

STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

**RECEIVED**

NOV 20 2015

**SC Court of Appeals**

Appeal From The Richland County  
Court of Common Pleas From Orders of  
Honorable G. Thomas Cooper, Jr.,

Appellate Case No.: 2015-000740

Case No.(s): 2013-CP-40-03078  
2007-CP-40-03742

Subsequent Interlocutory Orders of (Former) Circuit Court Judge,  
Honorable J. Michelle Childs:

Case No.(s): 2007-CP-40-03742  
2009-CP-40-02442

Subsequent Interlocutory Order of Circuit Court Judge,  
Honorable De Andrea Gist Benjamin:

Case No.: 2009-CP-40-02442

Clarence S. Gregory, . . . . .Appellant,

**Verses**

Riley Pope & Laney, LLC, Law Firm, Attorney(s) and Counselor(s)  
at Law; Individually and Individually named, Theodore D. Riley,  
T. Lowndes Pope, LeRoy Free Laney, Nikole H. Boland, Of whom  
All are sued In Their Individual and Professional Capacities,  
Riley Pope & Laney, Limited Liability Contractor(s)(LLC);

AND

Heath McAlvin Stewart, III, Individually and Individually named,  
Of who, Formerly Employed with Riley Pope & Laney, LLC, Law  
Firm, An Agent Attorney Is Sued In His Individual and

Professional Capacities, Et Al.;

All Whom are named as Defendants,  
Of Which Riley Pope & Laney, LLC, Is The Respondent.

---

RECORD ON APPEAL

---

VOLUME II, OF IV

CLARENCE S. GREGORY, #227394  
C/O BROAD RIVER CORRECTIONAL INST.,  
MURRAY UNIT, B-WING RM. 234  
4460 BROAD RIVER ROAD  
COLUMBIA, SOUTH CAROLINA  
ZIP CODE 29210-4012

APPELLANT PRO' SE

RILEY POPE & LANEY, LLC  
C/O DAMON C. WLODARCZYK, ESQUIRE  
ATTORNEY(S) AND COUNSELOR(S) AT LAW  
2838 DEVINE STREET  
POST OFFICE BOX 11412  
COLUMBIA, SOUTH CAROLINA  
ZIP CODE 29211-1412

RESPONDENT

DAMON C. WLODARCZYK, ESQUIRE FOR  
RESPONDENT.

| PAGE ONE (1) OF FOUR (4), <u>INDEX</u>                                                                                                                                  | PAGE(S) |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------|
| APPELLANTS' PETITION FOR A WRIT OF MANDAMUS APPENDIX, . . . . .                                                                                                         | 249     |
| LEGAL CORRESPONDANCE LETTER FROM, THE HONORABLE DANIEL E. SHEAROUSE, CLERK OF S.C. SUPREME COURT, . . . . .                                                             | 250     |
| LEGAL CORRESPONDANCE FROM, RESPECTIVE JUDY N. DAVIS, CIVIL RECORD MANAGER, RICHLAND COUNTY COURT OF COMMON PLEAS, . . . . .                                             | 251     |
| APPELLANTS' REPLY, . . . . .                                                                                                                                            | 253     |
| LEGAL CORRESPONDANCE DISPOSITION FROM, THE HONORABLE JEAN H. TOAL, CHIEF JUSTICE OF THE S.C. SUPREME COURT, . . . . .                                                   | 256     |
| LEGAL CORRESPONDANCE DISPOSITION OF, RICHLAND COUNTY ATTORNEY OFFICE, RESPECTIVE LARRY C. SMITH, ESQUIRE, . . . . .                                                     | 258     |
| RESPONDENTS' COUNSEL DAMON C. WLODARCZYK, MEMORANDUM IN OPPOSITION, IN CASE NO.: (2007-CP-40-03742), . . . . .                                                          | 260     |
| RESPONDENTS' COUNSEL, DAMON C. WLODARCZYK, MEMORANDUM IN OPPOSITION, IN CASE NO.: (2009-CP-40-02442), . . . . .                                                         | 264     |
| APPELLANTS' LETTER AND AFFIDAVIT OF SERVICE, PROCESS OF SERVICE, SUMMONS AND COMPLAINT, IN CASE NO.: (2013-CP-40-03078), . . . . .                                      | 268     |
| . . . . .                                                                                                                                                               | 268     |
| RESPONDENTS' COUNSEL DAMON C. WLODARCZYK'S NOTICE AND MOTION TO DISMISS, RULE 12 (B) (6), SCRCF, AND CERTIFICATE OF SERVICE, IN CASE NO.: (2013-CP-40-03078), . . . . . | 272     |
| APPELLANTS' COVER LETTER, NOTICE, MOTION, AFFIDAVIT IN OPPOSITION TO RESPONDENTS' MOTION TO DISMISS, RULE 12 (B)(6), SCRCF, . . . . .                                   | 275     |
| APPELLANTS' NOTICE AND MOTION TO AMEND COMPLAINT, . . . . .                                                                                                             | 292     |

|                                                                                                                                                                                   |     |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|
| RICHLAND COUNTY, COURT OF COMMON PLEAS, NOTICE OF MOTION<br>HEARING, IN CASE NO.: (2013-CP-40-03078), . . . . .                                                                   | 294 |
| RESPONDENTS' COUNSEL DAMON C. WLODARCZYK'S CASE LAW OF AUTHOR-<br>-TIES, EXHIBIT, HILL VS. YORK COUNTY SHERIFF'S DEPARTMENT, IN<br>CASE NO.: (2013-CP-40-03078), . . . . .        | 298 |
| RESPONDENTS' LETTER OF CORRESPONDANCE, IN CASE NO.: (2013-CP-<br>40-03078, DATED JULY 18, 2014, UNDER RULE 59 (E), SCRCP, MOTION<br>OF APPELLANT, . . . . .                       | 300 |
| APPELLANTS' COVER LETTER, NOTICE, MOTION AND AFFIDAVIT OF RULE<br>52, 59 (E), SCRCP, IN CASE NO.: (2013-CP-40-03078), . . . . .                                                   | 302 |
| APPELLANTS' NOTICE OF APPEAL AND PROOF OF SERVICE, . . . . .                                                                                                                      | 342 |
| RESPONDENTS' NOTICE, MOTION AND MEMORANDUM IN SUPPORT OF SUMMARY<br>JUDGMENT, IN CASE NO.: (2009-CP-40-02442), . . . . .                                                          | 352 |
| RESPONDENTS' (FORMER) COUNSEL HEATH M. STEWART, III, CERTIFICATE<br>OF SERVICE, IN CASE NO.: (2009-CP-40-02442), . . . . .                                                        | 363 |
| APPELLANTS' BRIEF AND MEMORANDUM, STATEMENT OF FACTS, AFFIDAVIT<br>IN SUPPORT OF OPPOSING RESPONDENTS' MOTION FOR SUMMARY JUDGMENT,<br>IN CASE NO.: (2009-CP-40-02442), . . . . . | 364 |
| RICHLAND COUNTY COURT OF COMMON PLEAS CLERK'S NOTICE FOR<br>SCHEDULING HEARING, BEFORE (FORMER) JUDGE HONORABLE J. MICHELLE<br>CHILDS, DATED JANUARY 14, 2010, . . . . .          | 375 |
| RESPONDENTS' (FORMER) COUNSEL, HEATH M. STEWART, III, COVER<br>LETTER, NOTICE OF DEPOSITION, DATED APRIL 12, 2010, IN CASE<br>NO.: (2009-CP-40-02442), . . . . .                  | 379 |

|                                                                                                                                                                                                              |     |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|
| RESPONDENTS' (FORMER) COUNSEL HEATH M. STEWART, III, CERTIFICATE OF SERVICE, IN CASE NO.: (2009-CP-40-02442), . . . . .                                                                                      | 383 |
| RESPONDENTS' (FORMER) COUNSEL, NIKOLE H. BOLAND, COVER LETTER, NOTICE, SUBSEQUENT MOTION FOR SUMMARY JUDGMENT, IN CASE NO.: (2009-CP-40-02442), DATED FEBRUARY 23, 2011, . . . . .                           | 384 |
| RESPONDENTS' (FORMER) COUNSEL NIKOLE H. BOLAND'S CERTIFICATE OF SERVICE, IN CASE NO.: (2009-CP-40-02442), . . . . .                                                                                          | 386 |
| APPELLANTS' NOTICE, MOTION, AMENDED MOTION TO OPPOSE, AND AFFIDAVIT, IN RESPONSE TO RESPONDENTS' COUNSEL BOLAND'S MOTION FOR (SUBSEQUENT SUMMARY JUDGMENT), IN CASE NO.: (2009-CP-40-02442), . . . . .       | 387 |
| APPELLANT IN RECEIPT OF RESPONDENTS' (FORMER) COUNSEL BOLAND'S MEMORANDUM IN SUPPORT OF (SUBSEQUENT) SUMMARY JUDGMENT, DATED AUGUST 31, 2011, IN THE PROCEEDINGS, IN CASE NO.: (2009-CP-40-02442), . . . . . | 391 |
| RICHLAND COUNTY COURT OF COMMON PLEAS, CLERK'S NOTICE OF MOTION, SCHEDULING FOR HEARING, DATED AUGUST 10, 2011, IN CASE NO.: (2009-CP-40-02442), . . . . .                                                   | 402 |
| RESPONDENTS' (FORMER) COUNSEL, LEROY FREE LANEY, COVER LETTER, (FIRST) NOTICE, MOTION FOR SUMMARY JUDGMENT, DATED OCTOBER 26, 2007, IN CASE NO.: (2007-CP-40-03742), . . . . .                               | 404 |
| RESPONDENTS' (FORMER) COUNSEL LANEY'S CERTIFICATE OF SERVICE, IN CASE NO.: (2007-CP-40-03742), . . . . .                                                                                                     | 407 |
| RICHLAND COUNTY COURT OF COMMON PLEAS, CLERK'S NOTICE OF HEARING SCHEDULED FOR HEARING, DATED DECEMBER 11, 2007, IN CASE                                                                                     |     |

|                                                                                                                                                                                                                            |                 |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|
| NO.: (2007-CP-40-03742), . . . . .                                                                                                                                                                                         | 408             |
| RESPONDENTS' (FORMER) COUNSEL HEATH M. STEWART, III, LETTER<br>AND NOTICE OF DEPOSITION, IN CASE NO.: (2007-CP-40-03742),<br>. . . . .                                                                                     | 409             |
| RESPONDENTS' COUNSEL HEATH M. STEWART, III, LETTER, NOTICE,<br>(SUBSEQUENT) MOTION, MEMORANDUM IN SUPPORT OF SUMMARY JUDGMENT,<br>DATED MAY 07, 2009, IN CASE NO.: (2007-CP-40-03742),<br>. . . . .                        | 414             |
| RESPONDENTS' (FORMER) COUNSEL HEATH M. STEWART, III, CERTIFICATE<br>OF SERVICE, IN CASE NO.: (2007-CP-40-03742), . . . . .                                                                                                 | 425             |
| APPELLANTS' COVER LETTER, NOTICE, (SUBSEQUENT) OPPOSING MOTION,<br>AFFIDAVIT IN SUPPORT TO BARR, RESPONDENTS' COUNSEL MOTION FOR<br>SUMMARY JUDGMENT, DATED JUNE 11, 2009, IN CASE NO.: (2007-CP-<br>-40-03742), . . . . . | 426             |
| APPELLANTS' (SUBSEQUENT) REQUEST FOR DISCOVERY, PRODUCTION AND<br>AFFIDAVIT OF SERVICE, DATED MAY 27, 2009, IN CASE NO.: (2009-<br>-CP-40-02442), . . . . .                                                                | 432             |
| RESPONDENTS' (FORMER) COUNSEL HEATH M. STEWART, III, (SUBSEQUENT)<br>REQUEST FOR DISCOVERY PRODUCTION, INTERROGATORY, DATED JUNE<br>23, 2009, IN CASE NO.: (2009-CP-40-02442), . . . . .                                   | 440             |
|                                                                                                                                                                                                                            | <u>Thru</u> 454 |

15

249

20130 P4000137

THE STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

IN THE ORIGINAL JURISDICTION

RICHLAND COUNTY  
FILED  
2013 JAN -9 AM 11:26  
JEANETTE W. MCBRIDE  
C.C.P. & G.S.

Clarence S Gregory . . . . . Petitioner

Verses

The Honorable Jeanette W. McBride, Clerk of Court, Richland  
County and The Honorable James R. Barber, III, Fifth Judicial  
Circuit, Chief Administrative Judge . . . . . Respondent(s)

PETITION FOR AN WRIT OF MANDAMUS

A P P E N D I X

CLARENCE S. GREGORY  
SCDC NUMBER #227394  
BROAD RIVER CORRECTIONAL INST.,  
MURRAY UNIT, B-WING RM. 234  
4460 BROAD RIVER ROAD  
RICHLAND COUNTY  
COLUMBIA, SOUTH CAROLINA  
ZIP CODE 29210-4012

PETITIONER, PRO SE

20



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JAN 17 2013

S.C. SUPREME COURT

AS

# The Supreme Court of South Carolina

DANIEL E. SHEAROUSE  
CLERK OF COURT

BRENDA F. SHEALY  
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330  
COLUMBIA, SOUTH CAROLINA  
29211

1231 GERVAIS STREET  
COLUMBIA, SOUTH CAROLINA 29201

TELEPHONE: (803) 734-1080

FAX (803) 734-1499

[www.sccourts.org](http://www.sccourts.org)

January 17, 2013

Jeanette W. McBride  
PO Box 2766  
Columbia SC 29202-2766

Re: Clarence S. Gregory v. State of South Carolina  
Appellate Case No. 2013-000024

Dear Ms. McBride:

This will acknowledge receipt of a Petition for Writ of Mandamus filed in the above matter. A copy of these materials is enclosed for your files. The Court asks that you please file a response to this matter, particularly addressing the relevancy of statutes 24-27-100 and 24-27-159.

Very truly yours,

*Daniel E. Shearouse*

CLERK

/bs

Enclosure

cc: Clarence S. Gregory, 00227394

57) Exhibit

JEANETTE W. McBRIDE  
CLERK OF COURT

ANNE G. KELLY  
Chief Deputy Clerk of Court



21

251

MAILING ADDRESS  
POST OFFICE BOX 2  
COLUMBIA, S.C. 29202-2

TELEPHONE  
(803) 576-19  
Fax (803) 576-17  
TDD (803) 748-49

RICHLAND COUNTY CLERK OF COURT  
Richland County Judicial Center  
1701 Main Street  
Columbia, S. C. 29201

January 23, 2013

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JAN 31 2013

S.C. SUPREME COURT

Daniel E. Shearouse, Clerk of Court  
Supreme Court of South Carolina  
P. O. Box 11330  
Columbia, South Carolina 29211

Re: Clarence S. Gregory V. State of South Carolina

Dear Mr. Shearouse:

The above referenced case was reviewed for filing by Judge James R. Barber on October 26, 2012 and based off of his findings, the determination was a denial. I am enclosing a copy of Judge Barber's Order Denying Plaintiff's Motion to Proceed In Forma Pauperis, dated October 26, 2012, showing denial reason.

Yours truly,

A handwritten signature in cursive script, appearing to read "Judy N. Davis".

Judy N. Davis  
Civil Records Manager  
Richland County Clerk of Court

Enclosure

Cc: Clarence S. Gregory, 00227394

58)  
Exhibit

Jeanette W. McBride  
CLERK OF COURT  
RICHLAND COUNTY  
P.O. Box 2766  
Columbia, SC 29202-2766

RECEIVED

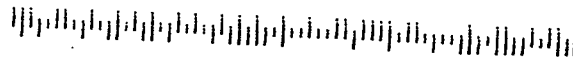
JAN 25 2013

BRCI  
MAILROOM

Mu 234

Clarence S. Gregory #227394  
Broad River Correctional Institution  
4460 Broad River Road  
Columbia, South Carolina 29210

2921034047 C077



S.C. SUPREME COURT

JAN 31 2013

RECEIVED

22  
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59)  
Exhibit

Return to sender if not  
delivered in five (5) days.

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JAN 31 2013

Clarence S. Gregory, #227394  
C/o Broad River Correctional Inst., (BRCI)  
Murray Unit, B-Wing Rm. 234  
4460 Broad River Road  
Columbia, South Carolina  
Zip Code 29210-4012

S.C. SUPREME COURT

Via U.S. Regular Mail

January 28, 2013

To: The Honorable Daniel E. Shearouse, Clerk of Court  
State of South Carolina, Supreme Court  
1231 Gervais Street  
Post Office Box 11330  
Columbia, South Carolina  
Zip Code 29201-1330

RE: Gregory, Clarence S. #227394 vs. State of South Carolina  
Appellate Case Number: 2013-000024  
Filed: January 04, 2013

SUBJ: Reply, ~~The~~ Respondent's Letter of Response, Dated January  
23, 2013, Is Equivalent To A Failure To Respond

Dear Mr. Shearouse/Clerk:

In reference to the above-subject matter, on or about January 28, 2013, I received a letter from the Clerk of Court, Jeanette W. McBride office, namely, Ms. Judy N. Davis. (See, Attached Letter)

The response only concludes what the Honorable Judge James R. Barber, III, did, on the basis of the Clerk's discretion of sending the Plaintiff's/Appellant's letter of request to file, summons and complaint, under § 24-27-100 thru 150, in supportive of the affidavit of financial account status, and with an original Inmate Trust Fund Account Report Form for Court's Filing Fees. (See, Appellant's Exhibit(s) in Appendix, Page 1 thru 7).

The Respondent has avoided to give a legal, justified reason why she did not "perform her ministerial duty" under the statute 24-27-100 thru 150, which such ministerial duties of the Clerk of Court, are "absolute, certain and imperative," and is not discretionary.

52) Exhibit

RECEIVED

JAN 31 2013

The statement asserted in the "Respondent's" January 23, 2013, Responsive letter, demonstrates "evasiveness" and tends to "shift" the burden on the other "Respondent" the Honorable Judge James R. Barber, III, Chief Administrative Judge, and such the said Respondent Jeanette W. McBride and Ms. Judy N. Davis did exercise their discretion, after reviewing, the Appellant's October 16, 2012, Letter of Request for filing summons and complaint, forwarded the said Request to the Respondent, Judge Barber, III. (See, Appellant's Exhibit In Appendix, Page 2).

At that point, by forwarding the Appellant's Request to the Respondent, Judge Barber, III, demonstrated the exercise of discretion, when the Respondent Judy N. Davis, on or about November 14, 2012, talked with Mr. Paul D. Marriott, SCDC Staff Member, Broad River Correctional Facility, Business office by telephone, Mr. Marriott, was advised by Respondents (Judy N. Davis), to inform the Appellant (Gregory, #227394), not to send any more papers to their office, that they (Respondents) was not going to accept any more from the Appellant. (See, Appellant's Statement of The Case, In Petition For A Writ of Mandamus, Page 6, Paragraph 4, And Appellant's Affidavit In Support, Page 2, Paragraph 6 and 7);

That, such assertion then, on or about November 14, 2012, demonstrates a "refusal" which at this time in Respondent's Letter dated January 23, 2013, constitutes an act of evasiveness. The Respondents (Clerk of Court), also refused to file Appellant's Rule 59 (e), S.C.R.C.P., Motion, sent it back with the summons and complaint, which is the "substance" of the Mandamus.

It has been over twenty (20) days, since the Appellant serve the Respondents, and the said Respondents, including the Honorable Judge Barber, III, has defaulted by not responding.

WHEREFORE, the Appellant respectfully request this Court to grant a compelling Order, compelling the Respondents to file the summons and complaint and file the Rule 59 (e), SCRCF, Motion, administering a monthly payment plan by order of the Court from

53) Exhibit

255

the Appellant's SCDC Cooper Trust Fund Account, for the full cost of filing and court cost fees and/or direct or compel the Respondents to pay the cost of the filing fees, for failure to perform Respondent's ministerial's duties as required under statutes 24-27-100 thru 24-27-159, S.C. Code of Laws.

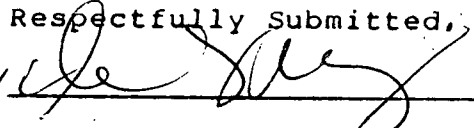
For a further relief, grant any other further relief as this Court deems necessary, just and proper. The said Appellant had to pay cost or debited his trust fund account for the cost of this litigation.

RICHLAND COUNTY.

COLUMBIA, SOUTH CAROLINA 29210

Dated: January 28, 2013.

Respectfully Submitted,

S/ 

CLARENCE S. GREGORY, #227394

APPELLATE CASE NO : 2013-0000  
24; FILED: JANUARY 04, 2013

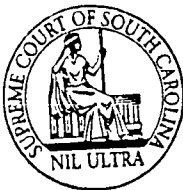
TO: THE HONORABLE DANIEL E,  
SHEAROUSE, CLERK OF COURT OF  
THE S C. STATE SUPREME COURT

RECEIVED

JAN 31 2013

S.C. SUPREME COURT

54)  
Exhibit



23  
256

## The Supreme Court of South Carolina

JEAN HOEFER TOAL  
CHIEF JUSTICE

1231 GERVAIS STREET  
COLUMBIA, SOUTH CAROLINA 29201  
TELEPHONE: (803) 734-1584  
FAX: (803) 734-1167

February 21, 2013

The Honorable Jeanette W. McBride  
Richland County Clerk of Court  
Post Office Box 2766  
Columbia, SC 29202-2766

RE: *Clarence S. Gregory, Petitioner, v. The Honorable Jeanette W. McBride, Clerk of Court, Richland County and The Honorable James R. Barber, III, Fifth Judicial Circuit, Chief Administrative Judge, Respondents.*  
Appellate Case No. 2013-000024

Dear Ms. McBride:

Mr. Gregory has filed a petition for a writ of mandamus with this Court in which he maintains that since October 2012, he has attempted on several occasions to initiate a civil action - *Clarence Gregory, #227394, v. Riley Pope & Laney, LLC, Law Firm Attorney(s) and Counselors at Law; Individually and Individually Named, Theodore D. Riley, T. Lowndes Pope, LeRoy Free Laney, Nikole H. Boland and Heath Alvin Steward, III, Individually, Defendants* - using his inmate trust account pursuant to S.C. Code Ann. §§ 24-27-100 and -150 (2007). Despite the fact that petitioner did not file a motion to proceed *in forma pauperis*, each time, petitioner has been informed by your office that his motion to proceed *in forma pauperis* was denied; that in order to proceed, the \$150 filing fee will be taken in installments from his Cooper Trust Account; and that he must re-send the original documents for filing along with a copy of his trust account statement. In response to each notification from your office, petitioner has re-submitted the original documents and a copy of his trust account statement, asking in his last letter that if there is something further he needs to do, that your office please explain it to him so that he can proceed with the filing of his action.

By letter dated January 17, 2013, the Clerk of this Court requested that you file a

(60)  
Exhibit

257

294

response to the petition and that the response specifically address the applicability of §§ 24-27-100 and -150. A response was provided in the form of a letter from Judy N. Davis, Civil Records Manager for the Richland County Clerk of Court; however, that letter simply stated the case had been reviewed by Judge Barber and the motion to proceed *in forma pauperis* was denied. The letter did not address the applicability of §§ 24-27-100 and -150, and why petitioner's action has not been filed in light of those statutory provisions.

Accordingly, I am requesting that you provide a response to the petition for a writ of mandamus that specifically addresses why petitioner's action has not been filed pursuant to §§ 24-27-100 and -150.<sup>1</sup> Please provide this response within five days of the date of this letter.

Very truly yours,



Jean Hoefer Toal

cc: Clarence S. Gregory, 00227394

61) Exhibit

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<sup>1</sup> Section 24-27-150 states that even if a prisoner's trust account does not contain sufficient funds to make the first-time payment required by section 24-27-100, the civil action *may still be filed*, and payments of ten percent of the preceding month's income in the prisoner's trust account shall be made from that account as soon as funds are available.

The County of Richland



Office of the County Attorney

February 27, 2013

**VIA HAND DELIVERY**

The Honorable Jean Hoefer Toal  
Chief Justice  
South Carolina Supreme Court  
1231 Gervais Street  
Columbia, SC 29201

Re: *Clarence S. Gregory, Petitioner v. The Honorable Jeanette W. McBride, Clerk of Court, Richland County and the Honorable James R. Barber, III, Fifth Judicial Circuit, Chief Administrative Judge, Respondents.*  
Appellate Case No. 2013-000024

Dear Judge Toal:

This morning my office received notice, from the Richland County Clerk of Court, of the above Petition for Writ of Mandamus and your letter of February 21, 2013. That office has asked for my office's assistance in responding to this matter. I apologize that the response has not been timely thus far, but it appears that Ms. Judy Davis, Civil Records Manager for the Richland County Clerk of Court did not fully understand the connection between the *in forma pauperis* denial and the relevant statutes, and unfortunately, she failed to request assistance once she received the above Petition for Writ of Mandamus. It seems that Ms. Davis did not understand that even though the *in forma pauperis* was denied that Mr. Gregory still had the right to avail himself of the statutory provisions outlined in your letter.

Richland County Clerk of Court agrees that S.C. Code Ann. §§24-27-100 and -150(2007) do apply to the instant case and that the Richland County Clerk of Court should have accepted filing of Mr. Gregory's civil action. Richland County Clerk of Court agrees to immediately contact Mr. Gregory in order to notify him that he needs to initiate payment to the Richland County Clerk of Court, from his Cooper Trust Account, of the sums provided for in S.C. Code Ann. §24-27-100, or in the alternative, that if he has insufficient funds in his Cooper Trust Account, that the action will be filed and the funds collected as provided in S.C. Code Ann. §24-27-150. Richland County Clerk of Court will accept Mr. Gregory's civil action for filing with proper payment under S.C. Code Ann. §§24-27-100 or -150.

I hope that this response is sufficient to resolve the matter. Again I apologize for any delay. Please feel free to contact me if you have any questions or concerns.

With kindest regards,

259

76

RICHLAND COUNTY ATTORNEY'S OFFICE

By: Larry C. Smith  
Larry C. Smith  
Richland County Attorney

LCS:eam

Cc: Jeanette McBride, Richland County Clerk of Court  
Anne Kelly, Richland County Chief Deputy Clerk of Court  
Daniel Shearouse, Clerk of Court, SC Supreme Court  
Clarence S. Gregory, 00227394

63) Exhibit

**RILEY POPE & LANEY, LLC**  
ATTORNEYS AND COUNSELORS AT LAW

1901 ASSEMBLY STREET, SUITE 390  
POST OFFICE BOX 11412 (29211)  
COLUMBIA, SOUTH CAROLINA 29201

TELEPHONE  
(803) 799-9993

FACSIMILE  
(803) 239-1414

January 29, 2013

The Honorable Jeanette W. McBride  
Richland County Clerk of Court  
Post Office Box 2766  
Columbia, South Carolina 29202

Re: Gregory, Clarence #227349 v. SCDC  
IRF Claim #: 36924  
Date of Loss: 06/06/05  
C.A. No.: 07-CP-40-03742

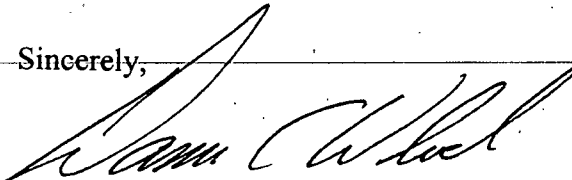
Dear Ms. McBride:

Enclosed for filing please find the original and a copy of a Memorandum in Opposition to Plaintiff's Rule 60(b), SCRCF, Motion for Relief for Judgment in connection with the above-referenced matter. Please file the original and return the filed copy in the enclosed self addressed, stamped envelope.

I would note that the court's records do not reflect a Rule 60 motion having been filed in this case. However, it appears that Plaintiff intended to file the motion as part of the Rule 60 motion filed in Civil Action No. 2009-CP-40-02442, which is scheduled for a hearing on February 7, 2012.

By copy of this letter I am this date serving a copy of the Notice upon Plaintiff Clarence Gregory. Thank you for your assistance in this matter.

Sincerely,



Damon C. Wlodarczyk

DCW/  
Enclosure

(101)

Exhibit

261

) IN THE COURT OF COMMON PLEAS  
) FIFTH JUDICIAL CIRCUIT

v.

**MEMORANDUM IN OPPOSITION TO  
PLAINTIFF'S RULE 60, S<sup>C</sup>RPC,  
MOTION FOR RELIEF FROM  
JUDGMENT**

On July 5, 2007, Plaintiff Clarence Gregory ("Gregory"), appearing *pro se*, filed suit against Jon Ozmint, Morris Elmore, Claude Hilton, John Sawadske, and the South Carolina Department of Corrections ("SCDC") (herein collectively referred to as "Defendants") in the Richland County Court of Common Pleas. All individuals were named in their individual capacities and collectively in their official capacities as employees of the SCDC. Gregory alleged violations of state law for gross negligence under the South Carolina Tort Claims Act and of his constitutional rights. On September 6, 2007, Defendants filed and timely served an Answer to Gregory's Complaint.

On October 30, 2007, D.

On October 30, 2007, Defendants filed and served a Notice and Motion for Summary Judgment without supporting affidavits. [Exhibit A]. A hearing was held on January 8, 2008, before the Honorable G. Thomas Cooper, Jr. On March 27, 2008, the

102 Exhibit

262

personal jurisdiction existed as to the Defendants. Therefore, the Plaintiff's "void for lack of jurisdiction" arguments are without merit.

Plaintiff also argues that since Defendants previously filed a motion for summary judgment, which was denied in 2008, that Judge Childs violated the S.C. Constitution by issuing an Order granting Defendants' second Motion for Summary Judgment.

The denial of a motion for summary judgment does not bar a party from making a later motion for summary judgment based on matters not involved in the decision on the first motion. If the first motion for summary judgment is unsuccessful the court has the power to permit a second motion for summary judgment prior to trial.

Crosswell Enterprises, Inc. v. Arnold, 309 S.C. 276, 279, 422 S.E.2d 157, 159 (Ct. App. 1992).

As previously set forth, the first summary judgment motion and the denial thereof was based solely on the pleadings in the case. However, the second summary judgment motion was based on Plaintiff's sworn deposition testimony. Moreover, the first Order denying summary judgment did not address whether the Plaintiff's negligence/gross negligence claims were barred by the exclusivity provision of the South Carolina Worker's Compensation Act, which was the sole basis for judgment in favor of the Defendants in Judge Child's Order. "Yes it did!" See Def. Answer

Based upon the record before this Court on Plaintiff's motion, there is no evidence that the second summary judgment motion and Order granting said motion was

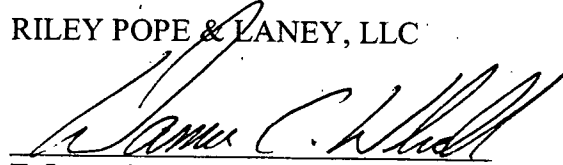
based solely on the same facts presented to Judge Cooper two years previously. (See, Def. Answer Sept. 06, 2007, Answer para. 15<sup>th</sup> Defense. Accordingly, Plaintiff's allegation that the Order granting summary judgment is "void" for lack of due process is also without merit and Plaintiff's motion should be dismissed.

263

CONCLUSION

For the foregoing reasons, Defendants respectfully request the Court deny Plaintiff's Motion for Relief from Judgment pursuant to Rule 60(b)(4), SCRPC.

