THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Carmen T. Mullen, Circuit Court Judge

Case No. 2011-CP-07-00013

Maureen T. Coffey, ... Respondent,

v.

Community Services Associates, Inc. and
George F. Breed, Jr. ..... Appellants.

FINAL REPLY BRIEF OF APPELLANT COMMUNITY SERVICES ASSOC., INC.

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I. RESPONDENT'S ASSERTION OF THE APPLICATION OF THE "TWO ISSUE RULE" IS MISPLACED.

Respondent's argument begins with the assertion that the six million dollar verdict should be affirmed under the two-issue rule because CSA ostensibly did not "challenge the amount of the general verdict." This assertion is erroneous; CSA did argue against the size of the verdict.

In Appellant CSA's brief, pp. 47-49, CSA has argued that the evidence presented by Respondent at trial regarding her slander claim did not justify a verdict against CSA's in *any* amount. The basic reason for CSA's claim in this regard is that Respondent Coffey has provided *no* evidence that any members of the control group of CSA ever heard or repeated the rumor[1] or that any employee of CSA repeated it within the scope of his or her employment.

There is no evidence whatsoever that Cary Kelley or George Breed knew about or repeated the rumor of an alleged improper relationship between Officer John Jolin and Judge Coffey. Tr.852, lines 6-11; R.735, lines 6-11. Tr.1718, lines 6-23; R.1466, lines 6-23.

There is also no evidence that the lower-level employees who are alleged to have repeated the rumor did so in the scope of their employment with CSA. Our law requires that for a master to be liable for defamatory statements made by an employee, there are specific conditions that must be met. This Court has ruled that, "a principal may be held liable for defamatory statements made by an agent **acting within the scope** of this apparent authority." Murray v. Holnam, Inc., 344 S.C. 129, 145, 542 S.E.2d 743, 751 (Ct. App. 2001) (emphasis added). *See also* Abofreka v. Alston Tobacco Co., 288 S.C. 122, 127, 341 S.E.2d 622, 625 (1986). Restatement (Second) of Agency, § 228, provides as follows:

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[1] The court, instructing Respondent's counsel, stated that, "someone's going to have to say, at some point, that this rumor was started by Mr. Breed. Someone's got to be able to say they heard Mr. Breed say it, not just that five other people said Mr. Breed said it. I mean, somewhere, you got to connect it up." Tr.354, lines 1-5; R.401, lines 1-5. That never happened. No one ever heard Mr. Breed repeat the gossip.

(1) Conduct of a servant is within the **scope of employment** if, but **only if:**
(a) It is of the **kind he is employed to perform**;
(b) It occurs substantially within the authorized time and space limits;
(c) It is **actuated, at least in part, by a purpose to serve the master, and**
(d) If force is intentionally used by the servant against another, the use of force is not unexpectable by the master.

(2) **Conduct of a servant is not within the scope of employment if it is different in kind from that authorized,** far beyond the authorized time or space limits, **or too little actuated by a purpose to serve the master.** (emphasis added)

See also, Armstrong v. Food Lion, Inc., 371 S.C. 271, 276, 634 S.E.2d 50, 53 (2006), which held as follows:

> The act of a servant done to effect some independent purpose of his own and not with reference to the service in which he is employed, or while he is acting as his own master for the time being, is not within the scope of his employment so as to render the master liable therefor. Lane[v. Modern Music, Inc., 244 S.C. 299, 136 S.E.2d 713 (1964)], *supra*. Under these circumstances the servant alone is liable for the injuries inflicted. *Id.* **If a servant steps aside from the master's business for some purpose wholly disconnected with his employment, the relation of master and servant is temporarily suspended; this is so no matter how short the time, and the master is not liable for his acts during such time.** *Id.*(emphasis added).

The record is devoid of evidence that these conditions are met. Jolin testified that he heard the rumor from Bobbie Martin. Tr. 517, lines 1-5; R.514, lines 1-5; from Randy Woods, Tr. 518, lines 16-21; R.515, lines 16-21; and from Mike Ryan. Regarding Ryan, Jolin's testimony was as follows:

Q: Did you hear the same *rumor* from someone else?
A: Mike Ryan.
Q: At the time that you heard it from Mr. Ryan, was he working for Sea Pines Security?
A: Not at the time. He was trying to – to go back to work for Sea Pines.

Tr. 519, lines 15-20; R.516, lines 15-20(emphasis added). CSA cannot be liable for the statement of Ryan, a non-employee. Mr. William Waxel,[2] who considered himself something of a father

[2] Mr. Waxel was not named as a witness during discovery, so he should not have been allowed to testify, as addressed in CSA's brief, as addressed in CSA's Brief and *infra*..

figure to Respondent's witness, Jolin, Tr.850, lines 22-24; R.734, lines 22-24, testified that he heard the rumor from Randy Woods. Tr.847, line 22-848, line 1; R731, line 22-732, line1. Respondent elicited testimony from Sherry Hamilton, an administrative assistant to Judge Coffey. Tr.1048, line 23-1050, line 1; R.909, line 23-911, line1.. It was Jolin himself who passed the rumor to Ms. Hamilton, who had not heard it. She testified that he told her the following:

> And he proceeded to tell me that ...they were saying that he and Judge Coffey had had an affair. And *I laughed.* And I said, You're serious, right? And he says, ...That's the *gossip* out there is that they're saying that she and I had an affair.

Tr.1049, lines 8-13; R.910, lines 8-13(emphasis added).

In these accounts of the gossip or rumor, there is not one shred of evidence that the employees were making the statements in the course of their employment. Respondent states that some were made "at work," but that is not sufficient to establish that they were made in the course of their employment – to further CSA's business in some way or that they were actually employed to speak of such matters. "At work" covers the locker room, coffee breaks and small talk at the water cooler, none of which are within the course of the speakers' employment by CSA. There is insufficient evidence to hold CSA liable for the gossip or rumor that made its way through the lower ranks of CSA.

There is especially insufficient evidence when it is considered that Respondent Coffey is a public figure and that she must prove by clear and convincing evidence that the alleged slanderous comment was "made with knowledge of its falsity or with reckless disregard of whether it was true or false." Tr.1877, line 24-1878, line1; R.1625, line 24-1626, line 1.

