

Jerome A. Owens # 299108  
Lieber Coll. Inst.  
Cooper B-wing # 48  
P.O. Box 205  
Ridgerville, S.C. 29472

**RECEIVED**

JAN 30 2013

Att: Honorable Daniel E. Shearouse  
Clerk of Court  
P.O. Box 11330  
Columbia, S.C. 29211

S.C. SUPREME COURT

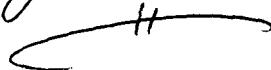
In. Re: Jerome A. Owens V. State of South Carolina  
Case No: 2012-CP-05-46 / Notice of Appeal from Bamberg County

Dear Mr. Shearouse,

Please find enclosed this Notice of Appeal to the cited action and Notice of Appeal the Rule (59(e)) of the same as afore mentioned. Notice of Appeal is timely. I received final Order on Rule 59(e) December 27, 2012 by U.S. mail.

Please file this Appeal and forward me (1) copy please Sir. I am unable to forward your office copies of my petition. S.C.P.C. does not allow inmates to copy Pro Se materials. Please provide copies for this Court and the rep. for the Attorney General's office,  
Megan Harrigan AAG.

Thank You. . . . . Sincerely yours  
J. A. Owens Sr.



THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

APPEAL FROM BAMBERG COUNTY  
Court of Common Pleas

Honorable Doyet A. Early, Circuit Court Judge Presiding

CASE NO. 2012-CP-05-46

Jerome A. Owens, #299108 . . . . . Appellant,

State of South Carolina, . . . . . Respondent.

NOTICE OF APPEAL

Jerome A. Owens, the Appellant herein, appeals from the Order of Dismissal of the Honorable Doyet A. Early, date October 30, 2012. filed of record in the Office of the clerk of court for Bamberg County on November 7, 2012 and received by the undersigned petitioner on November 16, 2012 which order dismissed his Application for Post Conviction Relief. A copy of the Order of Dismissal is attached hereto, January 25 2013 Ridgeville S.C.

Megan E. Harrigan, AAG  
Office of the Attorney Gen.  
P.O. Box 11549  
Columbia, S.C. 29211

By Jerome A. Owens  
Jerome A. Owens #299108  
Lieber Corr. Inst.  
Cooper B-48  
P.O. Box 205  
Ridgeville, S.C. 29472

Question

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

APPEAL FROM BAMBERG COUNTY  
Court of Common Pleas

Honorable Doyet A. Early, Circuit Court Judge Presiding

CASE NO. 2012-CP-05-46

Jerome A. Owens, # 299108 . . . . . Appellant,

State of South Carolina . . . . . Respondent

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on the Respondent by depositing a copy of it in the United States Mail, postage pre paid, on January 25, 2013 addressed as follows:

Megan E. Harrigan AAG  
Office of the Attorney Gen.  
P.O. Box 11549  
Columbia S.C. 29211

By Jerome A. Owens  
Jerome A. Owens # 299108  
Lieber Corr. Inst.  
Cooper B-48  
P.O. Box 205  
Ridgeville, S.C. 29472

also I have filed a copy of the Notice of Appeal in the Office of the Clerk of Court for Bamberg County on this date January 25 2013

STATE OF SOUTH CAROLINA  
COUNTY OF BAMBERG

FILED  
2012 DEC 28 PM 12:16

IN THE COURT OF COMMON PLEAS  
FOR THE SECOND JUDICIAL CIRCUIT

Jerome A. Owens, #299108,  
Applicant,

Case No. 2012-CP-05-0046

v.

**ORDER DENYING APPLICANT'S MOTION  
MOTION TO ALTER OR AMEND  
PURSUANT TO RULE 59(e), SCRPC**

State of South Carolina,  
Respondent.

This matter comes before this Court by way of an application for post-conviction relief filed February 27, 2012. In its Return, Respondent requested that the action be summarily dismissed. A Conditional Order of Dismissal was signed on July 31, 2012, and filed on August 8, 2012. Applicant was served with the Conditional Order of Dismissal on August 21, 2012. Applicant responded to the Conditional Order of Dismissal, re-alleging various jurisdiction issues previously asserted either in his present action or in previous actions for post-conviction relief. A Final Order of Dismissal was issued on October 30, 2012 and filed on November 7, 2012. Applicant filed a "Rule 59(e) SCRPC Motion to Alter or Amend Judgment" on November 27, 2012.

