

**RECEIVED**

**Dec 27 2023**

**SC Court of Appeals**

**Exhibit P**

**From:** Brad McIlvain bradmclivain@comcast.net  
**Subject:** Notice of Appeal - McIlvain v. Town of Kiawah Island  
**Date:** November 10, 2023 at 7:23 AM  
**To:** Joe Wilson joew@kiawahisland.org, Ross Appel ross@mklawsc.com

---



Gentlemen,

Attached is the Notice of Appeal in this matter.

Regards,

Brad McIlvain Notice of  
Appeal.pdf  
1.4 MB

Please disregard previous email which did not include the Notice.

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Jean Toal, Judge

---

Case No. 2023-CP-10-03550

---

J. Bradford McIlvain,

Appellant,

v.

Town of Kiawah Island,

Respondent.

---

NOTICE OF APPEAL

---

J. Bradford McIlvain appeals the order of the Honorable Jean Toal dated October 13, 2023 attached hereto as Exhibit "A." Appellant received written notice of the order on October 13, 2023.

November 10, 2023



J. Bradford McIlvain, *pro se*  
146 Blue Heron Pond Road  
Kiawah Island, South Carolina 29455  
(215) 789-8600

Counsel of Record for Respondent:

Joseph C. Wilson, Esquire  
PO Box 178  
Folly Beach, SC 29439  
(843) 834-2390  
[joew@kiawahisland.org](mailto:joew@kiawahisland.org)

Ross A. Appel, Esquire  
McCullough Kahn Appel  
2036 eWall Street, Suite 200  
Mt. Pleasant, SC 29464  
(843) 937-0400  
[ross@mklawsc.com](mailto:ross@mklawsc.com)

# **EXHIBIT A**

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
 	)	
J. BRADFORD MCILVAIN,	)	Civil Action No. 2023-CP-10-03550
	)	
Plaintiff,	)	
	)	
vs.	)	<b>ORDER</b>
	)	
THE TOWN OF KIAWAH ISLAND,	)	
	)	
Defendant.	)	
	)	
	)	
	)	

This matter is before the Court upon J. Bradford McIlvain’s (“Plaintiff”) Motion for Reconsideration of Judgment Order dated August 17, 2023 (“Motion for Reconsideration”), filed on August 28, 2023. The Court granted Plaintiff’s Motion for Reconsideration on August 29, 2023, and filed a Notice of Rehearing regarding the issues previously presented to this Court regarding Plaintiff’s action for declaratory and injunctive relief pursuant to the South Carolina Freedom of Information Act and Defendant’s Motion for Summary Judgment on the Pleadings or, in the alternative for Summary Judgment.

On September 13, 2023, the Court held a hearing to reconsider Defendant’s Motion for Judgment on the Pleadings, or in the alternative, Defendant’s Motion for Summary Judgment. Mr. Brad McIlvain appeared *pro se* and Mr. Joe Wilson appeared on behalf of the Town of Kiawah Island. Following the hearing, the Court requested additional briefing on whether the Court is required to go through the Attorney Memorandum at issue, line by line, to determine whether the attorney-client privilege or work product doctrine applies.

First, the Court declines to amend its previous Order entered on August 17, 2023, in which

this Court found: (1) the Attorney Memorandum at issue is protected by the work product and attorney-client privileges, (2) the Town of Kiawah Island (“Defendant”) never waived the attorney-client privileges as to the Attorney Memorandum, and (3) the Attorney Memorandum was exempt from public disclosure under the South Carolina Freedom of Information Act (“FOIA”) pursuant to S.C. Code Ann. § 30-4-40(a)(7).

Last, the Court disagrees with Plaintiff’s argument this Court is required to review the Attorney Memorandum for the reason that the entire Attorney Memorandum is exempt under § 30-4-40(a)(7) of the FOIA. Thus, the Court is not required to separate the exempt from nonexempt material, as the entire Attorney Memorandum is exempt. As stated in the hearing, this Court has reviewed the Attorney Memorandum *in camera* and confirmed it is exempt under § 30-4-40(a)(7) of the FOIA.

Therefore, for the reasons set forth in the Order dated August 17, 2023 and entered by this Court, the Court grants the Motion for Judgment on the Pleadings in favor of Defendant and denies the relief asked by the Plaintiff.

