

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County
Doyet A. Early III, Circuit Court Judge
Case No. 2008-CP-40-6656
Appellate Case No. 2014-002029

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SC Court of Appeals

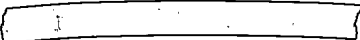
John R. Rakowsky, Respondent

v.

Law Offices of Adrian L. Falgione, LLC, James Spencer,
Estate of Doris Holt, Nick Williams on behalf of RSC,
Irene Santacroce, Rodney Keith Lail, Marguerite Stephens
Ricky Stephens, Michael Hartness, Horry County, SC,
Eugene Chewing, and Glenn W. Harrison,
Defendants,

Of whom James Spencer, Irene Santacroce, Rodney Keith
Lail, and the Estate of Doris Holt are the
Appellants.

FINAL BRIEF OF RESPONDENT


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ATTORNEYS FOR RESPONDENT

TABLE OF CONTENTS

Table of Authorities	ii
Statement of Issues on Appeal	iii
Statement of the Case	1
Statement of the Facts	3
Argument	5
Issue A	5
Issue B	5
Issue C	8
Issue D	9
Issue E	11
Issue F	11
Conclusion	12

TABLE OF AUTHORITIES

CASES

<u>Brouwer v. Sisters of Charity Providence Hospitals,</u> 409 S.C. 514, 763 S.E.2d 200 (Ct.App.2014).....	7, 8
<u>Charleston County Assessor v. LMP Properties,</u> 403 S.C. 194, 160, 743 S.E.2d 99 (Ct.App.2013).....	6
<u>Dreher v. South Carolina Department of Health and Environmental Control,</u> Op. No. 27507 (S.C. Sup.Ct. filed March 18, 2015)	5, 6
<u>Horton v. City of Columbia,</u> 408 S.C. 27, 757 S.E.2d 537 (Ct.App.2014).....	7
<u>Mulherin-Howell v. Cobb,</u> 362 S.C. 588, 608 S.E.2d 587 (Ct.App.2005).....	9

STATUTES

S.C. Code Ann. § 14-3-330(1) (1976, as amended).....	8, 9
--	------

OTHER AUTHORITIES

Rule 203(e), SCACR	9
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STATEMENT OF ISSUES ON APPEAL

- A. Issues A and B in Appellants' Initial Brief have already been adjudicated and are therefore not before this Court on appeal.
- B. Issues A and B in Appellants' Initial Brief have already been adjudicated and are therefore not before this Court on appeal.
- C. Appellants' argument regarding discovery is barred.
- D. There was no requirement that Rakowsky unilaterally pay the funds into court while a federal action was litigated; nonetheless, the action was brought seeking to pay the funds into court, and appellants objected to it.
- E. Rakowsky was entitled to the attorney fees due him from the Southern Holdings litigation.
- F. Appellants cannot request compensation on appeal.

STATEMENT OF THE CASE¹

The instant appeal (notice of which is dated January 20, 2014, docketed by this Court on February 2, 2014) is from an order of Judge Early dated December 18, 2014. (Notice of Appeal dated January 20, 2014). The order on appeal was not included with the Notice of Appeal, but was eventually filed with this Court on May 4, 2015, after a deficiency letter was sent to appellants² by this Court on February 10, 2015. An earlier appeal by the same appellants filed on September 19, 2014 (appeal from Judge Early's order filed June 27, 2014) was dismissed by order of this Court filed April 23, 2015.

It is important to identify specifically which order is on appeal because the majority of the issues raised in this appeal were adjudicated in Judge Early's order filed June 27, 2014, which is a final order and is not on appeal. That order precludes at least some of the issues raised in this appeal. The current appeal only addresses Judge Early's subsequent order, dated December 18, 2014, which ruled on numerous motions, granted the interpleader and granted, in part, Rakowsky's motion for equitable indemnification.

The motions ruled on in the order on appeal denied were a motion for jury trial filed July 14, 2011, motion to amend answer and counterclaims filed August 29/30, 2011,

¹ A related case is before this Court in a separate appeal. See Appellate Case No. 2014-000091, Spencer v. Rakowsky et al. The related appeal involves an action filed in 2011 by *pro se* by Spencer, individually and on behalf of his late mother, Doris Holt, and a corporate entity, seeking damages for malpractice against Rakowsky and Falgione arising from representation in the Southern Holdings case. On information and belief, the action was filed in Richland County, transferred to Lexington County, and dismissed. Appeal in Case No. 2014-000091 was filed on January 14, 2014. According to C-track, the case is in the briefing stage. It appears from the initial brief of appellants in that appeal are arguing at least one issue that addresses ruling in this case. (Appellant's Initial Brief filed June 1, 2015, Issue I).

