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THE STATE OF SOUTH CAROLINA
SOUTH CAROLINA COURT OF APPEALS

APPEAL FROM BEAUFORT COUNTY
COURT OF COMMON PLEAS

MARVIN H. DUKES, III, MASTER-IN-EQUITY,
BEAUFORT COUNTY
TRIAL COURT CASE NO.: 2013CP0700918

APPELLATE CASE NO.: 2014-000636

BEAUFORT COUNTY,

Respondent,

vs.

MARE BARACCO,

Appellant.

MOTION TO DISMISS



Mare Baracco, *Pro Se*
1006 Madrid Avenue
Port Royal, South Carolina 29935
(843) 592-1062

Date: March 10, 2015

RECEIVED

MAR 13 2015

SC Court of Appeals

RECEIVED

MAR 13 2015

SC Court of Appeals

Mare Baracco, the Appellant herein, moves this Court, pursuant to the South Carolina Rules of Civil Procedure, the Due Process Clauses of South Carolina and United States Constitutions, and lack of subject matter, personal and territorial jurisdiction of the administrative agency and Beaufort County, to dismiss the above-captioned case. As Appellant informed this Court previously, she is unable to file an Appeal Brief, as she lacks the most important document required, “**The Record**”, of a properly adjudicated “*Administrative Hearing*”, pursuant to Title 1, Chapter 23, “*State Agency Rule Making and Adjudication of Contested Cases*”, as she has not been afforded that opportunity, by the Respondent, Beaufort County. (Appellant would request this Court review, if needed, Appellant’s previous motion of October 9, 2014, in which she details all of the requirements of “**The Record**” that have not been provided her). Interestingly, the Respondent have made, as part of their record before this Honorable Court, a document that purports to be a ruling of an “*Administrative Determination*” submitted to this Court July 16, 2014). That would *seem* unlikely, without that initial first step, the creation of “**The Record**”. In support of this motion, Appellant shows the following:

1. The Appellant is a resident of the Town of Port Royal, an incorporated municipality. On July 4, 2012 due to an incident between Appellant’s dog, Bodi and a neighbor’s dog (owned by a Sally Germer), Appellant was issued a ticket, by the Port Royal Police Department, for allegedly violating Port Royal ordinance 3-53 “*Animal at Large*”. Appellant was also issued, July 9, 2012, for the same incident, a “*Written Notice*”, from the Beaufort County Sheriff’s Department for a violation of Beaufort County Ordinance 14-35 for a “*Dangerous Animal*”. Appellant immediately contacted them by telephone, then went to their office July 10, 2012 to contest the issuance of this “*Notice*”, as she hadn’t even answered to the Port Royal charge. And, Appellant contended she was being charged twice, by

two different police jurisdictions, ; she could not be held legally responsive to ordinance violations from both of these police jurisdictions, for same incident. Further, Appellant resides in Port Royal and was subject only to Port Royal's ordinances in this matter, **not** Beaufort County, **never** Beaufort County. Port Royal didn't have a contract with Beaufort County to adopt their ordinances, nor have a legally promulgated Mutual Aid Agreement (which, even if it existed, Beaufort County would *still* have to be responsive to the *host* jurisdiction, the municipality of Port Royal, an equal and separate governing body). Further, Appellant contended this "Notice" was overly harsh and inconsistent with State Statute and thus void; and the issuance violated her constitutional right to due process. The Sheriff's Department, in its confusion, and having no process in place, instructed Appellant to write a letter to the Beaufort County Magistrate to request a hearing on the matter. Appellant contends this was the wrong process to direct her to, as she was entitled, by State Law, to an "Administrative Hearing", pursuant to South Carolina Chapter 23 "State Agency Rule Making and Adjudication of Contested Cases" 1-23-10, et seq. "Notice" attached, indicating the two police jurisdictions and violations; Port Royal Ordinance Ticket also attached. Copy of Chapter 23 attached.

2. Subsequent to this visit, Appellant appeared before Judge Kline, Beaufort County Magistrate August 2012; he upheld the "Notice" she appealed to the Master in Equity (wrong court, again; however, that's the court she was directed to in the process). Appellant then answered the Port Royal charge November 8, 2012 in their Municipal Court for the "Animal at Large" violation, before a jury; Appellant was acquitted of this charge (attached). Subsequently, Judge Dukes, Master in Equity, overturned Judge Kline's ruling from August, on December 26, 2012 (attached). As Appellant was acquitted under the only ordinance she is/was

legally responsive to, because she is a resident of Port Royal and the incident took place in Port Royal, Appellant was bewildered to find herself *again* summoned to Beaufort County Magistrate Court, to answer to the same "*Notice for a Dangerous Animal*". It took months and *many* FOIA requests (the Respondents put up numerous "roadblocks" to prevent the Appellant from accessing information and documents through the FOIA process; including, but not limited to, charges for FOIA's in excess of \$45,000 - attached) for her to determine how, and why, this occurred, which will demonstrate to the Court how an "*Administrative Determination*", can be "created", without "**The Record**".

3. Unbeknownst to the Appellant, December 28, 2012, two days after Judge Dukes overturned Kline's ruling from the August hearing, the first of many secret communications ensued (attached from 12/28/12 – 12/12/13). Port Royal officials Van Willis, Tom Klein, and others exchanged e-mails/calls with the Respondent for another hearing on behalf of their friend, Ms. Germer. In these communications the attorney for the Respondent, Josh Gruber, deputies with the Sheriff's Department, the aforementioned town officials, and even the other party to the case, Ms. Germer herself, had communications about the Appellant. The discussions centered on re-charging the Appellant for the "*Notice of Dangerous Animal*". Appellant contends Beaufort County cannot nullify a valid court decision by a jury in the Port Royal Municipal Court, the only court in this matter with subject matter, personal and territorial jurisdiction, in order to satisfy certain individuals. The Court will take specific notice of the e-mail from attorney Josh Gruber, referencing his telephone call to Chief Magistrate Rod Sproatt, wherein Gruber requests a different judge be assigned. Appellant contends by this action, Gruber gained an unfair advantage in establishing yet another (unwarranted) case against her. Also, because a new judge was essential to the Respondent's plan; if the initial Judge,

Kline, re-heard the case, the Respondent and the Appellant would assume the same roles as before, that of Plaintiff and Defendant, respectively, as in the first hearing before Kline in August. So a (very) new judge was needed for this subsequent hearing. Their stage was now set for the Appellant's latest appearance in this labyrinth legal nightmare. E-mails attached.

4. A bogus "*Rule to Show Cause*" was mailed to the Appellant, summoning her to Beaufort County Magistrate Court (bogus, because it was not properly served by either a sheriff or a process server, pursuant to SC Rule 14, and it did not contain the requisite affidavit or verified petition and other supporting documentation required by "The Rules"). Further, the case had been remanded for a NEW hearing; Appellant was not in contempt of any order; in fact, Appellant had never actually been charged with anything by Beaufort County; she contested their "*determination of an employee of an agency*". These documents support Appellant's contention the Respondents knew an "*Administrative Hearing*" pursuant to Chapter 23 should have been afforded the Appellant, to comply with her constitutional right to due process when she initially contested the "*Notice*" July 10, 2012; Appellant appeared as summoned, as the Defendant, March 12, 2013 for a "*Rule to Show Cause*" hearing before Judge Brooks. As the Court will note from the attached transcript pages from this hearing, a meeting was first held with the principals in chambers. As soon as they returned, the Appellant was ruled in as the "Defendant", then, immediately the Respondent, Josh Gruber, made a Motion (Sheet 1, Page 4 – Lines 1-25; Sheet 2, page 5, Lines 1-4). Now, instead of a 'Rule to Show Cause, with the Appellant summoned to answer to this "*Notice*", Appellant summarily became "the Appellant" and the hearing "mutated" into a "*Court of Appellate Judicial Review*". (As Appellant understands, summary courts cannot be courts of Appellate Judicial Review and she contends this action was a total violation of the South Carolina Rules of Civil Procedure and of

her right to due process).

Thereafter, the Court will note this hearing was “peppered” with verbiage and legal jargon that’s only suitable for an “*Administrative Hearing*” (ex. Sheet 22, Pages 86-88).

Judge Brooks upheld the “*Notice*”; thereafter, the Appellant could never win a ruling in her favor because it was now considered an “Administrative Determination”, and the standard to overturn it was from a completely different judicial process and methodology than Appellant would have knowledge of, given her hearings in Beaufort County consisted of appearances before a summary court Magistrate. The Appellant had not yet discovered the e-mails and other documents that allowed her to put all the pieces together, including the following proof of their scheme:

Appellant received a telephone call from her (former) attorney the afternoon of May 1, informing her a hearing had been scheduled for the following morning, May 2, 2013, because of “unspecified neighbor complaints”. As the Appellant learned (a year later), the Magistrate Court had mailed “*Rule to Show Cause(s)*”, without supporting documentation, to Appellant’s (former) attorney’s office (attached). Appellant was subjected to yet another sham hearing, without proper notice, conformance to Rules, jurisdiction and a host of other procedural defects. Most interesting though, is the audio recording of this hearing, obtained from submission of a FOIA sent to Beaufort County Public Information Officer August 21, 2014. The FOIA’d recording was sent to Appellant via e-mail August 25, 2014, and downloaded (attached). The Respondent, Josh Gruber, speaks to jurisdiction and also expounds on this “*Administrative Determination*”, from minute 8:40 – minute 10:39.

AUTHORITIES

STATUTES

S.C. Code Ann. Section 1-23-10, et seq.
S.C. Code Ann., Section 1-23-111, et seq.
S.C. Code Ann. Section 1-23-115, et seq.
S.C. Code Ann. Section 1-23-140, et seq.
S.C. Code Ann. Section 1-23-310, et seq.
S.C. Code Ann. Section 1-23-320, et seq.
S.C. Code Ann. Section 1-23-340, et seq.
S.C. Code Ann. Section 1-23-350, et seq.
S.C. Code Ann. Section 1-23-380, et seq.
S.C. Rule 14

OTHER AUTHORITIES

Beaufort County's Official Notice Pursuant to Ordinance 14-35
Town of Port Royal Uniform Traffic Ticket Number 39533 FY - Violation of Ordinance 3-53
Beaufort Gazette Article November 9 2012
Copies of E-mails
"Rule to Show Cause" Summons
March 12, 2013 Hearing Transcript
Order of Judge Dukes December 2012
FOIA Invoices
Order of Judge Dukes October 2013
E-mails from Joy Nelson, Beaufort County PIO
May 2, 2013 "RTSC's"
Audio CD – Hearing May 2, 2013

This is an Official Notice

Section 14-35 of the Beaufort County Ordinance States:

"Dangerous animal" means any animal which the owner knows or reasonably should know has a propensity, tendency or disposition to attack unprovoked, cause injury, or otherwise endanger the safety of human beings or domestic animals.

The animal described below has hereby been declared dangerous. You are required by law to comply with the following requirements within seventy-two (72) hours of:

Date / Time July 9, 2012 / 2:30 PM
Species: Canine Breed: Rhodesian Ridge Back mix
Name: Bodi Age: 3 yrs Gender: M
Description: Red w/ white chest
Owner / Address / Location of Animal: Mare Baracco
1006 Madrid Avenue, Port Royal SC 29935

Requirements:

(1) The dangerous animal shall be securely confined within an occupied house or residence or in a securely enclosed and locked pen or kennel appropriate to the size of the animal. All pens or structures used to confine dangerous animals must be locked with a key or combination lock when such animals are within the structure. Such structure must have a secure floor (such as concrete) attached to the sides of the pen, or the sides of the pen must be embedded in the ground no less than two feet so as to prevent digging under the walls by the confined animal. The pen or run area must be clearly marked as containing a dangerous animal and must be designed to prevent the entry of the general public, including children, and to prevent the escape or release of the animal.

(2) All structures erected to house dangerous animals must be adequately lighted and ventilated and kept in a clean and sanitary condition.

(3) The dangerous animal must not go outside its kennel or pen unless the animal is securely leashed and muzzled with a leash no longer than six feet in length and under the actual physical control of a person 18 years of age or older. Such animals may not be leashed to inanimate objects such as trees, posts, buildings, or any other object or structure.

(4) The person owning, keeping, sheltering or harboring the animal must register the animal with the Beaufort County Animal Shelter within the required seventy-two hour timeframe and provide proof of liability insurance of at least fifty thousand dollars insuring or securing the owner for personal injuries inflicted by the dangerous animal. The Beaufort County Animal Shelter will issue Dangerous Animal tags which must be displayed on the animal's collar at all times. The dangerous animal must also display its current rabies tag on its collar at all times. The person owning, keeping, sheltering or harboring the dangerous animal shall have an identification microchip implant placed under the animal's skin by a licensed veterinarian within the required seventy-two hour timeframe.

Receipt left with: [Signature]

Date 7/9/12

Deputy: Lt. B. Chaplin

Date 7-9-12

Penalties:

Failure to comply with these requirements within seventy-two (72) hours of the date and time listed on this notice will result in the responsible party being fined in the amount up to \$1092.50. The dangerous animal will be removed from the premises and secured at the Beaufort County Animal Shelter in accordance with Section 14-35 of the Beaufort County Ordinance pending the decision of the Court.

Reasons for declaration of dangerousness: Reference case # 12-01444 (PRPD)
and 20120709-508 (BCSO) involving an
animal attack which the victim's K9 died.

Signature
under
duress; app

STATE OF SOUTH CAROLINA
UNIFORM TRAFFIC TICKETCITY OR COUNTY OF Port Royal VERSUS
FIRST NAME Marie MIDDLE NAME LAST NAME BaraccoSTREET AND NO. 1006 Madrid Ave CITY Port Royal STATE SC ZIP CODE 29935STATE LICENSED SC DRIVER'S LICENSE NO. 011585879 CDI ☐ YES ☒ NO DRI. LIC. CLASS D

VEH. LIC. NO. STATE MAKE OF VEH. YEAR COMM. VEH. AUTO 16 PSGR. VEH. COMB. HAZ. MT. MOPED MTRCYCL. OTHER

YOU ARE SUMMONED TO APPEAR BEFORE THE TRIAL COURT

NAME OF TRIAL COURT Grimsley STREET AND NO. 700 Paris AveDATE OF TRIAL 07/25/12 TIME OF TRIAL 6:00PM CITY Port Royal STATE SC ZIP CODE 29935VIOLATION - COURT APPEARANCE REQUIRED ☒ YES ☐ NO VIOLATION SECTION NO. 3-53OWNER OF VEHICLE DATE OF ARREST 07/04/12ADDRESS OF OWNER DATE OF VIOLATION 07/04/12BAIL DEPOSITED _____ NAME OF ARRESTING OFFICER Puryear RANK AFCPRESENT THIS SUMMONS TO THE
TRIAL COURT SHOWN ABOVE

Be sure you understand from the arresting officer the exact time and before whom you are to appear. IF THIS TICKET IS WRITTEN FOR A TRAFFIC VIOLATION AND YOU FORFEIT BAIL, PLEAD GUILTY OR NOLO CONTENDERE, OR ARE CONVICTED AFTER A TRIAL, THIS VIOLATION WILL BE PLACED AGAINST YOUR DRIVING RECORD, OR FORWARDED TO YOUR HOME STATE. FAILURE TO COMPLY WITH THE TERMS OF THIS SUMMONS MAY RESULT IN THE SUSPENSION OF YOUR DRIVERS LICENSE BY YOUR HOME STATE. YOU ARE REQUIRED BY LAW TO APPEAR IN COURT FOR CERTAIN OFFENSES.

SEE IMPORTANT INFORMATION ON
THE REVERSE SIDE OF THIS TICKET

COUNTY	NUMBER
<u>BFT</u>	<u>07</u>
BADGE	TROOP
<u>316</u>	<u>06</u>
D A Y	S M T W F S
1 2 3 4 5 6 7	1 2 3 4 5 6 7
TIME OF VIOLATION	WEATHER
<u>0930</u>	<u>clear</u>
DISTANCE IN FEET FROM INTERSECTION	
AND	
MILES	N E S W
	1 2 3 4
HWY NO.	CITY
Lat	
Long	
OFFENSE CODE	B.A. LEVEL
<u>94</u>	

39533 FY

VIOLATOR'S COPY

Bond: \$1,092.50

8/8/12

Chen of Court-893-986-2229

The Beaufort

FRIDAY, November 9, 2012

beaufortga

IN PORT ROYAL

Owner not guilty in dog attack

In July, Mare Baracco's dog, Bodie, a Rhodesian ridgeback mix, bit a Chihuahua-poodle mix, causing fatal injuries.

By ERIN MOODY
emoody@beaufortgazette.com
843-706-8184

A Port Royal resident has been found not guilty of letting her dog run loose during a July incident that resulted in the death of another dog.

A jury of six acquitted Mare Baracco in proceedings before Municipal Court Judge Ned Tupper.

Baracco was charged by Port Royal police after her dog, Bodie, a Rhodesian ridgeback mix, bit Zoey, a Chihuahua-poodle mix, causing fatal injuries.

"This is not an incident where you have a dog running around the neighborhood, wreaking havoc, mauling children. This is a one-time offense," Baracco's attorney Kimberly Smith said.

On the morning of July 4, Sally Germier and Buddy Brown walked their two small dogs on leashes past Baracco's Madrid Avenue home, where Bodie and another dog were in the yard. The dogs started barking at each other, according to testimony from witnesses and the police report. The gate to Baracco's yard opened, Bodie bit Zoey, and Zoey died the next day at Port Royal Veterinary Hospital.

Smith seeks Solicitor to fight former c

By PATRICK DONOHUE
pdonohue@beaufortgazette.com
843-706-8152

A month after successfully lobbying a federal judge to terminate her federal probation, former Beaufort County Clerk of Court Elizabeth Smith is asking a state judge to do the same.

However, 14th District Judge Duffie Stone is denying her request, saying it undermines the public's trust and confidence in the judiciary.

Smith's attorney, Charleston, filed a motion with the Circuit Court to force Judge Stone to grant her request.

DOG

Continued from 1A

At issue was whether the incident occurred on Baracco's property or outside the fence on public property.

Brown testified the incident occurred outside the gate. He said Bodie "crashed" through the gate so fast he was unable to remove Zoey from harm's way before the larger dog bit.

Baracco said she was inside her home when the dogs started barking, and she watched the events unfold through windows. She came outside as the altercation came to a head and maintained that Zoey's injury occurred on her property.

Baracco, Brown and Germer were the only witnesses called.

Baracco also is appealing a "dangerous dog" designation by Beaufort County Animal Control. Her attorney, Smith, said a hearing has not been scheduled.

Owners of dangerous animals

must find it a nuisance animal at best or a dangerous animal at worst." After the incident, Port Royal Town Council discussed creating a dangerous animal ordinance but postponed any action.

After hearing testimony in August, Judge Joseph Kline ruled Bodie's aggressive behavior led to the death of Zoey, so the court

must find it a nuisance animal at best or a dangerous animal at worst."

After the incident, Port Royal Town Council discussed creating a dangerous animal ordinance but postponed any action.

Follow reporter Erin Moody at twitter.com/EyeonPortRoyal.

PORT ROYAL MUNICIPAL COURT

P.O. DRAWER 9

PORT ROYAL, SC 29935

DISPOSITION SHEET

Date Printed: 10/07/2014

Case Type: Traffic Ticket 39533FY

Case #: 39533FY

Name: MARIE BARACCO
1006 MADRID AVE
PORT ROYAL, SC 29935

Violation: NT 00-00-0000 / 3-53
ANIMALS AT LARGE

Trial Date: 11/08/2012

Offense Date: 07/04/2012

Disposition: 5 NOT GUILTY JURY TRIAL

Total Fine:

Total Paid:

Sentence:

Certified to be a True Copy
[Signature]
Notary Public South Carolina
Commission expires 09-27-2023

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2012 CP-07-02944

THE STATE OF SOUTH CAROLINA

MARE BARACCO

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: BEAUFORT COUNTY MASTER IN EQUITY

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☒ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☒ Other Appeal withdrawn

☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☒ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☒ Remanded; ☐ Other

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

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

THIS CASE CAME BEFORE ME TODAY ON THE APPEAL OF MARE BARACCO, FILED AUGUST 15, 2012. ATTORNEY JOSHUA GRUBER APPEARED FOR THE STATE AND ATTORNEY KIMBERLY SMITH APPEARED FOR THE APPELLANT. AFTER HEARING FROM BOTH PARTIES AND DUE CONSIDERATION I HEREBY REMAND THIS CASE BACK TO THE LOWER COURT.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

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

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest

or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

3069

Judge Code

Date

12/28/12

For Clerk of Court Office Use Only

This judgment was entered on the 28th day of Dec, 2012 and a copy mailed first class or placed in the appropriate attorney's box on this 01st day of Jan, 2013 to attorneys of record or to parties (when appearing pro se) as follows:

JOSHUA GRUBER

KIMBERLY SMITH

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: N/A

Van Willis

From: Tom Klein <tklein@portroyal.org>
Sent: Friday, December 28, 2012 9:21 AM
To: Van Willis

Hope you had a good Christmas.

Question: Can you check on the status of the dog case with the county. The dog has been on the street without a muzzle the past two days.

--

From Home PC

Van Willis

From: Tom Klein <tklein@portroyal.org>
Sent: Friday, December 28, 2012 4:13 PM
To: Van Willis
Subject: Re: dog

This is outrageous.

Sent from tablet

Van Willis <vwillis@portroyal.org> wrote:

Case was remanded to another magistrate yesterday, so, for some reason I cannot understand, it's as though the dog was never labeled dangerous. That is what the county attorney advised animal control. Why the determination that the dog was found to be dangerous by the officer doesn't stand until then is beyond my comprehension.

Van Willis

From: Tom Klein <tklein@portroyal.org>
Sent: Friday, December 28, 2012 5:09 PM
To: Van Willis
Cc: Sally Germer; Joe Lee
Subject: Re:

Thanks for the update. As soon as I am feeling better, I would like to sit down with you and anyone else to discuss our options going forward to not allow this to happen again. In particular, can our code override county's? Can we absorb the costs?

On 12/28/2012 4:57 PM, Van Willis wrote:

Just spoke to County attorney, Dukes remanded it because the previous magistrate based his determination on his own research of Rhodesian ridgebacks, which, legally speaking, is very troublesome. The dog has no restrictions and the hearing may happen in next 30-45 days, depending on the docket of the magistrate that gets it. He may be pitching a compromise regarding muzzling and improvements to the fence.

I told him that might be a difficult pill to swallow.

--
From Home PC

Van Willis

From: Sally Germer <sallymgermer@yahoo.com>
Sent: Friday, December 28, 2012 5:10 PM
To: vwillis@portroyal.org
Subject: Re:

No kidding. I have sent an email to the eyewitness to see if they would be willing to come back for a visit at our expense. I am getting an attorney. I can not comprehend this

From: Van Willis <vwillis@portroyal.org>;
To: Sally Germer <sallymgermer@yahoo.com>;
Cc: Tom Klein <tklein@portroyal.org>; Joe Lee <jlee064@embarqmail.com>;
Sent: Fri, Dec 28, 2012 9:57:42 PM

Just spoke to County attorney, Dukes remanded it because the previous magistrate based his determination on his own research of Rhodesian ridgebacks, which, legally speaking, is very troublesome. The dog has no restrictions and the hearing may happen in next 30-45 days, depending on the docket of the magistrate that gets it. He may be pitching a compromise regarding muzzling and improvements to the fence.

I told him that might be a difficult pill to swallow.

Van Willis

From: Gruber, Joshua <jgruber@bcgov.net>
Sent: Thursday, January 10, 2013 2:30 PM
To: Chaplin, Brittany
Cc: Hiers, Jody; Van Willis (vwillis@perroyal.org)
Subject: FW: [Image File] JOSHUA,biv1, #522
Attachments: biv120130110022613.pdf

Officer Chaplin,

I am attaching a copy of the Form 4 Order from Judge Duke's Office that I received in the mail today in the Mare Baracco matter. It appears that it was signed and filed by the Judge back on December 28th.

I have also spoken with Chief Magistrate Sproatt, and requested that he assign this matter for a rehearing as quickly as possible. I also indicated that due to the error in the previous Order which gave rise to the remand, that we would respectfully request that it be assigned to an alternative magistrate.

As soon as I hear from him or the court as to the rehearing date and I will let you know. Please do so likewise should you hear anything from them.

Thanks,

-Josh-

Joshua A. Gruber
Staff Attorney
Beaufort County Legal Department
P.O. Box 1228
Beaufort, South Carolina 29901-1228
Tel.: (843) 255-2059
Fax.: (843) 255-9414

CONFIDENTIALITY--The information contained in this email message (including any files or attachments transmitted with it) contains confidential information and may be attorney-client privileged, protected by privacy laws or attorney work product. It is intended solely for the use of the individual or entity to whom it is addressed and others authorized to receive it. If you are not the intended recipient, you are hereby notified that any disclosure, use, forwarding, printing, dissemination, copying, distribution, or taking of any action in reliance on the contents of the information contained in this communication is strictly prohibited. If you have received this communication in error, please immediately notify us by telephone at (843) 255-2055 and permanently delete this email from your computer and destroy any printed copy of it. Although attempts are made to sweep emails and attachments for viruses, it does not guarantee that they are virus-free and no liability for any damage sustained as a result of viruses will be accepted.

-----Original Message-----

From: sakon@bcgov.net [mailto:sakon@bcgov.net]
Sent: Thursday, January 10, 2013 2:26 AM
To: Gruber, Joshua
Subject: [Image File] JOSHUA,biv1, #522

Van Willis

From: Tom Klein <tklein@portroyal.org>
Sent: Friday, March 15, 2013 9:22 AM
To: Van Willis
Subject: Re: FW: State v. Mare Baracco

Yes, I just heard the decision.
On 3/15/2013 9:11 AM, Van Willis wrote:

-----Original Message-----

From: Gruber, Joshua [<mailto:jgruber@bcgov.net>]
Sent: Friday, March 15, 2013 9:12 AM
To: Van Willis
Subject: Fwd: State v. Mare Baracco

FYI

Sent from my Verizon Wireless 4G LTE DROID

----- Original Message -----

Subject: State v. Mare Baracco
From: "Garst, Stephanie" <sgarst@bcgov.net>
To: "Gruber, Joshua" <jgruber@bcgov.net>, Kimberly Smith
<ksmith@mossandkuhn.com>, "Chaplin, Brittany" <bchaplin@bcgov.net>
CC:

3/15/13

Good morning.

Please see Judge Brooks' order attached. Thank you.

Stephanie Garst
Court Administrator
Beaufort Magistrate Courts
843-255-5641

-----Original Message-----

From: magbftkon@bcgov.net [<mailto:magbftkon@bcgov.net>]
Sent: Friday, March 15, 2013 8:27 AM
To: Garst, Stephanie
Subject: [Image File] steph,KMBT222, #128

FROM:
Image data has been attached to
the E-Mail.

--
From Home PC

Van Willis

From: Tom Klein <tklein@portroyal.org>
Sent: Friday, March 15, 2013 9:25 AM
To: Van Willis
Cc: murray40@centurylink.net; Joe Lee; bethh@hargray.com; tpayne@portroyal.org
Subject: Re: FW: State v. Mare Baracco

Who enforces the decision - Town or County?

On 3/15/2013 9:11 AM, Van Willis wrote:

-----Original Message-----

From: Gruber, Joshua [<mailto:jgruber@bcgov.net>]
Sent: Friday, March 15, 2013 9:12 AM
To: Van Willis
Subject: Fwd: State v. Mare Baracco

FYI

Sent from my Verizon Wireless 4G LTE DROID

----- Original Message -----

Subject: State v. Mare Baracco
From: "Garst, Stephanie" <sgarst@bcgov.net>
To: "Gruber, Joshua" <jgruber@bcgov.net>, Kimberly Smith
<ksmith@mossandkuhn.com>, "Chaplin, Brittany" <bchaplin@bcgov.net>
CC:

3/15/13

Good morning.

Please see Judge Brooks' order attached. Thank you.

Stephanie Garst
Court Administrator
Beaufort Magistrate Courts
843-255-5641

-----Original Message-----

From: magbftkon@bcgov.net [<mailto:magbftkon@bcgov.net>]
Sent: Friday, March 15, 2013 8:27 AM
To: Garst, Stephanie
Subject: [Image File] steph,KMBT222, #128

FROM:
Image data has been attached to
the E-Mail.

Van Willis

From: T. Alan Beach <abeach@portroyal.org>
Sent: Friday, March 15, 2013 9:49 AM
To: 'Van Willis'; tklein@portroyal.org
Cc: murray40@centurylink.net; 'Joe Lee'; bethh@hargray.com; tpayne@portroyal.org
Subject: RE: FW: State v. Mare Baracco

Yes we do.

From: Van Willis [mailto:vwillis@portroyal.org]
Sent: Friday, March 15, 2013 9:28 AM
To: tklein@portroyal.org
Cc: murray40@centurylink.net; 'Joe Lee'; bethh@hargray.com; tpayne@portroyal.org; 'T. Alan Beach'
Subject: RE: FW: State v. Mare Baracco

I think we both have an obligation to ensure compliance.

From: Tom Klein [mailto:tklein@portroyal.org]
Sent: Friday, March 15, 2013 9:25 AM
To: Van Willis
Cc: murray40@centurylink.net; Joe Lee; bethh@hargray.com; tpayne@portroyal.org
Subject: Re: FW: State v. Mare Baracco

Who enforces the decision - Town or County?
On 3/15/2013 9:11 AM, Van Willis wrote:

-----Original Message-----

From: Gruber, Joshua [mailto:jgruber@bcgov.net]
Sent: Friday, March 15, 2013 9:12 AM
To: Van Willis
Subject: Fwd: State v. Mare Baracco

FYI

Sent from my Verizon Wireless 4G LTE DROID

----- Original Message -----

Subject: State v. Mare Baracco
From: "Garst, Stephanie" <sgarst@bcgov.net>
To: "Gruber, Joshua" <jgruber@bcgov.net>, Kimberly Smith
<ksmith@mossandkuhn.com>, "Chaplin, Brittany" <bchaplin@bcgov.net>
CC:

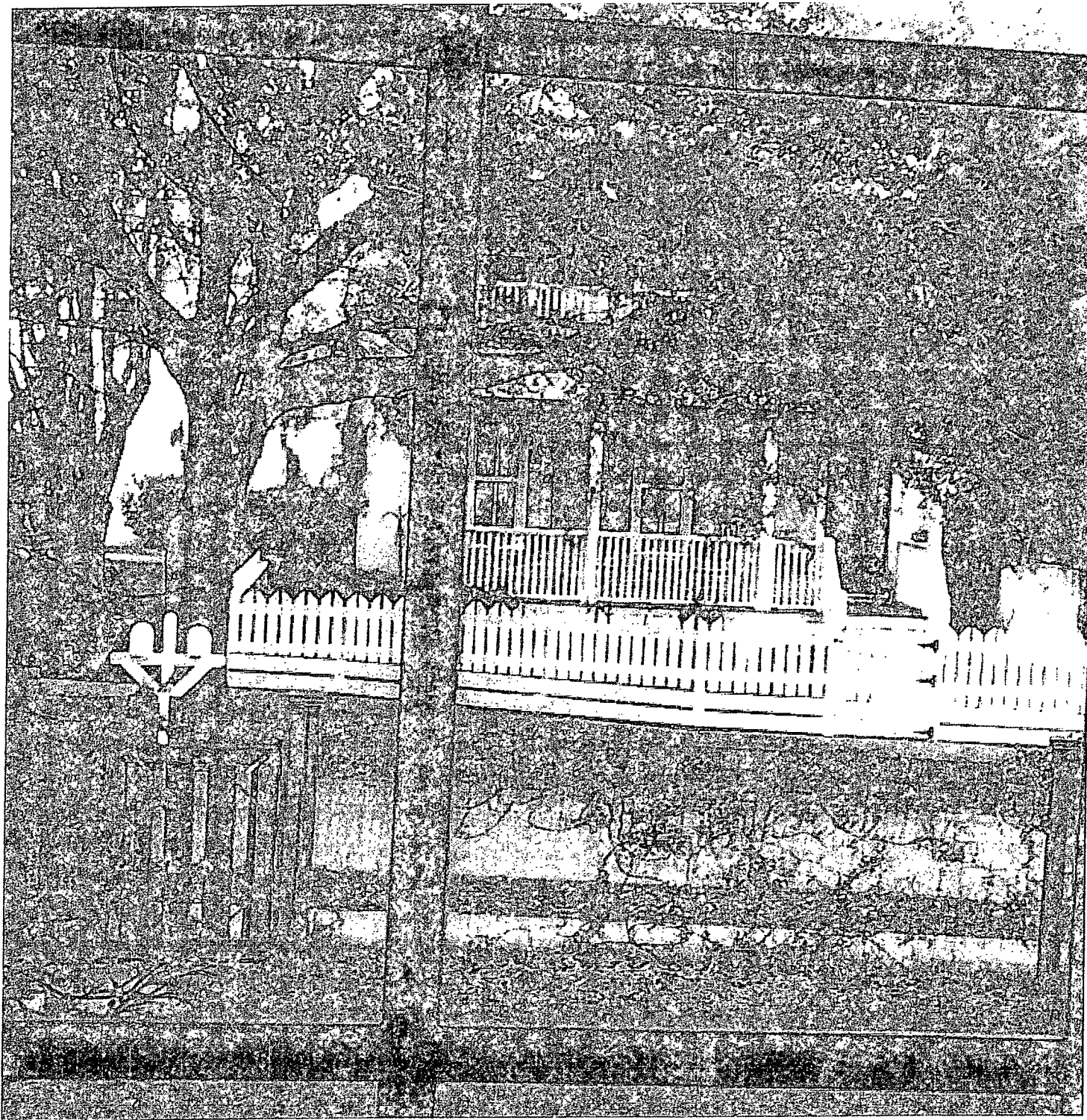
3/15/13

Good morning.