RILEY POPE & LANEY, LLC



T. Lowndes Pope  
Damon C. Wlodarczyk  
Post Office Box 11412  
Columbia, South Carolina 29211  
Telephone: (803) 799-9993  
Facsimile: (803) 239-1414

Attorney for Defendants Jonathan E.  
Ozmint, Commissioner, of South Carolina  
Department of Corrections (SCDC); Morris  
Elmore, Lieutenant & Environmental Health  
& Safety Officer (EHSO); Claude Hilton  
and John Sawadske, Maintenance & Repair  
Engineering, Director(s), at Lieber  
Correctional Institution (LCI); South  
Carolina Department of Corrections

Columbia, South Carolina  
January 29, 2013

**RILEY POPE & LANNEY, LLC**  
ATTORNEYS AND COUNSELORS AT LAW

2838 DEVINE STREET  
POST OFFICE BOX 11412 (29211)  
COLUMBIA, SOUTH CAROLINA 29201

TELEPHONE  
(803) 799-9993

FACSIMILE  
(803) 239-1414

264

January 29, 2013

**VIA Hand Delivery**

The Honorable Jeanette W. McBride  
Richland County Clerk of Court  
Post Office Box 2766  
Columbia, South Carolina 29202

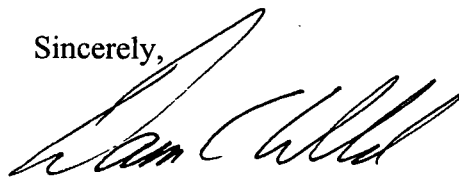
Re: Gregory, Clarence #227349 v. SCDC  
IRF Claim #: 53541  
Date of Loss: 05/15/08  
C.A. No.: 09-CP-40-02442

Dear Ms. McBride:

Enclosed for filing please find the original and one copy of the Memorandum in Opposition to the Plaintiff's Rule 60, SCRPC, Motion for Relief from Judgment in connection with the above-referenced matter. Please file the original and return the clocked in copy to my courier

By copy of this letter I am this date serving a copy of the same upon Plaintiff Clarence Gregory. Thank you for your assistance in this matter.

Sincerely,

  
Damon C. Wlodarczyk

DCW  
Enclosures

(92) Exhibit

COPY

265

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS  
) FIFTH JUDICIAL CIRCUIT

Clarence S. Gregory, #227394,

) Civil Action No.: 2009-CP-40-02442  
)

Plaintiff,

v.

) **DEFENDANTS' MEMORANDUM IN**  
) **OPPOSITION TO PLAINTIFF'S**  
) **RULE 60, SCRPC, MOTION FOR**  
) **RELIEF FROM JUDGMENT**

) Jonathan E. Ozmint, Commissioner  
) of South Carolina Department of  
) Corrections, et al., and South  
) Carolina Department of  
) Corrections, et al.,  
)

Defendants.

**STATEMENT OF THE CASE**

On April 2, 2009, Plaintiff Clarence S. Gregory ("Gregory"), appearing *pro se*, filed suit against Defendants Jonathan E. Ozmint ("Ozmint"), Commissioner of South Carolina Department of Corrections and South Carolina Department of Corrections ("SCDC") (herein collectively referred to as "Defendants") in the Court of Common Pleas of the Fifth Judicial Circuit. Defendant Ozmint was named in his official capacity as Director of the SCDC. Gregory alleges a violation of state law for gross negligence under the South Carolina Tort Claims Act. Defendants filed and timely served an Answer to Gregory's Complaint on May 18, 2009.

On October 7, 2009, Defendants filed a Notice and Motion for Summary Judgment on October 8, 2009. [Exhibit A]. A hearing was held before the Honorable Michelle Childs and on April 5, 2010, a Order was filed denying the Motion for Summary Judgment. [Exhibit B].

Subsequent to the Order being issued, Gregory was deposed. Defendants then filed a second Motion for Summary Judgment on or about February 23, 2011, supported

93 Exhibit

266

personal jurisdiction existed as to the Defendants.<sup>2</sup> Therefore, the Plaintiff's "void for lack of jurisdiction" arguments are without merit.

Plaintiff also argues that since Defendants previously filed a motion for summary judgment, which was denied in 2008, that Judge Childs violated the S.C. Constitution by issuing an Order granting Defendants' second Motion for Summary Judgment.

The denial of a motion for summary judgment does not bar a party from making a later motion for summary judgment based on matters not involved in the decision on the first motion. If the first motion for summary judgment is unsuccessful the court has the power to permit a second motion for summary judgment prior to trial.

Crosswell Enterprises, Inc. v. Arnold, 309 S.C. 276, 279, 422 S.E.2d 157, 159 (Ct. App. 1992).

As previously set forth, the first summary judgment motion and the denial thereof was based solely on the pleadings in the case. However, the second summary judgment motion was based on Plaintiff's sworn deposition testimony.

Based upon the record before this Court on Plaintiff's motion, there is no evidence that the second summary judgment motion and Order granting said motion was based solely on the same facts presented to Judge Cooper two years previously. Accordingly, Plaintiff's allegation that the Order granting summary judgment is "void" for lack of due process is also without merit and Plaintiff's motion should be dismissed.

### CONCLUSION

For the foregoing reasons, Defendants respectfully request the Court deny

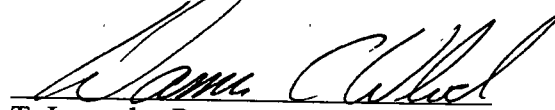
Plaintiff's Motion for Relief from Judgment pursuant to Rule 60(b)(4), SCRPC.

<sup>2</sup>The Defendant Butler was dismissed from the case in Judge Benjamin's Order as the Summons was deficient and, therefore, the Court lacked jurisdiction over her.

(96) Exhibit

267

RILEY POPE & LANEY, LLC



T. Lowndes Pope

Damon C. Wlodarczyk

Post Office Box 11412

Columbia, South Carolina 29211

Telephone: (803) 799-9993

Facsimile: (803) 239-1414

Attorneys for Defendants Jonathan E.  
Ozmint, Commissioner of South Carolina  
Department of Corrections, et al., and South  
Carolina Department of Corrections, et al.

Columbia, South Carolina  
January 29, 2013

(97) Exhibit

268

Clarence S. Gregory, #227394  
C/O Broad River Correctional Inst.,  
Murray Unit, B-Wing Rm. 234  
4460 Broad River Road  
Columbia, South Carolina 29210-4012

VIA U.S. REGULAR MAIL

July 02, 2013

TO: The Honorable Jeanette W. McBride, Clerk  
Court of Common Pleas, Richland County  
Fifth Judicial Center  
1701 Main Street, Room 205  
Post Office Box 2766  
Columbia, South Carolina 29202-2766

RE: Gregory, Clarence S. #227394 vs. Riley Pope & Laney, Et AL.  
C/A NO.: 2013-CP-40-03078

SUBJECT: Respectfully Request For Filing Plaintiff's Summons &  
Complaint(s) Has Been Served By Richland County Sheriff's  
Process Division By Sworn Affidavit of Service

Dear Ms. McBride/Clerk of Court:

In reference to the above-subject matter, enclosed please  
find a original copies of the Summons & Complaint(s), personally  
& individually served upon all parties of the Riley Pope & Laney,  
LLC, Law Firm and their agent attorney(s), served upon them by  
the Richland County Sheriff Process Server, according to the South  
Carolina Rules of Civil Procedure, Rule 4 (d) (1), & (3).

Please return to me the enclosed affidavit of service of process  
served by the Richland County Sheriff Department Process of server,  
showing a filing date.

I've enclosed two (2) copies, the one (1) for your office, and  
the other is for my record.

Thank you for your assistance and cooperation in this matter!

Respectfully Submitted, I am

S/

CLARENCE S. GREGORY, #227394

RICHLAND COUNTY  
COLUMBIA, SOUTH CAROLINA 29 29210-4012

DATED: July 02, 2013



LEON L. LOTT, JR.  
Sheriff

Richland County Sheriff's Department

269

Clarence S. Gregory, #227394  
c/o Broad River Correctional I  
Murray unit B-Wing Rm. 234  
Columbia, SC 29210

June 12, 2013

Re: Health McAlvin Stewart III

Dear Sir/Madam:

On 6/6/2013, this department received a civil paper from your office. Please find the enclosed Affidavit of Service/Non Service for the above reference case.

I am pleased to be of service and if my Department can assist you in the future, please call upon my Civil Process Division at (803) 576-3151.

Sincerely,

A handwritten signature in cursive script, appearing to read "Leon Lott".

Leon Lott  
Richland County Sheriff



# Richland County Sheriff's Department

270

JUN 6 7 2013

## AFFIDAVIT OF SERVICE or NON-SERVICE

|                 |            |
|-----------------|------------|
| Date Entered:   | 06/06/2013 |
| File Number:    | C201305572 |
| DSS Number:     | 0          |
| Foreign Case #: |            |
| Court Date:     | 01/01/1900 |

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

Date \_\_\_\_\_

### Plaintiff

Clarence S. Gregory, #227394 c/o Broad River Correctional I Murray unit B-Wing Rm. 234 Columbia, SC 29210

### Defendant(s)

Heath McAlvin Stewart, III 1320 Main St. 10th Floor Columbia, SC 29201  
Phone: (803) 518-3494 Work:

PERSONALLY APPEARED Before Me P. Wilkes, duty sworn says that he/she served, or attempted to serve, the following civil paper(s):

Summons & Complaint

1

on the defendant, Heath McAlvin Stewart, III, as follows:

- ( ) By personally handing the process to the defendant at 1320 MAIN ST. Columbia, SC on 06/06/13 - 3:35 P/m,  
(Street) (City) (Date/Time)
- ( ) By handing the process to \_\_\_\_\_ at \_\_\_\_\_,  
(Name of Person Served/Relationship) (Street)  
\_\_\_\_\_, SC on \_\_\_\_\_, a person of suitable age and discretion then residing in  
(City) (Date/Time)  
the defendant's usual place of abode.
- ( ) By handing the process to \_\_\_\_\_, the registered corporate agent or officer of the company at  
(Name of Person Served/Company Name)  
\_\_\_\_\_, SC on \_\_\_\_\_ and leaving him/her a copy.  
(Street) (City) (Date/Time)
- ( ) WAS UNABLE to locate and serve the above process on the defendant, after diligent efforts by checking the City/Telephone Directory, and going to the address given for the defendant, and by questioning persons in the vicinity of the address.  
THE PROCESS IS RETURNED UNEXECUTED.
- ( ) COMMENTS: \_\_\_\_\_

Deponent knows the person served to be the defendant and Deponent is not a party to the action.  
SWORN TO Before me this

6 day of June, 2013

P. Wilkes  
Deputy Sheriff, Richland County

P. WILKES  
S#1195

Kenneth Coleman  
NOTARY PUBLIC FOR SOUTH CAROLINA  
COMMISSION EXPIRES August 11, 2014  
Box 143 Columbia, SC 29202  
(803) 576-3151 Fax: (803) 576-1898

271

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

IN THE COURT OF COMMON PLEAS  
FIFTH JUDICIAL CIRCUIT

Clarence S. Gregory, #227394,

Plaintiff,

C/A NO.: 2013-CP-40-03078

vs.

Riley Pope & Laney, LLC, Law Firm,  
Attorney(s) And Counselor(s) at Law;  
Individually And Individually named,  
Theodore D. Riley, T. Lowndes Pope,  
LeRoy Free Laney, Nikole H. Boland;

OF WHOM ALL ARE SUED IN THEIR INDIVIDUAL  
AND PROFESSIONAL CAPACITIES, RILEY POPE  
& LANEY, LIMITED LIABILITY CONTRACTOR(S)  
(LLC);

AND

Heath McAlvin Stewart, III, Individually  
And Individually Named,

OF WHO, FORMERLY EMPLOYED WITH RILEY POPE  
& LANEY, LLC, LAW FIRM, AN AGENT ATTORNEY  
IS SUED IN HIS INDIVIDUAL AND PROFESSIONAL  
CAPACITIES, ETC.

ALL WHOM ARE NAMED, AS

DEFENDANT(S).

PLAINTIFF'S AFFIDAVIT  
OF SERVICE BY VIA  
UNITED STATES' REGULAR  
MAIL.

PROCESS OF SERVICE.  
RULE 4 (g), S.C.R.C.P.

PERSONALLY APPEARED before me, CLARENCE S. GREGORY #227394, who, first  
being duly sworn depose and says:

That, I am the Affiant and Plaintiff, in the above captioned matter, I  
hereby have served/mailed an Original Cover Letter, Five (5) Sworn Affidavit  
of Service of Process of Summons & Complaint(s), served upon Riley Pope & Laney,  
LLC Law Firm, And Heath M. Stewart, III, by the Richland County Sheriff  
Department Process Division, Post Office Box 143, Columbia, South Carolina  
29202-0143, on/or about June 07, 2013; Sent to: The Honorable Jeanette W.  
McBride, Clerk, Court of Common Pleas, Fifth Judicial Center, Richland County,  
Post Office Box 2766, 1701 Main Street, Room 205, Columbia, South Carolina  
29202-2766; From: Broad River Correctional Institution, Mailroom, 4460 Broad  
River Road, Columbia, South Carolina 29210-4012; Bearing proper Via United  
States' Regular Mail as postage as it appears on this 03 day of  
July, 2013.

This 3 Day Of July, 2013.

Respectfully Submitted,

Notary Public For South Carolina

My Commission Expires April 4, 2016

272

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Clarence S. Gregory, #227394,

Plaintiff,

v.

Riley Pope & Laney, LLC, Law Firm,  
Attorney(s) and Counselor(s) at Law;  
Individually and Individually named,  
Theodore D. Riley, T. Lowndes Pope,  
LeRoy Free Laney, Nikole H. Boland, of  
whom, all are sued in their individual and  
professional capacities, Riley Pope &  
Laney, Limited Liability Contractor(s)  
(LLC);

AND

Health McAlvin Stewart, III, Individually  
and Individually named, of who, formerly  
employed with Riley Pope & Laney, LLC,  
law firm, an agent attorney is sued in his  
individual and processional capacities, et  
al.,

All whom are named, as,

Defendants.

IN THE COURT OF COMMON PLEAS

C/A No.: 2013-CP-40-03078

**NOTICE OF MOTION  
AND  
DEFENDANTS' MOTION TO  
DISMISS**

YOU WILL PLEASE TAKE NOTICE that the undersigned as attorney for the Defendants will appear before the presiding judge for Richland County, ten (10) days after service hereof at 10:00 a.m., or at such other time and place as the Court may direct, and move pursuant to Rule 12 of the South Carolina Rules of Civil Procedure for an Order dismissing this case with prejudice on the following grounds:

- 1) That the Complaint fails to allege facts sufficient to constitute a cause or causes of action against the Defendants;

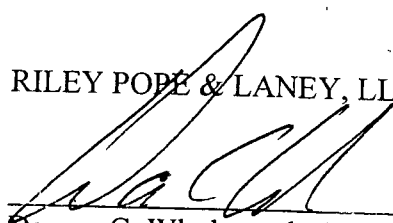
273

2) That even if the Complaint alleged facts sufficient to constitute a cause of causes of action against the Defendants, the claims are time barred by the applicable statute of limitations; and

3) That even if the Complaint alleged facts sufficient to constitute a cause or causes of action against the Defendants, the Court lacks subject matter jurisdiction over one or more of the alleged causes of action.

Said motion shall be based upon the statute and case law of the State of South Carolina, upon the pleadings and other evidence developed in discovery and other material properly received by the Court in connection therewith.

RILEY POPE & LANEY, LLC



Damon C. Wlodarczyk, SC Bar No. 70460  
Post Office Box 11412  
Columbia, SC 29211  
Telephone (803) 799-9993  
Facsimile (803) 239-1414

Attorneys for Defendants

June 13, 2013

Columbia, South Carolina

274

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Clarence S. Gregory, #227394,

Plaintiff,

v.

Riley Pope & Laney, LLC, Law Firm, et al.

Defendants.

IN THE COURT OF COMMON PLEAS

C/A No.: 2013-CP-40-03078,

**CERTIFICATE OF SERVICE**

This is to certify that I, Paula P. Ash, an employee with the law firm of Riley Pope & Laney, LLC, have this day caused to be served upon the person named below the attached **Notice of Motion and Defendants' Motion to Dismiss** in the above-captioned matter via United States mail, first-class postage prepaid, to the following individuals:

Clarence S. Gregory, Inmate #227394  
Broad River Correctional Institution  
Murray Unit, B-Wing Room 234  
4460 Broad River Road  
Columbia, South Carolina 29210-4012

*Paula P. Ash*

Paula P. Ash

Columbia, SC

June 13, 2013

(275)

Clarence S. Gregory, #227394  
C/O Broad River Correctional Inst.,  
Murray Unit, B-Wing Rm. 234  
4460 Broad River Road  
Columbia, S.C. Zip Code 29210-4012

Via U.S. Regular Mail

July 10, 2013

TO: The Honorable Jeanette W. McBride, Clerk  
Court of Common Pleas, Richland County  
Fifth Judicial Center  
1701 Main Street, Rm. 205  
P.O. Box 2766  
Columbia, S.C. Zip Code 29202-2766

RE: Gregory, Clarence S. #227394 vs. Riley Pope & Laney, LLC, Et AL  
C/A NO.: 2013-CP-40-03078

SUBJECT: Respectfully Request For Filing & Return To Plaintiff

Dear Ms. McBride/Clerk of Court:

In reference to the above-subject matter, please find enclosed the following for filing:

1-Original Copy, Plaintiff's Notice/Motion For Permission of Leave With (1) Notice/Motion/Statement of Facts/Affidavit In Support, Thereof, For An Order Of Disqualification;  
2-Original Copy, Plaintiff's Notice/Motion to Amend/Plaintiff's Amendment, Rule 15 (c), SCRCP, Relation-Back Doctrine;  
2-Original Copies, Plaintiff's Certificate of Service;  
2-Original Copies of Defendants' October 26, 2007, Notice/Motion For Summary Judgment;  
2-Original Copies, Judge G. Thomas Cooper, Jr., January 14, 2008, Matter Under Advisement, Order;  
2-Original Copies, Judge Cooper, Jr., March 26, 2008, Order;  
2-Copies, Defendants' Counsel Stewart, III, August 18, 2008, Letter of Deposition;  
2-Copies, Defendants' Counsel Stewart, III, Notice/Motion For Summary Judgment, Dated May 07, 2009;  
2-Copies, Presiding Judge J. Mitchell Childs' Order, Dated June 14, 2010; (C/A NO.: 2007-CP-40-03742);  
2-Original Copies, Plaintiff's Notice/Motion To Arrest/Void Judgment/Order, Rule 60 (B) 4, SCRCP;  
2-Original Copies, Defendants' Counsel Damon C. Wlodarczyk, Response/Memorandum In Opposition, To Plaintiff's Aforesaid Rule 60 (B), 4, SCRCP, Motion;  
2-Copies, Defendants' Counsel Laney, Answer, Page 5, dated September 06, 2007;

276

My apology for sending two (2) COPIES as voluminous, I've enclosed two (2) one for your office on file and the other for you to please clocked stamp & date, return to me.

RICHLAND COUNTY,

Respectfully Submitted, I am

COLUMBIA, SOUTH CAROLINA 29210

DATED: JULY 10TH, 2013.

S/ CLARENCE S. GREGORY, #227394

C/A NO. : 2013-CP-40-03078

PLAINTIFF'S COVER LETTER

Cc: Mr. Riley Pope & Laney, LLC, Law Firm, Et AL., C/O Mr. Damon C. Wlodarczyk, Defendants' Attorney/Counsel

CERTIFICATE OF SERVICE

PERSONALLY APPEARED before me, CLARENCE S. GREGORY, #227394, who, being first duly sworn depose and says:

That, I am the undersigned Plaintiff, and I have hereby, mailed and served the above-foresaid legal (sic) legal contents of Page One (1) of this Cover Letter upon the following parties:

Mr. Riley Pope & Laney, LLC, Law Firm, Et AL., C/O Mr. Damon C. Wlodarczyk, Attorneys And Counselors at Law  
2838 Devine Street  
P.O. Box 11412  
Columbia, South Carolina Zip Code 29211-1412

S/ CLARENCE S. GREGORY, #227394

Sworn and Subscribed to and before me,  
This 10th day of July, 2013.

Susan N. Frye  
Notary Public For State of South Carolina

My Commission Expires: \_\_\_\_\_ My Commission Expires

March 5, 2018

(277)

Clarence S. Gregory, #227394  
C/O BROAD River Correctional Inst.  
Murray Unit, B-Wing Rm. 234  
4460 Broad River Road  
Columbia, S.C. 29210-4012

Via U.S. Regular Mail

July 10, 2013

TO: Mr. Riley Pope & Laney, LLC  
C/o Mr. Damon C. Wlodarczyk, Attorney & Counselor at Law  
2838 Devine Street  
Post Office Box 11412  
Columbia, South Carolina Zip Code 29211-1412

RE: Gregory, Clarence S. #227394 vs. Riley Pope & Laney, LLC, Et AL.  
Case Assigned Number: 2013-CP-40-03078

SUBJECT: Enclosed Notice/Motion/Affidavit In Support, For An Order  
Of Mr. Damon C. Wlodarczyk Disqualification As Legal  
Attorney, Representing The Riley Pope & Laney, LLC, Et AL  
(Including) Defendant Heath M. Stewart, III

Dear Mr. Wlodarczyk/Defendants' Counsel:

In reference to the above-subject matter, please find enclosed the following:

- 1-Original Copy, Plaintiff's Notice Motion for Permission of Leave;
- 1-Original Copy, Plaintiff's Notice/Motion/Affidavit In Support thereof, For An Order of Disqualification;(Statement of Facts);
- 1-" " Copy, Plaintiff's Affidavit of Service;
- 1-Original Copy, Plaintiff's Notice/Motion To Amend & Amendment;
- 1-" " Copy, Judge G. Thomas Cooper, Jr., Order, March 26, 2007;
- 1-" " Copy, Judge Cooper, Jr., Matter Under Advisement Order, dated January 14, 2008;
- 1-" " Copy, Defendants' Counsel Stewart, III, August 18, 2008, Letter of Deposition;
- 1-Copy, Defendants' Counsel & Laney, Notice/Motion For Summary Judgment, Dated October 26, 2007;
- 1-" " Copy, Defendants' Counsel Stewart, III, Notice/Motion For Summary Judgment, Dated May 07, 2009;
- 1-" " Copy, Presiding Judge J. Mitchell Childs' Order, Dated June 14, 2010;
- 1-Copy, Plaintiff's Notice/Motion To Arrest/Void Judgment/Order, Dated August 30, 2012;
- 1-Copy, Defendants' Counsel Damon C. Wlodarczyk, Memorandum In Opposition, To Plaintiff's Rule 60 (b), SCRPC Motion, Dated January 29, 2013;
- 1-Copy, Defendants' Counsel Laney, September 06, 2007, Filed Answer To Complaint;

278

Thank you for your attention!

RICHLAND COUNTY,

COLUMBIA, SOUTH CAROLINA 29210

DATED: JULY 10TH, 2013

Sincerely, I am,

S/

CLARENCE S. GREGORY, #227394

C/A NO.: 2013-CP-40-03078

PLAINTIFF'S COVER LETTER

Cc: The Honorable Jeanette W. McBride, Clerk, Court of Common Pleas,  
Fifth Judicial Circuit, Richland County

CERTIFICATE OF SERVICE

PERSONALLY APPEARED before, CLARENCE S. GREGORY, #227394, who,  
being first duly sworn depose and says:

That, I am the undersigned Plaintiff, and I have hereby mailed  
and served upon the following, the above-aforesaid legal contents  
on Page One (1), of this Cover Letter and I have this day served  
the below parties:

The Honorable Jeanette W. McBride, Clerk, Court of Common Pleas,  
Fifth Judicial Center, Richland County, 1701 Main Street, Room 205,  
Post Office Box 2766, Columbia, South Carolina 29202-2766;

S/

XEROX

Z CLARENCE S. GREGORY, #227394

Sworn and Subscribed to and before me,

This 11th day of July, 2013.

Susan H. Frye

Notary Public For State of South Carolina

My Commission Expires:

My Commission Expires  
March 5, 2018

279

STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND )

FIFTH (5TH) JUDICIAL CIRCUIT

Clarence S. Gregory, # 227394,

C/A NO.: 2013-CP-40-03078

Plaintiff,

vs.

Riley Pope & Laney, LLC, Law Firm,  
Attorney(s) And Counselor(s) at Law;  
Individually And Individually Named,  
Theodore D. Riley, T. Lowndes Pope,  
LeRoy Free Laney, Nikole H. Boland, OF  
WHOM, ALL ARE SUED IN THEIR INDIVIDUAL  
AND PROFESSIONAL CAPACITIES, Riley Pope  
& Laney, Limited Liability Contractor(s)  
(LLC);

AND

Heath McAlvin Stewart, III, Individually  
And Individually Named, OF WHOM, FORMERLY  
EMPLOYED WITH, Riley Pope & Laney, LLC,  
Law Firm, AN AGENT ATTORNEY, Is Sued In  
His Individual And Professional Capacities,  
Et Al.,

ALL WHOM ARE NAMED, AS,

Defendant(s).

PLAINTIFF'S NOTICE OF  
MOTION AND MOTION FOR AN  
ORDER OF DISQUALIFICATION  
OF MR. DAMON C. WLODARCZYK  
OF WHOM, ACTIVELY/CURRENTLY  
REPRESENTS, RILEY POPE &  
LANEY, LLC, LAW FIRM, ET  
AL.,

PURSUANT TO THE SOUTH  
CAROLINA APPELLATE COURT  
RULES OF PROFESSIONAL CONDUCT  
FOR LAWYERS, RULE 407, AND  
THE ABA MODEL CODE OF  
ETHICAL PROFESSIONAL  
RESPONSIBILITY, CANNON 4,  
ET SEQ.

TO: MR. RILEY POPE & LANEY, LLC, C/O MR. DAMON C. WLODARCZYK,  
ACTIVELY ATTORNEY & COUNSELOR FOR THE ABOVE DEFENDANT(S):

YOU WILL PLEASE TAKE NOTICE that Plaintiff, through Pro'se,  
do hereby, respectfully motion this Honorable Court for an Order,  
and pursuant to the South Carolina Appellate Court Rules of  
Professional Conduct for Lawyers, Rule 407, et seq., and under  
the American Bar Association (ABA), Model Code of Ethics, Profess-  
ional Responsibility, Cannon 4, et seq., to disqualify, Mr. Damon  
C. Wlodarczyk, as legal Attorney & Counsel, representing the Riley  
Pope & Laney, LLC, Law Firm, Entity and Individually, and Order  
Riley Pope & Laney, LLC, Law Firm, et al., to hire/retain outset  
legal Counsel and/or independent legal counsel, based upon the

legal Counsel and/or an independent legal Counsel, based upon facts, and the grounds set forth as following:

- 1) That, Defendants' Counsel Wlodarczyk, is currently employed as an agent attorney, in the same firm with Defendant(s), Riley Pope & Loney, LLC, et al., and is an associate attorney of the former Defendants' Counsel Heath M. Stewart, III, (Defendant Stewart, III, who is accused of knowingly deceive and mislead the Court, in January 14, 2010, judicial proceeding);
- 2) That, the current representation of Attorney Wlodarczyk, the issue, and the subject matter of the former case, are "substantially related to the issues and subject matter of the present litigation (See, 2007-CP-40-03742, 2009-CP-40-02242 and 2013-CP-40-03078, are substantial related);
- 3) That, Plaintiff's attached, Statement of facts, Affidavit and Exhibits, herein enclosed, will demonstrates by the preponderance of the evidence, that Mr. Wlodarczyk, as Attorney in behalf of Defendants, are knowingly condoning, deceiving and misleading this Court, and ratifies the Defendants' and former Defendants' Counsel Heath M. Stewart, III, knowingly fraudulent activities, as alleged in Plaintiff's Complaint (2013-CP-40-03078): in violation of ABA Model Professional Code of Ethics Responsibility & SC Appellate Court Rules 407, et seq.;
- 4) That, its' axiom under the ABA Model Rules Professional Code of Ethics, Lawyers are required by virtue, to avoid even appearance of impropriety, if it's questionable of Lawyer's conduct tends to diminish public's confidence and trust in the judicial process and the legal system, even, Mr. Wlodarczyk;

281

process and the legal system, if the facts are proven, it includes, Mr. Włodarczyk, Attorney;

That, Plaintiff asserts disqualification not only applies to an individual attorney as Mr. Włodarczyk, it requires the disqualification also of the "entire" Riley Pope & Laney, LLC, Law Firm, et al., as well as all employees therein;

Finally, Mr. Włodarczyk, failed to disclosed to Plaintiff, the transcripts of the record, demonstrates concealment of relevant claims and defenses, and established Mr. Włodarczyk and the said Defendants' knowingly fraudulent conduct related to the judicial proceedings, such conduct tends to violates ABA Model Rules, Code of Professional Ethics Responsibility & S.C. Appellate Court Rules 407, et seq.; These facts and violation will be established;

For these asserted facts, supported by Statement of the Facts, Arguments, Affidavit In Support, and Material Facts, as Plaintiff's Exhibits, accompanied with the S.C. Appellate Court Rules 407, Professional Conduct of Lawyers, and the American Bar Association (ABA) Model Rules, Professional Ethical Responsibility, Cannon 4, et seq., and other legal standards, set forth herein.

WHEREFORE, based upon the allegations as proved, the Plaintiff respectfully (request) that this Court, order Mr. Włodarczyk, to decline, and order disqualification of Mr. Włodarczyk, and any other employee of the Riley Pope & Laney, LLC, Law Firm, from representing the firm, and grants an order that the Riley Pope & Laney, LLC, et al., hire/retain an "independent Attorney/Counsel, as a matter of law.

282

For a further request of Plaintiff, that Defendants' Counsel Wlodarczyk's, filed, Notice of Motion and Motion to dismiss, Rule 12 of the South Carolina Rules of Civil Procedure, be withdrawn and stricken out and permit Riley Pope & Laney, LLC, ET AL., independent legal Attorney/Counsel to file answer within 10 ten days, after the Order of this Court.

Further, I sayeth Naught!

RICHLAND COUNTY,

COLUMBIA, SOUTH CAROLINA

29210-4010

DATED: JULY 09, 2013

Respectfully Submitted, I am

S/

CLARENCE S. GREGORY, #227394  
C/O BROAD RIVER CORRECTIONAL INST.  
MURRAY UNIT, B-WING RM. 234  
4460 BROAD RIVER ROAD  
COLUMBIA, S.C. 29210-4012

C/A NO.: 2013-CP-40-03078

PLAINTIFF'S NOTICE/MOTION FOR AN  
ORDER OF DISQUALIFICATION OF MR.  
DAMON C. WLODARCZYK, AS DEFENDANTS'  
ATTORNEY/COUNSEL. S.C. A.C. RULES  
407, ET SEQ., / ABA MODEL RULES,  
CODE OF PROFESSIONAL ETHICS, CANNON  
4, ET SEQ.

4

283

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

IN THE COURT OF COMMON PLEAS  
FIFTH (5TH) JUDICIAL CIRCUIT

Clarence S. Gregory, #227394,  
Plaintiff,

C/A NO.: 2013-CP-40-03078

vs.

PLAINTIFF'S NOTICE OF MOTION  
AND MOTION FOR PERMISSION  
OF LEAVE

Riley Pope & Laney, LLC, Law Firm,  
Et AL.,

Defendant(s).