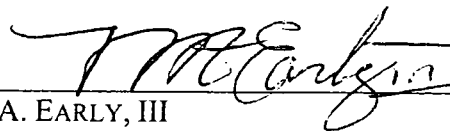
In his Motion, Applicant raises similar arguments to those posed in his response to the Conditional Order of Dismissal. Having carefully reviewed the entire record in this matter, this Court finds that no basis for altering or amending is prior ruling.<sup>1</sup> Therefore, this Court hereby denies the Applicant's Motion in its entirety, and affirms the previous Order of Dismissal.

This Court advises that if the Applicant desires to secure appellate review of this Order and the Order of Dismissal, a notice of appeal must be filed and served **within thirty days** of the service of this

<sup>1</sup> The Court, in its discretion, has considered this matter based upon the motions submitted by the parties and the post-conviction relief file, since oral argument will not aid the Court in reaching its decision. See Rule 59(f), SCRPC.

Rule 59 Order. Applicant and counsel are directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of appeal has been timely filed.

AND, IT IS SO ORDERED this 10<sup>th</sup> day of Dec, 2012



DOYET A. EARLY, III  
Chief Administrative Judge  
Second Judicial Circuit

Gambury, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF BAMBERG

Jerome A. Owens, 299108

Plaintiff

State Of South Carolina

Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.  
2012-CP-05-0046

MOTION AND ORDER INFORMATION  
FORM AND COVER SHEET

Plaintiff's Attorney:

Jerome A. Owens, Bar No.

Address:

LCI Post Office Box 205 Ridgeville, SC 29472

phone: fax:

e-mail: other:

Defendant's Attorney:

Megan E. Harrigan, Bar No.

Address:

Post Office Box 11549 Columbia SC 29211-1549

phone: (803) 734-3737 fax: (803) 734-4113

e-mail: other:

MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)

FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)

PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

**SECTION I: Hearing Information**

Nature of Motion:

Estimated Time Needed: Court Reporter Needed:  YES /  NO

**SECTION II: Motion/Order Type**

Written motion attached

Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Megan E. Harrigan  
Signature of Attorney for  Plaintiff /  Defendant

December 3, 2012

Date submitted

**SECTION III: Motion Fee**

PAID - AMOUNT:

EXEMPT:  Rule to Show Cause in Child or Spousal Support

(check reason)  Domestic Abuse or Abuse and Neglect

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, SCRPC)

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:

**JUDGE'S SECTION**

Motion Fee to be paid upon filing of the attached order.

Other:

JUDGE

CODE: Date:

**CLERK'S VERIFICATION**

Collected by: \_\_\_\_\_

Date Filed:

MOTION FEE COLLECTED: \_\_\_\_\_

CONTESTED - AMOUNT DUE: \_\_\_\_\_

STATE OF SOUTH CAROLINA  
COUNTY OF BAMBERG

FILED  
2012  
IN THE COURT OF COMMON PLEAS  
FOR THE SECOND JUDICIAL CIRCUIT

Jerome A. Owens, #299108

Case No.: 2012-CP-05-0046

Applicant,

v.

**FINAL ORDER OF DISMISSAL**

State of South Carolina,

Respondent.

This matter comes before the Court pursuant to an application for post-conviction relief filed February 27, 2012. The State made its Return and Motion to Dismiss on July 25, 2012, requesting that the application be summarily dismissed as successive, barred by the one-year statute of limitations, barred by the doctrine of *laches*, and barred by the doctrine of *res judicata*. Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a Conditional Order of Dismissal signed July 31, 2012 and filed August 8, 2012, provisionally denying and dismissing this action. This Court gave Applicant twenty days from the date of service of said Order in which to show why the dismissal should not become final. Attached to this Final Order and incorporated herein by reference is an Affidavit of Service dated August 21, 2012, serving the aforementioned Conditional Order of Dismissal on the Applicant.

In a document captioned "Opposition to Motion for Summary Judgment," filed September 12, 2012, the Applicant re-alleges various jurisdictional issues previously asserted, either in this application or previous applications for post-conviction relief. This Court has reviewed Applicant's responses to the Conditional order of Dismissal in its entirety, in conjunction with the original pleadings, and finds that no sufficient reason has been shown why

**A TRUE COPY**

Attest: J. B. King  
CLERK OF COURT  
BAMBERG COUNTY, SC

J. M. C.  
H

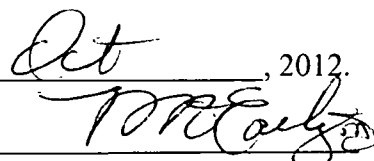
the Conditional Order of Dismissal should not become final. Furthermore, the Court finds that Applicant's claim that the Court lacked subject matter jurisdiction has been previously raised in one of Applicant's prior applications for post-conviction relief, which was dismissed pursuant to a Final Order dated May 9, 2011. Therefore, the Court finds that the allegation that the Court lacked subject matter jurisdiction has been previously raised and ruled upon in multiple proceedings.


