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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Case No: 2014-000091

RECEIVED
SEP 26 2016
SC Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

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

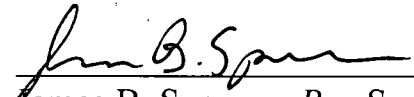
John R. Rakowsky, *Respondent*
Adrian Falgione, *Respondent*

v.

James Spencer, *Pro Se, Appellant*

MOTION TO REINSTATE,
FOR CLARIFICATION,
AND A REQUEST FOR MISTRIAL

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 August 31, 2016. This petition is timely filed on September 15, 2016. Further Rule 221 requires that, “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 that the Appellant failed to include “two of the Respondents’ designated items” in the July 8, 2016 Record on Appeal (“ROA”) filed by the *Pro Se* Appellant. ¹ It should be noted that the Court failed to specifically identify these missing “designated items” and the Court raised this matter *Sua Sponte*.

POINTS OVERLOOKED

BACKGROUND:

1. On May 26, 2016, this Honorable Court detailed what documents the Appellant was to add to complete the ROA in this matter. “We note

¹ Court Order issued on August 31, 2016.

Respondent Falgione's return to the motion to reinstate included many of the excluded documents as exhibits. Accordingly, it is our understanding that Appellant should have a copy of the excluded documents with an exception of the following: Court Exhibit 2 from a June 5, 2013 Hearing (Rakowsky's designated item 22); Falgione's Motion to Change Venue filed May 17, 2012 (Rakowsky designated item 14 & Falgione's designated item 9); and Memorandum in Support of Motion to Dismiss, dated January 27, 2012. Respondents shall provide Appellant a copy of any of these documents in their possession within ten days of the entry of this order and notify this court when the documents have been sent. Within twenty days of receipt of the documents, Appellant shall serve and file an amended ROA that includes the excluded documents and complies with Rule 210 SCACR."²

2. Respondents were not able to provide all the documents they had designated and that they were ordered to be provided by the court in its May 26, 2016 Order. Respondent Rakowsky asked Appellant to assist, as he was unable to determine what he had designated as item 22, and Respondent was ordered by the Court to provide in the May 26, 2016 Order.
3. Appellant based on Respondent's request spent numerous additional hours to identify what Respondent Rakowsky had designated as item 22, as

² Ibid

Respondents were unable to do. Appellant then incorporated the designated item which was the last such item identified by the court as necessary to complete the ROA in its May 26, 2016 Order.

4. The Court received the updated ROA that included all the documents named by the Court in its May 26, 2016 order to complete the ROA on June 28, 2016.
5. Respondent Falgione instead of legitimately reviewing the ROA and working directly with the *Pro Se* Appellant, as the Appellant had repeatedly requested, to resolve any concerns the Respondent might have, raised new objections to the ROA in a **July 1, 2016**, filing with the Court. Despite the Appellant's ROA complying with the Court's Order of May 28, 2016; the Respondent raised new issues on a point-by-point basis in a ten-page document filed with the Court on July 1, 2016.
6. Appellant addressed every point raised be it substantive or not by Respondent Falgione and both sent a complete substantive reply on **July 7, 2016** and filed another ROA on **July 8, 2016**, both addressing every item raised by Respondent regardless of merit in his ten-page filing dated **July 1, 2016**.
7. Respondent Falgione's counsel responded on **July 19, 2016**, to the July 7, 2016 twenty-page letter from Appellant, stating he just got back from vacation and was not going to take the time to read Appellants response and respond point by point to the *Pro Se* Appellant's letter that addressed the new issues

Respondent raised. In the one paragraph six-sentence July 19, 2016 response, Respondent's counsel, Mr. Bruner, without reviewing the July 8, 2016 ROA, simply states he will not glorify Spencer [Appellant] by responding to his July 7, 2016 letter. Mr. Bruner further stated he will not participate in this "madness" any more and stated that he cannot prepare his final brief from the ROA and in the alternative just wants his motion to dismiss to prevail.