TO: MR. RILEY POPE & LANEY, LLC, LAW FIRM, ET AL., C/O MR.

DAMON C. WLODARCZYK, ATTORNEY & COUNSELOR FOR DEFENDANT(S)

IN THE ABOVE CAPTIONED MATTER:

COMES NOW THE PLAINTIFF, AND YOU WILL PLEASE TAKE NOTICE that the Plaintiff by way of Pro'se, do hereby respectfully motion this Honorable Court for permission of leave, on the grounds of the Disqualification of Mr. Damon C. Wlodarczyk, who is actively, representing said Defendants, Agency & IN THEIR Individual capacities and former Associate Attorney, Heath M. Stewart, III, as Legal Attorney.

HEREIN, as a matter of law, in the interest of the justice and public's interest and of the rights of said Plaintiff, that it is necessary that this Court grants permission for leave so that said Plaintiff would no longer suffer substantial prejudice, seeking the disqualification of said Defendants' Counsel Wlodarczyk, pursuant to the ABA Model Rules, Code of Professional Ethics Responsibility and the SCRCR Rule 407.

284

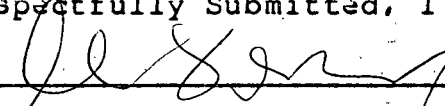
That, there are substantial evidence, based upon material fact that said Defendants' Counsel Włodarczyk is in violation of Codes of Ethics, Canon 4, et seq., and that it is required that a lawyer avoid even the appearance of impropriety, for the confidence and trust of the public's interest.

WHEREFORE, the Plaintiff prays for these grounds set forth in the accompanied, Motion, Statement of Facts, Supportive Affidavit and Exhibits as material facts, will demonstrates by the preponderance of these evidence, that Plaintiff's said motion be granted, and Order, Riley Pope & Laney, LLC, Law Firm, Agency and Individuals defendants, to retain/hire their own "independent Attorney/Counsel" so that Plaintiff will not suffer any further harm as he subdued extreme prejudice previously, as a matter of law.

Respectfully Submitted, I am

RICHLAND COUNTY,

S/



COLUMBIA, SOUTH CAROLINA 29210

CLARENCE S. GREGORY, #227394

DATED: JULY 10TH, 2013

C/O BROAD RIVER CORRECTIONAL INST.  
MURRAY UNIT, B-WING RM. 234  
4460 BROAD RIVER ROAD  
COLUMBIA, S.C. 29210-4012

C/A NO.: 2013-CP-40-03078

PLAINTIFF'S NOTICE/MOTION FOR  
PERMISSION OF LEAVE

285

STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND )

FIFTH (5TH) JUDICIAL CIRCUIT

Clarence S. Gregory, #227394,

C/A No.: 2013-CP-40-03078

Plaintiff,

vs.

Riley Pope & Laney, LLC, Law Firm,  
Attorney(s) And Counselor(s) at Law;  
Theodore D. Riley, T. Lowndes Pope,  
LeRoy Free Laney, Nikole H. Boland,  
OF WHOM, ARE SUED IN THEIR INDIVIDUAL  
AND PROFESSIONAL CAPACITIES, Riley Pope &  
Laney, Limited Liability Contractor(s),  
(LLC);

AND

Heath McAlvin Stewart, III, Individually  
and Individually Named, OF WHOM, FORMERLY  
EMPLOYED WITH, Riley Pope & Laney, LLC,  
Law Firm, AN AGENT ATTORNEY, Is Sued in  
His Individual And Professional Capacities,  
Et Al.,

ALL WHOM ARE NAMED, AS,

Defendant(s).

PLAINTIFF'S AFFIDAVIT  
IN SUPPORT OF AN ~~APPLICATION~~  
FOR AN ORDER OF (MOTION)  
DISQUALIFICATION OF  
MR. DAMON C. WLODARCZYK,  
ET AL., TO ACTIVELY AS  
ATTORNEY/COUNSEL TO  
REPRESENT DEFENDANT(S)

PERSONALLY APPEARED before me, CLARENCE S. GREGORY, #227394,  
who, being first duly SWORN depose and states:

That, I am the Affiant and Plaintiff, pro'se in the above  
captioned matter, I hereby makes these statements based upon belief  
and discovery information; I have not been induced, influence by  
any falsehood, deceit or dishonesty under any circumstance, and  
theses statements given are true and correct based upon my know-  
ledge, herein stated:

1). That, on/or about January 19, 2008, a motion hearing was  
convened at the Richland County Court of Common Pleas, Fifth Judicial

2

286

Circuit, before presiding Honorable G. Thomas Cooper, Jr., both parties appeared, the Plaintiff, represented himself, pro se, and Mr. Heath McAlvin Stewart, III, represented Defendant(s) (C/A No. 2007-CP-40-03742 and 2009-CP-40-02442), on issue(s), specifically Defendants' defense, that "Plaintiff's is barred from recovery under the South Carolina Workers' Compensation Act as the Act provides for an exclusive remedy for injuries such as Plaintiff allegedly sustained;" (See, Plaintiff's Attached Exhibit)

2). That, ON/OR about January 14, 2008, the aforesaid "matters was under advisement;" (See, Plaintiff's Attached Exhibit Judge G. Thomas Cooper, Jr., Order, Dated January 14, 2008)

3). That, on/or about March 26, 2008, presiding Judge Cooper, Jr., adjudicated those issues, facts, disputes, inferences and submissions on file of the record and denied Defendants' Counsel motion for summary judgment; (See, Plaintiff's Attached Exhibit presiding Judge Cooper's Order, Dated March 26, 2008)

4). That, on/or about August 18, 2008, Defendants' Counsel Stewart, III, (hereinafter, Defendant Stewart, III), did not file an appeal presiding Judge Cooper, Jr., "findings" rather Defendant Stewart, III, choose to motion for deposition; (See, Plaintiff's Attached Exhibit, Defendants' Counsel deposition Letter)

5). That, on/or about October 15, 2008, deposition convened and as a result of Defendants' Counsel deposition, it did not produce any new facts or new evidence, based upon Defendants' Counsel Stewart, III, filed Notice/Motion for summary Judgment, dated May 07, 2009; (See, Plaintiff's Attached Exhibit, Defendants' Notice/

3

287

Motion For Summary Judgment, Dated May 07, 2009);

6). That, Defendants' Counsel Stewart, III, aforesaid Motion in Plaintiff's Paragraph ¶ 5, plead the same facts and issues as plead in their October 26, 2007, Notice/Motion For Summary Judgment, which was adjudicated, on/or about MARCH 26, 2008; (See, Plaintiff's Attached Exhibits)

7). That, as a result of Defendants' Counsel subsequent motion as aforesaid, in Paragraph ¶ 5 & ¶ 6, a motion hearing was convened at the Broad River Correctional Institution, Via Courtroom, before presiding Honorable J. Mitchell Childs, of the Fifth Judicial Circuit, Richland County Court of Common Pleas;

8). That, both parties appeared the Plaintiff, represented himself, pro'se, and Defendant Stewart, III, represented the South Carolina Department of Corrections, Et Al., (C/A NO.: 2007-CP-40-03742 & C/A NO.: 2009-CP-40-02442), on issues, specifically, Defendants' Counsel Stewart, III, (Defendant Stewart, III), defense, "Plaintiff is barred from recovery under the South Carolina Workers' Compensation Act as the Act provides for an exclusive remedy for injuries such as Plaintiff allegedly sustained; (See, Plaintiff's Attached Exhibits)

9). That, during the aforesaid hearing alleged in Plaintiff's Paragraph ¶ 8, Defendants' Counsel Stewart, III, asserted/contends that (sic) that Plaintiff's claims is barred by the exclusive provisions of the South Carolina Workers' Compensation Act, etc; (See, Plaintiff's Exhibit Attached, Presiding Judge J. Mitchell Childs' Order, Dated June 14, 2010, Page 8, Paragraph ¶ 3, Line 3, Page 9, Paragraph ¶ 1, Lines 1-2;)

10). That, said Plaintiff, during the hearing, and after having heard Defendants' Counsel Stewart, III, aforesaid defense in Plaintiff's Paragraph ¶ 9, Plaintiff made an objection, and filed an motion on/or about June 2009, opposing; (See, Plaintiff's Attached Exhibits, Presiding Judge J. Mitchell Childs' Order, dated June 14, 2010, Page 10, Paragraph ¶ 2, (two), Lines 1-6;)

11). That, during the aforesaid hearing, alleged in the Plaintiff's Paragraph ¶ 9, & ¶ 10, Defendants' Counsel Stewart, III, knowingly made a false statement to the Presiding Judge Childs, that they (Defendants) never/did not raised the exclusivity provisions of the workers' compensation act in their previous summary judgment order; (See, Plaintiff's Attached Exhibit, Presiding Judge J. Mitchell Childs' Order, Dated June 14, 2010, Page 11, Paragraph ¶ 1, Lines 8-10 (Eight thru Ten);

12). That, at no times, herein or hereafterwards, said Defendants' Counsel Stewart, III or the Riley Pope & Laney, LLC, Law Firm, or it's succeeding/substitute Counsels, made any attempts to disclose or correct Defendants' Counsel Stewart, III, false statement made to the presiding Court or to the Plaintiff, as a reasonable remedial measure, but rather ratified it;

13). That, as a result, of the aforesaid false representation made by the Defendant Stewart, III, the presiding Court, relied upon it, and granted summary judgment to the Defendants' on/or about June 14, 2010, dismissing Plaintiff's action; (See, Plaintiff's Attached Exhibit, Judge Childs' Order, dated June 14, 2010, Page Page 10, Paragraph ¶ 1, Line 6, Page 12, PARABRAP ¶ 1, Lines 1-5;)

(5)

289

14). That, on/or about August 30, 2012, said Plaintiff discovered that Defendants' Counsel Stewart, III, was procedural barred, under Rule 43 (L), of the South Carolina Rules of Civil Procedures, and under the doctrine of the law of the case, as a result, presiding Judge Childs exceeded her authority beyond the Courts' jurisdiction, as a result from an prior unappealed order, the Court did not have authority or power to review or reverse the "findings" of the presiding Judge G. Thomas Cooper, Jr., § 14-3-330, and the subsequent order of Judge Childs was null and void; that the presiding Judge Cooper, Jr., Order is binding and remains outstanding; (See, Plaintiff's Attached Exhibit, Filed Notice/Motion To Arrest/Void Judgment/Order);

15). That, on/or about January 29, 2013, a response to the Plaintiff's aforesaid Motion to Arrest/Void Judgment, on Paragraph ¶ 14, was filed by Mr. Damon C. Wlodarczyk, an authorized AGENT Employee and attorney, with Riley Pope & Laney, LLC, who, ratified his associate or former associate attorney, Defendant Heath M. Stewart, III, fraudulent statement and activities; (See, Plaintiff's Attached Exhibit, Defendants' Counsel Damon C. Wlodarczyk, filed Response, Dated January 29, 2013;)

16). That, in the aforesaid Paragraph ¶ 15, of Defendants' Counsel Wlodarczyk Response, Page 4, Paragraph ¶ 2, Lines 3-7, and Paragraph ¶ 3, Lines 1-3, plead, "Moreover, the first Order denying summary judgment "did not" address whether the Plaintiff's negligence claims were "barred" by the exclusivity provision of the South Carolina Workers' Compensation Act, which was the sole basis for judgment in favor of the Defendants in Judge Childs'

6

290

Order.

(Paragraph ¶ 3, asserts/plead) "Based upon the record before this Court on Plaintiff's motion, there is "no evidence" that the second summary judgment motion and Order granting said motion was based solely on the same facts presented to Judge Cooper two (2) years previously. (See, Plaintiff's Attached Exhibit, Defendants' Counsel Damon C. Wlodarczyk, Memorandum In Opposition to Plaintiff's Rule 60, SCRPC Motion for Relief from Judgment, Dated January 29, 2013);

17). That, on/or about September 06, 2007, Defendants' Counsel Laney, filed their "Answer" and in the (Defendants' Counsel Answer) Answer, as opposing to Defendants' Counsel Wlodarczyk's Response, in Plaintiff's Paragraph ¶ 15, & ¶ 16, the Defendants' Counsel plead as a Fifteenth Defense, Page 5, Paragraph ¶ 36, provided, "The Plaintiff's is barred from recovery under the South Carolina Workers' Compensation Act as the Act provides for an exclusive remedy for injuries such as Plaintiff allegedly sustained; (See, Plaintiff's Attached Exhibit, Defendants' Counsel Laney, Filed Answer, Dated September 06, 2007);

18). That, said Defendants' Counsel Stewart, III, Boland and Defendants' Counsel Wlodarczyk, maintains as a defense conduct which tends to engage in fraud, deceit, dishonesty, said Defendants' Counsel Wlodarczyk, should avoid the appearance of impropriety;

19). That, such conduct violates the South Carolina Appellate Court Rules 407, Model Rule Code of Ethics Professional Responsibility, Cannon 4, 9 et seq.;

FURTHER, I SAYETH NAUGHT!

291

RICHLAND COUNTY,

DATED: JULY 10TH, 2013.

COLUMBIA, SOUTH CAROLINA

29210-4012

Respectfully Submitted,

s/

CLARENCE S. GREGORY, #227394

C/O BROAD RIVER CORRECTIONAL INST.

MURRAY UNIT, B-WING RM. 234

4460 BROAD RIVER ROAD

COLUMBIA, SOUTH CAROLINA

ZIP CODE

29210-4012

C/A NO.: 2013-CP-40-03078

PLAINTIFF'S AFFIDAVIT IN SUPPORT  
OF MOTION FOR AN ORDER OF  
DISQUALIFICATION

Sworn and Subscribed to and before me,

This 11th Day of July, 2013.

Susan H. Drye  
Notary Public For State of South Carolina

My Commission Expires: March 5, 2018

7

292

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

IN THE COURT OF COMMON PLEAS  
FIFTH (5TH) JUDICIAL CIRCUIT

Clarence S. Gregory, #227394,

Plaintiff,

C/A NO.: @ 2013-CP-40-03078

vs.

Riley Pope & E Laney, LLC,  
Law Firm, Et AL.,

Defendants.

NOTICE OF MOTION AND MOTION  
TO AMEND COMPLAINT

RICHLAND COUNTY  
FILED  
2014 MAR 17 AM 9:49  
JEANETTE W. MORRIS  
C.C.P. & C.S.

Pursuant to Rule 15 (a) and (c), of the South Carolina Rules of Civil Procedure (SCRCP), under the "relation back doctrine" permits a party to amend pleadings when the claim or defense arose out of the conduct, transaction or occurrence set forth or attempted to be set forth in the "original" pleadings, the said amendment relates back to the date of the original pleadings as following:

1). That, said Defendants in the above has not filed their "Answer" to the Plaintiff's complaint, and on/or about June 13, (2013); Defendants filed a motion to dismiss, particularly, asserting in pertinent part, Page (1), Paragraph ¶ 01, that the Complaint fails to allege facts sufficient to constitute a cause or causes of action against the Defendants;

For these reasons, herein mention, Plaintiff should be allowed to amend his complaint, as setforth as follows:

Plaintiff amends his cause of action, in "Abuse of Legal Process," Case Assigned 2007-CP-40-03742, Page 21, Paragraph ¶ 89, and Page 22, Paragraph ¶ 91;

293

Further, Plaintiff amends, his cause of action, of VII. Fraud  
And Fraudulent Conduct, Case 2007-CP-40-03742, Page 37, Paragraph  
¶ 155, 156, 157 thru 162;

Plaintiff amends, his cause of action, of ~~Abuse of Legal~~  
Process, in Case 2009-CP-40-02442, Page 42, Paragraph ¶ 167, 168,  
Page 44, Paragraph ¶ 175;

Plaintiff amends, his cause of action of, Page 57, Paragraph  
¶ 229, Page 58, Paragraph ¶ 233, ¶ 234, Page 59, Paragraph ¶ 235,  
Page 59, Paragraph ¶ 237, 238;

CONCLUSIONS

Accompanied with this said motion to amend, is Plaintiff's  
amended complaint, and for these reasons, Plaintiff respectfully  
request his said motion be granted.

RICHLAND COUNTY,  
COLUMBIA, SOUTH CAROLINA 29210  
Dated: March 13, 2014.

Respectfully submitted, I am

S/ CLARENCE S. GREGORY

CLARENCE S. GREGORY, #227394/  
C/O BROAD RIVER CORRECTIONAL  
MURRAY UNIT, B-WING RM. 234  
4460 BROAD RIVER ROAD  
COLUMBIA, S.C. 29210-4012

C/A NO.: 2013-CP-40-03078

PLAINTIFF'S NOTICE/MOTION TO  
AMEND COMPLAINT, RULE 15 (A),  
(C), SCRCP

LEGAL MAIL

NOTICE OF MOTION SCHEDULING

January 21, 2014

294



Motion "MDISMS - Motion to Dismiss" for Case: 2013CP4003078 -  
Clarence S #227394 Gregory vs Riley Pope & Laney LLC , defendant,  
et al has been added to the following Motions Roster:

**629 - MOTION ROSTER FEBRUARY 13, 2014 COURTROOM 3-B**

This hearing of this motion has been scheduled for 2/13/2014 at 2:00 PM.

The above referenced case is scheduled for a Motion Hearing before Judge Alison R. Lee. The Plaintiff's Attorney is to notify the Defendant in writing of the time and date of all Default and Damages Hearings. All requests for continuances must be in writing with a \$25.00 filing fee and received by the Chief Administrative Judge prior to the hearing. A request for a continuance does not guarantee that a case will be continued. Please notify the Court in writing if the Motions are resolved prior to the hearing. Please file any briefs or memorandum the Wednesday before the week of the hearing. ALL ATTORNEYS MUST SEND A PROPOSED ORDER OR MEMORANDUM OF LAW BY Wednesday, February 5, 2014 FOR THE MOTION HEARING THAT IS BEING HEARD ON HARD COPY AND DISK: OR IT CAN BE SENT BY EMAIL TO [ALeeLC@sccourts.org](mailto:ALeeLC@sccourts.org).

**Mail Notice To:**

Clarence S #227394 Gregory  
Broad River Correctional Institution  
4460 Broad River Road  
Columbia, SC 292104012

**Court Info:**

Richland County Common Pleas  
Richland County Judicial Center  
1701 Main Street  
Columbia, SC 29201-9201

Judge L. Casey Manning  
Chief Administrative Judge  
Fifth Judicial Circuit

NOTICE OF MOTION SCHEDULING

January 21, 2014

295



Motion "MAMNMO - Motion to Amend Opposing Motion" for Case:  
2013CP4003078 - Clarence S #227394 Gregory vs Riley Pope & Laney  
LLC , defendant, et al has been added to the following Motions Roster:

629 - MOTION ROSTER FEBRUARY 13, 2014 COURTROOM 3-B

This hearing of this motion has been scheduled for 2/13/2014 at 2:00 PM.

The above referenced case is scheduled for a Motion Hearing before Judge Alison R. Lee. The Plaintiff's Attorney is to notify the Defendant in writing of the time and date of all Default and Damages Hearings. All requests for continuances must be in writing with a \$25.00 filing fee and received by the Chief Administrative Judge prior to the hearing. A request for a continuance does not guarantee that a case will be continued. Please notify the Court in writing if the Motions are resolved prior to the hearing. Please file any briefs or memorandum the Wednesday before the week of the hearing. ALL ATTORNEYS MUST SEND A PROPOSED ORDER OR MEMORANDUM OF LAW BY Wednesday, February 5, 2014 FOR THE MOTION HEARING THAT IS BEING HEARD ON HARD COPY AND DISK: OR IT CAN BE SENT BY EMAIL TO [ALeeLC@sccourts.org](mailto:ALeeLC@sccourts.org).

Mail Notice To:

Clarence S #227394 Gregory  
Broad River Correctional Institution  
4460 Broad River Road  
Columbia, SC 292104012

Court Info:

Richland County Common Pleas  
Richland County Judicial Center  
1701 Main Street  
Columbia, SC 29201-9201

Judge L. Casey Manning  
Chief Administrative Judge  
Fifth Judicial Circuit

NOTICE OF MOTION SCHEDULING

January 21, 2014

296



Motion "MDISMS - Motion For An Order of Disqualification of Mr. Damon C. Wlod" for Case: 2013CP4003078 - Clarence S #227394 Gregory vs Riley Pope & Laney LLC , defendant, et al has been added to the following Motions Roster:

629 - MOTION ROSTER FEBRUARY 13, 2014 COURTROOM 3-B

This hearing of this motion has been scheduled for 2/13/2014 at 2:00 PM.

The above referenced case is scheduled for a Motion Hearing before Judge Alison R. Lee. The Plaintiff's Attorney is to notify the Defendant in writing of the time and date of all Default and Damages Hearings. All requests for continuances must be in writing with a \$25.00 filing fee and received by the Chief Administrative Judge prior to the hearing. A request for a continuance does not guarantee that a case will be continued. Please notify the Court in writing if the Motions are resolved prior to the hearing. Please file any briefs or memorandum the Wednesday before the week of the hearing. ALL ATTORNEYS MUST SEND A PROPOSED ORDER OR MEMORANDUM OF LAW BY Wednesday, February 5, 2014 FOR THE MOTION HEARING THAT IS BEING HEARD ON HARD COPY AND DISK: OR IT CAN BE SENT BY EMAIL TO [ALeeLC@sccourts.org](mailto:ALeeLC@sccourts.org).

Mail Notice To:

Clarence S #227394 Gregory  
Broad River Correctional Institution  
4460 Broad River Road  
Columbia, SC 292104012

Court Info:

Richland County Common Pleas  
Richland County Judicial Center  
1701 Main Street  
Columbia, SC 29201-9201

Judge L. Casey Manning  
Chief Administrative Judge  
Fifth Judicial Circuit

NOTICE OF MOTION SCHEDULING

January 21, 2014

297



**Motion "MMFDEF - Motion For Permission of Leave" for Case:  
2013CP4003078 - Clarence S #227394 Gregory vs Riley Pope & Laney  
LLC , defendant, et al has been added to the following Motions Roster:**

**629 - MOTION ROSTER FEBRUARY 13, 2014 COURTROOM 3-B**

**This hearing of this motion has been scheduled for 2/13/2014 at 2:00 PM.**

The above referenced case is scheduled for a Motion Hearing before Judge Alison R. Lee. The Plaintiff's Attorney is to notify the Defendant in writing of the time and date of all Default and Damages Hearings. All requests for continuances must be in writing with a \$25.00 filing fee and received by the Chief Administrative Judge prior to the hearing. A request for a continuance does not guarantee that a case will be continued. Please notify the Court in writing if the Motions are resolved prior to the hearing. Please file any briefs or memorandum the Wednesday before the week of the hearing. ALL ATTORNEYS MUST SEND A PROPOSED ORDER OR MEMORANDUM OF LAW BY Wednesday, February 5, 2014 FOR THE MOTION HEARING THAT IS BEING HEARD ON HARD COPY AND DISK: OR IT CAN BE SENT BY EMAIL TO [ALeeLC@sccourts.org](mailto:ALeeLC@sccourts.org).

**Mail Notice To:**

Clarence S #227394 Gregory  
Broad River Correctional Institution  
4460 Broad River Road  
Columbia, SC 292104012

**Court Info:**

Richland County Common Pleas  
Richland County Judicial Center  
1701 Main Street  
Columbia, SC 29201-9201

Judge L. Casey Manning  
Chief Administrative Judge  
Fifth Judicial Circuit

298

## **MULTIPLE SJ MOTIONS NOT PRECLUDED**

Hill raises two issues on appeal. He first contends the trial judge erred in granting the Sheriff's Department summary judgment based on the absence of proximate cause where the issue had previously been disposed of in an order by another circuit judge denying summary judgment. We disagree. While the circuit court initially denied summary judgment to the Sheriff's Department, the issue of proximate cause was never addressed in that order. The trial judge in the second summary judgment hearing had additional facts presented to him and decided the motion based on the proximate cause issue, while the trial judge in the initial summary judgment motion decided the issue based on the duty of the Sheriff's Department. Accordingly, we find no error.

Hill v. York Cnty. Sheriff's Dep't, 313 S.C. 303, 305, 437 S.E.2d 179, 180 (Ct. App. 1993)

## **ABUSE OF PROCESS:**

The focus in the abuse of process action is on the improper use of process after it has been issued.

"The essential elements of abuse of process, as the tort has developed, have been stated to be: first, an ulterior purpose, **\*\*301** and second, a wilful act in the use of the process not proper in the regular conduct of the proceeding. Some definite act or threat not authorized by the process, or aimed at an objective not legitimate in the use of the process, is required; and there is no liability where the defendant has done nothing more than carry out the process to its authorized conclusion, even though with bad intentions. The improper purpose usually takes the form of coercion to obtain a collateral advantage, not properly involved in the proceeding itself, such as the surrender of property or the payment of money, by the use of the process as a threat or club. There is, in other words, a form of extortion, and it is what is done in the course of negotiation, rather than the issuance or any formal use of the process itself, which constitutes the tort."

Scott v. McCain, 275 S.C. 599, 600-01, 274 S.E.2d 299, 300-01 (1981)

## **CIVIL CONSPIRACY**

"In a civil conspiracy claim, one must plead acts in furtherance of the conspiracy that are separate and independent from other wrongful acts alleged in the complaint, and the failure to properly plead such acts will merit the dismissal of the claim." Cricket Cove Ventures, LLC v. Gilland, 390 S.C. 312, 325-26, 701 S.E.2d 39, 46 (Ct.App.2010).

Moreover, the Plaintiff must allege special damages, which are "damages that are the natural, but not the necessary or usual, consequence of the defendant's conduct." Greywood at Hammett, LLC, 385 S.C. at 117, 682 S.E.2d at 875.

However, a plaintiff cannot recover damages for a particular act or wrong and likewise recover on a conspiracy to do the act or wrong. Peoples Federal Savings and Loan Assn. of South Carolina v. Resources Planning Corp., 358 S.C. 460, 476, 596 S.E.2d 51, 59 (2004).

### Intracorporate Immunity

intracorporate conspiracy doctrine. *See McMillan*, 367 S.C. at 564–65, 626 S.E.2d at 886–87 (holding a civil conspiracy cannot exist in the context of a principal-agent relationship where the individuals are all acting only for the corporation and not for any personal purpose of their own); *see also Cameron v. Church*, 253 F.Supp.2d 611, 623 (S.D.N.Y.2003) (stating “[t]he intracorporate conspiracy doctrine provides that the officers, agents and employees of a single corporate or municipal entity, each acting within the scope of his or her employment, legally are incapable of conspiring together” and holding the plaintiff’s claim of a civil conspiracy was barred by the intracorporate conspiracy doctrine where the individual defendants were all acting within the scope of their employment for the County of Westchester and thus no actionable conspiracy existed as a matter of law); *Perk v. Vector Res. Group, Ltd.*, 485 S.E.2d 140, 144 (Va.1997) (holding where Perk alleged a principal-agent or an employer-employee relationship existed between the several defendants, the trial court properly sustained a demurrer on Perk’s claim of civil conspiracy because the defendants were not separate entities and “an entity cannot conspire with itself”

Anvar v. Greenville Hosp. Sys., 2007-UP-004, 2007 WL 8324255 (S.C. Ct. App. Jan. 10, 2007)

### Fraud

Fraud is not presumed, but must be shown by clear, cogent, and convincing evidence. In order to prove fraud, the following elements must be shown: (1) a representation; (2) its falsity; (3) its materiality; (4) either knowledge of its falsity or a reckless disregard of its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer’s ignorance of its falsity; (7) the hearer’s reliance on its truth; (8) the hearer’s right to rely thereon; and (9) the hearer’s consequent and proximate injury. *King v. Oxford*, 282 S.C. 307, 318 S.E.2d 125 (Ct.App.1984). A complaint is fatally defective if it fails to allege all nine elements of fraud. *Inman v. Ken Hyatt Chrysler Plymouth, Inc.*, 294 S.C. 240, 363 S.E.2d 691 (1988).

Ardis v. Cox, 314 S.C. 512, 515, 431 S.E.2d 267, 269 (Ct. App. 1993)

**RILEY POPE & LANEY, LLC**  
ATTORNEYS AND COUNSELORS AT LAW

300

2838 DEVINE STREET  
POST OFFICE BOX 11412 (29211)  
COLUMBIA, SOUTH CAROLINA 29205

TELEPHONE  
(803) 799-9993

FACSIMILE  
(803) 239-1414

July 18, 2014

(VIA E-MAIL ONLY)

The Honorable G. Thomas Cooper, Jr.  
Richland County Courthouse  
P.O. Box 192  
Columbia, SC 29202-0192

Re: Clarence S. Gregory, #227394 v. Riley Pope & Laney, LLC, Law Firm, et al.  
C/A No. 2013-CP-40-03078  
Our File: 5052.00713

Dear Judge Cooper:

Attached for your consideration is a copy of your Order filed May 29, 2014, granting the Defendants' Motion to Dismiss. On or about June 6, 2014, Plaintiff submitted for filing the attached Rule 59(e), SCRCP, Motion for Reconsideration.

In reviewing the motion, it appears the vast majority of the arguments set forth are simply ~~restatements of the facts and authority previously set forth in the Complaint and Plaintiff's~~ response in opposition to the Defendants' Motion to Dismiss. I would note, however, that on page 16, Plaintiff contends that this Court "orally ruled from the bench" that Defendants were "wrong and violated the rules." Plaintiff further contends that I admitted to the Court and agreed with your Honor that the Defendants were "wrong."

Defendants will defer to the Court's recollection regarding any alleged ruling from the bench, which we believe there were none. Moreover, I dispute admitting any wrongdoing by the Defendants ~~aside from the possible hypothetical argument that assuming Plaintiff's allegations~~ are true for the purpose of the Rule 12(b)(6), SCRCP, motion, the Defendants would still be entitled to have the action dismissed for the reasons set forth in the Order.

As Plaintiff has failed to present any new arguments or authority to support his motion, Defendants would respectfully request a Form 4 Order denying Plaintiff's Motion.

By copy of this letter and e-mail, I am notifying Plaintiff of my communication with the Court. If any additional information is required, please do not hesitate to contact me.

301

**Damon Wlodarczyk**

---

**From:** Damon Wlodarczyk  
**Sent:** Friday, May 23, 2014 9:24 AM  
**Subject:** Proposed Order - Gregory #227394 v. Riley, Pope & Laney, LLC et al  
**Attachments:** Court.Ltr.7.18.14.pdf; Order.Filed.pdf; Rule 59(e).motion.pdf

I would appreciate if you would inform Judge Cooper about the attached a self-explanatory letter and filed Order and Plaintiff's Rule 59(e), SCRPC, motion concerning the above case heard by Judge Cooper on April 24<sup>th</sup>. I have mailed a copy of the letter and this e-mail to the incarcerated Plaintiff.

---

Sincerely,

Damon C. Wlodarczyk  
Attorney and Counselor at Law  
**Riley Pope & Laney, LLC**  
2838 Devine Street  
Post Office Box 11412 (29211)  
Columbia, South Carolina 29205  
Office: 803-799-9993  
Facsimile: 803-239-1414  
E-mail: [damonw@rplfirm.com](mailto:damonw@rplfirm.com)  
Web: [www.rplfirm.com](http://www.rplfirm.com)

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302

Clarence S. Gregory, #227394  
C/O Broad River Correctional Inst.,  
Murray Unit, B-Wing Rm. 234  
4460 Broad River Road  
Columbia, SC. 29210-4612

VIA U.S. Regular Mail

Dated: June 06, 2014

To: The Honorable G. Thomas Cooper, Jr.,  
Presiding Judge, Fifth (sth) Judicial  
Circuit, Court of Common Pleas,  
Richland County  
1701 Main Street,  
Post Office Box 192  
Columbia, SC. 29201-0192

Re: Gregory vs. Riley Pope & Laney, LLC,  
ET AL.,  
CIA NO. 2013-CP-40-03078

Subj: Respectfully Request To Rule  
ON Plaintiff's Enclosed Rule 59e,  
and Rule 52 a, b, d, SC, RCP  
MOTION(S).