² Since the Notice of Appeal was jointly filed, clarification is necessary. "Appellants" are James Spencer, who appears *pro se*, as well as Estate of Doris Holt, Irene Santacrose, and Rodney Keith Lail, all of whom are represented by attorney Michael Sribnick. See Notice of Appeal dated January 20, 2015, docketed February 2, 2015. This Court's deficiency letter dated February 2, 2015 was addressed to Spencer (individually) and Sribnick (as representative of the appellants he represented) jointly.

and a motion for sanctions against one of Rakowsky's attorneys. None of those issues are raised on appeal. Instead, appellants primarily argue issues that are foreclosed by the finality of Judge Early's order filed June 27, 2014, the appeal of which was dismissed by this Court's order filed April 23, 2015. They also generally argue that the process didn't work fairly and they just don't like how things turned out.

None of the issues raised in this appeal were not raised by way of Motion for Reconsideration after either of Judge Early's orders were issued³. As a result, none of the issues argued here were preserved for appeal. *See* legal citations below. And the issues argued here are largely missing from the pleadings at the trial court level.

Issue 4 listed in the "Statement of The Issues On Appeal" in Appellants' Initial Brief (pages 1-3) suggests there is also an appeal from an interlocutory order issued in this case on July 23, 2011. Since the actual argument portion of the brief separates the issues by alphabetical designation (A, B, etc.) rather than numerical⁴, it is difficult to determine which of the alphabetical arguments are supposed to align with Issue 4, although it appears to be Issue C. Appellants report they earlier appealed the order referred to in Issue 4, and that this Court dismissed that appeal as an interlocutory appeal on November 23, 2011. However, the notice of appeal in this appeal does not identify that order as an order being

³ Mr. Spencer and Mr. Sribnick separately sent multiple emails to Judge Early, both before and after the order on appeal was issued. On information and belief, none of those emails were made a part of the clerk of court's record. No motions were filed challenging the content of Judge Early's order (the one on appeal) either before or after it was issued. Certain of the emails are designated by Rakowsky for the convenience of this Court, but will be withdrawn from designations if any appellant objects to their inclusion in their record.

⁴ The Issues listed in the Table of Contents (page i) are identified with alphabetical designations: A through F. However, the issues listed in the Statement of Issues on Appeal (pages 1-3) are designated numerically 1 through 9. The argument portion of the initial brief aligns with the issues listed in the Table of Contents since both use alphabetical designations, but do not match the designation of 9 questions identified in the Statement of Issues on Appeal. For purposes of this Appeal, Rakowsky is responding to the numerically-designated issues set forth the Table of Contents and Argument section of the brief.

appealed in this proceeding. Additionally, an interlocutory order from 2011 would necessarily have to have been raised in appellant's appeal from Judge Early's June, 2014 order, which was dismissed. Any attempt to appeal a 2011 discovery order in this appeal is too late.⁵

FACTS

In a prior action in United States District Court for the District of South Carolina, Rakowsky was counsel for Southern Holdings Inc., James B. Spencer, Rodney Keith Lail, Irene Santacroce, Ricky Stephens, Marguerite Stephens, Doris Holt, and Nicholas C. Williamson⁶. Rakowsky associated Adrian Falgione (hereafter "Falgione"), and the two served as co-counsel leading up to and at trial when it commenced⁷. (R. pp. 17-18).

That earlier civil action, Southern Holdings Inc. et al. v. Horry County et al., Civil Action No. 4:02-cv-1859-RBH (hereafter "the Southern Holdings case"), was resolved when a settlement agreement was stated on the record before United States District Court Judge R. Bryan Harwell on May 9, 2007. (R. p. 17). Certain parties, including some of the appellants here, continue to challenge the enforceability of that settlement. Their most recent filing on that issue (Brief of Appellants) was made in the Fourth Circuit Court of

⁵ There is an order filed February 23, 2012 from this Court dismissing an earlier appeal which relates to an appeal filed *pro se* by Spencer on November 22, 2011 which was assigned Appellate Case No. 2011204306. Rakowsky is unaware of an order of dismissal issued by this Court dated November 23, 2011 (and C-track is not available for appeals of that vintage). Most likely this issue relates to an order issued by Circuit Judge William H. Seals Jr. dated July 25, 2011.

