

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

67971

Appeal from Beaufort County  
Roger M. Young, Circuit Court Judge

Case No. 2010-CP-07-4146

Ron Orlosky in his capacity as Personal Representative of  
The Estate of Debora L. Orlosky and in his capacity as trustee  
of the Debora Laura Orlosky Revocable Trust.....  
Respondent

v

The Law Office of Jay A. Mullinax, LLC, .....Appellant

**RESPONDENT'S MOTION FOR INVOLUNTARY DISMISSAL  
AND MEMORANDUM IN SUPPORT**

Pursuant to Rule 206(a), SCACR, Respondent Ron Orlosky, by and through his undersigned counsel, hereby moves to dismiss the above captioned appeal on the grounds that The Law Office of Jay A. Mullinax, LLC (Appellant) has failed to comply with the requirements of the South Carolina Appellate Court Rules (Rules) as more fully set forth below in the Memorandum in Support. The grounds for this Motion are Appellant has failed to meet its burden to provide the Transcript and has not filed its initial brief in the nearly ten months since having filed their Notice of Appeal with this Court. Appellant's unwarranted delay in this appeal is prejudicial to the Respondent, and the appeal should be dismissed.

RECEIVED

APR 09 2013

SC Court of Appeals

## **MEMORANDUM IN SUPPORT**

### **BACKGROUND**

On April 20, 2012 a Beaufort County Jury returned a verdict in favor of Respondent and against Appellant in the amount of \$80,000.00 actual damages. On April 26, 2012 Appellant filed post-trial motions for Directed Verdict, Relief from Judgment To Alter or Amend Judgment, and for a New Trial Absolute or New Trial Nisi Remittitur which were denied on May 17, 2012. Appellant filed the Notice of Appeal on June 18, 2012, and requested the transcript from the court reporter and from the Beaufort County Clerk of Court on June 25, 2012.

### **DISCUSSION**

Appellant has failed to comply with the Rules regarding the receipt of the trial transcript, has not files its initial brief, and the intentional delay has prevented the appeal from going forward to the prejudice and detriment of Respondent.

Rule 207(a)(1), SCACR, provides the transcript must be requested within 10 days after the date of service of the notice of appeal. Rules 201(a)(2) and (3), SCACR, establish the time in which the court reporter is required to provide the requested transcript. An appellant is not required to file its initial brief until 30 days after receiving the trial transcript. Rule 208(a)(1).

The only correspondence from Appellant to the court reporter of which Respondent is aware is the June 25, 2012 letter to the reporter initially requesting the transcript. Copies of this letter were provided to Respondent's counsel, the Clerk of the Court of Appeals, and the Beaufort County Clerk of Court. Also on June 25 Appellant

sent a letter to the Beaufort County Clerk of Court in which it is acknowledged that the reporter was no longer employed by the court and could not be located. (Copies of these letters are included at **Attachment A**) This letter too was provided to Respondent's counsel and to the Clerk of the Court of Appeals. However, Appellant failed to provide a copy of either letter to the Office of Court Administration as required by Rule 207(a)(1), SCACR. The purpose of the Rules' notification requirement is to ensure that everyone - the opposing party and all of the necessary court officials - is apprised of the status of the appeal and when to expect receipt of the transcript. This notification assists in identifying and addressing problems with the delivery of the transcript so the appeal can proceed timely. The appeal in this case has been delayed unnecessarily because of Appellant's failure to meet its obligation under Rule 207(a)(1), SCACR.

Additionally, and although Appellant notified Court Administration of the fact that the transcript had not been received by letter of September 6, 2012, that letter represents the last effort made by the Appellant to pursue its appeal. Since it is the Appellant's responsibility to either obtain the transcript or to initiate a motion to proceed without one, the lack of any activity to move the appeal forward after more than ten months appears deliberate. The Appellant clearly was aware that the court reporter could not be found when he wrote to the Beaufort County Clerk of Court of June 25, 2012. However, when he wrote to Court Administration more than two months later, that fact was not mentioned in his letter of September 6, 2012. (**Attachment B**)

Respondent attempted on four separate occasions to communicate with Appellant to determine the status of the appeal or any extension which may have been granted the

court reporter to deliver the transcript. Copies of those letters dated September 19, 2012, October 1, 2012, February 8, 2013, and February 15, 2013 are included at **Attachment C**. Appellant failed to respond to any of these inquiries, and ignored Respondent's letters.