Dear Presiding Judge Cooper:

In reference to the above-subject  
matter, Please Find enclosed an original

Notice and Motions, For a Rule 52, (a), (b), (d), and a Rule 59 (e), under provisions of the South Carolina Rules of Civil Procedure;

That, on/or about, June 03, 2014, I received a original copy of an written/signed "Proposed Order, that your Honor asked the Defendants' Counsel Wlodarczyk to draft;

According to Rule 58, SCRP, I have 10 (ten) days from the date that I received the written notice of entry, to file a request for a Rule 59 e or 52, Motion.

I am respectfully asking this Court to "reconsider" its Findings, in the May 28, 2014, Order.

Respectfully submitted,  
I am, S/

Clarence S. Gregory, #227394

CAND: 2013-CP-40-03078

cc: The Honorable Jeanette W. McBride, Clerk of Court, RICHLAND COUNTY;

Mr. Damon C. Wlodarczyk, Esq., For Defendants' Riley Pope & Laney, LLC, Law Firm, 06/06/14

304

STATE OF SOUTH CAROLINA) IN, COURT, Common Pleas  
COUNTY OF RICHLAND) 5TH JUDICIAL CIRCUIT

CLARENCE S. GREGORY, # 227394,

VS.

PLAINTIFF, C/A NO: 2013-CP-40-D3078

Riley Pope & Laney, LLC,  
Law Firm; Attorney(s) AND  
Counselors at Law;  
Individually AND Individually  
named, ET AL.,

Defendant(s).

PLAINTIFF'S  
NOTICE  
AND MOTION  
TO, ALTER,  
AMEND, OR  
RECONSIDER  
JUDGMENT/  
ORDER

TO: Mr. Riley Pope & Laney, LLC,  
C/O Mr. Damon C. Włodarczyk,  
Esquire, For Defendants.

RULE 52 (A),  
AND (B),  
SCRCP

Pursuant to Rule 52 (a), (b) and (d),  
of the South Carolina Rules of Civil  
Procedure, and the Plaintiff hereby,  
do respectfully request this Court,  
in its "findings" specifically and state  
separately its conclusions of Law,  
which constitute the grounds of its  
action, in the said Plaintiff's  
Attached Rule 59 e, SCRCP  
Motion.

RICHLAND COUNTY  
FILED  
2014 JUN 11 AM 9:33  
JEANNETTE W. MCBRIDE  
C.C.P. & G.S.

RULE 52, a.b.i.d, SERCP, NOTICE & MOTION  
DATED: JUNE 06, 2014

305

Furthermore, this Court did not address the Facts and conclusion of Law, separately in its May 28, 2014, Plaintiff's Filed Notice and Motion To Amend and Amended Complaints;

This Court did not address Facts and conclusion of, separately, of The Plaintiff's Notice and Motion To Disqualify, Defendants' Counsel Damon C. Wlodarczyk, as Legal Counsel For Defendants' for the reasons and grounds set forth in Plaintiff's Filed motion, dated on June 25, 2013;

This Court did not address nor make a specific "Findings" of Fact and a conclusion of Law in regarding to Plaintiff's Notice and motion, under the doctrine of equitable tolling, equitable estoppel and gap tolling in its May 28, 2014, Order.

306

## CONCLUSION

For these reasons set forth herein, and in Plaintiff's NOTICE and MOTION Rule 59(e), of the South Carolina Rules of Civil Procedure, should be granted as a matter of Law.

Respectfully Submitted,

I am CLARENCE S. GREGORY #227394  
CLARENCE S. GREGORY #227394  
C/O Broad River Correctional  
Murray Unit, B-Wing, Rm 234  
4460 Broad River Road  
Columbia, S.C. 29210-4012

CL A NO. 1 2013-CP-40-03078

PLAINTIFFS' NOTICE AND MOTION  
Rule 52 MOTION TO Amend  
JUDGMENT/ORDER

③

DATED: JUNE 06, 2014 (2014)

307

STATE OF SOUTH CAROLINA) IN, PART, COMMON PLEAS  
COUNTY OF RICHLAND) 5TH JUDICIAL CIRCUIT

CLARENCE S. GREGORY, #227394,

Plaintiff, CIA NO.: 2013-CP-40-03078

VS.  
Riley Pope & Laney, LLC, Law Firm;  
Attorneys and Counselors at Law;  
Individually and Individually  
named, ET AL.

Defendants).

PLAINTIFF'S  
NOTICE AND  
MOTION TO  
ALTER, AMEND,  
& RECONSIDER  
ORDER.  
RULE 59(e), 52  
SCRCP

TO: MR. Riley Pope & Laney, LLC, c/o Mr. Damon  
C. Wlodarczyk, Esquire FOR Defendants).

Pursuant to Rule 59(e), of the South Carolina Rules of Civil Procedure, a motion to alter, or amend the Order/Judgment shall be served not later than 10 days after receipt of written notice of the entry of Order.

The said Plaintiff, herein, respectfully request this Honorable Court to alter, amend, or reconsider it's Findings based upon the following grounds:

①

RICHLAND CO.  
FILED  
2014 JUN 11 AM 9:  
JEANETTE W. MCBR  
C.C.P. & G.S.

Plaintiff's STATEMENT OF THE Facts

That, on/or about, April 24, 2014, a motion hearing was convened at the Richland County, Court of Common Pleas, before this Court (presiding Honorable G. Thomas Cooper, Jr.), of the 5th Judicial Circuit, on Defendants' Counsel Damon C. Wlodarczyk's Motion to Dismiss, under Rule 12(b) 6, SCRCP.

That, both parties appeared, the Plaintiff, by way of pro'se, represented himself, and Damon C. Wlodarczyk, Esquire represented the Defendants' of the same Law Firm;

In Defendants' motion, Filed on, June 13, 2013, said Defendants' plead as a defense, under Rule 12(b) 6, SCRCP, the applicable Statute of Limitation, the defense that Plaintiff has Failed to alleged Facts sufficient to constitute a cause of action, and the Court Lack subject matter of jurisdiction over one or more Claims;

That, on/or about, June 25, 2013, said Plaintiff Filed Notice and motion to "oppose" Defendants' Counsel defense, under the doctrine of equitable tolling, equitable estoppel and gap tolling;

That, on/or about, April 24, 2014, this Court, asked the Plaintiff of the matter what hinged in Plaintiffs' Complaint;

Specifically, as Plaintiff explained, the facts, For 1). Defendants' Chose "not to appeal" the March 26, 2008, Findings of this Court (Honorable G. Thomas Cooper, Jr., Order), which said Order determined "That there are issue of facts to be resolved at trial," and denied Defendants' said motion for summary judgment; Rule 201, S.C. Appellate Court Rule; § 14-3-330 (2), precluded judgment;

2). That, as a matter of law, an

"prior unappealed Order," is the Law of the case, binding upon the Defendants' and subsequent proceedings;

(citing Authorities in, Eichman vs. Eichman, 329 SE 2d 764 (SC. 1985); (Holding, "despite of husbands' contention that he did not raise issue of paternity in the previous support proceedings," because husband hoped to preserve his marriage, "an prior unappealed Order" determining the "paternity issue" to Child, "barred" husband, under the doctrine of res-judicata;

The "Eichmans' Court, supra, Further held, that prior to the judgment / Order, there was before the Court, 1) the husbands' Complaint, 2) the Filed Answer and Counterclaim, 3) a Reply, and 4) an Order issued on/or about October 08, 1979;

The "Eichmans' Court, supra, additionally held, because the husband

"neglected" to plead or raise the paternity issue by motion in the prior order, he is barred from pleading or raising it, in a subsequent proceeding, under the doctrine of res judicata, and under Rule 8 (c), and Rule 43 (h), of the S.C. Rules of Civil Procedure.

Likewise, From reviewing the Facts and material Facts From the Richland County, Court of Common Pleas, Clerk's Record on File, in the Plaintiff's Case, (2007)-CP-40-03742 and (2009)-CP-40-02442 and current Case: 2013-CP-40-03078;

That, Defendants' circumvented to deposition October 15, 2008, and as a result, Filed a second summary judgment motion, on May 07, 2009;

That, a subsequent motion proceeding was held at the Broad River Correctional Institution, via Court-

room, before the former Judge J. Michelle Childs, January 14, 2010:

That, during the subsequent proceeding, said Defendants' contend that "they did not raise" the issue / defense of the S.C., Workers' Compensation Act, "Exclusivity remedy" in the previous Order (The March 26, 2008, Order):

That, in reviewing the incorporate filed records of the Richland County Court of Common Pleas, Clerk's Filed Records: reveals that said Defendants' Counsel Laney, Filed "Answer" on September 06, 2007, and plead on Page 05, Paragraph #36, as provided:

"The Plaintiff is 'barred' from recovery under the South Carolina Workers' Compensation Act, as the Act, provides for an 'exclusive remedy' for injuries such as Plaintiff allegedly sustained" (see, ATTACHED Exhibit)

That, from reviewing the cited Authorities held in, Eichman vs. Eichman, 329 S.E. 2d. 764 (S.C. 1985); (held),

"Despite of the Defendants' Counsel(s) contention in the January 14, 2010, subsequent proceeding, asserting before the former Judge Childs, that, "they (Defendants') did not raise" the S.C. Workers' Compensation Act, "exclusivity remedy" in the previous Order, because of the deposition testimony purported to be "additional evidence," as a matter of law,

"an prior unappealed Order," determining the issue of the S.C. Workers' Compensation Act, "exclusive remedy," to Defendants, "barred" Defendants' under the doctrine of res judicata and collateral estoppel, from raising the issue, "the S.C. Workers' Compensation Act, "exclusive remedy" in a subsequent

proceeding to another judge in the same action, between the same parties; (Rule 43(L), SCRCP, and Rule 8(c), SCRCP; Eichman vs. Eichman, 329 S.E.2d 764 (S.C. 1985);

Further, as a matter of Law, in reviewing the material Facts From September 06, 2007, record Under Rule 403, of the S.C. Rules of Evidence;

The Defendants' Counsels' October 15, 2008, and May 14, 2010, both "deposition testimony" of the Plaintiff, purported to be concluded by the Defendants' as "additional evidence," is constituted as "cumulative evidence," having and producing the "very same Fact," Same Character, and Class in effect.

That, Fact That, Defendants' defense of pleading the S.C. Workers' Compensation Act, Exclusive remedy, in their second motion For summary Judgment on/or

about, May 07, 2009, "pre-existed"  
on the record, on September 06, 2007,  
in Defendants' Filed Answer, and  
disputed by Plaintiffs' Reply, on/or  
about, September 24, 2007;

That, as a matter  
of law, citing Authorities in, Nelson  
vs. Charleston & Western C. Ry Co., 98  
S.E. 2d 798 (SC, 1957); (Holding),

"IN order to escape  
application of the "doctrine of the law  
of the case," there must be material  
change in evidence, not merely  
conclusion of additional evidence of  
a cumulative effect by the nature of  
an "established, pre-existed record"  
(shown by the Clerk of Courts' Filed  
Record, dated September 06, 2007);

Which records was  
reviewed and examined by the presiding  
Trial Courts, on March 26, 2008,  
and April 05, 2010;

Wherefore, the said Defendants' additional evidence in the form of an "deposition testimony" is cumulative evidence in and will not take both of the cases

2007-CP-40-03742 and 2009-CP-40-02442, out of the rule, of the doctrine of the law of the case, to constitute a "material change."

"Where the Defendants' additional evidence produced the same result, from a "pre-existence" record, which was considered by an "prior unappealed Order, dated: MARCH 26, 2008, and April 05, 2010;

That: Defendants' waived their rights to challenge the defense of the S.C. Workers' Compensation Act, "exclusive remedy" under Rule 8(c), SCRCF, by "failure to appeal" the (2) original prior Order(s) of whom first acquired exclusive jurisdiction of the same subject matters, as a matter of law;

That, as a matter of Law, Citing the Authorities in, Watson vs. Goldsmith, 31 SE.2d 317 (S.C. 1994); (Holding,

"The Defendants' are estopped by judgment" and said "Defendants' are estopped by record," which precludes Defendants' From denying the "truth" of matters set forth in the records on File. Whether Judicial or Legislative, and precludes Defendants' From denying the "truth" of matters adjudicated by a Court of Competent jurisdiction and is binding on the parties and those "privity" with them; (See, Watson vs. Goldsmith, 31 SE2d 317 (S.C. 1994);

Therefore, the subsequent presiding Court, did not have jurisdiction to entertained the Defendants' second motion, Filed on MAY 07, 2009; and February 23, 2011;

That, Defendants' Waived their rights to challenge the defense of the S.C. Workers' Compensation Act, "exclusive remedy," under Rule 8 (c), SCRCP, by "Failure to appeal" the original prior order(s) of whom, The First Court, presiding Honorable G. Thomas Cooper, Jr., first acquired exclusive jurisdiction of the same subject matter, (March 26, 2008).

(Citing Authorities in,  
Eichman vs. Eichman, 329 SE.2d 764 (SC. 1985);

Therefore, the second subsequent presiding Court (former State Circuit Court Judge, Honorable D. Michelle Childs) Lack jurisdiction or subject matter jurisdiction, and/or did not have authority or power, to review, overrule, modify or reversed the Findings of the First Court (Judge G. Thomas Cooper, Jr.)

(Citing Authorities in,  
Belton vs. State, 443 SE.2d 554 (SC

PLAINTIFFS NOTICE / MOTION, Rule 59 (e) OF  
SCRCP, C/A NO.: 2013-CP-40-03078

319

1994); (Holding, "an Order not appealed from is "the Law of the case," and another Circuit Court Judge of the same Court of Concurrent Jurisdiction does "not have jurisdiction, authority or power" to review, reverse or overrule the Order of another Circuit Court Judge;

(and citing Authorities in the S.C.  
Constitution Amendment Article V,  
§ 11i and in cited Authorities held in

[Page (13)]

[This has been amended from the Filed original  
Dated on June 11, 2014, due to the Richland County  
Clerk of Court "error" of completing Copying.]

LEGAL MAIL

320

State vs. Duncan, 264 S.E.2d 421 (SC. 1980);

The Lack of subject matter jurisdiction can be raised at any time, and can be raised for the first time on appeal, and can be raised "sua-sponte" by the Court.

Citing Authorities in, STATE vs. Brown, 570 S.E.2d 559 (SC. App. 2002);

Likewise, in Case, 2009-CP-40-02442, Defendants' Counsel Stewart, III and Boland, on or about, April 05, 2010, chose not to appeal the former State Court Judge J. Michelle Childs' Order, but, circumvented to the subsequent Circuit Court Judge, Honorable De Andrea G. Benjamin, pleading the same stated facts in Defendants' Counsel Boland's Memorandum IN support, dated August 31, 2011, and failed to disclose the facts that Defendants' did not appeal the



14

Order of Judge Childs, such Failure to disclose gave rise to a cause of action of Fraudulent Conduct, and thereby, the subsequent Judge Benjamin relied upon Defendants' representation and granted summary judgement in favor of Defendants.

That, as a matter of Law, even though, it was error for the presiding Judge Benjamin to review, reverse and overrule the "Findings" of former Judge Childs, the Defendants' invited the error;

The Defendants' invited error, is irrelevant the ~~the~~ Fact, "an prior unappealed Order," is the Law of the case, binding upon the Defendants and all parties, even in subsequent proceedings.

Citing Authorities in, Eichman vs. Eichman, 329 SE 2d 764 (SC, 1985),

Plaintiffs' NOTICE / MOTION, Rule 59(e), OF  
SCEP, CIA NO: 2013-CP-40-03078

322

Accordingly, the subsequent Judge Benjamin, did not have jurisdiction, authority OR power to review, reverse OR overrule The "Findings" OF The Former State Court Judge, Judge Childs;

Even in The Honorable J. Michelle Childs absent OR succeeded in another jurisdiction OF The Federal District Court, said Defendants' Counsel Bolands' act of "Failure to appeal" Judge Childs' April 05, 2010, Order is binding and is the Law OF the case;

(Citing, Authorities in, Belton vs. State, 443 SE.2d 554 (SC. 1994);

The S.C. State Constitution, Article V, section 11 (Eleven), did not grant authority to an individual Judge Judge Benjamin to review, reverse OR overrule, Judge Childs Order

(16)

323

because The former Judge, Honorable  
J. Michelle Childs' has succeeded in  
the Federal District Court, as a  
Federal District Court Judge.

(Citing Authorities in, State vs.  
Duncan, 264 SE.2d 421 (SC. 1980);

Holding, "The promulgation of  
rules by the "respective" Circuit is  
in-consistent with the S.C. State  
Constitution, Article I, Thru Article  
VI, and of section 11, For Circuit Court  
Judges.

"A judgment by a Court without  
jurisdiction of both the parties and  
the subject matter is "nullity" and  
must be so treated by the Courts;

(Citing Authorities in, Blanton vs. Stathos,  
(SC. App. 2002) 570 SE.2d 565;

Furthermore, as a matter of Law,  
The Plaintiff's Complaint should be

PLAINTIFFS' NOTICE / MOTION, Rule 59 (e),  
OF, SCRCP, CA NO.: 2013 CP-40-03078

324

"equitably tolled," and Defendants' defense  
of the statutory limitation should be  
"equitably estopped," due to the facts and  
inferences drawn, the "Filed records"  
and Plaintiff's Complaint, which demonstrated  
"extraordinary events and circumstances  
outside of the control of the Plaintiff,  
within the Richland County Clerk of  
Court's respective staff, conduct, words,  
and inactive duties" (words)

Citing Authorities in Dillion  
County School District No. 02, vs. Lewis  
Sheet Metal, 332 SE 2d at 561;

(Holding, "IT is not an  
essential element of equitable estoppel,  
whether the conduct were intentional or  
not of the parties' action to be estopped,  
it is sufficient that Plaintiff "relied"  
on the "words" or conduct of the Clerk's  
respective staff, Ms. Davis, Letter,  
dated on October 29, 2012 thru November  
14, 2012;

That, This Court "Failed" to address

(18)

PLAINTIFFS NOTICE / MOTION, RULE 59 (e),  
OF, SCRPC, CIA NO.: 2013-CP-40-03078

325

The Plaintiff's notice and motion to  
Amend and Amended Complaint in the  
Defendants' Counsel Granted Requested  
"Proposed Order, dated on/or about May  
28, 2014;

That, on/or about, April 24,  
2014, during the motion hearing, The  
presiding Court (Honorable G. Thomas  
Cooper, Jr.) orally ruled from the  
Bench, That Defendants' Counsel and  
The entire Riler Pope & Laney, LLC,  
Law Firm was "Wrong" and violated  
The rules; (see, Transcript of Record);

That, as a result, Defendants' Counsel  
Damon C. Wlodarczyk, stood up,  
in the presence of the presiding Court,  
and Admitted and agreed with the  
presiding Court, that Defendants'  
was wrong;

(Citing Authorities in, Rule 401

(19)

LEVA

PLAINTIFFS' NOTICE / MOTION, Rule 59 (e)  
OF, SCRCR, CIA NO.: 2013-CP-40-03078

326

OF the S.C. Rules of Evidence (SCRE):

That, this Court, Failed to address  
Plaintiffs' notice and motion to disqualify  
Defendants' Counsel Wlodarczyk as  
Legal Counsel as a result to Defendants'  
Counsel Wlodarczyk, having a conduct  
to engage in deceit, misleading the  
Court in his (Defendant Wlodarczyk)  
January 29, 2013, pleadings, violating  
an ethical conduct of duty, Rule 407,  
Rule 3.3 (a)(1); SCACR;

That, The Facts alleged in Plaintiffs  
Original Complaint and Amended Complaint,  
and incorporating The Richland County  
Court of Common Pleas, Clerk's Filed  
records, drawn as inferences supported  
and gave rise to causes of action of  
Defendants' abused legal process, by  
1) Filing the same stated facts and same

(20)

PLAINTIFFS' NOTICE / MOTION, Rule 59(e),  
OF SCRPC, CIA NO: 2013-CP-40-03078

327

defense, between the same party, in the  
same action, constitute an wilful act  
Defendants' having an ulterior  
purpose to prevent Plaintiff from  
having his rights to jury trial, and  
with hopes of obtaining a favorable  
summary judgment ruling, these acts  
of Defendants' in the use of the  
process was not proper in the regular  
conduct of the proceeding;

(Citing Authorities in, Broadmoor  
Apartments, Charleston vs. Horwitz, 307  
S.E. 2d 860 (1993);

That, the Facts and inferences  
in the Plaintiffs' Complaint and Amended  
Complaint against the Defendants' are  
clear, Cogent and Convincing to give  
rise to a cause of action of "Bad-  
Faith;

The Facts shows, 1) Defendants'  
knowingly and willfully chose not to  
appeal, both orders in case 2007 and

PLAINTIFFS' NOTICE / MOTION, Rule 59(e),  
OF SCRCP, CA NO.: 2013-CP-40-03078

328

2009-, 2). Defendants did not disclosed  
their Failure to appeal to the presiding  
Courts, in The January 14, 2010, motion  
proceedings, Judge Childs, and in The  
August 31, 2011, motion proceedings  
to Judge Benjamin. This Conduct  
of Defendants' is characterized as  
Fraudulent Concealment;

3). Defendants' in both proceedings  
"plead" the same stated Facts; the same  
defenses, the same issues, between the  
same parties, having the same interests,  
in the same action, to another judge,  
knowingly violated Rule 43 (2), SCRCP;

4). Defendants in the January 14, 2014,  
motion proceeding before Judge  
Childs knowingly gave a False statement  
of material Fact to the presiding  
Court;

5). Defendants during aforesaid  
asserted, that Defendants' did not raise

Plaintiffs Notice / Motion, Rule 59(e),  
of SCRCP, C/A No.: 2013-CP-40-03078

329

the S.C. Workers' Compensation  
Act <sup>(exclusive remedy)</sup> in the previous order (March  
26, 2008, and January 10, 2008);

6). That, the Richland County  
Court of Common Pleas, Clerk's record,  
reveals that on September 06, 2007,  
Defendants' plead on Page 05, of  
Defendants' Filed Answer, on  
Paragraph # 36,

"That, Defendants' plead  
the "exclusive remedy" of the  
SC. Workers' Compensation Act;

That, these facts in Paragraph(s)  
one (1) thru six (6), demonstrates  
clearly, cogent, and convincing  
that, Defendants' engaged in  
conduct involved in "Bad-Faith;

That, this Court did not appropriately  
address the facts demonstrated by

PLAINTIFFS' NOTICE / motion, Rule 59(e),  
OF SCRCP, CIA NO.: 2013-CP-40-03078

330

the adopted incorporated records  
to support a legal conclusion of  
law, in its Finding to the Cause  
of action of UNClean Hands;

IN Plaintiffs' aforesaid Paragraphs  
One (1) through Six (6), reflects a  
close "Nexus" between Defendants'  
transaction to have obtained  
two (2) Summary judgments, having  
engaged in conduct of unclean-  
Hands;

The Defendants' did not acted  
Fairly to the Plaintiff in both actions;

That, This Court did not address  
The Plaintiffs' causes of action of  
"Duplicity" against the Defendants'  
in its Proposed Order, granted  
to Defendants;

IN Plaintiffs' aforesaid Paragraphs  
One (1) through Six (6), reflects

(24)

PLAINTIFF'S NOTICE / MOTION, Rule 59(e)  
OF SCRCP, C/A NO.: 2013-CP-40-03878

331

Defendants' conduct of "doubler dealings," by pleading or raising the same defense, the same interest, between the same Plaintiff in the same action, to another Judge, knowing and recklessly disregarding, Rule 43(L), SCRCP.

Defendants did knowingly engaged in a "continuous scheme" to deceive and mislead;

Citing Authorities in, U.S. vs. DAVIS, 471 F.3d 783 (4th Cir. 2006);

That, this Court did not address Plaintiffs' cause of action, of < "Judge shopping," which stems from Defendants' "re-filing" an unsuccessful summary judgment motion, to another judge of the same Court of concurrent jurisdiction and chose not to appeal;

25

PLAINTIFFS' NOTICE / MOTION, Rule 59(e),  
OF SCRCP, C/A NO.: 2013-CP-40-03078

332

That, this Court Failed to address  
sufficiently to the Facts and the  
Legal Conclusion of law, and  
inferences drawn from the Plaintiffs  
Original and Amend Complaints,  
and from the Richland County  
Court of Common Pleas, Clerk's  
records on file, of Plaintiff's  
causes of action of "Fraud and  
Fraudulent Conduct of said  
Defendants;

In Plaintiffs Paragraphs  
as aforesaid, Paragraphs One (1)  
through six (6), demonstrates  
clear, cogent and convincing,  
that Defendants did knowingly  
engaged in Fraud and Fraudulent  
conduct to the both presiding  
Courts;

Furthermore, this Court "Failed"  
to address sufficiently to the Facts

PLAINTIFFS NOTICE / MOTION, Rule 59(e),  
OF SCRCP, CIA NO.: 2013-CP-40-03078

333

and Legal conclusions of Law,  
drawn from the inferences, records,  
The Original Plaintiff's Complaint,  
and Amended Complaints in this  
Court's Proposed Order, which were  
granted in Favor to the Defendants'  
on/or about, MAY 28, 2014,  
the Plaintiffs' Cause of action,  
For Civil Conspiracy against (sic)  
the Defendants;

That, this Court Failed to  
rule on Plaintiffs' motion to Amend  
and Amended Complaint, Plaintiffs  
Cause of action, For Civil Conspiracy  
When, The Defendants' Counsel  
Wlodarczyk, during The April 24,  
2014, motion hearing, "admitted  
to this Court, that Defendants'  
acted wrongful in both cases,  
in 2007-CP-40-03742 and in 2009-  
CP-40-02442, in violating Rule

27

Plaintiffs' Notice / Motion, Rule 59 (e),  
OF SCRPC, NO. 2013-CP-40-03078

334

8(c), and Rule 43 (L), of the  
South Carolina Rules of Civil  
Procedure;

That as an separate and  
independent acts of Defendants'  
in the furtherance of Conspiracy,  
Plaintiffs' Complaint and Amended  
demonstrates Defendants' Counsel  
Stewart, III, "Overt act," by  
knowingly giving or stating to the  
presiding Court (Former Judge J.  
Michelle Childs) on/or about,  
January 14, 2010, a false state-  
ment of material fact;

That, False statement  
is demonstrated in the Former Judge  
Childs' Order, on/or about, June 10,  
2010, (Holding, that Defendants' did  
not raise the S.C. Workers' Compensation  
Act, "exclusivity remedy" in the  
previous Order (The Order of  
presiding Court, Judge Cooper, Jr.,

dated, on/or about, March 26,  
2008);

"that, the RichLand County  
Court of Common Pleas, Clerk's  
Filed records, reveals that on/or  
about, September 06, 2007,  
said Defendants' Filed their  
Answer and plead or raised, on  
/Page 05, Paragraph #36, the  
SC. Workers' Compensation Act,  
"Exclusive remedy."

That, being a material  
Fact, and establish, Plaintiffs'  
Cause of action. For civil  
Conspiracy, a separate and  
independent wrong, in furtherance  
of conspiracy, an "Overt act"  
engaged by Defendants' Counsel  
Stewart, III.

That, this Court, by  
signing Defendants' Counsel Wlodarczyk,

Plaintiffs' Notice/Motion, Rule 59(e)  
of SCRCP, C/A NO.: 2013-CP-40-03078

336

Proposed Order, did not address again, Plaintiffs' causes of action, that Plaintiff was intimidated and threatened by both Defendants' Counsel(s), Heath McALvin Stewart, III, and Nikole H. Boland, in the October 15, 2008, and May 14, ~~2008~~ (sic) 2010, depositions proceedings;

That Defendants' Counsel in the Order asserts the Plaintiffs' Claims are "time barred" by 3 (three) years of Statutory of Limitations, which action were Filed on MAY 22, 2013;

That This Court Failed to address the Facts and Issue of The Clerk's respective, staff, Ms. Judy N. Davis, conduct, and Plaintiffs' Claims should be equitable

(30)

PLAINTIFF'S NOTICE / MOTION, Rule 59  
OF SCRCP, CIA NO.: 2013-CP-40-03078

337

tolled, and equitable estopped,  
when the respective Clerk's staff,  
Ms. Davis' words and inaction  
prevented and hindered the Plaintiff  
from timely filing (October 12,  
2012) and Ms. Davis, interrupted  
filing, and apologized later,  
and allowed Plaintiff to file on  
May 22, 2013;

Citing Authorities in,  
Magnolia North Property Owner's  
Association Inc., vs. Heritage, 725  
SE. 2d 211 (SC App. 2012);

### CONCLUSION

Under Rule 12(b) 6, motion to dismiss,  
this Court should not "sustain" Defendants'  
Counsel motion, for failure to state  
facts sufficient to constitute a  
cause or causes of action, "if

31

PLAINTIFF'S NOTICE/MOTION, RULE 59(e)  
OF SC RCP, CIA NO. 2013-CP-40-03078

338

The Facts alleged and inferences reasonably deducible therefrom would entitle the Plaintiff to any relief on any theory of the case.

(Citing From Authorities in, Logan vs. Cherokee Landscaping & Grading Co., (SC. App. 2010) 389 SC 611, 698 SE.2d 879, 240;

IT is "not" Whether Plaintiff will ultimately "prevail" or is likely to prevail, but whether Claimant is entitled to offer "evidence" to support claims alleged in Complaint;

(Citing From Authorities in, Charleston County School District vs. Laid Law Transit, INC., (SC. App. 2001) 348 SC. 420, 559 SE.2d 362;

For these reasons, it is clear, cogent, and convincing to an unbiased and impartial trial-

- Court, that Plaintiff has "sufficiently" alleged facts to constitute a cause or causes of action, in Plaintiff's original and Amended Complaint, as a matter of Law;

WHEREFORE, the Plaintiff respectfully request this Court to "reconsider" its "Findings" and deny said Defendant's motion to Dismiss.

Respectfully Submitted, I am Amended from the Filed Original due to it was not copied by the Richland County Clerk's Office;

I am, CLARENCE S. GREGORY #227394  
 C/O BROAD RIVER CORRECTION  
 Murray Unit, B-Wing Rm 234  
 4460 Broad River Road  
 Columbia, S.C. 29210-4012

CL A NO.: 2013-CP-40-03078

PLAINTIFF'S NOTICE / MOTION  
 OF RULE 59(E), SCRCP

340

STATE OF SOUTH CAROLINA) IN, COURT, COMMON PLEAS  
COUNTY OF RICHLAND) 5TH JUDICIAL CIRCUIT

Clarence S. Gregory, #227394,

vs. Plaintiff,

Riley Pope & Laney, LLC,  
Law Firm; Attorney(s)  
And Counselor(s) at Law,  
Individually And Individually  
named, ET AL.

Defendants.

