

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.

**RECORD ON APPEAL
VOLUME I**

Mark S. Barrow, Esquire
William R. Calhoun, Jr., Esquire
Sweeny, Wingate & Barrow, P.A.
Post Office Box 12129
Columbia, SC 29211
(803) 256-2233

**ATTORNEYS FOR APPELLANT
COMMUNITY SERVICES ASSOC.,
INC.**

Weston Adams, III, Esquire
McAngus, Goudelock & Courie, LLC
Post Office Box 12519
Columbia, SC 29211
(803) 779-2300

**ATTORNEY FOR APPELLANT
GEORGE F. BREED, JR.**

Robert V. Mathison, Jr., Esquire
Mathison & Mathison
Post Office Box 5271
Hilton Head Island, SC 29928
(843) 785-6503

C. Mitchell Brown, Esquire
Nelson, Mullins, Riley,
Scarborough, LLP
Post Office Box 11070
Columbia, SC 29211
(803) 255-9595
**ATTORNEYS FOR
RESPONDENT**

RECEIVED
DEC 13 2013
SC Court of Appeals

Index

1. Order of June 18, 2012.....	1
2. Order of October 15, 2012	3
3. Order of June 23, 2011.....	7
4. Scheduling Order, 1/31/11.....	8
5. Amended Scheduling Order, 10/12/2011	9
6. 2 nd Amended Scheduling Order, 12/1/2011.....	10
7. 3 rd Amended Scheduling Order, 3/12/2012	11
8. Complaint, November 20, 2008.....	12
9. Answer of Defendants Community Services Associates, Inc., Sea Pines Security Committee and George F. Breed, Jr., December 29, 2008	20
10. Answer of Defendants CSA, Inc. and George F. Breed, January 20, 2009	31
11. Rule 40(j) Consent Dismissal, January 12, 2010.....	39
12. Amended Complaint, February 8, 2011.....	41
13. Answer of Defendants CSA, Inc., Association of Sea Pines Plantation Property Owners, Inc. and George F. Breed, Jr. to the Amended Complaint, March 7, 2011	54
14. Defendant's First Set of Interrogatories to Plaintiff	65
15. Plaintiff's Answers to Defendants' Interrogatories	73
16. Motion for Summary Judgment.....	105
17. Memorandum in Support of Motion for Summary Judgment	108
18. Defendants' Motion in Limine, May 25, 2012, and as revised May 29, 2012	142
19. Defendants' Motion for Directed Verdict, June 4, 2012	148
20. Motion for Judgment Notwithstanding the Verdict, or in the Alternative, a New Trial, June 15, 2012	158
21. Motion to Vacate or Remit the Punitive Damages Award on Constitutional Grounds, June 15, 2012	166
22. Memorandum in Support of Defendants' Post-Trial Motions, June 28, 2012	167

23. Trial Transcript, pp. 1-27, 32, 70, 107-173, 177, 181, 183, 186, 198, 199, 200, 202-296, 309, 311-314, 331-336, 347, 349, 352-358, 360-366, 369, 379, 384-386, 391-393, 396-397, 402-404, 412-427, 429-430, 439, 447-455, 457-469	Vol. I, pp.188-466
470-522, 532, 549-551, 553, 556-560, 565-570, 574, 576-579, 583-590, 593-620, 622-649, 657, 661, 668-678, 692-721, 728-729, 734-738, 740-785, 788-789, 791-793, 795-797, 800-801, 812-814, 817-827, 837, 839-841, 843, 845, 847-850, 852-860, 871-915, 922-923, 927-974, 976-1039, 1042-1074, 1079-1083	Vol. II, pp.467-940
1084-1252, 1255-1475, 1490-1491, 1494, 1514-1527, 1555-1557, 1572-1573, 1577-1632.....	Vol. III, pp. 941-1408
1638-1652, 1662, 1665, 1671-1672, 1674-1702, 1705, 1710-1921, 1923.....	Vol. IV, pp.1409-1670
24. Post-Trial Transcript, pp. 1, 3-5, 7-10, 13, 14, 15, 17- 46.....	Vol. IV, pp. 1671-1711
25. Plaintiff's Exhibits Nos. 1-12, 15, 16, 17, 18, 20, 21, 22, 24, 25, 26, 30, 32, 33, 34, 35, 36, 37.....	Vol. IV, pp. 1712-1783
26. Defendants' Exhibit Nos. 4, 5, 11,12,13.....	Vol. IV, pp. 1784-1796
27. Court's Exhibit Nos. 2, 3, 4.....	Vol. IV, pp. 1797-1867
28. Letter of 6/6/2008 from George Breed to Commission on Judicial Conduct.....	1868
29. Extract of <u>Island Packet</u> newspaper of 12/8/2008.....	1871
30. Plaintiff's Witness List.....	1874
31. Trial Stipulation.....	1876
32. Memorandum in Opposition to giving Jury Charge re: spoliation, May 25, 2012.....	1878
33. Verdict Form, June 6, 2012.....	1881
34. Extract from Index to Transcript of Trial, p. from "Practiced" to "Presenting".....	1883
35. Certificate of Counsel	1884

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2011CP0700013

Maureen T Coffey	Community Services Associates Inc George F Breed	Sea Pines Resort Llc Association Sea Pines Plantation Property Owners Associat
PLAINTIFF(S)	DEFENDANT(S)	

Submitted by:	Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

Jury Trial on 5/29/2012. Jury found in favor of the Plaintiff in the amount of \$6050.00 special damages, \$ 2,000,000.00 general damages, and \$4,000,000.00 punitive damages. Total damages awarded: \$6,006,050.00. Post trial motions filed 6/15/12 have not been heard.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk:

RECEIVED

JUN 25 2012

McNair Law Firm, P.A.

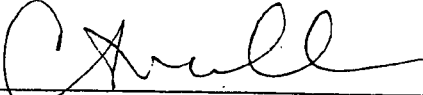
INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Maureen T. Coffey	Community Services Associates, Inc	\$ 6,006,050.00
Maureen T. Coffey	George F. Breed, Jr.	\$ 6,006,050.00

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**


Circuit Court Judge-Carmen T. Mullen

2142

Judge Code

6/18/12
Date

For Clerk of Court Office Use Only

This judgment was entered on 18 June, 2012, and a copy mailed first class or placed in the appropriate attorney's box on 21 June, 2012, to attorneys of record or to parties (when appearing pro se) as follows:

Robert V. Mathison Jr. PO Box 5271 Hilton Head Island,
SC 29938

Celeste Tiller Jones PO Box 11390 Columbia, SC 29211
Andrew Steven Halio PO Box 747 Charleston, SC
294020747

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Jamie Thompson

Jerri Ann Roseneau - Clerk of Court

Court Reporter-Wanda Rowe

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT
MAUREEN T. COFFEY,

Plaintiff,

vs.

COMMUNITY SERVICES ASSOCIATES,
INC. and GEORGE F. BREED;

Defendants.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 11-CP-07-

ORDER

2012 OCT 15 PM 4:59
CLERK OF COURT
BEAUFORT COUNTY, S.C.

The above Defamation case was tried before a jury beginning May 29, 2012 and concluding on June 5, 2012. The jury returned a verdict for the Plaintiff in the amount of \$6,050.00 in Special Damages, \$2,000,000.00 in General Damages and \$4,000,000.00 in Punitive Damages. Subsequently, this matter comes before me on Defendants Community Services Associates Inc. and George F. Breed Sea Pines Resort, LLC's ("Sea Pines") timely filed Motion for Judgment Not Withstanding Verdict or in the Alternative, a New Trial and Motion to Vacate or Remit the Punitive Damages Award on Constitutional Grounds. A hearing was held on these motions July 2, 2012.

The Motion for Judgment Not Withstanding Verdict or in that Alternative, a New Trial is respectfully denied. The standard for evaluating the sufficiency of evidence under SCRC 50 is the same regardless if it is made at the end of Plaintiff's case, at the end of all evidence or at post trial motions. Viewing all the evidence in the light most favorable to the Plaintiff, there is evidence to uphold the jury's verdict. The jury found and I agree that the Plaintiff met her burden of proof by clear and convincing evidence (previously determined as a matter of law that Municipal Court Judge Maureen Coffey was a public figure), that Breed published a false

statement of fact by giving a copy of the confidential letter he wrote to the Commission on Judicial Conduct to Greg DeLoach, the Assistant Hilton Head Town Administrator accusing Coffey of unethical conduct and that the statement was made with reckless disregard of its falsity. And while a qualified privilege likely extended to Breed's publication of the letter to the CSA Board, his employer, it is clear that any privilege that may have existed between Breed and the CSA Board was exceeded when that confidential letter was given to Greg DeLoach, the Assistant Hilton Head Town Administrator whose departments include managing the Town's Municipal Court.

I also deny the Defendants' Motion for a New Trial. I find the verdict is supported by the evidence and no alleged error of law. The primary basis for Defendants' Motion for a New Trial was the amount of the verdict, \$6 million dollars, as being grossly excessive in light of the evidence. Further, the Defendants argue that \$6,050 dollars in Special Damages and \$2 million in General Damages is grossly disproportionate and cannot stand. I can find no case law that requires a proportional amount of Special Damages to General Damages in a defamation case. Special damages are "tangible losses or injury to the plaintiff's property, business, occupation or profession, which are capable of being assessed monetarily and which result from injury to the plaintiff's reputation." *Erickson v. Jones Street Publishers, LLC* 629 S.E.2d 653, 664 at n. 6; *Holtzscheiter v. Thomson Newspapers, Inc.*, 506 S.E. 2d 496, 507 at n. 4; *Goodwin v. Kennedy*, 552 S.E.2d 319, 327 (Ct. App. 2001.) At trial, there was evidence of special damages in the form of therapists' bills and additional babysitting services required for the headaches that Plaintiff claims were caused by the defamatory publication of the confidential letter. The claim for compensation for therapists' bills in the amount of \$5,250 was corroborated by the testimony of Dr. Geiger, a psychologist that treated Coffey between December 2007 and June

2011. Further, there was evidence of general damages including injury to reputation, embarrassment, personal humiliation, mental anguish and suffering and wounded feelings found in the testimony of the Plaintiff, Steve Birdwell, Greg DeLoach, Curtis Coltrane and Brian Hulbert stemming from the dissemination of Breed's confidential letter to the Commission on Judicial Conduct. Understanding the amorphous nature of a Defamation claim and the difficulty in proving damages for such a claim, I decline to adopt a proportional standard of Special Damages to General Damages.

For the same reasons as stated above, I also deny Defendants Motion for a New Trial nisi remittitur. I find that the verdict was not unduly liberal nor actuated by passion, caprice or prejudice. The case was tried over a 7 day period in which Defendant Breed did not take the stand. The foreperson of the jury is a Hilton Head Lutheran Pastor. Another of the jurors is a well-known bankruptcy lawyer in Beaufort County. The remaining jurors were equally staid. As such, I decline to invade the province of the jury who weighed the evidence presented and rendered a verdict that they found was just and proper, absent any evidence that the jury or its verdict was unduly liberal or actuated by an improper motive.

To review the Punitive Damages award I considered the three pronged test adopted by the South Carolina Supreme Court in *Mitchell v. Fortis Ins. Co.*, 686 S.E.2d 176, 185 (2009) including: (1) the reprehensibility of the defendant's conduct, (2) the ratio of the actual or potential harm to the punitive damages award, and (3) the difference between the punitive damages award and any awards made in comparable cases.

In considering reprehensibility, I must consider whether (i) the harm caused was physical as opposed to economic; (ii) the tortious conduct evinced an indifference to or a reckless disregard for the health or safety of others; (iii) the target of the conduct had financial

vulnerability; (iv) the conduct involved repeated actions or was an isolated incident; and (v) the harm was the result of intentional malice, trickery, or deceit, rather than mere accident.

In the case before me, there is adequate evidence that the harm was the result of intentional malice, trickery or deceit, rather than mere accident as the jury was required to find actual constitutional malice as the Plaintiff was a public figure. Further, Plaintiff argued the fact that neither Defendant Breed nor Cary Kelley, the CSA Services President revealed to anyone that the Confidential Complaint of unethical conduct filed with the Commission on Judicial Conduct had been dismissed against the Plaintiff in October 2008, extended the duration of the conduct.

As to the ratio of the general damages award to the punitive damages award, our appellate courts have many times affirmed a 2:1 ratio for punitive to actual damages. Here, the punitive damages award was slightly less than twice actual damages.

In looking to comparative cases, there are *Limehouse v. Hulsey*, 723 S.E.2d 211, 227 (Ct.App, 2005) with a 2:1 ratio, *Duncan v. Ford Motor Co.*, 682 S.E.2d 877, 891 (Ct.App, 2009) with a 6:1 ratio and *Mitchell v. Fortis* with a 9:1 ratio, all upheld.

As to the Motion for a new trial based on evidentiary matters and errors of law, I rely on my rulings and bases therefore stated at trial.

I find there is sufficient evidence to justify the jury's verdict and respectfully deny the post-trial motions of the Defendants.

IT IS SO ORDERED.



Carmen T. Mullen
Fourteenth Judicial Circuit

Beaufort, South Carolina
October 10, 2012

STATE OF SOUTH CAROLINA

FORM 4

JUDGMENT IN A CIVIL CASE

file

COUNTY OF BEAUFORT

CASE NO: 2011CP0700013

THE COURT OF COMMON PLEAS

BEAUFORT COUNTY, S.C.

Maureen T Coffey vs. Community Services Associates Inc

CHECK ONE:

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON):
SCRPC (Vol. Non-suit); ☐ Rule 43(k), SCRPC (Settled); ☐ Rule 12(b), SCRPC; ☐ Rule 41(a),
☐ Other:
- ☐ ACTION STRICKEN (CHECK REASON):
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other: ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;

☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):

☐ Affirmed;

☐ Reversed;

☐ Remanded;

☐ Other;

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

IS ORDERED AND ADJUDGED:

☐ See attached order; (Formal order to follow)

☐ Statement of Judgment by the Court:

Defendant Community Services Associate's Motion to Dismiss is denied. Defendant Community Services Associate's Motion to Compel is granted, Plaintiff has 10 days to comply with discovery. Defendant Sea Pines Resort's Motion to Dismiss is withdrawn. Defendant Sea Pines Resort's Motion to Compel is denied.

Dated at Beaufort, South Carolina, this 23 June, 2011.

Court Reporter:


PRESIDING JUDGE - Carmen T. Mullen

This judgment was entered on the 24 June, 2011, and a copy mailed first class this 24 June, 2011, to attorneys of record or to parties (when appearing pro se) as follows:

Thomas A Holloway Harvey & Bettey, PA
P.O. Drawer 1107 Beaufort, SC 299011107
Robert V Mathison Jr Mathison & Mathison
Post Office Box 5271 Hilton Head Island, SC
29938

RECEIVED

JUN 29 2011

McNair Law Firm, P.A.

Celeste Tiller Jones McNair Law Firm, PA P.O.
Box 11390 Columbia, SC 29211
William Curry McDow Rchrdn Plowden
Carpenter&Robinson, PA P.O. Drawer 7788
Columbia, SC 29202
Phillip Ferderigos Barnwell Whaley Patterson &
Helms, LLC Po Drawer H Charleston, SC 29402-
0197
Andrew Steven Halio Halio & Halio, PA P.O. Box
747 Charleston, SC 29402-0747

CPFORM4M

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

MAUREEN T. COFFEY,
Plaintiff,

v.

COMMUNITY SERVICES ASSOCIATES,
INC., SEA PINES COMPANY, INC., SEA
PINES RESORT, LLC, SEA PINES
ASSOCIATES, INC., SEA PINES
SECURITY COMMITTEE, and GEORGE
F. BREED, JR.,

Defendants.

IN THE COURT OF COMMON PLEAS

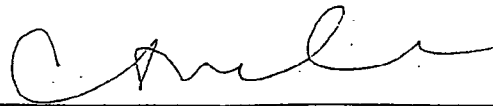
CASE NO. 2011-CP-07-00013
(formerly 2008-CP-07-04540)

PROPOSED CONSENT
SCHEDULING ORDER

11 JAN 31 PM 2:33
JEROME E. COLEMAN
CLERK OF COURT
BEAUFORT COUNTY, S.C.

Pursuant to Rule 16 of the South Carolina Rules of Civil Procedure, the following schedule is established in this case based upon an in court conference:

1. The plaintiff shall file her Amended Complaint on or before February 7, 2011 and responsive pleadings thereto shall be served on or before March 7, 2011.
2. Discovery shall be completed on or before October 1, 2011.
3. All dispositive motions shall be filed on or before October 20, 2011.
4. This case is subject to being called for trial, with the case being set for a date certain, on or after November 7, 2011.



Carmen T. Mullen
Chief Administrative Judge for Beaufort County

January 20, 2011
Beaufort, South Carolina

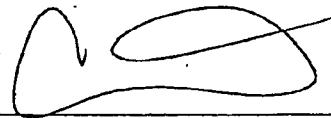
STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)
MAUREEN T. COFFEY,)
Plaintiff,)
vs.)
COMMUNITY SERVICES ASSOCIATES,)
INC.; GEORGE F. BREED; SEA PINES)
RESORT, LLC; ASSOCIATION OF SEA)
PINES PLANTATION PROPERTY)
OWNERS, INC. AND THE ADVISORY)
BOARD,)
Defendants.)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 11-CP-07-13

**FIRST AMENDED CONSENT
SCHEDULING ORDER**

Pursuant to Rule 16 of the South Carolina Rules of Civil Procedure, the following amended consent schedule is established in this case, as is evidenced by the signatures of counsel for all parties.

1. Discovery – Discovery shall be completed on or before January 15, 2012.
2. Dispositive Motions – All dispositive motions shall be filed on or before January 15, 2012.
3. Mediation – Mediation to be completed by December 31, 2011.
4. Trial – This case is subject to being called for trial on or after February 8, 2012.



Carmen T. Mullen
Chief Administrative Judge for Beaufort County

10-12, 2011
Beaufort, South Carolina

) IN THE COURT OF COMMON PLEAS

7
1) CASE NO.: 2011-CP-07-00013

)

(

1

4

2

1

11 DEC -6 PM 12:23
J. J. ROSENBAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

(

- :

3.

3

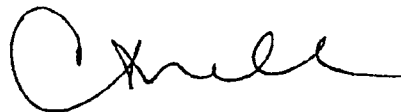
STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)
MAUREEN T. COFFEY,)
Plaintiff,)
v.)
COMMUNITY SERVICE ASSO-)
CIATES, INC., SEA PINES COM-)
PANY, INC., SEA PINES RE-)
SORT, LLC, SEA PINES ASSO-)
CIATES, INC., SEA PINES SEC-)
URITY COMMITTEE and)
GEORGE F. BREED, JR.,)
Defendants.)

IN THE COURT OF COMMON PLEAS
(Case No. 2011-CP-07-00013)

THIRD AMENDED
SCHEDULING ORDER

Pursuant to Rule 16 of the South Carolina Rules of Civil Procedure, the following
Third Amended Scheduling Order is established in this case.

1. Discovery – Discovery shall be completed on or before April 16, 2012.
2. Dispositive Motions – All Dispositive motions shall be filed on or before
April 10, 2012, and shall be heard on or before April 30, 2012.
3. Mediation – Mediation to be completed by April 30, 2012.
4. Trial – This case is subject to being called for trial on or after
May 14, 2012.



Carmen T. Mullen
Chief Administrative Judge for
Beaufort County

Dated: 3/12/12
Beaufort, South Carolina.

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT
MAUREEN T. COFFEY,

Plaintiff,
vs.

COMMUNITY SERVICES ASSOCIATES,
INC., SEA PINES COMPANY, INC., SEA
PINES RESORT, LLC, SEA PINES
ASSOCIATES, INC., SEA PINES
SECURITY COMMITTEE and GEORGE
F. BREED, JR.,

Defendant,

IN THE COURT OF COMMON PLEAS
CA NO. 2008-CP-07-04540

COMPLAINT
(Jury Trial Demanded)

ELIZABETH SMITH
BEAUFORT COUNTY, S.C.
CLERK OF COURT

2008 NOV 20 PM 2:28

The Plaintiff complaining of the Defendants alleges:

PARTIES

1. The Plaintiff, Maureen T. Coffey, is a resident of Hilton Head Island, Beaufort County, South Carolina.
2. Defendant, Community Services Associates, Inc., ("CSA") is a corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Hilton Head Island, South Carolina.
3. Sea Pines Company, Inc. ("Sea Pines, Inc.") is or was, upon information and belief, a corporation organized and existing under the laws of the State of South Carolina, with it principal place of business in Hilton Head Island, South Carolina, and is or was a controlling entity during certain operative times hereunder.
4. Sea Pines Resort, LLC ("Sea Pines Resort") is, upon information and belief, a limited liability company organized and existing under the laws of Virginia, and is licensed to do business in South Carolina and is or was a controlling entity during certain operative times hereunder.

5. Sea Pines Security Committee is, upon information and belief, an affiliate of and controlled by CSA and/or Sea Pines Resort, operating in Hilton Head Island, South Carolina.

6. The Defendant, George F. Brood, Jr. is employed as the "Director of Security and Community Affairs, Sea Pines-Hilton Head Island" for Defendant CSA.

JURISDICTION AND VENUE

7. That the parties hereto, the subject matter hereof and all matters and things hereinafter alleged are within the jurisdiction and venue of this Honorable Court.

BRIEF HISTORY OF THE PARTIES

8. Plaintiff re-alleges and incorporates paragraphs 1 through 7 as if restated herein.

9. By way of background, the Plaintiff's family has maintained a home in Sea Pines, Hilton Head Island, South Carolina since 1980. Her father, Michael Coffey, was a physician on the Island. Her parents have three (3) natural children, of which the Plaintiff is the oldest. When the Plaintiff was quite young, her parents adopted a five (5) month old African-American infant, Christopher, and his brother, Otis. The children resided together in the family home in Sea Pines. Christopher and Otis were among the very few African-Americans living in Sea Pines.

10. The Plaintiff completed her undergraduate studies at Vanderbilt University, graduating in May, 1987. She worked in Washington, D.C. for approximately two (2) years prior to attending Law School at George Mason University. The Plaintiff was admitted to the South Carolina Bar on or about October 4, 1994. Prior to becoming an associate Municipal Court Judge for the City of Hilton Head in December, 2000, the Plaintiff worked in private practice. The Plaintiff became the full time Municipal Court Judge for the Town of Hilton Head in February, 2005.

11. Sea Pines Plantation (the "Plantation") is a Planned community located on Hilton Head Island, South Carolina.

12. Upon information and belief, the "Plantation" was originally developed and operated by Sea Pines Plantation Company ("original company"). The "original company" declared bankruptcy in 1987. On November 17, 1987 the "original company" assigned and conveyed certain rights, powers and privileges held by the "original company" to Sea Pines Company, Inc. Upon information and belief, Sea Pines, Inc., and/or Sea Pines Resort continues to own and operate certain elements of the "Plantation."

13. The "Plantation" is a gated community and has a security gate and security force. The security force is staffed by security guards who are paid, directed or otherwise controlled by CSA and/or one or more of the Defendants.

BRIEF HISTORY OF DEFENDANTS IMPROPER AND ILLEGAL CONDUCT

14. Plaintiff realleges and incorporates paragraphs through 13 as if restated verbatim herein.

15. During the 2004 calendar year the Defendants' private security force by and through the Defendant, George F. Breed, Jr., began a pattern of harassment, and improper conduct toward the Plaintiff and the Plaintiff's immediate family members.

16. In particular, the Defendants, without probable cause or reasonable suspicion began a pattern of alleging Plaintiff's brother, Otis Coffey, as a suspect in a "rash of burglaries."

17. The Defendants had no reasonable basis or probable cause to name Otis Coffey as a "suspect" in crimes within Sea Pines, yet they began a pattern of harassing conduct designed to

jail Otis Coffey and to have the Plaintiff, Maureen Coffey, removed as the Municipal Judge as well

as disbarred from the South Carolina Bar.

18. In February, 2008 the Defendants, CSA and Breed instituted a policy of intimidation and harassment against the Coffey household in Sea Pines as are hereinafter more particularly set forth.

- (A) The Defendant instructed their private security patrol officers to focus on the Coffey residence with patrol vehicles and surveillance.
- (B) The Defendants falsified police reports and incident reports by alleging that Otis Coffey was observed traveling on a bike in a suspicious manner, refused to stop when ordered to by a CSA officer, fled the area, all within eyesight of the Coffey family home.
- (C) The Defendants further falsely alleged that the "suspect," Otis Coffey, was seen running into the Coffey home approximately fifteen (15) minutes later.
- (D) The Defendants summoned the Beaufort County Sheriff's Department to the Coffey residence in furtherance of the acts of intimidation and harassment. The "suspect" Otis Coffey was not located at the Coffey residence at that time.
- (E) The Defendant, CSA, by and through Defendant, George F. Breed, instructed the patrol officer to identify Otis Coffey as the fleeing "suspect" and obtain an arrest warrant.
- (F) When Defendant Breed was advised that the patrol officer could not identify Otis Coffey as the fleeing "suspect," Defendant, George F. Breed changed the patrol officers report to reflect that Otis Coffey was positively identified. Breed made said falsification with full knowledge that the allegation was false.
- (G) Defendants contacted the Sheriff's Department and reported that Otis Coffey was responsible for crimes in Sea Pines and falsely reported that Plaintiff was covering up and otherwise interfering with the investigation of her brother.

19. On or about June 16, 2008, the Defendants filed a Complaint with the Commission on Judicial Conduct against the Plaintiff, Maureen T. Coffey.

20. The allegations of the judicial complaint were purposely false and made with reckless disregard of the truth and otherwise made with actual malice.

21. The Judicial Complaint as aforementioned was investigated by the Supreme Court of South Carolina and dismissed by the Commission on Judicial Conduct as being without merit and without just cause.

FOR A FIRST CAUSE OF ACTION
Defamation Per Se

22. Plaintiff re-alleges and incorporates paragraphs 1 through 21 as part of this Cause of Action as if restated verbatim herein.

23. The publications of the Defendants were defamatory on their face.

24. The above mentioned publication made by the Defendants were knowingly false and malicious and as such, the publications were not privileged.

25. The Defendants provided written and spoken words to the Hilton Head Island town officials to discredit the Plaintiff, to reduce her character to her employers, friends, business and legal communities, to disgrace her and to render her odious, contemptible and unethical.

26. The Defendants falsely charged the Plaintiff with unethical violations and unfitness in her business, employment and profession.

27. The Defendants falsely published that the Plaintiff violated her oath as a Judge and as a lawyer and was designed to have the Plaintiff fired from her employment as the Municipal Judge of Hilton Head Island and disbarred or suspended as a lawyer.

28. Wherefore, as a direct and proximate result of printing, publishing, and circulation of the untrue and libelous statements by the Defendants, the Plaintiff has been exposed to public hatred, contempt and ridicule. Such defamatory and untrue statements have been the source of great embarrassment and humiliation to the Plaintiff, causing the Plaintiff to suffer mental anguish. The

Plaintiff's health has been effected and the Plaintiff has suffered and continues to suffer from acute nervousness, mental anguish and bodily pain. The Plaintiff has suffered a great wrong and injury on account of the above described actions of the Defendant, thereby causing the Plaintiff damages in a sum to be determined by a jury.

FOR A SECOND CAUSE OF ACTION
Malicious Prosecution

29. The Plaintiff re-alleges and incorporates paragraphs 1 through 28 as part of this Cause of Action as if restated verbatim herein.

30. The Defendants instituted with the Supreme Court of South Carolina, Commission On Judicial Conduct, a Complaint against the Plaintiff alleging misconduct in her capacity as the Hilton Head Municipal Judge.

31. That Judicial Complaint was fully investigated and dismissed in Plaintiff's favor by the Supreme Court of South Carolina Commission On Judicial Conduct.

32. The Defendants instituted said action against the Plaintiff with malice and without probable cause resulting in injury and damages to the Plaintiff.

33. The allegations of the judicial complaint were knowingly false and based upon false reports and allegations and therefore, no privilege attaches to the action of the Defendants.

FOR A THIRD CAUSE OF ACTION
Intentional Infliction of Emotional Distress/Outrage

34. The Plaintiff re-alleges and incorporates paragraphs 1 through 33 as part of this Cause of Action as if restated verbatim herein.

35. The Defendants conduct aforesaid intentionally or recklessly inflicted severe emotional distress, of which was certain or substantially certain that such distress would result

from their conduct.

36. The Defendants conduct was so extreme and outrageous as to exceed all possible bounds of decency and must be regarded as atrocious and utterly intolerable in a civilized community.

37. That the actions of the Defendants caused the Plaintiff emotional distress and the emotional distress suffered by the Plaintiff was so severe that a reasonable person could not be expected to endure it.

38. That the willful and reckless disregard of the Plaintiff's rights, were willfully intended by the Defendants and has resulted in the infliction of the severe emotional and physical stress to the Plaintiff and that due to and by the reason of, and as a direct and proximate result of outrageous conduct of the Defendants, by and through its officers, servants, and or employees, as alleged, the Defendant knew or should have known would cause damage and loss to the Plaintiff. The Plaintiff has additionally suffered the actual and consequential damages in addition to punitive damages.

FOR A FOURTH CAUSE OF ACTION
Negligence

39. The Plaintiff re-alleges and incorporates paragraphs 1 through 38 as part of this Cause of Action as if restated verbatim herein.

40. The Defendants failed to properly instruct, train and supervise its employees.

41. The Defendants' employees failed to follow proper and lawful procedures in the administration of justice by a private security agency for a Homeowners Association.

42. The Defendants' employees had no reasonable basis for believing that the Plaintiff was in violation of her obligations as the Municipal Judge of Hilton Head Island.

43. The Defendants and Defendants' employees had no basis whatsoever for believing that the Plaintiff "had failed to uphold the integrity and independence of the judiciary, failed to avoid the impropriety and appearance of impropriety in the Judge's activities and failed to be impartial or diligent."

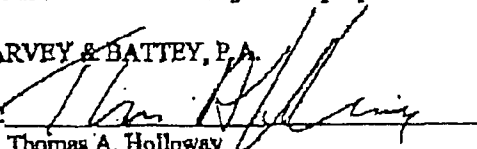
44. Due to their lack of training and failure to exercise reasonable care, the Defendants employees wrongfully concluded, in the absence of any evidence reasonably supporting their inferences, that the Plaintiff was improperly using her judicial office for personal or family gain.

45. The Plaintiff has suffered actual damages as a result of the negligent, willful, wanton and reckless actions of the conduct of the Defendant and its employees.

46. The Plaintiff is entitled to recover actual and punitive damages from the Defendants in an amount to be determined by a jury.

47. WHEREFORE, the Plaintiff prays for a judgment against the Defendants in an amount of actual and punitive damages to be determined by a jury, together with the cost of this action and for such further legal and equitable relief as the court deems just and proper.

HARVEY & BATTEY, P.A.

By: 

Thomas A. Holloway
P.O. Box 1107, 1001 Craven St.
Beaufort, SC 29901-1107
(Tel) 843.524.3109 (Fax) 843.524.6973
Attorneys for the Plaintiff

Beaufort, SC

November 20, 2008

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

MAUREEN T. COFFEY,

Plaintiff,

v.

COMMUNITY SERVICES ASSOCIATES,
INC., SEA PINES COMPANY, INC., SEA
PINES RESORT, LLC, SEA PINES
ASSOCIATES, INC., SEA PINES
SECURITY COMMITTEE, and GEORGE
F. BREED, JR.,

Defendants:

IN THE COURT OF COMMON PLEAS

CASE NO. 2008-CP-07-04540

ANSWER OF DEFENDANTS
COMMUNITY SERVICES
ASSOCIATES, INC., SEA PINES
SECURITY COMMITTEE AND
GEORGE F. BREED, JR.

08 DEC 29 PM 1:28
BEAUFORT COUNTY
CLERK OF COURT
BEAUFORT, S.C.

The defendants Community Services Associates, Inc. ("CSA"), Sea Pines Security Committee ("Committee"), and George F. Breed, Jr. ("Breed"), (hereinafter collectively "Defendants") respond generally that any and all allegations of the Complaint which are not expressly admitted herein are denied, and specifically respond as follows:

FOR A FIRST DEFENSE

1. The acts of the Plaintiff, Maureen T. Coffey, Municipal Court Judge for the City of Hilton Head, in filing the present action, violated the Code of Judicial Conduct, Rule 501 of the South Carolina Appellate Court Rules, including but not limited to Rule 13 of the Rules for Judicial Disciplinary Enforcement. Rule 13 states, "immunity from civil suits, communications to the commission . . . related to misconduct or incapacity . . . shall be absolutely privileged and no civil lawsuit predicated thereon may be instituted against any complainant or witness." (emphasis added).

2. In addition, the Plaintiff has further violated the Rules of Judicial Conduct by the filing of this action, as Rule 12 states, in relevant part, "all complaints, proceedings, records, information or orders relating to an allegation of misconduct or incapacity shall be confidential and shall not be disclosed to the public A violation of this provision may be punished as a contempt of the Supreme Court."

3. The Plaintiff's actions in instituting the present proceeding constitute contempt of the Supreme Court of South Carolina.

FOR A SECOND DEFENSE

4. Plaintiff is employed as an at-will public official. In our democratic society, a public official is answerable to members of the public, and allegations requesting review of her actions are not actionable against a member of the public.

5. The Plaintiff's Complaint fails to state a claim against which relief can be granted under South Carolina law.

FOR A THIRD DEFENSE

6. In bringing this retaliatory action against Defendants, Plaintiff has proven that she does, in fact, have a prejudice and cannot preside impartially over any cases arising in Sea Pines or involving any defendants.

7. The security force that patrols Sea Pines consists of approximately fifty (50) officers and support staff whose primary concern is the public safety, security and law enforcement for the Sea Pines community. The population of Sea Pines fluctuates between approximately 25,000 to 75,000 residents and visitors during the year.

8. During the last several months of 2004, several burglaries, thefts and residential break-ins occurred in Sea Pines. In its investigation of these crimes, the

Beaufort County Sheriffs Office ("BCSO") identified Otis Coffey, Plaintiff's brother, as the primary suspect. The BCSO communicated the identification of Otis Coffey as the prime suspect in the thefts to Defendant Breed.

9. Upon information and belief, Captain Toby McSwain of BCSO met with Plaintiff and advised her that Otis Coffey was the prime suspect in a rash of burglaries occurring over the previous several months. Judge Coffey stated to Capt. McSwain that she was going to get Otis Coffey out of town.

10. Shortly after this meeting the burglaries plaguing Sea Pines ceased.

11. In February, 2008, a new series of burglaries and residential break-ins in Sea Pines began. The route of travel, target homes, times, dates and method of operation used by the burglar or burglars closely tracked those used in the 2004 robberies for which Otis Coffey was named the primary suspect by the BCSO.

12. During the spring of 2008, CSA was made aware that Otis Coffey had returned to Sea Pines in February of that year, which coincided with the increase in reported burglaries and break-ins.

13. The burglaries continued from February, 2008 through May, 2008.

14. Upon information and belief Otis Coffey has a history of arrests and convictions as reflected on the NCIC reports of same.

15. On May 21, 2008, one of CSA's security officers found a vehicle parked on the narrow street in front of the Coffey residence. The vehicle was found to be registered to Michael Coffey, the deceased father of Plaintiff. Sea Pines Security made several attempts via phone and in person to contact Ms. Ann Coffey to ask her to move the vehicle from the road with no response. After approximately one hour, a tow vehicle responded at

which time both Otis Coffey and Ann Coffey emerged from the home. The officer on the scene issued Ann Coffey a parking citation. During this process Ann Coffey asked the officer if he was new to the department. The officer stated that he had been employed here for many years. Ann Coffey then stated "You do know who the judge is don't you . . . my daughter".

16. Judge Coffey is the only Municipal Court Judge for Hilton Head Island and, prior to instituting this lawsuit, was the only judge available to preside over traffic and criminal cases involving Sea Pines Security.

17. Based on the foregoing, Defendants are informed and believe that Plaintiff's inability to remove and insulate herself from personal relationships involving Sea Pines Security indicates a prejudice against the force and creates a conflict of interest that is detrimental both to Sea Pines Security's attempts to protect Sea Pines and to the community at-large.

18. In bringing this suit against Defendants for questioning her impartiality, Plaintiff has proven that Defendants' allegations of Plaintiff's bias and prejudice were accurate.

19. No cause of action against Defendants can lie for stating the truth about Plaintiff's impartiality and bias.

FOR A FOURTH DEFENSE

20. Defendants lack sufficient information to form a belief as to the truth of the allegations contained in paragraph 1 of the Complaint, and therefore deny the same.

21. Defendants admit the allegations in paragraph 2 of the Complaint.

22. Upon information and belief, Defendants deny the allegations contained in paragraph 3 of the Complaint.

23. Defendants lack sufficient information to form a belief as to the truth of the allegations contained in paragraph 4 of the Complaint, and therefore deny the same.

24. In response to the allegations contained in paragraph 5 of the Complaint, Defendants deny that the "Sea Pines Security Committee" is a legal entity, association, or person that may be subject to suit under South Carolina law. Insofar as the Sea Pines Security Committee is a committee of the Board of Directors for CSA, Defendants admit it is located and operates in Hilton Head Island, South Carolina. Defendants deny the remaining allegations contained in paragraph 5.

25. Defendants admit the allegations contained in paragraph 6 of the Complaint.

26. The allegations contained in paragraph 7 of the Complaint are allegations of law to which no response is required.

27. Defendants restate their responses to the allegations contained in Paragraphs 1 through 8 of the Complaint.

28. Defendants lack sufficient information to form a belief as to the truth of the allegations contained in paragraph 9 of the Complaint, and therefore deny the same.

29. Defendants lack sufficient information to form a belief as to the truth of the allegations contained in paragraph 10 of the Complaint, and therefore deny the same.

30. Defendants admit the allegations contained in paragraph 11 of the Complaint.

31. Defendants lack sufficient information to form a belief as to the truth of the allegations contained in paragraph 12 of the Complaint, and therefore deny the same.

32. In response to the allegations contained in paragraph 13, Defendants admit that Sea Pines is a planned gated community with security gates and a security force. Defendants admit the security force is staffed by paid security guards under the employ of CSA. Defendants deny the remaining allegations in paragraph 13.

33. Defendants restate their responses to the allegations contained in Paragraphs 1 through 13 of the Complaint.

34. Defendants deny the allegations contained in paragraph 15.

35. Defendants deny the allegations contained in paragraph 16.

36. Defendants deny the allegations contained in paragraph 17.

37. In response to the allegations contained in paragraph 18, Defendants admit that a security officer was sent to the Coffey residence in an attempt to apprehend a robbery suspect identified as Otis Coffey. Defendants deny the remaining allegations in paragraph 18.

38. Defendants admit the allegations contained in paragraph 19 of the Complaint.

39. Defendants deny the allegations contained in paragraph 20.

40. In response to the allegations contained in paragraph 21 of the Complaint, Defendants assert the mandates in Rule 501 of the S.C. Appellate Court Rules and the Code of Judicial Conduct. Defendants lack sufficient information to form a belief as to the truth of the remaining allegations contained in paragraph 21 of the Complaint, and therefore deny the same.

41. Defendants restate their responses to the allegations contained in Paragraphs 1 through 21 of the Complaint.

42. Defendants deny the allegations contained in paragraph 23.
43. Defendants deny the allegations contained in paragraph 24.
44. Defendants deny the allegations contained in paragraph 25.
45. Defendants deny the allegations contained in paragraph 26.
46. Defendants deny the allegations contained in paragraph 27.
47. Defendants deny the allegations contained in paragraph 28.
48. Defendants restate their responses to the allegations contained in Paragraphs 1 through 28 of the Complaint.
49. In response to the allegations contained in paragraphs 30 and 31 of the Complaint, Defendants crave reference to the Public Crime reports from 2004-2008 and the Rules of the S.C. Supreme Court and the Code of Judicial Conduct, and deny any allegations inconsistent therewith.
50. Defendants deny the allegations contained in paragraph 32.
51. Defendants deny the allegations contained in paragraph 33.
52. Defendants restate their responses to the allegations contained in Paragraphs 1 through 33 of the Complaint.
53. Defendants deny the allegations contained in paragraph 35.
54. Defendants deny the allegations contained in paragraph 36.
55. Defendants deny the allegations contained in paragraph 37.
56. Defendants deny the allegations contained in paragraph 38.
57. Defendants restate their responses to the allegations contained in Paragraphs 1 through 38 of the Complaint.
58. Defendants deny the allegations contained in paragraph 40.

59. Defendants deny the allegations contained in paragraph 41.
60. Defendants deny the allegations contained in paragraph 42.
61. Defendants deny the allegations contained in paragraph 43.
62. Defendants deny the allegations contained in paragraph 44.
63. Defendants deny the allegations contained in paragraph 45.
64. Defendants deny the allegations contained in paragraph 46.
65. Paragraph 47 is a prayer requiring no response from Defendants.

FOR A FIFTH DEFENSE
(12(b)(6))

66. One or more of the Plaintiffs' causes of action fail to allege facts sufficient to constitute a cause of action and should therefore be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A SIXTH DEFENSE
(South Carolina Frivolous Proceedings Act)

67. Plaintiffs' Complaint violates South Carolina's Frivolous Proceedings Act, and therefore, pursuant to this Act, Defendants are entitled to an award of attorneys' fees.

FOR A SEVENTH DEFENSE
(Privilege)

68. Defendants assert that if Plaintiff were defamed, which defamation they deny, any alleged defamatory statement was privileged, and therefore Plaintiff's defamation claim is barred.

FOR AN EIGHTH DEFENSE
(Punitive Damages)

69. The various claims set forth seek both punitive damages and multiple damages on different theories for the same loss, and Plaintiffs are not entitled to recover

both punitive damages and multiple damages for the same loss as such constitutes a double recovery.

FOR A NINETH DEFENSE
(Failure to Plead a Cause of Action for Defamation Per Se)

70. Defendants incorporate by reference all of the foregoing paragraphs as if set forth fully herein.

71. Plaintiff's Complaint, in whole or in part, fails to state facts sufficient to support a claim for defamation upon which relief can be granted and should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A TENTH DEFENSE
(Failure to Plead a Cause of Action for Malicious Prosecution)

72. Defendants incorporate by reference all of the foregoing paragraphs as if set forth fully herein.

73. Plaintiff's Complaint, in whole or in part, fails to state facts sufficient to support a claim for malicious prosecution upon which relief can be granted and the claim should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR AN ELEVENTH DEFENSE
**(Failure to Plead a Cause of Action for
Intentional Infliction of Emotional Distress/Outrage)**

74. Defendants incorporate by reference all of the foregoing paragraphs as if set forth fully herein.

75. Plaintiff's Complaint, in whole or in part, fails to state facts sufficient to support a claim for intentional infliction of emotional distress/outrage upon which relief can

be granted and the claim should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A TWELTH DEFENSE
(Failure to Plead a Cause of Action for Negligence; Absence of Duty)

76. Plaintiff's negligence claim fails and should be dismissed pursuant to Rule 12(b)(6), SCRPC because Plaintiff has failed to state a claim for negligence and Defendants owe Plaintiff no duty that could be or was breached.

FOR A THIRTEENTH DEFENSE
(Unclean Hands)

77. Defendants incorporate by reference all of the foregoing paragraphs as if set forth fully herein.

78. Plaintiff acted unfairly in a matter that is the subject of this litigation to the prejudice of Defendants, and, as a result, Plaintiff's claims are barred, in whole or in part, by the doctrine of unclean hands.

FOR A FOURTEENTH DEFENSE
(Punitive Damages Unconstitutional -- Procedural Due Process)

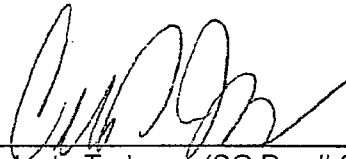
79. To the extent that Plaintiff seeks punitive or exemplary damages, such claims violate the right of the Defendants to procedural due process under the Fourteenth Amendment of the United States Constitution and the Constitution of the State of South Carolina.

FOR AN FIFTEENTH DEFENSE
(Punitive Damages Unconstitutional -- Substantive Due Process)

80. To the extent that Plaintiff seeks punitive or exemplary damages, such claims violate the right of the Defendants to substantive due process as provided in the Fifth and Fourteenth Amendments of the United States Constitution and the Constitution of the State of South Carolina.

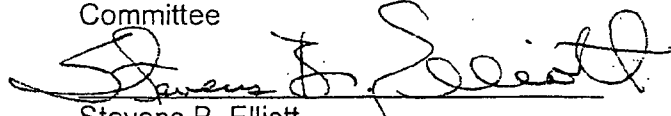
81. Defendants reserve the right to amend this answer to add additional affirmative defenses as discovery progresses.

WHEREFORE, having fully responded to the allegations set forth in Plaintiff's Complaint, Defendants Community Services Associates, Inc. and George F. Breed, Jr. pray that the Complaint be dismissed with prejudice as to the Defendants; that the Defendants be awarded fees and costs; and that the Court order such other and further relief as the Court may deem just and proper.



Celeste T. Jones (SC Bar # 3173)
McNAIR LAW FIRM, P.A.
Post Office Box 11390
Columbia, South Carolina 29211
(803) 799-9800
Fax (803) 753-3278

Attorneys for Community Services
Associates, Inc. and Sea Pines Security
Committee



Stevens B. Elliott
P.O. Box 6922
Columbia, SC 29260-6922
(803) 254-7980
Fax (803) 254-7130

December 22, 2008

Columbia, South Carolina

Attorney for George F. Breed, Jr.

1.16.09

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	C/A NO.: 08-CP-07-04540
MAUREEN T. COFFEY,	)	
Plaintiff,	)	
v.	)	ANSWER OF DEFENDANTS
	)	COMMUNITY SERVICES ASSOCIATES,
	)	INC. AND GEORGE F. BREED
COMMUNITY SERVICES ASSOCIATES,	)	
INC., SEA PINES COMPANY, INC., SEA	)	(Jury Trial Demanded)
PINES RESORT, LLC, SEA PINES	)	
ASSOCIATES, INC., SEA PINES	)	
SECURITY COMMITTEE and GEORGE	)	
F. BREED,	)	
Defendants.	)	

2009 JAN 20 PM 2:21
BEAUFORT COUNTY
CLERK OF COURT
BEAUFORT, S.C.

TO: THOMAS A. HOLLOWAY, ESQUIRE, COUNSEL FOR THE PLAINTIFF:

Reserving all rights to amend this Answer within thirty (30) days pursuant to Rule 15 (a) of the South Carolina Rules of Civil Procedure and reserving all rights to include in the Answer any defenses and/or objections under Rule 12 of the South Carolina Rules of Civil Procedure, and reserving all rights to make any motions under Rule 12 of the South Carolina Rules of Civil Procedure, the Defendants, Community Services Associates, Inc. and George F. Breed, by and through the undersigned attorneys (hereinafter "CSA and Breed"), answer the Complaint as follows:

FOR A FIRST DEFENSE

1. Defendants deny each and every allegation of the Complaint not hereinafter specifically and unconditionally admitted.
2. Defendants CSA and Breed admit the allegations of Paragraph 1 of Plaintiff's Complaint.

3. Defendants CSA and Breed admit the allegations of Paragraph 2 of Plaintiff's Complaint.
4. Answering paragraphs 3 and 4 of Plaintiff's Complaint, CSA and Breed do not have sufficient information with which to admit or deny said paragraphs.
5. Answering paragraph 5 of Plaintiff's Complaint, CSA and Breed do not have sufficient information to respond to said paragraph. To the extent that any actions or inactions of Sea Pines Security Committee is affiliated with or attributable to or from Defendant Community Services Associates, Inc. and George Breed, these Defendants deny any and all allegations against Sea Pines Security Committee which are attributable to or from in any way, shape, or form to Defendant Community Services Associates, Inc. or George Breed.
6. Answering paragraph 6 of Plaintiff's Complaint, CSA and Breed admit said paragraph.
7. Answering paragraphs 7, Defendants CSA and Breed do not have sufficient information with which to admit or deny said paragraph, therefore, Defendants deny said paragraph and demand strict proof hereof.
8. Answering paragraph 8, Defendants repeat and reallege their responses to paragraphs 1 – 7 as if stated herein verbatim.
9. Answering paragraphs 9, 10, 11, 12 and 13, Defendants CSA and Breed do not have sufficient information with which to admit or deny said paragraphs, therefore, Defendants deny said paragraphs and demand strict proof hereof. Defendants crave reference to Plaintiff's education and work history.
10. Answering paragraph 14, Defendants repeat and reallege their responses to paragraphs 1 – 13 as if stated herein verbatim.

11. Answering paragraphs 15, 16, 17, 18 sub-parts a-g, 19, 20 and 21, Defendants CSA and Breed do not sufficient information with which to admit or deny said paragraphs, therefore, Defendants deny said paragraphs and demand strict proof hereof. Defendant further claims reference to any judicial complaint and further raises any and all affirmative defenses associated therewith.
12. Answering Plaintiff's First Cause of Action, "Defamation Per Se," answering paragraph 22, Defendants repeat and reallege their previous responses to the Plaintiff's paragraphs 1 - 21 as if set forth verbatim herein.
13. Answering paragraphs 23, 24, 25, 26, 27 and 28, Defendants deny said paragraphs and demand strict proof hereof.
14. Answering Plaintiff's Second Cause of Action, "Malicious Prosecution," answering paragraph 29, Defendants repeat and reallege their responses to paragraphs 1 - 28 as if set forth verbatim herein.
15. Answering paragraphs 30, 31, 32 and 33, Defendants deny said paragraphs and demand strict proof hereof. Defendants further crave reference to any judicial complaint and raise the affirmative defense of absolute or qualified privilege concerning any judicial complaint.
16. Answering Plaintiff's Third Cause of Action, "Intentional Infliction of Emotional Distress/Outrage," answering paragraph 34 of the Plaintiff's complaint, Defendants repeat and reallege their responses to paragraphs 1 - 33 as if set forth verbatim herein.
17. Answering paragraphs 35, 36, 37 and 38, Defendants deny said paragraphs and demand strict proof hereof.

18. Answering Plaintiff's Fourth Cause of Action, "Negligence," answering paragraph 39, Defendants repeat and reallege their responses to paragraphs 1 – 38 as if set forth verbatim herein.

19. Answering paragraphs 40, 41, 42, 43, 44, 45, 46 and 47, Defendants deny said paragraphs and demand strict proof hereof.

**FOR A SECOND DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Failure to State a Claim)**

20. Plaintiff has failed to state facts sufficient to constitute a cause of action against these Defendants pursuant to Rule 12(b)(6), SCRCF and Plaintiff's claims should be dismissed.

**FOR A THIRD DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Failure to Mitigate)**

21. Plaintiff has failed to mitigate his damages as required by law.

**FOR A FOURTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Waiver, Estoppel, Laches)**

22. Plaintiff's claim may be barred by the doctrines of Waiver, Estoppel and/or Laches.

**FOR A FIFTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Intervening Acts of Third Parties)**

23. Plaintiff's damages, if any, are the direct and proximate result of intervening and superseding acts of third parties not affiliated with these Defendants and not under these Defendants' domain or control.

**FOR A SIXTH DEFENSE
AND BY WAY OF AN AFFIRMATIVE DEFENSE THERETO
(Contributory/Comparative Negligence)**

24. Any damage suffered by the Plaintiff is a direct and proximate result of her own comparative and contributory negligence and Plaintiff's recovery should be barred, or alternatively, reduced proportionately to Plaintiff's comparative negligence.

FOR A SEVENTH AFFIRMATIVE DEFENSE

25. These Defendants raise the defenses of the First Amendment and absolute/qualified privilege per statute. Plaintiff's allegations against this Defendant are barred by these Defendants' First Amendment rights and absolute/qualified privilege to report professional misconduct under South Carolina's constitution and statutes.

FOR AN EIGHTH AFFIRMATIVE DEFENSE

26. The Defendant asserts there was no publication of any alleged defamatory communication, as there is no publication, there is no defamation as a matter of law.

FOR A NINTH AFFIRMATIVE DEFENSE

27. The Defendant asserts the truth as an affirmative defense to Plaintiff's claims.

FOR A TENTH AFFIRMATIVE DEFENSE

28. The Defendant asserts a common law and statutory, qualified and/or absolute privilege as, at all times, the Defendant was acting in good faith and with reasonable cause based on the actions and admissions of the Plaintiff.

FOR AN ELEVENTH AFFIRMATIVE DEFENSE

29. The actions of the Defendant were lawful and protected by law and subject to privilege including, but not limited to, South Carolina Appellate Court Rules 501 and 502 and, therefore, the Plaintiff's claims should be dismissed. At all times, the Defendant was acting with reasonable cause, probable cause and in good faith.

FOR A TWELFTH AFFIRMATIVE DEFENSE

30. The actions of the Plaintiff were a conditionally privileged communication as the actions were 1) in good faith; 2) involved an interest to be upheld; 3) was a statement limited in scope to this purpose; 4) was made in a proper occasion; and 5) publication was made in a proper manner to the proper parties, and the conditional privilege includes, but is not limited to, publication of judicial proceedings and public records, the fair comment defense, business or professional interest defense, self-defense or defense of others' defense and public duty defense.

FOR A THIRTEENTH AFFIRMATIVE DEFENSE (Punitive Damages)

31. The Defendants would show that the claim of the Plaintiff for punitive damages cannot be had because any award of punitive damages under South Carolina law without bifurcation of the trial so that any punitive damages issues are tried only after and if liability on the merits of the action have been found would violate Defendant's due process rights guaranteed by the United States Constitution and the South Carolina Constitution and would violate the common law and public policy of the State of South Carolina.

32. The Defendants would show that the claim of the Plaintiff for punitive damages cannot be had because an award of punitive damages under South Carolina law without being subject to a pre-determined limit on the amount of punitive damages that a jury might impose would violate Defendants' due process rights guaranteed by the United States Constitution and The South Carolina Constitution and would violate the common law of the State of South Carolina.

33. The Defendants allege that the Complaint of the Plaintiff for punitive damages cannot be had because an award of punitive damages under South Carolina law by a jury that is not: a) provided with sufficiently clear standards for determining the appropriateness of the punitive damages award or size of such award; b) provided with accurate instructions as to the limits of punitive damages awards as determined by the principals underlying such an award; c) instructed that awarding punitive damages on invidiously discriminatory characteristics of the Defendants is improper; d) instructed to consider punitive damages under a standard for determining the amount that is neither vague, arbitrary nor capricious and that defines with reasonable clarity the actions of the Defendants upon which an award of punitive damages may be based; e) subjected to judicial review at both the trial and appellate court level under objective standards for determining appropriateness and reasonableness; and f) instructed that an award of punitive damages based on anything other than Defendants' conduct in connection with this alleged incident that is the subject of this lawsuit is forbidden; would violate the Defendants' equal protection and due process rights as guaranteed by the United States Constitution and the South Carolina Constitution and would also violate the laws of the State of South Carolina.

34. The Defendants allege that the imposition of punitive damages on the basis of Plaintiff's claims giving rise to this lawsuit would represent the deprivation of liberty and property without due process of law, the imposition of cruel and unusual punishment and excessive fines and deny the equal protection of the laws and violation of the Fifth, Sixth, Eighth, and Fourteenth Amendments to The Constitution of the United States and the comparable provisions of the State of South Carolina.

FOR A FOURTEENTH AFFIRMATIVE DEFENSE
(Sufficient Investigation)

35. The Defendant has not had an opportunity to conduct a sufficient investigation and will engage in a quick discovery touching on the circumstances of the Plaintiff's allegations. The Defendant intends to act as best as they can to inform themselves as to the pertinent facts and prevailing circumstances concerning the damages to the Plaintiff as alleged in the Complaint and give notice of their intent to assert further affirmative defenses and that the information gathered and processed may indicate, supported by fact and law, including but not limited to a defense that this action is barred in whole or in part by any applicable statutes, contracts, releases, covenants and/or the Doctrine of Laches. The Defendant reserves the right to amend its Answer to assert any such defenses.

WHEREFORE, having fully answered the Plaintiff's Complaint these Defendants pray that the same be dismissed with costs and for such other and further relief as the court may deem just and proper.

BARNWELL WHALEY
PATTERSON & HELMS, LLC

By: _____

Phillip S. Ferderigos
885 Island Park Drive (29492)
P.O. Drawer H
Charleston, SC 29402
(843) 577-7700

ATTORNEYS FOR COMMUNITY SERVICES
ASSOCIATES, INC. and GEORGE F. BREED

Dated: June 15, 2009
Charleston, South Carolina

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF BEAUFORT)

CA NO. 2008-CP-07-04540

MAUREEN T. COFFEY,)

Plaintiff,)

vs.)

RULE 40(j)

CONSENT DISMISSAL

COMMUNITY SERVICES ASSOCIATES,)

INC., SEA PINES COMPANY, INC., SEA)

PINES RESORT, LLC, SEA PINES)

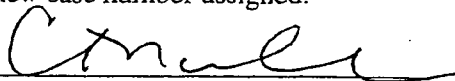
ASSOCIATES, INC., SEA PINES SECURITY)

COMMITTEE and GEORGE F. BREED, JR.,)

Defendants,)

2010 JAN 12 AM 10:34
JERRI ANN ROSEMEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

Upon Motion of Thomas A. Holloway, Esquire, attorney for the Plaintiff, and by and with the consent of counsels for all of Defendants, in accordance with Rule 40(j) SCRCP, the above matter is hereby stricken from the trial roster. The parties further agree that the claim shall be restored upon motion of the parties within one (1) year and that the case shall be set to the trial roster when restored, with a new case number assigned.

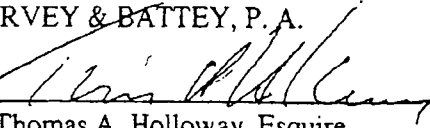

Judge, Fourteenth Judicial Circuit

Beaufort, South Carolina

1/12, 2010

WE SO MOVE:

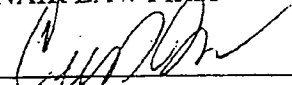
HARVEY & BATTEY, P.A.

By: 

Thomas A. Holloway, Esquire
Attorneys for the Plaintiff

WE CONSENT:

MCNAIR LAW FIRM

By: 

Celeste T. Jones, Esquire

Attorneys for Community Services Associates, Inc. and Sea Pines Security Committee

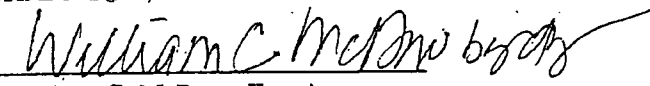
STEVENS B. ELLIOTT

By: 

Stevens B. Elliott, Esquire

Attorney for George F. Breed, Jr.

RICHARDSON, PLOWDEN & ROBINSON

By: 

William C. McDow, Esquire

Attorneys for Community Services Associates, Inc., Sea Pines Security Committee and George F. Breed, Jr.

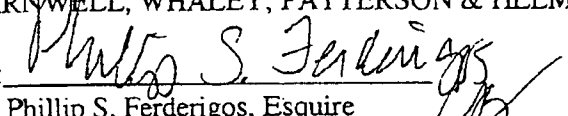
RUSSELL P. PATTERSON

By: 

Russell P. Patterson, Esquire

Attorney for Sea Pines Company, Inc., Sea Pines Resort, LLC, Sea Pines Associates, Inc.

BARNWELL, WHALEY, PATTERSON & HELMS

By: 

Phillip S. Ferderigos, Esquire

Attorneys for Community Services Associates, Inc. and George F. Breed, Jr.

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)
MAUREEN T. COFFEY,)
Plaintiff,)
v.)
COMMUNITY SERVICES ASSO-)
CIATES, INC., GEORGE F.)
BREED, JR., SEA PINES)
RESORT, LLC, and ASSOCIA-)
TION OF SEA PINES PLANT-)
ATION PROPERTY OWNERS,)
INC., AND THE ADVISORY)
BOARD,)
Defendants.)

IN THE COURT OF COMMON PLEAS
(Case No. 2011-CP-07-00013)

AMENDED COMPLAINT
(Jury Trial Demanded)

The Plaintiff, Maureen T. Coffey, complaining of the Defendants, alleges:

PROLOGUE

1. The Plaintiff, Maureen T. Coffey, is a citizen and resident of Hilton Head Island in Beaufort County, South Carolina.
2. The Plaintiff is an attorney employed as a municipal judge by the Town of Hilton Head Island, South Carolina.
3. The Defendant, Community Services Associates, Inc. (herein "CSA"), is a corporation organized and existing under the laws of the state of South Carolina which maintains its principal place of business, as well as a general agent, at Hilton Head Island in Beaufort County, South Carolina.

4. CSA is the corporate entity that owns and manages the common property in Sea Pines Plantation—a planned unit development at Hilton Head Island, South Carolina.

5. The Defendant, George F. Breed, Jr. (herein "Breed"), is a citizen and resident of Beaufort County, South Carolina.

6. Breed is employed as the Director of Security and Community Affairs by CSA—a position that puts him in charge of a force of private security officers (herein "Sea Pines Security") that serves Sea Pines Plantation.

7. Sea Pines Resort, LLC ("Resort"), is a limited liability company organized and existing under the laws of the state of Virginia which maintains its principal place of business, as well as a general agent, at Hilton Head Island in Beaufort County, South Carolina.

8. Sea Pines Resort is a for profit company that owns and manages the real estate and rental operations, as well as a number of commercial enterprises, primarily located within Sea Pines Plantation.

9. Sea Pines Resort is the assignee of and/or the successor in interest to numerous rights and obligations created under the covenants applicable to Sea Pines Plantation, which heretofore were held by numerous discrete entities, including, without limitation, Sea Pines Associates, Inc., Sea Pines Company, Inc., Sea Pines Real Estate Company, Inc., Sea Pines Plantation Company, Inc., The Fifth Golf Course Club, Inc., Sea Pines Forest Preserve Conservation Association, Inc., Lighthouse Realty, Inc., Sea Pines/Tide Pointe, Inc., and Tide Pointe, Inc.

10. The Association of Sea Pines Plantation Property Owners, Inc., and the Advisory Board (herein "ASPPPO") is a non-profit corporation organized and existing under the laws of the state of South Carolina which maintains its principal place of business, as well as a general agent, at Hilton Head Island in Beaufort County, South Carolina.

11. ASPPPO is the organization in Sea Pines Plantation that is responsible for enforcing the covenants running with the land.

12. Each of the officers, directors, agents and employees, of the Defendants, at all relevant times, was acting within the course of his or her agency or employment.

13. Any act, action, statement, failure or omission, if not authorized by a Defendant at the time of its occurrence, was subsequently adopted and/or ratified by the Defendant in question.

14. On or about June 6, 2008, Breed prepared a letter addressed to the Commission on Judicial Conduct (herein "the Letter") in which he impugned the character, honesty and fitness of the Plaintiff to engage in her business, trade, profession and/or office.

15. The Letter contained numerous false and defamatory statements about the Plaintiff, including, without limitation, the following:

- (a) As "a result of Judge Coffey's actions, she has given the distinct and transparent appearance of bias and partiality";
- (b) She "is not able to be a neutral and detached arbiter of the many cases that have been and will be pending before her";
- (c) She has engaged "in a pattern of reactive and overt actions that have/are undermining the criminal justice process";

- (d) "Judge Coffey has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts & criminal justice procedure";
- (e) Her "conduct was/is pervasive and invasive in nature and directly results in Judge Coffey's inability to maintain the impartiality so necessary to the successful balance of our legal system"; and
- (f) Judge Coffey's "overt involvement both past and present caused her to insert herself in these scenarios to the detriment of the community."

16. Before and after mailing the Letter to its ostensible addressee—an action that is privileged by rule—Breed and/or other officers, directors, agents and employees of CSA:

- (a) Delivered and/or displayed one or more copies of the Letter to officials of the Town of Hilton Head Island, with whom they discussed the contents of the Letter in an effort to have the Plaintiff fired by her employer;
- (b) Delivered and/or displayed multiple copies of the Letter to the Board of Directors of CSA, with whom they discussed the contents of the Letter;
- (c) Delivered and/or displayed one or more copies of the Letter to the Members of the Board of Directors of the Association of Sea Pines Plantation Property Owners (ASPPPO), with whom they discussed the contents of the Letter;
- (d) Delivered and/or displayed one or more copies of the Letter to the officers, directors, agents and employees of Sea Pines Resort, with whom they discussed the contents of the Letter; and
- (e) Delivered and/or displayed one or more copies of the Letter to members of the general public.

17. Both before and after the mailing of the Letter to its ostensible addressee, the officers, directors, agents and employees of the Town, of CSA, of ASPPPO and of Sea Pines Resort, upon information and belief, made repeated,

unprivileged, republications of the Letter and its contents to the general public so that the existence of the Letter and the defamatory statements about the Plaintiff became widely known.

18. Breed, as well as the officers, directors, agents and employees of CSA, of Sea Pines Resort and of ASPPPO, repeated and embellished the statements set forth in the Letter, as described in paragraph 15 above, to each other and to members of the general public, thereby broadcasting to the public the falsehood that the Plaintiff had been biased and partial in her judicial decision making, as well as the falsehood that the Plaintiff had intruded upon or impeded the investigation of her brother, Otis Coffey.

19. Breed, as well as other officers, directors, agents and employees of CSA, in order to further discredit the Plaintiff, who is a married woman, accused her of having an affair with a security officer, because the officer had refused to participate in Breed's efforts to falsify evidence of a positive identification of Otis Coffey on or about May 20, 2008.

FOR A FIRST CAUSE OF ACTION
(Libel at Common Law)

20. The allegations of paragraphs 1 through 17 above are hereby adopted and by express reference made a part of this First Cause of Action.

21. The quoted statements described in paragraph 15 were utterly false.

22. The quoted statements in paragraph 15 were defamatory on their face, and, because they were written, printed or typed, they constitute libel.

23. The statements described in paragraph 15 were actionable *per se* because they degrade the Plaintiff, that is, they reduce her character or reputation in the estimation of her friends or acquaintances, as well as in the eyes of the public at large, thereby disgracing the Plaintiff, and rendering her odious or contemptible.

24. Because the statements are actionable *per se*, at common law actual malice by the Defendants is implied, and general damages to the Plaintiff are presumed.

25. As an alternative to the implied malice and presumed damages described in paragraph 24, the Defendants were motivated by actual malice, their conduct constituted negligence, if not greater fault, and the Plaintiff, as a consequence, has sustained actual injury, including both general damages and special damages.

26. As the direct and proximate result of the libel of the Defendants, the Plaintiff has sustained and is entitled to recover actual damages in the amount determined by the jury, including, without limitation, general damages for injury to the Plaintiff's reputation, her shock, humiliation, distress, mental anguish, pain and suffering, and also special damages for the Plaintiff's out-of-pocket expenses incurred as a consequence of the Plaintiff's injuries and the treatment thereof, including, without limitation, the cost of medical treatment, psychological counseling, medication, lost sick days from work and increased child care, as well as attorney's fees to vindicate the Plaintiff's reputation.

27. The conduct of the Defendants was willful, wanton, reckless and malicious, amounting to a conscious disregard for the rights of the Plaintiff, who is, therefore, entitled to recover punitive damages.

FOR A SECOND CAUSE OF ACTION
(Libel—Constitutional Claim)

28. As an alternative to the First Cause of Action, if the Plaintiff were deemed a public official or a public figure—an averment that is expressly denied—the following allegations are applicable.

29. The allegations of paragraphs 1 through 17 and 23 above are hereby adopted and by express reference made a part of this Second Cause of Action.

30. Each of the statements set forth in the Letter, as described in paragraph 15 above, was made and published by the Defendants with actual malice under the United States Constitution, that is, either with knowledge that each such statement was false or with reckless disregard for whether it was true or false (herein “Constitutional actual malice”).

31. Each of the statements made by the Defendants, as set forth in paragraph 15, caused actual injury to the Plaintiff in the form of special damages and general damages.

32. The quoted statements described in paragraph 15 were utterly false.

33. The statements described in paragraph 15 were defamatory on their face, and, because they were written, printed or typed, they constitute libel.

34. As the direct and proximate result of the libel of the Defendants, the Plaintiff has sustained and is entitled to recover actual damages in the amount determined by the jury, including, without limitation, general damages for injury to the Plaintiff's reputation, her shock, humiliation, distress, mental anguish, pain and suffering, and also special damages for the Plaintiff's out-of-pocket expenses incurred as a consequence of the Plaintiff's injuries and the treatment thereof, including, without limitation, the cost of medical treatment, psychological counseling, medication, lost sick days from work and increased child care, as well as attorney's fees to vindicate the Plaintiff's reputation.

35. Because the Defendants' statements were made and published with Constitutional actual malice, as defined in paragraph 30 above, the Plaintiff is entitled to recover punitive damages.

FOR A THIRD CAUSE OF ACTION
(Slander at Common Law)

36. The allegations of paragraphs 1 through 25 above are hereby adopted and by express reference made a part of this Third Cause of Action.

37. Each of the statements set forth in paragraphs 15, as modified or embellished when repeated verbally, namely, that the Plaintiff was biased and partial in her decision making and/or that the Plaintiff had intruded upon or impeded an investigation, was utterly false.

38. The statements described in paragraph 19 above, namely, that the Plaintiff had an affair with a security officer, were utterly false.

39. Each of the statements described in paragraphs 37 and 38 constitutes slander that is actionable *per se* because:

- (a) The first impugns the character, honesty and fitness of the Plaintiff to engage in her business, trade, profession and/or office; and
- (b) The second not only impugns the character and honesty of the Plaintiff, but also alleges a lack of chastity and/or adultery on her part.

40. Because the statements are actionable *per se*, at common law actual malice by the Defendants is implied, and general damages to the Plaintiff are presumed.

41. As an alternative to the implied malice and presumed damages described in paragraph 40, the Defendants were motivated by actual malice, their conduct constituted negligence, if not greater fault, and the Plaintiff, as a consequence, has sustained actual injury, including both general damages and special damages.