On March 21, 2013, and at the request of the Beaufort County Probate Court, Michael L.M. Jordan, Esquire contacted the Clerk of the Court of Appeals to ascertain the status since The Estate of Debora Orlosky which he represents has not been able to be closed as a result of and pending the outcome of this appeal. (**Attachment D**) Subsequently, the Court communicated with Appellant on March 25, 2013, and On March 29, 2013 Appellant again advised that it had not received the transcript. In its communication with the Court, Appellant again fails to mention anything about the inability to contact the court reporter or the fact that transcripts are not available.

**(Attachment E)**

Since June of 2012 Appellant has taken no action to move its appeal forward and has communicated no intent to do so to this Court or to Respondent. Not only is the Respondent unable to close the Probate Estate of his late wife, but he is unable to collect the substantial judgment awarded to him by the jury almost a year ago. Thus, Respondent's rights are being prejudiced by the Appellant's seemingly deliberate delay in prosecuting its appeal. Because Appellant is not required to file a brief until after receipt of the transcript, the longer Appellant can unduly delay receiving the transcript or making the appropriate motion to proceed with the appeal in the absence of the transcript, the longer Respondent's must wait before being able to go forward, either in this appeal or in

the winding up of his late wife's Probate Estate.

This delay should not be tolerated, and Rule 260(a), SCACR, mandates dismissal: Whenever it appears that an appellant or a petitioner has failed to comply with the requirements of these Rules, the clerk **shall** issue an order of dismissal, which shall have the same force and effect as an order of the appellate court. . . . The clerk shall remit the case to the lower court or administrative tribunal in accordance with Rule 221 . . . (Emphasis added). "[T]he South Carolina Appellate Court Rules are not mere technicalities but provide the parties and this Court with an orderly mechanism through which to guide appeals in this State." *Henning v. Kaye*, 307 S.C. 436, 437, 415 S.E.2d 794, 794 (1992).

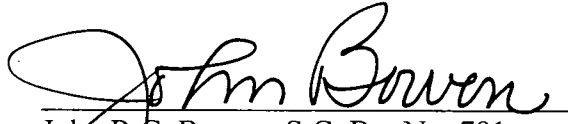
In *Henning*, the respondent moved for dismissal of the appeal because the appellant failed to follow several Rules regarding the formatting and content of the brief and record on appeal. 307 S.C. at 437-38, 415 at 794. The Supreme Court declined to dismiss the appeal, instead providing fifteen days for the appellant to file a compliant brief and record on appeal, but said, "this Court would be completely justified in dismissing this appeal based on appellant's numerous violations of the Rules." *Henning*, 307 S.C. at 437, 415 at 794. In *Henning*, unlike the present case, Appellant had attempted to move his appeal along, and had filed the initial brief; it was simply filed improperly. Accordingly, the Supreme Court declined to sanction Appellant by dismissing the appeal. Dismissal seems a harsh result when a party effectively has moved his appeal through the system. However, dismissal is appropriate in the instant case.

Appellants has made virtually no effort, other than filing a Notice of Appeal and sending a letter requesting a transcript to an address they apparently know is incorrect, to prosecute the appeal of the order denying the post trial motions in favor of the Jury's Verdict. The delay persists even in the face of a letter from this Court concerning the transcript to which the Appellant has disingenuously replied only that his "office has not received the transcript or notification of an extension" rather than advising the Court of the well known problems with the court reporter, or requesting some other relief. Appellant has not made sufficient efforts to procure the transcript or follow the Rules, and effectively is allowing its Appeal to languish in the system to the detriment of the Respondent.. Since it is the Appellant's responsibility to move the appeal forward, and since it appears that Appellant has made no good faith efforts to that end, this appeal should be dismissed pursuant to Rule 260(a), SCACR, for failure to comply with this Court's Rules.

### **CONCLUSION**

Because Appellant has neglected to secure the trial transcript, follow the Rules, or make any genuine effort to prosecute its appeal, Respondent respectfully requests this appeal be dismissed pursuant to Rule 260(a), SCACR, for failure to comply with the requirements of the Rules, and remitted to circuit court.

Respectfully submitted,

A handwritten signature in black ink that reads "John Bowen". The signature is written in a cursive style with a large, looping initial "J".

John R.C. Bowen, S.C. Bar No. 791

[john@laughlinandbowen.com](mailto:john@laughlinandbowen.com)

Laughlin & Bowen, P.C.

