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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Case No: 2014-000091

RECEIVED
MAR 21 2016
SC Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

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

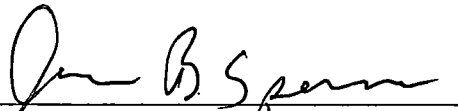
John R. Rakowsky, *Respondent*
Adrian Falgione, *Respondent*

v.

James Spencer, *Pro Se, Appellant*

MOTION TO REINSTATE

By:



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

INTRODUCTION

The lay, *Pro Se* Appellant, James Spencer, petitions this Court to reinstate Appeal, **Case No: 2014-000091**. Under South Carolina Judicial Rule 221, petitions for reinstatement have to be received by the Appellate Court no later than fifteen (15) days after the dismissal of the Appeal that occurred on March 4, 2016. March 19, 2016 falls on a Saturday, therefore this Motion to Reinstate, was timely filed on March 21, 2016. Further Rule 221 requires, “A petition for rehearing shall be in accordance with Rule 240 and shall state with particularity the points supposed to have been overlooked or misapprehended by the court.”

The stated basis for the dismissal by the Court was the Appellant’s “failure to comply and serve a record on appeal that includes all matters designated by the parties.”¹

POINTS OVERLOOKED

- 1.** There were misleading, or inaccurate designations and insufficient designations provided to the Appellant in violation of SCACR Rule 209 (b) by Respondent Falgione.
 - a.** “*Letter from Court to parties dated May 30, 2013*” (item 16, Falgione’s designation of matter). The Appellant attempted to find a copy of such

¹ Court Order issued on March 4, 2016.

letter to include in the Joint Appendix, assuming it was from Judge Griffith, but could find no record of such letter nor documents identified by Appellant in his Designation of Matter in the files of Judge Addy and the Lexington County Clerk of Court's Files. In that regard Appellant asked a lawyer to submit a FOIA to try to obtain the sought after documents instead of having the request come from a *Pro Se* litigant. None of the Appellant's efforts to lawfully obtain designated documents for the Joint Appendix were successful. See attached **Exhibit A.**

- b. "*Ans. Regarding Wavier or Recusal, May 28, 2013*" (item 15, Falgione's designation of matter). Appellant could not find Appellant Santacroce's document regarding her request for recusal nor could Appellant find his request for recusal with that date. Further, a document with this date could not be found in the Lexington Clerk of Court's office. Appellant was provided no designation with which to judge whether this pertained, nor would Respondent's counsel respond to emails from Appellant asking for clarification. These requests are legitimate under SCACR Rule 4.3 [2] in which an opposing counsel can clarify matters with a *Pro Se* litigant. Furthermore, refusing to respond to Appellant's emails is in violation of Judge Barber's order

stating that Mr. Falgione was to respond to Appellant's emails and not continue to block them which he did prior to his representation by counsel. However, Respondent's counsel Bruner reinstated this refusal to communicate with Appellant, an action that effectively denied the *Pro Se* Appellant due process in this litigation.

- c. "*Notice of Appearance, November 4, 2011*" (item 4, Falgione's designation of matter). Appellant now assumes Respondent Falgione was apparently listing the appearance of John Rakowsky's counsel, which was documented as being submitted to the Court on November 2, 2011 and date stamped by the Court on November 3, 2011.
- d. "*Motion to Dismiss, November 4, 2011,*" (item 5, Falgione's designation of matter). Appellant now assumes Respondent Falgione was apparently listing John Rakowsky's motion to dismiss, which was documented as actually submitted to the Court on November 2, 2011 and date stamped by the Court on November 3, 2011.
- e. "*E-mail from Headley to Court, May 7, 2013*" (item 12, Falgione's designation of matter). Appellant does not know who "Headley" is, the gender of Headley, or his relevance to this case. Appellant does not have an email from or to Headley and neither does the Richmond Clerk of Court or the Lexington Clerk of Court. Appellant clearly

cannot produce what he does not have access to nor identify and produce such when he is provided with the limited information provided by Respondent.)

In Respondent's motion to dismiss dated February 25, 2016, Respondent Falgione's counsel alleged, that pages presented in the Joint Appendix were altered and that the Appellant is responsible for such alterations. The Appellant did not perform alterations on documents for the Joint Appendix and only presented documents directly from files to which he had access. Respondent refers to slightly shaded areas on documents in the Joint Appendix as being from highlighting by Appellant. Any such documents may have had areas highlighted when they were originally received which resulted in the slight shading on a copy made for the Joint Appendix. Respondent also implied Appellant had redacted documents. Appellant produced only documents he had been presented and were not redacted by Appellant. Any redactions were by a Respondent on the documents originally provided to Appellant. Appellant would agree to substitution of a document in lieu of a document that had been submitted to Appellant with that slightly shaded area on the copy provided for the Joint Appendix if Respondent would supply such.

The Appellant asserts that material not included in the Joint Appendix was in large part due to the lack of specificity from Respondent Falgione due Appellant under SCACR Rule 209 (b) and Appellant was denied the means of communication

to gain clarification from Respondent.

Furthermore, the Appellant sought documents he had identified in his own designation. However, as documented in **Exhibit A** attached hereto, could not be found to exist (i.e. the case overview provided by Judge Griffith to Judge Addy, which was the basis of decisions made by Judge Addy.)

Appellant made every effort to substantially comply with the Rules and those instances of noncompliance were inadvertent technical errors and minor discrepancies by the inexperienced and seriously ill, *Pro Se* Appellant.

However, Respondent Falgione filed and served designations of material that do not clearly identify documents which violates SCACR Rule 209 (b), contradicting his Rule 209 (c) certification. Accordingly, the Court should reinstate the Appeal and in so doing dismiss Respondent's motion to dismiss.

