

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM WILLIAMSBURG COUNTY

Court of Common Pleas

Ferrell Cothran

Case No. 2012-212819

Marion L. Driggers

Appellant

v.

Daniel Shearhouse Clerk of Supreme Court

Honorable Jean Teal

Honorable Costa Pleicones

Honorable Donald Beatty

Honorable John Kittredge

Honorable Kay Hearne

Respondent

Record on Appeal

Marion L. Driggers – Prose

3497 Hebron Road

Lake City, South Carolina 29560

(843) 598-0735

February 28, 2013

RECEIVED

MAR 14 2013

SC Court of Appeals

STATE OF SOUTH CAROLINA

)

IN THE COURT OF APPEALS

COUNTY OF WILLIAMSBURG

)

Marion L. Driggers,

)

Appellate Case No.: 2012-212819

Plaintiff,

)

v.

)

)

CERTIFICATE OF SERVICE

)

Daniel Shearhouse, Honorable Jean Toal,

)

Honorable Costa Pleicones, Honorable

)

Donald Beatty, Honorable John Kittredge,

)

Defendants.

)

)

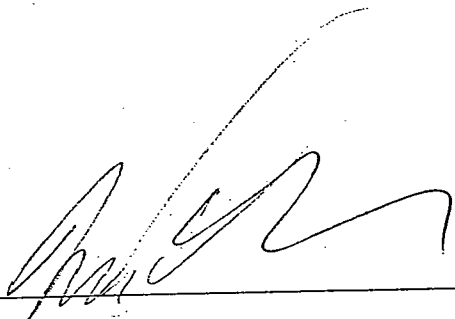
I, Marion L. Driggers Pro Se Plaintiff, do hereby certify that I have served all counsel in this action with a copy of the document below by mailing a copy of the same by United States Mail, postage prepaid, to the following address:

Document: Record on Appeal

Counsel: Tina Cundari Sowell & Gray

P O Box 11449

Columbia. South Carolina 29211



Marion L. Driggers

3497 Hebron Road

Lake City, South Carolina 29560

(843) 598-0735

February 28, 2013

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STATE OF SOUTH CAROLINA )  
 ) COURT OF COMMON PLEAS  
COUNTY OF WILLIAMSBURG )

Marion L. Driggers, )  
 )  
 APPELLANT, )  
 )  
 -VS- )  
 Daniel Shearhouse, et al., )  
 )  
 RESPONDENT. )  
\_\_\_\_\_ )

HEARING  
2011-CP-45-0648

BEFORE THE HONORABLE R. FERRELL COTHRANE, JR.

June 28, 2012

Williamsburg county, South Carolina

A P P E A R A N C E S:

Marion L. Driggers  
3497 Hebron Road  
Lake City, SC 29560

Appellant, Pro Se

Tina Cundari, Esq.  
Sowell Gray Lawfirm  
1310 Gadsden Street  
Columbia, SC 29211

For the Defendants

REMA K. GANTT THOMAS  
CIRCUIT COURT REPORTER

## E X H I B I T S

PAGE NO.

(There were no exhibits received into evidence during  
this hearing.)

(2)

1 THE COURT: Okay, whose motion is this?

2 DEFENSE ATTORNEY: My motion, Your Honor.

3 THE COURT: Which of the defendants do you  
4 represent?

5 DEFENSE ATTORNEY: I represent all of  
6 them, Your Honor.

7 THE COURT: Okay.

8 DEFENSE ATTORNEY: May it please the  
9 Court. I'm Tina Cundari and I'm here on behalf of  
10 all the defendants, the Honorable Dan Shearouse, the  
11 Honorable Jean Toal, the Honorable Costis Pleiconis,  
12 the Honorable Don Beatty and the Honorable John  
13 Kittridge.

14 This is an action that has been brought  
15 pro se by the plaintiff, Mr. Marion Driggers against  
16 the members of the Supreme Court and the Clerk of  
17 Court.

18 Mr. Driggers filed this action after his  
19 Writ of Certiorari was denied arguing that in  
20 essence that the Court did not give him reasons for  
21 denying the Writ of Certiorari. We have filed a  
22 motion to dismiss. I have also filed a memorandum  
23 in support of the motion as well as the affidavit of  
24 Dan Shearouse.

25 Does Your Honor have copies of those

1 documents or need those documents?

2 THE COURT: I have a memorandum in support  
3 of your motion in the file. Okay, I think I've got  
4 everything.

5 DEFENSE ATTORNEY: Very good. Just a  
6 little bit about the facts of this case. After the  
7 -- this case, by the way, Your Honor, has been  
8 pending since 2000. Mr. Driggers has been in front  
9 of this court several times, I believe in front of  
10 almost every judge in this county except for Your  
11 Honor. But where it has ended up is in front of the  
12 South Carolina Supreme Court.

13 The petition for writ of certiorari was  
14 denied after the court of appeals denied relief to  
15 Mr. Driggers for the second time and Mr. Driggers  
16 had began somewhat of a letter-writing campaign to  
17 the court, wrote four letters to Chief Justice which  
18 were all responded to timely and professionally and  
19 completely by the Honorable Dan Shearouse. And  
20 that's all set forth in his affidavit.

21 Mr. Shearouse explained to Mr. Driggers  
22 the standard practice of the Court not to give  
23 reasons for denying petitions for writ of  
24 certiorari. This case was not different than any  
25 other case.

1           Mr. Shearouse assured him that his case  
2 had been considered completely by the members of the  
3 Court excepting Justice Hearn who did not  
4 participate in the decision to deny the petition and  
5 informed Mr. Driggers that there was no transcript  
6 of any proceeding being denied to him but simply  
7 there was no information at all being denied to him.

8           Finally, after the fourth letter, Mr.  
9 Driggers filed the complaint against the Court. And  
10 I would ask Your Honor to dismiss the complaint for  
11 four reasons.

12           First is that there are no allegations  
13 specific to the individual members of the Court.  
14 It is fundamental that to survive a motion to  
15 dismiss the plaintiff must allege facts entitling  
16 the plaintiff relief under some theory of law. And  
17 there is absolutely no facts in his complaint.

18           I don't know if Your Honor has the  
19 complaint--

20           THE COURT: I do.

21           DEFENSE ATTORNEY: But it's essentially  
22 two paragraphs and does not mention the justices  
23 anywhere except for in the address line. So I would  
24 submit to the Court that the complaint should most  
25 definitely be dismissed as for that reason alone.

1           The second reason the complaint should be  
2 dismissed, Your Honor, is that this case is moot.  
3 There would be no practical affect from a decision  
4 in this case because there is no information to be  
5 given to Mr. Driggers. And Mr. Driggers has been  
6 given all the information that he is entitled to  
7 receive.

8           Therefore, there is no reason for this  
9 case to proceed any further. To the extent of a  
10 FOIA case, there is law in South Carolina that when  
11 documents have been provided pursuant to FOIA that  
12 it moves the case.

13           Third, Your Honor, I would submit this  
14 court does not have the authority to do what I  
15 believe Mr. Driggers is asking this court to do  
16 which is essentially to review a decision of the  
17 South Carolina Supreme Court in denying a petition  
18 for writ of certiorari. This court is without  
19 jurisdiction to do that.

20           Also the Court is without jurisdiction to  
21 review the conduct of the clerk of court in carrying  
22 out the judicial functions of his office which is  
23 the subject of this complaint.

24           Finally, Your Honor, these defendants are  
25 immune from suit. The law is well established on

1 immunity but there are exception. I've gone through  
2 those exceptions in my brief. None of those apply  
3 here.

4 The exceptions being that whenever the  
5 allegation is that the judicial officer is acting  
6 without jurisdiction at all or when the judicial  
7 officer is not performing a judicial junction or  
8 when the complaint is for perspective injunctive  
9 relieve only. And that is set forth in the Prior  
10 vs. Burns case.

11 None of those conditions are present here.  
12 The Supreme Court certainly had jurisdiction to deny  
13 the writ of certiorari. It was performing a  
14 judicial function when it did so. The members were  
15 -- Mr. Shearouse was performing judicial function  
16 and was the communicator of the court's decision to  
17 Mr. Diggers and corresponded with him. And in this  
18 complaint is seeking more than perspective  
19 conjunctive relief it is also seeking damages.

20 And for those reasons I would ask the  
21 Court to dismiss the complaint. In my motion I also  
22 suggest to the Court the Court considers the  
23 affidavit of Dan Shearouse in it's decision that  
24 because of the going outside of the pleadings at  
25 that point that this be converted to a summary

(7)

1 judgment hearing and that summary judgment be  
2 granted in favor of the defendants.

3 THE COURT: Okay, thank you.

4 DEFENSE ATTORNEY: Thank you, Your Honor.

5 THE COURT: Do you want to respond, Mr.  
6 Driggers?

7 MR. DRIGGERS: Yes, sir. On this case  
8 it's strictly a Freedom of Information Act. She is  
9 acting like it's something against the Supreme  
10 Court. It's a Freedom of Information Act. I  
11 believe that any court should have a record of why  
12 they made a decision. I don't think the Supreme  
13 Court is immune. I don't think the Court of Appeals  
14 is immune.

15 This is just a motion right here and we've  
16 still have somebody to take records on it. And I  
17 have a new case that just came off that her  
18 defendants just put in the record right here, an  
19 opinion, and before the Court's decision I'd like  
20 for this to be entered in.

21 It's Opinion Number 27138 and it was heard  
22 April 17th, 2012 and filed June 27, 2012. I just  
23 pulled it off the internet yesterday. And the sole  
24 reason this was case was filed was wa for freedom of  
25 information. That will be coming before a jury if

1 it's not dismissed here today.

2 But this case, in essence, the thing says  
3 that the legislature has specifically conferred  
4 standing upon any citizen of South Carolina to bring  
5 a FOIA claim against a public body for declaratory  
6 or injunctive relief or both. The Appellate has  
7 pled that he is a citizen of the State and that FOIA  
8 has been violated. Nothing more is required.

9 Therefore, the trial court erred in  
10 finding appellant lacked standing to assert is FOIA  
11 claim. On remand, appellate shall be entitled to  
12 pursue his FOIA claim seeking declaratory and  
13 injunctive relief.

14 And that is precisely what I have done and  
15 I've also sent this court a letter. She says that  
16 the justices shouldn't be included but I feel like  
17 that they were aware of it and I told her if she'd  
18 get me an affidavit from each one of the justices  
19 that I would relieve them. So that is my sole  
20 argument here. And that's a new opinion.

21 THE COURT: All right. Do you want to  
22 present me with that opinion or do you just want to  
23 give me a number? What does that opinion deal with?

24 MR. DRIGGERS: Well--

25 THE COURT: I can tell, you, I do not

1 have jurisdiction over the Supreme Court.

2 All right, sir--

3 MR. DRIGGERS: Let me say one more thing.

4 In an FOIA case it says the circuit court has  
5 jurisdiction over any public body.

6 THE COURT: I understand that but I don't  
7 have jurisdiction over Supreme Court. And Supreme  
8 Court has complied and given you everything that  
9 you're entitled to under the Freedom of Information  
10 Act. And you sued them individually, and the clerk  
11 -- you know, the suit is improper and I am going to  
12 dismiss it. I don't have jurisdiction.

13 MR. DRIGGERS: They don't have to have a  
14 reason?

15 THE COURT: They don't have to have a  
16 reason or any record. They can review something and  
17 say it's not something we're going to consider and  
18 deny cert and that's it. They don't necessarily have  
19 to have some hearing and some record. They can just  
20 do that simply and I assume that's what they have  
21 done.

22 MR. DRIGGERS: Well, they've got  
23 guidelines for certiorari. You've got five  
24 different things they ask for in certiorari. And I  
25 wanted to see how they were applied. I had three of

1       them I felt like that I had and somebody somewhere  
2       had to have a meeting or a hearing and say what went  
3       on and I feel like that's what the FOIA is for.

4               I mean, you know, that's for a jury to  
5       hear. And we talk about the other court cases and  
6       all, that's history. We're talking about a new FOIA  
7       case and the general assembly says that the circuit  
8       court can hear it and any citizen of the state can  
9       ask for it and that's what I'm doing.

10              THE COURT: Yes, sir, and I understand  
11       that. And you've asked for an FOIA request and they  
12       -- it's my understanding they have not refused this  
13       information they are telling you there is not  
14       information. We've given you all there is.

15              I don't have jurisdiction over them anyway  
16       but when there's information out there and some  
17       county official, some government entity refuses to  
18       give it to you then that's reviewed by the circuit  
19       court to determine whether it was information that  
20       you are entitled to under the Freedom of Information  
21       Act. And if it is you've got standing to request  
22       that and a circuit court can give you relief and  
23       order that government entity or that government body  
24       to provide that information--

25              MR. DRIGGERS: That's what I'm asking.

(11)

1 Whether they have it or not if they can prove that  
2 they don't have it.

3 THE COURT: Well, they say they don't have  
4 it.

5 MR. DRIGGERS: Well, okay, everybody says  
6 that.

7 THE COURT: They are the Supreme Court.

8 MR. DRIGGERS: I know it but everybody  
9 says that. If you go to any police department or  
10 anything and they don't want to release information  
11 they're going to say hey we don't have to. But I  
12 don't see anywhere in this Act where the Supreme  
13 Court is immune from it.

14 THE COURT: Well, I understand that, but  
15 they're saying they don't have it, they have given  
16 you all they have. It's a different situation where  
17 police say we've got it but we don't have to give it  
18 to you because it's not coming by the Freedom of  
19 Information or they refuse to give it to you or just  
20 ignore you. They are telling you they don't have  
21 anything else. And--

22 MR. DRIGGERS: Well, that would be easy to  
23 say with any organization, I don't have it. That's  
24 the reason you go to court.

25 THE COURT: Well, they're the top court in

(12)

1 the state.

2 MR. DRIGGERS: I understand that. But  
3 they are not immune from lawsuits. They are  
4 breaking the law if they don't release it or show me  
5 they don't have it.

6 THE COURT: Well, they are telling you  
7 they don't have it.

8 MR. DRIGGERS: I understand. I've had  
9 people tell me stuff before but I mean a lot of  
10 times they do have it.

11 THE COURT: Well, then you've got to find  
12 somebody different from me to get it because I don't  
13 have jurisdiction over them. They are telling you  
14 they don't have it and you've got to take their word  
15 for it.

16 MR. DRIGGERS: Even on an FOI you don't  
17 have it?

18 THE COURT: They don't -- I don't have  
19 jurisdiction to tell them anything but assuming, you  
20 know, that they came back to you and said we've got  
21 it but you aren't entitled to it under FOI.

22 MR. DRIGGERS: Yeah, that's what I want to  
23 go to court for.

24 THE COURT: You would have to go up above  
25 them. You'd have to deal with our federal system.

1 MR. DRIGGERS: That's why it goes before  
2 the circuit court.

3 THE COURT: I understand you.

4 Go ahead.

5 DEFENSE ATTORNEY: As far as the Freedom  
6 of Information Act, we did not directly address a  
7 statute in the brief for a reason. First of all, we  
8 felt like there were lots of other reasons why this  
9 court should dismiss the case. But just for what  
10 it's worth, South Carolina Supreme Court has never  
11 spoken on whether that Act even applies to the  
12 judiciary in it's administration of it's judicial  
13 functions.