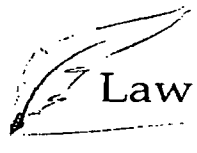
Post Office Drawer 21119

Hilton Head Island, SC 29925

(843) 689-5700

April 5, 2013  
Hilton Head Island, South Carolina

# ATTACHMENT A



Law Office of Jay A. Mullinax, LLC

2 PARK LANE, SUITE 303  
HILTON HEAD ISLAND, SC 29928

June 25, 2012

**VIA U.S. POSTAL SERVICE**

Ms. Lynn Bonge, Clerk  
Beaufort County Clerk of Court  
P.O. Box 1128  
Beaufort, SC 29901-1128

Re: Ron Orlosky in his capacity as Personal Representative of the Estate of Debora L. Orlosky, and in his capacity as Trustee of the Debora Laura Orlosky Revocable Trust v. The Law Office of Jay A. Mullinax, LLC  
Case No.: 2010-CP-07-4146

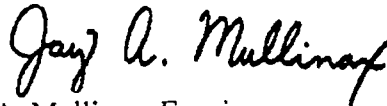
Dear Ms. Bonge:

As discussed, on April 18-20, 2012, the above case was tried before the Honorable Roger M. Young, Circuit Court Judge, in Beaufort County. We are trying to contact Deborah Everett, the court reporter for the case, to order the transcript. Please accept this as our formal request for the transcript. It is our understanding that Deborah Everett no longer works for the Court. Please contact us with Deborah Everett's contact information as soon as possible so that we can directly coordinate with her to obtain the transcript.

If you have any questions or require anything further, please do not hesitate to contact our office. Thank you for your time and attention to this matter.

Very truly yours,

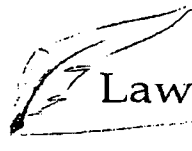
LAW OFFICE OF JAY A. MULLINAX, LLC



Jay A. Mullinax, Esquire

JAM:ink

Cc: John R.C. Bowen, Esquire  
South Carolina Court of Appeals



Law Office of Jay A. Mullinax, LLC

2 PARK LANE, SUITE 303  
HILTON HEAD ISLAND, SC 29928

June 25, 2012

**VIA U.S. POSTAL SERVICE**

Ms. Deborah Everett  
1104 Green Street  
Beaufort, SC 29902

Re: Ron Orlosky in his capacity as Personal Representative of the Estate of Debora L. Orlosky, and in his capacity as Trustee of the Debora Laura Orlosky Revocable Trust v. The Law Office of Jay A. Mullinax, LLC  
Case No.: 2010-CP-07-4146

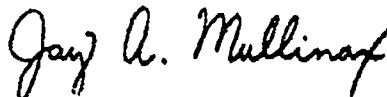
Dear Ms. Everett:

On April 18-20, 2012, the above case was tried before the Honorable Roger M. Young, Circuit Court Judge, in Beaufort County. My records indicate that you were the court reporter for this case. Please accept this as my formal request for the transcript of the proceedings. I agree to pay the per page charge for this transcript as provided by Rule 607, SCACR.

If you have any questions or require anything further, please do not hesitate to contact our office. Thank you for your time and attention to this matter.

Very truly yours,

LAW OFFICE OF JAY A. MULLINAX, LLC



Jay A. Mullinax, Esquire

JAM:lnk

Cc: John R.C. Bowen, Esquire  
South Carolina Court of Appeals  
Office of Court Administration

# **ATTACHMENT B**



Law Office of Jay A. Mullinax, LLC

2 PARK LANE, SUITE 303  
HILTON HEAD ISLAND, SC 29928

September 6, 2012

**VIA U.S. POSTAL SERVICE**

Office of Court Administration  
1015 Sumter Street, Suite 200  
Columbia, SC 29201

Re: Ron Orlosky, Respondent v. The Law Office of Jay A. Mullinax, LLC, Appellant  
Appellate Case No.: 2012-212331

To Whom It May Concern:

Pursuant to Rule 207(a)(5), please allow this correspondence to serve as notice that our office has failed to receive the transcript that was requested in correspondence sent to Ms. Deborah Everett, the court reporter, on June 25, 2012. Also, we have not received notification of an extension. Please advise our office if you require any further action on our part in order to obtain the requested transcript.

If you have any questions, please do not hesitate to contact our office. Thank you for your time and attention to this matter.