**AND IT IS SO ORDERED.**

***[JUDGE’S SIGNATURE PAGE FOLLOWS]***



**Charleston Common Pleas**

**Case Caption:** J Bradford Mcilvain VS Kiawah Island Town Of  
**Case Number:** 2023CP1003550  
**Type:** Order/Other

So Ordered

Jean H. Toal

Electronically signed on 2023-10-12 16:39:59 page 3 of 3

ELECTRONICALLY FILED - 2023 Oct 13 8:45 AM - CHARLESTON - COMMON PLEAS - CASE#2023CP1003550

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Jean Toal, Judge

---

Case No. 2023-CP-10-03550

---

J. Bradford McIlvain,

Appellant,

v.

Town of Kiawah Island,

Respondent.

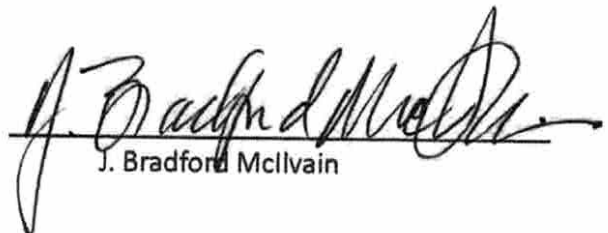
CERTIFICATE OF SERVICE

I certify that on this date I served a copy of the Notice of Appeal dated November 10, 2023 on Defendant Town of Kiawah Island by emailing it to its counsel as noted below:

Joseph C. Wilson, IV, Esquire  
Wilson Law Firm  
[joew@kiawahisland.org](mailto:joew@kiawahisland.org)

Ross A. Appel, Esquire  
McCullough-Kahn-Appel  
[ross@mklawsc.com](mailto:ross@mklawsc.com)

November 10, 2023  
Date

  
J. Bradford McIlvain

## Exhibit Q



# The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

CATHERINE S. HARRISON  
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629  
COLUMBIA, SOUTH CAROLINA 29211  
1220 SENATE STREET  
COLUMBIA, SOUTH CAROLINA 29201  
TELEPHONE: (803) 734-1890  
FAX: (803) 734-1839  
[www.sccourts.org](http://www.sccourts.org)

November 17, 2023

J. Bradford McIlvain  
146 Blue Heron Pond Road  
Kiawah Island SC 29455

Re: J. Bradford McIlvain v. Town of Kiawah Island  
Appellate Case No. 2023-001789

Dear Mr. McIlvain:

This Court has received your notice of appeal, and the case has been assigned the appellate case number that appears above. Please use this number on all future correspondence relating to this matter.

All parties to this matter are advised that all filings must comply with the requirements of Rule 267 of the South Carolina Appellate Court Rules (SCACR). The SCACR are available online at [www.sccourts.org/courtreg](http://www.sccourts.org/courtreg). Additionally, any filings submitted by counsel admitted in South Carolina must include counsel's bar number.

The attention of the parties is directed to the 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. The order can be found at [www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2014-04-15-02](http://www.sccourts.org/courtOrders/displayOrder.cfm?orderNo=2014-04-15-02). 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.

This is to advise that the title in the above matter has been changed to read as follows:

J. Bradford McIlvain, Appellant,

v.

The Town of Kiawah Island, Respondent.

All future records in this matter should be changed to reflect this title. If you have any questions, please do not hesitate to contact this office.

Very truly yours,

A handwritten signature in cursive script that reads "Catherine Hannisai, deputy". The signature is written in black ink and is positioned above the printed title "CLERK".

