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SC Court of Appeals

**STATE OF SOUTH CAROLINA
IN THE
COURT OF APPEALS**

Appeal from the Court of Common Pleas
For Beaufort County
Honorable Carmen T. Mullen, Circuit Judge
Civil Action No.: 2007-CP-07-0995

L. Paul Trask, Jr., Individually, as a Citizen, Resident,
Taxpayer and Registered Elector of the State of South
Carolina, and on behalf of others similarly situated,

Appellant,

v.

South Carolina Department of Public Safety; Beaufort
County; Beaufort County Management Information
Systems; Beaufort County Coroner Curtis Copeland in
His Official Capacity; Beaufort County Sheriff P.J. Tanner
In His Official Capacity,

Respondents.

**RECORD ON APPEAL
VOLUME IV**

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NPCHAR1:627885.1-APL-(SPG) 038981-00002

STATE OF SOUTH CAROLINA
IN THE
COURT OF APPEALS

RECEIVED
MAY 05 2010
SC Court of Appeals

Appeal from the Court of Common Pleas
For Beaufort County
Honorable Doyet A. Early, III, Circuit Judge
Civil Action No.: 2007-CP-07-0993

L. Paul Trask, Jr., Individually, as a Citizen, Resident,
Taxpayer and Registered Elector of the State of South
Carolina, and on behalf of others similarly situated,

Appellant,

v.

South Carolina Department of Public Safety; Beaufort
County; Beaufort County Management Information
Systems; Beaufort County Coroner Curtis Copeland in
His Official Capacity; Beaufort County Sheriff P.J. Tanner
In His Official Capacity,

Respondents.

RETURN TO MOTION TO DISMISS APPEAL

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TO: THE HONORABLE JUDGES OF THE SOUTH CAROLINA
COURT OF APPEALS:

COMES NOW the Appellant, L. Paul Trask, Jr., Individually, as
a Citizen, Resident, Taxpayer, and Registered Elector of the State of
South Carolina, and on behalf of others similarly situated ("Mr.
Trask"), pursuant to Rule 240(e) of the South Carolina Appellate
Court Rules, and respectfully requests that the Motion to Dismiss
Appeal filed by the Respondent, South Carolina Department of Public
Safety (the "SCDPS"), be denied on the grounds that the SCDPS was
constructively timely served with a copy of the Notice of Appeal herein.
(*Groves Affidavit*, para. 11; *Tisdale Affidavit*, para. 22).¹

¹ See Affidavit of Stephen P. Groves, Sr., Esquire sworn to on 3
May 2010 (the "Groves Affidavit"). A copy of the Groves Affidavit is
attached hereto as **Exhibit "1"** and incorporated herein by reference.
Affidavit of Thomas S. Tisdale, Jr., Esquire sworn to on 4 May 2010 (the
"Tisdale Affidavit"). A copy of the Tisdale Affidavit is attached hereto as
Exhibit "2" and incorporated herein by reference. The originals of both
the Groves Affidavit and the Tisdale Affidavit will contemporaneously filed
with the Court of Appeals at the same time this Return to Motion to
Dismiss is filed. In the alternative, Mr. Trask respectfully requests this
appeal be dismissed, without prejudice to his right to re-file it at the
appropriate later date, pursuant to Rule 203(b), SCACR, once the Circuit
Court enters a final order ruling upon Mr. Trask's still-pending joint
combined Motion for Reconsideration in this case and in Trask v. Beaufort
County, which was filed in the Circuit Court on 28 October 2009. (*Groves
Affidavit*, paras. 53, 80, 82). See generally Matthews v. Richland County
School District One, 357 S.C. 594, 597, 594 S.E.2d 177, 178 (Ct.App. 2004),
overruled on other grounds, Elam v. South Carolina Department of
Transportation, 361 S.C. 9, 25-26, 602 S.E.2d 772, 781 (2004).

The SCDPS has moved to dismiss this appeal on the sole basis that its legal counsel, William H. Davidson, II, Esquire and Andrew F. Lindemann, Esquire of Davidson & Lindemann ("Davidson & Lindemann"), were not served with a copy of the Notice of Appeal filed herein on or about 13 November 2009. (*Groves Affidavit*, para. 7; *Tisdale Affidavit*, para. 17). While it is true that Davidson & Lindemann was not sent a copy of the Notice of Appeal which was filed with this Court of Appeals or served upon the Beaufort County Clerk of Court (*Groves Affidavit*, para. 10; *Tisdale Affidavit*, para. 9),² it is undisputed that a copy of the Notice of Appeal was served upon Robert W. Achurch, III, Esquire and/or Jason F. Ward, Esquire of Howell, Gibson & Hughes ("Howell, Gibson & Hughes").³ (*Groves Affidavit*, para. 9;

² To the extent the SCDPS potentially may have been prejudiced by the delay in actual receipt of the Notice of Appeal or the Initial Appellant's Brief and Designation of Matters to be Included in the Record on Appeal, this Court of Appeals could easily grant the SCDPS an extension of time in which to respond.

³ On 21 January 2009, the Circuit Court substituted Davidson & Lindemann as counsel for the SCDPS replacing Howell, Gibson & Hughes. (*Groves Affidavit*, para. 8; *Tisdale Affidavit*, para. 10). This substitution was made some 30 days after the parties had argued their positions on the Defendants' Motion for Summary Judgment in this case (*Tisdale Affidavit*, para. 11). Furthermore, the Substitution Order was issued some 70 days after the parties had argued their respective positions to the Circuit Court on their cross motions for summary judgment filed in a related civil case which is currently on appeal to this Court of Appeals (Case No. 2009114686) and which is captioned L. Paul Trask, Jr., Personally and as Next of Kin and as the Duly Appointed Personal Representative of the Estate of L. Paul Trask, III, deceased, and Meredith C. Trask v. Beaufort County; Curtis Copeland, in

Tisdale Affidavit, paras. 16-17). At the time of this service, given the confusion associated with the SCDPS' legal representation, this service was reasonable and appropriate under the circumstances. (*Groves Affidavit*, paras. 12-80; *Tisdale Affidavit*, paras. 20-21).⁴

ARGUMENT AND CITATION OF AUTHORITY

A. Reasonable Confusion Regarding The Identity Of Legal Counsel For The SCDPS

The confusion regarding the identity of the SCDPS' legal counsel is amply evidenced by and through the correspondence between the parties and/or the Circuit Court (*Groves Affidavit*, paras. 12-19, 21-29, 32-36, 43-50, 65-68, 71; *Tisdale Affidavit*, paras. 20-21), as well as, through the numerous documentary filings by the parties and/or the

his Official Capacity as Coroner of Beaufort County and Individually; and Copeland Company of Beaufort, LLC (Appeal from Beaufort County Court of Common Pleas, Case No. 2007-CP-07-0993) ("Trask v. Beaufort County"). (*Tisdale Affidavit*, para. 12).

⁴ Nexsen Pruet has been representing and continues to represent Mr. Trask and his family in this matter and in Trask v. Beaufort County. (*Tisdale Affidavit*, para. 13). Davidson & Lindemann has been representing and continues to represent Coroner Copeland and the Copeland Funeral Home in Trask v. Beaufort County. (*Groves Affidavit*, paras. 39-40, 58-59, 77-78; *Tisdale Affidavit*, para. 14). Marshall H. Waldron, Jr., Esquire, both prior to and after he joined Griffith, Sadler & Sharp, P.A. ("Griffith Sadler & Sharpe"), has been representing and continues to represent both Beaufort County and Coroner Copeland (in his official capacity) in Trask v. Beaufort County. (*Groves Affidavit*, paras. 56-57, 75-76; *Tisdale Affidavit*, para. 15).

Circuit Court (*Groves Affidavit*, paras. 12-19, 21-36, 43-50, 65-68, 71; *Tisdale Affidavit*, paras. 20-21) which reasonably indicated Howell, Gibson & Hughes represented all of the below-Defendants, now Respondents, including specifically the SCDPS. (*Groves Affidavit*, paras. 12-19, 21-36, 43-50, 65-68, 71; *Tisdale Affidavit*, paras. 20-21).⁵ Furthermore, when Mr. Trask filed the (a) 4/3/2009 Motion for Reconsideration, (b) the 10/28/2009 Joint Motion for Reconsideration, and (c) the 11/19/2009 Opposition Memo, the respective Certificates of Service for each pleading clearly stated Howell, Gibson & Hughes was being served as legal counsel for all of the Defendants, including the SCDPS. (*Groves Affidavit*, paras. 37-38, 54-55, 73-74). Similarly, the same respective Certificates of Service for each pleading clearly stated Davidson & Lindemann was being served as legal counsel for Coroner Copeland in his individual capacity (*Groves Affidavit*, paras. 39-40, 58-59, 77-78; *Tisdale Affidavit*, para. 17), or, as in the case of the latter

⁵ In every proceeding in which Thomas S. Tisdale, Jr., Esquire of Nexsen Pruet attended and for which an attorney from Davidson & Lindemann appeared, Mr. Tisdale was under the impression and believed Davidson & Lindemann were in attendance in that law firm's capacity as legal counsel for Coroner Copeland and the Copeland Funeral Home in Trask v. Beaufort County. (*Tisdale Affidavit*, para. 18).

two documents, also as legal counsel for the Copeland Funeral Home. (*Groves Affidavit*, paras. 58-59, 77-78; *Tisdale Affidavit*, paras. 20-21).⁶

Even after receipt of the (a) 4/3/2009 Motion for Reconsideration, (b) the 10/28/2009 Joint Motion for Reconsideration, and (c) the 11/19/2009 Opposition Memo, no one advised Mr. Trask that Howell, Gibson & Hughes did not represent the SCDPS and/or that Davidson & Lindemann represented the SCDPS. (*Groves Affidavit*, paras. 41-42, 60-61, 79-80; *Tisdale Affidavit*, para. 20-21).

This is especially true given the fact the Howell, Gibson & Hughes' correspondence and/or pleadings all occurred after 21 January 2009, the date when Davidson & Lindemann was substituted for Howell, Gibson & Hughes as the SCDPS' counsel. (*Groves Affidavit*, paras. 15, 19, 23, 26, 32, 36, 46, 50, 71; *Tisdale Affidavit*, paras. 20-21). This is similarly true for the Circuit Court's electronic correspondence to the parties. (*Groves Affidavit*, paras. 65-66; *Tisdale Affidavit*, paras. 20-21).

⁶ The respective Certificates of Service for the 10/28/2009 Joint Motion for Reconsideration and the 11/19/2009 Opposition Memo also showed service upon Griffith, Sadler & Sharp as legal counsel for Coroner Copeland *in his official capacity* and for Beaufort County. (*Groves Affidavit*, paras. 56-57, 75-76; *Tisdale Affidavit*, paras. 20-21).

Moreover, as this Court of Appeals is aware, Mr. Trask filed and served his Notice of Appeal in this matter on 13 November 2009. (*Groves Affidavit*, paras. 83-85; *Tisdale Affidavit*, paras. 9, 16-17). The Proof of Service for the Notice of Appeal as well as the "Other Counsel Of Record" section indicates Howell, Gibson & Hughes was legal counsel for **all of the Respondents**, including the SCDPS, and service of the Notice of Appeal was being made upon Howell, Gibson & Hughes in that capacity. (*Groves Affidavit*, paras. 9-10; *Tisdale Affidavit*, paras. 16-17). Furthermore, Mr. Trask has filed a number of motions and/or documents with this Court of Appeals since filing the Notice of Appeal and service of those motions and/or documents all have been made upon Howell, Gibson & Hughes as counsel for all of the Respondents, including the SCDPS. (*Groves Affidavit*, paras. 87-90; *Tisdale Affidavit*, paras. 20-21). Even after service of the motions and/or the documents in this appeal, no one advised Mr. Trask that Howell, Gibson & Hughes did not represent the SCDPS and/or that Davidson & Lindemann represented the SCDPS. (*Groves Affidavit*, paras. 41-42, 60-61, 79-80; *Tisdale Affidavit*, paras. 20-21).

Based upon the Circuit Court's and the parties' respective correspondence and filed pleadings, it was reasonable and proper for the undersigned to consider that Howell, Gibson & Hughes represented all of the Defendants below, including specifically the SCDPS, and all of the Respondents herein, including specifically the SCDPS. (*Groves Affidavit*, para. 96; *Tisdale Affidavit*, paras. 20-21). Additionally, based upon the Circuit Court's and the parties' respective correspondence and filed pleadings, it was reasonable and proper for the undersigned to serve Howell, Gibson & Hughes with a copy of the Notice of Appeal as counsel for all of the Respondents herein, including specifically the SCDPS. (*Groves Affidavit*, para. 97; *Tisdale Affidavit*, paras. 20-21). Moreover, also based upon the Circuit Court's and the parties' respective correspondence and filed pleadings, service of the Notice of Appeal in this case upon Howell, Gibson & Hughes as counsel for all of the Respondents herein, including specifically the SCDPS, constituted correct and proper service on all of the Respondents, including the SCDPS, under Rule 203(b)(1), SCACR.1

7 Based upon the Circuit Court's and the parties' respective correspondence and filed pleadings, service of the Notice of Appeal in this case upon Howell, Gibson & Hughes as counsel for SCDPS, at the very minimum, constituted proper constructive service of the Notice of Appeal upon all of the Respondents herein, including specifically the SCDPS, sufficient to meet the requirements and mandates of Rule 203(b)(1), SCACR.

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It is clear that there was a significant level of confusion and/or apparent inadvertent misinformation by both the Circuit Court and Howell, Gibson & Hughes as to the correct identity of the SCDPS' legal counsel. (*Groves Affidavit*, paras. 12-19, 21-36, 43-50, 65-68, 71; *Tisdale Affidavit*, paras. 18-21). Both the Circuit Court and Howell, Gibson & Hughes consistently identified Howell, Gibson & Hughes (rightly or wrongly) as counsel for all of the Defendants below. (*Groves Affidavit*, paras. 12-81; *Tisdale Affidavit*, paras. 20-21).⁸

This significant level of confusion lead to service of the Notice of Appeal upon Howell, Gibson & Hughes as counsel for all of the Respondents herein, including the SCDPS. (*Groves Affidavit*, paras. 8-81, 96-97; *Tisdale Affidavit*, paras. 18-21). Given this high level of

See generally O' Connell, Goyak & Ball v. Silbernagel, 297 Or. 207, 681 P.2d 1159 (1984). In that case, the Oregon Supreme Court, approving the Oregon Court of Appeals' dismissal of an appeal, did so in part because the "Petitioners made no allegation that they were confused about who was representing one or more parties to the appeal." O' Connell, Goyak & Ball v. Silbernagel, 297 Or. 207, 212, 681 P.2d 1159, 1162. Conversely speaking, as in this case, the Oregon court implied if there had been confusion as to the identity of the proper legal counsel the outcome likely would have been different. O' Connell, Goyak & Ball v. Silbernagel, 297 Or. 207, 212, 681 P.2d 1159, 1162.

⁸ As previously noted, in every proceeding in which Thomas S. Tisdale, Jr., Esquire attended and for which an attorney from Davidson & Lindemann appeared, Mr. Tisdale was under the impression and believed Davidson & Lindemann were in attendance in that law firm's capacity as legal counsel for Coroner Copeland and the Copeland Funeral Home in Trask v. Beaufort County. (*Tisdale Affidavit*, para. 18).

confusion and Howell, Gibson & Hughes' consistent post- 21 January 2009, representations, either impliedly or directly, that Howell, Gibson & Hughes represented all of the Defendants – including the SCDPS (*Groves Affidavit*, paras. 13-19, 21-36, 43-50, 67-71; *Tisdale Affidavit*, paras. 20-21)⁹ – service of the Notice of Appeal upon Howell, Gibson & Hughes was proper service in order to bring the SCDPS into this appeal as a party-Respondent. (*Groves Affidavit*, paras. 96-99; *Tisdale Affidavit*, paras. 18-22). This is further bolstered by the Circuit Court's own actions "confirming" Howell, Gibson & Hughes' continued representation of the SCDPS. (*Groves Affidavit*, paras. 65-66; *Tisdale Affidavit*, paras. 20-21).¹⁰

⁹ Howell, Gibson & Hughes' indication of its implied and/or direct representation of the SCDPS comes from Howell, Gibson & Hughes' failure to show copies of pleadings and/or correspondence being sent to Davidson & Lindemann via Davidson & Lindemann's inclusion as a "CC" or "CCE" on letters (*Groves Affidavit*, paras. 12-14, 16-17, 21-22, 24-25, 27-28, 33-35, 43-45, 47-49, 67-68; *Tisdale Affidavit*, paras. 20-21) or as a designated counsel on various Certificates of Service. (*Groves Affidavit*, paras. 18, 30-31, 69-70; *Tisdale Affidavit*, paras. 20-21). Furthermore, there were some occasions where Howell, Gibson & Hughes actively stated it represented all of the Defendants below. (*Groves Affidavit*, paras. 29, 31, 43, 70; *Tisdale Affidavit*, paras. 20-21).

¹⁰ In every proceeding in which Thomas S. Tisdale, Jr., Esquire attended and for which an attorney from Davidson & Lindemann appeared, Mr. Tisdale was under the impression and believed Davidson & Lindemann were in attendance in that law firm's capacity as legal counsel for Coroner Copeland and the Copeland Funeral Home in Trask v. Beaufort County. (*Tisdale Affidavit*, para. 18).

B. The Notice Of Appeal Was Prematurely Filed Due To The Second Motion For Reconsideration

As this Court of Appeals is aware, Mr. Trask filed his 4/3/2009 Motion for Reconsideration with the Circuit Court in early April 2009. (*Groves Affidavit*, paras. 37-40). The Circuit Court, by and through the 10/13/2009 Reconsideration Order, finally issued a decision on 13 October 2009, denying the motion. (*Groves Affidavit*, paras. 51-52). On 28 October 2009, Mr. Trask subsequently filed his 10/28/2009 Joint Motion for Reconsideration requesting the Circuit Court to reconsider certain matters in the 10/13/2009 Reconsideration Order. (*Groves Affidavit*, paras. 53-59). The 10/28/2009 Joint Motion for Reconsideration was not made upon the same grounds as the original 4/3/2009 Motion for Reconsideration and raised new issues not raised in the original 4/3/2009 Motion for Reconsideration. (*Groves Affidavit*, para. 82).

Under normal circumstances “ [a] timely post-trial motion, including a motion to alter or amend the judgment pursuant to Rule 59(e), SCRCP, stays the time for an appeal for all parties until receipt of written notice of entry of the order granting or denying such

motion.' ¹¹ Nevertheless, there is some reasonable dispute as to whether the time for appeal is stayed and/or tolled upon the filing of a second or subsequent Rule 52(c), SCRCP, motion and/or Rule 59(e), SCRCP, motion.¹² Consequently, Mr. Trask filed his Notice of Appeal with this Court of Appeals on 13 November 2009, so as to potentially avoid a later assertion by one or more of the Respondents that the 10/28/2009 Joint Motion for Reconsideration did not stop the running of the appellate time and any subsequent Notice of Appeal was not timely filed.

Unlike the respective situations faced by this Court of Appeals in Coward Hund Construction Company, Inc. v. Ball Corporation and the Supreme Court in Quality Trailer Products, Inc. v. CSL Equipment Co., Inc., where the second and/or subsequent motion for reconsideration was either the same¹³ as the first or not a motion for

¹¹ Elam v. South Carolina Department of Transportation, 361 S.C. 9, 15, 602 S.E.2d 772, 775 (citing Rule 203(b)(1), SCACR, Rules 50(e), 52(c), and 59(f), SCRCP).

¹² See generally Coward Hund Construction Company, Inc. v. Ball Corporation, 336 S.C. 1, 2-6, 518 S.E.2d 56, 57-59 (Ct.App. 1999); Quality Trailer Products, Inc. v. CSL Equipment Co., Inc., 349 S.C. 216, 219-221, 562 S.E.2d 615, 617-619 (2002).

¹³ Coward Hund Construction Company, Inc. v. Ball Corporation, 336 S.C. 1, 2-6, 518 S.E.2d 56, 57-59.

reconsideration at all in the first instance,¹⁴ in this case the 10/28/2009 Joint Motion for Reconsideration was both a proper and necessary motion for reconsideration in the first instance and, moreover, was based entirely upon grounds which had not been raised in the original 4/3/2009 Motion for Reconsideration. (*Groves Affidavit*, para. 83).¹⁵ In this type of situation, the second motion for reconsideration, such as the 10/28/2009 Joint Motion for Reconsideration herein, actually stays the time for appeal until the applicable court issues a ruling on the pending second motion for reconsideration.¹⁶ Consequently, this Court of Appeals could reasonably be well within its rights to dismiss the Notice of Appeals filed on 13 November 2009, and the rest of this appeal without

¹⁴ Quality Trailer Products, Inc. v. CSL Equipment Co., Inc., 349 S.C. 216, 219-221, 562 S.E.2d 615, 617-619.

¹⁵ See generally Robinson v. Robinson, 365 S.C. 583, 586, 619 S.E.2d 425, 426 (2005) (A second post-trial motion is appropriate and tolls the time for filing notice of appeal if it challenges something that was altered from the original judgment as a result of the initial post-trial motion.).

¹⁶ Given this situation, our Supreme Court has stated "[w]e are aware that a party may attempt to file both a Rule 59[, SCRCP,] motion and a notice of appeal. If this does occur, one or the other will be inappropriate depending on whether the motion is both timely under Rule 59[, SCRCP,] and permissible under our ruling today. Elam v. South Carolina Department of Transportation, 361 S.C. 9, 20 n.2, 602 S.E.2d 772, 778 n.2 (citing Hudson v. Hudson, 290 S.C. 215, 349 S.E.2d 341 (1986) (when a timely post-trial motion is pending before the lower court, any notice of appeal will be dismissed without prejudice as premature)).

prejudice as being premature until such time as the Circuit Court ultimately issues its ruling on the still-pending and as yet undecided 10/28/2009 Joint Motion for Reconsideration. This would, of course, alleviate any need for this Court of Appeals to address the SCDPS' Motion to Dismiss Appeal since that motion would be moot due to the premature filing of this appeal when the 10/28/2009 Joint Motion for Reconsideration had yet to be decided.¹⁷

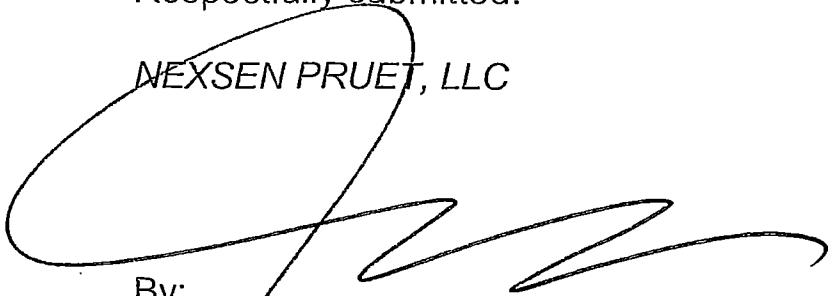
CONCLUSION

Based upon the foregoing arguments and citation of authority, the Appellant, L. Paul Trask, Jr., Individually, as a Citizen, Resident, Taxpayer, and Registered Elector of the State of South Carolina, and on behalf of others similarly situated, respectfully requests this Court of Appeals to deny the Motion to Dismiss Appeal by the Respondent, South Carolina Department of Public Safety, and to permit this appeal to proceed on in the normal course.

¹⁷ See generally Hudson v. Hudson, 290 S.C. 215, 349 S.E.2d 341; 15 South Carolina Jurisprudence, Appeal and Error, § 74 (Thomson Reuters West 2010) (*citing* Rule 203(b)(1)-(2), SCACR; Rules 52(c), 59(f), SCRCP; Hudson v. Hudson, 290 S. C. 215, 349 S. E. 2d 341; Diamond Jewelers of Spartanburg, Inc. v. Naegele Outdoor Advertising Co., 290 S. C. 260, 349 S. E. 2d 888 (1986); Wicker v. Anderson County Council, 289 S. C. 479, 347 S. E. 2d 96 (1986); Otten v. Otten, 287 S. C. 166, 337 S. E. 2d 207 (1985)) ("If a party timely serves and files a substantive post-trial motion, the time to appeal does not begin until the ruling on the motion.").

Respectfully submitted:

NEXSEN PRUET, LLC

By: 

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Thomas S. Tisdale, Jr., Esquire
Jeffrey S. Tibbals, Esquire
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Attorneys for the Appellant

Charleston, South Carolina

4 May 2010

NPCHAR1:567818.1-APL-(SPG) 038981-00002

STATE OF SOUTH CAROLINA
IN THE
COURT OF APPEALS

RECEIVED

MAY 05 2010

SC Court of Appeals

Appeal from the Court of Common Pleas
For Beaufort County
Honorable Doyet A. Early, III, Circuit Judge
Civil Action No.: 2007-CP-07-0993

L. Paul Trask, Jr., Individually, as a Citizen, Resident,
Taxpayer and Registered Elector of the State of South
Carolina, and on behalf of others similarly situated,

Appellant,

v.

South Carolina Department of Public Safety; Beaufort
County; Beaufort County Management Information
Systems; Beaufort County Coroner Curtis Copeland in
His Official Capacity; Beaufort County Sheriff P.J. Tanner
In His Official Capacity,

Respondents.

**AFFIDAVIT OF STEPHEN P. GROVES, SR.
IN SUPPORT OF
RETURN TO MOTION TO DISMISS APPEAL**

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Thomas S. Tisdale, Jr., Esquire
Jeffrey S. Tibbals, Esquire
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Attorneys for the Appellant

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STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

AFFIDAVIT

PERSONALLY APPEARED BEFORE ME one, Stephen P. Groves, Sr., Esquire, who, after being duly sworn, deposes and says as follows:

1. I am an attorney licensed and admitted to practice by the Supreme Court of South Carolina since 14 November 1986.

2. I am currently a member of Nexsen Pruet, LLC located in Nexsen Pruet, LLC's Charleston, South Carolina office and have been with Nexsen Pruet, LLC since 14 April 2003, when I came in as a Special Counsel.

3. Prior to joining Nexsen Pruet, LLC on 14 April 2003, I worked at Young, Clement, Rivers & Tisdale, LLP n/k/a Young, Clement, Rivers, LLP from 5 May 1986, until 11 April 2003, holding the positions as a law clerk, associate, non-equity partner, and equity partner.

4. During my legal career, the majority of my practice has been in the areas of appellate litigation (civil, criminal, and administrative law), insurance coverage litigation, and civil trial practice.

5. I have been involved with and/or handled several hundred appeals in this Court of Appeals, the Supreme Court of South Carolina, the United States Court of Appeals for the Fourth Circuit, and/or the United States Supreme Court since 1985 up to and including the present time and the present appeal.

6. I submit this affidavit in support of the contemporaneously filed Return to Motion to Dismiss Appeal on behalf of the then Plaintiff, now Appellant, L. Paul Trask, Jr., Individually, as a Citizen, Resident, Taxpayer, and Registered Elector of the State of South Carolina, and on behalf of others similarly situated ("Mr. Trask"), and respectfully request that the Motion to Dismiss Appeal filed by the Respondent, South Carolina Department of Public Safety (the "SCDPS"), be denied.

7. The principal basis for the Motion to Dismiss Appeal is that a copy of the Notice of Appeal filed in this appeal on 13 November 2009, was not served upon William H. Davidson, II, Esquire and/or Andrew F. Lindemann, Esquire of Davidson & Lindemann, P.A. ("Davidson & Lindemann"), legal counsel for the SCDPS.

8. According to a Consent Order Substituting Counsel for Defendant South Carolina Department of Public Safety (the "Substitution Order") issued 20 January 2009, and filed 21 January 2009, Davidson & Lindemann were substituted as counsel for the SCDPS replacing Robert W. Achurch, III, Esquire and Jason F. Ward, Esquire of Howell, Gibson & Hughes, P.A. ("Howell, Gibson & Hughes").

9. The Notice of Appeal (as shown in the "Other Counsel Of Record" section) and its related Proof of Service indicates service for all of the Respondents in this appeal was being made upon Howell, Gibson & Hughes as legal counsel for all of those parties, including the SCDPS.

10. I did not serve a copy of the Notice of Appeal on Davidson & Lindemann on 13 November 2009, as I was unaware of their involvement in this matter as counsel for the SCDPS and I believed Howell, Gibson & Hughes still represented the SCDPS.

11. I believe the SCDPS was constructively served with a copy of the Notice of Appeal on 13 November 2009, as the most recent pleadings and filings in this case at the Circuit Court level did not demonstrate that Davidson & Lindemann has been substituted for Howell, Gibson & Hughes and all indications were that Howell, Gibson & Hughes still held the position as SCDPS' counsel.

CONFUSION REGARDING REPRESENTATION OF THE SCDPS

12. On 13 February 2009, Jason F. Ward, Esquire of Howell, Gibson & Hughes sent a letter to the Honorable Carmen T. Mullen, Circuit Court Judge ("Judge Mullen"), attaching a proposed *Order Granting Defendants' Motion for Summary Judgment*. (See Letter to Hon. Carmen Tevis Mullen from Jason F. Ward, Esquire dated 13 February 2009 (the "2/13/2009 Mullen Letter"). (A copy of the 2/13/2009 Mullen Letter is attached hereto as **Exhibit "A"** and incorporated herein by reference).

13. The 2/13/2009 Mullen Letter from Howell, Gibson & Hughes showed copies being sent to, among others, Thomas S. Tisdale, Jr., Esquire of Nexsen Pruet, LLC ("Nexsen Pruet").

14. The 2/13/2009 Mullen Letter from Howell, Gibson & Hughes did not indicate a copy of either the 2/13/2009 Mullen Letter or the attached proposed *Order Granting Defendants' Motion for Summary Judgment* was sent to and/or served upon Davidson & Lindemann as an involved counsel herein either for the SCDPS or otherwise.

15. Howell, Gibson & Hughes sent a copy of the 2/13/2009 Mullen Letter and the attached proposed *Order Granting Defendants' Motion for Summary Judgment* to Nexsen Pruet approximately 14 days after Howell, Gibson & Hughes was relieved as counsel for the SCDPS on 21 January 2009, and Davidson & Lindemann was substituted.

16. On 12 March 2009, Robert W. Achurch, III, Esquire of Howell, Gibson & Hughes sent a letter to the Honorable Elizabeth M. Smith, (former) Beaufort County Clerk of Court, attaching and filing a Motion to Release Information related to the identification of cellular telephone numbers making calls to Beaufort County's 911 emergency service on 22 November 2005 (See Letter to Hon. Elizabeth M. Smith from Robert W. Achurch, III, Esquire dated 12 March 2009 (the "3/12/2009 Smith Letter"). (A copy of the 3/12/2009 Smith Letter is attached hereto as Exhibit "B" and incorporated herein by reference).

17. The 3/12/2009 Smith Letter indicated a copy of the letter and the enclosure was being sent to, among others, Nexsen Pruet, but **did not indicate** a copy of either the 3/12/2009 Smith Letter or the attached Motion for Release of Information was sent to and/or served upon Davidson & Lindemann as an involved counsel herein either for the SCDPS or otherwise.

18. The Certificate of Service, dated 13 March 2009, and attached to the Motion for Release of Information indicated Howell, Gibson & Hughes was serving a copy of the Motion for Release of Information "upon all counsel of record" with Thomas S. Tisdale, Jr., Esquire being the only lawyer listed as being served, Nexsen Pruet being the only law firm listed as being served, and no indication of any involvement and/or representation by Davidson & Lindemann.

19. Howell, Gibson & Hughes sent a copy of the 3/12/2009 Smith Letter and the attached Motion for Release of Information to Nexsen Pruet approximately 50 days after Howell, Gibson & Hughes was relieved as counsel for the SCDPS on 21 January 2009, and Davidson & Lindemann was substituted.

20. Judge Mullen issued her Order Granting Defendants' Motion for Summary Judgment (the "Summary Judgment Order") in this case on 13 March 2009, and it was filed on 18 March 2009. (See Order Granting Defendants' Motion for Summary Judgment dated 13 March 2009, and filed 18 March 2009). (A copy of the Summary Judgment Order is attached hereto as **Exhibit "C"** and incorporated herein by reference).

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21. On 16 March 2009, Robert W. Achurch, III, Esquire of Howell, Gibson & Hughes sent a letter to the Honorable Elizabeth M. Smith, (former) Beaufort County Clerk of Court, attaching the signed original copy of the Summary Judgment Order for filing with the Circuit Court. (See Letter to Hon. Elizabeth M. Smith from Robert W. Achurch, III, Esquire dated 16 March 2009 (the "3/16/2009 Smith Letter"). (A copy of the 3/16/2009 Smith Letter (with a copy of the signed, but not filed order) is attached hereto as **Exhibit "D"** and incorporated herein by reference).

22. The 3/16/2009 Smith Letter indicated a copy of the letter and the enclosure was being sent to, among others, Nexsen Pruet, but **did not indicate** a copy of either the 3/16/2009 Smith Letter or the attached Summary Judgment Order was sent to and/or served upon Davidson & Lindemann as an involved counsel herein either for the SCDPS or otherwise.

23. Howell, Gibson & Hughes sent a copy of the 3/16/2009 Smith Letter and the attached Summary Judgment Order to Nexsen Pruet approximately 54 days after Howell, Gibson & Hughes was relieved as counsel for the SCDPS on 21 January 2009, and Davidson & Lindemann was substituted.

24. On 16 March 2009, Robert W. Achurch, III, Esquire of Howell, Gibson & Hughes sent letters to the various registered agents for service of process for several cellular telephone providers, namely, T-Mobile, Triton PCS, Sprint, Cingular Wireless, Verizon Wireless, Alltel, and Hargray [Wireless], enclosing a copy of the previously filed Motion for Release of Information and advising each of those companies that the Circuit Court had scheduled a 7 April 2009, hearing date to consider the Motion for Release of Information. (See Letter to

Corporation Service Company for T-Mobile from Robert W. Achurch, III, Esquire, et. al. all dated 16 March 2009 (collectively the "3/16/2009 Cellular Carrier Letters"). (Copies of the 3/16/2009 Cellular Carrier Letters are collectively attached hereto as **Exhibit "E"** and incorporated herein by reference).

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25. The 3/16/2009 Cellular Carrier Letters indicated copies of the letters and the enclosures was being sent to, among others, Nexsen Pruet, but **did not indicate** a copy of either the 3/16/2009 Cellular Carrier Letters or the attached Motion for Release of Information was sent to and/or served upon Davidson & Lindemann as an involved counsel herein either for the SCDPS or otherwise.

26. Howell, Gibson & Hughes sent a copy of the 3/16/2009 Cellular Carrier Letters and the attached Motion for Release of Information to Nexsen Pruet approximately 54 days after Howell, Gibson & Hughes was relieved as counsel for the SCDPS on 21 January 2009, and Davidson & Lindemann was substituted.

27. On 23 March 2009, Robert W. Achurch, III, Esquire of Howell, Gibson & Hughes sent a letter to Thomas S. Tisdale, Jr., Esquire of Nexsen Pruet transmitting a copy of the signed and filed Summary Judgment Order. (See Letter to Thomas S. Tisdale, Jr. Esquire from Robert W. Achurch, II, Esquire dated 23 March 2009 (the "3/23/2009 Tisdale Letter"). (A copy of the 3/23/2009 Tisdale Letter is attached hereto as **Exhibit "F"** and incorporated herein by reference).

28. The 3/23/2009 Tisdale Letter indicated a copy of the letter and the enclosed Summary Judgment Order was being sent to only to Nexsen Pruet and there was **no indication** a copy of either the 3/23/2009 Tisdale Letter or the attached Summary Judgment Order was sent to and/or served upon Davidson & Lindemann as an involved counsel herein either for the SCDPS or otherwise.

29. The specific purpose of the 3/23/2009 Tisdale Letter was to serve Nexsen Pruet, as Mr. Trasks' legal counsel, with a copy of the "Order granting **Defendants'** Motion for Summary Judgment on behalf of **South Carolina Department of Public Safety**, Beaufort County Management Information Systems; Beaufort County Coroner Curtis Copeland; and Beaufort County Sheriff P.J. Tanner" upon Nexsen Pruet. (Emphasis added).

30. The Certificate of Service, dated 23 March 2009, and accompanying the Summary Judgment Order indicated Howell, Gibson & Hughes was serving a copy of the Summary Judgment Order "upon all counsel of record" with Thomas S. Tisdale, Jr., Esquire being the only lawyer listed as being served and Nexsen Pruet being the only law firm listed as being served and **no indication** of any involvement and/or representation by Davidson & Lindemann. (See Certificate of Service dated 23 March 2009 (the "3/23/2009 Certificate of Service"). (A copy of the 3/23/2009 Certificate of Service is attached hereto as **Exhibit "G"** and incorporated herein by reference).

31. The same Certificate of Service indicates that Robert w. Achurch, II, Esquire of Howell, Gibson & Hughes was signing the document as the "[a]ttorney for [the] **Defendants**" (emphasis added) and there was **no indication** of any involvement and/or representation by Davidson & Lindemann in this matter.

32. Howell, Gibson & Hughes sent the 3/23/2009 Tisdale Letter and the 3/23/2009 Certificate of Service to Nexsen Pruet approximately 60 days after Howell, Gibson & Hughes was relieved as counsel for the SCDPS on 21 January 2009, and Davidson & Lindemann was substituted.

33. On 7 April 2009, Robert W. Achurch, III, Esquire of Howell, Gibson & Hughes sent a letter to Judge Mullen, attaching a proposed *Order [Granting Motion for Release of Information]*. (See Letter to Hon. Carmen Tevis Mullen from Robert W. Achurch, III, Esquire dated 7 April 2009 (the "4/7/2009 Mullen Letter"). (A copy of the 4/7/2009 Mullen Letter is attached hereto as **Exhibit "H"** and incorporated herein by reference).

34. The 4/7/2009 Mullen Letter from Howell, Gibson & Hughes showed copies being sent to, among others, Thomas S. Tisdale, Jr., Esquire of Nexsen Pruet, but there was **no indication** of any involvement and/or representation by Davidson & Lindemann

35. The 4/7/2009 Mullen Letter from Howell, Gibson & Hughes **did not indicate** a copy of either the 4/7/2009 Mullen Letter or the attached proposed *Order [Granting Motion for Release of Information]* was sent to and/or served upon Davidson & Lindemann as an involved counsel herein either for the SCDPS or otherwise.

36. Howell, Gibson & Hughes sent a copy of the 4/7/2009 Mullen Letter and the attached *Order [Granting Motion for Release of Information]* to Nexsen Pruet approximately 75 days after Howell, Gibson & Hughes was relieved as counsel for the SCDPS on 21 January 2009, and Davidson & Lindemann was substituted.

THE AFFIANT'S INVOLVEMENT IN CASE

37. I became involved in the above-captioned matter shortly before 3 April 2009, when I prepared and filed a Motion for Reconsideration[,] to Amend Court's Findings, and to Alter or Amend Court's Judgment (the "4/3/2009 Motion to Reconsider") on behalf of Mr. Trask. (See Motion for Reconsideration[,] to Amend Court's Findings, and to Alter or Amend Court's Judgment dated 3 April 2009, and filed 7 April 2009). (A copy of the 4/3/2009 Motion to Reconsider is attached hereto as Exhibit "I" and incorporated herein by reference).¹

¹ Due to the numerous and voluminous nature of the exhibits attached to the 4/3/2009 Motion to Reconsider, the exhibits have been omitted from the copy attached hereto unless otherwise noted and designated as exhibits to this affidavit.

38. As noted by the Certificate of Service for the 4/3/2009 Motion to Reconsider, the pleading was served upon, among others, Howell, Gibson & Hughes as counsel for all of the named defendants below, in their official capacities, including the SCDPS.

39. As noted by the Certificate of Service for the 4/3/2009 Motion to Reconsider, the pleading was served upon Davidson & Lindemann as counsel for the Defendant, Curtis Copeland ("Coroner Copeland"), in his individual capacity, and not served upon Davidson & Lindemann as legal counsel for the SCDPS.

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40. I served Davidson & Lindemann with a copy of the 4/3/2009 Motion to Reconsider because that law firm has represented and continues to still represent Coroner Copeland, individually, and his prior funeral home business, Copeland Company of Beaufort, LLC ("Copeland Funeral Home"), in a related civil case which is currently on appeal to this Court of Appeals (Case No. 2009114686) and which is captioned L. Paul Trask, Jr., Personally and as Next of Kin and as the Duly Appointed Personal Representative of the Estate of L. Paul Trask, III, deceased, and Meredith C. Trask v. Beaufort County;

Curtis Copeland, in his Official Capacity as Coroner of Beaufort County and Individually; and Copeland Company of Beaufort, LLC
(Appeal from Beaufort County Court of Common Pleas, Case No. 2007-CP-07-0993) ("Trask v. Beaufort County").

41. After service of a copy of the 4/3/2009 Motion to Reconsider no one, until the filing of the Motion to Dismiss Appeal, from Davidson & Lindemann or otherwise advised me that (a) Davidson & Lindemann represented the SCDPS, (b) Howell, Gibson & Hughes did not represent the SCDPS, and/or (c) Davidson & Lindemann did not represent Coroner Copeland in his individual capacity in this matter as opposed to solely in Trask v. Beaufort County.

42. After service of a copy of the 4/3/2009 Motion to Reconsider no one from Howell, Gibson & Hughes advised me (a) that they did not represent the SCDPS or (b) that Davidson & Lindemann represented the SCDPS.

43. On 29 April 2009, Jason F. Ward, Esquire of Howell, Gibson & Hughes sent a letter to Judge Mullen, attaching a copy of the Defendants' Reply to Plaintiff's Motion for Reconsideration. (Emphasis added). (See Letter to Hon. Carmen Tevis Mullen from Jason F. Ward, Esquire dated 29 April 2009 (the "4/29/2009 Mullen Letter"). (A copy of the 4/29/2009 Mullen Letter is attached hereto as Exhibit "J" and incorporated herein by reference).

44. The 4/29/2009 Mullen Letter from Howell, Gibson & Hughes showed copies being sent only to Thomas S. Tisdale, Jr., Esquire of Nexsen Pruet with no indication of any involvement and/or representation by Davidson & Lindemann

45. The 4/29/2009 Mullen Letter from Howell, Gibson & Hughes did not indicate a copy of either the 4/29/2009 Mullen Letter or the attached Defendants' Reply to Plaintiff's Motion for Reconsideration was being sent to and/or served upon Davidson & Lindemann as an involved counsel herein either for the SCDPS or otherwise.

46. Howell, Gibson & Hughes sent a copy of the 4/29/2009 Mullen Letter and the attached Defendants' Reply to Plaintiff's Motion for Reconsideration to Nexsen Pruet approximately 97 days after Howell, Gibson & Hughes was relieved as counsel for the SCDPS on 21 January 2009, and Davidson & Lindemann was substituted.

47. On 8 October 2009, Robert W. Achurch, III, Esquire of Howell, Gibson & Hughes sent a letter to Judge Mullen addressing, among other things, Mr. Trask's still-pending and then as yet undecided 4/3/2009 Motion to Reconsider. (See Letter to Hon. Carmen Tevis Mullen from Robert W. Achurch, III, Esquire dated 8 October 2009 (the "10/8/2009 Mullen Letter"). (A copy of the 10/8/2009 Mullen Letter is attached hereto as **Exhibit "K"** and incorporated herein by reference).

48. The 10/8/2009 Mullen Letter from Howell, Gibson & Hughes showed copies being sent only to Thomas S. Tisdale, Jr., Esquire of Nexsen Pruet with **no indication** whatsoever of any involvement and/or representation by Davidson & Lindemann in this matter.

49. The 10/8/2009 Mullen Letter from Howell, Gibson & Hughes **did not indicate** a copy of either the 10/8/2009 Mullen Letter was being sent to and/or served upon Davidson & Lindemann as an involved counsel herein either for the SCDPS or otherwise.

50. Howell, Gibson & Hughes sent a copy of the 10/8/2009 Mullen Letter to Nexsen Pruet approximately eight and one-half months after Howell, Gibson & Hughes was relieved as counsel for the SCDPS on 21 January 2009, and Davidson & Lindemann was substituted.

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51. Judge Mullen issued her Order [Denying Plaintiff's Motion for Reconsideration, to Amend Court's Findings, and to Alter or Amend the Court's Judgment (the "10/13/2009 Reconsideration Order") in this case on 13 October 2009, and the 10/13/2009 Reconsideration Order was filed with the Circuit Court on 13 October 2009. (See Order [Denying Plaintiff's Motion for Reconsideration, to Amend Court's Findings, and to Alter or Amend the Court's Judgment dated and filed 13 October 2009). (A copy of the 10/13/2009 Reconsideration Order is attached hereto as **Exhibit "M"** and incorporated herein by reference).

52. Judge Mullen, also in the 10/13/2009 Reconsideration Order, denied Mr. Trask's then-still pending and as yet still undecided Petition for Rule to Show Cause, filed 17 December 2008 (the "12/17/2008 RTSC"), which sought to hold all of the defendants, including the SCDPS, in contempt from failing to comply with a prior order from Judge Mullen compelling certain discovery responses from the many defendants.