42. As the direct and proximate result of the slander of the Defendants, the Plaintiff has sustained and is entitled to recover actual damages in the amount determined by the jury, including, without limitation, general damages for injury to the Plaintiff's reputation, her shock, humiliation, distress, mental anguish, pain and suffering, and also special damages for the Plaintiff's out-of-pocket expenses incurred as a consequence of the Plaintiff's injuries and the treatment thereof, including, without limitation, the cost of medical treatment, psychological counseling, medication, lost sick days from work and increased child care, as well as attorney's fees to vindicate the Plaintiff's reputation.

43. The conduct of the Defendants was willful, wanton, reckless and malicious, amounting to a conscious disregard for the rights of the Plaintiff, who is, therefore, entitled to recover punitive damages.

FOR A FOURTH CAUSE OF ACTION
(Slander—Constitutional Claim)

44. As an alternative to the Third Cause of Action, if the Plaintiff were deemed a public official or a public figure—an averment that is expressly denied—the following allegations are applicable.

45. The allegations of paragraphs 1 through 19 and 28 through 33 above are hereby adopted and by express reference made a part of this Fourth Cause of Action.

46. Each of the statements set forth in paragraph 15, as modified or embellished when repeated verbally, namely, that the Plaintiff was biased and partial in her decision making and/or that the Plaintiff had intruded upon or impeded an investigation, was utterly false.

47. The statement that the Plaintiff had an affair with a security officer was utterly false.

48. Each of the statements described in paragraphs 46 and 47 constitutes slander that is actionable *per se* because:

- (a) The first impugns the character, honesty and fitness of the Plaintiff to engage in her business, trade, profession and/or office; and
- (b) The second not only impugns the character and honesty of the Plaintiff, but also alleges a lack of chastity and/or adultery on her part.

49. Each of the statements by the Defendants described in paragraphs 15, 16, 17, 18, 19, 46 and 47 above, was made and published with actual malice under the United States Constitution, that is, either with knowledge that each such statement was false or with reckless disregard for whether it was true or false (herein "Constitutional actual malice").

50. Each of the statements made by the Defendants, as set forth in paragraphs 15, 16, 17, 18, 19, 46 and 47 above caused actual injury to the Plaintiff in the form of special damages and general damages.

51. As the direct and proximate result of the slander of the Defendants, the Plaintiff has sustained and is entitled to recover actual damages in the amount determined by the jury, including, without limitation, general damages for injury to the Plaintiff's reputation, her shock, humiliation, distress, mental anguish, pain and suffering, and also special damages for the Plaintiff's out-of-pocket expenses incurred as a consequence of the Plaintiff's injuries and the treatment thereof, including, without limitation, the cost of medical treatment, psychological counseling, medication, lost sick days from work and increased child care, as well as attorney's fees to vindicate the Plaintiff's reputation.

52. Because the Defendants' statements were made and published with Constitutional actual malice, as defined in paragraph 49 above, the Plaintiff is entitled to recover punitive damages.

FOR A FIFTH CAUSE OF ACTION
(Conspiracy)

53. The allegations of paragraphs 1, 3, 5, 7 and 10 above are hereby adopted and by express reference made a part of this Fifth Cause of Action.

54. The Defendants combined and conspired for the purpose of doing injury to a third person, namely, the Plaintiff.

55. As a consequence of the conspiracy of the Defendants, the Plaintiff has sustained injury, including, without limitation, special damages in the form of the cost of investigating the Defendants' scheme.

56. As a direct and proximate result of the conspiracy of the Defendants, the Plaintiff has sustained and is entitled to recover actual damages in the amount determined by the jury.

FOR A SIXTH CAUSE OF ACTION
(Negligence)

57. The allegations of paragraphs 1 through 19 above are hereby adopted and by express reference made a part of this Sixth Cause of Action.

58. The Defendants each owed a duty to the Plaintiff to properly instruct, train and supervise its employees.

59. As a consequence of the Defendants' breach of duty, Breed and other employees conducted an unlawful investigation that exceeded the statutory authority of a security company, conducted a continuing program of harassment against the Plaintiff and her family, and, when these measures failed, they resorted to threats and falsifying evidence, in addition to disseminating the defamatory invective directed at the Plaintiff.

60. The Defendants' were negligent, willful, wanton and/or reckless in allowing the abuses described in paragraph 59 to begin and to continue.

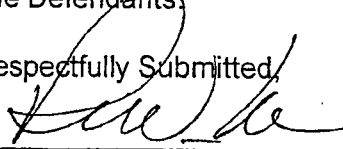
61. As a direct and proximate result of the negligent, willful, wanton and reckless conduct of the Defendants, the Plaintiff has sustained and is entitled to recover actual damages in the amount to be determined by the jury.

62. The conduct of the Defendants was willful, wanton reckless and malicious, amounting to a conscious disregard for the rights of the Plaintiff, who is, therefore, entitled to recover punitive damages.

WHEREFORE, the Plaintiff prays that the Court inquire into the facts and matters alleged herein; and

- (a) Grant judgment in favor of the Plaintiff's and against the Defendants for actual and punitive damages;
 - (i) With respect to the First or Second Cause of Action;
 - (ii) With respect to the Third or Fourth Cause of Action;
 - (iii) With respect to the Fifth Cause of Action; and
 - (iv) With respect to the Sixth Cause of Action; and
- (b) Tax all costs of this action against the Defendants.

Respectfully Submitted,

By: 

Robert V. Mathison, Jr.
Attorney for the Plaintiff
Maureen T. Coffey

February 8, 2011

Hilton Head Island, South Carolina.

MATHISON & MATHISON
Post Office Box 5271
Hilton Head Island, SC 29928
Telephone: (843) 785-6503
Facsimile: (843) 785-6170
Email: mathlaw@aol.com

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

MAUREEN T. COFFEY,

Plaintiff,

v.

COMMUNITY SERVICES ASSOCIATES,
INC., GEORGE F. BREED, JR., SEA
PINES RESORT, LLC, and
ASSOCIATION OF SEA PINES
PLANTATION PROPERTY OWNERS,
INC. and THE ADVISORY BOARD

Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO. 2011-CP-07-00013

ANSWER OF DEFENDANTS
COMMUNITY SERVICES
ASSOCIATES, INC., ASSOCIATION OF
SEA PINES PLANTATION PROPERTY
OWNERS, INC., AND GEORGE F.
BREED, JR. TO THE AMENDED
COMPLAINT

2011 MAR -7 AM 10:04
JENNIFER A. JENSEN
CLERK OF COURT
BEAUFORT COUNTY, S.C.

Defendants Community Services Associates, Inc. ("CSA"), Association of Sea Pines Plantation Property Owners, Inc. ("ASPPPO") and George F. Breed, Jr. ("Breed") (hereinafter collectively "Defendants") respond generally that any and all allegations of the Amended Complaint which are not expressly admitted herein are denied, and specifically respond as follows:

FOR A FIRST DEFENSE

1. Defendants lack sufficient information to form a belief as to the truth of the allegations contained in paragraph 1 of the Amended Complaint, and therefore deny the same.
2. Defendants admit the allegations in paragraph 2 of the Amended Complaint.
3. Defendants admit that CSA is a corporation organized and existing under the laws of the state of South Carolina with its principal place of business in Hilton Head Island, South Carolina. Defendants lack sufficient information to form a belief as to the truth of the remaining allegations contained in paragraph 3 of the Amended Complaint, and therefore deny the same.

4. Defendants admit that CSA is a South Carolina not for profit corporation that owns and manages certain common property in Sea Pines Plantation—a planned unit development on Hilton Head island, South Carolina. Defendants deny the remaining allegations in paragraph 4 of the Amended Complaint.

5. Defendants admit the allegations in paragraph 5 of the Amended Complaint.

6. Defendants admit George F. Breed, Jr. is employed as the Director of Security and Community Affairs by CSA and supervises the security forces that patrols Sea Pines Plantation. Defendants deny the remaining allegations in paragraph 6 of the Amended Complaint.

7. Defendants lack sufficient information to form a belief as to the truth of the allegations contained in paragraph 7 of the Amended Complaint, and therefore deny the same.

8. Defendants lack sufficient information to form a belief as to the truth of the allegations contained in paragraph 8 of the Amended Complaint, and therefore deny the same.

9. Defendants lack sufficient information to form a belief as to the truth of the allegations contained in paragraph 9 of the Amended Complaint, and therefore deny the same.

10. Defendants admit that CSA is a corporation organized and existing under the laws of the state of South Carolina with its principal place of business in Hilton Head Island, South Carolina. Defendants lack sufficient information to form a belief as to the truth of the remaining allegations contained in paragraph 10 of the Amended Complaint, and therefore deny the same.

11. Defendants lack sufficient information to form a belief as to the truth of the allegations contained in paragraph 11 of the Amended Complaint, and therefore deny the same.

12. Defendants lack sufficient information to form a belief as to the truth of the allegations contained in paragraph 12 of the Amended Complaint, and therefore deny the same.

13. Defendants lack sufficient information to form a belief as to the truth of the allegations contained in paragraph 13 of the Amended Complaint, and therefore deny the same.

14. In response to the allegations contained in paragraph 14 of the Amended Complaint, Defendants crave reference to the letter from George Breed to the Commission on Judicial Conduct dated June 6, 2008, and deny all allegations inconsistent therewith.

15. In response to the allegations contained in paragraph 15 of the Amended Complaint, to the letter from George Breed to the Commission on Judicial Conduct dated June 6, 2008, and deny all allegations inconsistent therewith.

16. In response to the allegations contained in paragraph 16 of the Amended Complaint, Defendants admit that George Breed discussed the contents of his letter to the Commission on Judicial Conduct with members of the Security Committee for CSA in accordance with his job duties prior to sending the letter to the Commission on Judicial Conduct. Defendants also admit that Cary Kelley reported the existence of the letter to the Board of Directors of CSA in accordance with his job responsibilities. Defendants deny the remaining allegations concerning the Defendants contained in paragraph 16 of the Amended Company.

17. Upon information and belief, Defendants deny the allegations concerning the Defendants contained in paragraph 17 of the Amended Company.

18. Upon information and belief, Defendants deny the allegations concerning the Defendants contained in paragraph 18 of the Amended Company.

19. Upon information and belief, Defendants deny the allegations concerning the Defendants contained in paragraph 19 of the Amended Company.

20. Defendants restate their responses to the allegations contained in paragraphs 1 through 20 of the Amended Complaint.

21. Upon information and belief, Defendants deny the allegations contained in paragraph 21 of the Amended Complaint.

22. Upon information and belief, Defendants deny the allegations contained in paragraph 22 of the Amended Complaint.

23. The allegations contained in paragraph 23 of the Amended Complaint are allegations of law to which no response is required. To the extent a response is required, Defendants deny the allegations contained in paragraph 23.

24. The allegations contained in paragraph 24 of the Amended Complaint are allegations of law to which no response is required. To the extent a response is required, Defendants deny the allegations contained in paragraph 24.

25. Upon information and belief, Defendants deny the allegations contained in Paragraph 25 of the Amended Complaint.

26. Upon information and belief, Defendants deny the allegations contained in Paragraph 26 of the Amended Complaint.

27. Upon information and belief, Defendants deny the allegations contained in Paragraph 27 of the Amended Complaint.

28. Paragraph 28 of the Amended Complaint does not contain any allegations of fact requiring a response. To the extent a response is required, Defendants deny the allegations contained in paragraph 28.

29. Defendants restate their responses to the allegations contained in Paragraphs 1 through 28 of the Amended Complaint.

30. Upon information and belief, Defendants deny the allegation that Defendants published any statements about Plaintiff with malice, actual or otherwise. The remaining allegations

contained in paragraph 30 of the Amended Complaint are allegations of law to which no response is required.

31. Upon information and belief, Defendants deny the allegations contained in Paragraph 31 of the Amended Complaint.

32. Upon information and belief, Defendants deny the allegations contained in Paragraph 32 of the Amended Complaint.

33. Upon information and belief, Defendants deny the allegations contained in Paragraph 33 of the Amended Complaint.

34. Upon information and belief, Defendants deny the allegations contained in Paragraph 34 of the Amended Complaint.

35. The allegations contained in paragraph 35 of the Amended Complaint are allegations of law to which no response is required. To the extent a response is required, Defendants deny the allegations contained in paragraph 35.

36. Defendants restate their responses to the allegations contained in Paragraphs 1 through 35 of the Amended Complaint.

37. Upon information and belief, Defendants deny the allegations contained in Paragraph 37 of the Amended Complaint.

38. Defendants are without sufficient knowledge to form a belief as to the truth of the statements made in paragraph 38 of the Amended Complaint, and therefore deny the same.

39. The allegations contained in paragraph 39 of the Amended Complaint are allegations of law to which no response is required. To the extent a response is required, Defendants deny the allegations contained in paragraph 39.

40. The allegations contained in paragraph 40 of the Amended Complaint are allegations of law to which no response is required. To the extent a response is required, Defendants deny the allegations contained in paragraph 40.

41. Upon information and belief, Defendants deny the allegations contained in Paragraph 41 of the Amended Complaint.

42. Upon information and belief, Defendants deny the allegations contained in Paragraph 42 of the Amended Complaint.

43. Upon information and belief, Defendants deny the allegations contained in Paragraph 43 of the Amended Complaint.

44. Paragraph 44 of the Amended Complaint does not contain any allegations of fact requiring a response. To the extent a response is required, Defendants deny the allegations contained in paragraph 44.

45. Defendants restate their responses to the allegations contained in Paragraphs 1 through 19 and 28 through 33 of the Amended Complaint.

46. Upon information and belief, Defendants deny the allegations contained in Paragraph 46 of the Amended Complaint.

47. Defendants are without sufficient knowledge to form a belief as to the truth of the statements made in paragraph 47 of the Amended Complaint, and therefore deny the same.

48. The allegations contained in paragraph 48 of the Amended Complaint are allegations of law to which no response is required. To the extent a response is required, Defendants deny the allegations contained in paragraph 48.

49. Upon information and belief, Defendants deny the allegations contained in Paragraph 49 of the Amended Complaint.

50. Upon information and belief, Defendants deny the allegations contained in Paragraph 50 of the Amended Complaint.

51. Upon information and belief, Defendants deny the allegations contained in Paragraph 51 of the Amended Complaint.

52. Upon information and belief, Defendants deny the allegations contained in Paragraph 52 of the Amended Complaint.

53. Defendants restate their responses to the allegations contained in Paragraphs 1,3,5,7 and 10 of the Amended Complaint.

54. Upon information and belief, Defendants deny the allegations contained in Paragraph 54 of the Amended Complaint.

55. Upon information and belief, Defendants deny the allegations contained in Paragraph 55 of the Amended Complaint.

56. Upon information and belief, Defendants deny the allegations contained in Paragraph 56 of the Amended Complaint.

57. Defendants restate their responses to the allegations contained in Paragraphs 1 through 19 of the Amended Complaint.

58. Upon information and belief, Defendants deny the allegations contained in Paragraph 58 of the Amended Complaint.

59. Upon information and belief, Defendants deny the allegations contained in Paragraph 59 of the Amended Complaint.

60. Upon information and belief, Defendants deny the allegations contained in Paragraph 60 of the Amended Complaint.

61. Upon information and belief, Defendants deny the allegations contained in Paragraph 61 of the Amended Complaint.

62. Upon information and belief, Defendants deny the allegations contained in Paragraph 62 of the Amended Complaint.

FOR A SECOND DEFENSE

63. Plaintiff's claims for libel and slander are barred by the statute of limitations.

FOR A THIRD DEFENSE

64. Upon information and belief, any damages suffered by plaintiff, including but not limited any loss of reputation, mental anguish, exposure to public contempt, physical deterioration and prejudice in future advancement in business, government and society, if any, resulted solely from plaintiff's own conduct and decisions wholly unrelated to the Defendants.

FOR A FOURTH DEFENSE

65. Plaintiff self-published the contents of George Breed's letter to the Commission on Judicial Conduct dated June 6, 2008 by quoting portions of the letter in her initial complaint in this matter which was filed on November 20, 2008.

66. Insofar as Plaintiff has suffered any damage from publication of the letter to the Commission on Judicial Conduct, which Defendants deny, said damage is the result of Plaintiff's actions, not those of Defendants.

FOR A FIFTH DEFENSE

67. The members of the CSA Board of Directors reviewed and approved Defendant Breed's letter to Commission on Judicial Conduct in their capacity as board members.

68. Any communication among the members of the CSA Board of Directors was made for the purpose of performing their official duties as board members, was regarding business and

professional interests, is subject to a conditional or qualified privilege, and does not constitute a publication.

FOR A SIXTH DEFENSE

69. Plaintiff's claims are barred by a conditional or qualified privilege because Plaintiff is a public official and a public figure and because any statements made by Defendants were made in good faith to protect an important public interest. These statements were also made on a proper occasion and in a proper manner and were properly limited in their scope.

FOR A SEVENTH DEFENSE

70. Plaintiff's claims are barred by the First and Fourteenth Amendments of the United States Constitution because Plaintiff's conduct as municipal judge for the Town of Hilton Head was open to public scrutiny and comment.

FOR AN EIGHTH DEFENSE

71. Plaintiff has failed to mitigate her damages.

FOR A NINTH DEFENSE

72. The statements made in George Breed's letter to the Commission on Judicial Conduct dated June 6, 2008 were true.

FOR A TENTH DEFENSE

73. Plaintiff's allegations fail to state a claim upon which relief may be granted.

FOR AN ELEVENTH DEFENSE

74. Defendants did not owe any duty to Plaintiff.

FOR A TWELTH DEFENSE

75. Defendants did not breach any duty owed to Plaintiff.

FOR A THIRTEENTH DEFENSE

76. Plaintiff's request for punitive damages cannot be sustained because the applicable state laws regarding the standards for determining liability for and the amount of punitive damages fail to give Defendants prior notice of the conduct for which punitive damages may be imposed and the severity of the penalty that may be imposed and are void for vagueness in violation of Defendants' due process rights guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and South Carolina Constitution.

77. Plaintiff's request for punitive damages against Defendants cannot be sustained, because an award of punitive damages under state law, subject to no predetermined limit, such as a maximum multiple of compensatory damages or a maximum limit on the amount of punitive damages that may be imposed, would violate Defendants' due process rights guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution and applicable state constitution, would violate Petitioner's right not to be subjected to an excessive award in violation of the Eighth Amendment to the United States Constitution and South Carolina Constitution, and would be improper under the common law and public policies of applicable South Carolina law.

78. Defendants further state that Plaintiff's Amended Complaint fails to state sufficient facts to support the prayer for punitive damages against Defendants.

FOR A FOURTEENTH DEFENSE

79. Defendants reserve the right to assert any other defenses that may become available or appear during discovery proceedings or otherwise in this case and hereby reserves the right to amend this Answer to assert any such defenses.

WHEREFORE, having fully responded to the allegations set forth in Plaintiff's Amended Complaint, Defendants Community Services Associates, Inc., Association of Sea Pines Plantation Property Owners, Inc. and George F. Breed, Jr. pray that the Amended Complaint be dismissed with prejudice as to the Defendants; that the Defendants be awarded fees and costs; and that the Court order such other and further relief as the Court may deem just and proper.

Kelly M. Jolley

Celeste T. Jones (SC Bar # 3173)
McNAIR LAW FIRM, P.A.
Post Office Box 11390
Columbia, South Carolina 29211
(803) 799-9800
Fax (803) 753-3278

Kelly M. Jolley (SC Bar #72573)
McNAIR LAW FIRM, P.A.
Post Office Drawer 3
Hilton Head Island, SC 29938
(843) 785-2171
Fax (843) 686-5991

Attorneys for Community Services
Associates, Inc., and Association of Sea Pines
Plantation Property Owners, Inc.

Stevens B. Elliott by Kelly M. Jolley
with permission of

Stevens B. Elliott
P.O. Box 6922
Columbia, SC 29260-6922
(803) 254-7980
Fax (803) 254-7130

Attorney for George F. Breed, Jr.

March 4, 2011

Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

MAUREEN T. COFFEY,

Plaintiff,

v.

COMMUNITY SERVICES ASSOCIATES,
INC., GEORGE F. BREED, JR., SEA
PINES RESORT, LLC, and
ASSOCIATION OF SEA PINES
PLANTATION PROPERTY OWNERS,
INC. and THE ADVISORY BOARD

Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO. 2011-CP-07-00013

COMMUNITY SERVICE ASSOCIATES,
INC. and ASSOCIATION OF SEA PINES
PLANTATION PROPERTY OWNERS,
INC. FIRST SET OF
INTERROGATORIES TO PLAINTIFF

TO: ROBERT V. MATHISON, JR., ESQUIRE, ATTORNEY FOR THE PLAINTIFF:

Pursuant to Rule 33 of the South Carolina Rules of Civil Procedure, the Defendants Community Services Associates, Inc. ("CSA") and Association of Sea Pines Plantation Property Owners, Inc. ("ASPPPO") hereby requests Plaintiff to answer the following Interrogatories under oath. Plaintiff is requested to serve her Answers to these Interrogatories within thirty (30) days following service of same. These Interrogatories are to be deemed to be of a continuing nature so as to require supplementation and amendment promptly, as needed, in order to comport with facts and information that is not known or available to you when the initial answers to these Interrogatories are served.

DEFINITIONS AND INSTRUCTIONS:

As used herein, the following terms have the following meanings, except where the context clearly requires otherwise:

A. Plaintiff, "Ms. Coffey," "Coffey," "you" and "your" refer to and include Plaintiff and all past and present officers, directors, employees, agents, heirs, assigns, representatives and attorneys of or for Plaintiff or any of her parents, subsidiaries, heirs, predecessors or successors.

B. "Person" or "persons" refers to individuals, companies, corporations, partnerships, sole proprietorships, trade groups, unincorporated associations and all other entities of every kind and description.

C. "Document" or "documents" as used herein shall mean original and every non-identical copy of any original of all mechanically written, handwritten, typed or printed material, electronically-stored data, microfilm, microfiches, sound recordings, films, photographs, slides, and other physical objects of every kind and description, including but not limited to, all transcripts, letters, notes, memoranda, tapes, records, telegrams, periodicals, pamphlets, brochures, circulars, advertisements, leaflets, reports, research studies, test data, working papers, drawings, sketches, diagrams, graphs, charts, diaries, logs, agreements, contracts, rough drafts, analyses, ledgers, inventories, financial information, books of account, understandings, minutes of meetings, minute books, resolutions, assignments, computer printouts, purchase orders, invoices, bills of lading, written memoranda or notes of oral communications, reports, laboratory or engineering notebooks, blueprints, drawings, operator manuals, software manuals, advertising information, consumer letters and complaints, trade journals, magazines, technical manuals, archive records expired or "dead" files electronically stored or recorded files, and any other tangible thing of whatever nature.

D. "Identify" or "identification" with respect to a person or persons shall mean to disclose:

- (1) the full name;
- (2) title and job description;
- (3) present address, or if unknown, last known address;
- (4) past business experience;
- (5) the employer(s) of such person(s); and
- (6) the employment duties, functions, and responsibilities of such person(s) and inclusive dates thereof.

E. "Identify" or "identification" with respect to a document shall mean to disclose:

- (1) the title of the document;
- (2) the date of the document;
- (3) the name of the person(s) who signed or prepared, or participated in the preparation of such document;
- (4) the name(s) of the person to whom the document was addressed;
- (5) the name of each person to whom the document was given or sent, or who received such document or a copy thereof;
- (6) the identity of each person having possession, custody or control of the document or thing;
- (7) the present location of the document or thing and all copies thereof; and,
- (8) the nature and subject of the document or thing.

F. "Identify" or "identification" with respect to an event or circumstances shall mean to disclose:

- (1) the date of such event;

- (2) the location of such event;
- (3) the identity of each person present at the event; and
- (4) what was said and/or done by each person present at the event.

G. "Identify" or "identification" with respect to a business or other entity shall mean to disclose:

- (1) its full name;
- (2) the type of entity;
- (3) its present or last known address of each established place of business; and
- (4) the officers and/or partners of each entity.

H. "Identify" or "identification" with respect to a service shall mean to disclose:

- (1) the provider of the service;
- (2) the service mark used to identify the source of the service;
- (3) the common commercial name of the service; and
- (4) the basic purpose or use of the service.

I. Words of gender shall be construed as including all genders, without limitation.

J. Words in the singular shall be construed to mean the plural and vice versa as appropriate.

K. "And" and "or" shall be read in the conjunctive or disjunctive in a manner to provide the broadest scope of an interrogatory.

L. If you are aware that a document or a group of documents once existed, but has been destroyed or lost, you shall state when the document or group of documents was destroyed or lost, who destroyed or lost it, why it was destroyed or lost, and the circumstances under which it was destroyed or lost.

M. The interrogatories propounded herein are continuing in nature to the extent permitted by the South Carolina Rules of Civil Procedure, and to the extent information is received or circumstances are known which may modify in any way or add to the responses given to these interrogatories, supplemental answers reflecting all such subsequently acquired information or known circumstances promptly shall be provided.

N. If any privilege is claimed with respect to any documents or oral communications, the identification of which would otherwise be required by these interrogatories, you need not produce or disclose the contents thereof at this time, but with respect to each document and oral communication for which a privilege is claimed, you shall:

- (1) identify the date thereof;

- (2) state the particular privilege believed applicable and concisely state sufficient facts to support the claim of privilege; and
- (3) if the privilege is asserted with respect to a document, identify all persons to whom its contents were disclosed, including all recipients thereof.

O. As used herein, the present tense shall include the past tense and vice versa.

P. "Communications" includes, without limitation, correspondence, conversations (whether face-to-face, by telephone cable or otherwise), memoranda, meetings, discussions, telegrams, press or news releases and all other means of transmitting information.

Q. All documents requested for production are to be produced as kept in the usual course of business so that the files in which they were located can be ascertained, the relative order of the documents within these files and how the files themselves are maintained.

R. Whenever information respecting a negotiation, meeting, discussion or communication is called for by these interrogatories and you know of the occurrence of any such negotiation, meeting, discussion or communication but cannot give, either in whole or in part, the specific information called for to the extent requested, please provide the current and most complete information which you can provide on the subject, including your best approximation of all dates, places and geographic locations.

INTERROGATORIES

1. Identify by full name, address, and phone number, each person known by the Plaintiff or her counsel to have knowledge of facts which relate to this case, and indicate whether written or recorded statements have been taken from these persons.

2. Identify by full name, address, and phone number, all Plaintiff's immediate family members, including parents and siblings.

3. For each person known by Plaintiff or her counsel to have knowledge of facts which relate to this case, set forth a summary of the facts known or observed by that person which relate to this action.

4. Please describe and list all documents, photographs, plats, or sketches which the Plaintiff intends to introduce into evidence at trial, indicating the title, date, and name and residential address and phone number of the person who prepared every such document.

5. Set forth an itemized statement of all damages, exclusive of pain and suffering, claimed to have been sustained by Plaintiff.

6. List the names, addresses, and expected testimony of any expert witnesses whom the Plaintiff proposes to use as a witness at the trial of this case.

7. Identify any lawsuit or administrative proceeding in which the Plaintiff has been or currently is a party or respondent, including the name of each, nature of each, where filed, date of filing, docket number, date of trial or disposition, and ultimate disposition thereof.

8. Please describe Plaintiff's educational background including school, date of graduation or degree, and degree earned (high school through Plaintiff's highest level of education).

9. Please list every job Plaintiff has held since college, including the name of the organization, the address of the organization, the name and address of Plaintiff's supervisor, the dates of employment, reason for leaving, and beginning and ending salary at each location.

10. In regard to paragraphs 16, 17, 18 and 19 of the Amended Complaint, please list each oral or written statement, writing or other publication to which Plaintiff is referring; and for each please list the person(s) who delivered, displayed or discussed the contents of the letter; to whom, when, where and how the alleged publication was made; and all witnesses of the alleged publication.

11. For each statement, writing or other publication listed in the Answer to paragraph number 10 above which you claim is defamatory, please specifically site the language in each statement, writing or other publication which you claim to be defamatory.

12. With regard to the alleged statement made regarding Plaintiff's alleged affair with a security officer, please identify the statement, the date, the time of the statement, to whom and by whom the statement was made, and the alleged identity of the security officer.

13. Has anyone ever accused Plaintiff of (1) acting with misconduct in her office as Municipal Judge, (2) irresponsibly wasting public funds, (3) violating county policies, and (4) bias in decision making? If the answer is yes, please describe each individual accusation and describe who made such accusations and the events leading up to the accusations. Also, please list all documents which contain or relate to any such accusations.

14. Identify by full name, address, and phone number each medical doctor, psychiatrist, psychologist, or other type of counselor which Plaintiff has seen in the past five years. For each person listed, please state the type of professional he/she is, and include the reason why Plaintiff sought treatment from each one.

15. Please identify by full name, address, and phone number each friend, neighbor, and associate of the Plaintiff in whose eyes Plaintiff's standing and esteem has been doubted and questioned.

16. Please describe Plaintiff's reputation prior to the allegations contained in the Complaint.

17. Please identify any allegations relating to civil conspiracy which do not relate to either the defamation or the tortious interference with contract causes of action.

18. Please list the special damages resulting to the Plaintiff from the civil conspiracy cause of action which do not relate to the defamation cause of action and the negligence cause of action.

19. Identify by full name, address, and phone number each person with whom Plaintiff or her counsel discussed any allegations contained in the Complaint or Amended Complaint prior to the filing of the lawsuit.

20. Identify the date(s) upon which the disclosure(s) set forth in Item 19 were made.

21. Identify by full name, address, and phone number each person with whom Plaintiff or her counsel discussed Plaintiff's belief that Defendants committed unlawful or tortious acts prior to the filing of the lawsuit.

22. Identify the date(s) upon which the disclosure(s) set forth in Item 21 were made.

23. Identify by full name, address, and phone number each person or entity which either Plaintiff or her counsel showed the Complaint or the Amended Complaint in this action (including any part or parts thereof) prior to the filing of either.

24. Identify the date or dates upon which the disclosure(s) set forth in Item 23 were made.

25. Please provide a list of all speaking engagements, panel discussions or public appearances made by Plaintiff in Beaufort County during Plaintiff's residence in the county, to include the occasion and group spoken to, the date of the event, and the topic covered.

26. Please provide a list of all civic involvement participated in by Plaintiff, including but not limited to church membership and civic group membership, non-profit board association, involvement (other than by monetary donation) with a charitable organization.

27. For each civic involvement listed in Item 26, please provide a list of any awards or recognition received as a result of such involvement.

28. Please provide a list of all public social events, including but not limited to charitable fundraisers, dinners, auctions, and other functions to which Plaintiff received an invitation or attended from January 2005 through the present.

29. Please provide a list of all professional organization in which PLaintff has been a member and her role in each organization.


Celeste T. Jones (SC Bar # 3173)
McNAIR LAW FIRM, P.A.
Post Office Box 11390
Columbia, South Carolina 29211
(803) 799-9800
Fax (803) 753-3278

Kelly M. Jolley (SC Bar #72573)
McNAIR LAW FIRM, P.A.
Post Office Drawer 3
Hilton Head Island, SC 29938
(843) 785-2171
Fax (843) 686-5991

Attorneys for Community Services
Associates, Inc. and Association of Sea
Pines Plantation Property Owners, Inc.

March 4, 2011
Columbia, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

MAUREEN T. COFFEY,)

Plaintiff,)

v.)

COMMUNITY SERVICES ASSO-)

CIATES, INC., GEORGE F.)

BREED, JR., SEA PINES)

RESORT, LLC, and ASSOCIA-)

TION OF SEA PINES PLANT-)

ATION PROPERTY OWNERS,)

INC., AND THE ADVISORY)

BOARD,)

Defendants.)

IN THE COURT OF COMMON PLEAS
(Case No. 2011-CP-07-00013)

PLAINTIFF'S ANSWERS TO FIRST
SET OF INTERROGATORIES OF
DEFENDANTS COMMUNITY SERVICE
ASSOCIATES, INC., and ASSOCIA-
TION OF SEA PINES PLANTATION
PROPERTY OWNERS, INC.

RECEIVED

APR 27 2011

McNair Law Firm, P.A.

TO: The Defendants, COMMUNITY SERVICES ASSOCIATES, INC.,
and ASSOCIATION OF SEA PINES PLANTATION PROPERTY
OWNERS, INC., by and through their attorney, CELESTE T.
JONES, Esquire.

The Plaintiff, Maureen T. Coffey (herein "the Plaintiff" or "Ms. Coffey"),
submits the following Answers to the First Set of Interrogatories to Plaintiff of
Community Service Associates, Inc., and Association of Sea Pines Plantation
Property Owners, Inc. (herein "the Interrogatories"):

GENERAL OBJECTIONS

The Plaintiff objects to any and all language in the Interrogatories,
including, without limitation, the so-called "Directions and Instructions," to the
extent that such language purports to enlarge upon the rights of a party
requesting discovery or upon the obligations of a party responding to discovery,
all as set forth in Rules 26 and 33, SCRCP. Without limiting the foregoing, the

Plaintiff does not propose to provide (a) any communications between the Plaintiff and her attorneys; (b) any communications between two or more attorneys presently or formerly employed by the Plaintiff; (c) any work product of or by the Plaintiff's attorneys; or (d) any list of the items withheld as a consequence of this objection.

In addition, the Plaintiff objects to each interrogatory to the extent that it requests information in the possession of persons or entities that are not under the supervision or control of the Plaintiff, such as the Town of Hilton Head Island.

Finally, the Plaintiff objects to the extent that the Interrogatories violate Rule 33(b)(8), SCRPC, by propounding more than 50 questions, including subparts.

By answering as follows the Plaintiff intends expressly to reserve and not to waive or otherwise relinquish each of the foregoing objections.

Subject to the General Objections, the Plaintiff answers as follows:

1. Identify by full name, address, and phone number, of each person known by the Plaintiff or her counsel to have knowledge of facts which relate to this case, and indicate whether written or recorded statements have been taken from these persons.

ANSWER: Persons known or believed to have knowledge of the facts of this case follow. Recorded statements have been taken from those identified in subparagraphs (b) and (c).

(a) Maureen T. Coffey
59 Ashton Cove Drive
Hilton Head Island, SC 29928

The Plaintiff, Ms. Coffey, has knowledge of and will testify about all facts known to be at issue in this case.

(b) John A. Jolin, Jr.
The Oaks, Apartment 39
400 William Hilton Parkway
Hilton Head Island, SC 29926

Mr. Jolin, a former Sea Pines Security Officer, has knowledge about an incident where he saw an unidentified black male riding a bicycle. Mr. Jolin thereafter prepared an incident report in which he did not make a positive identification of the person on the bicycle. Telephone calls were made by George F. Breed, Jr. (herein after "George Breed" or "Mr. Breed") to Mr. Jolin—both during and after Mr. Jolin's shift—in which Mr. Breed demanded that Mr. Jolin positively identify Otis Coffey in his incident report as the bicycle-riding suspect. Mr. Jolin has knowledge of the content of those calls, as well as of the content of a second and false incident report that was prepared either by or under the direction of George Breed, in which a number of material facts in Mr. Jolin's original report were altered, including the insertion of a statement that Mr. Jolin had positively identified Otis Coffey. In addition, because Mr. Jolin could not describe Otis Coffey's appearance, Lt. Todd McNeill of Sea Pines Security gave him an old photograph of Mr. Coffey to study in case Mr. Jolin was asked for a description of the suspect while obtaining a warrant. Lt. Bill Campbell is the person who last instructed Mr. Jolin to go get a warrant, and Mr. Jolin refused. After Lt. Campbell consulted with George Breed, Mr. Jolin was sent home from work.

Mr. Jolin also has knowledge of another incident involving a stray dog which proved to be owned by the Plaintiff's son. Mr. Jolin called the telephone number on the dog's collar, which turned out to be the number of the Plaintiff.

In addition, Mr. Jolin has knowledge of persons employed by Community Services Associates, Inc. (herein "CSA"), accusing him of having a sexual relationship with the Plaintiff. The relationship was concocted in order to discredit Mr. Jolin and the Plaintiff and was utterly false.

Mr. Jolin has knowledge of the techniques employed by CSA, the recording of telephone calls, the manner in which the computer could be accessed and the persons authorized to do so, the methods of making both internal reports and those assigned a case number, as well as the details of an unlawful investigation conducted against members of the Plaintiff's family.

A recorded statement has been taken from Mr. Jolin.

(c) R. Hawn or Hahn
Present Address Unknown

Mr. Hawn, a former Sea Pines Security Officer, has knowledge of many of the same events as Mr. Jolin. He also has knowledge of the techniques and methods employed by CSA, the chain of command and the personal relationships that exist, as well as the corporate culture of Defendant, CSA.

A recorded statement has been taken from Mr. Hawn.

(d) Gregory D. DeLoach, Esquire
One Town Center Court
Hilton Head Island, SC 29928

Mr. DeLoach is an Assistant Town Manager for the Town of Hilton Head Island. He has knowledge about his receipt of the Letter dated June 6, 2011,

conversations that occurred at that time and afterwards about the contents of the letter, the dissemination of the letter and/or its contents, the Plaintiff's job status, the Plaintiff's contracts—past and present—and the Plaintiff's specific tasks as Municipal Court Judge—past, present and future. Mr. DeLoach also has or had a long relationship with George Breed, sustained by their eating lunch together about once a month.

(e) Curtis L. Coltrane, Esquire
Alford, Wilkins & Coltrane, PC
Post Office Drawer 8008
Hilton Head Island, SC 29938

Mr. Coltrane, former Assistant Town Manager for the Town of Hilton Head Island, has knowledge of Mr. DeLoach's receipt of the Letter dated June 6, 2008, as well as of the conversations that attended and followed its delivery. The latter included his conversations with Mr. DeLoach and with the Plaintiff, who sought Mr. Coltrane's assistance once she learned of the existence of the letter.

(f) Brian E. Hulbert, Esquire
One Town Center Court
Hilton Head Island, SC 29928

Mr. Hulbert, who is an attorney for the Town of Hilton Head Island, has knowledge of Mr. DeLoach's receipt of the Letter dated June 6, 2008. Although he appeared to know some of the contents of the letter, Mr. Hulbert told the Plaintiff that he had not read the letter and that Mr. DeLoach had instructed him not to help the Plaintiff in any manner because the contents of the letter were personal and not Town-related.

(g) Sherry Hamilton
3 Town Center Court
Hilton Head Island, SC 29928

Ms. Hamilton, who serves as an administrative assistant in the Town's municipal court, on June 26, 2008, opened the letter from the Commission on Judicial Conduct which forwarded to the Plaintiff the Letter of June 6, 2008, from George Breed. She discussed the letter briefly with the Plaintiff at that time. Ms. Hamilton also engaged in the conversation with John Jolin more fully described in subparagraph 1(b) above.

(h) Steve Riley (and others)
One Town Center Court
Hilton Head Island, SC 29928

Mr. Riley, as the Town Manager for the Town of Hilton Head Island, is believed to have seen the Letter of June 6, 2008, and to have knowledge of its contents. So also are one or more Town Councilmen, the then-Mayor and a number of Town employees.

(i) George F. Breed, Jr.
Community Services Associates, Inc.
175 Greenwood Drive
Hilton Head Island, SC 29928

Mr. Breed has knowledge of the preparation and dissemination of his defamatory letter dated June 6, 2008. Criticized for not solving reported crimes in Sea Pines Plantation, Mr. Breed seized upon a potential culprit to use as a scapegoat, Otis Coffey. When his own security's unlawful investigation of Mr. Coffey, as well as the lawful investigation by the Beaufort County Sheriff's Office, failed to yield any evidence of probable cause, Mr. Breed decided to fix the blame for his company's failure on the Plaintiff. He and others thereupon concocted accusations that the Plaintiff was biased and that she had interfered in

the investigation of her brother. Not a single objective fact in George Breed's Letter of June 6, 2008, supports either of those conclusions.

However, the letter led directly to another outcome desired by Mr. Breed and the Defendants: The Plaintiff was required to recuse herself from hearing cases brought by Sea Pines Security.

In addition to assuring that copies of his letter were passed out and discussed at meetings of the CSA Board of Directors, Mr. Breed is believed to have engaged in verbal and written defamation before, during and after CSA meetings, as well as meetings of the so-called "Security Committee."

Besides discussing the contents of his letter as described above, Mr. Breed was responsible for it making its way into the hands of the Plaintiff's employer. He also accused Mr. Jolin and the Plaintiff of having a sexual relationship.

Mr. Breed has knowledge of the facts and events described in subparagraphs 1(b), 1(j), 1(k) and 1(l).

(j) Cary Kelley
Community Services Associates, Inc.
175 Greenwood Drive
Hilton Head Island, SC 29928

Mr. Kelley has knowledge of the dissemination and contents of Mr. Breed's defamatory letter, as well as written and oral defamation that occurred before, during and after meetings of the CSA Board and meetings of the board of the Association of Sea Pines Plantation Property Owners, Inc. (herein "ASPPPO"), both of which were attended religiously by Mr. Kelley. Mr. Kelley

also is believed to have made defamatory statements about the Plaintiff at his "Coffee with Cary" meetings with residents of Sea Pines Plantation.

(k) CSA Employees
Community Services Associates, Inc.
175 Greenwood Drive
Hilton Head Island, SC 29928

CSA Employees with knowledge are: Tracy McNeill, Todd McNeill, Bill Campbell, Corporal F. Fryman, Stephen Wright, Bobbie Martin and Randy Woods.

(l) CSA Board Members
175 Greenwood Drive
Hilton Head Island, SC 29928

The CSA Board of Directors, is composed of (a) persons who must be selected from among directors or employees of an autonomous, for-profit corporation, Sea Pines Resort, LLC; and (b) persons who must be appointed from directors or employees of an autonomous, not-for-profit corporation, ASPPPO; as well as (c) directors who are not affiliated with any entity except CSA.

Because of this unique composition, the defamation occurring at the CSA meetings was published to third parties, whose agents and servants then repeated variations of the same defamation to other third parties.

The CSA Board met on the following dates, all of which are believed to have been occasions for the spreading of defamatory remarks about the Plaintiff:

May 20, 2008

October 8, 2008

June 24, 2008

October 14, 2008

July 22, 2008

November 25, 2008

August 26, 2008

December 10, 2008

September 23, 2008

January 8, 2009

(m) ASPPPO Board of Directors
175 Greenwood Drive
Hilton Head Island, SC 29928

The ASPPPO Board of Directors met on the following dates, all of which are believed to be occasions for the spreading of defamatory remarks about the Plaintiff:

May 8, 2008

October 9, 2008

June 12, 2008

November 13, 2008

July 12, 2008

December 11, 2008

August 14, 2008

January 8, 2009

September 11, 2008

Additionally, ASPPPO sponsored a series of open forum meetings for Sea Pines property owners known as "Coffee with Cary," which are also believed to have been occasions for the spreading of defamatory remarks about the Plaintiff.

(n) Steve Birdwell
Cary Corbitt
Sea Pines Resort, LLC
32 Greenwood Drive
Hilton Head Island, SC 29928

Employees of Sea Pines Resort, LLC, these individuals were exposed to defamatory remarks about the Plaintiff before, during and after the meetings described in subparagraphs 1(j) and 1(l) above. It is also believed that one or more of them either disseminated George Breed's letter or made its contents known to the general public. Concerned about the negative publicity resulting

from the failure to apprehend persons who supposedly were engaged in crime in Sea Pines, Mr. Birdwell is believed to have pressured Mr. Breed to take some action to address that and other "security matters." Messrs. Birdwell and Corbitt also knew that the "investigation" of Otis Coffey and his mother was conducted in violation of the laws of South Carolina.

(o) Matt Harvey
Exact Address Unknown
Jacksonville, FL

Mr. Harvey has knowledge about the statements that the Plaintiff and John Jolin had a sexual relationship, as described in the Answer to interrogatory No. 12 below.

(p) Beaufort County Sheriff's Officers
2001 Duke Street
Beaufort, SC 29902

A number of employees of the Beaufort County Sheriff's Office (herein "BCSO") have knowledge about the investigation of Otis Coffey and/or the reputation of the Plaintiff, including, without limitation, Meredith Florencio, Brian Baird, Sgt. Blackmon, Sgt. Norton and Officer Murphy.

(q) C. Russell Keep, III, Esquire
Post Office Drawer 5857
Hilton Head Island, SC 29938

Mr. Keep has knowledge of his accusation of bias against the Plaintiff, as described in the Answer to the Interrogatory No. 13. He is also believed to have knowledge of many other facts set forth in subparagraph 1(i) above.

(r) Physicians

One or more of the physicians and medical providers described in the Answer to Interrogatory No. 14 may be called as a witness.

2. Identify by full name, address and phone number, all Plaintiff's immediate family members, including parents and siblings.

ANSWER: Members of the Plaintiff's family are set forth as follows:

- (a) Ann T. Coffey
4 Gadwall Road
Hilton Head Island, SC 29928
(843) 671-5746
- (b) Katie M. Coffey
4 Gadwall Road
Hilton Head Island, SC 29928
(843) 671-5746
- (c) Michael P. Coffey
431 N. Elmwood
Oak Park, IL 60302
(708) 445-1352
- (d) Christopher M. Coffey
1112 Woodard Ave.
Beaufort, SC 29902
(843) 476-2915
- (e) Otis Coffey
454 Live Oak Walk
Bluffton, SC 29910
(843) 298-0868
- (f) Avraham Edri
163/5 Derekh Mezada
Beer Sheva, Israel 84105
- (g) Zachary, Lily & Ava Edri
59 Ashton Cove Dr.
Hilton Head, SC 29928
(843) 686-2261

3. For each person known by Plaintiff or her counsel to have knowledge of facts which relate to this case, set forth a summary of the facts known or observed by that person which relate to this action.

ANSWER: Please see the Answer to Interrogatory No. 1, specifically in subparagraphs 1(a) through (r), as well as the Answer to Interrogatory No. 14.

4. Please describe and list all documents, photographs, plats, or sketches which the Plaintiff intends to introduce into evidence at trial, indicating the title, date, and name and residential address and phone number of the person who prepared every such document.

OBJECTION: This interrogatory seeks a list of documents that is subject to the attorney's work product privilege. It also seeks to impose the burden upon the Plaintiff of making a massive list, when the Defendant has elected to furnish her own business records, under Rule 33(c), SCRCP, and the answer may be derived or ascertained from the items produced in response to the Discovering Defendants' Request for Production. Accordingly, the Interrogatory constitutes oppression, undue burden and expense.

ANSWER: The Plaintiff's counsel has not determined what evidence will be introduced at trial. Prior to trial, the Plaintiff will provide notice to the Defendants of such exhibits as the Plaintiff intends to introduce as part of her case in chief, provided such notice is required by an applicable rule, order or agreement among the parties.

5. Set forth an itemized statement of all damages, exclusive of pain and suffering to have been sustained by Plaintiff.

ANSWER: Damages incurred by the Plaintiff are the following: (a)

Damage to her reputation (unknown at this time); (b) loss of present and future income (\$200,000.00); (c) attorney's fees and costs to clear the Plaintiff's name (\$11,000.00); (d) medical costs for treatment (\$7,478.00); (e) increased baby sitting charges (\$800.00); (f) transportation costs (\$107.24); and, (g) pain and suffering.

6. List the names, addresses, and expected testimony of any expert witnesses whom the Plaintiff proposes to use as a witness at the trial of this case.

ANSWER: The Plaintiff has not retained an expert, and, thus, at present she has no information that is responsive. The Plaintiff, nevertheless, reserves that right to employ an expert in the future, in which event she will supplement this answer as may be necessary.

In addition, one or more fact witnesses may be qualified as an expert. The physicians and other medical providers identified in the Answer to Interrogatory No. 14 may well be called. At this point, however, the Plaintiff does not know the subject matter about which any fact witness might be requested to testify as an expert.

7. Identify any lawsuit or administrative proceeding in which the Plaintiff has been or currently is a party or respondent, including the name of each, nature of each, where filed, date of filing, docket number, date of trial or disposition, and ultimate disposition thereof.

ANSWER: The Plaintiff is not currently involved in any lawsuit as a party except this one.

The Plaintiff, as a party, is not currently involved in any administrative proceeding. Her only experiences in that regard are the two matters brought before the Commission on Judicial Conduct, as described in the Answer to Interrogatory No. 13. The Plaintiff's entire response to that interrogatory, including the objection, is adopted and incorporated by reference into this response to Interrogatory No. 7.

The Plaintiff has previously been a party to five lawsuits—three of which are domestic relations cases:

(a) She was the plaintiff in a divorce action against her former husband, Brett David Mouser, that was brought in the Family Court for the Fourteenth Judicial Circuit (herein "the Family Court"), with a Decree of Divorce having been entered on April 19, 1999 (Case No. 1997-DR-07-01114).

(b) She was a party plaintiff in a termination of parental rights and adoption proceeding that was brought in the Family Court against Mr. Mouser, with an Order granting the relief sought having been entered on June 8, 2001 (Case No. 2000-DR-07-01666).

(c) She was the plaintiff in a separate maintenance action that was brought in the Family Court against her current husband, Avraham Edri, with a Decree of Separate Maintenance and Support having been entered on April 11, 2007 (Judgment Roll No. 2007-CP-07-01091).

(d) She was a defendant in an action in the Court of Common Pleas for Beaufort County brought by Wachovia Bank, N.A., against her mother, Ann T. Coffey, and the other heirs and distributees of her father, wherein the Plaintiff sought unsuccessfully to foreclose a mortgage (Case No. 2006-CP-07-01655). The Plaintiff herein, Maureen Coffey, was dismissed from Wachovia's action before it went to judgment, which was adverse to Wachovia. An appeal followed, which was also unsuccessful. *Wachovia Bank, N.A. v. Ann T. Coffey*, 389 S.C. 68, 689 S.E.2d 244 (S.C. App. 2010).

(e) She was named a co-defendant in an action brought in Magistrate's Court in Beaufort County by Gray's Heating and Air Conditioning against Fiesta Grille, Inc., evidently because the Plaintiff herein was the registered agent for the Fiesta Grille. The case went to judgment on or about April 13, 1998, in the amount of \$1,213.00, after which the judgment was paid and cancelled by the Fiesta Grille on or about April 8, 1999, before the Plaintiff herein even learned about the case (Case No. 9701158).

8. Please describe Plaintiff's educational background including, school, date of graduation or degree, and degree earned (high school through Plaintiff's highest level of education).

ANSWER: The Plaintiff has attended the following educational institutions:

St. Ignatius College Prep
1076 W. Roosevelt Road
Chicago, IL

Graduated in May of 1983

Vanderbilt University
Nashville, TN

B.A. May 8, 1987

George Mason University
Fairfax, VA

J.D. May 22, 1993

9. Please list every job Plaintiff has held since college, including the name of the organization, the address of the organization, the name and address of Plaintiff's supervisor, the dates of employment, reason for leaving, and beginning and ending salary at each location.

ANSWER: The Plaintiff's job history is set forth below. Her Curriculum Vitae, as of the date of her application to become a municipal judge in 2000, is included in the Response to the Discovering Defendants' Request to Produce at Bates No. 00054.

<u>Organization</u>	<u>Dates</u>	<u>Position/Wage</u>	<u>Supervisor</u>
ANEC, Washington, DC	1/88-4/88	Temp \$8-12/Hour	Mary
Congressman Mike Bilarakis Washington, DC	04/88-11/88	Congressional Aide \$12,000.00	Mike Bilarakis
Congressman Jack Fields Washington, DC	11/88-07/90	Congressional Aide \$20,000.00	Bob Ferguson
Kline & Joseph, P.A. Washington, DC	01/91-05/91	Intern: General Litigation \$7-10/Hour	Unknown
U.S. Department of Treasury Washington, DC	05/91-08/92	Intern: Contracts \$7-10/Hour	Unknown
Epilepsy Foundation of America Washington, DC	01/02-08/92	Intern: ADA \$8-12/Hour	Unknown

Public Defender's Office Alexandria, VA	01/93-05/93	Intern: Criminal Law Unpaid	Marty Lester
Powell, Goldstein, Frazier & Murphy Washington, DC	08/92-05/93	Intern: Antitrust \$8-10/Hour	Anne Bingaman
The Quarterdeck 160 Lighthouse Road Hilton Head Island, SC 29928	03/94-08/94	Waitress \$400.00/Week	Unknown
Wilson & Coltrane, P.A. 18 Executive Park Road Suite 1 Hilton Head Island, SC 29928 (843) 842-5500	08/94-10/96	Associate ca. \$25,000.00	Curtis Coltrane
Law Office of Maureen T. Coffey	10/98-12/00	Attorney \$8-12,000.00/Year	N/A
Town of Hilton Head Island One Town Center Hilton Head Island, SC 29928	12/00-05/05	Associate Municipal Court Judge \$25,000.00-\$40,000.00.	Greg Deloach
Town of Hilton Head Island One Town Center Hilton Head Island, SC 29928	05/05-Present	Municipal Court Judge \$70,000.00-\$87,400.00	Greg Deloach

Each job that the Plaintiff held through 1993 ended either because she found better employment or because the internship expired. Upon returning to Hilton Head Island, the Plaintiff worked primarily for tips as a waitress, until she found employment as an associate for Wilson & Coltrane, P.A. She left the law firm to

have her son and returned to the practice of law two years later as a sole practitioner.

10. In regard to paragraphs 16, 17, 18 and 19 of the Amended Complaint, please list each oral or written statement, writing or other publication to which Plaintiff is referring; and for each please list the person(s) who delivered, displayed or discussed the contents of the letter; to whom, when, where and how the alleged publication was made; and all witnesses of the alleged publication.

ANSWER: The written statements, of which the Plaintiff is aware, are set forth in George Breed's letter of June 6, 2008, as well as in paragraph 15 of the Amended Complaint dated February 8, 2011 (herein "the Amended Complaint"). Discovery will reveal whether other written statements were made.

The oral statements were variations or paraphrasing of the defamatory remarks set forth in George Breed's letter, and they were made before, during and after the events described specifically in paragraphs 16, 17 and 18 of the Amended Complaint.

The persons who made and heard the statements were George Breed, Cary Kelley and the other employees of CSA, the members of the Board of Directors of CSA, the Board of Directors of the Association of Sea Pines Plantation Property Owners, Steve Birdwell, Cary Corbitt, the employees and members of the Board of Directors of Sea Pines Resort, LLC, and various managers and employees at the Town of Hilton Head Island.

11. For each statement, writing or other publication listed in the Answer to paragraph number 10 above which you claim is defamatory, please specifically site the language in each statement, writing or other publication which you claim to be defamatory.

ANSWER: The Plaintiff knows only that the statements, whether written or oral, were variations of the same defamatory remarks set forth in paragraph 15 of the Amended Complaint. In addition, Mr. Breed is known to have said that he intended to "get rid" of the Plaintiff.

12. With regard to the alleged statement made regarding the Plaintiff's alleged affair with a security officer, please identify the statement, the date, the time of the statement, to whom and by whom the statement was made, and the alleged identity of the security officer.

ANSWER: The statement that John Jolin and the Plaintiff had a sexual relationship was made: (a) By George Breed to Lt. Bobbie Martin; (b) by Lt. Bobbie Martin to John Jolin; (c) by Lt. Randy Woods to Mike Ryan; (d) by Mike Ryan to John Jolin; and (e) by John Jolin to the Plaintiff's administrative assistant, Sherry Hamilton. It is not known, at present, how many times the statement was repeated, by whom, or to how many people, all of which is subject to discovery by the Plaintiff. In view of the fact that Mr. Jolin heard about it from two separate sources, it appears to have been widespread at CSA.

13. Has anyone ever accused Plaintiff of (1) acting with misconduct in her office as Municipal Judge, (2) irresponsibly wasting public funds, (3) violating county policies, and (4) bias in decision making?

If the answer is yes, please describe each individual accusation and describe who made such accusations and the events leading up to the accusations. Also, please list all documents which contain or relate to any such accusations.

OBJECTION: Rule 12, RJDE, of Rule 502, SCACR, appears to be obscure by design on the issue of confidentiality. The so-called "General Rule," which is set forth in Rule 12(a), RJDE, appears to impose a duty to maintain confidentiality on everyone except the person who complained and the person about whom the complaint was made.

Virtually identical language to that in Rule 12(a), RJDE, also appears in Rule 12(a) of the Rules for Lawyer Disciplinary Enforcement. Rule 12, RLDE, of Rule 413, SCACR. That language has been construed by the Supreme Court of South Carolina to mean, "[N]either the attorney nor the complainant [is] prohibited from disclosing the existence of an ethical complaint. *Richardson v. State*, 377 S.C. 103, 659 S.E.2d 493 Note 4 (2008)[herein after "*Richardson*".

While the statement quoted from *Richardson* appears to be a dictum, and the "General Rule" itself begins with a limitation ("Except as otherwise provided in these Rules . . ."), the Plaintiff has no compunction about disclosing the existence of the grievance filed by George Breed and the response to that grievance. One of the documents was ostensibly prepared by Mr. Breed, and the other one was sent to him by the Commission on Judicial Conduct.

The other grievance, however, may not have been made public by the person who complained. That person, under Rule 12(d), RJDE, has the right to

seek a protective order. Accordingly, the Plaintiff plans to afford the person who complained ten days within which to move for a protective order, and, if that person fails to do so, the Plaintiff will produce the documents described below in the Answer to Interrogatory No. 13 that will identify the complainant, the nature of his complaint and the resolution of it.

ANSWER: The Plaintiff has been accused of bias in decision making by George F. Breed, Jr., and by his friend, C. Russell Keep, III, Esquire. To the best of her knowledge, the Plaintiff has not been accused of "irresponsibly wasting public funds" or "violating county policies." However, the Plaintiff has been accused of misconduct as a Municipal Judge by Mr. Breed and by another individual, who shall be anonymous for the present.

The first accusation of bias was made by Mr. Keep initially to Brian Hulbert, who, at the time, was the Prosecutor for the Town of Hilton Head Island. The subject was then raised again shortly thereafter during a hearing before the Plaintiff on or about April 26, 2007. Mr. Keep claimed that, as a consequence of his representation of the Plaintiff's former husband in their 1997 divorce action, the Plaintiff was biased against him. Mr. Keep had appeared in the intervening years, often successfully, in a number of cases heard by the Plaintiff, without questioning her fairness. However, to avoid the appearance of impropriety to Mr. Keep's client, Mr. Hutka, the Plaintiff recused herself from hearing that case, as well as from any subsequent case in which Mr. Keep makes an appearance.

The accusation of bias by George F. Breed, Jr., is described in his letter dated June 6, 2008, as well as in paragraphs 14 and 15 of the Amended

Complaint. Because the letter was addressed (and ultimately sent) to the Commission on Judicial Conduct (herein "the Commission"), it constituted an accusation of judicial misconduct. The accusation, however, was dismissed as unfounded by letter to George F. Breed, Jr., from Deborah S. McKeown dated October 1, 2009. In that letter the following language appears:

In accordance with [the] Rules, the panel's inquiries were limited to whether or not there was evidence of ethical misconduct on the part of Judge Coffey as would warrant further investigation or the filing of formal charges. After considering the report of Disciplinary Counsel setting forth the results of the investigation, the panel voted to dismiss your complaint.

After the Plaintiff had filed and served her Complaint in this action, an individual sent a letter dated December 15, 2008, to the Commission in which that person contended that the Plaintiff had engaged in misconduct. On or about August 3, 2009, the Commission sent a letter to the Plaintiff resolving the matter.

14. Identify by full name, address and phone number each medical doctor, psychiatrist, psychologist, or other type of counselor which Plaintiff has seen in the past five years. For each person listed, please state the type of professional he/she is, and include the reason why Plaintiff sought treatment from each one.

ANSWER: The Plaintiff has used the following healthcare providers within the last five years:

- (a) David E. Dorsner, M.D.
Cross Island Medical Center
157 William Hilton Parkway
Hilton Head Island, SC 29926
(843) 681-8260

Dr. Dorsner served as the Plaintiff's primary care physician during most of the last five years.

- (b) Dr. Patrick Jordan, M.D.
Comprehensive Family Health Care
2 Greenwood Drive
Suite C
Hilton Head Island, SC 29928
(843) 341-3232

Dr. Jordan occasionally provided primary healthcare services for the Plaintiff and her family during 2007 and 2009, though she returned to Dr. Dorsner.

- (c) Women's Healthcare Associates, P.A.
100 Exchange St.
Suite 200
Hilton Head Island, SC 29926
(843) 681-9099

Women's Healthcare Associates delivered two of the Plaintiff's three children and was initially the Plaintiff's primary care physician during the period in question. Once the Plaintiff's needs were no longer primarily obstetric in nature, the Plaintiff began to use other physicians.

- (d) Dr. David Mauer, M.D. [Otolaryngologist]
Hilton Head ENT & Sinus Center
23 North Main Street
Hilton Head Island, SC 29926
(843) 682-3955

The Plaintiff sought treatment from Dr. David Maurer on February 4, 2009, due to frequent, intense headaches, which were believed to be either stress-related or sinus-related.

- (e) MRI at Belfair
18 Clark Summit Drive
Bluffton, SC 29910
(843) 815-9700

Finding nothing wrong with the Plaintiff's sinuses, Dr. Mauer recommended the Plaintiff undergo an MRI on February 9, 2009, to investigate further the cause of her headaches. The Plaintiff had also received a previous MRI from MRI at Belfair in February of 2008, as a consequence of a rollerblading injury in 2007.

- (f) Main Street Chiropractic
60 Main Street
Unit G
Hilton Head Island, SC 29926
(843) 342-3333

and

- (g) Palmetto Therapy Services
811 William Hilton Parkway
Hilton Head Island, SC 29926
(843) 842-3222

Main Street Chiropractic and Palmetto Therapy Services provided treatment for the 2007 rollerblading injury mentioned above.

- (h) Lynn E. Geiger, PhD.
19 Executive Park Road
Hilton Head Island, SC 29928
(843) 341-3020

The Plaintiff, along with her estranged husband, began to see a psychologist, Dr. Geiger, initially in October of 2007, in an attempt to reconcile. It became apparent that reconciliation was not possible, and the Plaintiff's husband stopped attending. The Plaintiff continued to see Dr. Geiger once a month to resolve her own marital issues. As her counseling was concluding, the Plaintiff

received the notice of George Breed's letter on or about June 26, 2008. She had an appointment scheduled for July 1, 2008, and related what had transpired to Dr. Geiger, who has continued to counsel the Plaintiff about stress, anxiety and other issues resulting from Mr. Breed's letter.

- (i) Beaufort OB/GYN Associates
Westbury Park
11 Arley Way
Bluffton, SC 29910
(843) 706-8664

The Plaintiff currently relies upon Dr. Norton and Beaufort OB/GYN for her annual OB/GYN check-ups and any issues the Plaintiff feels might be more related to women's medical health. In 2010, the Plaintiff, who was concerned about weight gain and other issues, had some thyroid testing done, initially by a mobile medical unit through Holy Family Catholic Church. When the results showed a possible irregularity, the Plaintiff called Dr. Norton. At that time, Dr. Norton ordered blood tests, thyroid tests and a thyroid ultrasound to take place on August 4, 2010. The hospital results were sent to Dr. Norton, who was concerned about the thyroid ultrasound and referred the Plaintiff to Dr. Rzeczycki.

- (j) Dr. Thomas Rzeczycki
Hilton Head General & Laparoscopic Surgery
25 Hospital Center Commons
Suite 100
Hilton Head Island, SC 29926

Dr. Rzeczycki performed more tests, including another ultrasound on the thyroid, after which he noted three nodules, only one over 5 mm. He wanted to see if it grew and scheduled an appointment months later.

(k) Joshua D. Hornig, MD [Otolaryngologist]
Medical University of South Carolina
135 Rutledge Avenue
Charleston, SC 29425

Concerned, the Plaintiff went to see Dr. Hornig—an Otolaryngologist and Thyroid surgery specialist. He conducted more tests. The blood tests came back normal, and Dr. Hornig confirmed that there were three nodules, only one about 5 mm. He also wanted to wait 6 months to see if it grew before deciding how to proceed. The Plaintiff is scheduled to see Dr. Hornig for a follow up on May 23, 2011.

15. Please identify by full name, address and phone number each friend, neighbor, and associate of the Plaintiff in whose eyes Plaintiff's standing and esteem has been doubted and questioned.

ANSWER: The Plaintiff's immediate supervisor, Assistant Town Manager, Greg DeLoach, whose address has been supplied in subparagraph 1(d) above. Also, Darby Cusick, 3 Gadwall, Hilton Head Island, SC, 29928.

16. Please describe Plaintiff's reputation prior to the allegations contained in the Complaint.

ANSWER: Strict but fair; open-minded; consistent; and compassionate, especially with young people.

17. Please identify any allegations relating to civil conspiracy which do not relate to either the defamation or the tortious interference with contract causes of action.

ANSWER: None of the substantive allegations relating to the defamation claim also relate to the conspiracy claim. Paragraph 53 of the Amended

Complaint incorporates only the jurisdictional allegations from the Prologue into the cause of action for conspiracy.

The crux of the conspiracy claim is that the named Defendants, colluding with others, trumped up an excuse to require the Plaintiff to recuse herself from hearing cases brought by Sea Pines Security. Fearing that their harassment of Otis Coffey and Ann Coffey might lead to unfair treatment at the Plaintiff's hands, the Defendants put the cart before the horse and simply pretended that it already had happened.

The conspiracy was in the nature of an interference with the Plaintiff's contract. The elements of that tort are set forth in *DeBerry v. McCain*, 275 S.C. 569, 274 S.E.2d 293 (1981). The conspiracy claim is also analogous to interference with prospective contractual relations, the elements of which are set forth in *Santoro v. Schulthess*, 384 S.C. 250, 681 S.E.2d 897 (S.C. App. 2009).

Conspiracy jurisprudence teaches that a plaintiff may have a cause of action for conspiracy, or for the underlying tort, but not for both. *Kuznik v. Bees Ferry Associates*, 342 S.C. 579, 538 S.E.2d 15 (S.C. App. 2000); *Todd v. Farm Bureau Mut. Ins. Co.*, 276 S.C. 284, 278 S.E.2d 607 (1981). Clearly, the Plaintiff herein has sought to plead neither interference with a contract nor interference with a prospective contract. In the absence of such underlying torts, the conspiracy claim is entirely appropriate.

18. Please list the special damages resulting to the Plaintiff from the civil conspiracy cause of action which do not relate to the defamation cause of action and the negligence cause of action.

ANSWER: Special Damages flowing solely from the cause of action for conspiracy are additional baby sitting costs for the Plaintiff which are anticipated to exceed \$2,500.00 per year. The Plaintiff is being assigned new duties, including early morning and late afternoon bond hearings that must be accomplished by teleconference between the court and the Beaufort County Detention Center. The Plaintiff has coverage for the afternoon hours, but the morning hours are expected to begin at 7:00 a.m.

Because of the Plaintiff's recusal, the Town of Hilton Head Island has had to pay other judges to hear the cases brought by Sea Pines Security. In order to recoup some of that expense, the Town has decided to assign more duties to the Plaintiff.

19. Identify by full name, address, and phone number each person with whom Plaintiff or her counsel discussed any allegations contained in the Complaint or Amended Complaint prior to the filing of the lawsuit.

OBJECTION: The Interrogatory seeks information protected by the attorney-client privilege and the attorney's work product privilege.

ANSWER: Subject to the objection, the Plaintiff discussed the allegations contained in the Complaint only with her attorney, Tom Holloway, prior to the filing of the lawsuit. For obvious reasons no discussion of the Amended Complaint took place at that time.

20. Identify the date(s) upon which the disclosure(s) set forth in Item 19 were made.

OBJECTION: The Interrogatory seeks information protected by the attorney-client privilege and the attorney's work product privilege.

ANSWER: Subject to the objection, the Plaintiff began discussions with her attorney in August of 2008.

21. Identify by full name, address and phone number each person with whom Plaintiff or her counsel discussed Plaintiff's belief that Defendants committed unlawful or tortious acts prior to the filing of the lawsuit.

OBJECTION: The Interrogatory seeks information protected by the attorney-client privilege and the attorney's work product privilege.

ANSWER: Subject to the foregoing objection, the Plaintiff may have discussed such matters with her attorney, Desa Ballard, who defended the grievance filed by George Breed. She definitely discussed them with her attorneys in this action.

22. Identify the date(s) upon which the disclosure(s) set forth in Item 21 were made.

OBJECTION: The Interrogatory seeks information protected by the attorney-client privilege and the attorney's work product privilege.

23. Identify by full name, address and phone number each person or entity which either Plaintiff or her counsel showed the Complaint or the Amended Complaint in this action (including any part or parts thereof) prior to the filing of either.

ANSWER: No such disclosure was made.

24. Identify the date or dates upon which the disclosure(s) set forth in Item 23 were made.

ANSWER: No such disclosure was made.

25. Please provide a list of all speaking engagements, panel discussions or public appearances made by Plaintiff in Beaufort County during Plaintiff's residence in the county, to include the occasion and group spoken to, the date of the event, and the topic covered.

ANSWER: The Plaintiff (a) gave a speech at Hilton Head Island High School to the Lady Seahawks in November of 2010; (b) spoke to the Interact Club once in 2009 and again in 2010; and (c), in 2005, 2006 and 2007, gave a talk about the court system, along with William C. Clark, Esquire, at "law school for non-lawyers" sponsored by Lowcountry Legal Clinic.

26. Please provide a list of all civic involvement participated in by Plaintiff, including but not limited to church membership and civic group membership, non-profit board association, involvement (other than by monetary donation) with a charitable organization.

ANSWER: The Plaintiff was a member of Holy Family Catholic Church from approximately January 1983 to January 1996, at which time she joined St. Francis by the Sea Catholic Church. She subsequently rejoined Holy Family in September of 2008 and remains a parishioner today.

In September of 2010, the Plaintiff's family also joined Beth Yam Synagogue so that the Plaintiff's two daughters can be raised in the faith of their father.

The Plaintiff was a founding member of Lowcountry Legal Aid. However, she resigned from the board in 2000 when family and job commitments took precedence.

Although she has been invited to join service clubs, the Plaintiff has declined because, as a working mother with an absent spouse and a demanding job, she lacks the time to commit to anything but her children and the court.

27. For each civic involvement listed in Item 26, please provide a list of any awards or recognition received as a result of such involvement.

ANSWER: The Plaintiff received an award for being one of the founders of Lowcountry Legal Aid.