Please see Judge Brooks' order attached. Thank you.

Stephanie Garst

Here is what we have observed this weekend. I took pictures because I was worried. These pictures were all taken this weekend 4-5 to 4-7-13.



Dog unattended and unrestrained in front yard (close-up below)

Van Willis

From: Tom Klein <tklein@portroyal.org>
Sent: Thursday, December 12, 2013 1:07 PM
To: Van Willis
Subject: Fwd: Clarification
Attachments: PRPD Report.pdf; PD Notes.pdf

fyi-
I sent the following to the Mayor and other Council Members.....

----- Original Message -----

Subject: Clarification
Date: Thu, 12 Dec 2013 12:43:08 -0500
From: Tom Klein <tklein@portroyal.org>
Reply-To: tklein@portroyal.org
Organization: Town of Port Royal
To: Mayor Mobile <murray40@centurylink.net>, bethheyward <bethheyward@hargray.com>, "jlee064@embarqmail.com" <jlee064@embarqmail.com>

Mayor and Fellow Council Members,

You may have seen the charge against me in the most recent Police Report in the December package which is when I became fully aware of it. I've debated for a number of days as to whether or not to comment on this situation. Just to set the record straight, I have decided to comment on this unfounded, false charge directed at me by my neighbor. I've attached two items from the PRPD regarding the case.

Mary, Joan and I have been harassed and have had false accusations said towards us on an ongoing basis ever since I testified at the first County Trial regarding Ms. Baracco and Mr. Deckard's dog which killed Sally Germer and Buddy Brown's dog, Zoey, back on July 4th, 2012. Ever since that trial we have put up with various forms of harassment and untruths from them, the most recent being this filed charge of Peeping-Tom. Some of you may have even been contacted by them regarding an attempt to file ethics charges against me last year. In my mind, this new and very serious charge has raised the level of harassment to a new level. Fortunately, the Port Royal Police Department investigated and found no basis for the charge and has since closed the case. I am very concerned though that this will not be their last attempt to damage my credibility and good standing in the community for whatever perverted reason they have.

This charge was first mentioned to me by Mr. Willis after he received a phone call from their attorney back, I believe, in September of 2012 threatening to press charges. At that time, there was no mention as to the details. It was and still is my firm belief, that this was a way to try and prevent me from testifying voluntarily in any future trial. Since that time, we have avoided any and all contact with them. If we are out walking or riding in the Golf Cart and see them, we change direction. I myself have stopped attending many non-Town sponsored events in which I may come in contact with them. So I am unsure as to why, after a year and a half they filed this charge other than the obvious.

The basis of the charge was that we videoed them from our front porch while they were video taping a contrived show of how the dog in question behaved with other dogs passing by on the public sidewalk in front of their

fence. I will not bore you with details regarding the show except to say the exercise was not going well for them. Buddy Brown, Joan, Mary and myself were present at the time and Buddy asked if I could record what was going on in case he needed it for evidence. So I did. I guess I'm guilty of recording public activity (as they were for taping us at the time also).

I am unsure of where this is all headed to at this point. If it becomes necessary for me to hire an attorney in order to put a stop to this, I may resign in order to prevent the Town from being drawn into this charade. I do hope that it does not come to that and that I can continue to serve the Town of Port Royal.

Please feel free to contact me for further details pertaining to this if you feel necessary. I will be printing out a copy of this and taking it to Vernon.

Tom
(843)521-7300

Re: Clarification

Please feel free to contact me for further details pertaining to this if you feel necessary. I will be printing out a copy of this and taking it to Vernon.

Tom
; (843)521-7300

Tom,
Sorry you, Mary and Ms Joan have had to go thru this, You should not resign. Ya'll have done nothing wrong. If I can help in anyway let me know.
Beth

Re: Clarification

Subject: Re: Clarification

From: Tom Klein <tklein@portroyal.org>

Date: 12/12/2013 2:34 PM

To: bethheyward <bethheyward@hargray.com>

Thanks.

This is what I alluded to last night. I just don't know when it will end. They have publicly stated that they would not be done until they run us out of Town. Good luck with that!

Tom

Re: Clarification

Subject: Re: Clarification

From: "bethheyward" <bethheyward@hargray.com>

Date: 12/12/2013 4:16 PM

To: <tklein@portroyal.org>

On Thu, 12 Dec 2013 14:34:32 -0500

Tom Klein <tklein@portroyal.org> wrote:

Thanks.

This is what I alluded to last night. I just don't know when it will end. They have publicly stated that they would not be done until they run us out of Town. Good luck with that!

Tom

Who do they think they are, where is Joe in all this?

Re: Clarification

Subject: Re: Clarification

From: Tom Klein <tklein@portroyal.org>

Date: 12/12/2013 4:11 PM

To: bethheyward <bethheyward@hargray.com>

Friend to all, defends no one.

On 12/12/2013 4:16 PM, bethheyward wrote:

On Thu, 12 Dec 2013 14:34:32 -0500

Tom Klein <tklein@portroyal.org> wrote:

Thanks.

This is what I alluded to last night. I just don't know when it will end.

They have publicly stated that they would not be done until they run us out of Town. Good luck with that!

Tom

Who do they think they are, where is Joe in all this?

Re: Clarification

Subject: Re: Clarification

From: Joe Lee <jlee064@embarqmail.com>

Date: 12/12/2013 4:39 PM

To: tklein@portroyal.org

I don't read the police reports so I am not aware of this. Sorry...this whole thing is out of control...we are too small a village for any of this.

RULE 14

RULE TO SHOW CAUSE

(a) For Contempt of Court. Except for direct contempt of court, contempt of court proceedings shall be initiated only by a rule to show cause duly issued and served in accordance with the provisions hereof.

Note:

The long established procedural vehicle to bring a party into court for contempt proceedings has been the rule to show cause.

Direct contempt is an act committed in the presence of the Court while it is in session. A person may be held in direct contempt if his/her conduct interferes with judicial proceedings, exhibits disrespect for the Court, or hampers the parties or witnesses. *Stone v. Reddix-Small*, 295 S.C. 514, 369 S.E.2d 840 (1988). Direct contempt is usually resolved by the trial judge during the regular proceeding already in session.

The rule to show cause provided herein is for contempt of court arising from failure to comply with the Court's orders, decrees or judgments and for enforcement thereof. This form of contempt is known as constructive contempt of court.

(b) Issuance; Form. A rule to show cause for contempt of court shall be issued by a Family Court judge, except as provided by Rules 24 and 27, SCRFC. The rule to show cause shall be signed by the issuing judge with the date of issuance and shall require the responding party to appear in court, at a clearly stated date, time and place, to show cause why the responding party should not be held in contempt and why permissible relief requested by the moving party should not be granted.

Note:

Rules to show cause brought pursuant to Rules 24 and 27, SCRFC, are issued by the clerk of court for enforcement of support and for enforcement of visitation or child custody rights, respectively.

Requiring the rule to show cause in Rule 14, SCRFC, to set forth the date, time and place of the contempt hearing satisfies rudimentary due process requirements. "Permissible relief" is relief normally incident to contempt of court proceedings, such as enforcement of court orders, decrees and judgments and awarding compensatory contempt damages. The judge issuing the rule to show cause is empowered to strike from the rule any request for relief not normally incident to contempt proceedings; e.g., modification (by either decrease or increase) of the child support amount. Such matters should be brought before the court by the filing of a Summons and Complaint as in any other modification action. However, in furtherance of justice and to serve the best interests of children, the judge should be able to consider, in his/her discretion, reasonable requests, e.g., the imposition of a restraining order or modification of visitation. See Rule 27(d), SCRFC.

(c) Affidavit or Verified Petition. No rule to show cause shall be issued unless based upon and supported by an affidavit or verified petition, or unless issued by the judge *sua sponte*. The supporting affidavit or verified petition shall identify the court order, decree or judgment which the responding party has allegedly violated, the specific act(s) or omission(s) which constitute contempt, and the specific relief which the moving party is seeking. Such court order, decree or judgment shall be attached to the affidavit or certified petition.

Note:

Requiring an affidavit or verified petition is consistent with manifest case law and other procedural rules.

A rule to show cause issued to initiate contempt proceedings must be based upon an affidavit or verified "petition." *State v. Johnson*, 249 S.C. 1, 152 S.E.2d 669 (1967). The failure to support the rule to show cause by an affidavit or verified petition "is a fatal defect." *Toyota of Florence v. Lynch*, 314 S.C. 257, 442 S.E.2d 611 (1994) (citing *State v. Blackwell*, 10 S.C. 35 (1878)). See *Brasington v. Shannon*, 288 S.C. 183, 341 S.E.2d 130 (1986) and *Hornsby v. Hornsby*, 187 S.C. 463, 198 S.E. 29, 32 (1938). Requiring the supporting affidavit or verified petition in Rule 14, SCRFC, satisfies due process concerns by ensuring that rules to show cause will only be issued with clear, specific allegations being set forth for the court and the responding party.

(d) Notice. The rule to show cause, and the supporting affidavit or verified petition, shall be served, in the manner prescribed herein, not later than ten days before the date specified for the hearing, unless a different notice period is fixed by the issuing judge within the rule to show cause. In an emergency situation, the notice period of ten days may be reduced by the issuing judge.

Note:

Requiring that rules to show cause be served with the supporting affidavit or verified petition and providing for ten days' notice are consistent with standard motion practice as provided by Rule 6(d), SCRCP. These requirements will also help alleviate the "surprise" problems which have plagued contempt proceedings, thereby satisfying due process. Nevertheless, the rights of the moving party are not ignored as the issuing judge has the discretion to shorten the notice period in emergencies.

(e) Service. The rule to show cause shall be served with the supporting affidavit or verified petition by personal delivery of a duly filed copy thereof to the responding party by the Sheriff, his deputy or by any other person not less than eighteen (18) years of age, not an attorney in or a party to the action.

Note:

The manner of service provided by Rule 14, SCRFC, is consistent with standard practice in all courts as provided by Rules 4(c) and 4(d), SCRCP, with the exception that the rule to show cause and supporting affidavit or verified petition are to be served by personal delivery upon the responding party.

Personal service as specified within Rule 14(e) ensures due process by facilitating reliable service directly upon the responding party.

(f) Return. If at the contempt proceeding the responding party intends to seek counsel fees and costs, or other appropriate relief permitted by law, then he shall serve a return to the rule to show cause prior to the commencement of the hearing, unless a Family Court judge requires a return to be served at some other time. The responding party's failure to serve a return does not relieve the moving party from the burden of establishing contempt of court.

Note:

The requirement of a return satisfies the due process rights of the moving party, thereby balancing the protection for the responding party provided elsewhere by Rule 14, SCRFC. Serving a return is analogous to the required service of an answer or reply or responsive affidavits in other litigation, and provides the moving party with some notice of the responding party's defense to the contempt allegations.

(g) Hearing Procedure. The contempt hearing shall be an evidentiary hearing with testimony pursuant to the Rules of Evidence, except as modified by the Family Court Rules. At the contempt hearing, the moving party must establish a prima facie case of willful contempt by showing the existence of the order of which the moving party seeks enforcement, and the facts showing the respondent's noncompliance. The moving party shall satisfy the burden of proof required by law for the specific nature of contempt before the court. Once the moving party establishes a prima facie case, the respondent is entitled to present evidence of a defense or inability to comply with the order. If requested, the Court may allow reply testimony. The Court may impose sanctions provided by law upon proper showing and finding of willful contempt, and may award other appropriate relief properly requested by a party to the proceeding.

Note:

In *Poston v. Poston*, 331 S.C. 106, 502 S.E.2d 86 (1998), the Supreme Court defined civil contempt of court and criminal contempt of court, and clarified the separate burden of proof for both forms of contempt. Requiring the moving party to meet the burden of proof at the contempt hearing is consistent with *Brasington v. Shannon*, 288 S.C. 183, 184, 341 S.E.2d 130, 131 (1986) (In a proceeding for contempt for violation of a court order, the moving party must show the existence of the order and the facts establishing the respondent's noncompliance. The burden then shifts to the respondent to establish his defense and inability to comply with the order.); *Messer v. Messer*, 359 S.C. 614, 598 S.E.2d 310 (Ct. App. 2004); *Widman v. Widman*, 348 S.C. 97, 557 S.E.2d 693 (Ct. App. 2001); *Lindsay v. Lindsay*, 328 S.C. 329, 491 S.E.2d 583 (Ct. App. 1997).

Even though a party is found to have violated a court order, the question of whether or not to impose sanctions remains a matter for the court's discretion. *Lindsay v. Lindsay*, 328 S.C. 329, 491 S.E.2d 583 (Ct. App. 1997) (citing *Sutton v. Sutton*, 291 S.C. 401, 409, 353 S.E.2d 884, 888 (Ct. App. 1987)). Statutory sanctions for contempt are enumerated at S.C. Code Ann. § 63-3-620 (Supp. 2010).

The court may also award compensatory contempt damages to the moving party. Compensatory contempt seeks to reimburse the party for the costs he or she incurs in forcing the non-complying party to obey the court's orders. See *Poston v. Poston*, 331 S.C. 106, 114, 502 S.E.2d 86, 90 (1998) ("In a civil contempt proceeding, a contemnor may be required to reimburse a complainant for the costs he incurred in enforcing the court's prior order, including reasonable attorney's fees. The award of attorney's fees is not a punishment but an indemnification to the party who instituted the contempt proceeding."); *Lindsay v. Lindsay*, 328 S.C. 329, 345, 491 S.E.2d 583, 592 (Ct. App. 1997) ("A compensatory contempt award may include attorney fees."); *Curlee v. Howle*, 277 S.C. 377, 386-87, 287 S.E.2d 915, 919-20 (1982) ("Compensatory contempt is a money award for the plaintiff when the defendant has injured the plaintiff by violating a previous court order." "Included in the actual loss are the costs of defending and enforcing the court's order, including litigation costs and attorney's fees.").

In furtherance of justice and to serve the best interests of children, the judge should be able to consider, in his/her discretion, appropriate requests, e.g., the imposition of a restraining order or modification of visitation. See Rule 27(d), SCRFC (court may modify prior order's provisions in visitation enforcement proceedings).

Added by order dated April 30, 2012.

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT
RULE TO SHOW CAUSE HEARING

Mare Baracco
1006 Madrid Avenue
Port Royal, SC 29935

MAGISTRATE SUMMONS

You are hereby summoned to be and appear personally in the Court of the
Beaufort Magistrate, located at **104 Ribaut Road Post Office Box 2207 Beaufort, SC**
29901 on **March 12, 2013** at **9:00 AM** to serve as a party in a Bench Trial in the case
of:

RE: State Of South Carolina

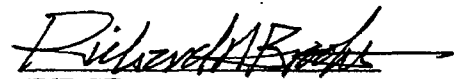
Vs Mare Baracco

PLAINTIFF(S)

DEFENDANT(S)

Civil Case Number: **2012CV0710401536, Petition.**

**HEREIN FAIL NOT, ON PAIN OF FORFEITING THE LAWFUL PENALTY IN
SUCH CASE MADE AND PROVIDED.**


JUDGE

Beaufort Magistrate
104 Ribaut Road Post Office Box 2207
Beaufort, SC 29901
Phone: (843) 255-5700 Fax: (843) 255-9516

February 5, 2013

**RULE TO SHOW CAUSE HEARING
BEFORE THE HONORABLE
RICHARD BROOKS**

held
March 12, 2013

in the matter of

State of South Carolina

-vs-

Mare Baracco

[2012-CV-07-10401536]

**COMPRESSED TRANSCRIPT
AND WORD INDEXING**

Bettye Anderson & Associates

Beaufort, South Carolina

843.525.0791 800.543.5506

www.anderson-reporting.com

South Carolina vs. Baracco
Rule To Show Cause before Judge Brooks held March 12, 2013

SHEET 1 PAGE 1

1 STATE OF SOUTH CAROLINA)
2) IN THE MAGISTRATE'S COURT
3 COUNTY OF BEAUFORT)
4)
5)
6)
7 STATE OF SOUTH CAROLINA,)
8)
9 Plaintiff,)
10) Case Number
11 -versus-) 2012-CV-07-10401536
12)
13 MARE BARACCO,)
14)
15 Defendant.)
16)
17)
18)
19)
20)
21)
22)
23)

Transcript of a Rule To Show Cause
Hearing before the Honorable Richard Brooks taken
on the 12th day of March, 2013, in the Arthur
Horne Building, Beaufort County Government
Center, 100 Ribaut Road, Beaufort, South
Carolina, commencing at approximately 9:14 a.m.

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APPEARANCES OF COUNSEL

1
2
3
4 For the State: Joshua A. Gruber, Esquire
5 BEAUFORT COUNTY STAFF ATTORNEY
6 Post Office Box 1228
7 Beaufort, South Carolina 29901
8
9 For the Defendant: Kimberly L. Smith, Esquire
10 MOSS, KUHN & FLEMING, P.A.
11 Post Office Drawer 507
12 Beaufort, South Carolina 29901
13
14 Reported by: Matthew Hazen Anderson
15 Notary Public/Court Reporter
16
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1 THE COURT: Okay. Good morning. I'm Judge
2 Richard Brooks. This is Beaufort County Magistrate's
3 Court. It is Tuesday, March the 12th, 2013, and we are
4 here for a rule to show cause in the matter of -- where is
5 that caption -- State of South Carolina versus Mare
6 Baracco? Am I pronouncing that correctly?
7 MS. SMITH: It's Mare.
8 THE COURT: Mare?
9 MS. SMITH: Baracco.
10 THE COURT: Mare Baracco. And this is civil case
11 number 2012-CV -- excuse me -- 07-10401536, and for the
12 State, we have Mr. Josh Gruber --
13 MR. GRUBER: Good morning, Your Honor.
14 THE COURT: -- the Beaufort County Attorney, and
15 for the Defendant, we have Ms. Kimberly Smith of the Moss,
16 Kuhn & Fleming law firm. And this is a rule to show cause
17 on an issuance of a dangerous animal notice by Beaufort
18 County. All right. Is there anything we need to address
19 before we proceed?
20 MR. GRUBER: No, Your Honor. I'd just put on the
21 record, as we discussed in chambers, I believe this matter
22 arises as more of an appeal of the determination made by
23 the officer, and as such, the appellant would bear the
24 burden of proving this matter and would, therefore, go
25 first.

South Carolina vs. Baracco

Rule To Show Cause before Judge Brooks held March 12, 2013

SHEET 2 PAGE 5

1 MS. SMITH: And we agree.
2 THE COURT: Also your understanding, Ms. Smith?
3 MS. SMITH: Yes, sir.
4 THE COURT: All right. I would ask you both --
5 I know that some of these facts have been presented,
6 previously, but they've not been presented to me. So this
7 is -- consider me a blank slate, tabula rasa, as it were.
8 Throwing out Latin before noon. Ms. Smith, if you're ready
9 to proceed?
10 MS. SMITH: Judge, just by way of background and
11 maybe just to put on the record before we get started --
12 THE COURT: Okay.
13 MS. SMITH: -- kind of how we got back to here --
14 THE COURT: Okay.
15 MS. SMITH: -- the notice that we're here about
16 was issued on July 9th, 2012, the dangerous animal notice
17 to my client. We came before the Magistrate Court on
18 August 8, 2012, pursuant to that notice. Judge Klein ruled
19 on the case on August 13th and emailed that ruling out to
20 everyone on August 15th, 2012. We filed a notice of appeal
21 on August 15th, 2012. That went before Judge Dukes, who
22 has now remanded it back here for a new trial. Like I say,
23 I'm just putting that on there for purposes of letting --
24 THE COURT: I understand.
25 MS. SMITH: -- letting you know kind of the time

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1 line and what we're doing. At this time, I'd like to call
2 Officer Chaplin.
3 THE COURT: Okay. Deputy Chaplin, if you would
4 state your name and affiliation for the record, please?
5 L.CPL. CHAPLIN: Lance Corporal Brittany Chaplin,
6 Beaufort County Sheriff's Office.
7 THE COURT: And raise your right hand, please.
8 (WHEREUPON, LANCE CORPORAL BRITTANY CHAPLIN,
9 called as a witness, having been first duly sworn, was
10 examined and testified as follows:)
11 DIRECT EXAMINATION
12 BY MS. SMITH:
13 Q Good morning, Officer Chaplin.
14 A Good morning.
15 Q Where do you work?
16 A Beaufort County Sheriff's Office Animal Control
17 Division.
18 Q How long have you worked there?
19 A Almost four years.
20 Q Okay. I'm going to refer you to the incident
21 that occurred on July 4th, 2012, in Port Royal. Do you
22 recall that incident?
23 A Yes, ma'am.
24 Q Okay. How were you contacted about this?
25 A I was contacted on July 5th, the day after the

PAGE 7

1 incident, by Sergeant Bush, who is my supervisor. She was
2 on call status on July 4th, when the incident occurred.
3 She was notified by Port Royal. She notified me the next
4 day in reference to following up on the investigation.
5 Q Who contacted her from Port Royal? Was it --
6 A I'm --
7 Q -- the Port Royal Police Department?
8 A -- not aware. Yes, ma'am, the police department.
9 Q Okay. Did they give you a copy of their report?
10 A Yes, ma'am.
11 Q What had happened in Port Royal?
12 A According to their police report, Ms. Baracco's
13 dog, Bodi, came off of -- came out of the fence and
14 attacked a small dog on the sidewalk.
15 Q Where did it occur?
16 A I believe on the sidewalk. I was not present.
17 Q Do you have the address?
18 A 1008 Madrid Avenue.
19 Q Are you -- are you sure that that's the address?
20 Do you need a copy of your report --
21 A I'm sorry.
22 Q -- to see what --
23 A Yes, ma'am. 1006. I'm sorry.
24 Q Okay. And I know it's been a while.
25 A Yes.

PAGE 8

1 Q You know, that's why I told you if you needed
2 your report to refresh your memory, it's okay. So you were
3 contacted on July 5th. What did you do next?
4 A I obtained a copy of the Port Royal Police report
5 and reviewed that first. I then responded to the
6 veterinary clinic to observe the victim's canine, Zoey.
7 Q Okay.
8 A She was just out of surgery when I observed her.
9 I observed multiple injuries to the canine; however -- and
10 I obtained the disk of photos with the -- during the
11 surgery, the injuries. When I left there, I met with Ms.
12 Baracco and her husband at their residence and went inside
13 and met the two dogs there.
14 Q Okay. What kind -- what kind of dogs were they;
15 do you know?
16 A According to the records, Bodi was a Rhodesian
17 Ridgeback mix, and I'm not sure what the other dog was.
18 Maybe a Lab mix.
19 Q Okay. When you went into their house, did you go
20 by yourself that day?
21 A Yes.
22 Q Okay. How did the dogs appear to you?
23 A They appeared friendly. Of course, they were
24 inside their residence and in their owners' presence at the
25 time.

Betty Anderson & Associates

Beaufort, South Carolina

843.525.0791 800.543.5506

South Carolina vs. Baracco

Rule To Show Cause before Judge Brooks held March 12, 2013

SHEET 3 PAGE 9

1 Q Okay. And what was your conversation with Ms.
2 Baracco and Mr. Deckard? I don't know if they were both
3 there or if it was just Ms. Baracco?
4 A I met with Mr. Deckard first.
5 Q Okay.
6 A And Ms. Baracco showed up later on. I advised
7 them that the dogs did appear friendly, and I was impressed
8 with their behavior.
9 Q Okay. Did Ms. Baracco provide you with any
10 information, any additional information about the dog, the
11 dogs, or a video, or anything like that?
12 A Yes, she showed me a video of Bodi playing
13 outside. I'm not sure if it was another facility or her
14 residence. He was outside, interacting with some other
15 dogs. And she also demonstrated the way that she and her
16 husband walk their canines on their bicycles outside her
17 residence.
18 Q Did she tell you about any specific training that
19 her dogs underwent or --
20 A She did mention --
21 Q -- facilities that she'd sent him to?
22 A -- a personal trainer, Kevin McHale, who assisted
23 her in training her canines.
24 Q Okay. While you were at the home, did you ever
25 observe any aggressive behavior?

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1 A No, ma'am.
2 Q Beyond that of a normal dog?
3 A No, ma'am.
4 Q What was your assessment at that point?
5 A At the time, once again, I was -- both canines
6 were in their home and in the presence of their owners,
7 under their control. I did not feel that they were
8 dangerous in that environment.
9 Q Okay. And I believe, if you refer to your
10 report, you state, "Concluding my interview, I did not feel
11 that this was a dangerous animal, and I advised Baracco
12 that I was impressed with her canines' behavior. I advised
13 her I'd continue the investigation." Do you put at any
14 time in the report that you did not feel they were
15 dangerous because they were inside the home?
16 A No, ma'am.
17 Q Okay. After that interview with Ms. Baracco and
18 Mr. Deckard, what did you do next, as far as this case was
19 concerned?
20 A Immediately leaving the residence, I contacted my
21 supervisor and advised him of, up to this point, the status
22 of the investigation.
23 Q Let me stop you a second. Who was your
24 supervisor?
25 A Staff Sergeant Jody Hiers.

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1 Q Okay. Continue. I'm sorry.
2 A After further examination, continuing the
3 investigation, it was determined that these animals needed
4 -- I'm sorry, the animal in question, Bodi, needed to be
5 declared dangerous.
6 Q Okay. Why was that? What made you change your
7 mind and make that determination?
8 A He attacked and injured, severely injured, and
9 which caused bleeding to death to a small canine.
10 Q Okay. And I believe we've been here before.
11 Under the stat -- the ordinance you're charging the dog
12 under is 14-35?
13 A Um-hum.
14 Q And it's the definition of a dangerous animal,
15 and there are four -- essentially, four subsections
16 underneath it. Which one are you referring to? And I
17 believe you're referring to number one, but let's clarify
18 for the record. "Any animal which the owner knows or
19 reasonably should know has a propensity, tendency, or
20 disposition to attack unprovoked, cause injury, or
21 otherwise endanger the safety of human beings or domestic
22 animals." The next section talks about injury to a human
23 being, which I'm assuming you're not, but we'll read it for
24 the record: section two, "an animal which makes an
25 unprovoked attack that causes bodily injury to a human

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1 being and the attack takes place other than the place where
2 the animal is confined." Are you referring to that
3 section?
4 A The first section.
5 Q Okay. Now, you just testified that you changed
6 your mind and you made the determination after talking with
7 your supervisor to deem my client's animal dangerous after
8 he attacked and killed another dog; is that correct?
9 A Yes.
10 Q Okay. What about the second requirement in
11 14-35(a)(1) that the owner has to know or reasonably know
12 that their dog has a propensity to attack unprovoked,
13 causing injury? Where --
14 A That's what this notice is for.
15 Q Okay. So what you're saying is that the notice
16 -- the knowledge provision in this statute, that if you can
17 prove attack, then you can issue the dangerous notice on
18 the -- dangerous animal notice on a person, and then once
19 that's -- that that's their knowledge?
20 A Yes, this -- her dog attacked and killed a small
21 dog. That's her knowledge.
22 Q And do you not believe that there should be --
23 that there's not a requirement under this statute that the
24 person, before this happens, has to know or reasonably know
25 that this could possibly occur, that their dog has a

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1 propensity to do something like that?
2 A Can you rephrase the question?
3 Q Okay. A dangerous animal -- and let's just go
4 through this. We've done it before. "Any animal which the
5 owner knows or reasonably should know has a propensity,
6 tendency, or disposition to attack unprovoked, cause
7 injury, or otherwise endanger the safety of human beings or
8 domestic animals." There's no question we have some sort
9 of altercation --
10 A Um-hum.
11 Q -- and we ended up with another dead animal?
12 A Right.
13 Q What I'm asking you is, what did you rely on to
14 meet the elements of the statute that my client knew or
15 reasonably should have known that her dog had a
16 propensity (sic) -- a propensity to do that?
17 A That her dog attacked and killed a small dog.
18 Q And that's all you're basing --
19 A Yes.
20 Q -- that determination on?
21 A Um-hum.
22 Q So, based on that, anybody that -- anybody's dog
23 that bites another dog or bites another person should be
24 deemed a dangerous animal?
25 A Yes.

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1 Q Throughout Beaufort County?
2 A Um-hum.
3 Q Okay. How many dangerous animals do y'all have
4 in Beaufort County?
5 A I have issued at least four or five notices.
6 Q So you've only had four or five dog bites in all
7 of Beaufort County?
8 A No, ma'am.
9 Q Okay. But you just testified, if a dog bites
10 another dog, you're going to issue a dangerous animal
11 notice, did you not?
12 A I'm not understanding what you're asking.
13 Q I'm merely reading the statute. I believe that
14 the intent of the statute requires the owner to have
15 knowledge that their animal would do that, and I'm asking
16 you what you're referring -- what you were relying on when
17 you issued the dangerous animal notice that my client had
18 knowledge that her animal would have done that.
19 A The notice is to prevent this issue from
20 happening again. There are certain requirements on the
21 form that the owner would have to meet to prevent this
22 from happening again. The animal has attacked and killed
23 a small canine. So, therefore, she knows that the animal
24 had the propensity to do it again. So this notice will
25 prevent that from happening again. That's why the notice

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1 was issued.
2 Q Okay. And I guess this is where we disagree.
3 You issue the notice. The knowledge comes after you issue
4 the notice. Is that what you're saying?
5 A After the attack occurred. And that states on
6 the bottom of the form the reasoning, why the notice was
7 issued, based on case number -- leading to death of a small
8 canine.
9 Q What did -- did you ever find out what happened
10 that day during the incident that we're here about today?
11 A I can refer back to the Port Royal Police report.
12 Q Okay. Well, do you want to do that?
13 A Um-hum.
14 Q Unless Port Royal is here. I can question them.
15 A (Examines file.) Okay. Here it states that they
16 received a call of a pit bull that jumped a fence and
17 attacked a smaller dog at the incident location of 1006
18 Madrid Avenue.
19 Q I guess this is my thing. Did you interview any
20 of the witnesses to this incident to find out what
21 happened?
22 A Yes.
23 Q Okay.
24 A Both parties involved.
25 Q Okay. What did they tell you happened, then?

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1 What do you recall that they told you happened?
2 A Ms. Baracco stated that she was inside her
3 residence; and the gate -- the latch must have been undone
4 when the mailman came, and Bodi jumped up on the fence, and
5 the latch pushed open, and he went out; and she explained
6 that she was responsible for everything that happened and
7 she was sorry that it happened.
8 Q Did she tell you that they had done anything
9 about the bills, the medical bills for the animal, or
10 anything like that?
11 A Yeah, she said that she would volunteer to help
12 them out.
13 Q What did Mr. Germ -- Ms. Germer or Mr. Brown tell
14 you about the incident?
15 A They were walking --
16 Q The owners of the other dog.
17 A -- both of their dogs on a leash near the
18 incident location when Bodi came out and began attacking
19 their small dog, and they had to jerk him up by a leash --
20 by the leash, to get them away from this dog, and
21 immediately rushed him to the vet.
22 THE COURT: Excuse me. Who is Mr. Brown?
23 MR. BROWN: (Raises hand.)
24 THE COURT: Okay. All right.
25 MS. SMITH: The owners of the other dog.

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1 THE COURT: Okay.
2 BY MS. SMITH:
3 Q Did you interview anybody else about the
4 incident?
5 A No.
6 Q Okay.
7 A Several residents in the area provided written
8 statements in reference to issues with Bodi.
9 Q Did you actually go and get those statements from
10 the --
11 A Yes.
12 Q -- individuals?
13 A Um-hum.
14 Q Or did you just provide the forms to the alleged
15 victims?
16 A I provided them to the people who wrote the
17 statements.
18 Q Okay. And the reason I ask that is there may be
19 some confusion. In the last sentence of page two of your
20 report, you said, "I provided statement forms and advised"
21 -- you're referring to Ms. Germer -- "to have her neighbors
22 write a statement in reference." So I didn't know if you,
23 personally, went and interviewed them, or if you got them
24 to give them --
25 A No, I didn't interview them. I provided

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1 statements.
2 Q Statement forms to her?
3 A Um-hum.
4 Q To go solicit these statements?
5 A Um-hum.
6 Q Okay. Thank you. Were you the only one to make
7 this determination, or did anybody else in your department
8 assist you?
9 A My supervisor.
10 Q Mr. Hiers?
11 A Yes.
12 Q Did Mr. Hiers ever go observe these dogs?
13 A No.
14 Q Okay. What did he base his assessment on; do you
15 know?
16 A Previous experience and his education.
17 Q Previous experience with what? Dogs?
18 A Um-hum. He is a dog trainer.
19 Q But, these dogs, he never did any investigation
20 into these specific dogs?
21 A No.
22 Q So this is all just based on his opinion as to
23 dogs and their behavior; correct?
24 A And the county ordinance.
25 Q Okay. Did he ever look at any of the videos or

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1 anything that you provided -- that she provided you?
2 A No, ma'am.
3 Q Okay. Do you know why that is?
4 A No, ma'am.
5 Q Okay. Does he routinely make these
6 determinations without actually visiting the animals in
7 question or assessing the specific situation, or does he
8 deem every dog dangerous, as well?
9 A No, ma'am.
10 Q No, ma'am, what?
11 A He -- each case is different. I'm not sure
12 exactly what he does with every case.
13 Q Okay. Did anyone call him about this case or
14 influence him in any way about this determination?
15 A Not to my knowledge.
16 Q Okay. When did y'all make the decision to deem
17 the dog dangerous?
18 A July 9th, 2012.
19 Q Okay. Just a minute -- I might be finished --
20 with the Court's indulgence, please. (Examines file.)
21 Just a couple questions. Did you have any conversations
22 with any members or town officials in Port Royal about this
23 case?
24 A No, ma'am, not prior to the case.
25 Q Okay. After -- and, I guess, prior to -- not

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1 prior to issuing the notice?
2 A No.
3 Q Okay. Have you talked with them since then?
4 A Um-hum.
5 Q Okay. Who have you talked to?
6 MR. GRUBER: Your Honor, I'm going to object
7 at this point. I'm not sure what the relevancy is of
8 questioning what may have happened after the notice
9 was issued. I think anything after that point is
10 irrelevant.
11 THE COURT: Ms. Smith, what is the
12 relevance?
13 MS. SMITH: Judge, they submitted several
14 statements that were taken from witnesses after the
15 notice was issued, as well, from members of Port
16 Royal, including councilmen. Different meetings were
17 held. So I'm trying to figure out -- you know, they
18 issued the notice, but then obtained additional
19 evidence afterwards, and I'm trying to figure out
20 where -- why that was not done prior to issuing the
21 notice.
22 MR. GRUBER: And I'm not sure if any of
23 those statements relate in regards to this direct
24 situation. If they do, I think they are relevant. If
25 they just relate, in general, to the observations that

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1 may or may not have occurred, by these individuals, of
2 the dog in the community, I don't believe that they're
3 relevant to this situation.
4 MS. SMITH: Actually --
5 THE COURT: So the -- the dangerous dog
6 designation had already been issued?
7 WITNESS: Um-hum.
8 THE COURT: And then other witnesses as to
9 what had already been done were interviewed?
10 MS. SMITH: Correct.
11 WITNESS: Um-hum.
12 MS. SMITH: And I guess my question is why
13 that was done. That would actually --
14 THE COURT: Well, I agree with --
15 MS. SMITH: -- be the gist.
16 THE COURT: -- Mr. Gruber that that -- I'm
17 not sure that's relevant, but I also would like to
18 know why.
19 MS. SMITH: And I'll rephrase the question,
20 and maybe this'll work.
21 THE COURT: Okay. That might help me.
22 BY MS. SMITH:
23 Q Why were those statements and interviews
24 conducted, or conversations done, after the notice was
25 issued?