There is no evidence in the record that any of the employees who are alleged to have made slanderous statements – if they were even serious, rather than in jest[3] – knew they were false. Of the people who Jolin accused of passing the rumor or gossip, both available witnesses denied that they did so. Officer Bobbie Martin testified that the only time she heard it was from Jolin himself and that she never passed it on. Tr.814, lines 1-24; R.713, lines 1-24; Tr.819, line 20-820, line 5; R.716, line 20-717, line 5. Randy Woods testified that he had not heard the rumor of a Jolin-Coffey affair from anyone at Sea Pines and that he never passed the gossip/rumor to anyone else or answered questions about it. Tr.854, lines 8-25; R.737, lines 8-25; Tr.857, lines 1-19; R.740, lines 1-19; Tr.860, lines 8-19; R.743, lines 8-19. The other person whom Jolin alleged to have passed the rumor was Mike Ryan, who did not testify at trial. Mr. Waxel testified that he heard the gossip from Randy Woods. Tr.847, line 22-848, line 1; R.731, line 22-732, line 1. What he heard Woods say, however, was not even close to malicious, constitutional slander. Waxel testified as follows:

> Q: Did he say it to you directly, or did he say it through other people?
> A: No. We talked directly.
> Q: And what is it that he said that Sergeant Jolin and Maureen Coffey had done?
> A: Just having a general affair. **He would stay behind late at court, and he'd be like the last one to leave. Just general stuff** (emphasis added).

Tr.848, lines 4-11; R.732, lines 4-11. Such banter does not cast any serious aspersions on Ms. Coffey's reputation for chastity. There is *no* evidence in the record that anything more incriminating than Waxel's testimony was ever part of the rumor or gossip. There is, moreover, no evidence in the record that there was *anything* more to the "slander" than light-hearted,

[3] Ms. Hamilton's response, *supra.* – laughter – suggests that the rumor was not serious. Jolin himself, in the same quoted dialogue calls it "gossip." Elsewhere in the Record it is referred to as a "rumor." Tr.353, lines 17-20, 25; R.400, lines 17-20, 25; Tr.518, lines 16-18; R.515,lines 16-18; Tr.519, lines 15-16; R.516, lines 15-16; Tr.1243, lines 16-18, R.1100, lines 16-18.

locker-room type teasing of John Jolin, who published the rumor to Ms. Hamilton, as cited *supra.* There is no evidence that anything genuinely slanderous was said about Maureen Coffey.

The lack of any evidence of a connection with the course of employment of any CSA employee; or that any senior official of CSA was even aware of the gossip/teasing; and the lack of clear and convincing evidence that anyone made statements "with knowledge of their falsity or with reckless disregard of their truth of falsity" all show that there was insufficient evidence of slander to go to the jury. If there is insufficient evidence of slander to go to the jury, it clearly follows that there is insufficient evidence to affirm an award of six million dollars in damages. CSA's brief *de facto* argues that the award for slander should be zero dollars ($0).

The award of six million dollars for passing "general stuff," such as Jolin's staying behind at court and being the last to leave, Tr.848, lines 10-11; R.732, lines 10-11, is "so shockingly disproportionate to the injuries" that it is clearly the "result of caprice, passion, prejudice or other considerations not founded on the evidence." Sanders v. Prince, 304 S.C. 236, 238, 403 S.E.2d 640, 642 (1991). To the extent the verdict pertains to the slander claim[4], it is "the duty of [the] Court...to set aside the verdict." Id.

II. RESPONDENT'S ASSERTION THAT CSA WAIVED ITS RIGHT TO A DIRECTED VERDICT BECAUSE IT MADE THE MOTION PRIOR TO REBUTTAL TESTIMONY FROM ONE WITNESS IS INCORRECT.

Respondent previously made a motion in this Court to strike part of CSA's brief on the basis, at least in part, of the alleged failure to renew the motion for a directed verdict at trial. By order of August 26, 2013, this Court denied Respondent's Motion. Appellant CSA believes that this Court's denial of Respondent's Motion to Strike should be dispositive of this issue. In an abundance of caution, however, CSA will readdress the issue.

[4] The verdict form lumps damages for libel and slander together. R. 1881-1882.

A. CSA Did Not Waive Its Right To Move For A Directed Verdict.

It is well established in South Carolina law that "a waiver is a voluntary and intentional abandonment or relinquishment of a known right." Burch v. Burch, 395 S.C. 318, 333, 717 S.E.2d 757, 765 (2011); King v. James, 388. S.C. 16, 30, 694 S.E.2d 35, 42 (Ct. App. 2010). In this case, CSA had no intention to abandon or relinquish its known right to move for a directed verdict at the close of evidence. It, in fact, made such a motion based on the instruction of the Trial Judge. The admission of evidence and the conduct of trial are, of course, largely within the discretion of the presiding judge at a trial. South Carolina Electric & Gas Co. v. Aetna Ins. Co., 238 S.C. 248, 265, 120 S.E.2d 111, 120 (1961) ("The conduct of a trial, including the admission or rejection of evidence, must be left largely to the trial judge's discretion") *citing* Chastain v. United Ins. Co., 230 S.C. 465, 96 S.E.2d 464 (1957).

B. The Trial Court, Knowing That There Was To Be A Rebuttal Witness Thereafter, Instructed The Appellants To Renew Their Motions For Directed Verdict.

At trial, the Court ascertained that the Respondent's counsel had one witness – who had already testified – that he was going to present in rebuttal. Despite this known intention of Respondent's counsel, the Court then instructed the parties, "what we need to do is let's renew our motions." Tr.1710, lines 16-17; R.1458, lines 16-17. After addressing scheduling, the Court reiterated that the motions for directed verdict be renewed then. She said, "I think you need to renew your motions at this point." Tr.1711, lines 21-23; R.1459, lines 21-23 (emphasis added). At no point did Respondent's counsel or Appellants' counsel object to the Trial Court's outlined procedure. Given our law regarding a Trial Judge's discretion to run the trial, it was assumed by all parties that the Court here had authority to direct when the Defendants were to renew their motions.

Appellants, in fact, submitted a written motion for directed verdict, Tr.1711, line 24 - 1712, line 6; R.1459, line 24-1460, line 6. That written motion in renewal of the prior motion should be considered as continuing until the end of trial. The colloquy between Appellants' counsel and the Court was as follows:

> MS JOLLEY: Your honor, we filed a written motion for direct verdict. We're happy to, and we've argued previously, we're happy to rely; on that argument and submit motion.
> THE COURT: Okay. As well.
> MS JOLLEY: We'll re-submit it at this point.
> THE COURT: Okay. That's fine, and I appreciate that.

Tr.1711, line 24–1712, line 5; R.1459, line 24-1460, line 5.

The trial court thereby clearly gave approval to that procedure to renew the motion for directed verdict.

C. The Trial Court Adjudicated The Motions For Directed Verdict Before The Rebuttal Witness Testified.

Immediately after directing the defending parties to renew their motions for directed verdict, the Court, in fact, elicited argument on, and then adjudicated, those motions. Tr.1712, line 8–1722, line 12; R.1460, line 8-1470, line 12. She granted directed verdict on the civil conspiracy claim, Tr.1714, lines 19-20; R.1462, lines 19-20 but denied it as to the slander claim against CSA, Tr. 1721 lines 1-3; R1461, lines 1-3, while granting it as to Defendant/Appellant Breed regarding the slander claim. Id.