28. Please provide a list of all public social events, including but not limited to charitable fundraisers, dinners, auctions, and other functions to which Plaintiff received an invitation or attended from January 2005 through the present.

ANSWER: The Plaintiff has received invitations to a number of fundraisers, dinners and other functions, including the Sea Pines Montessori Gala (2004-2008), Hilton Head Prep functions (2009 and 2010) and the fundraising dance for St. Francis by the Sea (2000-2004). Lacking the time or the money, the Plaintiff does not attend.

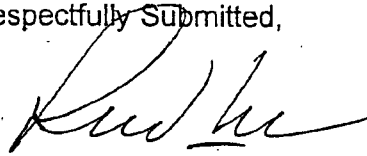
29. Please provide a list of all professional organizations in which Plaintiff has been a member and her role in each organization.

ANSWER: The Plaintiff is a member of the South Carolina Bar, the Beaufort County Bar and the South Carolina Summary Court Judges' Association. She does not hold an office in these organizations.

The Plaintiff reserves the right to amend or supplement these responses as additional information becomes available.

Respectfully Submitted,

By:



Robert V. Mathison, Jr.
Attorney for the Plaintiff
Maureen T. Coffey

April 25, 2011

Hilton Head Island, South Carolina.

MATHISON & MATHISON
Post Office Box 5271
Hilton Head Island, SC 29928
Telephone: (843) 785-6503
Facsimile: (843) 785-6170
Email: mathlaw@aol.com

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

IN THE COURT OF COMMON PLEAS
Case No. 2011-CP-07-00013

MAUREEN T. COFFEY,)
Plaintiff)

v.)

COMMUNITY SERVICES,)
ASSOCIATES, INC., *et al.*,)
Defendants)

NOTICE AND MOTION FOR
SUMMARY JUDGMENT ON BEHALF
OF COMMUNITY SERVICE ASSOC-
IATES, INC., GEORGE F. BREED,
ASSOCIATION OF SEA PINES
PLANTATION PROPERTY OWNERS,
INC. AND THE ADVISORY BOARD

TO: ROBERT V. MATHISON, JR., ESQ., ATTORNEY FOR PLAINTIFF:

PLEASE TAKE NOTICE that ten (10) days hereafter, or as soon thereafter as counsel may be heard, Defendants Community Service Associates, Inc., George F. Breed, Association of Sea Pines Plantation Property Owners, Inc. and the Advisory Board will move through the undersigned pursuant to Rule 56, S.C.R.C.P., for summary judgment in their favor on grounds that the communications complained of by Plaintiff are privileged at common law and under the constitutions of this state and the United States; that Plaintiff as a public official has no claim for civil conspiracy; that Plaintiff has suffered no injury as a consequence of the alleged civil conspiracy for which redress may be had; that defendants owed no duty to Plaintiff which was breached; that there is no genuine issue of material fact, and these defendants are entitled to judgment as a matter of law in the following particulars:

1. Plaintiff is a public official who can only recover on a defamation claim with clear and convincing evidence that the publications of which she complains were made with knowledge of falsity or with reckless disregard of the truth;

RECEIVED

FEB 17 2012

McNair Law Firm, P.A.

2. Plaintiff's claim for civil conspiracy based on comments regarding her fitness for her public office is barred by *Angus v. Burroughs & Chapin*, 368 S.C. 167, 628 S.E.2d 261 (2006);

3. Plaintiff's civil conspiracy allegations do nothing more than incorporate earlier allegations without alleging additional acts for which damages are sought, and, as a consequence, the claim is barred by *Hackworth v. Greywood at Hammett, L.L.C.*, 385 S.C. 110, 682 S.E.2d 871 (Ct. App. 2009) and *Todd v. South Carolina Farm Bureau Mut. Ins. Co.*, 276 S.C. 155, 278 S.E.2d 607 (Ct. App. 1981);

4. Plaintiff has suffered no injury as a consequence of the alleged civil conspiracy for which damages may be awarded;

5. To the extent that Plaintiff's negligence claim incorporates elements of her libel claim, it is barred by *Erickson v. Jones Street Publishers, L.L.C.*, 368 S.C. 444, 629 S.E.2d 653 (2006); and

6. To the extent that Plaintiff's negligence claim is based on allegations of a failure by Defendants to train employees, defendants owed no duty to Plaintiff the breach of which can be found to be the proximate cause of any injury suffered by Plaintiff.

This motion is supported by the pleadings and discovery in this case and the affidavit of George F. Breed, Jr. filed herewith and such other materials as may be filed in advance of the hearing on this motion.

In the event that the defamation claim survives Defendants' motion, Defendants move hereby for a determination in advance of trial that Plaintiff is a public official. *Erickson v. Jones Street Publishers, L.L.C.*, *supra*; *Sanders v. Prince*, 304 S.C. 236, 403 S.E.2d 640 (1991).

HALIO & HALIO
Attorneys for Defendants


ANDREW S. HALIO
13 North Adgers Wharf-Box 747
Charleston, SC 29402-0747
(843) 577-5200

and

Jay Bender, Esq.
Baker, Ravenel & Bender, L.L.P.
P. O. Box 8057
Columbia, SC 29202
(803) 799-9091

and

Celeste T. Jones, Esq.
Kelly M. Jolley
McNair Law Firm, P.A.
Post Office Box 11390
Columbia, SC 29211

AFFIRMATION

I affirm that consultation with opposing counsel prior to the filing of this motion is not required.


ANDREW S. HALIO

STATE OF SOUTH CAROLINA 2012 APR 20 PM 1:10 IN THE COURT OF COMMON PLEAS

Case No. 2011-CP-07-00013

COUNTY OF BEAUFORT HILTON HEAD

BEAUFORT COUNTY, S.C.

MAUREEN T. COFFEY, CLERK OF COURT

Plaintiff

v.

COMMUNITY SERVICES,
ASSOCIATES, INC., *et al.*,

Defendants

**MEMORANDUM IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT
ON BEHALF OF COMMUNITY
SERVICES ASSOCIATES, INC.,
GEORGE F. BREED, and ASSOCIATION
OF SEA PINES PLANTATION
PROPERTY OWNERS, INC. AND THE
ADVISORY BOARD**

Defendants Community Services Associates, Inc. ("CSA"), George F. Breed, Jr., and Association of Sea Pines Plantation Property Owners, Inc. and the Advisory Board ("ASPPPO") (hereinafter jointly the "Defendants"), by and through their undersigned counsel, hereby submit this memorandum in support of their motion for summary judgment.

BACKGROUND

Defendant CSA owns, maintains, and secures common property and roads within Sea Pines Resort ("Sea Pines") on Hilton Head Island, South Carolina. (Amended Complaint ¶ 4). Among its other duties, CSA operates a security force of approximately fifty (50) officers and support staff whose primary function is the public safety, security and law enforcement for the Sea Pines community. Defendant George Breed is employed as the Director of Security and Community Affairs for CSA and supervises the security force that patrols Sea Pines. (Amended Complaint ¶ 6). Defendant ASPPPO is a voluntary association of property owners for residential property owners within Sea Pines. Plaintiff is the municipal judge for the Town of Hilton Head Island. (Amended Complaint ¶ 2). Plaintiff filed an Amended Complaint in this action asserting claims against CSA, Mr. Breed, and ASPPPO for libel, slander, civil conspiracy and negligence, claiming that Defendants defamed her in a letter Mr. Breed submitted to the South Carolina

Commission on Judicial Conduct (the "Commission") regarding Plaintiff. (Exhibit 1 attached hereto). The filing of the Plaintiff's 2008 civil action was widely published in the press. (Exhibit 2).

In her initial Complaint filed in November 2008, Plaintiff asserted causes of action based exclusively on Mr. Breed's filing of his complaint with the Commission. As a result of the filing of this initial civil complaint, the Plaintiff received a Letter of Caution from the Commission for acting inconsistently with Rule 13 of the Rules of Judicial Conduct by initiating a civil action against one who had initiated a proceeding before the Commission on Judicial Conduct. (Coffey Depo. pgs. 38, l. 23 - p. 43, l. 8.)

A consent order striking this case pursuant to Rule 40(j), SCRCP was entered on January 12, 2010. Thereafter, on February 8, 2011, the Plaintiff filed the Amended Complaint, altering the defendants against whom the lawsuit was filed and dropping claims for malicious prosecution and intentional infliction of emotional distress. The Amended Complaint continues to assert Plaintiff's claim that she was wronged by the letter setting forth the grievance filed against her and its disclosure to Mr. Breed's superiors at CSA and the Administrator for the Town of Hilton Head Island, where plaintiff is employed as a municipal judge. (Amended Complaint ¶¶ 14-18). Defendants are entitled to summary judgment, on the following grounds:

1. Appellate Court Rule 502, Rules for Judicial Disciplinary Enforcement, Rule 13, Immunity from Civil Suits bars Plaintiff's claims against the Defendants based on Mr. Breed's letter to the Commission.

2. Plaintiff is a public official, and Breed's letter is related to a matter of public concern and protected under the First and Fourteenth Amendments to the U.S. Constitution, "Constitutional Privilege" and *New York Times Co. v. Sullivan*, 376 U.S. 254, 84 S.Ct. 710, 11

L.Ed.2d 686 (1964) including the requirement that actual malice be proved by clear and convincing evidence.

3. Plaintiff admits the factual statements set forth in Mr. Breed's letter that concern the Plaintiff.

4. Plaintiff voluntarily disclosed the content of Mr. Breed's letter by publicly filing it with the Clerk of Court for Beaufort County, which was then published in the Island Packet newspaper, along with several interviews given by Plaintiff.

5. The communication of the letter by Defendants was privileged.

6. As a public official, Plaintiff's civil conspiracy claims are barred under *Angus v. Burroughs & Chapin*, 368 S.C. 167, 628 S.E.2d 261 (2006). Additionally, Plaintiff cannot satisfy the necessary elements for a conspiracy claim.

7. Plaintiff lacks standing to pursue a negligence claim. The Defendants owed Plaintiff no duty under the law, no breach of duty has been shown, and the cause of action cannot survive dismissal of the other causes of action.

FACTS

At the core of Plaintiff's claim is Mr. Breed's letter dated June 6, 2008, to the Commission which related to the propriety of Plaintiff's involvement in an investigation into criminal activity occurring in Sea Pines Plantation in 2004 and again in 2007-2008. The June 6, 2008 letter contains three paragraphs setting forth the facts known to and believed by Breed to be true concerning the Plaintiff's involvement in the criminal investigation in which her brother was a suspect. (See: Affidavit of George Breed attached to Defendants' motion for summary judgment). Plaintiff's brother, Otis Coffey, was identified as a suspect by the Beaufort County Sheriff's Office ("BCSO"). (Coffey Depo. pg. 88, ll. 4-20). In 2004, the BCSO arrested Otis

Coffey and charged him with trespassing, a charge for which he was subsequently convicted. During the arrest, Plaintiff was telephoned by her father, who was upset that Otis was being arrested. Plaintiff instructed her father to hand the telephone to the arresting officer so she could speak to the officer and proceeded to question the officer to explain to her "what was going on." (Coffey Depo. p. 84, l. 18 – p. 85, l. 18).

Thereafter, also in 2004, after Otis Coffey declined to take a lie detector test that had been negotiated between the BCSO and Plaintiff, the Plaintiff told Otis to get out of town. (Coffey Depo. p. 87, l. 7 – p. 90, l. 3) ("It doesn't look good if you're in my jurisdiction and you're a suspect in a crime, so go work at the restaurant in Tybee.") (Coffey Depo. p. 89, ll. 21-23). Plaintiff testified that Otis Coffey followed her instruction and left Beaufort County and moved to Georgia.

Several years later, Otis returned to Hilton Head and Sea Pines. In connection with another crime spree in Sea Pines in 2007-2008, Plaintiff had a meeting with the BCSO detective in charge of the investigation. Plaintiff testified that in that meeting she offered to provide "surveillance" of the house in which her brother resided in Sea Pines and then, again, instructed Otis to leave Sea Pines. (Coffey Depo. pgs. 103-105.) In May 2008, following an incident in which an individual believed to be Otis Coffey was involved in a chase with a CSA security officer, Plaintiff told another CSA security officer that she was a judge and that they needed "to stop harassing my mother and that I was having Otis move out." (Coffey Depo. p. 102, ll. 3-25.) Specifically, the Plaintiff testified as follows in regard to her statements to the officer:

... And then on that Friday, she [plaintiff Coffey's mother] called me. She [plaintiff Coffey's mother] was very upset. She said that the security officers were following her and Otis outside in and out of Sea Pines. But I had been busy working that whole week. I don't get down to – it's South Beach, it's the end of Sea Pines, and I have three kids, so I don't get down there much, but I said, "All right, I'll go down there."

So I go down to my mom's house to wait for my mom. But I don't have a key, so I'm outside waiting. And a security car comes by, and I'm assuming I'm going to know who the officer is because I generally know these road guys because they appear before me.

It's somebody I don't know, so I introduce myself. And I tell them that they've got to stop harassing my mother and that I was having Otis move out, and "Tell Breed I'll get with him next week," which meant since he apparently wanted Otis and my mom to meet with him, I was going to go meet with him. And that's the end of it until I got served with this.

Q: When you saw the new officer, is that all you recall of the conversation?

A: That's all I recall. It was very brief.

Q: Did you mention to him that you were the judge?

A: I did.

Q: How did that come up?

A: I said, "Oh, you are new, you don't know me, I'm the judge" or something. I don't know exactly what I said, but something like that, "you guys have got to stop harassing my mother. I'm moving my brother out," which he didn't know anything about the situation, I guess, or so he said. You'd have to ask him, it's Mr. Wright. And "Tell Breed I'll get with him next week or I'll meet with him next week, I don't have time now" or something.

Coffey Depo. p. 101, l. 12 – p. 103, l. 5.

Plaintiff's mother also confronted an officer and stated to the officer, "Don't you know who my daughter is?" (Coffey Depo. p. 99, l. 7 – p. 100, l. 24). Mr. Breed's letter was submitted to the Commission shortly after this incident.

ARGUMENT

I. Standard of Review

Summary judgment is appropriate where, as here, the record demonstrates that "there is no genuine issue of material fact and it is clear the moving party is entitled to a judgment as a

matter of law.” Rule 56(c), SCRCF. Although the moving party carries the initial burden of showing the absence of a genuine issue of material fact, “[w]ith respect to an issue upon which the nonmoving party has the burden of proof, this initial responsibility [of the moving party] may be discharged by pointing out to the trial court that there is an absence of evidence to support the nonmoving party’s case.” *Hedgepath v. American Tel. & Tel. Co.*, 559 S.E.2d 327, 335 (S.C. Ct. App. 2001) (citations omitted). When the motion for summary judgment is supported by affidavits or deposition testimony, the “adverse party may not rest upon the mere allegations or denials of his pleading, but his response . . . must set forth specific facts showing that there is a genuine issue for trial.” Rule 56(c), SCRCF. Therefore, “when plain, palpable, and indisputable facts exists on which reasonable minds cannot differ, summary judgment should be granted.” *Hedgepath*, 559 S.E.2d at 336 (citing *Pye v. Aycock*, 480 S.E.2d 455 (S.C. Ct. App. 1997)).

Plaintiff has asserted four causes of action against Defendants: (1) libel, (2) slander, (3) civil conspiracy, and (4) negligence. As to each cause of action, no material issue of fact exists. Plaintiff has no evidence creating a genuine issue for trial. Accordingly, the motion for summary judgment should be granted and judgment entered in favor of Defendants.

II. Libel and Slander.

A. Plaintiff’s Libel and Slander Claims Are Barred by Absolute Privilege.

Defendants have immunity from any claim related to Mr. Breed’s letter to the Commission regarding Plaintiff pursuant to Appellate Court Rule 502, Rules for Judicial Disciplinary Enforcement, Rule 13, Immunity from Civil Suits. South Carolina Appellate Court Rule 502, “Rules for Judicial Disciplinary Enforcement,” governs allegations that a judge has committed ethical misconduct. Rule 13 specifically provides: “Communications . . . relating to misconduct . . . shall be absolutely privileged, and no civil lawsuit predicated thereon may be

instituted against any complainant” This expressly prohibits the filing of a lawsuit based on any complaint filed with the Commission on Judicial Conduct. This was the subject of the second grievance against the Plaintiff that resulted in the letter of caution, and Plaintiff acknowledges the privilege in her Amended Complaint. (Amended Complaint, ¶16). Astonishingly, the Plaintiff is nevertheless claiming as damages in this case the legal fees that she paid her attorney to represent her in both disciplinary complaints against her, which is an ongoing violation of Rule 13 and proof that this lawsuit is essentially another attempt to litigate a privileged matter. Rule 13 requires the Court to dismiss this action and grant judgment in favor of the Defendants under the circumstances.

B. Plaintiff's Defamation Claims Are Constitutionally Barred.

To recover for defamation, the plaintiff must establish by a preponderance of the evidence:

- (1) a false and defamatory statement by the defendant concerning the plaintiff;
- (2) an unprivileged communication;
- (3) fault on the defendant's part in publishing the statement; and
- (4) either actionability of the statement irrespective of special harm or the existence of special harm to the plaintiff caused by the publication.” *Holtzscheiter v. Thomson Newspapers, Inc.*, 506 S.E.2d 497, 506 (1998) (Toal, J., concurring).

The Supreme Court of the United States fundamentally altered the common law of libel in *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964). That case involved a libel action brought against the *New York Times* by a Montgomery, Alabama Commissioner of Public Affairs, L.B. Sullivan. Sullivan had been awarded damages by an Alabama state court for

defamatory statements made about him in an "advertorial" purchased by civil rights activists and published in the *Times*. The state's Supreme Court upheld the damages award.

The U.S. Supreme Court reversed the state court's ruling, holding that the First Amendment requires a heightened *prima facie* showing for defamation actions brought by public officials related to their official conduct. Specifically, *New York Times* "prohibits a public official from recovering damages for a defamatory falsehood relating to his official conduct unless he proves that the statement was made with 'actual malice'-that is, with knowledge that it was false or with reckless disregard or whether it was false or not." *Id.* at 279. This inquiry focuses on the defendant's subjective state of mind. Proof of malice must be shown with "convincing clarity." *Id.* at 285-286.

This standard has been applied and followed in South Carolina. "When a public figure seeks to recover damages for a defamatory falsehood relating to his official conduct, the 'fault' he must prove is that the statement was made with 'actual malice'." (Citations omitted). *Fleming v. Rose*, 567 S.E. 2d 857, 860 (2002) (blurring the distinction between "public figures" and "public officials"). "Actual malice means the publisher of the statement had knowledge the statement was false or acted with reckless disregard as to whether or not it was false....[T]he public figure must demonstrate actual malice by 'clear and convincing evidence'." *Id.*

(1) Plaintiff is a Public Official.

In *Erickson v. Jones Street Publishers, LLC*, 629 S.E. 2d 653 (2006), the South Carolina Supreme Court applied the definition of "public official" provided by the United States Supreme Court in *Rosenblatt v. Baer*, 383 U.S. 75, 85 (1966). "[A] public official is a person who, among the hierarchy of government employees, has or appears to the public to have 'substantial responsibility for or control over the conduct of governmental affairs.'" *Erickson v. Jones Street*.

Publishers, LLC, 629 S.E.2d 653, 666 (2006) (quoting *Rosenblatt v. Baer*, 383 U.S. 75, 86 (1966)). "In considering the question of whether one is a 'public official,' the 'employee's position must be one which would invite public scrutiny and discussion of the person holding it, entirely apart from the scrutiny and discussion occasioned by the particular charges in controversy.'" *Holtzscheiter v. Thomson Newspapers, Inc.*, 506 S.E.2d 497, 508 n. 4 (1998) (quoting *Rosenblatt*, 383 U.S. at 86). "The status of a public official may be deemed sufficient to warrant application of the *New York Times* privilege, not because of the government employee's place on the totem pole, but because of the public interest in a government employee's activity in a particular context." *McClain v. Arnold*, 275 S.C. 282, 284, 270 S.E.2d 124, 125 (1980). In South Carolina, police officers are public officials, as is an assistant police chief. *Miller v. City of West Columbia*, 322 S.C. 224, 471 S.E.2d 683 (1996); *McClain v. Arnold*, *supra*; *Fleming v. Rose*, *supra*. Likewise, a county administrator hired by county council is a public official. *Angus v. Burroughs & Chapin*, 368 S.C. 167, 628 S.E.2d 261 (2006).

Plaintiff is a public official. As Chief Justice Jean Toal explained in her concurring opinion in *Holtzscheiter v. Thomson Newspapers, Inc.*, 332 S.C. 502, 506 S.E.2d 497 (1988), (Toal, J. concurring in result), the determination of an individual's status as a public official is to be made on the basis of whether the employee "has or appears to the public to have 'substantial responsibility for or control over the conduct of governmental affairs.'" *Erickson*, *supra*, 629 S.E. 2d 653, 666. Plaintiff is, in fact, the judicial arm of the government of the Town of Hilton Head Island. Plaintiff has been a municipal judge for the Town since 2000. Formerly an Associate Judge, she is and has been the only municipal judge for the Town for several years.¹

¹ Since filing this action, Plaintiff has recused herself from Sea Pines cases, requiring a substitute for a couple of hours per month.

She is employed by Town Council. (Coffey Depo. p. 19, ll. 6-9; p. 23, ll. 12-16).² She hears criminal cases involving various agencies including the Beaufort County Sheriff's Department, the Town of Hilton Head, and some of the plantations on Hilton Head. She generally holds court four days per week and is "on call 24-seven, every day" to issue search and arrest warrants. (Coffey Depo. p. 35, l. 9 - p. 36, l. 22). Court proceedings are held in courtrooms that are open to the public. Clearly, she has substantial responsibility for and control over the conduct of governmental affairs. She can issue a search warrant authorizing an intrusion into a person's home or issue an arrest warrant allowing the deprivation of a person's liberty. She can find a criminal defendant guilty or innocent. She has the power to issue contempt citations. Since the public has a great interest in the integrity of the judicial system, *Landmark Communications v. Virginia*, 435 U.S. 829, 98 S. Ct. 1535, 56 L.Ed.2d 1 (1978), the public has a clear interest in the discussion of the qualifications and conduct of a judge. For these obvious reasons, Plaintiff, a municipal judge, is a public official for purposes of her defamation claims which relate specifically to her actions in that role.

No South Carolina appellate court decision specifically addresses the issue of whether a judge is a public official, but those jurisdictions which have considered the question have uniformly held that a judge is a public official and is obligated to prove actual malice under the *New York Times v. Sullivan* standard. When the United States Supreme Court applied the actual malice rule to reverse a criminal libel conviction in a prosecution which had been initiated by eight criminal court judges, the Supreme Court characterized the judges as public officials, stating: "[T]he *New York Times* rule also limits state power to impose criminal sanctions for criticism of the official conduct of public officials." *Garrison v. Louisiana*, 379 U.S. 64, 67 (1964).

² Plaintiff and the Town entered into a new, two year contract on Feb. 2, 2011.

The Supreme Judicial Court of Massachusetts stated unequivocally "A sitting judge is a public official for the purposes of applying the principles of *New York Times Co. v. Sullivan*." *Milgroom v. News Group Boston, Inc.*, 586 N.E.2d 985, 986, 20 Media L. Rep. 1097 (1992). The New York Court of Appeals began its discussion of the application of the actual malice standard in a libel action brought by a Justice of the Supreme Court of New York by stating:

The issue before us is whether plaintiff has established the existence of material facts sufficient to create a triable issue on his libel cause of action. More specifically, resolution of this appeal turns on whether plaintiff, a public official, has set forth facts sufficient to generate a triable issue on the constitutional elements of the libel complaint.

Rinaldi v. Holt, Rinehart & Winston, Inc., 42 N.Y.2d 369, 397 N.Y.S.2d 943, 366 N.E.2d 1299, 1301, 2 Media L. Rep. 2169 (1977). In *Kilcoyne v. Plain Dealer Publishing Co.*, 678 N.E.2d 581 (1996), the Court of Appeals of Ohio held that a libel plaintiff who was a judge was a public official subject to the actual malice burden. See also: *Driscoll v. Block*, 210 N.E. 2d 899 (Ohio App. 1965) (Municipal court judge is a public official). The United States Court of Appeals for the Ninth Circuit characterized a judge as a "public figure" and held that in order to resist a motion for summary judgment in his libel case, he "must establish that a reasonable jury could find by clear and convincing evidence that ABC published the challenged statements with knowledge of their falsity or with reckless disregard for their truth or falsity. (Citations omitted)." *Dodds v. American Broadcasting Co., Inc.*, 145 F.3d 1053, 1060, 26 Media L. Rep. 1705 (9th Cir. 1998). The same result was reached in *Braig v. Field Communications*, 456 A. 2d 1366 (Pa. Super. 1983).

Moreover, media coverage of this lawsuit would not have occurred but for Plaintiff's status as a public official since the content of the defamation lawsuit and the underlying grievance would have been meaningless to newspaper readers if Plaintiff had been a private

person. Accordingly, Plaintiff is a "public official" and must meet the burden of proof required by the United States Supreme Court in *New York Times v. Sullivan*.

(2) Plaintiff cannot prove actual malice.

"Actual malice" must be proven by evidence that establishes that the person making the publication knew the publication was false at the time of publication, or that the person had a reckless disregard for potential falsity. *New York Times v. Sullivan*, 376 U.S. at 279-80. The Supreme Court of South Carolina applied and explained the "actual malice" rule comprehensively in *Elder v. Gaffney Ledger*, stating:

Actual malice is a subjective standard testing the publisher's good faith belief in the truth of his or her statements. *Peeler v. Spartan Radiocasting, Inc.*, 324 S.C. 261, 478 S.E.2d 282 (1996). The constitutional actual malice standard requires a public official to prove by clear and convincing evidence that the defamatory falsehood was made with the knowledge of its falsity or with reckless disregard for its truth. *New York Times Co. v. Sullivan*, *supra*; *Botchie v. O'Dowd*, 315 S.C. 126, 432 S.E.2d 458 (1993). A "reckless disregard" for the truth, however, requires more than a departure from reasonably prudent conduct. "There must be sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication." *St. Amant v. Thompson*, 390 U.S. 727, 731, 88 S.Ct. 1323, 20 L.Ed.2d 262 (1968) (emphasis supplied [by court]). There must be evidence the defendant had a "high degree of awareness of ... probable falsity." *Garrison v. Louisiana*, 379 U.S. 64, 74, 85 S.Ct. 209, 13 L.Ed.2d 125 (1964) (emphasis supplied [by court]).

Elder v. Gaffney Ledger, 341 S.C. 108, 533 S.E.2d 899, 902 (2000).

Having admitted the truthfulness of Breed's factual assertions in her deposition, Plaintiff cannot meet the requisite standard of proof necessary to prove actual malice.³

Mr. Breed's opinions about Plaintiff's fitness for her position are also constitutionally protected, according to the United States Supreme Court:

Under the First Amendment there is no such thing as a false idea. However pernicious an opinion may seem, we depend for its correction not on the conscience of judges and juries but on the competition of other ideas.

³ See also: Affidavit of George Breed, ¶ 12 (stating that he believed that his statements were true).

Gertz v. Robert Welch, Inc., 418 U.S. 323, 339 (1974).

Comment on, and criticism of, public officials is a protected hallmark of our democracy. *New York Times Co. v. Sullivan*, *supra*; *Accord, Elder v. Gaffney Ledger*, *supra* ("[I]njury to official reputation is an insufficient reason for 'repressing speech that would otherwise be free.'") As the United States Supreme Court explained in reversing contempt citations against the publication of criticism of judges:

The assumption that respect for the judiciary can be won by shielding judges from published criticism wrongly appraises the character of American public opinion. For it is a prized American privilege to speak one's mind, although not always with perfect good taste, on all public institutions. And an enforced silence, however limited, solely in the name of preserving the dignity of the bench, would probably engender resentment, suspicion, and contempt much more than it would enhance respect.

Bridges v. California, 314 U.S. 252, 270 (1941).

South Carolina has long recognized that citizens have a right to criticize public officials and question their fitness for the offices they hold. As long as the criticism is fair, honest and without common law malice, it is not actionable. *Oswalt v. State Record Co.*, 250 S.C. 429, 435, 158 S.E.2d 204, 207 (1967); *Cartwright v. Herald Pub Co.*, 220 S.C. 492, 68 S.E.2d 415 (1951). This principle, sometimes referred to as the "fair comment" privilege, applies not only to publications by the media, but also to statements by private citizens. See 20 S.C. *Jurisprudence: Libel and Slander* § 63 at 158-59 and authorities cited in footnote 2 therein.

(3) Truth and Privilege.

As a public official, Plaintiff bears the burden of proving that the factual statements contained in the letter are false. *New York Times v. Sullivan*, *supra*. Since Mr. Breed's letter contained statements regarding matters of public concern, Plaintiff would bear the burden of proving falsity even if she were not a public official. As explained by the United States Supreme

Court, when the statement is of public concern, "the common law's rule on falsity – that the defendant must bear the burden of proving truth – must similarly fall here to a constitutional requirement that the plaintiff bear the burden of showing falsity, as well as fault, before recovering damages." *Philadelphia Newspapers, Inc. v. Hepps*, 475 U.S. 767, 776 (1986). The South Carolina Court of Appeals has recognized that this principle applies to public officials and media defendants. *Fleming v. Rose*, *supra*, 526 S.E. 2d at 737 (2000). (Constitutional malice principle applies "at least" where a media defendant is involved.) *Miller v. City of West Columbia*, 322 S.C. 224, 471 S.E. 2d 683 (1996) (To recover on claim for defamation, constitutional malice standard requires public official to prove by clear and convincing evidence that defamatory falsehood was made with knowledge of its falsity or with reckless disregard for the truth).

The standard for determining truth is "substantial truth." *Ross v. Columbia Newspapers*, 221 S.E.2d 770 (1976). That standard is clearly met by Plaintiff's admissions. She admits the factual predicates contained in the letter to, to wit: she initiated and had a telephone conversation with an officer while her brother was being arrested (Coffey Depo. p. 83, l. 19 - p. 85, l. 18); she volunteered to a new security officer that she was the town's judge and asked him to tell CSA security to stop harassing her mother (Coffey Depo. p. 101, l. 12 - p. 103, l. 5); and on two occasions, Plaintiff told her brother to move away from Sea Pines and flee the jurisdiction of Beaufort County at times when he was a suspect in a series of breaking and entering crimes that had occurred in Sea Pines. (Coffey Depo. p. 141, l. 11 - p. 142, l. 25).

Plaintiff also fails to meet the common law burden of non-privileged publication of the letter. Defamation is not actionable without publication. Publication requires that the statement be communicated to someone other than the plaintiff. *Kendrick v. Citizens & Southern National*

Bank, 223 S.E.2d 866, 867-68 (1976). Communication between persons having a common interest, such as employees within a company, is subject to a qualified privilege, and if privileged, does not constitute publication. *Watson v. Wannamaker*, 216 S.C. 295, 57 S.E.2d 477 (1950); *Austin v. Torrington Co.*, 810 F.2d 416, 424-25 (4th Cir. 1987) (applying South Carolina law).

South Carolina has long recognized that a "communication made in good faith on any subject matter in which the person communicating has an interest, or in reference to which he has a duty, is qualifiedly privileged if made to a person having a corresponding interest or duty." *Anderson's South Carolina Requests to Charge*.— Civil, § 14-17 Defamation – Defense of Qualified Privilege – Elements. *Accord, Conwell v. Spur Oil Co.*, 240 S.C. 170, 179, 125 S.E.2d 270, 275-75 (1962); *Fitchette v. Sumter Hardwood Co.*, 145 S.C. 53, _____, 142 S.E. 828, 833 (1928). The elements of a qualifiedly privileged communication are:

- 1) good faith;
- 2) an interest to be upheld;
- 3) a statement limited in its scope to this purpose;
- 4) a proper occasion; and
- 5) publication in a proper manner and to proper parties only.

Anderson's S.C. Requests to Charge, § 14-17. Further, "communications between servants, business associates, officers, or agents of the same corporation enjoy a qualified privilege." *Id.* *Accord, Conwell v. Spur Oil Co.*, 240 S.C. 170, 179-80, 125 S.E.2d 270, 275 (1962). Further, "the privilege embraces cases where the duty is not a legal one, but where it is of a moral or social character of imperfect obligation." *Fitchette v. Sumter Hardwood Co.*, 145 S.C. 53, 142

S.E. 828, 833-34 (1928). *Accord, Conwell v. Spur Oil Co.*, 240 S.C. 170, 179, 125 S.E.2d 270, 275 (1962).

Furthermore, since Plaintiff cannot recover from Defendants for her own publication, Plaintiff must prove, in response to Defendants' motion, that Defendants made a non-privileged publication before the Plaintiff herself publicly disclosed and published the letter by the filing of this action in 2008 and her subsequent interviews with the press.

(4) Allegations regarding sexual misconduct are unproven.

Plaintiff added an allegation to her Amended Complaint not present in the original that Mr. Breed accused her of having an extramarital affair with a Sea Pines security officer. Breed has testified that he has never made any statement regarding an affair between the officer and Plaintiff. In fact, Breed denies having any knowledge of, or making any statement regarding, Plaintiff's sexual activity in any context. (Affidavit of George Breed ¶ 13-18). Plaintiff admitted in her deposition she has no knowledge of or proof of Breed making any such statement. (Coffey Depo. pp. 110-111). No witness has testified that he or she heard Breed make that statement. Therefore, summary judgment should be granted to Defendants on this issue

III. Civil Conspiracy.

Under South Carolina common law, a claim for civil conspiracy requires proof of three elements: (1) a combination of two or more persons; (2) for the purpose of injuring the plaintiff; (3) which causes the plaintiff special damages. *Lawson v. S.C. Dep't of Corrections*, 532 S.E. 2d 259, 261. Plaintiff's civil conspiracy claim fails for three reasons: (a) Plaintiff cannot prove that the Defendants conspired with one another for the purpose of injuring the Plaintiff, (b) the allegations of the claim merely restate the earlier allegations of the Amended Complaint without

adding allegations relating to the conspiracy; and (c) a public official in South Carolina has no claim against citizens who criticize her performance in office.

A. Plaintiff Cannot Prove a Conspiracy for the Purpose of Injuring Her.

Plaintiff's civil conspiracy claim fails as a matter of law because there is no evidence that Defendants conspired with one another for the purpose of injuring Plaintiff. Under South Carolina law, a corporation cannot conspire with itself. *McLain v. Pactiv Corp.* 602 S.E. 2d 87, 90 (Ct. App. 2004). Plaintiff has not presented any evidence that separate entities or individuals conspired with one another to do anything, much less to injure her.

Even if Plaintiff could establish a combination of two or more persons, the lack of evidence with regard to the second element is fatal to her civil conspiracy claim. There is no evidence in the record that anyone associated with Defendants even knew Plaintiff personally, much less conspired with others for the purpose of injuring her. Plaintiff herself testified that she did not know George Breed or Cary Kelley, and they had never met prior to initiating this lawsuit. (Coffey Depo. p. 76).

The Supreme Court has directed that the essential consideration for a civil conspiracy claim is whether the "primary purpose or object of the combination is to injure the plaintiff." *Pye, supra*. Here, there is no evidence in the record that Breed or any representative of Defendants even knew Plaintiff. Because Plaintiff has failed to show that Defendants conspired with one another with the specific intent to cause injury to her, she cannot meet the second element and her claim must be dismissed as a matter of law.

B. Plaintiff Cannot Prove Special Damages.

Even if Plaintiff could prove that Defendants conspired with each other with the intent to injure her (despite not knowing her), Plaintiff's civil conspiracy claim also fails because she has

not proved special damages. Plaintiff must prove that she suffered special damages as a result of the conspiracy itself, not merely the same damages she alleges to have suffered in association with her other claims. *Vaught v. Waites*, 300 S.C. 201, 208-209, 387 S.E.2d 91, 95 (Ct. App. 1989) (dismissing the civil conspiracy claim because plaintiff failed to allege and prove damages that occurred as a result of the alleged conspiracy itself, in addition to any damages alleged as a result of any other claims). "Because the quiddity of a civil conspiracy claim is the damage resulting to the plaintiff, the damages alleged must go beyond the damages alleged in other causes of action." *Pye*, 633 S.E.2d at 511.

To prove special damages, Plaintiff must show that the acts in furtherance of the conspiracy were separate and independent from other wrongful acts alleged in the complaint. See *Todd v. S.C. Farm Bureau Mut. Ins. Co.*, 276 S.C. 284, 293, 278 S.E.2d 607, 611 (1981). Special damages must be properly pled, or the claim for civil conspiracy will be dismissed. *Hackworth v. Greywood at Hammett, LLC*, 385 S.C. 110, 115-16, 682 S.E.2d 871, 875 (Ct. App. 2009); see also Rule 9(g), SCRCP (requiring special damages to be specifically stated in the pleadings).

Plaintiff has failed to prove damages arising from Defendants' alleged civil conspiracy that are different from the damages that she seeks in her other causes of action. Civil conspiracy allegations cannot be "simply an embellishment" of the underlying claims. *Vaught*, 300 S.C. at 208, 387 S.E.2d at 95. Plaintiff has attempted to surmount this problem by alleging that the conspiracy "was in the nature of an interference with Plaintiff's contract." (Plaintiff's Answer to Interrogatory # 17). Even if this were a proper basis for this cause of action, Plaintiff has failed to produce any evidence of interference with her contract with the Town. In fact, according to the Assistant Town Manager, the evidence is that her contract was renewed for a two year term

in February 2001 with a \$1,400 salary increase that was commensurate with the salary increases given to other Town employees during this difficult economic period. (Gregory Deloach Depo. pp. 35-36). Accordingly, Plaintiff's claim for civil conspiracy must fail.

C. Plaintiff's Claim is Barred Because She Is a Public Official.

Perhaps most importantly, in *Angus v. Burroughs & Chapin Co.*, 368 S.C.167, 628 S.E.2d 261 (2006), the Supreme Court of South Carolina held that a public official has no claim for civil conspiracy against those who complained about her performance of her public position. In *Angus*, the Court of Appeals held that the former county administrator could maintain a conspiracy claim against the defendants who were not her employer. The Supreme Court reversed, stating:

In our democratic society, a public official is answerable to the public; members of the public are not third-party interlopers. Because of Angus's status as a public official, we conclude her action for civil conspiracy cannot be maintained against any of these defendants.

628 S.E. 2d at 262.

The clarity of the Supreme Court's holding has not been lost on the local federal court. *Reed v. Aiken Co.*, 2010 WL 2985805 (D.S.C. 2010) ("Under South Carolina law, a public official who is employed at-will cannot maintain a civil conspiracy claim against members of the public," citing the Supreme Court's opinion in *Angus, Id.*, 628 S.E.2d at 262⁴). As discussed in detail above, Plaintiff is a public official based on her status as the sole full-time municipal judge for the Town of Hilton Head. Accordingly, her civil conspiracy claim against the Defendants fails as a matter of law.

⁴ Interestingly, in contrast to Plaintiff's situation where she remains employed as the municipal judge for the Town of Hilton Head Island, Angus was dismissed from her position, but still had no claim for damages against her critics.

IV. Negligence.

To prove negligence, Plaintiff must demonstrate: (1) Defendants owed her a duty of care; (2) Defendants breached that duty by a negligent act or omission; and (3) she suffered damage as a proximate result of that breach. *Bloom v. Ravoir*, 339 S.C. 417, 422, 529 S.E.2d 710, 712 (2000). Since Plaintiff has failed to present evidence of any legal duty Defendants owed Plaintiff, her negligence claim fails as a matter of law.

In analyzing a negligence claim, the first question in the analysis is whether the law recognizes a particular duty. *Moore v. Weinberg*, 373 S.C. 209, 221, 644 S.E.2d 740, 746 (Ct. App. 2007). "If there is no duty, the defendant is entitled to a judgment as a matter of law." *Id.* Existence of duty is, at least in first instance, a question of law for the court to decide. *Ellis v. Niles*, 324 SC 223, 479 S.E.2d 47 (1996). An affirmative legal duty to act exists only if created by statute, contract, relationship, status, property interest, or some other special circumstance. *Carson v. Adgar*, 326 S.C. 212, 217, 486 S.E.2d 3, 5 (1997). "Foreseeability of injury, in and of itself, does not give rise to a duty." *Charleston Dry Cleaners & Laundry, Inc. v. Zurich Am. Ins. Co.*, 355 S.C. 614, 618, 586 S.E.2d 586, 588 (2003) (emphasis in original). Absent an affirmative legal duty arising out of contract or law, Plaintiff's negligence claim against Defendants fails.

At no time in this lawsuit has Plaintiff or any other witness identified any duty Defendants allegedly owe her. Plaintiff's allegations of wrongdoing in the Amended Complaint are limited to Defendants' purported publication of the contents of Mr. Breed's letter to the Commission and the entirely unsubstantiated allegation that Mr. Breed accused Plaintiff of participating in an extramarital affair. Plaintiff has failed to plead or prove any facts whatsoever about the assumed duty she was owed or how this assumed duty was breached. Unless Plaintiff

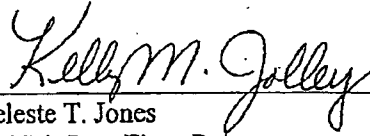
can prove an affirmative legal duty that Defendants breached in response to this motion, Defendants must be granted summary judgment on Plaintiff's negligence claim. Moreover, if the underlying claims are dismissed, the Defendants certainly cannot be held liable under a negligence theory.

CONCLUSION

For the reasons set forth herein, Defendants respectfully request that the Court grant Defendants' motion for summary judgment pursuant to SCRCP 56.

Respectfully submitted,

McNAIR LAW FIRM, P.A.



Celeste T. Jones
McNair Law Firm, P.A.
Post Office Box 11390
Columbia, South Carolina 29211
803.799.9800
803.753.3278 (fax)
cjones@mcnair.net

Kelly M. Jolley
McNair Law Firm, P.A.
Post Office Drawer 2
Hilton Head, South Carolina 29938
843.785.2171
843.686.5991
kjolley@mcnair.net

Andrew S. Halio
Halio & Halio
P.O. Box 747
Charleston, South Carolina 29402-0747
ashalio@bellsouth.net

Jay Bender
Baker, Ravenel, & Bender, LLP
Post Office Box 8057
Columbia, South Carolina 29202

jbender@brblegal.com

Attorneys for the Defendants
Community Services Associates, Inc.,
Association of Sea Pines Plantation
Property Owners, Inc. and George F. Breed, Jr.

April 19, 2012
Columbia, South Carolina

EXHIBIT 1

CSA ADMINISTRATIVE OFFICES
 OFFICE (843-) 671-1343
 FAX (843) 671-4027
 www.csascapitex.com

June 6, 2008

Commission on Judicial Conduct
 1055 Sumter Street
 Room 111
 Columbia, SC 29201

PLAINTIFF'S
 EXHIBIT

Re: Judge Maureen T. Coffey
 Town of Hilton Head Island-Municipal Court

4
 BREED

To the members of the Judicial Conduct Commission:

This is a letter of complaint regarding previous and ongoing conduct of Judge Maureen T. Coffey, Town of Hilton Head Island-Municipal Court. There is a pattern of reactive and overt actions that have/are undermining the criminal justice process. For the reasons that will be outlined below, it is apparent that Judge Coffey has engaged in conduct prejudicial to the effective and expeditious administration of the business of the courts & criminal justice procedure. This conduct was/is pervasive and invasive in nature, and directly results in Judge Coffey's inability to maintain the impartiality so necessary to the successful balance of our legal system.

Presently I have the responsibility of serving as the Director of Security & Community Affairs for Sea Pines, Hilton Head Island. In total, I have more than 30 years in a variety of capacities that include Law Enforcement & U.S. Government service in the Greater Washington, DC area. My present position oversees a staff of approximately 50 officers and support staff whose primary concern is the public safety, security and law enforcement for our community of 25,000 to 75,000 residents and visitors. This responsibility includes not only the public at large but extends to the certified officers charged with this enforcement.

1)

During the last several months of 2004 our community was the victim of a rash of burglaries, thefts and residential break-ins. After an exhaustive investigation by the Beaufort County Sheriff's Office, the primary suspect was identified as OTIS COFFEY (sibling of Judge Coffey). Prior to and since, this suspect had/had more than a passing familiarity with many law enforcement and parole & probation departments in several jurisdictions. During the course of these burglaries my department began a process of saturation patrols in the areas that the pattern dictated were of greatest exposure. On 12-10-04 at approx. 6 AM Otis Coffey's vehicle was reported to have backed into the driveway of a person unknown to him well off the main roadway and had exited his vehicle. Our officers & the BCSO responded. Otis Coffey eventually appeared in another vehicle in the company of his father (Michael Coffey-deceased). At that time Otis Coffey was lawfully arrested for trespassing. On the scene, Mr. Michael Coffey (father of Judge & Otis Coffey) attempted to insert himself into the arrest process and then proceeded to call Judge Coffey via cell phone and presented the phone to the on scene supervisor.

COMMUNITY SERVICES ASSOCIATES INC 175 GREENWICH DRIVE HILTON HEAD ISLAND, SC 29929

Sometime after this arrest Capt Toby McSwain-BCSO had a meeting with Judge M. Coffey and advised her that Otis was the prime suspect in a rash burglaries occurring over the previous several months. Judge Coffey stated to Capt. McSwain that she was "going to get him out of town", or words to that effect. From the date of that arrest and after that statement, our burglaries ceased.

From the date of December 10, 2004 the burglaries plaguing the community of Sea Pines ceased.

2)

Several months ago (Feb to May 2008) our community again was the victim of a rash of burglary cases. The route of travel, target homes, times, dates and M.O. were very similar (almost exact) to the cases of approx 3 1/2 years ago where Otis Coffey was the primary suspect. It was at about that time that it was learned that Otis Coffey had returned to this community at approximately the same time frame as the first burglary. I instructed the late shift patrols to focus in the areas of pronounced exposure and that fit the on going and familiar pattern. On May 20 around midnight one of our officers observed the suspect dressed in black traveling on a bike (our community does not offer any type of bike path or roadway lighting, nor is it permitted). The suspect was confronted & identified by our officer, at which time he rode off before he could be detained. A radio call was made to another officer who pulled his vehicle to within eyesight of the suspects home. Approximately 15 min. later that officer observed a suspect matching the same description run into the home and the lights were cut off. Our officers along with BCSO responded to the home where the owner answered the door (Ann Coffey-mother of Judge Coffey & Otis). She stated that she was home alone, no one was there and that Sea Pines Security was always trying to pin something on her son.

We continued our 24-hour patrol saturation process in the general area of the break-ins. On May 23 at approximately 8:30 PM one of my patrol officers (retired Indiana Police Officer-new hire) observed a person unknown to him (Judge Maurzen Coffey) walking outside on the street of the Coffey residence and offered a pleasantry. Judge Coffey replied, "We needed to quit harassing him". The officer stated that he did not know what she was referring to. She replied, "She was the Judge for the Town of Hilton Head Island". The officer said that he had never met her nor was he aware of who she was and that he was new to the area. Judge Coffey stated, "that she would go see Chief Breed but did not have the time. Further that she does not know if he is guilty or not and that she was going to have him moved out".

From the date of May 20, 2008 the community of Sea Pines has not had one burglary or report of break-in.

3) On May 21, 2008 one of our patrol officers found a vehicle parked in the roadway in front of 4 Gadwall Rd. (Coffey residence). The vehicle was found to be registered to a Michael Coffey (deceased). Several attempts were made via phone and in person at 4 Gadwall to have the vehicle moved from the road

with no response. After approx. 1 hour a tow vehicle responded at which time both Otis Coffey & Ann Coffey emerged from the home. The officer issued Mrs. Coffey a parking citation. During this process Mrs. Coffey asked the officer if he was new to the department. The officer stated that he had been employed here for many years. Mrs. Coffey then stated "You do know who the judge is don't you...my daughter".

CANON 1
A JUDGE SHALL UPHOLD THE INTEGRITY
AND INDEPENDENCE OF THE JUDICIARY

CANON 2
A JUDGE SHALL AVOID IMPROPRIETY AND THE APPEARANCE OF IMPROPRIETY IN
ALL OF THE JUDGE'S ACTIVITIES

CANON 3
A JUDGE SHALL PERFORM THE DUTIES OF JUDICIAL OFFICE IMPARTIALLY AND
DILIGENTLY

This complaint is the result of much serious, sober and deliberate examination and contemplation. In my many years of public service, this is the first time that I have generated correspondence such as this. It is also however, the first time that I have been faced with such concerns. I am most profoundly aware of the possible effect of this correspondence in as much as Judge Coffey is the only Municipal Court Judge for Hilton Head Island and as such is the only judicial conduit available to my officers for their numerous traffic and criminal cases. Nonetheless, my alarm for this community and the responsibility for its safety & security is much greater.

I believe that Judge Coffey's inability to remove and insulate herself from personal relationships and overt involvement both past and present have caused her to insert herself in these scenarios to the detriment of the community at large. Further, it has manifested itself and caused her to engage in conduct prejudicial to the effective and expeditious administration of the business of the courts and criminal justice process. In summary, as a result of Judge Coffey's actions, she has given the distinct and transparent appearance of bias and partiality, and is not able to be a neutral and detached arbiter of the many cases that have been and will be pending before her.

If I can provide any additional information that you require please do not hesitate to contact me.

Sincerely,

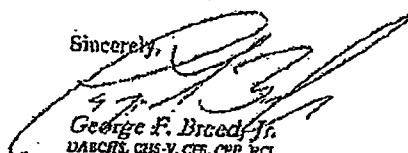

George F. Broady, Jr.
DAECTS, CHS-V, CHS, CFP, PCA
Director of Security & Community Affairs
Sea Pines-Hilton Head Island, SC
(843) 671-7139 / 671-3000

EXHIBIT 2

Judge files lawsuit against Sea Pines POA

By DANIEL BROWNSTEIN dbrownstein@islandpacket.com *Permalink | E-mail friendly*
843-706-8125
Published Monday, December 8, 2008 in The Island Packet | 528 Words | [news/local](#)

Setting the Record Straight

The Island Packet and The Beaufort Gazette correct all errors of fact. If you see an error in this article, please call the city desk at 843-706-8139. Corrections and clarifications will appear in this space.

Reprint & Reuse Policy

Web sites may link directly to search results and individual articles without permission.

Up to one paragraph of text may be included from an article as long as full attribution is given and the attribution links back to the full article.

To republish more than one paragraph of text, please contact us for permission.

Hilton Head Island's municipal court judge has sued the Sea Pines property owners association, saying the plantation's private security force harassed and publicly defamed both she and her family since trying to solve a series of burglaries in 2004.

In the lawsuit, filed Nov. 20 in the Beaufort Court of Common Pleas, Judge Maureen Coffey argues Sea Pines Security had no probable cause to consider her adopted brother, Otis Coffey, a suspect in the burglaries. She claims the security force "began a pattern of harassing conduct designed to jail Otis Coffey and have (Maureen Coffey) removed as the municipal judge as well as disbarred from the South Carolina Bar," according to the suit. The Sea Pines property owners association, Community Services Associates, lodged a judicial complaint against Judge Coffey in June. That complaint of judicial wrongdoing was investigated by the S.C. Supreme Court's Office of Disciplinary Counsel, which dismissed it after finding it was without merit, according to Coffey's lawsuit. Lesley M. Coggiale, the state's disciplinary counsel, said she couldn't comment on the complaint, citing confidentiality rules.

In order to avoid potential conflicts, the Town of Hilton Head Island began using Beaufort magistrate Ned Tupper in August to hear cases brought to the court by Sea Pines Security, town officials said.

When reached by phone in her office Friday afternoon, Judge Coffey declined to comment on the specifics of the lawsuit, but she did say she was confident the court would arrive at a "just" decision.

"While our judicial system isn't perfect, it's a great one," she said. "You have to have integrity on both sides to make it work."

Cary Kelley, executive vice-president of CSA, disagreed with Coffey's descriptions of what happened.

"We feel strongly that the lawsuit is without merit, and our attorneys will address it next week," he said.

In addition to the alleged harassment and intimidation, Judge Coffey claims Sea Pines security director George Breed falsified a police report written by one of his officers.

In the initial report, the officer allegedly wrote that he was unable to identify a "suspicious" black man riding a bike near the Coffey family's Sea Pines home last February. Coffey claims Breed changed the report to read that the officer identified her brother as the suspect who rode off from the security guard.

A Sea Pines security officer allegedly said he saw Otis Coffey run into the family's home about 15 minutes later. Beaufort County sheriff's deputies responded, but they did not find Otis Coffey at the house, according to the lawsuit.

Security officers were instructed to conduct surveillance on the home, the suit alleges.

Beaufort County court records show Otis Coffey pled guilty to two counts of possession of narcotics in 1991. A string of larceny and burglary charges the following year never were prosecuted, records show.

He has not faced any significant criminal charges since then.

The Coffey family has lived in Sea Pines since 1980. Maureen Coffey's parents had three children of their own, and adopted two black siblings. Otis Coffey and his younger brother, Christopher, were among the very few black people living in Sea Pines, according to the lawsuit.

Maureen Coffey became an associate municipal court judge for the Town of Hilton Head Island in December 2000. She was promoted to full-time judge in February 2005.

Statements made by Sea Pines exposed Maureen Coffey to "public hatred, contempt and ridicule" and have been a source of "great embarrassment and humiliation," the lawsuit says.

She is seeking an unspecified amount of money.

Coffey's lawsuit has created a stir within some circles of Sea Pines residents, according to e-mail exchanges obtained by The Island Packet.

In one of those e-mail blasts sent between residents, home-owner Daniel Westerbeck, wrote "The clear, unambiguous facts alleged (in the lawsuit) ... indicate CSA is out of control and wasting our money on matters unrelated to the maintenance of the Plantation and that its managers may be pursuing personal agendas. "Regardless of merit, it will cost a lot of money to defend because you can bet the judge is not going to go away," Westerbeck continued.

He called for his neighbors to press Kefey and board members for answers.

CSA currently is involved in a second significant lawsuit, one that involves the property owners association being sued by some of its own members over perceived violations of the neighborhoods covenants and other agreements.

The Sea Pines Country Club has sued CSA over the \$5 gate pass fee now being charged to guests of special events at the country club. The country club claims covenants and the 1989 transfer of the club's ownership from Sea Pines to its members prohibit charging the fee.

In its legal arguments, CSA claims only people attending events sponsored by a Sea Pines resident should be exempt from the fee and that security officers mistakenly have not been following that rule.

Patricia Jenkins, president of CSA's Board of Directors, urged homeowners not to rush to judgment and issued a

stem warning to those who may want to speak out.

"Correspondence, e-mail blasts and other statements, without the knowledge of all of the facts and circumstances that reach conclusions and make assertions are harmful to the reputation of our community and the morale of the staff and employees of CSA," she wrote in a Nov. 24 letter to homeowners. "Personal and public attacks should have no place in this community and will be responded to appropriately."

Read more: <http://www.lowcountrynewspapers.net/archive/node/1711fb221FA3Fb17G>

**DEFENDANT'S
EXHIBIT**

1/9

12/26/08

Judge Sues Hilton Head Security Force www.privateofficer.com & PRIVATE OFFICER NEWS NETWO... Page 3 of 4

• Meta

- Register
- Log in
- Entries RSS
- Comments RSS
- WordPress.com

...

• Robbers beat security officer with hammer www.privateofficer.com
Bounty hunters arrested for robbery www.privateofficer.com

Judge sues Hilton Head security force www.privateofficer.com

Posted by privateofficernews on December 26, 2008

**Judge sues Hilton Head security force
www.privateofficer.com**



HILTON HEAD ISLAND SC Dec 26 2008

beaufortgazette.com — The Sea Pines property owners association in charge of the plantation's private security team forcefully responded to Hilton Head Island municipal court Judge Maureen Coffey's lawsuit this week, painting her as unable to be impartial after her brother was suspected in two rushes of home break-ins.

Coffey filed the suit against Community Services Associates and Sea Pines security chief George Breed on Nov. 20, alleging Breed began a pattern of harassing conduct designed to jail her adopted brother Odis Coffey and have her removed as town judge.

CSA lodged a formal complaint against Judge Coffey in June. It was investigated by the S.C. Supreme Court's Office of Disciplinary Counsel, which dismissed it.

In its response, CSA argued Coffey's lawsuit is without merit because a section of Rule 501 of the South Carolina Appellate Court Rules prohibits judges from filing civil lawsuits against people for lodging complaints against them. In August, the town began using Beaufort municipal court Judge Ned Tupper to hear cases involving Sea Pines until the legal dispute between Coffey and CSA is settled.

JOIN THE NATIONAL ASSOCIATION OF PRIVATE OFFICERS

www.privateofficer.com

Get news alerts, officer down, weather emergency news in your mailbox

Sign up: admin@privateofficer.com

Join us at www.myspace.com/privateofficernews

Come be part of our social network! www.privateofficer.com

Share this: [Digg](#) [Reddit](#)

<http://privateofficernews.wordpress.com/2008/12/26/judge-sues-hilton-head-security-force-wwprivateoff...> 12/26/2011

Coffey
000373

DEFENDANT'S
EXHIBIT

28

WHATEVER HAPPENED TO?

Catching up with those who shaped and nurtured the Lowcountry.

Island judge vows to continue Sea Pines case

Judge Maureen Coffey sued in 2008 alleging Sea Pines security had harassed and detained her.

By TOM HANCOCK
thancock@islandpacket.com
843.706.3169

Maureen Coffey, 54, has been a judge for 20 years and has earned a reputation for her fair and impartial decisions. She is a Hilton Head Island Municipal Court judge.

And it appears her dispute with Sea Pines property owners association and the plantation's private security force, which began in 2008, might go on for a while longer.

In November 2008, Coffey sued the property owners association, Com-

munity Services Association, saying the plantation's security force and its chief had harassed and detained her and her family since trying to solve a series of home issues in 2004 and 2008.

Her case was dismissed Jan. 20 in the Circuit Court of Common Pleas in Beaufort County. Coffey said she has since retained new legal counsel. She has three months to respond to the case.

Please see JUDGE on 1A

Volume 40 / Founded 1970



086653 70001

INSIDE TODAY'S ISLAND PACKET

Lin Xiaobo, a leading Chinese dissident re the government for his activism, wins the in recognition of his struggle for human r

AL

More to you



Volunteer
Debra K
voting E

islandpacket.com • Saturday, October 9, 2010 • 11A

came to vote in the Bluffton, S.C., election. Many voters, including those in the Broad Island Town and has on. The urgency of the campaign of the Rep. Joe Ricketts, who is not a candidate for the Island, S.C., including who can show character, and the Rep. Ricketts who said he

TO VOTE ABSENTEE

Voters can download forms at www.sos.sc.gov and mail applications to the Beaufort County Board of Voter Registrations and Elections, 15 John Calhoun Blvd., Beaufort, S.C. 29901, or email them to bovr@co.beaufort.sc.us. The office is located at the new office at 15 John Calhoun Blvd. in Bluffton are open from 9 a.m. to 4 p.m. Monday through Friday. Serious military members and those unable to vote on Election Day are eligible for the fastest of processing. Call (843) 724-1111 or www.sos.sc.gov.

atic Party may the governor- "no." Cliburn's about Hal- Hills and trans- come, business drawing fines representative- should dis- to show they- jances, but only- 500 in consoli- sified from an- ing government- have been rated- yment, with the- enter as a fund- the joy that was- 2010. Nick Haley has, Cliburn said, is generating- people become- become disen- gaged, will have- and organizo- complicated- to win the gov- Cliburn say it- in win. Following Haley- stand some state- S. Sheheen cam- paigning President

(Columbia) State newspaper his nephew could win the three-man Democratic primary outright, avoiding an anticipated runoff. The elder Sheheen, who does not speak in his nephew's campaign, said Vincent Sheheen "represents" him for the moment.

But Sheheen won the nomination easily, taking 99 percent of the vote. As for the general election campaign, Bob Sheheen said Haley is doing better than he was doing 60 days ago and it's closer than it's ever been. "You can't overestimate the value of momentum."

Sawyer disputes Sheheen's momentum. "Democrats are not putting their eggs in a very good basket. (In Sheheen)," Sawyer said. "Despite negative tactics by Vincent Sheheen, he is not moving the needle in the race against Haley."

Bruce Ransom, a political science professor at Clemson University, said the ingredients for a Sheheen upset are at hand. But he added, the Democrat still has to make something of them.

"Sheheen can't win unless significant numbers of Republicans are dissatisfied and want a change," Ransom said. "I wouldn't close the door on Sheheen."

Ransom said encouraging "pebbles" abound for Sheheen, such as the recent startup of Conservatives for Truth in Politics, fostered by former

BRIEFLY

Motorcyclist dies in collision in Port Royal

An 18-year-old motorcyclist was killed Friday night in a collision with a small truck in Port Royal. The man, whose name was not released by the Beaufort County Coroner's Office, was riding on Port Royal Island Gateway about 7:30 p.m. when he collided with a Toyota

pickup near Marina Boulevard at the base of the Russell Bell Bridge, said Dan Byrne, spokesman for the Beaufort Fire District.

The motorcyclist was pronounced dead at the scene, Byrne said.

The female driver of the truck was uninjured, he said.

The crash closed the two east-bound lanes of Harris Island Gateway for about 45 minutes, Byrne said.

JUDGE

Continued from 1A

been taxing him, but he has been over my head," Coffey said Wednesday.

The dispute came from an investigation of the 2004 election in Beaufort County, S.C., in which Coffey's brother, Ollie, was elected sheriff.

The Beaufort County Sheriff's Office had accused the judge of "obstruction of justice" in 2004, according to Coffey's lawsuit.

Sheriff's Capt. John McLean informed Judge Coffey of the charges, but she said that she would have the charges dropped. The charges were dropped after Coffey's brother, Ollie, was elected sheriff.

But the plantation faced a similar set of break-ins in February 2008, in which the route of travel, target homes, times, dates and method of operation used by the burglars or burglars closely tracked those used in the 2004 robbery for which Ollie Coffey was named the primary suspect, according to the response.

CSA allegedly learned Ollie Coffey had returned to live in Sea Pines in February 2008, which coincided with the increase in reported burglaries. No charges in these burglaries have been filed.

The Coffey family has lived in Sea Pines since 1980.

County court records show Ollie Coffey pleaded guilty in 1984, 1990 and 1991 to four counts of bur-

glary in June 2008, but it was dismissed by the S.C. Supreme Court's Office of Disciplinary Counsel, which deemed it was without merit.

Likewise, CSA argued Coffey's lawsuit was without merit because S.C. Appellate Court Rules prohibit judges from filing civil lawsuits against people for lodging complaints against them.

Coffey said she believes she still has a right under the law to sue for defamation and damages she said she has incurred.

She claims Sea Pines security chief George Bredd falsified police reports, told the Sheriff's Office that Ollie Coffey was responsible for crimes in Sea Pines and falsely reported she was covering up and interfering with the investigation of her brother.

Now Coffey also takes issue with her own attorney. She said Holloway focused too much on CSA's complaint against her when he should have concentrated on alleged false statements made by Bredd.

"It's more about defamation," she said. "There was just too much emphasis on the judicial complaint and the issues my brother has with Sea Pines, and not on the false allegations made about me that are grossly wrongful, malicious and without basis."

Attempts to reach Holloway for comment were unsuccessful.

Coffey said Bredd and CSA wrote to and spoke with a town of Hilton Head Island official to discredit her.

"(Coffey's) health has been affected and the plaintiff has suffered and continues to suffer from acute nervousness and bodily pain," according to the suit.

Attorneys for CSA and Bredd have said in court documents "the

0037

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

MAUREEN T. COFFEY,

Plaintiff,

v.

COMMUNITY SERVICES ASSOCIATES,
INC., GEORGE F. BREED, JR., SEA
PINES RESORT, LLC, and
ASSOCIATION OF SEA PINES
PLANTATION PROPERTY OWNERS,
INC. and THE ADVISORY BOARD

Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO. 2011-CP-07-00013

CERTIFICATE OF SERVICE

2012 APR 20 PM 1:10
ROSEMEAU
CLERK OF COURT
BEAUFORT COUNTY, S.C.

I, Pamela K. Jolley, an employee of McNair Law Firm, P.A., do hereby certify that I have served a copy of MEMORANDUM IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT ON BEHALF OF COMMUNITY SERVICES ASSOCIATES, INC., GEORGE F. BREED, Jr., ASSOCIATION OF SEA PINES PLANTATION PROPERTY OWNERS, INC. and THE ADVISORY BOARD upon the following counsel of record by depositing the same in the U.S. Mail, postage prepaid, addressed as shown below, this 19th day of April 2012.

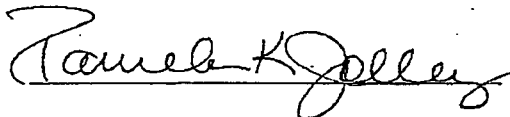
Robert V. Mathison, Jr., Esquire
Mathison & Mathison
P.O. Box 5271
Hilton Head Island, SC 29928

Andrew S. Halio, Esquire
Halio & Halio
P.O. Box 747
Charleston, SC 29402

Russell P. Patterson, Esquire
P.O. Box 8047
Hilton Head Island, SC 29938

Jay Bender, Esquire
Baker, Ravenel and Bender, LLP
Post Office Box 8057
Columbia, SC 29202

Columbia, South Carolina



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	Case No. 2011-CP-07-00013
COUNTY OF BEAUFORT	)	
MAUREEN T. COFFEY,	)	
Plaintiff	)	
v.	)	DEFENDANTS'
	)	MOTION IN LIMINE
COMMUNITY SERVICES,	)	
ASSOCIATES, INC., <i>et al.</i> ,	)	
Defendants	)	
	)	

Prior to the commencement of the trial in this action, Defendants Community Services Associates, Inc. ("CSA"), George F. Breed, Jr., and Association of Sea Pines Plantation Property Owners, Inc. and the Advisory Board ("ASPPPO") (hereinafter jointly the "Defendants"), by and through their undersigned counsel, will request that the Court direct that the Plaintiff cannot, during the course of the trial, attempt to submit any evidence with respect to the following topics.

A. **Objection to admission based on Rules 402 and 403, SCRE.** The following evidence is either irrelevant or, if relevant, is prejudicial or confusing:

1. Any and all testimony regarding a defamation lawsuit brought by George Breed against a third party, unrelated to this case that resulted in a settlement in which Breed received a sum of money..
2. Any and all testimony regarding the SLED memorandum regarding the authority of private security companies, under §40-18-110 and Regulation 73-418.
3. Any and all testimony challenging of CSA's "investigation" into the peeping tom and burglary incidents and the "stake out" of the burglary area under § 40-18-110 and Regulation 73-418.

4. Any and all testimony regarding George Breed's quit claim deed of his (1/2) house in his home to his wife on July 3, 2008 or Breed's personal medical history..
5. Any and all testimony or other evidence regarding the CSA's Board of Director's decision to indemnify George Breed's legal fees and costs related to this action in 2009 or to the CSA insurance policies or status.
6. Any and all testimony and other evidence regarding Defendants' actions after the Plaintiff self-published the contents of the letter George Breed sent to the Board Judicial Conduct, which self-publication occurred on November 20, 2008.
7. Any and all testimony about the legality of Greg Deloach's statement to George Breed that Maureen Coffey worked for Town Council rather than the Town of Hilton Head and that any complaints should go to Town Council or to the Commission on Judicial Conduct.
8. Any and all testimony or reference to the ticketing or towing of the Plaintiff's mother's car in May 2008, as Plaintiff's mother was found guilty of a parking violation, and the ticketing and towing of the vehicle is not related to any issue in this lawsuit, particularly in light of the disposition of the charge.

B. Objection to admission based on Rule 404(a) and 404(b), SCRE. The following evidence which seeks to either display the character of the defendants in a negative light or to accuse the defendants of wrong doing not at issue in this suit is not admissible for the purpose of proving any actions in conformity with the testimony in this case:

1. Any and all testimony that CSA officials would dismiss tickets if the accused gave money to the Sea Pine Forest Preserve Foundation.

2. Any and all testimony alleging that George Breed held anyone in his office until restitution or a bill was paid.
3. Any and all testimony that the Defendants acted as a fee collector for commercial entities located in Sea Pines.
4. Any and all testimony regarding the disposition of revenue by the Town of Hilton Head or Beaufort County.
5. Any and all testimony and other evidence regarding George Breed suggesting alleged victims of crimes take polygraph tests.
6. Any and all testimony regarding the disappearance of the Calverts.
7. Any and all testimony alleging the Defendants wanted "undesireables" out of Sea Pines.
8. Any and all testimony that the Defendants sought restitution agreements with individuals owing money to businesses located in Sea Pines.
9. Any and all testimony regarding purported letters and/or phone calls between George Breed and Judge Herring.
10. Any and all testimony by Plaintiff regarding any alleged bad acts on the part of any of the Defendant's witnesses or the Defendants that are not related directly to the Plaintiff.

C. Objection to admission based on Rule 802, SCRE.

1. Testimony that John Jolin stated that employees or former employees of CSA told Mr. Jolin they heard a rumor from others regarding a possible sexual relationship between Plaintiff and Mr. Jolin. Such statements by John Jolin should be excluded as inadmissible hearsay.

D. Objection to admission based on Rule 37, SCRPC. Defendants object to any and all testimony concerning any damages other than as set forth in Plaintiff's Answers to Interrogatories, to wit Plaintiff's Answers To First Set of Interrogatories of Defendants Community Service Associates, Inc., and Association of Sea Pines Plantation Property Owners, Inc. Interrogatory Number 5, and any damages testimony evidence outside the scope of what has been disclosed in discovery, either written discovery and/or deposition testimony including the following:

1. Any and all medical bills, since none have been produced during discovery, and any testimony related to medical or psychological treatment unless testified to by a qualified health care professional.
2. Any testimony that Plaintiff thinks she might have gotten a bigger raise but for Defendants letter. This testimony is speculative. The only testimony in the record from the town officials have confirmed its last raise was consistent with the raise received by all other town employees, and did not reflect dissatisfaction by the Town with Judge Coffey's performance. Neither the letter George Breed wrote to the Commission on Judicial Conduct nor Ms. Coffey's filing of this lawsuit had any impact on Ms. Coffey's employment with the Town of Hilton Head. (Depo. of G. Deloach, pp 35-6; 120-22; 129-31).
3. Any testimony by Plaintiff that Breed's letter of complaint prevented Plaintiff from pursuing a family court judgeship. Plaintiff never applied or run for a family court judgeship. Moreover, such appointments are solely in the hands of the legislature and are not determined by the Commission of Judicial Conduct in any case. *See Segars-Andrews v. Judicial Merit Selection Com'n*, 691 S.E.2d 453 (2010).