14 I will tell you that the federal court has  
15 specifically said that the federal FOIA does not  
16 apply to the judiciary. So that's an issue for  
17 another day. If you look at it so many reasons why  
18 it doesn't work with courts but we didn't want to go  
19 there because the court--

20 THE COURT: Okay.

21 MR. DRIGGERS: So do we need to try to get  
22 that changed where it says any citizen of the state?

23 THE COURT: You can try.

24 MR. DRIGGERS: Well, you got to start --  
25 that's what I'm doing.

(14)

1 THE COURT: I know but this is not the  
2 place to change it. You can try in the legislature  
3 but that doesn't necessarily mean it will change.

4 MR. DRIGGERS: So what this court is  
5 saying is you do not have the authority to the  
6 Supreme Court on FOIA.

7 THE COURT: That's right. They don't  
8 question as to whether they have to comply with it  
9 or not. But I don't have the authority. She set  
10 our four grounds. She is entitled to dismissal  
11 individually and collectively. So I'm dismissing  
12 it. I don't have the authority to tell the Supreme  
13 Court what to do. They have answered and that's the  
14 way it is.

15 Thank you.

16 MR. DRIGGERS: So be it.

17 THE COURT: Do you want your case back?

18 MR. DRIGGERS: Yes, I do.

19 DEFENSE ATTORNEY: Your Honor, I failed  
20 to introduce Ashley Robertson as the law clerk with  
21 us. I apologize.

22 THE COURT: Will you prepare me an order?

23 DEFENSE ATTORNEY: Yes, sir.

24 THE COURT: Thank you.

25 --End of Transcript of Record--

(15)

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(14)

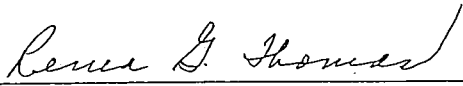
STATE OF SOUTH CAROLINA )  
COUNTY OF LEXINGTON )

COURT REPORTER'S CERTIFICATION

I, REMA K. GANTT THOMAS, OFFICIAL COURT REPORTER, AND NOTARY PUBLIC IN AND FOR THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE ABOVE-CAPTIONED CASE ON JUNE 28, 2012, IN WILLIAMSBURG COUNTY, SOUTH CAROLINA.

I FURTHER CERTIFY THAT I AM NEITHER OF COUNSEL NOR KIN TO ANY OF THE PARTIES TO THIS CAUSE OF ACTION, NOR AM I INTERESTED IN ANY MANNER IN ITS OUTCOME.

IN WITNESS WHEREOF, I HAVE HEREUNTO SET MY HAND AND SEAL AT CHAPIN, SOUTH CAROLINA, THIS THE FIRST DAY OF NOVEMBER, 2012.

  
REMA GANTT THOMAS  
OFFICIAL COURT REPORTER  
NOTARY PUBLIC FOR SOUTH CAROLINA  
MY COMMISSION EXPIRES 11/21/2013

COUNTY OF Williamsburg

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

Marion L. Driggers

Plaintiff(s)

vs.

2011 -CP-41-648

David Shearhouse, Etal

Defendant(s)

FILED

12/30/11
Williamsburg County
Clerk of Court
Kingstree SC

(Please Print)

Submitted By: Marion Drigger

SC Bar #:

Telephone #:

Address:

3497 Hebron Rd
Lake City, SC 29560

Fax #:

Other:

E-mail:

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

\*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint.
NON-JURY TRIAL demanded in complaint
This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
This case is exempt from ADR (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- Contracts: Constructions (100), Debt Collection (110), Employment (120), General (130), Breach of Contract (140), Other (199)
Torts - Professional Malpractice: Dental Malpractice (200), Legal Malpractice (210), Medical Malpractice (220), Previous Notice of Intent Case # 20-CP-, Notice/ File Med Mal (230), Other (299)
Torts - Personal Injury: Assault/Stalker/Label (300), Conversion (-10), Motor Vehicle Accident (320), Premises Liability (330), Products Liability (340), Personal Injury (350), Wrongful Death (360), Other (399)
Real Property: Claim & Delivery (400), Condemnation (410), Foreclosure (420), Mechanic's Lien (430), Partition (440), Possession (450), Building Code Violation (460), Other (499)
Inmate Petitions: PCR (500), Mandamus (520), Habeas Corpus (530), Other (599)
Judgments/Settlements: Death Settlement (700), Foreign Judgment (710), Magistrate's Judgment (720), Minor Settlement (730), Transcript Judgment (740), Lis Pendens (750), Transfer of Structured Settlement Payment Rights Application (760), Other (799)
Administrative Law/Relief: Reinstate Driver's License (800), Judicial Review (810), Relief (820), Permanent Injunction (830), Forfeiture-Petition (840), Forfeiture-Cor sent Order (850), Other (899)
Appeals: Arbitration (900), Magistrate-Civil (910), Magistrate-Criminal (920), Municipal (930), Probate Court (940), SCOT (950), Worker's Comp (960), Zoning Board (970), Public Service Commission (990), Employment Security Comm (991), Other (999)
Special/Complex/Other: Environmental (600), Automobile Arb. (610), Medical (620), Other (699), Pharmaceuticals (630), Unfair Trade Practices (640), Out-of State Depositions (650), Motion to Quash Subpoena in an Out-of-County Action (660), Sexual Predator (610)

Submitting Party Signature:

[Handwritten Signature]

Date: 12/30/11

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

STATE OF SOUTH CAROLINA, )  
COUNTY OF Williamsburg )  
MARION A. Driggs )  
Daniel Shearhouse Plaintiff, )  
vs. How SEAN TORI )  
How COSTA PIERCONES )  
How DONALD BEATTY )  
How JOHN KITTEREDGE Defendant. )

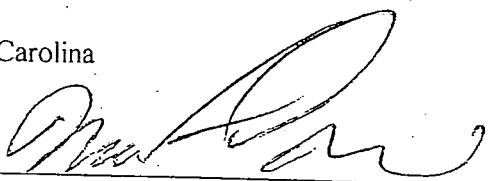
IN THE COURT OF COMMON PLEAS  
SUMMONS

FILE NO. 2011-CP-45-648

TO THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

Kingsree, South Carolina

  
Plaintiff/Attorney for Plaintiff

Dated: Dec 30 2011

Address: 3497 Hebron Rd Lake City, SC

**FILED**  
11 DEC 30 PM 3:5  
CAROLYN F. WILLIAM  
CLERK OF COURT  
KINGSTREE, S.C.

Marion L Driggers  
3497 Hebron Rd  
Lake City, SC 29560  
843-389-4468

David Shearhouse, Clerk of SC Supreme Court acting out of their behalf  
Honorable Jean Toal, Chief Justice of the SC Supreme Court  
Honorable Costa M Pleicones  
Honorable Donald W Beatty  
Honorable John W. Kitteredge

FILED  
11 DEC 30 PM 3:57  
CAROLYN F WILLIAMS  
CLERK OF COURT  
KINGSTREE, S.C.

TO THE ABOVE NAMED DEFENDANTS:

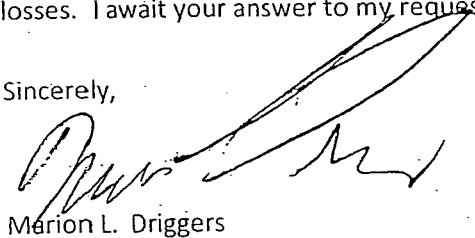
PURSUANT TO THE SCRPC YOU ARE SUMMONED TO ANSWER THE BELOW LISTED COMPLAINT

Dear Sirs:

I am filing this complaint because the SC Supreme Court will not obey its own rules and release to me the information under the Freedom of Information Act (30-4-100). I have requested all information regarding my Writ of Certorari under the title of( Driggers v Nexsen case tracking number 2010-165946). Mr. Shearhouse has denied any information on this case, does not know if they had a formal hearing, and informs me his court does not answer to anyone in this state. To my understanding 30-4-100 reads much differently as it states that all public bodies are open to the citizens of South Carolina. The insert from the court (enclosed) states this very clearly.

I am requesting this court grant a declaratory judgment and injunctive relief to enforce 30-4-100. I am also requesting that if I prevail in court that I am reimbursed in full for all of my expenses and losses. I await your answer to my request.

Sincerely,



Marion L. Driggers

# The Supreme Court of South Carolina

RE: Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings

---

## ORDER

---

Under the Federal Constitution, our State Constitution, and our common law, court records are presumptively open to the public, and these records may only be sealed by a court based on specific findings that the need for secrecy outweighs the presumption of openness. Ex parte Capital U-Drive-It, Inc., 369 S.C. 1, 630 S.E.2d 464 (2006); Davis v. Jennings, 304 S.C. 502, 405 S.E.2d 601 (1991). Therefore, with some few exceptions,<sup>1</sup> documents filed with this Court or the South Carolina Court of Appeals (appellate court) are available to the public unless sealed by order of the appellate court in which the matter is pending.

Several commercial vendors have recently requested copies of briefs filed with the appellate courts, and it is anticipated that these and other appellate filings will be available electronically from both private and public sources in the future. The ready availability of these documents raises significant privacy concerns. While this problem is currently under review by the Chief Justice's Task Force on Public Access to Court Records, we adopt the following interim guidance regarding personal data identifiers and other sensitive information in documents filed in the appellate courts.

---

<sup>1</sup> See, e.g., Rule 12 of the Rules for Lawyer Disciplinary Enforcement contained in Rule 413, SCACR; Rule 12 of the Rules for Judicial Disciplinary Enforcement contained in Rule 502, SCACR; Rule 402(n), SCACR; and Rule 403(1), SCACR.

delinquency matter from the family court shall be redacted to only use the juvenile's first name and first letter of the juvenile's last name (i.e., In the Interest of John S., a Juvenile.)

A party seeking to seal material beyond those personal identifiers listed above, must file a motion to seal with the appellate court in which the matter is pending. This is true even if the lower court or administrative tribunal may have issued an order sealing the record. Until the motion is ruled on, the clerk of the appellate court shall treat the material as if it is sealed. Parties and counsel are reminded that the standard established in Ex parte Capital U-Drive-It, Inc. and Davis v. Jennings, supra, must be met before any request to seal all or a portion of a record will be granted. Once sealed by order of an appellate court, the materials will remain sealed before the appellate courts unless otherwise ordered by the appellate court in which the matter is pending.

Parties should exercise caution in including other sensitive personal data in their filings, such as personal identifying numbers, medical records, employment history, individual financial information, proprietary or trade secret information, information regarding an individual's cooperation with the government, information regarding the victim of any criminal activity, or national security information.

Attorneys are expected to discuss this matter with their clients so that an informed decision can be made about the inclusion of sensitive information. The appellate courts and their staff will not review filings for redaction or to determine if materials should be sealed; the responsibility for insuring that information is redacted or sealed rests with counsel and the parties.

IT IS SO ORDERED.

s/ Jean H. Toal \_\_\_\_\_ C. J.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF WILLIAMSBURG	)	IN THE THIRD JUDICIAL CIRCUIT
Marion L. Driggers,	)	Civil Action No.: 2011-CP-45-648
	)	
Plaintiff,	)	
	)	
v.	)	
	)	<b>MEMORANDUM IN SUPPORT OF</b>
Daniel Shearouse, Honorable Jean Toal,	)	<b>MOTION TO DISMISS</b>
Honorable Costa Pleicones, Honorable	)	
Donald Beatty, Honorable John	)	
Kittredge,	)	
	)	
Defendants.	)	
	)	

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This case should be dismissed for at least four reasons. First, Plaintiff has failed to allege that the justices of the Supreme Court of South Carolina have done anything wrong. Second, the case is moot because Plaintiff has received all information that he is entitled to receive concerning the denial of his petition for writ of certiorari. Third, the circuit court lacks authority to review the denial of a petition for writ of certiorari, and lacks authority to review the conduct of the Clerk of Court of the Supreme Court in performing the duties and functions of his office. Fourth, to the extent Plaintiff seeks anything other than prospective, injunctive relief, the complaint should be dismissed because Defendants are immune from suit.

**FACTS**

This case arises out of the denial of a petition for writ of certiorari in the Supreme Court of South Carolina. Following the denial of his petition for writ of certiorari, Plaintiff proceeded to write four letters to the Chief Justice of the Supreme Court of South Carolina asking for an explanation as to why the petition was denied. The Clerk of Court, Daniel E. (Dan) Shearouse, responded to each letter, explaining that the Supreme Court does not give

reasons for denying petitions for writ of certiorari, and explaining that all information that can be provided to Plaintiff concerning his case has been provided. Dissatisfied with these responses, Plaintiff sued Dan Shearouse and the four justices of the Supreme Court who participated in the decision denying the petition for writ of certiorari, alleging that they have violated the South Carolina Freedom of Information Act.

Plaintiff's petition for writ of certiorari was denied on January 6, 2011, and on that same day, Dan Shearouse wrote a letter to Plaintiff notifying him of the Supreme Court's decision. (Aff. of Daniel E. Shearouse, Ex. A.) Approximately two weeks later, Plaintiff wrote a letter addressed to Chief Justice Toal stating that he was "deeply troubled" by the Supreme Court's ruling on the petition for writ of certiorari. (Aff. of Daniel E. Shearouse, Ex. B.) Plaintiff stated that he was concerned that no one had looked at the petition and that a reason for the denial had not been provided. *Id.* Shearouse responded to Plaintiff's letter and explained that the order denying the petition for writ of certiorari was signed by the Chief Justice—which is the Supreme Court's standard practice when denying a petition for writ of certiorari—and that the full Supreme Court, excluding Justice Hearn, who did not participate in the decision, fully considered the petition before ruling. (Aff. of Daniel E. Shearouse, Ex. C.) Shearouse further advised Plaintiff that the Supreme Court is not required to give a reason for denying a petition for writ of certiorari. *Id.*

Approximately one month later, Plaintiff wrote a second letter to the Chief Justice. This time he said he was disappointed that the reasons why the petition was not granted were not provided to him, and he requested that the information be provided pursuant to Title 30 of the Freedom of Information Act. (Aff. of Daniel E. Shearouse, Ex. D.) He also requested "information on why the court granted writs to Turner, Padgett, Graham, and Lainey [sic] on

their civil request, under the same Title 30.” *Id.* Shearouse responded to Plaintiff’s letter, telling him that all information that can be provided has been provided. (Aff. of Daniel E. Shearouse, Ex. E.) Shearouse also said that he did not know what Plaintiff was referring to with respect to the petition for writ of certiorari filed by the Turner Padgett law firm. *Id.*

Plaintiff wrote a third letter to the Supreme Court, again asking for information as to why his petition for writ of certiorari was denied. (Aff. of Daniel E. Shearouse, Ex. F.) Shearouse responded, telling Plaintiff once again that all information that can be provided has been provided. (Aff. of Daniel E. Shearouse, Ex. G.)

