

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

APPEAL FROM BERKELEY COUNTY  
THE HONORABLE DEBORAH JOHNSON, CIRCUIT COURT JUDGE  
APPELLATE COURT CASE# 2014-001913

RECEIVED

NOV 10 2014

SC Court of Appeals

THE STATE,

RESPONDENT,

v.

IN THE MATTER OF THE CARE AND TREATMENT OF  
MICHAEL E. HAMM,

APPELLANT.

APPELLANT'S MEMORANDUM IN OBJECTION TO THE  
RESPONDENT'S MEMORANDUM REGARDING APPELLABILITY

YES, THE DEPARTMENT OF MENTAL HEALTH DID AN EVALUATION ON 7/16/13. YES, THIS WAS FOR MY 2012 SUPPOSED ANNUAL REVIEW. IF THE STATE IS GOING TO PUT INFORMATION IN A DOCUMENT TO THIS COURT - THEN IT SHOULD BE THE TRUE FACTS!

1: THE STATE STATES THAT I DID NOT WAIVE MY WAIVER OF MY JANUARY 2014 CONSENT ORDER WAIVING ANNUAL REVIEW. [EXHIBIT THREE IN MY APPEAL PACKAGE SENT INTO THE COURT] THIS WAS ALSO RAISED IN [EXHIBIT TWO] OF MY APPEAL.

2: I AM INCLUDING INFORMATION TO SHOW THAT I HAVE BEEN FIGHTING THE VIOLATION OF S.C. CODE ANN. § 44-48-110 FOR SOME TIME AND WROTE TO MR. CHARLES T. BROOKS, III TO PULL BACK THE WAIVER OF MY ANNUAL REVIEW. IT CAN BE SHOWN THAT I TRIED TO HAVE MY CASE HEARD - TIME AFTER TIME, TO NO AVAIL. [ISSUE ONE AND TWO SEE EXHIBIT ONE]

3: AS EVIDENCED IN THE DOCUMENT FROM THE ATTORNEY GENERAL'S OFFICE DATED JUNE 4, 2014 - THAT THE ANNUAL REVIEW HEARING ISSUE IS STILL IN THE WORKS. [SEE EXHIBIT TWO]

A: APPELLANT IS "AN AGGRIEVED PARTY"

THE STATE AGAIN IS IN ERROR - IN THAT THE RECORD OF THE COURT WILL SHOW THAT I AM AGGRIEVED AND WAS PREJUDICED AGAINST.

THE LEGAL QUESTION OF LAW RAISED IN "AN AS-APPLIED ANALYSIS" AS TO THE DENIAL OF SECOND-SEAT COUNSEL. THE RECORD OF THE COURT WILL SHOW THAT SHE OFFERED MR. BISHOP SECOND-SEAT AND HE DENIED. SHE THEN DENIED ME ANY OTHER SECOND-SEAT COUNSEL STATING: "SECOND-SEAT IS FOR CRIMINAL CASES".

SO WHY DID SHE OFFER THEN DENIED ME SECOND-SEAT COUNSEL?  
THIS WAS PREJUDICIAL AND THUS PUTS ME AS AN AGGRIEVED PARTY DUE TO  
HER ACTIONS ON THIS LEGAL ISSUE.

### B: INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM

IN THE ORDER RELIEVING COUNSEL, PAGE TWO, LINE 3-5, IT  
SHOWS THAT THE DENIAL OF MY ANNUAL REVIEW AND RAISE THE INEFFEC-  
TIVE ASSISTANCE OF COUNSEL CLAIM.

THE JUDGE IS IN ERROR IN THAT ONCE AN INEFFECTIVE ASSISTANCE  
OF COUNSEL CLAIM IS RAISED - IT HAS TO BE HEARD TO SEE IF THE CLAIM  
IS TRUE, AND IF COUNSEL WAS DEFICIENT IN THEIR PERFORMANCE.

THE JUDGE IS IN ERROR IN LINE 5-6, PAGE 2 IN THAT SHE STATES  
THAT I HAD AN ANNUAL REVIEW. THIS IS AN ERROR, I HAVE HAD NONE AND  
THERE WILL BE NO RECORD TO SHOW OTHERWISE.

CHALLENGE TO AN INEFFECTIVE ASSISTANCE OF COUNSEL AS TO  
BOTH COURT APPOINTED COUNSELS, PERTAINING TO S.C. CODE ANN. §  
44-48-110; VIOLATION OF ACCESS TO THE COURTS; RIGHT TO HAVE A REDRESS  
OF MY GRIEVANCES, AND MY RIGHT NOT TO BE SUBJECTED TO UNDUE RESTRAINT.  
S.C. CONST. ART. I § 3 AND 9, U.S.C.A. CONST. AMEND. 6 AND 14. PEOPLE V. LAUTON  
212 ILL. 2D 285, 288 ILL. DEC. 638 (1988); IN RE CARE AND TREAT-  
MENT OF ONTIBEROS, 287 P. 308 (KAN. 2012); PEOPLE V. BAILEY, 265 ILL. APP.  
3D 756 (ILL. APP. 3 DIST. 1994); CULLEN V. PINHOLDER, — U.S. —, 113 S. CT. 1388  
(2011); HARRINGTON V. RITCHER, — U.S. —, 113 S. CT. 770 (2011); STATE V.  
VAN CLEAVE, 239 KAN. 117, 716 P. 2d 580 (KAN. 1986).

1. WHEN APPELLATE COUNSEL IN A CASE ARISING UNDER THE SCSVPA  
DESIRES TO RAISE AN INEFFECTIVE ASSISTANCE OF COUNSEL ISSUE AND THAT  
ISSUE HAS NEVER BEEN RULED ON BY THE TRIAL COURT, THE RESPONDENT  
MAY SEEK A RETIAND OF THE CASE TO THE TRIAL COURT FOR AN INITIAL  
DETERMINATION OF THE ISSUE. THE CAUTIONS SET OUT IN STATE V. VAN CLEAVE  
239 KAN 117, 120-21, 716 P. 2d 580 (1986).

2. THE SCSVPA IS CONSTITUTIONAL EVEN THOUGH IT CONTAINS NO  
SPECIFIC STATUTE ALLOWING A RESPONDENT TO CHALLENGE THE EFFECTIVE-  
NESS OF COUNSEL.

3. THE TWO-PRONG INEFFECTIVE ASSISTANCE OF COUNSEL TEST  
ESTABLISHED IN CRIMINAL CASES UNDER STRICKLAND V. WASHINGTON, 466  
U.S. 668, 686-89, 104 S. CT. 2052, 80 L. ED 2d 674 (1984), APPLIES TO CLAIMS  
BASED ON DEFICIENT PERFORMANCE OF COUNSEL IN A SCSVPA PROCEEDING.

DUE TO THE LOSS OF PERSONAL LIBERTY THE ACT IMPOSES UPON  
INDIVIDUALS ADJUDGED TO BE SEXUALLY DANGEROUS, IT SHOULD BE FOUND  
THAT THE RESPONDENT HAD A RIGHT TO THE EFFECTIVE ASSISTANCE OF COUNSEL  
UNDER THE SIXTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

IT SHOULD BE NOTED THAT THE ISSUES THAT SHOULD BE CONSIDERED  
IN THIS APPEAL OR HEARING WERE NOT PROPERLY PRESERVED FOR REVIEW.

YES, LOOKING AT THE ORDER RELIEVING COUNSEL, PAGE ONE, LINE 4-5, IT SHOWS THAT COUNSEL NOR THE ATTORNEY GENERAL OFFICE WERE AT THIS HEARING. THE JUDGE STATED "SHE COULD NOT SEE DELAYING THE HEARING, DUE TO MY CIRCUMSTANCES." SO, WE CONTINUED WITH COUNSEL AND THE ATTORNEY GENERAL'S OFFICE ON THE PHONE.

HOWEVER, BECAUSE THE ERROR WAS OF SUCH MAGNITUDE AS TO DENY THE RESPONDENT A FAIR TRIAL, IT SHOULD INVOLVE "THE PLAIN ERROR RULE" IN ORDER TO PRESERVE JUSTICE. SEE PEOPLE V. SPEIGHT, (1992) 153 ILL. 2D 365, 379-80, 180 ILL. DEC. 97, 103, 606 N.E. 2D 1174, 1180; PEOPLE V. DUNS WORTH (1992) 233 ILL. APP. 3D 258, 269-70, 174 ILL. DEC. 4, 83, 491, 599 N.E. 2D 29, 31. RAISED ALSO UNDER THE TENETS SET FORTH IN UNITED STATES V. CRONIC, 410 U.S. 648, 104 S. CT. 2039, 80 L. ED 26 657 (1984).