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1 A That was upon request by my supervisor of other
2 residents in the area that had issues with Bodi.
3 Q Okay. And your supervisor being Mr. Hiers?
4 A Yes.
5 Q Okay. And do you know why he requested that?
6 A Other issues with the dog.
7 Q Was he contacted about those issues?
8 A Nothing in relation to the dangerous animal
9 notice, but --
10 Q And one more thing, then I'm going to leave this.
11 It was nothing in relation to the dangerous animal notice,
12 but as part of this case, you went and got statements? Is
13 that what -- I'm not -- I can't quite figure out what the
14 reasoning was for that --
15 A The --
16 Q -- and why your supervisor --
17 A With issues --
18 Q -- didn't document it.
19 A -- with Bodi, the aggression that he shows, other
20 residents that had issues with him. That's the reasoning
21 for the statements.
22 Q And where did he get that information from, that
23 there were -- there was a --
24 A I'm not -- I don't -- I don't know.
25 Q Okay. And he didn't feel the need to disclose

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1 the result of his investigation in this report?
2 MR. GRUBER: Your Honor, the question calls
3 for speculation.
4 MS. SMITH: Withdrawn. One final question.
5 THE COURT: Ms. Smith withdrew the question.
6 BY MS. SMITH:
7 Q Had you had any complaints that you'd documented
8 about these dogs prior to this incident?
9 A No, ma'am.
10 Q Okay. Were you familiar with them prior to this
11 incident?
12 A No, ma'am.
13 Q Or my client?
14 A Hum-um.
15 MS. SMITH: I think that's all I have for
16 you. Thank you.
17 WITNESS: Thank you.
18 MS. SMITH: Wait a second.
19 THE COURT: Hold on.
20 MS. SMITH: He may have some questions for
21 you.
22 THE COURT: Hold on, Corporal Chaplin.
23 MR. GRUBER: Thank you, Your Honor.
24 THE COURT: Mr. Gruber?
25 MR. GRUBER: Just a couple of quick

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1 questions, Your Honor.
2 CROSS-EXAMINATION
3 BY MR. GRUBER:
4 Q Ms. Chaplin, you originally just testified now
5 that the first time you met Zoey was at the veterinary
6 hospital; is that correct?
7 A Yes.
8 Q Okay. And what did you observe the state of Zoey
9 to be at that time?
10 A She was just coming out of anesthesia from
11 operation. She had several deep wounds that were stitched
12 up on her stomach, her abdomen, on her hip area, I mean --
13 Q Puncture wounds?
14 A Yes, sir.
15 Q Did they appear to be from a canine, to your
16 knowledge?
17 A Yes, sir.
18 Q Okay. And to your knowledge, what canine caused
19 those injuries?
20 A Ms. Baracco's canine, Zoey.
21 MS. GERMER: Bodi.
22 WITNESS: Bodi. I'm sorry.
23 BY MR. GRUBER:
24 Q Bodi. And you testified just now that you
25 actually spoke with Ms. Baracco, and she admitted to you

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1 that her dog did cause those injuries?
2 A Yes, sir.
3 Q And she went so far as to offer to pay for the
4 veterinary bills as a result of that occurrence?
5 A Yes, sir.
6 Q Is that correct?
7 A Um-hum.
8 Q Okay. You also testified that you interviewed
9 the dog in the home; is that correct?
10 A Yes.
11 Q And do you consider that a controlled
12 environment?
13 A Yes, sir.
14 Q Okay. Why do you consider that a controlled
15 environment?
16 A The dog is in the owner's presence in an
17 environment that he's used to in his home.
18 Q Okay. And to your knowledge, did the alleged
19 attack occur inside the home?
20 A No, sir.
21 Q Where did it occur?
22 A According to the police report, it was out on the
23 sidewalk in front of the home at 1006 Madrid Avenue.
24 Q Okay. And I think you were asked a question
25 about whether you'd viewed a video of Bodi interacting with

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1 other dogs; is that correct?
2 A Yes.
3 Q Okay. And to your knowledge, did Bodi -- is it
4 possible that Bodi had previously interacted with those
5 animals before?
6 A Yes.
7 Q And been socialized to interact with those
8 animals?
9 A Yes.
10 Q All right. And if a dog is socialized to
11 interact with those animals, it would tend to reason that
12 it would not attack those animals that it's been socialized
13 with; correct?
14 A Yes.
15 Q But it did attack Zoey?
16 A Yes.
17 Q And to your knowledge, what ultimately happened
18 to Zoey as a result of those injuries?
19 A She passed away.
20 Q Let's talk now about how you came to write the
21 citation. You stated that you interviewed Ms. Baracco.
22 You met with the dog. You then went back and spoke with
23 your supervisor.
24 A Um-hum.
25 Q And what -- speaking with your supervisor, what

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1 was discussed?
2 A I informed him of the interviews, of my
3 observations with the two dogs, and the conditions of Zoey
4 at the veterinarian.
5 Q Okay. And did you discuss the county ordinance
6 at all?
7 A Yes.
8 Q And did you review the terms of the county
9 ordinance?
10 A Yes.
11 Q Okay. What items did you specifically look at?
12 A The propensity and tendency to attack.
13 Q Okay. And in your opinion, did Bodi meet the
14 definition of a dangerous animal?
15 A Yes.
16 Q And why is that?
17 A I feel that he has the propensity and tendency to
18 do this again, so the issue -- the notice was issued based
19 on that.
20 Q And what leads you to believe that he has the
21 propensity and tendency to attack, injure, and/or kill a
22 domestic animal?
23 A Based on this attack.
24 Q So the fact that it occurred is what gives you
25 knowledge?

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1 A Yes.
2 Q If it gives you knowledge, would it stand to
3 reason that it gives the dog's owner knowledge --
4 A Yes.
5 Q -- that this kind of event can occur?
6 A Yes, sir.
7 Q Okay. And because the owner now has that
8 knowledge, it would then stand to reason that they should
9 be placed on notice that their animal was dangerous to
10 prevent further attacks from occurring?
11 A Yes, sir.
12 Q There was a question of gathering information.
13 Do you normally solicit testimony as part of your
14 investigation?
15 A Yes.
16 Q And that includes getting witness statements,
17 including, you know, leaving the witness testimony sheet,
18 as you stated?
19 A (Witness nods head; no verbal response.)
20 Q And is it possible that you were soliciting
21 information after the citation was written to prepare for
22 defense of an appeal --
23 A Yes.
24 Q -- that you knew would be forthcoming?
25 A Yes.

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1 Q To your knowledge -- actually, let me step back
2 just a minute. Can you describe Bodi, physically?
3 A He is red in color. He's probably about 60 to 70
4 pounds. He appeared friendly inside his home and in his
5 owner's presence.
6 Q Okay. Would you consider him to be a large
7 animal?
8 A Yes.
9 Q Could you also describe Zoey?
10 A She was a small dog, about five pounds. I didn't
11 really get to see her, other than confined in a cage at the
12 veterinarian, but she was gray in color.
13 Q Do you have any knowledge to think that Zoey,
14 being a five-pound dog, would attack Bodi, a 60-pound dog?
15 A No.
16 Q So it's your knowledge that, based upon the
17 events, Bodi jumped at the gate; the gate pops open; he
18 lunges out and attacks Zoey, a small five-pound dog --
19 A Yes.
20 Q -- punctures, injures, and kills him?
21 A Yes, sir.
22 MR. GRUBER: Thank you. Your Honor, I have
23 no further questions.
24 THE COURT: Ms. Smith, do you have any --
25 anything else?

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REDIRECT EXAMINATION

1 BY MS. SMITH:
2 Q Did you state in your report where this incident
3 occurred -- in your specific report, where it occurred?
4 A It's on the front page.
5 Q Right. But I mean as far as like, like,
6 physically, at that location where it occurred, referring
7 to the sidewalk or --
8 A No.
9 Q -- inside the fence or anything?
10 A No, it was based on the Port Royal Police report.
11 Q Where did they say it occurred?
12 A I don't believe they did.
13 MS. SMITH: That's all I have. Thank you,
14 Judge.
15 THE COURT: Okay. Corporal Chaplin, I have
16 a couple of questions, mainly as it relates to a time
17 line.
18 EXAMINATION
19 BY THE COURT:
20 Q The incident occurred on July 4th?
21 A Yes, sir.
22 Q Is that correct?
23 A Um-hum.
24 Q Port Royal Police were called that day?

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1 A Yes, sir. We were not on duty.
2 Q And you were called the next day?
3 A Yes, sir.
4 Q And Zoey died on what day?
5 A July 6th.
6 Q July 6th. So we've got July 4, July 5, July 6.
7 And the notice was issued on what day?
8 A July 9th.
9 Q July 9th. And you were not on duty on July 4th
10 because it was a holiday?
11 A Yes, sir.
12 Q Or animal control was not on duty --
13 A Right.
14 Q -- because of the holiday.
15 A (Witness nods head; no verbal response.)
16 Q And I think I know this, but I'm going to ask it
17 anyway. Excuse me. Municipalities in Beaufort County do
18 not have animal control sections, units, whatever --
19 A Um-hum.
20 Q -- that the Beaufort County Sheriff's Office
21 would handle incidents, cases, within the municipalities --
22 the various municipalities?
23 A Yes, sir.
24 Q Is that correct?
25 A Um-hum.

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1 Q And the Beaufort County ordinance, are there
2 municipal ordinances that you enforce, or you --
3 A We enforce Beaufort County --
4 Q You enforce the Beaufort County ordinance --
5 A Um-hum.
6 Q -- within municipalities?
7 A Yes, sir.
8 THE COURT: Okay. All right. That's it.
9 Thank you.
10 L.CPL. CHAPLIN: Okay. Thank you.
11 THE COURT: All right. Ms. Smith?
12 MS. SMITH: Judge, at this time, I call Mare
13 Baracco.
14 THE COURT: All right. Ms. Baracco, if you
15 would, state your full name for the record, please.
16 MS. BARACCO: Mare Baracco.
17 THE COURT: And raise your right hand.
18 (WHEREUPON, MARE BARACCO, called as a
19 witness, having been first duly sworn, was examined and
20 testified as follows:)
21 THE COURT: Okay. Thank you. Have a seat,
22 and I apologize for mispronouncing --
23 WITNESS: That --
24 THE COURT: -- your name earlier.
25 WITNESS: That's all right.

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DIRECT EXAMINATION

1
2 B: MS. SMITH:
3 Q Mare, where do you live?
4 A 1006 Madrid Avenue.
5 Q And who do you live there with?
6 A My husband, Tim Deckard, and our two dogs.
7 Q Okay. How long have you lived in Port Royal?
8 A Almost 15 years.
9 Q What do you do for a living, Mare?
10 A We own boat businesses, and I am an independent
11 rep for a manufacturer.
12 Q Okay. How long have you had dogs as pets?
13 A Well, all my life.
14 Q Okay. How many dogs do you think you've had?
15 A Well, I've been working with animal rescue --
16 both my husband and I -- for many years; myself, over 30
17 years. So I've had a lot of dogs, and have fostered a lot
18 of animals, as well, not just dogs, but primarily dogs.
19 Q And the two dogs that you have now, are they also
20 rescue dogs?
21 A Correct.
22 Q Okay. How old are those dogs?
23 A Smiley is, I believe -- it's -- you know, when we
24 adopted them, ages were uncertain, but I'd say Smiley is
25 probably six or so, and Bodi is about three, three and a

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1 half now, I believe, maybe almost four.
2 Q And what kind of dogs are they?
3 A Smiley is a black Lab -- as near as we can tell,
4 a black Lab mix. We don't know what the other part is.
5 And Bodi is a Rhodesian Ridgeback. Well, he's classified
6 at the vet as a Rhodesian Ridgeback.
7 Q Okay. And how big are these dogs?
8 A Smiley is about -- well, they're both within a
9 couple of pounds of each other. I'd say about 55 or so
10 pounds, approximately.
11 Q Do you have these dogs doing any activities or
12 any training?
13 A Yes, we've been working with a behaviorist in
14 Beaufort, Kevin McHale, for the last, you know, about two
15 years, since we -- let's see. About two years. And as far
16 as exercise, we bike them, usually, once or twice a day,
17 and they're walked on unstructured, what we call, training
18 walks, three, sometimes four times a day.
19 Q Tell me this. Why do you send your dogs to a
20 behaviorist?
21 A Well, I guess it was after watching Cesar Millan
22 and his show and being involved in animal rescue and just
23 wanting to know a little bit more about psychology, just as
24 an interest. You know, I just think responsible ownership
25 is important.

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1 Q Did you ever have any specific incident that led
2 you to take him to the trainer, or you did it just because
3 you were interested in it and wanted to know?
4 A No, just wanted to learn more. I was -- had
5 actually met Kevin at one of the Port Royal festivals, and
6 he had three dogs with them, and they were all walking
7 right next to him, just like Cesar Millan's dogs, and we
8 got to talking, and I just, you know, remembered that we
9 had had that conversation, so we just started working with
10 him.
11 Q Okay.
12 THE COURT: Excuse me for a minute. The
13 behaviorist's name is Kevin --
14 WITNESS: McHale.
15 THE COURT: -- McHale, M-c-H-a-l-e?
16 WITNESS: H-a-l-e. He owns McHale Dog.
17 THE COURT: Okay. Thank you. Sorry to
18 interrupt.
19 BY MS. SMITH:
20 Q Okay. Let's go to the day in question that we're
21 here about today, the incident on July 4th.
22 A Um-hum.
23 Q Were you present during the incident with the
24 dogs?
25 A I was.

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1 Q Okay. Why don't you tell us what you saw and
2 where you were?
3 A Well, may I preface it? May I preface that, that
4 morning, for a moment?
5 Q Sure.
6 A We used to take our dogs, Bodi and Smiley, to the
7 neighbors' to just have free play with her dogs. She has a
8 -- she had a large dog and a Brookshire Terrier, and Ms.
9 Germer started bringing her dog, Zoey, there. I think, at
10 the time, she just had one dog. This was about eight
11 months before the incident, and her dog was very aggressive
12 to Bodi.
13 And I took the dogs, and I took them home, and I
14 called my trainer, Kevin McHale, and I just related what
15 had happened. I was very startled by it. All the dogs
16 were, you know, very mellow. He approach in a very, you
17 know, calm way, tail low, ears down, and I was just taken
18 aback by it, and I just wanted to learn maybe why that had
19 happened, so we had a conversation about it.
20 Q Who had a conversation?
21 A I had a conversation with my trainer, Kevin
22 McHale, and we discussed what could be, possibly, reasons
23 for that, and how to deal with it if it were to happen
24 again, because we enjoyed taking our dogs to play at this
25 free play.

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1 And it happened again, and I offered Ms. Germer
2 to have her dog and my dogs get together with the trainer
3 -- I'd pay for it, you know, neighborly -- so they would be
4 friends. And she said she wasn't interested, and I said
5 okay. And I told my husband about it, and we just decided
6 we weren't going to do that yard thing anymore. She was
7 going to be there with her dogs, and it would just be best
8 if we didn't have contact. Just different philosophy,
9 maybe, but, you know, we just wanted to not have to deal
10 with that, and that was how we left it. If we saw them
11 walking, we went to the to the other side of the street.
12 We never explained ourselves. We just continued that way
13 until this encounter on July 4th.

14 Q And you testified this was about eight months
15 prior to July 4th?

16 A Correct.

17 Q Okay. Did y'all have any other encounters before
18 -- between that time and July 4th, other than passing them
19 on the street?

20 A No.

21 Q Okay. Let's go to July 4th, then. What did you
22 witness that day?

23 A I had -- well, it was a holiday. I got up, and
24 it was about -- I think it was a little before 8:30. I let
25 the dogs out in the yard to use the restroom because I was

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1 going to take them for their morning walk, which is our
2 daily routine. And I went upstairs to my bedroom to get
3 something, and -- I think to get my phone.

4 And I heard all of this commotion outside my
5 bedroom window, which the bedroom and the great room have
6 windows that face the front yard, and we have a fenced
7 yard, and I ran to the window because it was -- there was
8 so much noise. And I looked out, and I saw the Germer-
9 Browns with their two dogs. They had gotten another dog
10 since the playing at the yard, but I'd never met that dog,
11 and the dogs were about four feet out ahead of them, and
12 their dogs were about to make contact with the corner of my
13 fence, where my dogs were inside the fence at the same
14 corner. And judging by the noise and how far out they
15 were, and that they were all going to make contact at the
16 fence, I -- and having had the experience with the dog
17 before, I just wanted to get my dogs in, and I didn't want
18 to have any problems with dogs fighting at the fence, or
19 her dog trying to get under my fence. I just wanted to get
20 my dogs inside.

21 And I went running down the stairs, and this all
22 took place within a 10-second period. So, as I was running
23 down the stairs, my stairs actually parallel the windows in
24 the front of the house, and I could see them continuing
25 along that path, and all the dogs are fighting at the

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1 fence, and the noise. And they're not picking their dogs
2 up or removing them, and I just want to bring my dogs in.
3 And then Mr. Brown started screaming at Bodi, at
4 the top of his lungs, and all this noise was just creating
5 more chaos. And I saw him put his hands up, and I didn't
6 see his dog's leash, and I went running to the front door.
7 And at that moment, Bodi was jumping backwards and had
8 jumped up and hit the gate, and the gate just opened. And
9 as he was trying to regain his footing, a little dog just
10 got right into my gate, and they only had about a second's
11 worth of contact. And, I mean, I didn't even think they
12 had contact, it was so quick.

13 And I called Bodi. I, at that point, was out in
14 my walkway. I called Bodi. He came right to me. Mr.
15 Brown picked his dog up, and I said, "Is everybody okay?"
16 Ms. Germer was dangling her dog at this point by the leash,
17 and then I said, "Is everybody okay? Is your dog okay?"
18 And then I heard the dog crying. He said, no, they're not.
19 He's not. The dog's not. And then they just went down the
20 street. I mean, it literally was within seconds.

21 And I had -- I had closed the gate myself the
22 night before when I watered the plants at the mailbox,
23 which I do at that point in the year when it's hot out. I
24 water my plants. And I had latched the gate myself. I did
25 not know until afterwards that someone had put the

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1 newspaper in our yard and that we also had two air
2 conditioning men working on the side of the house, but
3 it's behind our living fence. So I didn't even know
4 anybody was there. But I had secured the gate myself the
5 night before, and it looked secure. It looked like it
6 always looked, so --

7 Q What happened after that? Did the Germer-Browns
8 leave? Did they say anything else to you?

9 A No, they just said, "Oh, no, it's not okay," or
10 something to that effect. I was, of course, hysterical at
11 that point. I just couldn't believe this had happened. So
12 I went to -- I leashed by dogs, and I was very upset, and I
13 went to take a walk.

14 And I left the house, and I went around the
15 block, and as I came by, down 10th Street, I ran into
16 Councilman Klein, who's very good friends with the Germer-
17 Browns, and he told me I'd better do something about my
18 dangerous dog, or he was going to go over there and hurt my
19 dog. And I just -- I couldn't believe it, because this had
20 just happened. I didn't even know how anybody could even
21 know this had just happened, and it turned out that they
22 were actually on their way over to their good friend,
23 Councilman Klein's home.

24 And when I got back, the air conditioning people
25 told me that the police had been there and that they were

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1 coming back, and so I waited for the police to get there.
2 Q Okay. Did the police come to your house?
3 A They did.
4 Q Who came to your house?
5 A There were two officers. One was Officer
6 Puryear. I don't know the other -- who the other officer
7 is.
8 Q And what did they say to you?
9 A They said they had gotten a call that my dog had
10 jumped my fence, and I said, "Well, that's not correct."
11 And I explained how some -- there was a newspaper in my
12 yard, and the air conditioner people were there, and I --
13 you know, that was really all I knew, it had happened so
14 quickly. I was, you know, just very upset. And they said
15 they were issuing me an animal at large notice.
16 Q Was it a ticket?
17 A A ticket, yes.
18 Q Okay. And did they say anything else to you?
19 A No, but they came in the home, obviously. They
20 interacted with my dogs. We went outside, and I was, you
21 know, explaining, you know, what had transpired.
22 Q What happened with the animal at large ticket?
23 A I was found not guilty.
24 Q And about when was that?
25 A I had a trial on -- I believe it was in November.

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1 November 9th, I believe. I had a jury trial, and they
2 found that I was not guilty of having the animal outside of
3 my property.
4 Q After you met with the Port Royal Police, when
5 were you next contacted by law enforcement?
6 A I had an unannounced -- they said that animal
7 control would be contacting us, and then, the next day,
8 Officer Chaplin came by unannounced.
9 Q Okay. And what was -- what happened with your
10 visit with her?
11 A I believe she was there for about an hour and a
12 half. We went up to my office. I showed her two videos.
13 One was Bodi, just recently -- it was a couple weeks prior
14 -- at doggie day care, at the Bark Shack, with numerous
15 dogs. And he actually does not know -- they have different
16 dogs that come in to day care, so whatever dogs are there
17 that day are the dogs that he's socializing with. And the
18 owner of the Bark Shack had just sent me the video just to
19 show me our dogs playing at the day care. Just -- it was a
20 -- you know, a fun video.
21 And I also showed her a video -- and I also
22 emailed the links to her so she would have them -- a video
23 of Bodi playing at the sandbar downtown, and at the
24 sandbar, you know, you have people come up with their
25 boats, and they have all kinds of dogs that show up, and

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1 you don't know -- they're unknown dogs. You wouldn't know
2 what dogs are going to be there. So there were probably
3 about -- I don't know -- six or seven other dogs from --
4 large dogs to very small dogs that Bodi was playing with at
5 the sandbar.
6 Q What else did she do when she was there? Was she
7 by herself?
8 A She was by herself. We went outside. I
9 demonstrated my walking technique. I --
10 Q What's your walking technique?
11 A The way that we walk the dogs is, they're not
12 allowed to be out in front of us. When your dog is out in
13 front, according to the dog behavioral science, if you
14 will, the dog is the leader. The dog is in charge. And we
15 want our dogs to know that we're in charge. So our dogs
16 cannot go ahead of the -- the foot that is the foot that's
17 walking first, the dogs are not allowed to go past that.
18 So they always have to be by your side so you're able to
19 control them. In case anything should occur, you have them
20 right next to you. So that is our process, and that's the
21 kind of training walks we do three or four times a day, and
22 I demonstrated our technique, and then also went over how
23 we bike the dogs and how we control them when we're riding
24 on our bicycles and the kind of socialization they get. We
25 just had conversation. A lot of interaction between Bodi

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1 and Officer Chaplin, as I recall.
2 Q What did she tell you as far as her investigation
3 and her determination or assessment of your dogs at that
4 point -- your dog at that point?
5 A At the conclusion of the visit, she said that she
6 wouldn't -- could not in good conscience say the dog was
7 dangerous, and that she, further, was impressed with our
8 dog's behavior, Bodi's behavior. She was talking about
9 Bodi, specifically.
10 Q Okay.
11 A So we were relieved, and we didn't feel -- when
12 we knew animal control was coming, we felt that our dogs
13 would be as well behaved as they always are. We weren't
14 concerned about that.
15 Q When did you hear from animal control next?
16 A Well, I -- she asked me to send her the videos,
17 which was our evidence that showed that, you know, we had
18 no knowledge that this would occur, and it went on to show
19 he was social with other animals. That was on the 5th, I
20 believe, and then she -- I sent her the videos to her
21 office.
22 And then she contacted me on the 9th, which was
23 on Monday, and told me she was going to be coming back
24 over, and I asked her why, and she said she would talk to
25 me when she got there.

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1 Then she arrived with another officer and said
2 that her supervisor, Jody Hiers, had overturned her
3 assessment. And I said, "Why?" And she said she didn't
4 know. And I said, "Well, did you show him the videos?"
5 And she said he refused to look at them. And I said,
6 "Well, I'm not accepting this notice. I'm going to, you
7 know, take this further."

8 And I called and spoke to Lieutenant Spencer at
9 the sheriff's office, and then we went there and had a
10 meeting with Lieutenant Spencer.

11 Q And what came of that meeting, if anything?

12 A Well, in my phone call to Lieutenant Spencer, I
13 explained what had happened, how we had gotten this
14 assessment that said the dog was not dangerous, and the
15 officer was impressed with the dog, and I was surprised and
16 shocked, number one, that we were -- this decision had been
17 overturned, that it was related to us the supervisor
18 wouldn't look at our evidence that showed we, you know,
19 were not in violation, and that I already was -- I
20 disagreed with the ticket for the animal at large, and I
21 went into all that. And I asked him how it could be that
22 this assessment could be overturned by her supervisor, but
23 he had never come out to the house and never looked at the
24 dogs. How could he make an assessment on the dogs if he'd
25 never seen them? So he said he was going to send --

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1 MR. GRUBER: Your Honor --
2 WITNESS: -- Mr. Hiers.
3 MR. GRUBER: -- I'm going to object to the
4 hearsay at this point.

5 THE COURT: Ms. Smith?

6 BY MS. SMITH:

7 Q Only testify to what the officer told you, not
8 what an officer told the officer told the officer.

9 A Oh, so not my conversation with Lieutenant
10 Spencer?

11 Q You can tell us your conversation with Lieutenant
12 Spencer, but not --

13 A I questioned as to how a dog could be determined
14 dangerous by someone who had never seen the dog, and,
15 further, that my case had not been adjudicated. I was
16 pleading not guilty to the animal at large, and my story
17 differed from the complainants', and that there wasn't
18 anything in the report to suggest that my dog had gone over
19 my fence or that I had stated that my dog was outside my
20 property, and further that, the videos that I sent, I was
21 disturbed that they were not being looked at.

22 Q Since this notice was issued, have you had any
23 contact with the Germer-Browns?

24 A Yes.

25 Q Specifically, what?

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1 A Within 24 hours of this incident, we were
2 basically hostage in our home. We were --

3 MR. GRUBER: Your Honor, I think I'm going
4 to object at this point. Anything that may have
5 occurred after the notice was issued is irrelevant in
6 determining whether or not there was grounds for the
7 notice to be issued in the first place.

8 MS. SMITH: She was testifying to the day
9 after the incident. The notice was not issued until
10 the 9th.

11 THE COURT: I was going to ask you, where
12 does this occur on the time line?

13 MS. SMITH: The time line. Is that correct?

14 WITNESS: Correct.

15 THE COURT: So the notice still had not been
16 issued --

17 WITNESS: Correct.

18 MR. GRUBER: Okay.

19 THE COURT: -- at the time that you're
20 talking about?

21 WITNESS: Correct.

22 MS. SMITH: Correct.

23 MR. GRUBER: I withdraw my objection, then,
24 Your Honor.

25 THE COURT: Okay. Thank you.

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1 WITNESS: Correct. We were literally under
2 siege. Between the incident with the councilman
3 threatening our dog and the activities of the Germer-
4 Browns post this incident, we ended up in a situation
5 where we had to contemplate, and we did get that
6 following day, surveillance equipment for our
7 property, because we were highly concerned that harm
8 would come to our dog.

9 After the 5th, on the 6th, we were at home.
10 Again, we were in our home for at least a couple of
11 days because of what was going on outside our home,
12 and we were going to get the surveillance equipment.
13 And that Friday evening, which was the 6th, we had an
14 officer come to our home that we knew and --

15 BY MS. SMITH:

16 Q Who was that?

17 A Officer Trisha Gutterson.

18 Q Okay.

19 A And also Captain Mike Culligan was there from
20 Parris Island, as well. And we were in the midst of a
21 discussion about what we should do to protect ourselves and
22 our dogs, and we looked out the window, and the Germer-
23 Browns came by with their other dog and lifted their dog up
24 to our fence line and held it over the fence, the entire
25 way down the fence line, in a way that was very provocative

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1 in terms of baiting our dog, or our dogs. And it was just
2 shocking to see that, and that's one of the reasons that we
3 got the surveillance equipment, was because of the sense
4 that this was going to be a long siege, and we wanted to be
5 able to document anything that was going on on our
6 property, because we were very -- at that point, very
7 frightened. And that has continued up until -- it's
8 continued -- it's been nine months now that we've been
9 dealing with this --

10 Q Okay.

11 A -- with the Germer-Browns.

12 MS. SMITH: I have a video, and I don't know
13 if you want to object to it. You've seen it before.
14 It's what she submitted to Officer Chaplin. It's from
15 the trainer. It's about, like, ten minutes.

16 MR. GRUBER: I'm not going to object, Your
17 Honor.

18 THE COURT: Okay.

19 (WHEREUPON, a brief recess was held to
20 access the video.)

21 MS. SMITH: And Judge, my client, if she can
22 testify a little bit while explaining to you what
23 you're going to see in each sequence?

24 THE COURT: Okay.

25 WITNESS: Well, this was actually what the

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1 THE COURT: After the incident?

2 WITNESS: Correct. Yes. And then these are
3 videos at our house, showing Bodi in the yard,
4 reacting to other dogs. These are just two strange
5 dogs that are, you know, unknown to -- unknown to him.
6 And there's our other dog, and they're going up to the
7 fence, which is normal. (Pause.) And again just to
8 demonstrate the outside behavior, normal.

9 THE COURT: What's the other dog's name?

10 WITNESS: Smiley.

11 THE COURT: While I've got this in front of
12 me, how tall is that fence on the sidewalk?

13 WITNESS: It's -- I think it's five feet,
14 four and a half feet.

15 THE COURT: And the fence on the side?

16 WITNESS: It's, I think, four and a half
17 feet. (Pause.) And this is at the Doggie Lama. We
18 brought Bodi in cold to an entire group of dogs, no
19 socializing beforehand. We just brought him in and
20 let him go. (Pause.) I think there are 11 dogs
21 there, Your Honor, plus Bodi.

22 THE COURT: Okay. I'll take your word for
23 it. I can't count them.

24 WITNESS: Well, there are a lot of dogs --

25 THE COURT: It's a lot of dogs.

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1 dog trainer who was coming was going to testify to.
2 It's just the relation of the fence to the sidewalk
3 where -- that was just someone we knew that had two
4 small dogs, where the property is, and that sort of
5 thing, just to give you an idea of where it was.

6 This is just demonstrating --

7 THE COURT: Is that your fence?

8 WITNESS: No, this is actually at the Doggie
9 Lama. We were just showing our dogs' reaction to
10 other dogs and how dogs can react to each other, the
11 energy of the dogs. That's Bodi. That's us walking
12 our dogs, the way we walk them, our process of
13 walking. As you can see, they're not out ahead of us,
14 and then, also, we were bringing other dogs out to
15 show how certain dogs' energies can create excitement,
16 and then these are just various dogs that were brought
17 out. (Pause.) So what they did was, they would just
18 go get different dogs and bring them out to show, in
19 this part of the DVD, how, when a dog is out ahead,
20 sometimes you can get that energy created, and how
21 dogs react to other dogs, as you can see. And our dog
22 is not -- he's looking, but he's continuing to walk,
23 and then she is reining that other dog in.

24 THE COURT: When was this video made?

25 WITNESS: That was done on July 14th.

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1 WITNESS: -- as you can see. They keep
2 coming in. They keep letting more dogs in from the
3 other -- there's an enclosed area, and they just kept
4 letting more dogs in. (Pause.)

5 This is at the Bark Shack. This was on May
6 30th, prior to the incident, in Bluffton. It's at dog
7 boarding. This I sent to -- this is one of the videos
8 that Officer Chaplin viewed on the 5th of July, and
9 there are, I think, six or seven dogs in this
10 particular sequence. There was another video that I
11 have sent that Officer Chaplin viewed which was Bodi
12 at the sandbar, and so that was also one that I had
13 sent over to her office.