Plaintiff wrote a fourth letter to the Supreme Court. (Aff. of Daniel E. Shearouse, Ex. H.) This time Plaintiff enclosed the Supreme Court’s Order on the policy concerning personal data identifiers and other sensitive information in appellate court filings, which includes a statement that court records are presumptively open to the public, along with copies of letters signed by Shearouse on July 13, 2010, and March 28, 2011. *Id.* Plaintiff also referenced a prior request for a copy of a “trial transcript or hearing.” *Id.*

As he had done three times before, Shearouse responded to Plaintiff’s letter, telling Plaintiff there was nothing further he could give Plaintiff concerning the Supreme Court’s decision denying the petition for writ of certiorari. (Aff. of Daniel E. Shearouse, Ex. I.) Shearouse also stated that he did not see where Plaintiff had previously requested a copy of any trial transcript but he (Shearouse) nonetheless offered to provide Plaintiff with copies of the transcripts appearing in the Appendix Plaintiff filed. *Id.*

Plaintiff never wrote again and he never sent a check or money order for the transcripts. Instead, he filed this lawsuit against Shearouse and the four members of the Supreme Court who participated in the ruling on the petition for writ of certiorari. Plaintiff alleges in the

complaint that the Supreme Court “will not obey its own rules and release to me the information under the Freedom of Information Act (30-4-100).” Plaintiff further alleges that “Mr. Shearouse has denied any information on this case, does not know if they had a formal hearing, and informs me his court does not answer to anyone in this state.” Plaintiff requests that the court “grant a declaratory judgment and injunctive relief to enforce 30-4-100,” and seeks to be “reimbursed for all of [his] expenses and losses” should he prevail.

#### STANDARD

“In considering a motion to dismiss a complaint based on failure to state facts sufficient to constitute a cause of action, the trial court must base its ruling solely on allegations set forth in the complaint.” *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007). “If the facts alleged and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief under any theory, then dismissal under Rule 12(b)(6) is improper.” *Id.* “The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief.” *Id.* at 395, 645 S.E.2d at 247-48. “The complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action.” *Id.* at 395, 645 S.E.2d at 248.

If “matters outside the pleadings are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given a reasonable opportunity to present all material made pertinent to such a motion by Rule 56.” Rule 12(b), SCRPC. “Summary judgment is appropriate when it is clear there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law.” *Faile v. S.C. Dep’t of Juvenile Justice*, 350 S.C. 315, 323, 566 S.E.2d 536, 540 (2002). “In determining whether a genuine question of fact exists, the court must view the

evidence and all inferences which can be reasonably drawn from the evidence in the light most favorable to the nonmoving party.” *Id.* at 324, 566 S.E.2d at 540.

### ARGUMENT

The complaint in this case should be dismissed. Plaintiff has failed to allege any facts showing that the justices of Supreme Court of South Carolina have done anything wrong, and Plaintiff has received all the information he is entitled to receive concerning the denial of his petition for writ of certiorari. The claims are moot and fail to state a claim under any theory of law. For these reasons and those set forth more fully below, the motion to dismiss should be granted.

**I. The complaint fails to allege any wrongdoing by the justices of the Supreme Court of South Carolina.**

To begin, the complaint should be dismissed as to the four justices of the Supreme Court of South Carolina because the complaint does not allege any facts demonstrating that the individual justices of the Supreme Court did anything wrong. Other than in the caption, nowhere does the complaint identify the individual justices by name or say what they have done wrong.

”The purpose of a pleading is [to provide] fair notice to the opponent and the court.” *Watts v. Metro Sec. Agency*, 346 S.C. 235, 240, 550 S.E.2d 869, 871 (Ct. App. 2001). According to South Carolina Rules of Civil Procedure, “[a] pleading which sets forth a cause of action . . . shall contain . . . a short and plain statement of the facts showing that the pleader is entitled to relief . . . .” Rule 8, SCRCP. To survive a motion to dismiss, a complaint must allege facts entitling plaintiff to relief under some theory of law. *Grimsley v. S.C. Law Enforcement Div.*, 396 S.C. 276, 281, 721 S.E.2d 423, 426 (2012).

Here, the complaint does not state any facts entitling Plaintiff to relief against the individual justices. No allegations in the complaint have been directed against the individual justices, and nowhere, other than the caption, does the complaint identify the individual justices by name. The complaint alleges simply that the Supreme Court "will not obey its own rules and release to me the information under the Freedom of Information Act (30-4-100)." But the individual justices are not the institution that is the Supreme Court. They are members of the Court, and nowhere does the complaint explain what, as members of the Court, the individual justices have done that would entitle Plaintiff to relief.

Even if the individual justices could be considered the equivalent of the Court, the complaint does not allege whether and how the individual justices disobeyed the rules of the Court or failed to release information to Plaintiff. As the affidavit of Dan Shearouse makes clear, the individual justices did not correspond with Plaintiff and did not have any direct contact with him. The denial of the petition for writ of certiorari was communicated to Plaintiff through a letter from the Clerk of Court, which is the practice of the Supreme Court. *See Haggins v. State*, 377 S.C. 135, 659 S.E.2d 170 (2008) ("As is the practice in this Court, parties are informed that their petitions for writs of certiorari have been denied by letter from the appellate court clerk's office."). Moreover, the individual justices did not deny Plaintiff any information about his case or disobey any rules. The only thing the individual justices did concerning Plaintiff was rule on his petition for writ of certiorari, which is within their judicial functions.

Given the absence of allegations showing any wrongdoing by the four justices, the complaint should be dismissed as to them for failure to state a claim.

II. The allegations in the complaint are moot.

The complaint should also be dismissed because it is moot. The Clerk of Court of the Supreme Court of South Carolina has given Plaintiff all information available regarding the denial of Plaintiff's petition for writ of certiorari. There is nothing further to be done and no case or controversy exists.

"Before any action can be maintained, a justiciable controversy must be present." *Sloan v. Greenville Cnty.*, 356 S.C. 531, 546, 590 S.E.2d 338, 346 (Ct. App. 2003). "A justiciable controversy is a real and substantial controversy appropriate for judicial determination, as opposed to a dispute or difference of a contingent, hypothetical, or abstract nature." *Id.* A court "will not pass on moot and academic questions or make an adjudication where there remains no actual controversy." *Byrd v. Irmo High Sch.*, 321 S.C. 426, 431, 468 S.E.2d 861, 864 (1996). "A case becomes moot when judgment, if rendered, will have no practical legal effect upon existing controversy." *Id.* (quoting *Mathis v. S.C. State Highway Dep't*, 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1996)). In claims asserted under the Freedom of Information Act, "once the documents requested are produced, a justiciable controversy no longer exists." *Sloan v. Friends of the Hunley, Inc.*, 369 S.C. 20, 26, 630 S.E.2d 474, 477 (2006).

A justiciable controversy does not exist in this case. Plaintiff has been given all information he is entitled to receive regarding the denial of his petition for writ of certiorari. There is nothing further for the Court to do. Dan Shearouse has already explained to Plaintiff time and again that the Supreme Court does not provide reasons for denying a petition for writ of certiorari. (Aff. of Daniel E. Shearouse, ¶ 9 & Ex. C.)

To the extent that Plaintiff seeks information beyond what has already been provided, the information is confidential and protected from disclosure because it relates to the deliberative process of the Supreme Court. Documents related to the Supreme Court's decision-making process, such as memoranda from staff attorneys or law clerks to the members of the Supreme Court or notes or other correspondence of the individual justices, are not public and are not subject to disclosure. (Aff. of Daniel E. Shearouse, ¶ 19.) They are confidential in nature and are part of the Court's deliberative process and are therefore protected. *Id.* See also *Ex parte Capital U-Drive-It, Inc.*, 369 S.C. 1, 10, 630 S.E.2d 464, 469 (2006) (recognizing that although "[j]udicial proceedings and court records are presumptively open to the public under the common law," access may be restricted "based on a statute or the court's inherent power to control its own records and supervise the functioning of the judicial system"); *Thomas v. Page*, 837 N.E.2d 483 (Ill. App. Ct. 2005) (recognizing the state judiciary's inherent authority to protect the integrity of its decision-making process and the communications between judges and the court's staff in the performance of judicial duties and official court business).

In his response to the motion to dismiss, Plaintiff states that he has "been requesting information about the formal hearing that took place since about mid-February of 2011 and the only information they have offered me is what I had sent them." (Letter dated Feb. 10, 2012 to Clerk of Court for Williamsburg County.) But no formal hearing took place in the Supreme Court. The petition for writ of certiorari was decided, like virtually all petitions for writ of certiorari, without oral argument. No transcript of the Supreme Court's deliberations exists, and even if it did, it would not be made available to the public or to the parties based on the Court's inherent power to protect the deliberative process. Other than "information about the

formal hearing,” Plaintiff does not identify the information he is seeking or the information that has been denied.

In sum, because everything that can be provided to Plaintiff has been provided, this case does not present a justiciable controversy under the Freedom of Information Act and should be dismissed as moot.

**III. The complaint should be dismissed because the circuit court lacks authority to review the conduct complained of.**

Another reason the complaint should be dismissed is because the circuit court lacks authority to review a denial of a petition for writ of certiorari by the Supreme Court and to review the conduct of the Clerk of the Supreme Court in the performance of the duties and functions of his office.

An initial review of the complaint in this case suggests that this is a case about the Freedom of Information Act, a request for information, and a denial of information. Upon closer examination, however, the allegations in the complaint describe a litigant who is dissatisfied with the Supreme Court’s decision denying his petition for writ of certiorari and who wants an explanation as to why the petition was denied. This is confirmed by the affidavit of Dan Shearouse and the multiple letters written between Plaintiff and Shearouse.

Courts look to the essence of the allegations, not the labels, when examining the substance of a complaint. See *Bramlett v. Young*, 229 S.C. 519, 532-33, 93 S.E.2d 873, 879-80 (1956) (“Where it is doubtful upon what theory the pleading was drawn, the Court will construe it according to the theory it deems most in accord with the facts alleged.”) (quoting *Farmers’ Union Mercantile Co. v. Anderson*, 108 S.C. 66, 93 S.E. 422, 424 (1917)); *Richland Cnty. v. Kaiser*, 351 S.C. 89, 94, 567 S.E.2d 260, 262 (Ct. App. 2002) (“It is the substance of the

requested relief that matters regardless of the form in which the request for relief was framed.”)  
(internal quotation marks omitted).

When the substance of the allegations in this case are examined, it becomes apparent that Plaintiff is asking this Court to do something that is not within this Court’s authority to do. By complaining about the denial of his petition for writ of certiorari, Plaintiff is asking this Court to review the Supreme Court’s decision and to sit in an appellate capacity. But this Court’s appellate jurisdiction is prescribed by law and there is no law that gives this Court appellate jurisdiction to review the decisions of the Supreme Court. *See* S.C. Const. Art. V, § 11 (providing the circuit courts have “original jurisdiction in civil and criminal cases, except those cases in which exclusive jurisdiction shall be given to inferior courts, and shall have such appellate jurisdiction as provided by law.”).

Further, by complaining about the denial of information and Dan Shearouse’s responses to Plaintiff’s request, Plaintiff is asking this Court to review the conduct of the Clerk of Court of the Supreme Court, something that is not within this Court’s authority to do. The Supreme Court appoints and prescribes the terms and duties of the Clerk of Court, and it is the responsibility of the Court to ensure that the Clerk of Court is obeying the rules and procedures of the Court. The circuit court judges of this State do not sit as supervisors of the Clerk of Court of the Supreme Court or the South Carolina Court of Appeals. *See* S.C. Const. Art. V, § 6 (“There shall be appointed by the Justices of the Supreme Court a Reporter and a Clerk of Court, whose terms and duties shall be prescribed by the Court.”); S.C. Const. Art. V, § 10 (“There shall be appointed by the Judges of the Court of Appeals a clerk of court, whose term and duties shall be prescribed by the Court of Appeals and shall be subject to the general administrative authority and supervision of the Chief Justice.”). If Plaintiff has a legitimate

complaint about the conduct of the Clerk of Court of the South Carolina Supreme Court, that complaint should be directed to the justices of the Supreme Court and not to this Court.

Because the circuit court does not have the authority to review decisions of the Supreme Court and does not manage the conduct of the Clerk of Court, the complaint should be dismissed for failure to state a claim.

**IV. The complaint should be dismissed because the defendants are immune from suit.**

Finally, the complaint should be dismissed because Defendants are immune from suit.

“Judicial immunity is one of the basic common law tenets upon which the modern system of justice was built.” *O’Laughlin v. Windham*, 330 S.C. 379, 384, 498 S.E.2d 689, 692 (Ct. App. 1998). This immunity is “vital for the continuation of an independent judiciary and for the preservation of judicial integrity.” *Id.* Accordingly, “[j]udicial immunity serves as a bar to litigation against a judicial officer in certain circumstances.” *Plyler v. Burns*, 373 S.C. 637, 645, 647 S.E.2d 188, 192-93 (2007). Immunity also extends to clerks of court when conducting matters relating to judicial records and the operation of the court because they are considered arms of the judicial branch. *Times Publ’g Co. v. Ake*, 660 So.2d 255, 257 (Fla. 1995). But this immunity is not absolute. *Plyer*, 373 S.C. at 645, 647 S.E.2d at 193. “[J]udges and other officials are not entitled to judicial immunity if: (1) they did not have jurisdiction to act; (2) the act did not serve a judicial function; or (3) the suit is for prospective, injunctive relief only.” *Id.* (quoting *Faile v. S.C. Dept. of Juvenile Justice*, 350 S.C. 315, 324, 566 S.E.2d 536, 541 (2002)).

In the case at hand, Plaintiff is suing Dan Shearouse and four of the justices of the Supreme Court because the Supreme Court denied Plaintiff’s petition for writ of certiorari and did not provide reasons for doing so. The act of ruling on a petition for writ of certiorari is

within the jurisdiction of the justices of the Supreme Court, and by reviewing and ruling upon a petition for writ of certiorari, the justices were performing a judicial function. In addition, it was within Dan Shearouse's administrative duties as the Clerk of the Supreme Court to notify Plaintiff that the petition had been denied. By doing so, Shearouse fulfilled a judicial function on behalf of the Supreme Court. In addition, he served a judicial function by corresponding with Plaintiff concerning the availability of judicial records and the operation of the court, providing Plaintiff all information that he was entitled to receive about his case. Further, this suit is not limited to prospective, injunctive relief. Plaintiff seeks to be "reimbursed in full for all of [his] expenses and losses." This is the very type of relief that is prohibited by judicial immunity.

Because it was within Defendants' jurisdiction to act as they did, they were serving a judicial function, and this suit seeks more than prospective, injunctive relief, Defendants are immune from suit, and this case should be dismissed.

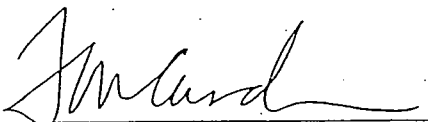
### CONCLUSION

Defendants' Motion to Dismiss should be granted. The complaint fails to state a claim for relief and does not present a case or controversy for this Court to decide. All information that can be provided to Plaintiff regarding his case has been provided. Further, this Court lacks the authority to review a denial of a petition for writ of certiorari by the Supreme Court of South Carolina and to review the conduct of the Supreme Court's Clerk of Court. Moreover, Defendants are immune from suit. For these reasons, the complaint in this case should be dismissed.