Very truly yours,

LAW OFFICE OF JAY A. MULLINAX, LLC

Jay A. Mullinax, Esquire

JAM:lnk

Cc: Ms. Jenny Abbott Kitchings, Clerk of Court, South Carolina Court of Appeals  
Mr. John R.C. Bowen, Esquire  
Ms. Deborah Everett, Court Reporter

# ATTACHMENT C

**LAUGHLIN & BOWEN. P.C.**

P.O. Drawer 21119  
Hilton Head Island, South Carolina 29925  
WWW.LAUGHLINANDBOWEN.COM

Drew A. Laughlin  
John R.C. Bowen\*  
Jennie S. Cerrati\*\*  
\*Admiralty Law  
\*\*Admitted in CA and SC

Telephone  
(843)689-5700  
Facsimile  
(843)689-9300  
Sender's E-Mail  
john@laughlinandbowen.com

September 19, 2012

VIA U.S. MAIL & FACSIMILE TO: 843-785-6104

Mr. Jay A. Mullinax  
The Law Office of Jay A. Mullinax, LLC  
2 Park Lane, Ste 303  
Hilton Head Island, SC 29928

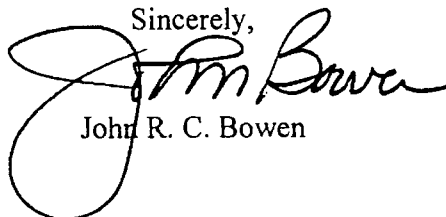
RE; Orlosky v. Mullinax  
Appellate Case No.: 2012-212331

Dear Mr. Mullinax:

On September 6, 2012, you sent a letter to the Office of Court Administration regarding the transcript. I would like to know whether or not you have had a response to your inquiry such as an extension being granted. Please advise immediately.

In the meantime, and with kind regards, I am

Sincerely,



John R. C. Bowen

JRCB/sv  
cc: Mr. Ronald Orlosky (via e-mail)

**LAUGHLIN & BOWEN, P.C.**

P.O. Drawer 21119  
Hilton Head Island, South Carolina 29925  
WWW.LAUGHLINANDBOWEN.COM

Drew A. Laughlin  
John R.C. Bowen\*  
Jennie S. Cerrati\*\*  
\*Admiralty Law  
\*\*Admitted in CA and SC

Telephone  
(843)689-5700  
Facsimile  
(843)689-9300  
Sender's E-Mail

[john@laughlinandbowen.com](mailto:john@laughlinandbowen.com)

October 1, 2012

VIA U.S. MAIL & FACSIMILE TO: 843-785-6104

Mr. Jay A. Mullinax  
The Law Office of Jay A. Mullinax, LLC  
2 Park Lane, Ste 303  
Hilton Head Island, SC 29928

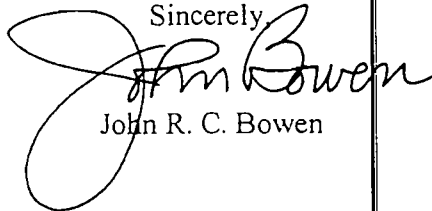
RE; Orlosky v. Mullinax  
Appellate Case No.: 2012-212331

Dear Mr. Mullinax:

On September 6, 2012, you sent a letter to the Office of Court Administration regarding the transcript. I would like to know whether or not you have had a response to your inquiry such as an extension being granted. Please advise immediately.

In the meantime, and with kind regards, I am

Sincerely,



John R. C. Bowen

JRCB/sv

cc: Mr. Ronald Orlosky (via e-mail)

**LAUGHLIN & BOWEN. P.C.**

P.O. Drawer 21119  
Hilton Head Island, South Carolina 29925  
WWW.LAUGHLINANDBOWEN.COM

Drew A. Laughlin  
John R.C. Bowen\*  
Jennie S. Cerrati\*\*  
\*Admiralty Law  
\*\*Admitted in CA and SC

Telephone  
(843)689-5700  
Facsimile  
(843)689-9300  
Sender's E-Mail  
john@laughlinandbowen.com

February 8, 2013

**VIA COURIER & FACSIMILE TO: 843-785-6104**

Mr. Jay A. Mullinax  
The Law Office of Jay A. Mullinax, LLC  
2 Park Lane, Ste 303  
Hilton Head Island, SC 29928

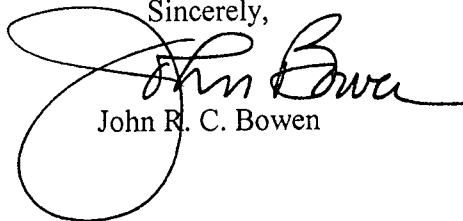
RE; Orlosky v. Mullinax  
Appellate Case No.: 2012-212331

Dear Mr. Mullinax:

On September 6, 2012, you sent a letter to the Office of Court Administration regarding the transcript. I would like to know whether or not you have had a response to your inquiry such as an extension being granted. I have posed this question to you twice before (in September and October of 2012), but have not had the courtesy of any response. Please advise immediately.