4. Any testimony that the Town of Hilton Head will not or may not renew her contract when it is up. Such testimony is speculative and is refuted by the evidence of the record. Testimony in the record is that Town Council has not even considered other applicants for Plaintiff's post during the time that she has been a full-time judge with the Town. There has never been any discussion by Town Council regarding not renewing Plaintiff's contract and Mr. Deloach was unaware of any reason why Plaintiff's contract would not be renewed when her current contract term ends. (Depo. of G. Deloach, pp. 132-34).
5. Any and all testimony that the Town of Hilton Head paid for an additional judge when Plaintiff recused herself from hearing any cases wherein CSA was a party. Any additional Town expenditure is not damage Plaintiff can recover. Additionally, the only evidence in the record is that the fact that the Town of Hilton Head hired an associate judge to handle Sea Pines cases has not adversely affected Ms. Coffey's relationship with the Town. (Depo. of G. Deloach, pp. 72-3, 122-23).

E. Objection to admission based on Rules 13 and 20 of the Rules for Judicial Disciplinary Enforcement, Rule 502, SCACR and Segars-Andrews v. Judicial Merit Selection Commission, 387 S.C. 109, 691 S.E.2d 453 (2010). Defendants object to the admission of any and all testimony and any reference to the filing of George Breed's grievance against Plaintiff with the Commission on Judicial Conduct and any damages related to the filing of the grievance, including Plaintiff's claim for attorneys fees. As Plaintiff admitted in her deposition, the filing of the grievance is privileged. (Depo. Of M. Coffey, pp. 39-42). Moreover, "[i]f a complaint has been dismissed, the allegations made in that complaint shall not be used for any purpose unless the complaint is re-

opened by the Commission.” Rule 20 of the Rules for Judicial Enforcement, Rule 502, SCACR. A subsequent judicial proceeding may not take up an a complaint already reviewed by the Commission given “the preclusive effect of a dismissal by the Commission of Judicial Conduct”. *Segars-Andrews*, 387 SC. 109, 121, FN 3, 691 S.E.2d 453, 460.

Respectfully submitted,

McNAIR LAW FIRM, P.A.

Celeste T. Jones
McNair Law Firm, P.A.
Post Office Box 11390
Columbia, South Carolina 29211
803.799.9800
803.753.3278 (fax)
cjones@mcnair.net

Kelly M. Jolley
McNair Law Firm, P.A.
Post Office Drawer 2
Hilton Head, South Carolina 29938
843.785.2171
843.686.5991 (fax)
kiolley@mcnair.net

Andrew S. Halio, Esquire
Halio & Halio
P.O. Box 747
Charleston, South Carolina 29402-0747
ashalio@bellsouth.net

Community Services Associates, Inc. Association
of Sea Pines Plantation Property Owners, Inc. and
George F. Breed, Jr

May ___, 2012

Hilton Head Island, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
CASE NO. 2011-CP-07-00013

MAUREEN T. COFFEY,

Plaintiff,

v.

COMMUNITY SERVICES ASSOCIATES,
INC., GEORGE F. BREED, JR., SEA
PINES RESORT, LLC, and
ASSOCIATION OF SEA PINES
PLANTATION PROPERTY OWNERS,
INC. and THE ADVISORY BOARD

Defendants.

**DEFENDANTS' MOTION FOR
DIRECTED VERDICT**

Pursuant to Rule 50(a) of the South Carolina Rules of Civil Procedure, Defendants Community Services Associates, Inc. ("CSA"), George F. Breed, Jr., and Association of Sea Pines Plantation Property Owners, Inc. and the Advisory Board ("ASPPPO") (hereinafter jointly the "Defendants"), by and through their undersigned counsel, respectfully move the Court for a directed verdict on the ground that Plaintiff has failed to present sufficient evidence to prove her claims of libel, slander and civil conspiracy.¹ In moving for directed verdict, the Defendants hereby incorporate all legal arguments contained in their Motion for Summary Judgment filed on March 27, 2012 and their Memorandum in Support of Summary Judgment.

I. LEGAL STANDARD

"[W]hen only one reasonable inference can be deduced from the evidence, the question becomes one of law for the court" and a directed verdict is appropriate. *Hanahan v. Simpson*, 326 S.C. 140, 485 S.E.2d 903 (1997). "In ruling on a directed verdict motion, the trial court is

¹ Plaintiff agreed to withdraw her claim for negligence with prejudice at the hearing on Defendants' Motion for Summary Judgment. Defendants only agree to that withdrawal insofar as it is with prejudice. If it is not, Defendants hereby move for directed verdict on Plaintiff's claim for negligence as well.

concerned only with the existence or nonexistence of evidence.” *Long v. Norris & Assocs., Ltd.*, 342 S.C. 561, 568, 538 S.E.2d 5, 9 (Ct. App. 2000). “[T]here must be some evidence arising out of the testimony which elucidates the issues of fact, and which enables the jury to form an intelligent conclusion.” *Crawford v. Town of Winnsboro*, 205 S.C. 72, 30 S.E.2d 841 (1944) (emphasis added). The evidence upon which a case should be sent to the jury must be “real, material, and pertinent and relevant evidence, not speculative and theoretical deductions.” *Johnson v. Metropolitan Life Ins. Co.*, 206 S.C. 415, 34 S.E.2d 757 (1945) (emphasis added). The Court is not authorized to “submit speculative, theoretical and hypothetical views to the jury.” *Hanahan*, 326 S.C. 140, 485 S.E.2d 903. Verdicts may not be permitted to rest on surmise, conjecture, or speculation. *Id.*

III. DISCUSSION

A. ASPPPO

There has been no evidence in this case that any individual acting in an official capacity for or on behalf of ASPPPO, rather than on his own behalf or as a representative of CSA, did any of the allegedly wrongful acts Plaintiff contends are indicative of libel, slander or a civil conspiracy. Accordingly, the Court should render a directed verdict for Defendant ASPPPO on all of Plaintiff’s causes of action.

B. Libel and Slander

1. No Actual Malice

In a libel and slander causes of action, any publication concerning a public official is constitutionally protected unless the plaintiff shows with “convincing clarity” that the defendants made the statement with “actual malice”. *New York Times v. Sullivan*, 376 U.S. 254, 280, 285-

86 (1964); *see, e.g., Miller v. City of West Columbia*, 322 S.C. 224, 471 S.E.2d 683, 686-86 (1996).

The constitutional actual malice standard requires a public official to prove by clear and convincing evidence that the defamatory falsehood was made with the knowledge of its falsity or with reckless disregard for its truth. A “reckless disregard” for the truth, however, requires more than a departure from reasonably prudent conduct. There must be sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication.

There must be evidence the defendant had a high degree of awareness of ... probable falsity.

Elder v. Gaffney Ledger, 341 S.C. 108, 114-15, 533 S.E.2d 899, 902 (S.C.,2000)(emphasis added)(internal citations omitted).

The presence or absence of actual malice is a constitutional issue and “[w]hether evidence is sufficient to support a jury’s finding of constitutional actual malice in a defamation action is a question of law. The trial court must make such a determination before submitting the issue to a jury.” *Id.*, 341 S.C. at 113, 533 S.E.2d 899, 901-02 (internal citations omitted). Unless the evidence presented is of sufficient “caliber or quantity to allow a rational finder of fact to find actual malice by clear and convincing evidence”, there is no genuine issue of fact and the trial judge should not submit the claim to a jury. *McLain v. Arnold*, 275 S.C. 282, 284, 270 S.E.2d 124 (1980) (holding that the trial court did not err in granting defendant summary judgment). *See also, Oswalt v. State-Record Co.*, 250 S.C. 429, ___ S.E.2d 430 (1967) (holding that the defendants’ motion for directed should have been granted); *Faltas v. State Newspaper*,

928 F. Supp. 637 (granting defendants' motion for summary judgment on "limited purpose public figure" plaintiff's cause of action for libel). internal citations omitted).

Although direct or indirect evidence relevant to the defendant's state of mind is admissible to prove actual malice (*St. Amant v. Thomson*, 390 U.S. 727 (1968)), "[t]he actual malice standard is not satisfied merely through a showing of ill will or 'malice' in the ordinary sense of the term." *Harte-Hanks*, 491 U.S. at 666. Although some evidence of motive may bear some relation to the actual malice inquiry, "courts must be careful not to place too much reliance on such factors." *Elder*, 341 S.C. at 115, 533 S.E.2d at 902 (citing *Harte-Hanks*, 491 U.S. at 668). "It is insufficient to show the defendant made an editorial choice or simply failed to investigate or verify information; there must be evidence at least that the defendant purposefully avoided the truth." *Elder*, 341 S.C. at 114, 533 S.E.2d at 902 (internal citation omitted)(emphasis added). Erasure of a tape recording when done as part of routine practice is not evidence of actual malice. *Peeler v. Spartan Radiocasting*, 324 S.C. 261, 478 S.E.2d 282 (1996).

In *Elder*, the plaintiff introduced various circumstantial evidence in an attempt to prove actual malice, including a failure to investigate or verify information the individual defendant Sossamon received via an anonymous caller; a missing telephone recording the plaintiff alleged the defendant newspaper, Sossamon's employer, had erased; Sossamon's prior guilty plea to manufacturing marijuana; and Sossamon's alleged rudeness to the plaintiff's wife. The South Carolina Supreme Court held "[t]his evidence is patently insufficient to demonstrate [defendant] in fact entertained serious doubts as to the truth of the publication." *Id.* at 115, 533 S.E.2d at 902.

2. No Causation

Plaintiff failed to proffer adequate evidence of proximate cause between her alleged injury and the Defendants allegedly defamatory statements. Plaintiff claims damages related to medical bills for headaches, weight gain, and counseling; babysitting charges related to her headaches; lost income due to Plaintiff not receiving the compensation to which she believes she was entitled in her current agreement with the Town of Hilton Head, and lost future income due to her current contract being a two year term agreement rather than the three year term agreement that Plaintiff desired. Plaintiff has not and cannot prove that but for the alleged defamatory publications (as opposed to learning of Breed's complaint to the Commission on Judicial Conduct which is protected by an absolute privilege) that she would not have suffered from any of her alleged damages.

Although Plaintiff claims Breed published the letter to Greg Deloach in an attempt to have Plaintiff fired, there is no testimony or other evidence to support Plaintiff's contention and Plaintiff did not in fact lose her job. To the contrary, Plaintiff received a new contract with the Town of Hilton Head and a raise following the publication of Breed's letter to Greg Deloach with the Town of Hilton Head. Plaintiff's allegations that her contract is of a shorter duration and her compensation less than what it would have been if Breed had not given his letter to Deloach is speculative and counter to the record. Moreover, Plaintiff's contract with the Town is and has always been a term agreement. Automatic renewal was not available under the contract and the contract gave Plaintiff no right to a particular increase in pay. Accordingly, Plaintiff has no legal right to presume that her contract would be renewed at a particular term or pay. *See, e.g., Childs v. City of Columbia*, 87 S.C. 566, 70 S.E. 296 (1911) (distinguished on other grounds by *Sunset Cay, LLC v. City of Folly Beach*, 357 S.C. 414 (2004))(holding perpetual contracts are

not favored in South Carolina and are generally upheld only where the perpetual nature of the agreement is an express term of the contract).

3. No Unprivileged Publication To CSA

Defendant Breed's publication of the letter to Cary Kelley and to the CSA Security Committee was subject to a qualified privilege as was Mr. Kelley's publication to the CSA Board of Directors. Communications between servants, business associates, officers, or agents of the same corporation enjoy a qualified privilege if made in good faith and in the usual course of business. *Conwell v. Spur Oil Co.*, 240 S.C. 170, 179-80, 125 S.E.2d 270, 275 (1962). Plaintiff bears the burden of proving that any privileged publication of the George Breed letter was exceeded or abused. *Bell v. Bank of Abbeville*, 208 S.C. 490, 494, 38 S.E.2d 641 (1946).

4. No Other Defamatory Statements Attributable to Breed or CSA

Plaintiff has failed to prove Breed or CSA made any statement that Plaintiff was having an affair with John Jolin. No one has testified that Breed or any other employee of CSA with apparent authority to speak for CSA has stated that Plaintiff was having an affair with John Jolin. A principal may be held liable for defamatory statements made by an agent only if the agent was acting within the scope of his employment or within the scope of his apparent authority. See *Abofreka v. Alson Tobacco Co.*, 288 S.C. 122, 341 S.E.2d 622 (1986); *Murray v. Honam, Inc.*, 344 S.C. 129, 542 S.E.2d 743 (Ct. App. 2001); Restatement (Second) of Agency § 247 (1965) (master is subject to liability for defamatory statements made by servant acting within the scope of his employment, or, as to those hearing or reading the statement, within his apparent authority). There was no testimony alleging that Sergeant Woods was acting within the scope of his employment or within his apparent authority on behalf of CSA when he allegedly accused John Jolin of having an affair with Plaintiff (which alleged statement Sergeant Woods denied) in

speaking to another security guard. To the contrary, the nature of the alleged statement supports finding that such statement could not have been made within the scope of Woods' employment or on any apparent authority given Woods by CSA.

5. Opinion is Constitutionally Protected

The honest expression of critical opinion regarding public officials is constitutionally protected. *New York Times*, 376 U.S. at 292. "[I]njury to official reputation is an insufficient reason for 'repressing speech that would otherwise be free.'" *Elder*, 341 S.C. 108, 114-15, 533 S.E.2d 899, 902. "Under the First Amendment there is no such thing as a false idea. However, pernicious an opinion may seem, we depend for its correction not on the conscience of judges and juries but on the competition of other ideas." *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 339 (1974).

Moreover, South Carolina has long recognized that citizens have a right to criticize public officials and question their fitness for the offices they hold. As long as the criticism is fair, honest and without common law malice (which would have to prove in addition to constitutional, actual malice in this case), it is not actionable. *Oswalt v. State Record Co.*, 250 S.C. 429, 435, 158 S.E.2d 204, 207 (1967); *Cartwright v. Herald Pub Co.*, 220 S.C. 492, 68 S.E.2d 415 (1951). "When a citizen holds a public office he becomes subject to criticism; any citizen ... is privileged to criticize his acts, fitness and qualifications for the office he holds and discuss his work without being liable for damages so long as the criticism is fair and honest and made without malice." *Oswalt*, 250 S.C. 429, 435, 158 S.E.2d at 207. This principle, sometimes referred to as the "fair comment" privilege, applies not only to publications by the media, but also to statements by private citizens. See 20 S.C. Jurisprudence: Libel and Slander § 63 at 158-59 and authorities cited in footnote 2 therein. "Fair comment is a complete defense to a suit for

libel and the words are not made actionable by the fact that the complaining party is injured in his business reputation.” *Fisher v. Washington Post Co.*, 212 A.2d 335 (D.C. Appeals 1965)(cited with approval in *Oswalt*, 250 S.C. 429, 434, 158 S.E.2d at 206).

6. No Proof the Factual Statements in the Letter Were False

As a public official, Plaintiff bears the burden of proving that the factual statements contained in Mr. Breed’s letter regarding plaintiff are false. *New York Times*, supra. Since Mr. Breed’s letter contained statements regarding matters of public concern, plaintiff would bear the burden of proving falsity even if she were not a public official. *Philadelphia Newspapers, Inc. v. Hepps*, 475 U.S. 767, 776 (1986). The standard for determining truth is “substantial truth.” *Ross v. Columbia Newspapers*, 266 S.C. 75, 221 S.E.2d 770 (1976). That standard is clearly met by plaintiff’s admissions regarding the factual assertions about plaintiff in Mr. Breed’s letter to the Commission on Judicial Conduct.

7. No Special Damages

As a public official, Plaintiff must prove actual injury arising from the alleged publication of the asserted libel or slander. Although general damages were presumed at common law for libel and slander per se, such a presumption is not allowed when the Plaintiff is a public official. *New York Times Co. v. Sullivan*, 376 U.S. 254, 283-84 (1964)(“Such a presumption is inconsistent with the federal rule.”), *Holtzscheiter v. Thomson Newspapers, Inc.*, 332 S.C. 502, 506, 506 S.E.2d 497, 518 (1998)(because of constitutional issues plaintiff “may not rely on the common law presumption of general damages arising from a defamation actionable *per se*.”). Plaintiff must prove actual damages related to her alleged injury to her reputation as a result of Defendant Breed’s publication of his complaint letter to the Commission on Judicial Conduct.

8. No Punitive Damages

Unless Plaintiff proves by clear and convincing evidence that Defendants acted with constitutional actual malice, Plaintiff cannot recover punitive damages and her claim for punitive damages may not be sent to the jury. *See e.g., Erickson*, 368 S.C. 444, 629 S.E.2d 653.

C. No Conspiracy

There is no evidence that Defendants conspired with one another for the purpose of injuring Plaintiff. Under South Carolina common law, a claim for civil conspiracy requires proof of three elements: (1) a combination of two or more persons; (2) for the purpose of injuring the plaintiff; (3) which causes the plaintiff special damages. *Lawson v. S.C. Dep't of Corrections*, 340 S.C. 346, 352, 532 S.E.2d 259, 261 (2000). First, Plaintiff has failed to show a combination of persons conspiring to harm Plaintiff. A corporation cannot be a party to a conspiracy consisting of the corporation and managers, directors or other persons in control of the corporate affairs. *McMillan v. Oconee Mem'l Hosp.*, 367 S.C. 559, 626 S.E.2d 884 (2006). *See also, McClain v. Pactive Corp.*, 360 S.C. 480, 602 S.E.2d 87 (Ct. App. 2004) (Conspiracy claim against corporation and employee failed because corporation cannot conspire with itself). The "essential consideration" in civil conspiracy "is not whether lawful or unlawful acts or means are employed to further the conspiracy, but whether the primary purpose or object of the combination is to injure the plaintiff." *Pye v. Estate of Fox*, 369 S.C. 555, 567, 633 S.E.2d 505, 511 (2006) (quoting *Lee v. Chesterfield General Hosp., Inc.*, 289 S.C. 6, 13, 344 S.E.2d 379, 383 (Ct. App. 1986)). Plaintiff has failed to prove that the Defendants engaged in any unlawful acts or any otherwise improper or unjustified acts in concert with the primary purpose to injure the Plaintiff. *Swinton Creek Nursery v. Edisto Farm Credit*, 326 S.C. 426, 483 S.E.2d 789 (Ct. App. 1997) (insufficient evidence of motive to injure plaintiff).

To prove special damages, Plaintiff must show that the acts in furtherance of the conspiracy were separate and independent from other wrongful acts alleged in the complaint. See *Todd v. S.C. Farm Bureau Mut. Ins. Co.*, 276 S.C. 284, 293, 278 S.E.2d 607, 611 (1981). Special damages must be properly pled, or the claim for civil conspiracy will be dismissed. *Hackworth v. Greywood at Hammett, LLC*, 385 S.C. 110, 115-16, 682 S.E.2d 871, 875 (Ct. App. 2009); see also Rule 9(g), SCRPC (requiring special damages to be specifically stated in the pleadings). Plaintiff has failed to prove damages arising from Defendants' supposed civil conspiracy that are different from the damages that she seeks in her other causes of action against Defendants. Civil conspiracy allegations cannot be "simply an embellishment" of the underlying claims. *Vaught v. Waites*, 300 S.C. 201, 208, 387 S.E.2d 91, 95 (Ct. App. 1989). Having failed to present willfulness by clear and convincing evidence, any claim for punitive damages related to the civil conspiracy allegations fails as a matter of law. See, e.g., *Charles v. Texas Co.*, 199 S.C. 156, 174, 18 S.E.2d 719 (1942).

Finally, Plaintiff's claim is barred because she is a public official. As previously argued, in *Angus v. Burroughs & Chapin Co.*, 368 S.C.167, 628 S.E.2d 261 (2006), the Supreme Court of South Carolina held that a public official has no claim for civil conspiracy against those who complained about her performance of her public position. The court specifically held:

Because of Angus's status as a public official, we conclude her action for civil conspiracy cannot be maintained against any of these defendants.

Id., 628 S.E.2d 261, 262. In contrast to Plaintiff's continued employment as the municipal judge for the Town of Hilton Head Island, Angus was dismissed from her position, but still had no claim for damages against her critics: "[i]n our democratic society, a public official is answerable to the public; members of the public are not third-

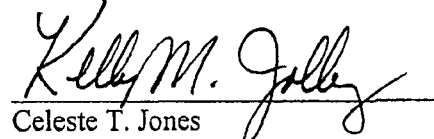
party interlopers. Because of Angus's status as a public official, we conclude her action for civil conspiracy cannot be maintained against any of these defendants."²

IV. CONCLUSION

For all the foregoing reasons and any others in the record, Defendants respectfully request that the Court issue an Order GRANTING Defendants' Motion for Directed Verdict.

Respectfully submitted,

McNAIR LAW FIRM, P.A.



Celeste T. Jones
McNair Law Firm, P.A.
Post Office Box 11390
Columbia, South Carolina 29211
803.799.9800
803.753.3278 (fax)
cjones@mcnair.net

Kelly M. Jolley
McNair Law Firm, P.A.
Post Office Drawer 2
Hilton Head, South Carolina 29938
843.785.2171
843.686.5991 (fax)
kjolley@mcnair.net

Andrew S. Halio, Esquire
Halio & Halio
P.O. Box 747
Charleston, South Carolina 29402-0747
ashalio@bellsouth.net

Community Services Associates, Inc. Association
of Sea Pines Plantation Property Owners, Inc. and
George F. Breed, Jr

June 4, 2012
Hilton Head Island, South Carolina

² The clarity of the Supreme Court's holding has not been lost on the local federal court. *Reed v. Aiken Co.*, 2010 WL 2985805 (DSC 2010) ("Under South Carolina law, a public official who is employed at-will cannot maintain a civil conspiracy claim against members of the public," citing the Supreme Court's opinion in *Angus*.).

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

MAUREEN T. COFFEY,

Plaintiff,

v.

COMMUNITY SERVICES ASSOCIATES,
INC. AND GEORGE F. BREED, JR.,

Defendants.

) IN THE COURT OF COMMON PLEAS

) CASE NO.: 2011-CP-07-00013

) MOTION FOR JUDGMENT
) NOTWITHSTANDING THE
) VERDICT, OR IN THE
) ALTERNATIVE, A NEW TRIAL

2012 JUN 15 AM 9:49
CLERK OF COURT
BEAUFORT COUNTY, S.C.

The Defendants move the Court for an Order granting judgment notwithstanding the verdict or in the alternative, a new trial, on the grounds set forth below:

I. JUDGMENT NOTWITHSTANDING THE VERDICT:

1. In favor of both Defendants on all grounds raised in the Defendants' directed verdict motions made at the trial of this case.

2. In favor of both Defendants on the ground that the award for special damages, which was a predicate for the general damages and punitive damages awards in this case, cannot be sustained. The award for special damages in the amount of \$6,050 is the precise amount claimed by the Plaintiff for expenses related to psychological treatment and for babysitting expenses caused by headaches. However, these are not legally cognizable "special damages." Special damages are "tangible losses or injury to the plaintiff's property, business, occupation or profession, which are capable of being assessed monetarily and which result from injury to the plaintiff's reputation." *Erickson v. Jones Street Publishers, LLC*, 629 S.E. 2d 653, 664 at n. 6; *Holtzscheiter v. Thomson Newspapers, Inc.*, 506 S.E. 2d 497, 502 a. n. 4; *Goodwin v. Kennedy*, 552 S.E. 2d 319,

327 (Ct. App. 2001). That is what this Court charged the jury in regard to "special damages." Because the jury did not render a monetary award of special damages for tangible loss or injury to the Plaintiff's property, business, occupation or profession resulting from injury to Plaintiff's reputation, the verdict for special damages, general damages and punitive damages must be vacated and judgment entered in favor of the Defendants.

3. In favor of both Defendants on the ground that there was not clear and convincing evidence that the Defendants published a false statement of fact concerning the Plaintiff.

4. In favor of both Defendants on the ground that there was not clear and convincing evidence that the Defendants published a statement concerning the Plaintiff with knowledge that it was false or with reckless disregard of its falsity.

5. In favor of both Defendants on the libel action on the ground that the only reasonable conclusion to be drawn from the evidence is that the letter George Breed wrote to the Judicial Commission regarding the Plaintiff and its publication were privileged.

6. In favor of both Defendants on the libel action on the ground that the only reasonable conclusion to be drawn from the evidence is that the letter contains opinions and fair comments about a public official that are constitutionally protected.

7. In favor of Community Services Associates on the slander action on the ground that the only reasonable conclusion to be drawn from the evidence is that the alleged slanderous statements regarding the Plaintiff were made by employees for whom Community Services Associates cannot be held vicariously liable.

II. NEW TRIAL (on behalf of both Defendants, if the Motion for Judgment Notwithstanding the Verdict is not granted):

1. For a new trial on the following grounds:

a. The verdict in the amount of Six Million Six Thousand Fifty and 00/100 (\$6,006,050.00) Dollars is grossly excessive so as to be the result of passion, caprice, prejudice or some influence outside the evidence. The \$2,000,000 award for general damages is four times the amount requested by Plaintiff's counsel in closing and approximately 330 times the amount of the "special damages." The \$4,000,000 award for punitive damages is also four times the amount requested by Plaintiff's counsel and approximately 660 times the amount of the "special damages." The verdict was delivered after only one and one half hours of deliberation, including lunch, during a seven day trial, indicating that the jury did not consider the evidence in rendering its verdict. The evidence relating to alleged damage to Plaintiff's reputation was minimal, at best. No witness testified that Plaintiff's reputation was damaged. Plaintiff received a new employment contract and a raise from her employer commensurate with raises given to other Town employees in February 2011. Similarly, the "special damages" award was only \$6,050 and did not include any damages for tangible losses or injury to Plaintiff's property, business, occupation or profession capable of being assessed monetarily and which resulted from injury to her reputation. The expenses for psychological services were \$5,250, and the diagnosis was headaches and weight gain. Clearly, the evidence does not warrant a multi-million dollar award of damages. *See: Sanders v. Prince*, 403 S.E. 2d 640 (1991).

- b. The verdict is against the weight of the evidence. (13th juror doctrine).
- c. There were erroneous rulings during the course of the trial relating to evidentiary matters and closing arguments, each of which alone was significant enough to have affected the jury's decision making process to the Defendants' prejudice including, but not limited, to the following:
 1. admission of evidence of other alleged bad acts on the part of the Defendants and their employees;
 2. admission of hearsay evidence relating to the slander claim;
 3. admission of the decision of the Judicial Commission relative to the letter of complaint against the Plaintiff;
 4. admission of evidence of Breed tape recording a conversation with Municipal Court Judge James Herring;
 5. admission of evidence of indemnification of Breed by the CSA Board of Directors;
 6. admission of testimony of Richard Sonberg, a witness who had not been identified as a witness in discovery and was not identified until the issuance of a subpoena to him a few days before trial;
 7. admission of evidence that Breed transferred his half interest in his home to his wife in July 2008;
 8. exclusion of a grievance filed against the Plaintiff by attorney Russell Keep;
 9. overruling objections to Plaintiff's closing argument in which a figure of \$500,000 in actual damages and a ratio of 2:1 punitive to actual damages were allowed to be argued;
 10. admission of a portion of CSA's 2011 financial statement after closing arguments and jury instructions so as to have, among other matters, effectively foreclosed defense counsel from commenting on the document that was not in evidence at the time.
- d. There were erroneous rulings during the course of the trial relating to evidentiary matters and closing arguments, which combined to influence the jury's

decision making process to the Defendants' prejudice including, but not limited to, the following:

1. admission of evidence of other alleged bad acts on the part of Defendants and their employees;
2. admission of hearsay evidence relating to the slander claim;
3. admission of the decision of the Judicial Commission relative to the letter of complaint against the Plaintiff;
4. admission of evidence of Breed tape recording a conversation with Municipal Judge James Herring;
5. admission of evidence of indemnification of Breed by the CSA Board of Directors;
6. admission of testimony of Richard Sonberg, a witness who had not been identified as a witness in discovery and was not identified until the issuance of a subpoena to him a few days before trial;
7. admission of evidence that Breed transferred his half interest in his home to his wife in July 2008;
8. exclusion of a grievance filed against the Plaintiff by attorney Russell Keep;
9. overruling objections to Plaintiff's closing argument in which a figure of \$500,000 in actual damages and a ratio of 2:1 punitive to actual damages were allowed to be argued;
10. admission of a portion of CSA's 2011 financial statement after closing arguments and jury instructions so as to have, among other matters, effectively foreclosed defense counsel from commenting on the document that was not in evidence at the time.

e. The award of special damages, consisting solely of the cost of Plaintiff's psychological treatment and babysitting costs due to headaches, does not constitute legally cognizable "special damages" under South Carolina law, which are a predicate for an award of actual and punitive damages.

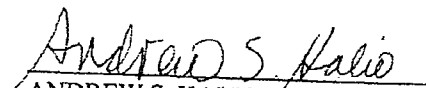
2. For a new trial *nisi remittitur* on the ground that the verdict in the amount of Six Million Six Thousand Fifty and 00/100 (\$6,006,050.00) Dollars is excessive. Plaintiff's counsel asked for an award of \$500,000 for general damages and an award of \$1,000,000 for punitive damages in closing, which should have set the outer limits for these awards based on the evidence presented at trial. The \$2,000,000 award for general damages was four times the amount requested by counsel and approximately 330 times the amount of the "special damages." The \$4,000,000 award for punitive damages was also four times the amount requested by counsel and approximately 660 times the amount of the "special damages." No witness testified that Plaintiff's reputation was damaged. She received a new contract and a raise from her employer in February 2011. The "special damages" award was only \$6,050 and did not include any damages for tangible losses to her property, business, occupation or profession capable of being assessed monetarily and which resulted from injury to her reputation. The psychologist's diagnosis was headaches and weight gain, and the claim for expenses for psychological services totaled \$5,250.

Additionally, there were erroneous ruling during the course of the trial relating to evidentiary matters and closing argument, as set forth in sections II (1) (c) and (d) above, which, taken individually or cumulatively, were significant enough to have affected the jury's decision making process and resulted in the excessiveness of the verdict.

Accordingly, Defendants request that this Court order that the verdict be remitted down to the sum of \$62,000 for general damages and \$124,000 for punitive damages so that the total verdict, including the "special damages," is remitted down to \$192,050.

This motion will be supported by a memorandum of law to be filed prior to the hearing on this matter.

HALIO & HALIO


ANDREW S. HALIO
13 North Adgers Wharf-Box 747
Charleston, SC 29402-0747
(843) 577-5200

and

McNAIR LAW FIRM, P.A.
Celeste T. Jones
Kelly M. Jolley
Post Office Box 11390
Columbia, SC 29211
(803) 799-9800

Attorneys for Defendants

June 15, 2012
Charleston, South Carolina

CERTIFICATION

This is to certify that the undersigned attorneys did this date serve the *Motion for Judgment Notwithstanding the Verdict, or in the Alternative, a New Trial* upon the attorney below listed by mailing a copy of the same to his office, postage prepaid on June 15, 2012.

Robert V. Mathison, Jr.
Attorney at Law
Post Office Box 5271
Hilton Head Island, SC 29938-5271


ANDREW S. HALIO

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	CASE NO.: 2011-CP-07-00013
MAUREEN T. COFFEY,	)	
Plaintiff,	)	
v.	)	MOTION TO VACATE OR
COMMUNITY SERVICES ASSOCIATES,	)	REMIT THE PUNITIVE
INC. AND GEORGE F. BREED, JR.,	)	DAMAGES AWARD ON
Defendants.	)	CONSTITUTIONAL GROUNDS

2012 JUN 15 AM 9:49
CLERK OF COURT

The Defendants move the Court for an order vacating or remitting the \$4,000,000 punitive damage award in this case on the ground that the award is so excessive that it violates the Defendants' constitutional right to due process under guidelines established by the Supreme Court of the United States as applied by the South Carolina Supreme Court.

This motion will be supported by a memorandum of law to be submitted prior to the hearing on this motion.

HALIO & HALIO


 ANDREW S. HALIO
 13 North Adgers Wharf-Box 747
 Charleston, SC 29402-0747
 (843) 577-5200

and

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CASE NO.: 2011-CP-07-00013
	)	
MAUREEN T. COFFEY,	)	
	)	
Plaintiff,	)	
	)	
v.	)	MEMORANDUM IN SUPPORT
	)	OF DEFENDANTS' POST-TRIAL
COMMUNITY SERVICES ASSOCIATES,	)	MOTIONS
INC. AND GEORGE F. BREED, JR.,	)	
	)	
Defendants.	)	
	)	

I. Motion for Judgment Notwithstanding the Verdict

In ruling on motions for directed verdict or judgment notwithstanding the verdict, the trial court is required to view the evidence and inferences that can reasonably be drawn therefrom in the light most favorable to the party opposing the motions. The court must determine the elements of the action alleged and whether any evidence existed on each element. *Murphy v. Jefferson Pilot Communications*, 613 S.E. 2d 808, 812 (Ct. App. 2005). If the evidence does not yield more than one inference, a directed verdict in favor of the moving party is proper. *Frasier v. Palmetto Homes of Florence, Inc.*, 473 S.E. 2d 865, 867 (Ct. App. 1996).

In this case, due to the heightened standard applicable to Plaintiff as a public official, Plaintiff was required to prove by clear and convincing evidence that the Defendants published a false statement of fact concerning the Plaintiff and that this false statement was made with knowledge that it was false or with reckless disregard of its falsity. *New York Times v. Sullivan*, 376 U.S. 254 (1964); *Elder v. Gaffney Ledger*, 533 S.E. 2d 899 (2000). A reckless disregard for the truth requires more than mere

negligence. "There must be sufficient evidence to permit the conclusion that the defendant **in fact entertained serious doubts as to the truth** of his publication." (Citations omitted). *Elder v. Gaffney Ledger*, 533 S.E. 2d at 902 (emphasis in the original). Constitutional actual malice is not satisfied through a showing of ill will or "malice" in the ordinary sense of the term. Rather, "there must be evidence that the defendant purposefully avoided the truth." *Id.*

This case primarily involves a letter written by George Breed to the South Carolina Commission on Judicial Conduct on June 6, 2008. In fact, since a directed verdict was granted in favor of Breed on the slander cause of action, the letter was the only basis for the verdict rendered against him. Defendants have moved for judgment notwithstanding the verdict on all grounds raised in the directed verdict motions argued at trial in which Defendants contended, first of all, that the evidence was insufficient on the issue of a false statement. The letter contains references to three incidents in which the Defendants claimed that Plaintiff improperly inserted herself into the investigation of her brother in connection with property crimes that occurred in Sea Pines Plantation in 2004 and 2008: an incident in 2004 in which Plaintiff asked that she be placed in communication with a Deputy Sheriff while her brother was being arrested for trespassing; an incident in 2004 or 2005 in which, after being told that her brother was under investigation, she told either one or two police officers with the Beaufort County Sheriff's Department that she was going to get her brother out of town; and an incident in 2008 in which she confronted a CSA security officer on patrol and told him that she was the judge and that they needed to stop harassing her family. The factual underpinnings of these three incidents were not in dispute; in fact, Plaintiff admitted as much in her own

testimony. The Plaintiff's primary focus at trial was the last paragraph of the letter in which Breed wrote that:

I believe that Judge Coffey's inability to remove and insulate herself from personal relationships and overt involvement both past and present have caused her to insert herself in these scenarios to the detriment of the community at large. Further, it has manifested itself and caused her to engage in conduct prejudicial to the effective and expeditious administration of the business of the courts and criminal justice process. In summary, as a result of Judge Coffey's actions, she has given the distinct and transparent appearance of bias and partiality, and is not able to be a neutral and detached arbiter of the many cases that have been and will be pending before her. (Emphasis added).

This paragraph is a constitutionally protected opinion under *New York Times v. Sullivan*, *supra*, and *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 339 (1974).

Second, Plaintiff did not prove by clear and convincing evidence that the defamatory statement was made with knowledge of its falsity or with reckless disregard of its truth. Breed's testimony was that he believed what he said in the letter to have been true. Plaintiff failed to present clear and convincing evidence that Breed knew that any of his statements were false or that he entertained substantial doubts about their truth. Although indirect evidence relevant to the Defendant's state of mind is admissible to prove actual malice, *Anderson v. Augusta Chronicle*, 619 S.E. 2d 428 (2005), the evidence must be relevant to the Defendant's state of mind in making the publication at issue. There was no such evidence in this case. Instead, Plaintiff was allowed to introduce a number of other bad acts as evidence of his state of mind. This type of evidence was held to be insufficient in *Elder*. 533 S.E. 2d at 902.

Third, Plaintiff failed to prove causation. Plaintiff testified that she suffered from headaches and weight gain. Dr. Lynn Geiger testified that Plaintiff suffered stress related headaches and weight gain caused by multiple factors, including the disciplinary

complaint filed by Breed, family problems, marital problems, and some other, unidentified litigation. Relying on *Carlyle v. Tuomey Hospital*, 407 S.E. 2d 630 (1991), Defendants argued that the evidence was insufficient to establish causation relative to the claims for special damages and general damages and, specifically, the itemized list of special damages. (Plaintiff's Exhibit 9). The Court agreed, and Plaintiff's Exhibit # 9 was never admitted into evidence. Accordingly, there was no basis for the jury's special damages award, which should be vacated and, since an award of special damages was a predicate to any other award of damages, Defendants' motion for judgment notwithstanding the verdict should be granted on the basis of insufficient evidence of causation.

Fourth, the only reasonable conclusion to be drawn from the evidence is that George Breed's letter to the Commission on Judicial Conduct was privileged. It is undisputed that the filing of the letter with the Commission was absolutely privileged under Rule 13 of the Code of Judicial Conduct. Qualified privileges existed with respect to the publication of the letter to Greg DeLoach, the Assistant Town Administrator whose departments included the Town's Municipal Court, and the CSA Board of Directors. *Conwell v. Spur Oil Co.*, 125 S.E. 2d 270, 275 (1962).

Fifth, with regard to the slander cause of action, Plaintiff failed to introduce evidence sufficient to hold CSA liable. There was no evidence tying Breed to the rumor that Plaintiff and John Jolin had an affair; consequently, the slander action against Breed was dismissed. The only evidence was that there was a rumor to that effect. A principal may be held liable for defamatory statement made by an agent only if the agent was acting within the scope of his employment or within the apparent scope of his authority.

See *Abrofeke v. Alson Tobacco Co.*, 341 S.E. 2d 622 (1986); *Murray v. Holnam, Inc.*, 542 S.E. 2d 743 (Ct. App. 2001); Restatement (Second) of Agency § 247 (1965). There was no evidence that any employee of CSA perpetrated or published the rumor within the scope of his employment. *Lare v. Modern Music, Inc.*, 136 S.E. 2d 713 (1964). Therefore, CSA cannot be held liable for slander. CSA contends that this evidence is insufficient to hold it liable for slander, and that if it was somehow linked to one of its employees, CSA cannot be held liable under a vicarious liability theory.

II. Motion for a New Trial

A. Motion for a New Trial absolute on the basis of the gross excessiveness of the verdict.

When a verdict is grossly excessive and the amount awarded is so shockingly disproportionate to the injuries as to indicate that the jury acted out of passion, caprice, prejudice or some other consideration not founded on the evidence, it becomes the duty of the trial court to set aside the verdict and order a new trial. *Branham v. Ford Motor Co.*, 701 S.E. 2d 5 (2010), *rehearing denied*. In this case, the jury's verdict of more than Six Million Dollars was grossly excessive in light of the evidence.

According to the procedures established in this case because of the Plaintiff's status as a public official, she was initially required to establish special damages. The evidence in this case relating to special damages consisted of the following:

1. \$5,250 in expenses from a psychologist;
2. \$800 in babysitting expenses; and
3. approximately \$80,000 in future lost income.

The award of special damages in the amount of \$6,050.00 totaled the amounts claimed for the psychologist and the babysitting. The claim for employment related losses was rejected in the special damages award.

Next, Plaintiff was required to prove general damages. The award of \$2,000,000 was grossly excessive in light of the evidence on general damages. The gravamen of the lawsuit was that Breed's statement questioning Plaintiff's fairness and impartiality damaged her reputation, particularly at work, where a copy of Breed's letter to the Commission on Judicial Conduct had been delivered to Greg DeLoach and allegedly seen by one other person, Curtis Coltrane. No witness from the Town testified that the Plaintiff's reputation at work was damaged other than the Plaintiff herself. She testified that she felt that her reputation with Town Council was damaged because she has not met with Town Council recently. However, as Mr. DeLoach testified, she has not been called to meet with Town Council because Town Council is satisfied with her work. She also testified that her reputation has been damaged among her colleagues at the Town; however, no Town employee testified to that. In fact, every Town employee or former Town employee who testified during the trial testified favorably for the Plaintiff. The fact that Plaintiff signed a new employment contract in 2011 for more money indicates that her reputation at work was not impacted, as the jury recognized in awarding no employment related losses in its special damages award. Similarly, there was no evidence that the allegation that she had an affair with Mr. Jolin had any impact on her reputation at the Town. With regard to other potential reputation damage, Plaintiff testified that her reputation with her friends was not damaged, and nobody testified that it was.

General damages can also include elements such as embarrassment, humiliation, mental anguish and wounded feelings. In support of these claims, Plaintiff offered the testimony of her psychologist, Dr. Lynn Geiger, whom she had been seeing for other problems since 2007. Dr. Geiger testified that Plaintiff suffered from stress related headaches and weight gain and that there were numerous factors that contributed to Plaintiff's stress. Dr. Geiger's expenses totaled \$5,250.00. Plaintiff's last visit to Dr. Geiger was in June 2011, almost a year before trial. There was no testimony that any condition caused by defamation is permanent.

There are other indications that the verdict was grossly excessive. Generally, one of the best indications of the extent of injuries and damages sustained by a plaintiff is the amount of the special damages. A plaintiff who is severely injured usually incurs more special damages than a plaintiff who is not. As noted above, the special damages award was \$6,050.00, of which \$5,250.00 was for treatment. Ratios have long been used by lawyers and judges as aids in assessing the extent of injuries. The United States Supreme Court uses ratios in reviewing the constitutionality of punitive damage awards. A ratio of 10 times the "specials" is considered to be quite liberal. The \$2,000,000 awarded for general damages in this case is approximately **330 times** the amount of the special damages. The \$4,000,000 awarded for punitive damages is approximately **660 times** the amount of special damages. The total award is approximately **1000 times** the amount of the special damages. All of these figures are grossly disproportionate to the evidence presented at trial.

Another red flag is the amount of the verdict in relation to the amount actually requested. In closing, Plaintiff's counsel requested \$500,000 in general damages and

\$1,000,000 in punitive damages. The amounts awarded for general and punitive damages were **four times and \$4.5 million more** than the amounts requested.

The length of the jury deliberation is also noteworthy. Total deliberation time was an hour and a half, including lunch, for a trial that took seven days. When the length of the deliberation is considered in light of the evidence on damages, the grossly disproportionate awards, and the award of four times the amount requested, it is evident that this verdict was the result of something other than the evidence.

There is no precedent for an award of this size in this type of case. At the upper end of the spectrum of reported cases, awards of \$2,000,000 to two separate plaintiffs, consisting of \$1.25 million in actual damages and \$750,000 in punitive damages, were held to be grossly excessive in *Sanders v. Prince*, 403 S.E. 2d 640 (1991). In that case, the defendant called a news conference in which he accused the plaintiffs of criminal misconduct, among other things. An important factor in the decision was the fact that one of the plaintiffs was reelected to her position on the School Board and also elected as Secretary of the Sumter County Democratic Party:

[W]hile there was evidence that Sanders' and Dabbs' reputations were damaged, there was also evidence that subsequent to the defamation, Sanders was reelected to her School Board position and was elected Secretary of Sumter County Democratic Party. **Neither Sanders' nor Dabbs' reputation was damaged to the extent that a multi-million dollar award of damages was warranted.** (Emphasis added).

403 S.E. 2d at 642.

The Supreme Court cited actual economic losses due to an the plaintiff's inability to find employment after being defamed in affirming an award of \$400,000 in actual damages and \$100,000 in punitive damages in *Constant v. Spartanburg Steel Products, Inc.*, 447 S.E. 2d 1994 (1994). In *Miller v. City of West Columbia*, 471 S.E. 2d 683

(1996), a verdict for \$250,000 in actual damages and \$500,000 in punitive damages was affirmed where the plaintiff's career was effectively destroyed. In contrast, there is an employment related gain rather than a loss in this case, and similar to *Sanders v. Prince*, Plaintiff's employment contract was renewed after the statements at issue. A multi-million dollar award of damages is not warranted.

In summary, it appears that the jury ignored the evidence on general damages and simply wrote in a huge number without any reasonable basis. This grossly excessive award of general damages was then doubled, resulting in a grossly excessive award of punitive damages as well. Allowing this verdict to stand will send the message that in defamation cases, the sky is the limit regardless of the extent of the injuries. A new trial absolute is required under these circumstances.

B. Motion for a New Trial *Nisi Remittitur*.

Defendants contend that the verdict in excess of Six Million Dollars is grossly excessive in light of the evidence. However, if the Court finds that the verdict is not so shockingly disproportionate to the injuries as to indicate that the jury acted out of some improper consideration not founded on the evidence, it is certainly excessive, and the motion for a new trial *nisi remittitur* should be granted.

The trial court may grant a new trial *nisi* on the ground that the verdict is excessive. *Vinson v. Hartley*, 477 S.E. 2d 715 (Ct. App. 1996). Consideration of a motion for new trial *nisi* requires the trial judge to consider the amount of the verdict in light of the evidence presented. *Patterson v. Reid*, 456 S.E. 2d 436 (Ct. App. 1996). Where the trial court finds the amount of the verdict to be excessive, the trial court alone has the power to grant a new trial *nisi*, whereby a new trial is granted unless the party

opposing it shall comply with the condition prescribed by it, when the amount of the verdict is found to be excessive. *Krepps by Krepps v. Ausen*, 479 S.E. 2d 490 (Ct. App. 1996). The trial judge must distinguish between awards that are merely unduly liberal and awards that are actuated by passion, caprice or prejudice. *Wright v. Craft*, 640 S.E. 2d 486 (Ct. App. 2006). Where the verdict indicates that the jury was unduly liberal in determining damages, the trial court has the power to reduce the verdict by granting a new trial *nisi remittitur*. *Welch v. Epstein*, 536 S.E. 2d 408 (Ct. App. 2000).

For all of the reasons set forth above in the discussion of the gross excessiveness of the verdict, Defendants believe that a substantial reduction of the verdict is warranted. Defendants have suggested that the verdict be remitted down to \$62,000 in general damages and \$124,000 in punitive damages, plus the \$6,050 special damages, for a total of \$192,050. The rationale for this is that \$62,000 was the actual damage award in *McAlhaney v. McElveen*, case no. 07-CP-07-2373, another defamation case tried in Beaufort County. Coincidentally, that is approximately ten times the amount of the special damages in this case, which is generally considered to be a very liberal ratio in this state. The \$124,000 figure represents the amount of the general damages and the jury's 2:1 punitive to actual damages ratio.

C. Motion for a New Trial Based on Evidentiary and Related Matters.

During the course of the trial, there were several evidentiary rulings that Defendants contend were erroneous and prejudicial, either alone or cumulatively. These included rulings made under Rules 402, 403, 404, 802 and 803 of the South Carolina Rules of Evidence, a ruling made in connection with the admission of the testimony of two witnesses who were not disclosed as required by the discovery rules, improper

argument by counsel, and admission of evidence after the Court's jury charge. These ruling include, but are not limited to, the following:

Rule 404 (b), S.C.R.E., precludes the admission of evidence of other bad acts to prove a person's character with certain exceptions. In this case, evidence of bad acts was offered by the Plaintiff to show that George Breed acted with constitutional actual malice. The evidence that was allowed to be introduced did not relate to this issue at all; rather, it was simply used to prejudice the Defendants. This evidence included the following:

1. That CSA routinely *nolle prossed* tickets;
2. That CSA had prosecuted a defendant for an offense after an agreement had been worked out;
3. That a ticket was dismissed in exchange for a donation to the Forest Preserve; and
4. That Breed taped a phone call with Municipal Judge James Herring.

The first three items did not even relate to Breed, much less to the issue of constitutional actual malice, and consequently served no purpose except to poison the atmosphere at trial.

Hearsay statements regarding an alleged affair between the Plaintiff and Mr. Jolin were allowed into evidence under the purported "witness in the courtroom" exception. Such statements were allowed until the Court recognized that the rule does not actually contain such an exception. By then, the damage was done.

Other evidentiary issues decided in favor of the Plaintiff under Rules 402 and 403 unfairly prejudiced the Defendants. These included admission of the decision of the Judicial Commission relative to the letter of complaint filed against the Plaintiff. The

truth of the statements contained in Breed's complaint letter was an issue for the jury to decide, and the admission of the letter effectively foreclosed the defense from prevailing on the issue of whether it was false or not. The indemnification of Breed by the CSA Board of Directors had nothing to do with the matters at issue in the case and prejudiced the defense by creating the impression that the Board had already decided that Breed was liable or, as argued by Plaintiff's counsel, that the CSA Board had somehow "ratified" Breed's letter and publication of the letter to the Town by agreeing to indemnify Breed after this lawsuit was filed. Likewise, the evidence that Breed transferred his interest in his house to his wife gave the jury the impression that he was guilty when, in fact, this lawsuit had not yet been brought and there was no indication that it would be brought. The exclusion of the grievance by Attorney Russell Keep prejudiced the Defendants on the issue of damages. The Court initially indicated that the grievance would not be admitted because any grievance made by Attorney Russell Keep was *per se* unreliable. Nevertheless, the Court then made a preliminary ruling that the grievance would be admissible on the issue of damages in light of the fact that it was filed and handled during the period when Plaintiff was claiming stress related damages. However, when the defense attempted to introduce the grievance, the Court ruled it inadmissible. The Court's preliminary ruling was correct: the grievance was clearly relevant on the issue of damages, and its exclusion prejudiced the defense and contributed to the huge verdict.

The admission of the testimony of Richard Sonberg, a witness who was never identified in Answers to Interrogatories and whose proposed testimony was not described until the trial was underway despite the fact that Plaintiff had known that he was a potential witness since 2009, was prejudicial. The fact that his name was mentioned in

the Plaintiff's deposition did not give the defense notice that he would be called as a witness at trial, and his testimony was prejudicial to the defense on the issue of liability. Similarly, Defendants were prejudiced by the admission of testimony of Dr. Lynn Geiger, an expert witness whose name and proposed testimony were not disclosed in Plaintiff's discovery responses.

Plaintiff's counsel's closing argument in which he suggested an award of general damages in the amount of \$5,000 without any basis whatsoever and a 2:1 punitive to actual damages ratio was improper, and Defendants' objection should have been sustained.

Finally, the admission of the CSA balance sheet after the Court's jury charge was highly prejudicial to the Defendants and likely contributed to the size of the verdict. The balance sheet was part of CSA's 2011 financial statement. Its authenticity was stipulated, but its admissibility was not. No witness was called to explain the document. It was simply large numbers on a sheet of paper. Since it was not admitted into evidence until after the charge, defense counsel did not have a chance to comment on it. The prejudice to the Defendants from admission of this document without foundation after the jury was charged is evident in the verdict.

D. Motion for a New Trial Because the Verdict is Against the Weight the Evidence.

Under the "thirteenth juror" doctrine, the trial judge may grant a new trial based solely upon the facts if she finds that the evidence does not justify the verdict. *Norton v. Norfolk Southern Ry. Co.*, 567 S.E. 2d 851 (2002). As the thirteenth juror, the judge can hang the jury by refusing to agree to the jury's otherwise unanimous verdict.

Curtis v. Blake, 709 S.E. 2d 79 (Ct. App. 2011). Under the doctrine, a new trial may be granted where the court merely finds that “the verdict is unsupported by the evidence,” that “the verdict is inconsistent and reflects the jury's confusion,” or that “justice has not prevailed.” *Vinson v. Hartley*, 324 S.C. 389, 404, 477 S.E.2d 715, 722-23 (Ct. App. 1996).

Importantly, this Court need not provide any reasons for its exercise of this Thirteenth Juror power aside from a finding that the Court disapproves and rejects the verdict based on the facts and evidence. *Howard v. Roberson*, 376 S.C. 143, 654 S.E.2d 877 (Ct. App. 2007). Further, this Court's exercise of its Thirteenth Juror power will not be disturbed on appeal in the absence of a misuse of the power, such as using the power to decide a legal point. *Trivelas v. South Carolina Dept. of Transp.*, 357 S.C. 545, 593 S.E.2d 504 (Ct. App. 2004) (holding that a circuit court's order granting a new trial upon the facts will not be disturbed unless its decision is wholly unsupported by the evidence or the conclusion reached was controlled by an error of law).

For the reasons set forth in more detail in other arguments herein and as may be made at oral argument, the Court should exercise its authority as the Thirteenth Juror in this matter and grant a new trial.

III. The Award of Punitive Damages is Unconstitutional and Excessive.

A. Introduction

The jury's \$4 million punitive damage award is grossly excessive and violates the Defendants' constitutional right to procedural and substantive due process. Plaintiff failed to present evidence sufficient to meet the clear and convincing threshold required to recover punitive damages. S.C. Code Ann. § 15-33-135 (Supp. 2003). As such, a

proper post-judgment consideration of the punitive damages awarded demonstrates that this Court should vacate the award in its entirety or remit the award to a ratio of no more than 1:1 to comport with the mandates of Defendants' constitutional due process rights.

B. General Principles Governing Punitive Damages.

Punitive damages exist to punish a defendant for conduct which is clearly "willful, wanton, or undertaken in reckless disregard of plaintiffs rights." *Kuznik v. Bees Ferry Assoc.*, 342 S.C. 579, 611, 538 S.E.2d 15, 32 (Ct. App. 2000).

Conduct is willful, wanton, or reckless when it is committed with a deliberate intention under such circumstances that a person of ordinary prudence would be conscious of it as an invasion of another's rights. It is the present consciousness of wrongdoing that justifies the assessment of punitive damages against the tortfeasor.

Cohen v. Allendale Coca-Cola Bottling Co., 291 S.C. 35, 40, 351 S.E.2d 897, 900 (Ct. App. 1986) (citation omitted) (emphasis added). Punitive damages are not proper when the evidence demonstrates ordinary or gross negligence. *See Lengel v. Tom Jenkins Realty, Inc.*, 286 S.C. 515, 519-20, 334 S.E.2d 834, 837 (Ct. App. 1985); *Cohen*, 291 S.C. at 40, 351 S.E.2d at 900 (reversing punitive damage award because there was "no proof of a present consciousness of wrongdoing on Allendale's part"); F.P. Hubbard & R.L. Felix, *The South Carolina Law of Torts* 595 (3d ed. 2004) (noting that "punitive damages are not awarded for negligence, whether simple or 'gross'").

"Punitive damages may properly be imposed to further a state's legitimate interests in punishing unlawful conduct and deterring its repetition." *BMW of North America v. Gore*, 517 U.S. 559, 568 (1996). The state's interests in awarding punitive damages must remain consistent with the principle of penal theory that "the punishment should fit the crime." *Atkinson v. Orkin Exterminating Co., Inc.*, 361 S.C. 156, 164, 604

S.E.2d 385, 389 (2004) (quoting *Mathias v. Accor Economy Lodging Inc. and Motel 6 Operating L.P.*, 347 F.3d 672, 676 (7th Cir. 2003)). Nevertheless, “while states possess discretion over the imposition of punitive damages, it is well established that there are procedural and substantive constitutional limitations on these awards.” *State Farm v. Campbell*, 538 U.S. 408, 416 (2003). “To the extent an award is grossly excessive, it furthers no legitimate purpose and constitutes an arbitrary deprivation of property.” *Id.* at 417.

In *Mitchell v. Fortis Ins. Co.*, 385 S.C. 570, 686 S.E.2d 176 (2009), the South Carolina Supreme Court articulated the test to be used in conducting a post-judgment review of a punitive damage award, stating:

We have said in the past that trial courts must consider both the *Gamble* and *Gore* factors However, considerations of judicial economy weigh in favor of a less burdensome and duplicative analysis With these considerations in mind, we articulate the following test for our courts in conducting a post-judgment review of punitive damage awards.

Id. at 587, 686 S.E.2d at 185. First, the court should consider “the degree of reprehensibility of the defendant's conduct.” *Id.* Second, the court should consider “the disparity between the actual or potential harm suffered by the plaintiff and the amount of the punitive damages award,” known as the ratio. *Id.* at 587-88, 686 S.E.2d at 186. Third, the court “should consider the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases.” *Id.* Applying these factors in this case, the \$4 million punitive damages award is unconstitutional and must be eliminated or significantly reduced. Defendants will address each factor in turn.

1. Reprehensibility.

Any court reviewing a punitive damages award is required to consider the degree of reprehensibility of the defendant's conduct. *Fortis*, 385 S.C. at 587, 686 S.E2d at 185. The factors to be considered include whether: (i) the harm caused was physical as opposed to economic; (ii) the tortious conduct evinced an indifference to or a reckless disregard for the health or safety of others; (iii) the target of the conduct had financial vulnerability; (iv) the conduct involved repeated actions or was an isolated incident; and (v) the harm was the result of intentional malice, trickery, or deceit, rather than mere accident.¹ *Id.* "The existence of any one of these factors weighing in favor of a plaintiff may not be sufficient to sustain a punitive damages award; and the absence of all of them renders any award suspect." *Campbell*, 538 U.S. at 419.

(i) The damages claimed in this case do not constitute "physical" harm. As noted above, Plaintiff's expert witness was a psychologist, and the testimony was that Plaintiff sustained stress related headaches and weight gain. Presumably, if the U.S. Supreme Court had intended to include psychological damages, it would have done so. In fact, the Court noted in *Campbell* that the damages sustained by the plaintiffs were "not from some physical assault or trauma; there were no physical injuries." 538 U.S. at 426.

(ii) Defendants' conduct did not evince a disregard for the health and safety of anyone, including the Plaintiff. As discussed in detail above, the conduct at issue involved a letter of complaint to the Commission on Judicial Conduct. Plaintiff's case focused on this as an employment/economic issue, not a health or safety issue.

(iii) There is no evidence that Plaintiff was financially vulnerable. As noted above, she signed a new contract for more money in February 2011.

¹ The court noted that "this analysis adequately encompasses and obviates the need for the first four factors of the Gamble review, which include the defendant's degree of culpability, the duration of the conduct, the defendant's awareness or concealment, and the existence of similar past conduct." *Id.*

(iv) This was an isolated incident.

(v) Although Defendants disagree that constitutional actual malice was proven, the jury verdict did indicate that they found that malice was involved.

In contrast to *Fortis*, only one of the five reprehensibility factors is present here. This Court may not rely on evidence of other bad acts as a basis for concluding that the conduct was reprehensible. "A defendant should be punished for conduct that harmed the plaintiff, not for being an unsavory individual or business." *Campbell*, 538 U.S. at 423. This Court admitted evidence of bad acts on the part of the Defendants that had absolutely nothing to do with the Plaintiff and cannot be considered as part of the reprehensibility analysis.

Moreover, the complicity rule precluded the imposition of punitive damages against CSA in this setting. Pursuant to the complicity rule of doctrine, a corporate defendant should not be held liable for punitive damages based on an employee's wrongdoing unless: (1) the principal authorized the employee's wrongdoing; (2) the employee was unfit for service and the principal was reckless in employing him; (3) the employee was employed in a managerial capacity and acting within the scope of employment; or (4) the principal ratified the employee's actions after the occurred. *Restatement (Second) of Torts* § 909 (1979).

The United States District Court for South Carolina has applied the complicity rule in an action where the plaintiff sued her employer for sexual harassment and constructive discharge by the Plant supervisor. *Scott v. American Yarn*, 73 F. Supp. 587, 590 (D.S.C. 1999). In deciding that the employer could not be held liable for punitive damages under the facts there, the court quoted the Restatement's four prong test

contained in section 217 C as providing the determinative factors. *Id.* at 597. The court recognized that allowing punitive damages against an employer which did not engage in any wrongdoing under 217 C runs afoul of “the very principles underlying common law limitations on vicarious liability for punitive damages—that it is improper ordinarily to award punitive damages against one, who himself is personally innocent and therefore only liable vicariously. *Id.* (quoting *Kirkland v. American Dental Ass’n*, 527 U.S. 526, 544 (1999); see also *Bryant v. Aiken Regional Med. Ctr., Inc.*, 333 F.3d 536, 548-49 (4th Cir. 2003) (reversing a punitive damages award against an employer for the same reasons).

CSA did not engage in any wrongdoing that would warrant the imposition of punitive damages against it under the Restatement test. First, no evidence exists to clearly establish that the CSA Board of Directors or Executive Director Cary Kelley directed the day-to-day operations of George Breed and the Sea Pines Security Staff in such a manner that either could be deemed to have authorized Breed to have published the complaint letter to the Town or authorized any employee to allegedly gossip about Plaintiff’s alleged affair with a former security officer. Therefore, application of the complicity rule to the facts of this case demonstrates a complete absence of any wrongdoing by CSA as a corporation that could support punitive damages against it. Since the jury’s award of punitive damages did not specify against which defendant the punitive damages were being imposed, this Court should vacate the award in its entirety.

2. Ratio

Although the ratio is 2:1, the \$4,000,000 punitive damages award is grossly and unconstitutionally excessive. The Supreme Court has declined to impose a “bright-line

ratio” in reviewing punitive damage awards. *Campbell*, 538 U.S. at 435. Rather, “courts must ensure that the measure of punishment is both reasonable and proportionate to the amount of the harm to the plaintiff and the general damages recovered.” *Id.* at 426. Moreover, “when compensatory damages are substantial, then a lesser rate, perhaps only equal to compensatory damages, can reach the outermost limit of the due process guarantee.” *Id.* The punitive damage award in this case is complicated by the grossly excessive general damages award. This Court should first reduce the general damage award to a more appropriate amount and then reduce the punitive damage award proportionally, or lower, as *Campbell* suggests. *See also: Casumpang v. Int’l. Longshore & Warehouse Union*, 411 F. Supp. 2d 1201, 1220-22 (D. Haw. 2005) (1 to 1 ratio appropriate because the damages were substantial). In considering the ratio factor, the Defendants’ wealth has little to do with the actual harm sustained by the Plaintiff, and the wealth of a defendant cannot be used to justify an otherwise unconstitutional punitive damage award. *BMW of North America v. Gore*, 517 U.S. at 585.

3. Comparative Penalty Awards

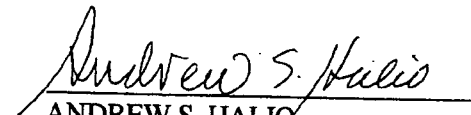
Finally, the court “should consider the difference between the punitive damages awarded by the jury and the civil penalties authorized or imposed in comparable cases.” *Fortis*, 385 S.C. at 588, 686 S.E.2d at 186. There are no reported defamation cases approaching the amount of the punitive damage award in this case. The highest affirmed verdicts for punitive damages are *Williams v. City of West Columbia*, 471 S.E. 2d 683 (1996) (\$500,000) and *Constant v. Spartanburg Steel Products, Inc.*, 447 S.E. 2d 194 (1994) (\$100,000). As previously noted, an award of \$750,000 in punitive damages was part of a \$2 million dollar verdict that was reversed in *Sanders v. Prince*, 403 S.E. 2d 640

(1991). On the criminal side, criminal libel is a misdemeanor with a fine not to exceed \$5,000. S.C. Code § 16-7-150. Thus, comparable penalty awards suggest that the punitive damages award be vacated or substantially reduced in this case.

CONCLUSION

Defendants request that this Court enter Judgment Notwithstanding the Verdict, or in the alternative, order a new trial absolute or a new trial *nisi remittitur*, and vacate or reduce the punitive damages on all of the grounds set forth in their motions, for all of the reasons set forth in this memorandum, and for all of the reasons to be presented at oral argument.

HALIO & HALIO


ANDREW S. HALIO
13 North Adgers Wharf-Box 747
Charleston, SC 29402-0747
(843) 577-5200

and

McNAIR LAW FIRM, P.A.
Celeste T. Jones
Kelly M. Jolley
Post Office Box 11390
Columbia, SC 29211
(803) 799-9800

Attorneys for Defendants

June 28, 2012.
Charleston, South Carolina

STATE OF SOUTH CAROLINA
14TH JUDICIAL CIRCUIT
COUNTY OF BEAUFORT
COURT OF COMMON PLEAS
CASE NO. 2011-CP-07-00013

MAUREEN T. COFFEY

PLAINTIFF

VERSUS

ORIGINAL

MAY 29, 2012

THROUGH JUNE 6, 2012

TRANSCRIPT OF TRIAL

BEAUFORT, SOUTH CAROLINA

COMMUNITY SERVICES ASSOCIATES,
INC.; GEORGE F. BREED, JR.; SEA
PINES RESORTS, LLC; ASSOCIATION
OF SEA PINES PLANTATION PROPERTY
OWNERS, INC., AND THE ADVISORY BOARD

DEFENDANTS

B E F O R E:

HON. CARMEN T. MULLEN, JUDGE; AND A JURY.

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

ON BEHALF OF PLAINTIFF:

HON. ROBERT V. MATHISON, JR.

AND HON. MICHAEL MATHESON

ON BEHALF OF DEFENDANTS:

COMMUNITY SERVICES ASSOCIATES,
INC.; ASSOCIATION OF SEA PINES
PLANTATION PROPERTY OWNERS, INC.,
AND GEORGE F. BREED, JR.:

HON. CELESTE T. JONES

HON. KELLY M. JOLLEY

HON. ANDREW S. HALIO

WANDA H. ROWE, CVR-M
OFFICIAL COURT REPORTER

INDEX

Caption & Appearances.....	1
Index.....	3
By the Court.....	28

DAY ONE, TUESDAY, MAY 29, 2012

VOIR DIRE

By the Court.....	31

CONTINUE VOIR DIRE

By the Court.....	43

CONTINUE VOIR DIRE

By the Court.....	50

JUROR STRIKES

Madam Clerk.....	76
By the Court.....	79

PRETRIAL MOTIONS

By the Court.....	85

OFF THE RECORD

BACK ON THE RECORD

CONTINUE PRETRIAL MOTIONS

By the Court.....107

JURORS SWORN

Madam Clerk.....174

By the Court.....174

OPENING STATEMENTS

On Behalf of Plaintiff,
Mr. Mathison.....178

On Behalf of Defendants
Ms. Jones.....192

MAUREEN COFFEY

Direct Examination
Mr. Mathison.....202

On-the-Record
Bench Conference.....218

Continue Direct Examination
Mr. Mathison.....228

On-the-Record Bench
Conference.....287

END DAY ONE

DAY TWO, WEDNESDAY, MAY 30, 2012

On-the-Record Bench
Conference Regarding
Motions.....294

OFF THE RECORD

BACK ON THE RECORD

By the Court.....359

CONTINUE MAUREEN COFFEY

Direct Examination
Mr. Mathison.....360

Cross-examination
Ms. Jones.....366

On-the-Record Bench
Conference, Out of
Presence of Jurors

Continue Cross-examination
Ms. Jones.....379

On-the-Record Bench
Conference, Out of
Presence of Jurors

OFF THE RECORD

BACK ON THE RECORD

Continue On-the-Record
Bench Conference, Out
of Presence of Jurors

Continue Cross-examination
Ms. Jones.....439

Re-direct Examination
Mr. Mathison.....458

JOHN ALBERT JOLIN, JR.

Direct Examination
Mr. Mathison.....460

On-the-Record Bench
Conference, Out of
Presence of Jurors

OFF THE RECORD

BACK ON THE RECORD

By the Court

CONTINUE JOHN ALBERT JOLIN, JR.