Applicant has shown no reason for the eight year delay between his conviction and his filing of this post-conviction relief application. Furthermore, the Applicant has shown no reason why these grounds could not have been raised or were not properly raised by him in his previous post-conviction relief applications. Accordingly, this Court finds no reason why the Conditional Order of Dismissal should not become final.

**IT IS THEREFORE ORDERED** that, for the reasons set forth in the Court's Conditional Order of Dismissal, the Application for post-conviction relief is hereby denied and dismissed with prejudice.

This Court hereby advised the Applicant he must file and serve a Notice of Appeal within thirty days of service on this Order to secure appellate review. *See* Rule 203, SCRAP. The Applicant's attention is directed to Rule 243, SCRAP, for the procedures following the filing and service of the notice of appeal.

AND IT IS SO ORDERED this 30<sup>th</sup> day of Oct, 2012.

  
DOYET A. EARLY, III  
Chief Judge for Administrative Purposes  
Second Judicial Circuit

, South Carolina



FILED  
BAMBERG COUNTY

STATE OF SOUTH CAROLINA  
COUNTY OF BAMBERG

2012 AUG -8 AM 10:11 THE COURT OF COMMON PLEAS  
SECOND JUDICIAL CIRCUIT

JAMES B. HIERS  
CLERK OF COURT  
BAMBERG, SC

2012-CP-05-046

Jerome A. Owens, # 299108,

Applicant,

v.

State of South Carolina,

Respondent.

**CONDITIONAL ORDER OF DISMISSAL**

This matter comes before this Court by way of an application for post-conviction relief filed February 27, 2012. In its return, the Respondent requested the application be summarily dismissed.

**PROCEDURAL HISTORY**

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Bamberg County. Applicant was indicted at the December 1, 2003, term of the Bamberg County Grand Jury for Trafficking Crack Cocaine (2003-GS-05-185), Possession with Intent to Distribute ("PWID") Within Proximity of a School (2003-GS-05-186), and Failure to Stop for a Blue Light (2003-GS-05-187). J. Christopher Wilson, Esquire, represented Applicant. Following a jury trial, Applicant was found guilty. The Honorable Reginald Lloyd sentenced the Applicant to twelve (12) years for PWID Within Proximity of a School and to a consecutive term of three (3) years for Failure to Stop for a Blue Light. On February 14, 2004, Judge Lloyd heard arguments on Applicant's Motion for a New Trial, which was denied. On February 19, 2004, Judge Lloyd sentenced Applicant to twenty-eight (28) years, concurrent, for Trafficking Crack Cocaine.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. After a review pursuant to Anders v. California, 386 U.S. 738 (1967), the South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Owens, Op. No. 2006-UP-202 (S.C. Ct. App. filed April 14, 2006). The Remittitur was sent on May 2, 2006.

The Applicant filed his first Application for PCR on May 25, 2006 (C.A. No. 2006-CP-05-0105). The Applicant alleged the following grounds for relief:

1. Ineffective Assistance of Counsel
  - a. "Counsel failed to protect all of my Constitutional rights."
2. Violation of Due Process
  - a. "Counsel failed to afford me a fair trial in all phases of Trial Court."
3. Prosecutor Misconduct
  - a. "Counsel failed to perform objections against the Solicitor's misconduct."

A memorandum of law was also submitted addressing the issue of Applicant's sentencing at a later date in another county. An evidentiary hearing was convened at the Bamberg County Courthouse on August 8, 2007. Patrick L. Wright, Esquire, represented the Applicant. By order of dismissal dated September 18, 2007, the Honorable J. Michael Baxley denied and dismissed the application with prejudice. A notice of appeal was filed on the Applicant's behalf. The South Carolina Court of Appeals denied the Petition for Writ of Certiorari by order filed December 10, 2009. The Remittitur was sent on December 30, 2009. Applicant then filed an appeal to the South Carolina Supreme Court which was denied by order dated January 14, 2010.

Applicant subsequently filed a PCR application on March 9, 2010 (C.A. No. 2010-CP-05-0057).

Applicant alleged:

1. "Ineffective assistance of counsel."
  - a. "Counsel failed to protect all of my constitutional rights."
  - b. "Counsel failed to afford me a fair trial in all phases of trial court."
  - c. "Counsel failed to perform objections against the solicitor's misconduct."
2. "Violation of Due Process."
3. "Prosecutor Misconduct."