14 THE COURT: So the first part of that video
15 was on July 14th, and --

16 WITNESS: Yes. Correct.

17 THE COURT: -- the second part at the, what
18 -- the Bark Shack in Bluffton was on --

19 WITNESS: Was on May 30th.

20 THE COURT: -- May 30th.

21 WITNESS: And the one of Bodi at the sandbar
22 was, I don't know, a couple months, maybe three months
23 or so. I don't remember the exact date of that one.
24 And there were probably at the sandbar -- I don't
25 know. Officer Chaplin could probably tell you, as

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1 well -- from very small dogs to large dogs. There
2 were probably six or eight dogs, plus Bodi, at the
3 sandbar. And, of course, they're not leashed at the
4 sandbar, as well, so --
5 THE COURT: Shouldn't they be?
6 WITNESS: No, not at the sandbar. Nobody
7 seems to do that.
8 MR. GRUBER: Maybe.
9 THE COURT: I'm serious. I think we have a
10 leash law.
11 MS. SMITH: Judge, I have just a couple more
12 questions, and I'm done with this witness.
13 THE COURT: Okay.
14 BY MS. SMITH:
15 Q Kind of in follow-up, have you ever had any
16 instances or any incidents where your dogs have gotten over
17 the fence, or any problems with that fence, prior to July
18 4th?
19 A No. And since the incident, we have not had any
20 issues of any kind.
21 Q Okay. Have your dogs ever gotten out before, out
22 of the fence?
23 A No.
24 Q Okay. When you walk your dogs, do you walk them
25 on a leash?

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1 A Always, yes.
2 Q Had you ever been cited by the Town of Port Royal
3 or by animal control for your dogs prior to this incident?
4 A No.
5 Q Had you ever had any tickets, any complaints?
6 A No.
7 Q Any calls from law enforcement regarding these
8 animals prior to July 4th?
9 A No.
10 MS. SMITH: Okay. That's all I have.
11 Please answer any questions Mr. Gruber has for you.
12 THE COURT: Mr. Gruber?
13 MR. GRUBER: Thank you, Your Honor. And
14 before I begin my cross-examination, let me apologize
15 to the Court for my cell phone going off. I know
16 that's highly disrespectful, but just so you know, my
17 wife is due to give birth tomorrow, so I have it on me
18 just in case. So I'm going to ask for your
19 indulgence, but I wanted to let you know I certainly
20 do not want to disrespect the Court.
21 THE COURT: I understand. Good luck with
22 that.
23 CROSS-EXAMINATION
24 BY MR. GRUBER:
25 Q Good morning, Ms. Baracco. I just have a couple

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1 quick questions for you.
2 A Yes, sir.
3 Q To your knowledge, is the Germers' dog Zoey
4 deceased?
5 A Yes.
6 Q And how did Zoey come to be deceased?
7 A As I understand, from the contact that their dog
8 had with my dog in my yard.
9 Q Okay. So your dog bit or injured their dog and
10 led to its death?
11 A I don't actually know the -- what type of injury
12 it was, other than what the vet, Dr. Marikay, told me.
13 Q And what did she tell you?
14 A She said -- well, she told me the dog was not
15 bitten, that that's -- that there were no puncture wounds.
16 That was my understanding. I don't really know what
17 transpired in the contact they had.
18 Q So there was no puncture wounds or lacerations to
19 the dog whatsoever?
20 A I -- that's only from my understanding. I never
21 -- I've never seen any reports or anything.
22 Q Okay. So how did the dog come to be at the
23 veterinary hospital, then?
24 A From the encounter with my dog.
25 Q But if there was no bites or lacerations, why

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1 would they take the dog to the vet?
2 A Well, I know the dog was injured. I don't know
3 its --
4 Q Okay. How was the dog injured?
5 A By the encounter with my dog.
6 Q Okay. And can you describe those injuries?
7 A No, I can't. I don't know what the injuries
8 were, specifically.
9 Q So you --
10 A I was not told.
11 Q You know it was injured, but you don't know what
12 injury?
13 A Correct.
14 Q Is it possible that the dog, your dog, Bodi, bit
15 Zoey?
16 A If it is, I don't know. It wasn't explained to
17 me, the specifications of the injuries.
18 Q Okay. And if their dog Zoey had lacerations and
19 cuts, it could've been caused by Bodi?
20 A I -- I don't --
21 Q They didn't just magically appear, is what I'm
22 trying to say.
23 A No, I'm not disputing what you're saying. I
24 wasn't informed of the specifics. That's all I'm saying.
25 Q Okay. If their dog is now deceased and Bodi,

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1 your dog, was the canine that caused the injuries to their
2 dog, which ultimately caused it to be deceased, do you now
3 know that it's possible for Bodi to attack and injure
4 another animal?
5 A No, I dispute that.
6 Q So it's not within --
7 A I dispute your --
8 Q -- the realm of possibility?
9 A I dispute your characterization.
10 Q So it can't physically happen?
11 A No, I didn't say that. I just dispute your
12 characterization of --
13 Q Okay. Well --
14 A -- the occurrence.
15 Q -- how would you characterize it, then?
16 A As I testified, the, I'll use the word, "energy"
17 created at the fence between all the dogs led to
18 excitement. When my gate opened, their dog got on my
19 property, and my dog had an encounter with their dog.
20 That's how I would characterize it.
21 Q Does energy kill a dog?
22 A No, what I was saying was, was that the
23 excitement that was created by the dogs fighting at the
24 fence --
25 Q Okay. Then does excitement kill a dog?

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1 A I -- as I explained, when the gate opened and the
2 dog got on my property, I said my dog had an -- they
3 obviously had a second's worth of contact, which obviously
4 created the injury. I don't know any more specifics.
5 Q Okay. But you do know, or at least you just now
6 admitted, that your dog caused an injury to their dog.
7 Now, you don't know the extent of it, but you do know that
8 he caused an injury, and that ultimately resulted in a
9 dog's death. So it is physically possible for your dog to
10 injure another dog?
11 A I would say any dog is capable of injuring
12 another dog.
13 Q I wouldn't disagree with you, but in this case,
14 you now know, because this incident occurred, that your dog
15 can physically injure and kill another animal?
16 A I don't know how to answer your question. It was
17 -- this happened --
18 Q How about you answer yes or no? Is it physically
19 possible?
20 A I guess it was -- it's possible for a --
21 Q And you --
22 A -- for a --
23 Q And you are aware that it's physically possible?
24 A Well, I'm aware that it happened, and I expressed
25 that Mike was -- as I testified, I was hysterical over the

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1 incident. We have apologized to the Germer-Browns. They
2 wouldn't take our calls. I paid all the vet bills. We
3 offered to get them another dog. I don't know what else to
4 tell the Germer-Browns. We -- except for how sorry we are.
5 This is something that happened. It was an incident that
6 happened.
7 Q And as you said, you paid the vet bills?
8 A Yes. Immediately.
9 Q And that's because you realized that your dog
10 injured their dog --
11 A It was on --
12 Q -- and caused its injuries?
13 A -- my property, and I thought I -- number one, I
14 thought that I should, and I also felt it was the right
15 thing to do.
16 Q Okay. How big is Bodi?
17 A I think I just testified he is 50, maybe 55
18 pounds.
19 Q So he's a large dog?
20 A He's considered, I guess, a medium large dog.
21 Q And how big was Zoey?
22 A I -- I don't know, specifically. She was a small
23 dog.
24 Q All right. And I think you testified that, at
25 one point in time, the Germers took their other small dog

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1 and held him over the fence?
2 A Correct.
3 Q Like this (indicating)?
4 A Yes.
5 Q Baiting your dog --
6 A Correct.
7 Q -- to come attack their dog?
8 A Yes.
9 Q So what you're asking the Court to believe is
10 that they wanted to sacrifice their dog?
11 A I actually don't know why they did that. I was
12 -- I was shocked. I couldn't believe what I was seeing.
13 I've been shocked by a lot of behavior I've seen over the
14 last nine months.
15 Q In the incident that occurred with Zoey --
16 A Yes.
17 Q -- did they hold the dog over the fence and ask
18 Zoey to bite it?
19 A Well, first of all, that wasn't the dog. What
20 are you -- I'm sorry. What are you talking about?
21 Q I'm asking --
22 A Which incident are you talking about?
23 Q -- on July 4th -- on July 4th --
24 A Yes.
25 Q -- did the Germers take their dog and hold it

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1 over the fence and ask your dog -- or invite your dog to
2 bite it?
3 A No. As I explained, their dogs were at my fence.
4 There was a fight between all the dogs at the fence.
5 That's what I witnessed.
6 Q Your --
7 A That's what I said.
8 Q Your 55-pound dog and their small dog?
9 A They were all fighting at the fence.
10 Q Okay.
11 A Barking at each other, yes.
12 Q You testified that you were found not guilty of
13 an animal at large citation?
14 A Correct.
15 Q Is that correct?
16 A Yes.
17 Q Isn't it true that you were cited with public
18 nuisance?
19 A No.
20 Q And let me clarify, because I -- you were cited
21 for an animal that is at large; correct?
22 A Are you talking about the ticket from Port Royal
23 on July 4th?
24 Q That's correct.
25 A Yes.

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1 Q Okay. And isn't it true that, under that
2 definition, that is considered a public nuisance? That's
3 one of the elements of a public nuisance?
4 A I'm not an attorney. I don't -- I only know it
5 was an animal at large ticket, and I appeared in court on
6 that ticket.
7 Q Were you there as a criminal defendant? Correct?
8 A (To Ms. Smith) Is that a criminal? I'm sorry. I
9 don't understand the question.
10 Q Were you facing either a fine or jail time?
11 A I guess, yes.
12 Q To your -- to your knowledge?
13 A I --
14 Q Okay. So you were there as a criminal defendant?
15 A Okay.
16 Q And are you aware that the burden of proof in a
17 criminal case is different than what we have here today?
18 A I'm -- I'm not understanding your question.
19 Q Yes or no. Are you aware that the burden of
20 proof in today's case is different than the burden of proof
21 that was in the criminal case that you've testified to that
22 you were found not guilty of?
23 A I -- I don't understand the distinction.
24 Q You can say you don't understand it.
25 A Well, I don't. I don't know.

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1 Q Ms. Baracco --
2 A Yes.
3 Q -- you did receive a copy of the notice from
4 Officer Chaplin?
5 A (Witness nods head; no verbal response.)
6 Q That's correct?
7 A I did.
8 Q Okay. And on the notice, did it state why your
9 dog was being deemed a dangerous animal?
10 A Yes.
11 Q Okay. And what was that reason?
12 A I -- well, I'd have to look at the notice. I
13 didn't agree with it, so -- which I stated to the officer.
14 Q Is that a copy of the notice you received?
15 (Tenders document to Witness.)
16 A Yes.
17 Q Okay. And what does it state on there was the
18 reason that you were receiving that notice?
19 L.CPL. CHAPLIN: It's at the bottom.
20 WITNESS: Involving an animal attack in
21 which the victim's canine died, reference case -- it
22 just has a reference case. I don't understand what --
23 oh, that's the date. Yeah, it referenced the case.
24 BY MR. GRUBER:
25 Q Okay. So you received the notice?

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1 A Yes.
2 Q And it contains a description of why you were
3 receiving it?
4 A Okay.
5 Q Okay. You showed a series of videos just now.
6 A Yes.
7 Q Did any of those videos show any interaction
8 between your dog and Zoey?
9 A No.
10 MR. GRUBER: I have no further questions,
11 Your Honor.
12 THE COURT: Ms. Smith?
13 MS. SMITH: I have nothing further for this
14 witness.
15 THE COURT: Okay. Do you have another
16 witness?
17 MS. SMITH: I do. I have a couple of short
18 witnesses, and I'll be done.
19 THE COURT: Okay. I'm just looking for a
20 recess opportunity. We can go ahead and do your --
21 WITNESS: Should I -- am I done?
22 MS. SMITH: Yeah, you can come sit here.
23 I've got four witnesses, if you want to take a break
24 now, or --
25 THE COURT: Sure. Let's do that.

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1 (Brief recess.)
2 THE COURT: All right. We're back on the
3 record. Having been outside, it's one of those days
4 where we might as well be inside. I wanted to ask Ms.
5 Baracco a couple of questions just for clarification
6 about the video that we saw, which was sort of a
7 compilation of different time elements.
8 WITNESS: Should I get back up there?
9 THE COURT: No, it's okay. You can --
10 you're still under oath, and you can answer from right
11 there.
12 WITNESS: Okay.
13 EXAMINATION
14 BY THE COURT:
15 Q The part of the video where the various dogs on
16 leashes were being walked up and down the sidewalk near
17 your home --
18 A Correct.
19 Q -- that part of the video was made after the Zoey
20 incident; is that correct?
21 A That was on July 14th by our trainer.
22 Q On July 14th; okay. And then the Bodi at the --
23 I think it was the Doggie Lama with the other dogs?
24 A Which -- of the -- okay. So not the Bark Shack,
25 but the Doggie Lama?

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1 Q Right.
2 A Okay. Yes.
3 Q At the Doggie Lama --
4 A Okay.
5 Q -- where the other dogs were -- you said there
6 were about 12 dogs there?
7 A Correct.
8 Q That was also filmed after the incident; is that
9 right?
10 A Correct. Just a few days after.
11 Q And then, the latter part of the video with the
12 dogs at the Bark Shack -- is that correct?
13 A Yes.
14 Q That was filmed before the incident?
15 A That was May 30th.
16 Q May 30th?
17 A Right.
18 Q Okay. I just wanted to be clear on that.
19 A Okay.
20 THE COURT: Thank you. Ms. Smith, if you'd
21 like to continue, call your next witness.
22 MS. SMITH: Judge, we call Mike Culligan.
23 THE COURT: Mr. Culligan?
24 MR. CULLIGAN: Yes, sir.
25 THE COURT: Would you state your full name

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1 for the Court, please?
2 MR. CULLIGAN: Yes, sir. Captain Michael
3 Culligan, United States Marine Corps.
4 THE COURT: And raise your right hand.
5 (WHEREUPON, MICHAEL CULLIGAN, called as a
6 witness, having been first duly sworn, was examined and
7 testified as follows:)
8 DIRECT EXAMINATION
9 BY MS. SMITH:
10 Q Captain Culligan, where do you live?
11 A I live at 2201 Mossy Oaks Road, Apartment G-9,
12 Beaufort.
13 Q Okay. How do you know my clients, Mare and Tim?
14 A I met them through my now wife, Trisha Culligan,
15 who was Trisha Gutterson at the time of the incident. I've
16 known them for about a year.
17 Q And are y'all friends? Are you and your wife
18 friends with Mare and Tim?
19 A Yes, we are.
20 Q Okay. Have you been over to their home in Port
21 Royal?
22 A Multiple times, yes, ma'am.
23 Q Okay. Have you had any type of interaction with
24 their dogs?
25 A Yes.

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1 Q Okay.
2 A As late as yesterday, actually.
3 Q Okay. Do y'all have dogs of your own?
4 A We do.
5 Q Okay. What kind of dogs do you have?
6 A We currently have a Walker Coonhound named
7 Douglas. He's about a 60-pound dog. And we had a small,
8 about a 10- or 11-pound Chihuahua named Nacho, but,
9 unfortunately, he passed a few months ago -- or a couple
10 months ago.
11 Q I'm sorry to hear that. Did both of those dogs
12 interact with both of Mare's dogs?
13 A Yes. Nacho more than Douglas, but yes.
14 Q And that's the smaller --
15 A That's the small --
16 Q Well, that's the small dog?
17 A That's the Chihuahua.
18 Q Okay. Did they -- were Mare's dogs, specifically
19 Bodi, ever aggressive towards your dogs?
20 A No, not that I ever saw.
21 Q Okay. Were they ever aggressive towards you --
22 A No.
23 Q -- or Trish?
24 A Not at all.
25 Q Okay. Did y'all ever take care of the dogs?

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1 A I know my wife has. I've never, personally, been
2 left alone with the dogs.
3 Q Okay. And she had taken care of them for days at
4 a time --
5 A Yes.
6 Q -- when Mare and Tim were out of town?
7 A Correct. That's my understanding.
8 Q Have you ever seen them running around outside of
9 the fence or running around the neighborhood or anything
10 like that --
11 A No.
12 Q -- and not on a leash?
13 A No. Only inside the fence.
14 Q Okay. Did you have -- were you at Mare and Tim's
15 house around July 6th of last year?
16 A Yes, and I'm not certain it was the 6th. It was
17 a couple days after the incident, and I believe it was the
18 Friday after July 4th.
19 Q Okay.
20 A And I would put the time roughly -- it was late
21 evening, but that time of the year, I'd put the time
22 roughly around 1900, 1930; or 7:00, 7:30 p.m.
23 Q Okay. And what did you witness that night?
24 A As you're standing on the porch, from the right
25 to the left, Mr. Brown and his wife were walking past the

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1 fence. At that time, they had a -- Mr. Brown was closest
2 to the fence, and he was carrying his dog -- I'm not sure
3 of his dog's name -- in his arm. They were less than a
4 meter away from the fence, and I wouldn't say he was
5 holding it over the fence, but he was carrying it above the
6 fence line in clear sight. We were standing in the living
7 room at the time.
8 Q Okay. And why was that so -- were y'all shocked
9 by this --
10 A Yeah..
11 Q -- occurring?
12 A Yes. Yes, ma'am, we were, because it didn't make
13 sense as to why -- I could see how they could take that
14 route past the house, because I believe the friend lives
15 there, the councilman, on the other side of the house. I'm
16 not sure of his name either.
17 Q Okay.
18 A But I wouldn't see why they would feel the need
19 to be so close to the fence line, and specifically holding
20 their dog above the fence line. As it happened, it seemed
21 to be for no other reason than to provoke another incident
22 or to make some sort of a statement as they walked past.
23 Q Okay. And --
24 MR. GRUBER: Your Honor, I'm going to object
25 at this point again. Can we get clarification as to

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1 the timing of this event? Again, if it occurred after
2 the incident which led to the ticket being issued, I'm
3 going to object on grounds of relevancy.
4 THE COURT: Ms. Smith?
5 MS. SMITH: He testified it was on July 6th.
6 The notice was issued on the 9th.
7 THE COURT: Given that it -- all right. I
8 was going to ask that very question. It occurred
9 after the incident and before the citation. I'm going
10 to let this continue.
11 MS. SMITH: Okay.
12 THE COURT: I don't know if it has any
13 relevance either, but that's what I'm looking for, if
14 you'd go in that direction, please.
15 BY MS. SMITH:
16 Q Okay. Other than -- are you aware of any other
17 aggressive acts by these dogs that you've been around?
18 A No, I'm not, and like I said, him and my smaller
19 dog, Nacho, who used to live directly next to them?
20 Q Right.
21 A Those were the people we got him from. They used
22 to interact all the time. So it's not so much a matter of
23 small versus big, apparently, judging from the interactions
24 he had with Nacho, over a dominance issue, which any dog of
25 any size could be dominant, or attempt to be dominant, over

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1 another dog.
2 Q And as much as your dogs were around each other,
3 specifically Nacho, were you ever worried or concerned --
4 A No, not at all.
5 Q -- that something was going to happen?
6 A No.
7 Q Was he more aggressive than your dog --
8 A No.
9 Q -- at any time? No?
10 A No.
11 MS. SMITH: Okay. That's all I have for
12 this witness. Thank you so much.
13 THE COURT: Mr. Gruber?
14 MR. GRUBER: Just a couple of quick
15 questions, Your Honor.
16 CROSS-EXAMINATION
17 BY MR. GRUBER:
18 Q You stated that you are social friends with the
19 appellants; is that correct?
20 A Yes, sir.
21 Q Okay. Have you had any direct knowledge of the
22 events that occurred on July 4th?
23 A What do you mean "direct," sir?
24 Q Were you at the appellants' house on July 4th?
25 A No.

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1 Q Did you witness the event?
2 A No.
3 Q When you testified that you were at their house
4 on the 6th, when you spoke to -- or referred to the
5 Gerners, when you said that they walked by the house, were
6 they walking on a public sidewalk?
7 A They were, yes, sir.
8 Q So they weren't trespassing on the appellants'
9 property?
10 A They were not.
11 Q And they were holding the dog in their arms?
12 A Close to the side, so on his -- it would've been
13 his left side, closest facing the house, along the fence
14 line.
15 Q And given the fact that their other dog had been
16 attacked and killed two days prior, would it be reasonable
17 for them to pick up their dog as they walked past this
18 property?
19 A Yes, but I would assert it wouldn't be reasonable
20 to walk that close to the fence line --
21 Q But they were --
22 A -- if they were concerned --
23 Q -- on a public sidewalk?
24 A They were on a public sidewalk.
25 MR. GRUBER: Okay. No further questions,

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1 Your Honor.
2 THE COURT: Thank you. Ms. Smith?
3 MS. SMITH: That's it for this witness.
4 THE COURT: Thank you, Captain Culligan.
5 WITNESS: Yes, sir.
6 MS. SMITH: We call Mike Fraley.
7 THE COURT: Hold on just one moment. Let me
8 state for the record that I just realized that I have
9 met Captain Culligan, and I know his wife, Trish
10 Gutterson, through her law enforcement capacity.
11 MR. GRUBER: I'd waive any claim of
12 conflict, Your Honor.
13 THE COURT: All right. Just noting it for
14 the record.
15 MS. SMITH: Thank you.
16 THE COURT: Thank you. Would you state your
17 name for the record, please?
18 MR. FRALEY: Mike Fraley.
19 THE COURT: Mike Fraley?
20 MR. FRALEY: Yes, sir.
21 THE COURT: And would you raise your right
22 hand, please?
23 (WHEREUPON, MIKE FRALEY, called as a
24 witness, having been first duly sworn, was examined and
25 testified as follows:)

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DIRECT EXAMINATION

2 BY MS. SMITH:
3 Q Mr. Fraley, where do you live?
4 A 1001 10th Street, Port Royal.
5 Q Okay. And do you know Mare and Tim Baracco?
6 A I do.
7 Q And how long have you known them?
8 A I've known Mare for probably 10 years, and Tim
9 for probably eight.
10 Q Okay. Do you go over to their home?
11 A I do.
12 Q Do you have dogs?
13 A I do.
14 Q Do you -- what kind of dogs do you have?
15 A I have a Shepherd Lab, about four years old. Big
16 dog.
17 Q And do you let your dog interact with their dogs?
18 A I do.
19 Q Have you ever witnessed any attacks or aggression
20 by their dogs against your dog, or other dogs, for that
21 matter?
22 A I have not.
23 Q How -- what is their behavior like?
24 A Their interaction with my dog is very playful.
25 They -- typical dog behavior -- jump on each other. My dog

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1 is younger, so she is somewhat passive, but most for the
2 part (sic), they know each other. And at the beginning of
3 their interaction, we greeted them together and made sure
4 that they kind of knew each other, which, you know, I think
5 you should do if you own dogs. The same way you should
6 walk up to a dog with your hand turned backward so they
7 can, you know, acknowledge who you are. And whenever that,
8 you know, occurred, they just played, friendly, like normal
9 dogs do.
10 Q Mr. Fraley, do you have any children?
11 A I do.
12 Q How old are they?
13 A Twelve, 14, and 16.
14 Q Have you allowed your children to be around
15 Mare's dogs?
16 A Yes, I have. Sometimes without her knowledge.
17 I've been asked to go check on the dogs or feed the dogs,
18 and my 12-year-old daughter is very comfortable with going
19 to see Bodi and Smiley and walk up to their house and feed
20 them or just play with them.
21 Q Okay. And this -- you've gone over there when
22 Mare or Tim were not home; is that correct?
23 A On -- on Friday of last week. Yes.
24 Q Do you have any knowledge of any attacks or any
25 injury they've caused on other animals or other people

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1 Besides the one we're here about today?
2 A None at all.
3 Q And do you have any personal knowledge as to what
4 happened that day?
5 A Other than Mare called me that day, very upset,
6 and I came over. And then through -- I mean, this whole
7 incident is ridiculous. It's dividing the community. It's
8 kind of -- I've heard from other people, you know, that
9 they're talking about what's going on and what's happening.
10 But, you know, it was an accident that occurred, and it's,
11 in my opinion, blown way out of proportion, and that's
12 really about all I know about it. It's unfortunate, and
13 it's dividing the community. But, you know, other than
14 that, I have no, you know, knowledge of, that day, what
15 actually happened, other than hearsay from other people.
16 MS. SMITH: Okay. Thank you, Mr. Fraley.
17 That's all I have for you. Please answer anything Mr.
18 Gruber has.
19 MR. GRUBER: Thank you.
20 CROSS-EXAMINATION
21 BY MR. GRUBER:
22 Q Mr. Fraley, just to confirm, you were not at the
23 appellants' house on July 4th; correct?
24 A I was not. Correct.
25 Q Okay. And have you ever witnessed any direct

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1 interaction between Bodi and the now-deceased Zoey?
2 A No.
3 MR. GRUBER: I have no further questions,
4 Your Honor.
5 THE COURT: Anything else, Ms. Smith?
6 MS. SMITH: That's it for this witness.
7 THE COURT: Thank you, Mr. Fraley.
8 MS. SMITH: Judge, we'd call J.R. Thorpe.
9 THE COURT: Mr. Thorpe, would you state your
10 full name for the record, please?
11 MR. THORPE: Francis Thorpe, Jr.
12 THE COURT: And raise your right hand.
13 (WHEREUPON, FRANCIS THORPE, JR., called as a
14 witness, having been first duly sworn, was examined and
15 testified as follows:)
16 DIRECT EXAMINATION
17 BY MS. SMITH:
18 Q Mr. Thorpe, where do you currently live?
19 A 1004 10th Street.
20 Q Okay. Is that next door to Mare and Tim?
21 A That street actually runs perpendicular to their
22 address, but we share a common back driveway to the
23 residence. So we're maybe five houses down from them.
24 Q Gotcha.
25 A Um-hum.

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1 Q Okay. How long have you known Mare and Tim?
2 A Since 2007. So right around seven -- six years,
3 seven years.
4 Q Do you interact with them on a regular basis?
5 A Almost on a daily basis.
6 Q Okay. Do you -- have you been around their dogs?
7 A Often.
8 Q Okay. And --
9 A Almost on a daily basis, so --
10 Q Okay. And what's their interaction been like
11 with these dogs? How have they behaved?
12 A In my opinion, I've -- if somebody categorizes or
13 calls Bodi a dangerous dog, I just -- I don't see it.
14 That's -- that is not, in my opinion, even remotely close
15 to this particular animal. I've never seen anything that
16 would remotely describe his actions, remotely justify
17 describing that dog, as being dangerous.
18 Q Does he behave like a normal dog?
19 A He does behave like a normal dog.
20 Q Does he bark?
21 A He does bark.
22 Q Does he lick?
23 A He licks. The dog licks a lot. That's why it's
24 so shocking to me that this interaction occurred, because
25 what I know of Bodi is a dog that licks a lot. When he

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1 come -- whenever they're walking by or they stop by the
2 house, that's what I know of Bodi. Bodi just goes right up
3 to you and starts licking all over the place. We -- you
4 know, I have a --
5 Q Well, I was going to ask, do you have any
6 children?
7 A I do have children, and I have a -- at the time
8 of the incident, it would've been about a four-and-a-half-
9 year-old and a one-year-old. Their dogs, Smiley and Bodi,
10 interact with my children, and they get face to face with
11 my children. I know them that well. I know those dogs
12 that well. I feel that comfortable. That might be
13 shocking to some, but like I say, what I know of Bodi and
14 how I've interacted with that -- with that dog, and my
15 children have interacted with that dog, I have no -- I have
16 not seen anything like what happened or what was described.
17 I've never seen any -- anything that he's ever done in that
18 manner.
19 Q And you have dogs?
20 A I do. I have another rescue shelter dog. She's
21 about a -- we think, about an eight-year-old, mixed Lab,
22 and she's, you know, 60 pounds; probably about 10 pounds
23 overweight, but she broke a hip. And they interact with
24 the dogs all the time. You know, I see Mare and Tim
25 walking, and I just -- if they're out walking, I try to

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1 take my dog for a walk at the same time just to -- you
2 know, just as a neighborly thing, and as a fun thing, so --
3 Q Have these dogs ever been aggressive to you or
4 any one of your dogs?
5 A Never.
6 Q Have you ever seen these dogs outside of their
7 yard, running loose, or not -- walking without a leash?
8 A Never. And, you know, I -- that's another thing.
9 You know, we mentioned about the fence being -- the front
10 of the fence is higher, and then the side of the fence is
11 way lower, and I think she testified it's four and a half
12 feet, and I -- and I think she way overestimated. It's
13 much lower. It's -- it seems to me --
14 Q Why is that?
15 A Well, it's because the house -- the street is on
16 a slant, and so, from my -- from my understanding -- I just
17 know that they mentioned that they were going to change the
18 fence line to make it look parallel to the street. So,
19 before they made the changes to the fence, it just -- it
20 looked kind of awkward, because it was going at a slant.
21 Now, whenever you're facing the house, aesthetically, it
22 becomes more pleasing because you've got this nice,
23 horizontal facade or fence.
24 But as we saw on the video, the sides of the
25 fence are -- are, you know, at least a foot and a half

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1 shorter, and the dog could get out at any time he wants to,
2 any time he wanted to.
3 Q Are you aware of him getting out of that fence?
4 A And I've never seen -- I've never seen the dogs
5 at large or leaving the -- leaving the yard without being
6 on a leash.
7 Q Do you let your dogs stay in the yard with Mare
8 and Tim's dogs?
9 A I do. And if they come over to the house, they
10 unleash their dog, and their dogs run out -- run about our
11 house.
12 MS. SMITH: Mr. Thorpe, thank you. I think
13 that's all I've got for you.
14 WITNESS: You're welcome.
15 MS. SMITH: Please answer any questions Mr.
16 Gruber has for you.
17 MR. GRUBER: Mr. Thorpe, real quick, and
18 we'll let you off the stand.
19 CROSS-EXAMINATION
20 BY MR. GRUBER:
21 Q Were you at the appellants' house on July 4th?
22 A No.
23 Q Have you ever witnessed any interaction between
24 Bodi and the now-deceased Zoey?
25 A No.

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1 MR. GRUBER: No further questions, Your
2 Honor.
3 MS. SMITH: Judge, this is the last witness
4 we have.
5 THE COURT: Okay.
6 MS. SMITH: Shonna White.
7 THE COURT: All right. Ms. White, would you
8 state your full name for the record, please?
9 MS. WHITE: Shonna Jean White.
10 (WHEREUPON, SHONNA WHITE, called as a
11 witness, having been first duly sworn, was examined and
12 testified as follows:)
13 DIRECT EXAMINATION
14 BY MS. SMITH:
15 Q Good morning, Ms. White.
16 A Good morning.
17 Q How do you know Mare and Tim?
18 A I have known them for about two years now. They
19 were professional contacts that I made in a networking
20 group we were a part of called BNI, which is Business
21 Networking International. It's a referral-based networking
22 group, and we're members, and -- my company was a member.
23 I own Low Country Maid Services, which is a housecleaning
24 company, and they own Castaway Charters and Vintage
25 Voyages, and Mare also became -- through the group, became

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1 one of my customers.
2 Q So do you do work for Mare and Tim now?
3 A Yes, we do.
4 Q And do you clean their house?
5 A Yes, we do.
6 Q When -- how often do you do that?
7 A Mare normally calls us about -- every three to
8 four months, she'll call -- she'll either, you know, call,
9 text, or email, and let me know she needs us to come in and
10 give her a cleaning. And we have also shampooed her
11 carpets twice for her.
12 Q Okay. Were the dogs, the two dogs we've been
13 talking about today, Bodi and Smiley -- were they in the
14 house --
15 A Yes, ma'am.
16 Q -- when you were there?
17 A I did her initial estimate in May of 2011, and I
18 actually went to the house. I do all of the estimates for
19 my homes. I went to the house. Both dogs were off-leash.
20 They were very friendly, came up to greet me. Mare gave me
21 treats to give to them, and they followed us throughout the
22 house as Mare -- as she was showing me the house.
23 Q Were you ever scared of these dogs, or were they
24 ever aggressive towards you?
25 A No, ma'am, and they've never been aggressive

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1 towards any of my cleaners either.
2 Q And they're -- have they always been there --
3 A Yes, ma'am.
4 Q -- when y'all have been at the house, cleaning?
5 A Yes, ma'am. They're there every time for the
6 cleaning, and then right before we get ready to mop her
7 hardwood floors, Mare takes them outside so they won't mess
8 up her floors.
9 Q Okay. Have you ever seen them attack anyone or
10 any other animal?
11 A No, ma'am. We -- in fact, we've shampooed her
12 carpets now twice, and the first time they were shampooed,
13 in -- last year -- 2012, Bodi followed me upstairs when I
14 went to go do it, and I was doing some floor work along the
15 baseboards, and he was just licking my face, and Mare had
16 to take him because he was just showing me too much
17 friendly attention
18 MS. SMITH: Thank you, Ms. White. That's
19 all I have.
20 CROSS-EXAMINATION
21 BY MR. GRUBER:
22 Q Ms. White, just the same two questions I've asked
23 everybody else. Were you at the appellants' house on July
24 4th?
25 A No, sir.