Continue Direct Examination
Mr. Mathison.....505

Cross-examination
Mr. Halio.....522

By the Court.....581

OFF THE RECORD

BACK ON THE RECORD

Re-direct Examination
Mr. Mathison.....583

Re-cross-examination
Mr. Halio.....590

MEREDITH FLORENCIO

Direct Examination
Mr. Mathison.....593

By the Court.....622

OFF THE RECORD

END DAY TWO

DAY THREE, THURSDAY, MAY 31, 2012

By the Court.....625

Cross-examination

Mr. Halio.....650

Re-direct Examination

Mr. Mathison.....668

Re-cross-examination

Mr. Halio.....675

By the Court.....676

OFF THE RECORD

BACK ON THE RECORD

By the Court.....677

DAVID DORSNER, M.D., PROFFER

Direct Examination

Mr. Mathison.....678

Cross-examination

Ms. Jones.....680

Argument on Proffer

Mr. Mathison.....681

Argument on Proffer

Ms. Jones.....682

OFF THE RECORD

BACK ON THE RECORD

By the Court.....696

BRIAN HULBERT

Direct Examination
Mr. Mathison.....703

Cross-examination
Mr. Halio.....722

Re-direct Examination
Mr. Mathison.....728

OFF THE RECORD

BACK ON THE RECORD

By the Court.....734

RICHARD THOMPSON SONBERG

Direct Examination
Mr. Mathison.....734

Cross-examination
Ms. Jones.....739

Re-direct Examination
Mr. Mathison.....742

Re-cross-examination
Ms. Jones.....742

GREG DELOACH

Direct Examination
Mr. Mathison.....743

Cross-examination	
Mr. Halio.....	783
Re-direct Examination	
Mr. Mathison.....	800
By the Court.....	802
OFF THE RECORD	
BACK ON THE RECORD	
By the Court.....	807

BARBARA ANN MARTIN

Direct Examination	
Mr. Mathison.....	812
Cross-examination	
Ms. Jones.....	815
Re-direct Examination	
Mr. Mathison.....	817

CURTIS LEE COLTRANE

Direct Examination	
Mr. Mathison.....	821
Cross-examination	
Ms. Jones.....	828
Re-direct Examination	
Mr. Mathison.....	835

BRIAN MARK BAIRD

(For the Defense)

Direct Examination	
Ms. Jones.....	836
Continue Direct Examination	
Mr. Mathison.....	841
(Return to Plaintiff's Case)	

WILLIAM ARNOLD WAXEL

Direct Examination	
Mr. Mathison.....	847
Cross-examination	
Mr. Halio.....	850

RANDALL BRUCE WOODS

Direct Examination	
Mr. Mathison.....	853
Cross-examination	
Mr. Halio.....	858
Re-direct Examination	
Mr. Mathison.....	860
Re-cross-examination	
Mr. Halio.....	868
By the Court.....	869
On-the-Record Bench Conference	
END DAY THREE	

DAY FOUR, FRIDAY, JUNE 1, 2012

Continue On-the-Record	
Bench Conference.....	921

DR. LYNN E. GEIGER

Direct Examination	
Mr. Mathison.....	931
Cross-examination	
Ms. Jones.....	942
Re-direct Examination	
Mr. Mathison.....	972
OFF THE RECORD	
BACK ON THE RECORD	
By the Court.....	975

STEPHEN P. BIRDWELL

Direct Examination	
Mr. Mathison.....	976
On-the-Record	
Bench Conference	
Cross-examination	
Mr. Halio.....	1028
Re-direct Examination	
Mr. Mathison.....	1034
Re-cross-examination	
Mr. Halio.....	1038

OFF THE RECORD

BACK ON THE RECORD

By the Court.....1041

SHERRY HAMILTON

Direct Examination

Mr. Mathison.....1042

Cross-examination

Mr. Halio.....1051

Re-direct Examination

Mr. Mathison.....1054

TODD MCNEILL

Direct Examination

Mr. Mathison.....1056

Cross-examination

Mr. Halio.....1065

By the Court.....1074

OFF THE RECORD

BACK ON THE RECORD

By the Court.....1079

Reading Deposition of

George F. Breed, Jr.,

Mr. Mathison.....1079

By the Court.....1252

END DAY FOUR

DAY FIVE, MONDAY, JUNE 4, 2012

By the Court.....	1254
Reading Deposition of Mr. Cary A. Kelley, Mr. Mathison.....	1275
OFF THE RECORD	
BACK ON THE RECORD	
By the Court.....	1342
Continue Reading Deposition of Mr. Cary A. Kelley, Mr. Mathison.....	1343
By the Court.....	1377
Reading Interrogatory Answers of Defendant CSA Mr. Mathison.....	1378
Plaintiff Rests.....	1382
By the Court.....	1382

MOTIONS FOR DIRECTED VERDICT

By the Court, Attorneys.....	1385

STEPHEN N. WRIGHT

Direct Examination Ms. Jones.....	1444
Cross-examination Mr. Mathison.....	1461

WILLIAM L. HOWARD, PROFFER

By the Court.....	1476
By Mr. Mathison.....	1485
Argument William L. Howard Proffer Mr. Mathison.....	1493
By the Court.....	1505
OFF THE RECORD	
BACK ON THE RECORD	

WILLIAM L. HOWARD

Direct Examination Mr. Halio.....	1506
Cross-examination Mr. Mathison.....	1528
Re-direct Examination Mr. Halio.....	1561
END DAY FIVE	

DAY SIX, TUESDAY, JUNE 5, 2012

By the Court.....	1572

CAPTAIN TOBY MCSWAIN

Direct Examination Ms. Jones.....	1577
Cross-examination Mr. Mathison.....	1683

Re-direct Examination	
Ms. Jones.....	1617
By the Court.....	1632
OFF THE RECORD	
BACK ON THE RECORD	
By the Court.....	1637

CARY A. KELLEY

Direct Examination	
Mr. Halio.....	1638
Cross-examination	
Mr. Mathison.....	1643
Re-direct Examination	
Mr. Halio.....	1652
On-the-Record Bench	
Conference Regarding	
Objections to Deposition	
of Plaintiff, Maureen Coffey.....	1653
OFF THE RECORD	
BACK ON THE RECORD	
By the Court.....	1663
Reading Deposition of	
Plaintiff Maureen T. Coffey,	
Mr. Halio.....	1664
Reading Stipulation	
Mr. Halio.....	1707

Defense Rests.....	1709
By the Court.....	1709
Renewing Motions.....	1710
OFF THE RECORD	
BACK ON THE RECORD	
By the Court.....	1724

SHERRY HAMILTON, ON REBUTTAL

Direct Examination	
Mr. Mathison.....	1725
Cross-examination	
Mr. Halio.....	1727
Re-direct Examination	
Mr. Mathison.....	1728
PLAINTIFF RESTS.....	1728
By the Court.....	1728
Discussion Regarding	
Jury Charges	
and Verdict Form.....	1821

CLOSING ARGUMENTS

On Behalf of Plaintiff	
Mr. Mathison.....	1755
On Behalf of Defendants	
Mr. Halio.....	1785

On Behalf of Plaintiff in Rebuttal Mr. Mathison.....	1811
By the Court.....	1819
OFF THE RECORD	
BACK ON THE RECORD	
Discussion Regarding Jury Charge and Verdict Form.....	1821
END DAY SIX	

DAY SEVEN, WEDNESDAY, JUNE 6, 2012

Reviewing Jury Charge and Verdict Forms.....	1847
OFF THE RECORD	
BACK ON THE RECORD	
Jury Charge By the Court.....	1872
Verdict.....	1919

ATTACHMENTS

Certificate of Reporter.....	1925
Keyword Index	

EXHIBITS

PLAINTIFF'S:

- 1 Copy of Document
 Referred as Contract,
 Duration February 5, 2011
 Through February 5, 2013
 Admitted as Evidence.....206

- 2 Copy of Document
 Referred to as Contract
 Signed October 10, 2005
 Admitted as Evidence.....207

- 3 Copy of Document
 Referred to as
 2008 Contract
 Admitted as Evidence.....208

- 4 Copy of Document
 Referred to as
 Letter Dated June 6, 2008
 Admitted as Evidence.....211

- 5 Copy of Document
 Referred to as Calendar
 Admitted as Evidence.....212

6	Copy of Document Referred to as Last Page of Interrogatories on Which the Statement Appears Admitted as Evidence.....	233
7	Copy of Document Identified as October 1, 2008 Letter Admitted as Evidence.....	258
8	Copy of Document Identified as Judge's Oath Admitted as Evidence.....	265
9	Document Referred to as Maureen's Relevant Medicals For Identification.....	274
10	Copy of Document Referred to as First Incident Report Admitted as Evidence.....	487
11	Copy of Document Referred to as Revised Incident Report Admitted as Evidence.....	497
12	Copy of Document Titled Uniform Traffic Citation For Identification.....	507

- 13 Copy of Document Referred
to as Undated Affidavit
For Identification.....522
- 14 Copy of Document Referred
to as List of Suspects
For Identification.....597
- 15 Copy of Document Referred
to as Email from George
Breed to Meredith Florenzio
Admitted as Evidence.....598
- 16 Copy of Document Referred
to as Uniform Traffic
Ticket that was Not Crossed
Admitted as Evidence.....719
- 17 Copy of Document Referred
to as Letter on Sea Pines
Museum and Forest Preserve
Stationary, and Check
Admitted as Evidence.....721
- 18 Copy of Document Referred
to as Letter Delivered by
Mr. Breed and Received by
Mr. DeLoach
Admitted as Evidence.....751

19	Copy of Document Referred to as Letter Without the Pleadings Admitted as Evidence.....	781
20	Copies of Documents Referred to as Emails Admitted as Evidence.....	984
21	Copy of Document Referred to as May 20, 2008 CSA Meeting Minutes Admitted as Evidence.....	1259
22	Copy of Document Referred to as June 24, 2008 Meeting Minutes Admitted as Evidence.....	993
23	Copy of Document Referred to as June 11, 2012 Bridge Report Admitted as Evidence.....	1259
24	Copy of Document Referred to as January 8, 2009 Minutes Admitted as Evidence.....	1265
25	Copy of Document Referred to as Email Dated December 3, 2008 from Cary Kelley Admitted as Evidence.....	1028

- 26 Copy of Document Referred
to as Community Service
Associates Minutes November
25, 2008
Admitted as Evidence.....1038
- 27 Copy of Document Referred
to as Incident Report
Admitted as Evidence.....1061
- 28 Copy of Document Referred
to as Affidavit (Incident
Report)
For Identification.....1217
- 29 Copy of Document Referred
to as Trespass Ticket
Dated on or about December
10, 2004 to Otis Coffey
Admitted as Evidence.....1258
- 30 Copy of Document Referred
to as Mr. Breed's Email
Dated January 24, 2009
Admitted as Evidence.....1261
- 31 Copy of Document Referred
to as Map from 2008
Admitted as Evidence.....1262

- 32 Copy of Document Referred
to as Description of Events
Prepared by Someone at
Sea Pines Security
Admitted as Evidence.....1263
- 33 Copy of Document Referred
to as Sea Pines Security
Update
Admitted as Evidence.....1264
- 34 Copy of Document Referred
to as Report of Security
Committee for Community
Services Associates
For Identification.....1264
- 35 Copy of Document Referred
to as Quitclaim Deed
For Identification.....1270
- 36 Copy of Document Referred
to as 2011 Financial
Statement of CSA, and
Specifically, The
Information that can be
Found on Page 11
Admitted as Evidence.....1960

37	Copy of Document Referred to as Subsequent Bridge Report, For Identification.....	1385
38	Copy of Document Referred to as Registered Agent Information Regarding Cary Kelley For Identification.....	1575
39	Copies of Documents Referred to as Incident Reports Admitted as Evidence.....	1598

DEFENDANTS' :

1	Copy of Documents Referred to as Family Court Documents For Identification.....	731
2	Copies of Documents Referred to as Civil Cover Sheet, Summons, Complaint For Identification.....	415
3	Copy of Document Referred to as December 8, Island Packet News Article For Identification.....	417

- 4 Copy of Document Referred
to as Criminal Record
of Otis Coffey
Admitted as Evidence.....661
- 5 Copies of Documents Referred
to as Letter Dated December
15, 2008, and August 3, 2009
SCCJC
For Identification.....450
- 6 Copy of Document Referred
to as Map
Admitted as Evidence.....547
- 7 Copy of Document Referred
to as Oath of Office Executed
by Ms. Coffey September 2011
Admitted as Evidence.....447
- 8 Copy of Document Referred
to as Newspaper Article
from the *Island Packet*
For Identification.....430
- 9 Copy of Document Referred
to as Warning Ticket
For Identification.....579

10	Copy of Document Referred to as Minutes from January 7, 2009 Meeting For Identification.....	739
11	Copy of Document Referred to as Contract Admitted as Evidence.....	786
12	Copy of Document Referred to as Contract Admitted as Evidence.....	786
13	Copy of Document Referred to as Contract Admitted as Evidence.....	787
14	Copy of Document Referred to as Statement by Stephen N. Wright Admitted as Evidence.....	1457
15	Copy of Document Referred to as Second Statement by Stephen N. Wright Admitted as Evidence.....	1460
16	Copy of Document Referred to as Print-off from Sex Offender Watch Program Admitted as Evidence.....	1619

17	Copies of Documents Referred to as Arrest Warrants on John Levy Admitted as Evidence.....	1619
18	Copy of Document Referred to as Letter with Documents For Identification.....	1750
19	Copy of Document Referred to as AOL Document For Identification.....	1750

COURT'S:

1	Juror Random Strike Sheet.....	79
2	Copy of Document Referred to as 32-Page Answers to Interrogatories.....	929
3	Copy of Document Referred to as Notice and Motion.....	1734
4	Jury Charge.....	1915

1 it is my pleasure to hold a civil term of court.

2 I will tell you, ladies and gentlemen, at the
3 beginning of the week, I tend to have a large docket. I
4 will tell you, ladies and gentlemen, at this time, we
5 are down to one case, which we are going to go ahead and
6 pull a jury on.

7 I'll also tell you, ladies and gentlemen, the good
8 news is that case will be done by Friday. So, if any of
9 you have any plans for the weekend or for next week or
10 going on vacation, I understand summer is coming up, you
11 will be completed with your jury service. So I want you
12 all to know that and feel secure in that. And I
13 appreciate you all being here.

14 Ladies and gentlemen, jury qualification is just
15 that; it's a qualification process. There are a number
16 of questions that I have to go through and ask you just
17 like you did during roll call.

18 Ladies and gentlemen, some of these questions can
19 be a bit personal, and I certainly understand that. And
20 I don't want anyone to suffer any embarrassment here.
21 If there's a question that you need to respond to, but
22 you just don't feel comfortable standing up and
23 announcing it in front of your fellow jurors, you can do
24 one of two things. You can either, Number 1, stand,
25 give me your name and your jury number, and then ask to

1 that there has been some coverage in the newspaper about
2 this case. My question to you is, is there any member
3 of the jury panel that cannot put aside what may have
4 been potentially produced or put out in the newspaper,
5 understanding that it is not necessarily accurate? If
6 so, please stand.

7 Ladies and gentlemen, has any member of the jury
8 panel had any experiences with law enforcement that
9 would result in any bias or prejudice on your part,
10 either for or against law enforcement? If so, please
11 stand.

12 Ladies and gentlemen, is there any member of the
13 jury panel who is a member of or contributor to any
14 group which has as its primary concern the promotion of
15 law enforcement? If so, please stand.

16 Ladies and gentlemen, does any juror know of any
17 reason whatsoever that they cannot serve as a fair and
18 impartial juror in the trial of this case? If so,
19 please stand.

20 Has any member of the jury panel formed or
21 expressed an opinion about any issue or matter involved
22 in this case? If so, please stand.

23 Ladies and gentlemen, is any member of the jury
24 panel aware of any bias or any prejudice for or against
25 the plaintiff or the defendants in this case? If so,

1 MS. JONES: Sure.

2 THE COURT: If you all can grab something and get
3 back here maybe about one-thirty-ish, and we'll go ahead
4 and we'll hear the motions in limine. That gives us a
5 good lunch. Okay?

6 OFF THE RECORD 12:42 P.M.

7 BACK ON THE RECORD 1:40 P.M.

8 CONTINUE PRETRIAL MOTIONS:

9 THE COURT: Let's go through and get as much as we
10 can done. What I would suggest doing is, since we are
11 slightly short on time, let's hit the ones that maybe
12 you're going to want to mention in your opening
13 statement, and kind of work that way. And then,
14 anything else, we can take up later, if necessary. I
15 just want to be timely with this jury so they know we're
16 going to work hard, so they have an expectation of going
17 forward.

18 MS. JOLLEY: Sure. For purposes of our motion in
19 limine, I think we can start at the back and work
20 forward. And then, maybe handle A, B, and C, at least,
21 at the end of the day, if you prefer our motion in
22 limine. Would that be better?

23 THE COURT: Absolutely.

24 MS. JOLLEY: But I do think we'll probably have to
25 also address the plaintiff's motion about spoliation,

1 because I suspect that will be recurring --

2 THE COURT: That's coming up.

3 MS. JOLLEY: -- if we don't take care of it.

4 THE COURT: Gotcha. Okay.

5 MR. MATHISON: It'd be foolish not to expect that.

6 MS. JOLLEY: Sir?

7 THE COURT: Sure. What I think I have is -- I've

8 got a very brief motion in limine from you, so I'm

9 guessing it doesn't include everything.

10 MR. MATHISON: Are you talking about Kelly?

11 THE COURT: I'm talking about you, Mr. Mathison.

12 I've just got --

13 MR. MATHISON: My only objection is to the mention

14 of the second grievance.

15 THE COURT: Okay. And I've got that.

16 MR. MATHISON: And the testimony of Mr. Howard and

17 the things that he may say.

18 THE COURT: Okay. Well, let's take up the second

19 grievance. And I think we can put Howard off until he's

20 going to testify, or if he's going to testify.

21 MR. MATHISON: I'm not going to mention him in

22 opening argument. I'm not going to say anything about

23 what he has to say, because I don't think it is

24 admissible.

25 THE COURT: And neither do they. Okay.

1 MS. JONES: Is the first thing we're addressing the
2 second grievance?

3 THE COURT: Apparently. They're Number 1 in your
4 motion in limine, correct?

5 MR. MATHISON: That's correct.

6 THE COURT: All right.

7 MR. MATHISON: May it please the Court. A short
8 narrative of history of this case is that the complaint
9 was filed on or about -- by letter dated June 6, 2008.
10 The Conduct on Judicial -- the conduct commission that
11 decided that there was no evidence to support the
12 complaint on October 1st. And a lawsuit was filed by
13 the plaintiff on November 20th.

14 In the lawsuit, there were multiple causes of
15 action, one of which was for defamation. In my reading
16 of that case, there was one claim, and it was styled
17 defamation per se. In my reading of the cause of
18 action, it was stated by my predecessor is that he was
19 basing his claim on the fact that there had been an
20 unprivileged publication, and the publication was to Ms.
21 Coffey's employer.

22 However, there were other causes of action, one of
23 which I believe was malicious prosecution. And I think
24 that it was based on the fact that there had been a
25 complaint filed with the Committee on Judicial Conduct.

Ab
5
c

1 All of the defendants there at that time were --
2 they were eager to get to a fight, and I think there
3 were five different answers filed on the behalf of CSA,
4 Mr. Breed. And they all raised the absolute privilege
5 that attaches to filing a complaint either against the
6 lawyer or against a judge, which, with respect to
7 judges, is found in Rule 13. And no one in this case
8 but a third party, C. Russ Keep, filed a grievance
9 against my client and her then lawyer based on the fact
10 that he believed that the privilege rule that's set
11 forth in Rule 13 had been violated.

12 As a consequence of his filing a grievance, there
13 was an investigation done. My client was issued a
14 letter of caution. And my assumption is, the letter of
15 caution was that the pleadings the next time around
16 should be without ambiguity, which is what I endeavor to
17 do, and to the best of my knowledge, I think I have
18 succeeded.

19 No one is going to argue to this jury that
20 submitting a complaint to the Commission on Judicial
21 Conduct is anything other than entirely condign. We're
22 not going to argue what may have been argued before.

23 But my point is this. What happened after the
24 actions that gave raise to my client's cause of action
25 were defamation, what happened in the institution of

1 this lawsuit on November 20th is not related in any
2 manner to what needs to be proven by way of the
3 plaintiff's case in chief or the defendants' defenses
4 with respect to the defamatory material that was put
5 into the market place on or about June 6, 2008. And the
6 only reason, the only reason, it's being used is to
7 somehow tarnish my client with the fact that, instead of
8 having an unblemished record, which she had before the
9 advent of Mr. Breed's complaint, she has, in fact,
10 become a two-time loser as a result of Mr. Keep having
11 filed his complaint. And we believe that it's not
12 related sufficiently, and a letter of conduct is so
13 unamb -- a letter of caution is so ambiguous as to what
14 it means that it will just confuse the jury, and we'd
15 ask that it be suppressed.

16 THE COURT: So his grievance was filed December 1,
17 2008, which is after Ms. Coffey filed her --

18 MR. MATHISON: Actually, filed on December 15,
19 2008.

20 THE COURT: Okay. So and she filed her lawsuit on
21 November 20th.

22 MR. MATHISON: That's correct.

23 THE COURT: Okay. And actually, that begs the
24 question, let's talk about how we're going to refer to
25 Ms. Coffey. Whether or not -- I've heard you guys call

1 her Judge Coffey. The Defense does. You call her Ms.
2 Coffey.

3 MR. MATHISON: I'm going to call her --

4 THE COURT: Do you have an agreement about how in
5 the world we're going to address her? And I want to
6 make sure I address her appropriately.

7 MR. MATHISON: I'm going to call her Maureen when I
8 examine her.

9 THE COURT: Okay.

10 MR. MATHISON: But I'm, you know, old, but,
11 therefore, I get away with it, I think. I don't think
12 it's, in the context of this case, marginalizing not to
13 address her as Judge Coffey. And I would refer to her
14 as Ms. Coffey, rather than Judge Coffey, because I think
15 it sends a message that is perhaps too grand, under the
16 circumstances.

17 THE COURT: I think it goes down to the whole
18 argument we have as to whether or not she's a public
19 official.

20 MR. MATHISON: It does, indeed.

21 MS. JONES: Well, you know, our position on that
22 is, as far as what to address her by, Ms. Coffey or
23 Judge Coffey, because, in many of the correspondence and
24 in many of the documents, it's Judge Coffey. And I
25 don't know how you can redact all that out or change it,

1 because that's not any --

2 MR. MATHISON: Well, I'm not suggesting they can't
3 refer to her as Judge Coffey. If they want to, that's
4 -- I'm just telling you how I'm going to refer to her.

5 MS. JONES: You know, a lot of the testimony was
6 her making the statement to witnesses that she was the
7 judge, so that's going to be mixed up.

8 THE COURT: Well, as long as the two of you don't
9 object to what you call each other, I'll just call her
10 the plaintiff. That makes life easier. So let's just
11 move on, then. I don't want to create issues that
12 aren't there, so let's move on with that. All right.

13 MS. JONES: Well, and what Mr. Mathison said brings
14 us into, I guess, you know, this issue, but also a
15 number of other issues. If the events after she filed
16 her lawsuit in November of 2008 are not related to the
17 case, that's -- then that is a rule that needs to apply
18 to everybody out here.

19 We have, in this case, not in the first case with
20 Mr. Mathison's predecessor, but in this case, with him
21 representing the plaintiff and answering the questions,
22 and with the plaintiff herself testifying under oath as
23 to this whole array of damages that she is claiming to
24 her reputation. You cannot claim to want to recover
25 damages to your reputation and say, but, I don't want

1 all the bad stuff that currently reflects on my
2 reputation to come into evidence. You can't cut it off.

3 In the answers to interrogatories, one of the items
4 that she claims as damages in this case in her
5 interrogatory answers, under Rob Mathison's
6 representation, are the legal fees she paid Desa Ballard
7 to represent her in the two grievances to the Judicial
8 Standards. I don't think she can recover that. That's
9 part of Bill Howard's testimony, as well. But that's --

10 MR. MATHISON: May it please the Court.

11 THE COURT: Go ahead.

12 MR. MATHISON: We're not going to go through with
13 that. The reason that the numbers were used was because
14 we thought we could parse out the amount where Ms.
15 Ballard had advised my client what she should do in
16 references to her employment and Town, specifically
17 recusing herself. But we couldn't parse it out. So
18 we're not going to ask for any of those damages.

19 THE COURT: Okay.

20 MR. MATHISON: And consequently, that's irrelevant.
21 Before we get to their motion, which is what Celeste is
22 arguing, I'd like to --

23 MS. JONES: No, but I've got some more on that.
24 I've got some more.

25 MR. MATHISON: Let's put it this way. If my client

1 had been adjudicated to have done something that was
2 censurable in the second grievance, I think that would
3 be appropriate to introduce to show character on her
4 part. There's no question about it. I think that the
5 letter of caution simply is something that no one can
6 define. I think it has an ineffable quality, which is
7 attended by the Commission, either with respect to
8 lawyers or respect to judges. It says, basically, we're
9 not going to do anything this time, but watch your step.
10 That's what it says. But I can't tell the jury that. I
11 don't think the jury's going to understand that.

12 I think it's -- it's a red herring to quote
13 something that I heard a great deal of at the summary
14 judgment hearing.

15 THE COURT: And just so I'm clear, the entire
16 subject of the grievance filed on December, you said
17 15th by Russ Keep, had to do with the filing of the
18 lawsuit by her former attorney and her.

19 MR. MATHISON: That's correct. And --

20 THE COURT: And didn't address any performance
21 issues specifically.

22 MR. MATHISON: No, it was whether or not it was
23 appropriate for her to do it in view of Rule 13.

24 THE COURT: Gotcha. Okay.

25 MR. MATHISON: And to be entirely candid with you,

1 I have no idea why it took as long as it did to get it
2 resolved. We were asked about it in discovery. And
3 because we represent the plaintiffs more often than
4 defendants, we were forthcoming, and gave them enough
5 information so they could understand what happened. I
6 think they're entitled to the information in discovery;
7 I just think that arguing to the jury that this somehow
8 is a character deficiency on our part is not
9 appropriate.

10 THE COURT: Okay.

11 MS. JONES: The other elements of damages that the
12 plaintiff is claiming here is that she, because of the
13 grievance that George Breed filed and gave to the Town,
14 that she couldn't run for a family court judgeship; that
15 it somehow kept her out. Now, she hadn't applied, and
16 you know, we've got some other grounds to make that an
17 inappropriate claim. But she's making that claim.

18 And again, if she applies for a family court
19 judgeship, her actions and the resulting letter from the
20 office -- and here are the two documents where Russell
21 Keeps submitted the briefs and where the Commission
22 responded and made a finding of misconduct. And it's
23 set forth in the letter. That's a poor copy of the
24 letter. I'll try to find you a better one. That was
25 just the first one I could get my hands on. So it

1 relates to that damages claim, as well as --

2 And in addition, the plaintiff says that she might
3 lose her job at the Town of Hilton Head the next time
4 her contract comes up for renewal. Well, you know, that
5 is the basis upon which she could lose her job next time
6 if it comes up for renewal. And she can't come into
7 court and claim as damages those things and try to
8 attribute all of it to the letter at issue in this case
9 that George Breed wrote, and keep out of evidence these
10 other things where there was a finding of misconduct.
11 And it is a fact that those people can rely on. We have
12 to be able to cross-examine her about her damages.

13 And it also goes to her claim of emotional stress,
14 which she testified about in her deposition related to
15 both of the grievances. And even though she, at that
16 point in time, didn't have any medical causation
17 testimony. But that's her claim. That she suffered
18 emotional damages; can't run for a family court
19 judgeship; and you know, it might impact her job at the
20 Town. Well, that might impact her job at the Town has
21 caused her emotional distress. She paid legal fees for
22 it, and all of that's laid out to her answers to
23 interrogatories that she answered after the case was re-
24 filed.

25 Because what happened, Judge Mullen is, she, Ms.

1 Coffey, filed her first lawsuit in November of 2008.
2 And then, and then she dismissed it. It was the 40(j)
3 dismissal. And it stayed dismissed for a year. It was
4 just a couple of days before the expiration of the year
5 when she came back in, amended the complaint, and
6 brought us here. So there was a -- there was a
7 practically 12-month period of time.

8 And actually, it was longer than that. Because,
9 from the first complaint, no discovery took place. No
10 interrogatories were asked. No documents were
11 exchanged. Nothing happened. We filed our motion to
12 dismiss that complaint. And then there was a big quiet
13 period where nothing happened. We finally got it
14 scheduled for a hearing. Her prior attorney came over
15 to the hearing and said, *I can't go forward because of*
16 *the Russell Keep complaint*. And then it got stayed for
17 awhile, and then it got 40(j'd). Sat out for a year,
18 and then got re-upped.

19 So from 2008 to 2010, nothing happened. So. But
20 she's claiming damages for all those things. She can't
21 claim the damages, and then keep out the testimony that
22 reflect upon the damages.

23 THE COURT: Mr. Mathison, can you parse out where
24 damages came from?

25 MR. MATHISON: Yes, I can. Essentially, some of

1 what Celeste said is correct and some of it isn't.
2 She's going to say what she has tried to say during her
3 deposition and they kept cutting her off, which is that
4 she's been damaged as follows:

5 She had what was a three-year contract for
6 \$85,600.00 a year, which over the life of the contract,
7 gave her \$258,000.00 in round numbers of guaranteed
8 income.

9 During the course of these proceedings, while this
10 case has been pending, her contract came up for renewal.
11 And they essentially agreed to give her a \$1,400.00
12 raise per year to \$87,000.00. But as a point of non-
13 negotiation, she was told she could not have more than
14 two years. So effectively, her loss is guaranteed
15 income for the one-year period. The difference being
16 \$82,800.00. That's going to be her income loss.

17 All right. She has medicals, all of which, in our
18 opinion, now, are stress related. She has medicals for
19 headaches. She has medicals for facial numbness, and
20 she has medicals for weight gain. Dr. Dorsner is going
21 to make the causal connection between stress and those
22 symptoms. He has treated her. The amount of damage
23 includes \$150.00 a month. Just like clockwork. Thirty-
24 five out of 36 months with Dr. Lynn Geiger, which was
25 essentially for counseling, which she has testified was

1 from and after July of 2008, primarily for this.

2 She also has babysitting charges, and the increase
3 babysitting charges is a result of the headaches. The
4 headaches we're talking about are not the garden
5 variety, the kind that I've been known to get
6 frequently, and maybe give from time to time. But they
7 are migraine headaches, cluster headaches. The type
8 that cause you gross physical symptoms, nausea. The
9 type that incapacitate you. And as a consequence, she
10 had to have additional babysitting.

11 The defendants are going to attack that on the
12 basis that she pays her babysitters in cash, so the
13 \$800.00, in their mind, is suspect. I don't mind them
14 making that argument. My guess is that most of the
15 women on the jury who have babysitters pay them in cash.
16 So I think it's a question of proof.

17 As to how that relates to the grievance, which is
18 not related to her job performance, --

19 THE COURT: Okay. I don't need to hear any more.
20 I don't need to hear any more. Okay. I will tell you
21 this. I do not see how a grievance filed after the
22 occurrence of all this relates in any way. Quite
23 frankly, -- oh, I can't even say this on the record. A
24 grievance by Russ Keep, I don't think, is indicative or
25 probative of anything, other than he read it in a

1 newspaper and he filed something.

2 So I am not going to let you go into this
3 grievance, provided you do not put anything in as far as
4 damages is concerned that's questionable as to if it's
5 related to this grievance versus the defamation. Does
6 that make sense?

7 MR. MATHISON: Well, I think that, in candor, my
8 client will testify that she believes that her
9 aspiration, which was to become a family court judge,
10 has, in large part, been derailed by what Mr. Breed did.
11 But she's not going to, in any way, suggest or relate
12 that to what I believe is the gravamen of Mr. Keep's
13 argument, which is that she shouldn't have sued somebody
14 for having taken her to the Judicial Grievance
15 Commission.

16 THE COURT: Okay. We're going to have to reach
17 that one when we get to it as far as the claim that she
18 didn't run for office.

19 MR. MATHISON: We're not claiming that she would
20 become a judge; we're saying that's her aspiration.
21 She's entitled to put that in as a question of whether
22 the aspiration has, in fact, been defeated by what he
23 did. I think you can make an argument either way. But
24 I think it's an argument that's factual and the jury has
25 to decide.

1 THE COURT: All right. I'm not going to let you
2 mention the second grievance. I don't think it's
3 probative of anything in this case. I think the
4 prejudice outweighs it, and I don't think it has any
5 weight.

6 MS. JONES: Let me ask you this for clarification.

7 THE COURT: Yes.

8 MS. JONES: Her original complaint that she filed
9 in this action that makes that claim, what is the
10 Court's ruling in regards to -- I mean, that is a
11 pleading of record in this case. What is the limitation
12 on how much I can cross-examine her in regards to that?
13 In regards to this claim of emotional distress, which
14 she has never parsed out in any interrogatory answer or
15 in her deposition testimony as to what caused it. In
16 that testimony, she said that it was based on stress
17 from the lawsuit, changing attorneys, working with Mr.
18 Fultz, bonding hearings with the prosecutor sticking his
19 nose into places he's not supposed to, and the situation
20 with the Russell Keep complaint, and having to hire Desa
21 Ballard to represent her twice, and getting the letter
22 of caution. She didn't parse it out. It's never been
23 parsed out in an interrogatory answer.

24 THE COURT: How do we do that, Mr. Mathison?

25 MR. MATHISON: Your Honor, may it please the Court.

1 My client answered, to the best of her ability,
2 questions that she asked. I'm not entitled in the
3 deposition to say, hey, you're not entitled to ask that
4 question. And I'm not somebody who plays goofy games in
5 responding to discovery. They wanted to know what the
6 Keep complaint was about, as if they didn't know. And I
7 gave them enough information so they knew enough to ask
8 the questions.

9 The fact that they asked the questions and the fact
10 that she responded to them doesn't make it good
11 evidence; it just makes it good discovery. I don't have
12 a problem with them discovering on the subject; I just
13 don't want them arguing it to the jury. And so, far as
14 I'm concerned, I don't see how one relates to the other.
15 I mean, --

16 THE COURT: I don't see this being relevant in this
17 case. The only problem is, when it crosses over and you
18 can't separate your damages, then it becomes a problem.

19 MR. MATHISON: I'm not asking for any damages, with
20 the exception I don't think anybody could parse to the
21 extent you could say 28 percent of my stress was caused
22 by George Breed.

23 THE COURT: Versus my five children that I take
24 care of versus dealing with the prosecutor.

25 MR. MATHISON: Exactly. I don't think you can --

1 but I don't think that you're held to that exacting
2 standard. I think you could say this is enhanced by
3 stress and that he's responsible for it, because,
4 frankly, there would be a lawsuit if there hadn't been
5 that silly complaint to start with. I think that --

6 THE COURT: Or the subsequent grievance, as well.

7 MR. MATHISON: Exactly.

8 THE COURT: Right.

9 MS. JONES: And I'm not talking about just the
10 parsing in her deposition; I'm talking about the parsing
11 in the answer to interrogatory. It's all lumped in
12 there together. That's what we were given them from
13 Rob.

14 MR. MATHISON: Well, wait a minute.

15 MS. JONES: That's the answer to the interrogatory
16 about damages. What are your damages in this case, and
17 that's the response.

18 MR. MATHISON: My response was to respond to their
19 interrogatory. And there were two of them. One was I
20 want every document and every physician from -- that
21 your client has seen in the previous five years. So we
22 devoted eight pages of our answers to interrogatories to
23 giving them that information.

24 The other was what are your damages. And we showed
25 them loss of income. And the loss of income we showed

1 them was \$200,000.00. We showed them medicals of
2 \$7,000.00, which didn't, in any way, align with the
3 medicals that she had in the comprehensive response,
4 which would have been in excess of \$20,000.00. And
5 almost all of it was unrelated. All right?

6 What they're doing is saying, because we were
7 comprehensive in answering, we can't parse? Well, we
8 have parsed.

9 THE COURT: The problem I have with that, though,
10 is, is that, if she's given testimony to that extent, I
11 think cross-examine on her on it.

12 MR. MATHISON: Well, I think they can with respect
13 to the damages. If they say why did you -- you're
14 saying that you have, you know, X amount of income
15 damages or Y amount of -- why did you say the other
16 amount at the deposition. That doesn't offend me. Of
17 course, they could do that.

18 THE COURT: But how do they do that without saying
19 is it part of the reason because there was a subsequent
20 complaint filed as a result of your filing this lawsuit
21 by another attorney?

22 MR. MATHISON: Well, you know, if I really thought
23 that that was the principal stressor here, I wouldn't
24 resist it. I don't think it's a stressor. I think it's
25 just a --

1 THE COURT: You think they're trying to dirty her
2 up by saying there's a subsequent --

3 MR. MATHISON: That's exactly what they're doing.

4 THE COURT: Well, quite frankly, that's an argument
5 you could make. I mean, I don't think one has anything
6 to do with the other. I don't think it's relevant that
7 Russ Keep has filed a grievance against her in regards
8 to what he opines in his opinion is right or wrong under
9 the Rules. I mean, quite frankly, I don't think anyone
10 cares what he thinks.

11 What I'm concerned about, again, is interjecting
12 things into the trial that aren't there. And I
13 understand everyone's trying to dirty everyone up. I
14 mean, that's really what this trial's about. I mean,
15 that, unfortunately, that's where we're going to end up.

16 So I can tell you, to the extent that we're talking
17 about, yeah, there was a subsequent grievance filed,
18 yeah, and the basis was is that, you know, this
19 attorney, whose opinion is worth literally the paper
20 it's written on, says that, you know, alleges that it
21 was improper to file the suit. What I don't want to do
22 is just beat a dead horse.

23 So this is the extent we're going to do it. We're
24 not going to introduce it unless you, on cross-
25 examination, need to say is it true that --

1 MS. JONES: -- you had these other stressors.

2 THE COURT: Right. And you know what, she can
3 elaborate on -- you can explain it all you want, but
4 we're not going to see it as you're a bad judge or
5 you're, you know, because you've had two grievances
6 filed against you.

7 MR. MATHISON: I think it's appropriate to say did
8 you have other stressors, and I fully expected them to
9 do that.

10 THE COURT: Okay. All right.

11 MR. MATHISON: I mean, the deposition testimony
12 will sustain that.

13 THE COURT: I think we know where we're at. I
14 mean, the simple fact is this, you need to make your
15 objection? Fine. I'll rule at the time. Literally,
16 like, trying to define what's going to happen, you know,
17 a day from now. So. Okay.

18 All right. Anything other than I see your other
19 motion is having to do with William Howard's testimony.
20 I have not had an opportunity to read it yet. He won't
21 come up, obviously, any time soon. So I'm going to read
22 his deposition overnight and take a look at what he's
23 opining.

24 MR. MATHISON: When I was here at the summary
25 judgment hearing, I offered the probability that I would

1 hand up a motion on spoliation, and I did. And Kelly,
2 bless her heart, anticipated it, but didn't anticipate
3 exactly what I was going to say about spoliation. So we
4 have -- essentially, I've moved for permission to be
5 able to tell the jury that I should comment on the fact
6 that they've lost all their email from 2008.

7 And at least with respect to Mr. Breed's email,
8 that, supposedly, he kept on AOL, we believe it's
9 recoverable, and he hasn't done it. And the reason that
10 we're suspicious is that we received some of Mr. Breed's
11 email in discovery to other parties, specifically, the
12 Beaufort County Sheriff's Office. And a lot of that
13 email does appear to be pertinent to this case,
14 including one email in which he referred to my client's
15 brother's little butt and how he wanted to get it, and
16 suggested that my client was somehow giving him cover
17 and was inserting herself into proceedings to his
18 detriment.

19 What Kelly believed I was going to complain about
20 is the fact that they also have recording equipment,
21 which automatically recorded every phone call at Sea
22 Pines Security into a computer data base. They also
23 have video equipment, which operates in the patrol cars,
24 and in addition, operates in various situations around
25 Sea Pine Sea Pines Plantation. Remarkably, not only is

1 there no email left, despite the fact that we know from
2 AOL, and Celeste has produced a document which she got
3 as a result of a Google search, which says it's there
4 unless the man deleted it.

5 And in addition, I --

6 THE COURT: How are you going to get that testimony
7 in?

8 MR. MATHISON: I've got --

9 THE COURT: Do you have someone who's going to come
10 from Google and state that?

11 MR. MATHISON: No, I'm not going to get that in.
12 What I can get in is, first, Mr. Breed saying that he
13 didn't tape record telephone conversations; then Mr.
14 Breed acknowledging that he had said something different
15 in the deposition in the Klippel case, which is fondly
16 known as the turkey case. And then, him acknowledging
17 that, yes, as a matter of routine, all of his deputies'
18 calls were recorded, whether they knew it or not. Only
19 his calls were selectively recorded, and he hadn't
20 recorded any.

21 THE COURT: So you want to say in your opening
22 statement, if I'm correct, because now you're telling me
23 what Ms. Kelly -- or Ms. Jolley thought you were going
24 to say. But now, your argument, you're just saying that
25 you want to be able to say to this jury that Mr. Breed

1 and CSA, I'm assuming -- sorry, I don't mean to assume,
2 I should never -- but we're not able to produce the
3 emails from 2008.

4 MR. MATHISON: I'm going to -- I assume that we
5 were going to argue about that, because there's some
6 debate about it. And in point --

7 THE COURT: Well, whether or not you get a
8 spoliation charge is a whole other issue, and we're not
9 talking about that just yet.

10 MR. MATHISON: I'm not asking for the charge now.

11 THE COURT: If what you want to say is that they
12 didn't produce documents that we got through other
13 witnesses, or they magically don't have anything, --

14 MR. MATHISON: Just like the document that I handed
15 up to you; that's correct.

16 THE COURT: I think you can comment on it. I mean,
17 I think you can comment on what they do and don't have.
18 But again, whether or not there's any kind of spoliation
19 issue is for later down the road.

20 MR. MATHISON: Well, I handed up the case, and
21 that's -- I'm trying to lay the groundwork for that now.

22 THE COURT: Okay. I don't think you need to argue
23 it. I mean, quite frankly, he can say that you all
24 didn't have it; he didn't turn it over; we got it from
25 other people. I think that's fair game.

1 MS. JOLLEY: That's fine. If all we're going to do
2 is talk about testimony.

3 THE COURT: Yes.

4 MS. JOLLEY: Earlier, in our motion's argument,
5 there was some discussion, though, about spoliation.
6 And if that word is going to come up in the argument or
7 discussing the case, then, I think we ought to argue
8 whether that's appropriate before. And --

9 MR. MATHISON: I agree with her. I'm not going to
10 use the word *spoliation*.

11 THE COURT: Okay. Thank you.

12 MR. MATHISON: In my opening or at any point until
13 you authorize it.

14 THE COURT: Not that the jury would understand it
15 anyway, other than Mr. Fairbanks. Okay. Okay.

16 All right. Well, let's get on then. This jury's
17 coming in at 2:15. And as soon as they're all here,
18 we're going. So okay?

19 MS. JOLLEY: Okay.

20 THE COURT: So let's get going. That's everything
21 as to you right now. Let's go ahead, let Ms. Jolley
22 start wherever we can.

23 MS. JOLLEY: Sure. Let's start in the back, then,
24 your Honor, on Page 6, which is F.

25 THE COURT: Okay.

1 MS. JOLLEY: And basically, the issue here is how
2 much of the complaint letter that Mr. Breed sent to the
3 Commission on Judicial Conduct can come into this case.
4 The plaintiff has agreed it's privileged. We already
5 know about the --

6 THE COURT: My question is this. I thought the
7 whole problem -- help me here, --

8 MS. JOLLEY: Um-hmm.

9 THE COURT: -- if I'm incorrect -- was not that it
10 was sent to the grievance, but that same letter was
11 given to the entire CSA board. Is that not what
12 happened?

13 MS. JOLLEY: The testimony of Mr. Breed's going to
14 be that he gave it to Greg DeLoach, and that he gave it
15 to his report, his direct report, Cary Kelley. And
16 you're right. We agreed.

17 THE COURT: And it went to the board.

18 MS. JOLLEY: Huh?

19 THE COURT: And it went to the board. Right.

20 MS. JOLLEY: And it went to the board. So those --
21 we think -- you're right. We think that the publication
22 of those, necessarily, not the fact that the letter was
23 ever sent to Judicial Conduct at all. Right.

24 THE COURT: So I don't understand --

25 MS. JOLLEY: Or what they did.

1 THE COURT: I don't understand why the whole thing
2 wouldn't come in that, if that was the publication. Am
3 I missing something? I mean, isn't what was in that
4 letter the slanderous or derogatory statements that was
5 then turned around and published to the board?

6 MS. JOLLEY: Yes, your Honor. What would happen --
7 what's in the letter, yes. The question is what about
8 the --

9 THE COURT: Because it says Judicial Conduct. Is
10 that what you're saying?

11 MS. JONES: Yes.

12 MS. JOLLEY: Yes. And because it -- and then what
13 Judicial Conduct did with the letter. I mean, is it all
14 coming in or only the publication?

15 THE COURT: It's kind of the -- it really is -- I
16 mean, how do you explain where this originally came from
17 if you don't have a -- if you don't have where and who
18 it was originally sent to. I mean, I can't have him sit
19 up here and say, well, yeah, I wrote this letter to the
20 board. It was a letter he wrote to Judicial Conduct. I
21 don't know what your position is on this. Do you only
22 want certain portions of it in, or?

23 MS. JOLLEY: No, your Honor. We're just trying to
24 decide how much of it the Court's going to allow in,
25 knowing that the Rules say it's privileged. We're just

1 trying to make it clear what the rules of the game are.

2 MR. MATHISON: Knowing that the -- knowing that the

3 Rules say it's privileged? I'm not following you.

4 THE COURT: Well, the problem is, is that, while

5 it's privileged, it's already been published.

6 MS. JOLLEY: Right.

7 THE COURT: So it's out there. I mean, so it's not

8 as if there isn't anything that isn't out there. And

9 I'd be definitely hesitant to start altering that

10 document to make it look like it's anything other than

11 exactly what it was, for both sides, quite frankly. I

12 think it is what it is.

13 And also Mr. Mathison, just so I'm clear, it's not

14 just for your defamation action; it's not just the

15 publication to CSA about the letter, but is it also the

16 allegation of infidelity?

17 MR. MATHISON: Yes, it is. The infidelity is, I

18 think, --

19 THE COURT: Ms. Coffey and someone else. And some

20 security person.

21 MR. MATHISON: That's correct. Officer Jolin.

22 THE COURT: So those are your two -- correct me if

23 I'm wrong, but those are your two claims, your two

24 defamation claims.

25 MR. MATHISON: Correct.

1 THE COURT: Okay.

2 MR. MATHISON: One is for libel and one is for
3 slander.

4 THE COURT: Gotcha.

5 MR. MATHISON: That's the reason for four causes of
6 action. One in common law for each, and one in
7 constitutional law for each.

8 THE COURT: Got it. Okay.

9 MS. JOLLEY: Speaking of that, I read plaintiff's
10 proposed order last night. And I thought that proposed
11 order on summary judgment was getting rid of the slander
12 claim for adultery. Is that not the case?

13 MR. MATHISON: No.

14 MS. JOLLEY: Okay.

15 THE COURT: And quite frankly, I had decided
16 anyway. So okay. All I can tell you is, as of right
17 now, we're going forward. I think we've all agreed on
18 what causes of actions are gone and that she's a public
19 official. I think we can all step back and understand
20 that.

21 MS. JOLLEY: Okay.

22 THE COURT: So.

23 MS. JOLLEY: So your Honor, the letter is coming
24 in. What about the decision of the Judicial Commission?

25 MR. MATHISON: I'm going to offer that. The only

1 thing I want to put in with respect to the proceeding is
2 that the letter was sent to them. I'm going to instruct
3 the jury that it was entirely appropriate that it be
4 sent to them. All right. That it was a privileged
5 communication, if you will; and that they properly
6 resolved it on October 1st, and here's a resolution. In
7 other words, one document, and it says what it says,
8 which is that it was dismissed for lack of evidence.

9 THE COURT: Okay. Let me ask you. Is one of your
10 defenses that what he said was true?

11 MS. JOLLEY: Yes, your Honor. Well, she has the
12 burden.

13 THE COURT: Right.

14 MS. JOLLEY: The plaintiff has the burden to prove
15 it's false.

16 THE COURT: Sorry. You're right. Correct.

17 MS. JOLLEY: So --

18 THE COURT: I'm sorry. didn't mean to shift the
19 burden. I apologize.

20 MS. JOLLEY: I understand.

21 THE COURT: I apologize. Okay. I'm inclined to
22 let it all in. I have a problem with this case in that
23 I figure like everything needs to be able to be put out
24 there so a jury can honestly see it. When I say
25 everything, I don't mean everything. But truly I think

1 the letter to Judicial Commission has to come in, in its
2 entirety. I just do.

3 MS. JOLLEY: Certainly. Our concern, of course, is
4 that the decision that there wasn't evidence to go
5 forward with the complaint does not mean that the
6 allegations in the letter are false.

7 THE COURT: I think you can also explain that,
8 though.

9 MS. JOLLEY: I just think the jury's going to think
10 it came from a commission and they know what they're
11 talking about. Or that they actually investigated,
12 which isn't the case.

13 THE COURT: That's like saying Russ Keep knew what
14 he was talking about when he filed his grievance. Okay.
15 I understand what you're saying. You're arguing because
16 it comes from a judicial grievance committee.

17 MS. JOLLEY: I mean, we've passed up the *Seager's*
18 case earlier, your Honor. And basically, there, they
19 said you can't use the complaint for any purpose if it's
20 been dismissed. I would say that also includes proving
21 that the allegations in it were false.

22 MR. MATHISON: May it please the Court. I don't
23 know what the *Seager's* case is, and it hasn't been
24 passed to me, so.

25 MS. JOLLEY: I don't want to address Counsel

1 directly. We attached it to our motion in limine.

2 THE COURT: Okay. Okay.

3 MS. JOLLEY: And which we sent all counsel.

4 THE COURT: Right. Okay. Well, obviously, I'm
5 familiar with the *Seager's* case.

6 MS. JOLLEY: Yes.

7 THE COURT: Just give me a couple minutes to think
8 on that one. I'm a little bit leery to tie his hands
9 not to say what the result of that was, just because I'm
10 wondering if the jury's going to be asking that
11 question. But let me think about that.

12 MS. JOLLEY: Okay.

13 THE COURT: Okay. What else -- sorry.

14 MS. JOLLEY: All right. Sure.

15 THE COURT: What else do we have?

16 MS. JOLLEY: Let's go to E, if you don't mind.

17 THE COURT: Sure.

18 MS. JOLLEY: Here, we're objecting to the calling
19 witnesses based on Rule 37. And here, your Honor,
20 frankly, discovery ended April 16th, and the scheduling
21 order had already been extended three times. We
22 received discovery responses on April 25th, 2011, from
23 the plaintiff. They were never amended. However, this
24 past week, we've received several proposed witnesses who
25 are not listed in the plaintiff's discovery responses.

1 We're just asking that you say no one can call any
2 witness that wasn't produced in discovery on the
3 witnesses.

4 THE COURT: Who are they? Who are these witnesses?

5 MS. JOLLEY: David Dorsner, M.D.; Richard Sonberg,
6 Jeanne Pearse. She was subpoenaed today. William --

7 THE COURT: Okay. Hold on a second. David
8 Dorsner, M.D. I heard him say that's for damages. Is
9 that correct? Medical doctor that's seen your client.

10 MR. MATHISON: He's a disclosed witness, your
11 Honor.

12 THE COURT: Where.

13 MR. MATHISON: Because in the ten pages where we
14 had upgraded every single doctor she'd seen in the
15 previous five years, we referred back to the witness
16 list, which we set forth in one of the first five
17 paragraphs. And if they'll read my answers to
18 interrogatories, it says every single doctor identified
19 in the subsequent interrogatory was subject to being
20 called as a witness in this case. Dorsner was
21 disclosed.

22 THE COURT: Okay.

23 MR. MATHISON: They discovered documents from him.

24 THE COURT: Let's go to the next one. If he's been
25 disclosed, he can testify.

1 MS. JOLLEY: Richard --

2 THE COURT: I mean, if he's qualified as an expert,
3 or whatever he is.

4 MS. JOLLEY: Well, they're never, certainly,
5 disclosed as an expert. We never had a chance to
6 disclose them or get an expert at anything. I mean,
7 this is today.

8 MR. MATHISON: My standard interrogatory says that
9 each person who is an expert among the physicians that
10 may be called as an expert.

11 THE COURT: Okay. Do we need to -- do I need to
12 actually look at your answers to interrogatories to see
13 whether or not you've listed him as an expert?

14 MS. JONES: I've got it. Right here.

15 MR. MATHISON: I have them, if you want to look at
16 them.

17 MS. JOLLEY: Okay. We can move on through the
18 list, your Honor.

19 THE COURT: Okay. Who's next, then?

20 MS. JOLLEY: Richard Sonberg.

21 MR. MATHISON: She is correct about that.

22 THE COURT: Okay. And again, who is he?

23 MR. MATHISON: He's a person that had a -- attended
24 a conference by Cary Kelley in January of 2009 where Mr.
25 Kelley said two things that were demonstratively false.

1 One was that the arrest of Otis Coffey was imminent.
2 And the other was that Judge Coffey had been concealing
3 him from law enforcement. He is being called because
4 the person that we disclosed as someone who had
5 knowledge of verbal repetition of the libel that's in
6 the letter --

7 THE COURT: By Mr. Kelley?

8 MR. MATHISON: -- is unavailable. She's out of --
9 out of the state and we can't get her. And Mr. Sonberg
10 was disclosed on Page 30 -- 136 and 137 of Ms. Coffey's
11 deposition, where she indicated what I just indicated to
12 Mr. Halio in response to his question. It's not
13 something that took them by surprise.

14 THE COURT: So Mr. Sonberg spoke with Mr. Kelley,
15 and Mr. Kelley told him, or --

16 MR. MATHISON: Told him that Judge Coffey had been
17 basically been concealing the whereabouts.

18 THE COURT: Concealing her brother and?

19 MR. MATHISON: And that the brother's arrest was
20 imminent. And of course, it wasn't.

21 THE COURT: And Mr. Sonberg works for sheriff's
22 department? Who's he work for?

23 MR. MATHISON: He doesn't work for -- he works for
24 himself. He's a, I believe, a retired lawyer from
25 Missouri. This was at a meeting that Mr. Kelley had

1 with the Calibogue Cay --

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

4 MR. MATHISON: No, he's in lieu of one that we did
5 disclose, but he was disclosed in her deposition
6 responses when asked.

7 THE COURT: But you got to list him as a witness.
8 Did you list him as a witness?

9 MR. MATHISON: I did not. I should have amended
10 last week, but quite frankly, didn't have the time.

11 THE COURT: Who else?

12 MS. JOLLEY: Jeanne Pearse. She works for CSA.
13 She was not listed as a witness.

14 MR. MATHISON: May it please the Court. We listed
15 other employees of CSA, in addition to the number that
16 we knew we were going to call.

17 THE COURT: Which is required.

18 MR. MATHISON: I think we listed six, and she's
19 another employee of CSA. Same thing with the Beaufort
20 County Sheriff's Office. We listed five or six officers
21 that we knew we were going to call, and said other
22 employees. I mean, you can't know everybody when you
23 respond to the deposition -- the interrogatory requests.

24 THE COURT: Well, see, your blanket said, *and all*
25 *other employees of CSA.*

1 MR. MATHISON: *And other employees, not all other*
2 *employees.*

3 THE COURT: *And other employees of CSA.*

4 MR. MATHISON: That's correct.

5 MS. JOLLEY: But then listed them. Listed five of
6 them. And now they're calling people that weren't
7 listed.

8 MR. MATHISON: I said *these and other employees.*
9 I'm only calling her for purposes of putting in the
10 documents that weren't furnished to me until the summary
11 judgment hearing. In response to our discovery
12 requests, we asked for all the meeting minutes. What we
13 got from CSA were documents that had *Draft* on the right
14 side of them.

15 When I got to Mr. Kelley's deposition, which is
16 about nine minutes later, he declined to answer on the
17 basis that I didn't have the final minutes. When it was
18 pointed out to him that he had to furnish me the final
19 minutes, then they finally did furnish them. Kelly gave
20 them to me on April 25th.

21 But I don't know whether they're final or not. And
22 the person who took the minutes is Jeanne Pearse. I've
23 called her for the purpose of putting the minutes in the
24 record, only three that I want; and also qualifying the
25 financial statement of Community Services Associates,

1 Inc., which indicates that they have in two separate
2 reserve funds, one undesignated and one designated, in
3 excess of thirteen million dollars. That's what I want
4 to use her for.

5 So, if you'll just allow me to use their public
6 report, I don't need to use her for that, but I need her
7 for the original minutes which they refused to produce,
8 and then had their -- they had --

9 THE COURT: Will they not agree that that's what
10 they are? Can you all not agree that that's what they
11 are?

12 MS. JOLLEY: We're happy to stipulate on the record
13 that the documents on the CD were the final CSA minutes.
14 In fact, we thought that's what had been produced before
15 at the deposition of Mr. Kelley. As Mr. Mathison
16 suggests -- states, said, wait, these say draft; you
17 should have the signed ones; we'll get them to you. I
18 got them on CD, and neatly gave them at the hearing.

19 MR. MATHISON: April 25th, I got them.

20 MS. JOLLEY: Well, we got this today.

21 MR. MATHISON: Got what today?

22 MS. JOLLEY: We got these lists today. The
23 subpoenas that went to CSA today.

24 THE COURT: And so, do you need her?

25 MR. MATHISON: I would prefer to call her, your

1 Honor, and I think that I'm entitled. I've never had
2 some --

3 THE COURT: I'm going to let you. If she can -- if
4 she's going to verify records and documents, business
5 records, then I'll let you call her if you need to. How
6 is she going to be able to answer any questions on when
7 they were produced or what was produced?

8 MR. MATHISON: I'm not going to ask her about the
9 production. I don't have any grudge against her in
10 terms of production. I'm going to ask her whether these
11 are authentic and to tell me what they are.

12 THE COURT: All right. Okay.

13 MR. MATHISON: And with respect to the financial
14 statement, I need someone who can say I believe that
15 this is its back-to-current financial statement for
16 Community Services Associates.

17 THE COURT: Okay.

18 MR. MATHISON: And you know, if they'll stipulate
19 that they've got an undesignated capital reserve, which
20 I translate to net worth, it's not committed to
21 anything, of 6.7 million dollars, I'll be happy to go
22 with that.

23 MS. JOLLEY: We're not going to stipulate to that,
24 your Honor. No 30(b)(6) --

25 MR. MATHISON: I didn't foresee you would.

1 MS. JOLLEY: No 30(b)(6) designation was ever
2 requested. I mean, we all know how discovery works.

3 THE COURT: How can Jeanne Pearse, I mean, how can
4 she verify what the bank account or what the net worth
5 is of CSA?

6 MS. JOLLEY: She can't. She's a secretary.

7 MR. MATHISON: It's not that she could verify what
8 it is. She can verify this appears in their current
9 published financial statement, which is up on the
10 Internet. I mean, --

11 THE COURT: It disappears. Okay. I'm missing
12 something.

13 MR. MATHISON: There is a booklet that they
14 produced that they have sent out. As a property owner,
15 I've got one.

16 THE COURT: Okay.

17 MR. MATHISON: Okay? And that is the official
18 record of the financial attainment year-to-year between
19 2010 and 2011. And the portion of that booklet that I
20 want the jury to see is right there. And what I've
21 marked as important is there. Basically, they have,
22 through charging assessments far greater than their
23 expenses, they've amassed a designated capital
24 infrastructure replacement fund of \$5,869,023.00. I
25 don't think that's fair game because that, you know, is

1 reserved for replacement.

2 THE COURT: Right.

3 MR. MATHISON: But they have an undesignated fund
4 for, you know, mad money, which is \$6,771,091.00. And I
5 think that is fair game. I think that's the functional
6 equivalent net worth. It's not committed to anything.
7 And I think that the jury can know that on the issue of
8 punitive damages.

9 THE COURT: I think she can clearly verify whether
10 or not the meeting minutes are appropriate. I guess you
11 can go ahead and ask her the question as to is this, in
12 fact, your report, and is this what was published and
13 put out to the homeowners. I don't know how much more
14 she's going to be able to tell more than that.

15 MR. MATHISON: I don't really need her to tell more
16 than that, your Honor.

17 THE COURT: Okay. Okay. All right. What else,
18 Ms. Jolley? I don't recall what the Court's ruling was
19 on Richard Sonberg, your Honor.

20 THE COURT: And I'm not sure. Again, --

21 MS. JOLLEY: Oh, okay.

22 THE COURT: No. I'm just -- I'm trying to
23 completely understand that, apparently, Mr. Kelley told
24 Mr. Sonberg that, Number 1, an arrest was imminent for
25 Ms. Coffey's brother; and --

1 MS. JOLLEY: That's the whole point of this case,
2 your Honor, is these alleged defamation -- defamatory
3 statements. Ms. Coffey apparently mentioned his name as
4 a potential witness back in her deposition, but they
5 never listed him as one. So no discovery ever took
6 place or discussion about him.

7 MR. MATHISON: Your Honor, may --

8 MS. JOLLEY: That's the whole point of the
9 discovery process.

10 MR. MATHISON: May it please the Court. We listed
11 Darby Kusic as someone who could testify about oral
12 repetitions of the same libelous statement that took
13 place in the letter. They didn't take Ms. Kusic's
14 deposition. We went to bring Ms. Kusic to court to
15 serve a subpoena, and she's currently out of state, and
16 she's not going to be back for a month. So in scrolling
17 through who else knew, we --

18 THE COURT: It not going to be entitled to you as
19 substitution of a new person that you haven't disclosed.
20 It just needs to be disclosed.

21 MS. JONES: Your Honor, I'd like to hand up the
22 interrogatory answers. And the first tab are the
23 witnesses that are listed, and the second tab is where
24 we asked what doctors she had seen in the last ten years
25 or five years. And she lists the doctor, and says

1 that's her primary care physician. The doctor was never
2 listed as a witness.

3 MR. MATHISON: Sorry, but if you look at the bottom
4 of the --

5 MS. JONES: Neither one of those other people you
6 just talked about.

7 MR. MATHISON: I can show you where they were
8 listed, your Honor, if you'll allow me to approach.

9 THE COURT: Well, I'm looking at the doctors' list
10 here.

11 MR. MATHISON: It's pretty comprehensive.

12 THE COURT: Hand me Mr. Sonberg.

13 MR. MATHISON: Mr. Sonberg is not on there.

14 THE COURT: Well, I saw the doctors listed. I
15 already decided that Dorsner will testify. He's going
16 to testify.

17 MR. MATHISON: Item F, on Page 10, *Physicians*.

18 MS. JOLLEY: Your Honor, --

19 MR. MATHISON: Excuse me, but I'd like her to read
20 that before we -- and then we can address the next red
21 herring.

22 THE COURT: I think he means Item R. Okay.

23 MR. MATHISON: I mean, it's pretty clear that I
24 identified every one of those physicians as a likely
25 witness in this case.

1 THE COURT: Okay. All right. Let me tell you what
2 I'm going to do with Mr. Sonberg. You've subpoenaed
3 him. Is that correct?

4 MR. MATHISON: I have.

5 THE COURT: When did you subpoena him for?

6 MR. MATHISON: Tomorrow.

7 THE COURT: All right. I'm going to give Defense
8 an opportunity to talk to him. And if there's anything
9 of any great surprise at that point, we will take up
10 whether or not he can testify. If I don't let him
11 testify, we'll do a proffer just for the record. But
12 let's make him available to the Defense so they can know
13 what he's going to say.

14 MR. MATHISON: I don't have any ability to do that
15 until he arrives here tomorrow, your Honor, I mean,
16 realistically. But I have no problem doing that.

17 MR. HALIO: So essentially, we got nothing. We got
18 no interrogatory answer; we got no opportunity; we got
19 nothing.

20 THE COURT: Do you not have a phone number for him?
21 Do you have a phone number for Mr. Sonberg?

22 MR. MATHISON: Yes, I do, actually.

23 THE COURT: Well, why don't you give it to him.

24 MR. MATHISON: Okay.

25 THE COURT: And the name is familiar to me, so how?

1 MR. MATHISON: I think that at one --

2 THE COURT: It's Dick Sonberg, right?

3 MR. MATHISON: I think at one juncture he was
4 involved in a dredging case. And the number I've got
5 for him is 671-3498. And I have no --

6 THE COURT: Is he an expert? Is he an expert in
7 the case? What does he do?

8 MR. MATHISON: No, he's not an expert. He's a
9 retired lawyer from Missouri, I believe. He was --

10 THE COURT: And he lives on Hilton Head?

11 MR. MATHISON: He does, in Sea Pines. And he
12 attended this meeting attended by Mr. Kelley where Mr.
13 Kelley made these statements, not in connection with
14 what they were there to discuss. They were there to
15 discuss whether or not the spoil site that they have
16 behind Calibogue Cay could be made available to take
17 spoil from Harbor Town and other places in Sea Pines.

18 THE COURT: All right. Ms. Kelly, you should be
19 able to find it.

20 MS. JOLLEY: Okay.

21 THE COURT: Ms. Jolley. And I'm sorry. I don't
22 know why I keep calling you Ms. Kelley, other than he's
23 got Mr. Kelley sitting back there. Anyway.

24 MR. MATHISON: And forgive me. I didn't have any
25 contact with him until May 25th. And he's furnished me

1 a copy of the minutes from that meeting dated January 7,
2 2009, which I am happy to share with anyone, if you'd
3 like to see it.

4 THE COURT: Okay.

5 MS. JOLLEY: The next one on the list is William
6 Waxel. Again, Mr. Waxel's not listed as a witness in
7 their response to interrogatories.

8 THE COURT: Who is Mr. Waxel?

9 MR. MATHISON: He's a CSA security officer, and
10 he's listed among the et als. I'm not certain how many
11 I listed in the answers to interrogatories, but I knew
12 of six of them. All right.

13 THE COURT: What's he going to testify to?

14 MR. MATHISON: He's going to testify that he heard
15 one or more of the officers at CSA say that Mr. Jolin
16 and Maureen Coffey were involved in a sexual
17 relationship. He's going to say that he told Mr. Jolin
18 that. I believe. I don't know. I haven't interviewed
19 him.

20 THE COURT: That Mr. Waxel told that -- he told Mr.
21 Jolin that he overheard someone else saying this?

22 MR. MATHISON: He's going to say that he was told
23 that by a gentleman named Woods, who's a CSA officer,
24 security officer. Waxel and --

25 THE COURT: How is that not hearsay?

1 MR. MATHISON: Pardon?

2 THE COURT: How is that not hearsay?

3 MS. JOLLEY: It is.

4 MR. MATHISON: Forgive me, but slander is only
5 spread by hearsay. I've also subpoenaed Mr. Woods. And
6 the way I'm going to make it not hearsay is I'm going to
7 go from Mr. Jolin to Mr. Waxel to Mr. Woods. And if all
8 three of them testify, it's not hearsay. That's why
9 I've served all the subpoenas. I've served subpoenas on
10 all of their officers, because I only have two agents
11 that I can put words in their mouth. One is Mr. Kelley,
12 the other is Mr. Breed. The other people are at levels
13 of hierarchy that I can't gage. And their word may not
14 be able to bind CSA. So in order to bring them in and
15 overcome hearsay objections, I had to subpoena them. I
16 have, I think, eight of their officers under subpoenas
17 now. Because, at any given time, you don't know how the
18 testimony is going to come out, who's going to say what
19 to whom. So I've got them all, all the ones that I
20 think I need.

21 THE COURT: Okay.

22 MS. JOLLEY: And your Honor, we're certainly not
23 saying anything about subpoenas. The question is the
24 number of people that were listed as witnesses
25 throughout and that are now showing up for trial.

1 THE COURT: Yes.

2 MS. JOLLEY: Without notice.

3 THE COURT: The only thing I'm concerned with is
4 they're your employees, so they're within your control.
5 Now, whether or not --

6 MS. JOLLEY: They're not all current employees.

7 THE COURT: Okay. But they were at the time, so.

8 MR. MATHISON: Mr. Waxel is a current employee,
9 your Honor.

10 THE COURT: Okay. All right..

11 MS. JOLLEY: Okay. The next is Ann Coffey. She's
12 listed in the interrogatories as a family member of the
13 plaintiff. She's not listed as a potential witness.

14 MR. MATHISON: We probably won't call her, your
15 Honor, but it's going to be difficult. There will be
16 opportunities where someone is going to say that Ms.
17 Coffey said something. And if you have her in the
18 courtroom, then she's available. She can be --

19 THE COURT: So you can use her as a rebuttal
20 witness, even if you haven't listed her. Is that how
21 you intend on using her?

22 MR. MATHISON: That's correct. Or they could call
23 her if they had a hearsay objection by having her
24 present within or without a subpoena. What I've done is
25 eliminate hearsay objections. That's all I'm trying to

1 do.

2 THE COURT: Okay. And they could call her as a
3 rebuttal witness without turning her over to you, as you
4 well know, so.

5 MS. JOLLEY: Marie Degler.

6 MR. MATHISON: Again, she's a CSA employee. Or a
7 former CSA employee.

8 THE COURT: Harold Harris.

9 MR. MATHISON: Former CSA employee. He's not under
10 subpoena. So, if he doesn't come voluntarily, I can't
11 put him up.

12 THE COURT: Okay.

13 MS. JOLLEY: Sergeant Eric Calendine. He's with
14 the Beaufort County Sheriff's Office. He is not a CSA
15 employee.

16 MR. MATHISON: That's true, but he's disclosed
17 under the five different deputies that I knew were
18 involved. Right? Because I say *and other employees of*
19 *the Beaufort County Sheriff's Office*. And he's
20 disclosed in Ms. Coffey's deposition in connection with
21 the conversation that took place on or about December
22 10th, 2004. The actual deputy who heard the
23 conversation between Ms. Coffey and whoever was at a
24 site in Sea Pines was Eric Calendine. And consequently,
25 for her to testify as to what was said during that, I

1 need to have Calendine, because he would be the
2 recipient of her declarations. And if they want to
3 refute them, I've got him under subpoena, so they can
4 put him up if they want to refute them.

5 THE COURT: And he investigated.

6 MR. MATHISON: He was investigating an incident in
7 which Ms. Coffey's brother ultimately was arrested for
8 trespassing.

9 THE COURT: Okay.

10 MS. JOLLEY: He may be, but he wasn't listed. Tom
11 Fultz, an employee of the Town of Hilton Head?

12 MR. MATHISON: Disclosed --

13 MS. JOLLEY: He is not listed.

14 MR. MATHISON: Disclosed witnesses are Curtis
15 Coltrane, Brian Hulbert, Greg DeLoach, Steve Riley. And
16 next to Steve Riley's name are other administrative
17 employees at the Town of Hilton Head Island.

18 THE COURT: So what is Mr. Tom Fultz going to
19 testify to?

20 MR. MATHISON: He's the person who is responsible
21 for control of the personnel that works in the office
22 where Ms. Coffey is the judge.

23 THE COURT: So he's the H.R. person.

24 MR. MATHISON: Actually, not. He's got an I.T.
25 function, but for some reason, he's considered under the

1 judicial or law enforcement branch! And all the
2 employees, essentially, work for him. They do not work
3 for Maureen.

4 THE COURT: Just so I'm clear, when you say you've
5 listed -- when you say you've listed in your
6 interrogatories as an answer as potential witnesses in
7 the case or as witnesses in the case, as you said, these
8 five employees and other, the administrative assistants
9 or whoever, did you, in fact, say that in your answer?

