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THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

Case No: 2014-002029

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SEP 14 2015

SC Court of Appeals

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

Judge Doyet A. Early, III, Circuit Court Judge

Case No. 2008-CP-40-6656

John R. Rakowsky, Respondent

v.

Irene Santacroce, Appellant  
Estate of Doris Holt, Appellant  
Rodney Lail, Appellant

and

James B. Spencer, Appellant, *Pro Se*

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**JOINT MOTION TO SERVE REPLY  
TO RETURN IN OPPOSITION OUT OF TIME**

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**MOTION TO SERVE AND FILE REPLY**  
**TO RETURN IN OPPOSITION OUT OF TIME**

Appellants Irene Santacroce, Rodney Lail and the Estate of Doris Holt, (“Represented Appellants”) by and through the undersigned counsel, and *Pro Se* Appellant James Spencer, all hereby move pursuant to Rule 26(b), of the South Carolina Rules of Appellate Procedure (SCRAP), for an order allowing Appellants to serve their Joint Reply to Return in Opposition, attached hereto, out of time.

In support of this motion Appellants show the following:

1. Represented Appellants are represented *Pro Bono* by the undersigned who is a solo practitioner.
2. The undersigned is representing the same clients in two ongoing cases in the Federal 4<sup>th</sup> Circuit Court of Appeals in Richmond, Va., and clients who have been named in a related South Carolina Appellate Court Case.
3. The undersigned did not receive service from Ms. Ballard until Wednesday, September 9, 2015, as the undersigned was out of town.
4. The *Pro Se* Appellant is 100% disabled, is indigent and suffers from partial permanent paralysis of his right hand and leg from the physical torture by defendants in the underlying lawsuit.
5. The *Pro Se* Appellant depends on others to perform functions such as typing documents and driving as the paralysis due to the physical torture

by the defendants in the underlying case has now spread to and is affecting Appellant's legs, limiting his mobility.

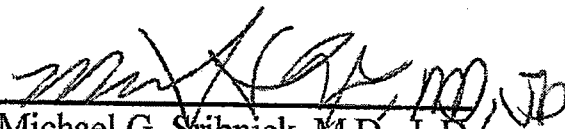
6. The *Pro Se* Appellant did not receive service from Ms. Ballard until September 5, 2015.

7. The disabled *Pro Se* Appellant struggles to keep up with the requirements of litigating multiple cases against common multiple attorneys and co-counsels in the different cases.

**WHEREFORE**, for the foregoing reasons, the represented Appellants and the *Pro Se* Appellant respectfully request leave from this Honorable Court to file the Reply to Return out of time.

Submitted this September 14, 2015

By:

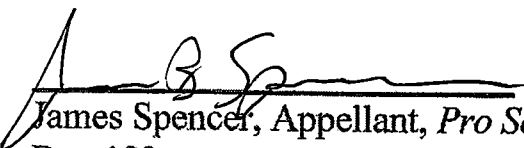
  
Michael G. Sribnick, M.D., J. D.

3 Kenilworth Avenue  
Charleston, S.C. 29403

Phone: (843) 789-3504

Fax: (843) 789-3504

Email: michael.g.sribnickmdjdlc@gmail.com

  
James Spencer, Appellant, *Pro Se*  
Box 183  
7001 Saint Andrews Road  
Columbia, SC 29212

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on August September 14, 2015, the document described below, was(were) served on all parties of record in this case by mailing a copy, by US mail or by courier.

Documents Served:       **JOINT MOTION TO SERVE REPLY  
TO RETURN IN OPPOSITION OUT OF TIME**

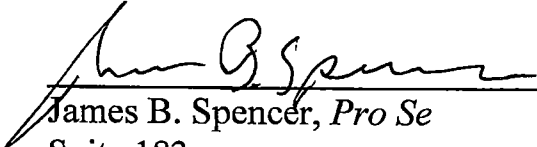
Parties Served:

Desa Ballard, Esquire  
Ballard and Watson, Attorneys at Law  
PO Box 6338  
West Columbia, SC 29171

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SC Court of Appeals

  
\_\_\_\_\_  
James B. Spencer, *Pro Se*  
Suite 183  
7001 Saint Andrews Road  
Columbia, SC 29212

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Estate of Doris Holt, Appellant  
Rodney Lail, Appellant

and

James B. Spencer, Appellant, *Pro Se*

**REPLY TO RETURN IN OPPOSITION  
TO MOTION TO EXTEND TIME**

**NOW COMES THE APPELLANTS**, Irene Santacroce, Rodney Lail and  
the Estate of Doris Holt, ("Represented Appellants") by and through the undersigned

counsel, and *Pro Se* Appellant James Spencer, (collectively “Appellants”), who will submit pertinent facts in this Reply in Opposition to Respondent’s “Return in Opposition To Joint Motion to Extend Time” under Rule 240(f). In support of this Reply the Appellants show the following:

### **BACKGROUND**

The Respondent filed the underlying Interpleader against the Appellants because he claimed he did not know who to distribute settlement proceeds to and he did not know who to return the remaining funds advanced for litigation purposes to in the underlying case. This filing was made in “bad faith”. The respondent knew or should have known exactly to whom the funds belonged and to whom they should be returned.

The Respondent, is an attorney who represented the Appellants under individual representation agreements. As such the Respondent is required under the South Carolina Code of Professional Ethics Rule 1.15 to keep records in the following manner:

“A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property. Funds shall be kept in a separate account maintained in the state where the lawyer's office is situated, or elsewhere with the consent of the client or third person. Other property shall be identified as such and appropriately safeguarded. Complete records of such account funds and other property shall be kept by the lawyer and shall be preserved for a period of six years after termination of the representation. A lawyer shall comply with Rule 417, SCACR (Financial Recordkeeping).”