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1 Q Okay. And have you ever witnessed any direct
2 interaction between Bodi and Zoey?
3 A No, sir.
4 MR. GRUBER: No further questions.
5 THE COURT: All right. Thank you, Ms.
6 White. You can step down.
7 MS. SMITH: Judge, that's all I've got.
8 ---oOo---
9 THE COURT: All right. Mr. Gruber?
10 MR. GRUBER: Your Honor, at this point, I would
11 move for a directed verdict, if I can make my argument to
12 the Court?
13 THE COURT: You may.
14 MR. GRUBER: For what little it may be worth.
15 THE COURT: You may.
16 MR. GRUBER: Your Honor, I believe the standard
17 in this case -- and we discussed it very briefly a little
18 bit ago -- is that this is stylized as an administrative
19 appeal. It's an appeal of the administrative decision made
20 by the animal control officer, and it arises out of the
21 county ordinance. It is Section fourteen twenty --
22 14-35(c). That section states, "An animal control officer,
23 in his or her discretion, observes that a particular animal
24 is a dangerous animal as defined in this article, may
25 declare such animal a dangerous animal by delivering a

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1 written notice of declaration to the owner. The notice
2 shall include a description of the animal and the basis for
3 the declaration of dangerousness."
4 Now, if you go back and look at the definition of
5 a dangerous animal, which is earlier on in the code,
6 Section 14-26, it says that a "Dangerous animal means any
7 animal which the owner knows or reasonably should know has
8 a propensity, tendency, or disposition to attack
9 unprovoked, comma, cause injury, comma, or otherwise
10 endanger the safety of human beings or domestic animals."
11 While not contained within the county code
12 section, the state enabling legislation under the dangerous
13 animal act contains a definition for the term "injury."
14 It's found under Code Section 47-3-710, Subsection -- let's
15 see here -- Subsection "E", and it states, "As used in this
16 article, 'injury' or 'bodily injury' means, one, broken
17 bones; two, lacerations; three, punctures of the skin; or
18 four, any physical injuries resulting in death."
19 The testimony that's been presented to you thus
20 far can only lead to one determination, and that
21 determination is that the animal control officer was
22 justified in declaring Bodi to be a dangerous animal,
23 because Bodi attacked and killed Zoey. There has been
24 uncontroverted testimony that that event occurred, and
25 because that event occurred, Bodi's owner, the appellant,

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1 now knows or should know that it is possible and that her
2 dog, under those same situations, has a tendency to attack
3 and kill another animal, and we know that because it
4 occurred.
5 When you look at the standard that the appellants
6 bear in this matter -- and I would submit to the Court the
7 case of Waters v. South Carolina Land Resources
8 Conservation Commission. It's a supreme court case from
9 1996, Your Honor. In that case, the court stated that the
10 standard of review in these matters is as, quote, "This
11 court's review of the administrative agency's finding of
12 fact are limited. The court shall not substitute its
13 judgment for that of the agency as to the weight of the
14 evidence on questions of fact. A court can reverse an
15 agency's findings, inferences, conclusions, or decisions
16 only if they are ... 'clearly erroneous in view of the
17 reliable, probative, and substantial evidence on the whole
18 record,' or 'arbitrary or capricious or characterized by
19 abuse of discretion or clearly unwarranted exercise of
20 discretion.'"
21 I have not heard any testimony here today that
22 controverts that this event occurred, and if this event
23 occurred, the animal control officer is justified under
24 this ordinance in classifying this animal as a dangerous
25 animal, and for that reason, Your Honor, we would move for

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1 a directed verdict.

2 THE COURT: Ms. Smith?

3 MS. SMITH: Judge, I'll kind of go in reverse.

4 First and foremost, as to the standard of review, I think
5 that we have presented testimony that would cause a -- at
6 this point, that would lend itself to believe that she --
7 her decision was arbitrary and capricious, by her own
8 testimony. She at one time testified, she said, "I feel
9 that this animal has the propensity and tendency to do
10 that," and then she refers to testimony where she refers to
11 her supervisor, who made that determination; and she could
12 never provide a basis other than the one attack, not any
13 other investigation or assessment, or that she depended on
14 her supervisor, Mr. Hiers, who never testified, who never
15 provided any evidence, who never did an assessment. He
16 never even did a report as to why they made this
17 determination. And she could not -- the only thing that
18 she said was that the dog attacked Zoey, Bodi attacked
19 Zoey, and therefore was a dangerous animal, that my client
20 now has knowledge.

21 I don't believe that's what the law says. I
22 believe the law says there has to be -- a reasonable person
23 should know that the dog has a tendency or propensity,
24 which would be a natural inclination, to do this, and I
25 believe that that part of the statute -- I would move on a

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1 directed verdict on that, saying that they have not -- or
2 stating that they have not proven that element of the
3 statute. I don't believe that the statute, the ordinance,
4 was enacted with a knowledge element, saying that, "Well,
5 once we charge you with it, now you have knowledge." I
6 believe you're supposed to determine whether they have the
7 knowledge prior to this incident occurring, and I believe
8 that we presented here the testimony that a directed
9 verdict is not appropriate at this juncture.

10 MR. GRUBER: If I could briefly respond, Your
11 Honor, with the Court's indulgence?

12 THE COURT: You may.

13 MR. GRUBER: Your Honor, with regards to
14 interpretation of this statute, as I know you're very well
15 aware, one of the rules of statutory construction is that
16 you should never interpret a statute that would result in
17 an absurd conclusion. And what you're being asked to
18 determine is that the fact that this statute says
19 "knowledge" means that not only has one incident had to
20 have occurred, but, in fact, two incidents would've had to
21 have occurred before you could actually place this label on
22 an animal to keep a third instance from happening, and
23 that, Your Honor, is an absurd result.

24 The whole point of declaring the animal a
25 dangerous animal is to protect other animals and people

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1 from the incident occurring again. That's clear from the
2 face of the statute, that that's what this was intended to
3 do.

4 As far as the evidence that's been presented
5 today, the officer testified, and it's been uncontroverted,
6 that her basis for writing the citation was that the one
7 attack occurred, and that is the basis for her citation.
8 The statute and the language of the ordinance allows her to
9 base her determination upon that event. The fact that she
10 went back after meeting with the dog, reviewing it with her
11 supervisor, and then reaching that conclusion is
12 irrelevant. The statute does not say that you have to make
13 an immediate determination. It just states that you have
14 to find that the animal is a dangerous animal as defined in
15 the ordinance, and the officer did that based upon the
16 facts that have been uncontroverted today. Thank you.

17 THE COURT: All right. Ms. Smith, anything else?

18 MS. SMITH: No, Your Honor.

19 THE COURT: All right. At this moment, Mr.
20 Gruber, I'm going to deny your motion, and likewise Ms.
21 Smith's motion, and hear more testimony, hopefully,
22 specifically about what occurred on July 4th. And we've
23 had a lot of testimony about before and after that date,
24 and if you would like to continue now?

25 MR. GRUBER: Yes. Thank you, Your Honor.

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1 ---o0o---

2 MR. GRUBER: I'd call Ms. Germer to the
3 stand, please.

4 THE COURT: All right. Would you state your
5 name for the Court, please?

6 MS. GERMER: Sally M. Germer.

7 THE COURT: And would you spell your last
8 name for me?

9 MS. GERMER: G-e-r-m-e-r.

10 (WHEREUPON, SALLY M. GERMER, called as a
11 witness, having been first duly sworn, was examined and
12 testified as follows:)

13 DIRECT EXAMINATION

14 BY MR. GRUBER:

15 Q Good afternoon -- or good morning, still, Ms.
16 Germer. It seems to be getting a little longer in the day.
17 Where do you live?

18 A At the time of the incident, I lived at 1107 12th
19 Street. I owned that house, and I also owned the house at
20 the corner, which is a duplex, of 1022 11th Street, which
21 is where I live now.

22 Q And when you say "incident," are you referring to
23 the incident on July 4th?

24 A Yes.

25 Q Okay. Can you explain for the Court in your

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1 testimony what occurred on that day?
2 A I can. My husband and I were walking our two
3 dogs on leashes, and we passed -- the house at the corner
4 is a duplex, and we had vacation rentals, and we had guests
5 who were staying in the side that was at 1104 Madrid, and
6 so we stopped and chatted with those two people, and they
7 -- we talked about dogs.

8 And then we continued walking down the sidewalk
9 and got to -- crossed over 11th Street and got to the
10 corner where the fence of 1106 is, and Bodi rushed up to
11 the fence and started aggressively attacking the fence,
12 barking, jumping. His chest would come up to a level
13 higher than the fence, and he jumped a couple of times at
14 the fence, and then, when he got to the gate, he knocked
15 the gate open.

16 I immediately, with the leash, grabbed my dog,
17 the one that I was holding. I had Caye. Buddy had Zoey.
18 And Buddy reached down to try to get Zoey, and Bodi came
19 after her, and so he kicked Bodi in the head. And by that
20 time, Bodi had gotten Zoey, and she was making this
21 horrific, screaming noise. And he went to get -- try to
22 kick at the same time and get the dog, get our dog, and
23 finally got her up. And she's, like, frantic because she's
24 so scared, and he kicked Bodi one more time.

25 And Mare came out of the house, and on the porch,

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1 walking on a public sidewalk, and so we were confident that
2 it would be okay.

3 Q So you weren't in the appellant's property? You
4 were on --

5 A No.

6 Q -- standing on the public sidewalk?

7 A Yeah, we were.

8 Q Okay. How did Bodi come to get out on the
9 sidewalk where you were at?

10 A He knocked the gate open and came out.

11 Q And so that is where -- if you'd explain for the
12 Court where the attack occurred?

13 A It actually happened on the outer edge of the
14 sidewalk almost on the grass right at that tree. There's a
15 tree there, and that's where it happened.

16 Q Could you tell, after the incident occurred, if
17 Zoey had any injuries?

18 A The only blood I saw was my husband's blood,
19 because Zoey had grabbed him because she was so scared, and
20 the vet said that's a common thing. When dogs are
21 attacked, they're just going to reach out and grab whatever
22 they can, and I saw no blood on Zoey.

23 And what Marikay told me -- what the vet told me
24 when they were trying to get Zoey calm was that, when a big
25 dog attacks a little dog, it's not the external injuries

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1 she yelled at Bodi and said, "What happened?" and Buddy
2 said, "Your dog attacked our dog."

3 We turned around, and we went into the other side
4 of the duplex at 1022. We thought we could lay her down.
5 We couldn't. She was screaming. So I called the Port
6 Royal animal vet and explained what happened, and they
7 said, "We'll be right there." We couldn't put her down, so
8 we physically walked her to the vet's office, and they
9 pulled up maybe five, 10 minutes -- maybe not even 10
10 minutes later.

11 And we went inside, and they were trying to give
12 her morphine because they couldn't touch her. While they
13 were administering the second group of morphine, Marikay,
14 who's the vet, said, "What happened?" And I said, "The
15 neighbor's pit bull attacked her," and she said, "This
16 isn't Bodi, is it?" and I said, "Yes, it is." She said,
17 "You need to call the police and make a report," and that's
18 what I did. And the police came, and I made my report.

19 Q Did you in any way provoke Bodi to attack?

20 A No. You know, we always -- my husband and I
21 always thought this was pretty interesting. You know, we
22 have little dogs, and they bark, but those dogs -- our dogs
23 didn't bark when they would walk past that fence, and I
24 don't know if it was fear or what it was. We always were
25 confident that this fence would hold our dogs. We were

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1 you have to worry about. It's the internal injuries. And
2 what she -- what Bodi actually did to Zoey was puncture her
3 stomach, the outer lining of the wall of her stomach, and
4 compromise the intestines.

5 Q And do you know if that's what caused Zoey to
6 pass away?

7 A It is.

8 Q And that's what the vet told you?

9 A Yes.

10 Q Did you believe that it was possible for Bodi to
11 attack you?

12 A Oh, yeah. In fact, I was very glad I wasn't the
13 first, in front.

14 Q So you were scared?

15 A Yes, um-hum.

16 MR. GRUBER: I believe that's all the
17 questions I have for this witness, Your Honor.

18 THE COURT: Ms. Smith?

19 MS. SMITH: Just a couple of questions.

20 CROSS-EXAMINATION

21 BY MS. SMITH:

22 Q Ms. Germer, had Bodi ever attacked your dogs
23 before?

24 A Yes.

25 Q Where was that?

Bettye Anderson & Associates

Beaufort, South Carolina

843.525.0791 800.543.5506

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1 A In the yard of a neighbor. I was sitting on the
2 porch with Zoey in my lap, and Bodi came after her. I
3 immediately jumped up and walked out the front door and
4 didn't do that again.
5 Q Where was this? Which neighbor's?
6 A Alley, Adam's house, right behind.
7 Q Is this the incident we were talking about
8 before?
9 A Uh-huh.
10 Q Or that was testified to earlier today by my
11 client?
12 A Um-hum.
13 Q The same incident?
14 A Um-hum.
15 Q What was -- did your dogs not do anything? Did
16 they not bark, or any kind of interaction?
17 A Well, it was just Zoey. She was sitting on my
18 lap, and I -- she was in my arms. So I immediately grabbed
19 her when he went aggressive at her, and I left. I didn't
20 wait around.
21 Q Do you recall having a conversation with my
22 client about doing some training, getting these animals
23 together, prior to this?
24 A My dog didn't have a problem, and my dog weighs
25 five pounds.

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1 Q And I --
2 A This dog was aggressive toward my dog. Why would
3 I put a five-pound dog with a 60-pound dog?
4 Q And I am -- I'm asking you to answer my question.
5 A And I just did.
6 Q No, you didn't. I said did you -- do you recall
7 having a conversation --
8 A I do.
9 Q -- with my client. Okay. That's what I was
10 asking. Have you ever called Port Royal Police Department
11 or animal control about these dogs before?
12 A No.
13 Q Did you not feel threatened enough by the
14 previous incident you were talking about to call them about
15 the dog?
16 A I just didn't put myself back in that position.
17 Q How often did you walk by my client's house?
18 A I walked on the public sidewalk often, daily,
19 several times a day.
20 Q Are you aware of any other -- strike that. Had
21 the dog ever attacked you or caused an injury to you prior
22 to this day?
23 A No, he just attacked the fence.
24 Q And when you say "attack," you said that he
25 approaches the fence, and he barks?

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1 A No, he's aggressive. He is -- he aggressively,
2 viciously rushes the fence.
3 Q Okay. Can you explain that in a little more
4 detail as to what that -- what you're calling "aggressive?"
5 He runs towards the fence when people are walking by? Is
6 that correct?
7 A No, that's not correct. He -- he rushes the
8 fence.
9 Q Okay. Have you ever seen him jump over the fence
10 or through the fence or --
11 A No.
12 Q -- anything like that?
13 A (Witness shakes head; no verbal response.)
14 MS. SMITH: I have nothing further for this
15 witness.
16 THE COURT: Mr. Gruber, anything else?
17 MR. GRUBER: One quick question, Your Honor.
18 THE COURT: Okay.
19 REDIRECT EXAMINATION
20 BY MR. GRUBER:
21 Q On the day that this incident occurred on July
22 4th, you were on the public sidewalk; correct?
23 A Yes.
24 MR. GRUBER: No further questions, Your
25 Honor.

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EXAMINATION

1 BY THE COURT:
2 Q Ms. Germer, let me ask you one more thing, if I
3 can find it, and it refers to the previous testimony from
4 Ms. Baracco. Let's see. Ms. Baracco testified earlier
5 that Zoey was very aggressive to Bodi, and you just
6 testified that Bodi had been aggressive toward your dog,
7 and my question is, when did this meeting occur? Was this
8 --
9 A I can't give you an exact date. It was before.
10 It was before.
11 Q I think Ms. Baracco said it was months prior to
12 this incident; is that correct? Is that --
13 A I think that would be -- yeah.
14 Q Okay. Again, I'm just trying to get all the --
15 the time frame consistent. So this was months before when
16 whatever happened at this encounter between Zoey and Bodi?
17 A Yes, sir.
18 THE COURT: Okay. Thank you. That's it.
19 WITNESS: Okay.
20 THE COURT: And Mr. Gruber, do you have
21 another witness?
22 MR. GRUBER: I do. One more, Your Honor.
23 THE COURT: All right.
24 MR. GRUBER: Mr. Germer.
25

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1 MS. GERMER: Mr. Brown.
2 MR. GRUBER: Mr. Brown. I apologize.
3 THE COURT: Mr. Brown, would you state your
4 full name for the record?
5 MR. BROWN: Homer Brown.
6 (WHEREUPON, HOMER BROWN, called as a
7 witness, having been first duly sworn, was examined and
8 testified as follows:)
9 DIRECT EXAMINATION
10 BY MR. GRUBER:
11 Q Good morning, Mr. Brown.
12 A Good morning.
13 Q Where do you currently live?
14 A 1022 11th Street, now. But those days, we lived
15 at 1107 12th Street.
16 Q And on July 4th, where did you live?
17 A 1107 12th Street.
18 Q And can you tell the Court your explanation of
19 events that occurred on July 4th?
20 A Sure. We go for a lot of walks, and we usually
21 stop by and see Tom and Mary at the corner. And we had
22 both dogs out that morning, and normally, Sally would walk
23 Zoey. This morning, I had Zoey. And we stopped and talked
24 to the guests that were in our house and continued down the
25 sidewalk.

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1 And the dog had -- their dog had a tendency to
2 jump at the fence, and we usually just scoot around it on
3 the right side of the sidewalk. And Zoey was beside me,
4 and the dog, you know, lunged at the -- at the fence, and
5 we continued just to scoot around, because, see, the --
6 because, you know, we didn't think the gate would be open
7 -- and wasn't fast enough. And the dog broke through the
8 gate between where Zoey was, on the grass part, between the
9 sidewalk and the street, and before I could kick it and get
10 it away from Zoey, she had attacked and -- and the -- done
11 the damage to Zoey.
12 And I -- so I kicked the dog, and then Mare comes
13 out of the house and said, "What happened?" I said, "Your
14 blankety-blank dog just attacked Zoey," and I was trying to
15 get care of Zoey. And I don't know what happened to their
16 dog, or her, or anything. I was just trying to get Zoey in
17 my hand. She was on a leash. Both of them were on the
18 leash, and very close to me, but I wasn't fast as that dog
19 was.
20 And -- and, you know, then we took the dog back
21 up to the house to try and figure it out. She was biting
22 me because she was in so much pain, and we couldn't see a
23 whole lot of damage. We were hoping that I was fast
24 enough, but we couldn't put her down, couldn't move her,
25 because she was screaming, and we walked up the street to

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1 the vet's.
2 Q So Zoey was injured as a result of that
3 encounter?
4 A Absolutely.
5 Q And what happened as a result of that injury?
6 A She passed away the 5th, the next day. We had --
7 we thought we got there fast enough, and we were hoping the
8 surgery would take care of it, and I know the vets did all
9 they could. You know, there must've been some sort of
10 infection. I don't know.
11 Q And during this encounter, did you ever believe
12 that you may be attacked?
13 A I wasn't -- I was so concerned about the dog, I
14 really didn't care. You know, I just assumed the dog would
15 attack me, but it -- you know, it wasn't really anything I
16 was thinking about at the time.
17 Q Did you believe that it was possible for the dog
18 to have attacked you?
19 A Oh, absolutely.
20 Q And were you in any kind of fear or apprehension
21 as a result of that possibility?
22 A Not at the time. I was too focused on protecting
23 Zoey.
24 MR. GRUBER: No further questions, Your
25 Honor.

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1 THE COURT: All right. Ms. Smith?
2 MS. SMITH: Just one question.
3 CROSS-EXAMINATION
4 BY MS. SMITH:
5 Q Mr. Brown, you just testified that it was a
6 possibility the dog would -- you believe there was a
7 possibility the dog would attack you?
8 Q I thought --
9 A Is that correct?
10 A (Witness nods head; no verbal response.)
11 Q Why was that?
12 A Because every time I -- you know, I'd walk down
13 the sidewalk, the dog would attack the fence, and, you
14 know, that's the only thing I can say. He wasn't very
15 friendly --
16 Q When you --
17 A -- towards --
18 Q I'm sorry.
19 A It wasn't very friendly towards people that I
20 know.
21 Q And when you say "attack the fence," do you mean
22 running and barking?
23 A Aggressively jumping at the fence, trying to
24 lunge at you.
25 Q Did it ever make it over the fence or touch you

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1 or attack you?
2 A I was never that close to the fence. I always,
3 you know, got to the far side, and he couldn't reach that
4 far, not that I knew of.
5 Q Were you closer to the fence on the day in
6 question that --
7 A No, we --
8 Q -- we were just talking about?
9 A We always go to the far side of the sidewalk.
10 MS. SMITH: Judge, I don't have anything
11 further of this witness. Thank you.
12 THE COURT: Mr. Gruber?
13 MR. GRUBER: No redirect, Your Honor.
14 EXAMINATION
15 BY THE COURT:
16 Q Let me ask you, sir, Mr. Brown, when you said
17 that you called the vet --
18 A No, Sally called. I was holding the dog. I
19 couldn't call.
20 Q Okay. What was the -- what vet did you call?
21 A Port Royal animal hospital, and that was on a --
22 was the 4th a Sunday? I don't remember, but they came over
23 pretty quickly:
24 Q And that is --
25 A And we walked up the street.

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1 Q That's right on Paris Avenue; right?
2 A Yeah. Yeah. We walked from our house --
3 Q Blocks?
4 A -- up the street.
5 Q Blocks? Maybe two, three blocks away?
6 A Probably, yeah, at least.
7 Q And somebody from the vet's office came to your
8 house?
9 A No, that's -- we met them at the vet.
10 Q You met them at the vet?
11 A Yeah. Yeah, because we knew she needed some
12 serious surgery, or whatever. They needed to --
13 Q Right. I was unclear whether the --
14 A Yeah.
15 Q -- vet came to you or you went to the vet.
16 A No.
17 Q Either way, it's very close?
18 A Yeah.
19 Q Okay.
20 A Thank you, sir.
21 THE COURT: Thank you.
22 MR. GRUBER: I have no further witnesses,
23 Your Honor.
24 ---o0o---
25 THE COURT: All right. At this time, if you

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1 would -- Ms. Smith, if you would argue the rule to show
2 cause motion here and let Mr. Gruber respond?
3 MS. SMITH: Judge, this is an unfortunate
4 incident. It's a one-time accident. I'm not saying -- I
5 believe that Counsel earlier said that you get three
6 strikes, essentially, before you can be deemed a dangerous
7 animal, is the way that I'm reading the law. This was an
8 accident, but nothing -- this had not occurred before.
9 There has been no testimony today that this dog, Bodi, who
10 belonged to Mare Baracco and Tim Deckard -- that he had
11 been involved in anything like this before, that he had
12 attacked another animal or a person, before or since this
13 incident occurred.
14 We do not dispute that because of the interaction
15 between these dogs, whether it be a puncture wound or some
16 sort of internal bleeding based on the roughhousing that
17 was going on at the fence line, resulted in the death of
18 Zoey, the Germer-Brown's dog. We don't dispute that that
19 occurred that day.
20 We do dispute whether the attack was -- if you
21 want to call it an attack -- unprovoked, as there was
22 testimony that they were walking right next to the fence
23 for some period of time, and their dog was actually at the
24 fence and going through the fence, the slats in the fence,
25 barking at my client's dog. There were four dogs out

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1 there. I find it hard to believe that they all weren't
2 barking at one another and jumping at the fence. That's
3 what normal dogs do. The other thing that's been made --
4 so our argument there would be that this was not an
5 unprovoked attack.
6 And based on my client's testimony that she had
7 had an encounter with Ms. Brown, who tells a very different
8 story, some eight months later -- eight months prior, with
9 their dogs acting aggressively towards one another,
10 specifically Zoey acting that way towards Mare's dog, Bodi,
11 that -- that that's precisely what happened that day, that
12 Zoey was actually provoking Bodi; whether it be barking --
13 I don't think this is a small dog versus little dog -- or
14 small dog versus big dog case.
15 Small dogs can be just as aggressive and loud and
16 energetic as a big dog. That doesn't mean -- I mean, I
17 think we're focusing on that. That's not the issue here
18 today. A small dog can still provoke a bigger dog to
19 engage them by barking, nipping, whatever. I've watched it
20 happen. We all have. I don't think it's because the
21 Germer-Browns had a small dog that my client's dog attacked
22 them. We had testimony from Mike Culligan that he and his
23 wife's Chihuahua played with the dog constantly and, up
24 until a couple of months ago, was very loving and
25 affectionate for it, and it was -- I should say, not an

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1 aggressive dog, but a very -- it had a lot of emotion and
2 played with the dog. So I think that putting the focus on
3 that is definitely not where we should be.

4 The other point that I have, and this is the way
5 that I am interpreting the statute, is that it requires
6 that the animal owner have knowledge or reasonably know
7 that their dog has a tendency, propensity, or inclination
8 to attack another dog. I believe that that knowledge
9 requirement -- that you cannot charge someone with
10 something and say, "Well, now you have knowledge." I think
11 that knowledge was required beforehand, that they had to
12 have known that their dog would behave in such a manner,
13 that their dog was aggressive.

14 A lot of times, in most dangerous animal cases
15 we see, you have pit bulls that people have chained up in
16 pens, and the reason they're there is because they will get
17 -- I mean, they have gotten out, and they have bitten a
18 child, or had a tendency to get loose out of their fence
19 and that type of thing. That's not the case here. These
20 dogs were never outside their fence when they weren't on a
21 leash. There's been numerous testimony to that. They
22 weren't jumping over a fence that they could've easily
23 cleared. One of our witnesses testified it's shorter on
24 one side. If they wanted to get out, they could have.

25 I think that that knowledge requirement is

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1 important. If we go by the interpretation they're trying
2 to give to this statute, if my dog gets -- and I don't have
3 a dog, but if my dog is tussling around with another dog
4 and bites it on its arm, that dog can be declared a
5 dangerous animal because it attacked another dog. That's
6 not what this statute is here for, and I think it does
7 require knowledge of an inclination or a tendency, or a
8 strong urge or propensity, to behave in that way, in a way
9 to attack other dogs or to believe that that dog would
10 attack other human beings, and that is not the case here..

11 There is no testimony that my clients ever
12 thought in a million years that their dog would've done
13 this that day. They have gone to every length imaginable,
14 trying to make sure that these dogs behave in a -- in a
15 normal manner, and even above that, going to a behaviorist.
16 They didn't just take these dogs because they had problems.
17 They've been raising rescue dogs -- Mare has -- for 30
18 years, and have been taking their dogs to places, as the
19 Doggie Lama, the Bark Shack. Kevin McHale, who could not
20 be here today, was going to testify to the same. He was
21 the trainer, or the behaviorist, that these dogs have been
22 sent to. They've taken every imaginable step to avoid
23 something just like this, which, unfortunately, was an
24 accident, and I don't believe that the dog should be deemed
25 dangerous as a result of an unfortunate incident that

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1 occurred that no one could've predicted would've happened
2 that day. Thank you, Judge..

3 THE COURT: Thank you, Ms. Smith. And Mr.
4 Gruber?

5 MR. GRUBER: Thank you, Your Honor. And I will
6 be try to be -- because I know a number of these you
7 already heard in my motion for a directed verdict, but I do
8 want to go back, and I want to begin with making sure that
9 the Court clearly understands what the level of review is
10 in this case. And as I stated, I do believe that Waters v.
11 South Carolina Land Resources Conservation Commission is
12 certainly persuasive in this matter.

13 In that case, it states that the burden is on the
14 appellants to convincingly prove that the agency's decision
15 is not only unsupported by the evidence, but is to the
16 level that it has to be found to be "clearly erroneous in
17 view of the reliable, probative, and substantial effort on
18 the whole record," or is either "arbitrary or capricious or
19 characterized by abuse of discretion."

20 That court went on to further state that just a
21 scintilla of evidence on its face does not meet that
22 definition. It says, "Substantial evidence is not a mere
23 scintilla ... nor evidence viewed blindly from one side,
24 but evidence which, when considering the record as a whole,
25 would allow reasonable minds to reach the conclusions that

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1 the agency reached... The possibility of drawing two
2 inconsistent conclusions from the evidence will not mean
3 the agency's conclusion was unsupported by substantial
4 evidence."

5 I'm not going to sit here and tell Your Honor
6 that this dog tries to attack every animal that's around,
7 or every person that's around. Obviously, it doesn't. I'm
8 not going to sit here and try to prove that to you. But
9 what is uncontroverted is that Bodi attacked and killed
10 Zoey. There's been no evidence to say that did not occur.
11 You know, there was no evidence to say that Zoey was hit by
12 a car or, you know, struck down with a disease. It is
13 uncontroverted that Bodi bit Zoey, which led to the death
14 of Zoey.

15 And when you look at the definition and the
16 language contained in the county's ordinance and in the
17 state enabling legislation, that action clearly is the kind
18 of action that was contemplated under this statute as
19 giving rise to the need to declare an animal to be a
20 dangerous animal. I disagree with Ms. Smith's contention
21 that this is some kind of charge that her client has to be
22 on prior notice of, prior to being charged with it. That
23 is not what this is. This is a labeling or a determination
24 that comes about as a result of an incident. I spoke
25 earlier about, you know, the absurd result that would occur

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1 if you adopted their interpretation in that you would have
2 to have no less than two previous attacks before you could
3 declare an animal dangerous, and what is the intent of
4 declaring an animal dangerous?

5 Well, if you look at what has to happen, once
6 that label has been placed on the animal, what happens
7 following that is a series of precautions, or preventative
8 steps and precautions, that the animal owner must undertake
9 to ensure that the attack does not occur again. The dog
10 has to be -- and I'll read them off the report here. You
11 have to keep the animal microchipped. You have to pay --
12 I'm sorry, you have to keep the animal under restraint at
13 all times. I believe you may have to keep the animal --
14 may have to keep them under confinement any time they go
15 off the property. All of those -- you have to post a sign
16 that says beware of the animal, and I believe you also must
17 have to provide liability insurance on your home.

18 But all of those requirements are requirements to
19 prevent this situation from occurring again, and so long as
20 the officer had substantial evidence -- even if it could be
21 viewed in different lights, so long as the officer had
22 substantial evidence to make her determination, this Court
23 must as a matter of law uphold the officer's determination.
24 Thank you, Your Honor.

25 THE COURT: Anything else?

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1 determination is the fact the attack occurred. Thank you,
2 Your Honor.

3 THE COURT: All right. Thank you both. Thank
4 you all. I am going to take this under advisement and
5 review the testimony, review the county ordinance, and Mr.
6 Gruber, if you would provide me with a copy of the Waters
7 opinion.

8 MR. GRUBER: I've got everything in there, Your
9 Honor, and I've already provided a copy to Counsel.

10 THE COURT: And I will render a decision soon and
11 let you know.

12 MR. GRUBER: Thank you, Your Honor.

13 MS. SMITH: Thank you, Your Honor.

14 THE COURT: And we're adjourned.

15 (WHEREUPON, this hearing was concluded at
16 approximately 11:55 a.m.)

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1 MS. SMITH: Just a brief rebuttal.

2 THE COURT: Okay.

3 MS. SMITH: Just addressing, you know, what he
4 discussed, the animal patrol officer -- Officer Chaplin's
5 determination for deeming the dog a dangerous animal, I
6 don't believe that she really provided a basis for her
7 determination, besides the altercation.

8 She actually stated in her initial statement,
9 assessment, and investigation that she did not think the
10 dog was dangerous and was actually impressed with its
11 behavior. And then, subsequently, based on her
12 supervisor's education and experience with dogs, they
13 changed that determination, yet he is not here to testify.
14 He has not submitted any reports, and no other witnesses or
15 supervisors from animal control have presented testimony as
16 to why that assessment changed, and I would just like to
17 make that point for the Court, because other than the
18 attack, she has no other basis for the dangerous animal --
19 deeming it a dangerous animal; nor did her supervisor, who
20 apparently felt so strongly to change her opinion on this,
21 or to change her assessment, come and ever interview my
22 clients, visit the dogs in question, either my clients'
23 dogs or the Germer-Brown's. Thank you.

24 MR. GRUBER: Your Honor, extremely briefly, the
25 sole basis necessary for the officer to make that

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1 STATE OF SOUTH CAROLINA

2 COUNTY OF BEAUFORT

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CERTIFICATE OF COURT REPORTER

I, Matthew Hazen Anderson, Court Reporter and Notary
Public in and for the State of South Carolina, do hereby
certify that the foregoing one hundred fifteen (115) pages
of typewritten testimony were taken down by me, and then
transcribed by me; that the same is a true, correct and
complete transcript of the proceedings as stated in the
caption.

I further certify that I am not of kin nor counsel to
any of the parties hereto, and, further, that I have no
interest whatsoever in the outcome of said proceedings.

IN WITNESS WHEREOF, I have hereunto set my hand and
seal this 2nd day of April, 2013.

NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires

April 25, 2021

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Betty Anderson & Associates

Beaufort, South Carolina
843.525.0791 800.543.5506

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Bettye Anderson & Associates
Beaufort, South Carolina
843.525.0791 800.543.5506

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Bettye Anderson & Associates

Beaufort, South Carolina
843.525.0791 800.543.5506

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Bettye Anderson & Associates

Beaufort, South Carolina
843.525.0791 800.543.5506

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Bettye Anderson & Associates
Beaufort, South Carolina
843.525.0791 800.543.5506

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Bettye Anderson & Associates
Beaufort, South Carolina
843.525.0791 800.543.5506

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South Carolina vs. Baracco

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Exhibit 2

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

MARE BARACCO

vs.

STATE OF SOUTH CAROLINA.

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

ORDER

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

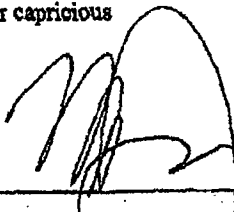
The Appellant appealed the Order of the Magistrate Court dated March 13, 2013 finding the dog, "Bodi" owned by Mare Baracco to be a "Dangerous Animal" pursuant to the Beaufort County Code of Ordinance Sec 14 -35. The issues raised by the pleadings concern whether the Magistrate Court erred as a matter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

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

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

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

THEREFORE, the Appeal is denied.


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

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

SECTION 1-23-380. Judicial review upon exhaustion of administrative remedies.

A party who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review pursuant to this article and Article 1. This section does not limit utilization of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by law. A preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy. Except as otherwise provided by law, an appeal is to the court of appeals.

(1) Proceedings for review are instituted by serving and filing notice of appeal as provided in the South Carolina Appellate Court Rules within thirty days after the final decision of the agency or, if a rehearing is requested, within thirty days after the decision is rendered. Copies of the notice of appeal must be served upon the agency and all parties of record.