10 MR. MATHISON: I say *and other employees*.

11 THE COURT: *And other employees*. Okay.

12 MR. MATHISON: Yes. And I've said it with respect
13 to the town, with respect to CSA, and with respect to
14 the sheriff's office.

15 THE COURT: Okay.

16 MR. MATHISON: Because I anticipated this problem.
17 And frankly, my experience has been that, in a case like
18 this, with as many stray facts, all the people that get
19 mentioned at some point, some of them can end up being
20 witnesses that, if you don't have under subpoena, you're
21 not going to be allowed to say what it is that they said
22 or what it is that they may have heard. So by
23 subpoenaing him, you eliminate that objection. You
24 bring them to court so there are no out-of-court
25 declarations. That's what I've done.

1 THE COURT: Well, the owners would be on the
2 defense, then, to compel you to give a larger answer or
3 to specifically list. But I want to make sure we're not
4 kind of doing a trial-by-ambush here.

5 MR. MATHISON: Well, here's what it comes down to.
6 I didn't -- I mean, they didn't want to take anybody's
7 deposition at the Town. I took the depositions of the
8 Town. They didn't notice to take those depositions. I
9 did.

10 THE COURT: Doesn't matter who takes whose
11 deposition, though. You got to list them as witnesses
12 at some point.

13 MS. JOLLEY: I mean, that's what Rule 33(b) says.
14 It's deemed continuing. Once it came to the other
15 side's knowledge that they wanted to call these people,
16 they should have informed us. Even if they'd done it
17 last week, it'd be different than us standing here today
18 finding out who these people are.

19 MR. MATHISON: Your Honor, they know who the people
20 are, because they've been mentioned during the
21 depositions. My likelihood of actually putting these
22 people on the stand is zero, unless what happens is what
23 has happened all throughout this case, which is, in
24 order to bog things down, they turn every conceivable
25 statement into a hearsay objection. And if that

1 happens, which I've seen before, I'm simply going to
2 call your attention to the fact that I've got the
3 witnesses under subpoena, and if they want to put them
4 up and contradict my witness, they're more than entitled
5 to do so. And that eliminates the hearsay objection.
6 Fultz is coming in, not because I want him to testify,
7 but because someone is going to say something that he
8 said, and I want to eliminate the objection.

9 THE COURT: So does that mean we're going to have
10 all these people sitting there during the entire trial
11 of the case? Is that what we're doing?

12 MR. MATHISON: If that's what's necessary, yes.
13 But trust me, I mean, I'm listening to discovery abuse
14 complaints from someone that gave me a 600-page data
15 drop last week. Now, you don't hear me whining about
16 that.

17 THE COURT: Okay. Well, to the extent that you're
18 using them as rebuttal witnesses, I think you can do
19 that. And these, you say, are people whose names have
20 all been mentioned in deposition testimony by someone.

21 MR. MATHISON: Beyond a shadow of a doubt, they're
22 all people that --

23 THE COURT: Well, the answer's yes or no.

24 MR. MATHISON: Yes. The answer is yes.

25 THE COURT: Yes or no. Okay. All right. Who

1 else?

2 MS. JOLLEY: That's it, your Honor, for witnesses.

3 THE COURT: Okay. All right. What else you got,
4 you all?

5 MS. JOLLEY: Okay. The next objection's to
6 admissioned-based, also in *Rule 37*. In this case, we're
7 objecting to any evidence of damages other than set
8 forth in plaintiff's answers to interrogatories. Here,
9 looking at Interrogatory Number 5, I think you have that
10 in front of you. And any damages testimony evidence
11 outside the scope that's been disclosed in discovery.
12 And we've listed in our motion five specific things.
13 One are any and all medical bills, because none have
14 been produced during discovery.

15 THE COURT: Okay. Let's address that. My
16 understanding is you said you got damages in the amount
17 of roughly \$7,000.00. I don't know if those are all
18 Dorsner or portion of Dorsner and Steiger [sic].

19 MR. MATHISON: Actually, there are -- there's an
20 MRI. And Dr. Dorsner and his partner, whose name is
21 Joey Abotti. Dr. Mauer is third. All of whom have been
22 disclosed. And Dr. Geiger, who's the clinical
23 psychologist.

24 Here's what we did. Maureen has very comprehensive
25 medical insurance. So in response to their production

1 request, we produced all of her EOBs for the previous
2 five years, explanation of benefits, which, obviously,
3 we can't say anything about to the jury, so we're not.

4 In response to that, Andy, in April of 2011, served
5 subpoenas on every single one of Ms. Coffey's medical
6 providers.

7 THE COURT: Nothing unusual about that.

8 MR. MATHISON: And they provided every single
9 document that Kelly now complains that she doesn't have.
10 In other words, and --

11 MS. JOLLEY: No, that's not my complaint. My
12 complaint isn't possession. I don't know what they're
13 saying is damages. They have not given us medical bills
14 as evidence of damages. That's a requirement.

15 MR. MATHISON: Excuse me, but there's no reason to
16 carry coals to Newcastle. We gave explanation of
17 benefits, which shows what the damages are. They
18 subpoenaed, with our consent. And Andy's letter says
19 that, a sufficient period of time without objection from
20 the plaintiff, we're now entitled to these documents.
21 And every single one, supplied documents, documenting
22 not only all of the conditions that were treated, but
23 all of the expenses that were charged and whether paid
24 by insurance or paid by out-of-pocket by Maureen.

25 THE COURT: Where's your list that says these are

1 the damages we're claiming for?

2 MR. MATHISON: I've got a list right now today,
3 which, instead of being what was supplied, is that long.

4 THE COURT: What does that mean? Does that mean a
5 stack of papers this long, or does that mean four pages?

6 MR. MATHISON: Means five lines.

7 THE COURT: Okay. So is that what you're going to
8 give to the jury?

9 MR. MATHISON: Yes.

10 THE COURT: Okay. And have you shown it to them?

11 MR. MATHISON: No, because we haven't gotten there
12 yet, but I have no problem doing that. I brought it for
13 the purpose of showing them.

14 THE COURT: Well, we're up for trial today, and I
15 think they're entitled to know what damages are being
16 claimed at this point.

17 MR. MATHISON: Well, it's less than the medical.
18 It's listed in the answers to interrogatories. And it
19 is specific. It's been parsed.

20 MS. JOLLEY: Your Honor, the case law is very
21 clear. You have to have evidence of causation and
22 damages. We have no evidence. We have no evidence, no
23 medical records showing these are the things, these are
24 the issues she has, these are the costs associated with
25 those issues, and that tying those issues to her alleged

1 harm. The discovery rules are clear.

2 THE COURT: I assume Dr. Dorsner is going to do
3 that, but I could be wrong.

4 MR. MATHISON: I believe that he will do that.

5 THE COURT: Dr. Geiger -- I'm sorry -- not Steiger.
6 But Geiger is going to do that as well, possibly?

7 MR. MATHISON: No, I don't think she's going to
8 come, but Dr. Dorsner is.

9 MS. JOLLEY: We don't know, because we don't have
10 the records.

11 MR. MATHISON: Forgive me, but I just said I didn't
12 hear Mr. Halio contradict what I said about his getting
13 all the documents from the physician. He did. They do
14 have the records. What they don't have is a winnowed
15 set saying this is specifically what we're going to put
16 in. And they're entitled to that. And that's why we
17 come here today. Just like they're entitled to a
18 witness list. And I'm going to give it to him.

19 MS. JONES: What we don't have is notice of,
20 which, --

21 THE COURT: Of the damages.

22 MS. JONES: -- out of that big stack, they were
23 going -- we have no notice as to who's going to --

24 THE COURT: Relating, related to.

25 MS. JONES: -- right, relate it to anything that

1 has to do with this case. We've never been given notice
2 of any of that, of any connection between what's claimed
3 in this case and these things that these doctors' visits
4 that she had. If you look at that interrogatory answer
5 from Rob, it says that the doctor who he's going to try
6 to call now was her primary care physician. That's all
7 it says about him. That's the only notice we're given
8 from him.

9 THE COURT: Did anybody ask Judge Coffey in her
10 deposition what are the damages that you're claiming and
11 other than in general, and ask --

12 MS. JONES: Yes.

13 THE COURT: -- her an actual dollar amount?

14 MS. JONES: Yes. Yes. Yes. And --

15 THE COURT: And what was the answer? That it would
16 be supplemented or?

17 MS. JONES: She said she's got medical; she's gone
18 to the doctor for a long time; she's been going for a
19 long time; she was going before this started and after
20 it's happened. And she says she has no diagnosis as to
21 causation to link anything between the stress she
22 suffered as a result of whatever she's claiming in this
23 case and any medical condition. Her testimony
24 specifically was no doctor's going to say that; no, I
25 don't have that; no, I don't have that.

1 THE COURT: And Dr. Dorsner's not going to say that
2 here?

3 MR. MATHISON: No, he's not going to say that.
4 Celeste knows that. What she said was, with respect to
5 -- forgive the unfamiliarity with the terminology.
6 There are nodules on the thyroid, and with respect to
7 that particular condition, my client testified that no
8 doctor would say that that was attributable to stress.
9 She did say that. But she didn't say with respect to
10 the headaches, for crying out loud. And she didn't say
11 it with respect to weight gain or what we're here to
12 testify about.

13 THE COURT: So Dr. Dorsner's going to talk
14 causation.

15 MR. MATHISON: He is. I've talked to him on the
16 phone, and he's going to say that stress causes those
17 conditions.

18 THE COURT: And whether or not stress caused those
19 conditions in Judge Coffey.

20 MR. MATHISON: Yes.

21 THE COURT: Okay.

22 MR. MATHISON: He has treated her for those
23 conditions.

24 THE COURT: Okay. But again, that still doesn't
25 mean they were necessarily or were caused by this

1 incidence, and he has got to make that connection. He
2 has to testify to that.

3 MR. MATHISON: Well, I don't know exactly whether
4 he's going to say that this incident caused the stress.
5 I do know that he's going to say stress causes these
6 symptoms. And I'm just going to have to find out.

7 THE COURT: Well, if you can't link it up and he
8 can't link it up, it isn't going coming in.

9 MR. MATHISON: I understand.

10 THE COURT: He's got to be able to say within a
11 reasonable degree of medical certainty that this most
12 likely caused or contributed to stress.

13 MR. MATHISON: There's no question he's going to
14 say that.

15 THE COURT: Okay.

16 MR. MATHISON: He just can't say that -- I'm not
17 going to ask him whether he can say, most probably, her
18 stress was caused a hundred percent by what George Breed
19 did. He's not going to say that. He's going to say
20 that stress caused these conditions, and undoubtedly,
21 that was a stressor that contributed to this cause. And
22 he will say that most probably.

23 THE COURT: Okay. All right. We're going to see
24 what you all put up. You can make your objections when
25 it's appropriate. And if I have to strike certain

1 testimony, I'm going to.

2 MS. JOLLEY: Okay.

3 THE COURT: If necessary. What else do we have to
4 do? Because it's a quarter till three. I think we need
5 to get going with our opening statements.

6 MS. JOLLEY: The other thing, I think A and B, your
7 Honor, mainly have to do with relevance and character
8 testimony. I'm trying to look through B, if you don't
9 mind, real quick, --

10 THE COURT: Sure.

11 MS. JOLLEY: -- to see if there's likely any of
12 those topics will be showing up in the opening. I
13 guess, if Mr. Mathison knows whether he's going to
14 discuss any of the topics in the opening, that would be
15 helpful.

16 THE COURT: I think you all are going to have a
17 hard time making promises in your opening statements.
18 I don't think anyone knows what's coming down, quite
19 frankly. Any lawyer that did would probably not be
20 very --

21 MS. JOLLEY: I think, your Honor, we can argue A
22 and B. Probably, at the end of the day, 802 is a
23 hearsay objection --

24 THE COURT: Okay.

25 MS. JOLLEY: -- that we've already talked about

1 regarding Mr. Jolin.

2 THE COURT: Okay.

3 MS. JOLLEY: So we can certainly make that as we go
4 or go back this evening. Regarding the one we were just
5 on, the things are, first off, we're objecting to the
6 admission of any speculative evidence of damages. For
7 example, she will be fired in the future; she cannot be
8 a family court judge in the future when she hasn't
9 applied; that the Town of Hilton Head will not renew her
10 contract. All those things are speculative. There's no
11 evidence in the record of any of that.

12 MR. MATHISON: Your Honor, may it please the Court.
13 I've actually done one of these cases before, and she's
14 entitled to say what she thinks she's been deprived of
15 and what bears on her reputation. No one's going to
16 tell this jury that she was going to be a judge and they
17 stopped her. But she's entitled to tell the jury, you
18 know, what she aspired to do. And she's entitled to say
19 that this has derailed that. As I'm sure it has. And
20 it's self-evident. But saying that you can't testify
21 about it, it doesn't make any sense. It's relevant.
22 And if she has the knowledge, the requisite knowledge to
23 say that, they examined her and asked her why she
24 thought she had a chance to be a judge. This is in her
25 deposition. And she said that she had been approached

1 and asked to consider it. She had named the individual.
2 And went through a pretty comprehensive discussion of
3 what the considerations were, but she didn't say she was
4 going to be a judge. And you can't. I don't think you
5 would let her. What she is going to say is that she
6 aspired to, and that this has had a detrimental impact
7 on those aspirations. And I think she's entitled to say
8 that.

9 THE COURT: Okay.

10 MS. JOLLEY: And the last item, your Honor, under
11 damages is any of the testimony that the Town of Hilton
12 Head's payment for an additional judge based on Judge
13 Coffey's recusal is somehow damages --

14 THE COURT: To her.

15 MS. JOLLEY: -- to her. I just don't think there's
16 -- there's no foundation for that.

17 THE COURT: Are you making that claim?

18 MR. MATHISON: No, but let's see if we can put this
19 as -- one of the things that she said, one of the
20 reasons that the Town of Hilton Head had reversed their
21 view of her job proficiency was because she had to
22 recuse herself in the Sea Pines cases. They had been
23 constrained to hire other judges and pay them,
24 essentially, to hear the cases. The first one was Ned
25 Tupper, and then Fletcher Johnson, until his untimely

1 death.

2 THE COURT: I understand that.

3 MR. MATHISON: We're not asking for damages for
4 that, but we certainly intent to put that in as an
5 explanation as to why they would be upset with her. I
6 mean, that's not something --

7 MS. JONES: That also goes back to the second
8 grievance, because it was at that point in time the
9 lawyer for the Town told her she couldn't hear any CSA
10 cases.

11 MR. MATHISON: The lawyer from the Town never told
12 her. If you'd read the discovery, she told the lawyer,
13 based on what her lawyer told her. That was what we
14 were trying to get you all to pay for.

15 MS. JOLLEY: I believe that's right. I believe it
16 was Ms. Ballard's advice to the plaintiff that she not
17 hear those cases.

18 THE COURT: Not to hear it?

19 MS. JOLLEY: It was the plaintiff voluntarily
20 recused herself.

21 THE COURT: Okay. Okay. All right, you all, let's
22 go ahead and just take five minutes. We're going to go
23 ahead -- I'm just going to see what your openings have
24 to say. I think that will probably tell me pretty much
25 what you're going to argue. And they are just that;

1 they are argument. So to the extent that you all want
2 to jump up and down and scream, again, they're just
3 argument. And I'll be darn sure to tell the jury in my
4 opening statement that that's what they are. And we'll
5 just go forward from there.

6 Again, I want you all to preserve your record as
7 you need to, but it sounds to me like there's a lot that
8 we're not quite sure what's going on. And it's a
9 defamation case, which makes it difficult. And I
10 understand and appreciate that. So I think we're just
11 going to have to see what comes up. We'll see what
12 rebuttal testimony is needed, and we'll go forward. All
13 right?

14 MS. JOLLEY: Thank you, your Honor.

15 THE COURT: All right. Let's just take five
16 minutes. When I bring the jury out, we're going to get
17 going. Okay?

18 OFF THE RECORD 2:50 P.M.

19 BACK ON THE RECORD 3:00 P.M.

20 BY THE COURT:

21 THE COURT: Thank you, you all. Please be seated.
22 All right. Please be seated. Mr. Mathison, are you
23 ready to go?

24 MR. MATHISON: Yes, ma'am.

25 THE COURT: Defense team ready to go?

1 MR. HALIO: Team is ready.

2 THE COURT: The team is ready. All right. Let's
3 bring the jury in.

4 BAILIFF: Yes, your Honor.

5 MR. HALIO: I don't guess we get any limits on
6 opening time-wise?

7 THE COURT: Oh, really, it's tempting, you all.
8 I'm not --

9 MR. HALIO: It's a short week.

10 THE COURT: Mr. Mathison, how long are you going to
11 argue?

12 MR. MATHISON: What do you want, your Honor?

13 THE COURT: Not too long. I think you need to
14 limit your time. And I do not limit lawyers. I really
15 don't like it. I hated it as an attorney, and I
16 certainly don't want to be as a judge, but I think if
17 you're just going on and on and on and on, you're going
18 to hear the Judge Buckner knock. You hear that knock,
19 get it done within about five minutes or so. And I'm
20 not going to do that unless you've been going on for,
21 you know, well over a half hour. Okay?

22 MR. MATHISON: You couldn't go for some theatrical
23 throat clearing first?

24 THE COURT: You would like. I was going to say,
25 you could do the old ear pulling, but you aren't going

1 to be looking at me, So yes, I can start clearing my
2 throat. No problem. I think the jury wants to get to
3 it. Yes. Yes. Oh, I can choke, definitely.

4 MR. HALIO: Oh, I got a bad cough.

5 THE COURT: Okay. All right. Who's opening for
6 you all?

7 BAILIFF: The jury is entering, your Honor.

8 THE COURT: Thank you. Jamie, you going to swear
9 them in for me?

10 MADAM CLERK: Yes, ma'am.

11 THE COURT: Thank you.

12 JURORS ENTER COURTROOM 3:02 P.M.

13 BAILIFF: The jury is seated, your Honor.

14 BY THE COURT:

15 THE COURT: Welcome back, ladies and gentlemen. I
16 hope you all had a nice lunch. I apologize. We are
17 running a little bit late, but I want you to know that
18 the attorneys have been in here working hard so they can
19 streamline this case and put it before you more
20 efficiently.

21 Ladies and gentlemen, at this time, I'm going to
22 give you a few brief instructions regarding the trial of
23 this case or how it's going to unfold. Then, you're
24 going to hear the opening arguments from the lawyers.
25 But before we do that, I'm going to have Jamie from the

1 understand something. We're not trying to hide anything
2 from you. Oftentimes, when I have to rule as a matter
3 of law whether or not certain evidence is admissible, I
4 may make a comment on the facts of this case. And
5 again, I'm not going to want anything I say or do to
6 influence you in your determination of the facts. So we
7 do it in relative private so I don't influence you in
8 any way.

9 Ladies and gentlemen, in determining what the true
10 facts are in this case, you must decide whether or not
11 the testimony of a witness is believable. It's my
12 responsibility to rule as a matter of law whether or not
13 certain testimony is admitted. But once that testimony
14 is admitted, whether or not you believe it, is solely
15 for you, the jury, to determine.

16 In deciding whether to believe a witness, you have
17 a right to consider whether the witness has an interest
18 in the outcome of the case; whether or not they have any
19 bias; whether they have any prejudice for or against the
20 plaintiff of the defendant in this case. And you can
21 look at what that witness had the opportunity to see and
22 observe about the case. And you can also look at the
23 way that witness acts on the witness stand.

24 You have the right to use anything that is in the
25 record of the case to help you determine the evidence

1 will hear evidence that Mr. Breed, while this complaint
2 was pending at the Commission, published the letter far
3 and wide. It was distributed at a meeting of Community
4 Services Associates. Seventeen people got a copy of it.
5 And it wasn't done in such a way to assure its privacy,
6 because they were delivered copies two or three days
7 before the meeting. Delivered copies where the family
8 could have opened it. The kids could have taken it
9 outside and made a paper airplane out of it. It was
10 just a mass distribution.

11 Essentially, what this letter says is that my
12 client acted with bias, prejudice, and partiality. In
13 this letter, which is three pages long, that statement
14 is repeated over and over again.

15 My client had an excellent reputation. She had
16 been on the Bench for eight years. She had adjudicated
17 cases fairly and impartially. The core complaint about
18 my client goes to the very essence of being a judge.
19 Anybody who's sworn in as a judge at any level in this
20 state has to swear an oath that requires impartiality.
21 The level of attack here is directly on my client's
22 fitness to serve in her office.

23 Now, as I told you, he's entitled to say that to
24 the Commission on Judicial Conduct. But he's not
25 entitled to say that to an ordinary citizen. And he's

1 stand he still believes everything in here is true. I'm
2 certain of it.

3 Well, here's what it comes down to. In order to
4 prove defamation under the circumstances that pertain in
5 this case, I have to establish that what's in here is
6 false. The preliminary determination is going to be
7 fairly easy, because certain statements that he made,
8 they've admitted are false.

9 For example, Mr. Breed says, and I'm quoting:
10 *Judge Coffey has given the distinct and transparent*
11 *appearance of bias and partiality and is not able to be*
12 *a neutral and detached arbiter of the many cases that*
13 *have been and will be pending before her.*

14 That sounds like she's a pretty wretched judge,
15 doesn't it? How do you explain, then, when we asked, in
16 our interrogatories, which are questions that you ask
17 your opponent, when we asked them to identify one single
18 case in her eight-year record in which they contended
19 she had made an adjudication with bias, prejudice, or
20 partiality. You know what their answer was? None.
21 None. Yet, that terminology appears in here repeatedly.

22 So as a threshold matter, there's one lie that's
23 already been proven, but there are many others here.
24 And the reason is, there was an agenda in this letter,
25 which was not really addressed by an attack on the

1 follows: My client, while serving at the municipal
2 court judge level, has, by this court, been determined
3 to be a public official. And because of certain
4 constitutional scriptures, under our laws as presently
5 constituted, someone who is a public official has to
6 carry a higher burden of proof than would a private
7 figure or an individual citizen who is not serving as a
8 public official.

9 To give you some idea of the difference, in common
10 law, actual malice, it can be presumed from the act of
11 telling a lie about somebody. Not with respect to
12 constitutional actual malice. To prove that, I've got
13 to show you that they were lies. All right?

14 In addition, it's not just show you that there was
15 lies. I've got to prove by clear and convincing
16 evidence that the person that told the lies either knew
17 they were, or reasonably should have known. He had to
18 act with reckless disregard for whether they were true
19 or false.

20 So there will be a good bit of evidence that comes
21 in that goes to the state of mind of the defendant,
22 George Breed. There will be evidence, I believe, which
23 shows a predisposition on the part of Mr. Breed during
24 the requisite period of time to fabricate, prevaricate,
25 dissemble, and lie. That's what I'm going to show.

1 heart, he's said so many different things to so many
2 different people, you can decide what you think went on
3 with him. But you know, he's had a lot of different
4 things to say to a lot of different people, and all
5 those people will come here and tell you all the
6 different things that he said.

7 He identified Otis Coffey as a suspect, and chased
8 him at midnight on his bicycle. And called another
9 officer, Sergeant Fryman, who also testified and told
10 Sergeant Fryman to go to the Coffey house and look out
11 for Otis because he was headed that way.

12 Sergeant Fryman went and hid, and he saw Otis go in
13 the house, shut the door, lock it, turn out the lights.
14 Beaufort County Sheriff's deputies arrived on the scene.
15 They went to the door. Mrs. Coffey comes to the door.
16 And they say, *We want to talk to Otis.* And she said,
17 *I'm here by myself. You all are always trying to pick*
18 *on Otis.* And she slammed the door in their face and
19 locked the door.

20 Now, in regards to that, the following day, a brand
21 new officer, didn't know the Coffey's, didn't know any
22 of this history, didn't know Judge Coffey, didn't know
23 Maureen Coffey at all, didn't know who she was, didn't
24 know anything about anything. He's riding through the
25 neighborhood. She stops him. And she says, *Hey, you*

1 don't know me. I'm the judge. You people have got to
2 stop harassing my family.

3 She's admitted she said that to that officer. And
4 then she said: I'm moving Otis out of town. You tell
5 Chief Breed, George Breed, I'll get with him next week.

6 She has admitted she said those things to an
7 individual she had never met before. Judges can't do
8 that. That's why George Breed wrote this complaint. It
9 is that behavior that was improper and is improper and
10 is absolutely true.

11 We now stand here in this court, and one thing that
12 was true at that point in time, the only two people that
13 George Breed had communicated this information to was
14 his direct report and what he believed to be Ms.
15 Coffey's direct report at the Town of Hilton Head.

16 However, in November of 2008, and this relates to a
17 couple of things. You know, here we are in 2012. This
18 first series of things happened in 2004, and the second
19 in 2008, in May of 2008. Ms. Coffey testified that on
20 May the 25th, 2008, she had Otis flee the jurisdiction
21 again and get out of town and leave.

22 From that point forward, almost nobody knew there
23 had even been a complaint about her. But in November of
24 2008, Maureen Coffey filed a lawsuit against George
25 Breed. Her first lawsuit against him, here in Beaufort

1 County.

2 The newspaper picked it up. She gave them an
3 interview. And as a result of that, she publicized
4 everything to the entire county through a series of
5 articles in the *Island Packet*.

6 That act has had a tremendous impact on her
7 reputation. That publication. The fact that the --
8 when she injected herself in these proceedings has
9 tarnished her reputation. But it's the truth. Not only
10 are they not able to prove the falsity of it; Maureen
11 Coffey has admitted the truth of those things. She's
12 admitted that she got involved. She's admitted that she
13 tried -- that she told Otis to get out of town. She's
14 admitted that she told Otis, hey, it doesn't look good
15 for you to be in my jurisdiction; leave; get out of
16 town. That's her -- that is her testimony in this case.

17 And this letter, this letter is absolutely
18 accurate. It is absolutely fair comment. It is
19 absolutely what the public needs to know. This letter
20 more than needed to be written. Overbearing officials
21 who impose themselves into a law enforcement
22 investigations and in proceedings to try to intercede on
23 behalf of their siblings, is a system that nobody needs
24 and nobody wants. And the public needs to and deserves
25 to know what happened when Maureen Coffey and her

1 disagree with what they say, defend with your life the
2 right for them to say it.

3 Thank you very much.

4 THE COURT: Thank you, Ms. Jones. Mr. Mathison,
5 would you call your first witness.

6 MR. MATHISON: May it please the Court, the
7 plaintiff calls Maureen Coffey to the stand.

8 THE COURT: Come forward, please, and be sworn.

9 WITNESS SWORN.

10 MAUREEN COFFEY

11 DIRECT EXAMINATION, MR. MATHISON:

12 Q Ms. Coffey, state your name for the record, please.

13 A Maureen Coffey Edri.

14 Q You wouldn't be offended if I called you Maureen,
15 would you?

16 A No, sir.

17 Q I'm old enough. Where do you live, Maureen?

18 A I reside at 59 Ashton Cove Drive, Hilton Head
19 Island, South Carolina.

20 Q And just to show how old I am, I'm going to ask you
21 how old you are.

22 A Forty-six.

23 Q Are you married?

24 A Yes, I am.

25 Q And who's your husband.

1 A Avraham Edri.
2 Q Are you currently living together or separately?
3 A We are legally separated at this moment.
4 Q Do you have children?
5 A Yes, sir.
6 Q What are their names and their ages?
7 A Zachary is 15, Lilly is 9, and Ava is 8.
8 Q And what do you do for a living?
9 A I am a municipal judge for the Town of Hilton Head
10 Island.
11 Q How did you prepare to be a judge, Maureen?
12 A Well, I attended Vanderbilt University. I
13 graduated in 1987. Then I went to George Mason School
14 of Law, and I graduated in 1993, which is -- and George
15 Mason is in Washington, D.C. And while I was in school,
16 I worked for different law firms, Redhaeffen Kaiser
17 (phonetic spell). And I worked on an antitrust case. I
18 worked for the Epilepsy Foundation of America, which we
19 dealt with ADA issues. And I was also working for the
20 public defenders' office in Alexandria, Virginia.
21 But while I was in law school, I became homesick.
22 I'm from Hilton Head. I missed my parents and my
23 family. So I moved back. And after I -- while I was
24 taking the Bar exam, I met a gentleman whose law firm
25 was looking for an associate. And I interviewed with

1 Mr. Curtis Coltrane. And so, I started working for
2 Wilson & Coltrane.

3 And then, when I became pregnant with my first
4 child, I took a leave of absence so that I could -- I
5 wanted to be home with him. And shortly thereafter, I
6 started my own sole practition so that I could balance
7 my family life, because I thought that I could control
8 my hours better, which your case load controls your
9 hours. And I was sort of my own pro bono legal clinic.
10 So we founded the Lowcountry Legal Aid.

11 And then, Mr. Coltrane, who was the Town's
12 attorney, came to me and said they needed an associate
13 part-time judge, and he knew that that was going to mesh
14 with my goals of still pursuing my law career, which, I
15 love the law, and still being able to be available for
16 my family. And so, I became the part-time judge. And
17 then, in 2005, the full-time position became available.
18 And at which point, my spouse had sold his business, and
19 the financial pressures were such that it was necessary
20 that I take the job. And I was just lucky it was a job
21 I loved.

22 Q Good. When were you admitted to the Bar?

23 A 1994.

24 Q Where were you admitted?

25 A South Carolina.

1 Q Do you think your breadth of experience qualifies
2 you for the job you hold?

3 A I do.

4 Q What, again, made you decide to go from part time
5 to full time?

6 A There were financial pressures. I -- and the time
7 was just right. They needed a full-time judge at that
8 point. And my family financial pressures were such that
9 it necessitated that I work full time to take care of my
10 family.

11 Q Are you currently employed under a contract of
12 employment with the Town of Hilton Head Island?

13 A I am.

14 Q I'm going to hand you this document and ask you to
15 identify it for me, please.

16 A Yes, sir. It appears to be my current contract.
17 Yes, it is.

18 Q And it is how long in duration?

19 A It's two years. Commenced on February 5, 2011, and
20 it terminates February 5, 2013.

21 Q Can you identify that as the contract that's in
22 force at the present?

23 A Yes, sir.

24 MR. MATHISON: Move the introduction as Plaintiff's
25 Exhibit 1.

1 MS. JONES: No objection.
2 THE COURT: Without objection.
3 COPY OF DOCUMENT REFERRED TO AS
4 CONTRACT, DURATION FEBRUARY 5,
5 2011 THROUGH FEBRUARY 5, 2013,
6 MARKED PLAINTIFF'S EXHIBIT NUMBER 1,
7 ADMITTED AS EVIDENCE.
8 BY MR. MATHISON:
9 Q When you first became a full-time judge, was that
10 in 2005?
11 A Correct.
12 Q And what salary were you making in 2005?
13 A When I became -- when I became a full-time judge?
14 Q Yes.
15 A \$70,000.00.
16 Q Was it subsequently increased by the time you
17 signed the contract?
18 A I think I may have gotten an interim raise of
19 5,000. So it became 75,000, yes.
20 Q Is that the initial contract when you were the
21 full-time judge in 2005?
22 A Yes, this is.
23 Q And what day was that signed?
24 A It was in October. Yeah, October 10, 2005.
25 MR. MATHISON: Move the introduction of this

1 contract as Plaintiff's Exhibit 2.

2 MS. JONES: No objection.

3 THE COURT: Without objection.

4 COPY OF DOCUMENT REFERRED TO AS CONTRACT
5 SIGNED OCTOBER 10, 2005, MARKED
6 PLAINTIFF'S EXHIBIT 2, ADMITTED AS
7 EVIDENCE.

8 BY MR. MATHISON:

9 Q What was the duration of Plaintiff's Exhibit 2,
10 your first full-time contract?

11 A It was for a term of three years.

12 Q And your second contract, that would have been
13 issued in approximately 2008. Is that correct?

14 A Correct.

15 Q And I'm going to hand you this copy and ask if you
16 can identify for me, please.

17 A Yes. It's my contract from 2008, which is a term
18 of three years and a salary of \$85,600.00.

19 Q So, if I understand correctly, initially, you were
20 making 70 when you became a full-time judge. By the
21 time you got your contract signed, it was 75? Is that
22 correct?

23 A Correct.

24 Q And then, three years later you had another
25 contract, and that contract paid you \$85,600.00. Is

1 that right?

2 A Correct. And in between the 2005 and the 2008
3 contract, I got a raise of \$5,000.00 that, from one of
4 my interim meetings, they just gave me.

5 Q A bonus.

6 A A bonus.

7 MR. MATHISON: Move the introduction of the 2008
8 contract as Plaintiff's Exhibit 3.

9 MS. JONES: No objection.

10 THE COURT: Without objection.

11 COPY OF DOCUMENT REFERRED TO AS
12 2008 CONTRACT MARKED PLAINTIFF'S
13 EXHIBIT NUMBER 3, ADMITTED AS EVIDENCE.

14 BY MR. MATHISON:

15 Q During the period that from the time you worked as
16 the part-time judge, through 2008, on or about the date
17 of the renewal of that contract, which I believe is
18 dated in February, what was your relationship like with
19 the Town of Hilton Head Island?

20 A I thought it was very good. Not to be immodest, as
21 I said in my deposition, I was one of the -- the golden
22 girl. I would meet with them. They would encourage me.
23 I met with them at least once a year. They continually
24 gave me raises, even when I didn't ask. I got a
25 contract renewal and a bonus or a raise every single

1 year up until 2008.

2 Q During this period of time, are you aware of any
3 criticism, political or otherwise, of the way in which
4 you were adjudicated cases in the municipal court of
5 Hilton Head?

6 A No, I was not aware of any criticisms.

7 Q Specifically, during the eight years that you were
8 on the Bench, do you have any idea how many cases you
9 had adjudicated by the time that Mr. Breed wrote his
10 letter, which I think is June 6, 2008?

11 A I heard -- I hear about approximately 150 cases a
12 week. And two weeks a year we do not hear cases. So
13 the number I had developed was based on 12 years. So on
14 12 years, it was 87,000. I'd have to do the math to get
15 me to eight years. Off the top of my head, it's 150
16 times 48.

17 Q Well, I was probably was just going to do two-
18 thirds, and I was thinking roughly 50,000. Is that
19 correct?

20 A That's approximately correct, yes.

21 Q And how many, what percentage of those cases were
22 out of Sea Pines Plantation, and therefore, essentially
23 prosecuted by Sea Pines Security?

24 A In 2008, I reviewed a document that was prepared by
25 my court clerk, Arlyne Benson. And according to that

1 document, it was three percent.

2 Q So that you would literally have heard thousands of
3 cases in which Sea Pines was involved on or before June
4 6, 2008.

5 A Correct.

6 Q Are you aware of anybody ever criticizing your
7 partiality -- impartiality in the context of
8 adjudicating Sea Pines cases?

9 A No.

10 Q Did you have any inkling that people at Sea Pines,
11 and specifically, George F. Breed, harbored some kind of
12 concern about whether you were biased or prejudiced in
13 June of 2006?

14 A Prior to receiving that letter? No, I had no idea.

15 Q The letter to which we're referring, I'm handing
16 you up a copy. I'm going to ask you if you can identify
17 it as appearing in the form that I'm handing it to you.

18 A Yes. I think it was June 24th I received this
19 letter.

20 Q You received a letter that was dated June 16th --
21 excuse me -- dated June 6th?

22 A June 6th, with a receipt mark of June 16th, yes.

23 Q So something that might have been sent as early as
24 June 6, you didn't receive until June 24th. Is that
25 right?

1 A 24th or 26th. I'd have to check the calendar.

2 Yes.

3 Q Okay. And you say this is the form in which you
4 received it?

5 A Yes.

6 MR. MATHISON: Move the introduction of Plaintiff's
7 Exhibit 4.

8 MS. JONES: No objection.

9 THE COURT: Without objection.

10 COPY OF DOCUMENT REFERRED TO AS LETTER
11 DATED JUNE 6, 2008, MARKED PLAINTIFF'S
12 EXHIBIT NUMBER 4, ADMITTED AS EVIDENCE.

13 BY MR. MATHISON:

14 Q Just so we keep our dates straight, I'm going to
15 hand you a calendar, May of 2008, showing the months of
16 May and June, and ask if you can confirm if those are,
17 in fact, the correct calendar days for that month.

18 A These are the correct calendar days. And according
19 to this, it would have been June 26 that I received the
20 letter.

21 Q What day of the month? What day of the week is
22 June 26th?

23 A Thursday.

24 MR. MATHISON: Counsel, I represent that these are
25 correct. Move the introduction as a combined exhibit,

1 Plaintiff's Exhibit 5.

2 COPY OF DOCUMENT REFERRED TO
3 AS CALENDAR MARKED PLAINTIFF'S
4 EXHIBIT NUMBER 5, ADMITTED
5 AS EVIDENCE.

6 BY MR. MATHISON:

7 Q Ms. Coffey, when you got that letter, what was you
8 response?

9 A I -- well, I was shocked. I -- I -- I was so
10 disturbed that, quite honestly, the first couple of
11 hours are a fog in my memory. But I -- I was completely
12 blindsided. I had no idea where it came from. And I
13 was -- when anyone gets a grievance, you're going to be
14 upset. I was particularly upset, because the entire
15 document was full of lies.

16 MS. JONES: Objection, your Honor. That's a
17 characterization of the letter, and that's contrary to
18 her testimony, and I move to strike.

19 THE COURT: Okay. She can testify. You have an
20 opportunity to cross-examine her when it's appropriate.

21 MS. JONES: I also move to strike the comment she
22 just made to me, too.

23 THE COURT: Denied. Go ahead.

24 BY MR. MATHISON:

25 Q What did you do -- strike that. Had you ever had a

1 grievance before as a lawyer?

2 A No, sir.

3 Q Had you ever had a grievance before as a judge?

4 A No, sir.

5 Q Had you ever been through the procedure?

6 A No.

7 A Do you know anything about it?

8 A I know they're supposed to be confidential.

9 Q Upon receipt of the letter, after you got over the
10 shock of it, then what did you do?

11 A I thought I needed to call our staff attorney, Mr.
12 Brian Hulbert.

13 Q And this is a person that works for the Town. Is
14 that right?

15 A Yes, sir. He's the prosecutor and the staff
16 attorney.

17 Q Okay. Is that Mr. Hulbert in the rear of the
18 courtroom?

19 A It is.

20 Q And what did you say to Mr. Hulbert about the
21 situation?

22 A Well, at first, I couldn't reach him. So I called
23 a good friend of mine who works for him. And I think
24 she had his private cell phone number. And she called
25 him. And I believe he called me at my house a couple

1 hours later.

2 Q All right. Well, what did you all discuss?

3 A I started telling him that I'd received this
4 grievance, and he stopped me.

5 MS. JONES: Objection. Hearsay.

6 MR. MATHISON: He's in the courtroom. He's under
7 subpoena. He's going to testify. It's not hearsay.

8 MS. JONES: Objection. Hearsay.

9 THE COURT: Is he on the witness list?

10 MS. JONES: He is on the witness list.

11 THE COURT: Okay.

12 MS. JONES: He is on the witness list, but there's
13 no foundation.

14 THE COURT: Go ahead.

15 BY MR. MATHISON:

16 A Okay. He told me that he couldn't help me; that
17 Greg had told -- Mr. DeLoach had told him that something
18 was coming down the pike, and that it was personal, and
19 not professional; and therefore, he couldn't help me. I
20 tried to persist and say this was completely
21 professional about me being a judge and not about me
22 being a bad neighbor or something. And he is a very
23 ethical person, and didn't want to hear anything. So.

24 Q Who is Mr. DeLoach?

25 A Mr. DeLoach is my liaison. He is an assistant town

1 manager, and he is my liaison to the Town Council.

2 Q Is he in charge of everyone in your department,
3 with the exception of you?

4 A Yes, he is.

5 Q So that, effectively, all of the people that work
6 in the same area as you work for Mr. DeLoach. Is that
7 right?

8 A Yes. There's an interim manager, a Mr. Fultz. But
9 Mr. Fultz reports to Mr. DeLoach.

10 Q Do you have administrative or management control
11 over anybody that works in your office?

12 A No.

13 Q Do you calendar your own cases?

14 A No.

15 Q Do you set the schedules?

16 A No.

17 Q So you exist in an environment that's occupied by
18 people that report to someone else. Is that right?

19 A Correct.

20 Q What did you conclude upon hearing from Mr. Hulbert
21 that he had been warned that this was *coming down the*
22 *pike*?

23 A I concluded that, somehow, Mr. DeLoach had access
24 to this letter prior to me having access to it, which
25 made me terribly upset.

1 Q Why did it make you upset, Maureen?

2 A Because I was already upset about the content of
3 the grievance. And then, I was further upset that --
4 cause, earlier in the day, I assumed it was
5 confidential; that -- anyone can file a grievance
6 against a judge, if you follow the proper forum. I
7 assumed he had done that. Even if you tell a bunch of
8 lies, you're not supposed to, but the fact that he,
9 obviously, gave it to my employer really upset me. And
10 the fact that they took the position that, you know, I
11 was lone wolf out, you know, they weren't going to help
12 me, made me feel even less favored.

13 Q Did you ask Mr. Hulbert to explain how you could
14 be, effectively, challenged in a forum like the Conduct
15 Commission --

16 MS. JONES: Objection, your Honor. He's leading.

17 THE COURT: Okay. Just rephrase it.

18 BY MR. MATHISON:

19 Q Did you ask Mr. Hulbert how he reached the
20 conclusion that this was personal rather than
21 professional?

22 A Yes, we -- we debated it.

23 Q And

24 A His answer was, *Greg told him so*. And so, I said,
25 *If you -- if you actually read the thing, you would know*

1 that it's professional and not personal.

2 But he stood by what Mr. DeLoach told him.

3 Q Did you infer from what he said that he had seen
4 the letter? Meaning Mr. Hulbert.

5 A No.

6 Q Did you subsequently ask somebody else in the Town
7 for help?

8 A The next morning would be a Friday morning. At
9 9:00 a.m., I called Curtis Coltrane, who had been my
10 previous -- my first employer and my mentor, if you
11 will. And then, he had become a master in equity. But
12 at this point, he was now back working for the Town,
13 actually, as an assistant manager. So I immediately
14 called him, and I was going to ask him for help. And he
15 told me that he had seen it; that Greg had asked his
16 opinion about it. He read it. He said, *It doesn't*
17 *sound like her, but I don't know; but in any case, I*
18 *don't think that it rises to the level of an ethical*
19 *complaint.*

20 Q When you say *it*, you're referring to the letter;
21 Mr. Coltrane had seen the letter. Is that right?

22 A Correct, he had seen it, and he must have read it,
23 because he gave Greg his opinion.

24 MS. JONES: Objection, your Honor. The witness is
25 speculating, and it's contrary to the testimony. Move

1 to strike.

2 MR. MATHISON: Your Honor, may it please the Court.

3 THE COURT: Okay. You all, we're not going to
4 argue this in front of the jury. If I need to send them
5 out, I'm welcome to do that. Or would you like me to do
6 that?

7 MR. MATHISON: Yes, I would, actually, because I
8 feel that --

9 THE COURT: All right. You don't need to state
10 anymore. Ladies and gentlemen of the jury, I'm going to
11 send you guys back to your jury room for your afternoon
12 break. Again, do not begin discussing this testimony.
13 It wouldn't be appropriate to do so at this time. We'll
14 be right with you shortly. Thank you.

15 JURORS LEAVE COURTROOM 4:07 P.M.

16 BAILIFF: The jury is clear, your Honor.

17 THE COURT: All right. We're going to take five
18 minutes, everyone, and come back. And then, I'm going
19 to hear what you have to say. Okay?

20 OFF THE RECORD 4:07 P.M.

21 BACK ON THE RECORD 4:20 P.M.

22 ON-THE-RECORD BENCH CONFERENCE,

23 OUT OF PRESENCE OF JURORS.

24 PRESENT: THE COURT,

25 MR. MATHISON, MR. MIKE MATHISON,

1 MS. JONES, MR. HALIO, MS. JOLLEY.
2 THE COURT: All right. We ready to go?
3 MR. MATHISON: May it please the Court.
4 THE COURT: Yes, sir.
5 MR. MATHISON: If we continue with this level of
6 objection. I don't know what that objection was about.
7 THE COURT: Well, let's hear what her objection is.
8 Absolutely.
9 MS. JONES: Thank you, your Honor. The objection
10 is multifold. First of all, Curtis Coltrane's not in
11 the room. And even though the witness being in the
12 room, I don't think that that's a exception to the
13 hearsay rule. I understand the Court's ruling in that
14 regard. Mr. Coltrane's not here. He --
15 THE COURT: He gave a deposition in this case,
16 didn't he?
17 MS. JONES: He gave a deposition in this case, and
18 he testified that he didn't believe that DeLoach had a
19 copy of the letter. That's one thing she testified to.
20 THE COURT: He believed. Curtis Coltrane believed
21 that DeLoach had a copy of the letter.
22 MS. JONES: Did not.
23 THE COURT: Did not.
24 MS. JONES: Did not. What Maureen Coffey just
25 testified to is that he said that --

1 THE COURT: He did.

2 MS. JONES: -- DeLoach did have a copy of the
3 letter. And that's completely at odds. That's the
4 problem with letting hearsay testimony in when the
5 witness who actually had the conversation and is giving
6 the testimony is saying something in the deposition
7 different from what she is giving as hearsay testimony
8 now.

9 And then, she went on to say that Curtis Coltrane
10 had an opinion about the validity of the letter. That
11 invades the providence of the jury. He can't -- that
12 testimony is completely inadmissible. You know,
13 Coltrane hadn't been qualified as an expert in this
14 case. He can't give an opinion. And in fact, in his
15 deposition, he testified that he didn't know anything
16 about the underlying facts. So, to allow as hearsay
17 testimony, the witness saying something that Coltrane
18 allegedly said that has no basis and is improper under
19 the Rules, all that needs to be stricken, and a curative
20 instruction needs to be given to the jury, because it's
21 improper.

22 Mr. Coltrane, even if he had that opinion, couldn't
23 offer it in this case, because he hadn't been identified
24 as an expert; he has not reviewed the facts; and he has
25 not offered that opinion.

1 MR. MATHISON: Are we done with the TEA Party
2 patriot speech?

3 THE COURT: You all, stop it.

4 MR. MATHISON: This is what I feel.

5 MS. JONES: And I'm tired of the personal remarks
6 from Judge Coffey and from her attorney. I haven't made
7 any personal remarks about them.

8 THE COURT: Okay. Now, that, we're going to stop.
9 We don't need personal remarks. I haven't heard any
10 from Ms. Coffey yet. Mr. Mathison, enough.

11 MR. MATHISON: Your Honor, with respect to the so-
12 called objection, you can't impeach one witness with the
13 testimony from another witness. Ms. Coffey's testimony
14 is entirely consistent with her own testimony in the
15 deposition. But even if it weren't, this is a trial.
16 If they wish to impeach her with her previous testimony,
17 they can. What they can't do is impeach her with Curtis
18 Coltrane's testimony. That's elementary. The first
19 part of the argument --

20 THE COURT: The problem with that is, is that
21 you're asking her what Curtis Coltrane said or did,
22 and --

23 MR. MATHISON: That's exactly right, and I've got
24 him as a subpoenaed witness, and he --

25 THE COURT: But you can't -- but that's not how to

1 -- you can't impeach him that way.

2 MR. MATHISON: I'm not impeaching anyone. I'm not
3 impeaching Coltrane. Her testimony's entirely
4 consistent with what she said in her deposition. And
5 Ms. Jones didn't say it wasn't.

6 MS. JONES: Oh, no, no, no, your Honor. I said
7 it's hearsay. It's inadmissible hearsay.

8 MR. MATHISON: It's not hearsay if the witness is
9 testifying. My client can testify at odds with her
10 previous testimony; she can testify at odds with anybody
11 else's testimony. There's nothing functionally wrong
12 with that. It's ridiculous. I've never heard that
13 argument made before. I mean, honestly.

14 THE COURT: Did you not ask Curtis Coltrane, in his
15 deposition, whether or not he'd seen the letter?

16 MR. MATHISON: I didn't ask him that, no.

17 THE COURT: Well, I don't know about you, but I'd
18 be shocked if Ms. Jones didn't.

19 MS. JONES: Question: *Did Mr. -- wait a minute.*
20 *Okay. Maybe it's on Page 11. Hang on a second. Oh.*

21 *Do you know whether he gave you a copy of the*
22 *letter at the time or not?*

23 Answer: *I don't recall. I don't believe that he*
24 *did, but I don't recall.*

25 MR. MATHISON: Gave him a copy.

1 MS. JONES: *When did you first see the letter?*
2 *I believe that the first time I saw the letter was*
3 *after it had been sent to the Commission on Judicial*
4 *Conduct and after it had been sent to Judge Coffey by*
5 *the Commission on Judicial Conduct, which they, you*
6 *know, do much like the ODC does. If there's a complaint*
7 *filed with --*
8 Then he talks about that for a minute. And he
9 testified that who showed him the letter was Judge
10 Coffey.
11 MR. MATHISON: Your Honor, he also --
12 MS. JONES: I'd be happy to hand you that -- hand
13 it up to you. It does not take away from the fact that
14 what the testimony being elicited from the witness is
15 hearsay and inadmissible under the Rules.
16 MR. MATHISON: I'm sorry, but that's just not the
17 law. The law is that, if he's a subpoenaed witness, he
18 can testify -- she can testify as to what he said.
19 Otherwise, you couldn't have a trial. I mean, this is
20 going to go on literally --
21 MS. JONES: Here's the rule. It's hearsay.
22 MR. MATHISON: Here's what rule?
23 MS. JONES: Rule 803.
24 THE COURT: You can only testify as to what you
25 know and what you have knowledge of.

1 MS. JONES: Right.

2 THE COURT: You can't put words in people's mouths.

3 MR. MATHISON: You can testify as to what you have
4 knowledge of if you're quoting somebody what he said to
5 you.

6 MS. JONES: No.

7 MR. MATHISON: Yes, you can. And you can do it as
8 long as that person is in the case. He's in the case.
9 He's already given his deposition testimony, and he's
10 going to testify for me.

11 MS. JONES: My three objections are: It's hearsay;
12 it's an improper opinion testimony that they're
13 eliciting in violation of the Rules; there's no
14 foundation.

15 THE COURT: I don't think it's an opinion
16 testimony. I don't think that's what the question was.
17 It wasn't asking his legal opinion as to what it was or
18 whether or not anything violated it.

19 MR. MATHISON: And it's entirely --

20 MS. JONES: Your Honor, --

21 MR. MATHISON: It's exactly what she said, your
22 Honor, in her deposition. Not that she would have to
23 say that, but it is what she said. I mean, there's
24 nothing inconsistent between what she said and what
25 she's saying now.

1 MS. JONES: No. He's pitting his witness against
2 another one of his witnesses by the use of hearsay, and
3 the elicit -- and him eliciting from her what was
4 Curtis' opinion. Curtis' opinion was that it was
5 unfounded. Curtis cannot offer that opinion. His
6 opinion is not admissible in this case. It's not a
7 fact. It's a lay opinion that's not admissible.

8 THE COURT: The argument that I understood we were
9 hearing about was whether or not he had seen the letter,
10 and whether or not it was a personal or a professional
11 attack. I mean, was that not where we were going with
12 this?

13 MR. MATHISON: That's correct. That's what I was
14 trying to elicit.

15 THE COURT: That wouldn't take a legal opinion in
16 any way, shape, or form.

17 MS. JONES: But your Honor, the question that Mr.
18 Mathison put to her and what the witness testified to is
19 that Curtis Coltrane told me that it was not -- it was
20 an invalid opinion. The court reporter would have to
21 read it back for me to be able to say it specifically,
22 but it was words to that effect. Curtis Coltrane told
23 me that the letter was invalid. It's an opinion about
24 the validity of the complaint. That's what's not
25 admissible under any circumstances, even if Curtis was

1 sitting on the witness stand.

2 THE COURT: I can tell you, just looking under
3 hearsay again, which is always interesting. Under
4 801(d), statements which are not hearsay is a prior
5 statement by a witness that is subject to cross-
6 examination either by deposition or, more specifically,
7 in this case, it's who's going to be testifying.

8 MR. MATHISON: That's correct, your Honor.

9 THE COURT: Someone's going to go first.

10 MR. MATHISON: That's why I served all the
11 subpoenas. I haven't wasted my money and my time.

12 MS. JONES: Your Honor, I believe that 801(d)(1)
13 requires that the declarant be the one on the witness
14 stand testifying. 801(c) hearsay, specifically defines
15 it as a statement other than the one --

16 THE COURT: Well, it wouldn't be hearsay if he was
17 saying it. It would be what he said.

18 MS. JONES: Correct. But her saying what he said
19 is hearsay. Because the declarant is not on the witness
20 stand.

21 THE COURT: Okay. She can testify, as long as he's
22 going to be a witness in the trial of this case. He's
23 already been deposed. I'm going to allow it.

24 MR. MATHISON: Thank you very much, your Honor.

25 MS. JONES: Is she going to be allowed to testify

1 regards to his opinion concerning the validity of the
2 complaint?

3 MR. MATHISON: May it please the court. This is
4 exactly what my client said in her deposition: And
5 Curtis told me, 'I'll help you. I know.' And he showed
6 -- told me that Greg had showed it to him and asked him
7 what he thought. And Curtis told me that he told Greg,
8 'I don't know. It doesn't sound like her, but I don't
9 know.'

10 And then he said, 'But even so, I don't think
11 anything in here amounts to an ethical complaint.' And
12 that's what he told me.

13 You can't impeach my witness with what she said in
14 her deposition because she just said the same thing.

15 THE COURT: That's not what she's doing. But long
16 story short, I don't think he is giving an opinion other
17 than he says I don't think it reaches an ethical
18 violation. However, he isn't in a position to make that
19 determination. I don't think he can give that opinion.
20 He doesn't qualify as an expert. So quite frankly, I
21 think it's been turned over to her boss or someone who
22 is her mentor who also works for the Town. So we're
23 going to go forward. Again, he can't give an opinion
24 whether or not it's an ethical violation or not.

25 What we're going to do from here on out, you all

1 can make your objections. I don't want running
2 objections. Just object; give your basis for it,
3 whether or not it's hearsay, relevant, leading,
4 whatever; I'll rule. I don't care, I'll rule, we'll go
5 for it. Okay?

6 And again, don't testify in front of the jury, Mr.
7 Mathison. Okay?

8 MR. MATHISON: When did I do that, your Honor?

9 THE COURT: You were starting to. Again.

10 MR. MATHISON: Well, let me put this on the record.
11 What was said to the jury was, and this is quoting, *She*
12 *had him leave the jurisdiction.*

13 THE COURT: Mr. Mathison, Mr. Mathison, the record
14 is there. I don't need you to repeat it so it's twice.
15 The record is there. Let's just go forward. Let's put
16 this in front of the jury.

17 Bring them in.

18 BAILIFF: Yes, ma'am.

19 BAILIFF: The jury is entering, your Honor.

20 JURORS ENTER COURTROOM 4:30 P.M.

21 BAILIFF: All right, your Honor.

22 THE COURT: Thank you. Welcome back, ladies and
23 gentlemen. Mr. Mathison, you may continue.

24 MAUREEN COFFEY, CONTINUE

25 DIRECT EXAMINATION, MR. MATHISON:

1 Q When you discussed the matter with Mr. Coltrane,
2 what, if anything, did he indicate about having seen the
3 letter?

4 A He indicated that he gave his opinion to Mr.
5 DeLoach. And he couldn't have given an opinion if he
6 didn't read it.

7 Q Okay. Did he tell you that he had seen the letter?

8 A Yes.

9 Q Did he tell you who had shown him the letter?

10 A Yes.

11 Q What did you conclude about whether Mr. DeLoach had
12 seen the letter?

13 A Well, I assumed at that point that Mr. DeLoach had
14 seen the letter because he had talked about it to Mr.
15 Hulbert and showed it to Mr. Coltrane.

16 Q Did you ask Mr. Coltrane to help you?

17 A I did.

18 Q And why did you do that?

19 A Because he was my mentor and I respect him as an
20 attorney. And because Mr. Hulbert said he wouldn't. Or
21 couldn't.

22 Q And what, if anything, did you do thereafter?

23 A Thereafter, I prepared a response at Curtis'
24 request. And then, I had gone to see my counselor, and
25 I had talked to an attorney, and I came to the

1 conclusion that it was probably best if I hired somebody
2 who wasn't affiliated with the Town.

3 Q And did you tell Mr. Coltrane that?

4 A I did.

5 Q And did you hire a lawyer to help you with the
6 complaint that Mr. Breed had filed?

7 A Yes, I did.

8 Q And what's that lawyer's name?

9 A Her name is Ms. Desa Ballard.

10 Q And what was the outcome of the complaint?

11 A The complaint was dismissed on or about October 1,
12 2008.

13 Q Do you believe that Mr. Breed had the right to file
14 a complaint against you, regardless of whether it was
15 accurate or not?

16 A Sure. Everyone has the right to file a grievance,
17 but there's a -- there's a form in which you -- you need
18 to file it, and that form also dictates certain rules,
19 and those rules need to be followed so that everyone's
20 rights are protected.

21 And if he had simply wrote the letter, whether it
22 had lies or not, and sent it to the Commission, the
23 Commission investigated and sent the decision back to
24 me, we wouldn't be here today.

25 Q Why?

1 A Because that's his right. It's his right to
2 complain. It's not his right to --

3 MS. JONES: Objection, your Honor. The witness is
4 offering opinion testimony that is --

5 THE COURT: Okay. I do think we're getting to an
6 area that's not appropriate.

7 A Okay.

8 BY MR. MATHISON:

9 Q At the time you received the letter, Maureen, on
10 June 26, do you know how many people had already seen
11 it, other than folks working for the Commission on
12 Judicial Conduct?

13 A Immediately, when I received it, I assumed the only
14 people that had seen it would be Mr. Breed.

15 MS. JONES: Objection, your Honor. She's basing it
16 on --

17 THE COURT: You cannot assume.

18 A Oh. Okay. When I first got the complaint, I -- I
19 only thought Mr. Breed, the Commission, and I had seen
20 it.

21 Q And after you spoke to Mr. Hulbert and Mr.
22 Coltrane, how many people did you think had seen it?

23 A Four.

24 Q Who were they?

25 A Mr. DeLoach, Mr. Hulbert, Mr. Coltrane, and Mr.

1 Riley.

2 Q Who's Mr. Riley?

3 A Steve Riley is the Town manager..

4 Q Standing here today, sitting here today, you don't
5 have any knowledge that he actually did see it, did you?

6 A No, I never had a discussion with him about it.

7 Q Looking at the letter itself, which is Plaintiff's
8 Exhibit 4, what, in the letter, is false?

9 A Well, it's brimming with falsehoods, but the one
10 that caused me the most heartburn was the last sentence
11 of the third page.

12 Q What was that one?

13 A *In summary, as a result of Judge Coffey's actions,*
14 *she has given the distinct and transparent appearance of*
15 *bias and partiality, and is not able to be a neutral and*
16 *detached arbiter of the many cases that have been and*
17 *will be pending before her.*

18 Q And I believe you testified at the time you got
19 this letter you'd already heard thousands of Sea Pines
20 cases. Is that right?

21 A That's correct.

22 Q Had you ever received a complaint by anybody on
23 behalf of Sea Pines about the way you were adjudicating
24 their cases?

25 A No.

1 Q And did you serve interrogatories on the defendants
2 in this case, and specifically Mr. Breed and Community
3 Services Associates, in which you asked in Interrogatory
4 19, *Identify by case name, case number, court, and*
5 *jurisdiction each case in which the defendant contends*
6 *that the plaintiff has acted with bias, partiality, or*
7 *prejudice?*

8 A I did.

9 Q Do you remember me sending that?

10 A Yes, I did.

11 Q And what case, if any, did they return?

12 A Their answer was none.

13 MR. MATHISON: Move the introduction of just the
14 last page of the interrogatories on which that statement
15 appears.

16 THE COURT: Any objection?

17 MS. JONES: None.

18 THE COURT: Without objection.

19 MR. MATHISON: It's Plaintiff's Number 6.

20 COPY OF DOCUMENT REFERRED TO AS

21 LAST PAGE OF INTERROGATORIES ON

22 WHICH THE STATEMENT APPEARS,

23 MARKED PLAINTIFF'S EXHIBIT

24 NUMBER 6, ADMITTED AS EVIDENCE.

25 BY MR. MATHISON:

1 Q In addition to that statement, are there other
2 indications throughout this three-page letter that you
3 were bias, prejudice, or partial?

4 A Yes, sir, several.

5 Q Are there further allegations that you believe are
6 inaccurate? Specifically, starting in the first
7 paragraph having to do with 2004 events.

8 A No -- the one during the last several months of
9 2004?

10 Q Yes.

11 A Yes, the -- the first -- the second sentence it
12 says, *After an exhaustive investigation by the Beaufort*
13 *County Sheriff's Office, the primary suspect was*
14 *identified as Otis Coffey.*

15 Q At the time, in 2004, did you know that Otis Coffey
16 was a primary suspect in any law enforcement operations?

17 A No. I -- I knew that, from Eric Calendine, that he
18 was a suspect, and I knew from Detective Brian Baird
19 that they wanted to rule him out as a suspect. Neither
20 one said that he was the primary suspect.

21 Q Do you know at present whether Beaufort County
22 Sheriff's Office, through the deposition testimony of an
23 officer, believed that someone else was responsible?

24 MS. JONES: Objection, your Honor. Pitting the
25 witnesses.

1 THE COURT: Okay. Once again, I assume we're going
2 to hear testimony later on, but I think you need to get
3 on with what she knew and what she understood.

4 BY MR. MATHISON:

5 Q There's a description of an incident that took
6 place in December of 2004 in that Paragraph 1, starting
7 with: *During the course of the burglaries, my*
8 *department began a process of saturation patrols.*

9 Would you read that portion into the record,
10 please.

11 A *During the course of these burglaries, my*
12 *department began a process of saturation patrols in the*
13 *areas that the pattern dictated were of greatest*
14 *exposure. On 12-10-04, at approximately 6:00 a.m., Otis*
15 *Coffey's vehicle was reported to have backed into the*
16 *driveway of a person unknown to him, well off the main*
17 *roadway, and had exited his vehicle. Our officers and*
18 *the BSCO responded. Otis Coffey eventually appeared in*
19 *another vehicle, in the company of his father, Michael*
20 *Coffey/deceased.*

21 At that time, Otis Coffey was lawfully arrested for
22 trespassing. On the scene, Mr. -- it should be Dr. --
23 Michael Coffey, father of Judge and Otis Coffey,
24 attempted to insert himself into the arrest process, and
25 then proceeded to call Judge Coffey via cell phone and

1 presented the phone to the on-scene supervisor.

2 Q Is there anything false in that statement?

3 A Yes.

4 Q What?

5 A A number of things. The first thing, according to
6 the police report, my father's car was stopped, as he
7 was trying to exit it. So he didn't insert himself in
8 the process. He did call me on the cell phone. I was
9 on my way to a continuing legal education class in
10 Charleston.

11 Q What time was this?

12 A On -- if I recall correctly, it was approximately
13 8:00 a.m. It might have been a little earlier. 7:00
14 a.m. And at the time, in December, my father was very
15 ill. He passed three months after. His voice was very
16 weak. He was upset. And I couldn't really understand
17 what he was saying. And I asked him to hand the phone
18 to somebody so that I could figure out what was going
19 on, because he was very upset.

20 He handed the phone to a person who happened to be,
21 at the time, I think, Lance Corporal Eric Calendine, who
22 is an officer that I'm familiar with. He's now a
23 sergeant, but at the time he was a lance corporal, I
24 believe.

25 Q Stop right there. Do you know whether Officer

1 Calendine, regardless of what his rank was, was the
2 supervisor at that crime scene?

3 A No, he certainly was not.

4 Q Do you know who else was there?

5 A I do.

6 Q Who else was there?

7 A Staff Sergeant Mike Riley and Staff Sergeant Jo Jo
8 Woodward. There were others. Those are the only two I
9 know for sure.

10 Q When you talked to Mr. Calendine, what, if
11 anything, did you say to him?

12 A I asked him what was going on. And he told me that
13 Sea Pines was arresting Otis for trespass, and that he
14 was a suspect in several burglaries; they wanted to
15 impound his car; inventory it; get an updated picture,
16 fingerprints, and DNA.

17 Q From Otis.

18 A From Otis.

19 Q Your brother.

20 A Correct.

21 Q And did you tell him to do anything or otherwise
22 attempt to influence what it was that was going on at
23 that scene?

24 A No. I asked him to hand the phone back to my
25 father.

1 Q What, if anything, did you tell your dad?

2 A I told my dad that it was going to be all right;
3 that it was -- trespass was no big deal; he'd be out the
4 next day; just let it happen and we'll deal with it the
5 next day.

6 Q To the best of your knowledge, did the arrest get
7 completed?

8 A It did.

9 Q Were you aware that anybody considered you to have
10 interfered with it as a consequence of your having
11 talked on the telephone with your father and with Office
12 Calendine?

13 A No.

14 Q Did you, in fact, make any effort to interfere with
15 what happened?

16 A No.

17 Q Do you have control over what your father may have
18 said or done?

19 A No.

20 Q On the next page of this letter, specifically the
21 paragraph at the top, what is set forth with respect to
22 a Captain Toby McSwain of the Beaufort County Sheriff's
23 Office?

24 A It said that: *Some time after this arrest, Captain*
25 *Toby McSwain, BCSO -- which is Beaufort County Sheriff's*

1 Office -- had a meeting with Judge M. Coffey and advised
2 her that Otis was the prime suspect in a rash of
3 burglaries occurring over the previous several months.
4 Judge Coffey stated to Captain McSwain that she was
5 going to get him out of town, or words to that effect.
6 From the date of that arrest and after that statement,
7 our burglaries ceased.

8 Q Now, have you ever had a conversation with Captain
9 Toby McSwain about the subject of your brother's
10 indiscretions?

11 A No.

12 Q Did you have one in 2004?

13 A No.

14 Q Did you have one in 2005?

15 A No.

16 Q Did you have one in 2006?

17 A No.

18 Q Any time since, have you had a conversation with
19 Captain Toby McSwain?

20 A No.

21 Q Have you had one about anything with Captain
22 McSwain?

23 A Not that I can recall.

24 Q Does Captain McSwain routinely come to your court?

25 A No.

1 Q Do you have occasion to see him socially?

2 A No.

3 Q Is what's in that statement about your having a
4 meeting with him true or false?

5 A Absolutely false.

6 Q At some point in early 2005, did someone from the
7 Beaufort County Sheriff's Office actually come and see
8 you?

9 A Yes.

10 Q And who was that?

11 A A Detective Brian Baird.

12 Q And how did he come to see you? Did you seek him
13 out, or did you insert yourself and go find him? What
14 happened?

15 A Apparently, he called my office and made an
16 appointment to come see me, as people in general --
17 officers do and people in the general public do.

18 Q And when, approximately, was this?

19 A It had to be in early 2005, because it was before
20 my father passed away, and it was after this trespassing
21 incident. I can't remember, but it was some time in the
22 early part of 2005.

23 Q And did Detective Baird make any statements about
24 Otis?

25 A He did.

1 Q What, if anything, did he say to you?

2 A He told me that there'd been some burglaries on the
3 north side of Sea Pines, North Sea Pines Drive, and that
4 they wanted to rule my brother out as a suspect, and
5 could I please ask him to take a polygraph exam. And I
6 said that I would.

7 He also told me that the sheriff was nearby in case
8 I was offended that he was asking me. I said, *I'm not*
9 *offended; you're just doing your job.*

10 So I asked my brother. He said he would. I was on
11 my way to pick him up to take him to the polygraph exam,
12 and he changed his mind. I --

13 Q Did you advise Detective Baird of that?

14 A I did, because I thought it would be a good idea
15 for Otis to take the polygraph exam, because I thought
16 it was in everyone's best interest if he cleared his
17 name.

18 And when he didn't clear his name, I told Detective
19 Baird that, considering the stress it was putting on my
20 family with my dad's illness and my job, that he should
21 go stay with my brother in Tybee Island, Georgia, and
22 work at our family's restaurant there.

23 Q And is that, in fact, what happened?

24 A Yes, it is.

25 Q You didn't advise your brother, did you, to flee

1 the jurisdiction?

2 A No, I didn't. And I told Detective Baird where he
3 was going. And they didn't have an active arrest
4 warrant, because I wouldn't have done anything. They
5 just wanted to rule him out as a suspect. And if they
6 had any evidence whatsoever, they wouldn't have to ask
7 my permission.

8 Q Well, as a consequence of the trespass arrest, they
9 had evidence of his fingerprints, didn't they?

10 A They did.

11 Q And they had evidence of a photograph, a current
12 photograph.

13 A Correct. Um-hmm.

14 Q And if they'd wanted it, they could have gotten DNA
15 evidence, couldn't they?

16 A Yes.

17 Q And they impounded his car and searched it, and
18 they didn't find anything, did they?

19 A No, they did not.

20 Q And they didn't arrest him for any burglaries in
21 2004, did they?

22 A No, they didn't.

23 Q Did he have a record for having been convicted of
24 burglary ever?

25 A No.

1 Q Had he been, at some point, in the early '90s,
2 arrested for some kind of burglary charge?

3 A In 1992, he was arrested for, I believe, three
4 counts of burglary, one count of grand larceny, all of
5 which were dismissed.

6 Q So he's the burglar who never was a burglar. Is
7 that correct?

8 A To the best of my knowledge, yes.

9 Q Did anyone connected with Sea Pines or Community
10 Services Associates ever tell you, before you got this
11 letter, that they felt you'd done something wrong in
12 interacting as you did with someone they weren't aware
13 you interacted with, namely, Detective Baird?

14 A No.

15 Q And is it your testimony you never talked to Toby
16 McSwain?

17 A Never. And in fact, I do have knowledge of the
18 Decem -- of the burglaries, because I was the one that
19 wrote the -- issued the arrest warrants for John Levy.

20 Q Well, tell me about what you know about Mr. Levy.

21 A I know that at approximately some -- October,
22 November of 2004, Mr. Levy was arrested on nine counts
23 of burglary/peeping Tom, of which many of them happened
24 in Hilton Head Plantation and Sea Pines, both areas.
25 And there were many more that he was attributed to they

1 closed out on that arrests weren't issued.