2. Misleading, or inaccurate designations and insufficient designations provided to the Appellant in violation of SCACR Rule 209 (b) by Respondent Rakowsky.

a. "*Transcript of May 27, 2012 Status Conference*" (Item 18 from Mr. Rakowsky's list of designations.) No record of any transcript can be found by Appellant for any year of this litigation with the date of May 27th. Furthermore, no record could be found for any date containing a conference scheduled for that date in the Richland County Clerk of

Court Records. Appellant cannot produce what he cannot find.

b. "*Order filed November 1, 2013 (denying Motion to Disqualify)*" (Item 2 from Mr. Rakowsky's list of designations.) Appellant does not have a record from that date and the designation does not mention the subject of the Motion to Disqualify nor the date of the Motion to Disqualify. Appellant does not have a copy of such Order and suspects it pertains to Appellant's motion to disqualify Amanda Dungeon, Esquire, which was not heard until the June 5, 2013 hearing before the Honorable Judge Addy. However, the dates do not coincide as the date of the Order from that hearing was August 19, 2013.

c. "*Order filed October 1, 2012 (denying Motion to Reconsider Venue Order)*" (Item 6 from Mr. Rakowsky's list of designations). This is the Order believed issued in response to Appellants' 59e motion filed on August 30, 2012.² According to the Richland County Clerk of Court there was something filed on October 5, 2012 regarding a denial concerning venue. Appellant assumes this may be the Respondent's

² Appellant due to lack of access to missing documents from the Clerk of Court and the Judges' records filed a motion to remand on November 13, 2015 in order to obtain documents to fulfill the designations for the Record on Appeal. On November 23, 2015, both Respondents filed Returns opposing the Appellant's attempt to gain access to the records designated. The Court issued an Order on November 25, 2015 denying Appellant's motion, effectively denying access to records designated by Respondents and Appellant for the Joint Appendix. **See Exhibit B attached.**

intended designation, being sought. However, Appellant's request for clarification to Respondent's designation went unanswered. Therefore, Appellant was unable to provide this document as it was not designated by Respondent Rakowsky.

- d. "*Court Exhibits 1 and 2 at June 5, 2013 hearing.*" (Item 22 from Mr. Rakowsky's list of designations). Appellant clearly identified that he never received "Exhibit 1" and the transcript of the June 5, 2013 hearing both lacks the exhibits presented to the Court and documents that no Exhibits were provided to Appellant (See transcript page 23 and index listing of exhibits on page 3 of June 5, 2013 Transcript). Respondents both failed to provide a copy to Appellant and opposed the Appellants motion to remand to obtain documents that were designated for the Joint Appendix.

Appellant states that he made every effort to substantially comply with the Rules and those instances of noncompliance were inadvertent technical errors and minor discrepancies by the inexperienced and seriously ill, *Pro Se* Appellant.

However, Respondent Rakowsky filed and served designations of material that do not clearly identify documents which violates SCACR Rule 209 (b), contradicting his Rule 209 (c) certification. Accordingly, the Court should Reinstate the Appeal and in so doing dismiss Respondent's motion to dismiss.

Furthermore, the bulk of Respondent Rakowsky's motion to dismiss recites Respondent Falgione's motion to dismiss naming documents designated by Respondent Falgione. Therefore, Appellant restates the arguments made above concerning the missing documents designated by Respondent Falgione in response to the restatement of the same by Respondent Rakowsky as if Rakowsky had designated the Respondent Falgione designated documents.

SUMMARY

Appellant, although indigent, was forced to hire an inexperienced assistant to help him put together the Joint Appendix in this case. Appellant's problematic vision and paralysis in his right arm and hand limit him severely in these matters. See Affidavit **Exhibit C** attached hereto. Further causing problems Respondent Rakowsky did not list the required Appeals Court case number on his Designation of Matter dated July 30, 2015. Respondents are both legal counsels and they are represented by legal counsels with virtually unlimited financial resources from their insurance carriers. If the Court dismisses this appeal it will be rewarding these highly trained attorneys for not complying with the SCRAP as laid out herein.

In one instance the Appellant submitted, due to the confusion of lack of identification of a case number on the Respondent's designation of matter, resulted in a complete Joint Appendix to a counsel who was not a counsel in the Interpleader action, Case No. 2014-002029. This was pointed out by the Court in their

correspondence of March 1, 2016.³ The Appellant simply does not have the money to print and submit several thousand pages of documents and pay Court costs. Obviously, Appellant is aware that all the attorneys he is opposed by will jump on any error he makes and call it intentional forcing him to bear additional costs in response and filing fees. The lay Appellant is very ill and does not have any thought of evading presenting documents or not complying with the rules. Appellant asserts that he has substantially complied with the Rules and that instances of noncompliance of the Appellant were inadvertent technical errors and minor discrepancies that clearly would have effectively prejudiced the Appellant instead of the Respondents. See attached Affidavit **Exhibit D**.

CONCLUSION

Respondents Rakowsky and Falgione filed and served designations of material that do not clearly identify documents for designation, which means both have violated SCACR Rule 209 (b), which means both also contradicted SCACR Rule 209 (c) certification. Furthermore, the Court denied the Appellant's motion to remand to obtain the documents necessary to complete the Joint Appendix. As


³ Furthermore, the Appellant had problems with the printer causing five pages from the June 7, 2012 transcript to be numbered incorrectly or not included in the Joint Appendix. This unintentional printer error favored the Respondents as pages (36, 37, 38, 44, and 64) pertained to orders being issued for discovery, that the Respondents sought to avoid and other issues ruled in favor of the Appellant by the Court. The allegation that the Appellant deliberately deleted these pages is baseless as these pages document the Respondents refusing to comply with issued Court orders.

documented herein, the Appellant has exhausted every legal alternative to obtain the documentation needed to complete the Joint Appendix and identify the documentation that the Respondents did not clearly identify in their designation of matter. Mutual agreement of identification is necessary so Appellant can properly certify the response required under Rule 210 (g) SCACR.

Accordingly, the Court should Reinstate the Appeal and in so doing deny Respondents' motions to dismiss. Furthermore, the Appellant prays this Court will require the Respondent's counsel to cooperate in the identification and production of documents needed for the Joint Appendix. Appellant respectfully requests the Court to instruct the Respondents to have a representative from their respective law firms available to resolve such issues through email with Appellant to allow this case to move forward. In that regard, the *Pro Se* litigant moves the Court to allow him to amend the Joint Appendix and submit the amended version once the issue as to the contents of the Joint Appendix is mutually resolved and agreed upon by mutual discourse between the Appellant and Respondents' counsels.