### C: INTERLOCUTORY APPEAL

INTERLOCUTORY (IN-TER-LOK'-U-TER-REJ) PROVISIONAL; TEMPORARY, INTERVENING, SOMETHING DONE BETWEEN COMMENCEMENT AND END OF SUIT, DECIDING SOME POINT IN RELATION TO THE SUIT ONLY TEMPORARILY. BLACKSTONE LAW GLOSSARY, COPYRIGHT 1988 BY DIRECT LEARNING SYSTEMS, INC., 2007 EDITION.

THE STATE IS IN ERROR AGAIN - IN THAT IT STATES I RECEIVED A FAVORABLE OUTCOME. "NO, THIS IS NOT SO."

1: NO, THE COURT DID NOT RULE IN MY FAVOR. I DID NOT RECEIVE SECOND-SEAT COUNSEL, EVEN THOUGH IT WAS OFFERED AT FIRST TO MR. BROOKS. WHEN HE TURNED IT DOWN, SHE STATED THEN IT WAS FOR CRIMINAL CASES ONLY. YOU DO NOT OFFER - THEN SAY NO!

2: NO, THE COURT DID NOT RULE IN MY FAVOR, IN THAT MY LEGAL ISSUE OF VIOLATION OF THE LAW PERTAINING TO S.C. CODE ANN. § 44-48-100.

3: NO, THE COURT DID NOT RULE IN MY FAVOR AS TO THE INEFFECTIVE ASSISTANCE OF COUNSEL CLAIM.

SO, YES BASED UPON THE FORGOING I BELIEVE THAT I AM "AN AGGRIEVED PARTY!"

Now, DOES THE STATE NOT CONSIDER THE ORDER RELIEVING COUNSEL AS FINAL. PAGE THREE - IT STATES:

THEREFORE, IT IS ORDERED,

THAT CHARLES T. BROOKS III BE RELIEVED OF ANY FURTHER SERVICES FOR THE RESPONDENT AND THAT RESPONDENT "WILL" PROCEED WITH THIS MATTER "PRO-SE". FURTHER, THE RESPONDENT UNDERSTANDS THAT HE "WILL NOT" BE APPOINTED ANOTHER COUNSELOR AND THAT IF HE WISHES TO OBTAIN COUNSEL, HE "MUST" RETAIN A PRIVATE ATTORNEY. IT IS SO ORDERED.

THE ORDER RELIEVING COUNSEL SEEMS PRETTY FINAL TO ME, AND THUS I PRAY IT DOES TO THIS COURT.

I DO NOT UNDERSTAND - THIS IS NOT THE QUESTION(S) THAT WERE ASKED?

WHY IS THE STATE NOT ANSWERING THE QUESTION ASKED BY THE CLERK OF COURT?

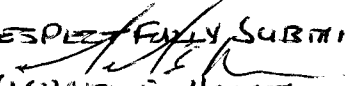
IS THE PAYMENT OF COURT COST

THE STATE IS IN ERROR IN THE THE COURT, THROUGH THE CLERK OF COURTS OFFICE SHOW THAT I DID INDEED PAY THE FILING FEE.

### CONCLUSION

BASED ON THE FORGOING, APPELLANT RESPECTFULLY SUBMITS THE RESPONDENT ARE IN ERROR. THAT APPELLANT IS "AN AGGRIEVED PARTY," AS BASED UPON THE FORGOING INFORMATION AND DOCUMENTATION INCLUDED IN THE MEMORANDUM.

THE APPELLANT IS SEEKING AN EVIDENTIARY TO SHOW A CAUSE OF ACTION BASED UPON THE TRUE FACTS TO THE CASE AT HAND. THE RECORD OF THE COURT FROM THE ORDER RELIEVING COUNSEL WILL SHOW THAT HE WAS PREJUDICED AGAINST AND IS AN AGGRIEVED PARTY.

RESPECTFULLY SUBMITTED  
  
MICHAEL E. HAMRA  
7901 FARROW ROAD  
BLOC #3 13rd FLOOR  
COLUMBIA, SC 29203-3220  
PRO-SE

NOVEMBER 6 2014  
COLUMBIA, SC 29203-3220

EXHIBIT ONE

*George B. Bishop, Jr., P.A.*  
Attorney at Law

Post Office Box 848  
223 E. Main Street  
Moncks Corner, SC 29461

September 18, 2012

(843) 761-8213  
Fax (843) 761-2776  
gbishopjr@yahoo.com

Michael E. Hamm  
7901 Farrow Road  
Building 3, 3<sup>rd</sup> Floor  
Columbia, SC 29203

**Re: State vs. Michael Hamm**  
**Case No.: 2010-CP-08-4436**

Dear Michael:

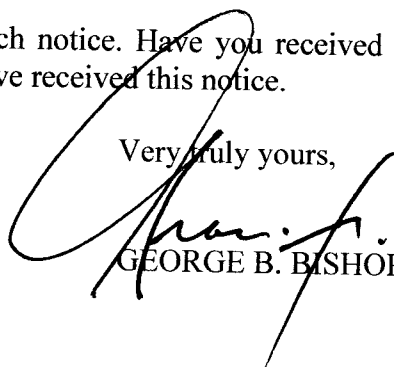
I received your September 5, 2012, correspondence several days ago. I apologize for the short delay in responding.

I am not sure if I am still your attorney of record or not. When you voluntarily agreed to commitment on September 7, 2012, I believed my representation ended.

I have enclosed a copy of S. C. Code §44-48-110 for your information. As you can see, annually you are to be examined and a report forwarded to the Court, Solicitor and others. The statute also provides that you will be provided with an annual written notice of your right to petition the court for a hearing.

I have not been copied on any such notice. Have you received one yet? If not, it will likely be sent soon. Let me know if you have received this notice.

Very truly yours,



GEORGE B. BISHOP, JR.

GBBjr/jsj

Enclosure

In The State of South Carolina  
County of Berkeley

The State of South Carolina,  
Defendants;

Department of Mental Health  
& Sexually Violent Predator  
Treatment Program as Party  
Defendants;

V.

In Re: Care and Treatment of  
Michael E. Hamm,

Petitioner.

In The Court of Common Pleas

C/A # 2010-CP-08-4136

"Petition for Writ of Mandamus  
and Contempt of Statutory Law

The Afore-Named Petitioner in and through himself is now coming to this Honorable Court seeking this *Petition for Writ of Mandamus and Contempt of Statutory Laws, "As -Applied Analysis."*

I, Michael E. Hamm, do hereby declare under the penalty of perjury that the forgoing is true and correct.

On the seventh day of September 2011; I, voluntarily committed myself to treatment and was sent to The Sexually Violent Predator Unit for treatment- *which was not explained to me before hearing.* I, was not told by The Honorable Judge R. Markley Dennis; Senior Assistant Attorney General, James G. Bogel, Jr.; nor by my lawyer George B. Bishop, Jr.; that I would be subjected to issue 2, 3, or 4 in the voluntary committal order. I, did not learn about the voluntary committal issues until I filed a law suit against Dr. Gehle for the lies in the evaluation for my committal hearing.

According to the Sexually Violent Predator act (1998) once a person is involuntarily committed to this program, there is a certain criteria that is mandated that "*must*" be conformed to by Due Process and Equal Protection Rights of the Law. It appears that the State of South Carolina and The Department of Mental Health via The Sexually Violent Predator Unit can and are violating The Statutory Laws pertaining to Section § 44-48-110, Periodic Mental Examination of Committed Persons; Report; Petition for Release; Hearing; Trial to consider release.

Even as a voluntary committal, I still fall within the Statutory Guidelines of section § 44-48-110, as is stipulated in the voluntary committal order signed by the Honorable Judge R. Markley Dennis on the Seventh day of September, 2011. So, I now bring in question as a Novel Question of Law as to the Contempt of the Statutory Laws by the State of South Carolina and The Department of Mental Health via The Sexually Violent Predator Unit in an, "As- Applied Analysis."