⁶ According to the ECF Docket, Williamson was dismissed as a plaintiff in 2004; however he filed an answer in this action and voluntarily appeared with other defendants in the answer dated January 18, 2011.

⁷ The Southern Holdings plaintiffs had been through multiple other counsel during Rakowsky's involvement. Falgione came on board for trial preparation and trial.

Appeals on December 14, 2015 in, Doris Holt et al. v. Horry County et al, Case No. 14-1678 (ECF No. 125⁸).

Defendants in the Southern Holdings case tendered to Rakowsky the settlement proceeds of \$55,000.00, which Rakowsky's clients refused to accept. (R. p. 23¶15). Rakowsky filed this interpleader action in 2008 seeking to interplead two (2) sums of money: (1) the \$55,000 settlement proceeds paid by Defendants pursuant to the Southern Holdings settlement; and (2) the balance of litigation funds which had been advanced to Rakowsky for litigation costs. *Id.* Judge Early's June, 2014 order dealt with Issue 2, *i.e.*, the balance of the remaining litigation funds and Rakowsky's handling of them, and ordered that the balance of litigation funds be disbursed to Spencer. (R. pp. 26-27). Those funds were paid to Spencer⁹. (R. p. 28). Judge Early retained jurisdiction to consider the remaining issues including Rakowsky's request for interpleader. *Id.*

On September 12, 2014, Judge Early's law clerk related (via email) a request from Judge Early that asking for proposed orders from any party who wished to submit one. (R. p. 526) (Email not of record, designated as a courtesy to the Court). At the request of Mr. Sribnick, another email was sent from Judge Early's clerk to the parties on October 4, 2014, specifying the specific issues to be addressed in any proposed orders the parties wished to submit. (R. p.527) (Email not of record, designated as a courtesy to the Court¹⁰).

⁸ A subsequent letter dated December 17, 2015 from Ronald Serota, who is believed to be a suspended attorney from Nevada who was previously representing Spencer in the Southern Holdings case, was filed with the Fourth Circuit on December 23, 2015. (Case No. 14-1678, ECF 126), ostensibly on behalf of the appellants in that case.

⁹ While not evident from the record at the trial court, Spencer negotiated the check in January, 2015. Should an objection be made to inclusion of this factual statement, which is believed to be undisputed, this footnote will be eliminated from the final brief.

¹⁰ Should objection be made to inclusion of these emails, which are not a part of the record at the circuit court, the designation of those emails will be withdrawn.

Rakowsky's counsel submitted a proposed order by letter dated October 23, 2014. (R. p. 531) (Letter not of record, designated as a courtesy to the Court). The record does not reflect that either Mr. Spencer or Mr. Sribnick submitted a proposed order; however, Mr. Sribnick did send an email objecting generally to Rakowsky's order (not to any specific portion thereof). (R. p. 533) (Letter not of record, designated as a courtesy to the Court).

Judge Early issued his final order on December 18, 2014 and it was recorded on December 23, 2014. (R. p.28). The order granted the request for interpleader in part, granted Rakowsky's request for attorney's fees from the settlement proceeds, granted in part Rakowsky's motion for equitable indemnification, denied Rakowsky's motion for judgment against Spencer and other parties, and discharged Rakowsky from any further obligations regarding the settlement funds. *Id.* No motions for reconsideration were filed; instead, a Notice of Appeal dated January 20, 2015 was docketed by this Court on February 2, 2015. Rakowsky did not appeal, even though some of the relief he requested was denied.

ARGUMENT

Issue A and B

Issues A and B in Appellant's Initial Brief have already been adjudicated and are therefore not before this Court on appeal.