On August 16, 2010, Applicant filed an amended application setting forth the following additional grounds for relief:

1. "The Applicant was subject to ineffective assistance of counsel and in that trial counsel failed to object to the improper sentence at the time and place of its imposition."
2. "Applicant's due process was denied due to his being sentenced in Richland County, after the term of court had ended in Bamberg."
3. "Applicant was subject to ineffective assistance of counsel and in that counsel failed to object to the trial judge vouching for and trying to rehabilitate prosecution witness testimony in charge to the jury."

The State made its Return and Motion to Dismiss on November 18, 2010 based on the statute of limitations and successiveness. The Honorable Doyet A. Early, III, signed a Conditional Order of Dismissal on November 22, 2010. A Final Order was signed by Judge Early on April 15, 2011 and filed April 21, 2011. Applicant then filed a document captioned "Opposition to Final Conditional," on May 2, 2011. A Return and Motion to Dismiss Applicant's Motion to Alter or Amend was made by the State on May 6, 2011. The "Opposition to Final Conditional" was denied by Judge Early in an order dated May 9, 2011 and filed May 16, 2011. On May 19, 2011, Applicant filed a Motion to Alter or Amend Judgment Pursuant to Rule 59(e) S.C.R.C.P. The State made its Return and Motion to Dismiss Applicant's Motion to Alter or Amend on June 10, 2011. In an order dated and filed June 8, 2011, Judge Early denied Applicant's second Motion to Alter or Amend Judgment pursuant to Rule 59(e). A Notice of Appeal was filed. In a written order dated August 9, 2011, the South Carolina Supreme Court dismissed the case. The remittitur was sent on August 25, 2011.

In his current application, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "The judge that imposed sentence was without vested jurisdiction."
  - a. "The Court was not lawfully existing before and after rendi..."
2. "The sentence imposed at Richland is void."
  - a. "The Court that imposed sentence was not lawfully constituted."
3. "The sentence imposed at Richland Common Pleas is void."



- a. "The Court imposed sentence did not lawfully have power to impose sentence."
4. "Applicant's was subject to ineffective assistance of counsel for the following reasons:"
  - a. "...his attorney failed to file motion against lack of authority by judge who imposed sentence."
  - b. "...failing to object or file motion because the court lacked jurisdiction to impose sentence."
  - c. "...counsel failed to object because the judge lacked jurisdiction to hear the State's untimely and unfiled Rule 29 post trial motion."
  - d. "...his attorney did not object to judge pronouncing sentence and court was not lawfully constituted."
  - e. "...his attorney did not object to the court not being lawfully constituted and vested with jurisdiction over a Bamberg pending case."
  - f. "...his attorney failed to object that the court lacked authority to impose sentence."
  - g. "attorney failed to object that the judge was without authority and jurisdiction to determine a new matter."
  - h. "...his attorney failed to address judge with lack of authority because there was no Order filed at Bamberg for leave to amend."
  - i. "in that there was no provision for leave to amend any Rule 29 post trial motion by the State."
  - j. "in that the judge was without authority to hear and determine a new matter at the 5<sup>th</sup> Judicial Circuit on motion by the state."
  - k. "in that his attorney failed to object to judge pronouncement of enhanced sentence on motion by the state that identified or ascertained what provision would be inserted by him at later date."
  - l. "in that his attorney failed to object and argue against motion made by state untimely and against the term of court rule."
  - m. "Applicant was subject to ineffective assistance of counsel before and after unlawful imposed sentence due to his attorney not objecting timely and calling the well settled practice of law in this state court, CaseLaw, Constitutional Law Common Law and Rules of Criminal Procedure State v. Best 186 S.E. 2d 272 (1972)."
5. "Applicant was subject to Ineffective Assistance of counsel in that his attorney failed to advise him of plea offer and ensuing trial thus leaving offer from being presented to the trial court, denying applicant his Fundamental Rights, U.S.C.A. Const. Amend 6, 14 Lafler v. Cooper No. 10-209. Cite as: 566 U.S. \_\_\_ 2012, March 21, 2012."

*MAE*  
*#4*

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court finds that the current application for post-conviction relief must be summarily dismissed because it is successive to his prior application for post-conviction relief. S.C. Code Ann. §17-27-90 provides that:

All grounds for relief available to an application under this chapter must be raised in his original, supplemental or amended Application. Any ground finally adjudicated or not so raised, knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding Applicant has taken to secure relief, may not be the basis for a subsequent Application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended Application.

Successive applications are disfavored and the burden is on Applicant to establish that any new ground raised in a subsequent application could not have been raised by him in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 309 S.C. 157, 420 S.E.2d 834 (1992).