ISSUES NOT COMPLIED WITH BY STATUTORY LAW

- 1) A person committed pursuant to this chapter "*must*" have an examination of his mental condition performed once every year.
- 2) The court "*must*" conduct an annual hearing to review the status of the committed person.
- 3) The committed person "*is not*" prohibited from petitioning the court for release at this hearing.
- 4) The Director of the department of mental health "*must*" provide the committed person with an annual

written notice of the person's right to petition the court for release over the Director's objection: the notice "must" contain a waiver of rights.

#### ISSUES DENIED

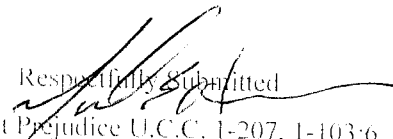
- A) My last mental examination was held on July 12, 2011
- B) My last annual hearing was held on "none".
- C) My last petition to the court for release was on September 1, 2012.
- D) The Department of Mental Health last provided an annual written notice of right to petition with the notice of waiver of rights on "none."

#### CONCLUSION

Based upon the forgoing The State of South Carolina and The Department of Mental Health via The Sexually Violent Predator Unit are in violation of the resident's Constitutional Rights both State and Federal as a matter of right of law. "As-Applied Analysis," as to the violation to section § 44-48-110 of the Sexually Violent Predator Act (1998) Act.

Resident, Michael E. Hamm is seeking Declaratory Judgment and Injunctive Relief based upon the Constitutional Rights Violations that occurred by The State of South Carolina and The Department of Mental Health via The Sexually Violent Predator Unit. Declaratory Judgment and Injunctive Relief should begin upon the court receiving said petition, until said violations are addressed to the full extent of the law, the Constitutional Rights Violations are resolved and A Resident's Bill on Rights are drafted to conform with the issues raised, so, that the same issues will not arise in the future.

It is so moved  
on this 25<sup>th</sup> day of February 2013

Respectfully Submitted  
  
Without Prejudice U.C.C. 1-207, 1-103:6

c g/ Clerk of Court, Berkeley County;  
File.

*George B. Bishop, Jr., P.A.*

Attorney at Law

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223 E. Main Street  
Moncks Corner, SC 29461

May 20, 2013

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Michael E. Hamm  
7901 Farrow Road  
Building 3, 3<sup>rd</sup> Floor  
Columbia, SC 29203

**Re: State vs. Michael Hamm**  
**Case No.: 2010-CP-08-4436**

Dear Michael:

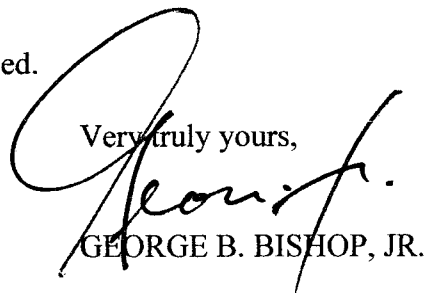
I have communicated with The Supreme Court this week regarding your letter to them.

I have been advised that there seems not to be a consistent position across the state whether appointed attorneys continue to represent individuals who have consented to or been involuntarily sent for treatment. My belief was that I no longer represented you in this matter. After my discussion with the Court, it was agreed that the better course is to continue representation.

Having said all of that, I am and will continue to represent you. The Department of Mental Health was to perform an annual examination regarding your condition, progress, etc... That has not been done as you know. I will in the immediate future file with the court a Motion to Compel and/or Release. Don't count on a release, but it may make the Department of Mental Health get moving on your case.

I will copy you on the Motion when filed.

Very truly yours,



GEORGE B. BISHOP, JR.

GBBjr/jsj



1. South Carolina Code of Law Ann. § 44-48-110 states: **Periodic mental examination of committed persons; report; petition for release; trial to consider release.** A person committed pursuant to this chapter *must* have an examination of his mental condition performed *once every year*. The person may retain or, if the person is indigent and so request, the court may appoint a qualified expert to examine the person, and the expert *must* have access to all medical, etc..... The Annual Report *must* be provided to the court which committed the person pursuant to this chapter, the Attorney General, etc..... The court *must* conduct an annual hearing to review the status of the committed person. The person is not prohibited from petitioning the court for release at this hearing. The Director of the Department of Mental Health *must* provide the committed person with an annual written notice of the person's right to petition the court for release over the Director's objection; the notice *must* contain a waiver of rights. The Director *must* forward the notice and waiver to the court with the annual report. Etc.....

2. All the evidence that will be presented will show that this was not complied with in accordance with the South Carolina Code of Law Ann. § 44-48-110 states: **Periodic mental examination of committed persons; report; petition for release; trial to consider release.** The Respondent's Constitutional Right's to Equal Protection of the Laws has been violated by the Plaintiffs, and his Constitutional Right's not to be subjected to Undue Restraint S.C. Constitution Article I, Bill of Rights § 3 Privileges and immunities; Due Process; Equal Protection of Laws. The privileges and immunities of citizens of this State and the United States under this Constitution *shall not* be abridged. *Nor shall* any person be deprived of *life, liberty*, or property *without due process of law, nor shall any person be denied the equal protection of the laws*. The Respondent has been denied this by the actions of the Department of Mental Health and the Attorney Generals Office for allowing this *Injustice* to continue. The State and the Attorney Generals Office are suppose to protect us from this *Injustice* by Due Process of the Laws.

*\*\*\*\*On the 24<sup>th</sup> of July 2013, they had me finally sign the Documents for Annual Examination And Review Hearing that is ten (10) months past the statutory requirement . The Annual Review Pursuant to § 44-48-110 has not been done as of August 16, 2013; eleven (11) months past the statutory requirement . \*\*\*\* As of this date of February 5<sup>th</sup> 2014, I still have not had my hearing by the Statutory Requirement Pursuant to § 44-48-110. This is Eighteenth (18) months past the*

***Statutory Requirement Pursuant to § 44-48-110. \*\*\*\****

3. Based on established precedent, under the Rules of Statutory Construction, in interpreting Statutes, the Court looks to the plain meaning of the Statute and the intent of the Legislature. *Gay v. Arial*, 673 S.E. 2<sup>nd</sup> 418 (S.C. 2009); *Edwards v. Sanford*, 678 S.E. 2<sup>nd</sup> 412 (S.C. June 4, 2009). Subtle or force construction to limit or expand a Statute's operation is not allowed. *Converse Power Corp. v. S.C. Dept. of Labor, Licensing, and Regulations*, 523 S.E. 2<sup>nd</sup> 795 (Ct. App. 1999).

4. Violation of the Sexually Violent Predator Statute, S.C. Code of Laws Ann. § 44-48-110: See the following case as a reference: 254 Wis. 2d 690 (Wis. App. 1998). *State ex rel. Marberry v. Macht*. The potential consequences for both parties cannot be labeled insignificant; failure to conduct a reexamination could result in the release of a potentially dangerous mentally disordered person into the community or “The Continued Confinement of a Person Who No Longer Presents a Danger to Society and The Prolonged Deprivation of [H]is or her Liberty. When the failure to act within “*A Statutory Time Limit Does Work an Injury or Wrong* “, this Court has construed the time limit as Mandatory. *Karow*, 82 Wis. 2d at 572, 263 N.E. 2d 214. Certainly an individual such as Marberry, who is institutionalized and deprived of his liberty, is injured to a substantial degree.

The general rule in interpreting statutory language is that the word shall [ in this State the Mandatory word “*Must*”] is presumed Mandatory when it appears in a statute. *State v. Sprosty*, 227 Wis. 2d 316, 324, 595 N.E. 2d 692 (1999) (citation omitted). “Further support is given to a mandatory interpretation of “*shall*” [ “*must*” in S.C.] in a particular statutory section, indicating the legislature was aware of the distinct meaning of the words.”

The Legislature in the State of South Carolina used the word “*must*” in S.C. Code of Laws Ann. § 44-48-110: A person committed pursuant to this chapter ***must*** have an examination of his mental condition performed ***once every year***. The person may retain or, if the person is indigent and so request, the court may appoint a qualified expert to examine the person, and the expert ***must*** have access to all medical, etc..... The Annual Report ***must*** be provided to the court which committed the person pursuant to this chapter, the attorney General, etc..... The court ***must*** conduct an annual hearing to review the status of the committed person. The person is not prohibited from petitioning the court for release at this hearing. The Director of the Department of Mental Health ***must*** provide the committed person with an annual written notice of the person's right to petition the court for release over the

Director's objection; the notice *must* contain a waiver of rights. The Director *must* forward the notice , etc.....