The fact that the Court adjudicated the motions with no objection from Respondent's counsel constitutes Coffey's waiver of any claim about the sequencing of the DV motions and the rebuttal witness. *Cf.* Ahrens v. McDaniel, 287 S.C. 63, 67, 336 S.E.2d 505, 508 (Ct. App. 1985)(ordinarily, the conduct of trial and the limitations of arguments on motions arising during trial are matters within the sound discretion of the trial judge).

D. The Rule 50(B) Statement To The Effect That Motions For Directed Verdict Must Be Made "At The Close Of All The Evidence" As A Prerequisite To A Motion For JNOV Is Subject To Exceptions, Which Are Applicable Here.

The Fourth Circuit, citing and quoting Moore's Federal Practice and cases from other circuits – Trujillo v. Goodman, 825 F.2d 1453 (10th Cir. 1987) and Ebker v. Tan Jay Int'l, Ltd., 739 F.2d 812 (2d Cir. 1984) – has made the point that there are two common exceptions to the general, strict rule. Singer v. Dungan, 45 F.3d 823, 829 (4th "Cir. 1995). Specifically, Singer provides as follows:

> Professor Moore notes that the courts have created various exceptions to Rule 50(b) analysis for purposes of reviewing the sufficiency of the evidence by holding that a party can still make a Rule 50(b) motion despite his failure to renew his Rule 50(a) motion at the close of all evidence if: "(1) the court indicated that renewal of the motion was unnecessary and/or; (2) the evidence following the party's unrenewed motion under Rule 50(a) was either nonexistent or was brief enough to be obviously inconsequential on the issue of the evidence's legal sufficiency."

Singer, 45 F.3d at 829 (citations omitted). As addressed below, these exceptions apply here. The trial court asked the parties to argue the motions after the defense rested and before the rebuttal evidence. The court was aware the brief rebuttal evidence would be offered, but requested the motions anyway. Also, the evidence was brief and irrelevant to the arguments for directed verdict.

E. To Cause Appellant to Forfeit Its Right to Make a Motion for Directed Verdict over the Testimony Of One Rebuttal Witness Would Be To Elevate Form Over Substance.

As this Court has held, "[w]e recognize that courts of this State have refused to elevate form over substance...." Pascal v. Price, 380 S.C. 419, 442, 670 S.E.2d 374, 387 (Ct. App. 2008) *rev'd on other grounds*, Wilkinson ex rel. Wilkinson v. Palmetto State Transp. Co., 382 S.C. 295, 676 S.E.2d 700 (2009). For several reasons a denial of Appellant's right to make a motion

for directed verdict in the situation that prevailed at trial would elevate form over substance; it would allow essentially a technicality to seriously handicap CSA's appeal. The substance of the situation at the time is as follows:

1. The Court Directed the Renewal of the Motions for Directed Verdict.

As addressed previously, it was the Court who told the defending parties when to renew their motions. She did so knowing that there was a rebuttal witness yet to be heard. CSA should not be severely punished for following the Court's instructions regarding conduct of the trial.

2. Inasmuch as the rebuttal witness was a witness for the plaintiff to address the credibility of another witness, her testimony could not have affected – and did not affect – CSA's motion for directed verdict.

As mentioned, the rebuttal witness, Sherry Hamilton, had testified previously in the trial. She was brought back to challenge the credibility of Captain Toby McSwain of the Beaufort County Sheriff's Office. He had previously testified that he had had a meeting with Judge Coffey at her office. This issue could not have had an effect on CSA's motion for directed verdict inasmuch as issues of credibility are strictly for the trier of fact, the jury. State v. McKerley, 397 S.C. 461, 464, 725 S.E.2d 139, 141 (Ct. App. 2012).

Hamilton's rebuttal testimony, moreover, had no effect on the motion for directed verdict, as those motions had already been adjudicated, Tr.1712-1722; R. 1460-1470;, before she testified, Tr. 1725, line 1–1728, line 20; R. 1473, line 1-1476, line 20.

3. Hamilton's testimony was short and completely inconsequential.

Perusal of Hamilton's rebuttal testimony, Tr. 1725, line1–1728, line 20, R. 1473, line 1-1476, line 20, reveals that it offers nothing new or of consequence to the motion for directed verdict. She offers speculation as to whether Captain McSwain visited Judge Coffey in 2004, but defendants successfully objected to that. Tr. 1725, lines 12-19, R.1473, lines 12-19. While she

gives some description of Judge Coffey's office, she offers no testimony whatsoever about Captain McSwain or his visiting the Judge, so the complete purpose of calling her was unfulfilled. Even if it had been fulfilled, however, it could have no conceivable effect on CSA's motion for directed verdict. This Court has previously considered the substance of testimony in determining whether the failure to renew a motion for directed verdict causes a waiver. Henderson v. St. Francis Community Hosp., 295 S.C. 441, 447, 369 S.E.2d 652, 656 (Ct. App. 1988) *rev'd on other grounds,* 303 S.C.177, 399 S.E.2d 767 (1990) (evidence presented after non-renewed motion for directed verdict "neither brief nor inconsequential"). In this case the post-motion testimony was both brief and inconsequential.

III. RESPONDENT'S MULTIPLE CLAIMS OF FAILURE TO RAISE ISSUES TO THE TRIAL COURT ARE WITHOUT MERIT.

A. The Trial Court Erred Regarding The Issue Of Jurisdiction.

Every court has the "duty to decide all issues necessary to the determination of its own jurisdiction." Eldridge v. City of Greenwood, 331 S.C. 398, 411, 503 S.E.2d 191, 197-98 (Ct. App. 1998) *quoting* State v. Keenan, 278 S.C. 361, 364, 296 S.E.2d 676, 677 (1982) *citing* Bridges v. Wyandotte Worsted Company, 243 S.C. 1, 132 S.E.2d 18 (1963) *o'ruled* by Sabb v. South Carolina State University, 350 S.C. 416, 567 S.E.2d 231(2002).

In the case at hand, the Court was aware that Respondent's claims were based on a complaint to the Commission on Judicial Conduct. See, Amended Complaint, ¶ 16; R.44; Tr. 109, lines 24-25; R.219, lines 24-25. Respondent's counsel brought to the Court's attention the fact that Appellants had raised the issue of absolute privilege under Rule 13 of Rule 502, SCACR. Counsel for Respondent, in pretrial motions, stated the following:

> ...[F]ive different answers [were] filed on the behalf of CSA, Mr. Breed. And they all raised the absolute privilege that attaches to filing a complaint ...against a judge, which, with respect to judges, is found in Rule 13.