2 Q And did the end of the burglaries in Sea Pines
3 coincide nicely with the arrest of John Thomas Levy?

4 A They did.

5 Q So that would be a pretty good explanation, would
6 it not, for why they stopped?

7 A To me, it would.

8 Q Did your brother move back to Hilton Head
9 subsequent to 2005?

10 A He did, in, I believe, it was November or December
11 of 2007.

12 Q And were you aware that that would create problems
13 or stress or concern in some sectors?

14 A No, but I wasn't part of his decision.

15 Q Well, in Paragraph 2, of Page 2, of Mr. Breed's
16 complaint, does he indicate that -- just read the first
17 --

18 A *Several months ago, February to May, 2008, our*
19 *community again was the victim of a rash of burglary*
20 *cases. The route of travel, target homes, times, dates,*
21 *and M.O., were very similar, almost exact to the cases*
22 *of approximately three-and-a-half years ago where Otis*
23 *Coffey was the primary suspect.*

24 Q Stop right there. Is that, in fact, true of your
25 own knowledge that these cases in 2008 were all

1 concentrated at the north end of Sea Pines near the
2 Ocean Gate?

3 A No, these cases in 2008 were concentrated in the
4 south end of Sea Pines.

5 Q So that wasn't a fact, right?

6 A Near Land's End. Yeah, right, that's not a fact.
7 That's incorrect.

8 Q Do you know whether your brother, Otis Coffey, was
9 ever identified as the primary suspect by anybody who
10 had the lawful authority to conduct an investigation,
11 meaning the Beaufort County Sheriff's Office?

12 A Angela Vennes declared John Levy as a suspect, the
13 primary suspect, in the 2004 cases.

14 Q I understand that. But in the 2008 case, are you
15 aware of anybody having told you or told anyone that --

16 A No. He was not the primary suspect.

17 Q What, if anything, do you know about the incident
18 that he describes further down in Paragraph 2 about an
19 event that happened on or about May 20th of 2008?

20 A I only know what was told to me by my mother and
21 Officer Blackmon.

22 Q Then, don't tell me at this juncture, but just read
23 to me what it says, beginning with *On May 20th*.

24 A *On May 20th, around midnight, one of our officers*
25 *observed the suspect dressed in black, traveling on a*

1 bike. Our community does not offer any type of bike
2 path or roadway lighting, nor is it permitted. The
3 suspect was confronted and identified by our officer, at
4 which time, he rode off before he could be detained.

5 A radio call was made to another officer who pulled
6 his vehicle to within eyesight of the suspect's home.
7 Approximately 15 minutes later, that officer observed a
8 suspect matching the same description run into the home
9 and the lights were cut off.

10 Our officers, along with BCSO responded to the
11 home, where the owner answered the door, Ann Coffey,
12 mother of Judge Coffey and Otis. She stated that she
13 was home alone, and no one was there, and that Sea Pines
14 security was always trying to pin something on her son.

15 Q Okay. Do you know whether any of that's true, of
16 your own knowledge? You weren't there, were you?

17 A I wasn't, but of my own knowledge, I'm not sure
18 what the crime is in riding your bike at night in Sea
19 Pines while black. And no identify -- no identification
20 was made. And if you read the police report, it says
21 the bike went left. Our house is right.

22 Q In other words, the bike went north.

23 A Went north. And we lived about ten minutes south.

24 Q When you say we lived, that's your mother's house.
25 Is that right?

1 A My -- I'm sorry. It's the house I grew up in, but
2 my mother's house, correct. And no bike was ever found.
3 And there was no crime committed that night, so.

4 Q When Mr. Breed penned this version of events, did
5 he have any more direct knowledge than you do? He
6 wasn't there either, was he?

7 A Not to my knowledge, no.

8 Q And he didn't put in there that your mom, Ann
9 Coffey, and I'm quoting now, *Slammed the door in the*
10 *face of the officers that came to visit her*, did he?

11 A It wasn't in this letter or the police report. And
12 I don't believe that Sergeant Blackmon or Officer Murphy
13 will testify that that's what happened.

14 Q Those are the officers who were there from the
15 Beaufort County Sheriff's Office. Is that right?

16 A That have told me they were there, yes.

17 Q Did you subsequently learn that a portion of this
18 rendition of events was patently false, specifically
19 with respect to the identification of your brother?

20 MS. JONES: Objection, your Honor. Again, --

21 THE COURT: Sustained. She can't -- she doesn't
22 know.

23 BY MR. MATHISON:

24 Q Did an officer Jolin come to your office some time
25 in the fall of 2008?

1 A He did.

2 Q And did he speak to a person who works in the court
3 with you, Sherry Hamilton?

4 A He did.

5 Q And did he give Ms. Hamilton --

6 MS. JONES: Objection, your Honor, double hearsay.

7 MR. MATHISON: She's a witness. She's coming.
8 She's under subpoena.

9 THE COURT: Come see me for a minute.

10 OFF-THE-RECORD BENCH CONFERENCE,
11 4:57 P.M., OUT OF HEARING OF JURORS,
12 THE COURT, ALL ATTORNEYS PRESENT.

13 BY MR. MATHISON:

14 Q Is Mr. Jolin here today to testify in your behalf?

15 A He is.

16 Q And do you know whether he has knowledge of what
17 was in these incident reports?

18 A He -- he does.

19 MS. JONES: Objection, your Honor. You cannot ask
20 directly -- indirectly what you cannot ask directly.

21 THE COURT: Okay. He can testify as to what he
22 knows.

23 BY MR. MATHISON:

24 Q Going back to the letter, did you look at Paragraph
25 3?

1 A Um-hmm. Yes.

2 Q It indicates that, after this encounter at your
3 mom's house, does it not, --

4 A Yes.

5 Q -- somebody went to your mom's house connected with
6 Sea Pines Security and was trying to tow her vehicle
7 away?

8 A Correct.

9 Q Were you there for that event?

10 A I was not.

11 Q Did you do anything to discourage them from towing
12 the vehicle away?

13 A No, I did not.

14 Q Do you have any knowledge of whether what they say
15 here is true?

16 A The only knowledge I have is what my mother told
17 me.

18 Q Okay. Specifically, read me the first sentence of
19 what it says here.

20 A On May 21st, 2008, one of our patrol car -- patrol
21 officers found a vehicle parked in the roadway in front
22 of 4 Gadwall, Coffey residence. The vehicle was found
23 to be registered to a Michael Coffey, deceased. Several
24 attempts were made via phone and in person at 4 Gadwall
25 to have the vehicle removed from the road, with no

1 response.

2 Q Stop right there. How long had the vehicle
3 essentially been parked at the same place?

4 A At that point, my mother had --

5 MS. JONES: Objection. No foundation. She said
6 she didn't know.

7 THE COURT: If she can testify under oath, then she
8 can -- she can tell us. If she doesn't know, she
9 doesn't know.

10 A I do know that prior to that point my mother
11 routinely parked her car there.

12 Q For how many years?

13 A Years. Since I grew up there as a kid. And more
14 so since my father was deceased, because it's hard for
15 her to get the car in the driveway, the garage.

16 Q Do you know what the objective was in either
17 attempting or threatening to tow your mother's car?

18 MS. JONES: Objection, your Honor. Calls for
19 speculation.

20 THE COURT: Sustained. Strike that last question,
21 ladies and gentlemen. Ask another, Mr. Mathison.

22 MR. MATHISON: May it please the Court. I'm having
23 to cross-examine my witness on something that was
24 written by someone who doesn't have anymore first-hand
25 knowledge than --

1 MS. JONES: Your Honor, I object and I move to
2 strike.

3 THE COURT: Mr. Mathison. It's not appropriate.
4 Ask her What she does, in fact, know.

5 BY MR. MATHISON:

6 A I do know that the day prior they were able to get
7 my mother to the door at midnight in less than a couple
8 of minutes. And on the next day, apparently, they
9 couldn't get her by -- at 6:00 something in the morning,
10 6:30, they couldn't get her by phone or in person. But
11 somehow, shortly thereafter, prior to the tow car, the
12 tow person leaving with the car, she was able to, on her
13 own fruition, leave the house and talk to the tow guy.

14 Q To get the car back.

15 A Right.

16 Q Did you have any involvement in the towing
17 incident?

18 A No.

19 Q Did you talk to anybody about it with Sea Pines
20 Security?

21 A No.

22 Q Did you talk to anybody about it with Beaufort
23 County Sheriff's Office?

24 A No.

25 Q What's it doing in a complaint about you which is

1 being shown to people to effectively denigrate your
2 ability to continue serving as a judge?

3 MS. JONES: Objection.

4 THE COURT: I'm going to go ahead and strike that.
5 It's not an appropriate question for her.

6 BY MR. MATHISON:

7 Q Do you know of anything that it says about you?

8 MS. JONES: Objection, your Honor. He cannot ask
9 indirectly what he cannot ask directly.

10 MR. MATHISON: You can't rebut what's in a letter
11 if you've got only a ghost to duel with.

12 THE COURT: You've asked the question of whether or
13 not she had any knowledge or any involvement. You need
14 to move on.

15 BY MR. MATHISON:

16 Q Subsequently, on or about May 23rd, -- do you know
17 what day of the week May 23rd was?

18 A It's a Friday.

19 Q Did you have occasion to be at your mother's house?

20 A I did.

21 Q What brought you there?

22 A Sea Pines Security was driving up and down our
23 street. My mother's street. I'm sorry. And she was
24 upset. She called me and said they were following her,
25 my brother, inside -- in and out of the plantation. I

1 told her after work I would come down and talk with her.
2 So I was waiting for her, because, after they showed up
3 at midnight on the 20th with all the bells and whistles
4 and cars, and after they attempted to tow her car, and
5 after they canceled her gate pass, now they were
6 following her in and out of the plantation. So I said
7 I'd go down there and talk to her.

8 And I was outside because I didn't have a key. And
9 a Sea Pines Security car drove up. I thought I would
10 recognize the person. I know most of those guys. But
11 this was a new guy. So I introduced --

12 Q Who was the person that drove up?

13 A Well, I since learned it was Stephen Wright. And I
14 said to him, *You don't know me; I'm Judge Coffey.* He
15 said, *No, I've never appeared before you.* He told me he
16 was from somewhere. I don't remember if he said Indiana
17 or not. He apparently is from Indiana.

18 And I said, *You all need to stop harassing my*
19 *mother.* He didn't know what I was talking about. I
20 said, *If it'll help, I'm going to have my brother move*
21 *out. Tell Mr. Breed I don't have time to talk to him*
22 *now, but I'll get with him some time in the future.*

23 Q Why did you tell him to say that to Mr. Breed?

24 A Because at the May 20th event, when they came to
25 the door, they asked for Otis to come meet with Mr.

1 Breed that next morning, which would be Tuesday morning.
2 And then, when my brother, Christopher, had gone up to
3 the gate pass to get the gate -- to get his pass to come
4 in and see my mom, and he was told the number no longer
5 worked, and my mother needed to go see Mr. Breed to get
6 the number fixed. Neither Otis nor my mother was
7 inclined to go see Mr. Breed, so I was just saying I
8 will go in their stead.

9 Q Do you know why they were not inclined to go see
10 Mr. Breed?

11 MS. JONES: Objection, your Honor.

12 A You'll have to ask -- you'll have to ask them.

13 Q Did you, in fact, go see Mr. Breed?

14 A I did not.

15 Q Why?

16 A Because that was the end of school, school getting
17 out. And I have three children. I had one son moving
18 up from sixth grade that's been moving up. My daughters
19 were in ballet performances. And my life -- this was
20 not like -- I actually didn't realize how significant
21 that all this was going on. Me going to see Mr. Breed
22 for this nonsense stuff, wasn't a top priority of mine.
23 I was going to do it; I just hadn't gotten around to it.
24 And by June 24th, I got this letter.

25 Q Did you ask Otis to move away from your mom's house

1 so that -- did you ask him to move away?

2 A Well, we talked about he didn't want to stay. Are
3 you kidding me? And he moved right outside the
4 plantation. And Meredith Florencio had his address.

5 Q So he did not flee the jurisdiction.

6 A He did not flee the jurisdiction. He moved ten
7 minutes away.

8 Q Just up the street on Genesta Street. Is that
9 correct?

10 A Correct.

11 Q So that he still could go in and out of the
12 plantation; he just wasn't living there.

13 A Correct. He didn't want to live there either.
14 Anymore than he wanted to go spend an afternoon with Mr.
15 Breed.

16 Q Do you know of anything else in the letter that is
17 false or --

18 A He wasn't -- he wasn't the primary suspect in 2008,
19 because, according to the newspaper, the only person was
20 ever identified or seen by any of the victims was a
21 white guy.

22 MS. JONES: Objection, your Honor. Hearsay again.
23 I don't know what else to --

24 MR. MATHISON: There is a witness that's going to
25 testify as to whether he was the primary suspect.

1 A Okay.

2 THE COURT: Well, let's ask that witness.

3 MR. MATHISON: That's what we're going to do.

4 BY MR. MATHISON:

5 A Well, I think it's false to say that I --

6 MS. JONES: Objection, your Honor. There's no
7 witness --

8 THE COURT: Okay.

9 MS. JONES: -- there's no question pending.

10 MR. MATHISON: I think she was still looking for
11 something else that was false that would not --

12 THE COURT: Why don't you ask her if there's
13 something further.

14 BY MR. MATHISON:

15 Q Is there something else that you know of you own
16 knowledge is false in the letter?

17 A There is nothing that I engaged in to the detriment
18 of the community at large, or nobody's identified
19 anything that's conduct prejudicial to the effective and
20 expeditious administration of the business of the courts
21 and the criminal justice process.

22 Q The statements that we've just addressed on the
23 record, are they the only statements that are used to
24 assign any kind of culpability to you in this letter?

25 A Those four incidences?

1 Q Yes.

2 A Yes.

3 Q Did you make an effort to either obstruct or

4 interfere with any investigation of your brother, Otis?

5 A No.

6 Q Are you quite certain of that?

7 A Absolutely.

8 Q And did the Commission on Judicial Conduct agree

9 with you?

10 A They dismissed the complaint.

11 Q Hand you that document and ask if you can identify

12 that.

13 A It's a letter that looks like the one I received on

14 October 1, two thousand -- well, that was written on

15 October 1, 2008. It was to Mr. Breed.

16 MS. JONES: Your Honor, for the record, I need to

17 renew the --

18 THE COURT: Previous objection. Okay.

19 A On October 1, 2008, -- do you want me to read the

20 letter?

21 Q No. Just can you identify as to when you received

22 it.

23 A It is.

24 Q And read the last paragraph on the first page.

25 MS. JONES: Your Honor, it hasn't been admitted

1 yet.

2 MR. MATHISON: Excuse me. Move the introduction as
3 Plaintiff's Exhibit 7.

4 MS. JONES: And we state our objection based on the
5 Seager's opinion and on the rule.

6 COPY OF DOCUMENT REFERRED TO AS
7 OCTOBER 1, 2008 LETTER MARKED
8 PLAINTIFF'S EXHIBIT NUMBER 7,
9 ADMITTED AS EVIDENCE.

10 BY MR. MATHISON:

11 Q Please read the last paragraph on the first page.

12 A In accordance with these rules, the panel's
13 inquiries into this matter were limited to whether or
14 not there was evidence of ethical misconduct on the part
15 of Judge Coffey that would warrant further investigation
16 or the filing of formal charges.

17 After considering the report of Disciplinary
18 Counsel setting forth the results of the investigation,
19 the panel voted to dismiss your complaint.

20 Q And that's what was sent to Mr. Breed? Was that
21 sent to Mr. Breed?

22 A It says it was sent to Mr. Breed on the -- the
23 letter.

24 Q Okay.

25 A It was addressed to Mr. Breed.

1 Q Was that letter made public, to your knowledge?
2 The letter that dismissed it.
3 A Not that I'm aware of.
4 Q Did anyone other than you and Mr. Breed know that
5 it had been dismissed after each of you received copies
6 of the dismissal?
7 A I told Mr. DeLoach it was dismissed.
8 Q Do you know whether Mr. Breed told anybody at the
9 Town of Hilton Head it had been dismissed?
10 A I believe, according to Mr. DeLoach's --
11 MS. JONES: Objection, your Honor, again, it's
12 hearsay.
13 THE COURT: Sustained.
14 A I don't know how to answer that. I think you'd
15 have to ask Mr. Birdwell and Mr. DeLoach.
16 Q Did the fact that you were essentially exonerated
17 by the Commission on Judicial Conduct get out --
18 MS. JONES: Objection, your Honor. That's a
19 misstatement of the testimony and the letter and it's
20 argumentative.
21 THE COURT: Go ahead and ask the question.
22 BY MR. MATHISON:
23 Q Did the resolution that we just put in the record,
24 regardless of how it's characterized, get publicized in
25 any way, shape, or form, so that people that had seen

1 the original letter, Plaintiff's Exhibit 4, knew that
2 what was in Plaintiff's Exhibit 4 had not arisen to a
3 standard that the Conduct on Judicial -- the Commission
4 on Judicial Conduct found it worthwhile? Did it ever
5 get out?

6 A Not that I'm aware of.

7 Q After you received knowledge of this letter, did
8 you subsequently learn that someone had alleged that you
9 were having a sexual affair with Officer John Jolin?

10 MS. JONES: Objection, your Honor, hearsay.
11 Multiple hearsay.

12 THE COURT: You need to ask her the direct
13 question.

14 MR. MATHISON: Your Honor, this is the dep -- I
15 need to have some privacy. We need to ask the jury to
16 be --

17 THE COURT: You need to approach.

18 MR. MATHISON: Thank you.

19 OFF-THE-RECORD BENCH CONFERENCE,
20 OUT OF HEARING OF JURORS. THE
21 COURT, MR. MATHISON, MS. JONES,
22 MR. HALIO.

23 BY MR. MATHISON:

24 Q Did Mr. Breed accuse you of having an affair with
25 his former officer, John Jolin?

1 A Yes.

2 MS. JONES: Objection, your Honor. I move to
3 strike.

4 THE COURT: Okay. Overruled.

5 BY MR. MATHISON:

6 Q And when you first heard that, what was your
7 response?

8 A Well, at first, I didn't take it too seriously,
9 because it was outlandish, and the nature of it seemed
10 to be more to discredit Mr. Jolin, because it came after
11 he had proffered evidence to my attorney, than to cast
12 aspersions on me. I subsequently became more concerned
13 that I realized that a person who sat in a similar
14 position as I do was terminated from her position. She
15 was the ministerial recorder. I'm actually a judge.
16 But she was terminated from her position for the -- for
17 -- for an allegation of having an affair that she didn't
18 disclose with an officer who appeared before her.

19 Q And without naming that individual, did she also
20 work for the Town of Hilton Head Island?

21 A She did.

22 Q Do you know when she was terminated?

23 A April of 1999.

24 Q And upon realizing the outcome that befell her, did
25 that cause you to re-assess --

1 A Yes, it did.

2 Q -- possible damage to your position with the Town?

3 A Yes, it did, because if I did, indeed, have an
4 affair with an officer that appeared before me, and I
5 failed to disclose it, that would be grounds for
6 termination.

7 Q How did Mr. Breed's complaint against you, as
8 published to your employer, namely through Mr. DeLoach
9 and/or Mr. Coltrane, impact your relationship with your
10 employer?

11 A Even prior to me learning what I did in Mr.
12 DeLoach's deposition, even prior to that, the first --
13 during the term between June and October, when the
14 complaint was dismissed, my relationship went from,
15 like, as I said, from golden girl to barely tolerable in
16 one fell swoop.

17 Prior to that, I enjoyed a nice relationship, I
18 thought, with Mr. DeLoach and Town Council. As I said,
19 I saw them yearly. They encouraged me. If I needed
20 something. It was a good relationship. They
21 consistently gave me raises, even unsolicited, for 5,000
22 or more per year. From 2008 on, it was frosty at best.
23 And to this day, --

24 Q Excuse me. Frosty was referring to Mr. DeLoach?

25 A Mr. DeLoach. He warmed up some, so I thought. At

1 the time I thought he did. And now I've rethinking all
2 that. But I have not had a meeting with Town Council
3 since 2008. And I've asked Mr. DeLoach on several
4 occasions if they wanted to meet with me, especially
5 after this became in the paper. And he said, No.

6 A year later, he said no. I asked again, because
7 throughout this, it appeared in the paper. And I would
8 think that common curiosities, they'd have questions of
9 me, but he said no. Until this date, I have not had
10 another meeting with Town Council.

11 Q What about the relationship with the immediate
12 supervisor person who works -- persons who work in your
13 office, Mr. Fultz?

14 A I -- somewhere about 2009, it seemed that, you
15 know, -- there were at least three occasions between
16 2008 and 2011 that I -- Mr. Fultz dominion into my court
17 was so upsetting to me that I had three separate
18 meetings with Mr. DeLoach. And each time, the -- I was
19 told that the situation would be remedied. I since
20 learned in the spring of 2011 that it was highly likely
21 that those -- that Mr. DeLoach never had these
22 discussions with Mr. Fultz about what I was concerned
23 about.

24 And at the time, I had thought that Mr. Fultz's
25 disdain for me was the result of the additional costs

1 that went on his budget, because he's very budget
2 conscious. But perhaps -- that's all I know, for sure.

3 Q In what manner were there budget decisions that had
4 to be made in view of --

5 A When this complaint was first -- when -- when
6 Breed's letter first came to me, I realized that it
7 would -- to avoid the appearance of impropriety, it
8 would be best if I recused myself from hearing Sea Pines
9 cases. Mr. DeLoach --

10 Q Just stop right there. For the benefit of those of
11 us who are uninitiated, what does recuse yourself mean?

12 A Oh. That I remove myself from hearing those cases,
13 and a judge who would have nothing to do with it would
14 hear those cases so that both Sea Pines and defendants
15 felt that they were getting a fair hearing. Not that I
16 couldn't be impartial; just to avoid the appearance of
17 impropriety.

18 Q You believed you could be impartial, but you didn't
19 want somebody to be able to question that. Is that
20 right?

21 A Correct.

22 Q And is partiality -- or impartiality sufficiently
23 important that it's made a part of the judge's oath?

24 A Yes, it is.

25 Q I'm handing you this document, which I represent is

1 Rule 502(1), and it is the judge's oath. Ask you if you
2 can identify that as a oath that you took when you
3 became a judge, or, actually, in your case, after that
4 one was disseminated?

5 A Yeah, I -- I -- I think I -- I swore out two
6 judicial oaths; one prior to 2004 and one subsequent.

7 Q And that is the subsequent oath; is it not?

8 A Yes, it is.

9 Q And doesn't it make impartiality an absolute
10 dictate, a requirement, of the job?

11 A It does.

12 Q Do you think that you've discharged your
13 responsibility under the judge's oath?

14 A Yes.

15 MR. MATHISON: Move the introduction of the oath as
16 Plaintiff's Exhibit 8.

17 MS. JONES: No objection.

18 THE COURT: Without objection.

19 COPY OF DOCUMENT REFERRED TO AS JUDGE'S

20 OATH MARKED PLAINTIFF'S EXHIBIT

21 NUMBER 8, ADMITTED AS EVIDENCE.

22 BY MR. MATHISON:

23 Q Did your relationship with Mr. Coltrane change?

24 A Not at that time.

25 Q Did you ever learn how long your colleagues at the

1 Town of Hilton Head Island had known about the complaint
2 before you learned about it?

3 A No, because I thought it would be improper to
4 discuss it with them. So even though Curtis and I
5 regularly had lunch, I never discussed with him again
6 the complaint or anything about it. I thought it would
7 have been improper.

8 Q But you did tell, I believe you said, Mr. DeLoach
9 that it had been dismissed. Is that right?

10 A Oh. Yeah.

11 Q Whose decision was it to stop hearing Sea Pines
12 cases?

13 A Mine.

14 Q Was that a matter of your discretion or a matter of
15 --

16 A No. I mean, it was my decision, but it's mandated
17 by the rules. To avoid -- there -- to avoid the
18 appearance of impropriety, there was no way I could sit
19 on those cases. I just had to explain that to Mr.
20 DeLoach. And Ms. Ballard had to explain it to Mr.
21 DeLoach.

22 Q And subsequent to the dismissal, did Mr. DeLoach
23 ask you to start hearing Sea Pines cases again?

24 A He did. He immediately sent me an email saying, I
25 *don't see any reason why you can't start hearing Sea*

1 *Pines cases again.*

2 Q And what, if anything, did you tell him at that
3 juncture?

4 A I emailed him back that I needed to come -- that I
5 needed to go speak to him. And I went to his office,
6 and I told him that I didn't believe I could start
7 hearing Sea Pines cases because, at that point, I had
8 retained counsel and a lawsuit was imminent.

9 Q Did you tell anybody other than Mr. DeLoach and
10 your lawyer that you were going to file a lawsuit as a
11 result of what happened to you?

12 A I did. I told Mr. Hulbert because I had -- I had
13 asked him to represent me.

14 Q Do you know how Community Services Associates found
15 out that they were going to be sued before they got
16 sued?

17 A I don't know.

18 Q As a result of the Breed complaint and the
19 allegation of the sexual relationship between you and
20 Mr. Jolin, have you sustained injury?

21 A I -- certainly.

22 Q What, specifically, was the result of your reaction
23 to this proceeding?

24 A Well, as I was going through it, I'm not sure that
25 I could have quantified it, but I -- looking back now,

1 in July, I think that was a stage of acute stress, and I
2 suffered migraines, which I'm prone to suffer, but I
3 hadn't had one in several years. And I had four in
4 about a six-week period. And my migraines come on the
5 down side of stress. So for instance, like, I would
6 foresee me getting a migraine this Friday, after
7 everything ends. After everything ends, and this was
8 happening then, on a Friday night, I'd start to get the
9 headache. By Saturday, I was completely debilitated.

10 You're nauseous. You can't move. It's -- it's a
11 pain that you -- is indescribable. Medicine general
12 doesn't work. You got to take the medicine right -- I
13 don't like taking it, and you got to take it right at
14 the beginning.

15 Occasionally, I'll -- if I'm desperate, I'll take a
16 Maxalt, but I usually just go through it, because the
17 medicine makes you feel as bad as the migraine. By
18 Sunday, I start getting back to myself. So it happened
19 on weekends for me. And that was acute stress.

20 And I think that the facial numbness and the eye
21 twitching was sort of the acute stress. And those both
22 occurred like in '08, early '09. Eventually, I think it
23 went into a chronic stress. Not more -- not really
24 acute. It was just chronic stress.

25 And unfortunately, a symptom of chronic stress was

1 weight gain. And so, I -- at first, I didn't attribute
2 the weight gain to this, but after watching the pattern,
3 because I exercise every day. I eat high protein, low
4 glycemic, low carb. I'm pretty fanatical about it. And
5 I'm still gaining weight, especially on my middle. And
6 been to the doctors. So I think it went into a sort of
7 a chronic -- chronic stress. That's what kind of --
8 your cortisol levels are up.

9 In pursuing this, I did discover that there were
10 nodules on my thyroid, but as I said, there's no one
11 that can tie that. But the thyroid's not responsible
12 for the weight gain, because I'm not hypothyroid.
13 Whatever that is.

14 Q I understand.

15 MS. JONES: Your Honor, I have an objection and I
16 move to strike.

17 THE COURT: Again, the last comment was not
18 appropriate. She can't state that.

19 MR. MATHISON: I don't have any objection to
20 striking the discussion of the thyroid.

21 BY MR. MATHISON:

22 Q Did you seek counseling for your medical concerns
23 from a clinical psychologist?

24 A I did.

25 Q What's her name?

1 A Dr. Lynn Geiger.

2 Q And how often did you go see Dr. Geiger?

3 A Once a month.

4 Q And had you been seeing Dr. Geiger before July of
5 2008?

6 A I had seen her a couple of times before July of
7 2008, correct.

8 Q What was that about when you went to see her?

9 A Originally, my spouse and I went to see her in
10 attempt to reconcile. We were separated.

11 And then, you know, we resolved that, and this came
12 up. And I thought she'd done a good job, so I was
13 seeing her for this.

14 Q Do you know how many sessions you've had with Dr.
15 Geiger since July 2, 2008?

16 A I think -- I think I saw her once a month from July
17 2, 2008 through July 2011, which would be 36, but she
18 only billed me for 35.

19 Q Why was that?

20 A Because one time around Christmas, Hanukkah, cause
21 I do them both, I told her to hold the check, and she
22 said that it was her gift to me or something. So she
23 didn't -- she saw me, but she didn't charge me.

24 Q And just so that we understand, you do them both,
25 what exactly are you referring to?

1 A My spouse is -- is Israeli, and he's Jewish. And
2 I'm Christian, so -- and he's orthodox, so they don't --
3 unless the mother converts, they don't recognize boys.
4 So my daughters are being raised Jewish, and my son is
5 raised Catholic, but it's all the same God, so.

6 Q So you're essentially going to two congregations
7 all weekend.

8 A Yeah, holy family and the synagogue.

9 Q How much per session did Dr. Geiger charge?

10 A \$150.00 a session. She doesn't -- yeah, that's it.

11 Q Did you, with respect to the headaches and insomnia
12 and weight gain, see Dr. Dorsner?

13 A I did, and Joey.

14 Q Who is Joey?

15 A The nurse practitioner.

16 Q Who works with Dr. Dorsner?

17 A Correct.

18 Q And did you incur costs in going to see them?

19 A I did.

20 MS. JONES: Your Honor, we have an objection in
21 regards to the lack of foundation as to causation. And
22 --

23 THE COURT: Mr. Mathison, you can ask her the
24 questions, and we'll get to that point in his testimony.

25 BY MR. MATHISON:

1 Q And on referral from Dr. Dorsner, did you end up
2 seeing a Dr. Mauer with respect to eye twitching and
3 facial numbness?

4 A I did.

5 Q And did you incur costs with Dr. Mauer?

6 A I did.

7 Q Did these doctors recommend that you have an MRI.

8 A He did.

9 Q And what, exactly, was it that they were trying to
10 determine or rule out with the MRI?

11 MS. JONES: Objection, your Honor. Same objection.

12 THE COURT: You just need to ask her what she did;
13 what doctors she saw.

14 BY MR. MATHISON:

15 Q Did you have an MRI?

16 A I did.

17 Q Do you know what it was for?

18 A It was of my head.

19 Q Did they find any indications that would indicate
20 that you had a medical problem, as opposed to
21 psychological problem?

22 MS. JONES: Objection, your Honor.

23 THE COURT: You can ask it.

24 BY MR. MATHISON:

25 A They found nothing that would be like a blockage or

1 anything like that, no.

2 Q And does that indicate stress as a likely cause?

3 MS. JONES: Objection, your Honor. Move to strike.

4 THE COURT: Okay. Sustained. She can't testify as
5 to that.

6 BY MR. MATHISON:

7 Q I handed you a list of your medicals. Ask if you'd
8 review that for me, please.

9 A Yes.

10 Q Specifically, the 35 visits at \$150.00 a visit to
11 Dr. Geiger; what does that add up to?

12 A \$5,250.00.

13 Q And you're seeing Dr. Dorsner and his nurse
14 practitioner. What did those visits costs?

15 A \$146.00.

16 Q Dr. Mauer, how much did it cost to see him?

17 A \$48.40.

18 Q And MRI of Belfair, how much did they charge you to
19 look into your head?

20 A A thousand dollars.

21 Q And where did you get those figures?

22 A From the bills.

23 MR. MATHISON: Move the introduction of what's been
24 labeled *Maureen's Relevant Medicals* as Plaintiff's
25 Exhibit 8.

1 MS. JONES: Your Honor, that exhibit is improper at
2 this point in time, because there's been no foundation
3 laid pursuant to the *Tuomey Medical Center* case that we
4 had cited to the Court. It is inadmissible at this
5 point.

6 MR. MATHISON: I think it needs to be tied up. And
7 that's why I have a physician coming in. So, if we
8 identify it as Plaintiff's Exhibit 9, that'll be fine
9 with me.

10 THE COURT: That's fine.

11 COPY OF DOCUMENT REFERRED TO AS MAUREEN'S
12 RELEVANT MEDICALS MARKED PLAINTIFF'S
13 EXHIBIT NUMBER 9, ADMITTED AS EVIDENCE.

14 BY MR. MATHISON:

15 Q In addition to the medicals, which I think add up
16 to \$6,444.00. Is that correct?

17 A I believe so.

18 Q Did you have other damage as a consequence of Mr.
19 Breed's letter, specifically with reference to coping
20 with your children during your period of illness when it
21 was chronic?

22 A Yes. I had to have additional babysitting.

23 Q And how much -- first of all, who were your
24 babysitters?

25 A Well, we have my sister. We have Katie Kavanagh,

1 Ella Coota, and Tonya Rivera.

2 Q And when did you use these sitters that you
3 wouldn't have otherwise?

4 A Well, I normally don't have them come over for a
5 whole Saturday. I actually rarely have a sitter on a
6 Saturday. Usually, if I have a sitter, it's for --
7 well, Tonya gets the kids from school. She's every day.
8 But you know, something after that, if I have to go to a
9 meeting. I rarely go out, but I suppose if I had a
10 Friday evening out, I would use a sitter. That would be
11 a normal use of a babysitter. That's not what -- that's
12 not what I'm talking about. These would be times when I
13 was incapacitated and no one was around to help me.
14 Because a great deal of this time, my spouse was out of
15 the country.

16 Q He was overseas?

17 A Um-hmm.

18 Q And the incapacitation was a result of what?

19 A The headaches, primarily.

20 Q And this was essentially in?

21 A 2008.

22 Q When did it commence?

23 A In July was when I first started having headaches.

24 Q How do you pay your babysitters, Ms. Coffey?

25 A With cash.

1 Q Do you know how much you paid for additional
2 babysitting, that is, above and beyond what it is that
3 you would have paid had it not been for the headaches
4 and the incapacity?

5 A Pursuant to my calculations, it was approximately
6 \$800.00, I think.

7 Q The contracts that we put in evidence, --

8 A Um-hmm.

9 Q -- the last contract, the contract under which
10 you're currently serving, --

11 A Correct.

12 Q -- Was that negotiated after this lawsuit was
13 brought?

14 A Well, it wasn't really negotiated, but it did occur
15 after this lawsuit was brought.

16 Q And with whom did you negotiated, if you will, the
17 terms of the contract?

18 A Mr. DeLoach.

19 Q And did you make requests for a raise?

20 A I did.

21 Q And how much was it that you requested?

22 A I was making 86.5, and I think I requested 90,000.

23 Q Why did you think that was appropriate?

24 A Because in the past, every contract renewal I had,
25 I had a 5,000 or better raise. And in those -- in the

1 past, even in the interim, if I went with a three-year
2 contract, I had an interim raise of \$5,000.00. So
3 between 2008 and 2011, I -- I -- I didn't even have one
4 interim raise. And so, I asked for what I had standard
5 -- I had gotten standardly in the past, which was
6 \$5,000.00. Or roughly, 4,400.

7 Q Are other Town employees paid an annual raise?

8 A They do get an annual raise.

9 Q Did you and Mr. DeLoach take into account the fact
10 that other Town employees had had their incomes
11 escalated during the period that you had not?

12 A I believe that was part of the equation.

13 Q Did he bring a chart to the negotiation?

14 A As I recall, he did.

15 Q And what was the purpose of the chart?

16 A If I receive correctly, the chart looked to me like
17 -- I don't remember if it had people's names on it, or
18 just their -- their roles. But I think the majority of
19 them were male, because I remember thinking in my head,
20 now it brings me up with the male employees. So there
21 was some chart, and it either had names or their roles
22 and the percentage of raise they had gotten. Something
23 like that. Which showed less than what, I guess, I
24 would be getting if I got a \$4,400.00 raise or something
25 like that. I don't remember. He basically showed me a

1 chart and said it can be \$1,400.00 in two years..

2 Q The duration of your contract that expired in 2011,
3 the one that originated in 2008, it was for how long?

4 A Three years.

5 Q And the one before that, which I think was in 2005,
6 their was for how long?

7 A Three years.

8 Q What happened with respect to your contract in
9 2011?

10 A It was shortened to two years.

11 Q Was there any negotiation on that?

12 A No.

13 Q Why?

14 A Because Mr. DeLoach told me there wasn't.

15 Q Told you that -- told you what, exactly?

16 A Told me that --

17 MS. JONES: Your Honor, I object. It's hearsay.

18 THE COURT: Okay.

19 MR. MATHISON: Mr. DeLoach is a witness. He's
20 coming to testify.

21 THE COURT: You can state what occurred in
22 negotiations, so.

23 BY MR. MATHISON:

24 A No. Yeah.

25 Q No negotiations?

1 A No.

2 Q Did he tell you whose decision that was?

3 A Yes.

4 Q Who?

5 A Town Council.

6 Q So, if I understand correctly, you got a \$1,400.00

7 raise for two years. Is that right?

8 A Correct.

9 Q Do you have injury by way of loss of income in view

10 of the contract that you signed that now will expire in

11 February of 2013?

12 A Yes.

13 Q And what is that injury?

14 A It's the loss of the third year on my contract.

15 Q The guaranteed income. Is that right?

16 A The guaranteed income of eighty -- it would be

17 \$82,800.00.

18 Q And how do you compute that, exactly?

19 A If you take my three-year contract at 85.6, you

20 come up with a number, I think it's 256. And you take

21 the two-year contract at 87, gets you 174. If you

22 subtract 174 from 256, you get 82.8.

23 Q So, if you were a shortstop, you would actually not

24 have as good a contract now as you had previously,

25 because you only have a guaranteed two years instead of

1 a guaranteed three years. Isn't that right?

2 A Correct.

3 MS. JONES: Objection, your Honor. That is --
4 there's no basis for that.

5 THE COURT: Okay. It's her belief, then. She can
6 testify to that.

7 MS. JONES: No foundation.

8 BY MR. MATHISON:

9 A I wasn't -- I asked to talk to Town Council. I
10 almost put myself on the agenda, but thought they would
11 not approve. And I didn't get a chance to talk to Town
12 Council to negotiate.

13 Q Well, has your conduct changed in the sense of the
14 way you do business in the courtroom as a consequence of
15 this complaint?

16 A No.

17 Q Have cases become more difficult to adjudicate?

18 A Oh. Yeah, some of them have.

19 Q And what's the cause of that?

20 A Lawyers will challenge me more on every ruling and
21 try and get me -- I have to hold recusal motions more
22 often, because they think that -- if they think I'm
23 going to rule a certain way, they're going to try and
24 judge shop. So it takes longer, because --

25 MS. JONES: Your Honor, I object. That's an

1 improper claim.

2 THE COURT: She can testify as to what her belief
3 is. I'm just going to go ahead and allow it.

4 BY MR. MATHISON:

5 A So it takes longer.

6 Q Maureen, has Mr. Breed's complaint had an impact on
7 your reputation?

8 A Absolutely.

9 Q Tell me in what respect your reputation has been
10 injured.

11 A If you -- if you look at the articles in the
12 *Packet*, of which I did not seek out, people who read
13 this, and even though the articles say the complaint was
14 dismissed, they still form a negative opinion of me.

15 Q Well, apart from the articles in the *Packet*, how's
16 your reputation stand with the Town as of this juncture?

17 A Well, I'd say in light of the fact that they
18 shortened my contract, it's not as favorable as it used
19 to be. And I -- I don't know if I can talk about the
20 future.

21 Q About what?

22 A I don't know if I can talk about the future, so.

23 Q Well, what, if anything, did you aspire to do with
24 your career from here on in?

25 A Well, when I was --

1 MS. JONES: Your Honor, this is the objection and
2 the argument that we had previously.

3 THE COURT: Okay. You need to come up.

4 OFF-THE-RECORD BENCH CONFERENCE,

5 OUT OF HEARING OF JURORS. PRESENT:

6 THE COURT, MR. MATHISON, MS. JONES,

7 MR. HALIO, MS. JOLLEY.

8 BY MR. MATHISON:

9 Q What were your career plans?

10 A I had -- prior to coming to the Bench, I practiced
11 immigration and family law. And I had always wanted to
12 be -- I don't know if it was realistic. I always wanted
13 to be a family court judge. In about 2005, I was
14 approached about trying to, I don't know, put my name in
15 the hat or go through the process. I think it was about
16 -- Judge Fender was retiring. When they asked me, I
17 said, *My daughter* -- my youngest daughter was one year
18 old. And at the time, it was my belief that you had to
19 travel the circuit. And I felt that my children were
20 too young for me to consider it at that point.

21 I -- my daughters are one and two. Right now, I'm
22 like five minutes from my house from their school. I
23 can -- if court ends early, like it sometimes does, you
24 can -- I could jot off if I had to be in Beaufort, or,
25 you know, in Sumter, I could not. I'd miss a lot. So I

1 said I wouldn't be interested at the time. They told me
2 that maybe another 10, 20 years before it comes
3 available. And I said, *I'll take my chances.*

4 So it had been something I had considered. And I
5 was talked about it more than once, actually. People
6 talked to me more than once. But now, I think the --
7 those chances would be nil.

8 Q And why is that?

9 A Because it's a somewhat political process to be
10 appointed a judge at the family court or circuit court
11 level. And you know, the -- Mr. Breed and CSA have a
12 lot of ties to politicians.

13 Q There's a vetting process, isn't there?

14 A Yes.

15 Q In order to be a judge.

16 A Um-hmm.

17 Q You can't just say I want to be a judge and get to
18 be a judge, right?

19 A No. It's difficult.

20 Q You've got to pass muster. It's not just a
21 political test; it's a test of ability. Is that
22 correct?

23 A There's a lot of tests. Correct.

24 Q If you have a record such as what Mr. Breed did to
25 you, does it make you more likely or less likely to be a

1 judge?

2 MS. JONES: Objection, your Honor.

3 THE COURT: Sustained. You can ask her if it
4 affects whether or not she chose to run for it, but that
5 is so close.

6 BY MR. MATHISON:

7 Q Does this have an impact, Mr. Breed's complaint,
8 have an impact on whether you'd be willing to submit to
9 the vetting process?

10 A Yes.

11 Q And why is that?

12 A I believe it negatively reflects on me. I don't
13 think I'd make it through the process.

14 Q Is there a way that you can get rid of the
15 negativism and stigma that came from the complaint filed
16 by Mr. Breed?

17 A Well, the only way to redress this complaint was to
18 file this lawsuit. If I could have done it in private,
19 I certainly would have. I don't enjoy the public
20 scrutiny of this whole process. But there was no other
21 way for me to be vindicated. And my stress wouldn't
22 leave until I was vindicated. My future wouldn't be any
23 brighter unless I was vindicated. Because even at this
24 point, no one has ever apologized to me; has ever
25 retracted their statement. And in fact, the CSA board

1 unanimously --

2 MS. JONES: Objection, your Honor.

3 MR. MATHISON: I'm not --

4 MS. JONES: You ruled that out.

5 MR. MATHISON: I don't understand that. That's the

6 same objection that she raised when I was arguing to the

7 jury. And I don't remember --

8 THE COURT: Come here, you all.

9 OFF-THE-RECORD BENCH CONFERENCE,

10 OUT OF HEARING OF JURORS.

11 PRESENT: THE COURT, MR. MATHISON,

12 MS. JONES, MR. HALIO.

13 BY MR. MATHISON:

14 Q How much money do you think would be required to

15 pay your reputation damage inflicted by Mr. Breed and

16 Community Services Associates?

17 MS. JONES: Objection, your Honor.

18 THE COURT: Basis.

19 MS. JONES: That's the jury's providence. She

20 can't invade the providence of the jury.

21 MR. MATHISON: I think the term is province. And I

22 think the jury, as I argued, is entitled to make up its

23 mind, but we're entitled to present a figure. And they

24 can determine whether it's appropriate.

25 MS. JONES: Your Honor, counsel --

1 THE COURT: You can actually suggest a figure. You
2 can.

3 MS. JONES: Counsel can in argument. The witness
4 can't testify to it.

5 MR. MATHISON: I don't believe that's the law, your
6 Honor.

7 THE COURT: It is the law. Go ahead.

8 MR. MATHISON: You're allowing me to ask the
9 question?

10 THE COURT: I'm not. I am not allowing you to ask
11 it. Go on.

12 MR. MATHISON: Forgive me, but I think we need to
13 make a record here.

14 THE COURT: Okay. Ladies and gentlemen of the
15 jury, based on the late hour, it is about three minutes
16 to 6:00 or 7:00, I'm going to go ahead and excuse you
17 for the remainder of the day.

18 Again, do not discuss this case, ladies and
19 gentlemen. It wouldn't be appropriate to do so.
20 Additionally, don't do any of your own independent
21 research. Also something may be in the newspaper on
22 this tomorrow or on T.V., but again, you are not to read
23 it. You are to disregard it. I will ask under oath
24 whether or not you saw something in there. The only
25 thing I ask, ladies and gentlemen, is you go home, get a

1 good night's sleep. I look forward to seeing you all
2 back in your jury room at 9:30 tomorrow morning, where
3 we're going to go ahead and continue the trial of the
4 case.

5 Mr. Foreperson, additionally, will you, when you
6 leave tonight, will you talk to all the jurors. I want
7 to make sure that no one has any special engagements
8 they need to be at, at a certain time. I'll catch you
9 later and not ask you that today. I certainly don't
10 want that to occur. But over the next couple of days,
11 if you have somewhere you need to be at a particular
12 time that you have previously engaged yourself to or
13 committed to, just let my bailiffs know, Mr. Foreperson,
14 and tell me what time they need to be there and how long
15 it's going to take. And we'll make sure we accommodate
16 you. All right? Thank you.

17 BAILIFF: Thank you, your Honor.

18 JURORS LEAVE COURTROOM 6:00 P.M.

19 ON-THE-RECORD BENCH CONFERENCE,

20 OUT OF HEARING OF JURORS. PRESENT:

21 MR. MATHISON, MS. JONES, MR. HALIO,

22 MS. JOLLEY.

23 BAILIFF: Jury's clear and the door is closed, your
24 Honor.

25 THE COURT: Thank you. Mr. Mathison, why don't you

1 show me some case law that says that you're client can
2 say what her reputation is worth, considering --

3 MR. MATHISON: Well, I will, but I --

4 THE COURT: I don't know how you do on something
5 like reputation, because the charge actually states that
6 it's within the jury's province.

7 MR. MATHISON: I know it does. But you can, in
8 fact, state a figure, if you have a figure. And they
9 can attack the figure. I know the law, because --

10 THE COURT: I think you can suggest it. I think
11 you can suggest it in a closing argument. But I don't
12 know how in the world she's going to put a number on it.

13 MR. MATHISON: All right. Well, my first concern
14 was this. I will concede that there is a portion of
15 their motion in limine that addresses the indemnity.
16 Okay? But we didn't argue it in here. Or if we did, I
17 wasn't aware of it. I mean, I've been at the
18 proceedings and I've tried to pay attention and
19 participate. And all of a sudden, you sustained an
20 object to my mentioning the indemnity during my
21 argument.

22 THE COURT: It was a motion in limine that they
23 made that we hadn't gotten to yet. But I presumed that
24 you'd read their motion in limine. Mr. Mathison, I
25 invited you all down here last week to argue your

1 motions in limine, anticipating they might be lengthy,
2 and your office told me that you were not available at
3 all.

4 MR. MATHISON: No, I was the one that said that.
5 It was not my office.

6 THE COURT: Well, whoever did it, it was you or
7 your office, it doesn't matter. You were not available,
8 which is why we're in the position we are right now,
9 that we are trying to put this case up in four days. So
10 we were not able to get to all the motions in limine.
11 We tried our best to do what was going to come out. But
12 again, I just presume everyone knows how to work under
13 the Rules. And based on that, you should know what
14 truly should be admissible or not admissible.

15 Typically, we all agree, typically, any
16 identification is not an admission of anything. It
17 could have been a business decision. And I believe we
18 did have this discussion, if I'm correct, during a
19 summary judgment motion, I know. Because normally, you
20 would never put in whether or not indemnity is an issue.

21 MR. MATHISON: It's not in the record here, and it
22 was objected to and sustained. And I'm not offering it
23 for the purpose of showing that he's got more money than
24 God. I'm offering it for the purpose of showing that a
25 group of individuals who were not consulted in advance,

1 who did not know and could not stop Mr. Breed from
2 acting the way he did, after getting a publication of a
3 document they shouldn't have seen, because in Mr.
4 Breed's deposition testimony, he didn't need their
5 authority; that was a publication.

6 So as of the moment that they got it, they were
7 innocent. This is the board of directors, the entity,
8 if you will.

9 Subsequently, they implicated themselves by
10 ratifying his act. And the proof of ratification is the
11 indemnity. He can't indemnify somebody without saying
12 we're agreeing with you to the extent that we're willing
13 to pay your judgment and your costs.

14 THE COURT: That is not correct. It could be that
15 they were buying him to hush him up. It could be a
16 purely business decision, and plenty of boards do that.
17 I don't think it's a ratification of anything.

18 Now, I do think there's a potential issue that it
19 goes to punitive damages. Because one of the things
20 they can consider is whether or not it's going to affect
21 an economic bankruptcy. And apparently, it won't,
22 because he is being indemnified. So I do think it might
23 possibly go as to that. But I don't think it is a
24 ratification by this board of anything.

25 MR. MATHISON: Well, --

1 THE COURT: I still think you're on shaky grounds
2 with your civil conspiracy. I mean, truly, you are.
3 And your civil conspiracies, you argued to me this
4 morning, was between Mr. Kelley having this dual
5 membership on a board and CSA. I think we have that --
6 that's what our issue is.

7 MR. MATHISON: I'm not attempting to argue civil
8 conspiracy here. What I'm arguing is that I think the
9 ratification is very important for purposes of imposing
10 liability within the context of the defamation claims.

11 THE COURT: Okay. Well, go find me some case law
12 tonight that says as much.

13 MR. MATHISON: All right, I will. And that's a
14 part of the reason that I'm asking. With respect to the
15 question of whether I can suggest a figure or whether I
16 can ask my client for a figure, I do believe, as a
17 result of instructions from Judge Kinard, that I
18 certainly should have put a figure on a case that I
19 tried here two years ago.

20 THE COURT: In closing argument, I agree with you.
21 I think a lawyer that doesn't ask for money is a fool,
22 particularly their own plaintiff's lawyer. But the
23 truth is, it's not to come from her, particularly on a
24 claim of defamation.

25 I mean, you're almost putting her at the point of

1 being an expert witness. Now we've got her as a fact
2 witness. We've got her as expert witness now. I think
3 you're walking a very fine line. And again, I invite
4 you to give me case law that says it's absolutely fine
5 for a plaintiff in a case who is not an expert witness
6 to give her opinion as to what her damages are in a
7 defamation case.

8 I would agree she has hard medicals; I would agree
9 that there are certain things, but suggesting a figure,
10 you can do to a jury in your closing argument. But I
11 don't think she can testify, nor do I think it would be
12 smart for her to do it. But of course, that's up to
13 you.

14 MR. MATHISON: I understand.

15 THE COURT: It's up to the lawyer to ask for the
16 money. It's not up to the client. And really, I mean,
17 I was just talking strategy, but still. If you can find
18 some case law that suggests that she can put a number on
19 defamation, I'm happy to entertain it.

20 MR. MATHISON: Okay. Thank you.

21 THE COURT: Anything else, you all?

22 MR. HALIO: We've still got some stuff that we
23 never had a chance to go over that's going to come up.
24 I don't know if you want to do it now or we'll wait.

25 THE COURT: Let me tell you what I want. Did

1 someone give me a copy of Mr. Howard's deposition? I
2 thought this morning you tried to get me copy of it.

3 MR. HALIO: I couldn't get it out because it was
4 stuck together.

5 THE COURT: Okay.

6 MR. HALIO: But I think somebody has a copy.

7 PLAINTIFF COFFEY: Can I step down.

8 THE COURT: Sure. Absolutely you may step down.

9 MR. HALIO: But the motion in limine, we haven't
10 even finished that, Judge, we, you know.

11 THE COURT: What I propose we do, because I don't
12 know about you all, but I'm tired. And I hope you all
13 are, too... Let's do this, you all. If you would be here
14 -- plan on being here tomorrow morning at 8:45. And
15 we'll go ahead and we'll finish up the motions in limine
16 and get everything cleaned up. By that point, I'll have
17 had an opportunity to read Mr. Howard's deposition.

18 All right. Well, apparently, we're going to be at
19 ease. If you all would just make a copy of it, if you
20 would. Just send it back to me, and I'll go ahead and
21 take it on the way home tonight, so I can have a chance
22 to look at it.

23 MS. JONES: She's getting it right now. I'm sorry,
24 your Honor.

25 MR. HALIO: I just have to figure out how to open

1 the clips. It was Mr. Mathison's reporter who's clipped
2 it so it's virtually unclippable.

3 THE COURT: All right. You all, go home and get
4 some rest.

5 MR. HALIO: Another assignment of error. No
6 problem.

7 THE COURT: Okay. We're going to go off record.
8 Good night, you all. See you at 8:45 tomorrow morning.

9 END DAY ONE, TUESDAY,

10 MAY 29, 2012, 6:10 P.M.

11 BEGIN DAY TWO, WEDNESDAY

12 MAY 30, 2012, 8:50 A.M.

13 ON-THE-RECORD BENCH CONFERENCE

14 REGARDING MOTIONS, OUT OF PRESENCE

15 OF JURORS:

16 THE COURT: I guess, before we start, at the point
17 that you need to bring Bill Howard in -- obviously, it
18 probably won't be today. I can't imagine we're going to
19 get to him. I can tell you, from having read his
20 deposition, I'm not sure what he's going to testify to,
21 either. I saw that it was only taken by Mr. Mathison.
22 You all didn't put anything specific out. So I'm
23 assuming you'd had written him. All right.

24 I think, regardless, I think he needs to come, is
25 what I'm trying to tell you. And even if he cannot

1 testify based on -- I want him to give a proffer. I
2 have certain things I need to ask him. I haven't quite
3 figured out, literally, what it is he's testified to.
4 Because it's not clear, obviously, from his deposition.
5 And because you all didn't take it. So I wanted to tell
6 you that just so you do plan to bring him.

7 MS. JOLLEY: Okay.

8 THE COURT: And we'll go from there. I'll at this
9 point, let's go through as many of the motions in limine
10 as we can before the jury comes in this morning. That,
11 hopefully, may take care of some things and might clear
12 a few things up, and that way we can just go forward.

13 You ready to go? And I'm just going to start from
14 the top, if that's all right with you. Do you mind?

15 MS. JOLLEY: Okay. Not at all.

16 THE COURT: If that's okay, I'll just start going
17 through. Any and all testimony, Number 1(a)(a), any and
18 all testimony regarding the defamation lawsuit brought
19 by George Breed against a third party and related to
20 this case, and resulted in a settlement which Breed
21 received money. The question is, is what's the
22 relevance of that?

23 MR. MATHISON: We're not going to offer it except
24 to impeach him. I mean, he initially testified -- there
25 are two iterations of this deposition taken on different

1 days. The first time he identified all the lawsuits
2 he'd been in, and he'd had four. The second time, after
3 we got the benefit of the Klippel deposition, we
4 interrogated him based on the Klippel deposition, he
5 did, in fact, agree he'd been in more lawsuits, and one
6 of them was, in fact, a slander action.

7 An action in which it was alleged by one of his
8 neighbors that he had stolen a Menorah, which, I think,
9 and outdoor Hanukkah decoration.

10 He was, in point of fact, represented by the former
11 Town judge, or may have been the then sitting Town
12 judge, Terry Finger. Got a judgment of \$20,000.00. It
13 shows that he recognizes that people have an interest in
14 their reputation that's worth protecting. I intend to
15 impeach him with that.

16 THE COURT: I don't see how that's relevant to this
17 case. So at this point, no, unless for true impeachment
18 purposes, it's necessary. Again, I just don't see it's
19 relevance.

20 MR. MATHISON: Well, he's denied that he was in
21 lawsuit. And then he was confronted with it, where he
22 had admitted it in a previous deposition. And under the
23 circumstances, specifically, those that we have to
24 prove; we have to show that his state of mind at or
25 about the time that, you know, he uttered these

1 your ultimate issue.

2 Number 4, any and all testimony regarding George
3 Breed's quitclaim deed of his one-half interest in his
4 home to his wife on July 3, 2008, or Breed's personal
5 medical history. Number 1, I have no idea what his
6 Personal medical history is.

7 MR. MATHISON: Neither do I. When I asked him in
8 his deposition whether he had any medical issues in May
9 and June of 2008, he initially testified, *I don't*
10 *recall*. Then I asked him whether he had effectively
11 deeded his one-half interest to his wife fewer than 30
12 days after he wrote this letter about Judge Coffey for
13 nothing.

14 THE COURT: Um-hmm.

15 MR. MATHISON: And he admitted it. Then, when I
16 asked him why, suggesting that it was done in order to
17 avoid what might be a retaliatory lawsuit and a judgment
18 that would encumber it, he proceeded to not say
19 anything. Celeste interjected an objection and said
20 that he had essentially done it for medical reasons.
21 And HIPAA prevented me finding out what they were.
22 That's what happened.

23 THE COURT: Okay. Well, when this gets back to me,
24 and again, we need to talk about this is the indemnity
25 of agreement, because, so far, I have not let it in. I

1 originally say he didn't recall. He then corrected his
2 testimony while the deposition was going on, which
3 you're allowed to do.

4 THE COURT: Um-hmm.

5 MS. JOLLEY: And said, actually, I'm not
6 comfortable sharing that information. I transferred the
7 house because it's part of my estate plan, and I
8 transferred it to her to make sure she was taken care
9 of. That's the testimony. If they want to ask him
10 about his medical condition, just to get that on the
11 record about the transfer of the house, fine. This has
12 nothing to do with whether he has property. That's not
13 what this is about.

14 The deposition question was: *Isn't it true you*
15 *transferred the house because you knew you were going to*
16 *be sued in six months by Maureen Coffey?*

17 THE COURT: Yes, that would be the inference I
18 would draw, quite frankly, that I would put in front of
19 the jury if I were him.

20 MR. MATHISON: And it is evidence of his state of
21 mind at or about the time he wrote the letter, which is
22 what the *Metts* case says I have to put in. That's what
23 I have to put in to prove constitutional actual malice.
24 It's guilty knowledge, if you will.

25 THE COURT: I would agree with that.

1 MR. MATHISON: Anticipation.
2 THE COURT: I would agree with that, quite frankly.
3 I think, though, it depends on how he testifies. I
4 really did.
5 MS. JOLLEY: Well, one of the issues, of course, is
6 that he's not going to be testifying in their case.
7 They're just going to read these little excerpts in.
8 THE COURT: Right.
9 MS. JOLLEY: So.
10 THE COURT: Well, again, if you all have a page and
11 line designation of his testimony.
12 MR. MATHISON: I do.
13 THE COURT: Do they not have it?
14 MR. MATHISON: I submitted it yesterday at 10:00
15 o'clock.
16 THE COURT: Okay. And you've done your
17 designations or your objections?
18 MS. JOLLEY: Yes, your Honor. Well, I was going to
19 make the objections today while we were doing this,
20 because most of them are these same motions here.
21 THE COURT: Okay.
22 MS. JOLLEY: But I could write on it and hand up my
23 objections to the Court.
24 THE COURT: Okay. Well, obviously, I need to look
25 at that.

1 MS. JOLLEY: Sure.

2 THE COURT: I don't know when or at what point you
3 plan on playing it, but I need an opportunity to go
4 through it. I'm guessing it's lengthy.

5 MR. MATHISON: It is.

6 THE COURT: So, okay. Well, I think you all need
7 to get those to me as soon as you possibly can so I can
8 take a look at his deposition. That might be possible
9 in this case. Okay. And as it stands right now, I
10 think it might be fair game. I really do. Depending on
11 -- I haven't seen the testimony, so. I think you can
12 allege, certainly, that he acted out is evidence of
13 guilty knowledge. All right.

14 Number 5, any and all testimony of other evidence
15 regarding the CSA's board of directors' decision to
16 indemnify George Breed's legal fees and costs related to
17 the action in 2009, or to CSA's insurance policies or
18 status.

19 MR. MATHISON: There's absolutely no reference to
20 insurance policies in the document I plan on
21 introducing. The indemnity was voted by CSA to
22 indemnify Mr. Breed against attorneys' fees and costs
23 incurred in this litigation, as well as against any
24 judgment or any settlement that he might make. We
25 construed --

1 THE COURT: Let me tell you my problem, though,
2 with this. And this goes back to the civil conspiracy
3 claim, which is, obviously, I didn't dismiss at summary
4 judgment stage, because I want to hear the testimony.
5 But if you're saying that the indemnity agreement is not
6 only we're going to pay your legal fees and we're going
7 to indemnify you for any judgment, but it's a putting
8 their arm around the shoulders saying, go ahead, keep
9 going, you can keep doing this; and if it's part of the
10 perpetuation; I don't know that; I don't know the
11 testimony; I haven't heard that yet; then I think
12 there's definitely an argument for civil conspiracy; but
13 I haven't heard that, really, yet.

14 MR. MATHISON: Yesterday, during Ms. Coffey's
15 examination, the objection was made for the second time.
16 She was going to say that that's one of the reasons she
17 believed, first, that the board of directors had
18 believed Mr. Breed. Second, that --

19 THE COURT: Okay. Wait a minute. She was going to
20 testify that she thinks they believed him because they
21 said they were going to indemnify him?

22 MR. MATHISON: Second, they --

23 THE COURT: How can she testify to that, though? I
24 mean, that is so speculative. How -- how --

25 MR. MATHISON: Well, for two reasons. This is a

1 it without her knowledge. She thought it was dismissed.
2 I had her pull it up; it comes off as guilty. She paid
3 court costs, but I think it's best if she -- if they ask
4 Mr. Campbell what happened, because I wasn't there.

5 MR. MATHISON: We're not going to object to the
6 fact that they put in the record that she was convicted
7 of parking in the wrong place. But the fact of the
8 matter is, the initial charge, instead of being parking,
9 they had her written up under the DUI statute. We
10 believe that was a mistake. We're not going to make a
11 big deal out of that. We're not trying to put the
12 ticket --

13 THE COURT: Just so I know, did they write DUI on
14 it, or did they just write the wrong statute?

15 MS. COFFEY: They wrote the wrong statute.

16 MR. MATHISON: Wrong statutory number.

17 THE COURT: Okay. Sorry. Just for my edification.
18 You may want it in.

19 MR. MATHISON: Well, they can put it in. They've
20 got Mr. Campbell listed on your witness list.

21 THE COURT: Okay.

22 MR. MATHISON: We're not going to object to it. We
23 can't.

24 THE COURT: Okay. All right. Now, Number 1, under
25 D. Any and all testimony that CSA officials would

1 dismiss tickets if the accused gave money to Sea Pines
2 Forest Preserve Foundation. Let me ask you. Is this
3 actually true?

4 MR. MATHISON: Yes. And we've got evidence of it.

5 MS. JOLLEY: Your Honor, I don't know anything
6 about it. I know there's no foundation laid in any of
7 the depositions. It was just laid out there as, did
8 this happen, do you do this. We don't know anything
9 about it.

10 MR. MATHISON: Mr. Hulbert will testify. He went
11 down and he interviewed our friend Mr. Kelley about this
12 problem. Mr. Kelley, under oath, denied that he'd ever
13 talked to Hulbert; denied that it was going on.

14 THE COURT: And Mr. Hulbert is who, again? Help me
15 out.

16 MR. MATHISON: Mr. Hulbert is the town attorney.

17 THE COURT: Okay. So Mr. Hulbert went and talked
18 to him, and you're saying that Kelley denied it?

19 MR. MATHISON: Yes.

20 MS. JOLLEY: No, he denied it in his deposition.

21 MR. MATHISON: He denied it in his deposition.

22 MS. JOLLEY: He did not deny it in --

23 MR. MATHISON: He denied that he knew anything
24 about it.

25 THE COURT: So what's Hulbert going to testify to?

1 He's going to say that he --

2 MR. MATHISON: He's going to say that he
3 investigated it; he took it to Sea Pines; he found out
4 that, in fact, this same Officer Campbell had, indeed,
5 solicited contribution. And the way it works is this, -

6 -
7 THE COURT: Did he do this to Mrs. Coffey, the
8 mother?

9 MR. MATHISON: No, he didn't. But we're trying to
10 show at -- at virtually the same time they had an
11 illegal investigation ongoing, and Mr. Jolin actually
12 participated in one of them. All right. Not in the one
13 that --

14 THE COURT: Is he going to testify, is Mr. Jolin
15 going to testify, that this is something that they did
16 there?

17 MR. MATHISON: He's going to testify with respect
18 to another investigation that happened on or about June
19 2nd, of the same -- with Linda Fugate, where they
20 arrested her grandson; and arrested him on two charges;
21 reached an agreement to have him pay \$3,250.00 for
22 having broken some lights. They promised him that if he
23 paid, they wouldn't prosecute him. He was making
24 payments of \$25.00 a month, and they showed up and
25 prosecuted him.

1 Mr. Jolin wrote the ticket. He then left Sea
2 Pines. He resigned when they would not use the right
3 incident report. And someone else took it up and
4 prosecuted it.

5 THE COURT: Okay.

6 MR. MATHISON: Mr. Hulbert has knowledge of that,
7 as well.

8 THE COURT: Okay. Was the 3,250 for restitution,
9 or was it to be donated to something specific?

10 MR. MATHISON: There's a contract that was
11 delivered to the Town of Hilton Head that we got under
12 our subpoena power. We didn't have it until we
13 subpoenaed it for trial.

14 THE COURT: That says what? That says what?

15 MR. MATHISON: It says that the 15 lights this guy
16 broke is costing \$3,250.00, and he's supposed to pay it
17 over 25 --

18 THE COURT: That's restitution.

19 MS. JOLLEY: Which is allowed under the statute.

20 MR. MATHISON: Well, --

21 THE COURT: Okay.

22 MR. MATHISON: -- but the restitution was based on
23 the fact that he wasn't going to get prosecuted. He was
24 making the payments; they took him to court; and
25 prosecuted.

1 MS. COFFEY: And Haynes prosecuted it, and Haynes
2 wasn't there.

3 MS. JOLLEY: I'm unaware of any foundation for
4 anything about this prosecution or any testimony that's
5 coming in about that.

6 THE COURT: Okay. Well, -- you're the one --

7 MR. MATHISON: We delivered all of the documents.

8 THE COURT: You're using it to show that what?

9 MR. MATHISON: We're using it to show guilty state
10 of mind by people at Sea Pines Security, at or about the
11 same time this event went on.

12 THE COURT: How in the world is that relevant to
13 this case?

14 MR. MATHISON: Again, you're trying to show that
15 the people there were acting in such a way as not to be
16 credible, not to be believable. That's what the *Metts*
17 *versus Mimms* case says. If you want to develop
18 constitutional actual malice, you show that what the
19 people are who are doing this were doing at or about the
20 same time.

21 THE COURT: So you're just -- you're using this as
22 other bad acts. That's what using it under?

23 MS. JOLLEY: Yes, your Honor.

24 THE COURT: That's what I'm asking, because that's
25 what it sounds like. Well, I can tell you, if that

1 actually is occurring, this a huge problem. Not only is
2 it unethical, but it probably is illegal. So, if they,
3 in fact, are doing this, I do have a huge problem with
4 it, and I do think somebody needs to be looking into it,
5 and it's probably our solicitor. But my question,
6 again, becomes, you're trying to show actions in
7 conformity. What about character evidence at this
8 point?

9 MR. MATHISON: I'm talking about state of mind
10 evidence under *Metts versus Mimms*. That's what you have
11 to show.

12 THE COURT: And you've got 404(b) issues. That's
13 the problem. You're talking about specific incidents.
14 So. And just because you've got to prove *Metts*, doesn't
15 mean you don't have to still live by the rules under
16 404(b). That's my concern. So I'm not so sure. What
17 we may have to do on something like this is take a
18 proffer, and then decide after that whether or not it's
19 admissible. But I will tell you, if this is an
20 allegation, if this is a problem, it is truly a problem
21 for security there. That's my concern.

22 MR. MATHISON: There are actually three events.
23 And one of the events, Mr. Hafer, we are not going to
24 pursue, because Mr. Hafer is out of state, and we don't
25 have any way to put on evidence about it. But the other

1 restitution agreements with individuals owing money to
2 businesses located -- This is, again, this whole thing
3 where is he acting as a debt collector.

4 MR. MATHISON: It is.

5 THE COURT: Mr. Breed. Okay. And that you're
6 saying that's outside his authority of the security
7 person.

8 MR. HALIO: So, if that comes up, we need to object
9 to it?

10 THE COURT: I think you need -- well, no. I don't
11 see how that's relevant in any way. We're talking about
12 whether or not he's exceeding his authority as to the
13 investigations and what he's doing with Otis Coffey, and
14 in his dealings with Judge Coffey. That's what we're
15 talking about. Okay.

16 Any and all testimony regarding purported letters
17 and/or phone calls between George Breed and Judge Jim
18 Herring.

19 MR. MATHISON: This is important.

20 THE COURT: I have no idea what the letters and
21 phone calls are about.

22 MR. MATHISON: This is important in two respects.
23 He was asked initially did he ever ask --

24 THE COURT: He was asked. Jim Herring was? Or
25 Breed?

1 opportunity to plead to lesser local offenses, and pay
2 more money, and not take the points, which was done
3 routinely in several courts in Beaufort County, in the
4 magistrate system.

5 THE COURT: Um-hmm.

6 MR. MATHISON: Which is what Mr. Breed says in his
7 letter. In his deposition, he said he didn't know what
8 they were doing in the magistrate's court and he didn't
9 know why he had put that in his letter. And he didn't
10 know why Mr. Herring wanted to know about it.

11 In addition, --

12 THE COURT: Is Mr. Herring going to testify?

13 MR. MATHISON: He could. Depends on what Mr. Breed
14 says on -- if he actually comes in, and if he gets
15 cross-examined, then, if he is deceitful, we're going to
16 bring Mr. Herring in. Mr. Herring's going to say what
17 he said.