In Issues A and B of their brief, appellants argue issues regarding Rakowsky's handling of the litigation funds which were advanced to him for purposes of the Southern Holdings litigation. This issue was addressed in detail by Judge Early in his June 2014 order. (R. pp. 16-27). The dismissal of that appeal by this Court (order dated April 23, 2015) was based on jurisdictional grounds, *i.e.*, this Court never gained jurisdiction over the appeal because the notice of appeal was not timely served or filed. These issues are the "law of the case" and are therefore not before this Court. Dreher v. South Carolina

Department of Health and Environmental Control, Case No. 27507 (Decided March 18, 2015), affirming in part 399 S.C. 259, 730 S.E.2d 922. *See also* Charleston County Assessor v. LMP Properties, 403 S.C. 194, 743 S.E.2d 99 (Ct.App. 2013).

In Issue A, appellants argue that Rakowsky had a duty to account regarding the litigation funds. Rakowsky has provided a detailed accounting pursuant to Judge Early's instruction, by filing his own affidavit and the Affidavit of Mara Ballard, a forensic accountant employed by Rakowsky's counsel¹¹. (R. p.503; Supp. R. p. 4). Rakowsky's affidavit contained exhibits detailing his receipt of litigation funds advanced for handling the Southern Holdings case, as well as his disbursement and accounting thereof. *Id.* Mara Ballard's affidavit reflected a reconciliation of Rakowsky's trust account that independently verified Rakowsky's recitation of his handling of the advanced litigation funds. Judge Early's June 2014 order indicated his "mandate to the parties to provide an accounting of litigation funds provided to Rakowsky and/or Falgione. . ." (R. p. 20).

These affidavits were filed at the request of appellants, whose request for an accounting was granted by Judge Early. (R. p. 20). The request for accounting was contained in the Certain Defendant's Response to Second Amended Complaint for Interpleader (R. p.466 ¶2). Judge Early's directive is referenced by Appellants on Page 6 of their Initial Brief but it does not appear to be designated. It is, however, referenced in Judge Early's June 2014 order (R. p. 19).

¹¹ Despite urban legend to the contrary, Mara Ballard and Rakowsky's counsel are not related by blood or marriage. They were briefly and tangentially related by marriage during the late 1980s, but that relationship ended following Mara Ballard's divorce from the former step-son of Rakowsky's counsel, long before Mara Ballard became an employee of Rakowsky's counsel in 1997. Mara Ballard is a certified fraud examiner and forensic accountant whose expertise is spelled out in her affidavit. (R. p. 370).

Moreover, it does not appear that appellants, or any of them, filed a motion to reconsider Judge Early's June 2014 order after he received and relied on the affidavits. Appellants represented by Sribnick did file an "Omnibus Emergency Motions Including Motion to Compel" on July 29, 2014 in which they raised objections regarding the affidavits. (R. p. 371) Spencer also filed an Omnibus motion, but it was not served on Rakowsky. The Omnibus motions were denied by order of Judge Early dated September 20, 2014. (R. p. 12).

In Issue B, appellants argue that the "proper procedure" for an accounting was not followed. Other than the "omnibus" motions, which are not a part of this appeal, this issue has not been raised before and is not preserved. Brouwer v. Sisters of Charity Providence Hospitals, 409 S.C. 514, 763 S.E.2d 200 (Ct.App. 2014).

Had this been a lawsuit brought by appellants against Rakowsky asking for an accounting, perhaps the case law cited by Appellants would be relevant. However, this was an interpleader action; Judge Early asked for an accounting and received it. He ruled on it. His ruling in June, 2014 is a final order and issues regarding the accounting are not before this Court in this appeal. Brouwer, supra. Additionally, appellants do not take issue with Rakowsky's own affidavit; they merely object to the affidavit by Mara Ballard. Any error in relying upon Mara Ballard's affidavit is harmless, since Rakowsky's own affidavit, to which no challenge is made on appeal. Notwithstanding the other issues set forth above, the "two-issue rule" requires that the trial court's order be affirmed, since no appeal is taken from the admission of Rakowsky's own affidavit. Horton v. City of Columbia, 408 S.C. 27, 757 S.E.2d 537 (Ct.App. 2014).

These issues are not preserved, have already been finally adjudicated, and are without merit.

Issue C

Appellants' argument regarding discovery is barred.

Appellants' argument in Issue C seems to relate to an order issued by Circuit Judge William H. Seals Jr. dated July 25, 2011, although Issue C does not actually identify what order is being addressed challenged in Issue C. Appellants have identified Judge Seal's order as Item 5 in their designations, so Rakowsky assumes that order is the subject of the argument set forth in Issue C.