53. On 28 October 2009, I sent a letter to the Honorable Jerri Ann Roseneau, Clerk of Court for Beaufort County, filing a copy of the combined Plaintiff's Motion for Reconsideration, to Amend Court's Findings, and to Alter or Amend Court's Judgment (the "10/28/2009 Joint Motion for Reconsideration") for this present case and in the Trask v. Beaufort County case in response to that section of Judge Mullen's 10/13/2009 Reconsideration Order which denied Mr. Trask's 12/17/2008 RTSC. (See Letter to Hon. Jerri Ann Roseneau, Beaufort County Clerk of Court from Stephen P. Groves, Sr., Esquire, dated 28 October 2009 (the "10/28/2009 Roseneau Letter"). (A copy of the 10/28/2009 Roseneau Letter is attached hereto as **Exhibit "N"** and incorporated herein by reference.).

54. I sent copies of the 10/28/2009 Roseneau Letter and the attached 10/28/2009 Joint Motion for Reconsideration to, among others, Howell, Gibson & Hughes and Davidson & Lindemann.

55. As noted by the Certificate of Service for the 10/28/2009 Joint Motion for Reconsideration, the pleading was served upon, among others, Howell, Gibson & Hughes as counsel for all of the named defendants below, in their official capacities, including the SCDPS.

56. As noted by the Certificate of Service for the 10/28/2009 Joint Motion for Reconsideration, the pleading was served upon Marshall H. Waldron, Jr., Esquire of Griffith, Sadler & Sharp, P.A. ("Griffith Sadler & Sharpe"), as counsel for both Beaufort County and Coroner Copeland in his official capacity.

57. Marshall H. Waldron, Jr., Esquire, prior to and after he joined Griffith, Sadler & Sharpe, had represented Beaufort County and Coroner Copeland, in his official capacity, in the Trask v. Beaufort County matter.

58. As noted by the Certificate of Service for the 10/28/2009 Joint Motion for Reconsideration, the pleading was served upon Davidson & Lindemann as legal counsel for Coroner Copeland in his individual capacity, as well as, for the Copeland Funeral Home, but not as legal counsel for the SCDPS.

59. I served Davidson & Lindemann with a copy of the 10/28/2009 Joint Motion for Reconsideration because that law firm has represented and continues to still represent Coroner Copeland, individually, and Copeland Funeral Home in the Trask v. Beaufort County matter.

60. After service of a copy of the 10/28/2009 Joint Motion for Reconsideration no one, until the filing of the Motion to Dismiss Appeal, from Davidson & Lindemann or otherwise advised me that (a) Davidson & Lindemann represented the SCDPS, (b) Howell, Gibson & Hughes did not represent the SCDPS, or (c) Davidson & Lindemann did not represent Coroner Copeland in his individual capacity in this matter as opposed to solely in Trask v. Beaufort County.

61. After service of a copy of the 10/28/2009 Joint Motion for Reconsideration no one from Howell, Gibson & Hughes advised me that (a) they did not represent the SCDPS or (b) Davidson & Lindemann represented the SCDPS.

62. On 15 October 2009, Thomas S. Tisdale, Jr., Esquire of Nexsen Pruet sent a letter to Judge Mullen addressing, among other things, Mr. Trask's still-pending and then as yet undecided 12/17/2008 RTSC. (See Letter to Hon. Carmen T. Mullen from Thomas S. Tisdale, Jr., Esquire dated 15 October 2009 (the "10/15/2009 Mullen Letter"). (A copy of the 10/15/2009 Mullen Letter is attached hereto as Exhibit "O" and incorporated herein by reference).

63. The 10/8/2009 Mullen Letter from Nexsen Pruet showed a copy being sent to, among others, Robert W. Achurch, III, Esquire of Howell, Gibson & Hughes.

64. The 10/15/2009 Mullen Letter from Nexsen Pruet did not indicate a copy of either the 10/15/2009 Mullen Letter was being sent to and/or served upon Davidson & Lindemann as an involved counsel herein either for the SCDPS or otherwise.

65. On 21 October 2009, Erin C. Gentry, Esquire, Judge Mullen's law clerk, sent an e-mail to Thomas S. Tisdale, Jr., Esquire of Nexsen Pruet, in which she acknowledged receipt of the 10/15/2009 Mullen Letter and requested a complete copy of the hearing transcript from the summary judgment hearing held before Judge Mullen on 19 December 2008. (See E-Mail to Thomas S. Tisdale, Jr., Esquire from Erin C. Gentry, Esquire dated 21 October 2009 (the "10/21/2009 Tisdale E-Mail"). (A copy of the 10/21/2009 Tisdale E-Mail is attached hereto as **Exhibit "P"** and incorporated herein by reference).

66. A copy of the 10/21/2009 Tisdale E-Mail is shown to have been sent to Jason F. Ward, Esquire and Robert W. Achurch, III, Esquire of Howell, Gibson & Hughes, but the Circuit Court did not forward a copy of the 10/21/2009 Tisdale E-Mail to Davidson & Lindemann in any capacity whatsoever.

67. On 10 November 2009, Kim Hopkinson, Legal Secretary to Jason F. Ward, Esquire of Howell, Gibson & Hughes sent an e-mail to Thomas S. Tisdale, Jr., Esquire attaching the Defendants' Reply to Plaintiff's Motion for Reconsideration, to Amend Court's Findings, and to Alter Court's Judgment, as well as a proposed *Order Denying Plaintiff's Motion for Reconsideration, to Amend Court's Findings, and*

to Alter Court's Judgment. (See E-Mail to Thomas S. Tisdale, Jr., Esquire from Kim Hopkinson dated 10 November 2009, with attachments (the "11/10/2009 Tisdale E-Mail"). (A copy of the 11/10/2009 Tisdale E-Mail is attached hereto as **Exhibit "Q"** and incorporated herein by reference).

68. A copy of the 11/10/2009 Tisdale E-Mail, together with its attachments, is shown to have been sent only to Thomas S. Tisdale, Jr., Esquire of Nexsen Pruet, but **no** copy was forwarded to Davidson & Lindemann in any capacity whatsoever.

69. The Certificate of Service, dated 10 November 2009, and accompanying the Defendants' Reply to Plaintiff's Motion for Reconsideration, to Amend Court's Findings, and to Alter Court's Judgment indicated Howell, Gibson & Hughes was serving a copy of the Defendants' Reply to Plaintiff's Motion for Reconsideration, to Amend Court's Findings, and to Alter Court's Judgment "upon all counsel of record" with Thomas S. Tisdale, Jr., Esquire being the only lawyer listed as being served and Nexsen Pruet being the only law firm listed as being served and there was no indication whatsoever of any involvement and/or representation by Davidson & Lindemann.

70. The same Certificate of Service indicates that Jason F. Ward, Esquire of Howell, Gibson & Hughes was signing the document as the "[a]ttorney for [the] Defendants" (emphasis added) and there was no indication of Davidson & Lindemann's involvement in this matter.

71. Howell, Gibson & Hughes sent the 11/10/2009 Tisdale E-Mail and the Defendants' Reply to Plaintiff's Motion for Reconsideration, to Amend Court's Findings, and to Alter Court's Judgment to Nexsen Pruet approximately nine and one-half months after Howell, Gibson & Hughes was relieved as counsel for the SCDPS on 21 January 2009, and Davidson & Lindemann was substituted.

72. On 19 November 2009, I sent a letter to the Honorable Jerri Ann Roseneau, Clerk of Court for Beaufort County, filing a copy of the combined Plaintiff's Memorandum in Opposition to Defendants' Reply to Plaintiff's Motion for Reconsideration, to Amend Court's Findings, and to Alter or Amend Court's Judgment (the "11/19/2009 Opposition Memo") for this present case and in the Trask v. Beaufort County case. (See Letter to Hon. Jerri Ann Roseneau, Beaufort

County Clerk of Court from Stephen P. Groves, Sr., Esquire, dated 19 November 2009, with attachments (the "11/19/2009 Roseneau Letter").
(A copy of the 11/19/2009 Roseneau Letter is attached hereto as **Exhibit "R"** and incorporated herein by reference.).

73. I sent copies of the 11/19/2009 Roseneau Letter and the attached 11/19/2009 Opposition Memo to, among others, Howell, Gibson & Hughes and Davidson & Lindemann.

74. As noted by the Certificate of Service for the 11/19/2009 Opposition Memo, the pleading was served upon, among others, Howell, Gibson & Hughes as counsel for all of the named defendants below, in their official capacities, including the SCDPS.

75. As noted by the Certificate of Service for the 11/19/2009 Opposition Memo, the pleading was served upon Marshall H. Waldron, Jr., Esquire of Griffith, Sadler & Sharp, as counsel for both Beaufort County and Coroner Copeland in his official capacity.

76. Marshall H. Waldron, Jr., Esquire, prior to and after he joined Griffith, Sadler & Sharpe, had represented Beaufort County and Coroner Copeland, in his official capacity, in the Trask v. Beaufort County matter.

77. As noted by the Certificate of Service for the 11/19/2009 Opposition Memo, the pleading was served upon Davidson & Lindemann as legal counsel for Coroner Copeland in his individual capacity, as well as, for the Copeland Funeral Home, but not as legal counsel for the SCDPS.

78. I served Davidson & Lindemann with a copy of the 11/19/2009 Opposition Memo because that law firm has represented and continues to still represent Coroner Copeland, individually, and Copeland Funeral Home in the Trask v. Beaufort County matter.

79. After service of a copy of the 11/19/2009 Opposition Memo no one, until the filing of the Motion to Dismiss Appeal, from Davidson & Lindemann or otherwise advised me that (a) Davidson & Lindemann represented the SCDPS, (b) Howell, Gibson & Hughes did not represent the SCDPS, or (c) Davidson & Lindemann did not represent Coroner Copeland in his individual capacity in this matter as opposed to solely in Trask v. Beaufort County.

80. After service of a copy of the 11/19/2009 Opposition Memo no one from Howell, Gibson & Hughes advised me that (a) they did not represent the SCDPS or (b) Davidson & Lindemann represented the SCDPS.

81. As of the date of the filing of this affidavit, Judge Mullen still has not issued a decision on either the 10/28/2009 Joint Motion for Reconsideration or the issues raised by the Defendants' Reply to Plaintiff's Motion for Reconsideration, to Amend Court's Findings, and to Alter or Amend Court's Judgment.

AFFIANT'S SERVICE OF THE NOTICE OF APPEAL

82. On 13 November 2009, out of an abundance of caution and even though I had already filed the 10/28/2009 Joint Motion for Reconsideration, I filed a Notice of Appeal with this Court of Appeals from both Judge Mullen's Summary Judgment Order and from her 10/12/2009 Reconsideration Order as I was unsure whether the second Motion for Reconsideration (*i.e.*; the 10/28/2009 Joint Motion for Reconsideration), even though it was a combined motion involving both this case and Trask v. Beaufort County and, moreover, based upon different grounds than the initial 4/3/2009 Motion to Reconsider would, pursuant to Rules 52(c), 59(e), SCRCP, stay the time for appeal.

83. On 13 November 2009, I filed the original copy of the Notice of Appeal (with attached copies of the Summary Judgment Order and 10/12/2009 Reconsideration Order) in this case with this Court of Appeals and, in turn, sent copies to the Honorable Jerri Ann Roseneau, Clerk of Court for Beaufort County, and Jason F. Ward, Esquire of Howell, Gibson & Hughes as counsel for all of the putative Respondents, including the SCDPS. (See Letter to Honorable Jeanette Barber, Clerk of South Carolina Court of Appeals, from Stephen P. Groves, Sr., Esquire, dated 13 November 2009 (the "11/13/2009 Barber Letter"). (A copy of the 11/13/2009 Barber Letter is attached hereto as **Exhibit "S"** and incorporated herein by reference.).

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84. On 13 November 2009, I sent a copy of the Notice of Appeal (with attached copies of the Summary Judgment Order and 10/12/2009 Reconsideration Order) in this case to the Honorable Jerri Ann Roseneau, Clerk of Court for Beaufort County. (See Letter to Honorable Jerri Ann Roseneau, Beaufort County Clerk of Court from Stephen P. Groves, Sr., Esquire, dated 13 November 2009 (the "11/13/2009 Roseneau Letter"). (A copy of the 11/13/2009 Roseneau Letter is attached hereto as **Exhibit "T"** and incorporated herein by reference.).

85. On 13 November 2009, I sent a copy of the Notice of Appeal (with attached Summary Judgment Order and 10/12/2009 Reconsideration Order) in this case to Jason F. Ward, Esquire of Howell, Gibson & Hughes as legal counsel for all of the putative Respondents, including the SCDPS. (See Letter to Jason F. Ward, Esquire from Stephen P. Groves, Sr., Esquire, dated 13 November 2009 (the "11/13/2009 Ward Letter"). (A copy of the 11/13/2009 Ward Letter is attached hereto as **Exhibit "U"** and incorporated herein by reference.).

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86. After service of a copy of the Notice of Appeal no one, until the filing of the Motion to Dismiss Appeal, has ever advised me that (a) Howell, Gibson & Hughes did not represent the SCDPS or (b) Davidson & Lindemann represented the SCDPS.

87. Since this appeal has been proceeding, I have filed several motions and/or made other filings with this Court of Appeals, all of which contained Certificates of Service indicating service upon Howell, Gibson & Hughes was intended to and thought to be service upon counsel for all of the Respondents herein, including the SCDPS. (See e.g.; Motion for Extension of Time (2nd) in Which to File Initial Brief and

Designation of Matters in the Record on Appeal dated 11 January 2010 (the "2nd Extension Motion"). (A copy of the 2nd Extension Motion is attached hereto as **Exhibit "V"** and incorporated herein by reference).

88. After service of the various motions and/or other filings with this Court of Appeals, no one, until the filing of the Motion to Dismiss Appeal, has ever advised me that (a) Howell, Gibson & Hughes did not represent the SCDPS or (b) Davidson & Lindemann represented the SCDPS.

89. On 15 March 2010, I filed Mr. Trask's Initial Appellant's Brief and Designation of Matters to be Included in the Record on Appeal with this Court of Appeals and served copies of each upon Jason F. Ward, Esquire of Howell, Gibson & Hughes as counsel for all of the Respondents herein, including the SCDPS.

90. After serving the Initial Appellant's Brief and Designation of Matters to be Included in the Record on Appeal no one, until the filing of the Motion to Dismiss Appeal, has ever advised me that (a) Howell, Gibson & Hughes did not represent the SCDPS or (b) Davidson & Lindemann represented the SCDPS.

91. I was unaware Davidson & Lindemann represented the SCDPS in this matter until I received a copy of the SCDPS' Motion to Dismiss Appeal.

92. All of the filings I made with the Circuit Court and/or this Court of Appeals have clearly indicated service was being made upon Howell, Gibson & Hughes in its capacity as legal counsel for all of the Defendants, including specifically the SCDPS.

93. All references to Davidson & Lindemann in the filings at the Circuit Court level were directed to that law firm's long-time representation of Coroner Copeland, in his individual capacity, and of the Copeland Funeral Home in both this action and in Trask v. Beaufort County.

94. At no time after 21 January 2009, up until the filing of the SCDPS' Motion to Dismiss Appeal, did any legal counsel hereto or representative thereof – either from Howell, Gibson & Hughes or Davidson & Lindemann – advise me that Howell, Gibson & Hughes did not represent the SCDPS in this matter.

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95. At no time after 21 January 2009, up until the filing of the SCDPS' Motion to Dismiss Appeal, did any legal counsel hereto or representative thereof – either from Howell, Gibson & Hughes or Davidson & Lindemann – advise me that Davidson & Lindemann represented the SCDPS in this matter.

96. Based upon the parties' respective correspondence and their filed pleadings, I believe it was reasonable and proper to consider that Howell, Gibson & Hughes represented all of the Defendants below in this case and all of the Respondents herein, including specifically the SCDPS in this appeal.

97. Based upon the parties' respective correspondence and their filed pleadings, I believe it was reasonable to serve Howell, Gibson & Hughes with a copy of the Notice of Appeal as counsel for all of the Respondents herein, including specifically the SCDPS.

98. Based upon the parties' respective correspondence and their filed pleadings, I believe service of the Notice of Appeal in this case upon Howell, Gibson & Hughes as counsel for all of the Respondents herein, including specifically the SCDPS, constituted correct and proper service on all of the Respondents, including the SCDPS, under Rule 203(b)(1), SCACR.

99. Based upon the parties' respective correspondence and their filed pleadings, I believe service of the Notice of Appeal in this case upon Howell, Gibson & Hughes as counsel for SCDPS, at the very minimum, constituted proper constructive service of the Notice of Appeal upon all of the Respondents herein, including specifically the SCDPS sufficient to meet the requirements and mandates of Rule 203(b)(1), SCACR.

100. Davidson & Lindemann have attached a number of letters, dated between 28 January 2009, through 10 February 2009, to the Motion to Dismiss Appeal which shows that copies of the same correspondence were being sent to, among others, William Davidson, II, Esquire of Davidson & Lindemann.

101. To the extent copies of any such correspondence or subsequent correspondence and/or court filings either before 21 January 2009, or after 10 February 2009, were served/provided to, and/or sent to Davidson & Lindemann, I believe such copies were transmitted because that law firm, either through William H. Davidson, II, Esquire or Andrew F. Lindemann, Esquire, has represented and continues to still represent Coroner Copeland, individually, or Copeland Funeral Home in Trask v. Beaufort County.

102. Davidson & Lindemann attached a copy of a SCRCP Form 4 Order dated 13 March 2009, and mailed on 4 May 2009 (the "5/4/2009 Judgment Form"), to the Motion to Dismiss Appeal which indicates the Circuit Court had issued an order granting the SCDPS' Motion for Summary Judgment and that Davidson & Lindemann was listed as counsel for the defendant(s).

103. I have searched our files and I have not been able to locate and believe we do not have a copy of any correspondence transmitting the 5/4/2009 Judgment Form to Nexsen Pruet from the Beaufort County Clerk of Court.

104. I have searched our files and I have not been able to locate and believe we do not have a copy of any correspondence transmitting the 5/4/2009 Judgment Form to Nexsen Pruet from Davidson and Lindemann.

105. The first knowledge I had of the existence of the 5/4/2009 Judgment Form was when I received a copy of the Motion to Dismiss Appeal bearing a copy of the 5/4/2009 Judgment Form attached thereto.

106. I make this affidavit of my own personal knowledge.

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FURTHER AFFIANT SAYETH NOT.

Signed: 

Stephen P. Groves, Sr.

Sworn to this 3rd of May, 2010

Signed: Marian R Parish

Notary Public for the
State of South Carolina

My Commission Expires: 4/12/2012

NPCHAR1:566357.1-APL-(SPG) 038981-00002

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HOWELL, GIBSON AND HUGHES, P.A.
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MARY BASS LOHR
THOMAS A. BENDLE, JR.
WILLIAM T. YOUNG III
JASON F. WARD

February 13, 2009

Hon. Carmen Tevis Mullen
Judge, Fourteenth Judicial Circuit
Beaufort County Court of Common Pleas
Post Office Box 1128
Beaufort, SC 29901

Re: L. Paul Trask, Jr. vs. SC Department of Public Safety; Beaufort County;
Beaufort County Management Information Systems; Beaufort County
Coroner Curtis Copeland; Beaufort County Sheriff P.J. Tanner
Civil Action No.: 07-CP-07-995

Dear Judge Mullen:

As previously requested by you, enclosed herewith please find a proposed Order Granting Defendants' Motion for Summary Judgment. In the event that you find the same in order, please execute the original and return the same to me in the enclosed envelope provided for your convenience. I will see that the document is properly filed with the Clerk of Court and served on all appropriate parties.

Please do not hesitate to contact me in the event you should require additions or corrections to the document or in the event you have any other questions or comments concerning the enclosures.

With kindest regards, I am

Yours truly,

HOWELL, GIBSON & HUGHES, P.A.



Jason F. Ward
JFW/kah
Enclosure

cc: Thomas S. Tisdale, Jr., Esquire

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT) CIVIL ACTION NO: 07-CP-07-995

L. PAUL TRASK, JR. Individually, as a)
Citizen, Resident, Taxpayer and)
Registered Elector of the State of)
South Carolina, and on behalf of)
others similarly situated,)

Plaintiff,)

vs.)

SOUTH CAROLINA DEPARTMENT)
OF PUBLIC SAFETY; BEAUFORT)
COUNTY; BEAUFORT COUNTY)
MANAGEMENT INFORMATION)
SYSTEMS; BEAUFORT COUNTY)
CORONER CURTIS COPELAND in)
his official capacity; BEAUFORT)
COUNTY SHERIFF P.J. TANNER in)
his official capacity,)

Defendants.)

ORDER GRANTING
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT

This matter came before me on December 19, 2008 on motion by the Defendants for Summary Judgment. Present at the hearing for the Plaintiff was Tom Tisdale of Nexsen Pruet, and for the Defendants Robert W. Achurch, III and Jason F. Ward, of Howell, Gibson and Hughes, P.A. Having fully considered the arguments of counsel, and having reviewed the parties respective memoranda of law and supplements thereto, I hereby GRANT Defendants' Motion for Summary Judgment.

The Plaintiff filed his Complaint in the Court of Common Pleas on April 17, 2007, alleging that the various Defendants, at various times, violated S.C. Code

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Ann. §30-4-10, also known as the "Freedom of Information Act" (hereinafter referred to as "FOIA"). The following are the dates and content of the requests as alleged in the Complaint:

SC Dept of Public Safety	2/23/06	Plaintiff requested a copy of all records related to the accident and the subsequent investigation. COMPLAINT P. 15
SC Dept of Public Safety	2/27/06	Plaintiff requested all records, excluding photographs pertaining to the accident. COMPLAINT P. 16
SC Dept of Public Safety	5/18/06	Plaintiff requested copies of field notes and the Coroner's toxicology report related to the accident. COMPLAINT P. 18
SC Dept of Public Safety	12/12/06	Plaintiff requested copies of email communications between several of the investigating SCHP troopers, BCSO Captain Robert Bromage and Coroner Copeland. COMPLAINT P.19
Beaufort County Coroner Curt Copeland	12/15/05	Plaintiff requested an inquest into the death of Plaintiff's son. Plaintiff also requested the SCHP Multidisciplinary Accident Investigation Team (MAIT) to conduct official investigation into the facts and circumstances of the accident. COMPLAINT P.27
Beaufort County Coroner Curt Copeland	2/21/06	Plaintiff requested that the Coroner's office preserve all records, including audio recordings and email correspondence related to the accident. COMPLAINT P.28
Beaufort County Coroner Curt Copeland	3/20/06	Plaintiff requested copies of the Coroner's report, Bromage's inquest investigation field notes and reports as well as reports from MAIT investigation. COMPLAINT P.29
Beaufort County Coroner Curt Copeland	4/14/06	Plaintiff requested Copeland's handwritten notes taken at the scene of the accident and his interview report with Fripp Island Security Guard, James Irby. COMPLAINT P.31
Beaufort County Coroner Curt Copeland	6/22/06	Plaintiff requested cell phone records for 11/05 through 5/06 and email communications from 11/22/05 through 6/22/06. COMPLAINT P.33
Beaufort County Coroner Curt Copeland	7/20/06	Plaintiff requested a list of all Deputy Coroners. COMPLAINT P.34
Beaufort County Coroner Curt Copeland	12/11/06	Plaintiff requested email correspondence on BCC hard drives pertaining to the accident. COMPLAINT P.35

Beaufort County Coroner Curt Copeland	2/25/07	Plaintiff requested copies of reports of all toxicology examinations taken by the Coroner's office from 6/1/05 through 12/31/06. COMPLAINT P.36
Beaufort County Coroner Curt Copeland	2/25/07	Plaintiff requested radio call log from the night of the accident. COMPLAINT P.37
Beaufort County Management Information Systems	12/12/06	Plaintiff requested a copy of the Beaufort County records retention schedule for all email correspondence. COMPLAINT P.42
Beaufort County Sheriff P.J. Tanner	12/13/06	Plaintiff requested email records of Bromage pertaining to the investigation of the accident. COMPLAINT P.49
Beaufort County Sheriff P.J. Tanner	1/11/07	Requested a response in writing which records could not be produced. COMPLAINT P.51
Beaufort County Sheriff P.J. Tanner	2/3/07	Plaintiff requested copy of Sheriff's authorization which allowed Capt. Bromage to use his personal email account for the conduct of official county business. COMPLAINT P.52
Beaufort County	12/14/05	Plaintiff requested information related to Beaufort County E911 audio and computer records, reports, photos and investigation records pertaining to the accident. Plaintiff also requested the records for all personnel who responded to the Sheriff's Office, EMS, Fire Department, Coroner's Office and Highway Patrol. COMPLAINT P.59
Beaufort County	1/23/06	Plaintiff requested the computer voice stamp be added to the Sheriff's Office and EMS discs. COMPLAINT P.62
Beaufort County	2/2/07	Plaintiff requested copies of the written operational procedures for Beaufort County 911 system, the records inventory forms and all other documents used to prepare records retention schedules for every type of public record created by the operation and use of the Beaufort County 911 system. COMPLAINT P.64

I. ALLEGED FOIA VIOLATIONS THAT ARE TIME BARRED BY STATUTE OF LIMITATIONS OF S.C. CODE ANN. §30-4-100

The Plaintiff has alleged numerous allegations relating to FOIA requests to these Defendants ranging in time from December 2005 to February 2007. S.C.

Code Ann. § 30-4-100 S.C. Code Ann. §30-4-100, entitled "Injunctive relief; costs and attorney's fees", provides the following:

(a) Any citizen of the State may apply to the circuit court for either or both a declaratory judgment and injunctive relief to enforce the provisions of this chapter in appropriate cases **as long as such application is made no later than one year following the date on which the alleged violation occurs** or one year after a public vote in public session, whichever comes later. The court may order equitable relief as it considers appropriate, and **a violation of this chapter must be considered to be an irreparable injury for which no adequate remedy at law exists.**

(b) If a person or entity seeking such relief prevails, he or it may be awarded reasonable attorney fees and other costs of litigation. If such person or entity prevails in part, the court may in its discretion award him or it reasonable attorney fees or an appropriate portion thereof.

The Plaintiff's Complaint in this matter was filed on or about April 17, 2007. The alleged FOIA violations contained in paragraphs 15, 16, 17, 27, 28, 29, 59, and 62 of the Plaintiff's Complaint all predate the Complaint by more than one year. Thus, I find that the alleged FOIA violations contained in the above mentioned are time barred by the provisions of S.C.Code Ann. §30-4-100 and are hereby dismissed with prejudice.

II. ALLEGED FOIA VIOLATIONS THAT ARE MOOT PER SLOAN.

The Plaintiff has asserted violations of the FOIA relating to the production of documents contained at Paragraphs 18, 19, 31, 32, 33, 35, 36, 37, 42, 49, 52, 59, and 64 of the Complaint. Based on my review of the Defendants' memorandum and supplement to their memorandum of law along with representations made by counsel, I find that the Defendants have produced the subject documents requested in the above paragraphs to the extent they are in

the Defendant's possession. In addition, I also find that while some of the FOIA requests were time barred, the Defendants nevertheless produced the documents. Our Supreme Court held in *Sloan v. Friends of Hunley, Inc.*, 369 S.C. 20, 630 S.E.2d 474 (2006) that [w]here the public records that were requested have been produced [to the requesting party], any claims for alleged prior violations under the FOIA are considered to be moot." Therefore, because I find that the documents requested in paragraphs, 18, 19, 31, 32, 33, 35, 36, 37, 42, 49, 52, 59, and 64 have been produced to the extent they are in the Defendant's possession, I find that the allegations contained in the above referenced Paragraphs are moot.

To the extent the Plaintiff has raised the issue, I find that the Defendants properly redacted public records in accordance with the applicable exemptions in the FOIA statute as well as other statutory exemptions. Some requested records (such as, but not limited to, the 911 CAD printouts and records of paragraph 59) are not considered public information under the Freedom of Information Act (See, e.g. S.C. Code Ann. §23-47-10 et seq), and are thus not subject to disclosure. In addition, many of these requested documents fall under the clear exemptions contained in the FOIA. Nevertheless, the Defendants redacted sensitive information and have produced such documents. Consequently, I find the Defendants have complied with the FOIA.

III. ALLEGED FOIA VIOLATIONS THAT ARE NOT REQUESTS FOR "PUBLIC RECORDS" AS DEFINED BY THE ACT.

With reference to the allegations contained at Paragraphs 34, 51, and 62 of the Complaint, the Defendants' maintain that production of these items are not

required under the FOIA as these are not requests for "public records" as defined by the FOIA. S.C.Code Ann. §30-4-20(c) requires a public body to produce to an FOIA requester a "public record" that is "prepared, owned, used, in the possession of, or retained" by that particular public body. The Plaintiff requested that the Defendants generate a list of deputy coroners (paragraph 34), requested for specification of public records which cannot be produced (paragraph 51), and requested the addition of computer voice time stamp be added to an audio recording which had previously been provided to the Plaintiffs (paragraph 62). I find that these requests are not "public records" in accordance with the FOIA. Consequently, no liability for these requests can arise, and these allegations are dismissed with prejudice.

IV. Implied Violations and Duties under the FOIA Asserted by the Plaintiff

The Plaintiff argues that in addition to the causes of action specifically set forth under the FOIA, there are other violations of the FOIA implied within the act. First, the Plaintiff has asserted there is a duty to restore or recover public records, including emails which have been "double deleted." Contrary to the Plaintiff's allegations, I find that there is no duty to "restore" public records as defined by the plain language of the FOIA. The plaintiff failed to point to any applicable case law or statute providing for such a duty under the FOIA, and the plain language of the FOIA statute does not mention a duty to restore public records. The Freedom of Information Act expressly sets forth what constitutes a

violation of the Act, and this court will not expand upon those specific mandates as drafted by the Legislature.

Similarly, the Plaintiff also argues that the Defendants are liable for the failure to produce public records over which the Defendants no longer exercise control or custody or possess. Again, the Plaintiff has provided and this Court can find no authority to support this proposition. Moreover, in *Kissinger v. Reporters Committee for the Freedom of The Press*, 445 U.S. 136, 100 S.Ct. 960, (1980) the United States Supreme Court found no violation of the FOIA where an agency that had been requested to produce the Nixon tapes did not produce them because it no longer exercised custody or possession of these tapes (as they had been transferred to the Department of Archives). I find that the Defendants in this case do not have a duty to produce those records which they no longer possess or exercise control or custody over.

The Plaintiff also argues that the Defendants owe a duty under the FOIA to "establish and develop standards procedures, techniques and schedules designed to protect and preserve the public records." [See, e.g., Complaint P. 65] The plain language of the FOIA does not mention such any such of a FOIA responder. Again this court will not read into the FOIA violations not specifically set forth therein. Consequently, I find that any alleged "violations" of the FOIA arising out of these alleged failures by the Defendants in the Complaint are hereby dismissed with prejudice.

V. Reasonableness of Beaufort County Sheriff's Office Fees for Copying

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The Plaintiff has asserted that the Beaufort County Sheriff's office charged the Plaintiff an amount for copies in excess of that amount provided pursuant to the FOIA." [Complaint, P. 53] S.C.Code Ann. §30-4-30 provides in relevant part that a public body,

"may establish and collect fees not to exceed the actual cost of searching for or making copies of records. Fees charged by a public body must be uniform for copies of the same record or document.... The records must be furnished at the lowest possible cost to the person requesting the records.... Nothing in this chapter prevents the custodian of the public records from charging a reasonable hourly rate for making records available to the public nor requiring a reasonable deposit of these costs before searching for or making copies of the records.

The Sheriff's office utilized the Beaufort County Code of Ordinances, Section 2-435 (Code 1982) to determine what fees to charge the Plaintiff. This Ordinance provided for uniform service charges for supplying copies of official records requested by individual citizens. Because the charges for fees by the Sheriff's office were made in accordance with a Beaufort county ordinance, I find they are reasonable and thus proper under the FOIA.

VI. Alleged FOIA violations argued by the Plaintiff but not raised in the Complaint.

Lastly, to the extent that the Plaintiff asserted (through affidavit, argument of counsel, or otherwise) additional violations of the FOIA which have not been specifically pled or alleged in his Complaint, I find that these issues are not properly before the Court. Consequently, this Court refuses to address those issues as the Plaintiff has not properly pled them nor sought amendment to his complaint.

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CONCLUSION

For all of the foregoing reasons, I hereby GRANT Defendants Motion for Summary Judgment, and dismiss this case with prejudice.

IT IS SO ORDERED.

By: _____
Carmen Tevis Mullen
Judge, Fourteenth

Beaufort, South Carolina

February _____, 2009.

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March 12, 2009

The Honorable Elizabeth M. Smith
Beaufort County Clerk of Court
Post Office Drawer 1128
Beaufort, SC 29901

Re: L. Paul Trask, Jr. vs. SC Department of Public Safety; Beaufort County;
Beaufort County Management Information Systems; Beaufort County
Coroner Curtis Copeland; Beaufort County Sheriff P.J. Tanner
Civil Action No.: 07-CP-07-995
Our File No: 10421 RWA

Dear Elizabeth:

Please find enclosed herewith for filing Motion for Release of Information with regard to the above referenced matter. I would appreciate your filing the same and returning a filed clocked copy to me in the enclosed self-addressed, stamped envelope provided for your convenience.

With kindest regards, I am

Yours truly,

HOWELL, GIBSON AND HUGHES, P.A.

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Robert W. Achurch, III

RWAI/WMH

Enclosures

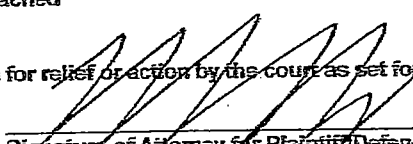
cc: Thomas S. Tisdale, Jr., Esquire
Ladson F. Howell, Esquire

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IN THE COURT OF COMMON PLEAS

COUNTY OF BEAUFORT

L. Paul Trask, Jr. ☐ Plaintiff, vs.	Civil Action No: 07-CP-07-995
Beaufort County, P.J. Tanner, Curt M. Copeland and Beaufort County Management Information Systems X Defendants Check box above indicating submitting party.	MOTION INFORMATION FORM AND COVER SHEET
Name, SC Bar No. and address of Plaintiff's/Opposing attorney: Thomas S. Tisdale, Jr. Post Office Box 486 Charleston, SC 29402 (843) 577-9440	Name, SC Bar No. and address of Defendant's attorney Robert W. Achurch, III SC Bar No: 064854 P.O. Box 40, Beaufort, SC 29901 hghpa@isc.net 843-522-2400 843-522-2429 fax
X MOTION HEARING REQUESTED (attach written motion and complete Sections I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information Nature of Motion: Motion for Release of Information Estimated Time Needed: 30 mins Court Reporter Needed: Yes	
SECTION II: Motion Type X Written Motion attached ☐ Form Motion - I hereby move for relief or action by the court as set forth in the attached proposed order.  Signature of Attorney for Plaintiff/Defendant March 12, 2009	
SECTION III: Motion Fee X PAID - AMOUNT: \$25.00 ☐ EXEMPT: ☐ Rule to Show Cause in child or spousal support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of Court; or, reduced in writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other:	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:	CODE: _____ DATE: _____
CLERK'S VERIFICATION Collected by: _____ (print name) ☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED - AMOUNT DUE: _____	

SCCA/233 (10/2004)

1257

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF BEAUFORT)

CIVIL ACTION NO. 07-CP-07-995

L. PAUL TRASK, JR. Individually, as a)
Citizen, Resident, Taxpayer and Registered)
Elector of the State of South Carolina, and)
on behalf of others similarly situated,)

Plaintiff,)

MOTION FOR RELEASE OF
INFORMATION

vs.)

SOUTH CAROLINA DEPARTMENT)
OF PUBLIC SAFETY; BEAUFORT)
COUNTY; BEAUFORT COUNTY)
MANAGEMENT INFORMATION)
SYSTEMS; BEAUFORT COUNTY)
CORONER CURTIS COPELAND in)
His official capacity; BEAUFORT)
COUNTY SHERIFF P.J. TANNER in)
his official capacity,)

Defendants.)

TO: THOMAS S. TISDALE, ESQUIRE AND THOMAS S. TISDALE, JR., ESQUIRE,
ATTORNEYS FOR THE PLAINTIFF
ALLTEL
VERIZON WIRELESS
HARGRAY
SINGULAR WIRELESS
SPRINT
TRITON PCS
T MOBILE

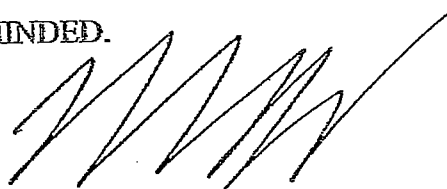
YOU WILL PLEASE TAKE NOTICE that above-named Defendants, by and through
their counsel, will move before the presiding Judge of the Court of Common Pleas for the
Fourteenth Judicial Circuit at the Beaufort County Courthouse, 100 Ribaut Road, Beaufort,
South Carolina on the 7th day of April, 2009 at 11:00 a.m., for an Order allowing Defendants to
release and disclose that certain 911 printout, in unredacted form, which occurred on November

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21-22, 2005, as such printout relates to that certain automobile accident which resulted in the death of the Plaintiff's son, L. Paul Trask, III.

Upon information and belief, the Defendants believe that the above-listed telephone communication companies claim such information is privileged under their licenses, copywrites and agreements with the Defendants, but Defendants feel that the Plaintiff's motive in reviewing this unredacted 911 printout is completely unrelated to any business or venture that may be in competition with such telephone communication companies and presents no harm or liability to them or any related or affiliated entity.

PLEASE BE PRESENT TO DEFEND IF SO MINDED.



Robert W. Achurch
Post Office Box 40
Beaufort, SC 29901
(843) 522-2400
Attorneys for Defendant

Beaufort, South Carolina
March ____, 2009

1259

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

) IN THE COURT OF COMMON PLEAS
)
) CIVIL ACTION NO: 07-CP-07-995

L. PAUL TRASK, JR. Individually, as a
Citizen, Resident, Taxpayer and
Registered Elector of the State of
South Carolina, and on behalf of
others similarly situated,

Plaintiff,

vs.

SOUTH CAROLINA DEPARTMENT
OF PUBLIC SAFETY; BEAUFORT
COUNTY; BEAUFORT COUNTY
MANAGEMENT INFORMATION
SYSTEMS; BEAUFORT COUNTY
CORONER CURTIS COPELAND in
his official capacity; BEAUFORT
COUNTY SHERIFF P.J. TANNER in
his official capacity,

Defendants.

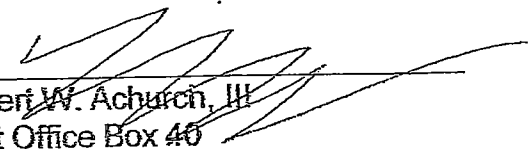
CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that he has served the
foregoing Motion for Release of Information upon all counsel of record by affixing
same with proper postage and placing same with the United States Postal
Service on 13th day of March, 2009 addressed to the following:

Thomas S. Tisdale, Jr., Esquire
Nexsen, Pruet, Jacobs & Pollard, L.L.P.
Post Office Box 486
Charleston, SC 29402

1260

HOWELL, GIBSON & HUGHES, P.A.

By: 
Robert W. Achurch, III
Post Office Box 40
Beaufort, SC 29901
(843) 522-2400
Attorney for Defendants

Beaufort, South Carolina

March 13, 2009

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STATE OF SOUTH CAROLINA 2009 MAR 10 PM 2:03 IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT BEAUFORT COUNTY CIVIL ACTION NO: 07-CP-07-995
CLERK OF COURT
BEAUFORT, S.C.

L. PAUL TRASK, JR. Individually, as a)
Citizen, Resident, Taxpayer and)
Registered Elector of the State of)
South Carolina, and on behalf of)
others similarly situated,)

Plaintiff,)

vs.)

SOUTH CAROLINA DEPARTMENT)
OF PUBLIC SAFETY; BEAUFORT)
COUNTY; BEAUFORT COUNTY)
MANAGEMENT INFORMATION)
SYSTEMS; BEAUFORT COUNTY)
CORONER CURTIS COPELAND in)
his official capacity; BEAUFORT)
COUNTY SHERIFF P.J. TANNER in)
his official capacity,)

Defendants.)

ORDER GRANTING
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT

This matter came before me on December 19, 2008 on motion by the Defendants for Summary Judgment. Present at the hearing for the Plaintiff was Thomas S. Tisdale, Jr. of Nexsen Pruet, and for the Defendants Robert W. Achurch, III and Jason F. Ward, of Howell, Gibson and Hughes, P.A. Having fully considered the arguments of counsel, and having reviewed the parties' respective memoranda of law and supplements thereto, I hereby GRANT Defendants' Motion for Summary Judgment.

The Plaintiff filed his Complaint in the Court of Common Pleas on April 17, 2007, alleging that the various Defendants, at various times, violated S.C. Code

1262

Ann. §30-4-10, also known as the "Freedom of Information Act" (hereinafter referred to as "FOIA"). The following are the dates and content of the requests as alleged in the Complaint:

SC Dept of Public Safety	2/23/06	Plaintiff requested a copy of all records related to the accident and the subsequent investigation. COMPLAINT P. 15
SC Dept of Public Safety	2/27/06	Plaintiff requested all records, excluding photographs pertaining to the accident. COMPLAINT P. 16
SC Dept of Public Safety	5/18/06	Plaintiff requested copies of field notes and the Coroner's toxicology report related to the accident. COMPLAINT P. 18
SC Dept of Public Safety	12/12/06	Plaintiff requested copies of email communications between several of the investigating SCHP troopers, BCSO Captain Robert Bromage and Coroner Copeland. COMPLAINT P.19
Beaufort County Coroner Curt Copeland	12/15/05	Plaintiff requested an inquest into the death of Plaintiff's son. Plaintiff also requested the SCHP Multidisciplinary Accident Investigation Team (MAIT) to conduct official investigation into the facts and circumstances of the accident. COMPLAINT P.27
Beaufort County Coroner Curt Copeland	2/21/06	Plaintiff requested that the Coroner's office preserve all records, including audio recordings and email correspondence related to the accident. COMPLAINT P.28
Beaufort County Coroner Curt Copeland	3/20/06	Plaintiff requested copies of the Coroner's report, Bromage's inquest investigation field notes and reports as well as reports from MAIT investigation. COMPLAINT P.29
Beaufort County Coroner Curt Copeland	4/14/06	Plaintiff requested Copeland's handwritten notes taken at the scene of the accident and his interview report with Fripp Island Security Guard, James Irby. COMPLAINT P.31
Beaufort County Coroner Curt Copeland	6/22/06	Plaintiff requested cell phone records for 11/05 through 5/06 and email communications from 11/22/05 through 6/22/06. COMPLAINT P.33
Beaufort County Coroner Curt Copeland	7/20/06	Plaintiff requested a list of all Deputy Coroners. COMPLAINT P.34
Beaufort County Coroner Curt Copeland	12/11/06	Plaintiff requested email correspondence on BCC hard drives pertaining to the accident. COMPLAINT P.35

Beaufort County Coroner Curt Copeland	2/25/07	Plaintiff requested copies of reports of all toxicology examinations taken by the Coroner's office from 6/1/05 through 12/31/06. COMPLAINT P.36
Beaufort County Coroner Curt Copeland	2/25/07	Plaintiff requested radio call log from the night of the accident. COMPLAINT P.37
Beaufort County Management Information Systems	12/12/06	Plaintiff requested a copy of the Beaufort County records retention schedule for all email correspondence. COMPLAINT P.42
Beaufort County Sheriff P.J. Tanner	12/13/06	Plaintiff requested email records of Bromage pertaining to the investigation of the accident. COMPLAINT P.49
Beaufort County Sheriff P.J. Tanner	1/11/07	Requested a response in writing which records could not be produced. COMPLAINT P.51
Beaufort County Sheriff P.J. Tanner	2/3/07	Plaintiff requested copy of Sheriff's authorization which allowed Capt. Bromage to use his personal email account for the conduct of official county business. COMPLAINT P.52
Beaufort County	12/14/05	Plaintiff requested information related to Beaufort County E911 audio and computer records, reports, photos and investigation records pertaining to the accident. Plaintiff also requested the records for all personnel who responded to the Sheriff's Office, EMS, Fire Department, Coroner's Office and Highway Patrol. COMPLAINT P.59
Beaufort County	1/23/06	Plaintiff requested the computer voice stamp be added to the Sheriff's Office and EMS discs. COMPLAINT P.62
Beaufort County	2/2/07	Plaintiff requested copies of the written operational procedures for Beaufort County 911 system, the records inventory forms and all other documents used to prepare records retention schedules for every type of public record created by the operation and use of the Beaufort County 911 system. COMPLAINT P.64

I. ALLEGED FOIA VIOLATIONS THAT ARE TIME BARRED BY STATUTE OF LIMITATIONS OF S.C. CODE ANN. §30-4-100

The Plaintiff has alleged numerous allegations relating to FOIA requests to these Defendants ranging in time from December 2005 to February 2007. S.C.

Code Ann. § 30-4-100 S.C. Code Ann. §30-4-100, entitled "Injunctive relief; costs and attorney's fees", provides the following:

(a) Any citizen of the State may apply to the circuit court for either or both a declaratory judgment and injunctive relief to enforce the provisions of this chapter in appropriate cases as long as such application is made no later than one year following the date on which the alleged violation occurs or one year after a public vote in public session, whichever comes later. The court may order equitable relief as it considers appropriate, and a violation of this chapter must be considered to be an irreparable injury for which no adequate remedy at law exists.