APPELLANT COULD NOT IDENTIFY THE TWO DESIGNATED ITEMS REFERENCED BY THE COURT *SU SPONTE* THAT WERE NOT INCLUDED IN THE ROA:

- 8.** Neither Respondent identified any designated matter that is not included in the Appellant's current version of the ROA in any filing with this court.
- 9.** Appellant specifically asked both Respondents for any items not included to be sent to Appellant to be included so the ROA includes all documents to enable the case to move forward. However, no other documents were provided by Respondents.
- 10.** Appellant has listed every item identified in both Respondents' designations and identified the pages in the ROA containing that certain document. **(See Exhibit "A" attached hereto.)**
- 11.** However, very importantly, the research to develop the compilation referred to in point 9 above did document the fact that there are very significant filing

errors related to Orders drafted by Respondent Rakowsky's former counsel Ms. Amanda K. Dudgeon, in this case. The filings errors are evidenced in the transcript of the May 7, 2012 conference and in a review of the hard copy files in the Clerk of Court's office in this case as well as the Clerk of Court's computer database regarding this case. These filing errors may address what the Court is referring to as two items being designated but not included in the ROA.

Appellant having produced an ROA that both complies with this Court's Order of May 26, 2016 and all subsequent claims beyond that defining Court Order, by Respondents, regarding items designated by Respondents but not included, there would appear to be no possible manner that two items designated by Respondents were not included in the ROA.

During the May 7, 2012 hearing, Amanda Dudgeon was instructed to send all of her drafts of Orders to the *Pro Se* Plaintiffs/Appellants for review and comment before sending them to the Court. **(See Transcript May 7, 2012, Page 61, lines 3 -18.)** This occurred after Appellant stated he was not being included in the order drafting and review process and that Ms. Dudgeon had been drafting Orders for the judge without the opportunity to review and comment by the *Pro Se* litigant.

Ms. Dudgeon admitted she had drafted and sent to the court a proposed

order for the Court's use regarding Judge Barber's decisions during the April 3, 2012 conference but did not do it until over a month later, on Friday[May 4, 2012] before the May 7, 2012 conference. Appellant stated he did not have any documentation of ever having received the order for review and comment. The Judge ordered that in the future Ms. Dudgeon and anybody else doing such drafting for the Court send any proposed Orders to the other parties for review and comment before sending them on to the Court. **(See Transcript of May 7, 2012, pages 60-61.)** The Appellant subsequently received a draft of the proposed Order for the April 3, 2012 conference rulings by the Court from Ms. Dudgeon shortly after the May 7, 2012 hearing that was sent to Judge Barber on May 4, 2012. The signed Order was served by the Richland County Clerk of Court to the Appellant on July 1, 2012. It had the May date crossed out, and was dated and signed by Judge Barber on June 14, 2012. It was date stamped by the Clerk of Court's Office on June 28, 2012. **(ROA pages 1-3).**

THE SHADOW ORDER:

- 12.** One of the most controversial aspects of this case is the fact that the Plaintiffs were prevented from conducting discovery regarding the required documentation of thousands of dollars of missing money provided for the litigation of the underlying case by the Plaintiff/Appellant to the Respondents.

This lack of discovery also prevented the necessary discovery related to the existence of the required informed consent agreement under South Carolina Court Rule 407 1.8(g). Judge Barber Ordered that discovery not be delayed during the May 7, 2012 hearing. However, Defendants/Respondents' counsels simply refused to participate in discovery because they claimed there had to be a signed written order by Judge Barber before they would consent to discovery.

Trying to have it both ways Respondent Rakowsky filed an interpleader lawsuit claiming he did not know whom the litigation and settlement funds in his possession belonged to.

Respondent Rakowsky refused all discovery requests in both cases in Circuit Court while claiming he had maintained the required financial records that if true would have detailed who the litigation funds belonged to as required by law under Rule 417 of the SCACR.

Respondent further claimed that he had the executed informed consent agreement that is required under Court Rule 407 1.8(g) that would have disclosed who the settlement funds belonged to, but Respondent claimed he would not and could not disclose the informed consent agreement because it was privileged information and non-disclosable as a matter of attorney client privilege. This case is also before this Court (Case Number: 2014-002029).

