

76991

RECEIVED
AUG 20 2015
SC Court of Appeals

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

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

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

APPELLATE CASE NO.: 2014-000091

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

v.

James Spencer, *Pro Se*, Appellant

**MOTION TO STRIKE RESPONDENT FALGIONE'S
OPENING BRIEF AND DESIGNATION OF MATTER
WITH PREJUDICE**

THIS DOCUMENT HAS ATTACHMENTS

BACKGROUND

On June 24, 2015, Respondent Adrian L. Falgione, (hereinafter Respondent) filed a motion for extension of time pursuant to Rule 240 of the South Carolina Appellate Civil Rules (SCACR) to file his Initial Brief and Designation of Matter to be Included on the Record on Appeal with a new due date of July 27, 2015, through his counsel, Benjamin C. Bruner.

On July 1, 2015, this Honorable Court granted the above named motion and extended the due date for serving and filing Respondent's Initial Brief and Designation of Matter until July 27, 2015.

Please take notice of the Motion for Sanctions under Rule 269 filed contemporaneously, with this motion (proper notice has been provided to Respondent under the Rules). This Motion for Sanctions clearly documents Respondent's fraudulent attempt before this court to make a filing of a pleading in this matter by the *Pro Se* Appellant appear as untimely by two days and seeks a dismissal of the Appeal on that fraudulently contrived basis. In that regard, as documented, Respondent through his counsel Benjamin Bruner, knowingly submitted a perjured sworn affidavit to this Honorable Court, (*see Affidavit of Counsel dated April 11, 2014, "Attachment A" of Motion for Sanctions under Rule 269*). This behavior by members of the South Carolina Bar simply cannot be

tolerated.

It is important to note that Respondent, Mr. Falgione, and his attorney, Mr. Bruner are both licensed experienced attorneys in the state of South Carolina and are required to abide by the Code of Professional Conduct as well as the South Carolina Rules of Appellate Procedure.

Please also note affidavit of *Respondent Falgione dated July 19, 2012*, "*Attachment D*" of *Motion for Sanctions under Rule 269*, evidencing this was not the first time a perjured "sworn" affidavit was used by **both** Respondents and **both** their counsels in the case at bar.

CONCLUSION

The document attached hereto as **Exhibit A**, clearly shows that on July 28, 2015, Respondent Falgione submitted service and filed the Initial Brief and Designation of Matter by putting it in the U.S. mail on that date. No expansion or explanation was provided or requested by Respondent to the court for this truly documented untimely filing.

These two attorneys simply ask the court to "look away" as they miss the due date for their submission after having been granted one earlier expansion, while they previously have asked this Honorable Court to hold the *Pro Se* Appellant to a *contrived and fraudulent orchestrated* untimely filing by dismissing his Appeal for

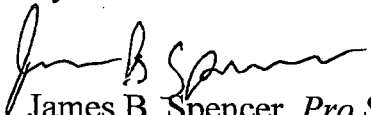
being two days late.

As the Respondent put it "Late is late." The court can't wink or blink at this behavior from licensed attorneys while holding the *Pro Se* Appellant to even higher standards. This is improper activity by counsel under any circumstances. The Respondent and his counsel, Benjamin Bruner, are attorneys who have sworn to uphold the law and to adhere to the Code of Professional Responsibility which includes a duty of care in all their work before this Honorable Court. This duty has once again been breached by Respondent and his counsel Mr. Bruner.

Therefore, the *Pro Se* Appellant respectfully requests that based on the Respondent's untimely service and filing with the court and the earlier fraud against *Pro Se* Appellant regarding using untimely service to dismiss the case, that this Honorable Court Strike Respondent Falgione's Opening Brief and Designation of Matter with Prejudice.

This 20th day of August, 2015.

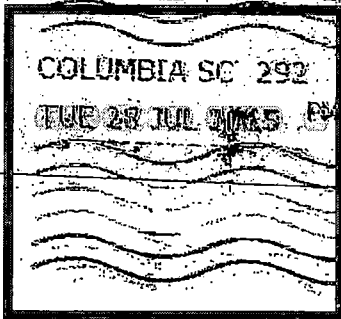
By:



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



EXHIBIT "A"



BRUNER, POWELL, WALL & MULLINS, LLC
A Professional Limited Liability Company
ATTORNEYS AND COUNSELORS AT LAW
1735 ST. JULIAN PLACE, SUITE 200
POST OFFICE BOX 61110
COLUMBIA, SOUTH CAROLINA 29260-1110

3-1742-108

The Honorable Jenny Abbott Kitchings
Clerk of Court, S.C. Court of Appeals
1220 Senate Street
Columbia, SC 29201

RECEIVED
JUL 29 2015
SC Court of Appeals

RECEIVED
AUG 20 2015
SC Court of Appeals

PROFF OF SERVICE

The undersigned hereby certifies that on , the document described below, was(were) served on all parties of record in this case by mailing a copy, by US mail and/or delivery by courier on this date August 20, 2015.


Documents served: "MOTION TO STRIKE RESPONDENT FALGIONE'S OPENING BRIEF AND DESIGNATION OF MATTER WITH PREJUDICE"

Parties Served:

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

David W. Overstreet
Carlock, Copeland & Stair, LLP
40 Calhoun Street, Suite 400
Charleston, South Carolina 29401
Attorneys for John Rakowsky

By:



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