(b) If a person or entity seeking such relief prevails, he or it may be awarded reasonable attorney fees and other costs of litigation. If such person or entity prevails in part, the court may in its discretion award him or it reasonable attorney fees or an appropriate portion thereof.

The Plaintiff's Complaint in this matter was filed on or about April 17, 2007. The alleged FOIA violations contained in paragraphs 15, 16, 17, 27, 28, 29, 59, and 62 of the Plaintiff's Complaint all predate the Complaint by more than one year. Thus, I find that the alleged FOIA violations contained in the above mentioned are time barred by the provisions of S.C.Code Ann. §30-4-100 and are hereby dismissed with prejudice.

II. ALLEGED FOIA VIOLATIONS THAT ARE MOOT PER SLOAN.

The Plaintiff has asserted violations of the FOIA relating to the production of documents contained at Paragraphs 18, 19, 31, 32, 33, 35, 36, 37, 42, 49, 52, 59, and 64 of the Complaint. Based on my review of the Defendants' memorandum and supplement to their memorandum of law along with representations made by counsel, I find that the Defendants have produced the subject documents requested in the above paragraphs to the extent they are in

the Defendant's possession. In addition, I also find that while some of the FOIA requests were time barred, the Defendants nevertheless produced the documents. Our Supreme Court held in *Sloan v. Friends of Hunley, Inc.*, 369 S.C. 20, 630 S.E.2d 474 (2006) that [w]here the public records that were requested have been produced [to the requesting party], any claims for alleged prior violations under the FOIA are considered to be moot." Therefore, because I find that the documents requested in paragraphs, 18, 19, 31, 32, 33, 35, 36, 37, 42, 49, 52, 59, and 64 have been produced to the extent they are in the Defendant's possession, I find that the allegations contained in the above referenced Paragraphs are moot.

To the extent the Plaintiff has raised the issue, I find that the Defendants properly redacted public records in accordance with the applicable exemptions in the FOIA statute as well as other statutory exemptions. Some requested records (such as, but not limited to, the 911 CAD printouts and records of paragraph 59) are not considered public information under the Freedom of Information Act (See, e.g. S.C. Code Ann. §23-47-10 et seq), and are thus not subject to disclosure. In addition, many of these requested documents fall under the clear exemptions contained in the FOIA. Nevertheless, the Defendants redacted sensitive information and have produced such documents. Consequently, I find the Defendants have complied with the FOIA.

III. ALLEGED FOIA VIOLATIONS THAT ARE NOT REQUESTS FOR "PUBLIC RECORDS" AS DEFINED BY THE ACT.

With reference to the allegations contained at Paragraphs 34, 51, and 62 of the Complaint, the Defendants' maintain that production of these items are not

required under the FOIA as these are not requests for "public records" as defined by the FOIA. S.C.Code Ann. §30-4-20(c) requires a public body to produce to an FOIA requester a "public record" that is "prepared, owned, used, in the possession of, or retained" by that particular public body. The Plaintiff requested that the Defendants generate a list of deputy coroners (paragraph 34), requested for specification of public records which cannot be produced (paragraph 51), and requested the addition of computer voice time stamp be added to an audio recording which had previously been provided to the Plaintiffs (paragraph 62). I find that these requests are not "public records" in accordance with the FOIA. Consequently, no liability for these requests can arise, and these allegations are dismissed with prejudice.

IV. Implied Violations and Duties under the FOIA Asserted by the Plaintiff

The Plaintiff argues that in addition to the causes of action specifically set forth under the FOIA, there are other violations of the FOIA implied within the act. First, the Plaintiff has asserted there is a duty to restore or recover public records, including emails which have been "double deleted." Contrary to the Plaintiff's allegations, I find that there is no duty to "restore" public records as defined by the plain language of the FOIA. The plaintiff failed to point to any applicable case law or statute providing for such a duty under the FOIA, and the plain language of the FOIA statute does not mention a duty to restore public records. The Freedom of Information Act expressly sets forth what constitutes a

violation of the Act, and this court will not expand upon those specific mandates as drafted by the Legislature.

Similarly, the Plaintiff also argues that the Defendants are liable for the failure to produce public records over which the Defendants no longer exercise control or custody or possess. Again, the Plaintiff has provided and this Court can find no authority to support this proposition. Moreover, in *Kissinger v. Reporters Committee for the Freedom of The Press*, 445 U.S. 136, 100 S.Ct. 960, (1980) the United States Supreme Court found no violation of the FOIA where an agency that had been requested to produce the Nixon tapes did not produce them because it no longer exercised custody or possession of these tapes (as they had been transferred to the Department of Archives). I find that the Defendants in this case do not have a duty to produce those records which they no longer possess or exercise control or custody over.

The Plaintiff also argues that the Defendants owe a duty under the FOIA to "establish and develop standards, procedures, techniques and schedules designed to protect and preserve the public records." [See, e.g., Complaint P. 65]. While public policy would support this contention, the plain language of the FOIA does not require it as such. Again, this court will not read into the FOIA violations not specifically set forth therein. Consequently, I find that any alleged "violations" of the FOIA arising out of these alleged failures by the Defendants in the Complaint are hereby dismissed with prejudice.

V. Reasonableness of Beaufort County Sheriff's Office Fees for Copying

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The Plaintiff has asserted that the Beaufort County Sheriff's office charged the Plaintiff an amount for copies in excess of that amount provided pursuant to the FOIA." [Complaint, P. 53] S.C.Code Ann. §30-4-30 provides in relevant part that a public body,

"may establish and collect fees not to exceed the actual cost of searching for or making copies of records. Fees charged by a public body must be uniform for copies of the same record or document.... The records must be furnished at the lowest possible cost to the person requesting the records.... Nothing in this chapter prevents the custodian of the public records from charging a reasonable hourly rate for making records available to the public nor requiring a reasonable deposit of these costs before searching for or making copies of the records.

The Sheriff's office utilized the Beaufort County Code of Ordinances, Section 2-435 (Code 1982) to determine what fees to charge the Plaintiff. This Ordinance provided for uniform service charges for supplying copies of official records requested by individual citizens. Because the charges for fees by the Sheriff's office were made in accordance with a Beaufort county ordinance, I find they are reasonable and thus proper under the FOIA.

VI. Alleged FOIA violations argued by the Plaintiff but not raised in the Complaint.

Lastly, to the extent that the Plaintiff asserted (through affidavit, argument of counsel, or otherwise) additional violations of the FOIA which have not been specifically pled or alleged in his Complaint, I find that these issues are not properly before the Court. Consequently, this Court refuses to address those issues as the Plaintiff has not properly pled them nor sought amendment to his complaint.

CONCLUSION

For all of the foregoing reasons, I hereby GRANT Defendants Motion for Summary Judgment, and dismiss this case with prejudice.

IT IS SO ORDERED.

By: C. Mullen
Carmen Tevis Mullen
Judge, Fourteenth

Beaufort, South Carolina

February 13, 2009.

Mullen

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HOWELL, GIBSON AND HUGHES, P.A.
ATTORNEYS AT LAW

Post Office Box 40
Beaufort, South Carolina 29901-0040

JAMES S. GIBSON, JR.
STEPHEN P. HUGHES
PATRICK M. HIGGINS
ROBERT W. ACHURCH III
DAVID S. BLACK

25 RUE DU BOIS
LADY'S ISLAND
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TELEPHONE: 843 - 522-2400
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E-Mail: hghpa@islc.net
WRITER'S DIRECT: 843 - 522-2420

MARY BASS LOHR
THOMAS A. BENDLE, JR.
WILLIAM T. YOUNG III
JASON F. WARD

March 16, 2009

The Honorable Elizabeth M. Smith
Beaufort County Clerk of Court
Post Office Drawer 1128
Beaufort, SC 29901

Re: L. Paul Trask, Jr. vs. SC Department of Public Safety; Beaufort County;
Beaufort County Management Information Systems; Beaufort County
Coroner Curtis Copeland; Beaufort County Sheriff P.J. Tanner
Civil Action No.: 07-CP-07-995
Our File No: 10421 RWA

Dear Elizabeth:

Please find enclosed herewith for filing Order granting Defendants' Motion for Summary Judgment with regard to the above referenced matter. I would appreciate your filing the same and returning a filed clocked copy to me in the enclosed self-addressed, stamped envelope provided for your convenience.

With kindest regards, I am

Yours truly,

HOWELL, GIBSON AND HUGHES, P.A.

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Robert W. Achurch, III

RWAIll/wmh

Enclosures

cc: Thomas S. Tisdale, Jr., Esquire

1272

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT) CIVIL ACTION NO: 07-CP-07-995

L. PAUL TRASK, JR. Individually, as a)
Citizen, Resident, Taxpayer and)
Registered Elector of the State of)
South Carolina, and on behalf of)
others similarly situated,)

Plaintiff,)

vs.)

SOUTH CAROLINA DEPARTMENT)
OF PUBLIC SAFETY; BEAUFORT)
COUNTY; BEAUFORT COUNTY)
MANAGEMENT INFORMATION)
SYSTEMS; BEAUFORT COUNTY)
CORONER CURTIS COPELAND in)
his official capacity; BEAUFORT)
COUNTY SHERIFF P.J. TANNER in)
his official capacity,)

Defendants.)

ORDER GRANTING
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT

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The Plaintiff filed his Complaint in the Court of Common Pleas on April 17, 2007, alleging that the various Defendants, at various times, violated S.C. Code

1273

Ann. §30-4-10, also known as the "Freedom of Information Act" (hereinafter referred to as "FOIA"). The following are the dates and content of the requests as alleged in the Complaint:

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I. ALLEGED FOIA VIOLATIONS THAT ARE TIME BARRED BY STATUTE OF LIMITATIONS OF S.C. CODE ANN. §30-4-100

The Plaintiff has alleged numerous allegations relating to FOIA requests to these Defendants ranging in time from December 2005 to February 2007. S.C.

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Code Ann. § 30-4-100 S.C. Code Ann. §30-4-100, entitled "Injunctive relief; costs and attorney's fees", provides the following:

(a) Any citizen of the State may apply to the circuit court for either or both a declaratory judgment and injunctive relief to enforce the provisions of this chapter in appropriate cases as long as such application is made no later than one year following the date on which the alleged violation occurs or one year after a public vote in public session, whichever comes later. The court may order equitable relief as it considers appropriate, and a violation of this chapter must be considered to be an irreparable injury for which no adequate remedy at law exists.

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The Plaintiff's Complaint in this matter was filed on or about April 17, 2007. The alleged FOIA violations contained in paragraphs 15, 16, 17, 27, 28, 29, 59, and 62 of the Plaintiff's Complaint all predate the Complaint by more than one year. Thus, I find that the alleged FOIA violations contained in the above mentioned are time barred by the provisions of S.C. Code Ann. §30-4-100 and are hereby dismissed with prejudice.

II. ALLEGED FOIA VIOLATIONS THAT ARE MOOT PER SLOAN.

The Plaintiff has asserted violations of the FOIA relating to the production of documents contained at Paragraphs 18, 19, 31, 32, 33, 35, 36, 37, 42, 49, 52, 59, and 64 of the Complaint. Based on my review of the Defendants' memorandum and supplement to their memorandum of law along with representations made by counsel, I find that the Defendants have produced the subject documents requested in the above paragraphs to the extent they are in

the Defendant's possession. In addition, I also find that while some of the FOIA requests were time barred, the Defendants nevertheless produced the documents. Our Supreme Court held in *Sloan v. Friends of Hunley, Inc.*, 369 S.C. 20, 630 S.E.2d 474 (2006) that [w]here the public records that were requested have been produced [to the requesting party], any claims for alleged prior violations under the FOIA are considered to be moot." Therefore, because I find that the documents requested in paragraphs, 18, 19, 31, 32, 33, 35, 36, 37, 42, 49, 52, 59, and 64 have been produced to the extent they are in the Defendant's possession, I find that the allegations contained in the above referenced Paragraphs are moot.

To the extent the Plaintiff has raised the issue, I find that the Defendants properly redacted public records in accordance with the applicable exemptions in the FOIA statute as well as other statutory exemptions. Some requested records (such as, but not limited to, the 911 CAD printouts and records of paragraph 59) are not considered public information under the Freedom of Information Act (See, e.g. S.C. Code Ann. §23-47-10 et seq), and are thus not subject to disclosure. In addition, many of these requested documents fall under the clear exemptions contained in the FOIA. Nevertheless, the Defendants redacted sensitive information and have produced such documents. Consequently, I find the Defendants have complied with the FOIA.

III. ALLEGED FOIA VIOLATIONS THAT ARE NOT REQUESTS FOR "PUBLIC RECORDS" AS DEFINED BY THE ACT.

With reference to the allegations contained at Paragraphs 34, 51, and 62 of the Complaint, the Defendants' maintain that production of these items are not

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required under the FOIA as these are not requests for "public records" as defined by the FOIA. S.C.Code Ann. §30-4-20(c) requires a public body to produce to an FOIA requester a "public record" that is "prepared, owned, used, in the possession of, or retained" by that particular public body. The Plaintiff requested that the Defendants generate a list of deputy coroners (paragraph 34), requested for specification of public records which cannot be produced (paragraph 51), and requested the addition of computer voice time stamp be added to an audio recording which had previously been provided to the Plaintiffs (paragraph 62). I find that these requests are not "public records" in accordance with the FOIA. Consequently, no liability for these requests can arise, and these allegations are dismissed with prejudice.

IV. Implied Violations and Duties under the FOIA Asserted by the Plaintiff

The Plaintiff argues that in addition to the causes of action specifically set forth under the FOIA, there are other violations of the FOIA implied within the act. First, the Plaintiff has asserted there is a duty to restore or recover public records, including emails which have been "double deleted." Contrary to the Plaintiff's allegations, I find that there is no duty to "restore" public records as defined by the plain language of the FOIA. The plaintiff failed to point to any applicable case law or statute providing for such a duty under the FOIA, and the plain language of the FOIA statute does not mention a duty to restore public records. The Freedom of Information Act expressly sets forth what constitutes a

violation of the Act, and this court will not expand upon those specific mandates as drafted by the Legislature.

Similarly, the Plaintiff also argues that the Defendants are liable for the failure to produce public records over which the Defendants no longer exercise control or custody or possess. Again, the Plaintiff has provided and this Court can find no authority to support this proposition. Moreover, in *Kissinger v. Reporters Committee for the Freedom of The Press*, 445 U.S. 136, 100 S.Ct. 960, (1980) the United States Supreme Court found no violation of the FOIA where an agency that had been requested to produce the Nixon tapes did not produce them because it no longer exercised custody or possession of these tapes (as they had been transferred to the Department of Archives). I find that the Defendants in this case do not have a duty to produce those records which they no longer possess or exercise control or custody over.

The Plaintiff also argues that the Defendants owe a duty under the FOIA to "establish and develop standards, procedures, techniques and schedules designed to protect and preserve the public records." [See, e.g., Complaint P. 65]. While public policy would support this contention, the plain language of the FOIA does not require it as such. Again, this court will not read into the FOIA violations not specifically set forth therein. Consequently, I find that any alleged "violations" of the FOIA arising out of these alleged failures by the Defendants in the Complaint are hereby dismissed with prejudice.

V. Reasonableness of Beaufort County Sheriff's Office Fees for Copying

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The Plaintiff has asserted that the Beaufort County Sheriff's office charged the Plaintiff an amount for copies in excess of that amount provided pursuant to the FOIA." [Complaint, P. 53] S.C.Code Ann. §30-4-30 provides in relevant part that a public body,

"may establish and collect fees not to exceed the actual cost of searching for or making copies of records. Fees charged by a public body must be uniform for copies of the same record or document.... The records must be furnished at the lowest possible cost to the person requesting the records.... Nothing in this chapter prevents the custodian of the public records from charging a reasonable hourly rate for making records available to the public nor requiring a reasonable deposit of these costs before searching for or making copies of the records.

The Sheriff's office utilized the Beaufort County Code of Ordinances, Section 2-435 (Code 1982) to determine what fees to charge the Plaintiff. This Ordinance provided for uniform service charges for supplying copies of official records requested by individual citizens. Because the charges for fees by the Sheriff's office were made in accordance with a Beaufort county ordinance, I find they are reasonable and thus proper under the FOIA.

VI. Alleged FOIA violations argued by the Plaintiff but not raised in the Complaint.

Lastly, to the extent that the Plaintiff asserted (through affidavit, argument of counsel, or otherwise) additional violations of the FOIA which have not been specifically pled or alleged in his Complaint, I find that these issues are not properly before the Court. Consequently, this Court refuses to address those issues as the Plaintiff has not properly pled them nor sought amendment to his complaint.

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CONCLUSION

For all of the foregoing reasons, I hereby GRANT Defendants Motion for Summary Judgment, and dismiss this case with prejudice.

~~IT IS SO ORDERED.~~

By: C. Mullen
Carmen Tevis Mullen
Judge, Fourteenth

Beaufort, South Carolina

February 13, 2009.

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HOWELL, GIBSON AND HUGHES, P.A.
ATTORNEYS AT LAW

Post Office Box 40
Beaufort, South Carolina 29901-0040

JAMES S. GIBSON, JR.
STEPHEN P. HUGHES
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DAVID S. BLACK

25 RUE DU BOIS
LADY'S ISLAND
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TELEPHONE: 843 - 522-2400
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WRITER'S DIRECT: 843 - 522-2420

MARY BASS LOHR
THOMAS A. BENDLE, JR.
WILLIAM T. YOUNG, III
JASON F. WARD

March 16, 2009

VIA CERTIFIED MAIL

Corporation Service Company for T-Mobile
1703 Laurel Street
Columbia, SC 29201

Re: L. Paul Trask, Jr. vs. SC Department of Public Safety; Beaufort County;
Beaufort County Management Information Systems; Beaufort County
Coroner Curtis Copeland; Beaufort County Sheriff P.J. Tanner
Civil Action No.: 07-CP-07-995
Our File No.: 10421 RWA

Dear Sir or Madam:

Please find enclosed for service Motion for Release of Information which is scheduled to be heard on April 7, 2009 at 11:00 AM at the Beaufort County Courthouse, 100 Ribaut Road, Beaufort, South Carolina. This motion is being served upon you as the register agent of T-Mobile.

With kindest regards, I am

Yours truly,

HOWELL, GIBSON & HUGHES, P.A.

S/

Robert W. Achurch, III

RWAI/WMH
Enclosure

cc: Ladson F. Howell, Esquire
Thomas S. Tisdale, Jr., Esquire

1283

HOWELL, GIBSON AND HUGHES, P.A.
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Post Office Box 40
Beaufort, South Carolina 29901-0040

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MARY BASS LOHR
THOMAS A. BENDLE, JR.
WILLIAM T. YOUNG III
JASON F. WARD

WRITER'S DIRECT: 843 - 522-2420

March 16, 2009

VIA CERTIFIED MAIL

Corporation Service Company for
Triton PCS
1703 Laurel Street
Columbia, SC 29201

Re: L. Paul Trask, Jr. vs. SC Department of Public Safety; Beaufort County;
Beaufort County Management Information Systems; Beaufort County
Coroner Curtis Copeland; Beaufort County Sheriff P.J. Tanner
Civil Action No.: 07-CP-07-995
Our File No: 10421 RWA

Dear Sir or Madam:

Please find enclosed for service Motion for Release of Information scheduled to be heard on April 7, 2009 at 11:00 AM at the Beaufort County Courthouse, 100 Ribaut Road, Beaufort, South Carolina. This motion is being served upon you as the register agent of Triton PCS.

With kindest regards, I am

Yours truly,

HOWELL, GIBSON & HUGHES, P.A.

9/

Robert W. Achurch, III

RWAIll/wmh
Enclosure

cc: Ladson F. Howell, Esquire
Thomas S. Tisdale, Jr., Esquire

1284

HOWELL, GIBSON AND HUGHES, P.A.
ATTORNEYS AT LAW

Post Office Box 40
Beaufort, South Carolina 29901-0040

JAMES S. GIBSON, JR.
STEPHEN P. HUGHES
PATRICK M. HIGGINS
ROBERT W. ACHURCH III
DAVID S. BLACK

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E-Mail: hghpa@islc.net
WRITER'S DIRECT: 843 - 522-2420

MARY-BASS LOHR
THOMAS A. BENDLE, JR.
WILLIAM T. YOUNG III
JASON F. WARD

March 16, 2009

VIA CERTIFIED MAIL

CT Corporation System for
Sprint
75 Beattie Place
Greenville, SC 29601

Re: L. Paul Trask, Jr. vs. SC Department of Public Safety; Beaufort County;
Beaufort County Management Information Systems; Beaufort County
Coroner Curtis Copeland; Beaufort County Sheriff P.J. Tanner
Civil Action No.: 07-CP-07-995
Our File No: 10421 RWA

Dear Sir or Madam:

Please find enclosed for service Motion for Release of Information scheduled to be heard on April 7, 2009 at 11:00 AM at the Beaufort County Courthouse, 100 Ribaut Road, Beaufort, South Carolina. This motion is being served upon you as the register agent of Sprint.

With kindest regards, I am

Yours truly,

HOWELL, GIBSON & HUGHES, P.A.

91
Robert W. Achurch, III

RWAIll/wmh

Enclosure

cc: Ladson F. Howell, Esquire
Thomas S. Tisdale, Jr., Esquire

1285

HOWELL, GIBSON AND HUGHES, P.A.
ATTORNEYS AT LAW

Post Office Box 40
Beaufort, South Carolina 29901-0040

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WRITER'S DIRECT: 843 - 522-2420

MARY BASS LOHR
THOMAS A. BENDLE, JR.
WILLIAM T. YOUNG III
JASON F. WARD

March 16, 2009

VIA CERTIFIED MAIL

Corporation Service Company for
Cingular Wireless
1703 Laurel Street
Columbia, SC 29201

Re: L. Paul Trask, Jr. vs. SC Department of Public Safety; Beaufort County;
Beaufort County Management Information Systems; Beaufort County
Coroner Curtis Copeland; Beaufort County Sheriff P.J. Tanner
Civil Action No.: 07-CP-07-995
Our File No: 10421 RWA

Dear Sir or Madam:

Please find enclosed Motion for Release of information which is scheduled to be heard on April 7, 2009 at 11:00 AM at the Beaufort County Courthouse, 100 Ribaut Road, Beaufort, South Carolina. This motion is being served upon you as the register agent of Cingular Wireless.

With kindest regards, I am

Yours truly,

HOWELL, GIBSON & HUGHES, P.A.

91

Robert W. Achurch, III

RWAIII/wmh

Enclosure

cc: Ladson F. Howell, Esquire
Thomas S. Tisdale, Jr., Esquire

1286

HOWELL, GIBSON AND HUGHES, P.A.
ATTORNEYS AT LAW

Post Office Box 40
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DAVID S. BLACK

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LADY'S ISLAND
BEAUFORT, SOUTH CAROLINA 29907

TELEPHONE: 843 - 522-2400
FAX NUMBER: 843 - 522-2429

E-Mail: bghpa@islc.net
WRITER'S DIRECT: 843 - 522-2420

MARY BASS LOHR
THOMAS A. BENDLE, JR.
WILLIAM T. YOUNG III
JASON F. WARD

March 16, 2009

VIA CERTIFIED MAIL

CT Corporation System for
Verizon Wireless
75 Beattie Place
Greenville, SC 29601

Re: L. Paul Trask, Jr. vs. SC Department of Public Safety; Beaufort County;
Beaufort County Management Information Systems; Beaufort County
Coroner Curtis Copeland; Beaufort County Sheriff P.J. Tanner
Civil Action No.: 07-CP-07-995
Our File No: 10421 RWA

Dear Sir or Madam:

Please find enclosed Motion for Release of Information which is scheduled to be heard on April 7, 2009 at 11:00 AM at the Beaufort County Courthouse, 100 Ribaut Road, Beaufort, South Carolina. This motion is being served upon you as the registered agent of Verizon Wireless.

Please feels free to contact me in the event you have any questions concerning the requests herein.

With kindest regards, I am

Yours truly,

HOWELL, GIBSON & HUGHES, P.A.

[Signature]

Robert W. Achurch, III

RWAIII/wmh
Enclosure

cc: Ladson F. Howell, Esquire
Thomas S. Tisdale, Jr., Esquire

1287

HOWELL, GIBSON AND HUGHES, P.A.
ATTORNEYS AT LAW

Post Office Box 40
Beaufort, South Carolina 29901-0040

JAMES S. GIBSON, JR.
STEPHEN P. HUGHES
PATRICK M. HIGGINS
ROBERT W. ACHURCH III
DAVID S. BLACK

25 RUE DU BOIS
LADY'S ISLAND
BEAUFORT, SOUTH CAROLINA 29907

TELEPHONE: 843 - 522-2400
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E-Mail: hghpa@islc.net
WRITER'S DIRECT: 843 - 522-2420

MARY BASS LOHR
THOMAS A. BENDLE, JR.
WILLIAM T. YOUNG III
JASON F. WARD

March 16, 2009

VIA CERTIFIED MAIL

CT Corporation System for
Alltel
75 Beattie Place
Greenville, SC 29601

Re: L. Paul Trask, Jr. vs. SC Department of Public Safety; Beaufort County;
Beaufort County Management Information Systems; Beaufort County
Coroner Curtis Copeland; Beaufort County Sheriff P.J. Tanner
Civil Action No.: 07-CP-07-995
Our File No: 10421 RWA

Dear Sir or Madam:

Please find enclosed Motion for Release of Information which is scheduled to be heard on April 7, 2009 at 11:00 AM at the Beaufort County Courthouse, 100 Ribaut Road, Beaufort, South Carolina. This motion is being served upon you as the Register Agent of Alltel.

Please feel free to contact me in the event that you have any questions concerning the requests herein.

With kindest regards, I am

Yours truly,

HOWELL, GIBSON AND HUGHES, P.A.

3/

Robert W. Achurch, III

RWAIII/wmh

Enclosure

cc: Ladson F. Howell, Esquire
Thomas S. Tisdale, Jr., Esquire

1288

HOWELL, GIBSON AND HUGHES, P.A.
ATTORNEYS AT LAW

Post Office Box 40
Beaufort, South Carolina 29901-0040

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MARY BASS LOHR
THOMAS A. BENDLE, JR.
WILLIAM T. YOUNG III
JASON F. WARD

March 16, 2009

VIA CERTIFIED MAIL

William W. Jones, Jr., Esquire for Hargray
Jones, Patterson, Simpson & Newton, P.A.
Post Office Box 7049
Hilton Head Island, SC 29938

Re: L. Paul Trask, Jr. vs. SC Department of Public Safety; Beaufort County;
Beaufort County Management Information Systems; Beaufort County
Coroner Curtis Copeland; Beaufort County Sheriff P.J. Tanner
Civil Action No.: 07-CP-07-995
Our File No: 10421 RWA

Dear Wes:

Please find enclosed for service Motion for Release of Information which is scheduled to be heard on April 7, 2009 at 11:00 AM at the Beaufort County Courthouse, 100 Ribaut Road, Beaufort, South Carolina. This motion is being served upon you as the registered agent of Hargray.

With kindest regards, I am

Yours truly,

HOWELL, GIBSON & HUGHES, P.A.

5/

Robert W. Achurch, III

RWAIII/wmh
Enclosure

cc: Ladson F. Howell, Esquire
Thomas S. Tisdale, Jr., Esquire

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HOWELL, GIBSON AND HUGHES, P.A.
ATTORNEYS AT LAW

Post Office Box 40
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JAMES S. GIBSON, JR.
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TELEPHONE: 843 - 522-2400
FAX NUMBER: 843 - 522-2429
E-Mail: hghpa@islc.net
WRITER'S DIRECT: 843 - 522-2420

March 23, 2009

Thomas S. Tisdale, Jr., Esquire
Nexsen, Pruet, Jacobs & Pollard, L.L.P.
Post Office Box 486
Charleston, SC 29402

Re: L. Paul Trask, Jr. vs. SC Department of Public Safety; Beaufort County;
Beaufort County Management Information Systems; Beaufort County
Coroner Curtis Copeland; Beaufort County Sheriff P.J. Tanner
Civil Action No: 07-CP-07-995
Our File No: 10421 RWA

Dear Tom:

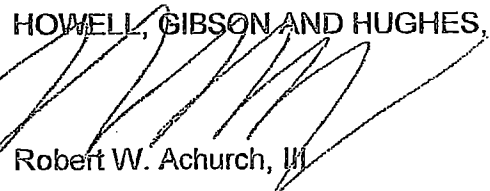
Please find enclosed herein for service upon you the Order granting Defendants' Motion for Summary Judgment on behalf of South Carolina Department of Public Safety; Beaufort County Management Information Systems; Beaufort County Coroner Curtis Copeland; and Beaufort County Sheriff P.J. Tanner, in connection with the above captioned matter.

If you should have any questions regarding this matter, please feel free to contact me.

With kindest regards, I am

Yours truly,

HOWELL, GIBSON AND HUGHES, P.A.



Robert W. Achurch, III

RWAI/WMH
Enclosure

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STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

) IN THE COURT OF COMMON PLEAS

)

) CIVIL ACTION NO: 07-CP-07-995

L. PAUL TRASK, JR. Individually, as a)
Citizen, Resident, Taxpayer and)
Registered Elector of the State of)
South Carolina, and on behalf of)
others similarly situated,)

Plaintiff,)

vs.)

SOUTH CAROLINA DEPARTMENT)
OF PUBLIC SAFETY; BEAUFORT)
COUNTY; BEAUFORT COUNTY)
MANAGEMENT INFORMATION)
SYSTEMS; BEAUFORT COUNTY)
CORONER CURTIS COPELAND in)
his official capacity; BEAUFORT)
COUNTY SHERIFF P.J. TANNER in)
his official capacity,)

Defendants.)

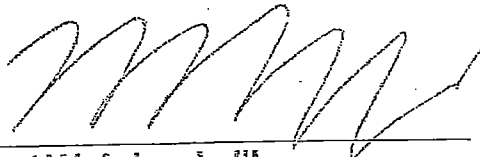
CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that he has served the foregoing Order granting Defendants' Motion for Summary Judgment upon all counsel of record by affixing same with proper postage and placing same with the United States Postal Service on 23 day of March, 2009 addressed to the following:

Thomas S. Tisdale, Jr., Esquire
Nexsen, Pruet, Jacobs & Pollard, L.L.P.
Post Office Box 486
Charleston, SC 29402

1253

HOWELL, GIBSON & HUGHES, P.A.

By: 

Robert W. Achurch, III
Post Office Box 40
Beaufort, SC 29901
(843) 522-2400
Attorney for Defendants

Beaufort, South Carolina

March 23, 2009

1294

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HOWELL, GIBSON AND HUGHES, P.A.
ATTORNEYS AT LAW

Post Office Box 40
Beaufort, South Carolina 29901-0040

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STEPHEN P. HUGHES
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ROBERT W. ACHURCH III
DAVID S. BLACK

25 RUE DU BOIS
LADY'S ISLAND
BEAUFORT, SOUTH CAROLINA 29907

TELEPHONE: 843 - 522-2400
FAX NUMBER: 843 - 522-2429
E-Mail: hghpa@jstc.net
WRITER'S DIRECT: 843 - 522-2420

MARY BASS LOHR
THOMAS A. BENDLE, JR.
WILLIAM T. YOUNG III
JASON F. WARD

April 7, 2009

VIA E-MAIL TRANSMISSION ONLY

The Honorable Carmen Tevis Mullen
Fourteenth Judicial Circuit
Beaufort County Court of Common Pleas
Post Office Box 1128
Beaufort, SC 29901

Re: L. Paul Trask, Jr. vs. SC Department of Public Safety; Beaufort County;
Beaufort County Management Information Systems; Beaufort County
Coroner Curtis Copeland; Beaufort County Sheriff P.J. Tanner
Civil Action No.: 07-CP-07-995
Our File No: 10421 RWA

Dear Judge Mullen:

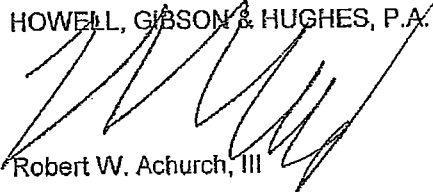
I enclose herewith for your review and approval an original of the proposed Order pursuant to Motion for Release of Information. In the event that you find the same in order, please execute the original and return the same to me in the enclosed envelope provided for your convenience. I will see that the document is properly filed with the Clerk of Court and served on all appropriate parties.

Please do not hesitate to contact me in the event you should require additions or corrections to the document or in the event you have any other questions or comments concerning the enclosures.

With kindest regards, I am

Yours truly,

HOWELL, GIBSON & HUGHES, P.A.


Robert W. Achurch, III

RWAIH/wmh
Enclosures

cc: Ladson F. Howell, Esquire
Thomas S. Tisdale, Jr., Esquire

1296

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

) IN THE COURT OF COMMON PLEAS
)
) CIVIL ACTION NO: 07-CP-07-995

L. PAUL TRASK, JR. Individually, as a
Citizen, Resident, Taxpayer and
Registered Elector of the State of
South Carolina, and on behalf of
others similarly situated,

Plaintiff,

vs.

SOUTH CAROLINA DEPARTMENT
OF PUBLIC SAFETY; BEAUFORT
COUNTY; BEAUFORT COUNTY
MANAGEMENT INFORMATION
SYSTEMS; BEAUFORT COUNTY
CORONER CURTIS COPELAND in
his official capacity; BEAUFORT
COUNTY SHERIFF P.J. TANNER in
his official capacity,

Defendants.

ORDER

This came to be heard before me on motion of the Defendant Beaufort County pursuant to a Motion for Release of Information to disclose that certain 911 printout, in un-redacted form, which was generated on November 21-22, 2005 and in the possession of Beaufort County.

Appearing on behalf of the Defendants was attorney Robert W. Achurch, III of Howell, Gibson and Hughes, PA and Ladson F. Howell of Beaufort County. No one appeared on behalf of the Plaintiff.

Notice was provided to each of the 911 providers to Beaufort County, including Alltel, Verizon Wireless, Hargray, Cingular Wireless, Sprint, Triton PCS

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and T Mobile through their register agents of service. A copy of the letters of service and signed receipt for each is attached herewith and made a part hereof and are referred to collectively as **Exhibit A**.

No representative or counsel appeared on behalf of Alltel, Verizon Wireless, Hargray, Cingular Wireless, Sprint, Triton PCS or T Mobile.

Beaufort County seeks this order so it may disclose the requested 911 printout in un-redacted form pursuant to a request of L. Paul Trask, Jr. Said printout is not producible pursuant to S.C. Code Section 23-47-75 which specifically exempts said information from disclosure pursuant to the Freedom of Information Act. In addition to S.C. Code Section 23-47-75, Beaufort County is prohibited by agreement from producing requested 911 information without a court order.

I find that the Plaintiff's motive for requesting and reviewing the un-redacted 911 printout is unrelated to any business or venture that may be in competition with such telephone communication company and the disclosure of the information requested presents no harm or liability to the 911 providers, Alltel, Verizon Wireless, Hargray, Cingular Wireless, Sprint, Triton PCS or T Mobile.

Therefore, on motion of Beaufort County, and without objection from the 911 providers and for reasons set forth above, I do hereby grant the Defendants' Motion for Release of Information of the 911 printout in un-redacted form to L. Paul Trask, Jr.

1298

LET IT BE ORDERED, ADJUDGED AND DECREED

IT IS SO ORDERED.

By: _____
Carmen Tevis Mullen
Judge, Fourteenth Judicial Circuit

_____, South Carolina

April _____, 2009

1295

HOWELL, GIBSON AND HUGHES, P.A.
ATTORNEYS AT LAW

Post Office Box 40
Beaufort, South Carolina 29901-0040

JAMES S. GIBSON, JR.
STEPHEN F. HUGHES
PATRICK M. HIGGINS
ROBERT W. ACHURCH III
DAVID S. BLACK

25 RUE DU BOIS
LADY'S ISLAND
BEAUFORT, SOUTH CAROLINA 29907

TELEPHONE: 843-522-2400
FAX NUMBER: 843-522-2429
E-Mail: hghps@gsic.net
WRITER'S DIRECT: 843-522-2428

MARY BASS LOHR
THOMAS A. BENDLE, JR.
WILLIAM T. YOUNG III
JASON F. WARD

March 16, 2009

VIA CERTIFIED MAIL
CT Corporation System for
Airtel
75 Beattie Place
Greenville, SC 29601

Re: L. Paul Trask, Jr. vs. SC Department of Public Safety; Beaufort County;
Beaufort County Management Information Systems; Beaufort County
Coroner Curtis Copeland; Beaufort County Sheriff P.J. Tanner
Civil Action No.: 07-CP-07-995
Our File No: 10421 RWA

Dear Sir or Madam:

Please find enclosed Motion for Release of Information which is scheduled to be heard on April 7, 2009 at 11:00 AM at the Beaufort County Courthouse, 100 Ribaut Road, Beaufort, South Carolina. This motion is being served upon you as the Register Agent of Airtel.

Please feel free to contact me in the event that you have any questions concerning the requests herein.

With kindest regards, I am

Yours truly,

HOWELL, GIBSON AND HUGHES

Robert W. Achurch, III

RWAlII/vmh
Enclosure

cc: Ladson F. Howell, Esq.
Thomas S. Tisdale, Esq.

SENDER: COMPLETE THIS SECTION

- ☒ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- ☒ Print your name and address on the reverse so that we can return the card to you.
- ☒ Attach this card to the back of the mailpiece or on the front if space permits.

1. Article Addressed to:

CT Corporation System
Sprint
75 Beattie Place
Greenville, SC
1300 29601

2. Article Number
(Transfer from service label)

7007 2560 0000 6510 8287

PS Form 3811, February 2004

Domestic Return Receipt

102535-02

COMPLETE THIS SECTION ON DELIVERY

A. Signature

Charles E. McDonald, Jr.

☐ Agent
☐ Addressee

2. Received by (Printed Name)

CT Corporation System

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

EXHIBIT A

HOWELL, GIBSON AND HUGHES, P.A.
ATTORNEYS AT LAW

Post Office Box 40
Beaufort, South Carolina 29901-0040

JAMES S. GIBSON, JR.
STEPHEN P. HUGHES
PATRICK M. HIGGINS
ROBERT W. ACHURCH III
DAVID S. BLACK

MARY RASS LOHR
THOMAS A. BENDLE, JR.
WILLIAM T. YOUNG III
JASON F. WARD

25 RUE DU BOIS
LADY'S ISLAND
BEAUFORT, SOUTH CAROLINA 29907

TELEPHONE: 843-522-2400
FAX NUMBER: 843-522-2429
E-Mail: hg@hga.com
WRITER'S DIRECT: 843-522-2420

March 16, 2009

VIA CERTIFIED MAIL
CT Corporation System for
Verizon Wireless
75 Beattie Place
Greenville, SC 29601

Re: L. Paul Trask, Jr. vs. SC Department of Public Safety; Beaufort County;
Beaufort County Management Information Systems; Beaufort County
Coroner Curtis Copeland; Beaufort County Sheriff P.J. Tanner
Civil Action No.: 07-CP-07-995
Our File No: 10421 RWA

Dear Sir or Madam:

Please find enclosed Motion for Release of Information which is scheduled to be heard on April 7, 2009 at 11:00 AM at the Beaufort County Courthouse, 100 Ribaut Road, Beaufort, South Carolina. This motion is being served upon you as the registered agent of Verizon Wireless.

Please feel free to contact me in the event you have any questions concerning the requests herein.

With kindest regards, I am

Yours truly,

HOWELL, GIBSON & HUGHES

Robert W. Achurch, III

RWAIII/wmh
Enclosure

cc: Ladson F. Howell,
Thomas S. Tisdale

SENDER COMPLETE THIS SECTION

- ☒ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- ☒ Print your name and address on the reverse so that we can return this card to you.
- ☒ Attach this card to the back of the mailpiece or on the front if space permits.

1. Article Addressed to:

CT Corporation System
Airtel
75 Beattie Place
Greenville, SC 29601

2. Article Number

(Transfer from service label)

PS Form 3811, February 2004

COMPLETE THIS SECTION ON DELIVERY

A. Signature

Charles McDonald, Jr.

Special Assistant Secretary
CT Corporation System

☐ Agent

☐ Addressee

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below. ☐ No

3. Service Type

☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

7007 2560 0000 6510 8300

Domestic Return Receipt

#10421

102538-02-M-1

HOWELL, GIBSON AND HUGHES, P.A.
ATTORNEYS AT LAW

Post Office Box 40
Beaufort, South Carolina 29901-0040

JAMES S. GIBSON, JR.
STEPHEN P. HUGHES
PATRICK M. HIGGINS
ROBERT W. ACHURCH III
DAVID S. BLACK

MARY BASS LOHR
THOMAS A. BENDLE, JR.
WILLIAM T. YOUNG III
JASON F. WARD

25 RUE DU BOIS
LADY'S ISLAND
BEAUFORT, SOUTH CAROLINA 29907

TELEPHONE: 843-522-2400
FAX NUMBER: 843-522-2429
E-Mail: hgapa@islc.net
WRITER'S DIRECT: 843-522-2430

March 16, 2009

VIA CERTIFIED MAIL

William W. Jones, Jr., Esquire for Hargray
Jones, Patterson, Simpson & Newton, P.A.
Post Office Box 7049
Hilton Head Island, SC 29938

Re: L. Paul Trask, Jr. vs. SC Department of Public Safety; Beaufort County;
Beaufort County Management Information Systems; Beaufort County
Coroner Curtis Copeland; Beaufort County Sheriff P.J. Tanner
Civil Action No.: 07-CP-07-995
Our File No: 10421 RWA

Dear Wes:

Please find enclosed for service Motion for Release of Information which is scheduled to be heard on April 7, 2009 at 11:00 AM at the Beaufort County Courthouse, 100 Ribaut Road, Beaufort, South Carolina. This motion is being served upon you as the registered agent of Hargray.

With kindest regards, I am

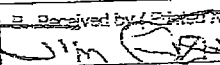
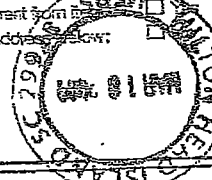
Yours truly,

HOWELL, GIBSON & HUGHES

Robert W. Achurch, III

RWAIII/wmh
Enclosure

cc: Ladson F. Howell,
Thomas S. Tisdale

SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY	
☒ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.	A. Signature 	☐ Agent
☒ Print your name and address on the reverse so that we can return the card to you.	B. Received by (Print Name) 	☐ Address
☒ Attach this card to the back of the mailpiece, or on the front if space permits.	C. Date of Delivery 	☐ Data of Delivery
1. Article Addressed to: William W. Jones, Jr. Jones, Patterson, Simpson & Newton, P.A. PO Box 7049 Hilton Head, SC 29938	D. Is delivery address different from that on the envelope? If YES, enter delivery address below:	☐ Is delivery address different from that on the envelope? If YES, enter delivery address below:
2. Article Number (Transfer from service label) 7007 2560 0000 6510 8348	3. Service Type ☒ Certified Mail ☐ Express Mail ☐ Registered ☐ Return Receipt for Merchandise ☐ Insured Mail ☐ C.O.D.	☐ Restricted Delivery? (Extra Fee) ☐ Yes
PS Form 3811, February 2004 Domestic Return Receipt #10421 102555-01		

HOWELL, GIBSON AND HUGHES, P.A.
ATTORNEYS AT LAW

Post Office Box 40
Beaufort, South Carolina 29901-0040

JAMES S. GIBSON, JR.
STEPHEN P. HUGHES
PATRICK M. HIGGINS
ROBERT W. ACHURCH III
DAVID S. BLACK

MARY BASS LOHR
THOMAS A. BENDLE, JR.
WILLIAM T. YOUNG III
JASON F. WARD

25 RUE DU BOIS
LADY'S ISLAND
BEAUFORT, SOUTH CAROLINA 29907

TELEPHONE: 843-522-2400
FAX NUMBER: 843-522-2429
E-Mail: hgtpa@isc.net
WRITER'S DIRECT: 843-522-2420

March 16, 2009

VIA CERTIFIED MAIL

Corporation Service Company for
Cingular Wireless
1703 Laurel Street
Columbia, SC 29201

Re: L. Paul Trask, Jr. vs. SC Department of Public Safety; Beaufort County;
Beaufort County Management Information Systems; Beaufort County
Coroner Curtis Copeland; Beaufort County Sheriff P.J. Tanner
Civil Action No.: 07-CP-07-995
Our File No: 10421 RWA

Dear Sir or Madam:

Please find enclosed Motion for Release of information which is scheduled to be heard
on April 7, 2009 at 11:00 AM at the Beaufort County Courthouse, 100 Ribaut Road,
Beaufort, South Carolina. This motion is being served upon you as the register agent of
Cingular Wireless.