Tr.110, lines 2-7; R.220, lines 2-7.

The Court, given this notice, and with the duty to determine its jurisdiction, should have examined Rule 13, especially the first sentence thereof, which states:

> Rule 13. IMMUNITY FROM CIVIL SUITS
>
> Communications to the Commission, Commission counsel, disciplinary counsel, or their staffs relating to misconduct or incapacity and testimony given in the proceedings shall be **absolutely privileged**, and **no civil lawsuit predicated thereon may be instituted against any complainant or witness** (emphasis added).[5]

There is no evidence in the record that the court closely examined the rule or the law of South Carolina which articulates the ramifications of a letter, such as the one at issue, being "absolutely privileged." An investigation of the pertinent, binding, law would reveal the following:

> "Privileged communications in the law of libel and slander are either Absolute or Qualified. 'When the communication is absolutely privileged, no action will lie for its publication, **no matter what the circumstances under which it is published...**' Bell v. Bank of Abbeville, 208 S.C. 490, 38 S.E.2d 641."

Richardson v. McGill, 273 S.C. 142, 145, 255 S.E.2d 341, 342 (1979) (emphasis added). *See also* Hainer v. American Medical Intern., Inc., 328 S.C. 128, 135, 492 S.E.2d 103, 106 (1997) ("When a communication is absolutely privileged, no action lies for its publication, no matter what the circumstances under which it was published....") *citing* Wright v. Sparrow, 298 S.C. 469, 473, 381 S.E.2d 503, 506 (Ct. App. 1989); Crowell v. Herring, 301 S.C. 424, 430, 392 S.E.2d 464, 467 (Ct. App. 1990).

Respondent's Brief asserts, p. 25, that Eubanks v. Smith, 292 S.C. 57, 354 S.E.2d 898 (1987), establishes a rule that a document that is absolutely privileged loses that privilege if it is

[5] Under S.C. Code Ann. §40-5-50, three months after promulgation of the rule, allowing time for legislative action, the rule "shall supersede all laws or parts of laws in conflict therewith to the extent of the conflict."

published to someone outside the proceeding. That assertion is in direct conflict with Haines, Wright, Crowell, Richardson and Bell, all *supra*. The Eubanks Court held specifically that the defendant was *not* "entitled to an absolute privilege...." 292 S.C. at 63, 354 S.E.2d at 902. The situation in Eubanks was that the City Manager for the City of Myrtle Beach "issued several press releases implying that [two former employees] were guilty of some criminal conduct and that disciplinary action would be taken." 292 S.C. at 60, 354 S.E.2d at 900. There was no rule or statute that specifically conferred an absolute privilege on these communications, while there is such a rule in the case at hand.

Public policy, moreover, requires that people who observe, or believe they observe, misconduct or lack of capacity by a judge be able to report that conduct without the threat of a defamation action. Public policy in South Carolina is the driving force behind such unqualified privilege. Pond Place Partners v. Poole, 351 S.C. 1, 30, 567 S.E.2d 881, 896 (Ct. App. 2002). Rule 13 of Rule 502, SCACR, is a direct statement of the public policy of this State. Other states have very similar rules, statutes or case law, based on similar public policy. *See*, e.g. Morgan & Pattinger, Attorneys, P.S.C v. Botts, 348 S.W. 599 (Ky. 2011). In Morgan, the Kentucky Supreme Court addressed the relevant public policy – pertaining to attorney discipline – as follows:

> "The doctrine of privileged communications rests upon public policy 'which looks to the free and unfettered administration of justice, though, as an incidental result, it may, in some instances, afford an immunity to the evil-disposed and malignant slanderer.' " *Schmitt [v. Mann],* 163 S.W.2d 281, 284 1942)(quoting *Bartlett v. Christhilf,* 69 Md. 219, 14 A. 518, 520 (1888)). This rationale applies no less to attorney discipline proceedings. In order to maintain a self-regulating profession, the investigation of unethical conduct must be vigorous and complainants must be free from threat of *any* civil liability. Any lesser grant of immunity would have a chilling effect on the reporting of attorney misconduct. *See Jarvis* [*v. Drake,*]830 P.2d 23, 26 [(Kan.1992)](internal quotations omitted) (["A]pprehension of personal liability for presenting a question of professional responsibility to the disciplinary administrator might tend to subvert the system

> established for ensuring that persons holding licenses to practice law are fit to be entrusted with professional and judicial matters.").

Morgan, 348 S.W.2d at 604. This same public policy rationale is even more pertinent to matters involving disciplinary proceedings regarding judges, as public officials who have far more influence and effect on the public than attorneys.

Respondent's citation of Eubanks is, therefore, unavailing particularly in light of the holdings of our Supreme Court and this Court in the previously-cited Bell v. Bank of Abbeville, 208 S.C. 490, 38 S.E.2d 641 (1946) and its progeny.

Without apparently researching the law of absolute privilege, the Trial Court held that the complaint to the Commission on Judicial Conduct was absolutely privileged for its being sent to the Commission, but had perhaps no privilege when sent to the Assistant Town Manager, Mr. DeLoach. The Court stated the following:

> I think there's a real argument as to whether or not Mr. Breed telling his employers, the Board, what he has done or what he has complained, I mean you know, their guys are charging qualified privilege, and there certainly can be a qualified privilege.
>
> The problem he has in this case is giving it to DeLoach. I mean, I think we all clearly know that. That's where the problem lies.

Tr.879, lines 6-13; R.752, lines 6-13. Holding that Mr. Breed's complaint to the Commission had perhaps a qualified privilege to the Board and no privilege in being given to Mr. DeLoach hybridizes the absolute privilege granted by Rule 13 and South Carolina law. It constitutes an error of law.

The words of Rule 13 make plain that, "no lawsuit predicated[6] [on a complaint to the Commission] may be instituted against any complainant ...." This statement, under the authority

[6] "Predicated" has been used in our law as a synonym for "based" or "founded," all meaning that a subsequent action or writing is related to some antecedent event, document or action. *See, e.g.* Home Builders Ass'n of South Carolina v. School Dist. No. 2, 405 S.C. 458, 466, 748 S.E.2d 230, 232 (2013); Broach v. Carter, 399 S.C. 434, 444, 732 S.E.2d 185, 190 (Ct. App. 2012).

of both the General Assembly (S.C. CODE ANN § 40-5-50) and the Supreme Court, deprives any South Carolina court of jurisdiction to hear cases of the general class of cases relating to complaints that have been made to the Commission. The court had "no power to hear and determine" the libel case. Dove v. Gold Kist, Inc., 314 S.C. 235, 238 442 S.E.2d 598, 600 (1994). Appellant CSA is, therefore, not precluded from raising the issue of jurisdiction on appeal, even if it was not previously addressed. GNOC Corp. v. Estate of Rhyne, 312 S.C. 86, 88, 439 S.E.2d 274, 275 (1994).