Respectfully submitted on March 21, 2016,

By,


James B. Spencer, *Pro Se*

Suite 183
7001 Saint Andrews Road
Columbia, SC 29212

I am an employee or clerk of the Lexington County Clerk of Courts office and state the following regarding the files on Case No: 2012-CP-32-3428. I have searched the files for the following:

- A letter from Judge Griffith dated May 30, 2013, to Judge Addy referencing materials provided to Judge Addy.
- An Order from Justice Toal dated January 17, 2013, which appointed Judge Griffith as chief Judge for administrative purposes to hear specifically Case No: 2012-CP-32-3428.
- Any overview to Judge Addy on Case No: 2012-CP-32-3428 from Judge Griffith's clerk.
- Copies of any of the above records found are attached hereto for a total of ____ pages. Clerk's initials here.

Printed name of Emily L. Hinson

Signature of Emily L. Hinson

Date: 5-29-15

Deputy Clerk of Common Pleas

Affix Seal of the Clerk of Court of Lexington County.

We do not have any of these documents in the Court file. This information was not filed with our office.

2015 MAY 29 A 11:00
 CLERK OF COURT
 LEXINGTON, SC

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

October 9, 2015

Ms. Freda Sartin
Administrative Assistant
528 Monument St., Ste. 210
Greenwood, SC 29646
Via Fax: (864) 942-8581

Re: Case No: 2012-CP-32-3428 – Spencer, et al. v. Rakowsky, et al.

Dear Ms. Sartin:

Thank you very much for your kindness in researching the records in the files at your offices today concerning the above case. As I mentioned, I am in the process of creating the required appendix for the South Carolina Appellate Court and I want to be certain I have all the documents. As we discussed this is a Lexington County Civil Case that was heard by the Honorable Judge Addy in Laurens, South Carolina on June 5, 2013.

There being no record in your files of Judge Addy ever hearing this case, I am sure is an oversight. However, you found a record that Judge Addy held court in Laurens on June 5, 2013 and heard two identified cases. It is my understanding that Judge Griffith appointed Judge Addy to hold the June 5, 2013 hearing on this case. However, the only record and/or document you found in your files concerning this case was Judge Addy's Order denying the Rule 59(e) Motion that I filed. As I understand it from our discussion, the 59(e) motion itself and any other documents generated regarding this case by Judge Addy and/or correspondence concerning this case from Judge Griffith or any other person or party, under court procedures, would have been sent to the Lexington County Clerk of Court's office for filing.

Before you send me the confirming email regarding this, would you kindly double-check the files. Perhaps a document was filed in a Judge Griffith correspondence file by error. Being *Pro Se* I just want to be certain, I am filing correct information in the Appendix.

Thank you very much; I am looking forward to hearing from you at your earliest convenience.

Yours truly,


James Spencer

James

From: James <JamesBSpencer@sc.rr.com>
Sent: Monday, October 12, 2015 12:56 PM
To: 'Addy, Frank R. Secretary (Freda E. Sartin)'
Subject: RE: 2012-CP-32-03428 (spencer v. Rakowsky, et al)

Thank you very much. Have a great day.

Yours truly,

Jim

From: Addy, Frank R. Secretary (Freda E. Sartin) [mailto:faddysc@sccourts.org]
Sent: Monday, October 12, 2015 12:32 PM
To: JamesBSpencer@sc.rr.com
Cc: Addy, Frank R. Law Clerk (Hallie Willm) <faddyjc@sccourts.org>; Addy, Frank R. <faddyj@sccourts.org>
Subject: 2012-CP-32-03428 (spencer v. Rakowsky, et al)

Mr. Spencer,

This is a follow up email pertaining to my conversation with you that took place on Friday, October 9th and to the fax that was received at our office on Saturday, October 10th. I have looked through our office and court term notation files for the term of court that was held on June 5th, 2013 more than once. This particular term of court was held in Laurens County. Judge Addy did hear matters from other counties during this assigned court term and does hear matters outside of the assigned county from time to time. The only documentation that is located in our file notes pertaining to the above case are copies of documents that were sent to the Lexington County Clerk of Court's office for filing. We have copies of the following Order of Dismissal, Order Denying Rule 59(e) Motion, Order Denying Motion to Disqualify and all of the originals were sent to the Lexington County Clerk of Court's office for filing. I can only speak of what is in our office and there is not any letters or correspondence in our notation files pertaining to the above case. Any letters or correspondence may not necessarily be in the Clerk of Court's file but, our office cannot speak to what is or is not in the Clerk of Court's file.

Freda Sartin
 Administrative Assistant
 Honorable Frank R Addy Jr
 Resident Judge, Eighth Judicial Circuit Greenwood County Courthouse
 528 Monument St , Room 210
 Greenwood, SC 29646
 Phone: (864)943-8020
 Fax: (864)942-8581
 Email: faddysc@sccourts.org<mailto:faddysc@sccourts.org>

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**Michael Sribnick**

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**From:** Benjamin, DeAndrea G. Law Clerk (Stacy A. Williams) <dbenjaminlc@sccourts.org>  
**Sent:** Thursday, November 12, 2015 9:14 AM  
**To:** Michael Sribnick  
**Subject:** RE: FOIA request for information....

Dr. Sribnick,

Any documents related to this would be available through the Lexington County Clerk of Court's office. Furthermore, Judge Benjamin did not hold court in Lexington during the time period requested. She was Chief of General Sessions in the Fifth Circuit at the time. If you require further assistance, please contact Rosalyn Frierson at [rfrierson@sccourts.org](mailto:rfrierson@sccourts.org). She is with Court Administration. Thank you, and have a great day.

Stacy A. Williams  
Law Clerk to the Honorable DeAndrea Gist Benjamin  
Richland County Judicial Center  
P.O. Box 192  
1701 Main Street, Suite 215  
Columbia, SC 29201  
Phone: 803-576-1511  
Fax: 803-576-1777  
[www.sccourts.org](http://www.sccourts.org)  
[dbenjaminlc@sccourts.org](mailto:dbenjaminlc@sccourts.org)

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**From:** Michael Sribnick [mailto:[legaldocumentation@sc.rr.com](mailto:legaldocumentation@sc.rr.com)]  
**Sent:** Monday, November 09, 2015 3:54 PM  
**To:** Benjamin, DeAndrea G. Law Clerk (Stacy A. Williams)  
**Subject:** FOIA request for information....

Dear Ms. Williams:

Please consider this email a request under the authority of the South Carolina Freedom of Information Act.

Please provide copies of any correspondence and/or orders issued by the Honorable Judge De Andrea G. Benjamin or her office regarding Lexington County Case Number: 2012-CP-32-3428, Spencer vs. Rakowsky, et al., during the period of May 30, 2013 through September 30, 2013.