In the event the Court denies the motion to dismiss, the case should be transferred to Richland County for further proceedings under Rule 82(b), SCRCF, because it has been brought

in the wrong county. Defendants are entitled to have the merits of this case heard and decided in Richland County, where Defendants perform their judicial functions and where the alleged acts occurred.

SOWELL GRAY STEPP & LAFFITTE LLC

By: 

Elizabeth Van Doren Gray  
Tina Cundari  
Bess J. DuRant  
1310 Gadsden Street  
Post Office Box 11449  
Columbia, South Carolina 29211  
(803) 929-1400

Attorneys for Defendants

Columbia, South Carolina  
April 2, 2012

(35)

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
 )  
COUNTY OF WILLIAMSBURG ) IN THE THIRD JUDICIAL CIRCUIT

Marion L. Driggers, ) Civil Action No.: 2011-CP-45-648  
 )

Plaintiff, )  
 )

v. )  
 )

CERTIFICATE OF SERVICE

Daniel Shearouse, Honorable Jean Toal, )  
Honorable Costa Pleicones, Honorable )  
Donald Beatty, Honorable John )  
Kittredge, )

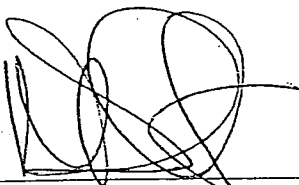
Defendants. )  
 )

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I, the undersigned legal assistant of the law offices of Sowell Gray Stepp & Laffitte, LLC, attorneys for Defendants, do hereby certify that I have served all counsel in this action with a copy of the document specified below by mailing a copy of the same by United States Mail, postage prepaid, to the following address:

**Document:** Defendants' Memorandum in Support of Motion to Dismiss

**Counsel Served:** Marion L. Driggers  
3497 Hebron Road  
Lake City, South Carolina 29560  
*Pro Se Plaintiff*



Michelle D. Laliberte

April 2, 2012  
Columbia, South Carolina

(36)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF WILLIAMSBURG	)	IN THE THIRD JUDICIAL CIRCUIT
Marion L. Driggers,	)	
	)	Civil Action No.: 2011-CP-45-648
Plaintiff,	)	
	)	
v.	)	AFFIDAVIT OF
	)	DANIEL E. SHEAROUSE
Daniel Shearouse, Honorable Jean Toal,	)	
Honorable Costa Pleicones, Honorable	)	
Donald Beatty, Honorable John	)	
Kittredge,	)	
	)	
Defendants.	)	

Personally appeared before me Daniel E. Shearouse, who first being duly sworn, deposes and says follows:

1. I am Daniel E. Shearouse. I am over the age of 18 years, and I submit this affidavit based upon my personal knowledge.
2. I am the Clerk of Court of the Supreme Court of South Carolina. I have served in this position for over 13 years.
3. I am submitting this affidavit in support of the Motion to Dismiss the lawsuit filed by Marion Driggers against me and four justices of the Supreme Court.
4. The lawsuit filed by Mr. Driggers arises out of the denial of Mr. Driggers's petition for writ of certiorari filed with the Supreme Court.
5. On July 12, 2010, the Supreme Court received a petition for writ of certiorari from Mr. Driggers seeking review of a court of appeals's decision.
6. On January 6, 2011, the Supreme Court denied the petition.

7. That same day, I wrote a letter to Mr. Driggers informing him that the Supreme Court denied his petition for writ of certiorari. A true and correct copy of my January 6, 2011 letter is attached as Exhibit A.

8. Approximately two weeks later, Mr. Driggers wrote a letter to Chief Justice Toal stating that he was "deeply troubled" by Supreme Court's ruling on the petition for writ of certiorari. Mr. Driggers said he was concerned that no one had looked at the petition and that a reason for the denial was not provided. A true and correct copy of the letter from Mr. Driggers is attached as Exhibit B.

9. On January 24, 2011, I wrote a letter responding to Mr. Driggers. I explained that the order denying the petition for writ of certiorari was signed by the Chief Justice—which is the Supreme Court's standard practice when denying a petition for writ of certiorari—and that the full Supreme Court, excluding Justice Hearn, who did not participate, fully considered the petition before ruling. I further advised him that the Supreme Court is not required to give a reason for denying a petition for writ of certiorari, and did not provide any reason for doing so in this case. A true and correct copy of my January 24, 2011 letter is attached as Exhibit C.

10. Approximately one month later, Mr. Driggers wrote a second letter to the Chief Justice. This time Mr. Driggers said he was disappointed that the information concerning why the petition was not granted was not provided to him, and he requested that the information be provided pursuant to Title 30 of the Freedom of Information Act. He also requested "information on why the court granted writs to Turner, Padgett, Graham, and Lainey on their civil request, under the same Title 30." A true and correct copy of the letter from Mr. Driggers is attached as Exhibit D.

11. On February 23, 2011, I responded to Mr. Driggers and told him that I had previously provided him with all information that can be provided in his case. I also told him that I did not know what he was referring to with respect to the petition for writ of certiorari filed by the Turner Padgett law firm. A true and correct copy of my February 23, 2011 letter is attached as Exhibit E.

12. A month later, Mr. Driggers wrote a third letter, again asking for information as to why his petition for writ of certiorari was denied. A true and correct copy of the letter from Mr. Driggers is attached as Exhibit F.

13. I wrote him back on March 28, 2011, telling him, again, that all information that can be provided has been provided. A true and correct copy of my March 28, 2011 letter is attached as Exhibit G.

14. On April 11, 2011, Mr. Driggers wrote a fourth letter to the Chief Justice. This time he enclosed the Supreme Court's Order on the policy concerning personal data identifiers and other sensitive information in appellate court filings, which includes a statement that court records are presumptively open to the public, along with copies of letters signed by me on July 13, 2010, and March 28, 2011. He also referenced a prior request for a copy of a "trial transcript or hearing." A true and correct copy of the letter from Mr. Driggers is attached as Exhibit H.

15. On April 19, 2011, I responded to Mr. Driggers, telling him I did not see where he had previously requested a copy of any trial transcript but I nonetheless offered to provide him with copies of the transcripts appearing in the Appendix he filed. I also reiterated that there was nothing further I could give him with respect to the reasons why

the Supreme Court denied the petition for writ of certiorari. A true and correct copy of my April 19, 2011 letter is attached as Exhibit I.

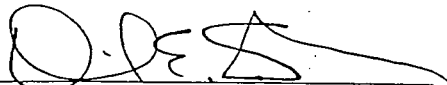
16. Mr. Driggers never wrote again and he never sent a check or money order for the transcripts. Instead, he filed this lawsuit against me and the four members of the Supreme Court who participated in the ruling on the petition for writ of certiorari.

17. As I stated in the five letters I wrote to Mr. Driggers, I have given him or have offered to give him all information and documents I have concerning his case that I am permitted to give him by law.

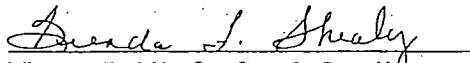
18. The Supreme Court's deliberations are not recorded and no transcript of the deliberations exists.

19. To the extent any other documents exist, such as memoranda from staff attorneys or law clerks to the members of the Supreme Court or notes or other correspondence of the individual justices, those documents are not public. They are confidential in nature and are part of the Court's deliberative process and therefore are protected from disclosure.

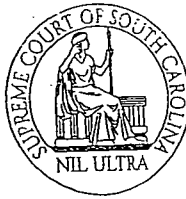
FURTHER AFFIANT SAYETH NOT.

  
Daniel E. Shearouse

Sworn to before me this 31<sup>st</sup> day  
of January, 2012

  
Notary Public for South Carolina

My Commission Expires: April 1, 2014



# The Supreme Court of South Carolina

DANIEL E. SHEAROUSE  
CLERK OF COURT

BRENDA F. SHEALY  
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330  
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

January 6, 2011

Marion L. Driggers  
3497 Hebron Road.  
Lake City, SC 29560

Re: Nexsen, David v. Driggers, Marion L.  
Lower Court Case No. 2000-CP-45-0448

Dear Mr. Driggers:

The Court has issued the following Order on your Petition for Writ of Certiorari in the above entitled matter:

“Petition for Writ of Certiorari Denied.

s/ Jean H. Toal C.J.  
For the Court

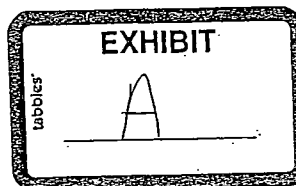
Justice Kaye G. Hearn, not participating.

January 6, 2011.”

By copy of this letter we are advising all interested parties of the action of the Court in this matter.

Very truly yours,

CLERK



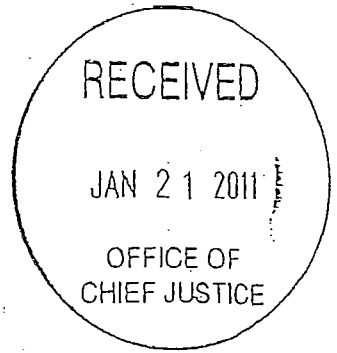
(41)

DES/lda

cc: Joseph Jakob Kennedy, Esquire  
The Honorable Carolyn F. Williams  
The Honorable Tanya Gee

(42)

Marion L Driggers  
3497 Hebron Rd  
Lake City, SC 29560  
843-389-4468



RECEIVED

JAN 21 2011

S.C. SUPREME COURT

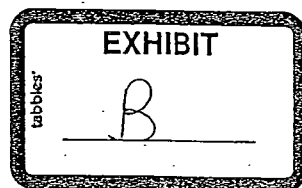
Chief Justice  
Supreme Court of South Carolina  
PO Box 11330  
Columbia, SC 29211

Dear Madam,

I am deeply troubled by this courts response to my "Writ of Certiorari." The first problem I have is: none of the judges have signed off on the writ. It was my understanding that this is required in any case. Does this mean that no one even looked at it? Secondly, none of the judges have given me any reason according to South Carolina Law for denying this request. In fact, I listed three of the five reasons for Certiorari. I am concerned, as the respondent did not even have the courtesy to respond to the Petition for Rehearing. This goes back to the question, did anyone look at this?

My understanding of the court system is: the judges are to be the mediators, and the litigants explain each side of the situation, with respect for their understanding of the law, with the judges ruling on the application of the appropriate South Carolina law. In my opinion, this was not done. I was not given the opportunity for the Certiorari, nor was I given a reason for it.

Additionally I would like to ask this court: Can a judge deny a Pro-Se the right to subpoena a witness? I was under the impression this was a constitutional right. The lobbyist must go for our system

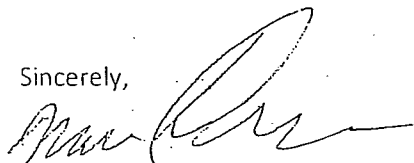


(43)

to work. In essence my rights as a citizen of South Carolina, and a taxpaying voter, have been negated.

With all the confusion, it is no wonder the people of South Carolina distrust the system of the law.

Sincerely,



Marion L Driggers

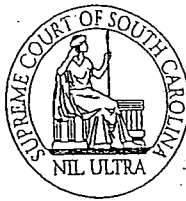
Cc: Jakob Kennedy

Carolyn Williams

Tanya Gee

Sen. Glenn McConnell

(44)



# The Supreme Court of South Carolina

DANIEL E. SHEAROUSE  
CLERK OF COURT

BRENDA F. SHEALY  
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330  
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

January 24, 2011

Mr. Marion L. Driggers  
3497 Hebron Road  
Lake City, SC 29560

Re: Nexsen, David v. Driggers, Marion L.

Dear Mr. Driggers:

This responds to your letter to Chief Justice Toal which was received on January 21, 2011. As reflected by my letter January 6, 2011, the Chief Justice signed the order denying the petition for a writ of certiorari on behalf of the Court. This is the standard practice of the Court when a petition for a writ of certiorari is denied. I can assure you that the members of this Court (other than Justice Hearn who did not participate in this matter) fully considered this matter before making the decision to deny the petition.

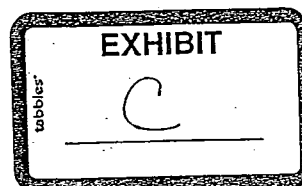
As to your concerns about the Court not giving a reason for its decision, this Court is not required to give a reason when it denies a petition for a writ of certiorari, and it did not do so in this case. Therefore, the only information that can be provided is what is contained in my letter of January 6, 2011.

As to your legal question about subpoenas, neither the members of this Court nor this office can provide legal advice or assistance. Therefore, I will be unable to respond to your legal question.

Very truly yours,

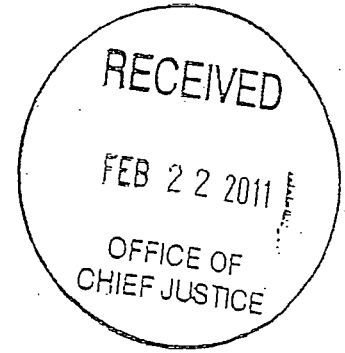
CLERK

cc: Joseph Jakob Kennedy, Esquire

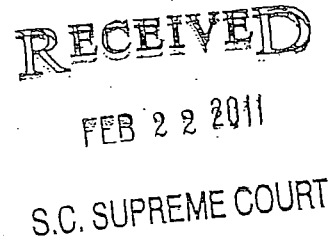


(45)

Marion L Driggers  
3497 Hebron Rd  
Lake City, SC 29560  
843-598-0735



Chief Justice  
South Carolina Supreme Court  
PO Box 11330  
Columbia, SC 29211



Dear Madam,

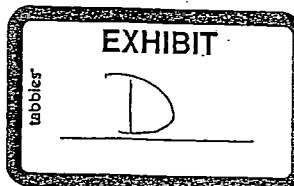
This is a follow up letter on my request for a Writ of Certiorari. I have further questions, why my request for a writ was not granted. Your clerk indicated that you, or the court, were not required to supply this information. I would have hoped that, out of courtesy, I would have been granted this information. Since this did not happen, I am requesting, under Title 30 of the Freedom of Information Act, this information be forwarded to me at a minimum of expense.

At this time, I am also requesting information on why the court granted writs to Turner, Padgett, Graham, and Lainey on their civil request, under the same Title 30. I disagree with the courts statement that a Pro-Se's right to a subpoena is a legal question. It became a constitutional question when I was denied my right by this court.

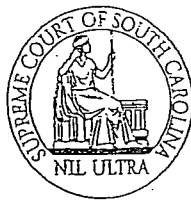
Time is of the essence, and if this information could be forwarded expeditiously it would improve my thought on the judicial system in South Carolina.

Sincerely,

Marion L Driggers



(46)



# The Supreme Court of South Carolina

DANIEL E. SHEAROUSE  
CLERK OF COURT

BRENDA F. SHEALY  
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330  
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

February 23, 2011

Mr. Marion L. Driggers  
3497 Hebron Road  
Lake City, SC 29560

Re: Nexsen, David v. Driggers, Marion L.

