

THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

Frank R. Addy, Jr., Circuit Court Judge

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Appellate Case No. 2014-000091

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RECEIVED  
APR 05 2016  
SC Court of Appeals

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

of whom James Spencer is the,

Appellant,

v.

John R. Rakowsky, Adrian L. Falgione,  
and the Law Offices of Adrian Falgione,  
LLC, Defendants,

of whom John R. Rakowsky  
and Adrian L. Falgione are the,

Respondents.

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**RESPONDENT JOHN RAKOWSKY'S RETURN  
TO APPELLANT'S MOTION TO REINSTATE**

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Respondent John R. Rakowsky ("Rakowsky"), by and through his undersigned counsel,  
submits this return to the motion to reinstate submitted by Appellant James B. Spencer  
("Spencer" or "Appellant") in the above-referenced appeal.

As an initial matter, this Court dismissed Spencer's appeal by order dated March 4, 2016.  
Pursuant to Rule 260, SCACR, Spencer's motion to reinstate must have been actually received

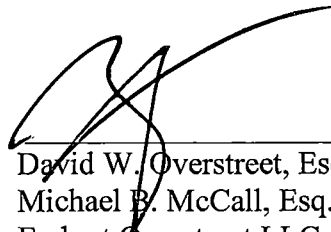
by the Court no later than March 21, 2016. Spencer states in his motion that it was filed on March 21, 2016, but undersigned has not received a filed copy of the motion and has not been able to confirm via the South Carolina Appellate Court Public Index whether the motion was actually received by the Court on or before March 21, 2016. To the extent Spencer's motion was not actually received by the Court on or before March 21, 2016, it is untimely and should be denied without further review.

To the extent Spencer's motion was timely received by the Court, it should be denied on the merits. Spencer's initial deadline to serve the record on appeal was some seven months ago. In his motion to reinstate, he now blames his repeated failure to prepare a proper record on Respondents, citing nine matters designated by Respondents that he contends are misleading, inaccurate or insufficient, and falsely claiming that he attempted to contact the undersigned for clarification, but received no response. *See* Affidavits of Counsel, attached as Exhibits A and B. These nine matters and the additional matters that Spencer conveniently omits are thoroughly addressed by Respondent Falgione in his return to Spencer's motion. For the sake of brevity, Respondent Rakowsky joins in Respondent Falgione's return and respectfully requests that the Court deny Spencer's motion and issue the remittitur.

[SIGNATURE PAGE FOLLOWS]

This 31<sup>st</sup> day of March, 2016.

Respectfully submitted by,

A handwritten signature in black ink, appearing to be 'D. Overstreet', written over a horizontal line.

David W. Overstreet, Esq.

Michael B. McCall, Esq.

Earhart Overstreet LLC

P.O. Box 22528

Charleston, South Carolina 29413

(843) 972-9404

Attorneys for Respondent John Rakowsky

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Of whom James Spencer is the Appellant, Appellant,

v.

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Adrian Falgione, LLC, Defendants,

Of whom John R. Rakowsky and Adrian L. Falgione are the Respondents.

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**PROOF OF SERVICE**

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I, Camille M. Gardner, an employee of Earhart Overstreet LLC, attorneys for Respondent John Rakowsky, certify that I served a copy of the attached corrected *Return to Appellant's Motion to Reinstate* by depositing a copy of it in the U.S. Mail, postage prepaid, on March 31, 2016, addressed to the *pro se* Appellant, James B. Spencer, 7001 Saint Andrews Road, Suite 183, Columbia, South Carolina 29212, and to Respondent Adrian Falgione's attorneys of record, Benjamin C. Bruner, Esquire and Warren C. Powell, Jr., Esquire, at Bruner, Powell, Wall & Mullins, LLC, P.O. Box 61110, Columbia, South Carolina 29260.