Please respond by email if no such document(s) exist and advise by email if they do exist and I will have a courier pick them up from your office for your convenience.

Thank you for your assistance in this matter.

Yours truly,

Michael Sribnick, MD, JD  
Attorney for Jim Spencer

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

NOV 13 2015

SC 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 PURSUANT TO SCAR 212(b) TO REMAND
AND SUPPLEMENT RECORD

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

Pro se Appellant JAMES B. SPENCER respectfully moves this Court, pursuant to SCAR 212(b) for leave of the court to remand this case in order to supplement the record and in support thereof respectfully shows as follows:

1. This is a legal malpractice case that was resolved on a motion for summary determination. A remand is necessary to reconstruct the record because many pertinent documents cited by Judge Addy are missing from the court records and are also missing from Judge Addy's files, prejudicing the appeal against the Appellant. These documents include an *ex parte* overview provided to Judge Addy of the case by Judge Griffith's law clerk. Judge Addy further stated that, "I only received a copy of Judge Griffith's letter [dated May 30, 2013] last week.¹ And I received a copy of the - - most of the materials which had been provided to him [Judge Griffith]." ² Judge Addy cited the overview and these unknown "materials" as the basis of his knowledge of the case. The missing overview and missing materials are needed to determine how and why issues were again litigated and existing rulings reversed and/or ignored, ones that had already been ruled upon by a prior judge who had authority to litigate this case.

2. Attached hereto as **exhibit "A"** are the relevant portions of the transcript of a proceeding before Judge Addy. On page 5 thereof, Judge Addy puts on the record

¹ Attached exhibit "C." Judge Addy stated he did not review material until the day before the June 5, 2013 hearing. Tr. ,p. 5 This hearing was wrongfully scheduled by Judge Griffith who required the attendance of the parties without the authority to both require such attendance nor schedule the June 5, 2013 hearing.

² June 5, 2013 Tr., p. 5, lines 3-9.

that Judge Griffith was recusing himself from further proceedings in this case, because Judge Griffith is related to defendant Rakowsky's counsel.

3. Judge Addy goes on to state, that Chief Justice Toal had appointed Judge Griffith as administrative judge of this case and that Judge Griffith had talked to him the night before the hearing on the telephone.

4. However, Judge Addy never reviewed the case history, which was kept in the Lexington County Clerk of Court's Office; Judge Addy heard this case in Laurens County two hours from Lexington County. Furthermore, Judge Addy is a Greenwood County Judge.

5. At page 7, Judge Addy then stated that Judge Griffith's clerk prepared an overview of the case that was sent to him. This overview was used by Judge Addy in making his final decisions on the case. Furthermore, based on the overview, Judge Addy referred to the underlying case as a medical malpractice action that had apparently been settled. This overview and Judge Addy's authorization providing his authority to act as a judge and make decisions in this case is nowhere to be found in the court records nor Judge Addy's records (*emphasis added*). See the documents attached as **exhibit "B."** These documents confirm that neither the Lexington County Clerk of Court's office nor Judge Addy had received the written authority referenced by Judge Addy as the prerequisite for his making rulings in this case.

6. Appellant Spencer moved for a mistrial during the hearing; see **exhibit "A"**

pages 65 and 66 in the attached transcript, because of the redundant hearings on the same matters resulting in conflicting decisions and the lack of proper judicial procedural due process, which followed therefrom [under the 5th and 14th Amendments to the United States Constitution].

7. The Court Administrator confirmed that in fact Judge Griffith did not have the authority to appoint Judge Addy in this case, and did not have the authority to order the parties to attend the hearing in Laurens County on June 5, 2013 as the January 17, 2013 order was negated due to Judge Griffith's recusal. This was confirmed by the Chief Justice of the South Carolina Supreme Court, the Honorable Judge Jean Hoefer Toal, who issued an Order on June 11, 2013, naming a replacement administrative judge for this case, thus confirming Judge Griffith's lack of authority due to a conflict of interest. Furthermore, Judge Addy knew or should have known he did not have the authority to make such rulings in this case³ as he stated on the record that he would have to receive the written authority before he could make a ruling (*emphasis added*). Such authority was never received according

³ Judge Addy stated on the record during the June 5, 2013, hearing that the court administration will be issuing an order that will give me the authority to hear this matter, probably sometime early next week..."what I am saying is the order is in route it's just not here yet." Tr. P. 6. lines 19-20. "I will be taking the matter under advisement." Upon receipt of authority to rule, I will issue a ruling on the issue...June 5, 2013 Tr., p. 64, lines 5-7. The Lexington County Clerk of Court's Office, Freda Sartin, Judge Addy's administrative assistant, and the Chief Justice of the Supreme Court, the Honorable Judge Toal, confirmed the requisite written authority was not received by Judge Addy. The only records available from the court administrator document Judge Griffith never had the authority to schedule the hearing of June 5, 2013 and order the parties to attend as he did in the May 30, 2013 correspondence. See exhibit "B."

to the office of court administrator and the court records in Lexington County, Laurens County nor in the Greenwood County clerk of court's offices. Furthermore, Judge Addy's office has no record of receiving the authority.

8. Despite his lack of authority due to his recusal, Judge Griffith rushed to have Judge Addy hear the case based on Judge Griffith's written overview of the case. That overview, the Order confirming Judge Addy's lack of authority, and the reassignment of the case by the Chief Justice Toal have all disappeared from the court files, **see exhibit "B."**

Each of these highly pertinent documents, including the summary and overview from Judge Griffith's office, documents that have now disappeared, were not allowed at any time to be accessible for review by the Appellant, and therefore the Appellant had/has no knowledge of the hearsay and *ex parte* documentation used by Judge Addy in reaching his decisions.

9. All the documentation that was purportedly received by Judge Addy, (Tr., p. 6, lines 2-9), has vanished from the court's files and Judge Addy's files. See **exhibit "C"** (correspondence from Judge Addy's Law Clerk, Freda Sartin).

10. Judge Addy was never given authority to hear this case, and the orders from Chief Justice Toal and any records to this effect, have all disappeared from the Lexington Court files and Judge Addy's files along with the documents sent from Judge Griffith, including the case overview.