(2) Except as otherwise provided in this chapter, the serving and filing of the notice of appeal does not itself stay enforcement of the agency decision. The serving and filing of a notice of appeal by a licensee for review of a fine or penalty or of its license stays only those provisions for which review is sought and matters not affected by the notice of appeal are not stayed. The serving or filing of a notice of appeal does not automatically stay the suspension or revocation of a permit or license authorizing the sale of beer, wine, or alcoholic liquor. The agency may grant, or the reviewing court may order, a stay upon appropriate terms, upon the filing of a petition under Rule 65 of the South Carolina Rules of Civil Procedure.

(3) If a timely application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon conditions determined by the court. The agency may modify its findings and decision by reason of the additional evidence and shall file the evidence and modifications, new findings, or decisions with the reviewing court.

(4) The review must be conducted by the court and must be confined to the record. In cases of alleged irregularities in procedure before the agency, not shown in the record, and established by proof satisfactory to the court, the case may be remanded to the agency for action as the court considers appropriate.

(5) The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;

(c) made upon unlawful procedure;

(d) affected by other error of law;

(e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or

(f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

HISTORY: 1977 Act No. 176, Art. II, Section 8; 1993 Act No. 181, Section 18; 2006 Act No. 387, Section 2, eff July 1, 2006; 2008 Act No. 334, Section 5, eff June 16, 2008.

South Carolina Legislature

South Carolina Law > Code of Laws > Title 1

South Carolina Code of Laws Unannotated Current through the end of the 2014 Session

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Title 1 - Administration of the Government

CHAPTER 23

State Agency Rule Making and Adjudication of Contested Cases

ARTICLE 1

State Register and Code of Regulations

SECTION 1-23-10. Definitions.

As used in this article:

- (1) "Agency" or "State agency" means each state board, commission, department, executive department or officer, other than the legislature, the courts, the South Carolina Tobacco Community Development Board, or the Tobacco Settlement Revenue Management Authority, authorized by law to make regulations or to determine contested cases;
- (2) "Document" means a regulation, notice or similar instrument issued or promulgated pursuant to law by a state agency;
- (3) "Person" means any individual, partnership, corporation, association, governmental subdivision or public or private organization of any character other than an agency;
- (4) "Regulation" means each agency statement of general public applicability that implements or prescribes law or policy or practice requirements of any agency. Policy or guidance issued by an agency other than in a regulation does not have the force or effect of law. The term "regulation" includes general licensing criteria and conditions and the amendment or repeal of a prior regulation, but does not include descriptions of agency procedures applicable only to agency personnel; opinions of the Attorney General; decisions or orders in rate making, price fixing, or licensing matters; awards of money to individuals; policy statements or rules of local school boards; regulations of the National Guard; decisions, orders, or rules of the Board of Probation, Parole, and Pardon Services; orders of the supervisory or administrative agency of a penal, mental, or medical institution, in respect to the institutional supervision, custody, control, care, or treatment of inmates, prisoners, or patients; decisions of the governing board of a university, college, technical college, school, or other educational institution with regard to curriculum, qualifications for admission, dismissal and readmission, fees and charges for students, conferring degrees and diplomas, employment tenure and promotion of faculty and disciplinary proceedings; decisions of the Human Affairs Commission relating to firms or individuals; advisory opinions of agencies; and other agency actions relating only to specified individuals.
- (5) "Promulgation" means final agency action to enact a regulation after compliance with procedures prescribed in this article.
- (6) "Office" means the Office of Research and Statistics of the Revenue and Fiscal Affairs Office.
- (7) "Substantial economic impact" means a financial impact upon:
 - (a) commercial enterprises;
 - (b) retail businesses;
 - (c) service businesses;
 - (d) industry;
 - (e) consumers of a product or service;
 - (f) taxpayers; or
 - (g) small businesses as defined in Section 1-23-270.

HISTORY: 1977 Act No. 176, Art. I, Section 1; 1992 Act No. 507, Section 2; 1996 Act No. 411, Section 1; 1999 Act No. 77, Section 2; 2000 Act No. 387, Part II, Section 69A.3; 2004 Act No. 231, Section 3, eff January 1, 2005.

SECTION 1-23-20. Custody, printing and distribution of documents charged to Legislative Council; establishment of State Register.

The Legislative Council is charged with the custody, printing and distribution of the documents required or authorized to be published in this article and with the responsibility for incorporating them into a State Register. Such Register shall include proposed as well as finally adopted documents required to be filed with the Council;

provided, however, that publication of a synopsis of the contents of proposed regulations meets the requirements of this section. Additions to the State Register shall be published by the Legislative Council at least once every thirty days.

HISTORY: 1977 Act No. 176, Art. I, Section 2.

SECTION 1-23-30. Filing of documents with Legislative Council; public inspection; distribution.

The original and either two additional originals or two certified copies of each document authorized or required to be published in the State Register by this article shall be filed with the Legislative Council by the agency by which it is promulgated. Filing may be accomplished at all times when the Council office is open for official business.

The Council shall note upon each document filed the date and hour of filing and shall as soon as practicable publish such document in the State Register. Copies of all documents filed shall be available at the Council office for public inspection during office hours.

The Council shall transmit to the Clerk of Court of each county a copy of the State Register and all additions thereto when published. Clerks of Court shall maintain their copies of the Register in current form and provide for public inspection thereof. The Council shall transmit one original or certified copy of each document filed with the Council to the Department of Archives and History which shall be made available for public inspection in the office of the department.

HISTORY: 1977 Act No. 176, Art. I, Section 3.

SECTION 1-23-40. Documents required to be filed and published in State Register.

There shall be filed with the Legislative Council and published in the State Register:

(1) All regulations promulgated or proposed to be promulgated by state agencies which have general public applicability and legal effect, including all of those which include penalty provisions. Provided, however, that the text of regulations as finally promulgated by an agency shall not be published in the State Register until such regulations have been approved by the General Assembly in accordance with Section 1-23-120.

(2) Any other documents, upon agency request in writing. Comments and news items of any nature shall not be published in the Register.

HISTORY: 1977 Act No. 176, Art. I, Section 4.

SECTION 1-23-50. Legislative Council to establish procedures.

The Legislative Council shall establish procedures for carrying out the provisions of this article relating to the State Register and the form and filing of regulations. These procedures may provide among other things:

(1) The manner of certification of copies required to be filed under Section 1-23-40;

(2) The manner and form in which the documents or regulations shall be printed, reprinted, compiled, indexed, bound and distributed, including the compilation of the State Register ;

(3) The number of copies of the documents, regulations or compilations thereof, which shall be printed and compiled, the number which shall be distributed without charge to members of the General Assembly, officers and employees of the State or state agencies for official use and the number which shall be available for distribution to the public;

(4) The prices to be charged for individual copies of documents or regulations and subscriptions to the compilations and reprints and bound volumes of them.

HISTORY: 1977 Act No. 176, Art. I, Section 5; 1979 Act No. 188, Section 2.

SECTION 1-23-60. Effect of filing and of publication of documents and regulations; rebuttable presumption of compliance; judicial notice of contents.

A document or regulation required by this article to be filed with the Legislative Council shall not be valid against a person who has not had actual knowledge of it until the document or regulation has been filed with the office of the Legislative Council, printed in the State Register and made available for public inspection as provided by this article. Unless otherwise specifically provided by statute, filing and publication of a document or regulation in the State Register as required or authorized by this article is sufficient to give notice of the contents of the document or regulation to a person subject to or affected by it. The publication of a document filed in the office of the Legislative Council creates a rebuttable presumption:

(1) That it was duly issued, prescribed or promulgated subject to further action required under this article;

(2) That it was filed and made available for public inspection at the day and hour stated in the printed notation thereon required under Section 1-23-30;

(3) That the copy on file in the Legislative Council is a true copy of the original;

The contents of filed documents shall be judicially noticed and, without prejudice to any other mode of citation, may be cited by volume and page number or the numerical designation assigned to it by the Legislative Council.

HISTORY: 1977 Act No. 176, Art. I, Section 6.

SECTION 1-23-70. Duty of Attorney General.

The Attorney General shall be responsible for the interpretation of this article and for the compliance by agencies required to file documents with the Legislative Council under the provisions of this article and shall upon request advise such agencies of necessary procedures to insure compliance therewith.

HISTORY: 1977 Act No. 176, Art. I, Section 7.

SECTION 1-23-80. Costs incurred and revenues collected by Legislative Council.

The cost of printing, reprinting, wrapping, binding and distributing the documents, regulations or compilations thereof, including the State Register, and other expenses incurred by the Legislative Council in carrying out the duties placed upon it by this article shall be funded by the appropriations to the council in the annual state general appropriations act. All revenue derived from the sale of the documents and regulations shall be deposited in the general fund of the State.

HISTORY: 1977 Act No. 176, Art. I, Section 8.

SECTION 1-23-90. Complete codifications of documents; Code of State Regulations designated.

(a) The Legislative Council may provide for, from time to time as it considers necessary, the preparation and publication of complete codifications of the documents of each agency having general applicability and legal effect, issued or promulgated by the agency which are relied upon by the agency as authority for, or are invoked or used by it in the discharge of, its activities or functions.

(b) A codification published under item (a) of this section shall be designated as the "Code of State Regulations". The Legislative Council may regulate the binding of the printed codifications into separate books with a view to practical usefulness and economical manufacture. Each book shall contain an explanation of its coverage and other aids to users that the Legislative Council may require. A general index to the entire Code of State Regulations may be separately printed and bound.

(c) The Legislative Council shall regulate the supplementation and republication of the printed codifications with a view to keeping the Code of State Regulations as current as practicable.

(d) The authority granted in this section is supplemental to and not in conflict with the establishment of the State Register as provided for in other provisions of this article.

HISTORY: 1977 Act No. 176, Art. I, Section 9.

SECTION 1-23-100. Exemptions for Executive Orders, proclamations or documents issued by Governor's Office; treatment of some Executive Orders for information purposes.

This article shall not apply to Executive Orders, proclamations or documents issued by the Governor's Office. However, Governor's Executive Orders, having general applicability and legal effect shall be transmitted by the Secretary of State to the Legislative Council to be published in a separate section of the State Register for information purposes only. Such orders shall not be subject to General Assembly approval.

HISTORY: 1977 Act No. 176, Art. I, Section 10.

SECTION 1-23-110. Procedures for publication of notice of proposed promulgation of regulations; public participation; contest of regulation for procedural defects.

(A) Before the promulgation, amendment, or repeal of a regulation, an agency shall:

(1) give notice of a drafting period by publication of a notice in the State Register. The notice must include:

(a) the address to which interested persons may submit written comments during the initial drafting period before the regulations are submitted as proposed;

(b) a synopsis of what the agency plans to draft;

(c) the agency's statutory authority for promulgating the regulation;

(2) submit to the office, no later than the date the notice required in item (3) is published in the State Register, a preliminary assessment report prepared in accordance with Section 1-23-115 on regulations having a substantial economic impact;

(3) give notice of a public hearing at which the agency will receive data, views, or arguments, orally and in writing, from interested persons on proposed regulations by publication of a notice in the State Register if requested by twenty-five persons, by a governmental subdivision or agency, or by an association having not less than twenty-five members. The notice must include:

(a) the address to which written comments must be sent and the time period of not less than thirty days for submitting these comments;

(b) the date, time, and place of the public hearing which must not be held sooner than thirty days from the date the notice is published in the State Register;

(c) a narrative preamble and the text of the proposed regulation. The preamble shall include a section-by-section discussion of the proposed regulation and a justification for any provision not required to maintain compliance with federal law including, but not limited to, grant programs;

(d) the statutory authority for its promulgation;

(e) a preliminary fiscal impact statement prepared by the agency reflecting estimates of costs to be incurred by the State and its political subdivisions in complying with the proposed regulation. A preliminary fiscal impact statement is not required for those regulations which are not subject to General Assembly review under Section 1-23-120;

(f) a summary of the preliminary assessment report submitted by the agency to the office and notice that copies of the preliminary report are available from the agency. The agency may charge a reasonable fee to cover the costs associated with this distribution requirement. A regulation that does not require an assessment report because it does not have a substantial economic impact, must include a statement to that effect. A regulation exempt from filing an assessment report pursuant to Section 1-23-115(E) must include an explanation of the exemption;

(g) statement of the need and reasonableness of the regulation as determined by the agency based on an analysis of the factors listed in Section 1-23-115(C)(1) through (11). At no time is an agency required to include items (4) through (8) in the reasonableness and need determination. However, comments related to items (4) through (8) received by the agency during the public comment periods must be made part of the official record of the proposed regulations.

(h) the location where a person may obtain from the agency a copy of the detailed statement of rationale as required by this item. For new regulations and significant amendments to existing regulations, an agency shall prepare and make available to the public upon request a detailed statement of rationale which shall state the basis for the regulation, including the scientific or technical basis, if any, and shall identify any studies, reports, policies, or statements of professional judgment or administrative need relied upon in developing the regulation. This subitem does not apply to regulations which are not subject to General Assembly review under Section 1-23-120.

(B) Notices required by this section must be mailed by the promulgating agency to all persons who have made timely requests of the agency for advance notice of proposed promulgation of regulations.

(C)(1) The agency shall consider fully all written and oral submissions respecting the proposed regulation.

(2) Following the public hearing and consideration of all submissions, an agency must not submit a regulation to the General Assembly for review if the regulation contains a substantive change in the content of regulation as proposed pursuant to subsection (A)(3) and the substantive change was not raised, considered, or discussed by public comment received pursuant to this section. The agency shall refile such a regulation for publication in the State Register as a proposed regulation pursuant to subsection (A)(3).

(D) A proceeding to contest a regulation on the ground of noncompliance with the procedural requirements of this section must be commenced within one year from the effective date of the regulation.

HISTORY: 1977 Act No. 176, Art. I, Section 11; 1980 Act No. 442, Section 1; 1985 Act No. 190, Section 2; 1988 Act No. 605, Section 1; 1989 Act No. 91, Section 1; 1992 Act No. 507, Section 3; 1993 Act No. 181, Section 11; 1996 Act No. 411, Sections 2, 3; 2002 Act No. 231, Section 1; 2007 Act No. 104, Section 1, eff July 1, 2008.

SECTION 1-23-111. Regulation process; public hearings; report of presiding official; options upon unfavorable determination.

(A) When a public hearing is held pursuant to this article involving the promulgation of regulations by a department for which the governing authority is a single director, it must be conducted by an administrative law judge assigned by the chief judge. When a public hearing is held pursuant to this article involving the promulgation of regulations by a department for which the governing authority is a board or commission, it must be conducted by the board or commission, with the chairman presiding. The administrative law judge or chairman, as the presiding official, shall ensure that all persons involved in the public hearing on the regulation are treated fairly and impartially. The agency shall submit into the record the jurisdictional documents, including the statement of need and reasonableness as determined by the agency based on an analysis of the factors listed in Section 1-23-115(C)(1) through (11), except items (4) through (8), and any written exhibits in support of the proposed regulation. The agency may also submit oral evidences. Interested persons may present written or oral evidence. The presiding official shall allow questioning of agency representatives or witnesses, or of interested persons making oral statements, in order to explain the purpose or intended operation of the proposed regulation, or a suggested modification, or for other purposes if material to the evaluation or formulation of the proposed regulation. The presiding official may limit repetitive or immaterial statements or questions. At the request of the presiding official or the agency, a transcript of the hearing must be prepared.

(B) After allowing all written material to be submitted and recorded in the record of the public hearing no later than five working days after the hearing ends, unless the

presiding official orders an extension for not more than twenty days, the presiding official shall issue a written report which shall include findings as to the need and reasonableness of the proposed regulation based on an analysis of the factors listed in Section 1-23-115(C)(1) through (11), except items (4) through (8), and other factors as the presiding official identifies and may include suggested modifications to the proposed regulations in the case of a finding of lack of need or reasonableness.

(C) If the presiding official determines that the need for or reasonableness of the proposed regulation has not been established, the agency shall elect to:

- (a) modify the proposed regulation by including the suggested modifications of the presiding official;
- (b) not modify the proposed regulation in accordance with the presiding official's suggested modifications in which case the agency shall submit to the General Assembly, along with the promulgated regulation submitted for legislative review, a copy of the presiding official's written report; or
- (c) terminate the promulgation process for the proposed regulation by publication of a notice in the State Register and the termination is effective upon publication of the notice.

HISTORY: 1993 Act No. 181, Section 11A; 1996 Act No. 411, Section 4.

SECTION 1-23-115. Regulations requiring assessment reports; report contents; exceptions; preliminary assessment reports.

(A) Upon written request by two members of the General Assembly, made before submission of a promulgated regulation to the General Assembly for legislative review, a regulation that has a substantial economic impact must have an assessment report prepared pursuant to this section and in accordance with the procedures contained in this article. In addition to any other method as may be provided by the General Assembly, the legislative committee to which the promulgated regulation has been referred, by majority vote, may send a written notification to the promulgating agency informing the agency that the committee cannot approve the promulgated regulation unless an assessment report is prepared and provided to the committee. The written notification tolls the running of the one hundred-twenty-day legislative review period, and the period does not begin to run again until an assessment report prepared in accordance with this article is submitted to the committee. Upon receipt of the assessment report, additional days must be added to the days remaining in the one hundred-twenty-day review period, if less than twenty days, to equal twenty days. A copy of the assessment report must be provided to each member of the committee.

(B) A state agency must submit to the Office of Research and Statistics of Revenue and Fiscal Affairs Office, a preliminary assessment report on regulations which have a substantial economic impact. Upon receiving this report the office may require additional information from the promulgating agency, other state agencies, or other sources. A state agency shall cooperate and provide information to the office on requests made pursuant to this section. The office shall prepare and publish a final assessment report within sixty days after the public hearing held pursuant to Section 1-23-110. The office shall forward the final assessment report and a summary of the final report to the promulgating agency.

(C) The preliminary and final assessment reports required by this section must disclose the effects of the proposed regulation on the public health and environmental welfare of the community and State and the effects of the economic activities arising out of the proposed regulation. Both the preliminary and final reports required by this section may include:

- (1) a description of the regulation, the purpose of the regulation, the legal authority for the regulation, and the plan for implementing the regulation;
- (2) a determination of the need for and reasonableness of the regulation as determined by the agency based on an analysis of the factors listed in this subsection and the expected benefit of the regulation;
- (3) a determination of the costs and benefits associated with the regulation and an explanation of why the regulation is considered to be the most cost-effective, efficient, and feasible means for allocating public and private resources and for achieving the stated purpose;
- (4) the effect of the regulation on competition;
- (5) the effect of the regulation on the cost of living and doing business in the geographical area in which the regulation would be implemented;
- (6) the effect of the regulation on employment in the geographical area in which the regulation would be implemented;
- (7) the source of revenue to be used for implementing and enforcing the regulation;
- (8) a conclusion on the short-term and long-term economic impact upon all persons substantially affected by the regulation, including an analysis containing a description of which persons will bear the costs of the regulation and which persons will benefit directly and indirectly from the regulation;
- (9) the uncertainties associated with the estimation of particular benefits and burdens and the difficulties involved in the comparison of qualitatively and quantitatively dissimilar benefits and burdens. A determination of the need for the regulation shall consider qualitative and quantitative benefits and burdens;
- (10) the effect of the regulation on the environment and public health;
- (11) the detrimental effect on the environment and public health if the regulation is not implemented. An assessment report must not consider benefits or burdens on out-of-state political bodies or businesses. The assessment of benefits and burdens which cannot be precisely quantified may be expressed in qualitative terms. This subsection must not be interpreted to require numerically precise cost-benefit analysis. At no time is an agency required to include items (4) through (8) in a preliminary assessment report or statement of the need and reasonableness; however, these items may be included in the final assessment report prepared by the office.

(D) If information required to be included in the assessment report materially changes at any time before the regulation is approved or disapproved by the General Assembly, the agency must submit the corrected information to the office which must forward a revised assessment report to the Legislative Council for submission to the committees to which the regulation was referred during General Assembly review.

(E) An assessment report is not required on:

- (1) regulations specifically exempt from General Assembly review by Section 1-23-120; however, if any portion of a regulation promulgated to maintain compliance with federal law is more stringent than federal law, then that portion is not exempt from this section;
- (2) emergency regulations filed in accordance with Section 1-23-130; however, before an emergency regulation may be refiled pursuant to Section 1-23-130, an assessment report must be prepared in accordance with this section;
- (3) regulations which control the hunting or taking of wildlife including fish or setting times, methods, or conditions under which wildlife may be taken, hunted, or caught by the public, or opening public lands for hunting and fishing.

HISTORY: 1992 Act No. 507, Section 1; 1993 Act No. 181, Section 12; 1996 Act No. 411, Sections 5, 6.

SECTION 1-23-120. Approval of regulations; submission to Legislative Council for submission to General Assembly; contents, requirements and procedures; compliance with federal law.

(A) All regulations except those specifically exempted pursuant to subsection (H) must be filed with Legislative Council for submission to the General Assembly for review in accordance with this article; however, a regulation must not be filed with Legislative Council for submission to the General Assembly more than one year after publication of the drafting notice initiating the regulation pursuant to Section 1-23-110, except those regulations requiring a final assessment report as provided in Sections 1-23-270 and 1-23-280.

(B) To initiate the process of review, the agency shall file with the Legislative Council for submission to the President of the Senate and the Speaker of the House of

Representatives a document containing:

(1) a copy of the regulations promulgated;

(2) in the case of regulations proposing to amend an existing regulation or any clearly identifiable subdivision or portion of a regulation, the full text of the existing regulation or the text of the identifiable portion of the regulation; text that is proposed to be deleted must be stricken through, and text that is proposed to be added must be underlined;

(3) a request for review;

(4) a brief synopsis of the regulations submitted which explains the content and any changes in existing regulations resulting from the submitted regulations;

(5) a copy of the final assessment report and the summary of the final report prepared by the office pursuant to Section 1-23-115. A regulation that does not require an assessment report because the regulation does not have a substantial economic impact must include a statement to that effect. A regulation exempt from filing an assessment report pursuant to Section 1-23-115(E) must include an explanation of the exemption;

(6) a copy of the fiscal impact statement prepared by the agency as required by Section 1-23-110;

(7) a detailed statement of rationale which states the basis for the regulation, including the scientific or technical basis, if any, and identifies any studies, reports, policies, or statements of professional judgment or administrative need relied upon in developing the regulation;

(8) a copy of the economic impact statement, as provided in Section 1-23-270(C)(1)(a); and

(9) a copy of the regulatory flexibility analysis, as provided in Section 1-23-270(C)(1)(b).

(C) Upon receipt of the regulation, the President and Speaker shall refer the regulation for review to the standing committees of the Senate and House which are most concerned with the function of the promulgating agency. A copy of the regulation or a synopsis of the regulation must be given to each member of the committee, and Legislative Council shall notify all members of the General Assembly when regulations are submitted for review either through electronic means or by addition of this information to the website maintained by the Legislative Services Agency, or both. The committees to which regulations are referred have one hundred twenty days from the date regulations are submitted to the General Assembly to consider and take action on these regulations. However, if a regulation is referred to a committee and no action occurs in that committee on the regulation within sixty calendar days of receipt of the regulation, the regulation must be placed on the agenda of the full committee beginning with the next scheduled full committee meeting.

(D) If a joint resolution to approve a regulation is not enacted within one hundred twenty days after the regulation is submitted to the General Assembly or if a joint resolution to disapprove a regulation has not been introduced by a standing committee to which the regulation was referred for review, the regulation is effective upon publication in the State Register. Upon introduction of the first joint resolution disapproving a regulation by a standing committee to which the regulation was referred for review, the one-hundred-twenty-day period for automatic approval is tolled. A regulation may not be filed under the emergency provisions of Section 1-23-130 if a joint resolution to disapprove the regulation has been introduced by a standing committee to which the regulation was referred. Upon a negative vote by either the Senate or House of Representatives on the resolution disapproving the regulation and the notification in writing of the negative vote to the Speaker of the House of Representatives and the President of the Senate by the Clerk of the House in which the negative vote occurred, the remainder of the period begins to run. If the remainder of the period is less than ninety days, additional days must be added to the remainder to equal ninety days. The introduction of a joint resolution by the committee of either house does not prevent the introduction of a joint resolution by the committee of the other house to either approve or disapprove the regulations concerned. A joint resolution approving or disapproving a regulation must include:

(1) the synopsis of the regulation as required by subsection (B)(4);

(2) the summary of the final assessment report prepared by the office pursuant to Section 1-23-115 or, as required by subsection (B)(5), the statement or explanation that an assessment report is not required or is exempt.

(E) The one-hundred-twenty-day period of review begins on the date the regulation is filed with the President and Speaker. Sine die adjournment of the General Assembly tolls the running of the period of review, and the remainder of the period begins to run upon the next convening of the General Assembly excluding special sessions called by the Governor.

(F) Any member of the General Assembly may introduce a joint resolution approving or disapproving a regulation thirty days following the date the regulations concerned are referred to a standing committee for review and no committee joint resolution approving or disapproving the regulations has been introduced and the regulations concerned have not been withdrawn by the promulgating agency pursuant to Section 1-23-125, but the introduction does not toll the one-hundred-twenty-day period of automatic approval.

(G) A regulation is deemed withdrawn if it has not become effective, as provided in this article, by the date of publication of the next State Register published after the end of the two-year session in which the regulation was submitted to the President and Speaker for review. Other provisions of this article notwithstanding, a regulation deemed withdrawn pursuant to this subsection may be resubmitted by the agency for legislative review during the next legislative session without repeating the requirements of Section 1-23-110, 1-23-111, or 1-23-115 if the resubmitted regulation contains no substantive changes for the previously submitted version.

(H) General Assembly review is not required for regulations promulgated:

(1) to maintain compliance with federal law including, but not limited to, grant programs; however, the synopsis of the regulation required to be submitted by subsection (B)(4) must include citations to federal law, if any, mandating the promulgation of or changes in the regulation justifying this exemption. If the underlying federal law which constituted the basis for the exemption of a regulation from General Assembly review pursuant to this item is vacated, repealed, or otherwise does not have the force and effect of law, the state regulation is deemed repealed and without legal force and effect as of the date the promulgating state agency publishes notice in the State Register that the regulation is deemed repealed. The agency must publish the notice in the State Register no later than sixty days from the effective date the underlying federal law was rendered without legal force and effect. Upon publication of the notice, the prior version of the state regulation, if any, is reinstated and effective as a matter of law. The notice published in the State Register shall identify the specific provisions of the state regulation that are repealed as a result of the invalidity of the underlying federal law and shall provide the text of the prior regulation, if any, which is reinstated. The agency may promulgate additional amendments to the regulation by complying with the applicable requirements of this chapter;

(2) by the state Board of Financial Institutions in order to authorize state-chartered banks, state-chartered savings and loan associations, and state-chartered credit unions to engage in activities that are authorized pursuant to Section 34-1-110;

(3) by the South Carolina Department of Revenue to adopt regulations, revenue rulings, revenue procedures, and technical advice memoranda of the Internal Revenue Service so as to maintain conformity with the Internal Revenue Code as defined in Section 12-6-40;

(4) as emergency regulations under Section 1-23-130.

(I) For purposes of this section, only those calendar days occurring during a session of the General Assembly, excluding special sessions, are included in computing the days elapsed.

(J) Each state agency, which promulgates regulations or to which the responsibility for administering regulations has been transferred, shall by July 1, 1997, and every five years thereafter, conduct a formal review of all regulations which it has promulgated or for which it has been transferred the responsibility of administering, except that those regulations described in subsection (H) are not subject to this review. Upon completion of the review, the agency shall submit to the Code Commissioner a report which identifies those regulations:

(1) for which the agency intends to begin the process of repeal in accordance with this article;

(2) for which the agency intends to begin the process of amendment in accordance with this article; and

(3) which do not require repeal or amendment.

Nothing in this subsection may be construed to prevent an agency from repealing or amending a regulation in accordance with this article before or after it is identified in the report to the Code Commissioner.

HISTORY: 1977 Act No. 176, Art. I, Section 12; 1979 Act No. 188, Section 3; 1980 Act No. 442, Section 2; 1981 Act No. 21, Section 1; 1982 Act No. 414, Section 1; 1986 Act No. 414, Section 14; 1988 Act No. 605, Section 2; 1989 Act No. 91, Section 2; 1992 Act No. 507, Section 4; 1993 Act No. 181, Section 13; 1996 Act No. 411, Section 7; 1996 Act No. 411, Section 8; 1997 Act No. 114, Section 1; 2002 Act No. 231, Section 2; 2004 Act No. 231, Sections 4, 5, eff January 1, 2005; 2007 Act No. 104, Section 2, eff July 1, 2008; 2011 Act No. 33, Section 1, eff June 7, 2011; 2013 Act No. 31, Section 3, eff May 21, 2013.

SECTION 1-23-125. Approval, disapproval and modification of regulations.

(A) The legislative committee to which a regulation is submitted is not authorized to amend a particular regulation and then introduce a joint resolution approving the regulation as amended; however, this provision does not prevent the introduction of a resolution disapproving one or more of a group of regulations submitted to the committee and approving others submitted at the same time or deleting a clearly separable portion of a single regulation and approving the balance of the regulation in the committee resolution.

(B) If a majority of a committee determines that it cannot approve a regulation in the form submitted, it shall notify the promulgating agency in writing along with its recommendations as to changes that would be necessary to obtain committee approval. The agency may:

(1) withdraw the regulation from the General Assembly and resubmit it with the recommended changes to the Speaker and the Lieutenant Governor, but any regulation not resubmitted within thirty days is considered permanently withdrawn;

(2) withdraw the regulation permanently;

(3) take no action and abide by whatever action is taken or not taken by the General Assembly on the regulation concerned.

(C) The notification tolls the one-hundred-twenty-day period for automatic approval, and when an agency withdraws regulations from the General Assembly prior to the time a committee resolution to approve or disapprove the regulation has been introduced, the remainder of the period begins to run only on the date the regulations are resubmitted to the General Assembly. Upon resubmission of the regulations, additional days must be added to the days remaining in the review period for automatic approval, if less than twenty days, to equal twenty days, and a copy of the amended regulation must be given to each member of the committee. If an agency decides to take no action pursuant to subsection (B)(3), it shall notify the committee in writing and the remainder of the period begins to run only upon this notification.

(D) This section, as it applies to approval, disapproval, or modification of regulations, does not apply to joint resolutions introduced by other than the committees to which regulations are initially referred by the Lieutenant Governor or the Speaker of the House of Representatives.

(E) A regulation submitted to the General Assembly for review may be withdrawn by the agency for any reason. The regulation may be resubmitted by the agency for legislative review during the legislative session without repeating the requirements of Section 1-23-110, 1-23-111, or 1-23-115 if the resubmitted regulation contains no substantive changes from the previously submitted version.

HISTORY: 1979 Act No. 188, Section 1; 1980 Act No. 442, Section 3; 1982 Act No. 414, Section 1; 1979 Act No. 188, Section 1; 1980 Act No. 442, Section 3; 1982 Act No. 414, Section 1; 1988 Act No. 605, Section 3; 1996 Act No. 411, Section 9; 2007 Act No. 104, Section 3, eff July 1, 2008.

SECTION 1-23-126. Petition requesting promulgation, amendment or repeal of regulation.

An interested person may petition an agency in writing requesting the promulgation, amendment or repeal of a regulation. Within thirty days after submission of such petition, the agency shall either deny the petition in writing (stating its reasons for the denial) or shall initiate the action in such petition.

HISTORY: 1980 Act No. 442, Section 6.

SECTION 1-23-130. Emergency regulations.

(A) If an agency finds that an imminent peril to public health, safety, or welfare requires immediate promulgation of an emergency regulation before compliance with the procedures prescribed in this article or if a natural resources related agency finds that abnormal or unusual conditions, immediate need, or the state's best interest requires immediate promulgation of emergency regulations to protect or manage natural resources, the agency may file the regulation with the Legislative Council and a statement of the situation requiring immediate promulgation. The regulation becomes effective as of the time of filing.

(B) An emergency regulation filed under this section which has a substantial economic impact may not be refiled unless accompanied by the summary of the final assessment report prepared by the office pursuant to Section 1-23-115 and a statement of need and reasonableness is prepared by the agency pursuant to Section 1-23-111.

(C) If emergency regulations are either filed or expire while the General Assembly is in session, the emergency regulations remain in effect for ninety days only and may not be refiled; but if emergency regulations are both filed and expire during a time when the General Assembly is not in session they may be refiled for an additional ninety days.

(D) Emergency regulations and the agency statement as to the need for and reasonableness of immediate promulgation must be published in the next issue of the State Register following the date of filing. The summary of the final assessment report required for refiling emergency regulations pursuant to subsection (B) must also be published in the next issue of the State Register.

(E) An emergency regulation promulgated pursuant to this section may be permanently promulgated by complying with the requirements of this article.

HISTORY: 1977 Act No. 176, Art. I, Section 13; 1980 Act No. 442, Section 4; 1986 Act No. 478, Section 1; 1992 Act No. 507, Section 5; 1993 Act No. 181, Section 14.

SECTION 1-23-140. Duties of state agencies; necessity for public inspection.

(a) In addition to other requirements imposed by law, each agency shall:

(1) Adopt and make available for public inspection a description of its organization, stating the general course and method of its operations and the methods whereby the public may obtain information or make submissions or requests;

(2) Adopt and make available for public inspection a written policy statement setting forth the nature and requirements of all formal and informal procedures available, including a description of all forms and instructions used by the agency;

(3) Make available for public inspection all final orders, decisions and opinions except as otherwise provided by law.

(b) No agency rule, order or decision is valid or effective against any person or party, nor may it be invoked by the agency for any purpose until it has been made available for public inspection as required by this article and Article 2. This provision is not applicable in favor of any person or party who has actual knowledge thereof.

HISTORY: 1977 Act No. 176, Art. I, Section 14.

SECTION 1-23-150. Appeals contesting authority of agency to promulgate regulation.

(a) Any person may petition an agency in writing for a declaratory ruling as to the applicability of any regulation of the agency or the authority of the agency to promulgate a particular regulation. The agency shall, within thirty days after receipt of such petition, issue a declaratory ruling thereon.

