

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Finkel Law Firm LLC,

PLAINTIFF,

vs.

Michael Miller, individually and in his official capacity as the Charleston County Register of Deeds,

DEFENDANT.

IN THE COURT OF COMMON PLEAS

CASE NO: 2021-CP-10-

SUMMONS

(Non-Jury)

(Petition for Writ of Mandamus)

TO THE ABOVE NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, or to otherwise appear and defend, and to serve a copy of your Answer to said Complaint upon the Plaintiff's attorneys at their office, 4000 Faber Place, Suite 450, N. Charleston, South Carolina, 29405, or to otherwise appear and defend the action pursuant to applicable court rules, within thirty (30) days after service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

FINKEL LAW FIRM LLC

/S/ Magalie A. Creech
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COMPLAINT

**(Non-Jury)
(Petition for Writ of Mandamus)**

Plaintiff, Finkel Law Firm LLC, (“FLF”) complaining of Michael Miller, individually and in his official capacity as the Charleston County Register of Deeds (“Defendant” or “Miller”), alleges as follows:

INTRODUCTION

1. This action arises out of Defendant Michael Miller’s chronic and willful failure and/or neglect to discharge his ministerial duties as the Charleston County Register of Deeds; specifically, to timely record within one month of delivery all deeds of conveyance, mortgages, and other writings concerning the titles to lands in Charleston County (“real estate documents”) under the date and in the order of time at which they are delivered to the Office of the Charleston County Register of Deeds (“Charleston ROD”).

2. Miller has allowed chronic delays of well over one month in the filing of real estate documents delivered to the Charleston ROD since late 2019 and these delays increased significantly by 2021, with some real estate documents being filed as late as four months after delivery. Miller has also adopted a practice of immediately filing real estate documents that are hand delivered to his office, while allowing hundreds or even thousands of real estate documents delivered to his office by U.S. mail or parcel delivery to be stored at the Charleston ROD until a later date, often months after the date of delivery, before they are filed.

3. Miller’s chronic and willful failure and/or neglect to timely record real estate documents has caused and will continue to cause substantial harm and potential legal liability to the parties to those real estate transactions and the attorneys and law firms who represent those parties. South Carolina is a race-notice

real estate jurisdiction and the real estate documents at issue are valid so as to affect the rights of subsequent creditors or purchasers, only from the day and hour when they are recorded in the office of the register of deeds.

4. This action is brought to petition the Court to issue a writ of mandamus ordering Miller to immediately comply with his non-discretionary and ministerial duty under law to file all real estate documents within one month of delivery to the Charleston ROD and to record these documents under the date and in the order of time at which they are delivered.

5. FLF does not seek damages for itself or its clients as aggrieved parties to Miller's willful failure and/or neglect of the duties of his office, but expressly reserves the right to bring subsequent actions for such damages under civil and/or criminal law.

PARTIES AND JURISDICTION

6. FLF is a limited liability corporation organized and existing under the laws of the State of South Carolina with offices in Charleston County, South Carolina and Richland County, South Carolina. FLF is engaged in the practice of law and a substantial portion of its practice is devoted to representing clients in real estate transactions, real estate litigation, and probate of estates, all of which involve the delivery to and filing of real estate documents with the Charleston ROD.

7. Miller's chronic and willful failure and/or neglect to timely record real estate documents under the date and in the order of time at which they are delivered to the Charleston ROD has substantially interfered with FLF's ability to meet its professional obligations to protect the interests of its clients in legal matters involving the recording of real estate documents; has exposed FLF to potential liability for correcting title problems resulting from Miller's dereliction of duty; and has caused and will cause FLF to expend valuable time and funds to monitor the status of real estate documents delivered to the Charleston ROD for filing, to respond to status inquiries from the firm's clients and third parties involved in the clients' real estate transactions, to re-examine real estate titles after the late filing of real estate documents to determine if the clients' interests have been compromised or if the clients have incurred liability due to the late filing, and

to take action to correct title problems caused by the late filing.

8. Miller is the duly elected Register of Deeds for Charleston County, whose elective office was established under the laws of the State of South Carolina and whose budget is provided by the County of Charleston. The Charleston ROD's principal place of business is located at 101 Meeting Street, Charleston, South Carolina, 29401.

9. This Court has jurisdiction over the parties and subject matter of this action and is empowered to grant the relief being sought.

(WRIT OF MANDAMUS)

10. FLF brings this action pursuant to Rule 65(f) of the South Carolina Rules of Civil Procedure and the common law of the State of South Carolina.

11. Miller has a statutory duty under South Carolina Code of Laws § 30-5-90 to FLF and its clients to timely record within one month of delivery to the Charleston ROD all real estate documents under the date and in the order of time at which they are delivered to the Charleston ROD.

12. Miller's duty to record is ministerial because it is absolute, certain, and imperative, involving merely the execution of specific duties arising from fixed and designated facts, leaving nothing to the exercise of discretion.

13. FLF's responsibility to supervise the recording of its clients' closing documents in real estate transactions pursuant to South Carolina law has been significantly frustrated by Miller's failure to satisfy his statutory duties.

14. FLF is an aggrieved party with a specific legal interest in the enforcement of the ROD's statutory recording duty.

15. Plaintiff has no other adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff petitions the Court for the following relief:

- A. That the Court issue a writ of mandamus ordering the Defendant Michael Miller to immediately file all real estate documents that have been delivered to the Charleston ROD and have not been filed within one month of delivery;
- B. That the Court's writ of mandamus also orders the Defendant to mark the recorded real estate documents as being recorded on the same date that they were delivered to the Charleston ROD.
- C. That the Court's writ of mandamus also orders the Defendant to record all real estate documents in the order of the times at which they are brought to the Charleston ROD, regardless of whether they are personally delivered or are delivered by U.S. mail or parcel post.
- D. That the Court retain jurisdiction of this matter for a reasonable period of time to monitor the continued operation of the Charleston ROD by Miller to ensure that Miller continues to comply with his non-discretionary and ministerial duty under statutory law to timely record within one month of delivery to the Charleston ROD all real estate documents under the date and in the order of time at which they are delivered to the Charleston ROD.
- E. That the Court award Plaintiff attorneys' fees and costs as authorized by law, and for;
- F. Such other and further relief as the Court deems just and proper.

(SIGNATURE PAGE FOLLOWS)

Respectfully submitted,

FINKEL LAW FIRM LLC

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Attorneys for Plaintiff

November 24, 2021
North Charleston, South Carolina