11. This overview is critical to the case as it was a basis, and possibly is the sole basis, *emphasis added*, for the decisions reached by Judge Addy and was the basis for what was heard by Judge Addy during the hearing. The lack of procedural due process is in part evidenced by the fact that the vast majority of what was heard by Judge Addy during the June 5, 2013, hearing had previously been litigated and ruled upon by the Honorable Judge Barber, who had the authority to litigate this case. Furthermore, Judge Addy never considered the motions that remained outstanding that were ordered to be heard first by Judge Barber. These prerequisite motions would have impacted the motions Judge Addy submitted rulings on and therefore were established as prerequisites before the motions heard by Judge Addy.⁴ The opposing counsel used this lack of knowledge of Judge Addy to misuse the June 5, 2013 hearing to raise issues already ruled upon by Judge Barber, rulings which were both ignored and or reversed by Judge Addy.

The *Pro Se* Appellant was not prepared for a rehearing of the previously litigated and decided issues as both the Appellant's understanding and preparation were for the outstanding pending motions identified in footnote number four. This

⁴ Pending motions included, (1) the motion to compel and stay any hearing on these matters until the remaining litigation funds from the underlying case belonging to the Appellant wrongfully withheld by defendant Rakowsky were released to the Appellant. Withholding these funds denied access to funding needed to obtain counsel by the disabled, indigent Appellant. The release of these funds was ordered by Judge Barber as a precondition for a hearing on any other motions in this case., (2) the amending of the complaint to remove parties not under the jurisdiction of the court, (3) motions compelling discovery both ordered by Judge Barber and agreed to by the defendants. Such discovery would have documented the defendants' further admission to malpractice, unequivocally negating the lack of expert witness defense in this malpractice action. June 5, 2013 Transcript, p. 64, lines 1-4, & 8-14.

is just one of the reasons the Appellant asked for a mistrial at the June 5, 2013 hearing. The *Pro Se* Appellant had no idea he was attending a hearing that had no authority to have been called in the first place and that Judge Addy had no authority to grant or rule against the motion for mistrial by the Appellant.

12. Appellant's motion for a mistrial during the hearing before Judge Addy for lack of proper procedures and procedural due process was denied. A remand is necessary to obtain the missing records sent by Judge Griffith to Judge Addy, and to document the lack of proper judicial procedural due process in violation of the 5th and 14th Amendments to the United States Constitution due to the reasons cited.

CONCLUSION

The matters stated herein necessitate a remand for discovery based on the recently discovered documents showing the lack of authority of Judge Griffith to instruct Judge Addy to hold the hearing and to order the Appellant to attend the hearing. These missing documents and the missing documents both authored and or provided by Judge Griffith's office that determined the outcome of the unauthorized hearing must be put on the record for the appeal and a proper hearing for a mistrial.

MEMORANDUM OF LAW

SCAR 212(b) confers the authority for this Court to remand the case for the purpose of supplementing the record.


Where, as here, portions of the record are missing, the proper procedure is to

direct the trial court to reconstruct those portions, following the process set forth in *China v. Parrott*, 251 S.C. 329, 162 S.E.2d 276 (1968), where the Supreme Court held that where portions of stenographic notes of a trial proceeding were lost before they were transcribed by the court reporter, it was proper for the trial judge to consider affidavits of plaintiff's counsel and the court reporter in determining what transpired. See *Koon v. State*, 358 S.C. 359, 367, 595 S.E.2d 456, 460 (2004) (recognizing a court's power to remand for a reconstruction hearing), overruled on other grounds by *State v. Gentry*, 363 S.C. 93, 105, 610 S.E.2d 494, 501 (2005); *Whitehead v. State*, 352 S.C. 215, 221, 574 S.E.2d 200, 203 (2002) (finding that when a transcript has been lost or destroyed, an appellate court may remand to have the record reconstructed); *Dolive v. J.E.E. Developers, Inc.*, 308 S.C. 380, 383, 418 S.E.2d 319, 321 (Ct.App. 1992) (trial court correctly granted property owner's request to reconstruct the record of zoning proceeding where portions of original tape of hearing were incapable of being transcribed).

For these reasons, the *Pro Se* Appellant humbly requests the motion for leave of court to remand for discovery based on the recently discovered missing evidence be granted as it is warranted.

SIGNATURE ON FOLLOWING PAGE

Dated: November 12, 2015


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

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 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

1 Judge Barber. This case was transferred out. It's become
2 so convoluted, including the submission of ex parte
3 information in the other case. I'd like to move for a
4 mistrial on this.

5 THE COURT: All right. I appreciate your position. I
6 don't necessarily disagree with your -- what you're saying,
7 as far as the case becoming somewhat convoluted.
8 Obviously, there's a lot of paper in front of you. There's
9 a lot of paper in front of the defendants.

10 I'm not inclined to grant a motion for a mistrial,
11 though. I don't really see any grounds for that. But I
12 appreciate your concerns.

13 Very good. We'll be at ease on this. Thank you.

14 MS. DUDGEON: Thank you, Judge.

15 MR. BRUNER: Thank you, Your Honor.

16 MR. SPENCER: Thank you, Your Honor.

17 MR. BRUNER: Would you ---

18 THE COURT: Thank you.

19 MR. BRUNER: --- like proposed orders from the
20 parties?

21 THE COURT: Not until I get authority from my boss,
22 saying everything is good; go ahead and issue an order.

23 MR. BRUNER: Okay.

24 THE COURT: Thank you.

25 MR. BRUNER: Thank you for your time this morning,

1 In conversing with court administration last night,
2 what they basically said was that -- that that's an
3 incorrect reading of the Chief Justice's order, but that
4 what they could do is get a -- do another order, in light
5 of Judge Griffith's conflict; appoint somebody else as
6 chief admin judge to hear this matter: either appoint me
7 or appoint somebody else who could then assign it to me.

8 The gentleman, Motte Talley, who I spoke with late
9 yesterday evening, told me that he's on vacation for the
10 next two days so -- or next three days -- today, tomorrow,
11 and Friday. So he was not going to be able to do an order
12 last night in advance of this hearing. Usually, the way
13 that we handle these things is that they're done *nunc pro*
14 *tunc* when they eventually get around to it.

15 Is everybody okay proceeding today? is what I'm
16 basically asking, with the anticipation that court
17 administration will be issuing this order, probably
18 sometime early next week, giving me authority to hear this
19 matter. And -- and so basically what I'm asking is: Is it
20 -- the -- what I'm saying is the order is en route; it's
21 just not here yet. Everybody okay to go forward today?
22 Mr. Spencer, you're all right with that?