In the meantime, and with kind regards, I am

Sincerely,



John R. C. Bowen

JRCB/sv

cc: Mr. Ronald Orlosky (via e-mail)

**LAUGHLIN & BOWEN. P.C.**

P.O. Drawer 21119  
Hilton Head Island, South Carolina 29928  
WWW.LAUGHLINANDBOWEN.COM

Drew A. Laughlin  
John R.C. Bowen\*  
Jennie S. Cerrati\*\*  
\*Admiralty Law  
\*\*Admitted in CA and SC

Telephone  
(843)689-5700  
Facsimile  
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Sender's E-Mail  
john@laughlinandbowen.com

February 15, 2013

VIA COURIER & FACSIMILE TO: 843-785-6104

Mr. Jay A. Mullinax  
The Law Office of Jay A. Mullinax, LLC  
2 Park Lane, Ste 303  
Hilton Head Island, SC 29928

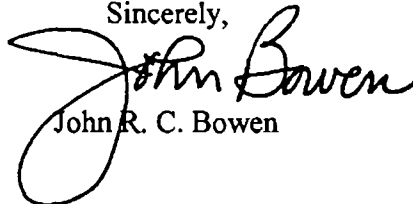
RE: Orlosky v. Mullinax  
Appellate Case No.: 2012-212331

Dear Mr. Mullinax:

As you know, the court reporter from whom you requested the transcript no longer works for the court, and has not done so since the Spring of 2012. I am advised that the Court has been unable to locate her, and that transcripts are not available. I have written to you concerning the transcript on three previous occasions without the courtesy of any response. Please advise immediately if you intend to pursue this appeal.

In the meantime, and with kind regards, I am

Sincerely,

  
John R. C. Bowen

JRCB/sv

cc: Mr. Ronald Orlosky (via e-mail)

# ATTACHMENT D

**COPY**

**MCNAIR**  
ATTORNEYS

Michael L. M. Jordan

mjordan@mcnair.net  
T (843) 785-2171  
F (843) 686-5991

March 21, 2013

Jenny Abbott Kitchings, Clerk of Court  
South Carolina Court of Appeals  
1015 Sumter Street  
Columbia, South Carolina 29201

Re: *Ron Orlosky, Respondent v.*  
*Law Office of Jay A. Mullinax, LLC, Appellant*  
Appellate Case Number: 212-212331  
Our File Number: 053505.00001

Dear Ms. Kitchens:

Please be advised we represent the personal representative, Ronald J. Orlosky, with regard to his wife's (Deborah L. Orlosky) estate administration in the Beaufort County Probate Court in case number 2009ES0700512. Mrs. Orlosky died on June 17, 2009. Her estate has remained open pending the outcome of the appeal filed by Mr. Jay A. Mullinax on June 18, 2012.

The Beaufort County Probate Court has requested we provide them with an update as to the status of the appeal. We would appreciate your cooperation in providing this information at your earliest convenience.

Very truly yours,

McNAIR LAW FIRM, P.A.

  
Michael L. M. Jordan

MLMJ:ksd

cc: The Honorable Kenneth E. Fulp Jr., Beaufort County Probate Court  
Ronald J. Orlosky, Personal Representative & Respondent  
John R. C. Bowen, Esquire – Attorney for Respondent  
HILTONHEAD 806875v1 053505-00001

McNair Law Firm, P. A.  
Shelter Cove Executive Park  
23-B Shelter Cove Lane, Suite 400  
Hilton Head Island, SC 29928

Mailing Address  
Post Office Drawer 3  
Hilton Head Island, SC 29938

mcnair.net

# **ATTACHMENT E**



## The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

V. CLAIRE ALLEN  
DEPUTY CLERK

POST OFFICE BOX 11629  
COLUMBIA, SOUTH CAROLINA 29211  
1015 SUMTER STREET  
COLUMBIA, SOUTH CAROLINA 29201  
TELEPHONE: (803) 734-1890  
FAX: (803) 734-1839  
[www.sccourts.org](http://www.sccourts.org)

March 25, 2013

Mr. Jay Anthony Mullinax  
2 Park Lane, Ste. 303  
Hilton Head Island SC 29928

Re: Ron Orlosky v. The Law Office of Jay Mullinax  
Appellate Case No. 2012-212331

Dear Counsel:

This will acknowledge receipt of your letter dated September 6, 2012 in which you stated you had failed to receive the transcript for the above mentioned case on appeal.