However, the research conducted as discussed in point 9 and point 10 above has provided an answer to the question of this court raising *Sua Sponte* two designations by the Respondents that were not included in the ROA and why the Respondents **did not raise these missing designations** when arguing the shortcomings of the ROA. It also explains why the Respondents did not provide the documentation on any missing designations to complete the ROA requested by the Appellant.

13. Respondent's Counsel, Ms. Amanda Dudgeon, ignored Judge Barber's instructions during the May 7, 2012 hearing and filed a second order that was signed by Judge Barber that covered other rulings made by the Judge during the hearing on April 3, 2012. In violation of the standards of fairness and due process, no draft of the order for review and comment was provided as Ordered by Judge Barber by Respondent's counsel to the Plaintiffs/Appellant. Furthermore, the Plaintiffs/Appellant were not even served a copy of executed Order. This shadow Order was also signed by Judge Barber on June 14, 2012 and date stamped by the Clerk on June 28, 2012 the same dates as the known order (**See ROA 1-3**). However, there was no hard copy in the file unlike the known order signed June 14, 2012 that was in the hard copy file at the Clerk of Court's office. Ms. Gloria Tribble, Deputy Clerk of Court, kindly researched the computer database and found the shadow order but there was

no certificate of service along with executed shadow order (**See Attached Exhibit B**). An affidavit from the former Plaintiff Irene Santacroce is attached affirming the fact that she also received no draft and no executed copy of this Order (see-attached affidavit **Exhibit C**). A copy of the shadow Order from the Clerk of Court database is attached (**Exhibit D, note page 4, point 3**). Please note that this shadow order documents that Judge Barber in fact issued a written order stating that discovery was to be conducted. Respondents' counsels withheld this Order from the Plaintiff/Appellant and denied its existence time after time when Plaintiff/Appellant made discovery requests the Defendants/Respondents refused to answer or comply with the request knowingly and wrongfully claiming there was no written order by Judge Barber for discovery and the oral order on May 7, 2012 for discovery is unenforceable. For example during the June 5, 2013 hearing before Judge Addy, Respondent Falgione's counsel Benjamin Bruner, with Ms. Amanda Dudgeon who drafted the shadow order present representing Respondent Rakowsky, stated on the record why Respondents refused to participate in discovery. Mr. Bruner stated:

“Mr. Bruner: And my – the best reading I can find on the enforceability of orders in this state leads me to believe—that an order is final when it's written and signed by a judge and submitted for filing, period. And if you look at the orders that were filed in this case after that – May 7th status conference, they are a June – and order signed June 14th by Judge Barber, denying the plaintiffs' motion for

entry of default against the defendants. There's an order signed June 14th continuing the motions to dismiss and Mr. Spencer's motion to disqualify, denying Ms. Santacroce's motion to disqualify filed, I believe June 28." **Transcript June 5, 2013 hearing, page 47, lines 11-23. (ROA, Page 312, lines 11-23.)**

The statement listed immediately above documents the facts that (1) Respondents; (1) knew of the contents of the shadow order; (2) knew that Judge Barber had in fact signed off and put the order for discovery in writing; and (3) knew the Appellant was not aware of the shadow order filed with the Clerk of Court. The Respondent's lawyer's game of fraud worked and Judge Addy dismissed the lawsuit as a result of that hearing.

These violations of procedural due process allowed by the Court prejudiced this case against the Plaintiffs/Appellant and allowed the ruse to continue regarding the Interpleader case. The Defendants/Respondents' counsels, including Amanda Dudgeon, adamantly denied on a continuous basis that discovery was ever ordered by Judge Barber in writing and that his oral order to conduct discovery during the May 7, 2012 hearing is unenforceable.