B. The Court Erred Regarding The Sufficiency Of Naming Witnesses In Groups.

Respondent asserts that Appellant CSA did not preserve its objection to witnesses being named in groups or "catchalls," focusing particularly on William Waxel. The introduction of witnesses who were not identified by name and address – as required by Rule 33(b)(1), SCRCP – was addressed in an extended pre-trial colloquy, extracts of which are as follows:

> MS. JOLLEY: [W]e're objecting to the calling witnesses based on Rule 37. And here, your Honor, frankly, discovery ended April 16th, and the scheduling order had already been extended three times. We received discovery responses on April 25th, 2011, from the plaintiff. They were never amended. However, this past week, we've received several proposed witnesses who are not listed in the plaintiff's discovery responses. We're just asking that you say no one can call any witness that wasn't produced in discovery on the witnesses.

Tr.138, line 18-139, line 3; R.248, line 18-249, line 3.

> MS. JOLLEY: Well, they're never, certainly, disclosed as an expert. We never had a chance to disclose them or get an expert at anything. I mean, this is today.
> MR. MATHISON: My standard interrogatory says that each person who is an expert among the physicians that may be called as an expert.

Tr. 140, lines 4-10; R.250, lines 4-10.

> THE COURT: Did you list him as a witness in the answers to your interrogatories?

MR. MATHISON: No, he's in lieu of one that we did disclose, but he was disclosed in her deposition responses when asked.
THE COURT: But you got to list him as a witness. Did you list him as a witness?
MR. MATHISON: I did not. I should have amended last week, but quite frankly, didn't have the time.

Tr. 142, lines 2-10; R.252, lines 2-10.

MS. JOLLEY: Jeanne Pearse. She works for CSA. She was not listed as a witness.
MR. MATHISON: May it please the Court. We listed other employees of CSA, n addition to the number that we knew we were going to call.
THE COURT: Which is required.

MR. MATHISON: I think we listed six, and she's another employee of CSA. Same thing with the Beaufort County Sheriff's Office. We listed five or six officers that we knew we were going to call, and said other employees. I mean, you can't know everybody when you respond to the deposition – the interrogatory requests.
THE COURT: Well, see, your blanket said, *and all other employees of CSA*.
MR. MATHISON: *And other employees*, not all other employees.
THE COURT: *And other employees of CSA*.
MR. MATHISON: That's correct.
MS. JOLLEY: But then listed them. Listed five of them. And now they're calling people that weren't listed.

Tr. 142, line 12-143, line 7; R.252, line 12-253, line 7 (emphasis added).

MS. JOLLEY: That's the whole point of this case, your Honor, in these alleged defamation – defamatory statements. Ms. Coffey apparently mentioned his name as a potential witness back in her deposition, but they never listed him as one. So no discovery ever took place or discussion about him.
MR. MATHISON: Your Honor, may –
MS. JOLLEY: That's the whole point of the discovery process.

Tr. 148, lines 1-9; R258, lines 1-9.

MS. JOLLEY: The next one on the list is William Waxel. Again, Mr. Waxel's not listed as a witness in their response to interrogatories.
THE COURT: Who is Mr. Waxel?
MR. MATHISON: He's a CSA security officer, and he's listed among the et als. I'm not certain how many I listed in the answer to interrogatories, but I knew of six of them. All right.

Tr. 152, lines 5-12; R.262, lines 5-12.

> MS. JOLLEY: And your Honor, we're certainly not saying anything about subpoenas. The question is the number of people that were listed as witnesses throughout and that are now showing up for trial.
> THE COURT: Yes.
> MS. JOLLEY: Without notice.
> THE COURT: **The only thing I'm concerned with is they're your employees,**
> MS. JOLLEY: They're not all current employees.
> THE COURT: Okay. **But they were at the time, so**.

Tr. 153, line 22-154, line 7; R.263, line 22-264, line 7 (emphasis added).

Given the extended objection to such witnesses raised by CSA, culminating in the Court's final decision that any CSA employee or former employee of CSA could come in without notice as a trial witness, further objection to the introduction of Mr. Waxel as a witness would have been futile. Neither law, Shupe v. Settle, 315 S.C. 510, 516, 445 S.E.2d 651, 655 (Ct. App. 1994), nor equity, Drury Development Corp. v. Foundation Ins. Co., 380 S.C. 97, 102, 668 S.E.2d 798, 801(2008), require the doing of a futile act.

The Court below, moreover, abused its discretion in allowing several witnesses to testify at trial who had not been named in compliance with Rule 33(b)(1), SCRCP. Considering "any other employee (or former employee) of an employer" to be an adequate designation compromises the public policy of ensuring fair trials. What if a business has 500 employees, of whom 10 are disgruntled and another five have just been fired? Does not the business have the right to find out the names of employees and former employees who are going to testify against it? Does it not have a right to depose them to enable the defense to use the most effective tool in the search for truth: cross-examination? Is the business not allowed time to find other employees who can testify about the same incident?

Hospitals, governmental entities and out-of-state companies and corporations would suffer profound prejudice, subjecting all to trial-by-ambush, as Respondents were here. This

Court should not put its imprimatur on a trial procedure that promises to subvert the search for truth in judicial proceedings.

The same principle applies to other "catch-all" lists, such as "other employees of the Beaufort County Sheriff's Office" and physicians, one of whom, Dr. Geiger, testified as an expert though she had not been named as an expert prior to trial. It is, of course, critical to preparation of a defense to be able to depose a named expert and to find another expert who has a different opinion based on the evidence. If the procedure used in this case is allowed to become precedent, as will be the case if the trial court's actions receive this Court's seal of approval, it is a reasonable inference that attorneys for both plaintiff and defendants will conform their practices in discovery to the precedent created in this case.

C. The Respondent's Brief Incorrectly States That Appellant CSA Did Not Raise Several Issues, Including Items About Damages, To The Trial Court.

On pp. 21-23 of her brief, Respondent Coffey briefly mentions 11 topics which CSA allegedly failed to preserve. They – and the place where facts to support the topics were brought to the Court's attention – are as follows:

Failure to Dismiss Libel Claim – Motion for JNOV, ¶6; R.160.

Hybrid privilege – Tr. 879, lines 11-13; R.752, lines 11-13; Tr. 1886, lines 1-6; R. 1634, lines 1-6. .

Failure to protest naming witnesses in "groups" – Tr.142, line 4 -158, line 21; R.252, line 4-268, line 21; Tr.152, lines 5-10; R.262, lines 5-10; Tr.154, lines 3-4; R.264, lines 3-4. *See, supra.,* pp. 14-16.