Please be advised that, pursuant to Rule 207 of the South Carolina Appellate Court Rules, you must immediately notify the Court in writing of the date the transcript is received from the court reporter so that appropriate timelines may be set for perfecting this appeal.

Please provide the Court with a written status update regarding the transcript within seven (7) days of the date of this letter.

Very truly yours,

  
CLERK

cc: John R.C. Bowen



Law Office of Jay A. Mullinax, LLC

2 PARK LANE, SUITE 303  
HILTON HEAD ISLAND, SC 29928

March 29, 2013

**VIA U.S. POSTAL SERVICE**

Jenny Abbott Kitchings, Clerk  
South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, SC 29211-1629

Re: Ron Orlosky v. The Law Office of Jay Mullinax  
Appellate Case No. 2012-212331

Dear Ms. Kitchings:

I am writing in response to your correspondence dated March 25, 2013. As of today, our office has not received the transcript or notification of an extension.

If you have any questions, please do not hesitate to contact our office. Thank you for your time and attention to this matter.

Very truly yours,

LAW OFFICE OF JAY A. MULLINAX, LLC

Jay A. Mullinax, Esquire

JAM:kem

Cc: Mr. John R.C. Bowen, Esquire

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

Appeal from Beaufort County  
Roger M. Young, Circuit Court Judge

---

Case No. 2010-CP-07-4146

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Ron Orlosky in his capacity as Personal Representative of  
The Estate of Debora L. Orlosky and in his capacity as trustee  
of the Debora Laura Orlosky Revocable Trust.....  
Respondent

v

The Law Office of Jay A. Mullinax, LLC, .....Appellant

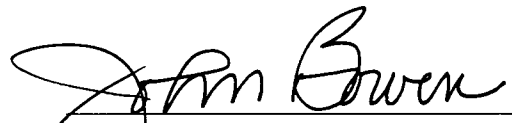
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**CERTIFICATE OF SERVICE**

---

I, John Bowen, do hereby certify that I have this date served one (1) copy of the Respondent's Motion for Involuntary Dismissal and Memorandum in Support upon the following counsel of record by causing said copy to be deposited with the United States Postal Service, first class postage prepaid and properly affixed thereto, and addressed as follows:

Jay A. Mullinax, Esquire  
Law Office of Jay A. Mullinax, LLC  
2 Park Lane, Suite 303  
Hilton Head Island, SC 29928

  
John R. C. Bowen, Esquire  
P.O. Drawer 21119  
Hilton Head Island, SC 29925  
(843) 689-5700  
Attorney for Respondent

April 5<sup>th</sup>, 2013  
Hilton Head Island, South Carolina

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APR 09 2013

SC Court of Appeals

**LAUGHLIN & BOWEN. P.C.**

P.O. Drawer 21119  
Hilton Head Island, South Carolina 29925  
WWW.LAUGHLINANDBOWEN.COM

Drew A. Laughlin  
John R.C. Bowen\*  
Jennie S. Cerrati\*\*  
\*Admiralty Law  
\*\*Admitted in CA and SC

Telephone  
(843)689-5700  
Facsimile  
(843)689-9300  
Sender's E-Mail  
john@laughlinandbowen.com

April 5, 2013

**VIA U.S. MAIL**

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

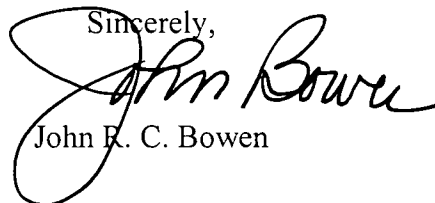
RE: Ron Orlosky v. The Law Office of Jay A. Mullinax, LLC  
Appellate Case No.: 2012-212331

Dear Ms. Kitchings:

Enclosed please find an original and seven (7) copies of Respondent's Motion for Involuntary Dismissal and Memorandum in Support and Certificate of Service along with our firm's check in the amount of \$25.00 for the filing fee. We would appreciate it if you could please file the originals and return a clocked copies to us in the enclosed self-addressed stamped envelope.

Please do not hesitate to contact us should you have any questions. In the meantime, and with kind regards, I am

Sincerely,



John R. C. Bowen

JRCB/sv

cc: Mr. Ronald Orlosky  
Mr. Jay A. Mullinax, Esquire

RECEIVED

APR 09 2013

SC Court of Appeals