Both Defendants/Respondents refused to participate in discovery, and without the written order, Plaintiffs/Appellant could not seek a motion to compel discovery. Respondents' counsels from both cases before this court attended the April 3, 2012 Circuit Court hearing. The *Pro Se*

Plaintiff/Appellant Spencer was in the hospital at MUSC and was not in attendance at the April 3, 2012 hearing. The other *Pro Se* Plaintiff was not present as she failed in her attempt to attend by telephone. Respondents' counsels knew discovery was authorized and Appellant believes that this Order was not provided by them for the ROA due to the knowledge that this shadow Order revealed the concealed knowledge that discovery in fact had been ordered by the Court in writing. The two designations not included in the ROA as contained in the shadow order regarding Plaintiff Santacroe would reveal the lack of procedural due process and the concealment by Defendants/Respondents attorneys of the shadow Order authorizing discovery by Judge Barber. Concealing the fraud regarding denying the badly needed discovery from the Appellant was of much greater importance to the Respondents' counsels which explains why the Court was forced to raise the issue *Sua Sponte*. The actions of Respondents' counsels in this matter both in the Circuit Court and in the Appellate Court breach ethical standards and need to be addressed by the appellate court forthwith. These acts by Respondent's counsels denied the Plaintiffs their constitutional rights as guaranteed by the 5th and 14th amendments to the U.S. Constitution.

SUMMARY

The *Pro Se* Appellant searching for answers on what the two unidentified

items that were missing from the ROA that the Court raised *Sua Sponte* unexpectedly uncovered fraud on the court and procedural due process violations by Respondents' counsels in both the Appellate Court and the Circuit Court that cannot be ignored by the Appellate Court. If the *Pro Se* Plaintiff/Appellant had any idea of the existence of that shadow order, ordering discovery by Judge Barber, Appellant would have had the Court enforce the Order and have the Defendants answer questions through discovery to unmask the unsustainable positions of the Defendants/Respondents regarding the indefensible acts of malpractice. Furthermore, the Appellant's research in any event discovered two designated items by the Respondents that were attributed to being from the only order known to have existed from the hearing of April 3, 2012. This order on pages 1-3 of the ROA was identified as the only order from the April 3, 2012 hearing on the record by Respondent Rakowsky's former counsel, Amanda Dudgeon during the May 7, 2012 hearing.

The two items were the Falgione designation number 23, "Order of continuance signed June 14, 2012 and filed June 28, 2012," and Rakowsky designation number 8, the "Order filed June 28, 2012 (denying Santacroce Motion to Disqualify, et.)." The Court needs to clarify their *Sua Sponte* as to the identity of the two designated items as the Appellant can find nothing else and everything else designated ever raised as missing by the Respondents was included in the ROA.

Respondents' designation of items from an order concealed from the Appellant by the Defendant/Respondent's lawyers deliberate actions in not following procedural due process that required the Appellant be issued a copy of the proposed shadow order and service of the executed shadow order in the lower court. Therefore, the court needs clarify by specifically identifying the two items it raised *Sua Sponte* as the reason for dismissal to determine the party responsible for the misdesignation of these two items under SCRCF Rules 209 & 210 and the application of SCRCF Rules for fraud.

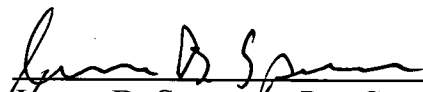
CONCLUSION

Respondents Rakowsky and Falgione filed and served designation of material that was wrongfully concealed in the underlying case that led to a decision to dismiss by Judge Addy resulting in this appeal. Once again, the Respondents' counsels have used the fraud on the court committed in the lower court to have the case dismissed in the Appellate Court by expanding those acts of fraud to this court. The Appellant has documented clearly in this motion how Respondent's Counsel, Bruner, committed fraud in both the lower courts and expanded it to this court through his misdesignation of a concealed order unknown to the *Pro Se* Appellant in violation of SCACR 209 (b) and Rule 209 (c). Therefore, Appellant requests first this case be reinstated for the reasons stated herein. The Appellant seeks a mistrial for the acts of fraud and violation of his due process rights under the 4th and 15th Amendments

to the United States Constitution. In the alternative the Appellants seeks to have this Court issue *Sua Sponte* an order for the financial records to be turned over to the Appellant regarding the litigation funds in this case required under Rule 417 of the SCACR by the Respondents and the informed consent agreement required under Rule 407 1.8(g). Respondent Rakowsky claims he has the informed consent agreement but refuses to turn it over, as it would be a violation of attorney client privilege. Finally, upon receipt of this information from the Respondents allow the Appellant to refile an appeal in this case with the information Appellant would have had if the Respondents had not continued their endless trail of fraud on the court. Alternatively, any other such remedy available to this court. If the court had not diligently raised *Sua Sponte* the missing designated items from the ROA, the Appellant would not have known about the fraud on the court that destroyed the judicial process in this case.