Dear Mr. Driggers:

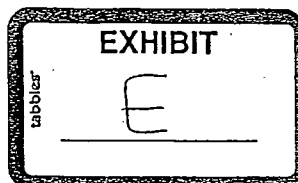
This responds to your letter to Chief Justice Toal which was received on February 22, 2011. Please be advised that the Chief Justice cannot assist you with this matter. Further, I have provided you with all the information that can be provided regarding the above matter.

As to your question regarding a petition of writ of certiorari filed by the Turner, Padgett, Graham and Laney law firm, I have no idea what case you are referring. Therefore, I will be unable to respond to your question regarding that case.

Very truly yours,

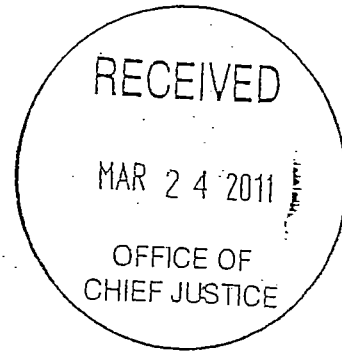
CLERK

cc: Joseph Jakob Kennedy, Esquire

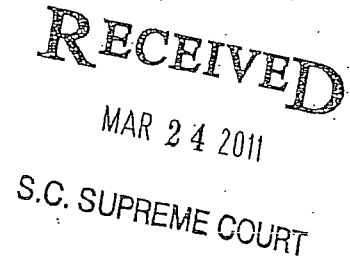


(47)

Marion L Driggers  
3497 Hebron Rd  
Lake City, SC 29560  
843-598-0735  
Second Request



Chief Justice  
South Carolina Supreme Court  
PO Box 11330  
Columbia, SC 29211



Dear Madam,

This is a follow up letter on my request for a Writ of Certiorari. I have further questions, why my request for a writ was not granted. Your clerk indicated that you, or the court, were not required to supply this information. I would have hoped that, out of courtesy, I would have been granted this information. Since this did not happen, I am requesting, under Title 30 of the Freedom of Information Act, this information be forwarded to me at a minimum of expense.

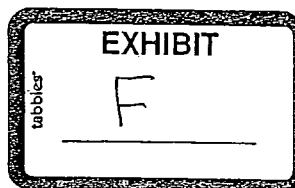
Time is of the essence, and if this information could be forwarded expeditiously it would improve my thought on the judicial system in South Carolina.

Sincerely,

A handwritten signature in black ink, appearing to be "Marion L Driggers".

Marion L Driggers

Cc: Sen. Glenn McConnell



(48)



# The Supreme Court of South Carolina

DANIEL E. SHEAROUSE  
CLERK OF COURT

BRENDA F. SHEALY  
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330  
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

March 28, 2011

Marion L. Driggers  
3497 Hebron Road  
Lake City, SC 29560

Re: Nexsen, David v. Driggers, Marion L.

Dear Mr. Driggers:

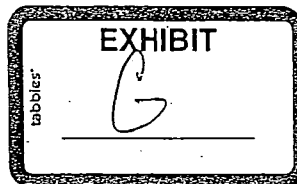
This responds to your recent letter to Chief Justice Toal. All the information that can be provided to you about this matter is contained in my letter of January 24, 2011. Nothing further can be provided.

Very truly yours,



CLERK

cc: Joseph Jakob Kennedy, Esquire

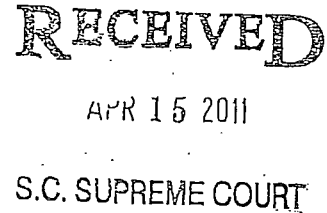


(49)

Marion L Driggers  
3497 Hebron Rd  
Lake City, SC 29560  
843-389-4468  
April 11, 2011



Chief Justice of the Supreme Court  
PO Box 11330  
Columbia, SC 29211



THIRD REQUEST

Dear Madam,

I am forwarding you a letter that was sent to me July 13, 2010. It is an order from you about the openness of your Supreme Court. When I requested a copy of the trial transcript or hearing, your clerk refused to release this information. The letter enclosed specifically states, "Under the Federal Constitution, our State Constitution, and our common law, court records are presumptively open to the public, and these records may only be sealed by a court based on specific findings that the need for secrecy outweighs the presumption of openness."

I feel that this information must be released for me to be comfortable with our court system. (See Simpson v. Simpson) If there is a reason this information is not available, I feel it is my right to know why.

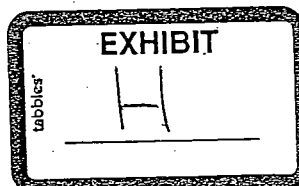
Thank you for your attention to this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Marion L Driggers".

Marion L Driggers

Cc: Sen. Glenn McConnell



(50)

The Supreme Court of South Carolina

RE: Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings

---

ORDER

---

Under the Federal Constitution, our State Constitution, and our common law, court records are presumptively open to the public, and these records may only be sealed by a court based on specific findings that the need for secrecy outweighs the presumption of openness. Ex parte Capital U-Drive-It, Inc., 369 S.C. 1, 630 S.E.2d 464 (2006); Davis v. Jennings, 304 S.C. 502, 405 S.E.2d 601 (1991). Therefore, with some few exceptions,<sup>1</sup> documents filed with this Court or the South Carolina Court of Appeals (appellate court) are available to the public unless sealed by order of the appellate court in which the matter is pending.

Several commercial vendors have recently requested copies of briefs filed with the appellate courts, and it is anticipated that these and other appellate filings will be available electronically from both private and public sources in the future. The ready availability of these documents raises significant privacy concerns. While this problem is currently under review by the Chief Justice's Task Force on Public Access to Court Records, we adopt the following interim guidance regarding personal data identifiers and other sensitive information in documents filed in the appellate courts.

---

<sup>1</sup> See, e.g., Rule 12 of the Rules for Lawyer Disciplinary Enforcement contained in Rule 413, SCACR; Rule 12 of the Rules for Judicial Disciplinary Enforcement contained in Rule 502, SCACR; Rule 402(n), SCACR; and Rule 403(l), SCACR.

delinquency matter from the family court shall be redacted to only use the juvenile's first name and first letter of the juvenile's last name (i.e., In the Interest of John S., a Juvenile.)

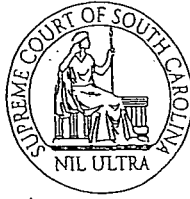
A party seeking to seal material beyond those personal identifiers listed above, must file a motion to seal with the appellate court in which the matter is pending. This is true even if the lower court or administrative tribunal may have issued an order sealing the record. Until the motion is ruled on, the clerk of the appellate court shall treat the material as if it is sealed. Parties and counsel are reminded that the standard established in Ex parte Capital U-Drive-It, Inc. and Davis v. Jennings, supra, must be met before any request to seal all or a portion of a record will be granted. Once sealed by order of an appellate court, the materials will remain sealed before the appellate courts unless otherwise ordered by the appellate court in which the matter is pending.

Parties should exercise caution in including other sensitive personal data in their filings, such as personal identifying numbers, medical records, employment history, individual financial information, proprietary or trade secret information, information regarding an individual's cooperation with the government, information regarding the victim of any criminal activity, or national security information.

Attorneys are expected to discuss this matter with their clients so that an informed decision can be made about the inclusion of sensitive information. The appellate courts and their staff will not review filings for redaction or to determine if materials should be sealed; the responsibility for insuring that information is redacted or sealed rests with counsel and the parties.

IT IS SO ORDERED.

s/ Jean H. Toal \_\_\_\_\_ C. J.



# The Supreme Court of South Carolina

DANIEL E. SHEAROUSE  
CLERK OF COURT

BRENDA F. SHEALY  
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330  
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

July 13, 2010

Marion L. Driggers  
3497 Hebron Road  
Lake City, SC 29560

Re: Nexsen, David v. Driggers, Marion L.  
Case Tracking No. 2010-165946

RECEIVED  
APR 15 2011  
S.C. SUPREME COURT

Dear Mr. Driggers:

This office has received your Petition for Writ of Certiorari and Appendix in the above matter. It has been assigned the Case Tracking Number that appears above. Please use this number on all future correspondence relating to this matter.

I do wish to call the attention of the parties to the attached order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will not review filings for redaction or to determine if materials should be sealed.

Very truly yours,

  
CLERK

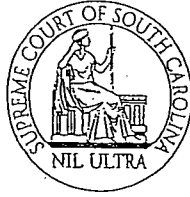
(53)

Nexsen, David v. Driggers, Marion L.  
Page Two  
July 13, 2010

DES/lda

cc: Joseph Jakob Kennedy, Esquire

(54)



# The Supreme Court of South Carolina

DANIEL E. SHEAROUSE  
CLERK OF COURT

BRENDA F. SHEALY  
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330  
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

March 28, 2011

Marion L. Driggers  
3497 Hebron Road  
Lake City, SC 29560

Re: Nexsen, David v. Driggers, Marion L.

Dear Mr. Driggers:

This responds to your recent letter to Chief Justice Toal. All the information that can be provided to you about this matter is contained in my letter of January 24, 2011. Nothing further can be provided.

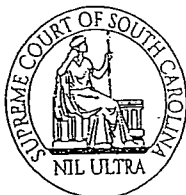
Very truly yours,



CLERK

cc: Joseph Jakob Kennedy, Esquire

(55)



# The Supreme Court of South Carolina

DANIEL E. SHEAROUSE  
CLERK OF COURT

BRENDA F. SHEALY  
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330  
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

April 19, 2011

Mr. Marion L. Driggers  
3497 Hebron Road  
Lake City, SC 29560

Re: Nexsen, David v. Driggers, Marion L.

Dear Mr. Driggers:

This responds to your letter to Chief Justice Toal dated April 11, 2011.

I can find no record of you requesting a copy of any trial transcript. The Appendix that you filed in this matter did contain all or portions of the transcripts of the hearings held in the circuit court on August 2, 2001 (6 pages including cover sheet and certificate), November 29, 2001 (8 pages including cover sheet, index and certificate), and January 10, 2008 (15 pages including cover sheet, index and certificate). I will be happy to provide you with a copy of these pages for \$8.05. This represents the cost of copying 29 pages at our standard rate of 25 cents a page plus a mailing fee of \$0.80. If you would like a copy of these transcript pages, please send a check or money order payable to the South Carolina Judicial Department. I note that the only portions of these trial transcripts that this office has is what you included in the Appendix that you filed.

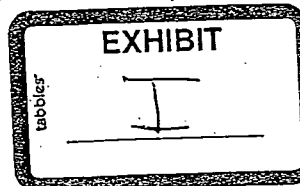
Your prior requests actually sought additional information about the Court's decision to deny the petition for writ of certiorari in this matter. My letter of January 24, 2011, has fully addressed this issue. There is simply nothing else that can be provided to you regarding the Court's denial of your petition.

Very truly yours,

  
CLERK

cc: Joseph Jakob Kennedy, Esquire

(56)

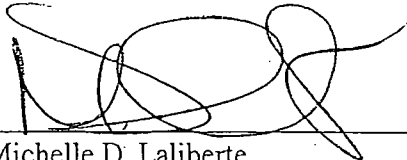


STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF WILLIAMSBURG	)	IN THE THIRD JUDICIAL CIRCUIT
Marion L. Driggers,	)	Civil Action No.: 2011-CP-45-648
	)	
Plaintiff,	)	
	)	
v.	)	
	)	<b>CERTIFICATE OF SERVICE</b>
Daniel Shearouse, Honorable Jean Toal,	)	
Honorable Costa Pleicones, Honorable	)	
Donald Beatty, Honorable John	)	
Kittredge,	)	
	)	
Defendants.	)	

I, the undersigned legal assistant of the law offices of Sowell Gray Stepp & Laffitte, LLC, attorneys for Defendants, do hereby certify that I have served all counsel in this action with a copy of the document specified below by mailing a copy of the same by United States Mail, postage prepaid, to the following address:

**Document:** Affidavit of Daniel E. Shearouse

**Counsel Served:** Marion L. Driggers  
3497 Hebron Road  
Lake City, South Carolina 29560  
*Pro Se Plaintiff*

  
\_\_\_\_\_  
Michelle D. Laliberte

February 1, 2012  
Columbia, South Carolina



# The Supreme Court of South Carolina

DANIEL E. SHEAROUSE  
CLERK OF COURT

BRENDA F. SHEALY  
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330  
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

January 6, 2011

Marion L. Driggers  
3497 Hebron Road  
Lake City, SC 29560

Re: Nexsen, David v. Driggers, Marion L.  
Lower Court Case No. 2000-CP-45-0448

Dear Mr. Driggers:

The Court has issued the following Order on your Petition for Writ of Certiorari in the above entitled matter:

“Petition for Writ of Certiorari Denied.

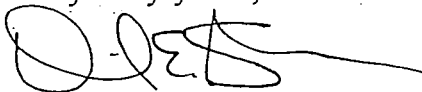
s/ Jean H. Toal C.J.  
For the Court

Justice Kaye G. Hearn, not participating.

January 6, 2011.”

By copy of this letter we are advising all interested parties of the action of the Court in this matter.

Very truly yours,

  
CLERK

(59)

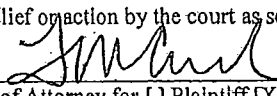
STATE OF SOUTH CAROLINA )  
COUNTY OF WILLIAMSBURG )  
Marlon L. Driggers, )  
[ ] Plaintiffs, )

IN THE [X] COURT OF COMMON PLEAS )  
[ ] FAMILY COURT )  
Civil Action No.: 2011-CP-45-648 )

vs. )

Daniel Shearouse, Honorable Jean Toal, Honorable )  
Costa Plecones, Honorable Donald Beatty, Honorable )  
John Kittredge, )  
[X] Defendants. )  
Check box above indicating submitting party )

MOTION AND ORDER INFORMATION FORM  
AND COVER SHEET

<u>name, and address of Pro Se Plaintiff</u> Marion L. Drigger 3497 Hebron Road Lake City, South Carolina 29560 Telephone: (843) 389-4468 e-mail: other:	<u>name, SC Bar no. and address of defendants' attorney</u> Tina M. Cundari - SC Bar No.: 71951 Elizabeth Van Doren Gray - SC Bar No.: 2434 Bess J. DuRant - SC Bar No.: 77920 Post Office Box 11449 Columbia, South Carolina 29211 Telephone: (803) 929-1400 Fax: (803) 929-0336 e-mail: <a href="mailto:tcundari@sowellgray.com">tcundari@sowellgray.com</a> ; <a href="mailto:egrav@sowellgray.com">egrav@sowellgray.com</a> ; <a href="mailto:bdurant@sowellgray.com">bdurant@sowellgray.com</a> other:
<input type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input checked="" type="checkbox"/> PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
<b>SECTION I: Hearing Information</b>	
Nature of Motion: Estimated Time Needed: Court Reporter Needed: YES [ ] NO [ ]	
<b>SECTION II: Motion Type</b>	
<input type="checkbox"/> Written motion attached <input checked="" type="checkbox"/> Form Motion: I hereby move for relief on action by the court as set forth in the attached proposed order.   Signature of Attorney for [ ] Plaintiff [X] Defendant      July 19, 2012 Date Submitted	
<b>SECTION III: Motion Fee</b>	
[ ] PAID - AMOUNT: _____ [X] EXEMPT: [ ] Rule to Show Cause in Child or Spousal Support [ ] Domestic Abuse or Abuse and Neglect (check reason) [ ] Indigent Status [ ] State Agency v. Indigent Party [ ] Sexually Violent Predator Act [ ] Post Conviction Relief [ ] Motion for Stay in Bankruptcy [ ] Motion for Publication [ ] Motion for Execution (Rule 69, SCRCP) [X] Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ [ ] Other:	
<b>JUDGE'S SECTION</b> [ ] Motion Fee to be paid upon filing of the attached order. [ ] Other:	JUDGE: _____ CODE: _____ Date: _____
<b>CLERK'S VERIFICATION</b>	
Collected by: _____ (print name)	
<b>DATE FILED</b>	
[ ] MOTION FEE COLLECTED: _____ [ ] CONTESTED - AMOUNT DUE: _____	

SCCA/233 (1/2003)

(60)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF WILLIAMSBURG	)	IN THE THIRD JUDICIAL CIRCUIT
	)	
Marion L. Driggers,	)	Civil Action No.: 2011-CP-45-648
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
Daniel Shearouse, Honorable Jean Toal,	)	
Honorable Costa Pleicones, Honorable	)	
Donald Beatty, Honorable John	)	
Kittredge,	)	
	)	
Defendants.	)	

order  
~~ORDER~~  
~~Motion TO RECONSIDER~~

This case is before the Court on Defendants' Motion to Dismiss. A hearing was conducted on June 28, 2012, at 10:00 a.m. in Kingstree, South Carolina. Tina Cundari, Esquire, of Sowell Gray Stepp & Laffitte, LLC, appeared on behalf of Defendants; Plaintiff Marion L. Driggers appeared *pro se*. After considering the materials submitted to the Court and the arguments presented at the hearing, the Court grants Defendants' motion to dismiss the complaint with prejudice. To the extent the Court's findings of fact or conclusions of law are based upon the information provided in the Affidavit of Daniel E. Shearouse, the Court grants summary judgment in favor of Defendants.

