace Circle
Myrtle Beach, SC 295889
(843) 455-0891

RICHLAND COUNTY
FILED
2012 AUG 30 AM 10:29
JEANETTE W. McBRIDE
C.C.P. & G.S.

The Circuit Court of South Carolina
Fifth Judicial Circuit

James R. Barber, III
Circuit Court Judge
Richland County Judicial Center
P.O. Box 2768
Columbia, South Carolina, 29201

(803) 576-1779
FAX (803) 576-1782



July 31, 2012

Amanda Kurzen Dudgeon
40 Calhoun St., Ste. 400
Charleston, SC 29401

Irene Santacroce
205 Deer Trace Circle
Myrtle Beach, SC 29588

Benjamin C. Bruner, Esq.
Bruner, Powell, Wall & Mullins, LLC
P.O. Box 61110
Columbia, SC 29260

James Spencer
7001 St. Andrews Road, Suite 183
Columbia, SC 29212

Stephanie Weissenstein
Ballard, Watson, Wessenstein
P.O. Box 6338
West Columbia, SC 29171

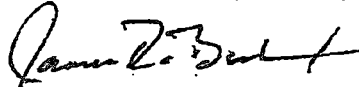
Rodney Lail
7001 St. Andrews Road
P.O. Box 183
Columbia, SC 29212

Re: Stewart Buchanan, #69848 v. Robert Brown, in his individual capacity, Sandra S. Bowie, in her individual capacity, and David Tatarsky, in his individual capacity
Case No. 2010-CP-40-5896

Dear Mr. Dudgeon, Ms. Santacroce, Mr. Bruner, Mr. Spencer, Ms. Wessenstein, and Mr. Lail:

I have signed the orders I intended to sign and they will stand.

Sincerely yours,



James R. Barber, III

JRB:ecb

EXHIBIT "B"

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
Case No. 2011--CP-40-5384

James Spencer, individually, on)
behalf of the Estate of Doris Holt)
and on behalf of Southern Holdings,)
and Irene Santacroce,)
)
Plaintiffs,)
)
v.)
)
John R. Rakowsky, Adrian L.)
Falgione, and The Law Offices of)
Adrian Falgione, LLC)
)
)
Defendants.)

RICHLAND COUNTY
FILED
 2012 JUL 30 PM 2:30
 JEANETTE W. McBRIDE
 C.C.P. & G.S.

Expedited Motion to Compel and to Stay hearings in the Above Captioned
Case until the Court Rules on this Motion to Compel the Defendants to
Comply with this Court's Previous Orders

WHEREFORE, on May 7, 2012, the Honorable Judge Barber, the Chief Administrative Judge, ordered that the next hearing in this proceeding would not occur until Defendant John Rakowsky has released the uncontested litigation funds and that Judge Barber has subsequently held a hearing and both released such funds to the Plaintiffs in this matter, and that the Court subsequently has also

provided time for Plaintiffs to secure representative counsel (See Attached Affidavit).

Whereas, Defendant John Rakowsky has not complied with the Court Orders issued on May 7, 2012 and Judge Barber has been unavailable since July 19, 2012 and, therefore, cannot correct this oversight,

Whereas Judge Barber on September 15, 2011, issued an Order in which by he cited, "There is a long-standing rule in this State that one judge of the same court cannot overrule another." *Tisdale v. Amer. Life Ins. Co.*, 216 S.C. 10, 56 S.E. 2d 580 (1950); *Dinkins v. Robbins*, 203 S.C. 199, 26 S.E. 2d 689 (1943).

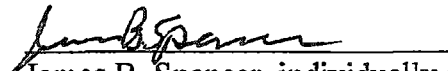
If the hearing is allowed to proceed on August 1, 2012, this will completely contradict the long standing policy as stated immediately above by Judge Barber and the following of long standing policy will turn the jurisdictional rules backwards toward judicial anarchy in the State of South Carolina. Thus the Plaintiffs humbly move the Court to order that:

1. The August 1, 2012 hearing is delayed until defendant John Rakowsky has complied with the Order of Judge Barber entered on May 7, 2012, to release the uncontested litigation funds and the Plaintiffs' have thereby been allowed to secure counsel, per Judge Barber's court Orders issued on May 7, 2012;

