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December 9, 2013

Ms. V. Claire Allen  
Deputy Clerk  
South Carolina Court of Appeals  
Post Office Box 11629  
Columbia, SC 29211

Re: The State of South Carolina vs. Mare Baracco  
Civil Action No.: 2013-CP-07-00918  
Our File No: 11369 MBL

Dear Ms. Allen:

Please find enclosed a copy of my Notice of Appearance on behalf of Beaufort County. I wanted to bring to your attention two related issues which I believe require the Court's attention. Initially, I believe that this case has been erroneously captioned "The State vs. Mare Baracco". This designation is, to my mind, inappropriate in as much as this is not a criminal case and The State is not a party. In fact, this case is an appeal to the magistrate's court of an administrative determination pursuant to Beaufort County Code of Ordinances 14-35, which I have attached for your review along with the order of the circuit court from which this appeal arises. I believe the proper party in this matter would either be Beaufort County or Beaufort County Animal Control as opposed to "the State." Moreover, as you can see the issue before the court is the classification of an animal owned by the Appellant as a "dangerous animal" pursuant to Beaufort Code of Ordinances Section 14-35, and does not involve any criminal penalty or sanction. Therefore, I would respectfully request that the Court reconsider its designation of this appeal as a Criminal Appeal and correct the caption in this matter to accurately reflect the proper nature of the case and appropriate parties in interest. If you have any questions, please do not hesitate to contact me at your convenience.

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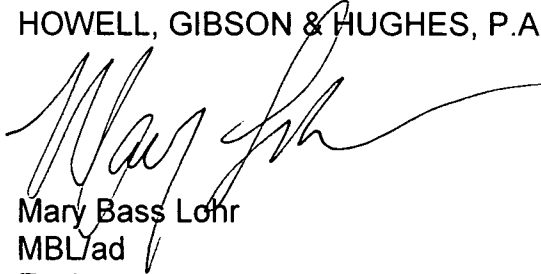
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SC Court of Appeals

With kindest regards, I am

Yours truly,

HOWELL, GIBSON & HUGHES, P.A.

A handwritten signature in black ink, appearing to read "Mary Bass Lohr". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Mary Bass Lohr  
MBL/ad  
Enclosure

cc: Ms. Mare Baracco  
Josh Gruber  
Ms. Salley W. Elliott

THE STATE OF SOUTH CAROLINA  
South Carolina Court of Appeals

APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

Case No.: 2013-CP-07-00918

MARE BARACCO.....Appellant,

vs.

THE STATE OF SOUTH CAROLINA.....Respondent.

NOTICE OF APPEARANCE  
ON BEHALF OF BEAUFORT COUNTY

NOTICE IS HEREBY given to the Court and to the parties' counsel that the undersigned is appearing in the above captioned action on behalf of Beaufort County. The undersigned requests that copies of all pleadings and discovery heretofore exchanged between the parties of record be served upon the undersigned at the address set forth herein below.

HOWELL, GIBSON & HUGHES, P.A.

By: 

Mary Bass Lohr  
Post Office Box 40  
Beaufort, SC 29901  
(843) 522-2400  
Attorney for Beaufort County  
Bar No: 16927

Beaufort, South Carolina

December 9, 2013

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**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
South Carolina Court of Appeals

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APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

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Case No.: 2013-CP-07-00918

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MARE BARACCO.....Appellant,

vs.

THE STATE OF SOUTH CAROLINA.....Respondent.

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CERTIFICATE OF SERVICE

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The undersigned counsel hereby certifies that he has served the foregoing  
Notice of Appearance on Behalf of Beaufort County upon all counsel of record by  
affixing same with proper postage and placing same with the United States

Postal Service on 9 day of December, 2013 addressed to the following:

Mare Baracco  
*Pro Se Appellant*  
1006 Madrid Ave.  
Port Royal, SC 29935

Josh Gruber, Esquire  
Beaufort County Staff Attorney  
Post Office Box 1228  
Beaufort, SC 29901

Salley W. Elliott, Esquire  
South Carolina Attorney General's Office  
Post Office Box 11549  
Columbia, SC 29211-1549

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**SC Court of Appeals**

HOWELL, GIBSON & HUGHES, P.A.