Failure to object to Waxel's testifying – *see, supra.*, pp. 14-16.

Failure to claim $2 million actual damage award was excessive – Motion for JNOV, p. 6; R.164; Memorandum in Support of Defendants' Post-Trial Motions, pp. 5-10; R.171-176.

Failure to claim that Respondent's own testimony about damages to her reputation was insufficient to support punitive damages– Motion for

JNOV; R.164; Memorandum in Support of Post-Trial Motions, p. 6; R.172.

That Respondent primarily suffered economic harm – Tr.450, lines 13-24; R.448, lines 13-24; Tr.452, line 1-453, line 2; R.450, line 1-451, line 2; Tr.457, lines 1-7; R.454, lines 1-7.

That Breed's intention in publishing letter was to protect the safety and welfare of Sea Pines residents – Tr.1277, line 19-1278, line 1; R.1132, line 19-1133, line 1; Tr.1643, lines 1-7; R.1414, lines 1-7; Tr.1126, lines 2-11; R.983, lines 2-11; Tr.1143, lines 11-13; R.1000, lines 11-13; Tr.1167, line 13-1168, line 11; R.1024, line 13-1025, line 11.

That Respondent disseminated defamatory reports by filing suit – Tr.199, line 22 - 200, line 5; R.289, line 22-290, line 5; Tr.416, line 15-420, line 14; R.430, line 15-434, line 14; Tr.429, line 24- 430, line 4; R442, line 24-443, line 4.

That Breed's letter was not the product of trickery or deceit – Memorandum in Support of Post-Trial Motions, p. 3; R.169.

That comments about Jolin-Coffey affair were possibly made in jest – Memorandum in Support of Post-Trial Motions, p. 4; R.170. *See, supra.*, pp. 4-5.

All of these issues were, therefore, preserved and are fully appropriate for being addressed in this appeal.

IV. IN THE ALTERNATIVE, IF AN ABSOLUTE PRIVILEGE DOES NOT ATTACH TO MR. BREED'S COMPLAINT TO THE COMMISSION ON JUDICIAL CONDUCT, THERE WAS A QUALIFIED PRIVILEGE FOR ITS PUBLICATION TO CARY KELLEY AND GREG DELOACH.

Appellant CSA has argued *supra.* that the plain, unambiguous wording of Rule 13 of Rule 502, SCACR, and the public policy behind that wording – in light of Richardson, Hainer, et. al. – manifest that absolute privilege attaches to a letter to the Commission on Judicial Conduct, regardless of where it is published. That would give absolute protection to Mr. Breed for his provision of the letter to Cary Kelley and Greg DeLoach.

If this Court, however, disagrees and holds that Rule 13 is ambiguous or that Richardson, Hainer, Wright and Crowell do not stand for the proposition that an absolutely privileged

communication is privileged wherever it is published, CSA argues that Breed's complaint has a qualified privilege for publication to Kelley and DeLoach. The question of whether an occasion creates a qualified privilege is generally one for the court. Murray v. Holnam, 344 S.C. 129, 140, 542 S.E.2d 743, 747 (Ct. App. 2001).

Our law provides that a qualified privilege may be granted to a communication under circumstances as follows:

> It is the duty of the trial judge to determine if the statement is privileged. *Id.* A communication made in good faith on any subject matter in which the person communicating has an interest or duty is qualifiedly privileged if made to a person with a corresponding interest or duty even though it contains matter which, without this privilege, would be actionable. Constant v. Spartanburg Steel Prods., Inc., 316 S.C. 86, 447 S.E.2d 194 (1994); Prentiss v. Nationwide Mut. Inc. Co., 256 S.C. 141, 181 S.E.2d 325 (1971). Communications between officers and employees of a corporation are qualifiedly privileged if made in good faith and in the usual course of business. Conwell v. Spur Oil Co., 240 S.C. 170, 125 S.E.2d 270 (1962).

Murray v. Holnam, Inc., 344 S.C.129, 140-41, 542 S.E.2d 743, 749 (Ct. App. 2001).

In this case, Breed's provision of the complaint to Kelley should certainly be protected by a qualified privilege under Murray. Kelley and Breed shared an intense interest in the safety and security of the Sea Pines Plantation. Kelley was the Executive Vice President of CSA, the legal entity operating Sea Pines, and as such had supervision of the security for the Plantation. One of the people who reported to him was George Breed, the Chief of Security and Head of Community Affairs. Tr.1277, lines 3-22; R 1132, lines 3-22.

It is readily apparent that they shared a common interest. It should also be readily apparent that it was eminently appropriate for a subordinate to provide to his boss a communication that addressed the subordinate's concerns about a situation affecting their common interest. The Court, therefore, erred in not instructing the jury that there was a qualified privilege for Breed's providing the complaint to Kelley. Instead, the Court turned the issue of

the existence of the privilege over to the jury. Tr.1885, line 13–1886, line 14; R.1633, line 13-1634, line 14. This was an abuse of discretion.

The issue of Breed's providing a copy of the Complaint to Greg DeLoach is not as clear cut, but the court should have held that a qualified privilege existed for that communication. Greg DeLoach was the Assistant Town Manager for Hilton Head Island. Tr.743, lines 16-24; R 658, lines 16-24. When the Complaint was sent to the Commission on Judicial Conduct, June 6, 2008, there were two Assistant Town Managers for Hilton Head Island. Mr. DeLoach's responsibilities included "human resources" and "legal." Tr.744, lines 3-11; R.659, lines 3-11. Maureen Coffey had been employed full-time as a judge by Hilton Head Island since 2005. Tr. 205, line 11–206, line 15; R.294, line 11-295, line 15. Coffey's employment, therefore, fell within two of DeLoach's areas of responsibility: human resources, addressing personnel policy and procedures within an organization; and legal, including the operation of municipal courts. Tr.746, lines 20-22; R.661, lines 20-22. Ms. Coffey did not report directly to Mr. DeLoach, but he certainly had an interest in what she was doing inasmuch as every other person working in the municipal court system worked indirectly for him. Tr.746, line 23–747, line 1; R.661, line 23-662, line 1. That Coffey did not report to DeLoach does not mean that he was unconcerned about her actions in and out of the courtroom. Anything within the Town's legal sphere was a direct concern of his. Ms. Coffey was well aware that DeLoach had a professional interest in what she was doing. Her counsel argued at the hearing of post-trial motions as follows:

> [Ms. Coffey] insisted that [Mr. Coltrane, another Town employee] do something to allow Mr. DeLoach to know that she was not responsible for what they had said she'd done.
>
> She also told Mr. Hulbert on repeated occasions that she wanted him to carry water for her to Mr. DeLoach, so that he was assured that she had not done whatever it was that Mr. Breed has said about her.