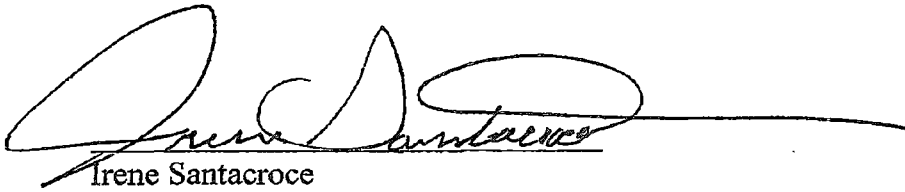
2. This hearing be delayed until the transcript of the May 7, 2012 hearing in this matter is available which documents Judge Barber's rulings on that date. This transcript has been on order by the Plaintiffs for several weeks;
3. Defendant John Rakowsky is assessed the costs associated with the filing of this motion to compel his compliance with Judge Barber's Order's issued on May 7, 2012.

Submitted this 30th day of July, 2012,

By,



James B. Spencer, individually and on behalf of the
Estate of Doris Holt and as interim Administrator
of Southern Holdings Co.,
PMB 183, 7001 Saint Andrews Road
Columbia, SC 29212
(803) 414-0889
JamesBSpencer@sc.rr.com



Irene Santacroce
205 Deer Trace Circle
Myrtle Beach, SC 29588
(843) 455-0891

CERTIFICATE OF COMPLIANCE

I, Irene Santacroce, *Pro Se*, do hereby certify that the foregoing Motion to Compel and to Stay any hearings on these matters until the Court Rules on the Motion to Compel the Defendants to Comply with its Previous Orders has this day been served on the following person(s) by either mail, fax or electronic transfer a true and correct copy, as follows:

Andrew A. Countryman, Esquire
Amanda K. Dudgeon, Esquire
Carlock, Copeland and Stair, LLP
40 Calhoun Street, Suite 400
Charleston, SC 29401
Email: Adudgeon@CarlockCopeland.com

Benjamin C. Bruner, Esquire
Bruner, Powell, Wall & Mullins, LLC
1735 St. Julian Place, Suite 200
P.O. Box 61110
Columbia, SC 29260-1110
Email: BBRUNER@brunerpowell.com



Irene Santacroce
205 Deer Trace Circle
Myrtle Beach, SC 29588
(843) 455-0891

RICHLAND COUNTY
FILED
2012 JUL 30 PM 2:30
JEANETTE W. McBRIDE
C.C.P. & G.S.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
Case No. 2011--CP-40-5384

James Spencer, individually, on)
behalf of the Estate of Doris Holt)
and on behalf of Southern Holdings,)
and Irene Santacroce,)
)
Plaintiffs,)
)
v.)
)
John R. Rakowsky, Adrian L.)
Falgione, and The Law Offices of)
Adrian Falgione, LLC)
)
Defendants.)

RICHLAND COUNTY
FILED
2012 JUL 30 PM 2:30
JEANETTE W. MACBRIDE
C.C.P. & G.S.

DECLARATION OF IRENE SANTACROCE

I, Irene Santacroce 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 attended the hearing before Judge Barber on May 7, 2012.
4. I understood with complete certainty that Judge Barber ruled that no hearings were to be held in Case No. 2011--CP-40-5384 until defendant John Rakowsky has complied with the Order of Judge Barber entered on May 7, 2012, to release the uncontested litigation funds and the Plaintiffs'

have thereby been allowed to secure counsel, per Judge Barber's court Order issued on May 7, 2012;

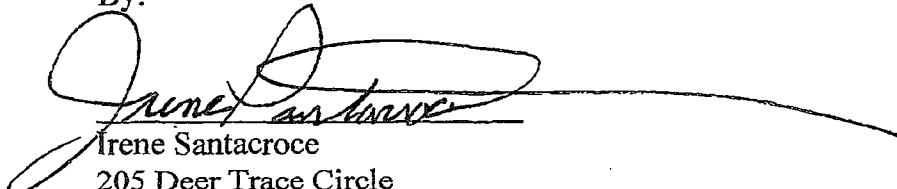
5. I have ordered the transcript of the May 7, 2012 hearing;
6. I have requested a conference with Judge Barber to resolve this issue, however, I just found out he has been on vacation since this matter has come to my attention.