\*\*\*\*Where statutes provide for performance of acts by public officers protecting private rights or the public in the public interest, they are mandatory. This rule has been enunciated by the United States Supreme Court as follows: “The conclusion to be declared from the authorities is, that where power is given to public officers.... whenever.... individual rights call for its exercise --- the language used... is in fact preemptory.” (citing *Bd. Of Supervisors v. United States ex rel. State Banks*, 71 U.S. (4 Wall) 435, 446-47, 18 L.Ed. 419 (1867)). \*\*\*\*

When our Supreme Court held that S.C. Code of Laws Ann. §§ 44-48-10 to 44-48-170 to be Constitutional the State promised it was prepared to provide specific treatment to those committed under S.C. Code of Laws Ann. §§ 44-48-10 to 44-48-170 and not to simply warehouse those committed. The State assured our Supreme Court that as the population increased, plans existed to increase the staff proportionately and that a committed person would be discharged as soon as his or her dangerousness or mental disorder abated. As noted, it was presumed good faith on the part of the Legislature; the State is clearly obliged under S.C. Code of Laws Ann. §§ 44-48-10 to 44-48-170 to provide, care and treatment to those determined to be sexually violent persons. South Carolina's Statute § 44-48-110 does contain restrictive procedural time limits and they acknowledge that these time limits may cause administrative difficulties. **HOWEVER**, our Supreme Court accepted the State's affirmation that it was “prepared to provide specific treatment to those committed under S.C. Code of Laws Ann. §§ 44-48-10 to 44-48-170 and not simply warehouse them” and that the Legislature would “proceed in good faith and fund the treatment programs necessary for those committed under S.C. Code of Laws Ann. §§ 44-48-10 to 44-48-170.”

**HOWEVER**, the Department of Mental Health through the Sexually Violent Predator Treatment Program took nearly two (2) years to provide Respondent with a reexamination that should have been conducted within one(1) year. Under the extreme state of affairs presented here and the prolonged Deprivation of Respondent's Liberty in Violation of the Strict Safeguards of S.C. Code of Laws Ann. § 44-48-110, Respondent's release is the only appropriate remedy.

**CONCLUSION:** *This Court should conclude that the one-year time limit of S.C. Code of Laws Ann. § 44-48-110 for an initial reexamination is mandatory and because of the egregious circumstances if this case, Plaintiff's release is necessary. Therefore the order of the Court of*

***Common Pleas should be reversed.***

The Respondent is informed and believes that the statute is to be interpreted to be any accumulation of material possessed violate the statute and the prescribed requirement in statute in § 44-48-110. Whether that is correct, and whether it is stated in mandatory language, this is the question before this Court? If the Court declares that the Plaintiff's interpretation is correct, then the question of whether an individual can be subjected to the multiple violations carried out by the Department of Mental Health, The State of South Carolina and The Attorney General's Office.

**Issue Two**

**Ineffective Assistance of Counsel and Violation of DR-6-101 for First Court Appointed Counsel**

In 2010, I was appointed Mr. George B. Bogel, Jr., as counsel. On the 10<sup>th</sup> day of September 2012, I informed Mr. Bishop that I had not been afforded the Statutory Right to South Carolina Code of Law Ann. § 44-48-110, and responded back to me that since I volunteered for this program that he was no longer my counsel. Then about 10 months later, he wrote that he found out that he was still my counsel. Then he started the process of getting this legal issue started. Then in July of 2013 he dismissed himself as counsel and I was given Mr. Brooks as counsel.

I charge Mr. Bishop with Ineffective Assistance of Counsel and Violating Dr. 6-101 for not filing Motions to have this legal issue brought into court for the State And the Department of Mental Health via the Sexually Violent Predator Unit for Violating the Law. [T]hey are in violation of violating the Statutory Right to South Carolina Code of Law Ann. § 44-48-110. Based on the forgoing Mr. Bishop is guilty of violating the State and Federal Constitutions for effective assistance of counsel. I have had my Constitutional Rights to Due Process and Equal Protection of the Laws under S.C. Const. Article I, Section 3 and under the U.S.C.A. Const. 6<sup>th</sup> and 14<sup>th</sup> Amend., by my Counsel and the State. I have been Denied my Statutory Right to the Annual Review Hearing since the 8<sup>th</sup> of September 2012 through the 5<sup>th</sup> of February, 2014 under the Statutory Right of South Carolina Code of Law Ann. § 44-48-110.

**Issue Three**

**Ineffective Assistance of Counsel and Violation of DR-6-101 for First Court Appointed Counsel**

***I notified Mr. Brooks of "The State and The Department of Mental Health via The Sexually Violent predator Unit are and have been in Violation of the Statutory Law South Carolina Code of***

*Law Ann. § 44-48-110, since the 8<sup>th</sup> day of September 2012, when I first received him as counsel and he did nothing to Prosecute this Legal Issue. [H]e stated to me that I needed to get together with the Resident's in here and file a Class Action Suit on this Legal Issue. Yet, he would do nothing about it, even though [H]e is my counsel.* Thus Mr. Brooks is guilty of Ineffective Assistance of Counsel and Violating Dr. 6-101.

As stated in Issue Two I also charge Mr. Brooks, with Ineffective Assistance of Counsel and For Violating Dr. 6-101. On the 18<sup>th</sup> of January 2014 I talked to Mr. Brooks on the phone and we discussed me Waiving the Annual Review Hearing, and at that time I agreed to this. “Yet,” on the 19<sup>th</sup> of January 2014, I wrote to Mr. Brooks and Mr. Bogel and stated that I did not want to waive my Annual Review Hearing, and that in the Voluntary Committal Transcript, Judge Dennis stated that I could attend and Mr. Bogel “*agreed.*”

Now on the 4<sup>th</sup> of February 2014, Mr. Brooks, sends to me this “Consent Order Waiving Annual Review Hearing”, after I wrote to [T]hem and stated that I did want my Annual Review Hearing's.

**Looking at this “Consent Order Waiving Annual Review Hearing”, they are trying to waive all of my hearings since I came to this program. Looking at “Issue One” and at the Statute this is not stated that this can be done thus “*The State and The Department of Mental Health via The Sexually Violent predator Unit are and have been in Violation of the Statutory Law South Carolina Code of Law Ann. § 44-48-110, since the 8<sup>th</sup> day of September 2012.*”**

I do not agree to waive both of my Annual Review Hearings from September 8<sup>th</sup>, 2011 through July 13<sup>th</sup> 2013. I was not told this by Mr. Brooks nor did I see this order before Mr. Brooks signed it, when I told [T]hem that I did not wish to waive my Right's to my Annual Review Hearings.

I charge Mr. Brooks with Ineffective Assistance of Counsel and Violating Dr. 6-10, for not filing Motions to have this legal issue brought into court for the State And the Department of Mental Health via the Sexually Violent Predator Unit for Violating the Law. [T]hey are in violation of violating the Statutory Right to South Carolina Code of Law Ann. § 44-48-110. Based on the forgoing Mr. Brooks is guilty of violating the State and Federal Constitutions for effective assistance of counsel.

I have had my Constitutional Rights to Due Process and Equal Protection of the Laws under S.C. Const. Article I, Section 3 and under the U.S.C.A. Const. 6<sup>th</sup> and 14<sup>th</sup> Amend., by my Counsel and the State. I have been Denied my Statutory Right to the Annual Review Hearing since the 8<sup>th</sup> of September 2012 through the 5<sup>th</sup> of February, 2014 under the Statutory Right of South Carolina Code of Law Ann.

§ 44-48-110.

#### Issue Four

I do not agree to Waive both of my Annual Review Hearings from September 8<sup>th</sup>, 2011 through July 13<sup>th</sup>, 2013. I was not told this by Mr. Brooks nor did I see this order before Mr. Brooks signed it, when I told [T]hem that I did not wish to waive my Right's to my Annual Review Hearings.