C/A NO.: 2013-CP-40-03078

PLAINTIFFS'  
AFFIDAVIT OF  
SERVICE BY U.S.  
REGULAR MAIL

PERSONALLY APPEARED before me,  
Clarence S. Gregory, #227394, who, being first  
duly sworn, depose and say:

That, I am the undersigned, That I have  
Served /mailed an original Notice  
Motion TO ALTER, AMEND or Reconsider,  
Rule 59(e), SCRCIP, and a Rule 52 A, b,  
and d, SCRCIP MOTION TO AMEND; TO:  
The Presiding Judge G. Thomas Cooper, Jr.,  
5TH Judicial Circuit, Court of Common  
Pleas, Richland County, 1701 main Street,  
Post Office Box 192, Columbia, S.C.  
29201-0192;

And TO: Mr. Riley Pope & Laney,  
LLC, c/o Mr. Damon C. Wlodarczyk,  
Esquire, Attorneys And Counselors at

RICHLAND COUNTY  
FILED  
JUN 11 AM 9:33  
JEANETTE W. MCBRIDE  
CLERK, C.P. & S.C.

341

Law; And To: The Honorable Jeanette W.  
McBride, Clerk, Court of Common Pleas,  
5th Judicial Center, 1701 Main Street,  
Room 205, Post Office Box 2766,  
Richland County, Columbia, S. Carolina  
29202-2766; From the Broad River  
Correctional Institution, Mail Room, 4460  
Broad River Road, Columbia, S. C. 29210-  
4612, Bearing Proper via United States'  
Regular Mail, as it appears on This  
09th day of JUNE, 2014;

Respectfully Submitted,  
S/ [Signature]  
Clarence S. Gregory, #227394  
CLAU: 2013-CP-40-03078

Sworn To and Subscribed To before me,  
This \_\_\_\_\_ day of \_\_\_\_\_, 2014;

NOTARY PUBLIC, STATE OF South Carolina  
My Commission Expires: \_\_\_\_\_

Under The Penalty  
of Perjury  
U.S.C.A 1746

PLAINTIFF'S NOTICE AND  
MOTION FOR Rule 59e, SCRPC  
TO ALTER, Amend, Reconsider,  
AND Rule 52 a b i d i SCRPC  
NOTICE AND MOTION TO Amend  
JUDGMENT / ORDER.

(AMENDED) original notice

342

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

APPEAL FROM THE RICHLAND COUNTY  
COURT OF COMMON PLEAS FROM  
ORDERS OF HONORABLE G.  
THOMAS COOPER, JR., CIRCUIT  
COURT JUDGE:

CASE NO.(S): 2013-CP-40-03078  
2007-CP-40-03742

SUBSEQUENT INTERLOCUTORY  
ORDERS OF (FORMER) CIRCUIT  
COURT JUDGE, HONORABLE J.  
MICHELLE CHILDS:

CASE NO.(S): 2007-CP-40-03742  
2009-CP-40-02442

SUBSEQUENT INTERLOCUTORY  
ORDER OF CIRCUIT COURT  
JUDGE, HONORABLE DE ANDREA  
GIST BENJAMIN:

CASE NO. 2009-CP-40-02442

343

Clarence S. Gre Gory ... Appellant.

VERSES

Riley Pope And Laney, LLC, Law Firm, ATTORNEY(S) and Counselors at Law; Individually and Individually named, Theodore D. Riley; T. Lowndes Pope, LeRoy Free Laney, Nikole H. Boland, of whom, all are sued in their individual and Professional Capacities, Riley Pope And Laney, Limited Liability Contractor(s) (LLC);

AND

Heath McAlvin Stewart, III, Individually and Individually named, of whom, formerly

344

employed with Riley Pope And  
Laney, LLC, Law Firm, an  
agent attorney is sued in  
his Individual and  
professional Capacities,  
et al.,

All of whom are named, as,  
..... Respondents.

---

## NOTICE OF APPEAL

---

Appellant, Clarence S. Gregory,  
do hereby appeals the Orders  
of the Honorable G. Thomas  
Cooper, Jr., dated on/or about,  
May 29, 2014; Appellant received  
written notice of entry of  
this Order, on/or about, June  
02, 2014, and filed Notice and

345

Motion to amend and reconsider  
under Rule 52 and 59 (e),  
SCRCP, on/or about, June 06,  
2014;

The Honorable Jeanette W.  
McBride, Clerk of Court,  
Common Pleas, did return  
and file the same, on/or  
about, June 11, 2014;

Appellant received a return  
disposition written entry of  
Order of Denial, Reconsider  
Rule 52, 59 (e), SCRCP, by  
the Honorable G. Thomas  
Cooper, Jr., on/or about,  
March 10, 2015, at the Broad  
River Correctional Institution  
Mailroom;

346

This Day,  
March 23, 2015;

Respectfully Submitted,

S/ *Clarence S. Gregory*

CLARENCE S. GREGORY, #  
C/O BRCI, MURRAY UNIT,

B-WING Rm. 234,

4460 BROAD RIVER ROAD  
COLUMBIA, SOUTH CAROLINA

ZTD CODE 29210-4012

Other Counsel of Record:

Mr. Riley Pope And Laney, LLC  
c/o Mr. Damon C. Włodarczyk,  
Esquire For Defendants,

2838 Devine Street, P.O.  
Box 11412, Columbia, South  
Carolina

29211-1412

AMENDED

Copy Proof of Service

347

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS

---

APPEAL FROM THE RICHLAND COUNTY  
COURT OF COMMON PLEAS FROM  
ORDERS OF HONORABLE G.  
THOMAS COOPER, JR., CIRCUIT  
COURT JUDGE:

CASE NO. (S): 2013-CP-40-03078  
2007-CP-40-03742

SUBSEQUENT INTERLOCUTORY  
ORDERS OF (FORMER) CIRCUIT  
COURT JUDGE, HONORABLE J.  
MICHELLE CHILDS:

CASE NO. (S): 2007-CP-40-03742  
2009-CP-40-02442

SUBSEQUENT INTERLOCUTORY  
ORDER OF CIRCUIT COURT  
JUDGE, HONORABLE DEANDREA

348

GIST BENJAMIN,

CASE NO.: 2009-CR-40-02442

Clarence S. Gregory.. Appellant.  
Verses

Riley Pope and Laney, LLC, Law Firm, Attorney(s) and Counselors at Law; Individually and Individually named, Theodore D. Riley; T. Lowndes Pope, LeRoy Free Laney, Nikole H. Boland, of whom, all are sued in their individual and Professional Capacities, Riley Pope and Laney, Limited Liability Contractor(s) (LLC);

AND

Heath McAlvin Stewart, III,

349

Individually and Individually  
named, of whom, formerly  
employed with Riley Pope and  
Laney, LLC, Law Firm, an  
an agent attorney is sued  
in his Individual and  
professional capacities,  
et al.,

All of whom are named as,  
..... Respondents.

---

## PROOF OF SERVICE

---

I, Clarence S. Gregory, certify  
that, I have served the Original  
Cover Letter, Notice of Appeal,  
with this Proof of Service, upon  
the Honorable Jenny A. Kitchings,  
Clerk of the South Carolina Court

350

of Appeals, at Post Office Box  
11629, Columbia, South Carolina  
29211-1629, and to, The Honorable  
Jeanette W. McBride, Clerk,  
Court of Common Pleas, Post  
Office Box 2766, Richland  
County, Columbia, South  
Carolina 29202-2766; and to:  
Mr. Damon C. Wlodarczyk,  
Attorney at Law, 2838 Devine  
Street, Post Office Box 11412,  
Columbia, South Carolina 29211-  
1412;

From Broad River Correctional  
Institution, Mail Room, at  
4460 Broad River Road, Columbia,  
South Carolina 29210-4012;

Bearing proper via United  
States' regular postage as

351

it appears on this 17<sup>th</sup>  
day of April, 2015;

Richland County,  
Columbia, South Carolina

29210-4012

S/ell J  
CLARENCE S. GREGORY<sup>#</sup> 227394  
C/O BROAD RIVER C.I.,  
MURRAY UNIT, B-WING Am. 234  
4460 BROAD RIVER ROAD  
COLUMBIA, S.C. 29210-4012

APPELLANT'S PROOF OF SERVICE

CIA NO.: 2013-CP-40-03078

Appellant Case NO. 2015-000740

RILEY POPE & LANEY, LLC  
ATTORNEYS AND COUNSELORS AT LAW

2838 DEVINE STREET  
POST OFFICE BOX 11412 (29211)  
COLUMBIA, SOUTH CAROLINA 29201

TELEPHONE  
(803) 799-9993

FACSIMILE  
(803) 239-1414

352

October 7, 2009

The Honorable Jeanette W. McBride  
Richland County Clerk of Court  
Post Office Box 2766  
Columbia, South Carolina 29202

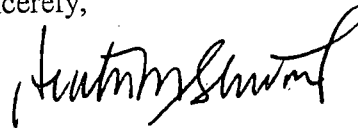
RE: Gregory, Clarence #227349 v. SCDC  
IRF Claim #: 53541  
Date of Loss: 05/15/08  
C.A. No.: 09-CP-40-02442

Dear Ms. McBride:

Enclosed for filing please find the original and a copy of Defendants Jon Ozmint and the South Carolina Department of Corrections' Motion for Summary Judgment in connection with the above-referenced matter. Please file the original and return the clocked in copy in the enclosed self-addressed, stamped envelope.

By copy of this letter I am this date serving a copy of the same upon Plaintiff, Mr. Clarence Gregory. Thank you for your assistance in this matter.

Sincerely,



Heath M. Stewart, III

Enclosures

cc: Mr. Clarence Gregory  
Mr. Harry Stokes, Esquire  
Ms. Nancy Stevenson

353

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS  
) FIFTH JUDICIAL CIRCUIT

Clarence S. Gregory, #227394,

) Civil Action No.: 2009-CP-40-02442  
)

Plaintiff,

v.

) **DEFENDANTS' NOTICE OF MOTION**  
) **AND MOTION FOR SUMMARY**  
) **JUDGMENT**

) Jonathan E. Ozmint, Commissioner  
) of South Carolina Department of  
) Corrections, et al., and South  
) Carolina Department of  
) Corrections, et al.,  
)

Defendants.

TO: CLARENCE GREGORY, #227394, THE PLAINTIFF, PRO SE:

YOU WILL PLEASE TAKE NOTICE that Defendants Jonathan E. Ozmint ("Ozmint"), Commissioner of South Carolina Department of Corrections and South Carolina Department of Corrections ("SCDC")(herein collectively referred to as "Defendants"), by and through their undersigned counsel, do hereby move pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, for an Order granting Defendants summary judgment on the grounds that there is no genuine issue of material fact and Defendants are entitled to judgment as a matter of law for the following reasons: 1) as a matter of law, Plaintiff has failed to state a cause of action for which relief can be granted; 2) as a matter of law, Plaintiff is not entitled to any claim for relief pursuant to the South Carolina Tort Claims Act; 3) as a matter of law, Plaintiff has failed to properly serve Defendants.

JEANETTE L. GREGORY  
C.C.P. & C.S.

2009 OCT 19 AM 10:02

FILED

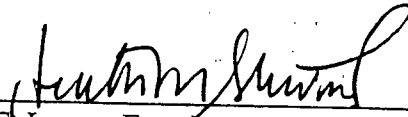
46

Exhibit

354

This motion is further based upon the laws, rules and statutes of the State of South Carolina, the pleadings, affidavits and such other material as this Court may deem just and proper.

RILEY POPE & LANEY, LLC



Roy F. Laney, Esquire  
Heath M. Stewart, III, Esquire  
Post Office Box 11412  
Columbia, South Carolina 29211  
Telephone: (803) 799-9993  
Facsimile: (803) 239-1414

Attorneys for Defendants Jonathan E. Ozmint, Commissioner of South Carolina Department of Corrections, et al., and South Carolina Department of Corrections, et al.

Columbia, South Carolina  
October 7, 2009

47 Exhibit

**RILEY POPE & LANEY, LLC**  
ATTORNEYS AND COUNSELORS AT LAW

2838 DEVINE STREET  
POST OFFICE BOX 11412 (29211)  
COLUMBIA, SOUTH CAROLINA 29201

TELEPHONE  
(803) 799-9993

FACSIMILE  
(803) 239-1414



January 6, 2010

**Via Hand Delivery**

The Honorable Jeanette W. McBride  
Richland County Clerk of Court  
Post Office Box 2766  
Columbia, South Carolina 29202

RE: Gregory, Clarence #227349 v. SCDC  
IRF Claim #: 53541  
Date of Loss: 05/15/08  
C.A. No.: 09-CP-40-02442

Dear Ms. McBride:

Enclosed for filing please find the original and a copy of Defendants Jon Ozmint and the South Carolina Department of Corrections' Memorandum in Support of Motion for Summary Judgment in connection with the above-referenced matter. Please file the original and return the clocked in copy with our courier.

By copy of this letter I am this date serving a copy of the same upon Plaintiff, Mr. Clarence Gregory. Thank you for your assistance in this matter.

Sincerely,

Heath M. Stewart, III

Enclosures

cc: Mr. Clarence Gregory (via US mail)  
Mr. Harry Stokes, Esquire (via US mail)  
Ms. Nancy Stevenson (via US mail)  
Ms. Jennifer Butler (via US mail)

48

Exhibit

356

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS  
) FIFTH JUDICIAL CIRCUIT

Clarence S. Gregory, #227394,

) Civil Action No.: 2009-CP-40-02442  
)

) Plaintiff,  
)

) v.  
)

**DEFENDANTS' MEMORANDUM IN  
SUPPORT OF MOTION FOR  
SUMMARY JUDGMENT**

) Jonathan E. Ozmint, Commissioner  
) of South Carolina Department of  
) Corrections, et al., and South  
) Carolina Department of  
) Corrections, et al.,  
)

) Defendants.  
)

**I. STATEMENT OF THE CASE**

On April 2, 2009, Plaintiff, Clarence S. Gregory ("Gregory"), appearing Pro Se, filed suit against Defendants Jonathan E. Ozmint ("Ozmint"), Commissioner of South Carolina Department of Corrections and South Carolina Department of Corrections ("SCDC")(herein collectively referred to as "Defendants") in the Court of Common Pleas of the Fifth Judicial Circuit. Defendant Ozmint was named in his official capacity as Director of the SCDC. Gregory alleges a violation of state law for gross negligence under the South Carolina Tort Claims Act. Defendants answered Gregory's Complaint on May 18, 2009, and filed a Notice and Motion for Summary Judgment on October 8, 2009.

In his Complaint, Gregory alleges that in May of 2008, while Gregory was housed at Lieber Correctional Institution ("Lieber") and working in the Lieber Cafeteria as an inmate worker, Food Service Supervisor Jennifer Butler ("Butler") gave him orders to clean out some trash cans. Gregory alleges that Butler then struck him in the back twice with a stainless steel serving spoon, causing "injury, unwanted stings . . . , shock, [and]

48 Exhibit

02442

357

emotional distress.” (Plaintiff’s Complaint, Page 4). Gregory also alleges that Butler threatened to fire Gregory if he reported the incident. (*Id.*)

Gregory alleges that Defendants were grossly negligent in failing to properly supervise Butler and allowing Butler to assault Gregory. Gregory seeks \$250,000.00 in damages against SCDC for the “willful, wanton and reckless disregard” for Gregory’s safety and \$250,000.00 for the alleged assault. (Plaintiff’s Complaint, Page4, 5).

As the Food Service Supervisor for Lieber, Butler is responsible for the day to day operations of the Lieber cafeteria during her shift. (Affidavit of Jennifer Butler). However, Butler does not have the authority to hire and/or fire inmate employees. (*Id.*) On or about April 15, 2009, Gregory was terminated from his position by the Food Service Director due to a reduction in the inmate workforce in the cafeteria. (*Id.*) At no time during Gregory’s prison employment at Lieber did Butler ever threaten, use vulgar and/or derogatory language, physically abuse and/or threaten to physically abuse or otherwise mistreat Gregory. (*Id.*)

A review of Gregory’s medical records show that, during the month of May 2008, he was not treated by the SCDC for any injuries as a result of the alleged assault by Butler. (Affidavit of Brenda Dash-Frazier; Medical Records).

For the reasons set forth in this Memorandum, Defendants are entitled to summary judgment on all claims in this action.

## **II. STANDARD FOR SUMMARY JUDGMENT**

Rule 56 of the South Carolina Rules of Civil Procedure provides that a party is entitled to judgment as a matter of law when there is no genuine dispute of material fact. Thus, summary judgment is appropriate when it is clear that there is no genuine issue of

49 Exhibit

42

Exhibit

358

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS,  
) FIFTH JUDICIAL CIRCUIT

Clarence S. Gregory, #227394,

) Civil Action No.: 2009-CP-40-02442  
)

Plaintiff,

)

v.

)

**DEFENDANTS' MEMORANDUM IN  
SUPPORT OF MOTION FOR  
SUMMARY JUDGMENT**

Jonathan E. Ozmint, Commissioner  
of South Carolina Department of  
Corrections, et al., and South  
Carolina Department of  
Corrections, et al.,

)

)

)

)

)

)

Defendants.

)

**I. STATEMENT OF THE CASE**

On April 2, 2009, Plaintiff, Clarence S. Gregory ("Gregory"), appearing Pro Se, filed suit against Defendants Jonathan E. Ozmint ("Ozmint"), Commissioner of South Carolina Department of Corrections and South Carolina Department of Corrections ("SCDC") (herein collectively referred to as "Defendants") in the Court of Common Pleas of the Fifth Judicial Circuit. Defendant Ozmint was named in his official capacity as Director of the SCDC. Gregory alleges a violation of state law for gross negligence under the South Carolina Tort Claims Act. Defendants answered Gregory's Complaint on May 18, 2009, and filed a Notice and Motion for Summary Judgment on October 8, 2009.

In his Complaint, Gregory alleges that in May of 2008, while Gregory was housed at Lieber Correctional Institution ("Lieber") and working in the Lieber Cafeteria as an inmate worker, Food Service Supervisor Jennifer Butler ("Butler") gave him orders to clean out some trash cans. Gregory alleges that Butler then struck him in the back twice with a stainless steel serving spoon, causing "injury, unwanted stings . . . , shock, [and]

359

material fact and the conclusions and inferences to be drawn from the facts are undisputed. *Etheredge v. Richland School District One*, 341 S.C. 307, 534 S.E. 2d 275 (2000). When determining if any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party. *Fleming v. Rose*, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002). The pleadings and documents on file must be liberally construed in favor of the nonmoving party who must be given the benefit of all favorable inferences that might reasonably be drawn from the record. *Bates v. City of Columbia*, 301 S.C. 320, 391 S.E.2d 733 (Ct.App.1990).

### III. ARGUMENT

#### A. GREGORY'S COMPLAINT FAILS TO STATE A CLAIM UPON WHICH RELIEF CAN BE GRANTED AND SHOULD BE DISMISSED PURSUANT TO SCRCP RULE 12(b)(6).

Gregory has named Jon Ozmint as a Defendant in this matter. As set forth in the Complaint, Gregory alleges that he was assaulted by a Food Service Supervisor while working as an inmate worker in the Lieber Cafeteria. However, Gregory fails to allege any specific fact, act or omission on the part of Defendant Ozmint.

Gregory's Complaint only states conclusions. A Complaint must allege enough information so as to place the Defendant on notice of some act or omission. Gregory has not alleged any specific act or omission he alleges on the part of Defendant Ozmint. Because Gregory has failed to set forth any facts which would support a claim against Defendant Ozmint, his Complaint should be dismissed.

Further, the South Carolina Tort Claims Act provides that when bringing an action against a governmental entity, the plaintiff shall name as the party defendant only the agency or political subdivision for which the employee was acting. S.C. Code Ann.

43 Exhibit

360

§15-78-70(c). Thus, Gregory cannot sue Defendant Ozmint individually pursuant to the terms of the Act. Therefore, Defendants are entitled to summary judgment on all claims in this matter.

**B. GREGORY'S CLAIMS SHOULD BE DISMISSED PRSUANT TO THE SOUTH CAROLINA TORT CLAIMS ACT.**

The South Carolina Tort Claims Act is the exclusive remedy for tort suits brought against the State of South Carolina and its political subdivisions. *S.C. Code Ann.* § 15-78-20. The Tort Claims Acts does not create causes of action; rather, it removes the common law bar of sovereign immunity in certain situations, but only to the extent mandated by the Act. *Summers v. Harrison Constr.*, 298 S.C. 451, 381 S.E.2d 493 (Ct. App. 1989). The Act provides several exceptions to the government's waiver of immunity. One such exception provides that a governmental entity is not liable for a loss resulting from "employee conduct . . . which constitutes . . . actual malice [or an] intent to harm. . . ." *S.C. Code Ann.* § 15-78-60(17). Gregory's Complaint clearly alleges intentional and malicious conduct by a SCDC employee. As alleged, SCDC is clearly immune from suit for such conduct.

In his Complaint, Gregory alleges that in May of 2008, while Gregory was housed at Lieber and working in the cafeteria as an inmate worker, Food Service Supervisor Butler gave him orders to clean out some trash cans. Gregory alleges that Butler then struck him in the back twice with a stainless steel serving spoon, causing "injury, unwanted stings . . . , shock, [and] emotional distress." (Plaintiff's Complaint, Page 4). Gregory also alleges that Butler threatened to fire Gregory if he reported the incident. (*Id.*) Gregory's Complaint contains numerous allegations related to alleged "intentional," "deliberate," "willful," and "wanton" behavior on the part of a SCDC employee. Thus,

361

while Gregory uses the term "gross negligence," he actually complains of intentional and malicious conduct. In examining a Complaint, Courts look beyond the labels describing the acts, to the acts themselves which form the basis of the claim. *Prior v. S.C. Medical Malpractice Ins. Joint Underwriting Ass'n*, 305 S.C. 247, 407 S.E.2d 655 (Ct.App.1991). Thus, despite the use of terms such as "negligence" and "recklessness," allegations of the commission of an intentional conduct shall be treated as an intentional tort. *Id.*

Despite the label of "gross negligence," Gregory's Complaint alleges intentional, malicious conduct on the part of a SCDC employee. The South Carolina Tort Claims Act specifically excludes the State from liability for the malicious conduct of State employees. S.C. Code Ann. § 15-78-60(17). Thus, because the allegations in Gregory's Complaint relate to alleged malicious conduct, SCDC is not subject to liability pursuant to the terms of the South Carolina Tort Claims Act.

Finally, the Act specifically excludes intentional infliction of emotional harm from the definition of loss, so that a state or its agencies are not liable for this harm. *S.C. Code Ann.* §15-78-30(f). Therefore, Defendants are entitled to summary judgment on Gregory's emotional distress claims.

**C. GREGORY FAILED TO PROPERLY SERVE DEFENDANTS SCDC AND JON OZMINT.**

Rule 4(d)(5) of the South Carolina Rules of Civil Procedure provides that service upon an officer of the State is accomplished by delivering a copy of the summons and complaint to the officer and sending a copy of the summons and complaint by registered or certified mail to the Attorney General at Columbia. On his Certificate of Service, Gregory certified he served the SCDC General Counsel and Jon Ozmint, the Director of the SCDC, by regular United States mail. There is no provision under the South Carolina

362

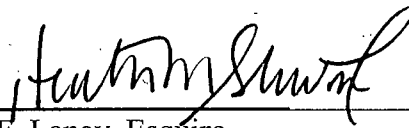
rules permitting service of the Summons and Complaint upon any entity by regular mail. Clearly, Gregory's service by regular mail is not proper service upon either party under the requirements of Rule 4(d)(5). Further, there is no evidence that Gregory served the Attorney General with a copy of Summons and Complaint.

Therefore, the court lacks personal jurisdiction over Defendants SCDC and Ozmint and this action should be dismissed.

#### **IV. CONCLUSION**

For the foregoing reasons, Defendants respectfully request the Court grant Defendants' Motion for Summary Judgment.

RILEY POPE & LANEY, LLC



Roy F. Laney, Esquire  
Heath M. Stewart, III, Esquire  
Post Office Box 11412  
Columbia, South Carolina 29211  
Telephone: (803) 799-9993  
Facsimile: (803) 239-1414

Attorneys for Defendants Jonathan E.  
Ozmint, Commissioner of South Carolina  
Department of Corrections, et al., and South  
Carolina Department of Corrections, et al.

Columbia, South Carolina  
January 6, 2010

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS  
) FIFTH JUDICIAL CIRCUIT

Clarence S. Gregory, #227394,

) Civil Action No.: 2009-CP-40-02442  
)

Plaintiff,

)

v.

)

Jonathan E. Ozmint, Commissioner  
of South Carolina Department of  
Corrections, et al., and South  
Carolina Department of  
Corrections, et al.,

)

)

)

)

)

)

Defendants.

)

**CERTIFICATE OF SERVICE**

This is to certify that I, Suzie B. Davis, an employee with the law firm of Riley Pope & Laney, LLC, have this day caused to be served upon the person named below the attached the **Defendants' Memorandum in Support of Motion for Summary Judgment** in the above-captioned matter via United States mail, first-class postage prepaid, to the following:

Clarence S. Gregory, #227394  
Broad River correctional Institution  
Murray Unit, B Wing, Room 214  
4460 Broad River Road  
Columbia, South Carolina 29210

  
Suzie B. Davis

Columbia, South Carolina  
January 6, 2010

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

IN THE COURT OF COMMON PLEAS  
FIFTH (5TH) JUDICIAL CIRCUIT

Clarence S. Gregory, #227394,

Plaintiff,

**VS.**

Jonathan E. Ozmint, Commissioner  
of South Carolina Department of  
Corrections, et al., and  
South Carolina Department of  
Corrections, et al.,

**Defendant.**

C/A NO.: 2009-CP-40-02442

PLAINTIFF'S BRIEF AND MEMORANDUM  
OF FACTS AND LAW

A) PLAINTIFF'S NOTICE/MOTION FOR AN ORDER TO COMPEL PRODUCTION OF  
DISCOVERY PRODUCTION AGAINST DEFENDANTS' COUNSEL:

1). That, on/or about June 2009, Plaintiff request Defendants' Counsel to produce any and all SCDC 19-39 completed form(s) related to the SCDC FoodService at Lieber Correctional Facility Main Cafeteria, Tool/Utensil Equipment log Sheet, dated from April thru June 2008, and SCDC 19-41 completed and signed in and out Quarterly Tool Utensil Equipment Inventory Sheet, describing any and all "18 inches or 24 inches Long Solid or Perforated Stainless Steel Serving spoon, showing dates where FoodService Supervisor, Jennifer Butler signed the same, reasons to show a specific time of the day or evening;

2). However, Defendants' Counsel object, states that such request is overbroad, unduly burdensome and calls for the disclosure of irrelevant information and is not reasonably calculated to lead to the discovery of admissible evidence;

3). That, Plaintiff also request for a photo-copy of a picture of the stainless steel serving spoon that Plaintiff asserted in pleading that Defendant, SCDC permitted FoodService Supervisor, an employee, whose

name is Ms. Jennifer Butler, who, with intent, struck Plaintiff with a Long Stainless steel serving perforated spoon, which constituted as infliction of forcible contact (using Defendant, SCDC) who, is Jennifer Butler's employer, while on the premises, at the Lieber Correctional Facility;

4). The purpose of a photo-copy is to use as demonstrative evidence, before the Court and juror, which said documents is relevant to the facts that exist, that pursuant to Rule 26 (b), tangible things in the possession, custody, and control of Defendant, SCDC which are relevant to disputed facts alleged with particularity in the Plaintiff's pleading;

5). 26 (e), Defendants' Counsel is under a duty to supplement at appropriate intervals its disclosures under subdivision (a) if party learns that in some material respect the information disclosed is incomplete or incorrect;

6). 34 a) Scope; Any party may serve on any other party a request (1) to produce and permit the party making the request, to inspect and copy, any designated documents (including writings, drawings, graphs, charts, photo-copy of pictures and sample any tangible things which constitute or contain matters within the scope of Rule 26 (b), S.C.R.C.P. and which are in the possession, custody or control of the Defendant, SCDC upon whom the request is served; (2)

7). Or permit entry upon designated land or other property in the possession or control of the Defendant, SCDC within the scope of Rule 26 (b), and Rule 34 (b) the request shall set forth, either by individual items, such as Plaintiff requested Defendants' Counsel for a copy of said SCDC 19-39 and 19-41, completed signed Tool/Utensil Equipment Sheet and inventory sheet to include dates and specific times, with reasonable particularity;

8). The request shall specify a reasonable time, place and manner of making the inspection and performing the related acts. Without leave of Court or written stipulations, a request may not be served before the time specified in

366

Rule 26 (d). The party upon whom the request is served (Defendants' Counsel) shall serve a written response within thirty (30) days after service of the request. A shorter or longer time may be directed by the Court or in the absence of such order, agreed to in writing by the parties, subject to Rule 29.

9). If the request for such item(s) or entrance upon land or premise(s) is objected to and if the Defendants' Counsel object to the request, the party submitting the request may "move/motion" the Court for an Order under Rule 37 (a) with respect to any objection to or other failure to respond to the request or any part thereof, or any failure to permit inspection by the Defendant's Counsel or any party as requested.

10). Rule 37 (b), states that an "evasive or incomplete disclosure, answer or response is to be treated as a failure to disclose, answer or respond.

B) PLAINTIFF'S NOTICE/MOTION FOR SUMMARY JUDGMENT PURSUANT TO SCRPC RULE 56:

10). That, Plaintiff asserted that Defendants' Counsel has failed to submit to support their denials, objections without evidence or material facts to support their argumental defense. A common law cause of action will "not" be barred by exclusivity provisions when the employer/employee manifests a deliberate intent to inflict injury upon a party. The S.C. Supreme Court accepts and recognized that a party/employee can maintain a common law cause of action for the employer's intentional tort of assault and battery; See, Stewart vs. McLellan's Stores Co., 194 S.C. 50, 9, S.E.2d 35 (S.C. 1940);

11). Defendants' Counsel asserted, he has been informed that the Plaintiff was not struck with a serving spoon by Ms Butler, and there were no witness(es) to the alleged incident as Plaintiff claimed in his pleadings; (See, Plaintiff's Request for Discovery Productions and Defendants' Counsel Response Page 6, Paragraph 6;

12). Defendants' Counsel did not conduct a properly discovery, to inquiry and investigate the incident as alleged there has been absolutely, no witness(es) warranting the existing evidence, that SCDC FoodService Supervisor, Jennifer Butler did not strike the Plaintiff in the back with a serving spoon, she (Ms. Butler, FSS) denied the allegation by way of an affidavit, and is subject to the penalty of perjury, as a matter of law;

13). That, Ms. Butler, FSS, an SCDC employee, admitted on an SCDC 19-11 Inmate Request to Staff Form, stated, Inmate Gregory, You got what you deserved. According to the S.C. Uniform Business Record as Evidence Act, § 19-5-510 (1985), that such said record is admissible; See, also S.C. Rules of Evidence 1004; Kershaw County Dept' Social Services vs. McCaskell, 276 S.C. 360, 362, 278 S.E. 2d 771, 773 (1981); State vs. Patterson, 351 S.E.2d 853, 855 (1986);

14). That, such assertion and writing in the said SCDC 19-11 Request to Staff Form disposition is uncontested, unchallenged and undisputed nor made any mentioned to dispute in the Affidavit of Jennifer Butler or Defendants' Counsel; See SCDC 19-11 Request to Staff Member Form Disposition on file, dated September 22, 2009;

15). That, Defendant, SCDC was put on prior knowledge or notice to the former Warden, Stanley Burt, at the Lieber Correctional Facility, as prerequisite to establishing proximate cause; See, Bramlette vs. Charter Medical Columbia, 302 S.C. 68, 393 S.E.2d 914 (1990); S.C. Tort Claims Act, § 15-78-60 (25); See, Foster vs. Dept' Highway & Public Transp., 413 S.E.2d 31 (S.C. 1992); Jackson vs. S.C. Dept' of Corrections, (S.C. App. Ct. 1989) 301 S.C. 125, 390 S.E.2d 467, cert. granted affirmed, 302 S.C. 519, 397 S.E. 2d 377; Supra.