Respectfully submitted on September 15, 2016,

By,



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

Falgione: Designation of Matter - Counsel: Benjamin Bruner

Found in ROA:

1. Complaint filed August 11, 2012pg 29 - 46
2. Notice of Appearance, November 2, 2011pg 78 - 81
3. Motion to Dismiss, November 2, 2011pg 78 - 81
4. Notice of Appearance, November 4, 2011pg 78 - 81
5. Motion to Dismiss, November 4, 2011pg 78 - 81
6. Amended Motion to Dismiss, January 3, 2012pg 217- 221
7. Memorandum in Support of Motion to Dismiss, January 27, 2012pg 243 - 252
8. Order Denying Motion for Entry of Default,
signed June 14, 2012 and filed June 28, 2012pg 1 - 3
9. Motion to Transfer Venue, May 17, 2012pg 234 - 336
10. Letter from Court to Parties, July 31, 2012pg 222 - 223
11. O. Granting Def.'s Mot. to Change Venue,
August 15, 2012pg 4 - 6
12. E-mail from Headley to Court, May 7, 2013pg 265
13. Order of the Circuit Court, May 8, 2013pg 8 - 10
14. Order of S.C. Supeme Court , June 11, 2013pg 27
15. Ans. Regarding Waiver or Recusal, May 28, 2013pg 241 - 247
16. Letter from Court to Parties, May 30, 2013pg 11 - 12
17. Falgione's Motion for Admissions filed May 16, 2013
(10 pages with exhibits)pg 86 - 95
18. Order Nunc Pro Tunc, June 25, 2013pg 28
19. Order of Dismissal, signed August 19, 2013 and filed August 23, 2013pg 13 - 18
20. Order Denying Rule 59(e) Motion, December 6 2013pg 19
21. Order Denying Motions to Set Aside Settlement in Southern Holdings, Inc.
v. Horry County, et al., C/A No. 4:02-cv-1859 (July 3, 2007)pg 463 - 471
22. Order Denying Motion for Entry of Default,
signed June 14, 2012 and filed June 28, 2012pg 1 - 3
23. Order of Continuance signed June 14, 2012 and filed June 28, 2012pg 1 - 3
24. Falgione's Motion to be Relieved as Counsel, filed July 10, 2007pg 472 - 475
25. Transcript of May 7, 2012 status conference, page 39, lines 1 to 25pg 334
26. Transcript of June 5, 2013 hearing: page 5, line 2 to page 7, line 4; page 39,
lines 18 to 24; pg. 44, line 21 to p. 45, line 24; pg. 49, line 22 to p. 50, line 5;
p 51, lines 13 to 15; Page 52, lines 16 to 21; page 58, line 24 to page 59,
line 3; Page 64, lines 1 to 19pg 266

**Note: Boxed
Designations to
the April 3, 2012
Hearing**

Rakowsky: Designation of Matter - Counsel: Desa Ballard

Found in ROA:

1. Order filed December 6, 2013 (denying Motion to Reconsider)pg 19
2. Order filed November 1, 2013 (denying Motion to Disqualify)pg 22 - 25
3. Order filed August 23, 2013 (granting Motion to Dismiss)pg 13 - 18
4. Order filed June 27, 2013 (assigning to Judge Addy).....pg 11 - 12
5. Order filed May 13, 2013
(dismissing Santacroce, scheduling hearings).....pg 8 - 10
6. Order filed October 1, 2012
(denying Motion to Reconsider Venue Order)pg 26
7. Order filed August 15, 2012 (granting Motion to Change Venue).....pg 4 - 6
8. Order filed June 28, 2012
(denying Santacroce Motion to Disqualify, etc.)pg 1 - 3
9. Order filed June 28, 2012 (denying Requests for Default).....pg 1 - 3
10. Complaint filed August 15, 2011pg 29 - 46
11. Rakowsky's Motion to Dismiss filed November 3, 2011pg 75 - 77
12. Falgione's Motion to Dismiss filed November 4, 2011pg 78 - 81
13. Spencer's Motion to Disqualify filed March 27, 2012pg 47 - 74
14. Falgione's Motion to Change Venue filed May 17, 2012.....pg 234 - 236
15. Rakowsky's Motion to Change Venue filed June 4, 2012pg 123 - 125
16. Pltf's Motion to Reconsider Dismissal filed September 9, 2013pg 213 - 216
17. Transcript of June 5, 2013 Hearingpg 266 - 333
18. Transcript of May 27, 2012 Satus Conference.....pg 334 - 403
19. Affidavit of Rakowsky dated January 25, 2012.....pg 228
20. Affidavit of Rakowsky dated January 26, 2012.....pg 229
21. Letter of Judge Barber, July 31, 2012.....pg 222 - 223
22. Court Exhibits 1 and 2 at June 5, 2012 Hearingpg 253 - 264

**Note: Boxed
Designations to
the April 3, 2012
Hearing**

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

AFFIDAVIT OF LISETTE RICHTER

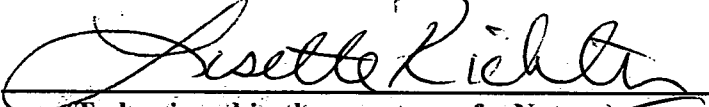
PERSONALLY APPEARED before me the undersigned Irene Santacroce who after being duly sworn states the following:

1. I have searched the Richland County Clerk of Court file hard copy on September 15, 2016 regarding Case No: 2011-CP-40-5384.
2. I was looking for **Order Denying Motion for Default** filed June 28, 2012.
3. I was looking for **Order Denying Motion for Entry of Judgement** filed June 28, 2012.
4. I was looking for **Order of Continuance** June 28, 2012.
5. I could only find the Order Denying the Motion for Default filed June 28, 2012.
6. I asked Ms. Gloria Tribble with the County Clerks office to help me.
7. Ms. Tribble located a second executed Order without a Certificate of Service in her Clerk's database date stamped June 28, 2012.

AFFIANT SAYETH FURTHER NAUGHT.

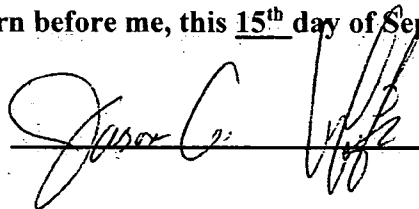
NOTARIZED SIGNATURE

Your Signature:


(To be signed in the presence of a Notary)

Subscribed and sworn before me, this 15th day of September of the year 2016.

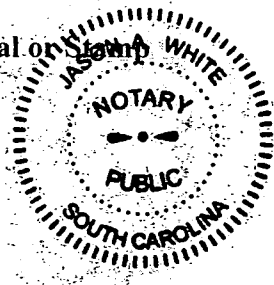
Signature of Notary:



Expiration date of Commission:

July 14, 2020

Notary Seal or Stamp



STATE OF SOUTH CAROLINA

COUNTY OF HORRY

AFFIDAVIT OF IRENE SANTACROCE

PERSONALLY APPEARED before me the undersigned Irene Santacroce who after being duly sworn states the following:

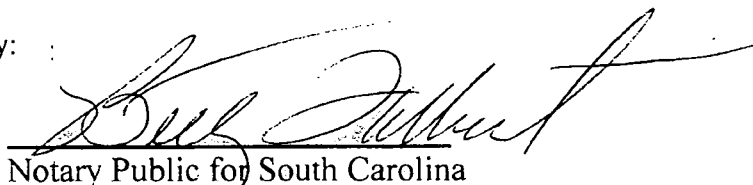
1. I was a Plaintiff in the legal malpractice lawsuit Case No: 2011-CP-40-5384 up until May of 2013 after the change of venue to Lexington, County dated August 15, 2012.
2. I received a copy of the proposed order for the April 3, 2012 hearing from Ms. Amanda Dudgeon submitted to the court on May 4, 2012 after the hearing on May 7, 2012 as she was instructed to do by Judge Barber at that hearing.
3. I received the executed copy of the same Order with the May date crossed out signed by Judge Barber on June 14, 2012 and date stamped by the clerk on June 28, 2012.
4. I received no other proposed order regarding the hearing on April 3, 2012 from any party.
5. I received no service on any other executed order dated June 14, 2012 and date stamped by the clerk on June 28, 2012.
6. The first time I became aware of the existence of another written Order executed by Judge Barber on June 14, 2012 and date stamped by the on June 28, 2012 was when Mr. Spencer emailed me a copy of September 15, 2016.
7. All attempts to conduct discovery on the Defendants in this case were denied by Mr. Bruner and Ms. Dudgeon because of a lack of a written order, these included attempts after the date of June 28, 2012.

AFFIANT SAYETH FURTHER NAUGHT.


Irene Santacroce

Subscribed and sworn before me, this 16th day of
September of the year 2016

By:


Notary Public for South Carolina

My Commission Expires:

My Commission Expires December 14, 2019

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 James Spencer, individually, on behalf of)
 the Estate of Doris Holt and on behalf of)
 Southern Holdings, Inc., and Irene)
 Santacroce,)
)
 Plaintiffs,)
)
 v.)
)
 John R. Rakowsky, Adrian L. Falgione, and)
 The Law Offices of Adrian Falgione, LLC,)
)
 Defendants.)
)

IN THE COURT OF COMMON PLEAS
 THE FIFTH JUDICIAL CIRCUIT
 CASE NO.: 2011-CP-40-5384

ORDER

JEANETTE W. McBRIDE
 C.C.P. & G.S.

2012 JUN 28 PM 2:25

RICHLAND COUNTY
 FILED

This matter came before the Court on April 3, 2012, on Defendant John R. Rakowsky's (hereinafter "Defendant Rakowsky") Motion to Dismiss, Defendants Adrian L. Falgione and The Law Offices of Adrian Falgione, LLC's ("Defendant Falgione") Motion to Dismiss, and *Pro Se* Plaintiffs James Spencer and Irene Santacroce's (hereinafter "Plaintiffs") Motion to Disqualify.

BACKGROUND

1. Defendant Rakowsky filed a Motion to Dismiss the present Complaint on November 3, 2011.
2. Defendant Falgione filed a Motion to Dismiss the present Complaint on November 4, 2011.
3. The Court noticed Defendants' Motions to Dismiss for a hearing on January 31, 2012.
4. On January 25, 2012, Plaintiff Spencer filed a Motion for Continuance of the January 31, 2012 hearing. Plaintiff Spencer stated in his Motion that he had a medical

SCANNED

appointment scheduled for January 31, 2012. Plaintiff Spencer did not specify the nature or location of the appointment.

5. On January 30, 2012, the Court continued the motions scheduled for January 31, 2012, based upon Spencer's representations.

6. The Court rescheduled and noticed Defendants' Motions to Dismiss for a hearing on February 28, 2012.

7. On February 7, 2012, Plaintiff Spencer submitted to the Court correspondence dated February 1, 2012, from Sarah W. Book, MD, Associate Professor of Psychiatry and Behavioral Sciences at the Medical University of South Carolina. In that letter, Ms. Book stated "If possible, I believe it would be best for Mr. Spencer's health if any hearing that he is involved in is postponed for the next two months."

8. Based upon Dr. Book's letter, Spencer requested protection from appearing in Court until after April 1, 2012 due to health reasons.

9. Relying on Spencer's representations and Dr. Book's letter, the Court continued the February 28, 2012 hearing, granted Spencer protection from court until after April 1, 2012, and noticed the hearing for April 3, 2012.