March 31, 2016

  
Camille M. Gardner

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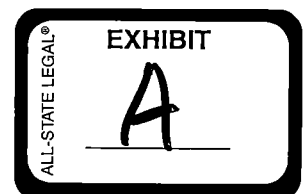
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**AFFIDAVIT OF COUNSEL**

---

PERSONALLY APPEARED BEFORE ME, David W. Overstreet, who being duly  
sworn, deposes and says as follows:

1. Michael B. McCall and I are the attorneys for Respondent John R. Rakowsky  
in the above-captioned appeal.



2. Appellant James Spencer claims in his motion to reinstate this appeal that he “attempted to contact Respondents’ counsel to clarify what was being designated by them, but received no response.”


3. To the best of my knowledge and based upon my review of the file, I have not received any communications from Appellant or anyone on his behalf requesting clarification of the matters designated or copies of the matters designated.

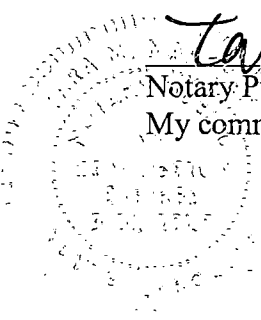
FURTHER AFFIANT SAYETH NOT.



David W. Overstreet

SWORN to and subscribed before me  
this 31<sup>st</sup> day of March, 2016.

  
\_\_\_\_\_  
Notary Public for South Carolina  
My commission expires:



THE STATE OF SOUTH CAROLINA  
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APPEAL FROM LEXINGTON COUNTY  
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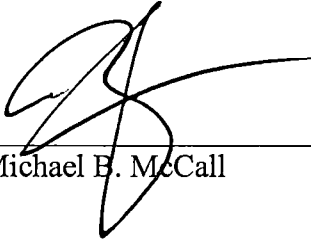
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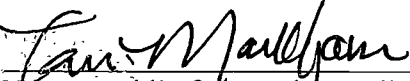
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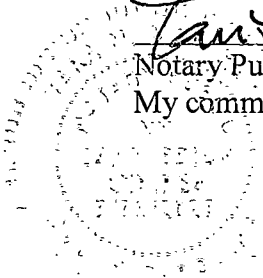
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FURTHER AFFIANT SAYETH NOT.

  
\_\_\_\_\_  
Michael B. McCall

SWORN to and subscribed before me  
this 31<sup>st</sup> day of March, 2016.

  
\_\_\_\_\_  
Notary Public for South Carolina  
My commission expires:





# Earhart Overstreet

ATTORNEYS AT LAW

Main: 843.972.9400  
www.earhartoverstreet.com  
PO Box 22528, Charleston, SC 29413

Mike@earhartoverstreet.com  
Direct: 843.628.3780

March 31, 2016

Jenny Abbott Kitchings, Clerk  
South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, South Carolina 29211

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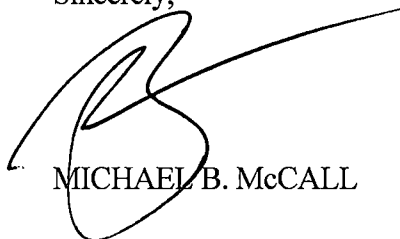
SC Court of Appeals

Re: James Spencer v. John R. Rakowsky, et al.  
Case No.: 2014-000091  
EO File No.: 110-0159

Dear Ms. Kitchings:

Enclosed for filing, please find the original and 6 copies of Respondent John R. Rakowsky's ***Return to Appellant's Motion to Reinstate*** and ***Proof of Service*** in this case. By copy of this correspondence, I am serving a copy of the same upon Appellant and all counsel of record. If you have any questions, please do not hesitate to contact me. With kind regards, I am

Sincerely,



MICHAEL B. McCALL

MBM/cmg  
Enclosures

cc: Benjamin Bruner, Esq.  
Warren C. Powell, Esq.  
James Spencer



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**Earhart Overstreet**

ATTORNEYS AT LAW

PO Box 22528, Charleston, SC 29413

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