By: 

Mary Bass Lohr

Post Office Box 40

Beaufort, SC 29901

(843) 522-2400

Attorney for Beaufort County

Beaufort, South Carolina

December 9, 2013

- (b) *Feral cat colonies.*
- (1) Feral cat colonies shall be permitted and caregivers shall be entitled to maintain them in accordance with the terms and conditions of this section.
  - (2) Caregiver requirements. It shall be the duty of the caregiver to:
    - a. Report bi-annually to the county animal control on the following:
      1. Number of colonies in the county if the caretaker maintains more than one colony.
      2. Providing the county animal control with descriptions of each cat in the colony and copies of documents evidencing that the cats have been vaccinated and spayed/neutered.
    - b. Help to resolve any complaints over the conduct of a colony or a cat within a colony.
    - c. Maintain records on the size and location of the colonies as well as the vaccination and spay/neuter records of cats in the colonies.
    - d. Mandatory vaccination of the colony population for rabies and making reasonable efforts to update the five-way or equivalent vaccinations on cats that can be recaptured.
    - e. Mandatory spaying/neutering of all cats within the colony by a licensed veterinarian. In facilitating the spaying/neutering of cats, caregivers shall be presumed to have acted in good faith in concluding that cats routinely congregating within the colony are feral.
    - f. Providing food, water and suitable shelter for colony cats.
    - g. Observe the colony cats daily and keeping a record of any illnesses or unusual behavior noticed in any colony cats.
    - h. Obtaining proper medical attention to any colony cat who appears to require it.
    - i. Obtaining written approval of the owner of any property, on which the colony resides, or to which the caregiver requires access, to provide colony care.
    - j. In the event that kittens are born to a colony cat, the caregiver shall remove the kittens from the colony after they have been weaned and be responsible for the placement of the kittens in homes or foster homes for the purpose of subsequent permanent placement.
    - k. Caregivers shall make reasonable efforts to find permanent inside homes for colony cats who exhibit the potential for acclimating to such a placement.
    - l. Caregiver shall make reasonable effort to maintain the colony as to prevent the colony from running at large beyond the confines of the designated area. (S.C. Code 1976 § 47-7-110)
- (c) *Ordinance enforcement.* Nothing shall interfere with the animal control officer's ability to:
- (1) Seize/remove a cat from a colony that is creating a nuisance as defined above if the caregiver has failed to cure the nuisance within a reasonable timeframe.
  - (2) Seize/remove a feral cat colony when the caregiver fails to comply with the requirements of this section.

*(Ord. No. 2010/7, 4-26-2010)*

#### **Sec. 14-35. - Regulation of dangerous animals.**

- (a) *Definition.* "Dangerous animal" means any animal which the owner knows or reasonably should know has a propensity, tendency or disposition to attack unprovoked, cause injury, or

otherwise endanger the safety of human beings or domestic animals; an animal which makes an unprovoked attack that causes bodily injury to a human being and the attack takes place other than the place where the animal is confined; or an animal that commits unprovoked attacks any place other than the place where the animal is confined and those acts cause a person to reasonably believe that the animal will attack and cause bodily injury to a human being. A dog will be considered a dangerous animal if it is used as a weapon in the commission of a crime.

- (b) *Confinement.* Every dangerous animal, as determined by the animal control officer, magistrate or licensing authority, shall be confined by the owner within a building or secure enclosure and shall be securely muzzled or caged whenever off the premises of its owner (S.C. Code 1976, § 47-3-720).
- (1) All dangerous animals shall be securely confined within an occupied house or residence or in a securely enclosed and locked pen or kennel, except when leashed as provided in this section. Such pen, kennel or structure must have secure sides and a secure top attached to the sides.
  - (2) All pens or other structures designed, constructed or used to confine dangerous animals must be locked with a key or combination lock when such animals are within the structure. Such structure must have a secure bottom, floor or foundation attached to the sides of the pen, or the sides of the pen must be embedded in the ground no less than two feet so as to prevent digging under the walls by the confined animal.
  - (3) All structures erected to house dangerous animals must be adequately lighted and ventilated and kept in a clean and sanitary condition. No dangerous animal may be kept on a porch, patio or in any part of a house or structure that would allow the animal to exit such building on its own volition.
  - (4) No person shall permit a dangerous animal to go outside its kennel or pen unless such animal is securely leashed and muzzled with a leash no longer than six feet in length. No person shall permit a dangerous animal to be kept on a chain, rope or other type of leash outside its kennel or pen unless both the animal and the leash are under the actual physical control of a person 18 years of age or older.
  - (5) Such animals may not be leashed to inanimate objects such as trees, posts, buildings, or any other object or structure.
- (c) *Declaring an animal dangerous.*
- (1) An animal control officer, in his or her discretion, observes that a particular animal is a dangerous animal as defined in this article, may declare such animal a dangerous animal by delivering a written notice of declaration to the owner. The notice shall include a description of the animal and the basis for the declaration of dangerousness. The notice shall be served upon any adult residing at the premises where the animal is located or may be posted on the premises if no adult is present.
  - (2) The person owning, keeping, sheltering or harboring the animal in question must comply with the requirements as designated in this section within 72 hours of the receipt of the animal control officer's declaration.
  - (3) Any animal that is alleged to be dangerous and that is under impoundment or quarantine at the animal shelter shall not be released to the owner, until such time that the owner is capable of confining the animal to his/her property in accordance with this section.
  - (4) All dangerous animals shall have an identification microchip implant placed under the animal's skin once the animal has been declared dangerous. The owner shall pay the

actual fee charged by the shelter or the licensed veterinarian who performed the microchip identification procedure.