With kindest regards, I am

Yours truly,

HOWELL, GIBSON & I

Robert W. Achurch, III

RWAIII/wmh

Enclosure

cc: Ladson F. Howe
Thomas S. Tisdale

SENDER: COMPLETE THIS SECTION

- ☒ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- ☒ Print your name and address on the reverse so that we can return the card to you.
- ☒ Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Corporation Service CO
Cingular Wireless
1703 Laurel Street
Columbia, SC 29201

2. Article Number
(Transfer from service label)

PS Form 3811, February 2004

COMPLETE THIS SECTION ON DELIVERY

A. Signature ☒ Agent ☐ Addressee

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes ☒ No
If YES, enter delivery address below:

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

7007 2560 0000 6510 8317

Domestic Return Receipt

102555-02-1

HOWELL, GIBSON AND HUGHES, P.A.
ATTORNEYS AT LAW

Post Office Box 40
Beaufort, South Carolina 29901-0040

JAMES S. GIBSON, JR.
STEPHEN P. HUGHES
PATRICK M. HUGGINS
ROBERT W. ACHURCH III
DAVID S. BLACK

MARY BASS LOFFER
THOMAS A. BENDLE, JR.
WILLIAM T. YOUNG III
JASON F. WARD

25 RUE DU BOIS
LADY'S ISLAND
BEAUFORT, SOUTH CAROLINA 29907

TELEPHONE: 843-522-2400
FAX NUMBER: 843-522-2429
E-Mail: hgibson@islc.net
WRITER'S DIRECT: 843-522-2420

March 16, 2009

VIA CERTIFIED MAIL

CT Corporation System for
Sprint
75 Beattie Place
Greenville, SC 29601

Re: L. Paul Trask, Jr. vs. SC Department of Public Safety; Beaufort County;
Beaufort County Management Information Systems; Beaufort County
Coroner Curtis Copeland; Beaufort County Sheriff P.J. Tanner
Civil Action No.: 07-CP-07-995
Our File No: 10421 RWA

Dear Sir or Madam:

Please find enclosed for service Motion for Release of Information scheduled to be heard on April 7, 2009 at 11:00 AM at the Beaufort County Courthouse, 100 Ribaut Road, Beaufort, South Carolina. This motion is being served upon you as the register agent of Sprint.

With kindest regards, I am

Yours truly,

HOWELL, GIBSON & HUGHES P.A.

Robert W. Achurch, III

RWAIII/wmh
Enclosure

cc: Ladson F. How
Thomas S. Tisc

SENDER - COMPLETE THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
☒ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. ☒ Print your name and address on the reverse so that we can return the card to you. ☒ Attach this card to the back of the mailpiece or on the front if space permits.		A. Signature Charles E. McDonald, Jr. Special Assistant Secretary CT Corporation System	
1. Article Addressed to: CT Corporation System Verizon Wireless 75 Beattie Place Greenville, SC 29601 1304		C. Date of Delivery MAR 16 2009	
2. Article Number (Transfer from service label) 7007 2560 0000 4510 8355		D. Is delivery address different from item 1? ☐ Yes If YES, enter delivery address below: ☐ No	
3. Service Type ☒ Certified Mail ☐ Express Mail ☐ Registered ☐ Return Receipt for Merchandise ☐ Insured Mail ☐ C.O.D.		4. Restricted Delivery? (Extra Fee) ☐ Yes	

PS Form 3811, February 2004 Domestic Return Receipt

HOWELL, GIBSON AND HUGHES, P.A.
ATTORNEYS AT LAW

Post Office Box 40
Beaufort, South Carolina 29901-0040

JAMES S. GIBSON, JR.
STEPHEN P. HUGHES
PATRICK M. HIGGINS
ROBERT W. ACHURCH III
DAVID S. BLACK

MARY BASS LOHR
THOMAS A. BENDLE, JR.
WILLIAM T. YOUNG III
JASON F. WARD

25 RUE DU BOIS
LADY'S ISLAND
BEAUFORT, SOUTH CAROLINA 29907

TELEPHONE: 843-522-2490
FAX NUMBER: 843-522-2429
E-Mail: hgibson@isc.net
WRITER'S DIRECT: 843-522-2420

March 16, 2009

VIA CERTIFIED MAIL

Corporation Service Company for
Triton PCS
1703 Laurel Street
Columbia, SC 29201

Re: L. Paul Trask, Jr. vs. SC Department of Public Safety; Beaufort County;
Beaufort County Management Information Systems; Beaufort County
Coroner Curtis Copeland; Beaufort County Sheriff P.J. Tanner
Civil Action No.: 07-CP-07-895
Our File No: 10421 RWA

Dear Sir or Madam:

Please find enclosed for service Motion for Release of Information scheduled to be heard on April 7, 2009 at 11:00 AM at the Beaufort County Courthouse, 100 Ribaut Road, Beaufort, South Carolina. This motion is being served upon you as the register agent of Triton PCS.

With kindest regards, I am

Yours truly,

HOWELL, GIBSON & HUGHES P.A.

Robert W. Achurch, III

RWAlII/wmh

Enclosure

cc: Ladson F. Howell, Corporation Service Co
Thomas S. Tisdale T-Mobile

1. Article Addressed to:

1703 Laurel Street
Columbia, SC 29201
1305

2. Article Number

(Transfer from service label)

7007 2560 0000 6510 8324

PS Form 3811, February 2004

Domestic Return Receipt #10421

102595-02-1

SENDER: COMPLETE THIS SECTION

- ☐ Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- ☐ Print your name and address on the reverse so that we can return this card to you.
- ☐ Attach this card to the back of the mailpiece, or on the front if space permits.

COMPLETE THIS SECTION ON DELIVERY

- A. Signature ☐ Agent ☐ Addressee
[Signature]
- B. Received by (Printed Name) *[Signature]*
- C. Date of Delivery *3/18/09*
- D. Is delivery address different from item 1? ☐ Yes ☐ No
If YES, enter delivery address below:

- 3. Service Type
☐ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

- 4. Restricted Delivery? (Extra Fee) ☐ Yes

HOWELL, GIBSON AND HUGHES, P.A.
ATTORNEYS AT LAW

Post Office Box 40
Beaufort, South Carolina 29901-0040

JAMES S. GIBSON, JR.
STEPHEN P. HUGHES
PATRICK M. HIGGINS
ROBERT W. ACHURCH III
DAVID S. BLACK

MARY BASS LOHR
THOMAS A. BENDLE, JR.
WILLIAM T. YOUNG III
JASON F. WARD

25 RUE DU BOIS
LADYS ISLAND
BEAUFORT, SOUTH CAROLINA 29907

TELEPHONE: 843 - 522-2400
FAX NUMBER: 843 - 522-2429
E-Mail: hghgs@isic.net
WRITER'S DIRECT: 843 - 522-2429

March 16, 2009

VIA CERTIFIED MAIL

Corporation Service Company for T-Mobile
1703 Laurel Street
Columbia, SC 29201

Re: L. Paul Trask, Jr. vs. SC Department of Public Safety; Beaufort County;
Beaufort County Management Information Systems; Beaufort County
Coroner Curtis Copeland; Beaufort County Sheriff P.J. Tanner
Civil Action No.: 07-CP-07-995
Our File No: 10421 RWA

Dear Sir or Madam:

Please find enclosed for service Motion for Release of Information which is
scheduled to be heard on April 7, 2009 at 11:00 AM at the Beaufort County
Courthouse, 100 Ribaut Road, Beaufort, South Carolina. This motion is being
served upon you as the register agent of T-Mobile.

With kindest regards, I am

Yours truly,

HOWELL, GIBSON

Robert W. Achurch

RWAIII/wmh
Enclosure

cc: Ladson F. H
Thomas S. I

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Corporation Service
Company - T-Mobile
1703 Laurel Street
Columbia, SC
29201

2. Article Number

(Transfer from service label)

7007 2550 0000 6530 8294

COMPLETE THIS SECTION ON DELIVERY

A. Signature ☒ Agent
[Signature] ☐ Addressee

B. Received by (Printed Name) *[Signature]* C. Date of Delivery *3/18/09*

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type
☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee) ☐ Yes

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1307

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS

L. Paul Trask, Jr., et.c.

☒ Plaintiff

CASE NO.

2009 APR -7 PM 3:10 07-CP-07-995

v.

South Carolina Department of Public Safety, et al.

☐ DefendantBEAUFORT MOTION AND ORDER INFORMATION
CLERK OF COURT FORM AND COVER SHEET
BEAUFORT, S.C.

Plaintiff's Attorney:

Stephen P. Groves, Sr., Bar No. 7854

Address:

PO Box 486, Charleston, SC 29402

phone: 843-577-9440 fax: 843-720-1777

e-mail: ttisdale@nexsenpruet.com other:

Defendant's Attorney:

Robert W. Achurch. Bar No.

Address:

P. O. Box 40, Beaufort, SC 29901-0040

Phone (843) 522-2400 fax: (843) 522-2429

e-mail: hghpa@islc.net other:

- ☒ **MOTION HEARING REQUESTED** (attach written motion and complete SECTIONS I and III)
☐ **FORM MOTION, NO HEARING REQUESTED** (complete SECTIONS II and III)
☐ **PROPOSED ORDER/CONSENT ORDER** (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion for Reconsideration

Estimated Time Needed: 1 hour.

Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached☐ Form Motion/Order

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

Signature of Attorney for ☒ Plaintiff / ☐ Defendant

April 3, 2009

Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT: \$25.00

- ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

☐ Other:

JUDGE'S SECTION

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

JUDGE

CODE: _____ Date: _____

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

☐ MOTION FEE COLLECTED: _____☐ CONTESTED - AMOUNT DUE: _____

STATE OF SOUTH CAROLINA)

COURT OF COMMON PLEAS

COUNTY OF BEAUFORT)

14th JUDICIAL CIRCUIT

CASE NO.: 2007-CP-07-0995

2009 APR -7 PM 3:10

L. PAUL TRASK, JR.,
Individually, as a Citizen,
Resident, Taxpayer, and
Registered Elector of the State
of South Carolina, and on
behalf of others similarly
situated,

BEAUFORT COUNTY
CLERK OF COURT
BEAUFORT, S.C.

Plaintiffs,

vs.

ND
1
SOUTH CAROLINA
DEPARTMENT OF PUBLIC
SAFETY; BEAUFORT COUNTY;
BEAUFORT COUNTY
MANAGEMENT INFORMATION
SYSTEMS; BEAUFORT
COUNTY CORONER CURTIS
COPELAND in his Official
Capacity; and BEAUFORT
COUNTY SHERIFF
P. J. TANNER in his Official
Capacity,

Defendants.

**PLAINTIFF'S MOTION
FOR RECONSIDERATION
TO AMEND COURT'S
FINDINGS, AND TO
ALTER OR AMEND
COURT'S JUDGMENT**

COMES NOW the Plaintiff, L. Paul Trask, Jr., Individually, as a
Citizen, Resident, Taxpayer, and Registered Elector of the State of South
Carolina, and on behalf of others similarly situated ("Mr. Trask"), pursuant

to Rules 52(b) and 59(e) of the South Carolina Rules of Civil Procedure, and respectfully requests this Circuit Court to reconsider its Order Granting Defendants' Motion for Summary Judgment (the "Order") dated March 13, 2008, and filed with the Office of the Beaufort County Clerk of Court on March 18, 2009.¹ Mr. Trask states the Order, which must be reversed, is based upon improper legal grounds and is not factually supported by the record before this Circuit Court. Moreover, this Circuit Court should grant Mr. Trask summary judgment against all of the Defendants.

ND
2/1
This motion seeking to have this Trial Court reverse the summary judgment granted herein to the Defendants, South Carolina Department of Public Safety ("SCDPS"); Beaufort County; Beaufort County Management Information Systems ("BC-MIS"); Beaufort County Coroner Curtis Copeland in his official capacity ("Coroner Copeland"); Beaufort County Sheriff P. J. Tanner in his official capacity ("Sheriff Tanner"), and, in turn, grant Mr. Trask summary judgment against the Defendants is made upon the following grounds:

¹ A copy of this Circuit Court's Order dated March 13, 2009, is attached hereto as Exhibit "A" and incorporated herein by reference. Mr. Trask's counsel received the filed and executed order on March 24, 2009.

1. Production of Public Documents in Compliance with FOIA

This Trial Court incorrectly concluded the Defendants had complied with all requests for information/documentation made by Mr. Trask pursuant to the South Carolina Freedom of Information Act, as codified in S.C. Code Ann. §§ 30-4-10, et seq., (the "FOIA") which are at issue in this case.² A review of the record demonstrates Mr. Trask, and not the Defendants, was entitled to summary judgment on several of the FOIA violations for which the Defendants can raise no genuine disputes of fact.³ For example, and without limitation:

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² The Defendants provided Mr. Trask's counsel with Gwen Duhon's file and a Privilege Log via U.S. Mail on December 18, 2008. See Letter from Jason F. Ward, Esquire to Thomas S. Tisdale, Jr., Esquire dated December 17, 2008 (the "12/17/2008 Ward Letter"). A copy of the 12/17/2008 Ward Letter is attached hereto as Exhibit "B" and incorporated herein by reference. This was apparently in response to Mr. Trask's **November 16, 2007**, Request for Production of Documents. The documents were finally produced some 12 months later. Additionally, Mr. Trask made a FOIA request for the toxicology reports on **February 5, 2007**. On December 19, 2008, the Defendants provided Mr. Trask's counsel with requested toxicology reports via hand delivery. See Letter from Jason F. Ward, Esquire to Thomas S. Tisdale, Jr., Esquire dated December 19, 2008 (the "12/19/2008 Ward Letter"). A copy of the 12/19/2008 Ward Letter is attached hereto as Exhibit "C" and incorporated herein by reference. Mr. Trask made a FOIA request for the toxicology reports on **February 5, 2007**. The documents were finally produced some 22 months later.

This Circuit Court held its hearing to consider the Defendants' Motion for Summary Judgment on December 19, 2008. Mr. Trask's counsel had very little, if any meaningful opportunity to review the December 18, 2008, documents, much less the documents hand delivered on December 19, 2008, prior to that hearing. For that reason alone this Circuit Court should vacate its order and hold another hearing to address the summary judgment.

³ See Affidavit of L. Paul Trask, Jr., dated November 4, 2008 (the "Trask Affidavit"). A copy of the Trask Affidavit was previously filed in this case. Additionally, a

ND
F

Mr. Trask made a FOIA request on February 2, 2007 (the "2/2/2007 FOIA Request")⁴ to William Winn of the Beaufort County Emergency Management Department (the "BC-EMD") requesting, among other public documents, "a copy of the written operational procedures for the Beaufort County 911 system". The BC-EMD unquestionably failed to respond to the 2/2/2007 FOIA Request within the statutory allotted 15 business days.⁵ Therefore, the 2/2/2007 FOIA Request was deemed approved.⁶ However, the requested public records - written operating procedures for the Beaufort County 911 system - were neither furnished nor made available for copying, despite the fact these public records were specifically referenced in files which the Defendants ultimately produced on December 18, 2008.⁷ BC-EMD failed to produce any of the requested records pursuant to the 2/2/2007 FOIA Request.⁸

copy of the Trask Affidavit is attached hereto as Exhibit "D" and incorporated herein by reference. See also Supplemental Affidavit of L. Paul Trask, Jr. dated January 27, 2009 (the "Supplemental Trask Affidavit"). A copy of the Supplemental Trask Affidavit was previously filed in this case. Additionally, a copy of the Supplemental Trask Affidavit is attached hereto as Exhibit "E" and incorporated herein by reference.

⁴ See Trask Affidavit, para. 1 under the heading Beaufort County Emergency Management Division; Supplemental Trask Affidavit, para. 13(d).

⁵ Trask Supplemental Affidavit, para. 13(d).

⁶ See S. C. Code Ann. § 30-4-30(c).

⁷ See Letter from Thomas S. Tisdale, Jr., Esquire to the Honorable Carmen T. Mullen, Circuit Court Judge, dated February 6, 2009 (the "Tisdale 2/6/2009 Letter"). A copy of the 2/6/2009 Tisdale Letter is attached hereto as Exhibit "F" and incorporated herein by reference.

⁸ Trask Supplemental Affidavit, para. 13(d).

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There can be no dispute (i) Mr. Trask made the 2/2/2007 FOIA Request on February 2, 2007, (ii) the Defendants failed to respond to the 2/2/2007 FOIA Request, (iii) the Defendants failed to provide the responsive public records even after the statutory 15-day deadline had expired, (iv) this FOIA violation was specifically alleged in Mr. Trask's Complaint, and (v) Mr. Trask's Complaint was filed within one year of the violation. Contrary to the clear evidence, this Circuit Court's Order erroneously concluded the Defendants had produced the documents responsive to the 2/2/2007 FOIA Request, and therefore, the issue was moot.⁹ However, there is no evidence in the record to suggest either BC-EMD or any other of the Defendants ever produced the written operational procedures for the Beaufort County 911 system. In fact, the evidence in the record shows BC-EMD actually prepared draft responses to 2/2/2007 FOIA Request but never sent them to Mr. Trask's counsel.

The evidence also shows Mr. William Winn provided false testimony regarding the 2/2/2007 FOIA Request. Mr. Winn testified, by affidavit under oath, that "[He] also received Mr. Trask's February 2, 2007 FOIA request regarding the operational procedures for the 911 system and [Mr. Winn] affirm[ed] there are none' to give [Mr. Trask] because there [wa]s no consolidated or written procedure for 911 because the

911 system [wa]s owned by a multitude of companies.”¹⁰

Notwithstanding these allegedly truthful assertions, Mr. Trask’s counsel recently received a copy of a *Table of Contents for Beaufort County Communications Standard Operating Procedures*, which included a listing for the **operating procedures for the 911 system**.¹¹ This Table of Contents flatly contradicts Mr. Winn’s sworn testimony.

NP
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As noted, on or about **February 16, 2009**, over two years after the original 2/2/2007 FOIA Request, Beaufort County (via Ladson F. Howell, Esquire) **finally** produced the Table of Contents from the *Beaufort County Communications Policy & Procedures Manual*, as well as, one operating procedure. This production was, however, in response to a new FOIA request dated February 2, 2009 (the “2/2/2009 FOIA Request”) and apparently somehow not in response to the original 2/2/2007 FOIA Request.¹²

¹⁰ See Affidavit of William Winn, Jr., dated December 9, 2008, and previously filed with this Circuit Court.

¹¹ See Letter from Ladson F. Howell, Esquire to L. Paul Trask, Jr., dated February 16, 2009 (the “2/16/2009 Howell Letter”). A copy of the 2/16/2009 Howell Letter is attached hereto as **Exhibit “G”** and incorporated herein by reference.

¹² This production, first requested over 24 months ago, plainly demonstrated the existence of the documents and flatly contradicted Mr. Winn’s sworn testimony that such **written procedures did not exist**.

Moreover, on or about **March 9, 2009**,¹³ Attorney Howell recently produced an additional FIFTEEN separate 911 operating procedures.¹⁴ This is, of course, 15 additional operating procedures bearing issue dates and/or revision dates from August 1, 1992, through April 14, 2008, which the Defendants have long asserted did not exist in the first instance. Furthermore, this production was in response to two new FOIA requests dated February 25, 2009 (the "2/25/2009 FOIA Requests") and, again, apparently somehow not in response to the original 2/2/2007 FOIA Request.

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Both the **February 16, 2009**, and the **March 9, 2009**, BC-EMD document productions, again both first requested over 24 months previously, plainly demonstrated the long-time existence of the documents at issue. Moreover, these document production flatly contradict Mr. Winn's sworn testimony (presented to this Circuit Court) stating such written procedures did not exist.

¹³ Additionally, Attorney Howell also produced, inter alia, the CVDS Log for the time of the accident which should have been provided response to the original 2/2/2007 FOIA Request.

¹⁴ See Memorandum from Ladson F. Howell, Esquire to L. Paul Trask, Jr., dated March 9, 2009 (the "3/9/2009 Howell Memo."). A copy of the 3/9/2009 Howell Memo. is attached hereto as Exhibit "H" and incorporated herein by reference.

Most importantly, production of these 911 standard operating procedures more than 2 years after the 2/2/2007 FOIA Request was made and some 20 months after this litigation was filed cannot, in any way, shape, or form, be reasonably construed by any of the Defendants or by this Circuit Court under any circumstances as a lawful response pursuant to FOIA.

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The Defendants have had possession and control of the requested documents all along and simply rejected, failed, declined, and/or refused to provide them even though they were subject to disclosure under FOIA. The Defendants have not provided any explanation for their disregard of their legal obligation under the plain and unambiguous FOIA provisions. The Defendants should not and, indeed, cannot be granted summary judgment under FOIA. The Defendants have clearly violated several FOIA provisions and this Circuit Court must not permit this blatant statutory disrespect. .

At the very minimum, the Defendants' other FOIA violations described in the Trask Supplemental Affidavit demonstrate, at the very least, factual disputes clearly exist as to whether the Defendants complied with the FOIA regarding Mr. Trask's numerous FOIA requests as described therein.

2. Destruction of Public Documents

This Trial Court

incorrectly concluded the Defendants' admitted destruction of public documents does not constitute a FOIA violation. This Trial Court's reliance on Kissinger v. Reporters Committee for Freedom of the Press,¹⁵ is inapposite, because in Kissinger, the requested documents had already been transferred from one public body to another public body at the time that the FOIA requests at issue were delivered.

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In this case, the Order makes no findings concerning whether the SCDPS, Beaufort County, BC-MIS, Coroner Copeland, and/or Sheriff Tanner had actual possession and/or control of the requested documents at the time Mr. Trask made his FOIA requests. As in Office of Governor v. Washington Post Co.,¹⁶ which distinguished Kissinger v. Reporters Committee for Freedom of the Press on the basis that Supreme Court's interpretation of the federal FOIA statute therein referred to "agency records", while the FOIA statute at issue Office of Governor v. Washington Post Co. deals with "public records." Consequently, the Maryland Court's rationale in Office of Governor v. Washington Post Co. applies in this case:

¹⁵ Kissinger v. Reporters Committee for Freedom of the Press, 445 U.S. 136 (1980)

¹⁶ Office of Governor v. Washington Post Co., 360 Md. 520, 759 A.2d 249 (Md. 2000).

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Unlike the Federal [FOIA] Act, there is no statutory language or legislative history suggesting that any unit of the Maryland Government is exempt from the Public Information Act's coverage. The grounds for the Supreme Court's interpretation of the Federal Act in Kissinger v. Reporters Committee for Freedom of the Press . . . do not exist with regard to the Maryland [FOIA] Act. On the contrary, the cases interpreting the Maryland Act have broadly construed the terms "public record" and "instrumentality of the State government." The offices of the Governor and his staff in the State House and Shaw House in Annapolis, as well as their offices in Baltimore and Washington, are clearly encompassed by the statutory language "unit or instrumentality of the State government." ¹⁷

3. Duty to Maintain Public Records This Trial Court incorrectly ignored precedent from other jurisdictions holding that public bodies have a duty to maintain public records under FOIA. In Walloon Lake Water Systems, Inc. v. Melrose Township,¹⁸ the Michigan Supreme Court found the Michigan FOIA implied a duty to "preserve and maintain [records requested through the act] until access has been provided or a

¹⁷ Office of Governor v. Washington Post Co., 360 Md. 520, 536, 759 A.2d 249, 258.

¹⁸ Walloon Lake Water Systems, Inc. v. Melrose Township, 163 Mich. App.

court executes an order finding the record to be exempt from disclosure.”¹⁹
This ruling imposes a duty under Michigan’s FOIA to preserve and not to
destroy records once a FOIA request has been made.²⁰ Likewise, this
Circuit Court should impose the same implied duty under South Carolina’s
FOIA to ensure all of the underlying legislative purposes of the FOIA are
carried out.

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4. Actual Production of Documents This Trial Court
incorrectly applied Sloan v. Friends of the Hunley, Inc.,²¹ to the instant
case, because in Sloan v. Friends of the Hunley, Inc., the plaintiff conceded
the requested documents had been produced. Mr. Trask has not made
any such concessions here, but has raised genuine disputes of material
fact as to whether the Defendants have actually produced the requested
documents. Consequently, this Circuit Court’s decision that the disputes
arising because of Mr. Trask’s FOIA requests were moot is inaccurate and
inappropriate in this case.

726, 415 N.W.2d 292 (1987).

¹⁹ Walloon Lake Water Systems, Inc. v. Melrose Township, 163 Mich. App.
726, 731, 415 N.W.2d 292, 294.

²⁰ Walloon Lake Water Systems, Inc. v. Melrose Township, 163 Mich. App.
726, 731, 415 N.W.2d 292, 294.

²¹ Sloan v. Friends of the Hunley, Inc., 369 S.C. 20, 630 S.E.2d 474 (2006).

5. Lack of Mootness This Trial Court incorrectly failed to apply the two primary exceptions to the mootness doctrine, 1) when the issue raised is capable of repetition, yet evading review, and 2) when the question considers matters of important public interest.²² Both exceptions apply in this case. This is particularly true in light of the admissions as follows:

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- a. By Robert Bromage ("Captain Bromage") and Michael W. Hatfield ("Chief Hatfield") that they routinely double deleted all of their e-mails, even when the e-mails concerned Beaufort County official business activities. (*Bromage Depo.*, p.27, line 2 – p.31, line 21; *Hatfield Depo.*, p.34, line 16 – p.35, line 17).²³
 - b. The SCDPS admitted (1) it had no policy whatsoever regarding the retention of e-mail traffic generated in the course of official governmental actions, (2) double deletion of e-mail was not addressed or prohibited, and, in essence, (3) the

²² Curtis v. State of South Carolina, 345 S.C. 557, 568, 549 S.E.2d 591, 596 (2001).

²³ See Deposition of Captain Robert Bromage sworn to on June 30, 2008 (the "Bromage Depo."). Copies of the relevant pages of the Bromage Depo. are attached hereto as Exhibit "I" and incorporated herein by reference. See also Deposition of Michael W. Hatfield sworn to on June 27, 2008 (the "Hatfield Depo."). Copies of the relevant pages of the Hatfield Depo. are attached hereto as Exhibit "J" and incorporated herein by reference.

"retention" of official e-mail or any e-mail was left up to the individual user involved with the particular e-mail. (*Langley Depo.*, p.24, line 18 – p.42, line 11).²⁴

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- c. In March 2009, the Defendants filed with this Circuit Court a *Motion for Release of Information* seeking judicial permission/approval "to release and disclose that certain 911 printout, in unredacted form, which occurred on November 21-22, 2005, as such printout relates to that certain automobile accident which resulted in the death of . . . L. Paul Trask, III."²⁵

6. **Statutory Exemptions** The Trial Court incorrectly ruled some of Mr. Trask's FOIA requests were subject to statutory exemptions, however, this Circuit Court failed to specify the applicable exemptions in the Order. Moreover, none of the Defendants made any showing whatsoever of any attempt to separate allegedly exempt material from non-

²⁴ See Deposition of Barry Langley sworn to on January 7, 2009 (the "Langley Depo."). Copies of the relevant pages of the Langley Depo. are attached hereto as Exhibit "K" and incorporated herein by reference.

²⁵ See Motion for Release of Information dated March , 2009 and filed with the Beaufort County Court of Common Pleas (the "Information Release Motion"). A copy of the Information Release Motion is attached hereto as Exhibit "L" and incorporated herein by reference. The motion is scheduled to be heard on April 7, 2009.

exempt material as required by the FOIA. At a minimum, genuine disputes of material fact exist between Mr. Trask and the Defendants as to whether any of the Defendants appropriately raised any exemptions to the FOIA.

7. Failure to Timely Initiate Litigation This Trial Court incorrectly granted summary judgment to the Defendants on the ground Mr. Trask failed to timely bring his claims for the Defendants' numerous FOIA violations. The only evidence in the record shows Mr. Trask brought his claims within one year of the FOIA violations at issue. To the extent Mr. Trask made certain FOIA requests were made initially more than one year prior to the filing of the Complaint, Mr. Trask's claims are equitably tolled since one or more of the Defendants induced Mr. Trask into believing the requested public records would be produced without the necessity of a lawsuit.²⁶

Moreover, it is not unreasonable to postulate the Defendants made these assurances and representations to Mr. Trask concerning their forthcoming document production solely with the intent to "lull" Mr. Trask

²⁶ See, e.g., Hopkins v. Floyd's Wholesale, 299 S.C. 127, 129, 382 S.E.2d 907, 908 (1989) (determining the statute of limitations is tolled for a workers' compensation claim during a reliance period).

into a false sense of security so that the one-year time period would run prior to him asserting his claims in court.

8. Statute of Limitations This Trial Court incorrectly granted summary judgment to the Defendants on the ground Mr. Trask failed to timely bring his claims for FOIA violations. The evidence clearly shows the Defendants are estopped from claiming application of the statute of limitations as a defense since Mr. Trask's delay in bringing the action was clearly induced by Defendants' conduct.²⁷ This Trial Court completely ignored the undisputed evidence one or more of the Defendants repeatedly assured Mr. Trask they would produce all available documents responsive to his FOIA requests, even though the Defendant's individual and collective actions demonstrated they never intended to do so.

Moreover, it is not unreasonable to postulate the Defendants made these assurances and representations to Mr. Trask concerning their forthcoming document production solely with the intent to "lull" Mr. Trask into a false sense of security so that the one-year time period would run prior to him asserting his claims in court.

²⁷ Wiggins v. Edwards, 314 S.C. 126, 130, 442 S.E.2d 169, 171 (1994).

9. Beyond the Definition of "Public Records" This Trial Court erroneously ruled certain of Mr. Trask's FOIA requests did not constitute requests for the production of "public records" as defined by the FOIA.

10. Discovery Not Completed This Trial Court incorrectly and prematurely granted summary judgment to the Defendants where:

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- (a) Mr. Trask's discovery directed to the other parties had not yet been completed,
 - (b) Mr. Trask's December 9, 2008, Motion to Compel certain discovery responses (filed on December 15, 2008) was still outstanding and had not yet been considered/ruled upon by this Circuit Court;
 - (c) Mr. Trask's December 15, 2008 Petition for Rule to Show Cause (filed on December 17, 2008) was still outstanding and had not yet been considered/ruled upon by this Circuit Court; and
 - (d) Mr. Trask's October 23, 2008, Motion for Summary Judgment (filed October 24, 2008) was still outstanding and had not yet been considered and/or ruled upon by this Circuit Court.

11. Reasonable Copying Fees

This Trial Court incorrectly ruled the Beaufort County Sheriff's Office charged Mr. Trask reasonable copying fees when there was a genuine dispute of material fact as to the reasonableness of the fees. Beaufort County had an established fee schedule (*Operating Procedure 22-3*) setting forth a cost of \$0.05 per page for printing costs and \$14.00 per hour for research and/or documents gathering time. The Defendants overwhelmingly failed to not comply with this established and set fee schedule by charging Mr. Trask (for the limited documents actually produced) costs substantially in excess of those which would have been charged under the set schedule. In fact, the Defendants generally asserted the "customary" copying fee for documents produced under the FOIA was \$0.25 per page - five times the scheduled set amount.

12. Allegedly Non-Specific FOIA Violations

This Trial Court incorrectly granted summary judgment to the Defendants on certain of Mr. Trask's FOIA violations which had not specifically been alleged in the Complaint, without affording Mr. Trask the opportunity to amend his Complaint to include such violations.

13. Award of Attorneys' Fees Under FOIA This Trial Court incorrectly failed to provide a ruling on Mr. Trask's request for attorneys' fees incurred due to the Defendants' repeated, consistent, and admitted FOIA violations. (*Trask Affidavit*, pp.1-7 with attachments; *Trask Supplemental Affidavit*, pp.1-6 with attachments; *Bromage Depo.*, p.27, line 2 – p.31, line 21; *Hatfield Depo.*, p.34, line 16 – p.35, line 17; *Langley Depo.*, p.24, line 18 – p.42, line 11).

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14. Mr. Trask's Outstanding Motions This Trial Court incorrectly failed to provide a ruling on the following motions previously filed by Mr. Trask and which were outstanding and as yet unconsidered as of the date of the Order:

- (a) Mr. Trask's October 23, 2008, Motion for Summary Judgment (filed October 24, 2008).
- (b) Mr. Trask's December 9, 2008, Motion to Compel certain discovery responses (filed on December 15, 2008); and
- (c) Mr. Trask's December 15, 2008 Petition for Rule to Show Cause (filed on December 17, 2008).

Unfortunately, since this Circuit Court has dismissed this matter with prejudice, it has effectively divested itself of jurisdiction to hear any matter concerned with this litigation except for reconsidering its prior order.

Without saying so, this Circuit Court has denied Mr. Trask the opportunity to argue his own Motion for Summary Judgment, to present evidence demonstrating the fact the Defendants failed to cooperate in discovery, and to present evidence demonstrating the fact the Defendants failed to abide by and comply with this Circuit Court's order directing their discovery compliance.

15. The Defendants' Continuing Violation of the South Carolina Public Records Act This Trial Court has completely ignored the Defendants' past and continuing violation of the South Carolina Public Records Act (the "SCPRA").²⁸ As a practical matter, if this Circuit Court does not enforce the terms of the SCPRA against the Defendants then the Defendants will continue to flaunt their, at best, piecemeal and reluctant compliance with the FOIA. In fact, without adherence with the SCPRA, then a governmental body cannot effectively comply with the FOIA.

The SCPRA requires and mandates all governmental entities, whether state, regional, local, municipal, quasi-governmental, or otherwise, to establish a "records management program directed to the application of efficient and economical management methods and relating to the creation,

²⁸ See S.C. Code Ann. §§ 30-1-10, et seq. (Thomson/West 2006).

utilization, maintenance, retention, preservation, and disposal of public records”²⁹ The “chief administrative officer of any agency or subdivision or any public body in charge of public records or creating, filing, or keeping public records is the legal custodian of [those] records and is responsible for carrying out the duties and responsibilities of [the SCPRA] assigned to public agencies, bodies, offices, or subdivisions.”³⁰

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Furthermore, the SCPRA requires the “head of each [governmental] agency, the governing body of each subdivision, and every public records custodian [to] cooperate with the [South Carolina Department of] Archives [and History] in complying with the provisions of [the SCPRA] and to establish and maintain an active, continuing program for the economical and efficient management of the records of the agency or subdivision.”³¹ In complying with the SCPRA, the Defendants were all

²⁹ See S.C. Code Ann. § 30-1-80 (Thomson/West 2006). The SCPRA applies to “any department of the State, any state board, commission, agency, and authority, any public or governmental body or political subdivision of the State, including counties, municipalities, townships, school districts, and special purpose districts, or any organization, corporation, or agency supported in whole or in part by public funds or expending public funds, including committees, subcommittees, advisory committees, and the like of any such body by whatever name known, and includes any quasi-governmental body of the State and its political subdivisions” See S.C. Code Ann. § 30-1-80(B) (Thomson/West 2006).

³⁰ See S.C. Code Ann. § 30-1-20 (Thomson/West 2006). The chief administrative officer is authorized to “appoint a records officer to act on his [or her] behalf.” S.C. Code Ann. § 30-1-20.

³¹ See S.C. Code Ann. § 30-1-80 (Thomson/West 2006) (Emphasis added).

required to establish[] records schedules mandating a time period for the retention of each series of records.”³² Failure to comply with the SCPRA constitutes a criminal violation.³³

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The record contains substantial evidence demonstrating the Defendants, especially when concerning office business e-mail traffic, either do not have a records retention policy of any type whatsoever or the existing policy does not prevent the deletion and/or double deletion of business related e-mails generated in the normal course of governmental business (whether on governmentally purchased or privately-owned computers). (*Bromage Depo.*, p.27, line 2 – p.31, line 21; *Hatfield Depo.*, p.34, line 16 – p.35, line 17; *Langley Depo.*, p.24, line 18 – p.42, line 11). Overall, most of the Defendants do not have any meaningful public records retention policies and, if one does exist, it does not address or take into consideration present day electronic communication methods.

This Circuit Court must require the Defendants to comply with the SCPRA in order for the Defendant to be able to meaningfully comply with the FOIA.

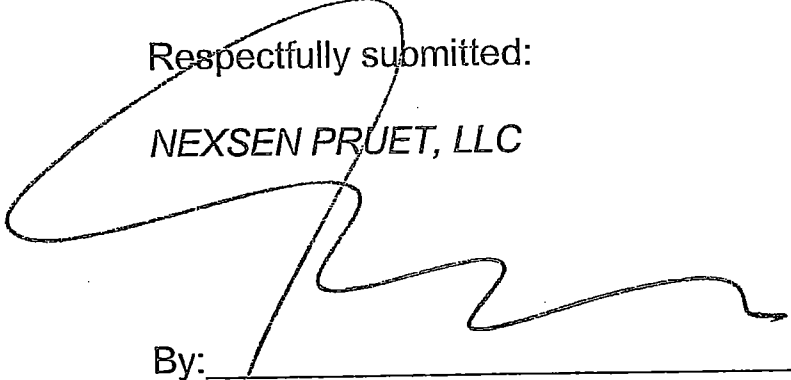
³² See S.C. Code Ann. § 30-1-90(A) (Thomson/West 2006).

³³ See S.C. Code Ann. § 30-1-140 (Thomson/West 2006).

In conclusion, Mr. Trask respectfully requests, at a minimum, this Circuit Court to reverse its prior order granting the Defendants summary judgment and permit this action to proceed to trial. In the alternative, Mr. Trask respectfully requests this Circuit Court to grant him summary judgment on all claims asserted against the Defendants.

Respectfully submitted:

NEXSEN PRUET, LLC

By: 

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Attorneys for the Plaintiffs

Charleston, South Carolina

April 3, 2009

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

COURT OF COMMON PLEAS
14th JUDICIAL CIRCUIT
CASE NO.: 2007-CP-07-0995

L. PAUL TRASK, JR.,)
Individually, as a Citizen,)
Resident, Taxpayer, and)
Registered Elector of the State)
of South Carolina, and on)
behalf of others similarly)
situated,)

Plaintiffs,)

vs.)

SOUTH CAROLINA)
DEPARTMENT OF PUBLIC)
SAFETY; BEAUFORT COUNTY;)
BEAUFORT COUNTY)
MANAGEMENT INFORMATION)
SYSTEMS; BEAUFORT)
COUNTY CORONER CURTIS)
COPELAND in his Official)
Capacity; and BEAUFORT)
COUNTY SHERIFF)
P. J. TANNER in his Official)
Capacity,)

Defendants.)

**PLAINTIFF'S MOTION
FOR RECONSIDERATION
TO AMEND COURT'S
FINDINGS, AND TO
ALTER OR AMEND
COURT'S JUDGMENT**

Certificate of Mailing

I, Stephen P. Groves, Sr., Esquire hereby certify a copy of the

DEFENDANTS' JOINT MOTION FOR RECONSIDERATION, TO AMEND

COURT'S FINDINGS, AN TO ALTER OR AMEND COURT'S JUDGMENT

has been served upon the Trial Judge and all counsel of record by placing the same in the United States mail, first class postage prepaid, addressed to the following as shown below this 3rd day of April 2009:

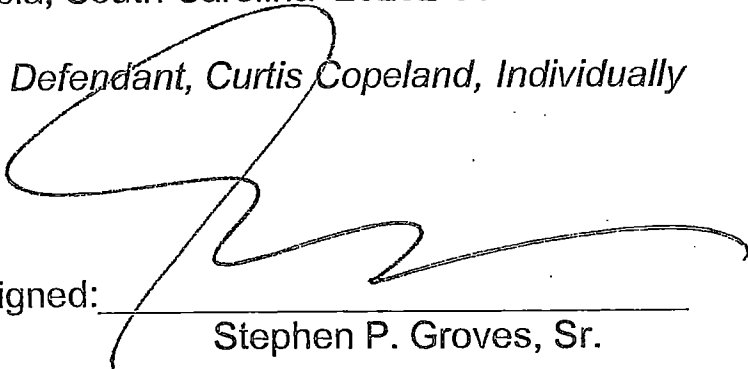
The Honorable Carmen Tevis Mullen
Circuit Court Judge
Fourteenth Judicial Circuit
Post Office Box 1128
Beaufort, South Carolina 29901

Robert W. Achurch, III, Esquire
Howell, Gibson & Hughes, PA
Post Office Box 40
Beaufort, South Carolina 29901-0040

*Attorneys for the Defendants, South Carolina Department of Public Safety;
Beaufort County; Beaufort County Management Information Systems;
Beaufort County Coroner Curtis Copeland in his official capacity, and
Beaufort County Sheriff P. J. Tanner in his official capacity*

William Davidson, Esquire
DAVIDSON & LINDEMANN, PA
Post Office Box 8568
Columbia, South Carolina 29202-8568

Attorney for the Defendant, Curtis Copeland, Individually

Signed: 

Stephen P. Groves, Sr.

Charleston, South Carolina
April 3, 2009

NPCHAR1:472051.1-MO-(SPG) 038981-00002

NPCHAR1:472051.1-MO-(SPG) 038981-00002
Motion for Reconsideration, etc.
April 3, 2009
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(HAND DELIVERED)

April 29, 2009

Hon. Carmen Tevis Mullen
Judge, Fourteenth Judicial Circuit
Beaufort County Court of Common Pleas
Post Office Box 1128
Beaufort, SC 29901

Re: L. Paul Trask, Jr. vs. SC Department of Public Safety; Beaufort County;
Beaufort County Management Information Systems; Beaufort County
Coroner Curtis Copeland; Beaufort County Sheriff P.J. Tanner
Civil Action No.: 07-CP-07-995

Dear Judge Mullen:

Please find enclosed herewith, the Defendants' Reply to Plaintiff's Motion for Reconsideration with regard to the above referenced matter. I also enclose herewith for your review and approval a proposed Order the Plaintiff's Motion for Reconsideration. In the event that you find the same in order, please execute the original and return the same to me in the enclosed envelope provided for your convenience. I will see that the document is properly filed with the Clerk of Court and served on all appropriate parties.

Please do not hesitate to contact me in the event you should require additions or corrections to the document or in the event you have any other questions or comments concerning the enclosures.

With kindest regards, I am

Yours truly,

HOWELL, GIBSON & HUGHES, P.A.

SI

Jason F. Ward
JFW/kah
Enclosure(s)

✓ cc: Thomas S. Tisdale, Jr. (w/o enclosures)

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT) CIVIL ACTION NO: 07-CP-07-995

L. PAUL TRASK, JR. Individually, as a)
Citizen, Resident, Taxpayer and)
Registered Elector of the State of)
South Carolina, and on behalf of)
others similarly situated,)

Plaintiff,)

vs.)

SOUTH CAROLINA DEPARTMENT)
OF PUBLIC SAFETY; BEAUFORT)
COUNTY; BEAUFORT COUNTY)
MANAGEMENT INFORMATION)
SYSTEMS; BEAUFORT COUNTY)
CORONER CURTIS COPELAND in)
his official capacity; BEAUFORT)
COUNTY SHERIFF P.J. TANNER in)
his official capacity,)

Defendants.)

DEFENDANTS REPLY TO
PLAINTIFF'S MOTION FOR
RECONSIDERATION TO
AMEND COURT'S FINDINGS,
AND TO ALTER OR AMEND
COURT'S JUDGMENT

This matter comes before the Court on the motion of the Plaintiff for the Court to reconsider its prior granting of Summary Judgment in favor of the Defendants. Defendants submit this Reply to the Court in order to provide a clear, factual, and legal basis for the affirmance of the Court's prior grant of summary judgment in this case. [Order granting Summary Judgment, attached hereto as EXHIBIT A]. The Plaintiff withdrew his Motion for Summary Judgment at the hearing

1. Production of Public Documents in Compliance with FOIA.

The Plaintiff argues in his Motion that the Court incorrectly concluded that the Defendants had complied with all of the Plaintiff's FOIA requests. In support of this

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contention, the Plaintiff points to only one alleged FOIA violation – Mr. Trask's February 2, 2007 request for written operational procedures for the Beaufort County 911 system. [Plaintiff's 2/2/07 FOIA Request, attached hereto as Exhibit B] The Plaintiff argues that (1) because no response was provided as to this request, the request was deemed approved; that (2) Mr. Winn provided false testimony regarding existence of written operational procedures; and (3) that the recent production of fifteen Communications Policy and Procedure documents demonstrates "the long time existence of the documents at issue." (Plaintiff's Motion for Reconsideration, P.5-7)

S.C. Code Ann. §30-4-30(c) provides the following:

Each public body, upon written request for records made under this chapter, shall within **fifteen days** (excepting Saturdays, Sundays, and legal public holidays) of the receipt of any such request **notify the person making such request of its determination and the reasons therefor.** Such a determination shall constitute the final opinion of the public body as to the public availability of the requested public record and, if the request is granted, the record must be furnished or made available for inspection or copying. If written notification of the determination of the public body as to the availability of the requested public record is neither mailed nor personally delivered to the person requesting the document within the fifteen days allowed herein, the request must be considered approved.

As to the Plaintiff's first contention, the Defendants notified Mr. Trask within fifteen days of February 2 (here, February 23, 2007) of its determination regarding his 2/2/07 FOIA request. [See Email of Kelly Golden, dated February 23, 2007; Bates Stamped PLTF 0154; Attached hereto as EXHIBIT C; See Also Letter of Kelly Golden to Mr. Trask, dated February 23, 2007, with Table of Contents; Attached hereto as Exhibit D; Bates Stamped PLTF 0158] Because a response was provided to Mr. Trask within

fifteen business days, the Defendants have fully complied with the requirements of the FOIA.

Mr. Winn, in his affidavit dated December 9, 2008, affirmed that he, "received Mr. Trask's February 2, 2007 FOIA request regarding the operational procedures for the 911 system and ... that there are none to give him because there is no consolidated or written procedure for 911 because the 911 system is owned by a multitude of companies." [Affidavit of William Winn, attached hereto as EXHIBIT E] This statement was true when he made it, and remains true to this day. There is no written or consolidated, "Beaufort County 911 Operating procedure" for the 911 system; rather various private telephone providers maintain what the Plaintiff refers to as the Beaufort County "911 system". Each has its own "operating procedure for the Beaufort County 911 system"; Beaufort County does not have such a document.