I have had my Constitutional Rights to Due Process and Equal Protection of the Laws under S.C. Const. Article I, Section 3 and under the U.S.C.A. Const. 6<sup>th</sup> and 14<sup>th</sup> Amend., by my Counsel and the State. I have been denied my Statutory Right to the Annual Review Hearing since the 8<sup>th</sup> of September 2012 through the 5<sup>th</sup> of February, 2014, under the Statutory Right of South Carolina Code of Law Ann. § 44-48-110.

#### PRAYER


**I PRAY**, that this Court will Grant this Motion to Dismiss the “**Consent Order Waiving Annual Review Hearing,**” and grant me the relief that I seek. I seek to have both or one of my Annual Review Hearings guaranteed to me through the Statutory Right to the Annual Review Hearing of South Carolina Code of Law Ann. § 44-48-110.

If so, a justifiable controversy exists, needing further analysis if a statutory violation occurred and administration of the appropriate relief pursuant to S.C. Code of Law Ann. § 15-53-10 to 140.

**Wherefore**, based upon all of the forgoing, the Respondent moves this Honorable Court for an Order of Declaratory Judgment to answer the questions posed. The Respondent then asks for Prospective Relief and Injunction to correct the unlawful restraint of this Respondents Constitutional Rights and Protected Liberty Interest to the Privileges and Immunities of citizens of this State and the United States under this Constitution *shall not* be abridged. *Nor shall* any person be deprived of *Life, Liberty*, or property *Without Due Process of Law, nor Shall any Person be Denied the Equal Protection of the Laws*. The Respondent *Has Been Denied* this by the actions of the Attorney Generals Office and The State of South Carolina for allowing this *Injustice* to continue. The State and the Attorney Generals Office are suppose to protect us from this *Injustice* by Due Process of the Laws.

**This The Respondent Humbly Prays**

On this 6<sup>th</sup> Day of February, 2014, It Is So Moved.

  
Michael E. Hamm  
7901 Farrow Road

Bldg.#3 / 3<sup>rd</sup> Floor  
Columbia, South Carolina  
29203-3220

cc:/ The Honorable Stephanie P. McDonald,  
Chief Administrative Judge Ninth Judicial Circuit,  
Court Of Common Pleas. 100 Broad Street, Suite 427,  
Charleston, South Carolina 29401.

Sent to: The Attorney Generals Officers  
Post Office Box 11549  
Columbia, South Carolina 29211-1549

and Mr. Charles T. Brooks III, Esquire  
309 Broad Street  
Post Office Box 3512  
Sumter, South Carolina 29151

In The Court of Common Pleas

---

The State of South Carolina-----Plaintiff  
The Department of Mental Health via The Sexually Violent Predator Unit;  
Mr. Charles T. Brooks, Attorney; Mr. George B. Bishop, Jr.; Party Plaintiffs

vs.

Michael E. Hamm--- Respondent

C/A/No. 2010-CP-08-4436

**AFFIDAVIT OF SERVICE**

I, Michael E. Hamm, do Swear or Declare that on this 6<sup>th</sup> day of February 2014, I have served the enclosed on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States Mail properly addressed to each of them and with first-class postage prepaid, or by delivery to a third-party commercial carrier for delivery within three ( 3 ) calendar days.

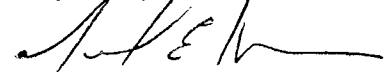
The names of those served are as follows:

Clerk of Court, The Court of Common Pleas  
Berkeley County  
Post Office Box 219  
Moncks Corner, S.C. 29461-0219

Mr. Charles T. Brooks, III, Esquire  
309 Broad Street, P.O. Box 3512  
Sumter, S.C. 29151

Office of the Attorney General  
c/o Mr. Bogel, Jr.,  
Post Office Box 11549  
Columbia, S.C. 29211-1549

Respectfully Submitted



Without Prejudice U.C.C. 1-207  
Michael E. Hamm  
7901 Farrow Road  
Bldg. #3/ 3<sup>rd</sup> Floor  
Columbia, S.C. 29203-3220

cc:// Clerk of Court, Berkeley County;  
Office of the Attorney General;  
File.

# The Brooks Law Offices, LLC

---

**CHARLES T. BROOKS, III,**  
Attorney

309 Broad Street  
Sumter, South Carolina 29150  
Post Office Box 3512, Sumter, SC 29151  
OFFICE: (803) 418-5708  
FAX: (803) 934-9618 TOLL FREE: (877) 770-8792  
Email: cbrooks@ctbrooks.com

**IRMA R. BROOKS**  
Attorney

February 10, 2014

Michael Hamm  
7901 Farrow Road  
Bldg 3, 3<sup>rd</sup> Floor  
Columbia, S. C. 29203


RE: In the Matter of the Care and Treatment of  
Michael Hamm

Dear Mr. Hamm:

Please be advised that I would advise you against all of these filings. These filings could pose a harm to your case and your eventual freedom.

With kind regards, I am,

Sincerely,

  
Charles T. Brooks, III  
CTB, III/jlb

# The Brooks Law Offices, LLC

---

**CHARLES T. BROOKS, III,**  
Attorney

309 Broad Street  
Sumter, South Carolina 29150  
Post Office Box 3512, Sumter, SC 29151  
OFFICE: (803) 418-5708  
FAX: (803) 934-9618 TOLL FREE: (877) 770-8792  
Email: [cbrooks@ctbrooks.com](mailto:cbrooks@ctbrooks.com)

**IRMA R. BROOKS**  
Attorney

January 24, 2014

---

Michael Hamm  
7901 Farrow Road  
Bldg 3, 3<sup>rd</sup> Floor  
Columbia, S. C. 29203

RE: In the Matter of the Care and Treatment of  
Michael Hamm

Dear Mr. Hamm:

Please be advised that I have already indicated to the Court that you consented to waiving the review.

Please note this is what you indicated through our phone conversation.

With kind regards, I am,

Sincerely,

Charles T. Brooks, III  
CTB, III/jlb

Michael E. Hamm  
7901 Farrow Road  
Bldg. # 3/ 3<sup>rd</sup> Floor  
Columbia, S.C. 29203- 3220

January 18<sup>th</sup> 2014

To: Mr. Charles T. Brooks, III  
The Brooks Law Office, LLC  
Post Office Box 3512  
Sumter, S.C. 29151

Re: Notice of Intent

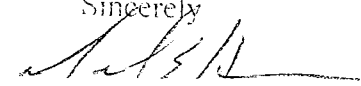
Sir,

Sir, at this time I am pulling back my Denial of an Annual Review.

I am seeking to have my Annual Review Hearing with in the Statute at this time. As was stated in the Voluntary Committal Hearing by Judge Dennis that I have the right to attend the hearing and I wish at this time to attend.

I have contacted Mr. Bogel, Jr., and informed him of the same Legal Issue.

Sincerely



*\* NOTICE IN THE VOLUNTARY COMMITMENT HEARINGS TRANSCRIPT, IT IS STATED TO MR. BOGEL, JR. AND PREVIOUS COUNSEL THAT I CAN ATTEND THIS HEARING, AND MR. BOGEL, JR. AGREED.*

CC:// Mr. Bogel, Jr.  
Office of the Attorney General  
Post Office Box 11549  
Columbia, S.C. 29211- 1549

# The Brooks Law Offices, LLC

---

CHARLES T. BROOKS, III,  
Attorney

309 Broad Street  
Sumter, South Carolina 29150  
Post Office Box 3512, Sumter, SC 29151  
OFFICE: (803) 418-5708  
FAX: (803) 934-9618 TOLL FREE: (877) 770-8792  
Email: cbrooks@ctbrooks.com

IRMA R. BROOKS  
Attorney

January 16, 2014

---

Michael Hamm  
7901 Farrow Road  
Bldg 3, 3<sup>rd</sup> Floor  
Columbia, S. C. 29203

RE: In the Matter of the Care and Treatment of  
Michael Hamm

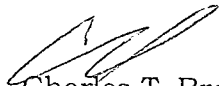
Dear Mr. Hamm:

Please be advised that I enjoyed speaking with you today.

Per our conversation, it is my understanding that you wish to waive your  
Annual Review. Please confirm this in writing to me as soon as possible.