Affiant further sayeth naught.

I DO SOLEMNLY SWEAR AND AFFIRM UNDER THE PENALTIES OF PERJURY THAT THE ABOVE FOREGOING STATEMENTS ARE TRUE AND CORRECT TO THE BEST OF MY PERSONAL KNOWLEDGE.

This 30th day of July, 2012.

By:


Irene Santacroce
205 Deer Trace Circle
Myrtle Beach, SC 29

MUNICIPAL COURT JUDGES
LANCASTER, LAURENS, LEE, AND LEXINGTON COUNTIES

	EXHIBIT "C"
	PAGE 1 OF 1
<p>The Honorable Bill M. Cade Chief Judge 186 North Carlisle Street Gaston, SC 29053-9403 OFFICE: (803) 796-7725 FAX: (803) 739-5793 County: Lexington Municipality: Gaston Gender: Male Race: Caucasian</p>	<p>The Honorable Rebecca L. Adams Chief Judge Post Office Box 406 Irmo, SC 29063-0230 OFFICE: (803) 781-8700 FAX: (803) 749-2743 County: Lexington Municipality: Irmo Gender: Female Race: _____</p>
<p>The Honorable Joseph M. Epting Chief Judge Post Office Box 406 Irmo, SC 29063-0230 OFFICE: (803) 781-8700 FAX: (803) 749-2743 County: Lexington Municipality: Irmo Gender: Male Race: _____</p>	<p>The Honorable Gary W. Reinhart Assistant Judge Post Office Box 406 Irmo, SC 29063-0230 OFFICE: (803) 781-8700 FAX: (803) 749-2743 County: Lexington Municipality: Irmo Gender: Male Race: _____</p>
<p>The Honorable John R. Rakowsky ██████████ 111 Maiden Lane Lexington, SC 29072-3450 OFFICE: (803) 359-6260 FAX: (803) 951-4643 County: Lexington Municipality: Lexington Gender: Male Race: Caucasian</p>	<p>The Honorable Brian W. Jeffcoat Associate Judge 111 Maiden Lane Lexington, SC 29072-3450 OFFICE: (803) 359-6260 FAX: (803) 951-4643 County: Lexington Municipality: Lexington Gender: Male Race: Caucasian</p>
<p>The Honorable Scott D. Whittle Chief Judge P.O. Box 7 Pelion, SC 29123-0007 OFFICE: (803) 894-3535 FAX: (803) 894-3535 County: Lexington Municipality: Pelion Gender: Male Race: Caucasian</p>	<p>The Honorable Stephanie S. Cameron Associate Judge P.O. Box 7 Pelion, SC 29123-0007 OFFICE: (803) 894-3535 FAX: (803) 894-3535 County: Lexington Municipality: Pelion Gender: Female Race: Caucasian</p>

EXHIBIT 5

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

James Spencer, individually and on behalf of)
the Estate of Doris Holt and on behalf of)
Southern Holdings, Inc.; and Irene Santacroce;)

C/A No. 2011-CP-40-5384.

Plaintiffs,)

v.)

**ORDER GRANTING DEFENDANTS'
MOTIONS TO CHANGE VENUE**

John R. Rakowsky; Adrian L. Falgione; and)
The Law Offices of Adrian Falgione, LLC;)

Defendants.)

THIS MATTER came before the undersigned by way of motions to change venue, which were filed on May 17, 2012, on behalf of Adrian L Falgione (“Falgione”) and The Law Offices of Adrian L. Falgione, LLC (collectively, “Falgione Defendants”), and on June 4, 2012, on behalf of John R. Rakowsky (“Rakowsky”). At a hearing on these motions on August 1, 2012, at the Richland County Judicial Center, the Plaintiffs appeared pro se, Benjamin C. Bruner, Esquire appeared on behalf of the Falgione Defendants, and Amanda K. Dudgeon, Esquire appeared on behalf of Rakowsky. Having carefully considered the arguments and submissions of the parties, I find the Defendants’ motions should be granted and this case should be transferred to Lexington County.