The only documents that have been produced recently to the Plaintiff are fifteen "procedures" from the Beaufort County *Communications Policy & Procedure* Manual [Attached hereto as Exhibit F]. The Plaintiff did not request *this* manual, or any procedures from this Communications manual; rather, he requested (in 2007) the, "written operational procedures for the Beaufort County 911 system." For example, the documents which were produced recently, for example, range from communications center employment procedures (Procedure #1-0) and Communications center security (Procedure #5-0) to an outline of the rules and regulations for employees taking breaks and mealwhile on duty (Procedure #22-4). There are CAD procedures (Procedure #7-2) and procedures for filling out employee evaluations (Procedure #17-0); but again, there is no "written operating procedure for the Beaufort County 911 system".

The Plaintiff continues to characterize this recent response as the "911 operating procedures", but as has been stated many times before, there is no such document. What has been provided is everything the County could think of which might be responsive to his most recent FOIA request; not the "written operational procedures for the Beaufort County 911 system" as requested in 2007.

For all of the foregoing reasons, the Order granting summary judgment should be affirmed.

2. Destruction of Public Documents

As stated by the Court in its Order, there is no express or implied duty owed to the Plaintiff in the Freedom of Information Act to restore or preserve public records. Consequently, no liability may attach for the failure to do something which the law does not require.

3. Duty to maintain Public Records

As the Court held in its prior order, there is no express or implied duty owed specifically to the Plaintiff in the Freedom of Information Act to maintain public records. Consequently, no liability may attach for the failure to do something which the law does not require.

4. Actual production of Documents

The Plaintiff argues that the Court incorrectly applied *Sloan v. Friends of the Hunley, Inc.* 369 S.C. 20, 630 S.E.2d 474 (2006). The Plaintiff misreads the express holding of *Sloan*; whether a plaintiff concedes that all of the documents as requested have been produced is not the holding of this case. Rather, the record in this case (and as stated by the Court in its Order) shows that the Defendants in fact have produced the

requested documents. Consequently, the controlling precedent of *Sloan* renders this case moot.

5. Lack of Mootness

The *Sloan* holding is clear; once the requested documents have been produced, the issue is moot and there is no violation of the FOIA. The Plaintiff argued neither of these exceptions to the mootness doctrine at the hearing for summary judgment nor in his brief. Nevertheless, neither exception applies for the following reasons.

a. Capable of repetition, yet evading review

This exception does not apply because while it may be true that an FOIA violation may be capable of repetition, it is also true that the Plaintiff may simply make a new FOIA request in order to preserve his rights under the statute.

As the *Sloan* Court held, once the documents that were requested under the FOIA have been produced, there is no further relief for the Court to provide. A case becomes moot when judgment, if rendered, will have no practical legal effect upon the existing controversy; this is true when some event occurs making it impossible for the reviewing court to grant effectual relief. *Curtis v. State of South Carolina*, 345 S.C. 557, 549 S.E.2d 591 (2001). Any judgment by the Court will have no practical legal effect – it would be absurd for the Court to order a Defendant to produce the same documents which they already produced. If an FOIA Plaintiff wants the same or additional documents, a new request could be made, and a new suit (legal review) may be brought should there be a subsequent violation. These exceptions do not apply, and summary judgment should be affirmed.

b. Matters of Important Public Interest

This exception does not apply because whether or not the Plaintiff is entitled to various public documents or non-public documents under the FOIA is not a matter of important public interest. Moreover, the Plaintiff fails to point to any matter of important public interest in this case.

6. Statutory Exemptions

The Court did not need to recite every statutory exemption it relied upon because it found that the Defendants had produced the statutorily exempt documents.

7. Failure to Timely Initiate Litigation

As illustrated in its Order, the Court went through each allegation of the Plaintiff's Complaint and applied the appropriate statute of limitations to the alleged FOIA violations and found that those which predated the complaint by more than a year were time barred.

In addition, the Plaintiff argues conclusorily that the "only evidence in the record shows Mr. Trask brought his claims within one year of the FOIA violations at issue." Yet the Plaintiff fails to point to any evidence of such a contention. The Plaintiff's argument that the Defendants' intended "to lull Mr. Trask into a false sense of security so that the one year time period would run prior to him asserting his claim in court" is wholly meritless. There is *absolutely* no evidence in the record, or anywhere else for that matter, supporting such a charge.

8. Statute of Limitations

For all of the same reasons as stated in #7, the Court's Order should be affirmed.

8. Beyond the Definition of "Public Records"

The Defendant cannot respond to this argument because the plaintiff does not point to any specific examples supporting his argument.

9. Discovery Not Completed

With regards to the Plaintiff's Motion to Compel and Petition for A Rule to Show Cause, Summary judgment was properly granted because there were no further factual or legal FOIA matters for the Court to determine at the hearing. Any order compelling the discovery requested would have no practical legal effect on the granting of summary judgment. Whether there was outstanding discovery is irrelevant; at the Summary Judgment hearing, the Court only needed to determine the legal and factual issues surrounding violations of the FOIA.

As the Court may recall, the Plaintiff withdrew his motion for summary judgment on the record at the beginning of the hearing for Defendants Motion for Summary Judgment. His contention that it had not been considered or ruled upon is erroneous.

10. Reasonable Copying Fees

The Court found that the Sheriff's Office charged copying fees in accordance with a Beaufort County ordinance and thus in accordance with the FOIA. Summary Judgment on this ground should also be upheld.

11. Allegedly Non-Specific FOIA Violations

The Plaintiff filed his Complaint on April 17, 2007. In the past two years, Mr. Trask has never once moved before the Court to amend his Complaint. His suggestion that the Court did not afford him, "the opportunity" to include additional alleged FOIA violations distorts the record.

12. Award of Attorneys Fees under FOIA

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No ruling on Mr. Trask's request for Attorneys fees was necessary because the Defendants prevailed.

13. Mr. Trask Outstanding Motions

For all of the same reasons as stated in #9, the Court's Order should be affirmed.

14. The Defendants Continuing Violation of the South Carolina Public Records Act

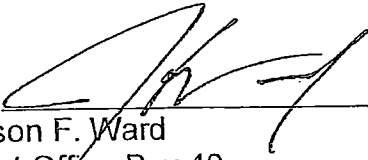
The court addressed this issue in its Order in Paragraphs IV and VI. Summary Judgment should be affirmed.

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CONCLUSION

Based on the foregoing, it is respectfully submitted that this Court should deny Plaintiff's Motion Defendant's motion for reconsideration to amend Court's Findings and to Alter or Amend Court's Judgment and affirm its prior grant of Summary Judgment in favor of the Defendants.

HOWELL, GIBSON & HUGHES, P.A.

By: 

Jason F. Ward

Post Office Box 40

Beaufort, SC 29901

(843) 522-2400

Attorney for Defendants

Bar No: 74850

Beaufort, South Carolina

April 23, 2009

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HOWELL, GIBSON AND HUGHES, P.A.
ATTORNEYS AT LAW

Post Office Box 40
Beaufort, South Carolina 29901-0040

JAMES S. GIBSON, JR.
STEPHEN P. HUGHES
PATRICK M. HIGGINS
ROBERT W. ACHURCH III
DAVID S. BLACK

MARY BASS LOHR
THOMAS A. BENDLE, JR.
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JASON F. WARD

25 RUE DU BOIS
LADY'S ISLAND
BEAUFORT, SOUTH CAROLINA 29907

TELEPHONE: 843 - 522-2400
FAX NUMBER: 843 - 522-2429
E-Mail: hghpa@isc.net
WRITER'S DIRECT: 843 - 522-2420

October 8, 2009

The Honorable Carmen Tevis Mullen
Fourteenth Judicial Circuit
Beaufort County Court of Common Pleas
Post Office Box 1128
Beaufort, SC 29901

Re: L. Paul Trask, Jr. vs. SC Department of Public Safety; Beaufort County;
Beaufort County Management Information Systems; Beaufort County
Coroner Curtis Copeland; Beaufort County Sheriff P.J. Tanner
Civil Action No.: 07-CP-07-995
Our File No: 10421 RWA

Dear Judge Mullen:

I am in receipt of Tom Tisdale's letter to you of September 28, 2009. While I agree you have not ruled on the Plaintiff's Motion to Reconsider the Order dismissing the Plaintiff's case, my recollection is that the court denied the Plaintiff's Motion for a Rule to Show Cause at the same hearing that the Motion for Summary Judgment was granted.

Therefore, the only matter that needs to be addressed is the Plaintiff's outstanding Motion to Reconsider the granting of Summary Judgment.

I have enclosed a proposed order denying the Plaintiff's Motion to Reconsider if that is the decision of the court.

With kindest regards, I am

Yours truly,

HOWELL, GIBSON & HUGHES, P.A.

Robert W. Achurch, III

RWAI/WMH

Enclosure

cc: Thomas S. Tisdale, Jr., Esquire

1346

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

) IN THE COURT OF COMMON PLEAS
)
) CIVIL ACTION NO: 07-CP-07-995

L. PAUL TRASK, JR. Individually, as a)
Citizen, Resident, Taxpayer and)
Registered Elector of the State of)
South Carolina, and on behalf of)
others similarly situated,)

Plaintiff,)

vs.)

SOUTH CAROLINA DEPARTMENT)
OF PUBLIC SAFETY; BEAUFORT)
COUNTY; BEAUFORT COUNTY)
MANAGEMENT INFORMATION)
SYSTEMS; BEAUFORT COUNTY)
CORONER CURTIS COPELAND in)
his official capacity; BEAUFORT)
COUNTY SHERIFF P.J. TANNER in)
his official capacity,)

Defendants.)

ORDER

This matter comes before the Court upon Plaintiff's Motion for Reconsideration to Amend Court's findings, and to Alter or Amend the Court's Judgment. I respectfully decline to reconsider, amend or alter this Court's grant of Summary Judgment for all of the reasons stated in this Court's prior Order.

The Plaintiff's motion is denied.

LET IT BE ORDERED ADJUDGED AND DECREED

IT IS SO ORDERED.

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By: _____
Carmen Tevis Mullen
Judge, Fourteenth Judicial Circuit

_____, South Carolina

October _____, 2009

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10-13-09

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT) CIVIL ACTION NO: 07-CP-07-995

L. PAUL TRASK, JR. Individually, as a)
Citizen, Resident, Taxpayer and)
Registered Elector of the State of)
South Carolina, and on behalf of)
others similarly situated,)

Plaintiff,)

vs.)

SOUTH CAROLINA DEPARTMENT)
OF PUBLIC SAFETY; BEAUFORT)
COUNTY; BEAUFORT COUNTY)
MANAGEMENT INFORMATION)
SYSTEMS; BEAUFORT COUNTY)
CORONER CURTIS COPELAND in)
his official capacity; BEAUFORT)
COUNTY SHERIFF P.J. TANNER in)
his official capacity,)

Defendants.)

ORDER

BEAUFORT COUNTY
CLERK OF COURT
BEAUFORT, S.C.

2009 OCT 13 PM 4:26

This matter comes before me upon Plaintiff's Motion for Reconsideration to Amend Court's findings and to Alter or Amend the Court's Judgment. I respectfully decline to amend or alter this Court's grant of Summary Judgment for the Defendants for all of the reasons stated in this Court's prior Order.

THEREFORE,

Plaintiff's Motion seeking reconsideration of my Order, dated March 18, 2009, granting summary judgment for the defendants is respectfully denied.

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Additionally, Plaintiff's Petition for a Rule to Show Cause, filed on December 17, 2008, is hereby denied *as it was inadvertently not ruled upon after a hearing.*

IT IS SO ORDERED.



Carmen T. Mullen
Judge, Fourteenth Circuit Court

Beaufort, South Carolina

October 13, 2009.

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28 October 2009

The Honorable Jerri Ann Roseneau
Clerk of Court
Beaufort County Court of Common Pleas
Post Office Box 1128
Beaufort, South Carolina 29901

Re: L. Paul Trask, Jr., individually, as a Citizen, Resident, Taxpayer and Registered Elector of the State of South Carolina v. South Carolina Department of Public Safety; Beaufort County; Beaufort County Management Information Systems; Beaufort County Coroner Curtis Copeland, in his Official Capacity; and Beaufort County Sheriff P. J. Tanner in his Official Capacity

Beaufort County Court of Common Pleas

Case No.: 2007-CP-07-995

NP File No.: 038981-00002

and

L. Paul Trask, Jr., Personally and as Next of Kin and as the Duly Appointed Personal Representative of the Estate of L. Paul Trask, III, deceased, and Meredith C. Trask v. Beaufort County; Curtis Copeland, in his Official capacity as Coroner of Beaufort County and Individually; and Copeland Company of Beaufort, LLC

Beaufort County Court of Common Pleas

Case No.: 2007-CP-07-993

NP File No.: 038981-00003

Dear Ms. Roseneau:

Hon. Jerri Ann Roseneau
Clerk of Court
28 October 2009
Page 2

Enclosed please find the original and one copy of the **Plaintiffs' Motion for Reconsideration, to Amend Court's Findings, and to Alter or Amend Court's Judgment** submitted by the Plaintiff, L. Paul Trask, Jr., individually, as a Citizen, Resident, Taxpayer and Registered Elector of the State of South Carolina, in the first above-referenced matter, as well as the Plaintiffs, L. Paul Trask, Jr., Personally and as Next of Kin and as the Duly Appointed Personal Representative of the Estate of L. Paul Trask, III, deceased, and Meredith C. Trask, in the second above-referenced matter. I also enclose the original **Motion and Order Information Form and Cover Sheet**, as well as, our firm check in the amount of \$25.00 to cover the applicable filing fee for the motion.

I would appreciate you filing the **Plaintiffs' Motion for Reconsideration, to Amend Court's Findings, and to Alter or Amend Court's Judgment** with the Circuit Court and returning a stamped copy to my attention in the enclosed self-addressed and stamped envelope.

By separate letter, copy enclosed, I have sent two copies of the **Plaintiffs' Motion for Reconsideration, to Amend Court's Findings, and to Alter or Amend Court's Judgment** to the Honorable Carmen Tevis Mullen, Circuit Court Judge, for her review and consideration. A copy has also been sent to all counsel of record.

If you need anything else or I otherwise may be of any assistance to you regarding this matter, please feel free to contact me at your convenience.

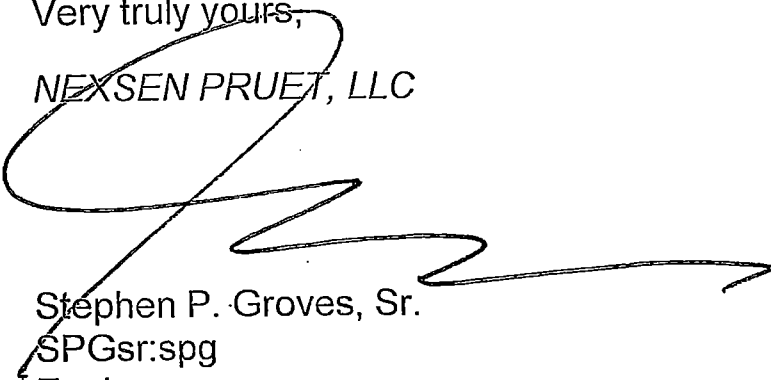
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Hon. Jerri Ann Roseneau
Clerk of Court
28 October 2009
Page 3

With kindest regards, I remain

Very truly yours,

NEXSEN PRUET, LLC



Stephen P. Groves, Sr.

SPGsr:spg

Enclosures

CCE: Honorable Carmen Tevis Mullen, Circuit Court Judge ✓
Robert W. Achurch, III, Esquire ✓
William Davidson, Esquire ✓
Marshall H. Waldron, Jr., Esquire ✓
Mr. L. Paul Trask, Jr. ✓

NPCHAR1:518383.1-LT-(SPG) 038981-00002

1355

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

L. Paul Trask, Jr., et al.,

☒ Plaintiff,

v.

South Carolina Department of Public Safety; et al.,

☐ Defendants.

L. Paul Trask, Jr., et al.,

☒ Plaintiff,

v.

Beaufort County, et al.,

☐ Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO. 2007-CP-07-0995

and

CASE NO. 2007-CP-07-0993

MOTION INFORMATION FORM
AND COVER SHEET

Plaintiff's Attorney:

Thomas S. Tisdale, Jr., Esquire

Stephen P. Groves, Sr., Esquire

Address: P.O. Box 486

Charleston, SC 29402

Phone: 843.577-9440 Fax: 843.414.8206

E-mail: sgroves@nexsenpruet.com

Defendant's Attorney:

Robert Achurch, Esquire

Address: P. O. Box 40

Beaufort, SC 29901-0040

Phone: 843-522-2400 Fax: 843-522-2429

E-mail: hghpa@islc.net

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

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

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

SECTION I: Hearing Information

Nature of Motion: Plaintiff's Motion for Reconsideration to Amend Court's Findings, and to Alter or Amend Court's Judgment

Estimated Time Needed: 30 minutes

Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

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

Signature of Attorney for ☒ Plaintiff / ☐ Defendant

October 28, 2009

Date submitted

SECTION III: Motion Fee

☒ PAID - AMOUNT:

☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support

(check reason) ☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

☐ Other:

JUDGE'S SECTION

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

☐ Other:

JUDGE

CODE: _____ Date: _____

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CLERK'S VERIFICATION

Date Filed:

Collected by: _____

☐ MOTION FEE COLLECTED: _____

☐ CONTESTED - AMOUNT DUE: _____

1357

STATE OF SOUTH CAROLINA)

COURT OF COMMON PLEAS

COUNTY OF BEAUFORT)

14th JUDICIAL CIRCUIT

L. PAUL TRASK, JR.,)
Individually, as a Citizen,)
Resident, Taxpayer, and)
Registered Elector of the State)
of South Carolina, and on)
behalf of others similarly)
situated,)

CASE NO.: 2007-CP-07-0995

Plaintiffs,)

vs.)

**PLAINTIFFS' MOTION
FOR RECONSIDERATION
TO AMEND COURT'S
FINDINGS, AND TO
ALTER OR AMEND
COURT'S JUDGMENT**

 SOUTH CAROLINA)
DEPARTMENT OF PUBLIC)
SAFETY; BEAUFORT COUNTY;)
BEAUFORT COUNTY)
MANAGEMENT INFORMATION)
SYSTEMS; BEAUFORT)
COUNTY CORONER CURTIS)
COPELAND in his Official)
Capacity; and BEAUFORT)
COUNTY SHERIFF)
P. J. TANNER in his Official)
Capacity,)

Defendants.)

L. PAUL TRASK, JR.,)
personally and as next of kin)
and as the duly appointed)
personal representative of)

CASE NO.: 2007-CP-07-0993

1352

the ESTATE OF L. PAUL
TRASK, III, deceased, and
MEREDITH C. TRASK,

Plaintiffs,

vs.

BEAUFORT COUNTY;
CURTIS COPELAND, in
his Official Capacity as
Coroner of Beaufort County
and Individually; and
COPELAND COMPANY
OF BEAUFORT, LLC,

Defendants.

**PLAINTIFFS'
JOINT MOTION FOR
RECONSIDERATION,
TO AMEND COURT'S
FINDINGS, AND TO
ALTER OR AMEND
COURT'S JUDGMENT**

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COMES NOW the Plaintiff, L. Paul Trask, Jr., Individually, as a
Citizen, Resident, Taxpayer, and Registered Elector of the State of South
Carolina, and on behalf of others similarly situated ("Mr. Trask") (Case No.
2007-CP-07-0995) and the Plaintiffs, L. Paul Trask, Jr., personally, and as
next of kin and as the duly appointed personal representative of the Estate
of L. Paul Trask, III, deceased, and Meredith C. Trask (collectively the
"Trasks") (Case No. 2009-CP-07-0993), pursuant to Rules 52(b), 59(e),
SCRCP, and respectfully requests this Circuit Court to reconsider its Order
Denying Plaintiffs' Petition for Rule to Show Cause (the "Order") dated
October 13, 2009, and filed with the Office of the Beaufort County Clerk of

Court on October 13, 2009.¹ Mr. Trask states the Order, which must be reversed, is based upon improper legal grounds and is not factually supported by the record before this Circuit Court. Moreover, this Circuit Court failed to make any findings of fact or conclusions of law whatsoever.

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This motion respectfully requests this Circuit Court to reverse its prior decision denying the Plaintiffs' their Petition for a Rule to Show Cause (the "RTSC") against the Defendants, South Carolina Department of Public Safety; Beaufort County; Beaufort County Management Information Systems; Beaufort County Coroner Curtis Copeland in his official capacity; Beaufort County Sheriff P. J. Tanner in his official capacity; Curtis Copeland, individually; and the Copeland Company of Beaufort, LLC, concerning those Defendants' failure to abide by this Circuit Court's May 8, 2008, Order (the "May 2008 Discovery Order")² requiring the Defendants to comply with and/or properly/fully and completely respond to various of the Plaintiffs' discovery requests.

¹ A copy of this Circuit Court's Order dated October 13, 2009, is attached hereto as Exhibit "A" and incorporated herein by reference. Mr. Trask's counsel received the filed and executed order on October 19, 2009. The Order involves both Case No. 2007-CP-07-0993 and Case No. 2007-CP-07-0995.

² A copy of this Circuit Court's May 2008 Discovery Order dated May 8, 2008, is attached hereto as Exhibit "B" and incorporated herein by reference. The May 2008 Discovery Order involves both Case No. 2007-CP-07-0993 and Case No.

This motion is made upon the following facts already contained in the record before this Circuit Court:

A. Facts Applicable To Both Cases

1. This Circuit Court issued the May 2008 Discovery Order which required the Defendants to comply with the Plaintiffs' discovery requests.

2. The Defendants have failed to comply with the May 2008 Discovery Order and, in turn, the Plaintiffs filed their Petition for Rule to Show Cause on December 15, 2008.

B. Facts Applicable To Case No. 993

1. The Duhon File

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(a) The *May 2008 Discovery Order* required the Defendants, within ten days, to confirm they had located no additional documents which should be produced in response to Plaintiffs' Interrogatory No. 2 dated November 19, 2007.

(b) During Gwen Duhon's deposition, the Defendants agreed on the record to produce the documents about which Ms. Duhon testified (the "Duhon File").³

2007-CP-07-0995.

³ The Defendants provided the Plaintiffs with Gwen Duhon's file and a Privilege Log via U.S. Mail on December 18, 2008. This was apparently in response to

(c) Despite the Plaintiffs' repeated subsequent requests for the Duhon File, the Defendants failed to produce the documents.

(d) The *May 2008 Discovery Order* required production of the Duhon File.

(e) The Defendants have never responded to this production request prior to the Plaintiffs' filing of the RTSC and were in clear violation of the *May 2008 Discovery Order* as of the date the Plaintiffs filed their Petition for RTSC.

2. Records From The Coroner

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(a) Plaintiff's Interrogatory No. 10 dated November 19, 2007, requested the Defendants to identify all prior incidents involving fatal motor vehicle accidents where the Coroner failed or declined to conduct a toxicology examination as required by state law.

(b) The Defendants failed to respond even though the *May 2008 Discovery Order* directed the Defendants to respond within the aforementioned ten-day time frame.

Mr. Trask's **November 16, 2007**, Request for Production of Documents. The documents were finally produced some 12 months later.

(c) Coroner Copeland admitted in his deposition, under oath, he had not responded to Plaintiffs' Interrogatory No. 10 and his legal counsel stated the information would be provided in the future.

(d) The Defendants have never responded to this discovery request and were in clear violation of the *May 2008 Discovery Order* as of the date the Plaintiffs filed their Petition for RTSC.

(e) Plaintiff's Interrogatory No. 19 dated November 19, 2007, requested the Defendants to identify all statutory procedures, autopsy performance standards, and/or standard identification procedures which applied to the investigation of the death of L. Paul Trask, III.

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(f) The Defendants failed to respond to Interrogatory No. 19 and the *May 2008 Discovery Order* required the Defendants to make a full and complete response to within the aforementioned ten-day time frame.

(h) The Defendants have never responded to this discovery request and were in clear violation of the *May 2008 Discovery Order* as of the date the Plaintiffs filed their Petition for RTSC.

(i) Plaintiffs' Request to Produce No. 15, dated November 19, 2007, requested the right to inspect any computer used by Deputy Coroner Connie Herman during her employment with any Defendant.

(j) The *May 2008 Discovery Order* required the Defendants to permit any such computer(s) to be analyzed and to provide a full and complete response no later than ten days after Coroner Copeland retained new legal counsel.

(k) The Defendants have failed to respond to this discovery request and were in clear violation of the *May 2008 Discovery Order* as of the date the Plaintiffs filed their Petition for RTSC.⁴

C. Facts Applicable To Case No. 995

1. The Duhon File

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(a) The May 2008 Discovery Order required the Defendants, within ten days, to confirm they had located no additional documents which should be produced in response to Plaintiffs' Interrogatory No. 2, dated November 19, 2007.

(b) During Gwen Duhon's deposition, the Defendants agreed on the record to produce the documents about which Ms. Duhon testified - the Duhon File.

⁴ The Defendants did state Coroner Copeland sold such a computer to a third-party. This sale occurred despite the Plaintiffs' written notice to the Coroner on February 21, 2006, and December 11, 2006, requesting that all such evidence, including, specifically, Deputy Coroner Herman's computer, should be retained and preserved.

(c) Despite the Plaintiffs' repeated subsequent requests for the Duhon File, the Defendants failed to produce the documents prior to the Plaintiffs' RTSC even though the May 2008 Discovery Order required production of the Duhon File.

(d) The Defendants have never responded to this production request and were in clear violation of the *May 2008 Discovery Order* as of the date the Plaintiffs filed their Petition for RTSC.

(e) Plaintiffs' Request to Produce No. 9(n), dated November 19, 2007, required the Defendants to produce the Duhon File, as well as all other unknown correspondence and other documents exchanged between the parties.

(f) The Order required the Defendants to make a full and complete response to this discovery request.

(g) During Gwen Duhon's deposition the Defendants agreed to produce the Duhon File.⁵

⁵ The Defendants submitted an Affidavit, dated October 30, 2008, some five and one half months after the time the Order required a response, asserting that after conferring with all of the government-entity Defendants that there were no additional documents which were responsive to Plaintiffs' Interrogatory No. 2. Furthermore, the Defendants also supplemented their response to Plaintiff's Requests for Production on November 27, 2008, confirming no additional documents had been located responsive to Case 995.

(e) Contrary to the October 30, 2008, Affidavit's representations, Ms. Duhon had previously testified under oath on August 8, 2008, she kept a file in her office regarding the "Trask matter" (*i.e.*; the Duhon File) and she left the Duhon File with her successor when she retired.

(f) Despite repeated subsequent requests for the Duhon File, the Defendants failed to produce the documents before the Plaintiffs filed the RTSC, even though the *May 2008 Discovery Order* required production of the Duhon File.

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(g) The Defendants have never responded to this production request prior to the Plaintiffs' RTSC and were in clear violation of the *May 2008 Discovery Order* as of the date the Plaintiffs filed their Petition for RTSC.

D. The Circuit Court's Promised Hearing

(a) During this Circuit Court's hearing in these cases on December 18, 2008, the Plaintiffs' counsel advised the Court the Plaintiffs' RTSC needed to be heard. This Circuit Court advised that it would hear the motion at an appropriate time in the future. Notwithstanding this statement, this Circuit Court ruled on the Plaintiffs' RTSC without a hearing and

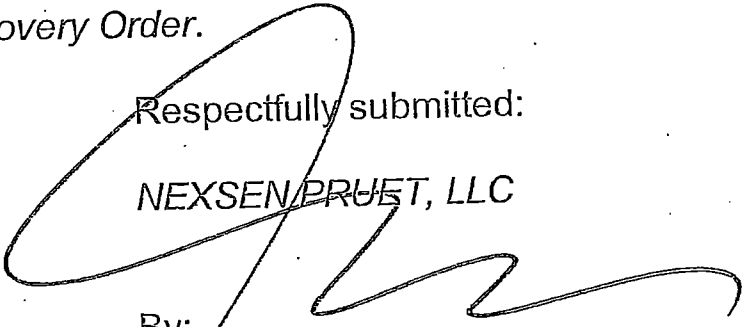
without any response by any of the Defendants to counter the Plaintiffs' assertions and representation that the Defendants had violated the May 2008 Discovery Order.

F. No Findings Of Fact Or Conclusions Of Law

(a) This Circuit Court failed to make any Findings of Facts or Conclusions of Law when it denied the Plaintiffs' RTSC. This was done even though the Defendants did not make any response to counter the Plaintiffs' assertions and representation the Defendants had violated the May 2008 Discovery Order.

Respectfully submitted:

NEXSEN PRUET, LLC

By: 

Thomas S. Tisdale, Jr., Esquire
Stephen P. Groves, Sr., Esquire
Jeffrey S. Tibbals, Esquire
205 King Street, Suite 400
Charleston, South Carolina 29401
Telephone: 843.577.9440
Telecopier: 843.720.1777
E-Mail: ttisdale@nexsenpruet.com
sgroves@nexsenpruet.com
jtibbals@nexsenpruet.com

Attorneys for the Plaintiffs

Charleston, South Carolina

28 October 2009

Certificate of Mailing

I, Stephen P. Groves, Sr., Esquire hereby certify a copy of the

PLAINTIFFS' JOINT MOTION FOR RECONSIDERATION, TO AMEND
COURT'S FINDINGS, AN TO ALTER OR AMEND COURT'S JUDGMENT

(Two Cases) has been served upon the Trial Judge and all counsel of record by placing the same in the United States mail, first class postage prepaid, addressed to the following as shown below this 3rd day of April 2009:

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The Honorable Carmen Tevis Mullen
Circuit Court Judge
Fourteenth Judicial Circuit
Post Office Box 1128
Beaufort, South Carolina 29901

Robert W. Achurch, III, Esquire
Howell, Gibson & Hughes, PA
Post Office Box 40
Beaufort, South Carolina 29901-0040

*Attorneys for the Defendants, South Carolina Department of Public Safety;
Beaufort County; Beaufort County Management Information Systems;
Beaufort County Coroner Curtis Copeland in his official capacity, and
Beaufort County Sheriff P. J. Tanner in his official capacity*

Marshall H. Waldron, Jr., Esquire
GRIFFITH, SADLER & SHARP, P.A.
Post Office Drawer 570
Beaufort, South Carolina 29910-0570

*Attorneys for the Respondents,
Beaufort County and Curtis Copeland, In his Official Capacity
As Coroner of Beaufort County*

William Davidson, Esquire
Andrew F. Lindemann, Esquire
DAVIDSON & LINDEMANN, PA
Post Office Box 8568
Columbia, South Carolina 29202-8568

*Attorneys for the Respondents,
Curtis Copeland, Individually and Copeland Company, LLC*

AD
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Signed: _____

Stephen P. Groves, Sr.

Charleston, South Carolina

28 October 2009

NPCHAR1:518031.1-MO-(SPG) 038981-00002

1369

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

) IN THE COURT OF COMMON PLEAS
)
) CIVIL ACTION NO: 07-CP-07-995

L. PAUL TRASK, JR. Individually, as a
Citizen, Resident, Taxpayer and
Registered Elector of the State of
South Carolina, and on behalf of
others similarly situated,

Plaintiff,

vs.

SOUTH CAROLINA DEPARTMENT
OF PUBLIC SAFETY; BEAUFORT
COUNTY; BEAUFORT COUNTY
MANAGEMENT INFORMATION
SYSTEMS; BEAUFORT COUNTY
CORONER CURTIS COPELAND in
his official capacity; BEAUFORT
COUNTY SHERIFF P.J. TANNER in
his official capacity,

Defendants.

ORDER

BEAUFORT COUNTY
CLERK OF COURT
BEAUFORT, S.C.

2009 OCT 13 PM 4:26

This matter comes before me upon Plaintiff's Motion for Reconsideration to Amend Court's findings and to Alter or Amend the Court's Judgment. I respectfully decline to amend or alter this Court's grant of Summary Judgment for the Defendants for all of the reasons stated in this Court's prior Order.

THEREFORE,

Plaintiff's Motion seeking reconsideration of my Order, dated March 18, 2009, granting summary judgment for the defendants is respectfully denied.

1370

Exhibit A

Additionally, Plaintiff's Petition for a Rule to Show Cause, filed on December 17, 2008, is hereby denied *as it was inadvertently not ruled upon after a hearing.*

IT IS SO ORDERED.


Carmen T. Mullen
Judge, Fourteenth Circuit Court

Beaufort, South Carolina

October 13, 2009.

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE CIRCUIT COURT

2008 MAY 20 AM 10:03

BEAUFORT COUNTY

CLERK OF COURT

Case No. 2007-CP-07-995

L. Paul Trask, Jr, individually, as A CITIZEN, BEAUFORT, S.C.
RESIDENT, TAXPAYER AND
REGISTERED ELECTOR OF THE State of
South Carolina,

Plaintiff,

vs.

South Carolina Department of Public Safety;
Beaufort County; Beaufort County
Management Information Systems; Beaufort
County Coroner Curtis Copeland in his official
capacity; Beaufort County Sheriff P. J. Tanner
in his official capacity,

Defendants.

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS

Case No. 2007-CP-07-993

L. PAUL TRASK, JR., personally, and as next
of kin and as the duly appointed personal
representative of the ESTATE OF L. PAUL
TRASK, III, deceased, and MEREDITH C.
TRASK,

Plaintiffs,

vs.

BEAUFORT COUNTY; CURTIS
COPELAND, in his official capacity as
Coroner of Beaufort County and
INDIVIDUALLY; AND COPELAND
COMPANY OF BEAUFORT, LLC;

Defendants.

ORDER

1372



THIS MATTER COMING ON TO BE HEARD and being heard on the 22nd day of April, 2008 before ~~the Honorable Judge Presiding~~ *me in the* Beaufort County Court of Common Pleas, Beaufort County, South Carolina, upon the Plaintiffs' Motion to Compel, and it appearing to the Court and the Court finding that the Motions should be granted in the manner set forth below,

NOW THEREFORE, IT IS HEREBY ORDERED, as follows:

Case No. 993:

1. Defendants shall supplement and provide a full and complete response to Interrogatory Number 2 (photographs, plats, sketches and prepared documents). Counsel for the government Defendants will confer with the government Defendants to confirm no additional documents have been located for production to opposing counsel. Any and all documents withheld due to attorney client privilege or attorney work product shall be described with reasonable particularity in a privilege log served with the supplemental response. Defendants shall have 10 days from the date of this Order to serve such full and complete response upon counsel for Plaintiffs.
2. Defendants shall provide a full and complete response to Interrogatory Number 5. (lawsuits to which Coroner Copeland has been a party) Defendants shall have 10 days from the date of this Order to serve such full and complete response upon counsel for Plaintiffs.
3. Defendants shall provide a full and complete response to Interrogatory Number 10. (all MVA incidents where Coroner Copeland failed to conduct a toxicology examination) Defendants shall have 10 days from the date of this Order to serve such full and complete response upon counsel for Plaintiffs.

1373

4. Defendants shall provide a full and complete response to Interrogatory Number 11 & 12. Defendants shall have 10 days from the date of this Order to serve such full and complete response upon counsel for Plaintiffs.

5. Defendants shall supplement their response to Interrogatory Number 14. (Copeland employment history) and provide employment history for Curtis Copeland. Defendants shall have 10 days from the date of this Order to serve such full and complete response upon counsel for Plaintiffs.

6. Defendants shall provide a full and complete response to Interrogatory Number 19 (All applicable Autopsy Performance Standards, and/or Standard Identification Procedures). Defendants shall have 10 days from the date of this Order to serve such full and complete response upon counsel for Plaintiffs.

7. Defendants shall provide a full and complete response to Interrogatory Number 23 (all communications with Jack Geron, Dennis March, Bruce Kline, Rick Ramsey, Tommy Collins, Martin Sauls, and any Fripp Island employee). Defendants shall have 10 days from the date of this Order to serve such full and complete response upon counsel for Plaintiffs.

8. In response to Request for Production Number 15 (computer(s) hard drive used by Connie Herman), Defendants will select a computer technician to attempt to recover responsive files and/or documents that may be contained in CCB computers used by Connie Herman. Defendants will provide to the Plaintiffs the name and address of the person selected to analyze all computers used by Connie Herman prior to the inspection date. Defendants shall have 10 days from the date of this Order or 10 days from the date new counsel for CCB and Curtis Copeland personally enters an appearance, whichever is the later date, to serve such full and complete responses upon counsel for Plaintiffs.

1374

Case No. 995:

1. Defendants shall supplement and provide a full and complete response to Interrogatory Number 2 (photographs, plats, sketches and prepared documents). Counsel for the government Defendants will confer with the government Defendants to confirm no additional documents have been located for production to opposing counsel. Any and all documents withheld due to attorney client privilege or attorney work product shall be described with reasonable particularity in a privilege log, served with the supplemental response. Defendants shall have 10 days from the date of this Order to serve such full and complete response upon counsel for Plaintiffs.
2. Defendants shall provide a full and complete response to Request for Production Number 3. (all correspondence and e-mails between or among defendants and witnesses) Defendants' counsel will make an inquiry with all government Defendants to locate responsive documents. Defendants shall have 10 days from the date of this Order to serve such full and complete response upon counsel for Plaintiffs.
3. Defendants shall produce all documents relating to such full and complete responses as requested in Request for Production Number 10. (all documents relating to written policies or procedures of all Defendants from 2005 to present regarding FOIA requests) Plaintiff shall have 10 days from the date of this Order to serve such full and complete response upon counsel for Plaintiffs.

IT IS SO ORDERED.

Beaufort, South Carolina
May 8, 2008


Chief Administrative Judge, Fourteenth Judicial Circuit
C. T. Mullen

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October 15, 2009

The Honorable Carmen T. Mullen
P.O. Box 1128
Beaufort, SC 29901

*Re: L. Paul Trask, Jr., et al. v. South Carolina Department of
Public Safety, et al.
Case No. 2007-CP-07-995*

Dear Judge Mullen:

We have received a copy of Mr. Achurch's letter to you of October 8, 2009 in which he asserts that you have previously ruled on Plaintiff's Petition for a Rule to Show Cause. We respectfully believe that his assertion is incorrect. Enclosed herewith are copies of pages 80 and 81 (the pertinent lines are page 80, line 22 through page 81, line 2), of a transcript of the hearing you conducted on December 19, 2008 in which you stated that you would hear the motion at an appropriate time. It has not been ruled on by the Court at anytime.

We, of course, contend that it would be entirely inappropriate to sign the proposed Consent Order sent to you by Mr. Achurch that would deny Plaintiff's Motion for Reconsideration of your Summary Judgment ruling. Based on current law, Plaintiff is entitled to a favorable ruling on the motion.

We again request a status conference on these matters.

With best wishes, I am

Sincerely,

Thomas S. Tisdale, Jr.

TST/tj

Enclosures

cc: Robert W. Achurch, III, Esquire
Mr. L. Paul Trask

205 King Street
Suite 400 (29401)
PO Box 486
Charleston, SC 29402
www.nexsenpruet.com

T 843.720.1749
F 843.414.8220
E TTisdale@nexsenpruet.com
Nexsen Pruet, LLC
Attorneys and Counselors at Law

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From: Mullen, Carmen T. Law Clerk (Erin Gentry) [mailto:CMullenLC@sccourts.org]
Sent: Wednesday, October 21, 2009 2:49 PM
To: Tisdale, Thomas S.
Cc: 'Jason F. Ward'; 'Robert W. Achurch, III'; Robert W. Achurch, III
Subject: L. Paul Trask, Jr., et al. v. SC Dept. of Public Safety, et al., 07-CP-07-995

Good afternoon Mr. Tisdale:

Judge Mullen is in receipt of your letter dated October 15, 2009. She has asked that you please forward a copy of the entire transcript of the hearing conducted on December 19, 2008 for her review.

Thank you and please do not hesitate with any questions or concerns.

Erin

Erin C. Gentry
Law Clerk to The Honorable Carmen T. Mullen
Fourteenth Judicial Circuit
100 Ribaut Road
Beaufort, SC 29901
Telephone (843) 470-5244
Facsimile (843) 522-8362



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3/15/2010

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Leclerc, Denise A.

From: Tisdale, Thomas S.
Sent: Tuesday, November 10, 2009 11:44 AM
To: Groves, Stephen P.
Cc: Leclerc, Denise A.; Johnston, Terry A.
Subject: FW: {Matter No.[10421 RWA]}{Trask vs. Beaufort County (FOIA violation)}
Attachments: 222977.doc; 223024.pdf

Terry,

Please print copies of the attachments.

Thanks.

From: Kim Hopkinson [mailto:KHopkinson@hghpa.com]
Sent: Tuesday, November 10, 2009 11:41 AM
To: Tisdale, Thomas S.
Subject: {Matter No.[10421 RWA]}{Trask vs. Beaufort County (FOIA violation)}

Mr. Tisdale,

Attached hereto please find copies of the Defendant's Reply to Plaintiff's Motion for Reconsideration, to Amend Court's Findings, and to Alter Court's Judgment, along with a copy of a proposed Order Deying Plaintiff's Motion for Reconsideration, to Amend Court's Findings, and to Alter Court's Judgment with regard to the above referenced matter.

If you should have any questions, please feel free to contact us.

Kim Hopkinson
Legal Secretary to Jason F. Ward
Howell, Gibson & Hughes, PA
PO Box 40
Beaufort, SC 29901
843-522-2400
843-522-2429 (Fax)
Khopkinson@hghpa.com

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1382

11/10/2009

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

) IN THE COURT OF COMMON PLEAS
)
) CIVIL ACTION NO: 07-CP-07-995

L. PAUL TRASK, JR. Individually, as a
Citizen, Resident, Taxpayer and
Registered Elector of the State of
South Carolina, and on behalf of
others similarly situated,

Plaintiff,

vs.

SOUTH CAROLINA DEPARTMENT
OF PUBLIC SAFETY; BEAUFORT
COUNTY; BEAUFORT COUNTY
MANAGEMENT INFORMATION
SYSTEMS; BEAUFORT COUNTY
CORONER CURTIS COPELAND in
his official capacity; BEAUFORT
COUNTY SHERIFF P.J. TANNER in
his official capacity,

Defendants.

REPLY TO PLAINTIFF'S
MOTION FOR
RECONSIDERATION, TO
AMEND COURT'S FINDINGS,
AND TO ALTER COURT'S
JUDGMENT

This matter comes before the Court on the Plaintiff's motion to reverse, reconsider, amend, and/or alter the Court's prior Order of October 13, 2009 pursuant to Rules 52(b) and 59(e). To the extent Plaintiffs are seeking this Court's reconsideration of the Court's October 13, 2008 Order denying Reconsideration regarding Summary Judgment these Defendants would object. Nevertheless, the Defendants respectfully request this Honorable Court deny Plaintiff's Motion for the following reasons.

To begin, this Honorable Court only considered case No. 07-CP-07-995 (hereinafter referred to as Case 995) at the December 19, 2008 Motion for Summary

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Judgment hearing. After a review of the transcript, it was apparent that Judge Early had disposed of Case 07-CP-07-993 (hereinafter referred to as Case 993) on a Motion for Summary Judgment prior to the December 19, 2008 hearing. Consequently, no issues with regards to case 993 were before Judge Mullen nor were such issues considered at the hearing or addressed in the Order the Plaintiff now seeks to have reconsidered.

In Part C of his Motion for reconsideration, to amend Court's findings, and to alter Court's Judgment, entitled "Facts Applicable to Case No. 995; 1.The Duhon File," Plaintiff incorrectly argues that the May 2008 Discovery order required the production of the Duhon file. A brief review of the May 2008 Discovery Order yields no such conclusion. There is no mention of the "Duhon file"; rather, Defendants were required, "to supplement and provide a full and complete response to Interrogatory No. 2", and "confirm no additional documents have been located." (May 2008 Discovery Order) Interrogatory No. 2 was a standard interrogatory, and requested that a list of plats, charts, documents, etc be provided to Plaintiffs. This interrogatory did not request the production of the "Gwen Duhon file." Nonetheless, Defendants fully complied with this Order this by way of Defendants Supplemental Response to Plaintiff Interrogatories, dated July 16, 2008, and Marshall Waldron (counsel for the Defendants at that time) filed an Affidavit confirming the same. (Affidavit of Waldron, attached hereto as EXHIBIT E)

Plaintiffs are also incorrect that the May 2008 Discovery Order required the Defendants to respond to Plaintiff's Request for Production 9(n). Again, a brief review of this Court's order fails to evidence any such directive, as it only references Request

for Production Number 3 and Number 10. There is absolutely no reference to 9(n) or the "Duhon file"; Plaintiff's argument is without merit, and ignores the clear language of the May 2008 Discovery Order.