Transcript of Hearing on Post-Trial Motions, p. 23, lines 12-19; R. 1668, lines 12-19.

Mr. Breed's concern about the legal situation was precipitated particularly by the report of Officer Stephen N. Wright, based on an incident of May 23, 2008. Tr. 1457, line 14–1458, line 20; R.1312, line 14-1313, line 20.. Wright immediately reported Coffey's actions to his direct supervisor and Security Chief Breed. Tr.1461, lines 13-15; R.1316, lines 13-15. Breed's Complaint to the Commission on Judicial Discipline was made less than two weeks thereafter.

DeLoach and Breed, therefore, both had professional concerns about Ms. Coffey's activities. Though one was within the Town organization and the other outside, the two men nonetheless had an interest – a corresponding interest because it related to the actions of the same person in regard to law enforcement. The court should have held that at least a qualified privilege for the complaint existed. It was error – an abuse of discretion – for the court not to do so, as addressed below.

Mr. Breed, moreover, had a right as a private citizen to make comments, under a qualified privilege, about a public official such as Judge Coffey. The United States Supreme Court has held as follows:

> McDonald correctly notes that the right to petition the Government requires stringent protection. "The very idea of a government, republican in form, implies a right on the part of its citizens to meet peaceably for consultation in respect to public affairs and to petition for a redress of grievances." United States v. Cruikshank, 2 Otto 542, 92 U.S. 542, 552, 23 L.Ed. 588 (1876). The right to petition is "among the most precious of the liberties guaranteed by the Bill of Rights," Mine Workers v. Illinois Bar Assn., 389 U.S. 217, 222, 88 S.Ct. 353, 356, 19 L.Ed.2d 426 (1967), and **except in the most extreme circumstances citizens cannot be punished for exercising this right "without violating those fundamental principles of liberty and justice while lie at the base of all civil and political institutions**," DeJonge v. Oregon, 299 U.S. 353, 364, 57 S.Ct. 255, 260, 81 L.Ed 278 (1937). As with the freedoms of speech and press, exercise of the right to petition "may well include vehement, caustic, and sometimes unpleasantly sharp attacks on government and public officials," and the occasionally "erroneous statement is inevitable." New York Times Co. v. Sullivan, *supra,* 376 U.S., at 270-271, 84 S.Ct., at 720-721. The First Amendment requires that we extend substantial "'breathing space'" to such

> expression, because a rule imposing liability whenever a statement was accidently or negligently incorrect would intolerably chill "would-be critics of official conduct ... from voicing their criticism." 376 U.S. at 272, 279, 84 S.Ct. at 721, 725

McDonald v. Smith, 472 U.S. 479, 486-87, 105 S. Ct. 2787- 2791-92 (1985) (Brennan concurring) (emphasis added) (footnote omitted).[7]

V. RESPONDENT DID NOT PROVIDE SUFFICIENT EVIDENCE THAT MR. BREED KNEW OR SHOULD HAVE KNOWN THAT ANYTHING IN THE COMPLAINT TO THE COMMISSION WAS FALSE FOR THE LIBEL CLAIM TO GO TO THE JURY.

As mentioned above, Mr. Breed wrote his complaint to the Commission shortly after Officer Wright had told him about Judge Coffey's actions. Wright, a retired Indiana policeman with 25 years of experience in law enforcement, Tr.1444, line 15–1445, line 8; R.1299, line 15-1300, line 8, had reported to Breed that Judge Coffey had told him that they "needed to quit harassing [Otis Coffey]" and that she was going "to tell Chief Breed that I was harassing her...." Tr. 1457, line 14–1458, line 20; R.1312, line 14-1313, line 20. Wright's reaction raises the inference he had never seen a judge act in such manner toward a law enforcement officer.

Given this report from his officer, and finding out from Mr. DeLoach that Ms. Coffey worked for Town Council rather than for DeLoach, but that he could complain to the Commission on Judicial Conduct, Tr.746, line 8–748, line 23; R.661, line 8-663, line 23, Mr. Breed wrote the Commission, reflecting Wright's experience and other incidents. He obviously believed Wright's report, which, incidentally, was largely corroborated by Judge Coffey. Tr.253, lines 9– 22; R.342, lines 9-22. Mr. Breed testified, via deposition read at trial, that he believed

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[7] *See also* Demby v. English, 667 So.2d 350, 354 (Fla. Ct. App. 1995) ("although appellee is not an elected public official, she is certainly a public officer ..., and the qualified privilege of every citizen to criticize a public officer applies...."); Swenson-Davis v. Martel, 354 N.W.2d 288, 291 (Mich. Ct. App. 1984) ("The Michigan Supreme Court has held that a citizen who complains to the appropriate official about the fitness of a public school teacher enjoys a qualified privilege .... His letter and complained-of statements reflect defendant's legitimate concern.").

that his letter reflected the truth. Tr. 1126, lines 2 -11; R.983, lines 2-11. There is not one shred of evidence in the record that Mr. Breed ever wavered in his opinion. There is also no evidence in the record that anything happened between Wright's report of his run-in with Coffey – May 23, 2008; Tr.1448, line 21; R.1303, line 21 – and June 6, 2008, the date of the complaint to the Commission, that would cause Breed to know or suspect anything in the letter was untrue. Respondent, therefore, did not meet her evidentiary burden. Consequently, there was insufficient evidence for the libel issue to go to the jury.

VI. THE TRIAL COURT FAILED TO EXERCISE THE DISCRETION INHERENT IN A JUDGE'S FUNCTION.

The Trial Court failed to exercise its discretion in two ways other than the decisions regarding the admission of witnesses and evidence. Specifically, the Court failed to exercise its exclusive prerogatives to construe Rule 13 of Rule 502, SCACR, and to decide whether and what kind of privilege Appellants had.

The relevant law regarding a court's duty to determine the existence of a privilege is found in Rule 104(a), SCRE, which states that:

> (a) Questions of Admissibility Generally. **Preliminary questions concerning** the qualification of a person to be a witness, **the existence of a privilege**, or the admissibility of evidence **shall be determined by the court**, subject to the provisions of subdivision (b). In making its determination it is not bound by the rules of evidence **except those with respect to privileges** (emphasis added).

This Rule applies to the determination of the issue of privilege at all stages of the litigation. Rule 1101(c) and (d), SCRE. Our Supreme Court has held, moreover, that a trial court "must determine the question of privilege...." Wilson v. Preston, 378 S.C. 348, 358, 662 S.E.2d 580, 585 (2008) (emphasis added).

In the case at hand, the trial court did *not* decide the question of privilege at the beginning of trial, but turned the issue of the existence of privilege over to the jury. Tr.1884, line 8-1886,

line 14; R. 1632, line 8-1634, line 14; Tr.1892, line 19-1893, line 5; R.1640, line 19-1641, line 5. The preliminary question of privilege should have been decided *by the court* at the beginning of the trial to let the defendants know what they needed to defend. This was not done and CSA was substantially prejudiced thereby.