16). The Affidavit of Brenda Dash-Frazier is disputed to the facts that, Plaintiff was medical treated for the laceration/cutt to his back; (See, SCDC 19-11 Request to Staff Disposition Form on file, Record dated September 22, 2009, Richland County, Clerk, Court of Common Pleas);

17). See, also SCDC 19-11 Request To Staff Disposition of Registered Nurse, K. Scott Stewart, on file Records, dated September 22, 2009; Also See, Affidavit of Plaintiff (Clarence S. Gregory, #227394, Affidavit of Raymond A. White, #276060, all affidavit(s) is on filed as same date);

C). PLAINTIFF'S NOTICE/MOTION IN OBJECTION TO DEFENDANTS' COUNSEL SUMMARY JUDGMENT MOTION:

18). Plaintiff asserts that, Defendants' Counsel failed to file a motion objecting Plaintiff's summary judgment motion, as required by Rule 56 (e), SCRCF, and such failure deems a waiver to filed any objection; When party is faced with motion for summary judgment that is support by evidence, Plaintiff/Defendant "cannot" defeat said motion by relying merely upon allegations of complaint or denials in Answer, Discovery, Interrogatories, Admissions, or Affidavit(s), but must disclose or show specific facts by affidavits and other relevant materials; SCRCF Rule 56 (e);

D). PLAINTIFF'S SUPPLEMENTAL NOTICE/MOTION IN SUPPORT TO OPPOSITION TO DEFENDANT'S COUNSEL SUMMARY JUDGMENT MOTION:

19). Plaintiff asserts that SCDC ADM-Policy/Procedure for Health Services 18.05, Title, Sick-Call and Dental Health Services; Paragraph 5.1 of Page 4 of 8, states: Sign up: Inmate(s) is required to sign up for sick-call on SCDC Supply M-137, or by an SCDC Form 19-11, "called Inmate Request To Staff."

20). Paragraph 6, Documentation, which states in part, all completed SCDC Supply M-137, Sick-call/Dental Sign up Roster and/or SCDC Request to Staff

Forms 19-11(s), will be filed in the Institutional "Medical" office for at least three (3) years. Sick call(s) refers to a system through which an "Inmate" reports and individualized and appropriate medical services for non-emergency illness or injuries, etc. (See, SCDC ADM-Policy/Procedure Health Services (HS) 18.05) Also, See, Plaintiff SCDC 19-11 Request To Staff Form Disposition on filed Record, Clerk, Court of Common Pleas, Richland County, Dated November 03, 2009);

E). PLAINTIFF'S NOTICE/MOTION FOR SANCTIONS AGAINST DEFENDANTS' COUNSEL:

21). Plaintiff asserted that Defendants' Counsel should be sanctions pursuant to Rule 11 and Rule 26 (g), SCRPC, and under the S.C. Tort Claims Act, § 15-78-120 (c).

a). Under Rule 11 (b) Defendants' Counsel certifying that their defensive argument, Response in denial that their were no witness(es), and Complaint, there is no genuine issue of material fact, based upon knowledge and inquiry and investigation, and Defendants' Counsel signature certified such fact, and such certified facts was immaterial and insufficient defense, which should been withdrawn and not defended; b). That Plaintiff complaint was substantiated and warranted upon existence of evidence of material facts;

c). Under Rule 26 (g), states, that, the signature of Defendants' Counsel constituted a certification that to the best of Defendants' Counsel knowledge, information and belief, formed after a reasonable inquiry (2) objection and denials in Defendants' Counsel Response to Plaintiff's Discovery Request, Admission, Page 4, Paragraph 6, and 7; Interrogatories Page 7, Paragraph 10, and 11; Plaintiff asserts that such denials and objectional defense was warranted upon a frivolous and immaterial defense;

d). Plaintiff asserts pursuant to S.C. Tort Claims Act, § 15-78-120 (c), SCRPC

370

Rule 11 (c), (1) (A), and Rule 26 (g) (3), for the reasons set forth as  
aforesaid and other reasons as reasonably diligence, Lawyer conduct, 1).  
misleading conduct, 2). defending a frivolous defense, 3). reckless  
disregarding the facts and truth about material facts, 4). failure to properly  
investigate, 5). failure to withdraw from misleading statements and facts, 6).  
repetitiously failure to withdraw from a frivolous defense after a reasonably  
inquiry and investigation, 8). failure to disclose adverse party material fact  
and evidence which would lead to admissible evidence;

WHEREFORE, under these reasons set forth herein, the Plaintiff motion for  
sanctions should be granted and summary judgment as a matter of law.

Richland County,

Columbia, South Carolina 29210

December 31, 2009

Respectfully Submitted,

S/ \_\_\_\_\_

CLARENCE S. GREGORY, #227394  
C/O BROAD RIVER CORRECTIONAL  
CONGAREE UNIT, A-WING RM. 142  
4460 BROAD RIVER ROAD  
COLUMBIA, S.C. 29210

PLAINTIFF'S BRIEF OF MEMORANDUM  
OF FACTS AND LAW  
C/A NO.: 2009-CP-40-02442  
RICHLAND COUNTY, FIFTH (5TH)  
JUDICIAL CIRCUIT, THE HONORABLE  
JEANETTE W. MCBRIDE, CLERK, COURT  
OF COMMON PLEAS, & THE HONORABLE  
JUDGE J. MICHELLE CHILDS, FOR THE  
UP-COMING SCHEDULED MOTION  
HEARING, JANUARY 14, 2010, AT  
9:00 a.m.

7

371

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

IN THE COURT OF COMMON PLEAS  
FIFTH (5TH) JUDICIAL CIRCUIT

Clarence S. Gregory, #227394,

Plaintiff,

vs.

Jonathan E. Ozmint, Commissioner  
of South Carolina Department of  
Corrections, et al., and  
South Carolina Department of  
Corrections, et al.,

Defendant.

C/A NO.: 2009-CF-40-02442

PLAINTIFF'S STATEMENT OF FACTS  
AND AFFIDAVIT IN SUPPORT OF  
SUMMARY JUDGMENT MOTION

2009 SEP 22 AM 9:29  
JENNIFER W. MCBRIDE  
P. & G.S.

RICHLAND COUNTY  
FILED

PERSONALLY APPEARED before me, CLARENCE S. GREGORY, #227394, who, being first duly Sworn depose and says:

- 1). That, Defendant, South Carolina Department of Corrections, with their Employee(s)/Agents were put on prior actual/constructive notice, on/or about December 20, 2007, former Warden Stanley Burtt, at the Lieber Correctional Institution was contacted in person and by way of an SCDC 19-11 Request Form and Disposition regard to previous assault(s) and battery; See, Attached Sheet, SCDC 19-11 Request to Warden Burtt, Dated December 24, 2007;
- 2). That, prior notice presented to SCDC FoodService Assistant Director, Mr. N.A. Helms, on/or about February 12, 2008; See, Attached Sheet, SCDC 19-11 Request Form;
- 3). That, SCDC FoodService Supervisor, III, Jennifer Butler, Returned SCDC 19-11 Request Form Disposition, direct evidence, dated May 21, 2008, Admittance that, Plaintiff got what he deserve; See, Attached Sheet; § 15-78-60 (25), S.C. Tort Claims Act, Grossly Negligence Supervising, Assault and Battery; See, Attached Sheet;
- 4). Plaintiff presents, Sworn Affidavit of Inmate Christopher A. Jones, #316204, as a witness to Incident; See, Attached Affidavit of Inmate Jones, #316204, Dated March 24, 2009;
- 5). Plaintiff presents, Sworn Affidavit of Inmate Donnie M. Malpass, #164744, as a witness; See, Attached Affidavit of Inmate, Malpass, #164744;
- 6). Plaintiff submits an SCDC 19-11 Request to Warden McKither Bodison, on/or about February 11, 2009, that SCDC FoodService Supervisor, Jennifer Butler,

CONT'D PAGE TWO (2), PLAINTIFF'S STATEMENT OF FACTS/AFFIDAVIT IN SUPPORT OF SUMMARY JUDGMENT, 09/15/2009

committed intentional assault and battery against another party, within the SCDC, See, Attached SCDC 19-11 Request Return Disposition Form Warden, McKither Bodison, From Inmate Christopher A. Jones, #316204, Dated February 12, 2009;

7). Plaintiff's submits Sworn Affidavit, See, Attached Affidavit of Inmate Clarence S. Gregory, #227394, Dated, March 24, 2009;

8). Plaintiff submits, Defendants' Counsel Responses To Plaintiff's Discovery Production, Interrogatories, and Admission, Page (4), "Request For Admission," Plaintiff: "State who witnessed the incident (intentional assault & battery, from SCDC FoodService Supervisor, Jennifer Butler), Defendants' Counsel Response: "In part," the Defendants are informed and believe that there are no witnesses to the alleged "incident," as referenced in Paragraph 6;

9). Plaintiff submits, See, Attached SCDC 19-11 Return Request Disposition Form of Ms. Butler, FSS; See, Attached, Affidavit(s) of Inmate Malpass, #164744 and Inmate Jones, #316204;

10). Plaintiff submits, Defendants' Counsel Interrogatories, Page (5), Paragraph 10, Plaintiff: " Why did the SCDC FoodService Supervisor, Ms. Jennifer Butler striked Plaintiff in the back with a serving spoon?" Defendants' Counsel Responses, Page 5, Paragraph (11), "Defendants "deny" that Plaintiff was struck with a serving spoon."

11). Plaintiff submits, Page 5, Paragraph 11, Plaintiff: "Who or what other person(s) officer witnessed the incident?" Defendants' Counsel Response, "Defendants deny that Plaintiff was struck with a serving spoon and Defendants are therefore informed and believe that there are no witnesses to the alleged, "incident."

373

12). See, Plaintiff's Exhibit, SCDC 19-11 Return Request Disposition Form of SCDC FoodService Supervisor, Jennifer Butler, Dated May 21, 2008; See, Attached Affidavit of Inmate Malpass, #164744 and Inmate Jones, #316204;

13). Plaintiff submits, Defendants' Counsel, Discovery Production, Page (4), Paragraph 8, Defendants' Counsel Responses, to Admission: Plaintiff, "State, prior to the alleged incident, whether or not the FoodService Supervisor had meetings or warnings, regarding touching or making unauthorized contacts to the Inmate worker(s) by any previous Warden's in 2007 or 2008." Defendants' Counsel Response: "Defendants object to this Request on the grounds that the term "FoodService Supervisor" is unduly vague as Defendants are unsure which FoodService Supervisor Plaintiff is referring to, and therefore Defendants deny same."

14). See, Plaintiff's Exhibit, SCDC 19-11 Return Request Disposition Form of the former Lieber Correctional Facility, Warden Stanley Burt, Dated December 24, 2007; Also See, Attached, currently Lieber Correctional Facility, Warden McKithen Bodison's, SCDC 19-11 Return Request Disposition Form, Dated February 12, 2009;

15). See, Plaintiff's Exhibit(s), Defendants' Counsel Responsive "Answer," to Plaintiff's Complaint, For A First Defense, Page (1), (2) and (3), Paragraph One (1) thru (11), "Defendants' Counsel, stated that all of the Plaintiff's allegations in the Complaint call for a "legal conclusion and therefore Defendants deny such allegations." See, Attached Exhibit(s), enclosed and see whether or not as a matter of law, as Defendants' Counsel asserted, whether or not it is a legal conclusion.

16). Plaintiff submits, SCDC 19-11 Return Request Medical Disposition Form, for the "bruise and cutt in the Plaintiff's back; See, Attached SCDC 19-11 Request Disposition, Dated, May 24, 2008;

CONCLUSION, PAGE FOUR (4), PLAINTIFF'S STATEMENT OF FACTS/AFFIDAVIT IN  
SUPPORT OF SUMMARY JUDGMENT, 09/15/2009

374

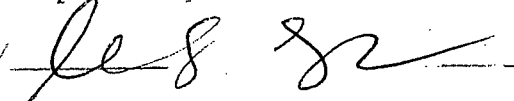
17). See, Defendants' Counsel Responsive, "Answer" to Plaintiff's Complaint, Page Three (3), Paragraph (17), For A Fourth Defense, Defendants' Counsel Answered, "Plaintiff has failed to pursue and exhaust appropriate administrative remedies."

18). See, Plaintiff exhibit, SCDC 10-5 Form, Inmate Grievance, Step One (1), Dated May 24, 2008; The Lieber Correctional Facility, Staff Grievant Coordinator has failed or deliberately lost or refuse to process this grievance, as a timely manner, pursuant to and required by SCIX ADM-Policy/Procedures G.A. 01.12; See, Attached SCDC 10-5 Form, Inmate Grievance, Step One (1), Dated May 24, 2009, date stamped by the Lieber Mail Room;

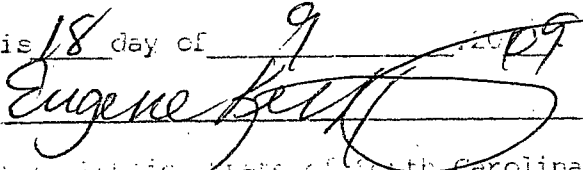
19). That, all of the above copies of SCDC 19-11 Request To Staff Form(s) and Affidavit(s) is true and correct, based upon information and belief, facts, exhibits and evidence which are admissible as in accordance to the South Carolina Rules of Evidence, § 19-5-510, The Uniform Business Record, in the regular course of business, such as to justify its admission, as a matter of law.

FURTHER, I SAYTH NAUGHT!

Respectfully Submitted, From

/s/   
CLARENCE S. GREGORY, #127294

Sworn and Subscribed to and before me,

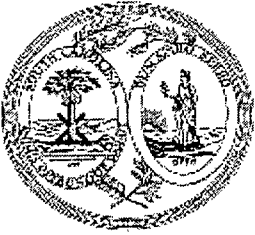
this 18 day of 9  
  
Notary Public, State of South Carolina

My Commission Expires: My Commission Expires April 4, 2016

NOTICE OF MOTION SCHEDULING

November 08, 2010

375



**Motion "MAMNMO - Plaintiff's Motion to amend/delete plaintiff's previous moti" for Case: 2009CP4002442 - Clarence S #227394 Gregory vs Jonathan E Ozmint , defendant, et al has been added to the following Motions Roster:**

**MOTION ROSTER DECEMBER 1, 2010 COURTROOM 2-C**

**This hearing of this motion has been scheduled for Wednesday, December 1, 2010 at 9:30 am.**

The above referenced case is scheduled for a Motion Hearing before Judge L. Casey Manning in Courtroom 2-C. The Plaintiff's Attorney is to notify the Defendant in writing of the time and date of all Default and Damages Hearings. All requests for continuances must be in writing with a \$25.00 filing fee and received by the Chief Administrative Judge prior to the hearing. A request for a continuance does not guarantee that a case will be continued. Please notify the Court in writing if the Motions are resolved prior to the hearing. Please file any briefs or memorandum the Wednesday before the week of the hearing.

**Mail Notice To:**

Clarence S #227394 Gregory  
Broad River Correctional Institution  
4460 Broad River Road  
Columbia, SC 29210

**Court Info:**

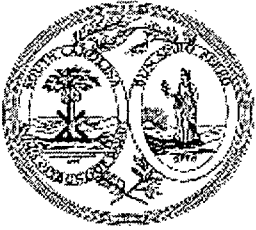
Richland County Common Pleas  
Richland County Judicial Center  
1701 Main Street  
Columbia, SC 29201-9201

Judge Alison R. Lee  
Chief Administrative Judge  
Fifth Judicial Circuit

NOTICE OF MOTION SCHEDULING

November 08, 2010

376



**Motion "MSUMJM - Plaintiff's Motion for Summary Judgment" for Case: 2009CP4002442 - Clarence S #227394 Gregory vs Jonathan E Ozmint , defendant, et al has been added to the following Motions Roster:**

**MOTION ROSTER DECEMBER 1, 2010 COURTROOM 2-C**

**This hearing of this motion has been scheduled for Wednesday, December 1, 2010 at 9:30 am.**

The above referenced case is scheduled for a Motion Hearing before Judge L. Casey Manning in Courtroom 2-C. The Plaintiff's Attorney is to notify the Defendant in writing of the time and date of all Default and Damages Hearings. All requests for continuances must be in writing with a \$25.00 filing fee and received by the Chief Administrative Judge prior to the hearing. A request for a continuance does not guarantee that a case will be continued. Please notify the Court in writing if the Motions are resolved prior to the hearing. Please file any briefs or memorandum the Wednesday before the week of the hearing.

**Mail Notice To:**

Clarence S #227394 Gregory  
Broad River Correctional Institution  
4460 Broad River Road  
Columbia, SC 29210

**Court Info:**

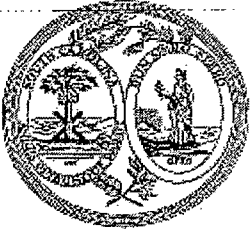
Richland County Common Pleas  
Richland County Judicial Center  
1701 Main Street  
Columbia, SC 29201-9201

Judge Alison R. Lee  
Chief Administrative Judge  
Fifth Judicial Circuit

NOTICE OF MOTION SCHEDULING

December 21, 2009

377



**Motion "MOFREE - Motion/Motion For Production Of Documents  
SCRPC Rule" for Case: 2009CP4002442 - Clarence S #227394 Gregory  
vs Jonathan E Ozmint , defendant, et al has been added to the following  
Motions Roster:**

**MOTION ROSTER JANUARY 14, 2010**

**This hearing of this motion has been scheduled for Thursday, January  
14, 2010 at 9:00 am.**

The above referenced case is scheduled for a Motion Hearing before Judge J. Michelle Childs  
at the Broad River Correctional Institution 4460 Broad River Road, Columbia, SC 29210.

The Plaintiff's Attorney is to notify the Defendant in writing of the time and date of all  
Default and Damages Hearings.

All requests for continuances must be in writing with a \$25.00 filing fee and received by the  
Chief Administrative Judge prior to the hearing. A request for a continuance does not  
guarantee that a case will be continued. Please notify the Court in writing if the Motions are  
resolved prior to the hearing. Please file any briefs or memorandum the Wednesday before  
the week of the hearing.

**Mail Notice To:**

Clarence S #227394 Gregory  
Lieber Correctional Institution  
P O Box 205  
Ridgeville, SC 294720205

**Court Info:**

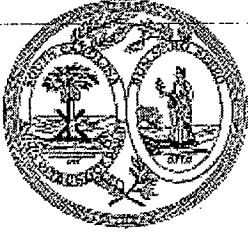
Richland County Common Pleas  
Richland County Judicial Center  
1701 Main Street  
Columbia, SC 29201-9201

Judge James R. Barber III  
Chief Administrative Judge  
Fifth Judicial Circuit

NOTICE OF MOTION SCHEDULING

December 21, 2009

378



Motion "MCOMPL - Motion/Notice of Motion to Compel Production of Discovery" for Case: 2009CP4002442 - Clarence S #227394 Gregory vs Jonathan E Ozmint, defendant, et al has been added to the following Motions Roster:

**MOTION ROSTER JANUARY 14, 2010**

**This hearing of this motion has been scheduled for Thursday, January 14, 2010 at 9:00 am.**

The above referenced case is scheduled for a Motion Hearing before Judge J. Michelle Childs at the Broad River Correctional Institution 4460 Broad River Road, Columbia, SC 29210.

The Plaintiff's Attorney is to notify the Defendant in writing of the time and date of all Default and Damages Hearings.

All requests for continuances must be in writing with a \$25.00 filing fee and received by the Chief Administrative Judge prior to the hearing. A request for a continuance does not guarantee that a case will be continued. Please notify the Court in writing if the Motions are resolved prior to the hearing. Please file any briefs or memorandum the Wednesday before the week of the hearing.

**Mail Notice To:**

Clarence S #227394 Gregory  
Lieber Correctional Institution  
P O Box 205  
Ridgeville, SC 294720205

**Court Info:**

Richland County Common Pleas  
Richland County Judicial Center  
1701 Main Street  
Columbia, SC 29201-9201

Judge James R. Barber III  
Chief Administrative Judge  
Fifth Judicial Circuit

RILEY POPE & LANEY, LLC  
ATTORNEYS AND COUNSELORS AT LAW

2838 DEVINE STREET  
POST OFFICE BOX 11412 (29211)  
COLUMBIA, SOUTH CAROLINA 29201

379

TELEPHONE  
(803) 799-9993

FACSIMILE  
(803) 239-1414

April 12, 2010

The Honorable James R. Barber III  
Post Office Box 2766  
1701 Main Street, Room 223  
Columbia, South Carolina 29202-2766

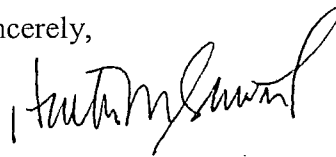
RE: Gregory, Clarence #227349 v. SCDC  
IRF Claim #: 53541  
Date of Loss: 05/15/08  
C.A. No.: 09-CP-40-02442

Dear Judge Barber:

Enclosed please find a Proposed Order for the deposition of Plaintiff Clarence Gregory in the above-referenced matter. By copy of this letter, I am serving Plaintiff with the same.

Thank you for your consideration in this matter. Please do not hesitate to contact me should you have any questions, concerns or need anything further regarding this matter.

Sincerely,



Heath M. Stewart, III

Enclosures

cc: Mr. Clarence Gregory  
Mr. Harry Stokes, Esquire  
Ms. Nancy Stevenson  
Ms. Jennifer Butler

RILEY POPE & LANEY, LLC  
ATTORNEYS AND COUNSELORS AT LAW

2838 DEVINE STREET  
POST OFFICE BOX 11412 (29211)  
COLUMBIA, SOUTH CAROLINA 29205

380

TELEPHONE  
(803) 799-9993

FACSIMILE  
(803) 239-1414

April 28, 2010

Mr. Clarence S. Gregory, #227394  
Broad River correctional Institution  
Murray Unit, B Wing, Room 214  
4460 Broad River Road  
Columbia, South Carolina 29210

RE: Gregory, Clarence #227349 v. SCDC  
IRF Claim #: 53541  
Date of Loss: 05/15/08  
C.A. No.: 09-CP-40-02442

Dear Mr. Gregory:

Enclosed please find a Notice of Deposition in the above referenced action. As indicated in the Notice, we have scheduled your deposition for Friday, May 14, 2010, at 9 am at the Broad River Correctional Institution.

I thank you for your attention to this matter.

Sincerely,



Heath M. Stewart, III

Enclosures

cc: Ms. Nancy Stevenson  
Mr. Harry Stokes, Esquire  
Ms. Jennifer Butler  
Warden Robert M. Stevenson, III

381

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS  
) FIFTH JUDICIAL CIRCUIT

Clarence S. Gregory, #227394,

) Civil Action No.: 2009-CP-40-02442  
)

Plaintiff,

)

)

**NOTICE OF DEPOSITION**

v.

)

)

Jonathan E. Ozmint, Commissioner  
of South Carolina Department of  
Corrections, et al., and South  
Carolina Department of  
Corrections, et al.,

)

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)

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Defendants.

)

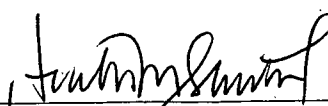
TO: CLARENCE GREGORY, #227394, THE PLAINTIFF, PRO SE:

PLEASE TAKE NOTICE that on Friday, May 14, 2010, at 9:00 a.m., at Broad River Correctional Institution, 4460 Broad River Road, Columbia, South Carolina 29210, the attorney for Defendants Jonathan E. Ozmint, Commissioner of South Carolina Department of Corrections, et al., and South Carolina Department of Corrections, will take the deposition of **Clarence Gregory** by oral examination pursuant to the South Carolina Rules of Civil Procedure before a Notary Public or some other officer authorized by law to take depositions; said deposition continuing from day to day until completed. You are hereby authorized to appear and take such part in the examination as you may be advised and shall be fit and proper.

*(Signature page to follow)*

382

RILEY POPE & LANEY, LLC



Roy F. Laney, Esquire  
Nikole H. Boland, Esquire  
~~Heath M. Stewart, III, Esquire~~  
Post Office Box 11412  
Columbia, South Carolina 29211  
Telephone (803) 799-9993  
Facsimile (803) 239-1414

Attorneys for Defendants Jonathan E.  
Ozmint, Commissioner of South Carolina  
Department of Corrections, et al., and South  
Carolina Department of Corrections, et al.

Columbia, South Carolina  
April 28, 2010

383

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS  
) FIFTH JUDICIAL CIRCUIT

Clarence S. Gregory, #227394,

) Civil Action No.: 2009-CP-40-02442  
)

Plaintiff,

)

**CERTIFICATE OF SERVICE**

v.

)

Jonathan E. Ozmint, Commissioner  
of South Carolina Department of  
Corrections, et al., and South  
Carolina Department of  
Corrections, et al.,

)

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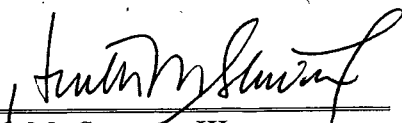
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Defendants.

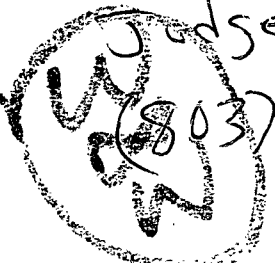
)

This is to certify that I, Heath M. Stewart, III, an employee with the law firm of Riley Pope & Laney, LLC, have this day caused to be served upon the person named below the attached the **Notice of Deposition** in the above-captioned matter via United States mail, first-class postage prepaid, to the following:

**Clarence S. Gregory, #227394  
Broad River correctional Institution  
Murray Unit, B Wing, Room 214  
4460 Broad River Road  
Columbia, South Carolina 29210**

  
Heath M. Stewart, III

Columbia, South Carolina  
April 28, 2010

 Judge J. Michelle Childs,  
(803) - 576 - 1770

**RILEY POPE & LANNEY, LLC**  
ATTORNEYS AND COUNSELORS AT LAW

2838 DEVINE STREET  
POST OFFICE BOX 11412 (29211)  
COLUMBIA, SOUTH CAROLINA 29201

TELEPHONE  
(803) 799-9993

FACSIMILE  
(803) 239-1414

February 23, 2011

The Honorable Jeanette W. McBride  
Richland County Clerk of Court  
Post Office Box 2766  
Columbia, South Carolina 29202

RE: Gregory, Clarence #227349 v. SCDC  
IRF Claim #: 53541  
Date of Loss: 05/15/08  
C.A. No.: 09-CP-40-02442

Dear Ms. McBride:

Enclosed for filing please find the original and one copy of Defendants' Motion for Summary Judgment in connection with the above-referenced matter. Please file the original and return the clocked in copy in the enclosed self-addressed, stamped envelope.

By copy of this letter I am this date serving a copy of the same upon Plaintiff, Mr. Clarence Gregory. Thank you for your assistance in this matter.

Sincerely,

*Nikole H. Boland*

Nikole H. Boland

(68) (A)  
*Exhibit*

Enclosures

cc: Mr. Clarence Gregory  
Mr. Harry Stokes, Esquire  
Ms. Nancy Stevenson

384

385

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS  
) FIFTH JUDICIAL CIRCUIT

Clarence S. Gregory, #227394,

) Civil Action No.: 2009-CP-40-02442  
)

Plaintiff,

)

)

)

v.

)

)

)

**DEFENDANTS' NOTICE OF MOTION  
AND MOTION FOR SUMMARY  
JUDGMENT**

Jonathan E. Ozmint, Commissioner  
of South Carolina Department of  
Corrections, et al., and South  
Carolina Department of  
Corrections, et al.,

)

)

)

)

)

)

Defendants.

)

TO: CLARENCE GREGORY, #227394, THE PLAINTIFF, PRO SE:

YOU WILL PLEASE TAKE NOTICE that the undersigned as counsel for the Defendants will appear before the Court, ten (10) days after service hereof at 10:00 a.m., or at such other time and place as the Court may direct, and move for an order granting Defendants summary judgment on the grounds that there is no genuine issue of material fact and Defendants are entitled to judgment as a matter of law.

This motion is further based upon the laws, rules and statutes of the State of South Carolina, the pleadings, affidavits and such other material as this Court may deem just and proper.

RILEY POPE & LANEY, LLC

Nikole H. Boland

Roy F. Laney, Esquire

Nikole H. Boland, Esquire

Damon C. Wlodarczyk, Esquire

Post Office Box 11412

Columbia, South Carolina 29211

Telephone: (803) 799-9993

Facsimile: (803) 239-1414

Attorneys for Defendants

66B  
Exhibit

Columbia, South Carolina  
February 23, 2011

386

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS  
FIFTH JUDICIAL CIRCUIT

Clarence S. Gregory, #227394,

Civil Action No.: 2009-CP-40-02442

Plaintiff,

v.

**CERTIFICATE OF SERVICE**

Jonathan E. Ozmint, Commissioner  
of South Carolina Department of  
Corrections, et al., and South  
Carolina Department of  
Corrections, et al.,

Defendants.

This is to certify that I, Suzie B. Davis, an employee with the law firm of Riley Pope & Laney, LLC, have this day caused to be served upon the person named below the attached the **Defendants' Notice of Motion and Motion for Summary Judgment** in the above-captioned matter via United States mail, first-class postage prepaid, to the following:

Clarence S. Gregory, #227394  
Evans Correctional Institution  
F-5 Wing, Room 116 B  
Post Office Box 2951202  
Bennettsville, South Carolina 29512

(69) Exhibit

Suzie B. Davis  
Suzie B. Davis

Columbia, South Carolina  
February 23, 2011

387

Clarence S. Gregory, #227394  
C/o Broad River Correctional Inst.,  
Murray Unit, B-Wing Rm. 234  
4460 Broad River Road  
Columbia, S.C. 29210-4012

Mia U.S. Regular Mail

March 03, 2011

TO: The Honorable Jeanette W. McBride, Clerk  
Court of Common Pleas, Richland County  
Fifth Judicial Center  
1701 Main Street, Room 205  
Post Office Box 2766  
Columbia, S.C. 29202- 2766

RE-Gregory, Clarence S. #227394 vs. Ozmint, Jonathan E. & SCDC, et al.,  
C/A NO.: 2009-CP-40-02442

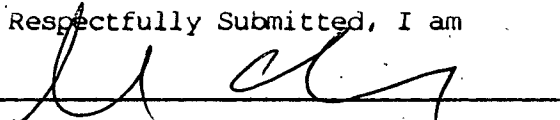
Dear Ms. McBride/Clerk:

Please find enclosed for filing purposes, a Amended Motion To Oppose said Plaintiff's previous motion to oppose Defendants' Counsel Summary judgment motion and please return to me a filed copy at the address above.

Thank you for your assistance and cooperation in regarding this matter!