**FACTS**

This case arises out of the denial of a petition for writ of certiorari in the Supreme Court of South Carolina. Following the denial of his petition for a writ of certiorari, Plaintiff wrote four letters to the Chief Justice of the Supreme Court of South Carolina asking for an explanation as to why the petition was denied. The Clerk of Court, Daniel E. (Dan) Shearouse, responded to each letter, explaining that the Supreme Court does not give reasons for denying petitions for a

RSE/

writ of certiorari, and explaining that all information that can be provided to Plaintiff concerning his case has been provided. Dissatisfied with these responses, Plaintiff brought this action against Dan Shearouse and the four justices of the Supreme Court who participated in the decision denying the petition for a writ of certiorari, alleging that they have violated the South Carolina Freedom of Information Act.

### LEGAL STANDARD

“In considering a motion to dismiss a complaint based on failure to state facts sufficient to constitute a cause of action, the trial court must base its ruling solely on allegations set forth in the complaint.” *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007). “If the facts alleged and inferences reasonably deducible therefrom, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief under any theory, then dismissal under Rule 12(b)(6) is improper.” *Id.* “The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief.” *Id.* at 395, 645 S.E.2d at 247-48.

If “matters outside the pleadings are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given a reasonable opportunity to present all material made pertinent to such a motion by Rule 56.” Rule 12(b), SCRCPP. “Summary judgment is appropriate when it is clear there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law.” *Faile v. S.C. Dep’t of Juvenile Justice*, 350 S.C. 315, 323, 566 S.E.2d 536, 540 (2002). “In determining whether a genuine question of fact exists, the court must view the evidence and all inferences which can be reasonably drawn from the evidence in the light most favorable to the nonmoving party.” *Id.* at 324, 566 S.E.2d at 540.

## ANALYSIS

### I. Failure to State a Claim Against the Justices of the Supreme Court.

To begin, the Court dismisses the complaint as to the individual justices of the Supreme Court because the complaint fails to allege that the justices have done anything wrong.

According to South Carolina Rules of Civil Procedure, “[a] pleading which sets forth a cause of action . . . shall contain . . . a short and plain statement of the facts showing that the pleader is entitled to relief . . . .” Rule 8, SCRPC. To survive a motion to dismiss, a complaint must allege facts entitling plaintiff to relief under some theory of law. *Grimsley v. S.C. Law Enforcement Div.*, 396 S.C. 276, 281, 721 S.E.2d 423, 426 (2012).

Here, the complaint does not state any facts entitling Plaintiff to relief against the individual justices of the Supreme Court. No allegations in the complaint have been directed against the individual justices, and nowhere, other than the caption, does the complaint identify the individual justices by name. The complaint alleges simply that the Supreme Court “will not obey its own rules and release to me the information under the Freedom of Information Act (30-4-100).” But the individual justices are not the institution that is the Supreme Court. They are members of the Court, and nowhere does the complaint explain what, as members of the Court, the individual justices have done that would entitle Plaintiff to relief.

Even if the individual justices were the equivalent of the Court, the complaint does not allege whether and how the individual justices disobeyed the rules of the Court or failed to release information to Plaintiff. As the Affidavit of Dan Shearouse and the letters attached thereto make clear, the individual justices did not correspond with Plaintiff and did not have any direct contact with him. The denial of the petition for writ of certiorari was communicated to Plaintiff through a letter from the Clerk of Court, which is the practice of the Supreme Court.

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*See Haggins v. State*, 377 S.C. 135, 659 S.E.2d 170 (2008) (“As is the practice in this Court, parties are informed that their petitions for writs of certiorari have been denied by letter from the appellate court clerk’s office.”).

Moreover, the individual justices did not deny Plaintiff any information about his case or disobey any rules. The only thing the individual justices did concerning Plaintiff was rule on his petition for writ of certiorari, which is part of the judicial functions performed by the members of the Supreme Court.

Given the absence of allegations showing any wrongdoing by the four justices identified in the Complaint, the Court dismisses the complaint as to the individual justices of the Supreme Court.

**II. This Court lacks authority to grant the relief requested.**

Another basis for dismissing the complaint is that this Court does not have the authority to review a denial of a petition for writ of certiorari by the Supreme Court or to compel the Supreme Court to provide a reason for why it has denied such a petition. Nor does this Court have the authority to review the conduct of the Clerk of the Supreme Court in the performance of the duties and functions of his office.

Courts look to the essence of the allegations, not the labels, when examining the substance of a complaint. *See Bramlett v. Young*, 229 S.C. 519, 532-33, 93 S.E.2d 873, 879-80 (1956) (“Where it is doubtful upon what theory the pleading was drawn, the Court will construe it according to the theory it deems most in accord with the facts alleged.”) (quoting *Farmers’ Union Mercantile Co. v. Anderson*, 108 S.C. 66, 93 S.E. 422, 424 (1917)); *Richland Cnty. v. Kaiser*, 351 S.C. 89, 94, 567 S.E.2d 260, 262 (Ct. App. 2002) (“It is the substance of the

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requested relief that matters regardless of the form in which the request for relief was framed.”)  
(internal quotation marks omitted).

Although the complaint in this case references the South Carolina Freedom of Information Act (FOIA), the Court finds that this case is about a litigant who is dissatisfied with the Supreme Court’s decision denying his petition for writ of certiorari and who wants an explanation as to why the petition was denied.<sup>1</sup> By filing a complaint in this Court, Plaintiff is essentially asking this Court to review the Supreme Court’s decision denying the petition for writ of certiorari and to compel the Supreme Court to provide a reason for the denial.

This Court does not sit in review of Supreme Court decisions either as to the result reached or as to the content of those decisions. This Court’s appellate jurisdiction is prescribed by law and there is no law that gives this Court appellate jurisdiction to review a denial of petition for writ of certiorari to the Supreme Court. *See* S.C. Const. Art. V, § 11 (providing the circuit courts have “original jurisdiction in civil and criminal cases, except those cases in which exclusive jurisdiction shall be given to inferior courts, and shall have such appellate jurisdiction as provided by law.” ). Indeed, under Article V, § 5 of the Constitution, it is for the Supreme Court, as the highest court in this State, to review decisions of the circuit court. The relief Plaintiff seeks would improperly reverse these roles established by the Constitution.

Further, this Court lacks authority to review the conduct of the Clerk of Court in the performance of duties and functions of his office. The Supreme Court appoints and prescribes the terms and duties of the Clerk of Court, and it is the responsibility of the Court to ensure that

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<sup>1</sup> Even if the Court construes the complaint as setting forth a claim under the South Carolina Freedom of Information Act, the Court finds that the claim is moot. According to the Affidavit of Dan Shearouse, all information that can be provided to Plaintiff has been provided, and Plaintiff has not presented any evidence to the contrary. The Court’s analysis of mootness is more fully explained in Section IV of this Order.

the Clerk of Court is obeying the rules and procedures of the Court. The circuit court judges of this State do not sit as supervisors of the clerks of court of the Supreme Court or the South Carolina Court of Appeals. See S.C. Const. Art. V, § 6 (“There shall be appointed by the Justices of the Supreme Court a Reporter and a Clerk of Court, whose terms and duties shall be prescribed by the Court.”); S.C. Const. Art. V, § 10 (“There shall be appointed by the Judges of the Court of Appeals a clerk of court, whose term and duties shall be prescribed by the Court of Appeals and shall be subject to the general administrative authority and supervision of the Chief Justice.”). If Plaintiff has a legitimate complaint about the conduct of the Clerk of Court of the South Carolina Supreme Court, that complaint should be directed to the justices of the Supreme Court and not to this Court.

Because this Court does not have the authority to review decisions of the Supreme Court, and does not manage the conduct of the Clerk of that Court, the complaint is dismissed for failure to state a claim.

### III. Defendants are Immune from Suit.

In addition to the reasons stated above, the Court dismisses the complaint because Defendants are immune from suit.

“Judicial immunity is one of the basic common law tenets upon which the modern system of justice was built.” *O’Laughlin v. Windham*, 330 S.C. 379, 384, 498 S.E.2d 689, 692 (Ct. App. 1998). This immunity is “vital for the continuation of an independent judiciary and for the preservation of judicial integrity.” *Id.* Accordingly, “[j]udicial immunity serves as a bar to litigation against a judicial officer in certain circumstances.” *Plyler v. Burns*, 373 S.C. 637, 645, 647 S.E.2d 188, 192-93 (2007). Immunity also extends to clerks of court when conducting matters relating to judicial records and the operation of the court because they are considered

R3ef

arms of the judicial branch. *Times Publ'g Co. v. Ake*, 660 So.2d 255, 257 (Fla. 1995). But this immunity is not absolute. *Plyer*, 373 S.C. at 645, 647 S.E.2d at 193. “[J]udges and other officials are not entitled to judicial immunity if: (1) they did not have jurisdiction to act; (2) the act did not serve a judicial function; or (3) the suit is for prospective, injunctive relief only.” *Id.* (quoting *Faile v. S.C. Dept. of Juvenile Justice*, 350 S.C. 315, 324, 566 S.E.2d 536, 541 (2002)).

In the case at hand, Plaintiff is suing Defendants because the Supreme Court denied Plaintiff's petition for writ of certiorari and did not provide a reason for doing so. The act of ruling on a petition for writ of certiorari is within the jurisdiction of the justices of the Supreme Court, and by reviewing and ruling upon a petition for writ of certiorari, the justices were performing a judicial function. Additionally, it was within Dan Shearouse's administrative duties as the Clerk of Court to notify Plaintiff that the petition had been denied. By doing so, Shearouse fulfilled a judicial function on behalf of the Supreme Court. Likewise, he served a judicial function by corresponding with Plaintiff concerning the availability of judicial records and the operation of the court, providing Plaintiff all information that he was entitled to receive about his case. Further, this suit is not limited to prospective, injunctive relief. Plaintiff seeks to be “reimbursed in full for all of [his] expenses and losses.” This is the very type of relief that is prohibited by judicial immunity.

Because Defendants had jurisdiction to act as they did, served a judicial function in doing so, and this case seeks more than prospective, injunctive relief, the Court concludes that Defendants are immune from suit and this case is dismissed.

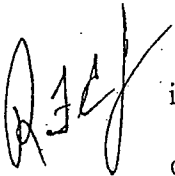
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IV. The allegations in the complaint are moot.

Finally, the Court finds that this matter is moot because all information related to Plaintiff's case that can be provided has been provided. There is nothing further to be done and no case or controversy exists.

"Before any action can be maintained, a justiciable controversy must be present." *Sloan v. Greenville Cnty.*, 356 S.C. 531, 546, 590 S.E.2d 338, 346 (Ct. App. 2003). "A justiciable controversy is a real and substantial controversy appropriate for judicial determination, as opposed to a dispute or difference of a contingent, hypothetical, or abstract nature." *Id.* A court "will not pass on moot and academic questions or make an adjudication where there remains no actual controversy." *Byrd v. Irmo High Sch.*, 321 S.C. 426, 431, 468 S.E.2d 861, 864 (1996). "A case becomes moot when judgment, if rendered, will have no practical legal effect upon existing controversy." *Id.* (quoting *Mathis v. S.C. State Highway Dep't*, 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1996)). In claims asserted under the Freedom of Information Act, "once the documents requested are produced, a justiciable controversy no longer exists." *Sloan v. Friends of the Hunley, Inc.*, 369 S.C. 20, 26, 630 S.E.2d 474, 477 (2006).

A justiciable controversy does not exist in this case. Plaintiff has been given all information he is entitled to receive regarding the denial of his petition for writ of certiorari. There is nothing further for the Court to do. Dan Shearouse has explained to Plaintiff time and again that the Supreme Court does not provide reasons for denying a petition for writ of certiorari.

 Plaintiff contends in his response to the motion to dismiss that he has "been requesting information about the formal hearing that took place since about mid-February of 2011 and the only information they have offered me is what I had sent them." (Letter dated Feb. 10, 2012 to


Clerk of Court for Williamsburg County.) But no formal hearing took place in the Supreme Court. The petition for writ of certiorari was decided without oral argument. No transcript of the Supreme Court's deliberations exists, and even if it did, it is not available to the parties or the public. The Supreme Court has inherent authority to protect its deliberative process. See *Matter of Ferguson*, 304 S.C. 216, 218, 403 S.E.2d 628, 630 (1991) (recognizing the Supreme Court's inherent power to protect itself and the public); *State-Record Co., Inc. v. State*, 332 S.C. 346, 349, 504 S.E.2d 592, 593 (1998) (recognizing the inherent authority of a court to protect its proceedings).

Other than "information about the formal hearing," Plaintiff has not identified any other information that he is seeking that has been denied to him. At the hearing, Plaintiff stated that he does not believe the Supreme Court when it says that nothing further can be provided. Plaintiff's mistrust of the Supreme Court does not create a genuine issue of material fact as to whether information has been denied.

Because everything that can be provided to Plaintiff has been provided, and therefore this case does not present a justiciable controversy. Accordingly, the complaint is dismissed as moot.