18 In addition, we spent the better part of a day
19 trying to get Mr. Breed to admit that, as a matter of
20 routine at Sea Pines Security in 2008, he had all of his
21 officers' phone calls recorded. He wouldn't do it.

22 We tried to get him to admit that he recorded his
23 own calls. He wouldn't do that either. Then we went
24 and got the Klippel deposition, because he said he'd
25 testified in it, and it's available. It was actually

1 stretch, but I haven't heard the testimony yet.

2 MR. MATHISON: He ultimately did admit in the
3 second iteration of his deposition that the calls were
4 routinely recorded in 2008.

5 THE COURT: Okay.

6 MR. MATHISON: But he has no explanation for where
7 the calls are that we want to look at or listen to.

8 THE COURT: Okay. The next question is. Any and
9 all testimony about the plaintiff regarding any alleged
10 bad acts on the part of any of the defendants' witnesses
11 or the defendants that are not related directly to the
12 plaintiff.

13 You know, I can tell you what I see in this case,
14 and you know, I don't know about all the different
15 witnesses, because I certainly don't know what they've
16 done; if Breed gets up here for some reason and starts
17 testifying what a great system and what a great security
18 force he's run, I think they've opened -- you've more
19 than opened the door that you can go after him for all
20 this stuff. I truly believe that.

21 And if he gets up there and he says he does a great
22 job, I think he's putting his own character as evidence,
23 and I think, certainly, the rules allow it, and
24 certainly, all the case law does. But I think it
25 depends on what he says. I really do. I mean, that's

1 kind of -- you all are going to figure on that one, if
2 that occurs. If you put him up.

3 MR. MATHISON: We're concerned that Mr. Breed may
4 not testify at all; that he will, basically, bring
5 officers in who will say what he would have said if he
6 took the stand.

7 THE COURT: But you also have the ability to call
8 him.

9 MR. MATHISON: I understand that, but I've deposed
10 him on two successive days.

11 THE COURT: Um-hmm.

12 MR. MATHISON: And I don't think I'm going to do
13 any better than what I've already got.

14 THE COURT: Okay. Again, I think that one is going
15 to be based on what they put up, based on the officers'
16 testimony or whomever. Okay.

17 Testimony that John Jolin stated that the employees
18 or former employees of CSA told Mr. Jolin that they
19 heard a rumor from others regarding a possible sexual
20 relationship between plaintiff and Mr. Jolin. It says,
21 *Such statements by John Jolin should be excluded as*
22 *inadmissible hearsay.*

23 I don't think it's used for the truth of the matter
24 asserted. It's used for the issue that he heard that.
25 Someone told him as a rumor. So it was going out there.

1 But someone's going to have to say, at some point, that
2 this rumor was started by Mr. Breed. Someone's got to
3 be able to say they heard Mr. Breed say it, not just
4 that five other people said Mr. Breed said it. I mean,
5 somewhere, you got to connect it up.

6 MR. MATHISON: I think you're on the right side of
7 this issue, your Honor.

8 THE COURT: Well, that's nice that you agree with
9 me on this one. I'm so thrilled.

10 MR. MATHISON: We think that, basically, there is a
11 statement that's in *Goodwin versus Kennedy*, a case that
12 makes my heart flutter, which indicates that there's a
13 relaxed attitude in defamation cases with respect to
14 hearsay. The way that courts in other states have
15 analyzed it, --

16 THE COURT: Um-hmm.

17 MR. MATHISON: -- the act of defamation is an act.
18 It's not a statement in the traditional sense of
19 hearsay, so that it's like witnessing an event if
20 someone repeats it. That being the case, it's generally
21 allowed, because no one is insisting that Mr. Jolin
22 actually had a sexual relationship with Maureen Coffey.
23 That's the truth of the statements.

24 THE COURT: The ultimate issue is whether or not
25 Mr. Breed was the one that perpetuated this rumor.

1 MR. MATHISON: Well, --

2 THE COURT: That's the big ultimate issue.

3 MR. MATHISON: I can tell you where it's going to
4 lead. It's going to lead to the fact that Mr. Breed
5 perpetuated the statement, I believe, that they had a
6 personal relationship. And one of his lieutenants, Mr.
7 Woods, perpetuated or perverted that into a sexual
8 relationship. And there will be two tentacles leading
9 back into them. We've identified the people that have
10 spoken in the chain, and we're simply going to -- we've
11 got them under subpoena, and we're going to ask them if
12 they said it and heard it.

13 THE COURT: Now, they said it and they heard it.

14 MR. MATHISON: They heard it from Mr. Woods. They
15 said it either to Mr. Jolin --

16 THE COURT: And Mr. Jolin's on the witness list, so
17 I'm assuming he's going to say what he heard from Mr.
18 Breed.

19 MR. MATHISON: That's correct.

20 THE COURT: Okay. And then, whether or not it was
21 published, I think you can do after that. But someone's
22 got to ultimately say they heard Mr. Breed say this.
23 That testimony has got to come out.

24 MR. MATHISON: Bobbie Martin is going to say, in
25 our opinion, that she -- she will only say personal

1 relationship -- that there was a personal relationship
2 between Mr. Jolin and Mr. -- Mr. Woods, on the other
3 hand, at one juncture, acknowledged to Mr. Jolin in a
4 telephone conversation that he was the one that was
5 spreading the sexual innuendo, and actually apologized
6 for it.

7 MR. HALIO: One of the problems with Mr. Jolin is
8 it's not just hearsay; it's double hearsay. It's I
9 heard it from him who heard from somebody else. So it's
10 getting a little far down the chain.

11 THE COURT: Right. But the question, again, is, is
12 whether or not it's being put out there. I mean, that's
13 the whole idea behind the defamation. But again,
14 someone's got to hear the original from Mr. Breed of
15 what it is. It's got to go from there. And I'm going
16 to assume that you're going to get that out through
17 Woodward [sic] or through someone else that's actually
18 heard it.

19 MR. HALIO: The problem is, Judge, I don't know
20 that there's going to be any testimony to that. And if
21 it's not, then we've got all this hearsay innuendo
22 floating around out there.

23 THE COURT: I think he's got to connect it up, and
24 I think he will. He's got to. But. Okay.

25 MR. MATHISON: Your Honor, we have statements out

1 of their file that get pretty close to saying this. It
2 says that -- and they're not signed statements, and we
3 couldn't get Mr. Breed to tell us which among his many
4 officers may have penned these, but there is a good deal
5 of material in there about how Mr. Jolin had a sexual
6 interest in Maureen Coffey.

7 MR. HALIO: Well, if he's got such great proof
8 elsewhere, we would ask that the motion be granted as to
9 Mr. Jolin, who only knows it by way of double hearsay.
10 And then, as we go through the trial, maybe we can get a
11 little bit closer.

12 MR. MATHISON: Your Honor, may it please the Court.
13 This identical issue was raised in *Goodwin versus*
14 *Kennedy*.

15 THE COURT: Um-hmm.

16 MR. MATHISON: The man was complaining, basically,
17 that the defamer had said things that had been overheard
18 by school children, who were repeating them. He was
19 allowed to put in the fact that the school children were
20 repeating them, and he was allowed to --

21 THE COURT: And that's what I'm saying. You can do
22 that, because it doesn't go to the truth of the matter
23 asserted.

24 MR. MATHISON: Exactly.

25 THE COURT: It goes to whether it was actually

1 published.

2 MR. MATHISON: It's not hearsay. It's a question
3 of whether the statement was made.

4 THE COURT: Okay. Well, I can tell you, I'm
5 interested in hearing Mr. Jolin's testimony at this
6 point, I can tell you that. But we'll just see. You'll
7 have to make your objection to something, and we'll just
8 go on from that point. Again, I'm trying to, literally,
9 anticipate what somebody's going to testify to.
10 Hopefully, they're going to be able to connect it up.

11 All right. I think we took care of most of the D.

12 MS. JOLLEY: Yes, your Honor.

13 THE COURT: I think we're beyond that. And we took
14 care of E. So we're done, correct?

15 MS. JOLLEY: Yes, your Honor.

16 THE COURT: Okay. Let's go. Five minutes.

17 MR. HALIO: Did you want Mr. Kelley's deposition?

18 THE COURT: Yes. And I also want Mr. Breed's
19 deposition. I don't know if someone already gave it to
20 me or not, but.

21 You all, let's do this. We're going to take a
22 quick three or four minutes or so, and you all refresh
23 yourselves, and we'll come right back, and we're going
24 to go ahead and start this morning.

25 And Ms. Coffey, when you come back, prepare to take

1 trial of this case, and we are going to continue with
2 the direct examination of Ms. Coffey. And I'm just
3 going to remind her for the record that she continues to
4 be under oath.

5 Mr. Mathison.

6 MR. MATHISON: Thank you, your Honor.

7 CONTINUE MAUREEN COFFEY

8 DIRECT EXAMINATION, MR. MATHISON:

9 Q Ms. Coffey, how long has your family lived on Hilton
10 Head Island?

11 A Full time since 1983.

12 Q What did your dad do?

13 A My father was an obstetrician/gynecologist.

14 Q Do you have a lot of acquaintances in Sea Pines
15 Plantation?

16 A I think they have more, but I have some, yes.

17 Q Do you have a lot of acquaintances on Hilton Head at
18 large?

19 A Yes. It's a small town.

20 Q Has Mr. Breed's complaint caused any problems for
21 you with respect to the people that you see and interact
22 with on a daily basis?

23 A In my work, it does. In my personal life, most
24 people that read about it in the paper that know me, it
25 didn't change their mind about me, no. But I think it

1 had a great effect on my work and people that may not
2 know me very well.

3 Q Among the people that knew you the best, the people
4 with whom you work, or worked at the time on a
5 continuing basis, what, if any, impact did the Breed
6 letter have?

7 A Well, in the -- initially, I thought that, you know,
8 Mr. DeLoach and I were good friends and -- well, work
9 friends. We didn't do things outside of work, but I
10 thought we had a good healthy respect for each other. I
11 do think that, based on his subsequent actions, that he
12 did believe. I don't believe he would have acted as he
13 did if he did not believe what Mr. Breed had put in that
14 letter or had discussed with him. Because initially, I
15 believed that Mr. Breed -- Mr. DeLoach just received the
16 letter. And that's all I knew until his deposition, at
17 which time I learned that he was, in fact, the one that
18 had given Mr. Breed the contact information for the
19 Commission.

20 So that -- at that point, I thought that, perhaps,
21 if I had known that, I would've asked that my liaison to
22 counsel should have been Steve Riley. It should have
23 been Steve Riley anyway, but had I have known that, I
24 would have definitely asked. Because I think what
25 happened afterwards where Mr. DeLoach was concerned

1 about what was in the paper, I think he innocently
2 showed it to other people, but by that publication, I
3 think it put him in a -- in a -- in a bind. So I -- I
4 now view some subsequent actions, the fact that I -- I
5 didn't think anything of the fact that I wasn't allowed
6 to talk to counsel. I thought it was a business -- a
7 business decision. But now I think it was sort of
8 intentional. I do think that in April 10, 2000 -- or
9 April 4, 2010, when he came to me and they wanted to
10 modify my contract because I was over 500-plus sick
11 hours. And part of the -- part of the problem is I'm
12 terrible about keeping my time, so he came to me, and
13 then I thought it was favorable to me, because I didn't
14 like keeping my time. So I said, *Sure, I'll waive all*
15 *those sick hours; I don't have to keep my -- my time.*
16 And I thought that was a good thing for me.

17 In retrospect, in April of 2010, it was -- my case
18 was put on 40(j) status. It was filed in 2008. It was
19 put on 40(j) status, which doesn't mean it's dismissed.
20 It just means it's inactive, because I had terminated my
21 relationship with the attorney that initially filed the
22 case. And during the pendency, when I had tried to find
23 another attorney, most of the big firms I called were
24 conflicted out, and I had difficulty finding another
25 attorney. And then Mr. Mathison agreed to take the case

1 to put it back on the active docket. It's still the
2 same case, so any sort of evidence that was required by
3 law to be kept when the case was filed, the case was not
4 dismissed; it was just put in a pending, inactive
5 status, and brought back on the active docket within --
6 Q Did you --
7 MS. JONES: Your Honor, I'm going to object to the
8 narrative and the opinions, --
9 THE COURT: Okay.
10 MS. JONES: -- and the improper response by the
11 witness.
12 THE COURT: We need to move on.
13 BY MR. MATHISON:
14 A Okay. I'll get back to the --
15 Q Did you know at the time that the Breed letter was
16 written that Mr. DeLoach and Mr. Breed were friends?
17 A Yes.
18 Q Did you have a high degree of trust in Mr. DeLoach,
19 nevertheless?
20 A Yes.
21 Q Did anything happen that caused you to re-think that
22 position?
23 A Yes. It was the two things. It was the fact that
24 he was the one --
25 MS. JONES: Objection, your Honor. It's calling

1 for an opinion.

2 THE COURT: No. She can give her two factual bases
3 for -- go ahead.

4 BY MR. MATHISON:

5 Q It was the -- him giving Mr. Breed the Commission
6 information, because that's such a -- and the second one
7 would be when I learned that he had received an email
8 from Cary Kelley that had jokes and comments and said,
9 *Here. Thought you'd be interested. This is our answer.*
10 *And by the way, it's going to be in the paper in three*
11 *days.*

12 Those -- learning those made me re-think.

13 Q Had you confided in Mr. DeLoach about matters that
14 were otherwise private?

15 A I confided with him my intent to file a lawsuit.

16 Q Why did you do that?

17 A Because he had asked me to start hearing cases, and
18 I thought it would be improper, since I knew that that's
19 what I was going to do.

20 Q Do you know whether or not he shared that
21 information with Mr. Breed?

22 A By virtue of an email, I know that somebody did.
23 And the only other person I discussed it with was Mr.
24 Hulbert.

25 Q Do you know -- did you discuss with Mr. DeLoach the

1 stress this placed on you?

2 A Oh. Yes, I did.

3 Q In what connection did you do that?

4 A There -- there was obviously some incident at work.
5 And I don't remember what had happened, but something,
6 obviously, put me over the edge. And I had a discussion
7 with him or I sent an email where I said, *I am -- the*
8 *pressure here, I'm like, I'm a --* I think I said I was
9 like at a boiling pot, and when something happened, you
10 know, I felt that I was getting too stressed. And so
11 he, instead of taking -- I don't remember if he
12 suggested I take a leave of absence or -- but I do know
13 he sent over the EAP form, which is the Employee
14 Assistance Program, which suggested I contact a
15 psychologist or something.

16 Q Do you know whether Mr. Breed was told that you were
17 under stress by Mr. DeLoach?

18 A I -- I don't know. I don't have firsthand knowledge
19 of that. I --

20 Q Do you know whether your reputation has been damaged
21 with your employees and your friends as a result of Mr.
22 Breed's letter? With your fellow colleagues at the
23 Town. Let me put it that way.

24 A Oh, yeah, definitely with my -- with my colleagues,
25 not with my friends. No.

1 MR. MATHISON: Please answer any questions that
2 Counsel may ask.

3 MS. JONES: May it please the Court, your Honor.

4 THE COURT: Yes, ma'am.

5 MS. JONES: If I can borrow your desk here.

6 MR. MATHISON: You certainly can.

7 MS. JONES: Thanks. Do you have her original
8 deposition?

9 THE COURT: Ladies and gentlemen of the jury, if
10 anyone needs to stand up and stretch, you're more than
11 welcome to. I know we haven't been going on too
12 terribly long, but you're welcome if you'd like.

13 MAUREEN COFFEY

14 CROSS-EXAMINATION, MS. JONES:

15 Q Ms. Coffey, what discussions did you have with Rob
16 Mathison last night while you were still under oath?

17 A I had no discussions.

18 Q What were you talking with him about in that room at
19 the end of court?

20 A What we were talking about in that room at the end
21 of court.

22 MR. MATHISON: I don't mind telling you.

23 A I don't remember.

24 MR. MATHISON: I said that she could not --

25 MS. JONES: The question is for the witness, your

1 hearsay was actually Judge Kinard. And that was the
2 discussion.

3 BY MS. JONES:

4 Q What else did you talk to him about?

5 A That's it.

6 Q Isn't it true that your testimony, on the stand
7 yesterday, you were -- your lawyer attempted to elicit
8 from you testimony concerning the indemnity, and the
9 judge ruled it out. Isn't that true?

10 A I didn't know the judge ruled it out.

11 Q Were you sitting here in the courtroom when she
12 ruled it out?

13 A I don't even --

14 Q Or did you leave?

15 A I don't know if I was here then.

16 Q You didn't hear that from the Court?

17 A I heard it when I was sitting here. She -- she --
18 she objected -- you objected during his -- and you
19 don't --

20 Q And my objection was sustained; wasn't it?

21 A Correct.

22 Q But you were fixing to talk about indemnity. Isn't
23 that correct?

24 A I don't -- I don't -- I didn't think it was a dead
25 issue, and I still don't. If you want to argue with

1 THE COURT: Ms. Jones, I also think you need to be
2 a little bit careful not to elicit what I would consider
3 expert opinion testimony from her because she's a lawyer
4 and a judge. I think we could just stick to the facts.

5 MS. JONES: I agree with you, your Honor.

6 THE COURT: I'm worried that we're going to open up
7 this Pandora's box, that then you're going to turn
8 around and object to. And we just need to be careful
9 and keep it narrow as to the facts of this case. Okay?
10 Okay.

11 BAILIFF: The jurors are entering, your Honor.

12 JURORS ENTER COURTROOM 10:30 A.M.

13 THE COURT: Welcome back, ladies and gentlemen.
14 We're going to go ahead and continue with the testimony
15 of Judge Coffey. Ms. Jones, you can continue now.

16 MS. JONES: Thank you.

17 CONTINUE MAUREEN COFFEY

18 CROSS-EXAMINATION, MS. JONES:

19 Q Ms. Coffey, your duties as a public official as a
20 municipal judge, you hear misdemeanor criminal cases.
21 Is that correct?

22 A Yes.

23 Q Okay. The law enforcement folks that appear before
24 you are the Beaufort County Sheriff's Office officers,
25 right?

1 A To whom?

2 Q And you testified about it; didn't you?

3 A I don't know what you're talking about. Who did I
4 complain about it to? I'm just saying that that is the
5 nature of why we would run into friction. Prior to this
6 letter, I didn't have these frictions. Now, all of the
7 sudden, I've got the prosecutor double checking things,
8 and I didn't think it was proper.

9 Q And who complained to Brian about you?

10 A I think there was -- there was a defendant.

11 Q A defendant did.

12 A Yes.

13 Q And what was his complaint?

14 A That I was racist.

15 Q And I think you described that defendant as a known
16 crazy person.

17 A Yes.

18 Q And they wanted you to recuse yourself because --

19 A No, that person didn't want me to recuse myself.
20 That person was -- because I found him guilty, was
21 saying I was a racist as he was being carried out of the
22 room.

23 Q Well, who was the guy that filed the grievance
24 against you?

25 A No, he didn't file a grievance against me. I said I

1 would answer -- Mr. Hulbert came over and asked me about
2 that. I think the guy called somebody at the Town. He
3 also complained about every single officer that was
4 there. And I told Brian I was sick of it, because Brian
5 had come to me previously and said, *McSwain wants you to*
6 *recuse yourself on these cases.* And they were cases
7 about a noise ordinance and a business that was owned by
8 Israelis. And before I heard the first noise ordinance
9 case, I disclosed to the audience that I knew these
10 people but, you know, if they didn't have any problem,
11 we could forward the case. We went forward with the
12 case.

13 Before I even ruled on the case, he came and said
14 -- and actually, I found him guilty, by the way, But in
15 the --

16 Q So there was the complaint lodged against you during
17 the course of those proceedings; wasn't there?

18 A Not a formal complaint. Not a -- not a grievance.

19 Q Not a written complaint?

20 A Not a written --

21 Q Just a verbal complaint?

22 A Mr. McSwain asked me to recuse myself. And
23 actually, I did recuse myself. But the reason why he
24 asked me to -- after I already ruled on one case and
25 found him guilty.

1 Q Did you have any conversation with Mr. McSwain
2 directly about --

3 MR. MATHISON: May it please the Court. May she
4 please be allowed to finish.

5 THE COURT: All right. Let her finish. You can go
6 ahead and explain your answer, Ms. Coffey.

7 BY MS. JONES:

8 A I did not. That's what Mr. Hulbert told me. He
9 told me that Mr. McSwain said that I had gone to
10 Christmas parties and had these people babysit my
11 children. And I'm like, that's ridiculous. First of
12 all, they would be Hanukkah parties, and no, I did not
13 attend. And second of all, I don't routinely have
14 single men who own night clubs and strip -- tattoo
15 joints babysit my children. And no, they never have.

16 Q The Mr. Hulbert that you're speaking of is the
17 lawyer over at the Town.

18 A Yes, the staff attorney.

19 Q He's the staff attorney. He works for the Town.
20 Isn't that correct?

21 A He does, correct.

22 Q And I believe he's a friend of yours.

23 A Well, sometimes we get into it, as you see.

24 Q And I think you described him in your direct
25 testimony that you find him to be a very ethical person.

1 and he -- cause I thought that he was the person that I
2 should call to represent me. He told me what Mr.
3 DeLoach said to him was that something was coming down
4 the pike, and he couldn't help me; it was personal and
5 not professional. I --

6 Q And he refused to do it.

7 A Yes, but the -- what I -- I did not continue to ask
8 him to represent me. What I continued to say is, if you
9 saw this, you would see it was not personal; it was
10 professional. He was just relying on Greg's
11 interpretation of the complaint, because I already hired
12 Desa Ballard.

13 Q Ms. Coffey, do you agree that a judge cannot use the
14 prestige of the office to gain any advantage in a
15 personal matter?

16 A Absolutely.

17 Q And do you agree that a judge cannot use the
18 prestige of the office to draw attention to herself?

19 A Yes.

20 Q And that status of the judge in the context of a
21 personal case should not interfere with what she's doing
22 on the bench?

23 A Correct.

24 Q And you agreed that Mr. Breed may have misconstrued
25 your statements in May of 2008, when you told Officer

1 Corporal Stephen Wright to stop harassing your family.

2 Isn't that true?

3 A I don't think he misconstrued that statement. I
4 said, stop --

5 Q Do you think that -- okay. Do you agree that Mr.
6 Breed may have misconstrued your statement to Corporal
7 Wright, when you told Corporal Wright to tell Chief
8 Breed I'll get with him next week.

9 A I'm assuming he did, yes.

10 Q Well, I mean, isn't it true that that is -- you've
11 acknowledged that that's why Mr. Breed filed this formal
12 complaint against you; isn't it?

13 A I don't know if that's why.

14 Q But you agree that he may have misconstrued your
15 statement?

16 A I suppose he could have, yeah.

17 Q And what happened in April of 2005 was, you were
18 down at your mother's house, and Corporal Wright drove
19 by; didn't he?

20 A It was May of 2008.

21 Q Okay. May of 2008, Corporal Wright drove by.

22 A Yes.

23 Q Okay. And you didn't know Corporal Wright; did you?

24 A No, but I assumed that I would know -- I didn't know
25 it was a new officer. I assumed I would know him.

1 Q And you didn't know he was a new hire; did you?
2 A When I saw him I did.
3 Q And you didn't know he'd never heard of you or Otis
4 or your mom or anything.
5 A No. I introduced myself to him.
6 Q And what you said to him was, hey, I'm the judge.
7 A No, I did not.
8 Q Isn't it true you said, hey, you don't know me; I'm
9 the judge.
10 A I don't remember exactly what I said, but it was --
11 it wasn't like, hey, I'm the judge. It was, I'm the
12 judge, you know. He said something like he's never
13 appeared before me. I think he did know who I was.
14 Because he said he had never appeared before me. It
15 would be helpful if we could have that tape, that audio
16 tape.
17 Q Isn't it true that you walked up to his car, and you
18 said words to the effect, hey, you don't know me; I'm
19 the judge. You raised the issue that you were the judge
20 for the Town of Hilton Head.
21 A I -- yes, I did. I was identifying myself, but I
22 was not using my position. At that point, I was a
23 daughter who was upset that her family, especially my
24 mother, was being harassed.
25 Q But you didn't say, hey, I'm the daughter. You

1 didn't know anything about the situation?

2 A I don't think he knew anything about the situation.

3 I -- when I said, you all need to stop harassing my
4 mother, I think he said he didn't know anything about
5 the situation. So I said, tell Mr. Breed if it will
6 help, I will move my -- my brother is moving out, and I
7 will get with him next week. Because it was my
8 understanding that he wanted to meet with either my
9 mother or my brother.

10 Q And that part of this letter from George Breed,
11 which is contained in Paragraph 2 of the Breed letter,
12 is correct. That happened on May the 23rd; didn't it?

13 A It's not correct exactly as it's written. And it
14 would be helpful if we could have those tapes. Then we
15 would really know what -- what took place.

16 Q And you never did go see Chief Breed; did you?

17 A I did not.

18 Q And tell me what tape you're referring to in regards
19 to a conversation with Corporal Steve Wright.

20 A There should be an audio tape.

21 Q And audio tape of what?

22 A That -- that they wear in their cars.

23 Q Who wears?

24 A The officers.

25 Q Is that based on hearsay testimony?

1 A No. It's just based on my general knowledge of the
2 officers.

3 Q Your general knowledge based on what somebody told
4 you?

5 A Based on the general practices of -- I -- have
6 actually in --

7 Q At what point in time?

8 MR. MATHISON: Would you let her finish, please?

9 A In court, they often will present evidence of their
10 audio and video. And the audio is, I'm assuming, on
11 their person. And their video is, I'm assuming, in
12 their car.

13 Q You're assuming.

14 A Based on the view I'm getting of the camera, yes.

15 Q Well, what you're trying to do here, is you're
16 trying to put into evidence in front of this jury
17 information that you don't have any firsthand knowledge
18 of.

19 THE COURT: Okay.

20 MR. MATHISON: That's not a proper question.

21 THE COURT: Okay. Number one, you're testifying.

22 MS. JONES: I understand, your Honor.

23 THE COURT: You need to move on.

24 MS. JONES: I'll move on.

25 BY MS. JONES:

1 don't think they're initially called suspects. I think
2 they do the information to rule them out so they can
3 focus on the real people who may or may not be
4 committing the crimes.

5 Q Isn't it true, Ms. Coffey, that before Mr. Baird
6 came to see you, that you had tried to file a complaint
7 with the Beaufort County Sheriff's Office against Sea
8 Pines Security for harassing Otis?

9 A Before 2004 or '5?

10 Q Right before Mr. -- isn't that why Mr. Baird came to
11 see you, because you had contacted them?

12 A Because I -- no, I didn't contact them.

13 Q That's your testimony; you did not contact them.

14 A I did not -- did I contact Brian Baird?

15 Q The Beaufort County Sheriff's Office.

16 A I did not contact the Sheriff's Office at all about
17 filing a complaint against Sea Pines ever.

18 Q And isn't it true that, at that point in time, you
19 tried to get Otis to take a lie detector test to clear
20 his name?

21 A That's what that -- that's what Detective Baird
22 asked me to ask him.

23 Q And did you do that?

24 A Yeah. I thought it would be a good idea to clear
25 his name.

1 Q Well, that was my question to you. Didn't you get
2 involved in it and try to get Otis to take a lie
3 detector test?
4 A Because they asked me to.
5 Q But isn't it true you did that?
6 A I did. I drove to try and get him, yes.
7 Q Yeah. And then, I think it was shortly thereafter,
8 your brother refused to do that.
9 A He changed his mind, yes.
10 Q I think you said he was skittish about trusting law
11 enforcement.
12 A He was.
13 Q And you didn't understand then, but you do now.
14 A Correct.
15 Q And you don't trust law enforcement; do you?
16 A No, I do trust. I think generally most people try
17 and do the right thing. I think there are some bad
18 apples in every profession, law enforcement, lawyers,
19 judges.
20 Q And isn't it true that, when Otis said he wouldn't
21 take the lie detector, you said, and I quote, *All right.*
22 *Well, listen, it doesn't look good if you're in my*
23 *jurisdiction?*
24 A I didn't say those specific words, but that's what my
25 deposition -- that's what I said in my deposition. I was

1 being shorthanded.

2 Q And then you said, *All right. You're a suspect in a*
3 *crime. Go work at the restaurant in Tybee.*

4 A I don't think that's what I said, but maybe that's
5 what I said. What page is that on?

6 Q Page 90.

7 A That's not exactly what -- how it happened, but I did
8 ask him to go in -- into Tybee. Where did I say that?
9 Page 90?

10 Q Hang on a second. Okay, 89. Yes, on Page 89, --

11 A In my --

12 Q -- starting at Line 21, read what the testimony was.

13 A Okay. It was -- my testimony at my deposition was:
14 *Well, listen. It doesn't look good if you're in my*
15 *jurisdiction. You're a suspect in a crime, so go work at*
16 *the restaurant in Tybee.*

17 Q And that's Tybee, Georgia; isn't it?

18 A Tybee Island, Georgia. That's where our family
19 restaurant was, yes.

20 Q And that's in Georgia; isn't it?

21 A It is.

22 Q That's outside the jurisdiction of Beaufort County;
23 isn't it?

24 A It is, but --

25 Q And that was your parents' restaurant?

1 told you more specifically what happened. I said, *Tell*
2 *him if it will help, Otis is moving out.* Otis wanted to
3 move out. And he moved to Janesta Street.

4 Q And he did; he moved out again.

5 A Of -- of my mother's house, yes.

6 Q On Page 211 of your deposition, I call your attention
7 to that.

8 A Okay.

9 Q Starting at Line 2.

10 A Yes.

11 Q What'd you testify to in your deposition?

12 A I said, *You don't know me; I'm Maureen Coffey; I'm*
13 *the municipal judge; but you guys have to stop harassing*
14 *my mother; I'm having Otis move out; and tell Breed that*
15 *I'll meet with him next week; some time next week.*

16 Q Now, isn't it true that you do not have any
17 knowledge, any firsthand knowledge, that the defendants,
18 any of the defendants, disseminated this letter, except
19 for to the gentleman at the Town who told Mr. Breed how
20 to file the complaint, and the board at CSA?

21 A No, Curtis told me that --

22 Q Isn't it true that you don't have any firsthand
23 information, you have no knowledge, that the defendants
24 disseminated George Breed's letter of complaint about you
25 beyond Mr. DeLoach and the Town?

1 A Right.

2 Q Mr. DeLoach is actually the person who told Mr. Breed

3 how to file a complaint concerning you.

4 A Correct.

5 Q Isn't that true?

6 A That's correct.

7 Q And you don't have any information that he

8 disseminated the letter beyond Mr. DeLoach and the Board

9 -- or actually, Mr. Kelley, and the board at CSA.

10 A I do. Because when I asked Curtis to help me, he

11 didn't -- he helped me. He knew about the complaint, and

12 I didn't have to give it to him.

13 Q You have firsthand knowledge of that. That the

14 defendant -- one of the defendants talked to Curtis

15 Coltrane.

16 A Oh, no. No.

17 Q No, you don't. What you just said is incorrect.

18 A That's correct. Mr. DeLoach gave it to him, correct.

19 And he's not a defendant.

20 Q The truth is, you do not have now and didn't have in

21 your deposition any information that my clients, George

22 Breed and Cary Kelley and CSA, disseminated that letter

23 to a soul on this earth, other than the Judicial

24 Commission and Mr. DeLoach, who told him how to file the

25 letter. Isn't that true?

1 A And the board.

2 Q That's what I said. the board.

3 A Oh, the board. Yes.

4 Q Isn't that true? Nobody else?

5 A The other, I got from hearsay, yes.

6 Q But you published the letter in your complaint that

7 you filed in 2008; didn't you?

8 A I -- I did not published the letter.

9 Q You published substantial contents of the letter in

10 2008; didn't you?

11 A My attorney drafted a complaint.

12 Q So are you blaming your lawyer now for publishing the

13 letter?

14 A He didn't publish the letter.

15 MR. MATHISON: I'm going to object at this juncture,

16 your Honor. Filing a lawsuit is not a self-publication.

17 A And there was --

18 MS. JONES: I didn't --

19 THE COURT: We're not going to argue that right now.

20 Just ask her the question.

21 BY MS. JONES:

22 Q Isn't it true that the original complaint that was

23 filed on your behalf, --

24 A Um-hmm.

25 Q -- that had your name all over it, --

1 A Right.

2 A -- specifically referenced and made public the
3 information concerning George Breed's complaint?

4 A No.

5 COURT REPORTER: You have several here. Are they
6 all to --

7 MS. JONES: It's just the complaint. It's just one
8 copy of the original complaint. It's the summons and the
9 complaint on publishing. Civil cover sheet, summons,
10 complaint. That's Page 8.

11 MR. MATHISON: May it please the Court. May I
12 inquire, is she going to introduce the original complaint
13 in this case as an exhibit? Is that correct?

14 THE COURT: I don't know.

15 MS. JONES: I've marked it for identification. I've
16 got some questions about what was contained in the
17 complaint.

18 THE COURT: For identification purposes only.

19 COPIES OF DOCUMENTS REFERRED TO AS
20 CIVIL COVER SHEET, SUMMONS, COMPLAINT
21 MARKED DEFENDANTS' EXHIBIT NUMBER 2,
22 FOR IDENTIFICATION.

23 BY MS. JONES:

24 Q Do you recognize that document, Ms. Coffey?

25 A I do.

1 Q And what is it?

2 A It is the original civil cover sheet, summons, and

3 complaint of my first attorney.

4 Q And I'd ask you to turn to Page 6 of that complaint.

5 And that was filed here in the courthouse, and it's a

6 public document; isn't it?

7 A Correct.

8 Q And on Page 6, isn't it true that your complaint made

9 public the fact that George Breed's complaint against you

10 had occurred in Paragraph 30, 31? 30 and 31.

11 A My -- the complaint says that -- do you want me to

12 read it?

13 Q I'm asking you if -- did you hear my question?

14 A Not really.

15 Q Does, in your complaint, on Paragraphs 30 and 31, set

16 forth the fact that the defendant, George Breed, had

17 filed a complaint against you alleging misconduct in your

18 capacity as the Hilton Head Municipal Judge?

19 A Yes. He didn't publish the complaint, but he

20 published that there was a complaint.

21 Q Okay. So, at that point in time, were you contacted

22 by the news media?

23 A No.

24 Q When were you contacted by the news media?

25 A The news media called me some time in December, and I

1 didn't comment on the case.

2 Q Okay. This is November the 20th, 2008.

3 A Right.

4 Q And so, you say they contacted you in December?

5 A I think so.

6 Q Okay. And the news articles appeared in -- I guess
7 the first one was when?

8 A I think December 8th.

9 Q Okay. And in the December 8th news article, did it
10 talk about the complaint that Mr. Breed had filed
11 regarding your conduct?

12 A I think it talked about this complaint. Not the
13 Breed letter. I think it talked about this complaint.

14 Q Okay.

15 MS. JONES: Would you mark this next exhibit,
16 please.

17 COPY OF DOCUMENT, DECEMBER 8,
18 ISLAND PACKET NEWS ARTICLE,
19 MARKED DEFENDANTS' EXHIBIT NUMBER 3,
20 FOR IDENTIFICATION.

21 BY MS. JONES:

22 Q Let me hand you what's been marked as Defendants'
23 Exhibit 3, and ask you if that is a December 8th news
24 article --

25 A Yes, it is.

1 Q -- concerning --
2 A It is.
3 Q -- the complaint that you filed, in November of 2008?
4 A Yes, it is.
5 Q And isn't it true that that news article discusses
6 in --
7 MR. MATHISON: Objection. May it please the Court.
8 She's trying to get in through my witness what some
9 newspaper man said about a subject she testified she
10 didn't tell them about it. She can't impeach my client
11 with what, effectively, somebody else's written word.
12 MS. JONES: It's a publication. If it's a
13 publication --
14 THE COURT: She couldn't answer it.
15 MS. JONES: I think I laid the foundation, your
16 Honor. I asked the witness if that was the news article
17 that appeared as a result of her filing the complaint.
18 THE COURT: You can ask the question.
19 BY MS. JONES:
20 Q Isn't that the news article?
21 A It appears to be THE news article, yes.
22 Q And does it not make public to everyone who read the
23 *Island Packet* down here, the fact that there had been a
24 complaint lodged against you?
25 A I had nothing to do with this news article.

1 Q I didn't ask you that question. My question was,
2 isn't it true that that news article made public, --

3 MR. MATHISON: May it please the Court.

4 Q -- as a result of your filing --

5 THE COURT: Okay. She can actually ask the
6 question, Mr. Mathison. I understand your objection.
7 I'm overruling you. Go ahead and ask it, Ms. Jones.

8 BY MS. JONES:

9 Q Ms. Coffey?

10 A Um-hmm.

11 Q Isn't it true that the newspaper picked up, published
12 to the world, the fact that the defendant had made a
13 complaint against you, not because the defendants told
14 the newspaper, but because they got the information out
15 of the publicly-filed complaint that you filed here in
16 the Beaufort County Courthouse?

17 A Well, I don't know how -- I don't -- since the
18 defendants knew on November 2nd that I was filing a
19 complaint, that they may have alerted the news media. I
20 have no idea how -- I have no idea how they found out
21 about this.

22 Q Do you want to read the news article? Doesn't it
23 reference your complaint that you filed in the Beaufort
24 County Sheriff's Office?

25 A I don't know how they knew I filed a complaint.

1 Q That's not my question, Ms. Coffey. My question is,
2 didn't the newspaper attribute their news story to --
3 A They didn't attribute it to anything they in -- there
4 was a lawsuit filed on November 20th.
5 Q And that's your lawsuit that you filed; isn't it, Ms.
6 Coffey?
7 A I filed the lawsuit, and as I said before, if I could
8 have kept it private, I would've, but I can't go pillar
9 to post and tell everybody who may have known about this
10 that I was vindicated.
11 Q But the point here is, is that the dissemination of
12 this complaint was done when you filed this lawsuit, and
13 the newspapers put it in the news.
14 A No.
15 Q Isn't that true?
16 A The more public dissemination of this, which is a
17 typical strategy of some attorneys to defend defamation
18 based on self-publication. However, the publication to
19 the people that mattered in my case had already been
20 done. This is a more public.
21 Q Isn't it true -- isn't it true that you have no
22 firsthand knowledge, even as we sit here today, that any
23 of the defendants disseminated the letter, beyond Mr.
24 DeLoach, who told them how to file the grievance? Isn't
25 that true?

1 A No. People -- other people told me. Yeah, firsthand
2 knowledge.
3 Q Isn't that true? That's true; isn't it?
4 A Other people knew about it.
5 Q And when you filed this complaint at the Beaufort
6 County Courthouse, --
7 A Um-Hmm.
8 Q -- in November the 20th of 2008, it was then
9 published by the *Island Packet*; wasn't it?
10 A That wasn't my intent.
11 Q I didn't ask you if it was your intent.
12 A The *Island Packet* --
13 Q I'm asking you isn't that what happened?
14 A The *Island Packet* published the -- the lawsuit.
15 Q Right. And your lawsuit, in your lawsuit, that was
16 filed right here --
17 A That could have been your strategy from the get go on
18 November 2nd.
19 MS. JONES: You know, your Honor, I move to strike
20 that. That is completely unresponsive.
21 THE COURT: Okay. I don't want you two arguing.
22 Ms. Jones is going to ask the question; you're going to
23 answer the question, Ms. Coffey.
24 A All right.
25 THE COURT: Let's continue. Let's go.

1 BY MS. JONES:
2 Q I think we've beat that dead horse.
3 A Thank you.
4 Q And even so, before that news article appeared --
5 A Um-hmm.
6 Q -- isn't it true, Ms. Coffey, that you gave a copy of
7 the complaint about your conduct to Curtis Coltrane?
8 A No, I did not.
9 Q All right.
10 A Gave him a complaint of this? Wait, which complaint
11 are you talking about?
12 Q Isn't it true that, before the newspaper published
13 anything, --
14 A Um-hmm.
15 Q -- you gave to Curtis Coltrane a copy of George
16 Breed's letter or showed it to him?
17 A No.
18 Q Okay.
19 A I told you I didn't need to. He already had a -- he
20 already knew what it was about. He asked me to summarize
21 the stuff in that.
22 Q Well, you called him the next day, --
23 A Correct.
24 Q -- after you got George Breed's letter; didn't you?
25 A Yes, I did.

1 Q And you told him about it.

2 A When I asked him to help me, I told you what he said.

3 Greg had shown him the letter. He --

4 Q And you can testify to all that, but you called him

5 the next morning. You did this. And you said, Curtis,

6 I've gotten a letter complaining about me from George

7 Breed.

8 A Because I was asking Curtis to help me. And

9 initially, he -- he was going to represent me.

10 Q And all I'm asking you is it true that you did that?

11 You told Curtis -- you called Curtis Coltrane, and told

12 him about the letter the following morning after you

13 received it?

14 A And Greg had already showed it to him.

15 Q But you called him and told him that. Answer my

16 question, yes or no. Yes, you did.

17 A Yes. Yes, to ask for help.

18 Q All right. And you also told Sam Bauer.

19 A I didn't tell Sam Bauer. I asked him a question

20 about a representative for a lawyer.

21 Q Well, you told Sam Bauer that you had gotten this

22 complaint and asked him for a recommendation. Isn't that

23 true?

24 A That I had gotten an ethics complaint.

25 Q Isn't it true that you told him about it?

1 A I didn't tell him about the George Breed specific
2 letter. I said that I had an ethics complaint, and I
3 asked him for a referral to an attorney.

4 Q And isn't it true that your secretary, Sherry, opened
5 the letter, even though it was marked confidential?

6 A She opens all my mail that's marked confidential,
7 because --

8 Q Just answer my question, yes or no.

9 A Yes.

10 Q Yes. Okay. And isn't it true that you told Brian
11 Hulbert, which we've already been over.

12 A Um-hmm.

13 Q And isn't it true that you told Connie Pratt?

14 A I told Connie Pratt I had an ethics complaint,
15 because I --

16 Q Yes or no.

17 A I didn't tell her about this complaint, no. I told
18 her there was an ethics complaint; I needed to get a hold
19 of Brian.

20 Q And isn't it true you also told Officer Florencio?

21 A No, I did not.

22 Q Okay.

23 A I think Ms. Ballard did.

24 Q Did you just tell her about the complaint and not
25 show it to her?

1 A Who?

2 Q Meredith Florencio.

3 A I didn't show it to her. I thought my lawyer -- I

4 thought Ms. Ballard called her about something. That's

5 what I thought.

6 Q But not the defendant. Somebody on your behalf

7 disclosed it to her.

8 A I think Ms. Ballard had to call her for something, my

9 lawyer.

10 Q But did you also disclosed it to Arlyne in court

11 administration?

12 A I -- I don't recall if I did or not.

13 Q No one at the Town showed you any letter; did they?

14 A No.

15 Q And the Town never disseminated the letter; did they?

16 A Well, --

17 Q Firsthand knowledge. Do you have any firsthand

18 knowledge that someone from the Town disseminated the

19 letter?

20 A I didn't see anyone -- I didn't see anyone

21 disseminating it, no, ma'am.

22 Q And you don't have any knowledge or information, no

23 firsthand knowledge or information, that anyone on the

24 CSA board disseminated the letter; do you?

25 A No.

1 Q And when was your interview with Tom Barton at the
2 *Island Packet*?
3 A I never had an interview with Tom Barton.
4 Q Who did you speak to at the *Island Packet* concerning
5 this situation, if it wasn't Tom Barton?
6 A I -- I don't know who you're talking about.
7 Q Is it your testimony that you did not speak to the
8 press concerning this?
9 A I inadvertently spoke to somebody, but I told him
10 that I couldn't comment on the case.
11 Q And who was that?
12 A I don't know who it was.
13 Q Was that in 2008?
14 A I don't think so.
15 Q And is it true that the *Island Packet* ran not only
16 the article that I handed you, but a couple of others,
17 too?
18 A Well, somehow you all knew three days in advance
19 that --
20 Q Answer my question yes or no.
21 A Yes.
22 Q Yes. Okay. And there were a number of public
23 comments.
24 A Correct.
25 Q With those articles; were they?

1 A There were.

2 Q And they were horrible; weren't they?

3 A Most of them.

4 Q Okay. And all of those occurred as a result of your
5 publication, and not from any publication by the
6 defendant. Isn't that true?

7 A Not really. I don't think so.

8 Q You have no firsthand knowledge of any publication of
9 the letter. Isn't that true? By the defendants.

10 A Yes.

11 Q Okay. All right. That's true. And isn't it true
12 that, as a result of your filing the complaint, the one
13 that got 40(j'd), that it got published in the newspaper?

14 A I don't know why it got published in the newspaper.

15 Q And had you brought any actions against the folks who
16 wrote those horrible public comments about you?

17 A No.

18 Q Have you sued the *Island Packet*?

19 A No.

20 Q And isn't it true that you are not aware of any
21 problems with the Town from Mr. Breed's having made a
22 complaint about you?

23 A No, there have been problems.

24 Q Let me ask you to turn to Page 150 of your
25 deposition.

1 *knowledge.*

2 Q So we've established that a limited number of people

3 knew about Mr. Breed's complaint.

4 A No, you've established it. From -- only elicited

5 from my firsthand knowledge. We have to wait to hear

6 from other people.

7 Q Let me put you on notice on -- well, I'm asking you

8 about your testimony.

9 A Oh, yes.

10 Q Okay. We've established, from your testimony, that a

11 limited number of people knew about this complaint from

12 Mr. Breed.

13 A That I have firsthand knowledge of, correct.

14 Q And based on the newspaper articles, everybody in the

15 public knows about it now; don't they?

16 A Yeah. Well, there are other intervening people that

17 I -- that --

18 Q That's correct; isn't it?

19 A Not exactly.

20 Q Please turn to Page 243 of your deposition.

21 A Yes.

22 Q Start at Line 19.

23 A All right.

24 Q So now we've established that a limited number of

25 people knew about your complaint, but based on these

1 articles, now everybody in the public knows a complaint
2 was filed against you; don't they?

3 And what was your answer?

4 A That's correct, but --

5 Q Okay. Did you tell the truth in your deposition?

6 A I did, but you're --

7 Q Okay. That's all I want to know.

8 A You're parsing this.

9 Q And you've never taken any medication for stress. Is
10 that correct.

11 MR. MATHISON: Excuse me just a second.

12 THE COURT: Let her finish the answer.

13 BY MS. JONES:

14 A No, there's no medication for stress.

15 Q Okay. And you told Mr. DeLoach -- okay. And let me
16 hand you what's been marked as Defendants' Exhibit 8, and
17 ask you if you can identify those, as well.

18 COPY OF NEWSPAPER ARTICLE FROM
19 THE ISLAND PACKET, MARKED DEFENDANTS'
20 EXHIBIT 8, FOR IDENTIFICATION.

21 A Defendants Exhibit 8 is *Hilton Head Judge* -- Yeah,
22 something from the *Packet*.

23 Q It's more news articles, correct?

24 A Correct.

25 Q And it's about the lawsuit, right?

1 THE COURT: Thank you.

2 BAILIFF: The jury is seated, your Honor.

3 THE COURT: Yes, Ms. Jones.

4 MS. JONES: Thank you, your Honor.

5 JURORS ENTER COURTROOM

6 CONTINUE MAUREEN COFFEY

7 CROSS-EXAMINATION, MS. JONES:

8 Q Ms. Coffey, isn't it true that you'd never met or

9 spoken to George Breed or Cary Kelley before the suit?

10 A That's correct.

11 Q And I don't even know that you've ever even spoken to

12 them to this day; have you?

13 A Outside of this lawsuit, no.

14 Q Okay. And you had in your first lawsuit that was

15 filed in November, November the 20th, 2008, that

16 complaint, which you have up there with you, contains

17 absolutely no allegation against Mr. Breed concerning any

18 sexual relationship between you and Mr. Jolin; does it?

19 A You know, I may have misplaced that.

20 Q I've got another copy of it.

21 A Okay.

22 THE COURT: Which complaint is this?

23 MS. JONES: The original complaint filed November

24 the 20th, 2008.

25 BY MS. JONES:

1 municipal judge for the Town of Hilton Head?

2 A I don't -- I think I took two oaths. This one is
3 dated September 2011.

4 Q Is it one of the oaths that you executed since you
5 became a municipal judge?

6 A I believe so.

7 Q And did you produce that document in discovery?

8 A I must have.

9 MS. JONES: Your Honor, we would offer Defendants'
10 Exhibit 7, the oath of office that was executed by Ms.
11 Coffey.

12 THE COURT: Any objections? It's straight up.

13 MR. MATHISON: It is our document, your Honor. We
14 don't have any objection.

15 THE COURT: Okay. It's without objection.

16 COPY OF DOCUMENT REFERRED TO AS

17 OATH OF OFFICE EXECUTED BY MS.

18 COFFEY SEPTEMBER 2011 MARKED

19 DEFENDANTS' EXHIBIT NUMBER 7,

20 ADMITTED AS EVIDENCE.

21 BY MS. JONES:

22 Q I believe you testified yesterday, Ms. Coffey, that
23 you related stress in your life from July the 8th to the
24 present, and that you had some medical bills and other
25 things concerning the stress in your life that you had

1 sought some counseling for and treatment. Is that
2 correct?

3 A Correct.

4 Q All right. Now, isn't it true that, during this
5 period of time you had a great many other things going on
6 in your life that all produced a lot of stress?

7 A Not as much as stress as this.

8 Q Okay. Well, isn't it true you had other things?

9 A I think everyone does.

10 Q Isn't it true that you separated from your husband?

11 A In 2007.

12 Q And isn't it true that you continue to be separated
13 from him?

14 A Yeah.

15 Q Isn't it true that your husband has a temper?

16 A He did.

17 Q And isn't it true that there were issues concerning
18 his temper and some domestic violence?

19 A On one occasion.

20 Q Okay. And isn't it true that you also had other
21 complaints since July of 2008 about your work?

22 A What do you mean?

23 Q You had other complaints about your work. We've
24 talked about some of them.

25 A Complaints about the functionality of the court, not

1 complaints about my ability as a judge.

2 Q Well, isn't it true that you've had other complaints
3 about your ability as a judge?

4 A Not that I can recall. I -- I don't know what you're
5 talking about. I --

6 MR. MATHISON: Wait just a minute, your Honor.
7 What's going on here? I haven't been presented any of
8 the exhibits.

9 THE COURT: Just go show him what you're trying to
10 get into.

11 MS. JONES: Sure. Certainly.

12 MR. MATHISON: She is trying to get into evidence
13 which you already ruled out. That's what she's trying to
14 get into evidence.

15 MS. JONES: I'm using it for impeachment, your
16 Honor.

17 THE COURT: It's not being used for the purpose of
18 where we're going on this, at least not from what I
19 understood it to be. If there's something specific or
20 other than this. But we're not getting into that.

21 MR. MATHISON: I mean, this is -- I don't mean to
22 sound as indignant as my colleague.

23 THE COURT: Okay. No, don't sound anything. Just
24 go ahead and sit down. Ms. Jones is going to move on.

25 MS. JONES: Your Honor, could I mark it?

1 THE COURT: For identification purposes?
2 MS. JONES: Yes.
3 THE COURT: Absolutely. I've already ruled on it.
4 COPY OF LETTER DATED 12-15-08 AND
5 COPY OF 8-3-09 SCCJC MARKED DEFENDANTS'
6 EXHIBIT 5 FOR IDENTIFICATION.
7 BY MS. JONES:
8 Q So is your testimony that you did not have any other
9 stress as a result of anyone complaining about your work
10 as a judge?
11 A I had absolute -- yeah, I had no stress about any
12 other complaints. Trust me.
13 Q And no physician has ever connected anything that
14 you've complained about here to this case; have they?
15 A For fear of self-publication, I did not --
16 Q Please answer my question yes or no.
17 A I'm not answering the question yes or no. I did not
18 disclose the source of my --
19 MS. JONES: Your Honor.
20 THE COURT: Ms. Coffey. Ms. Coffey. You do have to
21 answer it yes or no, I don't know; then you're welcome to
22 explain it all you want, but you have to answer it.
23 BY MS. JONES:
24 A Okay. No.
25 Q No. Okay. And in addition, --

1 THE COURT: And no, Ms. Jones, if she needs to
2 explain it, if you'd like to explain it, you may.

3 A What I'm saying is that I never disclosed, except to
4 my counselor, which I thought was private, until all her
5 notes were produced to you all, I never disclosed to any
6 of my doctors the specific source, because I was afraid
7 of self-publication. So, no. And that's why I didn't
8 discuss this.

9 Q And isn't it true that you also suffered from a
10 skateboard fall?

11 A In 2007.

12 Q And that what --

13 A No, no. It's roller Blanding.

14 Q Oh, rollerblading. Okay. And that you also had
15 issues concerning sinus infections and issues related to
16 hormone levels.

17 A I had issues -- I had a cold, and we were -- yes,
18 there were issues that's related to the stress and the
19 excess cortisol, but you don't want me to get into that.

20 Q And then there were other issues concerning you have
21 one child that has some medical issues.

22 A So, at times it's trying.

23 Q And in regards to your last contract with the Town of
24 Hilton Head, --

25 A Correct.

1 Q -- I believe you said that you think you should have
2 gotten a bigger raise.
3 A Yes.
4 Q Isn't it true that everyone in the Town on Hilton
5 Head got the same three percent raise?
6 A I have no idea.
7 Q You don't have any knowledge one way or the other?
8 Do you believe that you're entitled to a greater raise
9 than all the other employees of the Town?
10 A No.
11 Q Okay. And if you got the same raise that all the
12 rest of them got, then you don't object to that?
13 A I would object to that.
14 Q Okay. So you do think you're entitled to a greater
15 raise than all the other employees of the Town.
16 A Not necessarily. We're -- I'm different from the
17 other employees of the Town. They have different
18 benefits. Their contracts are negotiate -- they don't
19 have contracts. They get annual cost-of-living raises.
20 I'm on a contract. It's separate. It's different. It's
21 not that I think that I'm entitled to more; it's that I
22 don't think I'm the same class as they are, same
23 position.
24 Q Well, but what your claim here is, is that you should
25 have had more. You should've gotten more than the rest

1 of the employees got.

2 A My claim is that I should've gotten more than I did
3 get, and that's all my claim is.

4 Q And this contract, this last contract, was negotiated
5 with you after the 2008 stock market crash that
6 everybody's aware of, right?

7 A Well, 2011's after 2008.

8 Q So the answer to my question is yes; isn't it?

9 A Um-hmm.

10 Q And there were a number of job losses during this
11 period of time; hasn't there been?

12 A I suppose so.

13 Q And record high unemployment.

14 A Perhaps.

15 Q And at the end of the day, you never even spoke to
16 town council about the contract; did you? Isn't that
17 true?

18 A I did -- I wasn't -- yes, it's true. I wasn't given
19 the chance to talk to them. I asked to speak to them. I
20 didn't get the chance to negotiate.

21 COURT REPORTER: I'm sorry. I did or didn't get the
22 chance to negotiate?

23 A I didn't get the chance to negotiate.

24 THE COURT: Did not..

25 Q And you never filled out any paperwork, or did

1 anything in regards to changing jobs in any respect; did
2 you? From 2008 till now, you've never tried to get
3 another job. Isn't that true?
4 A That's true. I like my job.
5 Q You've never done anything about this, any other
6 position anywhere.
7 A Well, I wasn't going to -- when the family court
8 position became open, with this case pending, I wasn't
9 going to put in for it, no.
10 Q I thought the family court position became open in
11 2006.
12 A One did. That would be Judge Fender. But then, one
13 came -- Pete Fuge just got a position, so it became open.
14 I remember Diane DeWitt put in -- people talked about it.
15 And I said, no, I wasn't going to do it.
16 Q And you never filled out any paperwork?
17 A No, I did not.
18 Q You never took the mandatory test; did you?
19 A No, I did not.
20 Q So you don't even know if you can pass that test, as
21 we sit here.
22 A I do not know.
23 Q If you did -- let me ask you this. This
24 interrogatory, your Plaintiff's Exhibit 6, it says,
25 *Identify by case name, case number, court jurisdiction,*

1 each case in which the defendant contends that the
2 plaintiff has acted with bias, partiality or prejudice.

3 You see that?

4 A Yes.

5 Q Okay. Who had the information about cases that were
6 before you in 2004, '5, '6, '7, and '8?

7 A Who has the information?

8 Q Yes. The case name, the specific information that's
9 asked there. You wanted the case name and the docket
10 number. Isn't that what it says?

11 A Identify by case name, case number, court and
12 jurisdiction. That's what it says, yes.

13 Q Case name, case number. Who's got that information?

14 A Well, I suppose myself and the defendants.

15 Q Where would the defendants have the information? Do
16 they control your docket?

17 A They control -- they -- they have a copy of the cases
18 and dispositions that go back to them.

19 Q A copy where? Where is it maintained?

20 A I have no idea.

21 Q Right.. You have no idea. Who do you know, of your
22 personal knowledge, that has the case names and case
23 numbers?

24 A I know that we do and the defendants do.

25 Q Where do the defendants have them?

1 Q And isn't it true that your therapy with the licensed
2 clinical psychologist pre-dates any involvement that you
3 had with Mr. Breed, and pre-dates by from 2007?
4 A November of 2007 to June of 2008?
5 Q Right. It pre-dates any letter written, any
6 complaint by Mr. Breed; doesn't it?
7 A Correct.
8 Q Okay. And so, that doesn't have anything to do with
9 Mr. Breed; does it?
10 A No. We didn't claim it did.
11 Q And in your original complaint that you filed in
12 November the 20th, 2008, there is no allegation in there
13 regarding Mr. Breed and the allegation that you had a
14 sexual relationship with Mr. Jolin; is there?
15 A I'm not sure Mr. --
16 Q Is there any allegation in the complaint?
17 A No. I'm not sure if Mr. Holloway was aware of it at
18 that time.
19 Q Okay. And so, the answer is, there is no allegation
20 in this document.
21 A Doesn't appear to be.
22 Q Okay. And you have no firsthand knowledge, no
23 personal knowledge, of Mr. Breed having ever made any
24 comment about you regarding anything; do you?
25 A Mr. Breed never said it to me, no.

1 Q You have no firsthand knowledge. Isn't that correct?

2 A He never told me directly, no, he did not.

3 MS. JONES: I think that's all the questions I have.

4 That's all the questions that I have. Thank you.

5 THE COURT: Mr. Mathison.

6 MR. MATHISON: A couple questions on re-direct, your

7 Honor.

8 MAUREEN COFFEY

9 RE-DIRECT, MR. MATHISON:

10 Q Ms. Coffey, when you responded to Ms. Jones and

11 indicated that you made no claim for your seeing Dr.

12 Geiger, the clinical psychologist, when you said you made

13 no claim for it, you were referring, were you not, to the

14 November of 2007 through June of 2008 interval that she

15 described to you?

16 A Correct.

17 Q You are making a claim, are you not, for what

18 happened from July on?

19 A Yes, sir.

20 Q And how many visits was that with Dr. Geiger?

21 A Thirty-six.

22 Q For which she only charged you 35.

23 A Thirty-five, correct.

24 Q Is that right?

25 A Yes, sir.

1 Q To the best of your knowledge, Ms. Coffey, has Sea
2 Pines Security or Community Service Associates identified
3 any adjudication by you that they consider not to have
4 been appropriate?

5 A No.

6 Q Did you in any manner interfere with the lawful
7 investigation of your brother, Otis Coffey, while you
8 were serving as a judge?

9 A No.

10 Q Do you understand that to be what this case is about?

11 A I -- I understand they're saying that I interfered in
12 Mr. Breed's investigation, which didn't exist.

13 Q Without discussing what is or is not an
14 investigation, did you interfere in anybody's
15 investigation, including that of the Beaufort County
16 Sheriff's Office?

17 A No. And I meant shouldn't have existed.

18 MR. MATHISON: Thank you. I don't have any further
19 questions.

20 THE COURT: Any re-cross?

21 MS. JONES: No, your Honor.

22 THE COURT: You may step down.

23 A Thank you.

24 THE COURT: Mr. Mathison, if you will call your next
25 witness.

1 MR. MATHISON: Your Honor, the plaintiff will call
2 John Jolin to the stand, please.

3 THE COURT: Come on up Mr. Jolin, and be sworn, sir.
4 WITNESS SWORN.

5 JOHN ALBERT JOLIN, JR.

6 DIRECT EXAMINATION, MR. MATHISON:

7 Q State your name for the record, please.

8 A John Albert Jolin, Jr.

9 Q John, how old are you?

10 A Thirty.

11 Q Where do you live?

12 A 400 William Hilton Parkway, Hilton Head Island, South
13 Carolina.

14 Q And are you married?

15 A Yes, sir.

16 Q What's your wife's name?

17 A Margarita Morano.

18 Q Is that the lady that was here with you yesterday?

19 A Yes, sir.

20 Q Do you have any children?

21 A Two sons, yes, sir.

22 Q And what are their names?

23 A Joshua and Jacob.

24 Q What's your current occupation, John?

25 A I'm the store manager for the Circle K, on Hilton

1 Head Island.

2 Q How long have you done that?

3 A I was part time for a little while, but I've been
4 there about two years.

5 Q Prior to going to work for Circle K, did you hold
6 employment as a security officer for Sea Pines Security
7 at Sea Pines Plantation?

8 A Yes, sir. From May of 2001 to June 2008.

9 Q 2008?

10 A Yes, sir, around June of 2008.

11 Q Do you know whether Sea Pines Security is a division
12 of Community Services Associates?

13 A Yes, sir.

14 Q Is that who wrote you a check?

15 A Yes, sir. The check said the CSA on it.

16 Q To the best of your knowledge, did you work for a
17 company called the Association of Sea Pines Property
18 Owners and Advisory Board?

19 A Yes, sir. I do believe that that is a part of the
20 CSA, the Community Service Associates.

21 Q When did you start with Sea Pines Security?

22 A It would have been May of 2001.

23 Q And when you started, what did you do?

24 A I was hired on as part time in the beginning as a
25 beach club officer.

1 Q Just so the jury understands, what did a beach club
2 officer do?

3 A They -- we had to -- there's two of them. We had Sea
4 Pines Beach Club, and then you had Tower Beach, which was
5 the property owners' beach. If you worked that gate, it
6 was only the property owners allowed to park there, so we
7 restrict the parking. And at the other beach, it was any
8 of the resort guests or property owners.

9 Q How long did you serve in that job?

10 A Only during the summertime, sir.

11 Q Then what happened?

12 A I was promoted to full time and was put on the Sea
13 Pines front gate, which that is just restricting, once
14 again, passes, restricting vehicles onto the property.

15 Q How long did you serve as, essentially, as a man at
16 the gate?

17 A For a couple of years. I can't tell you the exact
18 time line, but it was a couple of years.

19 Q Did you, ultimately, become a patrol officer?

20 A Yes, sir.

21 Q And when you became a patrol officer, did your rank
22 increase?

23 A Not at the beginning, no, sir.

24 Q When, approximately, did you become a patrol officer
25 for Sea Pines Security?

1 A I -- I couldn't actually give you the exact date or
2 the time that I became a patrol officer then. I know
3 that I was on the gates for a couple years before I was
4 promoted on -- onto the road.

5 Q After you became a patrol officer, did you have the
6 occasion to go to the municipal court of the Town of
7 Hilton Head Island?

8 A Yes, sir.

9 Q Did you encounter Judge Coffey at the court in your
10 capacity as an officer of Sea Pines Security?

11 A Yes, sir.

12 Q Did you prosecute cases that you had -- in which you
13 had made the arrest in her court?

14 A Yes.

15 Q Did she treat you fairly, to the best of your
16 understanding?

17 A Absolutely, and the defendants, as well. I thought
18 that she was very fair, yes, sir.

19 Q How about other Sea Pines security officers? Did you
20 have occasion to watch their cases be tried before or
21 after your case was tried?

22 A Absolutely. Yes, sir.

23 Q Did you ever see Ms. Coffey do something that you
24 felt showed bias or prejudice toward or against Sea Pines
25 Security?

1 A Neither. I thought that she was fair with everybody,
2 and I haven't heard one officer complain.

3 MR. HALIO: Objection to what he might have heard,
4 has not heard, to be hearsay.

5 MR. MATHISON: What was your rank in May of 2008?

6 A I was a sergeant then, sir.

7 Q What shift were you working on?

8 A Third shift.

9 Q And how many people were on your shift at Sea Pines?

10 A That night it was -- of course, we have two gate
11 officers at night time. One at the front, one at the
12 back. We have a dispatcher. As far as patrol, we only
13 had two officers that night.

14 Q And who were those officers?

15 A That would be myself and -- and Sergeant Fryman.

16 Q At the time, was Sergeant Fryman a sergeant?

17 A No, he was not a sergeant at the time, no, sir. He
18 was -- he was a corporal.

19 Q What is the third shift? What time do you come on?

20 A From 10:00 p.m., to 6:00 a.m.

21 Q What time did you typically get to the Sea Pines
22 Security office?

23 A I usually always got there around 9:00, 9:30.

24 Q Why was the purpose -- what was the purpose of doing
25 that?

1 A I always made fresh coffee, and I went into dispatch,
2 looked at -- through some of the other -- first and
3 second shifts' report, what had taken place that day.

4 Q When you say you looked at the reports, where were
5 the reports displayed in Sea Pines Security?

6 A Sometimes they would be out in the dispatch room, or
7 they'd be in the back room. They had a little tray where
8 each shift placed their -- their reports in.

9 Q So they were available to be read by people that came
10 in afterwards? Is that correct?

11 A Yes, sir. Yes, sir.

12 Q Did they have them on a clipboard anywhere?

13 A They had -- they had all the incident reports on
14 clipboards, and also, the in-house reports were on
15 clipboards.

16 Q Were they separate clipboards?

17 A Yes, there's two separate clipboards.

18 Q At this time, that is to say in May of 2008, describe
19 what an incident report was.

20 A An incident report would be a -- could be multiple
21 things that -- that we have received a case number for
22 the Beaufort County Sheriff's Office for. That -- that
23 would be a incident report.

24 Q And who made the determination as to whether or not
25 to obtain a case number from the Beaufort County

1 Sheriff's Office?

2 A Sometimes -- well, the majority of the time, it -- it
3 was us. Sometimes your lieutenant or supervisors would
4 -- would step in.

5 Q All right. When you say us, you mean the patrol
6 officers?

7 A The patrol officer, yes, sir.

8 Q And what would separate an incident report where you
9 got a case number, from one that was just an in-house
10 report?

11 Q An in-house would stay within the community, there at
12 the security office. It would not be available to -- it
13 wouldn't make it to Beaufort County.

14 Q And what was the difference in quality between what
15 you were looking at for one and the other?

16 A There was not much difference, but one has a case
17 number, and the other one would have a -- we would, where
18 the case number would go, we would just write *in-house* in
19 that.

20 Q In May of 2008, were you writing both incident
21 reports and in-house reports?

22 A Absolutely.

23 Q Had anyone ever told you, who was employed by Sea
24 Pines Security, that there was no such thing as an in-
25 house report?

1 A No, sir.

2 Q In fact, you have actually filled out a number of
3 them; haven't you?

4 A I have, yes, sir.

5 Q Do you know whether in 2008 there was an impetus at
6 Sea Pines Security to do fewer in-house reports and
7 more --

8 MR. HALIO: Objection, your Honor. I don't see
9 where any of this is relevant to this case.

10 THE COURT: Okay. You can go ahead and ask it.

11 BY MR. MATHISON:

12 Q Was there a perceived need to do fewer in-house
13 reports and more incident reports?

14 A There was a lot of confusion among the officers about
15 that, but yes, sir. There was --

16 Q What was the point of doing more incident reports?

17 A Are you talking about doing more in-house reports?

18 Q Doing more incident reports where you actually got a
19 case number.

20 A There was -- during that year, we -- there was a lot
21 of burglaries. There was -- I mean, during that time, if
22 that's what you're pertaining to.

23 Q Describe for me what you've described, tell the jury
24 what had been going on in Sea Pines during the Spring of
25 2008.

1 A There was -- we was receiving a lot of complaints
2 about burglaries, peeping Toms. We actually had one
3 incident with an elderly couple on South Beach Lane that
4 apparently he -- somebody -- had been in the house, and
5 had a elderly lady pushed up against the wall in her
6 bathroom. There -- there was a lot of that going on at
7 that time.

8 Q Do you know whether or not, during this period of
9 time, there were photographs of Otis Coffey displayed at
10 Sea Pines Security?

11 A There was after the night of -- it would have been --
12 I think they -- I think it was May 20th, I think it was.

13 Q How did you learn of Otis Coffey?

14 A I've heard Otis Coffey's name ever since I first
15 started in May of 2001, as a -- as a beach officer. I
16 remember sitting at my post; multiple officers coming up
17 to me; they would be receiving burglary calls or -- or
18 things of that nature; and you would always hear Otis
19 Coffey is back in town.

20 Q Do you know whether Mr. Coffey has ever been
21 convicted of a burglary, a peeping Tom, or any form of
22 break-in?

23 A No, sir.

24 Q With the exception of the trespassing conviction,
25 about which there's been testimony in this case, are you

1 aware of any conviction that Otis Coffey has ever had?

2 A No, sir.

3 Q On the night of May 19th, that is, when you got to
4 work, to work a shift that would finish the next morning
5 on the 20th, did anyone tell you to go out and try and
6 find Otis Coffey?

7 A Not specifically Otis Coffey. It was asked of me to
8 -- which I was already doing -- to -- to remain in the
9 areas that -- that the crimes had been occurring in. And
10 that's what I did, yes.

11 Q And how, just for the jury's understanding, what span
12 of property are we talking about? Are we talking about
13 linear miles? Are we talking about less than a mile?
14 How much space were you patrolling?

15 A Well, they -- the -- it really all -- the areas that
16 were hit were as soon as you enter through the back gate.
17 I think it would have been Canvas Back -- Back Road.
18 We've had reports from there, all the way down to South
19 Beach Lane. I typically concentrated in the South Beach
20 Lane area.

21 Q So you're talking about down the eastern spine, where
22 the coast of what is Sea Pines Plantation, right?

23 A It is a very large area, yes, sir, the area with all
24 the side streets, and it is.

25 Q And what you referred to as the back gate would be,