23 MR. SPENCER: Yes, sir.

24 THE COURT: All right. Y'all are okay?

25 MS. DUDGEON: Yes, Your Honor.

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.

I am an employee or clerk of the Lexington County Clerk of Courts office and state the following regarding the files on Case No: 2012-CP-32-3428. I have searched the files for the following:

- A letter from Judge Griffith dated May 30, 2013, to Judge Addy referencing materials provided to Judge Addy.
- An Order from Justice Toal dated January 17, 2013, which appointed Judge Griffith as chief Judge for administrative purposes to hear specifically Case No: 2012-CP-32-3428.
- Any overview to Judge Addy on Case No: 2012-CP-32-3428 from Judge Griffith's clerk.
- Copies of any of the above records found are attached hereto for a total of ____ pages. Clerk's initials here.

Printed name of Emily L. Hinson

Signature of Emily L. Hinson Date: 5-29-15
Deputy Clerk of Common Pleas

Affix Seal of the Clerk of Court of Lexington County.

We do not have any of these documents in the Court file. This information was not filed with our office.

FILED

2015 MAY 29 A 11:00a

DEBRA A. CARTER
CLERK OF COURT
LEXINGTON, SC



South Carolina Court Administration
South Carolina Supreme Court
Columbia, South Carolina

ROSALYN W. FRIERSON
DIRECTOR

1220 SENATE STREET, SUITE 200
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1800
FAX: (803) 734-1355
E-MAIL: rfrierson@sccourts.org

June 24, 2015

Michael G. Sribnick, Esquire
3 Kenilworth Avenue
Charleston, SC 29403-4305

Re: Irene Santacroce, et al. v. John R. Rakowsky, et al.
2012-CP-32-03428

Dear Mr. Sribnick:

Your letter addressed to Daniel Shearouse, dated June 20, 2015 has been forwarded to me for response. Per your request, I have enclosed a copy of two Orders issued by the Chief Justice in the above-mentioned matter. The first, dated January 17, 2013 assigns Judge Griffith to administer and prepare for trial the above-captioned matter. The second, dated June 11, 2013, rescinds the first Order, due to a conflict of interest, and assigns Judge Benjamin to serve in an administrative capacity for the above-captioned matter.

Should you require any further assistance, feel free to contact this office.

Sincerely,

Tiffany B. Raines
SCCA Staff Attorney

Enclosures

The Supreme Court of South Carolina

18

Irene Santacroce, et al.

Plaintiffs,

v.

John R. Rakowsky, et al.

Defendants.

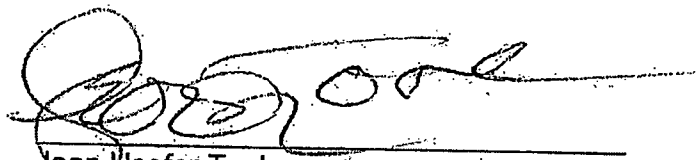
Lexington County
2012-CP-32-03428

ORDER

This matter is pending in Lexington County. The Honorable R. Knox McMahon, Chief Judge for Administrative Purposes (Civil), cannot act as Chief Judge for Administrative Purposes to administer this case. The Honorable William P. Keesley, Chief Judge for Administrative Purposes (Criminal), also cannot act as Chief Judge for Administrative Purposes to administer this case.

Now therefore,

IT IS ORDERED that the Honorable Eugene C. Griffith, Jr., as the Chief Judge for Administrative Purposes in the Eighth Judicial Circuit, be assigned as Chief Judge for Administrative Purposes in the Eleventh Judicial Circuit (Civil) for the sole purpose of administering this case and preparing it for trial. Any judge subsequently appointed as Chief Judge for Administrative Purposes in the Eighth Judicial Circuit shall assume this responsibility



Jean Hofer Toal
Chief Justice

January 17, 2013
Columbia, South Carolina

The Supreme Court of South Carolina

Irene Santacroce, et al.,

Plaintiffs,

v.

John R. Rakowsky, et al.,

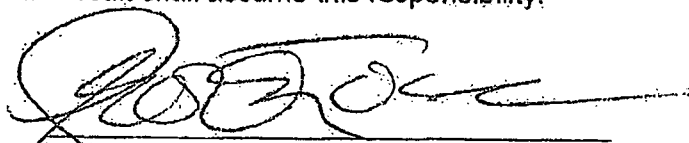
Defendants.

Lexington County
2012-CP-32-03428

ORDER

This matter is pending in Lexington County. The Honorable Eugene C. Griffith, Jr., Chief Judge for Administrative Purposes in the Eighth Judicial Circuit, was assigned as the Chief Judge for Administrative Purposes in the Eleventh Circuit (Civil) to administer this case and prepare it for trial. A conflict has arisen and he can no longer administer this case. Now therefore,

IT IS ORDERED that the Order dated January 17, 2013 be rescinded and that the Honorable DeAndrea G. Benjamin, as the Chief Judge for Administrative Purposes (Criminal) for the Fifth Judicial Circuit, be assigned as Chief Judge for Administrative Purposes (Civil) in the Eleventh Judicial Circuit for the sole purpose of administering this case and preparing it for trial. Any judge subsequently appointed as Chief Judge for Administrative Purposes (Criminal) for the Fifth Judicial Circuit shall assume this responsibility.



Jean Hofer Toal
Chief Justice

June 11, 2013
Columbia, South Carolina

Michael Sribnick

From: Benjamin, DeAndrea G. Law Clerk (Stacy A. Williams) <dbenjaminlc@sccourts.org>
Sent: Thursday, November 12, 2015 9:14 AM
To: Michael Sribnick
Subject: RE: FOIA request for information....

Dr. Sribnick,

Any documents related to this would be available through the Lexington County Clerk of Court's office. Furthermore, Judge Benjamin did not hold court in Lexington during the time period requested. She was Chief of General Sessions in the Fifth Circuit at the time. If you require further assistance, please contact Rosalyn Frierson at rfrierson@sccourts.org. She is with Court Administration. Thank you, and have a great day.