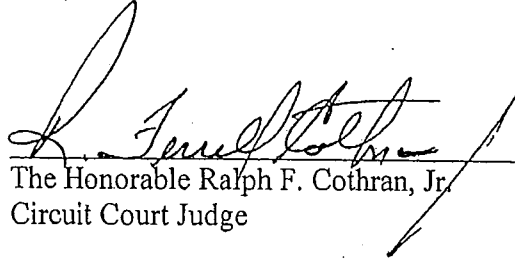
#### CONCLUSION

The motion to dismiss is granted. The complaint fails to state a claim for relief and does not present a case or controversy for this Court to decide. All information that can be provided to Plaintiff about his case has been provided. In any event, this Court lacks the authority to review a denial of a petition for a writ of certiorari by the Supreme Court (either as to the result or the content) or to review the conduct of the Clerk of Court of the Supreme Court, and Defendants are immune from suit.

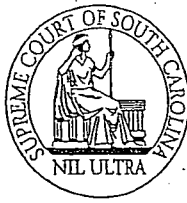


For these reasons and those stated above, the Court grants the Motion to Dismiss. The complaint is dismissed with prejudice.

IT IS SO ORDERED.

  
The Honorable Ralph F. Cothran, Jr.  
Circuit Court Judge

Manning, South Carolina  
July 25, 2012



# The Supreme Court of South Carolina

DANIEL E. SHEAROUSE  
CLERK OF COURT

BRENDA F. SHEALY  
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330  
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

January 24, 2011

Mr. Marion L. Driggers  
3497 Hebron Road  
Lake City, SC 29560

Re: Nexsen, David v. Driggers, Marion L.

Dear Mr. Driggers:

This responds to your letter to Chief Justice Toal which was received on January 21, 2011. As reflected by my letter January 6, 2011, the Chief Justice signed the order denying the petition for a writ of certiorari on behalf of the Court. This is the standard practice of the Court when a petition for a writ of certiorari is denied. I can assure you that the members of this Court (other than Justice Hearn who did not participate in this matter) fully considered this matter before making the decision to deny the petition.

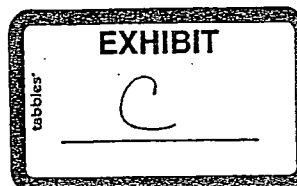
As to your concerns about the Court not giving a reason for its decision, this Court is not required to give a reason when it denies a petition for a writ of certiorari, and it did not do so in this case. Therefore, the only information that can be provided is what is contained in my letter of January 6, 2011.

As to your legal question about subpoenas, neither the members of this Court nor this office can provide legal advice or assistance. Therefore, I will be unable to respond to your legal question.

Very truly yours,

CLERK

cc: Joseph Jakob Kennedy, Esquire



(71)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF WILLIAMSBURG	)	IN THE THIRD JUDICIAL CIRCUIT
Marion L. Driggers,	)	Civil Action No.: 2012-CP-45-648
Plaintiff,	)	
V.	)	
	)	<b>Motion to Reconsider</b>
	)	
Daniel Shearhouse, Honorable Jean Toal,	)	
Honorable Costa Pleicones, Honorable	)	
Donald Beatty, Honorable John Kittredge,	)	
Defendants.	)	
_____	)	

I, Marion L. Driggers Pro Se Plaintiff, do hereby certify that I have served all counsel in this action with a copy of the document below by mailing a copy of the same by United States Mail, postage prepaid, to the following address:

Document: Motion to Reconsider  
Counsel: Tina Cundari Sowell & Gray  
P O Box 11449  
Columbia. South Carolina 29211



Marion L. Driggers

August 10, 2012

Lake City, South Carolina 29560

The Honorable Ferrell Cothran  
C/O Carolyn Williams Williamsburg Clerk of Court  
125 West Main Street  
Kingstree, South Carolina 29556

Dear Sir:

It is obvious from the signed order I received that you and Mrs. Cundari and I are on a totally different page on the motion hearing. I gave you at the hearing a Supreme Court Opinion Number 27138 written by the defendants that states totally different facts that are on this order.

First, it is irrelevant what brought this FOIA claim. It has nothing to do with the writ of certiorari I requested. I stated at the motion hearing that this was a FOIA request and nothing more.

This will eliminate the first error in this order.

The second error in this order is that Rule 12 (b) 6 cannot even be applied when it is an FOIA request. Opinion # 27198 makes it clear that traditional concepts of Constitutional standing are inapplicable when standing is conferred by statute. FOIA contains a specific standing provision allowing any citizen of South Carolina to seek a Declaratory Judgment or Injunctive relief to enforce the acts requirements. I did not make these rules. They were made by the defendants and the S.C. Legislature. It would be hypocritical for the court to not obey their rules. Rule 220 (B) 1 states that all material at any public hearing must be maintained. Also, title 14-8-240 & 250 require open records on all cases. Title 14-3-130 also requires open records such that anyone can understand the reasoning on a decision by the court.

I offered Mrs. Cundari in court for her clients to sign an affidavit that they were unaware of this FOIA claim and I would drop the charges against them. This was never done.

The third and final error in this order is that if the Circuit Court does not have the authority to hear this case how they can possibly dismiss it. That would not be an error at law; that would be an abuse of power and that certainly is not allowed in our court system. I would ask this court to review the court reporters transcript and see the errors of this order.

Sincerely:

Marion L. Driggers  
3497 Hebron Rd  
Lake City, SC 29560  
(843) 598-0735

CC: Tina Cundari Sowell & Gray  
Carolyn Wilson Clerk of Court  
Honorable Alan Wilson Attorney General

(73)

February 10, 2012

Carolyn Williams

Williamsburg County Clerk of Court

125 W. Main Street

Kingstree, South Carolina 29556

Dear Ms. Williams:

I want to bring to the court's attention some serious errors in the defendant's motion to dismiss & summary judgment.

The first error is that this is a Freedom of Information request and there can be no lack of jurisdiction in the state of South Carolina. Secondly section 30-4-100 states (any citizen of the state may apply to the circuit court for either or both a declaratory judgment and an injunctive relief to enforce the provisions of this Chapter in appropriate Cases.)

The information I am requesting originated from a case in Williamsburg County so I assumed that the proper venue was there. If the court should find that this is not the proper venue, I have no problem changing the location to another County. It will be difficult to have a fair and unbiased trial in any county when the judge works directly for the defendants. The Legislature did not foresee that the Supreme Court Judges would break the law.

I have been requesting information about the formal hearing that took place since about mid-February of 2011 and the only information they have offered me is what I had sent them.

As to the statement that the procedures of the Supreme Court are protected, I cannot find this provision in Section 30-4-40. I also wish to correct the defendant's statement of Lack of Jurisdiction. This is a FOIA request and according to Section 30-4-100 any citizen of the state can apply.

As to the issue of Judicial Immunity Section 30-4-110 States (any person or group of persons who willfully violates the provisions of this Chapter shall be deemed guilty of a misdemeanor and upon conviction shall be fined not more than one hundred dollars or imprisoned for not more than thirty days

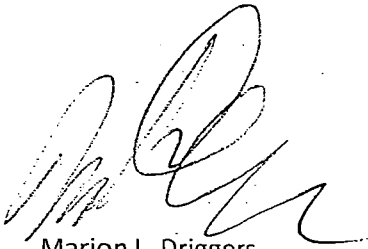
(24)

for the first offense.) My interpretation of this section since it did not exclude judges, that it is a crime. Nobody in the state of South Carolina has immunity from a crime.

The four Justices were included in this suit, because they did know or should have known about this request. If they sign an affidavit stating that they were not aware of this situation, I will consider dropping the charges against them. I also would like to remind them that signing a false affidavit is perjury. I am also requesting a jury trial according to Section 15-53-90.

As Thomas Jefferson once said (When injustice becomes law, then resistance becomes duty).

Sincerely,

A handwritten signature in black ink, appearing to read 'M. Driggers', written in a cursive style.

Marion L. Driggers

3497 Hebron Road

Lake City, South Carolina 29560

(843) 598-0735

JNTY OF WILLIAMSBURG  
IE COURT OF COMMON PLEAS

CASE NO: 2011CP4500648

**Marion L Driggers vs. Daniel Shearhouse**

CK ONE:

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):**
  - Rule 12(b), SCRPC;  Rule 41(a),
  - SCRPC (Vol. Nonsuit);  Rule 43(k), SCRPC (Settled);  Other: \_\_\_\_\_
- ACTION STRICKEN (CHECK REASON):**
  - Rule 40(j) SCRPC;  Bankruptcy;
  - Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
  - Other: \_\_\_\_\_
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
  - Affirmed;  Reversed;  Remanded;
  - Other: \_\_\_\_\_

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

**ORDERED AND ADJUDGED:**  See attached order;  Statement of Judgment by the Court:

Dated at Kingstree, South Carolina, this 18th day of September, 2012.

Reporter:

\_\_\_\_\_  
PRESIDING JUDGE -

This judgment was entered on the 18th day of September, 2012, and a copy mailed first class this 18th day of September, 2012, to attorneys of record or to parties (when appearing pro se) as follows:

Pro-se  
\_\_\_\_\_  
CORNEY(S) FOR THE PLAINTIFF(S)

Tina Marie Cudari 1310 Gadsden St. Columbia,  
SC 29201  
\_\_\_\_\_  
ATTORNEY(S) FOR THE DEFENDANT(S)

CPFORM4M  
SCCA SCRPC Form 4 Revised 06/2008

*Carolyn J. Williams*  
*Clerk of Court*

(76)

COUNTY OF WILLIAMSBURG

) IN THE COURT OF COMMON PLEAS  
)

Marion Driggers,

Plaintiff,

vs.

Daniel Shearouse, Honorable Jean Toal,  
Honorable Costa Pleicones, Honorable  
Donald Beatty, Honorable John Kittredge,

Defendants.

ORDER  
Case No.: 2011-CP-45-648

A CERTIFIED TRUE COPY  
*Carolyn F. Williams*  
CAROLYN F. WILLIAMS  
CLERK OF COURT  
WILLIAMSBURG COUNTY

The pro se Plaintiff, Marion Driggers, requests the Court to reconsider the Order dated July 25, 2012 and filed August 1, 2012 in the Williamsburg County Clerk of Court's office.

Having duly considered the motion of the Plaintiff, this Court has determined that its original ruling of July 25, 2012 is fully supported by the law and the evidence and is hereby ratified and reconfirmed. The motion is therefore DENIED.

AND IT IS SO ORDERED.

Manning, South Carolina

Dated: Sept. 13, 2012

*R. Ferrell Cothran, Jr.*  
R. Ferrell Cothran, Jr.  
Judge, Third Judicial Circuit

FILED  
12 SEP 14 PM 3:49  
CAROLYN F. WILLIAMS  
CLERK OF COURT  
WILLIAMSBURG COUNTY, S.C.

(77)

The Honorable Ferrell Cothran  
C/O Carolyn Williams Williamsburg Clerk of Court  
125 West Main Street  
Kingstree, South Carolina 29556

Dear Sir:

It is obvious from the signed order I received that you and Mrs. Cundari and I are on a totally different page on the motion hearing. I gave you at the hearing a Supreme Court Opinion Number 27138 written by the defendants that states totally different facts that are on this order.

First, it is irrelevant what brought this FOIA claim. It has nothing to do with the writ of certiorari I requested. I stated at the motion hearing that this was a FOIA request and nothing more.

This will eliminate the first error in this order.

The second error in this order is that Rule 12 (b) 6 cannot even be applied when it is an FOIA request. Opinion # 27198 makes it clear that traditional concepts of Constitutional standing are inapplicable when standing is conferred by statute. FOIA contains a specific standing provision allowing any citizen of South Carolina to seek a Declaratory Judgment or Injunctive relief to enforce the acts requirements. I did not make these rules. They were made by the defendants and the S.C. Legislature. It would be hypocritical for the court to not obey their rules. Rule 220 (B) 1 states that all material at any public hearing must be maintained. Also, title 14-8-240 & 250 require open records on all cases. Title 14-3-130 also requires open records such that anyone can understand the reasoning on a decision by the court.

I offered Mrs. Cundari in court for her clients to sign an affidavit that they were unaware of this FOIA claim and I would drop the charges against them. This was never done.

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Sincerely:

Marion L. Driggers  
3497 Hebron Rd  
Lake City, SC 29560  
(843) 598-0735

CC: Tina Cundari Sowell & Gray  
Carolyn Wilson Clerk of Court  
Honorable Alan Wilson Attorney General

(78)

Rule 220 B-1

**THE STATE OF SOUTH CAROLINA  
In The Supreme Court**

Richard Freemantle, individually and on behalf of himself and all others similarly situated, Appellant,  
v.

Joe Preston, in his official capacity and individually, while Administrator of Anderson County; Anderson County, a political subdivision of the State of South Carolina; Anderson County Council, the Legislative and Executive body of Anderson County; Ron Wilson, in his official capacity and individually; Bill McAbee, in his official capacity and individually; Larry Greer, in his official capacity and individually; Michael Thompson in his official capacity and individually; Gracie Floyd, in her official capacity and individually, Respondents.

Appellate Case No. 2010-181306

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Appeal From Anderson County  
J. Cordell Maddox, Circuit Court Judge

---

Opinion No. 27138  
Heard April 17, 2012 – Filed June 27, 2012

---

**AFFIRMED IN PART, REVERSED IN PART, AND REMANDED**

Charles R. Griffin, Jr., of Anderson, for Appellant.

James W. Logan, of Logan Jolley & Smith, of Anderson,  
Kevin W. Sturm, of Sturm & Cont, of Spartanburg,

(79)

Candy M. Kern-Fuller, of Upstate Law Group, of Easley, Andrew F. Lindemann, of Davidson & Lindemann, of Columbia, D. Randle Moody, II, and Joseph O. Smith, both of Roe Cassidy Coates & Price, of Greenville, and Chuck Allen, of Anderson, for Respondents.

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**JUSTICE KITTREDGE:** This is an appeal from the trial court's dismissal of claims pursuant to Rule 12(b)(6), SCRCP. Appellant Richard Freemantle, a citizen and taxpayer of Anderson County, sought to invalidate a severance agreement between Anderson County and its former county administrator, contending the approval of the severance agreement violated the common law and South Carolina's Freedom of Information Act ("FOIA"). The trial court dismissed the action finding that Appellant's status as a taxpayer did not confer standing to challenge the severance agreement. We agree with the able circuit judge in most respects concerning Appellant's lack of standing. We disagree with the trial court only insofar as the FOIA claim is concerned, for traditional standing principles do not apply under FOIA because the legislature has conferred standing on any citizen to enforce the Act's provisions. Accordingly, we affirm in part, reverse in part, and remand for further proceedings.

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## I.

Appellant filed this action in November 2009 to challenge the legality of a severance agreement between Anderson County ("the County") and Joey Preston, a former Anderson County Administrator. In addition to suing the County and Preston, Appellant named as Defendants the Anderson County Council ("Council") and several former and current Council members in their official and individual capacities. We collectively refer to Defendants as Respondents.

Preston was hired as County Administrator in July 1998. His employment contract with the County provided for an initial employment term of three years and a continuing, annual renewal of employment in the absence of written notice not to renew the contract. The contract provided Preston with an annual salary of \$95,000 and contemplated annual pay increases consistent with the County's wage and compensation plan. In the event the County terminated Preston's employment without cause, which he alleged occurred in September 2008, the employment contract provided Preston was to be entitled to severance pay, including the financial benefits remaining on the balance of his contract, compensation for

earned sick and annual leave, and additional severance pay based upon the length of his total service to the County.