CLERK

cc: Ross A. Appel, Esquire  
Joseph C. Wilson, IV, Esquire



## The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

CATHERINE S. HARRISON  
CHIEF DEPUTY CLERK

POST OFFICE BOX 11629  
COLUMBIA, SOUTH CAROLINA 29211  
1220 SENATE STREET  
COLUMBIA, SOUTH CAROLINA 29201  
TELEPHONE: (803) 734-1890  
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November 17, 2023

J. Bradford McIlvain  
146 Blue Heron Pond Road  
Kiawah Island SC 29455

Re: J. Bradford McIlvain v. Town of Kiawah Island  
Appellate Case No. 2023-001789

Dear Mr. McIlvain:

Upon reviewing your notice of appeal, the following deficiency has been noted under the South Carolina Appellate Court Rules (SCACR), and any deficiency must be corrected within ten (10) days of the date of this letter or this matter will be dismissed:

- The accompanying proof of service is not in compliance with the SCACR. Pursuant to Rule 262(c)(3), SCACR, and Re: Methods of Electronic Filing & Service Under Rule 262 of the South Carolina Appellate Court Rules, S.C. Sup. Ct. Order dated May 6, 2022, only lawyers admitted to practice in South Carolina may serve other lawyers using the lawyer's primary email address in AIS. Service by pro se parties may be accomplished by hand delivery or U.S. mail.

Very truly yours,

*Catherine Harrison, deputy*  
CLERK

cc: Ross A. Appel, Esquire  
Joseph C. Wilson, IV, Esquire

## Exhibit R

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Jean Toal, Judge

---

Case No. 2023-CP-10-03550

---

J. Bradford McIlvain,

Appellant,

v.

Town of Kiawah Island,

Respondent.

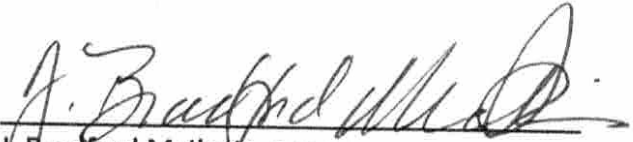
---

NOTICE OF APPEAL

---

J. Bradford McIlvain appeals the order of the Honorable Jean Toal dated October 13, 2023 attached hereto as Exhibit "A." Appellant received written notice of the order on October 13, 2023.

November 10, 2023

  
J. Bradford McIlvain, *pro se*  
146 Blue Heron Pond Road  
Kiawah Island, South Carolina 29455  
(215) 789-8600

Counsel of Record for Respondent:

Joseph C. Wilson, Esquire  
PO Box 178  
Folly Beach, SC 29439  
(843) 834-2390  
[joew@kiawahisland.org](mailto:joew@kiawahisland.org)

Ross A. Appel, Esquire  
McCullough Kahn Appel  
2036 eWall Street, Suite 200  
Mt. Pleasant, SC 29464  
(843) 937-0400  
[ross@mklawsc.com](mailto:ross@mklawsc.com)

# **EXHIBIT A**

STATE OF SOUTH CAROLINA )  
COUNTY OF CHARLESTON )

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT

J. BRADFORD MCILVAIN, )  
Plaintiff, )

Civil Action No. 2023-CP-10-03550

vs. )

**ORDER**

THE TOWN OF KIAWAH ISLAND, )  
Defendant. )

This matter is before the Court upon J. Bradford McIlvain's ("Plaintiff") Motion for Reconsideration of Judgment Order dated August 17, 2023 ("Motion for Reconsideration"), filed on August 28, 2023. The Court granted Plaintiff's Motion for Reconsideration on August 29, 2023, and filed a Notice of Rehearing regarding the issues previously presented to this Court regarding Plaintiff's action for declaratory and injunctive relief pursuant to the South Carolina Freedom of Information Act and Defendant's Motion for Summary Judgment on the Pleadings or, in the alternative for Summary Judgment.

On September 13, 2023, the Court held a hearing to reconsider Defendant's Motion for Judgment on the Pleadings, or in the alternative, Defendant's Motion for Summary Judgment. Mr. Brad McIlvain appeared *pro se* and Mr. Joe Wilson appeared on behalf of the Town of Kiawah Island. Following the hearing, the Court requested additional briefing on whether the Court is required to go through the Attorney Memorandum at issue, line by line, to determine whether the attorney-client privilege or work product doctrine applies.

First, the Court declines to amend its previous Order entered on August 17, 2023, in which

this Court found: (1) the Attorney Memorandum at issue is protected by the work product and attorney-client privileges, (2) the Town of Kiawah Island ("Defendant") never waived the attorney-client privileges as to the Attorney Memorandum, and (3) the Attorney Memorandum was exempt from public disclosure under the South Carolina Freedom of Information Act ("FOIA") pursuant to S.C. Code Ann. § 30-4-40(a)(7).