*(Ord. No. 2010/7, 4-26-2010)*

### **Sec. 14-36. - Enforcement.**

- (a) *Duties.* The division of animal control shall be charged with the responsibility of:
- (1) Cooperating with the health officers of various state government units and assisting in the enforcement of laws of the state with regard to the control of animals, and especially with regard to the vaccination of dogs and cats against rabies.
  - (2) Investigating all complaints with regard to animals covered by this article.
  - (3) Enforcing within the unincorporated areas of the county and municipalities, all of the state laws, ordinances enacted by the county and contracts entered into the county for the care, control and custody of animals covered by this article.
- (b) *Entering the premises.* The animal control officer shall patrol the properties of the county, public and private, for the purpose of checking animals for the following:
- (1) Rabies.
  - (2) Inhumane treatment and the health of animals.
  - (3) Boarding.
- (c) *Interference with officers.* No person shall interfere with or hinder an animal control officer or any such agent of the county in the performance of such officer's duty or seek to release animals in the custody of the animal control officer or any such agent of the county.
- (d) *Penalties.* Any person who violates the provisions of this article shall be guilty of a misdemeanor and upon conviction, shall be subject to a fine up to \$500.00 or 30 days in jail. Each day's violation of any provision of this article shall constitute a separate offense.

*(Ord. No. 2010/7, 4-26-2010)*

*Cross reference— Health and sanitation, ch. 46.*

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#### **FOOTNOTE(S):**

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— (2) —

*Editor's note—Ord. No. 2010/7, adopted Apr. 26, 2010, amended art. II in its entirety to read as herein set out. Former art. II pertained to the same subject matter, consisted of §§ 14-26—14-37, and derived from the 1982 Code; Ord. No. 2008/10, adopted Apr. 14, 2008; and Ord. No. 2009/13, adopted Mar. 20, 2009. [\(Back\)](#)*

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

MARE BARACCO

vs.

STATE OF SOUTH CAROLINA.

) IN THE COURT OF COMMON PLEAS  
2013 OCT 16 AM 11:16  
)  
) FOURTEENTH JUDICIAL CIRCUIT  
) ANN ROSENEAU  
) BEAUFORT COUNTY, S.C.  
) CLERK OF COURT: 2013-CP-07-00918

)  
) ORDER  
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This matter came before this Court for a hearing on October 4, 2013 upon the Appeal from the Beaufort County Magistrate Court filed by the Petitioners on April 10, 2013. The Appellant was represented by Kimberly Smith of Moss, Kuhn and Fleming, and the State was represented by Allison C. Coppage, Assistant Beaufort County Attorney.

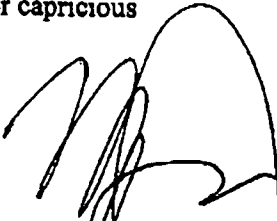
The Appellant appealed the Order of the Magistrate Court dated March 13, 2013 finding the dog, "Bodi" owned by Mare Baracco to be a "Dangerous Animal" pursuant to the Beaufort County Code of Ordinance Sec 14 -35. The issues raised by the pleadings concern whether the Magistrate Court erred as a matter of law in determining that the Respondent met the burden of proof in affirming the administrative decision and whether there was a question of fact as to where the incident occurred.

In an Administrative Appeal, "the Court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The Court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative finding, inferences, conclusions, or decisions are clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record, or arbitrary or capricious or

characterized by abuse of discretion or clearly unwarranted exercise of discretion.” S.C.Code Ann. §1-23-380(5).

Based upon the facts and testimony contained in the record, I hereby find that the decision to designate the Appellant’s dog as a “dangerous animal” was supported by the evidence on the whole record and was neither arbitrary nor capricious

THEREFORE, the Appeal is denied.



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The Honorable Marvin H. Dukes, III  
Master In Equity and  
Special Circuit Court Judge

This 4 day of October 2013  
at Beaufort, South Carolina.

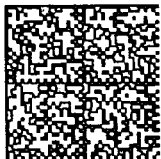
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**COURT OF APPEALS**

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