Judge Seals' order dated July 25, 2011 ruled on several motions, one of which was a motion by Rakowsky to quash a subpoena served on Rakowsky by Spencer. (R. p.1). The subpoena in question is not of record. Additionally, the basis of Judge Seals' ruling was his personal *in camera* review of financial documents, which he determined were privileged and not subject to discovery.

Setting aside the question of whether a party can subpoena documents from another party (as opposed to requesting production through discovery), the issues raised by appellants in Issue C were not raised at the trial level. Judge Seals did not address the constitutional issue now being argued in Issue C, so this argument is not preserved for appeal. Brouwer, *supra*.

A party may raise on appeal an interlocutory order when the party appeals a final order. S.C. Code Ann. Section 14-3-330(1) (1976, as amended). Appellants could have raised objections to Judge Seals' order when they appealed from Judge Early's June, 2014 order, which was a final order. They did not do so. Even if they had, however, the dismissal (on jurisdictional grounds) of appellant's appeal (see this Court's order dated

April 23, 2015) also dismissed any opportunity that may have existed by virtue of Section 14-3-330(1) to raise interlocutory orders on appeal. The Notice of Appeal dated September 17, 2014 identified only Judge Early's order dated July 10, 2014 (*sic*, actual date June 23, 2014) as the subject of the appeal. Rule 203(e), SCACR, requires that a Notice of Appeal identify "[t]he date of the order, judgment, or sentence from which the appeal is taken. . .". Appellant's opportunity to appeal from Judge Seals' order came and went. Judge Seals' order is final and cannot now be appealed.

Moreover, appellants' argument in Issue C does not identify what "documents" they are arguing about, or what difference production of the documents would have made. Conclusory arguments which lack specificity may be considered by this Court to be an abandonment of an issue (even if the issue were otherwise properly before the Court). Mulherin-Howell v. Cobb, 362 S.C. 588, 608 S.E.2d 587 (Ct.App. 2005).

Lastly, appellants assert that Judge Seals "never revealed" what documents he reviewed prior to ruling. That's simply not true. Judge Seals' order clearly stated what documents he reviewed. (R. p. 1). Appellants' do not raise any objection, nor could they, to the process of a circuit judge conducting an *in camera* review of documents in order to rule on a discovery motion.

This issue is not preserved, has already been adjudicated, and is without merit.

Issue D

There was no requirement that Rakowsky unilaterally pay the funds into court while a federal action was litigated; nonetheless, the action was brought seeking to pay the funds into court, and appellants objected to it.

Appellants argue that Rakowsky should have paid the funds which were the subject of this interpleader into court "to await the Final Decisions on the Appeals in the Federal Courts." (Appellants' Initial Brief p. 13). They cite to a transcript of a status conference

held before Judge Barber which resulted in no orders being issued. Discussions by a judge during a status conference are certainly not orders.

Appellants have been trying to set aside the May 2007 settlement in federal court since it occurred. They still seek to do so. The circuit court was never asked to stay the state court proceedings while the federal court action was litigated (other than Sribnick's inflammatory email to Judge Early dated October 24, 2014, which was apparently sent in response to the proposed order submitted by Rakowsky's counsel). (R. p. 533).

It was because of the appellants' never-ending challenges to the May 2007 settlement that this entire action was brought. Rakowsky held funds which belonged to someone, and he had an obligation to try to pay them into Court so claims could be made and adjudicated. Appellants cite no authority that the pendency of endless motions to reconsider and re-open a federal court case somehow prevents a state court from considering an independent interpleader. The PACER online docket for the Southern Holdings settlement, Case No. 4:02-cv-01859-RBH specifically states that the matter is "closed." The existence of patently frivolous and nauseatingly endless filings in the Fourth Circuit Court of Appeals, in Case No. 14-1678 does not prevent the circuit court from adjudicating issues presented to it. Appellants cite no authority to the contrary.

Moreover, appellants (and others) specifically objected to Rakowsky's request to interplead funds into the Court. (R. p. 461).

This issue is without merit.

Issue E

Rakowsky was entitled to the attorney fees due him from the Southern Holdings litigation.