Last, the Court disagrees with Plaintiff's argument this Court is required to review the Attorney Memorandum for the reason that the entire Attorney Memorandum is exempt under § 30-4-40(a)(7) of the FOIA. Thus, the Court is not required to separate the exempt from nonexempt material, as the entire Attorney Memorandum is exempt. As stated in the hearing, this Court has reviewed the Attorney Memorandum *in camera* and confirmed it is exempt under § 30-4-40(a)(7) of the FOIA.

Therefore, for the reasons set forth in the Order dated August 17, 2023 and entered by this Court, the Court grants the Motion for Judgment on the Pleadings in favor of Defendant and denies the relief asked by the Plaintiff.

**AND IT IS SO ORDERED.**

***[JUDGE'S SIGNATURE PAGE FOLLOWS]***



**Charleston Common Pleas**

**Case Caption:** J Bradford Mcilvain VS Kiawah Island Town Of  
**Case Number:** 2023CP1003550  
**Type:** Order/Other

**So Ordered**

**Jean H. Toal**

Electronically signed on 2023-10-12 16:39:59 page 3 of 3

ELECTRONICALLY FILED - 2023 Oct 13 8:45 AM - CHARLESTON - COMMON PLEAS - CASE#2023CP1003550

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

Jean Toal, Judge

---

Case No. 2023-CP-10-03550

---

J. Bradford McIlvain,

Appellant,

v.

Town of Kiawah Island,

Respondent.

CERTIFICATE OF SERVICE

I certify that on this date I served a copy of the Notice of Appeal dated November 10, 2023 on Defendant Town of Kiawah Island by US Mail it to its counsel as noted below:


Joseph C. Wilson, IV, Esquire  
Wilson Law Firm  
PO Box 178  
Folly Beach, SC 29439

Ross A. Appel, Esquire  
McCullough-Kahn-Appel  
2036 eWall Street, Suite 200  
Mt. Pleasant, SC 29464

NOVEMBER 27, 2023  
Date

  
\_\_\_\_\_  
J. Bradford McIlvain

# Exhibit S

**From:** Court Of Appeals Filings [ctappfilings@sccourts.org](mailto:ctappfilings@sccourts.org)   
**Subject:** RE: Mcllvain v. Town of Kiawah Island - Appellate Case No. 2023-001789  
**Date:** December 11, 2023 at 1:46 PM  
**To:** Brad Mcllvain [bradmcllvain@comcast.net](mailto:bradmcllvain@comcast.net), Court Of Appeals Filings [ctappfilings@sccourts.org](mailto:ctappfilings@sccourts.org)  
**Cc:** Joe Wilson [joew@kiawahisland.org](mailto:joew@kiawahisland.org), Ross Appel [ross@mklawsc.com](mailto:ross@mklawsc.com)



The Court has received your filing. A stamped copy is attached for your records.

Thank you.

-----Original Message-----

From: Brad Mcllvain <[bradmcllvain@comcast.net](mailto:bradmcllvain@comcast.net)>  
Sent: Monday, December 11, 2023 1:41 PM  
To: Court Of Appeals Filings <[ctappfilings@sccourts.org](mailto:ctappfilings@sccourts.org)>  
Cc: Joe Wilson <[joew@kiawahisland.org](mailto:joew@kiawahisland.org)>; Ross Appel <[ross@mklawsc.com](mailto:ross@mklawsc.com)>  
Subject: Mcllvain v. Town of Kiawah Island - Appellate Case No. 2023-001789

\*\*\* EXTERNAL EMAIL: This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. \*\*\*

Please be advised that there were two hearings in the Lower Court in this matter: one on August 17, 2023 and one on September 13, 2023. The parties received transcripts of both hearings prior to the Notice of Appeal being filed. Therefore, no request for a transcript was made.