Furthermore, Respondent due to his own negligence did not comply with the proper record keeping required as to the distribution of any settlement proceeds under South Carolina Local Federal Rule 83.1.08, which specifically incorporates South Carolina Rule 407 1.8(g) states: "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, when an aggregate settlement is involved, which includes the distribution of the aggregate settlement among the parties". This requirement for the counsel(s) to have written authority to settle a case is to protect the individual party's rights. There was no such written signed agreement in the present case.<sup>1</sup> Therefore through Respondent's own failure to comply with the Rules he filed this Interpleader action.

For eight years the Appellants legally sought to have the Interpled funds be deposited with the court in order to gain interest and also to obtain a proper accounting of the funds as over \$60,000.00 of litigation funds were unaccounted for by Respondent. Appellants never were given access to proper accounting records that were required to be maintained under Rule 417, SCACR (Financial Recordkeeping), and were unsuccessful in having the funds deposited with the Court to accrue interest.

Respondent, had the funds awarded to himself by the court for his costs to

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<sup>1</sup> South Carolina Rule 407 1.8(g).

litigate the interpleader action despite the fact he brought the litigation based on his own negligence and knew or should have known exactly who the funds belonged to.

### **RELEVANCY OF CONTENT**

The Respondent's Return consisted of thirty pages. Twenty one pages were documents submitted in a South Carolina Federal District Court in 2007. Five (5) pages are documents on matters in an ongoing appeal being litigated in the Federal 4<sup>th</sup> Circuit Court of Appeals involving the Represented Appellants, but have nothing to do with this case. The remaining four (4) pages primarily were citations to the attached twenty one pages from the litigation from the other courts attached but were not germane to the Appellants' motion. The four (4) pages consist of thirteen (13) points.

Ten (10) of the thirteen points were related to matters being litigated in the 4<sup>th</sup> Circuit Court of Appeals and thus are not relevant to this discussion. As to the relevant issues the Appellants admit they did file an appeal in the Interpleader action. The Appellants admit this is their second request for extension and Appellants admit their first request was granted.

### **DISCUSSION**

On August 20, 2014, in a hearing in the underlying case Respondent's counsel argued that the proceeding regarding the Interpleader action should not be a stage for the argument of issues raised there. Respondent's counsel stated, "*What we've*

*got is an attempt in this litigation [by the Appellants] to re-litigate issues that have been litigated both in the federal court - was there a settlement –“<sup>2</sup>*

Now Respondent reverses her position and presents documents and arguments from the Federal Courts to argue against an extension which is nothing but a diversion and a waste of this Honorable Court's time. The Appellants are simply under deadlines dictated by the Federal Appellate Court and filing lengthy motions takes extensive time based on the new evidence. What the Respondent's counsel failed to mention was that any and all extension requests for additional time was granted by the 4<sup>th</sup> Circuit, because of the burden on the Appellants, and the motion for remand is being reviewed based on the new evidence. Respondent's counsel's interpretation of events in the 4<sup>th</sup> Circuit is self-serving and irrelevant to the matter before the court.

The relevant criteria would include whether the motion for extension is going to prejudice any party and the answer is “no” since the Respondent has already taken the monies he Interplead and has used the funds for his personal business. The next real issue is whether the delay is necessary to be able to present a proper appeal by the Appellants. The answer is “yes” and it is illogical to think the Appellants have any reason to delay a hearing on the merits when in fact the Respondent has presented a thirty page irrelevant brief to attempt to gain a dismissal without a review

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<sup>2</sup> Transcript, August 14, 2014, page 14, lines 14-16.

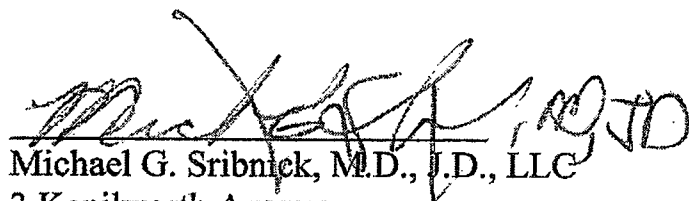
of the merits.

**CONCLUSION**

The Appellants motion for an extension should be granted forthwith as the delays caused by Respondent by filing such a lengthy response based on matters litigated in other cases is both irrelevant and a waste of the court's resources.

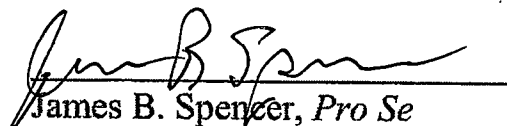
Submitted this September 14, 2015,

By:



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By:



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7001 Saint Andrews Road  
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**CERTIFICATE OF SERVICE**

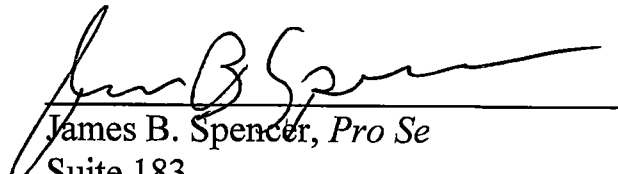
The undersigned hereby certifies that on September 14, 2015, the document described below, was(were) served on all parties of record in this case by mailing a copy, by US mail or by courier.

Documents Served:

Parties Served:

Desa Ballard, Esquire  
Ballard and Watson, Attorneys at Law  
PO Box 6338  
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