Rakowsky filed a claim against interpleaded funds on December 12, 2013 for payment of attorney fees due him from the settlement proceeds. (R. p. 473). No objection was made. No motion was ever filed by any appellant submitting copies of fee agreements or making the arguments now raised about the content of fee agreements. This is a new issues that has not previously been raised. This issue was not raised (by Rule 59(e)) following Judge Early's order granting Rakowsky recovery of attorney fees. The issue is not preserved.

More importantly, this is an issue which could and probably should have been raised in the legal malpractice case that Spencer filed against Rakowsky and Falgione. *See* footnote 1. The raising of this issue in this forum, at this time, is characteristic of the approach which appellants have taken to this litigation throughout. Rather than filing motions, objections or following proper procedure, appellants wrote letters and emails to virtually every judge who touched this case, crying "poor, poor, pitiful me¹²" and whining that they were not being treated fairly.

This issue is without merit.

Issue F

Appellants cannot request compensation on appeal.

Amazingly, appellants ask this Court to award them "compensation" for being deprived of "their funds. . ." There are no "their funds." Judge Early determined in his June 2014 order that the remaining litigation funds were due to Spencer and only Spencer.

¹² Authored by Warren Zevon, 1975, recorded and released on May 10, 1976 by Asylum Records.

The argument in Issue F seems to be addressing Judge Early's denial of sanctions requested by Spencer, although it is difficult to tell, especially when appellants' request unspecified "compensation." While it is true that Spencer filed a motion for sanctions against Rakowsky's former counsel Stephanie Weissenstein (R. p. 123), Judge Early clearly examined the facts and circumstances of the case and determined that his order was the first time funds could be released. (R. p. 28). Spencer never made a motion for release of the funds, and the pleadings filed by Spencer and the other appellants were a confused mix of directions and positions taken by those parties about whose money was being held, where it came from, where it should go, and even whether there was even a settlement at all.

Judge Early did not abuse his discretion in failing to award sanctions. And there is no request for "compensation" to appellants embraced by the pleadings in this matter. This issue is completely without merit.

CONCLUSION

Spencer is essentially a professional litigant as it relates to this matter. In addition to the endless filings in United States District Court for the District of South Carolina in the Southern Holdings case, Civil Action No. 4:02-cv-1859-RBH, and in the Fourth Circuit Court of Appeals in Case No. 14-1678 (both already cited), he and his compatriots have filed numerous complaints against Rakowsky with the Commission on Lawyer Conduct (all of which were dismissed), and multiple other lawsuits in different venues hoping to find a sympathetic forum for their constant blathering. See, by way of example:

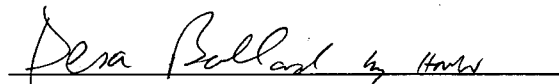
- Legal malpractice action filed December, 2011 in Richland County, Case No. 2011-CP-40-5384, now the subject of Appellate Case No. 2014-000091 (still pending),

- Center for Legal Reform v. Rakowsky, filed December 19, 2012 in the United States District Court for the District of Nevada, Case No. 2_12-cv-02161-JAD, transferred to United States District Court for the District of South Carolina as Case No. 3:14-cv-01674-JFA¹³;
- Lail v. United States Government *et al*, United States District Court, District of Columbia, Case No. 1:10-cv-00210-PLF, which included as Defendants the south Carolina Law Enforcement Division (SLED) and all the defense attorneys from the original Southern Holdings litigation;

There may well be others.

This appeal is without merit and Judge Early's order should be affirmed in its entirety.

Respectfully submitted,



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ATTORNEYS FOR RESPONDENT

September 15, 2016

¹³ In 2014, a motion was filed seeking to add Rakowsky's undersigned counsel, her former associate Stephanie Weissenstein, Mara Ballard, and others as defendants. The motion was denied. (ECF 67).

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Richland County
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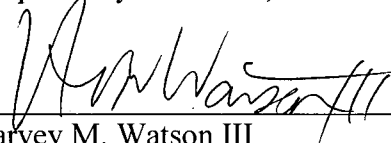
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CERTIFICATE OF COUNSEL

Typographical errors on page 8 and 9 were corrected changing "Appellant's" to
"Appellants." No other changes were made, and thus the undersigned hereby certifies that
this Final Reply Brief complies with Rule 211(b), SCACR.

Respectfully submitted,


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