The trial court's failure to follow Rule 104(a)'s requirements and the holding of Wilson, and then turning the issue of the existence of privilege over to the jury constitute an abuse of discretion. This is an error of law. Simpson v. Simpson, 404 S.C. 563, 580, 746 S.E.2d 54, 63 (Ct. App. 2013).

The trial court also abused its discretion in turning the construction of Rule 13 of Rule 502 over to the jury. As cited above, at p. 1892 of the transcript, R.1640, lines 19-25, the court read the text of Rule 13 – without construing comment – to the jury, inviting the jurors to interpret it themselves. Our law makes clear that it is the exclusive province of courts to interpret statutes and court rules. Court rules are construed using the same rules of construction "used in construing statutes." Green by and through Green v. Lewis Truck Lines, Inc., 314 S.C. 303, 304, 443 S.E.2d 906, 907 (1994). The court is expected to construe the statute in the following fashion: "[I]t is **the duty of the court to ascertain the intent of the Legislature** and to give it effect so far as possible within constitutional limitations." Brown v. County of Horry, 308 S.C. 180, 183, 417 S.E.2d 565, 567 (1992)(emphasis added); *see also* State v. McGrier, 378 S.C. 320, 328, 663 S.E.2d 15, 19 (2008) ("In the interpretation of statutes, our sole function is to determine and, within constitutional limits, give effect to the intention of the legislature, with reference to the meaning of the language used and the subject matter and purpose of the statute") (quoted in State v. Lanier, 390 S.C. 367, 372, 701 S.E.2d 53, 55 (Ct. App. 2010)).

The trial court, therefore, erred in handing the duty of construing Rule 13 over to the jury. That was an abuse of discretion and consequently an error of law. A jury is not capable of making an investigation of the meaning of the language, the legislature's (and Supreme Court's, in this case) purpose for the rule or the important public policy upon which the rule rests.

The trial court's decision should be reversed. When this Court performs the requisite investigation of these factors, it should hold that Mr. Breed's letter sent to the Commission on Judicial Conduct was absolutely privileged. Allowing the free expression of complaints about judicial incapacity or malfeasance, without threat of legal retaliation, is clearly the public purpose of Rule 13 of Rule 502, SCACR. Appellants have been severely prejudiced by the trial court's errors of law regarding the construction of Rule 13 of Rule 502, and the failure of the court to fulfill its preliminary duty of determining the existence of privilege. Gause v. Smithers, 403 S.C. 140, 149, 742 S.E.2d 644, 649 (2013) ("We will not reverse the circuit court's ruling ...unless... the ruling is controlled by an error of law") *citing* Law v. South Carolina Dept. of Corr., 368 S.C. 424, 434-35, 629 S.E.2d 642, 648 (2006). Here, the lower court's rulings on these issues were controlled by errors of law, which this Court should rectify.

CONCLUSION

Numerous abuses of discretion – including the admission of several surprise witnesses; the court's failure to construe Rule 13, leaving such construction to the jury; and the failure to determine the existence of privilege – created severe prejudice against CSA and George Breed.

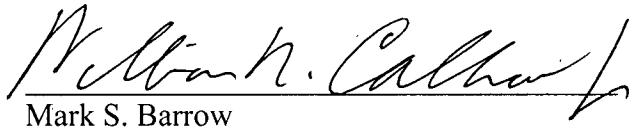
As to the slander cause of action, the Respondent presented no evidence that anyone who allegedly trafficked in the rumor did so within the scope of his or her employment for the benefit of CSA, that anything slanderous was actually said about Maureen Coffey or that any of the people who allegedly passed on the gossip knew or had reason to believe it was false – if it was

even serious enough to require an assessment of its truth or falsity. The testimony suggests unseriousness, as does the reaction to Jolin's gossip by Ms. Hamilton and Mr. Waxel's description of the substance of it. The six million dollar damage award for the slander claim should be reversed as grossly disproportionate to anything said by any CSA employee.

The Court should construe Rule 13 of Rule 502, SCACR, according to that Rule's plain language, which provides an absolute privilege to complainants to the Commission. The law of South Carolina regarding the lack of time or place restrictions on publications of communications that have an absolute privilege, manifested in Bell v. Bank of Abbeville, *et al.*, *supra,* p.11, should be upheld. The principle of non-limitation as to communications that are absolutely privileged articulated in those cases is fully consistent with the public policy of allowing criticism of public officials without fear of retribution in the form of defamation actions. The long-term integrity of our legal system requires such protection for people who observe judges doing and saying things that the observer *believes* to be contrary to the ethics expected of judges. The verdict should be reversed.

Respectfully submitted,

SWEENY, WINGATE & BARROW, P.A.



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December 12, 2013

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Carmen T. Mullen, Circuit Court Judge

Case No. 2011-CP-07-00013

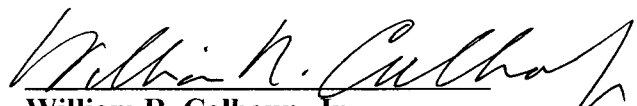
Maureen T. Coffey, ... Respondent,

v.

Community Services Associates, Inc. and
George F. Breed, Jr. ..... Appellants.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Reply Brief complies with Rule 211(b), SCACR.



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The Honorable Carmen T. Mullen, Circuit Court Judge

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Appeal Tracking Number 2012-213252

Maureen T. Coffey, ... Respondent,

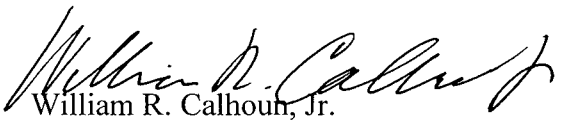
v.

Community Services Associates, Inc. and George F. Breed, Jr. .... Appellants.

PROOF OF SERVICE

I certify that I have served the Final Brief and Final Reply Brief of Community Services Associates, Inc. on Appellant by depositing a copy of each brief in the United States Mail, postage prepaid, on December 13,2013, addressed to her attorneys of record: C. Mitchell Brown at Nelson Mullins Riley & Scarborough, LLP; 1320 Main Street, 17th Floor; Columbia, S. C. 29201; and Robert V. Mathison, Jr. at Mathison & Mathison; Post Office Box 5271, Hilton Head Island, S.C. 29928. Service on Appellant George F. Breed, Jr. was accomplished by similar mailing on the same date addressed to his attorney: Weston Adams, III, at McAngus Goudelock & Courie, LLC ; Post Office Box 12519; Columbia, S.C. 29211-2519.

December 13, 2013



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