The balance of power on Council was substantially altered as a result of the November 2008 election. With the new Council coming in, one of the final acts of the outgoing Council was to execute a severance agreement for Preston that provided him over one million dollars in severance benefits, which was well in excess of that provided for in his employment contract. The severance agreement also included a release provision, stating that the County would never seek legal redress against Preston for any claims relating to his employment with the County. This occurred in a Council meeting on November 18, 2008, amid allegations of secret meetings and collusion. By a vote of 5-2, the outgoing Council approved the severance agreement. The severance agreement was not placed on the meeting's agenda.

Appellant filed a complaint against Respondents on behalf of himself and all others similarly situated seeking monetary relief and various declaratory judgments. Specifically, Appellant alleged that Council's vote approving the severance agreement was invalid. In addition, Appellant contended the successor Anderson County Council was in any event not bound by the severance agreement. Relief was sought pursuant to various causes of action, including covin and collusion, breach of fiduciary duties, illegal gift of county funds, misfeasance, malfeasance, conspiracy, violations of public policy, and violations of FOIA, S.C. Code Ann. §§ 30-4-10 to -165 (Supp. 2011).<sup>1</sup>

Thereafter, Respondents moved for the suit to be dismissed pursuant to Rules 12(b)(6), SCRCPP, asserting that Appellant, as a taxpayer, lacked standing. Respondents further asserted that they were entitled to legislative immunity, and Appellant's claims were barred by Rule 12(b)(8), SCRCPP, due to a pending action seeking similar relief. In its order of dismissal, the trial court found that Appellant

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<sup>1</sup> Appellant asserts Respondents failed to properly notice an executive session meeting of the Personnel Committee on November 4, 2008. Additionally, Appellant maintains that Respondents were aware of the severance agreement prior to the November 18, 2008 meeting but did not place the severance agreement on the agenda prior to the meeting. Appellant contends that the Council's failure to include the severance package on the agenda violated section 30-4-80 of the South Carolina Code, which requires that agenda for a public body meeting must be posted at least twenty-four hours prior to scheduled meetings and requires that bodies make reasonable and timely efforts to give notice of their meetings.

(1992) (internal quotations and citations omitted)). "[A] private person may not invoke the judicial power to determine the validity of executive or legislative action unless he has sustained, or is in immediate danger of sustaining, prejudice therefrom." *Evins v. Richland Cnty. Historic Pres. Comm'n*, 341 S.C. 15, 21, 532 S.E.2d 876, 879 (2000). A taxpayer lacks constitutional standing when he "suffers in some *indefinite* way in common with people *generally*." *ATC South*, 380 S.C. at 198, 669 S.E.2d at 341 (quoting *Frothingham v. Mellon*, 262 U.S. 447, 488 (1923)) (emphasis added).

In our judgment, the injury, if any, to Appellant as a taxpayer is common to all citizens and taxpayers of Anderson County. Thus, this feature of commonality defeats the constitutional requirement of a concrete and particularized injury. We therefore affirm the trial court in rejecting Appellant's claim of taxpayer standing under constitutional standing principles.

#### B. *The "Public Importance" Exception*

This Court has often recognized the "public importance" exception to the general standing requirements. "[S]tanding is not inflexible and standing may be conferred upon a party when an issue is of such public importance as to require its resolution for future guidance." *Id.* at 198, 669 S.E.2d at 341 (quoting *Davis v. Richland Cnty. Council*, 372 S.C. 497, 500, 642 S.E.2d 740, 741 (2007) (citation omitted)). In cases falling within the ambit of important public interest, standing is conferred "without requiring the plaintiff to show he has an interest greater than other potential plaintiffs." *Davis*, 372 S.C. at 500, 642 S.E.2d at 741-42 (finding recreation commissioners have standing under the public importance exception to challenge the constitutionality of an act which authorizes their removal from office). However, a matter is deemed to be of public importance only where a resolution is needed for future guidance. *Sloan v. Sanford*, 357 S.C. 431, 434, 593 S.E.2d, 470, 472 (2004) ("[U]nder certain circumstances, standing may be conferred upon a party when an issue is of such public importance as to require its resolution for future guidance."). Thus, "[f]or a court to relax general standing rules, the matter of importance must, in the context of the case, be inextricably connected to the public need for court resolution for future guidance." *ATC South*, 380 S.C. at 199, 669 S.E.2d at 341.

This nexus between the public importance exception and the need for future guidance from the Court is invariably linked to a need for and entitlement to injunctive relief. That Appellant sought monetary damages for himself in his common law causes of action, while claiming to represent the taxpayers of

lacked standing under the constitution, the public importance exception, and pursuant to state statute. Alternatively, the trial court held that Respondents were entitled to legislative immunity and that Appellant's action was barred under Rule 12(b)(8) because a "duplicative" action was pending in circuit court.

## II.

"On appeal from the dismissal of a case pursuant to Rule 12(b)(6), an appellate court applies the same standard of review as the trial court." *Rydde v. Morris*, 381 S.C. 643, 646, 675 S.E.2d 431, 433 (2009). "That standard requires the Court to construe the complaint in a light most favorable to the nonmovant and determine if the facts alleged and the inferences reasonably deducible from the pleadings would entitle the plaintiff to relief on any theory of the case." *Id.* (internal quotations omitted). If the facts alleged and inferences deducible therefrom would entitle the plaintiff to any relief, then dismissal under Rule 12(b)(6) is improper. *Sloan Constr. Co. v. Southco Grassing, Inc.*, 377 S.C. 108, 113, 659 S.E.2d 158, 161 (2008).

## III.

Appellant relies on his status as a taxpayer in contending the trial court erred in finding Appellant lacked standing to assert his various claims against Respondents. Standing may be acquired: (1) through the rubric of "constitutional standing"; (2) under the "public importance" exception; or (3) by statute. *ATC South, Inc. v. Charleston Cnty.*, 380 S.C. 191, 195, 669 S.E.2d 337, 339 (2008). We hold the trial court properly found Appellant lacks standing under the traditional standing principles. However, we find Appellant possesses standing pursuant to state statute.

### A. Constitutional Standing

To establish constitutional standing, a plaintiff must first show he has suffered an "injury in fact—an invasion of a legally protected interest which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical."<sup>2</sup> *Id.* (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61

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<sup>2</sup> To establish constitutional standing, a plaintiff must also show a causal connection between the injury and the conduct complained of and it must be likely, as opposed to speculative, that the injury will be redressed by a favorable decision. *ATC South*, 380 S.C. at 195, 669 S.E.2d at 339.

Anderson County, directly conflicts with the purpose and spirit of the public importance exception. Moreover, the personnel choices of Anderson County, even in the face of a seemingly excessive severance package, do not necessitate further guidance. Thus, we affirm the circuit court's finding that this action does not warrant invocation of the public importance exception.

### C. Statutory Standing

The traditional concepts of constitutional standing are inapplicable when standing is conferred by statute. FOIA contains a specific standing provision allowing any citizen of South Carolina to seek a declaratory judgment or injunctive relief to enforce the Act's requirements. S.C. Code Ann. § 30-4-100(a) (Supp. 2011) ("Any citizen of the State may apply to the circuit court for either or both a declaratory judgment and injunctive relief to enforce the provisions of this chapter in appropriate cases . . . .").

This Court specifically addressed the issue of standing under FOIA in *Fowler v. Beasley*, 322 S.C. 463, 472 S.E.2d 630 (1996) (citizens brought action against county legislative delegation, school board, and governor seeking injunction to prevent school board candidate from serving due to violations of FOIA). In *Fowler*, the county delegation and school board contended citizens of Charleston County lacked standing to seek an injunction because they had "no personal stake in the outcome." 322 S.C. at 466, 472 S.E.2d at 632. In following the legislature's unmistakable intent, this Court disagreed and stated "[FOIA] permits any citizen to apply to the circuit court for injunctive relief. Accordingly, respondents have standing to challenge the Delegation's procedures under the FOIA." *Id.*; see also *Sloan v. Friends of Hunley, Inc.*, 369 S.C. 20, 28, 630 S.E.2d 474, 479 (2006) ("[T]his Court has held that standing under FOIA does not require the information seeker to have a personal stake in the outcome." (internal quotations omitted)); *Bus. License Opposition Comm. v. Sumter Cnty.*, 304 S.C. 232, 403 S.E.2d 638 (1991) (holding appellants are entitled to litigate the nature and effect of a violation of FOIA and the appropriate relief, if any, to be awarded).

The legislature has specifically conferred standing upon any citizen of South Carolina to bring a FOIA claim against a public body for declaratory or injunctive relief, or both. Appellant has pled that he is a citizen of the State and that FOIA has been violated. Nothing more is required. Therefore, the trial court erred in

finding Appellant lacked standing to assert his FOIA claims.<sup>3</sup> On remand, Appellant shall be entitled to pursue his FOIA claims seeking declaratory and injunctive relief.

#### IV.

Appellant also argues the trial court erred in alternatively dismissing the action on the bases of the affirmative defense of legislative immunity and pursuant to Rule 12(b)(8), SCRCR, since there was not a duplicative action already pending in trial court. We agree and find dismissal on the grounds of legislative immunity and Rule 12(b)(8) was improper pursuant to Rule 220(b)(1), SCACR, and the following authorities: *Frazer v. Badger*, 361 S.C. 94, 101, 603 S.E.2d 587, 590 (2004) ("Immunity under the [Tort Claims] statute is an affirmative defense that must be proved by the defendant at trial."); *Jensen v. S.C. Dep't of Soc. Servs.*, 297 S.C. 323, 333, 377 S.E.2d 102, 108 (Ct. App. 1988) ("Dismissal under Rule 12(b)(6) is seldom appropriate when the defense of immunity is pleaded. In such cases the court must determine whether the public official acted within the scope of his discretionary authority."); *see also Capital City Ins. Co. v. BP-Staff, Inc.*, 382 S.C. 92, 105-06, 674 S.E.2d 524, 531-32 (Ct. App. 2009) (finding that Rule 12(b)(8) should be interpreted "narrowly such that the claim must be precisely or substantially the same in both proceedings in order for the drastic remedy of dismissal to be appropriate under Rule 12(b)(8)").<sup>4</sup>

#### V.

On the basis of Appellant's lack of standing, we affirm the trial court's dismissal of all of Appellant's claims save his FOIA claims for declaratory and

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<sup>3</sup> We note that the trial court's order indicates potential limitations regarding the FOIA causes of action, specifically the statute of limitations, if the Appellant were found to have standing under FOIA. However, such issues are not within the scope of our review and should be more fully vetted in the trial court upon remand.

<sup>4</sup> Respondents claim a pending action, *Anderson County v. Preston*, C.A. No. 2009-CP-04-4482 (Anderson, S.C., Ct. Common Pleas (Complaint filed Nov. 12, 2009)), is duplicative of the action before us. In that action, Anderson County, as plaintiff, seeks to rescind the severance agreement, the return of any monies paid to Preston, and a constructive trust and return of monies paid to the Retirement System. Although both actions seek to ultimately invalidate the severance agreement, the parties and claims of the two actions are not substantially similar to warrant Rule 12(b)(8) dismissal.

injunctive relief. Pursuant to section 30-4-100 of the South Carolina Code, Appellant is legislatively conferred standing to pursue a FOIA claim. Additionally, we hold that dismissal on the alternative bases of legislative immunity and Rule 12(b)(8), SCRPC, was improper. Therefore, we reverse and remand for further consideration of Appellant's FOIA causes of action.

**AFFIRMED IN PART, REVERSED IN PART, AND REMANDED.**

**TOAL, C.J., PLEICONES, BEATTY and HEARN, JJ., concur.**

**SECTION 14-3-410.** Court of record; public inspection of records.

The Supreme Court shall be a court of record, and the records thereof shall at all times be subject to the inspection of the citizens of the State or other persons interested. The records shall be kept in a manner prescribed by the justices of the court.

HISTORY: 1962 Code Section 15-131; 1952 Code Section 15-131; 1942 Code Section 15; 1932 Code Section 15; Civ. C. '22 Section 15; Civ. C. '12 Section 3819; Civ. C. '02 Section 2723; G. S. 2091; R. S. 2223; 1896 (22) 3.

Section 14-8-240. Records.

The Court shall be a court of record, and the records thereof shall at all times be subject to public inspection.

HISTORY: 1979 Act No. 164 Part IV-A Section 1, eff July 1, 1979; 1983 Act No. 89 Section 1, eff June 2, 1983; 1983 Act No. 90 Section 2, eff July 1, 1985.

Section 14-8-250. Points necessary to decision of appeal and fairly arising upon record, with reason for Court's decision, to be preserved in writing.

In every decision rendered by the Court, every point distinctly stated in the case which is necessary to the decision of the appeal and fairly arising upon the record of the Court must be stated in writing and must, with the Court's decision, be preserved in the record case, provided, that the Court need not address a point which is manifestly without merit.

HISTORY: 1979 Act No. 164 part IV-A Section 1, eff July 1, 1979; 1983 Act No. 89 Section 1, eff June 2, 1983; 1985 Act No. 105, Section 2 approved by the Governor on May 21, 1985, and eff after July 1, 1985.



4. The complaint should be dismissed to the extent that Plaintiff seeks anything more than prospective, injunctive relief, because Defendants are immune from suit.

5. The complaint should be dismissed for improper venue because this lawsuit has been filed in the wrong county.

This motion is based upon the allegations in the complaint, the Affidavit of Daniel E. Shearouse and documents attached thereto, the law of this State, and any other material that may be served upon Plaintiff prior to a hearing. Because Defendants are presenting matters outside the pleading, Defendants will ask the circuit court to convert this motion to a motion for summary judgment pursuant to Rule 12(b), SCRCF, at least with respect the argument made in paragraph 2 above.

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February 1, 2012

STATE OF SOUTH CAROLINA )

IN THE COURT OF APPEALS

COUNTY OF WILLIAMSBURG )

Marion L. Driggers, )

Appellate Case No.: 2012-212819

Plaintiff, )

v. )

CERTIFICATE OF SERVICE

Daniel Shearhouse, Honorable Jean Toal, )

Honorable Costa Pleicones, Honorable )

Donald Beatty, Honorable John Kittredge, )

Defendants. )

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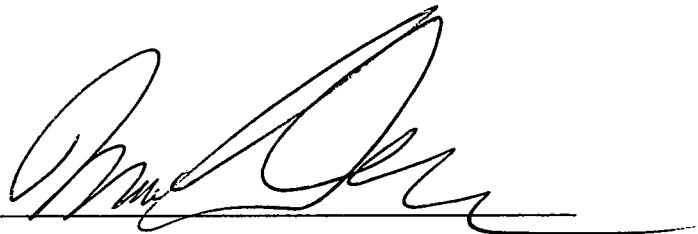
I, Marion L. Driggers Pro Se Plaintiff, do hereby certify that I have served all counsel in this action with a copy of the document below by mailing a copy of the same by United States Mail, postage prepaid, to the following address:

Document: Revised Record on Appeal

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March 13, 2013