Regards,

J. Bradford Mcllvain, Pro se Appellant

~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

**From:** [Brad.Mcllvain](mailto:Brad.Mcllvain)  
**To:** [Court.Of.Appeals.Filings](mailto:Court.Of.Appeals.Filings)  
**Cc:** [Joe.Wilson](mailto:Joe.Wilson); [Ross.Appel](mailto:Ross.Appel)

**RECEIVED**  
**Dec 11 2023**  
SC. Court of Appeals

# Exhibit T

**From:** Liz Lademan liz@mklawsc.com  
**Subject:** J. Bradford McIlvain v. Town of Kiawah Island (2023-001789)  
**Date:** December 13, 2023 at 4:54 PM  
**To:** Spencer, Shelby sspencer@sccourts.org, ctappfilings@sccourts.org  
**Cc:** jcamwilsoniv@gmail.com, Ross Appel ross@mklawsc.com, joe@follybeachlaw.com, Brad McIlvain bradmclivain@comcast.net



Ms. Kitchings,

Please find the Respondent Town of Kiawah Island's Petition to Dismiss Appeal, as well as the Proof of Service attached for filing.

A copy of the Petition to Dismiss is being sent to the Appellant via U.S. Mail and Appellant is copied on this email.

A check for the \$50.00 filing fee will be mailed to the Court with the attached cover letter. Please let us know if we can provide anything further.

Thank you,

Liz



**Liz Lademan**  
Paralegal, McCullough ■ Khan ■ Appel

O: (843) 937-0400 | F: (843) 937-0706

E: liz@mklawsc.com | W: www.mklawsc.com

A: 2036 eWall Street, Mount Pleasant, SC 29464



THE INFORMATION CONTAINED IN THIS COMMUNICATION IS ATTORNEY PRIVILEGED AND CONFIDENTIAL INFORMATION INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPY OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY CONTACT ME. THANK YOU.

20231213 Ltr re      20231213      20231213 POS -  
Petitio...iss.pdf    Petitio...iss.pdf    Petitio...iss.pdf

# Exhibit U

**From:** Court Of Appeals Filings ctappfilings@sccourts.org  
**Subject:** RE: J. Bradford McIlvain v. Town of Kiawah Island (2023-001789)  
**Date:** December 14, 2023 at 2:42 PM  
**To:** Liz Lademan liz@mklawsc.com, Spencer, Shelby sspencer@sccourts.org, Court Of Appeals Filings ctappfilings@sccourts.org  
**Cc:** Ross Appel ross@mklawsc.com, Brad McIlvain bradmclivain@comcast.net, Joe Wilson joew@kiawahisland.org, joe@follybeachlaw.com

Dear Counsel:

The Court has received your filing. A stamped copy is attached for your records.

Thank you.

---

**From:** Liz Lademan <liz@mklawsc.com>  
**Sent:** Thursday, December 14, 2023 2:40 PM  
**To:** Spencer, Shelby <sspencer@sccourts.org>; Court Of Appeals Filings <ctappfilings@sccourts.org>  
**Cc:** Ross Appel <ross@mklawsc.com>; Brad McIlvain <bradmclivain@comcast.net>; Joe Wilson <joew@kiawahisland.org>; joe@follybeachlaw.com  
**Subject:** J. Bradford McIlvain v. Town of Kiawah Island (2023-001789)

**\*\*\* EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. \*\*\*

Ms. Kitchings,

Please find the Respondent Town of Kiawah Island's First Motion for Extension of Time to File Initial Response Brief and Designation of Matter, as well as the Proof of Service.

A copy of the Motion for Extension is being sent to the Appellant via U.S. Mail and Appellant is copied on this email.

A check for the \$50.00 filing fee will be mailed to the Court with the attached cover letter. Please let us know if we can provide anything further.

Thank you,

Liz



**Liz Lademan**  
Paralegal, McCullough ■ Khan ■ Appel

O: (843) 937-0400 | F: (843) 937-0706  
E: [liz@mklawsc.com](mailto:liz@mklawsc.com) | W: [www.mklawsc.com](http://www.mklawsc.com)  
A: 2036 eWall Street, Mount Pleasant, SC 29464



THE INFORMATION CONTAINED IN THIS COMMUNICATION IS ATTORNEY PRIVILEGED AND CONFIDENTIAL INFORMATION INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPY OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS

COMMUNICATION IN ERROR, PLEASE IMMEDIATELY CONTACT ME. THANK YOU.

~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any

attachments.      McIlvain v.  
                            Kiawah...Ext.pdf