(b) After compliance with the provisions of paragraph (a) of this section, any person affected by the provisions of any regulation of an agency may petition the Circuit Court for a declaratory judgment and/or injunctive relief if it is alleged that the regulation or its threatened application interferes with or impairs, or threatens to interfere with or impair, the legal rights or privileges of the plaintiff or that the regulation exceeds the regulatory authority of the agency. The agency shall be made a party to the action.

HISTORY: 1977 Act No. 176, Art. I, Section 15; 1980 Act No. 442, Section 5.

SECTION 1-23-160. Prior filed regulations unaffected.

All regulations of state agencies promulgated according to law and filed with the Secretary of State as of January 1, 1977, shall have the full force and effect of law. All regulations of state agencies promulgated under this article and effective as of June 30, 1994 shall have the full force and effect of law.

HISTORY: 1977 Act No. 176, Art. I, Section 16; 1993 Act No. 181, Section 15.

ARTICLE 2**Small Business Regulatory Flexibility****SECTION 1-23-270.** Small business defined; economic impact statements; impact reduction options; judicial review of agency compliance; periodic review of regulations.

(A) This article may be cited as the "South Carolina Small Business Regulatory Flexibility Act of 2004".

(B) As used in this article "small business" means a commercial retail service, industry entity, or nonprofit corporation, including its affiliates, that:

(1) is, if a commercial retail service or industry service, independently owned and operated; and

(2) employs fewer than one hundred full-time employees or has gross annual sales or program service revenues of less than five million dollars.

(C) Before an agency submits to the General Assembly for review a regulation that may have a significant adverse impact on small businesses, the agency, if directed by the Small Business Regulatory Review Committee, shall prepare:

(1) an economic impact statement that includes the following:

(a) an identification and estimate of the number of small businesses subject to the proposed regulation;

(b) the projected reporting, recordkeeping, and other administrative costs required for compliance with the proposed regulation, including the type of professional skills necessary for preparation of the report or record;

(c) a statement of the economic impact on small businesses; and

(d) a description of less intrusive or less costly alternative methods of achieving the purpose of the proposed regulation;

(2) a regulatory flexibility analysis in which the agency, where consistent with health, safety, and environmental and economic welfare, shall consider utilizing regulatory methods that accomplish the objectives of applicable statutes while minimizing a significant adverse impact on small businesses.

(D) The agency shall consider, without limitation, each of the following methods of reducing the impact of the proposed regulation on small businesses:

(1) establishment of less stringent compliance or reporting requirements for small businesses;

(2) establishment of less stringent schedules or deadlines for compliance or reporting requirements for small businesses;

(3) consolidation or simplification of compliance or reporting requirements for small businesses;

(4) establishment of performance standards for small businesses to replace design or operational standards required in the proposed regulation; and

(5) exemption of small businesses from all or a part of the requirements contained in the proposed regulation.

(E) A small business that is adversely impacted or aggrieved in connection with the promulgation of a regulation is entitled to judicial review of agency compliance with the requirements of this article. A small business may seek that review during the period beginning on the date of final agency action.

(F)(1) Each state agency, which promulgates regulations or to which the responsibility for administering regulations has been transferred, shall by July 1, 1997, and every five years thereafter, conduct a formal review of all regulations which it has promulgated or for which it has been transferred the responsibility of administering, except that those regulations described in Section 1-23-120(H) are not subject to this review. Upon completion of the review, the agency shall submit to the Code Commissioner a report which identifies those regulations:

(a) for which the agency intends to begin the process of repeal in accordance with this article;

(b) for which the agency intends to begin the process of amendment in accordance with this article; and

(c) which do not require repeal or amendment.

Nothing in this subsection may be construed to prevent an agency from repealing or amending a regulation in accordance with Article 1 before or after it is identified in the report to the Code Commissioner.

(2) Regulations that take effect on or after the effective date of this article must be reviewed within five years of the publication of the final regulation in the State Register and every five years after that to ensure that they minimize economic impact on small businesses in a manner consistent with the stated objectives of applicable statutes.

(3) In reviewing regulations to minimize their economic impact on small businesses, the agency shall consider the:

(a) continued need for the regulation;

(b) nature of complaints or comments received concerning the regulation from the public;

(c) complexity of the regulation;

(d) extent to which the regulation overlaps, duplicates, or conflicts with other federal, state, and local governmental regulations; and

(e) length of time since the regulation has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the regulation.

HISTORY: 2004 Act No. 231, Section 2, eff January 1, 2005; 2007 Act No. 104, Section 4, eff July 1, 2008.

SECTION 1-23-280. Small Business Regulatory Review Committee; membership; terms.

(A)(1) There is established a Small Business Regulatory Review Committee within the South Carolina Department of Commerce. For purposes of this article, "committee" is the Small Business Regulatory Review Committee and "department" is the South Carolina Department of Commerce.

(2) The duties of the committee, in determining if a proposed permanent regulation has a significant adverse impact on small businesses, are to:

(a) direct the promulgating agency to prepare the regulatory flexibility analysis described in Section 1-23-270(C)(2) no later than the end of the public comment period that follows the notice of proposed regulation, as provided in Section 1-23-110(A)(3); and

(b) request, at the committee's discretion, the Revenue and Fiscal Affairs Office to prepare a final assessment report, as provided in Section 1-23-115(B), of the proposed permanent regulation no later than the end of the public comment period that follows the notice of proposed regulation, as provided in Section 1-23-110(A)(3). The committee may request a final assessment report from the Revenue and Fiscal Affairs Office only in cases where the committee determines that information in addition to the agency's economic impact as provided in Section 1-23-270(C)(1) is critical in the committee's determination that a proposed permanent regulation has a significant adverse impact on small business. The Revenue and Fiscal Affairs Office:

(i) within the review and comment period, shall perform a final assessment report of the regulation on small businesses within sixty days of a request for assessment by the committee, and the promulgating agency has sixty days to complete a regulatory flexibility analysis; and

(ii) may request additional information from the agency. The sixty-day final assessment report deadline must be tolled until the time that the Office of Research and Statistics receives the requested additional information. The one-year deadline for submission of regulations to the General Assembly as provided in Section 1-23-120(A) also must be tolled until the time that both analyses are prepared and presented to the committee; and

(c) submit to the promulgating agency, no later than thirty days after receipt of the regulatory flexibility analysis prepared by the promulgating agency and, if requested by the committee, after receipt of the final assessment report prepared by the Office of Research and Statistics, a written statement advising the agency that a proposed permanent regulation has a significant adverse impact on small business.

(3) This subsection does not limit the committee's ability to petition a state agency to amend, revise, or revoke an existing regulation.

(4) Staff support for the committee must be provided by the department. The department shall act only as a coordinator for the committee, and may not provide legal counsel for the committee.

(B) The committee shall consist of eleven members, appointed as follows:

(1) five members to be appointed by the Governor;

(2) three members to be appointed by the President Pro Tempore of the Senate; and

(3) three members to be appointed by the Speaker of the House of Representatives.

(C) In addition, the Chairmen of the Labor, Commerce and Industry Committee of the South Carolina Senate and the Chairman of the Labor, Commerce and Industry Committee of the South Carolina House of Representatives, or their designees, shall serve as nonvoting, ex officio members of the committee. During the committee review process, the director or his designee, of the promulgating agency shall be available at the request of the committee for comment on the proposed regulation.

(D) Appointments to the committee must be representative of a variety of small businesses in this State. All appointed members shall be either current or former owners or officers of a small business.

(E) The initial appointments to the committee must be made within sixty days from the effective date of this act. The department shall provide the name and address of each appointee to the Governor, the President Pro Tempore of the Senate, the Speaker of the House of Representatives, and the Chairmen of the House and Senate Labor, Commerce and Industry Committees.

(F)(1) Members initially appointed to the committee shall serve for terms ending December 31, 2005. Thereafter, appointed members shall serve two-year terms that expire on December thirty-first of the second year.

(2) The Governor shall appoint the initial chairman of the committee from the appointed members for a term ending December 31, 2006, and shall appoint subsequent chairs of the committee from the appointed members for two-year terms that expire on December thirty-first of the second year.

(3) The committee shall meet as determined by its chairman.

(4) A majority of the voting members of the committee constitutes a quorum to do business. The concurrence of a majority of the members of the committee present and voting is necessary for an action of the committee to be valid.

(5) An appointed committee member may not serve more than three consecutive terms.

HISTORY: 2004 Act No. 231, Section 2, eff January 1, 2005.

SECTION 1-23-290. Petition opposing regulation having significant adverse impact; determination of whether impact statement or public hearing addressed economic impact; waiver or reduction of administrative penalties.

(A) For promulgated regulations, the committee may file a written petition with the agency that has promulgated the regulations opposing all or part of a regulation that has a significant adverse impact on small business.

(B) Within sixty days after the receipt of the petition, the agency shall determine whether the impact statement or the public hearing addressed the actual and significant impact on small business or if conditions justifying the regulation have changed. The agency shall submit a written response of its determination to the committee within sixty days after receipt of the petition. If the agency determines that the petition merits the amendment, revision, or revocation of a regulation, the agency may initiate proceedings in accordance with the applicable requirements of the Administrative Procedures Act.

(C) If the agency determines that the petition does not merit the amendment or repeal of a regulation, the committee promptly shall convene a meeting for the purpose of determining whether to recommend that the agency initiate proceedings to amend or repeal the regulation in accordance with the Administrative Procedures Act. The review must be based upon the actual record presented to the agency. The committee shall base its recommendation on any of the following reasons:

(1) the actual impact on small business was not reflected in, or significantly exceeded, the economic impact statement formulated by the Revenue and Fiscal Affairs Office, pursuant to Section 1-23-280(A)(2);

(2) the actual impact was not previously considered by the agency in its economic impact statement formulated pursuant to Section 1-23-270(C) or its regulatory flexibility analysis formulated pursuant to Section 1-23-280(A)(2); or

(3) the technology, economic conditions, or other relevant factors justifying the purpose for the regulations have changed or no longer exist.

(D) If the committee recommends that an agency initiate regulation proceedings for a reason provided in subsection (C), the committee shall submit to the Speaker of the House of Representatives and the President Pro Tempore of the Senate an evaluation report and the agency's response as provided in Section 1-23-290(B). The General Assembly may take later action in response to the evaluation report and the agency's response as the General Assembly finds appropriate.

(E)(1) Notwithstanding another provision of law, an agency authorized to assess administrative penalties or administrative fines upon a business may waive or reduce an administrative penalty or administrative fine for a violation of a regulation by a small business if the:

(a) small business corrects the violation within thirty days or less after receipt of a notice of violation or citation; or

(b) violation was the result of an excusable misunderstanding of the agency's interpretation of a regulation.

(2) Item (1) does not apply if:

(a) a small business has been notified previously of the violation of a regulation by the agency pursuant to Section 1-23-290(E)(1) and has been given an opportunity to correct the violation on a previous occasion;

(b) a small business fails to exercise good faith in complying with the regulation;

(c) a violation involves wilful or criminal conduct;

(d) a violation results in imminent or adverse health, safety, or environmental impact; or

(e) the penalty or fine is assessed pursuant to a federal law or regulation, for which a waiver or reduction is not authorized by the federal law or regulation.

HISTORY: 2004 Act No. 231, Section 2, eff January 1, 2005.

SECTION 1-23-300. Applicability.

This article does not apply to emergency regulations promulgated pursuant to Section 1-23-130 or regulations promulgated pursuant to Chapter 9 of Title 46 or Chapter 4 of Title 47 or to proposed regulations by an agency to implement a statute or ordinance that does not require an agency to interpret or describe the requirements of the statute or ordinance, such as state legislative or federally mandated provisions that do not allow discretion to consider less restrictive alternatives or to a federal regulation that has gone through the federal regulatory flexibility act, if the federal review process is the same as or is stricter than the requirements of these sections.

HISTORY: 2004 Act No. 231, Section 2, eff January 1, 2005.

ARTICLE 3

Administrative Procedures

SECTION 1-23-310. Definitions.

As used in this article:

(1) "Administrative law judge" means a judge of the South Carolina Administrative Law Court created pursuant to Section 1-23-500;

(2) "Agency" means each state board, commission, department, or officer, other than the legislature, the courts, or the Administrative Law Court, authorized by law to determine contested cases;

(3) "Contested case" means a proceeding including, but not restricted to, ratemaking, price fixing, and licensing, in which the legal rights, duties, or privileges of a party are required by law to be determined by an agency after an opportunity for hearing;

(4) "License" includes the whole or part of any agency permit, franchise, certificate, approval, registration, charter, or similar form of permission required by law, but it does not include a license required solely for revenue purposes;

(5) "Party" means each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party;

(6) "Person" means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency.

HISTORY: 1977 Act No. 176, Art. II, Section 1; 1980 Act No. 442, Section 7; 1993 Act No. 181, Section 16; 1998 Act No. 359, Section 1; 2008 Act No. 334, Section 3, eff June 16, 2008.

SECTION 1-23-320. Notice and hearing in contested case; depositions; subpoenas; informal disposition; content of record.

(A) In a contested case, all parties must be afforded an opportunity for hearing after notice of not less than thirty days, except in proceedings before the Department of Employment and Workforce, which are governed by the provisions of Section 41-35-680.

(B) The notice must include a:

(1) statement of the time, place, and nature of the hearing;

(2) statement of the legal authority and jurisdiction under which the hearing is to be held;

(3) reference to the particular sections of the statutes and rules involved;

(4) short and plain statement of the matters asserted. If the agency or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement must be furnished.

(C) A party to these proceedings may cause to be taken the depositions of witnesses within or without the State and either by commission or de bene esse. Depositions must be taken in accordance with and subject to the same provisions, conditions, and restrictions as apply to the taking of like depositions in civil actions at law in the court of common pleas; and the same rules with respect to the giving of notice to the opposite party, the taking and transcribing of testimony, the transmission and certification of it, and matters of practice relating to it apply.

(D) The agency hearing a contested case may issue subpoenas in the name of the agency for the attendance and testimony of witnesses and the production and examination of books, papers, and records on its own behalf or, upon request, on behalf of another party to the case.

A party to the proceeding may seek enforcement of or relief from an agency subpoena before the Administrative Law Court pursuant to Section 1-23-600(F).

(E) Opportunity must be afforded all parties to respond and present evidence and argument on all issues involved.

(F) Unless precluded by law, informal disposition may be made of a contested case by stipulation, agreed settlement, consent order, or default.

(G) The record in a contested case must include:

- (1) all pleadings, motions, intermediate rulings, and depositions;
 - (2) evidence received or considered;
 - (3) a statement of matters officially noticed;
 - (4) questions and offers of proof, objections, and rulings on the contested case;
 - (5) proposed findings and exceptions;
 - (6) any decision, opinion, or report by the officer presiding at the hearing.
- (H) Oral proceedings or any part of the oral proceedings must be transcribed on request of a party.
- (I) Findings of fact must be based exclusively on the evidence and on matters officially noticed.

HISTORY: 1977 Act No. 176, Art. II, Section 2; 1983 Act No. 56, Section 1; 1993 Act No. 181, Section 17; 1998 Act No. 359, Section 2; 2008 Act No. 334, Section 4, eff June 16, 2008.

SECTION 1-23-330. Evidentiary matters in contested cases.

In contested cases:

- (1) Irrelevant, immaterial or unduly repetitious evidence shall be excluded. Except in proceedings before the Industrial Commission the rules of evidence as applied in civil cases in the court of common pleas shall be followed. Agencies shall give effect to the rules of privilege recognized by law. Objections to evidentiary offers may be made and shall be noted in the record. Subject to these requirements, when a hearing will be expedited and the interests of the parties will not be prejudiced substantially, any part of the evidence may be received in written form;
- (2) Documentary evidence may be received in the form of copies or excerpts, if the original is not readily available. Upon request, parties shall be given an opportunity to compare the copy with the original;
- (3) Any party may conduct cross-examination;
- (4) Notice may be taken of judicially cognizable facts. In addition, notice may be taken of generally recognized technical or scientific facts within the agency's specialized knowledge. Parties shall be notified either before or during the hearing or by reference in preliminary reports or otherwise of the material noticed including any staff memoranda or data, and they shall be afforded an opportunity to contest the material so noticed. The agency's experience, technical competence and specialized knowledge may be utilized in the evaluation of the evidence.

HISTORY: 1977 Act No. 176, Art. II, Section 3; 1979 Act No. 188, Section 6.

SECTION 1-23-340. Procedure in contested cases where majority of those who are to render final decision are unfamiliar with case.

When in a contested case a majority of the officials of the agency who are to render the final decision have not heard the case or reviewed the record, the decision, if adverse to a party to the proceeding other than the agency itself, shall not be made until a proposal for decision is served upon the parties, and an opportunity is afforded to each party adversely affected to file exceptions and present briefs and oral argument to the officials who are to render the decision. The proposal for decision shall contain a statement of the reasons therefor and of each issue of fact or law necessary to the proposed decision, prepared by the person who conducted the hearing or one who has read the record. The parties by written stipulation may waive compliance with this section.

HISTORY: 1977 Act No. 176, Art. II, Section 4.

SECTION 1-23-350. Final decision or order in contested case.

A final decision or order adverse to a party in a contested case shall be in writing or stated in the record. A final decision shall include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. If, in accordance with agency rules, a party submitted proposed findings of fact, the decision shall include a ruling upon each proposed finding. Parties shall be notified either personally or by mail of any decision or order. Upon request a copy of the decision or order shall be delivered or mailed forthwith to each party and to his attorney of record.

HISTORY: 1977 Act No. 176, Art. II, Section 5.

SECTION 1-23-360. Communication by members or employees of agency assigned to decide contested case.

Unless required for the disposition of ex parte matters authorized by law, members or employees of an agency assigned to render a decision or to make findings of fact and conclusions of law in a contested case shall not communicate, directly or indirectly, in connection with any issue of fact, with any person or party, nor, in connection with any issue of law, with any party or his representative, except upon notice and opportunity for all parties to participate. An agency member:

- (1) May communicate with other members of the agency; and
- (2) May have the aid and advice of one or more personal assistants.

Any person who violates the provisions of this section shall be deemed guilty of a misdemeanor and upon conviction shall be fined not more than two hundred fifty dollars or imprisoned for not more than six months.

HISTORY: 1977 Act No. 176, Art. II, Section 6.

SECTION 1-23-370. Procedures regarding issuance, denial or renewal of licenses.

(a) When the grant, denial or renewal of a license is required to be preceded by notice and opportunity for hearing, the provisions of this article and Article 1 concerning contested cases apply.

(b) When a licensee has made timely and sufficient application for the renewal of a license or a new license with reference to any activity of a continuing nature, the existing license does not expire until the application has been finally determined by the agency, and, in case the application is denied or the terms of the new license limited, until the last day for seeking review of the agency order or a later date fixed by order of the reviewing court.

(c) No revocation, suspension, annulment, or withdrawal of any license is lawful unless, prior to the institution of agency proceedings, the agency gave notice by mail to the licensee of facts or conduct which warrant the intended action, and the licensee was given an opportunity to show compliance with all lawful requirements for the retention of the license. If the agency finds that public health, safety or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, summary suspension of a license may be ordered pending proceedings for revocation or other action. These proceedings shall be promptly instituted and determined.

HISTORY: 1977 Act No. 176, Art. II, Section 7.

SECTION 1-23-380. Judicial review upon exhaustion of administrative remedies.

A party who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case is entitled to judicial review pursuant to this article and Article 1. This section does not limit utilization of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by law. A preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy. Except as otherwise provided by law, an appeal is to the court of appeals.

(1) Proceedings for review are instituted by serving and filing notice of appeal as provided in the South Carolina Appellate Court Rules within thirty days after the final decision of the agency or, if a rehearing is requested, within thirty days after the decision is rendered. Copies of the notice of appeal must be served upon the agency and all parties of record.

(2) Except as otherwise provided in this chapter, the serving and filing of the notice of appeal does not itself stay enforcement of the agency decision. The serving and filing of a notice of appeal by a licensee for review of a fine or penalty or of its license stays only those provisions for which review is sought and matters not affected by the notice of appeal are not stayed. The serving or filing of a notice of appeal does not automatically stay the suspension or revocation of a permit or license authorizing the sale of beer, wine, or alcoholic liquor. The agency may grant, or the reviewing court may order, a stay upon appropriate terms, upon the filing of a petition under Rule 65 of the South Carolina Rules of Civil Procedure.

(3) If a timely application is made to the court for leave to present additional evidence, and it is shown to the satisfaction of the court that the additional evidence is material and that there were good reasons for failure to present it in the proceeding before the agency, the court may order that the additional evidence be taken before the agency upon conditions determined by the court. The agency may modify its findings and decision by reason of the additional evidence and shall file the evidence and modifications, new findings, or decisions with the reviewing court.

(4) The review must be conducted by the court and must be confined to the record. In cases of alleged irregularities in procedure before the agency, not shown in the record, and established by proof satisfactory to the court, the case may be remanded to the agency for action as the court considers appropriate.

(5) The court may not substitute its judgment for the judgment of the agency as to the weight of the evidence on questions of fact. The court may affirm the decision of the agency or remand the case for further proceedings. The court may reverse or modify the decision if substantial rights of the appellant have been prejudiced because the administrative findings, inferences, conclusions, or decisions are:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

HISTORY: 1977 Act No. 176, Art. II, Section 8; 1993 Act No. 181, Section 18; 2006 Act No. 387, Section 2, eff July 1, 2006; 2008 Act No. 334, Section 5, eff June 16, 2008.

SECTION 1-23-390. Supreme Court review.

An aggrieved party may obtain a review of a final judgment of the circuit court or the court of appeals pursuant to this article by taking an appeal in the manner provided by the South Carolina Appellate Court Rules as in other civil cases.

HISTORY: 1977 Act No. 176, Art. II, Section 9; 1999 Act No. 55, Section 4; 2006 Act No. 387, Section 3, eff July 1, 2006.

SECTION 1-23-400. Application of article.

The provisions of this article shall not apply to any matters pending on June 13, 1977. The provisions of Sections 1-23-360 and 1-23-370 shall not apply to any agency which under existing statutes have established and follow notice and hearing procedures which are in compliance with such sections.

HISTORY: 1977 Act No. 176, Art. II, Section 10.

ARTICLE 5

South Carolina Administrative Law Court

SECTION 1-23-500. South Carolina Administrative Law Court created; number of judges.

There is created the South Carolina Administrative Law Court, which is an agency and a court of record within the executive branch of the government of this State. The court shall consist of a total of six administrative law judges. The administrative law judges shall be part of the state employees retirement system.

HISTORY: 1993 Act No. 181, Section 19; 1994 Act No. 452, Section 9; 2004 Act No. 202, Section 1, eff April 26, 2004.

SECTION 1-23-505. Definitions.

As used in this article:

- (1) "Administrative law judge" means a judge of the South Carolina Administrative Law Court created pursuant to Section 1-23-500.
- (2) "Agency" means a state agency, department, board, or commission whose action is the subject of a contested case hearing or an appellate proceeding heard by an administrative law judge, or a public hearing on a proposed regulation presided over by an administrative law judge.
- (3) "Contested case" means a proceeding including, but not restricted to, ratemaking, price fixing, and licensing, in which the legal rights, duties, or privileges of a party are required by law or by Article I, Section 22, Constitution of the State of South Carolina, 1895, to be determined by an agency or the Administrative Law Court after an opportunity for hearing.
- (4) "License" includes the whole or part of any agency permit, franchise, certificate, approval, registration, charter, or similar form of permission required by law, but does not include a license required solely for revenue purposes.
- (5) "Party" means each person or agency named or admitted as a party, or properly seeking and entitled as of right to be admitted as a party.
- (6) "Person" means any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency.

HISTORY: 2008 Act No. 334, Section 1, eff June 16, 2008.

SECTION 1-23-510. Election of judges; terms.

(A) The judges of the division must be elected by the General Assembly in joint session, for a term of five years and until their successors are elected and qualify; provided, that of those judges initially elected, the chief judge, elected to Seat 1 must be elected for a term of five years, the judge elected to Seat 2 must be elected for a term of three years, the judge elected to Seat 3 must be elected for a term of one year. The remaining judges of the division must be elected for terms of office to begin February 1, 1995, for terms of five years and until their successors are elected and qualify; provided, that those judges elected to seats whose terms of office are to begin on February 1, 1995, to Seat 4 must be initially elected for a term of five years, the judge elected to Seat 5 must be initially elected for a term of three years, and the judge elected to Seat 6 must be initially elected for a term of one year. The terms of office of the judges of the division for Seats 1, 2, and 3 shall begin on March 1, 1994. The terms of office of the judges of the division for Seats 4, 5, and 6 shall begin on February 1, 1995. The terms of office of each of the seats shall terminate on the thirtieth day of June in the final year of the term for the respective seats.

(B) In electing administrative law judges, race, gender, and other demographic factors including age, residence, type of practice, and law firm size should be considered to assure nondiscrimination, inclusion, and representation to the greatest extent possible of all segments of the population of this State.

(C) Before election as an administrative law judge, a candidate must undergo screening pursuant to the provisions of Section 2-19-10, et seq.

(D) Each seat on the division must be numbered. Elections are required to be for a specific seat. The office of chief administrative law judge is a separate and distinct office for the purpose of an election.

(E) In the event that there is a vacancy in the position of the chief administrative law judge or for any reason the chief administrative law judge is unable to act, his powers and functions must be exercised by the most senior administrative law judge as determined by the date of their election to the division.

HISTORY: 1993 Act No. 181, Section 19; 1999 Act No. 39, Section 1.

SECTION 1-23-520. Eligibility for office.

No person is eligible for the office of law judge of the division who does not at the time of his election meet the qualification for justices and judges as set forth in Article V of the Constitution of this State.

HISTORY: 1993 Act No. 181, Section 19.

SECTION 1-23-525. Members of General Assembly disqualified for office of law judge.

No member of any General Assembly who is not otherwise prohibited from being elected to an administrative law judge position may be elected to such position while he is a member of the General Assembly and for a period of four years after he ceases to be a member of the General Assembly.

HISTORY: 1993 Act No. 181, Section 19.

SECTION 1-23-530. Oath of office.

The judges of the division shall qualify after the date of their election by taking the constitutional oath of office.

HISTORY: 1993 Act No. 181, Section 19.

SECTION 1-23-535. Official seal.

The Administrative Law Court shall have a seal with a suitable inscription, an impression of which must be filed with the Secretary of State.

HISTORY: 2008 Act No. 334, Section 2, eff June 16, 2008.

SECTION 1-23-540. Compensation; full-time position.

The chief judge (Seat 1) shall receive as annual salary equal to ninety percent of that paid to the circuit court judges of this State. The remaining judges shall receive as annual salary equal to eighty percent of that paid to the circuit court judges of this State. They are not allowed any fees or perquisites of office, nor may they hold any other office of honor, trust, or profit. Administrative law judges in the performance of their duties are also entitled to that per diem, mileage, expenses, and subsistence as is authorized by law for circuit court judges.

Each administrative law judge shall devote full time to his duties as an administrative law judge, and may not practice law during his term of office, nor may he during this term be a partner or associate with anyone engaged in the practice of law in this State.

HISTORY: 1993 Act No. 181, Section 19.

SECTION 1-23-550. Vacancies.

All vacancies in the office of administrative law judge must be filled in the manner of original appointment. When a vacancy is filled, the judge elected shall hold office only for the unexpired term of his predecessor.

HISTORY: 1993 Act No. 181, Section 19.

SECTION 1-23-560. Application of Code of Judicial Conduct; complaints against administrative law judges; attending judicial-related functions.

Administrative law judges are bound by the Code of Judicial Conduct, as contained in Rule 501 of the South Carolina Appellate Court Rules. The sole grounds for discipline and sanctions for administrative law judges are those contained in the Code of Judicial Conduct in Rule 502, Rule 7 of the South Carolina Appellate Court Rules. The Commission on Judicial Conduct, under the authority of the Supreme Court, shall handle complaints against administrative law judges for possible violations of the Code of Judicial Conduct in the same manner as complaints against other judges. Notwithstanding another provision of law, an administrative law judge and the judge's spouse or guest may accept an invitation to attend a judicial-related or bar-related function, or an activity devoted to the improvement of the law, legal system, or the administration of justice.

HISTORY: 1993 Act No. 181, Section 19; 2008 Act No. 334, Section 6, eff June 16, 2008; 2014 Act No. 146 (S.405), Section 1, eff April 7, 2014.

SECTION 1-23-570. Chief Judge responsible for administration of division.

The Chief Judge of the Administrative Law Judge Division is responsible for the administration of the division, including budgetary matters, assignment of cases, and the administrative duties and responsibilities of the support staff. The chief judge shall assign judges of the division to hear all cases of the various state departments and commissions for which it is responsible on a general rotation and interchange basis by scheduling and assigning administrative law judges based upon subject matter no less frequently than every six months.

HISTORY: 1993 Act No. 181, Section 19; 1998 Act No. 359, Section 3.

SECTION 1-23-580. Clerk of division; assistants to administrative law judges; other staff.

(A) A clerk of the division, to be appointed by the chief judge, must be appointed and is responsible for the custody and keeping of the records of the division. The clerk of

the division shall perform those other duties as the chief judge may prescribe.

(B) Each administrative law judge may appoint, hire, contract, and supervise an administrative assistant as individually allotted and authorized in the annual general appropriations act.

(C) The other support staff of the division is as authorized by the General Assembly in the annual general appropriations act and shall be hired, contracted, and supervised by the chief judge. The division may engage stenographers for the transcribing of the proceedings in which an administrative law judge presides. It may contract for these stenographic functions, or it may use stenographers provided by the agency or commission.

HISTORY: 1993 Act No. 181, Section 19; 1998 Act No. 359, Section 4.

SECTION 1-23-590. Appropriation of funds.

The General Assembly in the annual general appropriations act shall appropriate those funds necessary for the operation of the Administrative Law Judge Division.

HISTORY: 1993 Act No. 181, Section 19.

SECTION 1-23-600. Hearings and proceedings.

(A) An administrative law judge shall preside over all hearings of contested cases as defined in Section 1-23-505 or Article I, Section 22, Constitution of the State of South Carolina, 1895, involving the departments of the executive branch of government as defined in Section 1-30-10 in which a single hearing officer, or an administrative law judge, is authorized or permitted by law or regulation to hear and decide these cases, except those arising under the:

- (1) Consolidated Procurement Code;
- (2) Public Service Commission;
- (3) Department of Employment and Workforce;
- (4) Workers' Compensation Commission, except as provided in Section 42-15-90; or

(5) other cases or hearings which are prescribed for or mandated by federal law or regulation, unless otherwise by statute or regulation specifically assigned to the jurisdiction of the Administrative Law Court. Unless otherwise provided by statute, the standard of proof in a contested case is by a preponderance of the evidence. The South Carolina Rules of Evidence apply in all contested case proceedings before the Administrative Law Court.

(B) All requests for a hearing before the Administrative Law Court must be filed in accordance with the court's rules of procedure. A party that files a request for a hearing with the Administrative Law Court must simultaneously serve a copy of the request on the affected agency. Upon the filing of the request, the chief judge shall assign an administrative law judge to the case. Notice of the contested case hearing must be issued in accordance with the rules of procedure of the Administrative Law Court.

(C) A full and complete record must be kept of all contested cases and regulation hearings before an administrative law judge. All testimony must be reported, but need not be transcribed unless a transcript is requested by a party. The party requesting a transcript is responsible for the costs involved. Proceedings before administrative law judges are open to the public unless confidentiality is allowed or required by law. The presiding administrative law judge shall render the decision in a written order. The decisions or orders of administrative law judges are not required to be published but are available for public inspection unless confidentiality is allowed or required by law.

(D) An administrative law judge also shall preside over all appeals from final decisions of contested cases pursuant to the Administrative Procedures Act, Article I, Section 22, Constitution of the State of South Carolina, 1895, or another law, except that an appeal from a final order of the Public Service Commission and the State Ethics Commission is to the Supreme Court or the court of appeals as provided in the South Carolina Appellate Court Rules, an appeal from the Procurement Review Panel is to the circuit court as provided in Section 11-35-4410, and an appeal from the Workers' Compensation Commission is to the court of appeals as provided in Section 42-17-60. An administrative law judge shall not hear an appeal from an inmate in the custody of the Department of Corrections involving the loss of the opportunity to earn sentence-related credits pursuant to Section 24-13-210(A) or Section 24-13-230(A) or an appeal involving the denial of parole to a potentially eligible inmate by the Department of Probation, Parole and Pardon Services.

(E) Review by an administrative law judge of a final decision in a contested case, heard in the appellate jurisdiction of the Administrative Law Court, must be in the same manner as prescribed in Section 1-23-380 for judicial review of final agency decisions with the presiding administrative law judge exercising the same authority as the court of appeals, provided that a party aggrieved by a final decision of an administrative law judge is entitled to judicial review of the decision by the court of appeals pursuant to the provisions of Section 1-23-610.

(F) Notwithstanding another provision of law, a state agency authorized by law to seek injunctive relief may apply to the Administrative Law Court for injunctive or equitable relief pursuant to Section 1-23-630. The provisions of this section do not affect the authority of an agency to apply for injunctive relief as part of a civil action filed in the court of common pleas.

(G) Notwithstanding another provision of law, the Administrative Law Court has jurisdiction to review and enforce an administrative process issued by an agency or by a department of the executive branch of government, as defined in Section 1-30-10, such as a subpoena, administrative search warrant, cease and desist order, or other similar administrative order or process. A department or agency of the executive branch of government authorized by law to seek an administrative process may apply to the Administrative Law Court to issue or enforce an administrative process. A party aggrieved by an administrative process issued by a department or agency of the executive branch of government may apply to the Administrative Law Court for relief from the process as provided in the Rules of the Administrative Law Court.