With kind regards, I am,

Sincerely,



Charles T. Brooks, III  
CTB, III/jlb

# The Brooks Law Offices, LLC

---

**CHARLES T. BROOKS, III,**  
Attorney

309 Broad Street  
Sumter, South Carolina 29150  
Post Office Box 3512, Sumter, SC 29151  
OFFICE: (803) 418-5708  
FAX: (803) 934-9618 TOLL FREE: (877) 770-8792  
Email: cbrooks@ctbrooks.com

**IRMA R. BROOKS**  
Attorney

January 16, 2014

Office of the Attorney General  
Attn: James Bogle, Esquire  
PO Box 11549  
Columbia, SC 29211-1549

RE: In the Matter of the Care and Treatment of  
Michael Hamm, Case No. 2010-CP-08-4436

Dear Mr. Bogle:

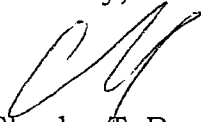
Please be advised that I have spoken to Mr. Hamm today in reference to his case.

At this time Mr. Hamm wishes to withdraw this year's Annual Review.

Thank you in advance for your prompt attention to this matter and if you have any questions or concerns, please do not hesitate to call me.

With kind regards, I am,

Sincerely,



Charles T. Brooks, III  
CTB, III/jlb

cc: Michael Hamm

STATE OF SOUTH CAROLINA  
COUNTY OF BERKELEY

IN THE COURT OF COMMON PLEAS  
NINTH JUDICIAL CIRCUIT

IN RE THE MATTER OF THE CARE  
AND TREATMENT OF:  
MICHAEL E. HAMM  
RESPONDENT

MOTION TO DISMISS

V.  
THE STATE OF SOUTH CAROLINA  
DEFENDANT  
and PARTY DEFENDANT'S

C/A No.: 2010- CP-08 4436

FILED  
2014 MAY -9 PM 2:36  
MARY P. BROWN  
CLERK OF COURT  
BERKELEY COUNTY, SC

Attention: The Honorable Chief Administrative Judge Ninth Judicial Circuit, Court Of  
Common Pleas, and The Honorable Mary P. Brown; Clerk of Court, Berkeley County.

Issue One

Statement of the Case

I, have not had any Annual Review Hearing since I came into this program in September 8<sup>th</sup> 2011.  
Is this not Mandatory as a Matter of Law?

Argument

The Defendant hereby objects to the State's Motion to *"Consent Order Waiving Annual Review Hearing is an Injustice."* The State and my Counsel Mr. Charles T. Brooks III, Esquire, are trying to have waived The Annual Review Hearing for 21 months, not. just the 2012 hearing. I contacted Mr. Brooks by mail on/ or about the 19<sup>th</sup> of February 2014 that I did not want to consent to this. By the Letter of the Law according to South Carolina Code Ann. § 44-48-110. this is *"must be"* done every year and I have had none based on the forgoing. I, *"Object to this Consent Order Waiving Annual Review Hearing."*

When a Waiveable Right or claim is involved, the failure to make a reservation thereof; causes a loss of the right and bars it's assertion at a later date..... U.C.C. 1-103:6 Common Law, a statute should be construed in harmony with the common law .unless there is clear legislative intent to abrogatc the common law. "The Code Cannot be Read to Preclude a Common Law Action."

Issue Two

Statement of the Case

The Department of Mental Health and State that runs this program are Violating my Constitutional Rights, due to [T]hem not following the Mandatory Requirement in § 44-48-110 raised in an "As- Applied Analysis." [T]hey are Violating my Due Process, and Equal Protection Rights of the State and Federal Constitution under S.C. Const. Article I, Section 3 and under the U.S.C.A. Const. 6<sup>th</sup> and 14<sup>th</sup> Amend., by my Counsel and the State. This is raised as a Novel question of Law --- as A Certified Question of Law --- in an "As-Applied Analysis"

Argument

The potential consequences for both parties cannot be labeled insignificant; failure to conduct a reexamination could result in the release of a potentially dangerous mentally disordered person into the community, or, "*The continued confinement of a person who no longer presents a danger to society and the prolonged deprivation of his / her liberty.*" So can the State and the Department of Mental Health continue to Violate South Carolina Code of Law Ann. § 44-48-110?

1. South Carolina Code of Law Ann. § 44-48-110 states: **Periodic mental examination of committed persons; report; petition for release; trial to consider release.** A person committed pursuant to this chapter *must* have an examination of his mental condition performed *once every year*. The person may retain or, if the person is indigent and so request. the court may appoint a qualified expert to examine the person, and the expert *must* have access to all medical, etc..... The Annual Report *must* be provided to the court which committed the person pursuant to this chapter, the Attorney General, etc..... The court *must* conduct an annual hearing to review the status of the committed person. The person is not prohibited from petitioning the court for release at this hearing. The Director of the Department of Mental Health *must* provide the committed person with an annual written notice of the person's right to petition the court for release over the Director's objection; the notice *must* contain a waiver of rights. The Director *must* forward the notice and waiver to the court with the annual report. Etc.....

2. All the evidence that will be presented will show that this "*was not*" complied with in accordance with the South Carolina Code of Law Ann. § 44-48-110 states: **Periodic mental examination of committed persons; report; petition for release; trial to consider release.** The

Defendant's Constitutional Right's to Equal Protection of the Laws has been violated by the Plaintiffs, and his Constitutional Right's not to be subjected to Undue Restraint S.C. Constitution Article I, Bill of Rights § 3 Privileges and immunities; Due Process; Equal Protection of Laws. The privileges and immunities of citizens of this State and the United States under this Constitution *shall not* be abridged. *Nor shall* any person be deprived of *life, liberty*, or property *without due process of law, nor shall any person be denied the equal protection of the laws*. The Defendant has been denied this by the actions of the Department of Mental Health and the Attorney Generals Office for allowing this *Injustice* to continue. The State and the Attorney Generals Office are suppose to protect us from this *Injustice* by Due Process of the Laws.

*\*\*\*\*On the 24<sup>th</sup> of July 2013, they had me finally sign the Documents for Annual Examination And Review Hearing that is ten (10) months past the statutory requirement. The Annual Review Pursuant to § 44-48-110 has not been done as of August 16, 2013; eleven (11) months past the statutory requirement, Of September 8<sup>th</sup> 2012\*\*\*\* As of this date of May 6<sup>th</sup> 2014, I still have not had my hearing by the Statutory Requirement Pursuant to § 44-48-110. This is twenty-one (21) months past the Statutory Requirement Pursuant to § 44-48-110. \*\*\*\* In re Commitment of Beyer, 707 N.W. 2d 509 (Wis. 2006)*

3. Based on established precedent, under the Rules of Statutory Construction, in interpreting Statutes, the Court looks to the plain meaning of the Statute and the intent of the Legislature. *Gay v. Arial*, 673 S.E. 2<sup>nd</sup> 418 (S.C. 2009); *Edwards v. Sanford*, 678 S.E. 2<sup>nd</sup> 412 (S.C. June 4, 2009). Subtle or force construction to limit or expand a Statute's operation is not allowed. *Converse Power Corp. v. S.C. Dept. of Labor, Licensing, and Regulations*, 523 S.E. 2<sup>nd</sup> 795 (Ct. App. 1999).

4. Violation of the Sexually Violent Predator Statute, S.C. Code of Laws Ann. § 44-48-110: See the following case as a reference: 254 Wis. 2d 690 (Wis. App. 1998). *State ex rel. Marberry v. Macht*. The potential consequences for both parties cannot be labeled insignificant; failure to conduct a reexamination could result in the release of a potentially dangerous mentally disordered person into the community or "The Continued Confinement of a Person Who No Longer Presents a Danger to Society and The Prolonged Deprivation of [H]is or her Liberty. When the failure to act within "A Statutory Time Limit Does Work an Injury or Wrong," this Court has construed the time limit as Mandatory. *Karow*, 82 Wis. 2d at 572, 263 N.E. 2d 214. Certainly an individual such as Hamm, who is institutionalized and deprived of his liberty, is injured to a substantial degree.

The general rule in interpreting statutory language is that the word shall [ in this State the Mandatory word "Must" ] is presumed Mandatory when it appears in a statute. *State v. Sprosty*, 227 Wis. 2d 316, 324, 595 N.E. 2d 692 (1999) (citation omitted). "Further support is given to a mandatory interpretation of "shall" [ "must" in S.C. ] in a particular statutory section, indicating the legislature was aware of the distinct meaning of the words."