Stacy A. Williams
Law Clerk to the Honorable DeAndrea Gist Benjamin
Richland County Judicial Center
P.O. Box 192
1701 Main Street, Suite 215
Columbia, SC 29201
Phone: 803-576-1511
Fax: 803-576-1777
www.sccourts.org
dbenjaminlc@sccourts.org

From: Michael Sribnick [mailto:legaldocumentation@sc.rr.com]
Sent: Monday, November 09, 2015 3:54 PM
To: Benjamin, DeAndrea G. Law Clerk (Stacy A. Williams)
Subject: FOIA request for information....

Dear Ms. Williams:

Please consider this email a request under the authority of the South Carolina Freedom of Information Act.

Please provide copies of any correspondence and/or orders issued by the Honorable Judge De Andrea G. Benjamin or her office regarding Lexington County Case Number: 2012-CP-32-3428, Spencer vs. Rakowsky, et al., during the period of May 30, 2013 through September 30, 2013.

Please respond by email if no such document(s) exist and advise by email if they do exist and I will have a courier pick them up from your office for your convenience. **21**

Thank you for your assistance in this matter.

Yours truly,

Michael Sribnick, MD, JD
Attorney for Jim Spencer

This electronic message and any attached files contain information intended for the exclusive use of the individual or entity to whom it is addressed and may contain information that is proprietary, privileged, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient, you are hereby notified that any viewing, copying, disclosure or distribution of this information may be subject to legal restriction or sanction and is strictly prohibited. If you have received this communication in error, please notify the sender by return electronic message or telephone, and destroy the original message without making any copies.

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# Fax

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

DATE: 10-10-2015

TO: Ms. Freda Sartin FROM: James B. Spencer

FAX: (864) 942-8581 PAGES: 2 including coversheet

Urgent  For Review  Please Comment  Please Reply

RE: Our telephone conversation of October 9, 2015

**CONFIDENTIALITY NOTICE:** This facsimile message is for the sole use of the intended recipient(s) and may contain sensitive and privileged information or otherwise be protected by law. Any unauthorized review, use, disclosure or distribution is prohibited. If you are not the intended recipient, please contact the sender and destroy all copies of the original message.

HP Officejet Pro 8500 A909a All-in-One series

Fax Log for  
James Spencer  
803-414-0889  
Oct 10 2015 4:48PM

**23**

**Last Transaction**

| Date   | Time   | Type     | Station ID' | Duration<br>Digital Fax | Pages | Result |
|--------|--------|----------|-------------|-------------------------|-------|--------|
| Oct 10 | 4:47PM | Fax Sent | 18649428581 | 0:42<br>N/A             | 2     | OK     |

**Note:**

Image on Fax Send Report is set to Off

An image of page 1 will appear here for faxes that are sent as Scan and Fax.

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

October 9, 2015

Ms. Freda Sartin  
Administrative Assistant  
528 Monument St., Ste. 210  
Greenwood, SC 29646  
Via Fax: (864) 942-8581

Re: Case No: 2012-CP-32-3428 – Spencer, et al. v. Rakowsky, et al.

Dear Ms. Sartin:

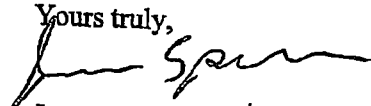
Thank you very much for your kindness in researching the records in the files at your offices today concerning the above case. As I mentioned, I am in the process of creating the required appendix for the South Carolina Appellate Court and I want to be certain I have all the documents. As we discussed this is a Lexington County Civil Case that was heard by the Honorable Judge Addy in Laurens, South Carolina on June 5, 2013.

There being no record in your files of Judge Addy ever hearing this case, I am sure is an oversight. However, you found a record that Judge Addy held court in Laurens on June 5, 2013 and heard two identified cases. It is my understanding that Judge Griffith appointed Judge Addy to hold the June 5, 2013 hearing on this case. However, the only record and/or document you found in your files concerning this case was Judge Addy's Order denying the Rule 59(e) Motion that I filed. As I understand it from our discussion, the 59(e) motion itself and any other documents generated regarding this case by Judge Addy and/or correspondence concerning this case from Judge Griffith or any other person or party, under court procedures, would have been sent to the Lexington County Clerk of Court's office for filing.

Before you send me the confirming email regarding this, would you kindly double-check the files. Perhaps a document was filed in a Judge Griffith correspondence file by error. Being *Pro Se* I just want to be certain, I am filing correct information in the Appendix.

Thank you very much; I am looking forward to hearing from you at your earliest convenience.

Yours truly,



James Spencer

James

**From:** James <JamesBSpencer@sc.rr.com>  
**Sent:** Monday, October 12, 2015 12:56 PM  
**To:** 'Addy, Frank R. Secretary (Freda E. Sartin)'  
**Subject:** RE: 2012-CP-32-03428 (spencer v. Rakowsky, et al)

Thank you very much. Have a great day.

Yours truly,

Jim

---

**From:** Addy, Frank R. Secretary (Freda E. Sartin) [mailto:faddysc@sccourts.org]  
**Sent:** Monday, October 12, 2015 12:32 PM  
**To:** JamesBSpencer@sc.rr.com  
**Cc:** Addy, Frank R. Law Clerk (Hallie Willm) <faddyjc@sccourts.org>; Addy, Frank R. <faddyj@sccourts.org>  
**Subject:** 2012-CP-32-03428 (spencer v. Rakowsky, et al)

Mr. Spencer,

This is a follow up email pertaining to my conversation with you that took place on Friday, October 9<sup>th</sup> and to the fax that was received at our office on Saturday, October 10<sup>th</sup>. I have looked through our office and court term notation files for the term of court that was held on June 5<sup>th</sup>, 2013 more than once. This particular term of court was held in Laurens County. Judge Addy did hear matters from other counties during this assigned court term and does hear matters outside of the assigned county from time to time. The only documentation that is located in our file notes pertaining to the above case are copies of documents that were sent to the Lexington County Clerk of Court's office for filing. We have copies of the following Order of Dismissal, Order Denying Rule 59(e) Motion, Order Denying Motion to Disqualify and all of the originals were sent to the Lexington County Clerk of Court's office for filing. I can only speak of what is in our office and there is not any letters or correspondence in our notation files pertaining to the above case. Any letters or correspondence may not necessarily be in the Clerk of Court's file but, our office cannot speak to what is or is not in the Clerk of Court's file.