(H)(1) This subsection applies to timely requests for a contested case hearing pursuant to this section of decisions by departments governed by a board or commission authorized to exercise the sovereignty of the State.

(2) A request for a contested case hearing for an agency order stays the order. A request for a contested case hearing for an order to revoke or suspend a license stays the revocation or suspension. A request for a contested case hearing for a decision to renew a license for an ongoing activity stays the renewed license, the previous license remaining in effect pending completion of administrative review. A request for a contested case hearing for a decision to issue a new license stays all actions for which the license is a prerequisite; however, matters not affected by the request may not be stayed by the filing of the request. If the request is filed for a subsequent license related to issues substantially similar to those considered in a previously licensed matter, the license may not be automatically stayed by the filing of the request. If the requesting party asserts in the request that the issues are not substantially similar to those considered in a previously licensed matter, then the license must be stayed until further order of the Administrative Law Court. Requests for contested case hearings challenging only the amount of fines or penalties must be deemed not to affect those portions of orders imposing substantive requirements.

(3) The general rule of subsection (H)(2) does not stay emergency actions taken by an agency pursuant to an applicable statute or regulation.

(4) After a contested case is initiated before the Administrative Law Court, a party may move before the presiding administrative law judge to lift the stay imposed pursuant to this subsection. Upon motion by any party, the court shall lift the stay for good cause shown or if no irreparable harm will occur, then the stay shall be lifted. A hearing must be held within thirty days after the motion is filed with the court and served upon the parties to lift the automatic stay or for a determination of the applicability of the automatic stay. The judge must issue an order no later than fifteen business days after the hearing is concluded.

(5) A final decision issued by the Administrative Law Court in a contested case may not be stayed except by order of the Administrative Law Court or the court of appeals.

(6) Nothing contained in this subsection constitutes a limitation on the authority of the Administrative Law Court to impose a stay as otherwise provided by statute or by rule of court.

(I) If a final order of the Administrative Law Court is not appealed in accordance with the provisions of Section 1-23-610, upon request of a party to the proceedings, the

clerk of the Administrative Law Court shall file a certified copy of the final order with a clerk of the circuit court, as requested, or court of competent jurisdiction, as requested. After filing, the certified order has the same effect as a judgment of the court where filed and may be recorded, enforced, or satisfied in the same manner as a judgment of that court.

(J) If an attorney of record is called to appear in actions pending in other tribunals in this State, the action in the Administrative Law Court has priority as is appropriate. Courts and counsel have the obligation to adjust schedules to accord with the spirit of comity between the Administrative Law Court and other state courts.

HISTORY: 1993 Act No. 181, Section 19; 1994 Act No. 452, Sections 1, 5; 1995 Act No. 92, Section 1; 2004 Act No. 202, Section 2, eff April 26, 2004; 2006 Act No. 381, Section 1, eff June 13, 2006; 2006 Act No. 387, Section 4, eff July 1, 2006; 2007 Act No. 111, Pt I, Section 1, eff July 1, 2007, applicable to injuries that occur on or after that date; 2008 Act No. 188, Section 1, eff January 1, 2009; 2008 Act No. 201, Section 13, eff February 10, 2009; 2008 Act No. 334, Section 7, eff June 16, 2008; 2010 Act No. 278, Section 23, eff July 1, 2010; 2012 Act No. 183, Section 2, eff June 7, 2012; 2012 Act No. 212, Section 1, eff June 7, 2012.

SECTION 1-23-610. Judicial review of final decision of administrative law judge; stay of enforcement of decision.

(A)(1) For judicial review of a final decision of an administrative law judge, a notice of appeal by an aggrieved party must be served and filed with the court of appeals as provided in the South Carolina Appellate Court Rules in civil cases and served on the opposing party and the Administrative Law Court not more than thirty days after the party receives the final decision and order of the administrative law judge. Appeal in these matters is by right.

(2) Except as otherwise provided in this chapter, the serving and filing of the notice of appeal does not itself stay enforcement of the administrative law judge's decision. The serving and filing of a notice of appeal by a licensee for review of a fine or penalty or of its license stays only those provisions for which review is sought and matters not affected by the notice of appeal are not stayed. The serving or filing of a notice of appeal does not automatically stay the suspension or revocation of a permit or license authorizing the sale of beer, wine, or alcoholic liquor. Upon motion, the administrative law judge may grant, or the court of appeals may order, a stay upon appropriate terms.

(B) The review of the administrative law judge's order must be confined to the record. The court may not substitute its judgment for the judgment of the administrative law judge as to the weight of the evidence on questions of fact. The court of appeals may affirm the decision or remand the case for further proceedings; or, it may reverse or modify the decision if the substantive rights of the petitioner have been prejudiced because the finding, conclusion, or decision is:

- (a) in violation of constitutional or statutory provisions;
- (b) in excess of the statutory authority of the agency;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or
- (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

HISTORY: 1993 Act No. 181, Section 19; 2006 Act No. 387, Section 5, eff July 1, 2006; 2008 Act No. 334, Section 8, eff June 16, 2008.

SECTION 1-23-630. Powers of law judges.

(A) Each administrative law judge of the division has the same power at chambers or in open hearing as do circuit court judges and to issue those remedial writs as are necessary to give effect to its jurisdiction.

(B) An administrative law judge may authorize the use of mediation in a manner that does not conflict with other provisions of law and is consistent with the division's rules of procedure.

HISTORY: 1993 Act No. 181, Section 19; 2003 Act No. 39, Section 1.

SECTION 1-23-640. Principal offices of court; where cases heard.

The court shall maintain its principal offices in the City of Columbia. However, judges of the court shall hear contested cases at the court's offices or at a suitable location outside the City of Columbia when determined by the chief judge.

HISTORY: 1993 Act No. 181, Section 19; 1994 Act No. 452, Section 6; 2008 Act No. 334, Section 9, eff June 16, 2008.

SECTION 1-23-650. Promulgation of rules.

(A) Rules governing the internal administration and operations of the Administrative Law Court must be:

- (1) proposed by the chief judge of the court and adopted by a majority of the judges of the court; or
- (2) proposed by any judge of the court and adopted by seventy-five percent of the judges of the court.

(B) Rules governing practice and procedure before the court which are:

- (1) consistent with the rules of procedure governing civil actions in courts of common pleas; and
- (2) not otherwise expressed in Chapter 23, Title 1; upon approval by a majority of the judges of the court must be promulgated by the court and are subject to review as are rules of procedure promulgated by the Supreme Court under Article V of the Constitution.

(C) All hearings before an administrative law judge must be conducted exclusively in accordance with the rules of procedure promulgated by the court pursuant to this section. All other rules of procedure for the hearing of contested cases or appeals by individual agencies, whether promulgated by statute or regulation, are of no force and effect in proceedings before an administrative law judge.

HISTORY: 1993 Act No. 181, Section 19; 1994 Act No. 452, Section 2; 1998 Act No. 359, Section 5; 2006 Act No. 387, Section 6, eff July 1, 2006.

SECTION 1-23-660. Office of Motor Vehicle Hearings; conduct of hearings; applicability of Code of Judicial Conduct; appeals.

(A) There is created within the Administrative Law Court the Office of Motor Vehicle Hearings. The chief judge of the Administrative Law Court shall serve as the director of the Office of Motor Vehicle Hearings. The duties, functions, and responsibilities of all hearing officers and associated staff of the Department of Motor Vehicles are devolved upon the Administrative Law Court effective January 1, 2006. The hearing officers and staff positions, together with the appropriations relating to these positions, are transferred to the Office of Motor Vehicle Hearings of the Administrative Law Court on January 1, 2006. The hearing officers and staff shall be appointed, hired, contracted, and supervised by the chief judge of the court and shall continue to exercise their adjudicatory functions, duties, and responsibilities under the auspices of the Administrative Law Court as directed by the chief judge and shall perform such other functions and duties as the chief judge of the court prescribes. All employees of the office shall serve at the will of the chief judge. The chief judge is solely responsible for the administration of the office, the assignment of cases, and the administrative duties and responsibilities of the hearing officers and staff. Notwithstanding another provision of law, the chief judge also has the authority to promulgate rules governing practice and procedures before the Office of Motor Vehicle Hearings. These rules are subject to review as are the rules of procedure promulgated by the Supreme Court pursuant to Article V of the South Carolina Constitution.

(B) Notwithstanding another provision of law, the hearing officers shall conduct hearings in accordance with Chapter 23 of Title 1, the Administrative Procedures Act, and the rules of procedure for the Office of Motor Vehicle Hearings, at suitable locations as determined by the chief judge. For purposes of this section, any law enforcement agency that employs an officer who requested a breath test and any law enforcement agency that employs a person who acted as a breath test operator resulting in a suspension pursuant to Section 56-1-286 or 56-5-2951 is a party to the hearing and shall be served with appropriate notice, afforded the opportunity to request continuances and participate in the hearing, and provided a copy of all orders issued in the action. Representatives of the Department of Motor Vehicles are not required to appear at implied consent, habitual offender, financial responsibility, or point suspension hearings. However, if the Department of Motor Vehicles elects not to appear through a representative at any implied consent hearing, or through the submission of documentary evidence at any habitual offender, financial responsibility, or point suspension hearing, and it wishes to appeal the decision, it must first file a motion for reconsideration with the Office of Motor Vehicle Hearings within ten days after receipt of the hearing officer's decision. The hearing officer must issue a written order upon the motion for reconsideration within thirty days. The Department of Motor Vehicles may file a notice of appeal with the Administrative Law Court within thirty days after receipt of the hearing officer's order on the motion for reconsideration. The Administrative Law Court must dismiss any appeal which does not meet the requirements of this subsection.

(C) The hearing officers are bound by the Code of Judicial Conduct, as contained in Rule 501 of the South Carolina Appellate Court Rules. The State Ethics Commission is responsible for the enforcement and administration of those rules and for the issuance of advisory opinions on the requirements of those rules for administrative law judges and hearing officers pursuant to the procedures contained in Section 8-13-320. Notwithstanding another provision of law, an administrative law judge or hearing officer, and the judge's or hearing officer's spouse or guest, may accept an invitation to and attend a judicial-related or bar-related function, or an activity devoted to the improvement of the law, the legal system, or the administration of justice.

(D) Appeals from decisions of the hearing officers must be taken to the Administrative Law Court pursuant to the court's appellate rules of procedure. Recordings of all hearings will be made part of the record on appeal, along with all evidence introduced at hearings, and copies will be provided to parties to those appeals at no charge. The chief judge shall not hear any appeals from these decisions.

HISTORY: 1993 Act No. 181, Section 19; 2005 Act No. 128, Section 22, eff July 1, 2005; 2006 Act No. 381, Section 2, eff June 13, 2006; 2006 Act No. 387, Section 7, eff July 1, 2006; 2008 Act No. 201, Section 14, eff February 10, 2009; 2008 Act No. 279, Section 1, eff October 1, 2008.

SECTION 1-23-670. Filing fees.

Each request for a contested case hearing, notice of appeal, or request for injunctive relief before the Administrative Law Court must be accompanied by a filing fee equal to that charged in circuit court for filing a summons and complaint, unless another filing fee schedule is established by rules promulgated by the Administrative Law Court, subject to review as in the manner of rules of procedure promulgated by the Supreme Court pursuant to Article V of the Constitution of this State. This fee must be retained by the Administrative Law Court in order to help defray the costs of the proceedings. No filing fee is required in administrative appeals by inmates from final decisions of the Department of Corrections or the Department of Probation, Parole and Pardon Services. However, if an inmate files three administrative appeals during a calendar year, then each subsequent filing during that year must be accompanied by a twenty-five dollar filing fee. If the presiding administrative law judge determines at the conclusion of the proceeding that the case was frivolous or taken solely for the purpose of delay, the judge may impose such sanctions as the circumstances of the case and discouragement of like conduct in the future may require.

HISTORY: 2008 Act No. 353, Section 2, Pt 18A, eff July 1, 2009.

SECTION 1-23-680. Cost of South Carolina Code, supplements, and replacement volumes.

The South Carolina Administrative Law Court is not required to reimburse the South Carolina Legislative Council for the cost of the Code of Laws, code supplements, or code replacement volumes distributed to the court.

HISTORY: 2008 Act No. 353, Section 2, Pt 18B, eff July 1, 2009.

**Beaufort County
Government**

Office of Public Information



June 24, 2014

Mare Baracco
1006 Madrid Avenue
Port Royal, SC 29935

Re: Freedom of Information Act request

Dear Ms. Baracco,

I have been provided your letter, dated June 5, 2014, you sent to County Council Chairman Paul Sommerville requesting material from Beaufort County under the Freedom of Information Act. Below I have provided information on where a portion of the material requested can be located online. Other information in the request will require a significant amount of staff time and resources to fill, therefore, a deposit from you, for the cost of employee time and copies will be required. Please consider this correspondence the response from Beaufort County to the information requested.

a. Documents in regard to the creation of Beaufort County and the boundaries of Beaufort County can be found at the following two links: <http://www.scstatehouse.gov/code/t04c001.php>
<http://www.scstatehouse.gov/code/title4.php>.

b. All Beaufort County ordinances can be found at the following link:
<https://library.municode.com/HTML/10400/level1/PTIGEOR.html>.

c. A list of all services offered by Beaufort County to its residents can be found at www.bcgov.net under Departments. There you will find information on services offered by the Detention Center, Animal Services, the Sheriff's Office and Solid Waste and Recycling. Also, located at www.bcgov.net is an icon at the top of the page labeled Helpful Links. There you will search for each of the Fire Departments website's that will explain its services.

d. Information regarding all Mutual Aid Agreements Beaufort County and any entity or company can be found at www.bcgov.net at the bottom of the page where a blue icon is labeled Archives. There, a variety of information is available including, but not limited to a list of Intergovernmental Agreements, Leases, Memorandums of Understanding, Policies, Reports, Studies, information regarding the Detention Center and Public Works.

e. Copies of any and all contracts between Beaufort County and any entity, company or corporation for any type of law enforcement, fire services, animal services and litter control for the last five (5) years will cost \$1,100.00. This cost reflects staff time to search for the requested information and cost of copies.

f. Copies of Beaufort County Council minutes dating back to 2000 can be found at www.bcgov.net under Departments and County Council. All payments made by the County can be found at the above link under Departments - Finance and Purchasing dating back to Fiscal Year 2011. For vendor payments dating back further than Fiscal Year 2011 there will be a cost of \$1,500.00. This cost reflects staff time to search for the requested information and cost of copies. If the information found online is sufficient for information you are searching for, no cost will be required for this section of the request.

g. Copies of all County resolutions can be found at www.bcgov.net under Departments and County Council. All County ordinances can be found at the following link: <https://library.municode.com/HTML/10400/level1/PTIGEOR.html>. For copies of all County Council emails between Council members and members of the municipalities and entities listed in the request, there is a cost listed at the bottom of this letter for the staff time to search for the requested information and cost of copies.

h. Copies of any and all authorizations from Beaufort County to the Sheriff's Office for mutual aid in regard to law enforcement, fire services, animal services/control and litter control for the last (5) five years to the municipalities and entities has a cost listed at the bottom of this letter for the staff time to search for the requested information and cost of copies.

i. Copies of any and all authorizations from the municipalities and entities listed in your request to Beaufort County for mutual aid in regard to law enforcement, fire services, animal services/control and litter control for the last (5) five years has a cost listed at the bottom of this letter for the staff time to search for the requested information and cost of copies.

j. Copies of all documentation from Beaufort County to the municipalities and entities listed in your request detailing personnel and equipment to rendering mutual aid in regard to law enforcement, fire services, animal services/control and litter control for the last (5) five years has a cost listed at the bottom of this letter for the staff time to search for the requested information and cost of copies.

k. Copies of all documentation from the municipalities and entities listed in your request to Beaufort County detailing personnel and equipment to rendering mutual aid in regard to law enforcement, fire services, animal services/control and litter control for the last (5) five years has a cost listed at the bottom of this letter for the staff time to search for the requested information and cost of copies.

l. Copies of memoranda and/or other documentation between Beaufort County as it pertains to "host jurisdiction" regarding law enforcement, fire services, animal services/control and litter control for the last (5) five years has a cost listed at the bottom of this letter for the staff time to search for the requested information and cost of copies.

m. All documentation between Beaufort County and the municipalities and entities listed in your request as it pertains to the relinquishment of any governmental powers has a cost listed at the bottom of this letter for the staff time to search for the requested information and cost of copies.

n. All Beaufort County resolutions dating back to 1962 can be found online at www.bcgov.net under Departments and County Council. As for other documentation in regard to the relinquishment of any governmental powers vested in Beaufort County, a cost is listed at the bottom of this letter for the staff time to search for the requested information and cost of copies.

o. The request for all documentations of the full accountings of the number of hours spent by an entity of Beaufort County as it relates to the "cooperative law enforcement services" is denied due the documentation being requested does not exist. Under the Freedom of Information Act, Beaufort County is not required to provide data in a specific format when such a document may not already exist.

p. All documentation in reference to language used in any Mutual Aid Agreement between Beaufort County and any entity or company can be found online. Specifics on how to retrieve that material is explained above in letter d.

q. All documentation as to any claims arising out of any mutual agreements/contracts between Beaufort County and the municipalities and entities listed in your request as it pertains to "host jurisdiction" regarding law enforcement, fire services, animal services/control and litter control for the last (5) five years will cost \$300.00. This cost reflects staff time to search for the requested information and cost of copies.

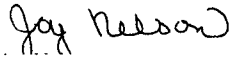
r. No documentation in regard to policies and procedures and/or directives of the Beaufort County Council and/or Administration as it pertains to any and all notifications of any type of law enforcement, fire services, animal services/control and litter control for the last (5) five years was found.

The total estimated cost of the information requested is \$35,500.00. According to SC Title 30-4-30, (b) the public body may establish and collect fees not to exceed the actual cost of searching for or making copies of records. This fee is based on the estimation of time it will take to search for any and all documents pertaining to the topics listed above and for the copies of all checks, contracts and emails. For one employee, it's estimated to take 60 days to search the County email data base looking for information detailed above. The amount of emails expected to be found during this search is more than 100,000. Beaufort County does not have the capability to print this large amount of material, therefore, having to send the emails to a company to print the request. The cost associated for the 60 days of staff time, discs and printing cost is estimated at \$32,000.00. As a result of this price, a deposit to begin the process of fulfilling the request is \$8,875.00. This amount is one-fourth of the total cost of the request. Once the entire requested information is ready for delivery, the remaining \$26,625.00 must be received by Beaufort County before the information is sent. If you would like this Freedom of Information Act request

to be carried out, please send a check for \$8,875.00. Please make the check out to the *Beaufort County Treasurer* and send to Joy Nelson at PO Drawer 1228, Beaufort, SC 29901.

Please let me know if there is anything else I can assist you with.

Sincerely,

A handwritten signature in cursive script that reads "Joy Nelson".

Joy Nelson
Beaufort County Government
Public Information Officer
PO Drawer 1228
Beaufort SC 29901
jnelson@bcgov.net
(843)255-2250

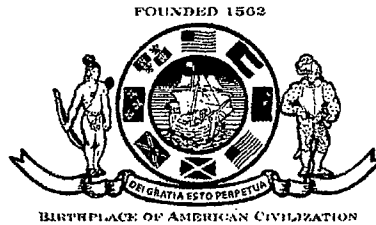
Town of Port Royal, South Carolina

Council

Samuel E. Murray
Mayor

Mary Beth Heyward
Mayor Pro Tempore

Vernon DeLoach
Tom Klein
Joe Lee



Van Willis
Town Manager

T. Alan Beach
Chief of Police

Jeffrey S. Coppinger
Daniel G. Lemieux
Operations

Linda Bridges
Planning

May 29, 2014.

Ms. Mare Baracco
1006 Madrid Avenue
Port Royal, SC 29935

Re: FOI Request

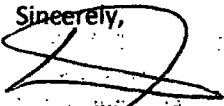
Dear Ms. Baracco:

I am in receipt of your most recent freedom of information request of May 20, 2014, and I need some clarification. First, what is encompassed in this most recent request is the same language of the FOI request I received on Friday evening, May 16, 2014, at 11:11pm. Do you want the information requested in the FOI of May 16, 2014 separate from the May 20, 2014 request?

Second, I have reviewed your request for a waiver of fees for this work, and I cannot do that at this time. We have a small administrative staff. As a matter of fact, I do not have an administrative assistant, so it will be necessary for me, the town clerk, the police chief, the assistant police chief, and other employees to pull the information and assemble it. Considering the large scope of the request, it will require those employees to be pulled off their other duties. The estimated cost for the request is very preliminary at this time, but will easily run at least \$3,000 to \$4,000. If you would like to revise the scope of the request to reduce costs, please let me know.

At your earliest opportunity, please let me know if you would prefer to have us perform this work, or make the ordinance books, files, minutes, and other associated documents available for your review. If that is the preferred option, we will schedule the conference room for your use, provide the materials pertinent to your request, and make copies of the pages you deem pertinent at a cost of 15 cents per page. You can review minute books and ordinance books, any time. Just let us know when you would like to those the documents.

Sincerely,


Van Willis
Town Manager

Cc: Mayor and Town Council



HARVEY & BATTEY, PA
ATTORNEYS AT LAW
SINCE 1922

1001 CRAVEN STREET • P.O. DRAWER 1107 • BEAUFORT, SC 29901-1107
(843) 524-3109 • (843) 524-6973 FAX
www.harveyandbattey.com • writer's e-mail: bharvey@harveyandbattey.com

W. BRANTLEY HARVEY, SR.
(1893-1981)
W. BRANTLEY HARVEY, JR.
(Retired)
COLDEN R. BATTEY, JR.
(S.C. Circuit Court Mediator)
WILLIAM B. HARVEY, III
(S.C. Circuit Court Mediator)

JOHN M. TATUM, III
THOMAS C. DAVIS
THOMAS A. HOLLOWAY
(Also Admitted in N.J. & Pa.)
EUGENE PARRS
(Also Admitted in N.Y., Ga., N.C., and Fla.)
J. SAMUEL SCOVILLE
KEVIN E. DUKES

July 21, 2014

Ms. Mare Baracco
1006 Madrid Avenue
Port Royal, SC 29935

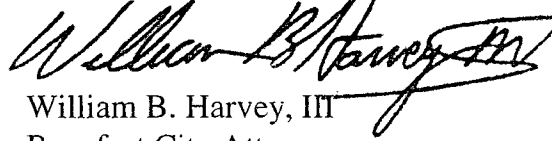
Re: ***Freedom of Information Request dated June 5, 2014***
H&B File Number 12232

Dear Ms. Baracco:

In follow up to my letter of June 11, 2014, the City has determined that it will take an estimated 160 hours of staff time to research and gather the documents and other information requested in your FOIA request of June 5, 2014. At \$35.00 per hour, this will total \$5,600 of staff research time. In keeping with City policy regarding requests of this nature, payment in advance for this staff research time will be required before we will devote such extensive resources to this project.

I have your letter of June 16, 2014. We do not allow individuals to simply inspect City files. I understand that you have received a similar response from Beaufort County regarding your FOIA request to them. Upon receipt of your check, we will begin expending the staff time necessary to fulfill your request. Please contact me if you have further questions. Thank you for your cooperation.

Very truly yours,
HARVEY & BATTEY, P.A.



William B. Harvey, III
Beaufort City Attorney

WBHIII/lpb

cc: Scott Dadson
Ivette Burgess

TOWN OF HILTON HEAD ISLAND

One Town Center Court, Hilton Head Island, S.C. 29928

(843) 341-4600 Fax (843) 842-7728

www.hiltonheadislandsc.gov

June 26, 2014

Drew A. Laughlin
Mayor

William D. Harkins
Mayor ProTem

Council Members

Wm. Lee Edwards
Marc A. Grant
Kim W. Likins
John J. McCann
George W. Williams, Jr.

Stephen G. Riley
Town Manager

Mare Baracco
1006 Madrid Avenue
Port Royal, SC 29935

Re: Freedom of Information Request Dated June 5, 2014

Dear Ms. Baracco:

First, I would like to address your June 12, 2014 letter to Faidra Smith. The decision you mentioned related to Mr. Hoagland relates to research time to comply with a Subpoena for information (issued by an attorney) not a Freedom of Information request. South Carolina Code Section 30-4-30 (b) states that a "public body may establish and collect fees not to exceed the actual cost of searching for or making copies of records."

Please find attached an invoice showing the estimate of time and costs for research to comply with your request. It is the Town's policy to require a 50% deposit prior to research if the estimate is over \$50.00.

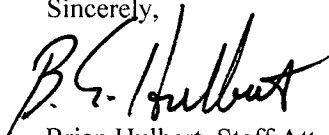
Your request involves many different departments and staff levels. Page two of the invoice explains the fee schedule that the Town charges for research costs. Hourly rates are based on a range of salary levels.

Please send a check for \$456.00 (50%) payable to the Town of Hilton Head Island, Attention: Faidra Smith, Administration, One Town Center Court, Hilton Head Island, SC 29928. Once we receive the deposit, we will commence the research. Again, this is an estimate for research time and **does not include costs for copies**. Once we research and gather the information, you may come in to view the documents prior to any copies being made. Copies are 10 cents a page.

If you wish to revise your request to reduce the costs please feel free to send a revised request in writing. We will then issue a new estimate of costs to you. Please note that Item G in your request involves a great deal of research time.

If you have any questions regarding your request, please feel free to contact me at 341-4633.

Sincerely,



Brian Hulbert, Staff Attorney

**Town of Hilton Head Island
Public Information Requests
Fee Calculation Form**

INVOICE #: _____

☐ Written Request

☐ Verbal Request

Request Details:	Law enforcement services, fire services, animal service, animal control, litter control etc.
-------------------------	--

Requested by: Mare Baracco	Date of Request 06/05/2014
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Research (Staff Hourly Rate vary by Salary Grade. Please see below.)				
	Department/Employee Involved	Administrative Hours	Staff Hourly Rate*	Research Fees Due
1	Executive/Administration	3	\$ 22.00	\$ 66.00
2	Town Council/Asst. Town Mng.	5	\$ 51.00	\$ 255.00
3	Staff Attorney	1	\$ 35.00	\$ 35.00
4	Fire/Rescue Adm. Assistants	3	\$ 22.00	\$ 66.00
5	Fire/Rescue Administration	14	\$ 35.00	\$ 490.00
Subtotal				\$ 912.00

Copies				
	Department/Employee Involved	Number of Copies	Fee per Copy	Fees Due
1		0	\$ 0.10	\$ -
2			\$ 0.10	\$ -
3			\$ 0.10	\$ -
4			\$ 0.10	\$ -
5			\$ 0.10	\$ -
Subtotal				\$ -

Postage	
----------------	--

Deposit	\$ -
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Total Due	\$ 912.00
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Please remit payment payable to the Town of Hilton Head Island to:

Town of Hilton Head Island
ATTN: Revenue & Collection Dept.
One Town Center Court
Hilton Head Island, SC 29928

* Salary Grades 10-18: \$22.00 / hr. Salary Grades 19-23: \$35.00 / hr. Salary Grades 24 & above: \$51.00 / hr.

Salary Breakdown on other side.

**STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT**

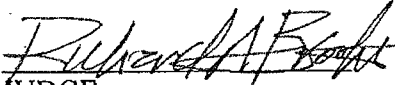
RULE TO SHOW CAUSE

Kimberly Smith, Esq.
PO Drawer 507
Beaufort, SC 29901

MAGISTRATE SUMMONS

IT IS ORDERED THAT YOU APPEAR BEFORE THIS COURT ON May 2, 2013 at 10:00 AM, then and there to be prepared to show cause, if any, why the dog subject to the Order should not be remanded to the custody of Beaufort County Animal Control until such time as you are in compliance with the requirements for keeping a dangerous animal OR Judge Brooks' Order is reversed on Appeal.

HEREIN FAIL NOT, ON PAIN OF FORFEITING THE LAWFUL PENALTY IN SUCH CASE MADE AND PROVIDED.


JUDGE

Beaufort Magistrate
104 Ribaut Road Post Office Box 2207
Beaufort, SC 29901
Phone: (843) 255-5700 Fax: (843) 255-9427

April 17, 2013


P-
n-

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

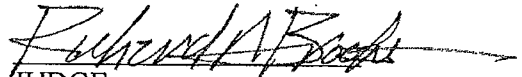
RULE TO SHOW CAUSE

Mare Baracco
1006 Madrid Avenue
Port Royal, SC 29935

MAGISTRATE SUMMONS

IT IS ORDERED THAT YOU APPEAR BEFORE THIS COURT ON May 2, 2013 at 10:00 AM, then and there to be prepared to show cause, if any, why the dog subject to the Order should not be remanded to the custody of Beaufort County Animal Control until such time as you are in compliance with the requirements for keeping a dangerous animal OR Judge Brooks' Order is reversed on Appeal.

HEREIN FAIL NOT, ON PAIN OF FORFEITING THE LAWFUL
PENALTY IN SUCH CASE MADE AND PROVIDED.


JUDGE

Beaufort Magistrate
104 Ribaut Road Post Office Box 2207
Beaufort, SC 29901
Phone: (843) 255-5700 Fax: (843) 255-9427

April 17, 2013

Subject: Re: FOIA Request
From: Mare Baracco Deckard (maremailmmm@yahoo.com)
To: jnelson@bcgov.net;
Date: Thursday, August 21, 2014 2:55 PM

Thank you.

On Thursday, August 21, 2014 1:49 PM, "Nelson, Joy" <jnelson@bcgov.net> wrote:

Hello Ms. Baracco,
I wanted to let you know I did receive your check yesterday. The Clerk for Magistrate Court who can make the copy is on vacation this week but will return Monday. I will touch base with her on Monday to retrieve the CD. As soon as it's been made, I'll let you know and mail it to you.

Please let me know if there is anything else I can assist you with in the meantime.

Thank you and have a wonderful day,

Joy Nelson
Public Information Officer
Beaufort County
843-255-2250
jnelson@bcgov.net



From: Mare Baracco Deckard [mailto:maremailmmm@yahoo.com]
Sent: Tuesday, August 19, 2014 8:47 AM
To: Nelson, Joy
Subject: Re: FOIA Request

Thank you, hard copy with check mailed to you this am.

On Tuesday, August 19, 2014 8:20 AM, "Nelson, Joy" <jnelson@bcgov.net> wrote:

Good Morning Ms. Baracco,
I have received your Freedom of Information Act request in regard to a copy of the court audio recording, from the May 2, 2013 hearing before Judge Richard Brooks, in the matter of *The State of South Carolina v Mare Baracco*.

Thank you and have a wonderful day,

Joy Nelson
Public Information Officer
Beaufort County
843-255-2250
jnelson@bcgov.net



From: Mare Baracco Deckard [<mailto:maremailmmm@yahoo.com>]
Sent: Monday, August 18, 2014 11:20 PM
To: Nelson, Joy
Cc: Brittany L. Shane; Skipphoagland
Subject: FOIA Request

Dear Ms. Nelson, please confirm receipt. Thank you, Mare Baracco

Subject: FW: FOIA Request
From: Nelson, Joy (jnelson@bcgov.net)
To: maremailmmm@yahoo.com;
Date: Monday, August 25, 2014 6:02 PM

Hello Ms. Baracco,

I've been able to retrieve the recording you requested under the Freedom of Information Act. If you are happy with the recording being attached to this email, I will return your \$10 check. If not, I will have the judge create a CD for you.

Thank you and have a wonderful day,

Joy Nelson

Public Information Officer

Beaufort County

843-255-2250

jnelson@bcgov.net



THE STATE OF SOUTH CAROLINA
SOUTH CAROLINA COURT OF APPEALS

APPEAL FROM BEAUFORT COUNTY
COURT OF COMMON PLEAS

MARVIN H. DUKES, III, MASTER-IN-EQUITY

APPELLATE CASE NO.: 2014-000636

BEAUFORT COUNTY,

Respondent,

vs.

MARE BARACCO,

Appellant.

PROOF OF SERVICE

I certify that I have served upon the Respondent the Appellant's Motion to Dismiss by depositing a copy of it in the United States Mail, postage prepaid, March 10, 2015, addressed to their attorneys of record, as follows:

Mary Bass Lohr
Post Office Box 40
Beaufort, South Carolina 29901-0040

Allison Coppage
Joshua Gruber
Beaufort County Attorneys
Post Office Box 1228
Beaufort, South Carolina 29901-1228

RECEIVED

MAR 13 2015

SC Court of Appeals

RECEIVED
MAR 13 2015
SC Court of Appeals

(843) 255-2059

Attorneys for Respondent.

A handwritten signature in black ink, appearing to read 'Mare Baracco', written over a horizontal line.

Mare Baracco, *Pro Se*
1006 Madrid Avenue
Port Royal, South Carolina 29935

Date: March 10, 2015.

MARE BARACCO
1006 Madrid Avenue
Port Royal, South Carolina 29935
(843) 592-1062

RECEIVED
MAR 13 2015
SC Court of Appeals

March 10, 2015

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1015 Sumter Street #5
Columbia, South Carolina 29201

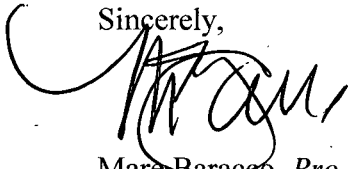
RECEIVED
MAR 13 2015
SC Court of Appeals

RE: Mare Baracco v. Beaufort County, Case No. 2013-CP-07-00918
Appellate Case No.: 2014-000636

Dear Ms. Kitchings:

Enclosed for filing is Appellant's Motion to Dismiss in the above captioned case, and six copies for filing. Also enclosed is a check in the amount of \$25.00 for the filing, and the proof of service.

Sincerely,



Mare Baracco, *Pro Se*
1006 Madrid Avenue
Port Royal, South Carolina 29935

Other Counsel of Record:
Mary Bass Lohr
Allison Coppage
Joshua Gruber