The Legislature in the State of South Carolina used the word "must" in S.C. Code of Laws Ann. § 44-48-110: A person committed pursuant to this chapter **must** have an examination of his mental condition performed **once every year**. The person may retain or, if the person is indigent and so request, the court may appoint a qualified expert to examine the person, and the expert **must** have access to all medical, etc..... The Annual Report **must** be provided to the court which committed the person pursuant to this chapter, the attorney General, etc..... The court **must** conduct an annual hearing to review the status of the committed person. The person is not prohibited from petitioning the court for release at this hearing. The Director of the Department of Mental Health **must** provide the committed person with an annual written notice of the person's right to petition the court for release over the Director's objection; the notice **must** contain a waiver of rights. The Director **must** forward the notice , etc.....

\*\*\*\*Where statutes provide for performance of acts by public officers protecting private rights or the public in the public interest, they are mandatory. This rule has been enunciated by the United States Supreme Court as follows: "The conclusion to be declared from the authorities is, that where power is given to public officers.... whenever.... individual rights call for its exercise --- the language used... is in fact peremptory." (citing *Bd. Of Supervisors v. United States ex rel. State Banks*, 71 U.S. (4 Wall) 435, 446-47, 18 L.Ed. 419 (1867)). \*\*\*\*

When our Supreme Court held that S.C. Code of Laws Ann. §§ 44-48-10 to 44-48-170 to be Constitutional the State promised it was prepared to provide specific treatment to those committed under S.C. Code of Laws Ann. §§ 44-48-10 to 44-48-170 and not to simply warehouse those committed. The State assured our Supreme Court that as the population increased, plans existed to increase the staff proportionately and that a committed person would be discharged as soon as his or her dangerousness or mental disorder abated. As noted, it was presumed good faith on the part of the Legislature; the State is clearly obliged under S.C. Code of Laws Ann. §§ 44-48-10 to 44-48-170 to provide care and treatment to those determined to be sexually violent persons. South Carolina's Statute

§ 44-48-110 does contain restrictive procedural time limits and they acknowledge that these time limits may cause administrative difficulties.

**HOWEVER**, our Supreme Court accepted the State's affirmation that it was "prepared to provide specific treatment to those committed under S.C. Code of Laws Ann. §§ 44-48-10 to 44-48-170 and not simply warehouse them" and that the Legislature would "proceed in good faith and fund the treatment programs necessary for those committed under S.C. Code of Laws Ann. §§ 44-48-10 to 44-48-170."

**HOWEVER**, the Department of Mental Health through the Sexually Violent Predator Treatment Program took nearly two (2) years to provide Defendant with a reexamination that should have been conducted within one(1) year. Under the extreme state of affairs presented here and the prolonged Deprivation of Defendant's Liberty in Violation of the Strict Safeguards of S.C. Code of Laws Ann. § 44-48-110, Defendant's release is the only appropriate remedy.

**CONCLUSION:** *"This Court should conclude that the one-year time limit of S.C. Code of Laws Ann. § 44-48-110 for an initial reexamination is mandatory and because of the egregious circumstances if this case, Plaintiff's release is necessary. Therefore the order of the Court of Common Pleas should be reversed."*

The Defendant is informed and believes that the statute is to be interpreted to be any accumulation of material possessed violate the statute and the prescribed requirement in statute in § 44-48-110. Whether that is correct, and whether it is stated in mandatory language, this is the question before this Court? If the Court declares that the Plaintiff's interpretation is correct, then the question of whether an individual can be subjected to the multiple violations carried out by the Department of Mental Health, The State of South Carolina and The Attorney General's Office.

### Issue Three

#### Statement of the Case

**Are and were Counsel's Ineffective in their Assistance and in Violation of DR-6-101 for not raising the Legal Issue's as stated in the Motion to Dismiss?**

#### Argument

In 2010, I was appointed Mr. George B. Bogel, Jr., as counsel. On the 10<sup>th</sup> day of September 2012.

I informed Mr. Bishop that I had not been afforded the Statutory Right to South Carolina Code of Law Ann. § 44-48-110, and responded back to me that since I volunteered for this program that he was no longer my counsel. Then about 10 months later, he wrote that he found out that he was still my counsel. Then he started the process of getting this legal issue started. Then in July of 2013 he dismissed himself as counsel and I was given Mr. Brooks as counsel.

~~I charge Mr. Bishop with Ineffective Assistance of Counsel and Violating Dr. 6-101 for not filing~~ Motions to have this legal issue brought into court for the State And the Department of Mental Health via the Sexually Violent Predator Unit for Violating the Law. [T]hey are in violation of violating the Statutory Right to South Carolina Code of Law Ann. § 44-48-110. Based on the forgoing Mr. Bishop is guilty of violating the State and Federal Constitutions for effective assistance of counsel. I have had my Constitutional Rights to Due Process and Equal Protection of the Laws under S.C. Const. Article I, Section 3 and under the U.S.C.A. Const. 6<sup>th</sup> and 14<sup>th</sup> Amend., by my Counsel and the State. I have been Denied my Statutory Right to the Annual Review Hearing since the 8<sup>th</sup> of September 2012 through the 5<sup>th</sup> of February, 2014 under the Statutory Right of South Carolina Code of Law Ann. § 44-48-110.

#### Issue Four

##### Statement of the Case

**Are and were Counsel's Ineffective their Assistance and in Violation of DR-6-101 for not raising the Legal Issue's as stated in the Motion to Dismiss?**

##### Argument

**I notified Mr. Brooks of: *"The State and The Department of Mental Health via The Sexually Violent predator Unit are and have been in Violation of the Statutory Law South Carolina Code of Law Ann. § 44-48-110, since the 8<sup>th</sup> day of September 2012, when I first received him as counsel and he did nothing to Prosecute this Legal Issue. [H]e stated to me that I needed to get together with the Resident's in here and file a Class Action Suit on this Legal Issue. Yet, he would do nothing about it, even though [H]e is my counsel. Thus Mr. Brooks is guilty of Ineffective Assistance of Counsel and Violating Dr. 6-101.***

As stated in Issue Two I also charge Mr. Brooks, with Ineffective Assistance of Counsel and For Violating Dr. 6-101. On the 18<sup>th</sup> of January 2014 I talked to Mr. Brooks on the phone and we discussed

me Waiving the Annual Review Hearing, and at that time I agreed to this. "Yet," on the 19<sup>th</sup> of January 2014, I wrote to Mr. Brooks and Mr. Bogel and stated that I did not want to waive my Annual Review Hearing, and that in the Voluntary Committal Transcript, Judge Dennis stated that I could attend and Mr. Bogel "agreed."

Now on the 4<sup>th</sup> of February 2014, Mr. Brooks, sends to me this "Consent Order Waiving Annual Review Hearing", after I wrote to [T]hem and stated that I did want my Annual Review Hearing's.

**Looking at this "Consent Order Waiving Annual Review Hearing", they are trying to waive all of my hearings since I came to this program. Looking at "Issue One" and at the Statute this is not stated that this can be done thus "The State and The Department of Mental Health via The Sexually Violent predator Unit are and have been in Violation of the Statutory Law South Carolina Code of Law Ann. § 44-48-110, since the 8<sup>th</sup> day of September 2012."**

I do not agree to waive both of my Annual Review Hearings from September 8<sup>th</sup>, 2011 through July 13<sup>th</sup> 2013. I was not told this by Mr. Brooks nor did I see this order before Mr. Brooks signed it, when I told [T]hem that I did not wish to waive my Right's to my Annual Review Hearings.

I charge Mr. Brooks with Ineffective Assistance of Counsel and Violating Dr. 6-10, for not filing Motions to have this Legal Issue brought into Court for the State And the Department of Mental Health via the Sexually Violent Predator Unit for Violating the Law. [T]hey are in violation of violating the Statutory Right to South Carolina Code of Law Ann. § 44-48-110. Based on the forgoing Mr. Brooks is guilty of violating the State and Federal Constitutions for effective assistance of counsel.

I have had my Constitutional Rights to Due Process and Equal Protection of the Laws under S.C. Const. Article I, Section 3 and under the U.S.C.A. Const. 6<sup>th</sup> and 14<sup>th</sup> Amend., by my Counsel and the State. I have been Denied my Statutory Right to the Annual Review Hearing since the 8<sup>th</sup> of September 2012 through the 6<sup>th</sup> of May, 2014 under the Statutory Right of South Carolina Code of Law Ann. § 44-48-110.