Most importantly, contrary to the allegations in the Plaintiff's motion, all documents that were ordered to be produced by this Court in its Order dated May 8, 2008 or requested by Plaintiff's, by way of FOIA or Discovery, have been produced. (See Defendants Supplemental Responses to Plaintiffs Requests for Production; Order dated May 8, 2008, attached hereto as EXHIBIT A) Even though the "Gwen Duhon File" was not ordered to be produced, it has been produced to the Plaintiff. (EXHIBIT C; See Also Cover Letter to Tisdale, dated December 17, 2008 referencing Gwen Duhon File/Privilege Log (attached to EXHIBIT C))

Moreover, Defendants fully responded to Plaintiffs Request for Production No. 9 by way of Defendants Supplemental Return to Plaintiffs Request for Production (dated December 17, 2008, EXHIBIT C) and Defendants Supplemental Return to Plaintiffs Request for Production (dated December 8, 2008, EXHIBIT D). Finally, Marshall Waldron provided this Court with an Affidavit confirming that he had responded fully to the May 2008 Order and that he had conferred with Plaintiff's Counsel and confirmed he could not locate any further documents. (EXHIBIT E)

Plaintiff argues in his Motion to Reconsider Plaintiff's Petition and Rule to Show Cause that no findings of fact or conclusions of law were made. Rule 52(a) specifically states that, "Findings of Fact and conclusions of law are unnecessary on decisions of motions under Rules 12 and 56 or any other motion except as provided in Rule 41(b)." SCRCP. The Court denied the Plaintiff's Petition for a Rule to Show Cause; Rule 52(a)

1385

clearly allows for the Court to do so without findings of fact or conclusions of law. Thus, the Court does not need to make any factual findings or conclusions of law. To the extent the Plaintiff seeks to have the denial of the Plaintiff's Motion for Reconsider the grounds of Summary Judgment reconsidered, said motion is improper and the Plaintiff's remedy is an appeal. (Rule(s) 201 and 203, SCACR)

These Defendants do not believe any amendment to this Court's denial of the motion is necessary. However, should this Court decide to Amend, Defendants would respectfully request that this Court Amend its Order as it relates to Case 2007-CP-07-0995 (hereinafter referred to as the "FOIA" case) to include the following findings:

- That the Defendants fully complied with the Court's May 2008 Discovery Order;
- That there is no mention of Plaintiff's Request for Production 9(n) in this Court's May 2008 Discovery Order;
- The Defendants provided to Plaintiffs all responsive documents in its Supplemental Responses to Plaintiffs Requests for Production; Order dated May 8, 2008 (Provided on or around October 28, 2008, attached hereto as EXHIBIT A);
- All of the issues involved in the May 8, 2008 Discovery Order with regards to Case 995 were moot;
- Plaintiff's Request for Production No. 9(n) (referred to in part as the "Gwen Duhon File" in Plaintiff's Motion) was not included in this Court's Discovery Order of May 8, 2008. (Attached hereto as EXHIBIT B)

SANCTIONS

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Finally, Defendants respectfully move pursuant to Rule 11 and S.C. Code Ann. 15-36-10 and request that this Honorable Court award attorneys fees and costs for having to respond to this frivolous Motion. S.C. Code Ann. 15-36-10(A)(4)(a, b)(iv) provides in relevant part:

(4) An attorney or pro se litigant participating in a civil or administrative action or defense may be sanctioned for:

(a) filing a frivolous pleading, motion, or document if:

(iv) a reasonable attorney presented with the same circumstances would believe the pleading, motion, or document is frivolous, interposed for merely delay, or merely brought for any purpose other than securing proper discovery, joinder of parties, or adjudication of the claim or defense upon which the proceedings are based;

(b) making frivolous arguments a reasonable attorney would believe were not reasonably supported by the facts;

As explained above, the May 8, 2008 Discovery Order does not reference the "Gwen Duhon File", nor does it reference Request for Production 9(N). As clearly shown by EXHIBIT C, Defendants have already responded to this discovery even without an Order from the Court compelling them to do so. There is no reasonable attorney that, if presented with these indisputable facts, would believe that the filing of this recent motion is brought for a proper purpose, and Plaintiff's argument is not reasonably supported by the clear and unambiguous facts as they exist in the record. It is important to note that Plaintiff's filed their Petition for a Rule to Show Cause over four (4) months after receiving these Responses, and never moved to compel any further responses from the Defendants. This tends to show that Plaintiffs either (a) waived any right to Petition this Court for a Rule to Show Cause, or (b) that this recent motion is frivolous and brought for improper purposes. Sanctions are thus appropriate.

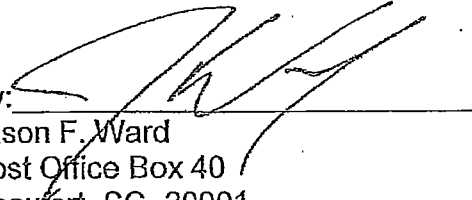
1387

S.C. Code Ann. 15-36-10(G) allows for the Court to award a variety of sanctions for this type of Motion, and Defendant respectfully requests that costs and attorneys fees be awarded to the Defendants and that the court award any other sanction as it sees fit.

CONCLUSION

Based on the foregoing, Defendants respectfully request that this Honorable Court deny Plaintiff's Motion for Reconsideration of Plaintiffs Petition for a Rule to Show Cause and award attorneys fees and costs to the Defendants in this matter for having to respond to this Motion.

HOWELL, GIBSON & HUGHES, P.A.

By: 

Jason F. Ward
Post Office Box 40
Beaufort, SC 29901
(843) 522-2400
Attorney for Defendants
Bar No: 74850

Beaufort, South Carolina

November ¹⁰/₃, 2009

1388

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

) IN THE COURT OF COMMON PLEAS
)
) CIVIL ACTION NO: 07-CP-07-995

L. PAUL TRASK, JR. Individually, as a)
Citizen, Resident, Taxpayer and)
Registered Elector of the State of)
South Carolina, and on behalf of)
others similarly situated,)

Plaintiff,)

vs.)

SOUTH CAROLINA DEPARTMENT)
OF PUBLIC SAFETY; BEAUFORT)
COUNTY; BEAUFORT COUNTY)
MANAGEMENT INFORMATION)
SYSTEMS; BEAUFORT COUNTY)
CORONER CURTIS COPELAND in)
his official capacity; BEAUFORT)
COUNTY SHERIFF P.J. TANNER in)
his official capacity,)

Defendants.)

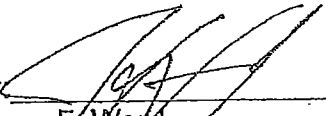
CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that he has served the foregoing Reply to Plaintiff's Motion for Reconsideration upon all counsel of record by affixing same with proper postage and placing same with the United States Postal Service on 10th day of November, 2009 addressed to the following:

Thomas S. Tisdale, Jr., Esquire
Nexsen, Pruet, Jacobs & Pollard, L.L.P.
Post Office Box 486
Charleston, SC 29402

1389

HOWELL, GIBSON & HUGHES, P.A.

By 

Jason F. Ward

Post Office Box 40

Beaufort, SC 29901

(843) 522-2400

Attorney for Defendants

Beaufort, South Carolina

1390

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT) CIVIL ACTION NO: 07-CP-07-995

L. PAUL TRASK, JR. Individually, as a)
Citizen, Resident, Taxpayer and)
Registered Elector of the State of)
South Carolina, and on behalf of)
others similarly situated,)

Plaintiff,)

vs.)

SOUTH CAROLINA DEPARTMENT)
OF PUBLIC SAFETY; BEAUFORT)
COUNTY; BEAUFORT COUNTY)
MANAGEMENT INFORMATION)
SYSTEMS; BEAUFORT COUNTY)
CORONER CURTIS COPELAND in)
his official capacity; BEAUFORT)
COUNTY SHERIFF P.J. TANNER in)
his official capacity,)

Defendants.)

DEFENDANTS SUPPLEMENTAL
RESPONSES TO PLAINTIFFS
REQUESTS FOR PRODUCTION;
ORDER DATED MAY 8, 2008

TO: TOM TISDALE, ESQUIRE, ATTORNEY FOR THE PLAINTIFF:

The Defendants, Beaufort County, P.J. Tanner, Curt M. Copeland and Beaufort County Management Information Systems, above named, supplementing previous responses to the Request for Production propounded by parties hereto and responding to Plaintiffs proposed Notice of Motion and Motion for Order for Rule to Show Cause, would show the following:

Defendants reserve and reiterate all prior objections and claims of privilege and incorporate them herein by reference. Without waiving any

1391

Exhibit "A"

objections, Defendants would respond fully to the Court's Order dated May 8, 2008 :

Case 995:

- 1) Defendant's counsel has confirmed that there are no additional documents located that are responsive to Response to Interrogatory Number 2 in accordance with the Court's Order. No documents were withheld pursuant to attorney client privilege; no privilege log was submitted because one was not necessary. In addition, please see the attached affidavit of Marshall Waldron.
- 2) Defendant's counsel has confirmed that there are no additional documents located that are responsive to Request for Production Number 3 in accordance with the Court's Order. No documents were withheld pursuant to attorney client privilege; no privilege log was submitted because one was not necessary. In addition, please see the attached affidavit of Marshall Waldron.
- 3) Defendant's counsel has confirmed that there are no additional documents located that are responsive to Request for Production Number 10 in accordance with the Court's Order. No documents were withheld pursuant to attorney client privilege; no privilege log was submitted because one was not necessary. In addition, please see the attached affidavit of Marshall Waldron.

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HOWELL, GIBSON & HUGHES, P.A.

By: _____
Robert W. Achurch, III
Post Office Box 40
Beaufort, SC 29901
(843) 522-2400
Attorney for Defendants
Bar No: 064854

Beaufort, South Carolina

October 22, 2008

CERTIFICATE OF SERVICE

I certify that I served the foregoing Defendants' Supplemental Answers to Plaintiff's Interrogatories upon all counsel of record by affixing same with proper postage placing same with the United States Postal Service addressed to counsels' last known address on _____ day of October, 2008.

By: _____
Robert W. Achurch, III

1393

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE CIRCUIT COURT

2008 MAY 20 AM 10:03

BEAUFORT COUNTY

CLERK OF COURT

Case No. 2007-CP-07-993

L. Paul Trask, Jr, individually, as A CITIZEN,
RESIDENT, TAXPAYER AND
REGISTERED ELECTOR OF THE State of
South Carolina,

Plaintiff,

vs.

South Carolina Department of Public Safety;
Beaufort County; Beaufort County
Management Information Systems; Beaufort
County Coroner Curtis Copeland in his official
capacity; Beaufort County Sheriff P. J. Tanner
in his official capacity,

Defendants.

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS

Case No. 2007-CP-07-993

L. PAUL TRASK, JR., personally, and as next
of kin and as the duly appointed personal
representative of the ESTATE OF L. PAUL
TRASK, III, deceased, and MEREDITH C.
TRASK,

Plaintiffs,

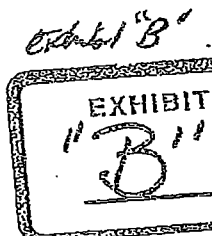
vs.

BEAUFORT COUNTY; CURTIS
COPELAND, in his official capacity as
Coroner of Beaufort County and
INDIVIDUALLY; AND COPELAND
COMPANY OF BEAUFORT, LLC;

Defendants.

ORDER

1394



THIS MATTER COMING ON TO BE HEARD and being heard on the 22nd day of April, 2008 before ~~the Honorable Judge Presiding~~ ^{me in the} Beaufort County Court of Common Pleas, Beaufort County, South Carolina, upon the Plaintiffs' Motion to Compel, and it appearing to the Court and the Court finding that the Motions should be granted in the manner set forth below,

NOW THEREFORE, IT IS HEREBY ORDERED, as follows:

Case No. 993:

1. Defendants shall supplement and provide a full and complete response to Interrogatory Number 2 (photographs, plats, sketches and prepared documents). Counsel for the government Defendants will confer with the government Defendants to confirm no additional documents have been located for production to opposing counsel. Any and all documents withheld due to attorney client privilege or attorney work product shall be described with reasonable particularity in a privilege log served with the supplemental response. Defendants shall have 10 days from the date of this Order to serve such full and complete response upon counsel for Plaintiffs.
2. Defendants shall provide a full and complete response to Interrogatory Number 5. (lawsuits to which Coroner Copeland has been a party) Defendants shall have 10 days from the date of this Order to serve such full and complete response upon counsel for Plaintiffs.
3. Defendants shall provide a full and complete response to Interrogatory Number 10. (all MVA incidents where Coroner Copeland failed to conduct a toxicology examination) Defendants shall have 10 days from the date of this Order to serve such full and complete response upon counsel for Plaintiffs.

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4. Defendants shall provide a full and complete response to Interrogatory Number 11 & 12. Defendants shall have 10 days from the date of this Order to serve such full and complete response upon counsel for Plaintiffs.

5. Defendants shall supplement their response to Interrogatory Number 14. (Copeland employment history) and provide employment history for Curtis Copeland. Defendants shall have 10 days from the date of this Order to serve such full and complete response upon counsel for Plaintiffs.

6. Defendants shall provide a full and complete response to Interrogatory Number 19 (All applicable Autopsy Performance Standards, and/or Standard Identification Procedures). Defendants shall have 10 days from the date of this Order to serve such full and complete response upon counsel for Plaintiffs.

7. Defendants shall provide a full and complete response to Interrogatory Number 23 (all communications with Jack Geron, Dennis March, Bruce Kline, Rick Ramsey, Tommy Collins, Martin Sauls, and any Fripp Island employee). Defendants shall have 10 days from the date of this Order to serve such full and complete response upon counsel for Plaintiffs.

8. In response to Request for Production Number 15 (computer(s) hard drive used by Connie Herman), Defendants will select a computer technician to attempt to recover responsive files and/or documents that may be contained in CCB computers used by Connie Herman. Defendants will provide to the Plaintiffs the name and address of the person selected to analyze all computers used by Connie Herman prior to the inspection date. Defendants shall have 10 days from the date of this Order or 10 days from the date new counsel for CCB and Curtis Copeland personally enters an appearance, whichever is the later date, to serve such full and complete responses upon counsel for Plaintiffs.

1396

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

) IN THE COURT OF COMMON PLEAS
)
) CIVIL ACTION NO: 07-CP-07-995

L. PAUL TRASK, JR. Individually, as a)
Citizen, Resident, Taxpayer and)
Registered Elector of the State of)
South Carolina, and on behalf of)
others similarly situated,)

Plaintiff,)

vs.)

SOUTH CAROLINA DEPARTMENT)
OF PUBLIC SAFETY; BEAUFORT)
COUNTY; BEAUFORT COUNTY)
MANAGEMENT INFORMATION)
SYSTEMS; BEAUFORT COUNTY)
CORONER CURTIS COPELAND in)
his official capacity; BEAUFORT)
COUNTY SHERIFF P.J. TANNER in)
his official capacity,)

Defendants.)

DEFENDANTS'
SUPPLEMENTAL RETURN TO
PLAINTIFF'S REQUESTS FOR
PRODUCTION

**TO: THOMAS S. TISDALE, JR., ESQUIRE, ATTORNEY FOR THE
PLAINTIFF:**

The Defendants above named, supplementing their responses to the
Requests for Production propounded by the Plaintiff, hereby produce, by way of
supplement, the following documents.

Interrogatory:

2. Set forth a list of photographs, plats, sketches, and all prepared
documents in possession of the party that relate to the claims or defenses
in this case:

Request for Production:

1397

Exhibit "C"

9. All information and documents which could, or will, be used at trial or during discovery for impeachment purposes.

RESPONSE: In response to prior FOIA request, the County produces the documents which may be responsive. Any redacted information is subject to either exemptions and/or privileges as provided by applicable law.

- 1) Redacted copy of February 1, 2007 email from Gwen Duhon to William Winn.
- 2) Copy of file of Gwen Duhon.

HOWELL, GIBSON & HUGHES, P.A.

By: _____
Robert W. Achurch, III
Jason F. Ward
Post Office Box 40
Beaufort, SC 29901
(843) 522-2400
Attorney for Defendants

Beaufort, South Carolina

December 17, 2008

CERTIFICATE OF SERVICE

I certify that I served the foregoing Second Supplemental Responses to Request for Production upon all counsel of record by affixing same with proper postage placing same with the United States Postal Service addressed to counsels' last known address on the ____ day of December, 2008.

By: _____
Jason F. Ward

1398

CERTIFICATE OF SERVICE

I certify that I served the foregoing Supplemental Reply to Plaintiffs Requests for Production upon all counsel of record by affixing same with proper postage placing same with the United States Postal Service addressed to counsels' last known address on ____ day of November, 2008.

By: _____
Robert W. Achurch, III

1359

HOWELL, GIBSON AND HUGHES, P.A.
ATTORNEYS AT LAW

Post Office Box 40
Beaufort, South Carolina 29901-0040

JAMES S. GIBSON, JR.
STEPHEN P. HUGHES
PATRICK M. HIGGINS
ROBERT W. ACHURCH III
DAVID S. BLACK

MARY BASS LOHR
THOMAS A. BENDLE, JR.
WILLIAM T. YOUNG III
JASON F. WARD

25 RUE DU BOIS
LADY'S ISLAND
BEAUFORT, SOUTH CAROLINA 29907

TELEPHONE: 843 - 522-2400
FAX NUMBER: 843 - 522-2429
E-Mail: hghpa@islc.net
WRITER'S DIRECT: 843 - 522-

December 17, 2008

Thomas S. Tisdale, Jr., Esquire
Nexsen, Pruet, Jacobs & Pollard, L.L.P.
Post Office Box 486
Charleston, SC 29402

Re: L. Paul Trask, Jr. vs. SC Department of Public Safety; Beaufort County;
Beaufort County Management Information Systems; Beaufort County
Coroner Curtis Copeland; Beaufort County Sheriff P.J. Tanner
Civil Action No: 07-CP-07-995
Our File No: 10421 RWA

Dear Tom:

Please find enclosed herein for service upon you a Privilege Log related to Gwen Duhon's file on behalf of the Defendants in connection with the above captioned matter.

If you should have any questions regarding this matter, please feel free to contact me.

With kindest regards, I am

Yours truly,

HOWELL, GIBSON AND HUGHES, P.A

Jason F. Ward
JFW/kah
Enclosures

1400

STATE OF SOUTH CAROLINA,
COUNTY OF BEAUFORT

) IN THE COURT OF COMMON PLEAS
)
) CIVIL ACTION NO: 07-CP-07-995

L. PAUL TRASK, JR. Individually, as a)
Citizen, Resident, Taxpayer and)
Registered Elector of the State of)
South Carolina, and on behalf of)
others similarly situated,)

Plaintiff,)

vs.)

SOUTH CAROLINA DEPARTMENT)
OF PUBLIC SAFETY; BEAUFORT)
COUNTY; BEAUFORT COUNTY)
MANAGEMENT INFORMATION)
SYSTEMS; BEAUFORT COUNTY)
CORONER CURTIS COPELAND in)
his official capacity; BEAUFORT)
COUNTY SHERIFF P.J. TANNER in)
his official capacity,)

Defendants.)

DEFENDANTS'
SUPPLEMENTAL RETURN TO
PLAINTIFF'S REQUESTS FOR
PRODUCTION

TO: THOMAS S. TISDALE, JR., ESQUIRE, ATTORNEY FOR THE
PLAINTIFF:

The Defendants, Beaufort County, P.J. Tanner, Coroner Curt M. Copeland, and Beaufort County Management Information Systems, above named, supplementing their responses to the Requests for Production propounded by the Plaintiff.

9. All documents that in any way relate to, directly or indirectly, any claim, defense or issue in this lawsuit.

RESPONSE: In response to prior FOIA request, the County produces the following public records which may be responsive. Any redacted information is subject to either exemptions and/or privileges as provided by applicable law.

1401

Exhibit "D"

- 1) Redacted copy of Unit History (Radio Log) for Coroner Copeland.
- 2) Complete Printout report of all Beaufort County CAD entries made from 12:00 am to 06:00 am on November 22, 2005.
- 3) Redacted copy of E-911 printouts from 12:00 am to 0:600 am on November 22, 2005.
 - a. All cellphone information redacted;
 - b. All names and addresses redacted; and
 - c. Phone numbers for EMS calls redacted
- 4) Copy of Beaufort County Emergency Management Records Retention Schedule pertaining to E-911 Printouts.
- 5) Copy of Record Retention Transmittal and Receipt Form for the E911 Printouts on November 22, 2005.

HOWELL, GIBSON & HUGHES, P.A.

By: _____
Robert W. Achurch, III
Post Office Box 40
Beaufort, SC 29901
(843) 522-2400
Attorney for Defendants

Beaufort, South Carolina

December 8, 2008

CERTIFICATE OF SERVICE

I certify that I served the foregoing Supplemental Responses to Request for Production upon all counsel of record by affixing same with proper postage placing same with the United States Postal Service addressed to counsels' last known address on the ____ day of December, 2008.

By: _____
Robert W. Achurch

1402

CERTIFICATE OF SERVICE

I certify that I served the foregoing Supplemental Reply to Plaintiff's Requests for Production upon all counsel of record by affixing same with proper postage placing same with the United States Postal Service addressed to counsels' last known address on ____ day of November, 2008.

By: _____
Robert W. Achurch, III

1403

HOWELL, GIBSON AND HUGHES, P.A.
ATTORNEYS AT LAW

Post Office Box 40
Beaufort, South Carolina 29901-0040

JAMES S. GIBSON, JR.
STEPHEN P. HUGHES
PATRICK M. HIGGINS
ROBERT W. ACHURCH III
DAVID S. BLACK

MARY BASS LOHR
THOMAS A. BENDLE, JR.
WILLIAM T. YOUNG III
JASON F. WARD

25 RUE DU BOIS
LADY'S ISLAND
BEAUFORT, SOUTH CAROLINA 29907

TELEPHONE: 843-522-2400
FAX NUMBER: 843-522-2429
E-Mail: hghpa@isc.net
WRITER'S DIRECT: 843-522-

December 17, 2008

Thomas S. Tisdale, Jr., Esquire
Nexsen, Pruet, Jacobs & Pollard, L.L.P.
Post Office Box 486
Charleston, SC 29402

Re: L. Paul Trask, Jr. vs. SC Department of Public Safety; Beaufort County;
Beaufort County Management Information Systems; Beaufort County
Coroner Curtis Copeland; Beaufort County Sheriff P.J. Tanner
Civil Action No: 07-CP-07-995
Our File No: 10421 RWA

Dear Tom:

Please find enclosed herein for service upon you Second Supplemental Responses to Plaintiff's Request for Production on behalf of the Defendants in connection with the above captioned matter.

If you should have any questions regarding this matter, please feel free to contact me.

With kindest regards, I am

Yours truly,

HOWELL, GIBSON AND HUGHES, P.A

Jason F. Ward
JFW/kah
Enclosures

1404

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

) IN THE COURT OF COMMON PLEAS
)
) CIVIL ACTION NO: 07-CP-07-995

L. PAUL TRASK, JR. Individually, as a)
Citizen, Resident, Taxpayer and)
Registered Elector of the State of)
South Carolina, and on behalf of)
others similarly situated,)

Plaintiff,)

vs.)

AFFIDAVIT OF MARSHALL
WALDRON

SOUTH CAROLINA DEPARTMENT)
OF PUBLIC SAFETY; BEAUFORT)
COUNTY; BEAUFORT COUNTY)
MANAGEMENT INFORMATION)
SYSTEMS; BEAUFORT COUNTY)
CORONER CURTIS COPELAND in)
his official capacity; BEAUFORT)
COUNTY SHERIFF P.J. TANNER in)
his official capacity,)

Defendants.)

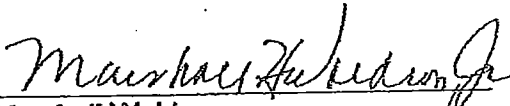
PERSONALLY APPEARED BEFORE ME, Marshall Waldron, who, being
first duly sworn, deposes and says as follows:

1. That my name is Marshall Waldron and I am over the age of eighteen (18) years.
2. I am a resident of Beaufort County, South Carolina.
3. That I was previously counsel for the Defendants in this case.
4. There were no privileged documents withheld or claimed to be subject to the attorney-client privilege such that would necessitate a privilege log being generated.

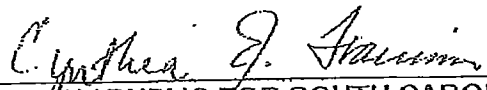
1405

5. That I contacted Tom Tisdale's office in a timely fashion and in accordance with Judge Mullen's Order in order to confirm conferences had taken place and that no additional documents have been located for production to opposing counsel.
6. I have reviewed the attached supplemental responses to requests for production (attached hereto) as referenced in Case No. 995, P. 1-3 of Judge Mullen's Order of May 8, 2008 and confirm that they are correct.
7. That I am of sound mind and competent to testify to the matters set out hereinabove.

FURTHER AFFIANT SAYETH NAUGHT.


Marshall Waldron

SWORN TO BEFORE
me this 30 day of October, 2008.


NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: May 21, 2017

1406

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

L. Paul Trask, Jr., individually as A CITIZEN
RESIDENT, TAXPAYER AND
REGISTRED ELECTOR OF THE State of
South Carolina, and on behalf of others
similarly situated,

Plaintiff,

vs.

South Carolina Department of Public Safety;
Beaufort County; Beaufort County
Management Information Systems; Beaufort
County Coroner Curtis Copeland in his official
Capacity; Beaufort County Sheriff P. J. Tanner
In his official capacity,

Defendants.

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

L. PAUL TRASK, JR., personally, and as next
Of kin and as duly appointed personal
Representative of the ESTATE OF L. PAUL
TRASK, III, deceased, and MEREDITH C.
TRASK,

Plaintiffs,

vs.

BEAUFORT COUNTY; CURTIS
COPELAND, in his official capacity as
Coroner of Beaufort County and
INDIVIDUALLY; AND COPELAND
COMPANY OF BEAUFORT, LLC;

Defendants.

TO: THOMAS S. TISDALE, JR., ESQUIRE and JEFFREY S. TIBBALS, ESQUIRE,
ATTORNEYS FOR THE PLAINTIFFS:

IN THE CIRCUIT COURT

CASE NO.: 07-CP-07-995

DEFENDANTS' SUPPLEMENTAL
RESPONSES TO PLAINTIFF'S TO
PLAINTIFF'S INTERROGATORIES

IN THE CIRCUIT COURT

CASE NO.: 07-CP-07-993

1467

NOW COME the Defendants, in accordance with Rules 26 and 33, SCRCP, and in response to the Plaintiffs' Interrogatories state as follows:

OBJECTIONS

The Defendants incorporate by reference all objections and Answers stated in their Answers to the Plaintiff's Interrogatories. The Defendants reserve the right to supplement these Interrogatories up to and including the time of trial.

INTEROGATORIES:

2. Set forth a list of photographs, plats, sketches, and all prepared documents in possession of the party that relate to the claims or defenses in this case.

RESPONSE:

Objection. This Request calls for the disclosure of attorney work product and legal conclusions.

Notwithstanding said objection, the Defendants respond that they have reviewed all documents within their possession and confirm that no additional documents have been located which are subject to production with the exception of those produced during the deposition of J. Purdy.

5. Identify all lawsuits to which Copeland or CCB have been a party in the past ten years.

RESPONSE:

C/A No. 1991-CP-07-2430

C/A No. 1998-CP-07-0695

C/A No. 1998-CP-07-1266

C/A No. 2000-CP-07-1327

C/A No. 2000-CP-07-1212

10. Identify all prior incidents involving fatal motor vehicle accidents where Copeland failed or declined to conduct a toxicology examination.

RESPONSE:

This information is not readily available. The Coroner does not keep records that would disclose examinations not performed.

11. Identify all employees of CCB from 2005 to the present.

RESPONSE:

Objection. Counsel for the Coroner does not represent CCB and is not privy to the information sought. The Plaintiff should inquire of Andrew Lindemann, Esquire.

12. Identify all deputy Coroners in Beaufort County from 2005 to the present.

RESPONSE:

The individuals listed below have fulfilled the duties of Deputy Coroner:

Ed Allen, Johnny Politzer and Connie Herman

14. Identify Copeland's employment history from 1990 to the present, including dates of employment and salary for each position held by Copeland.

RESPONSE:

Copeland Funeral Home, Copeland Company of Beaufort, Beaufort County Coroner. The answering Defendants are not privy to the salary information of Copeland Funeral Home or Copeland Company of Beaufort. The Coroner's current salary is \$66,997.60 per year.

19. Identify all statutory procedures, Autopsy Performance Standards, and/or Standard Identification Procedures that applied to your investigation of the Accident or handling of the remains of decedent L. Paul Trask, III.

RESPONSE:

The Defendants object on the basis that this information is equally available to all parties from more convenient sources.

23. Identify by date, time and subject matter, all communication you had with the following individuals relating to the accident: (1) Jack Geren; (b) Dennis March; (c) Fire Chief

Bruce Kline; (d) Rick Ramsey; (e) Tommy Collins; and (f) Martin Sauls; (g) any representative or employee of Fripp Island.

RESPONSE:

November 22, 2005, Fripp Island Employee Jim Irby said that the decedent had been at the gate but was denied entrance because the name Trask was not on the gate pass list. The decedent drove slowly away then accelerated and drove off.

The Coroner is not in possession and is not aware of any documents memorializing communication between his office and any of the persons listed above.

DATED this 16th day of July 2008 at Beaufort, South Carolina.

Respectfully submitted,

MARSHALL H. WALDRON, JR.
Post Office Box 1674
Beaufort, South Carolina 29901
843-521-4242
843-521-4247 (Facsimile)
Attorney for the Defendants

CERTIFICATE OF SERVICE

I certify that on this 16th day of July 2008, I served the Defendants' Supplemental Responses to Plaintiffs' Interrogatories upon counsel for Plaintiffs, by e-mail and by depositing same in the United States mail, postage prepaid to:

Thomas S. Tisdale, Esquire
Jeffrey S. Tibbals, Esquire
Post Office Box 486
Charleston, South Carolina 29401

Marshall H. Waldron, Jr.

Beaufort, South Carolina

1410

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

) IN THE COURT OF COMMON PLEAS
)
) CIVIL ACTION NO: 07-CP-07-995

L. PAUL TRASK, JR. Individually, as a
Citizen, Resident, Taxpayer and
Registered Elector of the State of
South Carolina, and on behalf of
others similarly situated,

Plaintiff,

vs.

SOUTH CAROLINA DEPARTMENT
OF PUBLIC SAFETY; BEAUFORT
COUNTY; BEAUFORT COUNTY
MANAGEMENT INFORMATION
SYSTEMS; BEAUFORT COUNTY
CORONER CURTIS COPELAND in
his official capacity; BEAUFORT
COUNTY SHERIFF P.J. TANNER in
his official capacity,

Defendants.

ORDER DENYING PLAINTIFF'S
MOTION FOR
RECONSIDERATION, TO
AMEND COURT'S FINDINGS,
AND TO ALTER COURT'S
JUDGMENT

This matter comes before the Court on the motion of the Defendant for

Based on the foregoing, it is respectfully submitted that this Court should grant
Defendant's motion for

HOWELL, GIBSON & HUGHES, P.A.

By: _____
Carmen Tevis Mullen

1411

Post Office Box 1128
Beaufort, SC 29901
(843) 470-5244
Attorney for Defendants
Bar No:

Beaufort, South Carolina

November 10, 2009

1412

**E
X
H
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T

R**

1413

19 November 2009

The Honorable Jerri Ann Roseneau
Clerk of Court
Beaufort County Court of Common Pleas
Post Office Box 1128
Beaufort, South Carolina 29901

Re: L. Paul Trask, Jr., individually, as a Citizen, Resident, Taxpayer and Registered Elector of the State of South Carolina v. South Carolina Department of Public Safety; Beaufort County; Beaufort County Management Information Systems; Beaufort County Coroner Curtis Copeland, in his Official Capacity; and Beaufort County Sheriff P. J. Tanner in his Official Capacity

Beaufort County Court of Common Pleas

Case No.: 2007-CP-07-995

NP File No.: 038981-00002

and

L. Paul Trask, Jr., Personally and as Next of Kin and as the Duly Appointed Personal Representative of the Estate of L. Paul Trask, III, deceased, and Meredith C. Trask v. Beaufort County; Curtis Copeland, in his Official capacity as Coroner of Beaufort County and Individually; and Copeland Company of Beaufort, LLC

Beaufort County Court of Common Pleas

Case No.: 2007-CP-07-993

NP File No.: 038981-00003

Charleston

Charlotte

Columbia

Greensboro

Greenville

Hilton Head

Myrtle Beach

NEXSEN PRUET

Hon. Jerri Ann Roseneau
Clerk of Court
19 November 2009
Page 2

Dear Ms. Roseneau:

Enclosed please find the original and two copies of the **Plaintiffs' Memorandum in Opposition to Defendants' Reply to Plaintiffs' Motion for Reconsideration, to Amend Court's Findings, and to Alter or Amend Court's Judgment** submitted by the Plaintiff, L. Paul Trask, Jr., individually, as a Citizen, Resident, Taxpayer and Registered Elector of the State of South Carolina, in the first above-referenced matter, as well as the Plaintiffs, L. Paul Trask, Jr., Personally and as Next of Kin and as the Duly Appointed Personal Representative of the Estate of L. Paul Trask, III, deceased, and Meredith C. Trask, in the second above-referenced matter.

I would appreciate you filing the **Plaintiffs' Memorandum in Opposition to Defendants' Reply to Plaintiffs' Motion for Reconsideration, to Amend Court's Findings, and to Alter or Amend Court's Judgment** with the Circuit Court and returning a stamped copy to my attention in the enclosed self-addressed and stamped envelope. A signed copy should go in each court file.

By separate letter, copy enclosed, I have sent two copies of the **Plaintiffs' Memorandum in Opposition to Defendants' Reply to Plaintiffs' Motion for Reconsideration, to Amend Court's Findings, and to Alter or Amend Court's Judgment** to the Honorable Carmen Tevis Mullen, Circuit Court Judge, for her review and consideration. In addition, I have sent a copy to all counsel of record.

1415

NEXSEN PRUET

Hon. Jerri Ann Roseneau
Clerk of Court
19 November 2009
Page 3

If you need anything else or I otherwise may be of any assistance to you regarding this matter, please feel free to contact me at your convenience.

With kindest regards, I remain

Very truly yours,

NEXSEN PRUET, LLC

Stephen P. Groves, Sr.
SPGsr:spg
Enclosures

CCE: Honorable Carmen Tevis Mullen, Circuit Court Judge
Robert W. Achurch, III, Esquire
William Davidson, Esquire
Marshall H. Waldron, Jr., Esquire
Mr. L. Paul Trask, Jr.

NPCHAR1:525134.1-LT-(SPG) 038981-00002

1416

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

L. PAUL TRASK, JR.,
Individually, as a Citizen,
Resident, Taxpayer, and
Registered Elector of the State
of South Carolina, and on
behalf of others similarly
situated,

Plaintiffs,

vs.

20
SOUTH CAROLINA
DEPARTMENT OF PUBLIC
SAFETY; BEAUFORT COUNTY;
BEAUFORT COUNTY
MANAGEMENT INFORMATION
SYSTEMS; BEAUFORT
COUNTY CORONER CURTIS
COPELAND in his Official
Capacity; and BEAUFORT
COUNTY SHERIFF
P. J. TANNER in his Official
Capacity,

Defendants.

L. PAUL TRASK, JR.,
personally and as next of kin
and as the duly appointed
personal representative of

COURT OF COMMON PLEAS

14th JUDICIAL CIRCUIT

CASE NO.: 2007-CP-07-0995

**PLAINTIFFS'
MEMORANDUM IN
OPPOSITION TO
DEFENDANTS'
REPLY TO PLAINTIFFS'
MOTION FOR
RECONSIDERATION
AND REQUEST FOR
SANCTIONS**

2009 NOV 23 PM 3:43
JERRI ANN ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

CASE NO.: 2007-CP-07-0993

the ESTATE OF L. PAUL
TRASK, III, deceased, and
MEREDITH C. TRASK,

Plaintiffs,

vs.

BEAUFORT COUNTY;
CURTIS COPELAND, in
his Official Capacity as
Coroner of Beaufort County
and Individually; and
COPELAND COMPANY
OF BEAUFORT, LLC,

Defendants.

AD
COMES NOW the Plaintiff, L. Paul Trask, Jr., Individually, as a
Citizen, Resident, Taxpayer, and Registered Elector of the State of South
Carolina, and on behalf of others similarly situated ("Mr. Trask") (Case No.
2007-CP-07-0995) and the Plaintiffs, L. Paul Trask, Jr., personally, and as
next of kin and as the duly appointed personal representative of the Estate
of L. Paul Trask, III, deceased, and Meredith C. Trask (collectively the
"Trasks") (Case No. 2009-CP-07-0993), and respectfully submits this
Memorandum in response to the Reply to Plaintiff[s]' Motion for
Reconsideration to Amend Court's Findings, and to Alter Court's Judgment
(the "995 Reply Memo.") submitted by the Defendants, South Carolina

Department of Public Safety; Beaufort County; Beaufort County Management Information Systems; Beaufort County Coroner Curtis Copeland in his official capacity; and Beaufort County Sheriff P. J. Tanner in his official capacity (the "Case 995 Defendants"). The Trasks respectfully request this Circuit Court to (a) reject the Case 995 Defendants' arguments in the 995 *Reply Memo.*, (b) deny any and all sanctions requested by the Case 995 Defendants, and (c) impose monetary sanctions (attorneys' fees, costs, *etc.*) against the Case 995 Defendants for their frivolous and thoughtless response.

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3

Initially, the Trasks would point out to this Circuit Court that the arguments made in their October 28, 2008 Motion for Reconsideration (the "*Reconsideration Motion*") of this Circuit Court's summary denial of their RTSC Petition were essentially the same arguments made in their RTSC Petition filed with this Circuit Court on December 17, 2008. The Case 995 Defendants did not respond to the RTSC Petition, much less assert the Trasks should be sanctioned for the arguments made therein.¹

¹ The Case 995 Defendants have waived their right or are estopped from asserting their meritless request for sanctions due to their failure to raise the issue in

A. Addressing The Alleged "Merits"

The Case 995 Defendants, in their 995 Reply Memo., have misinterpreted and misconstrued the facts in the following manner:

- (a) *This Circuit Court only addressed Case 2007-CP-08-995 during the December 19, 2008 hearing to address the Case 995 Defendants' Motion for Summary Judgment.*

ND
4

This is an incorrect, misrepresentative, and meritless statement given this Circuit Court's subsequent order dated October 13, 2009, denying the Trasks' Petition for Rule to Show Cause (the "RTSC Petition"). As the Case 995 Defendants are aware, the RTSC Petition was filed in **both** Case 2007-CP-08-993 and Case 2007-CP-08-995 and, therefore, when this Circuit Court denied the RTSC Petition it necessarily did so in both Case 2007-CP-08-993 **and** Case 2007-CP-08-995.

- (b) *Judge Early had disposed of Case [20]07-CP-08-993 . . . on a Motion for Summary Judgment prior to the December 19, 2008 hearing.*

This is an incorrect, misrepresentative, and meritless statement of the facts and the law. The Case 995 Defendants completely ignore the fact that even though Judge Early indicated he was going to rule in favor against the Trasks in Case 2007-CP-08-0993, he had not yet issued his written opinion when this Circuit Court conducted the December 19, 2008, hearing.

response to the RTSC Petition.

Consequently, absent a written and filed order, Case 2007-CP-08-993 was not concluded since Judge Early could have changed his mind.² In any case, that matter is on appeal to the Court of Appeals.

- (c) *This Circuit Court's May 2008 Discovery Order did not require the Case 995 Defendants to produce the Duhon File.*

ND
5

This is an incorrect, misrepresentative, and meritless statement of the facts. This Circuit Court's May 2008 Discovery Order, among other things, required the Case 995 Defendants to "supplement and provide a full and complete response to Interrogatory No. 2 (photographs, plats, sketches[,] and prepared documents) [and their counsel] will confer with the government Defendants to confirm no additional documents [exist] for production" (5/2008 Order, p.2, para. 1). The Trasks' Interrogatory No. 2, albeit specifically worded broadly in our civil procedure rules, clearly encompassed the Duhon File as it related to the facts and circumstances of the accident.³ In fact, the evidence shows the Duhon File:

² See generally Ford v. State Ethics Commission, 344 S.C. 642, 545 S.E.2d 821 (2001) (citing First Union National Bank v. Hitman, Inc., 306 S.C. 327, 411 S.E.2d 681 (Ct.App. 1991), *affirmed*, 308 S.C. 421, 418 S.E.2d 545 (1992); Case v. Case, 243 S.C. 447, 134 S.E.2d 394 (1964)) ("Until written and entered, the trial judge retains discretion to change his mind and amend his oral ruling accordingly. . . . The written order is the trial judge's final order and as such constitutes the final judgment of the court. The final written order contains the binding instructions which are to be followed by the parties.").

³ This interrogatory is one of the standard interrogatories contained in the South Carolina Rules of Civil Procedure. See Rule 33(b)(2), SCRCP. They are approved by our Legislature and the South Carolina Supreme Court. The "purpose of

- NP
6
- (1) existed when the Trasks sent Interrogatory No. 2 to the Case 995 Defendants,
 - (2) existed, but had not yet been produced, on March 18, 2008, when the Case 995 Defendants responded to discovery and said the Trasks already had all of the relevant documents;
 - (3) existed, but had not yet been produced, on April 16, 2008, when the Trasks were forced to file a Motion to Compel Discovery Responses;
 - (4) existed, but had not yet been produced, when this Circuit Court issued the May 2008 Discovery Order;
 - (5) existed, but had not yet been produced, on July 16, 2008 when the Case 995 Defendants served their Supplemental Responses to Plaintiffs' Interrogatories which indicated all documents had been produced;
 - (6) existed, but had not yet been produced, when Gwen Duhon first disclosed its existence during her August 6, 2008 deposition;

interrogatories is to promote full and fair disclosure to prevent surprise to either party." Fields v. Regional Medical Center Orangeburg, 354 S.C. 445, 458, 581 S.E.2d 489, 495-496 (Ct.App. 2003) (citing South Carolina State Highway Dep't v. Booker, 260 S.C. 245, 252, 195 S.E.2d 615, 619 (1973)), *affirmed in part and reversed in part on other grounds*, 363 S.C. 19, 609 S.E.2d 506 (2005)). See also Reed v. Clark, 277 S.C. 310, 316, 286 S.E.2d 384, 388 (1982) ("Disclosure of information between the parties before trial is designed to avoid surprise and to promote decisions on the merits after a full and fair hearing.").

- (7) existed, but had not yet been produced, on October 30, 2008 when Marshall Waldron, Esquire, executed his affidavit saying no other documents existed,
- (8) existed, but had not yet been produced, on December 16, 2008, when the Trasks filed the RTSC Petition; and
- (9) existed on existed on December 15, 2008 (date of transmittal letter) when the Case 995 Defendants finally produced the documents long after they were due either under Rule 33(a), SCRCP, or, more importantly, under the May 2008 Discovery Order.

- 
- (d) *While Interrogatory No. 2 did not request the Duhon File, the Case 995 Defendants complied with the May 2008 Discovery Order via their July 16, 2008 Supplemental Responses to Plaintiff's Interrogatories and through the Waldron Affidavit.*

This is an incorrect, misrepresentative, and meritless statement of the facts. In fact, the evidence shows the Duhon File:

- (1) existed when the Trasks sent Interrogatory No. 2 to the Case 995 Defendants,
- (2) existed, but had not yet been produced, on March 18, 2008, when the Case 995 Defendants responded to discovery and said the Trasks already had all of the relevant documents;
- (3) existed, but had not yet been produced, on April 16, 2008, when the Trasks were forced to file a Motion to Compel Discovery Responses;
- (4) existed, but had not yet been produced, when this Circuit Court issued the May 2008 Discovery Order;

(5) existed, but had not yet been produced, on July 16, 2008 when the Case 995 Defendants served their Supplemental Responses to Plaintiffs' Interrogatories which indicated all documents had been produced;

(6) existed, but had not yet been produced, when Gwen Duhon first disclosed its existence during her August 6, 2008 deposition,

(7) existed, but had not yet been produced, on October 30, 2008 when Marshall Waldron, Esquire, executed his affidavit saying no other documents existed;

(8) existed, but had not yet been produced, on December 15, 2008, when the Trasks filed the RTSC Petition; and

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(9) existed on December 17, 2008 (date of transmittal letter) when the Case 995- Defendants finally produced the documents long after they were due either under Rule 33(a), SCRCP, or, more importantly, under the May 2008 Discovery Order.

The Case 995 Defendants' July 16, 2008, supplemental interrogatory responses, while stating no other documents existed, were plainly incorrect as the Duhon File existed at that time and had been in existence for sometime previously. Moreover, the Waldron Affidavit was plainly incorrect in its assertion no other documents existed. The evidence showed Gwen Duhon had previously disclosed the existence of the Duhon File during her August 6, 2008, deposition and the Case 995 Defendants' attorney promised, on the record during the deposition, to produce the file, but failed to do so.

B. Addressing The Sanctions Request

The Case 995 Defendants' request for sanctions, pursuant to Rule 11, SCRCP, and S.C. Code Ann. §§ 15-36-10, *et. seq.*, is completely frivolous, meritless, unjustified, unwarranted, and itself subject to a request for counter-sanctions.

The sanctions request is based on the proposition the Case 995 "Defendants have already responded to . . . discovery [propounded by the Trasks] even without an Order from th[is] [Circuit] Court compelling them to do so." (995 Reply Memo., p.5). The Case 995 Defendants cite to their attached "Exhibit C" as clearly demonstrating their compliance.