Respectfully Submitted, I am

S/

  
CLARENCE S. GREGORY, #227394

Richland County,

Columbia, South Carolina 29200-4012

March 03, 2011

Enclosure

cc: Mr. Riley Pope & DeLaney, & Ms. Nikole H. Boland, Esquires & Counselor(s)  
For Defendant(s)

388

Clarence S. Gregory, #227394  
C/o Broad River Correctional Inst.,  
Murray Unit, B-Wing Rm. 234  
4460 Broad River Road  
Columbia, S.C. Zip Code 29210-4012

Via U.S. Regular Mail

March 03, 2011

TO: Mr. Riley Pope & DeLaney, LLC  
C/o Ms. Nikole H. Boland, Attorney(s) at Law  
2838 Devine Street  
Post Office Box 11412  
Columbia, South Carolina 29211-1412

RE: Gregory, Clarence S. #227394 vs. Ozmint, Jonathan E. & SCDC, Et. AL.  
C/A NO.: 2009-CP-40--02442

Dear Ms. Boland Defendants' Counsel:

Please find enclosed an original Plaintiff's Amended Motion To Oppose Defendants' Counsel motion for summary judgment.

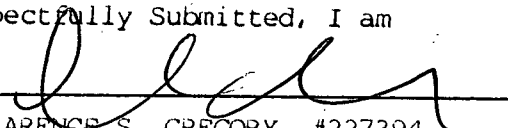
Since you are aware that your motion for summary judgment may not be made during the process of awaiting for the Honorable Judge L. Casey Manning ruling matter under advisement.

Therefore, your motion for summary judgment is premature and during the motion Hearing, on Wednesday, December 01, 2010, you failed to file any opposing motion(s), affidavit(s), prior Two (2), before the hearing and any thing you disputed during the said motion hearing is deemed "waived" as a matter of law. (See, Rules of Civil Procedure, South Carolina, Rule 56)

Thank you for your attention at this time!

Respectfully Submitted, I am

S/

  
CLARENCE S. GREGORY, #227394

Richland County,

Columbia, South Carolina 29210-4012

March 03, 2011

Enclosure

cc: The Honorable Jeanette W. McBride, Clerk, Court of Common Pleas,  
Richland County, Fifth Judicial Center

329

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

IN THE COURT OF COMMON PLEAS  
FIFTH (5TH) JUDICIAL CIRCUIT

Clarence S. Gregory, #227394,

Plaintiff,

vs.

Jonathan E. Ozmint, Commissioner  
of South Carolina Department of  
Corrections, et al., and  
South Carolina Department of  
Corrections, et al.,

Defendant.

C/A NO.: 2009-CP-40-02442

PLAINTIFF'S ADMENDED MOTION TO  
MOTION OPPOSING DEFENDANTS' COUNSEL  
MOTION FOR SUMMARY JUDGMENT

PURSUANT TO RULE 56 (D)  
CASE NOT FULLY ADJUDICATED ON MOTION

FILED  
2011 MAR 7 PM 4:12  
RICHLAND COUNTY

TO: MR. RILEY POPE & DELANEY, ESQUIRE(S) & COUNSELOR(S) FOR THE ABOVE  
DEFENDANT:

COMES NOW, the said pro'se Plaintiff and respectfully motion this Honorable Court to amend his previous motion to oppose Defendants' Counsel motion for summary judgment on grounds pursuant to Rule 56 (d), of the South Carolina Rules of Civil Procedure, that said Defendants' Counsel motion is outside of the sequence and the said case has not been fully adjudicated. The Honorable Judge L. Casey Manning is in the process of making a ruling on the said previous summary judgment motion, during the motion hearing on December 01, 2010, and the matter is under advisement and said Defendants' Counsel said motion is prematurely as a matter of law.

WHEREFORE, said Plaintiff amended motion to oppose is based upon, rules, and case laws, and the Plaintiff prays that this Court grants him favor and deny said Defendants' Counsel motion, as a matter of law.

RICHLAND COUNTY,

COLUMBIA, SOUTH CAROLINA 29202

MARCH 03, 2011

Respectfully Submitted, I am

S/

CLARENCE S. GREGORY, #227394  
C/o BROAD RIVER CORRECTIONAL INST.,  
MURRAY UNIT, B-WING RM. 234  
4460 BROAD RIVER ROAD  
COLUMBIA, S.C. 29210-4012

390

STATE OF SOUTH CAROLINA )

COUNTY OF RICHLAND )

Clarence S. Gregory, #227394,

Plaintiff,

vs.

Jonathan E. Ozmint, Commissioner  
of South Carolina Department of  
Corrections, et al., and  
South Carolina Department of  
Corrections, et al.,

Defendant.

IN THE COURT OF COMMON PLEAS

FIFTH (5TH) JUDICIAL CIRCUIT

C/A NO.: 2009-CP-40-02442

PLAINTIFF'S AFFIDAVIT OF  
SERVICE BY VIA U.S. REGULAR  
MAIL

2011 MAR -7 PM 4:4  
JEANETTE W. MCBRIDE  
C.C.P. & C.S.  
FILED  
RICHLAND COUNTY

PERSONALLY APPEARED before me, CLARENCE S. GREGORY, #227394, who, being first duly Sworn, depose and says:

That, I am the Affiant and Plaintiff in the above-captioned matter, and I hereby have served/mailed an original Cover Letter(s), AMended Motion To Oppose Defendants' Counsel Summary Judgment Motion, Affidavit of Service, to: The Honorable Jeanette W. McBride, Clerk, Court of Common Pleas, Fifth Judicial Circuit Richland County, 1701 Main Street, Room 205, Post Office Box 2766, Columbia, South Carolina 29202-2766; To: The Honorable Judge G. Thomas Cooper, Jr., Fifth Judicial Circuit, Richland County, 1701 Main Street, Room 214, Post Office Box 192, Columbia, South Carolina 29202-0192; and TO: Mr. Riley Pope & DeLaney, LLC, C/o Ms. Nikole H. Boland, Esquire(s) & Counselor(s) at Law, 2838 Devine Street, Post Office Box 11412, Columbia, South Carolina 29211-1412; From within South Carolina Department of Corrections (SCDC), at Broad River Correctional Institution, Mail Room, 4460 Broad River Road, Richland County, Columbia, South Carolina 29210-4012; Bearing proper Via United States' Regular Mail as postage as it appears on this 03 day of February, 2011.

Richland County,  
Columbia, South Carolina 29210-4012  
March 03, 2011

Respectfully Submitted, I am

S/ Clarence S. Gregory  
CLARENCE S. GREGORY, #227394

Sworn and Subscribed to and before me,  
this 3rd day of March, 2011.

Susan H. Frye

Notary Public, State of South Carolina  
My Commission Expires: March 5, 2018

) IN THE COURT OF COMMON PLEAS  
) FIFTH JUDICIAL CIRCUIT

) Civil Action No.: 2009-CP-40-02442

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)

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**DEFENDANTS' MEMORANDUM IN  
SUPPORT OF MOTION FOR  
SUMMARY JUDGMENT**

## **I. STATEMENT OF THE CASE**

On April 2, 2009, Plaintiff, Clarence S. Gregory ("Gregory"), appearing pro se, filed suit against Defendants Jonathan E. Ozmint ("Ozmint"), Commissioner of South Carolina Department of Corrections and the South Carolina Department of Corrections ("SCDC")(herein collectively referred to as "Defendants") in the Court of Common Pleas of the Fifth Judicial Circuit. Defendant Ozmint was named in his official capacity as Director of the SCDC. Gregory alleges a claim for gross negligence under the South Carolina Tort Claims Act and a claim for intentional assault and battery. Defendants answered Gregory's Complaint on May 18, 2009. Defendants filed the present Motion for Summary Judgment on February 25, 2011.

In his Complaint, Gregory alleges that in May of 2008, while Gregory was housed at Lieber Correctional Institution ("Lieber") and working in the Lieber Cafeteria as an inmate worker, Food Service Supervisor Jennifer Butler ("Butler") gave him orders to clean out some trash cans. Gregory alleges Butler then struck him in the back twice with a stainless steel serving spoon, causing "injury, unwanted stings . . . , shock, [and]

(70) exhibit

322

emotional distress.” (Plaintiff’s Complaint, p. 4). Gregory also alleges Butler threatened to fire him if he reported the incident. Id. Documentation submitted by Gregory during the course of this action identifies the date of the alleged incident as May 21, 2008.

Gregory alleges Defendants were grossly negligent in failing to properly supervise Butler and allowing Butler to assault him. Gregory seeks \$250,000.00 in damages against the SCDC for the “willful, wanton and reckless disregard” for Gregory’s safety and \$250,000.00 for the alleged assault. (Plaintiff’s Complaint, pp. 4, 5).

As the Food Service Supervisor for Lieber, Butler is responsible for the day to day operations of the Lieber cafeteria during her shift. (Affidavit of Jennifer Butler). At no time during Gregory’s prison employment at Lieber did Butler ever threaten, use vulgar and/or derogatory language, physically abuse and/or threaten to physically abuse or otherwise mistreat Gregory. Id. However, Butler does not have the authority to hire or fire inmate employees. Id. On or about April 15, 2009, Gregory was terminated from his position by the Food Service Director due to a reduction in the inmate workforce in the cafeteria. Id.

A review of Gregory’s medical records shows that Gregory was not treated by the medical staff at the SCDC in May 2008 for any injuries. (Affidavit of Nadine Pridgen; Medical Records.) Gregory submitted a Step 1 grievance dated May 22, 2008 to the Inmate Grievance Branch that was received on September 6, 2009. (Inmate Grievance Form, Inmate Correspondence.)

For the reasons set forth in this Memorandum, Defendants are entitled to summary judgment on all claims in this action.

## II. STANDARD FOR SUMMARY JUDGMENT

393

Rule 56 of the South Carolina Rules of Civil Procedure provides that a party is entitled to judgment as a matter of law when there is no genuine dispute of material fact.

Thus, summary judgment is appropriate when it is clear that there is no genuine issue of material fact and the conclusions and inferences to be drawn from the facts are undisputed. Etheredge v. Richland School District One, 341 S.C. 307, 534 S.E. 2d 275 (2000). When determining if any triable issues of fact exist, the evidence and all reasonable inferences must be viewed in the light most favorable to the non-moving party. Fleming v. Rose, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002). "However, if the evidence is susceptible of only one reasonable inference, the question is no longer one for the jury but one of law for the Court." Ward v. Zelinski, 260 S.C. 229, 232, 195 S.E.2d 385, 387 (1973).

### III. ARGUMENT

A. GREGORY'S COMPLAINT FAILS TO STATE A CLAIM AGAINST OZMINT AND HE SHOULD BE DISMISSED FROM THE ACTION PURSUANT TO SCRCP RULE 12(b)(6).

Gregory has named Jon Ozmint as a Defendant in this matter. As set forth in the Complaint, Gregory alleges he was assaulted by a Food Service Supervisor while working as an inmate worker in the Lieber Cafeteria. However, Gregory fails to allege any specific fact, act or omission on the part of Defendant Ozmint.

Gregory's Complaint states only conclusions and does not allege any specific act or omission by Ozmint. Gregory asserts only that Ozmint is liable as the Director of the SCDC. Gregory does not assert that he put Ozmint on notice of any problems with staff in the Lieber cafeteria. As such, Gregory has failed to set forth any facts which would support a claim against Ozmint.

92

Exhibit

394

Further, the South Carolina Tort Claims Act provides that when bringing an action against a governmental entity, the plaintiff shall name as the party defendant only the agency or political subdivision for which the employee was acting. S.C. Code Ann. §15-78-70(c). If "...the employee is individually named, the agency...for which the employee was acting must be substituted as the party defendant." *Id.* Gregory named Ozmint in his official capacity in this matter. At a hearing in this case, Gregory reiterated that he is suing Ozmint only in his official capacity. (Order filed April 6, 2010, footnote

2.) Therefore, Defendant Ozmint should be dismissed from this matter.

**B. GREGORY'S CLAIMS SHOULD BE DISMISSED PURSUANT TO THE SOUTH CAROLINA TORT CLAIMS ACT.**

The South Carolina Tort Claims Act (the "Act") is the exclusive remedy for tort suits brought against the State of South Carolina and its political subdivisions. S.C. Code Ann. § 15-78-20. The Tort Claims Act does not create causes of action; rather, it removes the common law bar of sovereign immunity in certain situations, but only to the extent mandated by the Act. Summers v. Harrison Constr., 298 S.C. 451, 381 S.E.2d 493 (Ct. App. 1989). The Act provides several exceptions to the government's waiver of immunity. One such exception provides that a governmental entity is not liable for a loss resulting from the "responsibility or duty including but not limited to supervision, protection, control, confinement, or custody of any ...prisoner...,of any governmental entity, except when the responsibility or duty is exercised in a grossly negligent manner." S.C. Code Ann. §15-78-60(25). Another exception provides that a governmental entity is not liable for a loss resulting from "employee conduct . . . which constitutes . . . actual malice [or an] intent to harm. . . ." S.C. Code Ann. § 15-78-60(17).

(73) EXHIBIT

395

Gross negligence means the failure to exercise even a slight degree of care.

Moore v. Berkeley County School Dist., 326 S.C. 584, 486 S.E.2d 9 (Ct. App. 1997).

Gross negligence is the intentional, conscious failure to do something which one ought to

do. Worsley Companies, Inc. v. Town of Mt. Pleasant, 339 S.C. 51, 528 S.E.2d 657

(2000). When the evidence supports only one reasonable inference, summary judgment

is appropriate on the issue of gross negligence. Id.

In his Complaint, Gregory alleges that in May of 2008, while Gregory was housed

at Lieber and working in the cafeteria as an inmate worker, Food Service Supervisor

Butler gave him orders to clean out some trash cans. Gregory alleges that Butler then

struck him in the back twice with a stainless steel serving spoon, causing "injury,

unwanted stings . . . , shock, [and] emotional distress." (Plaintiff's Complaint, Page 4).

Gregory also alleges that Butler threatened to fire Gregory if he reported the incident. Id.

During his deposition, when asked how he believed the SCDC was grossly negligent in this matter, Gregory stated only that he informed Warden Burke in 2007 of what was going on with the food service supervisor and he claimed he was going to look into it and have a meeting with the food service staff and with Reeves. (Deposition of Clarence Gregory, p. 81, ll. 12 - 20.) He also stated he talked to Mr. Hamms, the food service director, about the same thing. (Id. at ll. 21 - 23.) However, Gregory did not identify what was going on with this unidentified "food service supervisor" and has offered no proof that a meeting did not occur. When asked what Jon Ozmint did that was grossly negligent, Gregory responded by citing to his "Motion and Objecting to Opposing Defendant's Counsel Memorandum in Support of Summary Judgment." (Deposition of Clarence Gregory, p. 82, ll. 18 - 25.) He stated that

74 exhibit

396

The Commissioner was responsible for describing the rules and regulations to redress under Title 24-1-140, to redress and enforce the aforesaid rules towards employees' conduct of mistreatment against the plaintiff. Title 24-1-210. He was responsible as under the doctrine of respondent's superior to properly investigate the misconduct of Ms. Butler, Title 24-3-17, and the fact that he failed to investigate the conduct of Ms. Butler and he failed to prosecute her for her misconduct outside of the scope of her official duty. (Deposition of Clarence Gregory, p. 82, ll. 1 - 12.)

These excerpts clearly show that Gregory has not alleged and cannot establish any gross negligence on the part of the Defendants. Further, Gregory cannot show that Defendants were on notice of any alleged incident. Gregory's grievance concerning the alleged incident was not filed until September 6, 2009. Despite his claims to the contrary, there are no records of any medical treatment in May of 2008. (Affidavit of Nadine Pridgen; Medical Records.) Gregory has not alleged that he ever notified Ozmint of this incident, and Ozmint cannot be held liable simply because he was the Director of the SCDC. Thus, Gregory has not shown that either the SCDC or Ozmint failed to exercise a slight degree of care in this matter.

Gregory's Complaint contains numerous allegations related to alleged "intentional," "deliberate," "willful," and "wanton" behavior on the part of a SCDC employee. Thus, while Gregory uses the term "gross negligence," he actually complains of intentional and malicious conduct. In examining a Complaint, Courts look beyond the labels describing the acts, to the acts themselves which form the basis of the claim. Prior v. S.C. Medical Malpractice Ins. Joint Underwriting Ass'n, 305 S.C. 247, 407 S.E.2d 655 (Ct.App.1991). Thus, despite the use of terms such as "negligence" and "recklessness," allegations of the commission of an intentional conduct shall be treated as an intentional tort. Id.

75 Exhibit

397

In her Order filed April 6, 2010, Judge Childs found that Gregory stated a cause of action for intentional assault and battery. (Order filed April 6, 2010.) As previously stated, Gregory sued Ozmint in his official capacity only, which equates to suing the SCDC. Therefore, Ozmint is also not liable for intentional conduct of a SCDC employee. The South Carolina Tort Claims Act specifically excludes the State from liability for intentional conduct. S.C. Code Ann. § 15-78-60(17). Thus, because the allegations in Gregory's Complaint relate to alleged intentional conduct, the SCDC is not subject to liability pursuant to the terms of the South Carolina Tort Claims Act.

Finally, the Act specifically excludes intentional infliction of emotional harm from the definition of loss, so that a state or its agencies are not liable for this type of harm. S.C. Code Ann. §15-78-30(f). Therefore, Defendants are also entitled to summary judgment on Gregory's emotional distress claims.

C. **GREGORY IS BARRED FROM RECOVERY UNDER THE EXCLUSIVE REMEDY PROVISION OF THE SOUTH CAROLINA WORKERS' COMPENSATION ACT.**

The South Carolina Workers' Compensation Act (the "Act") is the exclusive remedy of an employee injured in the course and scope of employment. S.C. Code Ann. § 42-1-540. Any inmate of the South Carolina Department of Corrections who suffers an injury compensable under the Act may be awarded and paid compensation pursuant to the Act. S.C. Code Ann. § 42-1-480. "The term *"inmate"* includes any person sentenced to the South Carolina Department of Corrections and who is then in the jurisdiction of the Department. . . ." *Id.* A prison inmate who is injured while working in a jail kitchen cannot maintain a suit for the negligence of prison officials since such an action is barred by the exclusive remedy provision of the Act. Arnold v. South Carolina Dept. of

7 (76) EXHIBIT

398

Corrections, 843 F.Supp. 110, 114 n. 2 (D.S.C. 1994); *See also Davis v. South Carolina Dept. of Corrections*, 289 S.C. 123, 345 S.E.2d 245 (1986).

The Workers' Compensation Act applies if a claimant sustains an "injury by accident arising out of and in the course of employment." S.C. Code Ann. § 42-1-160(A). "In the course of employment" refers to the time, place and circumstances under which the accident occurs. Loges v. Mack Trucks, Inc., 308 S.C. 134, 417 S.E.2d 538, 540 (1992). "An injury arises out of employment when there is apparent to the rational mind, upon consideration of all the circumstances, a causal relationship between the conditions under which the work is to be performed and the resulting injury." Id.

S.C. Code Ann. § 42-1-540 provides in relevant part:

The rights and remedies granted by this Title to an employee when he and his employer have accepted the provisions of this title, respectively, to pay and accept compensation on account of personal injury or death by accident, *shall exclude all other rights and remedies of such employee, . . . as against his employer, at common law or otherwise, on account of such injury, loss of service or death.* (Emphasis added).

South Carolina's appellate courts have repeatedly recognized that the Act provides the exclusive remedy for on-the-job personal injury claims by employees against their employers. Posey v. Proper Mold & Eng., Inc., 378 S.C. 210, 223, 661 S.E.2d 395, 402 (Ct.App. 2008)("The General Assembly has vested the South Carolina Workers' Compensation Commission with exclusive original jurisdiction over employees' work-related injuries."); McClain v. Pactiv Corp., 360 S.C. 480, 484, 602 S.E.2d 87, 89 (Ct.App. 2004), *cert. improvidently granted*, 373 S.C. 98, 644 S.E.2d 65 (2007), *citing* S.C. Code Ann. § 42-1-540 ("[t]he rights and remedies of an injured worker under the Workers' Compensation Act constitute the worker's exclusive remedies against the employer.").

77 Exhibit

399

The South Carolina Supreme Court has determined that a common law cause of action is not barred by the South Carolina Workers' Compensation Act if the employer acted with a deliberate or specific intent to injure the employee. Peay v. U.S. Silica Co., 313 S.C. 91, 94, 437 S.E.2d 64, 65-66 (1993) ("Giving the intentional injury exception to section 42-1-540 its most narrow construction, we find that only those injuries inflicted by an employer who acts with a deliberate or specific intent to injure are exempted from the exclusive remedy of workers' compensation coverage."). The Court also found that the standard regarding employers "also would apply to injuries intentionally inflicted by a co-employee." Id. at 94, n.1, 437 S.E.2d at 66, n.1. The South Carolina Supreme Court has even found that intentional torts fall within the Act. See Loges, 308 S.C. at 136-137, 417 S.E.2d at 540 (in ruling that the exclusive remedy provision of the South Carolina Workers' Compensation Act barred the plaintiff's claims, the Supreme Court stated: "We hold that summary judgment is appropriate on the allegations of intentional infliction of emotional distress, assault and battery as these constitute personal injuries within the scope of the Act."); Dickert v. Metropolitan Life Ins. Co., 311 S.C. 218, 220, 428 S.E.2d 700, 701 (1993) (holding that negligence, assault, battery and outrage were "precluded by the exclusivity provision of the South Carolina Workers' Compensation Act").

In Edens v. Bellini, the South Carolina Court of Appeals clarified the intentional tort exception to the workers' compensation exclusivity provision, citing to Larson's treatise on Workers' Compensation law:

Since the legal justification for the common-law action is the nonaccidental character of the injury from the defendant employer's standpoint, the common-law liability of the employer cannot, under the almost unanimous rule, be stretched to include accidental injuries caused by the gross, wanton, willful, deliberate, intentional, reckless, culpable, or malicious negligence, breach of statute, or other misconduct of the

7400

employer short of a conscious and deliberate intent directed to the purpose of inflicting an injury.

Even if the alleged conduct goes beyond aggravated negligence, and includes such elements as knowingly permitting a hazardous work condition to exist, knowingly ordering employees to perform an extremely dangerous job, willfully failing to furnish a safe place to work, willfully violating a safety statute, failing to protect employees from crime, refusing to respond to an employee's medical needs and restrictions, or withholding information about worksite hazards, the conduct still falls short of the kind of actual intention to injure that robs the injury of accidental character.

Edens v. Bellini, 359 S.C. 433, 448, 597 S.E.2d 863, 871 (Ct.App. 2004)(citing 6 Arthur Larson & Lex K. Larson, Larson's Workers' Compensation Law § 103.03 (2002)).

Gregory alleges he was injured while performing his duties as a food service aide in the Lieber kitchen. It is clear from Gregory's own Complaint that he was an inmate worker at the time of his injury and that, as an inmate worker, he was subject to the provisions of the South Carolina Workers' Compensation Act and its exclusive remedy provision. Gregory may not circumvent the procedures mandated by the South Carolina Workers' Compensation Act for work related injuries in order to seek monetary damages through a civil action. Thus, Gregory's claims are barred by the exclusive remedy provision of the South Carolina Workers' Compensation Act, and Gregory's Complaint should be dismissed.

79 exhibit

401

IV. CONCLUSION

For the foregoing reasons, Defendants respectfully request the Court grant Defendants' Motion for Summary Judgment.

RILEY POPE & LANEY, LLC

Nikole H. Boland

Roy F. Laney, Esquire

Nikole H. Boland, Esquire

Post Office Box 11412

Columbia, South Carolina 29211

Telephone: (803) 799-9993

Facsimile: (803) 239-1414

Attorneys for Defendants Jonathan E.  
Ozmint, Commissioner of South Carolina  
Department of Corrections, et al., and South  
Carolina Department of Corrections, et al.

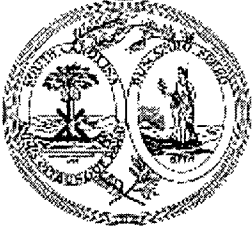
Columbia, South Carolina  
August 31, 2011

80 Exhibit

NOTICE OF MOTION SCHEDULING

August 10, 2011

202



**Motion "MSUMJM - Plaintiff's Motion Opposing Defendant's Counsel Motion for S" for Case: 2009CP4002442 - Clarence S #227394 Gregory vs Jonathan E Ozmint , defendant, et al has been added to the following Motions Roster:**

**MOTION ROSTER AUGUST 31, 2011 COURTROOM 2-C**

**This hearing of this motion has been scheduled for Wednesday, August 31, 2011 at 2:00 pm.**

The above referenced case is scheduled for a Motion Hearing before Judge DeAndrea G. Benjamin in Courtroom 2-C. The Plaintiff's Attorney is to notify the Defendant in writing of the time and date of all Default and Damages Hearings. All requests for continuances must be in writing with a \$25.00 filing fee and received by the Chief Administrative Judge prior to the hearing. A request for a continuance does not guarantee that a case will be continued. Please notify the Court in writing if the Motions are resolved prior to the hearing. Please file any briefs/memorandums and proposed orders the Wednesday before the week of the hearing.

**Mail Notice To:**

Clarence S #227394 Gregory  
Broad River Correctional Institution  
4460 Broad River Road  
Columbia, SC 29210

**Court Info:**

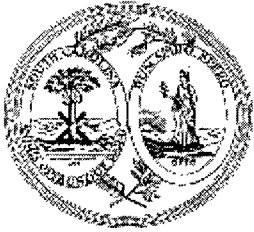
Richland County Common Pleas  
Richland County Judicial Center  
1701 Main Street  
Columbia, SC 29201-9201

Judge Alison R. Lee  
Chief Administrative Judge  
Fifth Judicial Circuit

NOTICE OF MOTION SCHEDULING

August 10, 2011

Ex 3



**Motion "MSUMJM - Plaintiff's Amended Motion to Opposing Defendants Counsel Mo" for Case: 2009CP4002442 - Clarence S #227394 Gregory vs Jonathan E Ozmint , defendant, et al has been added to the following Motions Roster:**

**MOTION ROSTER AUGUST 31, 2011 COURTROOM 2-C**

**This hearing of this motion has been scheduled for Wednesday, August 31, 2011 at 2:00 pm.**

The above referenced case is scheduled for a Motion Hearing before Judge DeAndrea G. Benjamin in Courtroom 2-C. The Plaintiff's Attorney is to notify the Defendant in writing of the time and date of all Default and Damages Hearings. All requests for continuances must be in writing with a \$25.00 filing fee and received by the Chief Administrative Judge prior to the hearing. A request for a continuance does not guarantee that a case will be continued. Please notify the Court in writing if the Motions are resolved prior to the hearing. Please file any briefs/memorandums and proposed orders the Wednesday before the week of the hearing.

**Mail Notice To:**

Clarence S #227394 Gregory  
Broad River Correctional Institution  
4460 Broad River Road  
Columbia, SC 29210

**Court Info:**

Richland County Common Pleas  
Richland County Judicial Center  
1701 Main Street  
Columbia, SC 29201-9201

Judge Alison R. Lee  
Chief Administrative Judge  
Fifth Judicial Circuit

RILEY POPE & LANEY, LLC  
ATTORNEYS AND COUNSELORS AT LAW

1901 ASSEMBLY STREET, SUITE 390  
POST OFFICE BOX 11412 (29211)  
COLUMBIA, SOUTH CAROLINA 29201

TELEPHONE  
(803) 799-9993

FACSIMILE  
(803) 239-1414

404

October 26, 2007

The Honorable Barbara A. Scott  
Richland County Clerk of Court  
Post Office Box 2766  
1701 Main Street, Room 205  
Columbia, South Carolina 29202

RE: Gregory, Clarence #227349 v. SCDC  
IRF Claim #: 36924  
Date of Loss: 06/06/05  
C.A. No.: 07-CP-40-03742

Dear Ms. Scott:

Enclosed for filing please find a copy of the Defendants' Notice of Motion and Motion for Summary Judgment in connection with the above-referenced matter.

By copy of this letter I am this date serving a copy of the Motion upon Plaintiff. Thank you for your assistance in this matter.

Sincerely,

Roy F. Laney

RFL/lef  
enclosure

cc: Ms. Nancy Stevenson  
Mr. Robert Petersen  
Mr. Clarence Gregory

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS  
FIFTH JUDICIAL CIRCUIT

Clarence Gregory, #227394  
Plaintiff,

Civil Action No.: 2007-CP-40-03742

v.

Jonathan E. Ozmint, Commissioner,  
of South Carolina Department of  
Corrections (SCDC); Morris  
Elmore, Lieutenant &  
Environmental Health & Safety  
Officer (EHSO); Claude Hilton and  
John Sawadske, Maintenance &  
Repair Engineering, Director(s), at  
Lieber Correctional Institution  
(LCI); South Carolina Department  
of Corrections; each sued in their  
individual and official capacity, et  
al.,  
Defendants.

**DEFENDANT'S NOTICE OF MOTION  
AND MOTION FOR SUMMARY  
JUDGMENT**

TO: CLARENCE GREGORY, #227394, THE PLAINTIFF, PRO SE:

YOU WILL PLEASE TAKE NOTICE that Defendants, by and through their undersigned counsel, do hereby move pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, for an Order granting Defendants summary judgment in the above captioned action on the grounds that there is no genuine issue of material fact and Defendants are entitled to judgment as a matter of law for the following reasons: 1) as a matter of law, Plaintiff has failed to state a cause of action for which relief can be granted; 2) as a matter of law, Plaintiff is not entitled to any claim for relief pursuant to the South Carolina Tort Claims Act; 4) as a matter of law, Plaintiff is not entitled to any claim for relief pursuant to the South Carolina Workers' Compensation Act; and 5) as a matter of law, Plaintiff has failed to properly serve Defendants.

This motion is further based upon the laws, rules and statutes of the State of South Carolina, the pleadings and affidavits in this case, and such other material as this Court may deem just and proper.

RILEY POPE & LANEY, LLC

Roy F. Laney  
Post Office Box 11412  
Columbia, South Carolina 29211  
Telephone (803) 799-9993  
Facsimile (803) 239-1414

Attorney for Defendants

Columbia, South Carolina

October 26, 2007

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

IN THE COURT OF COMMON PLEAS  
FIFTH JUDICIAL CIRCUIT

Clarence Gregory, #227394 )  
Plaintiff, )

Civil Action No.: 2007-CP-40-03742

v. )

Jonathan E. Ozmint, Commissioner, )  
of South Carolina Department of )  
Corrections (SCDC); Morris )  
Elmore, Lieutenant & )  
Environmental Health & Safety )  
Officer (EHSO); Claude Hilton and )  
John Sawadske, Maintenance & )  
Repair Engineering, Director(s), at )  
Lieber Correctional Institution )  
(LCI); South Carolina Department )  
of Corrections; each sued in their )  
individual and official capacity, et )  
al., )

Defendants. )

**CERTIFICATE OF SERVICE**

This is to certify that I, Lacey E. Fisher, an employee with the law firm of Riley Pope & Laney, LLC, have this day caused to be served upon the person named below the attached the **Defendant's Notice of Motion and Motion for Summary Judgment** in the above-captioned matter via United States mail, first-class postage prepaid, to the following:

Clarence S. Gregory, #227394  
C/O Lieber Correctional Institute  
Cooper Unit, A-Wing Room 55  
P.O. Box 205  
Ridgeville, South Carolina 29472-0205



Lacey E. Fisher

Columbia, South Carolina

October 26, 2007

407

408

Richland County Clerk Of Court  
1701 Main Street

PO Box 2766  
Columbia, SC 29202

December 11, 2007

J. Commissioner South Carolina Dept of Corrections

Case Number: 2007CP4003742

~~Clarence S #227394 Gregory vs. Jonathan E Ozmint~~

MOTION(S) FILED:  
Motion Ju

Motion To Opose & Deny Defendants Summary Judgme

The above referenced case is scheduled for a Motion Hearing on January 10, 2008 at 9:00 AM before Judge G. Thomas Cooper Jr. in Courtroom 3 - A.