10. On March 27, 2012, Plaintiffs (including Spencer) filed an Expedited Motion to Disqualify Defendant Rakowsky's attorneys Amanda Dudgeon and Andrew Countryman.

11. On March 29, 2012, a telephone status conference was held in which the following individuals participated: Judge James R. Barber, III; Benjamin C. Bruner, as counsel for Defendant Falgione; Amanda K. Dudgeon, as counsel for Defendant Rakowsky; Plaintiff Spencer; and Plaintiff Santacroce. In the telephone conference, the parties were advised that Plaintiffs' Motion to Disqualify would be heard, at Plaintiffs' request, on April 3, 2012, at 9:00

am and that Defendants' Motions to Dismiss would be heard as scheduled on the roster on April 3, 2012, at 11:00 am.

12. On April 2, 2012, at 5:17 pm, one day before the scheduled hearings, Plaintiff Spencer emailed the Court and stated he was not able to attend the hearings in the morning. He likewise provided what appeared to be an April 2, 2012, notice of Robert Holt's¹ appointment at the Medical University of South Carolina in Charleston, South Carolina, with Dr. Book for April 3, 2012. The notice did not include any time for the appointment, but did include "due to emergency" in handwriting.

13. Plaintiff Santacroce forwarded to the Court correspondence indicating she did not plan to attend the hearings. She did not request a continuance.

14. On April 3, 2012, attorneys Benjamin Bruner, Amanda Dudgeon, and Desa Ballard, along with their respective clients, appeared for the scheduled hearings. Neither Plaintiff appeared for the hearing.

15. The counsel and parties who were present proceeded to chambers to attempt to contact Plaintiff Spencer and Plaintiff Santacroce by telephone.

16. Plaintiff Spencer did not answer when called at the telephone number on file with the Court.

17. However, Plaintiff Spencer did answer the telephone when called at (803) 414-0889. The undersigned advised Plaintiff Spencer that he could not continue to request continuances of the hearings, which had been scheduled three times.

18. Plaintiff Spencer agreed that the Court may discuss Spencer's medical condition with his medical providers to determine a schedule for this action.

¹ Upon information and belief, Robert Holt is Plaintiff Spencer's alias.

RULINGS

1. Plaintiff Santacroce's Motion to Disqualify is denied.
2. The hearings on Plaintiff Spencer's Motion to Disqualify, Defendant Rakowsky's Motion to Dismiss, and Defendant Falgione's Motion to Dismiss are continued.

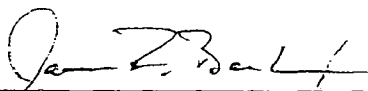
3. The continuances and other rulings by this Court shall have no effect on discovery in this case, which may proceed without delay.

4. Any future request for a continuance by any Plaintiff must be supported by a properly executed affidavit of a licensed medical professional unequivocally opining that the Plaintiff is not capable of attending the scheduled hearing or proceeding. If the Plaintiff's request for a continuance is not supported by such an affidavit, the request shall be denied.

5. If any Plaintiff shall again fail to appear at any hearing or proceeding in this action without good cause, that Plaintiff's claims shall be dismissed with prejudice.

6. In addition, if any Plaintiff unnecessarily delays this case further, Defendants may seek sanctions.

IT IS SO ORDERED.



James R. Barber, III
Chief Administrative Judge
Fifth Judicial Circuit

Columbia, South Carolina

This 14 day of JUNE, 2012.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on September 15, 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
AND A REQUEST FOR MISTRIAL**

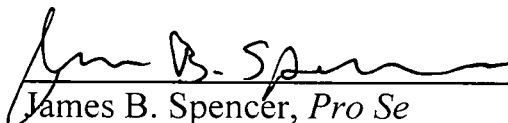
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Parties Served:

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SEP 26 2016
SC Court of Appeals

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SEP 26 2016

I will supplement this timely filing with six copies in the mail as the paralysis in my hand has locked up my hands and I cannot even separate pages.

SC Court of Appeals

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