#### Issue five

I do not agree to Waive both of my Annual Review Hearings from September 8<sup>th</sup>, 2011 through July 13<sup>th</sup> 2013. I was not told this by Mr. Brooks nor did I see this order before Mr. Brooks signed it, when I told [T]hem that I did not wish to waive my Right's to my Annual Review Hearings.

I have had my Constitutional Rights to Due Process and Equal Protection of the Laws under S.C. Const. Article I, Section 3 and under the U.S.C.A. Const. 6<sup>th</sup> and 14<sup>th</sup> Amend., by my Counsel's and the

State. I have been denied my Statutory Right to the Annual Review Hearing since the 8<sup>th</sup> of September 2012 through the 5<sup>th</sup> of February, 2014, under the Statutory Right of South Carolina Code of Law Ann. § 44-48-110.

**PRAYER**

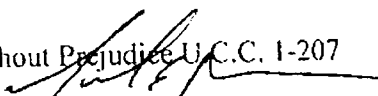
I PRAY, that this Court will Grant this Motion to Dismiss the “**Voluntary Committal Order**” and grant me the relief that I seek. If so, a justifiable controversy exists, needing further analysis if a Statutory Violation occurred and administration of the Appropriate Relief pursuant to S.C. Code of Law Ann. § § 15-53-10 to 140.

**Wherefore**, based upon all of the forgoing, the Defendant moves this Honorable Court for an Order of Declaratory Judgment to answer the questions posed. The Defendant then asks for Prospective Relief and Injunction to correct the unlawful restraint of this Defendants Constitutional Rights and Protected Liberty Interest to the Privileges and Immunities of citizens of this State and the United States under this Constitution *shall not* be abridged. *Nor shall* any person be deprived of *Life, Liberty*, or property *Without Due Process of Law, nor Shall any Person be Denied the Equal Protection of the Laws*. The Defendant, *Has Been Denied* this by the actions of the Attorney Generals Office, The Department of Mental Health and The State of South Carolina for allowing this *Injustice* to continue. The State, The Attorney Generals Office and The Department of Mental Health are suppose to protect us from this *Injustice* by Due Process of the Laws.

**This The Defendant Humbly Prays**

On this 6<sup>th</sup> Day of May, 2014, It Is So Moved.

Without Prejudice U.C.C. 1-207

  
Michael E. Hamm  
7901 Farrow Road  
Bldg.#3 / 3<sup>rd</sup> Floor  
Columbia, South Carolina  
29203-3220

cc:/ The Honorable Mary P. Brown; Clerk of Court &  
Chief Administrative Judge Ninth Judicial Circuit,  
Court Of Common Pleas.  
Post Office Box 219  
Moncks Corner, SC 29461-0219

Sent to: The Attorney Generals Officers  
Post Office Box 11549  
Columbia, South Carolina 29211-1549

EXHIBIT Tulo



ALAN WILSON  
ATTORNEY GENERAL

June 4, 2014

The Honorable Mary P. Brown  
Berkeley County Clerk of Court  
Post Office Box 219  
Moncks Corner, South Carolina 29461

RE: In the Matter of the Care and Treatment of Michael Hamm  
Case No.: 2010-CP-08-04436

Dear Ms. Brown:

Enclosed herewith please find an original and two copies of the Return to Motions for Hearing and to Dismiss in connection with the above referenced case.

Please file the original and return two certified copies in the enclosed envelope.

Thank you.

Very truly yours,

James G. Bogle, Jr.  
Senior Assistant Attorney General

JGB:grm  
Enclosures  
cc: Michael Hamm, *pro se* (with enclosure) ✓

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF BERKELEY	)	CASE NO. 2010-CP-08-04436
	)	
IN THE MATTER OF THE CARE	)	RETURN TO MOTIONS FOR
	)	HEARING AND TO DISMISS
MICHAEL HAMM,	)	
RESPONDENT.	)	
_____	)	

To: Michael Hamm, *pro se*.

YOU WILL PLEASE TAKE NOTICE that the State would make the following Return to the Motion for a Hearing and the Motion to Dismiss, asking that both be denied, and that the Court consider prohibiting you from filing future pleadings without paying any required Motion fee. In support of this Return the following is offered:

1. This is a sexually violent predator case. Michael Hamm voluntary committed to the Department of Mental Health on September 7, 2011, and the Order was filed the same day (Exhibit 1).
2. On or about March 18, 2014 following a hearing conducted by Judge Deadra L. Jefferson, Michael Hamm's attorney, Charles T. Brooks III, was relieved, and Mr. Hamm was allowed to precede *pro se*.
3. By Motions filed on or about May 9, 2014, Mr. Hamm has moved for a hearing and dismissal of a prior Consent Order waiving his annual review hearing.
4. A committed person under the Sexually Violent Predator Act must have an examination of his mental condition performed once every year by the Department of Mental Health, as provided for at S.C. Code Ann. Section 44-48-110. Upon information and belief the Department has gotten behind in these evaluations, and in an effort to remedy this has taken certain steps, including contracting with an additional psychologist to remedy the situation. It is submitted that for this reason, most likely, Mr. Hamm's first Annual Review Treatment Report was issued covering the period from September 8, 2011 through July 13, 2013.
5. At the time the Annual Review Report was issued Mr. Hamm was represented by competent counsel, Mr. Brooks. Mr. Hamm, through his attorney Mr. Brooks, executed a consent order waiving the annual

review hearing, signed by Chief Administrative Judge Stephanie P. McDonald on January 31, 2014 and filed on or about March 4, 2014 (Exhibit 2).


6. The intent of Mr. Hamm's Motions before the Court appear to be to request a hearing to revoke the above consent order. However, upon information and belief there has been no appeal of the Consent Order, and the time within which to have done so has expired. Further, Mr. Hamm's motions do not appear to fall within the categories for relief from judgment found at Rule 60 (b), SCRPC (Exhibit 3). Therefore, his motions should be denied without a hearing.
7. This Court may wish to consider barring Mr. Hamm from future filings without paying the required filing fee. Attached as Exhibit 4 please find an Order to that effect from the Supreme Court of South Carolina, and as Exhibit 5 a Notice of Appeal of the Order relieving Mr. Brooks, received by the Attorney General's Office today.

WHEREFORE, IT IS REQUESTED THAT the Motions for a hearing and to dismiss be denied, and that the Court grant such other and further relief as is appropriate.

Respectfully Submitted,

ALAN WILSON  
Attorney General

JAMES G. BOGLE, JR.  
Senior Assistant Attorney General

By:   
Attorneys For Petitioner  
Office of the Attorney General  
Post Office Box 11549  
Columbia, South Carolina 29211  
Telephone: (803) 734-3243

June 4, 2014  
Columbia, South Carolina

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

APPEAL FROM BERKELEY COUNTY  
THE HONORABLE DEBORAH L. JEFFERSON, CIRCUIT JUDGE  
APPELLATE CASE NO. 2014-001913

THE STATE,

RESPONDENT,

v.

IN THE MATTER OF THE CARE AND TREATMENT OF:  
MICHAEL E. HAMM,

APPELLANT.


PROOF OF SERVICE

I, MICHAEL E. HAMM, CERTIFY THAT I SERVED THE APPELLANT'S MEMORANDUM IN OBJECTION TO THE RESPONDENT'S MEMORANDUM REGARDING APPEALABILITY ON RESPONDENTS BY DEPOSITING A COPY IN THE UNITED STATES MAIL, POSTAGE PAID, ADDRESSED TO:

DEBORAH R. J. SHUDE  
OFFICE OF THE ATTORNEY GENERAL  
POST OFFICE BOX 11549  
COLUMBIA SC 29211-1549

I FURTHER CERTIFY THAT ALL PARTIES BY RULE TO BE SERVED HAVE BEEN SERVED.

THIS 6 DAY OF NOVEMBER, 2014.

  
MICHAEL E. HAMM  
PRO-SE  
7901 FARROW ROAD  
BLO #3 / 3RD FLOOR  
COLUMBIA SC 29203-3220

RECEIVED

NOV 10 2014

SC Court of Appeals

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**SC Court of Appeals**

*THE COURT OF APPEALS c/o  
KITCHINGS, CLERK  
Box 11629  
29211*

**RECEIVED**

NOV 10 2014

**SC Court of Appeals**