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Unfortunately for the Case 995 Defendants, they ignore the fact their Exhibit C, entitled "*Defendants' Supplemental Return to Plaintiff[s]' Requests for Production*" was dated December 17, 2008, which occurred both after the Trasks were forced to file their RTSC Petition and after this Circuit Court issued the May 2008 Discovery Order. The Case 995 Defendants' Exhibit C produces the allegedly previously nonexistent Duhon File which the Case 995 Defendants had declined to produce before December 17, 2008. The Exhibit C is in direct response to and in compliance with, albeit woefully delayed, the May 2008 Discovery Order.

Moreover, the Case 995 Defendants assert, as support for their sanctions request, that "[i]t is important to note [the Trasks] filed their [RTSC Petition] over four (4) months after receiving these [discovery] [r]esponses, and never moved to compel any further responses from the [Case 995] Defendants." (995 Reply Memo., p.5). It is puzzling how the Case 995 Defendants can reasonably assert the Trasks filed their RTSC Petition four months after receiving Exhibit C since, in actuality, the Trasks filed the RTSC Petition two days before the Case 995 Defendants served Exhibit C.

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If, on the other hand, the Case 995 Defendants have mistakenly referred to their Exhibit C when they should have been referring to Exhibit E (Waldron Affidavit – Attachment – *Defendants' Supplemental Responses to Plaintiff's . . . Interrogatories*, dated July 16, 2008), the Case 995 Defendants still are mistaken in their position. The as yet unproduced Duhon File existed when Attorney Waldron originally served his 7/16/2008 supplemental interrogatory responses. The as yet unproduced Duhon File existed when Gwen Duhon openly disclosed its existence during her August 6, 2008, deposition. The as yet unproduced Duhon File existed when the Case 995 Defendants' counsel promised its production once

Gwen Duhon discussed it in her deposition. The as yet unproduced Duhon File existed when Marshall Waldron submitted his October 30, 2008 Affidavit indicating there were no other documents which needed to be produced through discovery to the Trasks.

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In any case, notwithstanding the Case 995 Defendants' assertions, the Trasks did not simply wait four months to file their RTSC Petition. The Trasks' counsel filed the RTSC Petition in December 2008, only after repeatedly contacting the Case 995 Defendants' counsel and advising of the possibility of a RTSC if compliance with the May 2008 Discovery Order was not made. In fact, the Trasks sent a copy of the proposed RTSC Petition to opposing counsel on October 23, 2008, seeking compliance prior to filing the RTSC Petition with this Circuit Court.⁴

⁴ See Letter to Robert W. Achurch, III, Esquire and Andrew F. Lindemann, Esquire from Thomas s. Tisdale, Jr., Esquire dated October 23, 2008 (the "10/23/2008 Tisdale Letter"). A copy of the 10/23/2008 Tisdale Letter is attached hereto as Exhibit "A" and incorporated herein by reference.

While the Case 995 Defendants' assertion the May 2008 Discovery Order did not "reference" the Duhon File is facially correct, the proposition is disingenuous in that the Case 995 Defendants knew or, at a minimum, reasonably should have known the May 2008 Discovery Order applied to the Duhon File, especially once it came to light in Gwen Duhon's deposition and their counsel promised its production.

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The Case 995 Defendants are not entitled to any sanctions whatsoever. The Trasks have acted properly and diligently sought compliance with their discovery requests directed to the Case 995 Defendants. On the other hand, the Trasks respectfully request and suggest they are entitled to, at a minimum, monetary sanctions (attorneys' fees, costs, etc.) against the Case 995 Defendants for having to respond to the meritless 995 Reply Memo., especially the Case 995 Defendants' frivolous sanctions request.

The Trasks respectfully request this Circuit Court conduct a hearing on this matter and award sanctions against the Case 995 Defendants in an amount this Circuit Court believes appropriate under the circumstances.

Respectfully submitted:

NEXSEN PRUET, LLC



By: _____

Thomas S. Tisdale, Jr., Esquire
Stephen P. Groves, Sr., Esquire
Jeffrey S. Tibbals, Esquire
205 King Street, Suite 400
Charleston, South Carolina 29401
Telephone: 843.577.9440
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E-Mail: ttisdale@nexsenpruet.com
sgroves@nexsenpruet.com
jtibbals@nexsenpruet.com

Attorneys for the Plaintiffs

Charleston, South Carolina

19 November 2009

Certificate of Mailing

I, Stephen P. Groves, Sr., Esquire hereby certify a copy of the
PLAINTIFFS' MEMORANDUM IN OPPOSITION TO DEFENDANTS'
REPLY TO PLAINTIFFS' JOINT MOTION FOR RECONSIDERATION, TO
AMEND COURT'S FINDINGS, AN TO ALTER OR AMEND COURT'S
JUDGMENT (Two Cases) has been served upon the Trial Judge and all
counsel of record by placing the same in the United States mail, first class
postage prepaid, addressed to the following as shown below this 19TH day
of November 2009:

WD
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The Honorable Carmen Tevis Mullen
Circuit Court Judge
Fourteenth Judicial Circuit
Post Office Box 1128
Beaufort, South Carolina 29901

Robert W. Achurch, III, Esquire
Jason F. Ward, Esquire
Howell, Gibson & Hughes, PA
Post Office Box 40
Beaufort, South Carolina 29901-0040

*Attorneys for the Defendants, South Carolina Department of Public Safety;
Beaufort County; Beaufort County Management Information Systems;
Beaufort County Coroner Curtis Copeland in his official capacity, and
Beaufort County Sheriff P. J. Tanner in his official capacity*

Marshall H. Waldron, Jr., Esquire
GRIFFITH, SADLER & SHARP, P.A.
Post Office Drawer 570
Beaufort, South Carolina 29910-0570

*Attorneys for the Respondents,
Beaufort County and Curtis Copeland, In his Official Capacity
As Coroner of Beaufort County*

William Davidson, Esquire
Andrew F. Lindemann, Esquire
DAVIDSON & LINDEMANN, PA
Post Office Box 8568
Columbia, South Carolina 29202-8568

*Attorneys for the Respondents,
Curtis Copeland, Individually and Copeland Company, LLC*

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Signed: _____

Stephen P. Groves, Sr.

Charleston, South Carolina

19 November 2009

NPCHAR1:524896.1-MO-(SPG) 038981-00002

1432

October 23, 2008

Robert W. Achurch, III, Esquire
Howell, Gibson & Hughes, PA
P.O. Box 40
Beaufort, SC 29901-0040

Andrew F. Lindemann, Esquire
Davidson Morrison & Lindemann, PA
P. O. Box 8568
Columbia, SC 29202-8568

Re: *L. Paul Trask, Jr., individually, as A CITIZEN RESIDENT,
TAXPAYER AND REGISTERED ELECTOR OF THE State of
South Carolina, and on behalf of others similarly situation, v.
South Carolina Department of Public Safety, et al.
Case No. 2007-CP-07-995*

Charleston

Charlotte

Columbia

Greensboro

Greenville

Hilton Head

Myrtle Beach

Raleigh

*L. Paul Trask, Jr., personally and as next of kin and as the duly
appointed personal representative of the ESTATE OF L. PAUL
TRASK, III, deceased, and MEREDITH C. TRASK v. Beaufort
County, et al.
Case No. 2007-CP-07-993*

Dear Robert and Andrew:

Enclosed please find a Motion to Compel Supplemental Discovery and Motion for Rule to Show Cause in connection with the above-referenced matters. As you may know, Marshall Waldron has not provided us with supplemental discovery requests served on the Defendants to date. He also has not fully complied with Judge Mullen's Order dated May 20, 2008 in response to the Motion to Compel hearing held earlier this year. Please let me know if you can provide us with these responses within the next five business days. Otherwise, we will file the attached Motions to seek relief with the Court.

By copy of this letter and the attached documents, I am serving a copy of the same on all counsel of record.

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PO Box 486
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www.nexsenpruet.com

T 843.720.1749
F 843.414.8220
E TTisdale@nexsenpruet.com
Nexsen Pruet, LLC
Attorneys and Counselors at Law

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Robert W. Achurch, III, Esquire
October 23, 2008
Page 2

With kind regards, I am

Very truly yours,

TST

Thomas S. Tisdale, Jr.

TST/dal

Enclosures

cc: Marshall Waldron, Esquire
Jeffrey S. Tibbals, Esquire

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Stephen P. Groves, Sr.
Member
Admitted in South Carolina

13 November 2009

The Honorable Jeanette Barber
Clerk of Court
South Carolina Court Of Appeals
1015 Sumter Street
Columbia, South Carolina 29201

Re: **L. Paul Trask, Jr., Individually, as a Citizen, Resident, Taxpayer, and Registered Elector of the State of South Carolina, and on behalf of others similarly situated v. South Carolina Department of Public Safety; Beaufort County; Beaufort County Management Information Systems; Beaufort County Coroner Curtis Copeland in His Official Capacity; Beaufort County Sheriff P.J. Tanner in His Official Capacity**

Charleston

Charlotte

Columbia

Greensboro

Greenville

Hilton Head

Myrtle Beach

Beaufort County Court of Common Pleas
Case No.: 2007-CP-07-995
NP File No.: 038981-00002

Dear Ms. Barber:

Enclosed please find the original and two copies of a **Notice of Appeal** filed on behalf of the Appellant, L. Paul Trask, Jr., Individually, as a Citizen, Resident, Taxpayer, and Registered Elector of the State of South Carolina, and on behalf of others similarly situated, in the above-referenced matter. Copies of the two orders being appealed are attached to the Notice of Appeal.

I also enclose the original and one copy of the **Proof of Service** showing service of the **Notice of Appeal** upon counsel for the Respondent, South Carolina Department of Public Safety; Beaufort County; Beaufort County Management Information Systems; Beaufort County Coroner Curtis Copeland in His Official

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Attorneys and Counselors at Law

1436

NEXSEN PRUET

Hon. Jeanette Barber
Clerk of Court
13 November 2009
Page 2

Capacity; Beaufort County Sheriff P.J. Tanner In His Official Capacity. I also enclose our firm check for \$100.00 in payment for the applicable filing fee.

I would appreciate your filing these documents with the Court of Appeals and returning one stamped copy of each to my attention in the enclosed self-addressed stamped envelope.

If you need anything else or I otherwise may be of any assistance to you regarding this matter, please feel free to contact me at your convenience.

With kindest regards, I remain

Very truly yours,

NEXSEN PRUET, LLC

Stephen P. Groves, Sr.

SPGsr:spg

Enclosures

CCE

Hon. Jerri Ann Roseneau, Clerk of Court
(Beaufort CCCP)

Jason F. Ward, Esquire

Mr. L. Paul Trask, Jr.

1437

STATE OF SOUTH CAROLINA
IN THE
COURT OF APPEALS

Appeal from the Court of Common Pleas
For Beaufort County
Honorable Doyet A. Early, III, Circuit Judge
Civil Action No.: 2007-CP-07-0993

L. Paul Trask, Jr., Individually, as a Citizen, Resident,
Taxpayer and Registered Elector of the State of South
Carolina, and on behalf of others similarly situated,

Appellant,

v.

South Carolina Department of Public Safety; Beaufort
County; Beaufort County Management Information
Systems; Beaufort County Coroner Curtis Copeland in
His Official Capacity; Beaufort County Sheriff P.J. Tanner
In His Official Capacity,

Respondents.

NOTICE OF APPEAL

Stephen P. Groves, Sr., Esquire
Thomas S. Tisdale, Jr., Esquire
Jeffrey S. Tibbals, Esquire
NEXSEN PRUET, LLC
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Attorneys for the Appellant

1438

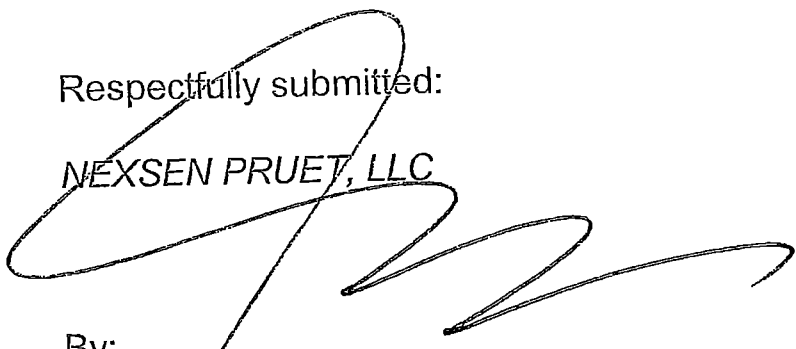
TO: THE HONORABLE JUDGES OF THE SOUTH CAROLINA
COURT OF APPEALS:

The Appellant, L. Paul Trask, Jr., Individually, as a Citizen, Resident, Taxpayer, and Registered Elector of the State of South Carolina, and on behalf of others similarly situated ("Mr. Trask"), pursuant to Rule 203 of the South Carolina Appellate Court Rules, respectfully hereby serves his Notice of Appeal showing he is appealing (a) the Order of the Honorable Carmen T. Mullen, Circuit Judge, dated 13 March 2009 and filed 18 March 2009 entitled "Order Granting Defendants' Motion for Summary Judgment", as well as, (b) the Order of the Honorable Carmen T. Mullen, Circuit Judge, dated and filed 13 October 2009, denying Mr. Trask's Motion for Reconsideration and to Alter or Amend Court's Judgment.

The Appellants' counsel received a written copy of the 18 March 2009 Order on 24 March 2009; and received a written copy of the 13 October 2009 Order on 19 October 2009. Copies of both orders are attached hereto as Exhibits "A" and "B" and are incorporated herein by reference.

Respectfully submitted:

NEXSEN PRUET, LLC

By: 

Stephen P. Groves, Sr., Esquire
Thomas S. Tisdale, Jr., Esquire
Jeffrey S. Tibbals, Esquire
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Attorneys for the Appellant

Charleston, South Carolina

13 November 2009

NPCHAR1:523308.1-APL-(SPG) 038981-00002

OTHER COUNSEL OF RECORD:

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*Attorneys for the Respondents,
South Carolina Department of Public Safety; Beaufort
County; Beaufort County Management Information
Systems; Beaufort County Coroner Curtis Copeland in
His Official Capacity; Beaufort County Sheriff P.J. Tanner
In His Official Capacity*

STATE OF SOUTH CAROLINA)
2009 MAR 10 PM 2:03) IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT)
BEAUFORT COUNTY)
CLERK OF COURT)
BEAUFORT, S.C.) CIVIL ACTION NO: 07-CP-07-995

L. PAUL TRASK, JR. Individually, as a)
Citizen, Resident, Taxpayer and)
Registered Elector of the State of)
South Carolina, and on behalf of)
others similarly situated,)

Plaintiff,)

vs.)

SOUTH CAROLINA DEPARTMENT)
OF PUBLIC SAFETY; BEAUFORT)
COUNTY; BEAUFORT COUNTY)

MANAGEMENT INFORMATION)

SYSTEMS; BEAUFORT COUNTY)

CORONER CURTIS COPELAND in)

his official capacity; BEAUFORT)

COUNTY SHERIFF P.J. TANNER in)

his official capacity,)

Defendants.)

ORDER GRANTING
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT

This matter came before me on December 19, 2008 on motion by the Defendants for Summary Judgment. Present at the hearing for the Plaintiff was Thomas S. Tisdale, Jr. of Nexsen Pruet, and for the Defendants Robert W. Achurch, III and Jason F. Ward, of Howell, Gibson and Hughes, P.A. Having fully considered the arguments of counsel, and having reviewed the parties' respective memoranda of law and supplements thereto, I hereby GRANT Defendants' Motion for Summary Judgment.

The Plaintiff filed his Complaint in the Court of Common Pleas on April 17, 2007, alleging that the various Defendants, at various times, violated S.C. Code

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Ann. §30-4-10, also known as the "Freedom of Information Act" (hereinafter referred to as "FOIA"). The following are the dates and content of the requests as alleged in the Complaint:

SC Dept of Public Safety	2/23/06	Plaintiff requested a copy of all records related to the accident and the subsequent investigation. COMPLAINT P. 15
SC Dept of Public Safety	2/27/06	Plaintiff requested all records, excluding photographs pertaining to the accident. COMPLAINT P. 16
SC Dept of Public Safety	5/18/06	Plaintiff requested copies of field notes and the Coroner's toxicology report related to the accident. COMPLAINT P. 18
SC Dept of Public Safety	12/12/06	Plaintiff requested copies of email communications between several of the investigating SCHP troopers, BCSO Captain Robert Bromage and Coroner Copeland. COMPLAINT P.19
Beaufort County Coroner Curt Copeland	12/15/05	Plaintiff requested an inquest into the death of Plaintiff's son. Plaintiff also requested the SCHP Multidisciplinary Accident Investigation Team (MAIT) to conduct official investigation into the facts and circumstances of the accident. COMPLAINT P.27
Beaufort County Coroner Curt Copeland	2/21/06	Plaintiff requested that the Coroner's office preserve all records, including audio recordings and email correspondence related to the accident. COMPLAINT P.28
Beaufort County Coroner Curt Copeland	3/20/06	Plaintiff requested copies of the Coroner's report, Bromage's inquest investigation field notes and reports as well as reports from MAIT investigation. COMPLAINT P.29
Beaufort County Coroner Curt Copeland	4/14/06	Plaintiff requested Copeland's handwritten notes taken at the scene of the accident and his interview report with Fripp Island Security Guard, James Irby. COMPLAINT P.31
Beaufort County Coroner Curt Copeland	6/22/06	Plaintiff requested cell phone records for 11/05 through 5/06 and email communications from 11/22/05 through 6/22/06. COMPLAINT P.33
Beaufort County Coroner Curt Copeland	7/20/06	Plaintiff requested a list of all Deputy Coroners. COMPLAINT P.34
Beaufort County Coroner Curt Copeland	12/11/06	Plaintiff requested email correspondence on BCC hard drives pertaining to the accident. COMPLAINT P.35

Beaufort County Coroner Curt Copeland	2/25/07	Plaintiff requested copies of reports of all toxicology examinations taken by the Coroner's office from 6/1/05 through 12/31/06. COMPLAINT P.36
Beaufort County Coroner Curt Copeland	2/25/07	Plaintiff requested radio call log from the night of the accident. COMPLAINT P.37
Beaufort County Management Information Systems	12/12/06	Plaintiff requested a copy of the Beaufort County records retention schedule for all email correspondence. COMPLAINT P.42
Beaufort County Sheriff P.J. Tanner	12/13/06	Plaintiff requested email records of Bromage pertaining to the investigation of the accident. COMPLAINT P.49
Beaufort County Sheriff P.J. Tanner	1/11/07	Requested a response in writing which records could not be produced. COMPLAINT P.51
Beaufort County Sheriff P.J. Tanner	2/3/07	Plaintiff requested copy of Sheriff's authorization which allowed Capt. Bromage to use his personal email account for the conduct of official county business. COMPLAINT P.52
Beaufort County	12/14/05	Plaintiff requested information related to Beaufort County E911 audio and computer records, reports, photos and investigation records pertaining to the accident. Plaintiff also requested the records for all personnel who responded to the Sheriff's Office, EMS, Fire Department, Coroner's Office and Highway Patrol. COMPLAINT P.59
Beaufort County	1/23/06	Plaintiff requested the computer voice stamp be added to the Sheriff's Office and EMS discs. COMPLAINT P.62
Beaufort County	2/2/07	Plaintiff requested copies of the written operational procedures for Beaufort County 911 system, the records inventory forms and all other documents used to prepare records retention schedules for every type of public record created by the operation and use of the Beaufort County 911 system. COMPLAINT P.64

I. ALLEGED FOIA VIOLATIONS THAT ARE TIME BARRED BY STATUTE OF
LIMITATIONS OF S.C. CODE ANN. §30-4-100

The Plaintiff has alleged numerous allegations relating to FOIA requests to these Defendants ranging in time from December 2005 to February 2007. S.C.

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Code Ann. § 30-4-100 S.C. Code Ann. §30-4-100, entitled "Injunctive relief; costs and attorney's fees", provides the following:

(a) Any citizen of the State may apply to the circuit court for either or both a declaratory judgment and injunctive relief to enforce the provisions of this chapter in appropriate cases as long as such application is made no later than one year following the date on which the alleged violation occurs or one year after a public vote in public session, whichever comes later. The court may order equitable relief as it considers appropriate, and a violation of this chapter must be considered to be an irreparable injury for which no adequate remedy at law exists.

(b) If a person or entity seeking such relief prevails, he or it may be awarded reasonable attorney fees and other costs of litigation. If such person or entity prevails in part, the court may in its discretion award him or it reasonable attorney fees or an appropriate portion thereof.

The Plaintiff's Complaint in this matter was filed on or about April 17, 2007. The alleged FOIA violations contained in paragraphs 15, 16, 17, 27, 28, 29, 59, and 62 of the Plaintiff's Complaint all predate the Complaint by more than one year. Thus, I find that the alleged FOIA violations contained in the above mentioned are time barred by the provisions of S.C. Code Ann. §30-4-100 and are hereby dismissed with prejudice.

II. ALLEGED FOIA VIOLATIONS THAT ARE MOOT PER SLOAN.

The Plaintiff has asserted violations of the FOIA relating to the production of documents contained at Paragraphs 18, 19, 31, 32, 33, 35, 36, 37, 42, 49, 52, 59, and 64 of the Complaint. Based on my review of the Defendants' memorandum and supplement to their memorandum of law along with representations made by counsel, I find that the Defendants have produced the subject documents requested in the above paragraphs to the extent they are in

the Defendant's possession. In addition, I also find that while some of the FOIA requests were time barred, the Defendants nevertheless produced the documents. Our Supreme Court held in *Sloan v. Friends of Hunley, Inc.*, 369 S.C. 20, 630 S.E.2d 474 (2006) that [w]here the public records that were requested have been produced [to the requesting party], any claims for alleged prior violations under the FOIA are considered to be moot." Therefore, because I find that the documents requested in paragraphs, 18, 19, 31, 32, 33, 35, 36, 37, 42, 49, 52, 59, and 64 have been produced to the extent they are in the Defendant's possession, I find that the allegations contained in the above referenced Paragraphs are moot.

To the extent the Plaintiff has raised the issue, I find that the Defendants properly redacted public records in accordance with the applicable exemptions in the FOIA statute as well as other statutory exemptions. Some requested records (such as, but not limited to, the 911 CAD printouts and records of paragraph 59) are not considered public information under the Freedom of Information Act (See, e.g. S.C. Code Ann. §23-47-10 et seq), and are thus not subject to disclosure. In addition, many of these requested documents fall under the clear exemptions contained in the FOIA. Nevertheless, the Defendants redacted sensitive information and have produced such documents. Consequently, I find the Defendants have complied with the FOIA.

III. ALLEGED FOIA VIOLATIONS THAT ARE NOT REQUESTS FOR "PUBLIC RECORDS" AS DEFINED BY THE ACT.

With reference to the allegations contained at Paragraphs 34, 51, and 62 of the Complaint, the Defendants' maintain that production of these items are not

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required under the FOIA as these are not requests for "public records" as defined by the FOIA. S.C.Code Ann. §30-4-20(c) requires a public body to produce to an FOIA requester a "public record" that is "prepared, owned, used, in the possession of, or retained" by that particular public body. The Plaintiff requested that the Defendants generate a list of deputy coroners (paragraph 34), requested for specification of public records which cannot be produced (paragraph 51), and requested the addition of computer voice time stamp be added to an audio recording which had previously been provided to the Plaintiffs (paragraph 62). I find that these requests are not "public records" in accordance with the FOIA. Consequently, no liability for these requests can arise, and these allegations are dismissed with prejudice.

IV. Implied Violations and Duties under the FOIA Asserted by the Plaintiff

The Plaintiff argues that in addition to the causes of action specifically set forth under the FOIA, there are other violations of the FOIA implied within the act. First, the Plaintiff has asserted there is a duty to restore or recover public records, including emails which have been "double deleted." Contrary to the Plaintiff's allegations, I find that there is no duty to "restore" public records as defined by the plain language of the FOIA. The plaintiff failed to point to any applicable case law or statute providing for such a duty under the FOIA, and the plain language of the FOIA statute does not mention a duty to restore public records. The Freedom of Information Act expressly sets forth what constitutes a

violation of the Act, and this court will not expand upon those specific mandates as drafted by the Legislature.

Similarly, the Plaintiff also argues that the Defendants are liable for the failure to produce public records over which the Defendants no longer exercise control or custody or possess. Again, the Plaintiff has provided and this Court can find no authority to support this proposition. Moreover, in *Kissinger v. Reporters Committee for the Freedom of The Press*, 445 U.S. 136, 100 S.Ct. 960, (1980) the United States Supreme Court found no violation of the FOIA where an agency that had been requested to produce the Nixon tapes did not produce them because it no longer exercised custody or possession of these tapes (as they had been transferred to the Department of Archives). I find that the Defendants in this case do not have a duty to produce those records which they no longer possess or exercise control or custody over.

The Plaintiff also argues that the Defendants owe a duty under the FOIA to "establish and develop standards, procedures, techniques and schedules designed to protect and preserve the public records." [See, e.g., Complaint P. 65]. While public policy would support this contention, the plain language of the FOIA does not require it as such. Again, this court will not read into the FOIA violations not specifically set forth therein. Consequently, I find that any alleged "violations" of the FOIA arising out of these alleged failures by the Defendants in the Complaint are hereby dismissed with prejudice.

V. Reasonableness of Beaufort County Sheriff's Office Fees for Copying

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The Plaintiff has asserted that the Beaufort County Sheriff's office charged the Plaintiff an amount for copies in excess of that amount provided pursuant to the FOIA." [Complaint, P. 53] S.C.Code Ann. §30-4-30 provides in relevant part that a public body,

"may establish and collect fees not to exceed the actual cost of searching for or making copies of records. Fees charged by a public body must be uniform for copies of the same record or document.... The records must be furnished at the lowest possible cost to the person requesting the records.... Nothing in this chapter prevents the custodian of the public records from charging a reasonable hourly rate for making records available to the public nor requiring a reasonable deposit of these costs before searching for or making copies of the records.

The Sheriff's office utilized the Beaufort County Code of Ordinances, Section 2-435 (Code 1982) to determine what fees to charge the Plaintiff. This Ordinance provided for uniform service charges for supplying copies of official records requested by individual citizens. Because the charges for fees by the Sheriff's office were made in accordance with a Beaufort county ordinance, I find they are reasonable and thus proper under the FOIA.

VI. Alleged FOIA violations argued by the Plaintiff but not raised in the Complaint.

Lastly, to the extent that the Plaintiff asserted (through affidavit, argument of counsel, or otherwise) additional violations of the FOIA which have not been specifically pled or alleged in his Complaint, I find that these issues are not properly before the Court. Consequently, this Court refuses to address those issues as the Plaintiff has not properly pled them nor sought amendment to his complaint.

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CONCLUSION

For all of the foregoing reasons, I hereby GRANT Defendants Motion for Summary Judgment, and dismiss this case with prejudice.

IT IS SO ORDERED.

By: C. Mullen
Carmen Tevis Mullen
Judge, Fourteenth

Beaufort, South Carolina

February 13, 2009.

Mullen

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STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

) IN THE COURT OF COMMON PLEAS
)
) CIVIL ACTION NO: 07-CP-07-995

L. PAUL TRASK, JR. Individually, as a)
Citizen, Resident, Taxpayer and)
Registered Elector of the State of)
South Carolina, and on behalf of)
others similarly situated,)

Plaintiff,)

vs.)

SOUTH CAROLINA DEPARTMENT)
OF PUBLIC SAFETY; BEAUFORT)
COUNTY; BEAUFORT COUNTY)
MANAGEMENT INFORMATION)
SYSTEMS; BEAUFORT COUNTY)
CORONER CURTIS COPELAND in)
his official capacity; BEAUFORT)
COUNTY SHERIFF P.J. TANNER in)
his official capacity,)

Defendants.)

ORDER

BEAUFORT COUNTY
CLERK OF COURT
BEAUFORT, S.C.

2009 OCT 13 PM 4: 26

This matter comes before me upon Plaintiff's Motion for Reconsideration to Amend Court's findings and to Alter or Amend the Court's Judgment. I respectfully decline to amend or alter this Court's grant of Summary Judgment for the Defendants for all of the reasons stated in this Court's prior Order.

THEREFORE,

Plaintiff's Motion seeking reconsideration of my Order, dated March 18, 2009, granting summary judgment for the defendants is respectfully denied.

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Additionally, Plaintiff's Petition for a Rule to Show Cause, filed on December 17, 2008, is hereby denied *as it was inadvertently not rule upon after a hearing.*

IT IS SO ORDERED.



Carmen T. Mullen
Judge, Fourteenth Circuit Court

Beaufort, South Carolina

October 13, 2009.

1451

**STATE OF SOUTH CAROLINA
IN THE
COURT OF APPEALS**

Appeal from the Court of Common Pleas
For Beaufort County
Honorable Doyet A. Early, III, Circuit Judge
Civil Action No.: 2007-CP-07-0993

L. Paul Trask, Jr., Individually, as a Citizen, Resident,
Taxpayer and Registered Elector of the State of South
Carolina, and on behalf of others similarly situated,

Appellant,

v.

South Carolina Department of Public Safety; Beaufort
County; Beaufort County Management Information
Systems; Beaufort County Coroner Curtis Copeland in
His Official Capacity; Beaufort County Sheriff P.J. Tanner
In His Official Capacity,

Respondents.

**PROOF OF SERVICE
for the
NOTICE OF APPEAL**

Stephen P. Groves, Sr., Esquire
Thomas S. Tisdale, Jr., Esquire
Jeffrey S. Tibbals, Esquire
NEXSEN PRUET, LLC
205 King Street, Suite 400
Charleston, South Carolina 29401
Telephone: 843.577.9440
Telecopier: 843.720.1777
E-Mail: sgroves@nexsenpruet.com

Attorneys for the Appellant

1452

I, Stephen P. Groves, Sr., Esquire, hereby certify that on 13 November 2009, I served a copy of the **Notice of Appeal** submitted by the Appellant, L. Paul Trask, Jr., Individually, as a Citizen, Resident, Taxpayer, and Registered Elector of the State of South Carolina, and on behalf of others similarly situated, on counsel for the Respondents via United States Mail, postage pre-paid, and addressed as follows:

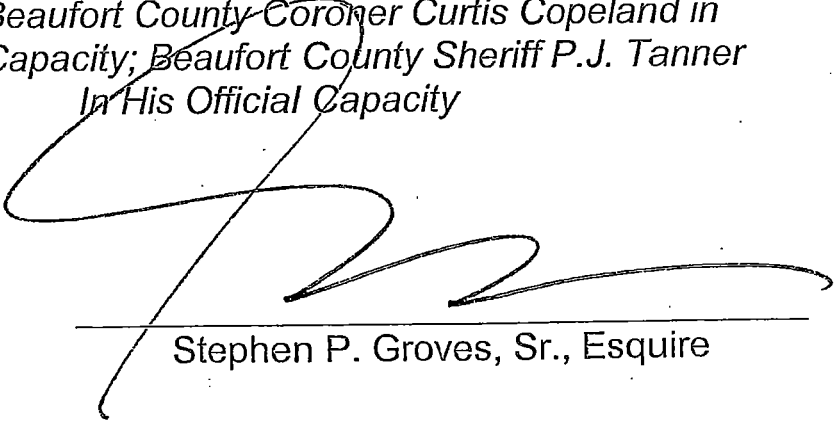
Jason F. Ward, Esquire
HOWELL, GIBSON AND HUGHES, P.A.
Post Office Box 40

Beaufort, South Carolina 299010040

Telephone: 843.522.2400

Telecopier: 843.522.2429

*Attorneys for the Respondents,
South Carolina Department of Public Safety; Beaufort
County; Beaufort County Management Information
Systems; Beaufort County Coroner Curtis Copeland in
His Official Capacity; Beaufort County Sheriff P.J. Tanner
In His Official Capacity*



Stephen P. Groves, Sr., Esquire

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1454

Stephen P. Groves, Sr.
Member
Admitted in South Carolina

13 November 2009

The Honorable Jerri Ann Roseneau
Clerk of Court
Beaufort Country Court of Common Pleas
Post Office Drawer 1228
Beaufort, South Carolina 29901

Re: L. Paul Trask, Jr., Individually, as a Citizen, Resident, Taxpayer, and Registered Elector of the State of South Carolina, and on behalf of others similarly situated v. South Carolina Department of Public Safety; Beaufort County; Beaufort County Management Information Systems; Beaufort County Coroner Curtis Copeland in His Official Capacity; Beaufort County Sheriff P.J. Tanner In His Official Capacity

Beaufort County Court of Common Pleas
Case No.: 2007-CP-07-995
NP File No.: 038981-00002

Charleston

Charlotte

Columbia

Greensboro

Greenville

Hilton Head

Myrtle Beach

Dear Ms. Roseneau:

Enclosed please find two copies of a **Notice of Appeal** filed by the Appellant, L. Paul Trask, Jr., Individually, as a Citizen, Resident, Taxpayer, and Registered Elector of the State of South Carolina, and on behalf of others similarly situated, in the above-referenced action. I enclose two copies of a **Proof of Service**.

I would appreciate your filing these documents with the Circuit Court and returning one stamped copy of each to my attention in the enclosed self-addressed stamped envelope.

205 King Street
Suite 400 (29401)
PO Box 486
Charleston, SC 29402
nexsenpruet.com
T: 843.720.1725
F: 843.414.8206
E: SGroves@nexsenpruet.com
Nexsen Pruet, LLC
Attorneys and Counselors at Law

1455

NEXSEN PRUET

Hon. Jerri Ann Roseneau
Clerk of Court
13 November 2009
Page 2

If you need anything else or I otherwise may be of any assistance to your office, please feel free to contact me at your convenience.

With kindest regards, I remain
Very truly yours,
NEXSEN PRUET, LLC

Stephen P. Groves, Sr.
SPGsr:spg
Enclosures

CCE Hon. Jeanette Barber, Clerk of Court
Jason F. Ward, Esquire
Mr. L. Paul Trask, Jr.

NPCOL1:1137697.1-LT-(SPG) 038981-00001

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Stephen P. Groves, Sr.
Member
Admitted in South Carolina

13 November 2009

Jason F. Ward, Esquire
HOWELL, GIBSON AND HUGHES, P.A.
Post Office Box 40
Beaufort, South Carolina 29901-0040

Re: L. Paul Trask, Jr., Individually, as a Citizen, Resident, Taxpayer, and Registered Elector of the State of South Carolina, and on behalf of others similarly situated v. South Carolina Department of Public Safety; Beaufort County; Beaufort County Management Information Systems; Beaufort County Coroner Curtis Copeland in His Official Capacity; Beaufort County Sheriff P.J. Tanner in His Official Capacity

Beaufort County Court of Common Pleas
Case No.: 2007-CP-07-995
NP File No.: 038981-00002

Charleston

Charlotte

Columbia

Greensboro

Greenville

Hilton Head

Myrtle Beach

Dear Mr. Ward:

Enclosed please find, for each of you, a copy of the **Notice of Appeal**, as well as, a copy of the **Proof of Service**, filed on behalf of the Appellant, L. Paul Trask, Jr., Individually, as a Citizen, Resident, Taxpayer, and Registered Elector of the State of South Carolina, and on behalf of others similarly situated, in the above-referenced matter. This Notice of Appeal has been filed with the South Carolina Court of Appeals and the Beaufort County Clerk of Common Pleas.

If you need anything else or I otherwise may be of any assistance to you regarding this matter, please feel free to contact me at your convenience. My direct telephone number is 843.720.1725 and the direct telecopier number is 843.414.8206.

205 King Street
Suite 400 (29401)
PO Box 486
Charleston, SC 29402
nexsenpruet.com

T: 843.720.1725
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Nexsen Pruet, LLC
Attorneys and Counselors at Law

1458

NEXSEN PRUET

Jason F. Ward, Esquire

13 November 2009

Page 2

With kindest regards, I remain

Very truly yours,

NEXSEN PRUET, LLC

Stephen P. Groves, Sr.

SPGsr:spg

Enclosures

CCE

Hon. Jeanette Barber, Clerk of Court
(S.C. Court of Appeals)

Hon. Jerri Ann Roseneau, Clerk of Court
(Beaufort CCCP)

Mr. L. Paul Trask, Jr.

NPCHAR1:458757.1-LT-(SPG) 038981-00003

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**STATE OF SOUTH CAROLINA
IN THE
COURT OF APPEALS**

Appeal from the Court of Common Pleas
For Beaufort County
Honorable Doyet A. Early, III, Circuit Judge
Civil Action No.: 2007-CP-07-0993

L. Paul Trask, Jr., Individually, as a Citizen, Resident,
Taxpayer and Registered Elector of the State of South
Carolina, and on behalf of others similarly situated,

Appellant,

v.

South Carolina Department of Public Safety; Beaufort
County; Beaufort County Management Information
Systems; Beaufort County Coroner Curtis Copeland in
His Official Capacity; Beaufort County Sheriff P.J. Tanner
In His Official Capacity,

Respondents.

**MOTION FOR EXTENSION OF TIME (2nd) IN WHICH
TO FILE INITIAL BRIEF AND DESIGNATION
OF MATTERS IN THE RECORD ON APPEAL**

Stephen P. Groves, Sr., Esquire
Thomas S. Tisdale, Jr., Esquire
Jeffrey S. Tibbals, Esquire
NEXSEN PRUET, LLC
205 King Street, Suite 400
Charleston, South Carolina 29401
Telephone: 843.577.9440
Telecopier: 843.720.1777
E-Mail: sgroves@nexsenpruet.com

Attorneys for the Appellant

1461

TO: THE HONORABLE JUDGES OF THE SOUTH CAROLINA
COURT OF APPEALS:

The Appellant, L. Paul Trask, Jr., Individually, as a Citizen, Resident, Taxpayer, and Registered Elector of the State of South Carolina, and on behalf of others similarly situated ("Mr. Trask"), pursuant to Rule 224 of the South Carolina Appellate Court Rules, and respectfully requests this Court of Appeals to grant him an additional thirty-day (30) extension of time in which to file his Initial Appellant's Brief and Designation of Matters to be Included in the Record on Appeal in this matter. The basis for this motion is the recent Christmas and New Years holidays, an illness of a step-child, and the fact counsel is involved in a number of other appellate and trial matters at this time.

Based upon the current briefing schedule, the Appellant's Initial Brief and Designation of Matters are due on or before 12 January 2010. Consequently, anticipating a favorable reception and subsequent grant of this motion, the Initial Brief and DOM would then be due on 11 February 2010.

Finally, Mr. Trask respectfully requests this Court of Appeals to hold the briefing time in abeyance until such time as this motion may be considered and ruled upon.

1462

Respectfully submitted:

NEXSEN PRUET, LLC

By: _____

Stephen P. Groves, Sr., Esquire
Thomas S. Tisdale, Jr., Esquire
Jeffrey S. Tibbals, Esquire
205 King Street, Suite 400
Charleston, South Carolina 29401
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Telecopier: 843.720.1777

Attorneys for the Appellant

Charleston, South Carolina

11 January 2020

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**STATE OF SOUTH CAROLINA
IN THE
COURT OF APPEALS**

Appeal from the Court of Common Pleas
For Beaufort County
Honorable Doyet A. Early, III, Circuit Judge
Civil Action No.: 2007-CP-07-0993

L. Paul Trask, Jr., Individually, as a Citizen, Resident,
Taxpayer and Registered Elector of the State of South
Carolina, and on behalf of others similarly situated,

Appellant,

v.

South Carolina Department of Public Safety; Beaufort
County; Beaufort County Management Information
Systems; Beaufort County Coroner Curtis Copeland in
His Official Capacity; Beaufort County Sheriff P.J. Tanner
In His Official Capacity,

Respondents.

**PROOF OF SERVICE
for the
MOTION FOR EXTENSION (2nd)**

Stephen P. Groves, Sr., Esquire
Thomas S. Tisdale, Jr., Esquire
Jeffrey S. Tibbals, Esquire
NEXSEN PRUET, LLC
205 King Street, Suite 400
Charleston, South Carolina 29401
Telephone: 843.577.9440
Telecopier: 843.720.1777
E-Mail: sgroves@nexsenpruet.com

Attorneys for the Appellant

1464

I, Stephen P. Groves, Sr., Esquire, hereby certify that on 11 January 2010, I served a copy of the **Motion for Extension (2nd)** submitted by the Appellant, L. Paul Trask, Jr., Individually, as a Citizen, Resident, Taxpayer, and Registered Elector of the State of South Carolina, and on behalf of others similarly situated, on counsel for the Respondents via United States Mail, postage pre-paid, and addressed as follows:

Jason F. Ward, Esquire
HOWELL, GIBSON AND HUGHES, P.A.
Post Office Box 40
Beaufort, South Carolina 299010040
Telephone: 843.522.2400
Telecopier: 843.522.2429

*Attorneys for the Respondents,
South Carolina Department of Public Safety; Beaufort
County; Beaufort County Management Information
Systems; Beaufort County Coroner Curtis Copeland in
His Official Capacity; Beaufort County Sheriff P.J. Tanner
In His Official Capacity*

Stephen P. Groves, Sr., Esquire

Charleston, South Carolina

11 January 2010

NPCHAR1:527694.1-APL-(SPG) 038981-00002

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RECEIVED

MAY 05 2010

STATE OF SOUTH CAROLINA
IN THE
COURT OF APPEALS

SC Court of Appeals Appeal from the Court of Common Pleas
For Beaufort County
Honorable Doyet A. Early, III, Circuit Judge
Civil Action No.: 2007-CP-07-0993

L. Paul Trask, Jr., Individually, as a Citizen, Resident,
Taxpayer and Registered Elector of the State of South
Carolina, and on behalf of others similarly situated,

Appellant,

v.

South Carolina Department of Public Safety; Beaufort
County; Beaufort County Management Information
Systems; Beaufort County Coroner Curtis Copeland in
His Official Capacity; Beaufort County Sheriff P.J. Tanner
In His Official Capacity,

Respondents.

**AFFIDAVIT OF THOMAS S. TISDALE, JR.
IN SUPPORT OF
RETURN TO MOTION TO DISMISS APPEAL**

Stephen P. Groves, Sr., Esquire
Thomas S. Tisdale, Jr., Esquire
Jeffrey S. Tibbals, Esquire
NEXSEN PRUET, LLC
205 King Street, Suite 400
Charleston, South Carolina 29401
Telephone: 843.577.9440
Telecopier: 843.720.1777
E-Mail: sgroves@nexsenpruet.com

Attorneys for the Appellant

1467

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

AFFIDAVIT

PERSONALLY APPEARED BEFORE ME one, Thomas S. Tisdale, Jr. Esquire, who, after being duly sworn, deposes and says as follows:

1. I am an attorney licensed and admitted to practice by the Supreme Court of South Carolina.
2. I am currently a member of Nexsen Pruet, LLC located in Nexsen Pruet, LLC's Charleston, South Carolina office.
3. Prior to joining Nexsen Pruet, LLC, I worked at Young, Clement, Rivers & Tisdale, LLP n/k/a Young, Clement, Rivers, LLP, holding the positions as an associate, partner, and managing partner.
4. During my legal career, the majority of my practice has been in the areas of civil trial and appellate litigation.
5. I have been involved with and/or handled numerous appeals in this Court of Appeals, the Supreme Court of South Carolina, the United States Court of Appeals for the Fourth Circuit, and/or the United States Supreme Court.
6. I make this affidavit of my own personal knowledge.

7. I submit this affidavit in support of the contemporaneously filed Return to Motion to Dismiss Appeal on behalf of the then Plaintiff, now Appellant, L. Paul Trask, Jr., Individually, as a Citizen, Resident, Taxpayer, and Registered Elector of the State of South Carolina, and on behalf of others similarly situated ("Mr. Trask").

8. I respectfully request this Court of Appeals deny the Motion to Dismiss Appeal filed by the Respondent, South Carolina Department of Public Safety (the "SCDPS").

9. The principal basis for the Motion to Dismiss Appeal is that a copy of the Notice of Appeal filed in this appeal on 13 November 2009, was not served upon William H. Davidson, II, Esquire and/or Andrew F. Lindemann, Esquire of Davidson & Lindemann, P.A. ("Davidson & Lindemann"), as legal counsel for the SCDPS.

10. According to a Consent Order Substituting Counsel for Defendant South Carolina Department of Public Safety (the "Substitution Order") issued 20 January 2009, and filed 21 January 2009, Davidson & Lindemann were substituted as counsel for the SCDPS replacing Robert W. Achurch, III, Esquire and Jason F. Ward, Esquire of Howell, Gibson & Hughes, P.A. ("Howell, Gibson & Hughes").

1465

11. The Circuit Court issued the Substitution Order approximately 33 days after the parties in this case had argued their respective positions to the Circuit Court on the summary judgment motion filed by all of the Defendants below in this matter.

12. The Circuit Court issued the Substitution Order approximately 74 days after the parties had argued their respective positions to the Circuit Court on their cross motions for summary judgment filed in a related civil case which is currently on appeal to this Court of Appeals (Case No. 2009114686) and which is captioned L. Paul Trask, Jr., Personally and as Next of Kin and as the Duly Appointed Personal Representative of the Estate of L. Paul Trask, III, deceased, and Meredith C. Trask v. Beaufort County; Curtis Copeland, in his Official Capacity as Coroner of Beaufort County and Individually; and Copeland Company of Beaufort, LLC (Appeal from Beaufort County Court of Common Pleas, Case No. 2007-CP-07-0993) ("Trask v. Beaufort County").