**Freda Sartin**  
 Administrative Assistant  
 Honorable Frank R Addy Jr  
 Resident Judge, Eighth Judicial Circuit Greenwood County Courthouse  
 528 Monument St, Room 210  
 Greenwood, SC 29646  
 Phone: (864)943-8020  
 Fax: (864)942-8581  
 Email: [faddysc@sccourts.org](mailto:faddysc@sccourts.org)<mailto:faddysc@sccourts.org>

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James

From: Addy, Frank R. Secretary (Freda E. Sartin) <faddysc@sccourts.org>
Sent: Monday, October 12, 2015 12:32 PM
To: JamesBSpencer@sc.rr.com
Cc: Addy, Frank R. Law Clerk (Hallie Willm); Addy, Frank R.
Subject: 2012-CP-32-03428 (spencer v. Rakowsky, et al)

Mr. Spencer,

This is a follow up email pertaining to my conversation with you that took place on Friday, October 9th and to the fax that was received at our office on Saturday, October 10th. I have looked through our office and court term notation files for the term of court that was held on June 5th, 2013 more than once. This particular term of court was held in Laurens County. Judge Addy did hear matters from other counties during this assigned court term and does hear matters outside of the assigned county from time to time. The only documentation that is located in our file notes pertaining to the above case are copies of documents that were sent to the Lexington County Clerk of Court's office for filing. We have copies of the following Order of Dismissal, Order Denying Rule 59(e) Motion, Order Denying Motion to Disqualify and all of the originals were sent to the Lexington County Clerk of Court's office for filing. I can only speak of what is in our office and there is not any letters or correspondence in our notation files pertaining to the above case. Any letters or correspondence may not necessarily be in the Clerk of Court's file but, our office cannot speak to what is or is not in the Clerk of Court's file.

Freda Sartin
Administrative Assistant
Honorable Frank R Addy Jr
Resident Judge, Eighth Judicial Circuit Greenwood County Courthouse
528 Monument St., Room 210
Greenwood, SC 29646
Phone: (864)943-8020
Fax: (864)942-8581
Email: faddysc@sccourts.org<<mailto:faddysc@sccourts.org>>

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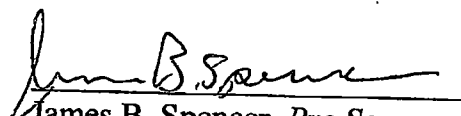
SC Court of Appeals

CERTIFICATE OF SERVICE

I, James Spencer, *Pro Se*, Appellant, do hereby certify that the foregoing this day  
MOTION PURSUANT TO SCAR 212(b) TO REMAND AND SUPPLEMENT  
RECORD November 13, 2015, been served on the following person(s) by either  
mail, fax, courier 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

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

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

**Case No: 2014-000091**

---

APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

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

---

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

v.

James Spencer, *Pro Se, Appellant*

---

**AFFIDAVIT OF**  
**L. M. CUNNINGHAM**

---

*JMC*

**AFFIDAVIT OF L. M. CUNNINGHAM**

PERSONALLY APPEARED before me the undersigned L. M. Cunningham who after being duly sworn states the following:

1. I am over eighteen years of age and qualified to testify.
2. The information in this affidavit is based on my personal knowledge.
3. I was engaged to assist in putting together the Joint Appendix by James Spencer.
4. I could not locate numerous documents due to the incomplete or incorrect designations of matter submitted by Respondent Rakowsky and Respondent Falgione.
5. James Spencer attempted to contact the Respondents' counsels to clarify what was being designated, but received no response back.
6. I printed or had printed out at Staples what documents we believed were being requested.
7. I typed the addresses and sent the boxes of several thousand documents to the parties that appeared to be designated to receive a copy of the Joint Appendix.
8. Either any error of inclusion or non-inclusion of a document was due to the lack of the ability to determine the documents being requested by the Respondents and an attempt to include documents explaining the missing documents or the documents that were Appellant's best guess as to what the document being designated by the Respondent was.
9. Any exclusion of a page of a document was due to not having the page or an unintentional error due to a printer malfunction that went unnoticed.

**AFFIANT FURTHER SAYETH NAUGHT**



Signature *L. M. Kuzhen*

SUBSCRIBED AND SWORN TO before me this 21<sup>ST</sup> day of March, 2016,

by *Christie N. Remley*

NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: *August 5, 2025*



*LMC*

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

Case No: 2014-000091

---

APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

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

---

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

v.

James Spencer, *Pro Se, Appellant*

---

**AFFIDAVIT OF  
JAMES SPENCER**

---



**AFFIDAVIT OF JAMES SPENCER**

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

1. I am over eighteen years of age and qualified to testify.
2. The information in this affidavit is based on my personal knowledge.
3. I made every legal effort to secure the documents named by both Respondents and myself identified in our respective designations.
4. I could not locate numerous documents due to the incomplete or incorrect designations of matter submitted by Respondent Rakowsky and Respondent Falgione.
5. I attempted to contact the Respondents' counsels to clarify what was being designated by them, but received no response.
6. Either any error of inclusion or non-inclusion of a document was due to the lack of ability to determine the documents being requested by the Respondents and the inclusion of documents explaining the missing documents or the documents that were my best guess as to what the document being designated by the Respondent was. There was never any intent to fail to provide a document that was requested by Respondents.
7. Any exclusion of a page of a document was due to not having the page or an unintentional error due to a printer malfunction that went unnoticed.

**AFFIANT FURTHER SAYETH NAUGHT**



Signature Jim B Spear

SUBSCRIBED AND SWORN TO before me this 21<sup>ST</sup> day of March, 2016,

by Christie N. Remley

NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: August 5, 2025



*[Handwritten signature]*

**CERTIFICATE OF SERVICE**

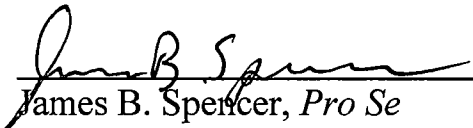
The undersigned hereby certifies that on March 21, 2016, the document described below, was(were) served on all parties of record in this case by mailing a copy, by US mail or by courier.

Documents Served: **MOTION TO REINSTATE**

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  
Attorneys for Adrian Falgione

David W. Overstreet  
Earhart Overstreet, LLC  
P.O. Box 22528  
Charleston, South Carolina 29413  
Attorneys for John Rakowsky

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

RECEIVED  
MAR 21 2016  
SC Court of Appeals