When a plaintiff files suit in a county that is not the proper venue for trial under the venue statutes, the Court may transfer the case to a proper county for trial. S.C. Code Ann. § 15-7-100 (Supp. 2011.). Based upon the allegations in the Complaint, S.C. Code Ann. § 15-7-30 governs venue of this action. Under that statute, venue is proper either in the defendant’s resident county or in the county where the most substantial part of the alleged act or omission giving rise to the

plaintiff's claim occurred. S.C. Code Ann. § 15-7-30(C), (E) (Supp. 2011). The South Carolina Supreme Court has recognized that a defendant's right to be tried in his resident county is a substantial one. Jeter v. South Carolina Dept. of Transp., 369 S.C. 433, 442, 633 S.E.2d 143, 147-48 (2006). Furthermore, "in a case involving only one defendant or multiple defendants who reside in a single county, the venue choice generally is controlled by the residence of the defendant." Id.

In this legal malpractice action, the Defendants contend this case should be transferred to Lexington County as a matter of right because Richland County is not a proper venue under §15-7-30 and because Lexington County is the Defendants' resident county. I agree.

I find venue is not proper in Richland County. All the named defendants are from Lexington County, and the most substantial part of the acts and omissions alleged in the Complaint occurred outside Richland County. The Plaintiffs argued at the hearing that they signed fee agreements with the Defendants in Richland County. Even if this were true,¹ where the fee agreements were signed does not override the Defendants' substantial right to be tried in their resident county, nor does it establish that the most substantial part of the acts and omissions alleged in the Complaint occurred in Richland County, as the statute requires. In fact, Plaintiff Spencer argued at the hearing that the alleged malpractice occurred in Florence County. I therefore find Richland County is not a proper venue for this action and the Defendants have a substantial right to be tried in Lexington County that has not been waived.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that the Defendants' motions to change venue should be, and hereby are, granted and that the above-

¹ The Defendants submitted affidavits stating that the fee agreements were signed at their offices in Lexington County. In response, the Plaintiffs submitted a series of documents that purported to be affidavits in support of their argument that the fee agreements were drafted and signed in Richland County, but none of the affidavits the Plaintiffs submitted were notarized.

captioned case be, and hereby is, transferred to the Court of Common Pleas for Lexington County. **IT IS FURTHER ORDERED** that the Clerk of Court for Richland County is hereby directed to take all steps necessary to effectuate the immediate transfer to the Lexington County Court of Common Pleas of all pleadings and other documents presently on file with this Court in connection with this action.

AND IT IS SO ORDERED.

The Honorable Brooks P. Goldsmith
Presiding Judge, Fifth Judicial Circuit

August __, 2012

Columbia, South Carolina

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on August 1, 2012, the document(s) described below was(were) served on all parties of record in this case by mailing a copy, first class mail, postage prepaid and addressed as set forth below.

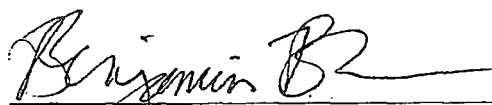
Documents served: **PROPOSED ORDER GRANTING DEFENDANTS' MOTIONS TO CHANGE VENUE.**

Parties served:

James B. Spencer
7001 Saint Andrews Road, Suite 183
Columbia, South Carolina 29212
Pro Se

Irene Santacroce
205 Deer Trace Circle
Myrtle Beach, South Carolina 29588
Pro Se

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



Benjamin C. Bruner


CERTIFICATE OF SERVICE

I, James Spencer, *Pro Se*, Plaintiff, do hereby certify that the foregoing Informal Initial Brief this day March 7, 2015, been served on the following person(s) by either mail, fax or electronic transfer a true and correct copy, as follows:

Andrew Countryman, Esquire
Carlock, Copeland & Stair, LLP
40 Calhoun Street, Suite 400
Charleston, SC 29401
(843) 727-0307
acountryman@carlockcopeland.com

Benjamin C. Bruner, Esquire
Bruner, Powell, Wall & Mullins, LLC
1735 St Julian Place, Suite 200
PO Box 61110
Columbia, SC 29260-1110
(803) 753-0060

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James B. Spencer
Suite 183, 7001 Saint Andrews Road
Columbia, SC 29212
(803) 414-0889
JamesBSpencer@sc.rr.com