This Court finds that the current allegations were or could have been raised in the proceedings based on Applicant's prior application for post-conviction relief and thus the current application is successive and barred under S.C. Code § 17-27-90. Applicant has failed to establish sufficient reason why he could not have raised his current allegations in his previous application for post-conviction relief; therefore, he has failed to meet the burden imposed upon him. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980); Aice, 305 S.C. 448, 409 S.E.2d 392; Arnold v. State/Plath v. State, 309 S.C. 157, 420 S.E.2d 834.

This Court finds, further, that this Application for Post-Conviction Relief should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to -160. S.C. Code Ann. §17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was convicted of the offenses he challenges in this Application on February 19, 2004. This Application was filed on February 27, 2012, which was over seven (7) years after the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. §17-27-70(c) (1985) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, this Court finds that the application for post-conviction relief is summarily dismissed for failure to file within the time mandated by statute and for being successive.

Additionally, this Court finds this application is barred under the doctrine of *laches*. The Applicant has filed this application over eight (8) years after he was convicted. The doctrine of *laches* bars the Applicant from raising these allegations in a post-conviction relief application. Absent some explanation or justification for the delay in seeking post-conviction relief, *laches* will prevent an Applicant from seeking collateral review of his conviction, especially where the delay affects the availability of evidence to refute the applicant's claims. McElrath v. State, 276 S.C. 282, 277 S.E.2d 890 (1981); Honeycutt v. Ward, 612 F.2d 36 (2nd Cir. 1979). Whitehead v. State, 352 S.C. 215, 574 S.E.2d 200 (2002).

Handwritten signature and initials, possibly "TAC" and "#4", in black ink.

To ensure finality of litigation, our courts require reasonable diligence in pursuing collateral relief. This requirement "guards the state's legitimate expectation that it will not be called upon without due cause, to defend the integrity of convictions that occurred many years ago, where records and witnesses are no longer available." McElrath, 276 S.C. at 283. Rule 9(a) of the Federal Habeas Corpus Act recognizes the doctrine of laches. The Rule states in pertinent part:

A petition may be dismissed if it appears that the state of which the Respondent is an officer has been prejudiced in its ability to respond to the Petition by delay in its filing unless the Petitioner shows that it is based on grounds of which he could not have had knowledge by the exercise of reasonable diligence before the circumstances prejudicial to the state occurred.

Furthermore the South Carolina legislature has recognized this problem and instituted a one-year statute of limitations. See S.C. Code Ann. §17-27-45(a).

The Applicant's delay has greatly prejudiced the Respondent. It is questionable whether the attorneys will remember the case and whether their files will be available. If the Applicant had sought post-conviction relief within a reasonable time after his plea, neither of these problems would exist. Therefore, the Court intends to summarily dismiss the Application based on the Applicant's lack of diligence in processing his claim for relief.

Further, this Court finds this application is barred under the doctrine of *res judicata*. *Res judicata* prohibits subsequent actions by the same parties on the same issues. Bell v. Bennett, 307 S.C. 286, 414 S.E.2d 786 (Ct. App. 1992). A final judgment on the merits in a prior action bars subsequent consideration of those issues in a new action. Foran v. USAA Casualty Ins. Co., 311 S.C. 189, 427 S.E.2d 918 (Ct. App. 1993). *Res judicata* also bars any issues that could have been raised in the former action. Id.

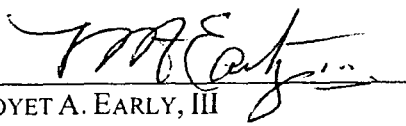
The Applicant had a full opportunity to litigate all allegations regarding ineffective assistance

of counsel in prior post-conviction relief proceedings. The public interest in finality of judgments requires that litigation must eventually come to an end. Pursuant to Rule 12(b)(6), SCRPC, the Court intends to summarily dismiss these claims as barred by *res judicata*.

Pursuant to S.C. Code Ann. § 17-27-70(b), the Court intends to dismiss this Application with prejudice unless the Applicant provides specific reasons, factual or legal, why the Application should not be dismissed in its entirety. The Applicant is granted twenty (20) days from the date of service of this Order upon him to show why this Order should not become final. The Applicant shall file any reasons he may have, factual or legal, with the Bamberg County Clerk of Court and shall serve opposing counsel at the following address:

Office of the Attorney General  
Attn: Megan E. Harrigan, Esquire  
P.O. Box 11549  
Columbia, South Carolina 29211

AND IT IS SO ORDERED this 31 day of July, 2012.

  
DOYET A. EARLY, III  
Chief Judge for Administrative Purposes  
Second Judicial Circuit

Bamberg, South Carolina.