13. I have been representing and continue to represent Mr. Trask and his family in this matter and in Trask v. Beaufort County.

1470

14. Davidson & Lindemann has been representing and continues to represent Coroner Copeland and the Copeland Funeral Home in Trask v. Beaufort County.

15. Marshall H. Waldron, Jr., Esquire, both prior to and after he joined Griffith, Sadler & Sharp, P.A. ("Griffith Sadler & Sharpe") has been representing and continues to represent both Beaufort County and Coroner Copeland (in his official capacity) in Trask v. Beaufort County.

16. The Notice of Appeal (as shown in the "Other Counsel Of Record" section) and its related Proof of Service indicates service for all of the Respondents in this appeal was being made upon Howell, Gibson & Hughes as legal counsel for all of those parties.

17. I understand that a copy of the Notice of Appeal was not served on Davidson & Lindemann on 13 November 2009, as it was unclear to both me and Stephen P. Groves, Sr., Esquire the Howell, Gibson & Hughes no longer represented the SCDPS.

18. In every proceeding which I attended and for which Davidson & Lindemann appeared, I was under the impression and believed Davidson & Lindemann were in attendance in Davidson & Lindemann's capacity as legal counsel for Coroner Copeland and the Copeland Funeral Home in Trask v. Beaufort County.

19. As to which party-defendant Davidson & Lindeman represented in this case and when such legal representation began was and is, at a minimum, unclear to me.

20. Based upon the correspondence and pleadings attached as exhibits to the contemporaneously filed Affidavit of Stephen P. Groves, Sr. (the "Groves Affidavit"), I believe there was justifiable and understandable confusion as to the identity of the law firm which represented the SCDPS at the Circuit Court level and, thereafter, at the appellate level.

21. Based upon the correspondence and pleadings attached as exhibits to the Groves Affidavit, I believe service of the Notice of Appeal upon Howell, Gibson & Hughes, as counsel for the SCDPS, was both justifiable and understandable given confusion as to the identity of the law firm which represented the SCDPS.

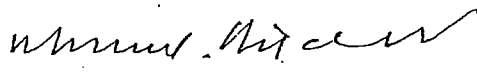
22. I believe the SCDPS was constructively served with a copy of the Notice of Appeal on 13 November 2009, as the most recent correspondence and/or pleadings and filings in this case at the Circuit Court level did not reveal that Davidson & Lindemann has been substituted for Howell, Gibson & Hughes and all indications were that Howell, Gibson & Hughes still held the position as SCDPS' counsel.

23. Davidson & Lindemann have attached a number of letters to the Motion to Dismiss Appeal dated between 28 January 2009, through 10 February 2009, which indicates that copies of the correspondence were being sent to, among others, William Davidson, II, Esquire of Davidson & Lindemann.

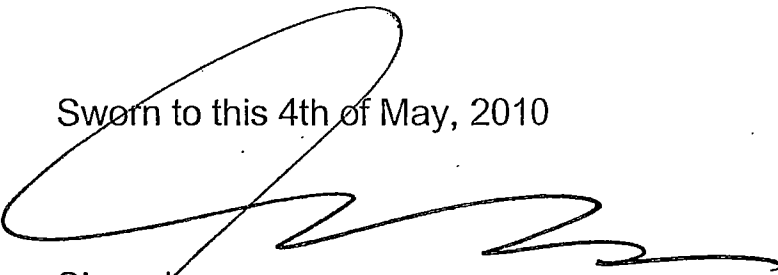
24. To the extent that I have copied Davidson & Lindemann with any such correspondence or subsequent correspondence and/or court filings either before 21 January 2009, or after 10 February 2009, I have done so because that law firm, either through William H. Davidson, II, Esquire or Andrew F. Lindemann, Esquire, has represented and continues to still represent Coroner Copeland and the Copeland Funeral Home in Trask v. Beaufort County.

25. To the extent that I have copied Marshall H. Waldron, Jr., Esquire of Griffith, Sadler & Sharp on any correspondence and/or court filings either before 1 January 2009, or up until the present, I have done so because Griffith Sadler & Sharpe has served as counsel for both Beaufort County and Coroner Copeland in his official capacity in Trask v. Beaufort County.

FURTHER AFFIANT SAYETH NOT.

Signed: 
Thomas S. Tisdale, Jr.

Sworn to this 4th of May, 2010

Signed: 
STEPHEN D. GROVES, SR.
Notary Public for the
State of South Carolina

My Commission Expires: 23 APR 2018

NPCHAR1:569519.1-APL-(SPG) 038981-00002

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Carmen Tevis Mullen, Circuit Court Judge

Case No. 2007-CP-07-0995

L. Paul Trask, Jr., individually, as a citizen, resident,
taxpayer and registered elector of the State of South Carolina,
and on behalf of others similarly situated, ... Appellant,

v.

South Carolina Department of Public Safety, Beaufort County,
Beaufort County Management Information Systems,
Beaufort County Coroner Curtis Copeland in his official capacity,
and Beaufort County Sheriff P.J. Tanner in his official capacity, ... Respondents.

**REPLY TO RETURN TO
MOTION TO DISMISS APPEAL**

The Respondent South Carolina Department of Public Safety ("SCDPS") has moved this Court to dismiss the Appellant's appeal for lack of appellate jurisdiction as a result of the Appellant's failure to serve the Notice of Appeal on SCDPS or its counsel of record.

1475

In response, the Appellant argues that there was "reasonable confusion" about the identity of the counsel of record for SCDPS and suggests that there was "constructive service" of the Notice of Appeal when it was served on SCDPS's former counsel. The applicable facts and law do not support that position.

As an initial point, it is very telling what was *not* included in the lengthy affidavits of the Appellant's two attorneys. Neither Thomas Tisdale or Stephen Groves denies having been served with the Consent Order Substituting Counsel for Defendant South Carolina Department of Public Safety filed January 21, 2009.¹ Therefore, there is no question that the Appellant through his counsel had proper notice of the change in counsel for SCDPS in January 2009.

The record demonstrates with equal clarity that the Appellant's counsel immediately acted upon that change in counsel for SCDPS. A series of correspondence and filings in January and February 2009 show that Tisdale was aware that William Davidson had become counsel for SCDPS. There are a number of letters generated by Tisdale and received by Tisdale which copy Davidson. *See*, Davidson Affidavit, para. 7, Ex. E. Interestingly, there are no letters *prior to January 2009* to Davidson or copying Davidson. That refutes any suggestion that Davidson

¹ The record includes a copy of a cover letter dated January 29, 2009, showing that a filed copy of the Consent Order Substituting Counsel for Defendant South Carolina Department of Public Safety was sent to Thomas S. Tisdale, Jr. That cover letter, in fact, reiterated that William Davidson had been substituted as counsel of record for SCDPS. *See*, Davidson Affidavit, para. 6, Ex. D. The record further includes a copy of a letter dated January 15, 2009, whereby Davidson forwarded the Consent Order Substituting Counsel for Defendant South Carolina Department of Public Safety to Judge Carmen Mullen for her signature. Tisdale. was copied on that January 15, 2009 letter. *See*, Davidson Affidavit, para. 5, Ex. C.

was copied on certain correspondence only because he was believed to have been involved in other Trask litigation. The fact that Davidson began receiving and sending correspondence in January 2009 demonstrates the Appellant's recognition and understanding that he had become counsel of record for SCDPS *in this litigation*.²

Further, it is submitted that the Appellant's professed confusion is simply immaterial. South Carolina law does not recognize the concept of "constructive service." To the contrary, prevailing case law clearly explains that actual service of the Notice of Appeal is a jurisdictional requirement. The applicable Appellate Court Rules state in mandatory terms that the Notice of Appeal "*shall* be served on all respondents" and that the service "*shall* be made upon the attorney." Rules 203(b)(1) and 233(b), SCACR. (Emphasis added). South Carolina law does not provide for any exceptions or any discretion for this Court to excuse a failure to properly serve a Notice of Appeal. The Supreme Court has clearly held that "if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no

² In the affidavits, the Appellant's counsel suggests that confusion was caused by another lawsuit filed by L. Paul Trask, Jr. which bears Civil Action Number 2007-CP-07-0993. The Appellant correctly points out that Andrew F. Lindemann, who practices with William Davidson, was and remains counsel of record in that case. Lindemann represents only non-governmental defendants in that litigation, namely Copeland Company of Beaufort, LLC and Curtis Copeland in his individual capacity. SCDPS is not a party to that litigation. Lindemann did not make an appearance in the present litigation (Civil Action Number 2007-CP-07-0993) until after the appeal was filed. *See*, Davidson Affidavit, paras. 8, 10. Moreover, there is no evidence that Davidson was ever involved in Civil Action Number 2007-CP-07-0993. *See*, Davidson Affidavit, para. 11. Hence, the Appellant's suggestion that there was any bonafide confusion when in January 2009, Davidson was legally and properly substituted as counsel for SCDPS in Civil Action Number 2007-CP-07-0995 is unavailing.

authority or discretion to 'rescue' the delinquent party by extending or ignoring the deadline for service of the notice." *Elam v. South Carolina Dept. of Transportation*, 361 S.C. 9, 602 S.E.2d 772, 775 (2004). The Appellant has conceded that he did not serve the Notice of Appeal on SCDPS or its counsel of record. His error is not subject to "rescue" by this Court. On that basis alone, SCDPS must be dismissed from this appeal.

As a secondary or alternative argument, the Appellant maintains that at the time he filed his Notice of Appeal there was still another Rule 59(e) motion pending in the Circuit Court. He therefore suggests that the Notice of Appeal was prematurely filed. Strangely, the Appellant does not actually request that his current appeal be dismissed to allow the lower court to consider that Rule 59(e) motion. Instead, he appears to be seeking an advisory opinion. He does not point blank ask for the dismissal of his "prematurely filed" appeal because of apparent concern that the pending Rule 59(e) motion is a repetitive motion which would not stay the deadline for filing an appeal. Instead, he suggests that this Court "could" dismiss the current appeal. However, it is clear that our appellate courts will not issue advisory opinions. *See, S.C. Labor Ltd., LLC v. Eastern Tree Service, Inc.*, 362 S.C. 654, 609 S.E.2d 305, 307, n.1 (Ct. App. 2005) (Court of Appeals does not issue advisory opinions). *See also, Horry County v. Parbel*, 378 S.C. 253, 662 S.E.2d 466 (Ct. App. 2008). This Court therefore should not decide whether the Appellant's current Rule 59(e) motion is repetitive and would therefore bar a later

appeal – if filed. That would clearly be an advisory decision.

Nonetheless, even if the Court weighs in on the impact of the pending Rule 59(e) motion, SCDPS submits that it makes no difference. SCDPS submits that the Appellant has abandoned that pending Rule 59(e) motion. The Appellant never intended to pursue that motion after filing his current Notice of Appeal. If he had truly intended to obtain the adjudication of that motion, he would have taken steps to stay this appeal and have jurisdiction returned to the Circuit Court for a ruling on that motion. Such has not been done. To the contrary, the Appellant has taken steps to proceed forward with his appeal – including the filing of his Initial Brief. That pending Rule 59(e) motion was long forgotten and abandoned, that is, until SCDPS moved for dismissal of the appeal.

The Appellant cites to the case of *Hudson v. Hudson*, 290 S.C. 215, 349 S.E.2d 341 (1986), in which the Supreme Court held that "the service and filing of a Notice of Appeal *before* the filing of timely post-trial motions under Rule 59 by any party does not deprive the lower court of jurisdiction to consider the motions." 349 S.E.2d at 341. (Emphasis added). *Hudson*, however, is not dispositive as to the jurisdictional issue presented here in the abstract because the Appellant filed his Notice of Appeal *after* filing a Rule 59(e) motion and without waiting for that motion to be adjudicated. By footnote the Supreme Court in *Hudson* indicated that this presented a different scenario -- one where a Notice of Appeal need not be filed. 349 S.E.2d at 341, n.1.

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By filing his Notice of Appeal while his second Rule 59(e) motion was pending, the Appellant abandoned or waived that Rule 59(e) motion. He has made absolutely no attempt since October 2009 to have his Rule 59(e) motion heard before proceeding with his appeal. For example, he did not file a motion to remand jurisdiction to the lower court nor did he file a motion to stay the appeal to allow for his Rule 59(e) motion to be heard. In fact, until now he provided no notice to this Court that there was still a motion even pending in the lower court. Instead, he proceeded forward with the appeal and filed his Initial Brief, thereby giving full indication that he was no longer seeking the adjudication of that second Rule 59(e) motion.

This very issue regarding the abandonment of a pending motion in the lower court by the pursuit of an appeal has been previously addressed by the Iowa Supreme Court. In *IBP, Inc. v. Al-Gharib*, 604 N.W.2d 621 (Iowa 2000), the Iowa court ruled as follows:

When the party who has filed a posttrial motion appeals, no jurisdictional problem arises. Rather, we consider the movant-appellant's appeal as having been taken as a matter of right. However, in these circumstances, the appellant is deemed to have waived and abandoned the posttrial motion. Additionally, once the appeal is perfected, the district court loses jurisdiction to rule on the motion, and any such ruling has no legal effect.

604 N.W.2d at 628. See also, *Peachee v. Pitcher*, 695 N.W.2d 43 (Iowa Ct. App. 2004) ("[a]lthough [appellants] did file a post-ruling motion, by filing their notice

of appeal before the district court could entertain the motion or enter a ruling, they are deemed to have waived and abandoned the motion").

Consequently, where a Notice of Appeal is filed while a Rule 59(e) motion is pending, the movant should be held to have waived or abandoned that motion. That should especially be the case where, as here, the appealing party makes no motion to stay the appeal and instead proceeds forward with filing his Initial Brief before the Rule 59(e) motion is even heard. In effect, the Appellant failed to provide any indication to this Court or to the opposing party that he still intended to pursue that second Rule 59(e) motion. In fact, his filing of his Notice of Appeal and then his Initial Brief sent the opposite message.

At any rate, even if the rule announced by the Supreme Court in *Hudson* were controlling as the Appellant seems to suggest, then he is still not entitled to any relief because he failed to follow that rule. The *Hudson* Court held as follows:

IT IS ORDERED that in the event timely post-trial motions are filed under Rule 59, simultaneously with or subsequent to the filing of a Notice of Appeal, the appellant shall notify the Clerk of this Court in writing. Upon receipt of such notice, the appeal shall be dismissed without prejudice. Any party can appeal within ten (10) days after the order disposing of the post-trial motions. A second filing fee will not be collected from a party who previously appealed.

Hudson, 349 S.E.2d at 341-42. It is undisputed that the Appellant did not notify the Clerk of the Court of Appeals in writing that there was a Rule 59(e) motion still pending in the lower court that needed to be heard. His failure to comply with the

procedure set forth in *Hudson* is thus further evidence to show that he abandoned or waived any consideration of that Rule 59(e) motion.

Furthermore, as a final point, SCDPS submits that the Appellant's reliance on *Hudson* is actually misplaced given that *Hudson* was decided under the Rules of Practice in the Supreme Court and Court of Appeals, which were repealed effective September 1, 1990, when the South Carolina Appellate Court Rules were adopted. *See*, Rule 102, SCACR. Rule 205, SCACR, which governs this appeal, provides as follows:

Upon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal; *the lower court shall have exclusive jurisdiction to entertain petitions for writs of supersedeas as provided by Rule 225.* Noting in these Rules shall prohibit the lower court, commission or other tribunal from proceeding with matters not affected by the appeal.

See, Rule 205, SCACR. (Emphasis added). The italicized sentence above provides the *only* exception to the general rule that exclusive jurisdiction vests in the appellate court upon the service of the Notice of Appeal.³ If the Supreme Court in its rules-making capacity intended to maintain the rule announced in *Hudson*, certainly Rule 205 would have included language stating that the lower court retained jurisdiction also to decide timely post-trial motions under Rule 59.

³ Interestingly, this italicized provision appears to have been new to the Appellate Court Rules. Such language was not included in Rule 18, § 3 of the Supreme Court Rules, which was the predecessor of Rule 205, SCACR.

As further indication that the Supreme Court intended a change from *Hudson*, it is quite telling that the very specific procedure adopted by the Court in *Hudson* -- requiring the appellant to notify the clerk of the appellate court in writing when a post-trial motion remains pending in the lower court -- was *not* adopted as part of the South Carolina Appellate Court Rules. This demonstrates that *Hudson* is no longer persuasive authority.

In sum, under the South Carolina Appellate Court Rules, the lower court loses jurisdiction over a pending Rule 59(e) motion when a Notice of Appeal is served and filed. At any rate, this Court should consider the Appellant's Rule 59(e) motion to have been abandoned given his failure to take any steps since the filing of the Notice of Appeal to have jurisdiction remanded for consideration of that motion. To the contrary, the Appellant has proceeded forward with his appeal by filing his Initial Brief with this Court. Finally, this Court should not issue any advisory opinion as to whether the pending Rule 59(e) motion is a repetitive motion and/or whether that motion properly stays the time for appealing. If the Appellant wishes to dismiss this appeal, he may do so, but the consequences of that decision remain to be decided. This Court may determine the timeliness of a later appeal only when that appeal is actually filed. To decide such issues at this point would be advisory and thus beyond this Court's jurisdiction.

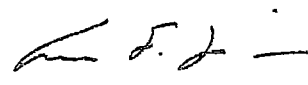
Based on the foregoing discussions, the Respondent SCDPS reiterates its request that the appeal against SCDPS for alleged FOIA violations be dismissed.

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The Appellant's failure to serve the Notice on Appeal on the Respondent SCDPS or its counsel of record is a jurisdictional defect. Because there was not timely service of the Notice of Appeal on SCDPS, this Court lacks appellate jurisdiction over the appeal of the order in favor of SCDPS.

Respectfully submitted,

DAVIDSON & LINDEMANN, P.A.

BY: 

ANDREW F. LINDEMANN
WILLIAM H. DAVIDSON, II
1611 Devonshire Drive
Post Office Box 8568
Columbia, South Carolina 29202
(803) 806-8222

*Counsel for Respondent South Carolina
Department of Public Safety*

Columbia, South Carolina

May 19, 2010

1484

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Carmen Tevis Mullen, Circuit Court Judge

Case No. 2007-CP-07-0995

L. Paul Trask, Jr., individually, as a citizen, resident,
taxpayer and registered elector of the State of South Carolina,
and on behalf of others similarly situated, ... Appellant,

v.

South Carolina Department of Public Safety, Beaufort County,
Beaufort County Management Information Systems,
Beaufort County Coroner Curtis Copeland in his official capacity,
and Beaufort County Sheriff P.J. Tanner in his official capacity, ... Respondents.

AFFIDAVIT OF WILLIAM H. DAVIDSON, II

PERSONALLY APPEARED BEFORE ME, WILLIAM H. DAVIDSON, II,
who first being duly sworn deposes and states as follows:

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6. By letter dated January 29, 2009, my paralegal Adam J. Bruyere forwarded to the other counsel of record, Robert Achurch and Thomas S. Tisdale, Jr., a filed copy of the Consent Order Substituting Counsel for Defendant South Carolina Department of Public Safety. That letter reiterated that I had been substituted as counsel of record for SCDPS. A true and accurate copy of the January 29, 2009 letter is attached as Exhibit D to this affidavit.

7. From that January 8, 2009 forward, I was copied on numerous letters and other filings from Mr. Tisdale as well as from Mr. Achurch, who remained counsel for the other Defendants. A true and accurate copy of such correspondence is attached as Exhibit E to this affidavit. Those letters reference specifically and only Civil Action Number 2007-CP-07-0995 and reflect that all counsel were aware of my involvement as counsel of record for SCDPS in Civil Action Number 2007-CP-07-0995.

8. My partner Andrew F. Lindemann did not get involved in Civil Action Number 2007-CP-07-0995 representing the South Carolina Department of Public Safety until after the appeal was filed.

9. Prior to January 2009, my law firm did not represent any party in Civil Action Number 2007-CP-07-0995.

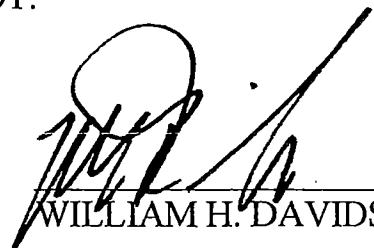
10. Mr. Lindemann had been and continues to be counsel of record in another lawsuit filed by L. Paul Trask, Jr. which bears Civil Action Number 2007-

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CP-07-0993. In that lawsuit, Mr. Lindemann represents only non-governmental defendants, namely Copeland Company of Beaufort, LLC and Curtis Copeland in his individual capacity. That action is currently on appeal to the South Carolina Court of Appeals. SCDPS is not and, to my knowledge, never has been a party in Civil Action Number 2007-CP-07-0993.

11. I have never been counsel of record in Civil Action Number 2007-CP-07-0993. I have never worked on that file. I have never billed any time to that file. I have never made any appearances in that case. I have never sent any correspondence even referencing that case. The insurer on Civil Action Number 2007-CP-07-0993 is Selective Insurance Company, for which I personally do no work within my firm. I have never given Appellant's counsel nor anyone else any reason to believe that I was counsel of record in Civil Action Number 2007-CP-07-0993.

FURTHER AFFIANT SAYETH NOT.



WILLIAM H. DAVIDSON, II

SWORN TO BEFORE ME THIS

19 DAY OF MAY 2010.

Nancy M. Bouknig (t) (SEAL)
NOTARY PUBLIC FOR
SOUTH CAROLINA

COMMISSION EXPIRES: 1-17-2013

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Exhibit A

1455

DAVIDSON & LINDEMANN, P.A.

ATTORNEYS AND COUNSELLORS AT LAW

William H. Davidson, II
Andrew F. Lindemann*
James M. Davis, Jr.†
Robert D. Garfield

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Kate A. Rice
Daniel C. Plyler
Joel S. Hughes
Kristy M. Grafton

Of Counsel
Kenneth P. Woodington

January 8, 2009

* Also admitted in North Carolina
† Certified Mediator

Via Facsimile (843-522-8362) and U.S. Mail

The Honorable Carmen Tevis Mullen
Chief Administrative Judge
Fourteenth Judicial Circuit
100 Ribaut Road
Beaufort, South Carolina 29901

RE: L. Paul Trask, Jr., individually, as a citizen, resident, taxpayer and registered elector of the State of South Carolina, and on behalf of others similarly situated v. South Carolina Department of Public Safety, Beaufort County; Beaufort County Management Information Systems; Beaufort County Coroner Curtis Copeland in his official capacity; Beaufort County Sheriff P.J. Tanner in his official capacity
Civil Action Number: 07-CP-07-995
Claim Number:
Date of Incident: November 22, 2005
Our File Number: 103.8010

Dear Judge Mullen:

I have just been retained to represent the South Carolina Department of Public Safety in connection with the above-referenced case. I understand that this case is on the trial roster for the week of January 12, 2009, and that summary judgment is currently pending. It is also my understanding that someone from Robert Achurch's office will be attending the roster meeting, and I can make myself available to status this case if the Court is so inclined.

Additionally, I am in the process of preparing an order substituting me as counsel for the Department and will forward same to you for your approval in the near future. Thank you for your consideration in this matter.

Very truly yours,

DAVIDSON & LINDEMANN, P.A.



William H. Davidson, II

WHD,II:ajb

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The Honorable Carmen Tevis Mullen
January 8, 2009
Page Two

cc: Via Facsimile (843-414-8220) and U.S. Mail
Thomas S. Tisdale, Esquire
Nexsen Pruet, LLC
205 King Street, Suite 400
Post Office Box 486
Charleston, South Carolina 29401

Via Facsimile (843-522-2429) and U.S. Mail
Robert W. Achurch, III, Esquire
Howell, Gibson & Hughes, P.A.
25 Rue Du Bois Lady's Island
Post Office Box 40
Beaufort, South Carolina 29901

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DAVIDSON & LINDEMANN, P.A.

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Lawrence S. Kerr, M.D.†
Kate A. Rice
Daniel C. Plyler
Joel S. Hughes
Kristy M. Grafton

Of Counsel
Kenneth P. Woodington

FACSIMILE COVER SHEET

* Also admitted in North Carolina
† Certified Mediator

DATE: January 8, 2009

TO: The Honorable Carmen Tevis Mullen **FAX:** 843-522-8362
Thomas S. Tisdale, Esquire **FAX:** 843-414-8220
Robert W. Achurch, III, Esquire **FAX:** 843-522-2429

FROM: William H. Davidson, II, Esquire

RE: L. Paul Trask, Jr., individually, as a citizen, resident, taxpayer and registered elector of the State of South Carolina, and on behalf of others similarly situated v. South Carolina Department of Public Safety, Beaufort County; Beaufort County Management Information Systems; Beaufort County Coroner Curtis Copeland in his official capacity; Beaufort County Sheriff P.J. Tanner in his official capacity
Civil Action Number: 07-CP-07-995
Claim Number:
Date of Incident: November 22, 2005
Our File Number: 103.8010

NUMBER OF PAGES INCLUDING COVER SHEET: 3

COMMENTS:

Please see attached correspondence. Thank you.

The information contained in this facsimile message is attorney privileged and confidential information intended only for the use of the individual or firm named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution, or copy of this communication is strictly prohibited. If you have received this communication in error, please notify us immediately by telephone at 803-806-8222 and return the original message at the above address via the United States Postal Service. Thank you!

If you have any problems receiving this fax, please contact Adam at 803-806-8222.

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Exhibit B

1492

HOWELL, GIBSON AND HUGHES, P.A.
ATTORNEYS AT LAW

Post Office Box 40
Beaufort, South Carolina 29901-0040

JAMES S. GIBSON, JR.
STEPHEN P. HUGHES
PATRICK M. HIGGINS
ROBERT W. ACHURCH III
DAVID S. BLACK

MARY BASS LOHR
THOMAS A. BENDLE, JR.
WILLIAM T. YOUNG III
JASON F. WARD

25 RUE DU BOIS
LADY'S ISLAND
BEAUFORT, SOUTH CAROLINA 29907

TELEPHONE: 843 - 522-2400
FAX NUMBER: 843 - 522-2429
E-Mail: hghpa@islc.net
WRITER'S DIRECT: 843 - 522-2420

January 9, 2009

VIA FACSIMILE AND U.S. MAIL (FAX#803-806-8855)

William H. Davidson, II, Esquire
Davidson & Lindemann, PA
Post Office Box 8568
Columbia, SC 29202

Re: L. Paul Trask, Jr. vs. SC Department of Public Safety; Beaufort County;
Beaufort County Management Information Systems; Beaufort County
Coroner Curtis Copeland; Beaufort County Sheriff P.J. Tanner
Civil Action No.: 07-CP-07-995
Our File No: 10421 RWA

Dear Will:

Please find enclosed proposed Order for Substitution of Counsel in regards to the above referenced matter.

If you find the Order for Substitution of Counsel satisfactory, please sign it where indicated and return it to me in the enclosed self-addressed stamped envelope. I will see that the Order is filed with the court.

With kindest regards, I am

Yours truly,

HOWELL, GIBSON & HUGHES, P.A.



Robert W. Achurch, III

RWAIll/wmh

Enclosures

cc: Henry R. Wengrow, Esquire
Thomas S. Tisdale, Jr., Esquire

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Exhibit C

1494

DAVIDSON & LINDEMANN, P.A.

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Joel S. Hughes
Kristy M. Grafton

Of Counsel
Kenneth P. Woodington

January 15, 2009

* Also admitted in North Carolina
† Certified Mediator

The Honorable Carmen Tevis Mullen
Chief Administrative Judge
Fourteenth Judicial Circuit
100 Ribaut Road
Beaufort, South Carolina 29901

RE: L. Paul Trask, Jr., individually, as a citizen, resident, taxpayer and registered elector of the State of South Carolina, and on behalf of others similarly situated v. South Carolina Department of Public Safety, Beaufort County; Beaufort County Management Information Systems; Beaufort County Coroner Curtis Copeland in his official capacity; Beaufort County Sheriff P.J. Tanner in his official capacity
Civil Action Number: 07-CP-07-995
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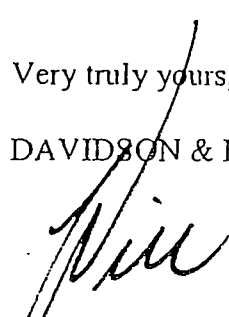
Dear Judge Mullen:

Enclosed herewith for your consideration is a **Consent Order Substituting Counsel for Defendant South Carolina Department of Public Safety** in the above-referenced case. You will note that the previous attorney for DPS, Robert Achurch, and General Counsel from DPS have consented to the substitution. If this order meets with your approval, please sign same and return it to me in the enclosed self-addressed, stamped envelope. I will then take care of having the order filed with the Clerk.

Thank you for your consideration in this matter.

Very truly yours,

DAVIDSON & LINDEMANN, P.A.


William H. Davidson, II

WHD,II:ajb
Enclosures

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The Honorable Carmen Tevis Mullen
January 15, 2009
Page Two

cc: Thomas S. Tisdale, Esquire
Nexsen Pruet, LLC
205 King Street, Suite 400
Post Office Box 486
Charleston, South Carolina 29401

Robert W. Achurch, III, Esquire
Howell, Gibson & Hughes, P.A.
25 Rue Du Bois Lady's Island
Post Office Box 40
Beaufort, South Carolina 29901

1456

Exhibit D

1457

DAVIDSON & LINDEMANN, P.A.

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Of Counsel
Kenneth P. Woodington

January 29, 2009

* Also admitted in North Carolina
† Certified Mediator

Robert W. Achurch, III, Esquire
Howell, Gibson & Hughes, P.A.
25 Rue Du Bois Lady's Island
Post Office Box 40
Beaufort, South Carolina 29901

RE: L. Paul Trask, Jr., individually, as a citizen, resident, taxpayer and registered elector of the State of South Carolina, and on behalf of others similarly situated v. South Carolina Department of Public Safety, Beaufort County; Beaufort County Management Information Systems; Beaufort County Coroner Curtis Copeland in his official capacity; Beaufort County Sheriff P.J. Tanner in his official capacity
Civil Action Number: 07-CP-07-995
Claim Number:
Date of Incident: November 22, 2005
Our File Number: 103.8010

Dear Mr. Achurch:

Enclosed herewith for your file is a clocked-in copy of the order substituting Will Davidson and our firm as counsel of record for the South Carolina Department of Public Safety.

Thank you for your attention in this matter.

Very truly yours,

DAVIDSON & LINDEMANN, P.A.



Adam J. Bruyere
Paralegal to William H. Davidson, II

:ajb
Enclosure

cc: Thomas S. Tisdale, Esquire

1498

Exhibit E

1495

HOWELL, GIBSON AND HUGHES, P.A.
ATTORNEYS AT LAW

Post Office Box 40
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DAVID S. BLACK

MARY BASS LOHR
THOMAS A. BENDLE, JR.
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25 RUE DU BOIS
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BEAUFORT, SOUTH CAROLINA 29907

TELEPHONE: 843 - 522-2400
FAX NUMBER: 843 - 522-2429
E-Mail: hghpa@islc.net
WRITER'S DIRECT: 843 - 522-2420

January 19, 2009

Thomas S. Tisdale, Jr., Esquire
Nexsen, Pruet, Jacobs & Pollard, L.L.P.
Post Office Box 486
Charleston, SC 29402

Re: L. Paul Trask, Jr. vs. SC Department of Public Safety; Beaufort County;
Beaufort County Management Information Systems; Beaufort County
Coroner Curtis Copeland; Beaufort County Sheriff P.J. Tanner
Civil Action No: 07-CP-07-995
File No: 10421 RWA

Dear Tom:

It was a pleasure meeting with you and Paul Trask to discuss Mr. Trask's list of documentation which, if provided, Mr. Trask would agree that any and all FOIA requests made to Beaufort County would have been complied with to the extent the information requested exists.

Mr. Trask listed six (6) subjects. 1) Mr. Trask requested a copy of the un-redacted 911 printout and indicated that, for now, if Beaufort County would provide him with the telephone numbers identified in the 911 printout that would be satisfactory; 2) a copy of the operations procedures for the 911 system; 3) a copy of the com log operations manual; 4) telephone bills for Deputy Arbelo's personal cellular phone; 5) another copy of the CD which was previously been produced, however, Mr. Trask requested a copy of the CD that Ms. Duhon had; 6) copies of any and all e-mails that exist that have not yet been provided.

Mr. Trask wants an agreement to the effect that the Defendants will obey the law with regard to the South Carolina Public Records Act.

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If I have misstated or mischaracterize the information Mr. Trask has requested, please advise me immediately. As far as what I will be able to produce with regard to the request, I will provide you with a written response in the near future.

With kindest regards, I am

Yours truly,

HOWELL, GIBSON AND HUGHES, P.A

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Robert W. Achurch, III

RWAIII/wmh

cc: The Honorable Carmen Tevis Mullen
~~Mr. William H. Davidson, II, Esquire~~

C
O
P
Y

HOWELL, GIBSON AND HUGHES, P.A.
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TELEPHONE: 843 - 522-2400
FAX NUMBER: 843 - 522-2429
E-Mail: hghpa@islc.net
WRITER'S DIRECT: 843 - 522-

January 27, 2009

Hon. Carmen Tevis Mullen
Judge, Fourteenth Judicial Circuit
Beaufort County Court of Common Pleas
Post Office Box 1128
Beaufort, SC 29901

Re: L. Paul Trask, Jr. vs. SC Department of Public Safety; Beaufort County;
Beaufort County Management Information Systems; Beaufort County
Coroner Curtis Copeland; Beaufort County Sheriff P.J. Tanner
Civil Action No.: 07-CP-07-995
Our File No: 10421 RWA

Dear Judge Mullen:

At the hearing of the Defendants' Motion for Summary Judgment on December 19, 2008, you requested that our office contact other County offices regarding their retention policies as it relates to email. I have now spoken with Greenville, Charleston, and Columbia's county attorneys, as well as the S.C. Department of Archives, and can provide the following information.

Greenville and Columbia do not have a specific records retention policy with regards to emails. Based on my conversations with Mark Tollison and Larry Smith, these counties have a similar email system to Beaufort County. Specifically, the server keeps emails in the system for 30 days, and then automatically deletes them. In addition, there is no specific policy as to the "double deletion" of emails by county employees.

The reason for this automatic deletion is simply that it is too much information to keep backed up for any significant period of time. Also, both stated that once the emails were double deleted, for all practical purposes the emails were gone, as they could no longer reasonably exercise any control over

1502

them. This is the same information that Ted Anderson, Beaufort County's MIS Director has provided to us.

Bernie Ferrara at the Charleston County attorneys office informed me that they have a similar email server to Beaufort (Outlook); however, they have set up a 1 year retention schedule. This means that they can go back one year from the present day and capture emails; however, the next day they cannot get what they could get today. Mr. Ferrara stated that as a practical matter once emails are double deleted, they are no longer in possession of the County.

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We have also consulted with the South Carolina Department of Archives regarding email and document retention policies for local government. With regards to a specific "email policy", there is really no such policy mandated for any local governments. Rather, there is, in the general schedule, a policy with regards to correspondence (which likely includes email) which categorizes the correspondence into three types: Policies, Administrative, and Housekeeping. Enclosed herein for reference is 12-503.15 of the General Records Retention Schedules for County Records.

The decision of what category to place an email rests with the chief administrative officer of each respective agency (as the legal custodian per the Public Records Act). By way of example, a police officer who has county emails would not be the "legal custodian" under the Public Records Act.

In addition, you asked that Robert Achurch and Mr. Tisdale schedule a meeting and figure out exactly what FOIA documents which were requested in the Complaint still needed to be given to Mr. Trask. At the hearing, your Honor limited the scope of what we needed to provide to Mr. Trask to only those things contained in the complaint.

After consultation, the following six items are the "documents" for which Mr. Trask now asks:

- (1) The previously redacted Phone numbers from the previously provided 911 Printout;
- (2) The Operational Procedures for the 911 System;
- (3) The ComLog Operations Manual;
- (4) Deputy Arbello's phone Bill;
- (5) A CD of Gwen Duhon's file;
- (6) Any additional emails that may exist

S.C.Code Ann §23-47-75 entitled "CMRS location information and other data in 911 system not subject to FOIA or disclosure," provides the following:

1503

(A) CMRS location information obtained by safety personnel or for public safety personnel for public safety purposes is not public information under the Freedom of Information Act.

(B) A person may not disclose or use, for any purpose other than for the 911 or other emergency calling system, information contained in the data base of the telephone network portion of a 911 or other emergency calling system established pursuant to this chapter.

The first three items fall under the purview of this statute and are clearly exempt from FOIA requests. Nevertheless, the County has attempted to redact and provide as much information from the 911 printouts that it reasonably believed could be provided to Mr. Trask. Any redactions were made in accordance with the exemptions as provided by the Freedom of Information Act, HIPAA, and §23-47-75.

There is no "operational procedure" for the 911 system to give Mr. Trask. William Winn, the affirmed that, "there are [no operational procedures for the 911 system] to give [Mr. Trask] because there is no consolidated or written procedure for 911 because the 911 system is owned by a multitude of companies."

Mr. Trask never requested the ComLog Operations manual in any of the FOIA requests contained in the complaint. Nevertheless, this information would also fall under various exemptions in the FOIA as well as the above statute.

As to the fourth item, Mr. Trask never requested this in any of the FOIA requests contained in his Complaint. The County did not "prepare, own, use, or retain" Deputy Arbello's personal phone information, nor are we in possession of such.

As to the Fifth item, the county has again provided Mr. Trask with this CD. We had previously provided this CD, but have provided it again as requested by Mr. Trask.

As to item six, Mr Trask has requested any additional emails that exist. There are no further emails to give Mr. Trask responsive to any of his FOIA requests in the Complaint.

The Department of Public Safety and all of the various county agencies have produced all documents that exist that were responsive to Mr. Trask's FOIA requests in the Complaint. There is no longer any controversy for this Court to enforce.

With kindest regards, I am

Yours truly,

HOWELL, GIBSON & HUGHES, P.A.

31

Jason F. Ward

JFW/kah

Enclosure(s)

cc: Tom Tisdale
Will Davidson

C
O
P
Y

1505

NEXSEN|PRUET

Thomas S. Tisdale, Jr.
Member
Admitted in SC

January 28, 2009

Robert W. Achurch, III, Esquire
Howell, Gibson & Hughes, PA
P.O. Box 40
Beaufort, SC 29901-0040

Re: *L. Paul Trask, Jr., individually, as A CITIZEN RESIDENT, TAXPAYER AND REGISTERED ELECTOR OF THE State of South Carolina, and on behalf of others similarly situation, v. South Carolina Department of Public Safety, et al.*
Case No. 2007-CP-07-995

Dear Robert:

Charleston

Charlotte

Columbia

Greensboro

Greenville

Hilton Head

Myrtle Beach

Raleigh

In response to your letter dated January 19, 2009, this is to confirm that you accurately characterized the discussions at our meeting in Columbia on January 7, 2009, with the following significant and material exception.

Mr. Trask did not agree that if the Beaufort County Defendants produced the public records on the six items referenced in your letter that FOIA compliance would be achieved. In fact, production of these public records at this late date would not satisfy FOIA requirements and many documents in other categories that were requested have been destroyed, rendering the various agencies incapable of FOIA compliance.

The specific violations, many of which cannot be cured, are contained in Plaintiff's Motion for Summary Judgment filed on January 27, 2009.

We do, however, appreciate your efforts to provide public records for FOIA requests that remain outstanding.

With kind regards, I am

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1506

Robert W. Achurch, III, Esquire
January 28, 1009
Page 2

Very truly yours,



Thomas S. Tisdale, Jr.
TST/dal
Enclosures

cc: William Davidson, II Esquire
The Honorable Carmen Tevis Mullen
Jeffrey S. Tibbals, Esquire

1507

Thomas S. Tisdale, Jr.
Member
Admitted in SC

January 29, 2009

Via E-mail and Regular Mail

The Honorable Carmen T. Mullen
P.O. Box 1128
Beaufort, SC 29901

Re: *L. Paul Trask, Jr., individually, as A CITIZEN RESIDENT,
TAXPAYER AND REGISTERED ELECTOR OF THE State of South
Carolina, and on behalf of others similarly situation, v. South
Carolina Department of Public Safety, et al.
Case No. 2007-CP-07-995*

Dear Judge Mullen:

Attached is a courtesy copy of Plaintiff's Notice of Motion and Motion for Summary Judgment that was previously filed and served on all counsel of record on January 27, 2009.

Charleston

Charlotte

Columbia

Greensboro

Greenville

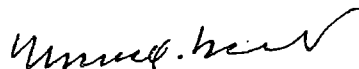
Hilton Head

Myrtle Beach

Raleigh

With kind regards, I am

Very truly yours,



Thomas S. Tisdale, Jr.

TST/dal

Enclosures

cc: William Davidson, II Esquire (w/encl.)
Robert W. Achurch, III, Esquire (w/encl.)
Jeffrey S. Tibbals, Esquire

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February 5, 2009

Thomas S. Tisdale, Jr., Esquire
Nexsen, Pruet, Jacobs & Pollard, L.L.P.
Post Office Box 486
Charleston, SC 29402

Re: L. Paul Trask, Jr. vs. SC Department of Public Safety; Beaufort County;
Beaufort County Management Information Systems; Beaufort County
Coroner Curtis Copeland; Beaufort County Sheriff P.J. Tanner
File No: 10421 RWA
Civil Action: 07-CP-07-995

Dear Tom:

I am in receipt of your letter to me of January 28, 2009. If provisions of the six (6) items referenced in my letter of January 19, 2009 would not result in compliance with Mr. Trask's FOIA requests, then what was the point of Mr. Trask providing me with the six (6) items? My letter of January 19, 2009 was qualified with the provision that the responses to the FOIA request would have been complied with "to the extent the information requested exists".

As you indicated in your letter, the items that no longer exist can not be produced. The whole purpose of our conference was to try to ascertain from you and Mr. Trask what he contends remains outstanding, which could be produced. We met as requested by the court. Of course several items on Mr. Trask's list were not even the subject of his Complaint. Mr. Trask continues to complain all documents have not been produced, but he refuses to state what documents he wants. What he wants continues to be a moving target.

1509

With regard to the FOIA requests referenced in Mr. Trask's complaint, all documents responsive to the requests have now been produced.

I am also disappointed that Mr. Trask has elected to re-file a motion for summary judgment which was withdrawn at the last hearing. Because the court has asked me to prepare an order with regard to our motion for summary judgment, I do not believe Mr. Trask's new motion needs to be responded to.

With kindest regards, I remain

Sincerely,

HOWELL, GIBSON AND HUGHES, P.A

/s/

Robert W. Achurch, III

RWAIII/wmh

cc: ~~William~~ William H. Davidson, II, Esquire
The Honorable Carmen Tevis Mullen

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C
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Y

STATE OF SOUTH CAROLINA
IN THE
COURT OF APPEALS

Appeal from the Court of Common Pleas
For Beaufort County
Honorable Carmen T. Mullen, Circuit Judge
Civil Action No.: 2007-CP-07-0995

L. Paul Trask, Jr., Individually, as a Citizen, Resident,
Taxpayer and Registered Elector of the State of South
Carolina, and on behalf of others similarly situated,

Appellant,

v.

South Carolina Department of Public Safety; Beaufort
County; Beaufort County Management Information
Systems; Beaufort County Coroner Curtis Copeland in
His Official Capacity; Beaufort County Sheriff P.J. Tanner
In His Official Capacity,

Respondents.

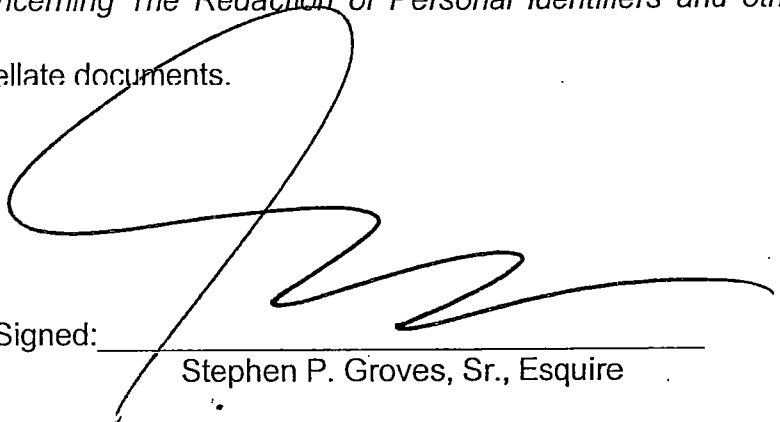
**RULE 210(g), SCACR,
CERTIFICATE OF COUNSEL
and
CERTIFICATE OF COUNSEL
Certifying
Compliance With 13 August 2007
Supreme Court Order**

VOLUME IV

1511

I, Stephen P. Groves, Sr., Esquire, hereby certify, pursuant to Rule 210(g), SCACR, that this **Record on Appeal (Volume IV)** contains all of the material and documentation proposed to be included by any of the parties and not any other material.

In addition, I, Stephen P. Groves, Sr., Esquire, hereby further certify this **Record on Appeal (Volume IV)** complies with the Order of the South Carolina Supreme Court dated 13 August 2007, *Concerning The Redaction of Personal Identifiers and other Sensitive Information* in appellate documents.



Signed: _____

Stephen P. Groves, Sr., Esquire

Charleston, South Carolina

21 January 2011