

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY

Court of Common Pleas

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APR 10 2015

SC Court of Appeals

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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

MOTION TO SERVE
DESIGNATION OF MATTER
AND
BRIEF OUT OF TIME

MOTION TO SERVE AND FILE DESIGNATION OF MATTER AND
BRIEF OUT OF TIME

James B. Spencer, *Pro se*, hereby respectfully moves this Court, pursuant to Rule 26(b), for an order allowing him to serve his Designation of Matter and Initial brief out of time.

In support of this motion, counsel for Appellant shows the following.

1. *Pro Se*, indigent and disabled Appellant, depends on others to perform functions such as reading documents to him, typing documents and driving, as the paralysis due to the actions of the defendants in the case, litigated by the defendants in this action, has now spread to and is affecting Appellant's legs, limiting his mobility.
2. On April 3, the Appellant had addressed and placed in the US Mail by caretaker his Initial Informal Brief to the Clerk of Court. (See **attachment "A"** declaration of caretaker).
3. The Appellant has been forced to serve, by hand delivery, to the other parties, due to the actions taken by the defendants' attorneys regarding service.
 - a. See **Attachment "B"** as an example. Mr. Bruner, esquire without basis claimed, in a sworn affidavit, he had Appellant personally served by courier, when in fact, the address he claimed an unidentified courier personally served Appellant. However, Mr. Bruner thought the address used by Appellant was his home; problematically it was a UPS mailbox. Not only could the Appellant not have been served there, the fact is the UPS store does not accept service by courier and is prohibited from doing so by law See Affidavit of UPS owner as part of **Attachment "B."** When Mr. Bruner realized he was caught being untruthful when he was seeking a cure for his client by wrongfully claiming a failure to address service he unbelievably claims "he did this [committed fraud] to show problems

related to proper service of Mr. Spencer.”¹ This and other inappropriate actions regarding untruths related to service has forced the Appellant to have a courier personally, hands deliver to accomplish service and document such service by recordings. The Appellant had to have the Appellees served multiple times bearing redundant costs for a professional independent server and Appellees still claimed improper service in their answers to the summons and complaint.

- b. See **Attachment “C”** as a second example. Here attorney Desa Ballard was forced to retract her claim of lack of service. When the courier submitted the audiotape, which he recorded service on and an affidavit to the court; she was forced to retract her baseless claim of lack of service. Also, please note Desa Ballard has included in the body of her email attached as page 2 of **Attachment “C”** dated August 20, 2014, that she will not communicate directly with the Appellant, apparently feels making matters more difficult for the disabled Appellant advances the case for her client. She, therefore, openly stated in writing she delays service on the Appellant, despite having been ordered by the Honorable Judge Barber on the court record to communicate by email directly with the *Pro Se* litigant. The Bruner law firm also refuses email communications from/to Appellant on the same basis as Ms. Ballard.
4. These actions and others has created an environment that is prejudicial for an indigent, *Pro Se* appellant to efficiently litigate, thus both prejudicing the Appellant and causing delays in service and economic hardship on the indigent Appellant.
5. In this matter, Appellant faxed a copy into the Clerk of Court’s office on April 6, 2015, attempted personal hand delivery, but physically because of his leg paralysis took close to

¹ See last page of Attachment C, lines 2 and 3

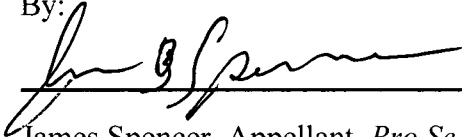
twenty-five minutes just to climb the steps on April 7, 2015. As Appellant approached the door of the courthouse from the final step, Appellant saw the last person going in as the door was locked behind her by the guard at 5:00 PM. He resorted to then mailing a copy to the court and other parties that same day from the mail center that was opened late. Finally, when his volunteer courier came back into town the courier made hand delivery on April 9, 2015, and again served the other parties by personal and mail delivery respectfully.

6. Appellant's courier was notified by Ms. Carter of the Clerk of Court's office that the lay Appellant needed to file a Designation of Matter rather than the separate document appendix the courier also attempted to serve. Appellant contacted the case manager at the clerk of court's office. The case manager suggested avoiding confusion problems with the duplicative and incomplete service that the Designation of Matter is served with yet another Informal Appellant Brief with a common date of service to all parties and the clerk of court's office. The Appellant also needed to file a motion for filing out of time and serve all parties.
7. The lay Appellant has taken every step he could to file the Informal Brief numerous times, relying on others and dealing with the obstacles put in place by Appellees' counsels, his physical disabilities, and his economic constraints.
8. Appellant believes he has now corrected the errors caused by circumstances beyond his control and has completed the filing.

WHEREFORE, for the foregoing reasons, the Appellant respectfully requests leave to file the brief and Designation of Matter out of time.

Submitted this April 15, 2015

By:



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