The Plaintiff's Attorney is to notify the Defendant in writing of the time and date of a Default and Damages Hearings.

All requests for continuances must be in writing with a \$25.00 filing fee and received by the Chief Administrative Judge prior to the hearing. Please notify the Court in writing if the Motions are resolved prior to the hearing. Please file any briefs or memorandums the Wednesday before the week of the hearing.

Questions concerning this Notice should be directed to the Chief Administrative Judge.

Judge Alison R. Lee  
Chief Administrative Judge

Fax: (803) 576-1768

Exhibit  
12

RILEY POPE & LANEY, LLC  
ATTORNEYS AND COUNSELORS AT LAW

2838 Devine Street  
POST OFFICE BOX 11412 (29211)  
COLUMBIA, SOUTH CAROLINA 29205

TELEPHONE  
(803) 799-9993

FACSIMILE  
(803) 239-1414

August 1, 2008

The Honorable L. Casey Manning  
Post Office Box 192  
1701 Main Street, Room 214  
Columbia, SC 29202-0192

RE: Gregory, Clarence #227349 v. SCDC  
IRF Claim #: 36924  
Date of Loss: 06/06/05  
C.A. No.: 07-CP-40-03742

Dear Judge Manning:

Enclosed please find a Proposed Order for the deposition of Plaintiff Clarence Gregory in the above-referenced matter. By copy of this letter, I am serving Plaintiff with the same.

Thank you for your consideration in this matter and please do not hesitate to contact me with any questions or concerns.

Sincerely,



Heath M. Stewart, III

Enclosures

cc: Ms. Nancy Stevenson  
Mr. David Tatarsky, Esquire  
Mr. Clarence Gregory

RILEY POPE & LANEY, LLC  
ATTORNEYS AND COUNSELORS AT LAW

2838 Devine Street  
POST OFFICE BOX 11412 (29211)  
COLUMBIA, SOUTH CAROLINA 29205



TELEPHONE  
(803) 799-9993

FACSIMILE  
(803) 239-1414

August 18, 2008

Clarence S. Gregory, #227394  
Lieber Correctional Institute  
Cooper Unit, A-Wing Room 55  
P.O. Box 205  
Ridgeville, South Carolina 29472-0205

RE: Gregory, Clarence #227349 v. SCDC  
IRF Claim #: 36924  
Date of Loss: 06/06/05  
C.A. No.: 07-CP-40-03742

Dear Mr. Gregory:

Enclosed please find an Order to take Plaintiff's deposition signed by Judge Manning in the above referenced action.

I thank you for your attention to this matter.

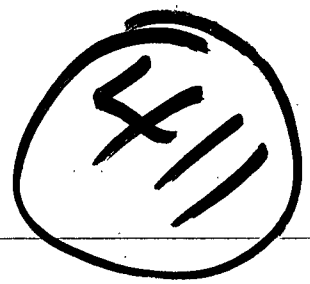
Sincerely,

Heath M. Stewart, III

Enclosure

cc: Ms. Nancy Stevenson  
Mr. David M. Tatarsky, Esquire

RILEY POPE & LANNEY, LLC  
ATTORNEYS AND COUNSELORS AT LAW



2838 Devine Street  
POST OFFICE BOX 11412 (29211)  
COLUMBIA, SOUTH CAROLINA 29205

TELEPHONE  
(803) 799-9993

FACSIMILE  
(803) 239-1414

September 26, 2008

Clarence S. Gregory, #227394  
Lieber Correctional Institute  
Cooper Unit, A-Wing Room 55  
P.O. Box 205  
Ridgeville, South Carolina 29472-0205

RE: Gregory, Clarence #227349 v. SCDC  
IRF Claim #: 36924  
Date of Loss: 06/06/05  
C.A. No.: 07-CP-40-03742

Dear Mr. Gregory:

Enclosed please find a Notice of Deposition in the above referenced action. I thank you for your attention to this matter.

Sincerely,

Heath M. Stewart, III

Enclosure

cc: Ms. Nancy Stevenson  
Mr. David M. Tatarsky, Esquire

(16) Exhibit

4/2

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

IN THE COURT OF COMMON PLEAS  
FIFTH JUDICIAL CIRCUIT

Clarence Gregory, #227394 )  
Plaintiff, )

Civil Action No.: 2007-CP-40-03742

v. )

Jonathan E. Ozmint, Commissioner, )  
of South Carolina Department of )  
Corrections (SCDC); Morris )  
Elmore, Lieutenant & )  
Environmental Health & Safety )

NOTICE OF DEPOSITION

Officer (EHSO); Claude Hilton and )  
John Sawadske, Maintenance & )  
Repair Engineering, Director(s), at )  
Lieber Correctional Institution )  
(LCI); South Carolina Department )  
of Corrections; each sued in their )  
individual and official capacity, et )  
al., )

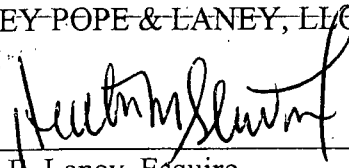
Defendants. )

TO: CLARENCE GREGORY, #227394, THE PLAINTIFF, PRO SE:

PLEASE TAKE NOTICE that on October 15, 2008, at 10:00 a.m., at Lieber Correctional Institution, 136 Wilborn Avenue, Ridgeville, South Carolina 29472, the attorney for the Defendants will take the deposition of **Clarence Gregory** by oral examination pursuant to the South Carolina Rules of Civil Procedure before a Notary Public or some other officer authorized by law to take depositions, said deposition continuing from day to day until completed. You are hereby authorized to appear and take such part in the examination as you may be advised and shall be fit and proper.

107 Exhibit

RILEY POPE & LANEY, LLC



Roy P. Laney, Esquire  
T. Lowndes Pope, Esquire  
Heath M. Stewart, III, Esquire  
Post Office Box 11412  
Columbia, South Carolina 29211  
Telephone (803) 799-9993  
Facsimile (803) 239-1414

4/3

Columbia, South Carolina  
September 26, 2008

Attorney for Defendants

18

RILEY POPE & LANEY, LLC  
ATTORNEYS AND COUNSELORS AT LAW

1901 ASSEMBLY STREET, SUITE 390  
POST OFFICE BOX 11412 (29211)  
COLUMBIA, SOUTH CAROLINA 29201



TELEPHONE  
(803) 799-9993

FACSIMILE  
(803) 239-1414

May 7, 2009

The Honorable Jeanette W. McBride  
Richland County Clerk of Court  
Post Office Box 2766  
Columbia, South Carolina 29202

RE: Gregory, Clarence #227349 v. SCDC  
IRF Claim #: 36924  
Date of Loss: 06/06/05  
C.A. No.: 07-CP-40-03742

Dear Ms. Scott:

Enclosed for filing please find the original and two (2) copies the Defendants' Notice of Motion and Motion for Summary Judgment in connection with the above-referenced matter. Please file the original and return the clocked in copies in the enclosed self addressed stamped envelope.

By copy of this letter I am this date serving a copy of the Motion upon Plaintiff. Thank you for your assistance in this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Heath M. Stewart, III', is written over the typed name.

Heath M. Stewart, III

Enclosure

cc: Ms. Nancy Stevenson  
Mr. David M. Tatarsky, Esquire  
Mr. Clarence Gregory

**Exhibit C**

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS  
) FIFTH JUDICIAL CIRCUIT  
)

Clarence Gregory, #227394  
Plaintiff,

) Civil Action No.: 2007-CP-40-03742  
)

v.

Jonathan E. Ozmint, Commissioner,  
of South Carolina Department of  
Corrections (SCDC); Morris  
Elmore, Lieutenant &  
Environmental Health & Safety  
Officer (EHSO); Claude Hilton and  
John Sawadske, Maintenance &  
Repair Engineering, Director(s), at  
Lieber Correctional Institution  
(LCI); South Carolina Department  
of Corrections; each sued in their  
individual and official capacity, et  
al.,  
Defendants.

**DEFENDANTS' NOTICE OF MOTION  
AND MOTION FOR SUMMARY  
JUDGMENT**

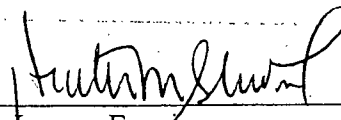
TO: CLARENCE GREGORY, #227394, THE PLAINTIFF, PRO SE:

YOU WILL PLEASE TAKE NOTICE that Defendants, by and through their undersigned counsel, do hereby move pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, for an Order granting Defendants summary judgment on the grounds that there is no genuine issue of material fact and Defendants are entitled to judgment as a matter of law for the following reasons: 1) as a matter of law, Plaintiff has failed to state a cause of action for which relief can be granted; 2) as a matter of law, Plaintiff is not entitled to any claim for relief pursuant to the South Carolina Tort Claims Act; 3) as a matter of law, Plaintiff's claims are barred by exclusive provisions of the South Carolina Workers' Compensation Act; and 4) as a matter of law, Plaintiff has failed to properly serve Defendants.

4/6

This motion is further based upon the laws, rules and statutes of the State of South Carolina, the pleadings, affidavits, depositions and hearing transcripts in this case and such other material as this Court may deem just and proper.

RILEY POPE & LANEY, LLC



Roy F. Laney, Esquire  
T. Lowndes Pope, Esquire  
Heath M. Stewart, III, Esquire  
Post Office Box 11412  
Columbia, South Carolina 29211  
Telephone (803) 799-9993  
Facsimile (803) 239-1414

Attorney for Defendants Jonathan E. Ozmint, Commissioner, of South Carolina Department of Corrections (SCDC); Morris Elmore, Lieutenant & Environmental Health & Safety Officer (EHSO); Claude Hilton and John Sawadske, Maintenance & Repair Engineering, Director(s), at Lieber Correctional Institution (LCI); South Carolina Department of Corrections; each sued in their individual and official capacity

Columbia, South Carolina  
May 7, 2009

4/17

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS  
FIFTH JUDICIAL CIRCUIT

Clarence Gregory, #227394  
Plaintiff,

Civil Action No.: 2007-CP-40-03742

v.

Jonathan E. Ozmint, Commissioner,  
of South Carolina Department of  
Corrections (SCDC); Morris  
Elmore, Lieutenant &  
Environmental Health & Safety  
Officer (EHSO); Claude Hilton and  
John Sawadske, Maintenance &  
Repair Engineering, Director(s), at  
Lieber Correctional Institution  
(LCI); South Carolina Department  
of Corrections; each sued in their  
individual and official capacity, et  
al.,  
Defendants.

**CERTIFICATE OF SERVICE**

This is to certify that I, Suzie B. Davis, an employee with the law firm of Riley Pope & Laney, LLC, have this day caused to be served upon the person named below the attached the **Defendants' Notice of Motion and Motion for Summary Judgment** in the above-captioned matter via United States mail, first-class postage prepaid, to the following:

Clarence S. Gregory, #227394  
Lieber Correctional Institute  
Cooper Unit, A-Wing Room 55  
P.O. Box 205  
Ridgeville, South Carolina 29472-0205

Suzie B. Davis  
Suzie B. Davis

Columbia, South Carolina  
May 7, 2009

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS  
FIFTH JUDICIAL CIRCUIT

Clarence Gregory, #227394  
Plaintiff,

Civil Action No.: 2007-CP-40-03742

v.

Jonathan E. Ozmint, Commissioner,  
of South Carolina Department of  
Corrections (SCDC); Morris  
Elmore, Lieutenant &  
Environmental Health & Safety  
Officer (EHSO); Claude Hilton and  
John Sawadske, Maintenance &  
Repair Engineering, Director(s), at  
Lieber Correctional Institution  
(LCI); South Carolina Department  
of Corrections; each sued in their  
individual and official capacity, et  
al.,  
Defendants.

**MEMORANDUM IN SUPPORT OF  
DEFENDANTS' MOTION FOR  
SUMMARY JUDGMENT**

**I. STATEMENT OF THE CASE**

On July 5, 2007, Plaintiff, Clarence Gregory ("Gregory"), appearing Pro Se, filed suit against Jon Ozmint, Morris Elmore, Claude Hilton, John Sawadske, and the South Carolina Department of Corrections ("SCDC")(herein collectively referred to as "Defendants") in the Richland County Court of Common Pleas. All individuals were named in their individual capacities and collectively in their official capacities as employees of the SCDC. Gregory alleges violations of state law for gross negligence under the South Carolina Tort Claims Act and of his constitutional rights. On September 6, 2007, Defendants filed an Answer to Gregory's Complaint and on October 30, 2007, filed a Notice and Motion for Summary Judgment. On October 15, 2008, Defendants took Gregory's deposition and on May 7, 2009, filed a Motion for Summary Judgment based on Gregory's testimony.

25 EXHIBIT

419

suffers an injury compensable under the Act may be awarded and paid compensation pursuant to the Act. S.C. Code Ann. § 42-1-480 (1976). "The term *"inmate"* includes any person sentenced to the South Carolina Department of Corrections and who is then in the jurisdiction of the Department. . . ." *Id.* A prison inmate who is injured while working in a jail kitchen cannot maintain a suit for the negligence of prison officials since such an action is barred by the exclusive remedy provision of the Act. *Arnold v. South Carolina Dept. of Corrections*, 843 F.Supp. 110, 114 n. 2 (D.S.C. 1994); *See also Davis v. South Carolina Department of Corrections*, 289 S.Ct. 123, 345 S.E.2d 245 (1986).

Gregory alleges that he was injured while performing his duties as a food service aid in the Lieber kitchen. As an inmate employee of the SCDC, Gregory's only recourse is through the South Carolina Workers' Compensation Act. To be sure, Gregory filed a claim with the South Carolina Workers' Compensation Commission (the "Commission") on August 8, 2005. (South Carolina Workers' Compensation Commission Form 50, "Employee's Notice of Claim and or Request for Hearing"). Defendant Elmore prepared a First Report of Injury on September 7, 2005, notifying the Commission of Gregory's injury. (Affidavit of Lt. Morris Elmore). Regarding his prison employment, Gregory testified during his deposition as follows:

Question: And in prison do you have a prison job?

Answer: Yes, I do.

Question: What is that?

Answer: I am the cafeteria inmate shift leader . . . .

Question: So you do work in the cafeteria—

Answer: Yes.

Question: --currently?

Answer: Yes, sir. (Clarence Gregory Deposition, p. 12, ll. 4-8, 14-17).

\*\*\*

Question: And you have held that [job] continuously since 1996?

420

Answer: Well, not that particular position, but the job assignment in the cafeteria. I worked a variety of places in the cafeteria.

Question: So in some capacity you've been a cafeteria worker since 1996?

Answer: Yes, sir. (Clarence Gregory Deposition, p. 13, ll. 7-13).

\*\*\*

Question: In your capacity as a food service aide, an injured food service aide, did you file a worker's comp claim?

Answer: Yes, I did. (Clarence Gregory Deposition, p. 45, ll. 20-23).

\*\*\*

When presented with the signed Form 50 and his filing of a claim pursuant to the Act, Gregory testified as follows:

Question: Could you tell me what this is?

Answer: It's a worker's comp form for a claim.

Question: Is this your name at the top left corner?

Answer: That's correct.

Question: Is that your signature . . . ?

Answer: Yes, sir, it is.

Question: So this is your worker's comp claim that you filed because of your injury?

Answer: Yes . . . .

Question: . . . you filed this claim?

Answer: Yes, I did. (Clarence Gregory Deposition, p. 46, ll. 5-18).

\*\*\*

Question: But you filed this worker's comp claim?

Answer: Yes, I did.

Question: And you had an attorney represent you in your worker's comp claim?

Answer: Yes, I did. (Clarence Gregory Deposition, p. 47, ll. 4-8).

\*\*\*

Furthermore, during a motions hearing on February 12, 2009, Gregory stated that he "was ordered to close the tray room door . . . [and] that [he] would be fired or terminated and written up for [not closing the door]." (Transcript of Record, February 12, 2009, p. 4, ll. 18-22). Moreover, Gregory's Complaint alleges that "if an inmate refused to shut or closed (sic) the trayroom door, upon a direct order, that the inmate is to

be (sic) charged or terminated for disobeying a direct order . . . .” (Plaintiff’s Amended Complaint, ¶ 23).

EX-2

Although Gregory testified that his shift had not yet started at the time of his injury, this does not remove his claim from coverage under the Act. “[T]he general rule that ‘an injury sustained by an employee on his way to or from work and away from the premises of the employer does not arise out of and in the course of employment’ is inapplicable” when the injury occurs on the employer’s premises. *Evans v. Coat & Clark*, 328 S.C. 467, 492 S.E.2d 807 (Ct.App.1997)(internal citations omitted).

It is clear from Gregory’s own Complaint and testimony that he was an inmate worker at the time of his injury and that, as an inmate worker, he was subject to the provisions of the Act and its exclusive remedy provision. Gregory has initiated a claim pursuant to the Act, but has abandoned it in favor of seeking damages under the South Carolina Tort Claims Act. As previously discussed, Gregory may not circumvent the procedures mandated by the South Carolina Workers’ Compensation Act for work related injuries in order to seek monetary damages available in a civil action. Therefore, Defendants are entitled to summary judgment on all claims in this matter.

**B. GREGORY’S CLAIMS SHOULD BE DISMISSED PURSUANT TO THE SOUTH CAROLINA TORT CLAIMS ACT.**

The South Carolina Tort Claims Act is the exclusive remedy for tort suits brought against the State of South Carolina and its political subdivisions. S.C. Code Ann. § 15-78-20. The Tort Claims Acts does not create causes of action; rather, it removes the common law bar of sovereign immunity in certain situations, but only to the extent mandated by the Act. *Summers v. Harrison Constr.*, 298 S.C. 451, 381 S.E.2d 493 (Ct. App. 1989). The Tort Claims Act provides that when bringing an action against a

5 (28) EXHIBIT

governmental entity, the plaintiff shall name as the party defendant only the agency or political subdivision for which the employee was acting. S.C. Code Ann. §15-78-70(c).

Because Gregory's suit does not comply with the mandates of the Act, his claims against Defendants should be dismissed.

The Act also provides several exceptions to the government's waiver of immunity. One such exception provides that a governmental entity is not liable for a loss resulting from the "responsibility or duty including but not limited to supervision, protection, control, confinement, or custody of any ...prisoner..., of any governmental entity, except when the responsibility or duty is exercised in a grossly negligent manner." S.C. Code Ann. §15-78-60(25).

Gross negligence means the failure to exercise even a slight degree of care. *Moore v. Berkeley County School Dist.*, 326 S.C. 584, 486 S.E.2d 9 (Ct. App. 1997). Gross negligence is the intentional, conscious failure to do something which one ought to do. *Worsley Companies, Inc. v. Town of Mt. Pleasant*, 339 S.C. 51, 528 S.E.2d 657 (2000). When the evidence supports only one reasonable inference, summary judgment is appropriate on the issue of gross negligence. *Id.*

Gregory has failed to allege facts which support a violation of a tort duty. To establish a claim for gross negligence, Gregory must prove: 1) Defendant had a duty of due care; 2) Defendant breached the duty by failing to exercise a slight degree of care; 3) proximate cause; and 4) damages. *Jinks v. Richland County*, 355 S.C. 341, 585 S.E.2d 281, 283 (2003). In addition, the doctrine of res ipsa loquitur does not apply in South Carolina. *Crider v. Infinger Transp. Co.*, 248 S.C. 10, 148 S.E.2d 732 (1966).

29

Exhibit

423

C. **GREGORY HAS NO CAUSE OF ACTION FOR ALLEGED VIOLATIONS OF THE SOUTH CAROLINA CONSTITUTION.**

In a single paragraph of his Complaint, Gregory refers to violations of the Eighth Amendment. 42 U.S.C. § 1983 provides a private right of action for violations of the constitution and laws of the United States. *Martinez v. State of Calif.*, 444 U.S. 277, 284 (1980). However, alleged violations of the South Carolina Constitution will not support a claim under 42 U.S.C. § 1983. South Carolina does not have a state law counterpart to 42 U.S.C. § 1983. Thus, there is no private right of action for violations of South Carolina's constitution. Therefore, Defendants are entitled to summary judgment on Gregory's claims.

D. **GREGORY FAILED TO PROPERLY SERVE DEFENDANTS.**

Rule 4(d)(5) of the South Carolina Rules of Civil Procedure provides that service upon an officer of the State is accomplished by delivering a copy of the summons and complaint to the officer and sending a copy of the summons and complaint by registered or certified mail to the Attorney General at Columbia. Further, Rule 4(d)(8) provides that service upon individuals by certified mail should be restricted delivery. On his Certificate of Service, Gregory attests that he served Defendants by certified United States mail. However, there is no evidence that Gregory served the Attorney General with a copy of his Summons and Complaint. Further, there is no evidence that Gregory served any of the named individuals by certified mail, restricted delivery. Thus, Gregory's failure to serve a copy of the Summons and Complaint on the Attorney General's office and restricted delivery to the named individuals is in violation of the requirements of Rule 4(d)(5) and 4(d)(8) of the South Carolina Rules of Civil Procedure.

Therefore, the court lacks personal jurisdiction over Defendants and Defendants are entitled to summary judgment on all claims in this matter.

#### IV. CONCLUSION

For the foregoing reasons, Defendants respectfully request the Court grant Defendants' Motion for Summary Judgment.

RILEY POPE & LANEY, LLC



Roy F. Laney, Esquire

Heath M. Stewart, III, Esquire

Post Office Box 11412

Columbia, South Carolina 29211

Telephone: (803) 799-9993

Facsimile: (803) 239-1414

Attorney for Defendants Jonathan E. Ozmint, Commissioner, of South Carolina Department of Corrections (SCDC); Morris Elmore, Lieutenant & Environmental Health & Safety Officer (EHSO); Claude Hilton and John Sawadske, Maintenance & Repair Engineering, Director(s), at Lieber Correctional Institution (LCI); South Carolina Department of Corrections

Columbia, South Carolina  
January 6, 2010

(31) Exhibit

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

Clarence Gregory, #227394  
Plaintiff,

v.

Jonathan E. Ozmint, Commissioner,  
of South Carolina Department of  
Corrections (SCDC); Morris  
Elmore, Lieutenant &  
Environmental Health & Safety  
Officer (EHSO); Claude Hilton and  
John Sawadske, Maintenance &  
Repair Engineering, Director(s), at  
Lieber Correctional Institution  
(LCD); South Carolina Department  
of Corrections; each sued in their  
individual and official capacity, et  
al.,  
Defendants.

IN THE COURT OF COMMON PLEAS  
FIFTH JUDICIAL CIRCUIT

Civil Action No.: 2007-CP-40-03742

425

**CERTIFICATE OF SERVICE**

This is to certify that I, Suzie B. Davis, an employee with the law firm of Riley Pope & Laney, LLC, have this day caused to be served upon the person named below the attached the **Defendants' Memorandum in Support of Motion for Summary Judgment** in the above-captioned matter via United States mail, first-class postage prepaid, to the following:

Clarence S. Gregory #227394  
Broad River Correctional Institution  
Murray Unit, B Wing, Room 214  
4460 Broad River Road  
Columbia, South Carolina 29210

Suzie B. Davis  
Suzie B. Davis

Columbia, South Carolina  
January 6, 2010

32  
Exhibit

Note

"Also Enclosed and Attached is  
an copy of an original Order dated  
January 14, 2008, and Summary Judgment  
Order, Filed Dated for March 27,  
2008; page(s) one (1) & Two (2)."

Clarence S. Gregory, #227394  
C/O Broad River Correctional Inst.,  
Murray Unit, B-Wing Room 214  
4460 Broad River Road  
Columbia, S.C. 29210

Via U.S. Regular Mail

Dated: June 11, 2009

TO: The Honorable Jeanette W. McBride, Clerk  
Court of Common Pleas, Richland County  
Fifth Judicial Center  
1701 Main Street, Rm. 205  
Post Office Box 2766  
Columbia, S.C. 29201-2766

RE: Gregory, Clarence S. #227394 vs. Jonathan E. Ozmint, SCDC et al.  
C/A No.: 2007-CP-40-03742  
Date of Loss: 06/06/2005

SUBJ: Request For Filing

Dear Ms. McBride/Clerk:

Please find enclosed for filing purposes, an original Cover Letter(s),  
Notice/Motion/Affidavit, Support of Motion To Barr Defendants' Counsel  
Summary Judgment Motion, By The Doctrine of Res Judicata, Collateral  
Estoppel, Laches, Waiver, and Statute of Limitation, cop(ies) of Defendants'  
Counsel previously filed October 26, 2007, Summary Judgment Motion, with an  
Affidavit of Service by Via U.S. Regular Mail.

Please filed clocked stamped and date and please be so kindly to return  
to me, providing postage envelope, I don't presently have funds to cover  
postage.

If you have an non-jury roster that has an scheduled summary judgment  
motion hearing for this case, on the said filed documents request, please  
inform me as to when the hearing is to be scheduled.

Thank you so kindly for your assistance and cooperation in regard to  
my requested matter!

Best wishes!

Respectfully Submitted, I am

s/ Clarence S. Gregory

CLARENCE S. GREGORY, #227394

PRO'SE PLAINTIFF

cc: Riley Pope & Laney, Esquire(s) & Counselor(s) For Defendant, SCDC/06/11/2009

426

JEANETTE W. MCBRIDE  
C.C.P. & S.C.

2009 JUN 16 AM 9:20

RICHLAND COUNTY  
FILED

Note: "also enclosed and attached is an  
copy of an original order dated,  
January 14, 2008, and Summary Judgment  
Order, filed, Dated for March 27, 2008;  
pages ONE (1) & Two (2); \*

Clarence S. Gregory, #227394  
C/O Broad River Correctional Inst.,  
Murray Unit, B-Wing Rm. 214  
4460 Broad River Road  
Columbia, S.C. 29210

Via U.S. Regular Mail

Dated:

TO: Riley Pope & Laney, LLC  
Attention: Mr. Heath M. Stewart, III  
Attorney(s) & Counselor(s) at Law  
2838 Devine Street  
Post Office Box 11412  
Columbia, S.C. 29211-1412

RE: Gregory, Clarence S. #227394 vs. Jonathan E. Ozmint, SCDC et al  
C/A NO.: 2007-CP-40-03742  
Date of Loss: 06/06/2005

Dear Mr. Stewart, III/Defendants' Counsel:

Please find enclosed an original Cover Letter(s),  
Notice/Motion/Affidavit, In Support of Plaintiff's Motion to Barr Defendants'  
Counsel Summary Judgment Motion, By The Doctrine of Res Judicata, Collateral  
Estoppel, Laches, Waiver, and Statute of Limitation, cop(ies) of Defendants'  
Counsel previously filed October 26, 2007, Summary Judgment Motion, with an  
Affidavit of Service by Via U.S. Regular Mail.

Please be advised that, I have retained an attorney to represent me, but  
as of now, please continue to forward any and all documents to me, an  
agreement has not been signed by me (the Plaintiff) and by the attorney who,  
intends to represent me, in the Court of Law.

I'm expecting for you to send me a copy of the photograph pictures of  
the Lieber Cafeteria, former trayroom door, as you has been ordered!

I'm expecting to go to trial by jury rather than to settle this matter,  
due to your deliberate conduct.

Thank you for your attention!

Respectfully Submitted, I am

s/ Clarence S. Gregory  
CLARENCE S. GREGORY, #227394

Enclosure

cc: The Honorable Jeanette W. McBride, Clerk, Court of Common Pleas, Richland  
County/ /



JEANETTE W. McBRIDE  
C.C.P. & G.S.

2009 JUN 16 AM 9:20

RICHLAND COUNTY  
FILED

STATE OF SOUTH CAROLINA )

COUNTY OF RICHLAND )

Clarence S. Gregory, #227394, )

Plaintiff, )

Jonathan E. Ozmint, Commissioner )  
of South Carolina Department of )  
Corrections, et al., and )  
South Carolina Department of )  
Corrections, et al., )

Defendant. )

IN THE COURT OF COMMON PLEAS

FIFTH (5TH) JUDICIAL CIRCUIT

C/A NO.: 2007-CP-40-03742

PLAINTIFF'S NOTICE OF MOTION  
AND MOTION TO BAR DEFENDANTS'  
COUNSEL SUMMARY JUDGMENT  
MOTION BY THE DOCTRINE OF  
RES JUDICATA, COLLATERAL  
ESTOPPEL, LACHES, WAIVER,  
AND STATUTE OF LIMITATION.

TO: RILEY POPE & LANEY, ESQUIRE(S) & COUNSELOR(S) FOR ABOVE NAMED DEFENDANT:

YOU WILL PLEASE TAKE NOTICE that the Pro'se Plaintiff in the above-captioned matter, hereby before this Honorable Court, motion to barr as a matter of law, Defendants' Counsel Summary Judgment Motion pursuant to the South Carolina Rules of Civil Procedure, Rule 8, 58 (a), 59 (e), South Carolina Circuit Court Rule, Rule 44 and the South Carolina Code of law, § 14-3-330, and pursuant to South Carolina case laws, upon said grounds based upon the facts *(and the same issues)* that has previously presented as follows: 1). that, Defendants' Counsel presently submits the same issue(s), which were ruled and/or adjudicated upon by the Honorable Judge G. Thomas Cooper, Jr., on March 26, 2008, which said orders were written, entered and filed by the Honorable Barbara A. Scott, Clerk of Court, and as a matter of law, the Defendants' Counsel summary judgment motion is judicially barred by the doctrine of res judicata, collateral estoppel, laches, waiver and statutory limitation.

The Plaintiff said motion is supported by a brief of memorandum of laws and case laws, with an Affidavit in support thereof and the Plaintiff prays that this Court grants him this motion and forward his case on the jury trial roster, so that the jury will determine and resolve any disputed facts and issues that both the Pro'se Plaintiff and Defendant Counsel has, as a matter of law.

RICHLAND COUNTY

COLUMBIA, SOUTH CAROLINA 29210

THIS 11<sup>th</sup> DAY OF June, 2009

429

S/ Cl S Gregory

CLARENCE S. GREGORY, #227394

C/O BROAD RIVER CORRECTIONAL

MURRAY UNIT, B-WING RM. 214

4460 BROAD RIVER ROAD,

COLUMBIA, SOUTH CAROLINA

ZIP CODE 29210

PLAINTIFF'S NOTICE OF MOTION

TO BARR DEFENDANTS' COUNSEL

SUMMARY JUDGMENT MOTION BY

DOCTRINE OF RES JUDICATA,

COLLATERAL ESTOPPEL,

LACHES, AND STATUTE OF

LIMITATION

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

IN THE COURT OF COMMON PLEAS  
FIFTH (5TH) JUDICIAL CIRCUIT

Clarence S. Gregory, #227394,

Plaintiff,

vs.

Jonathan E. Ozmint, Commissioner  
of South Carolina Department of  
Corrections, et al., and  
South Carolina Department of  
Corrections, et al.,

Defendant.

C/A NO.: 2007-CP-40-03742

PLAINTIFF'S AFFIDAVIT IN  
SUPPORT OF MOTION  
TO BARR DEFENDANTS'  
COUNSEL SUMMARY JUDGMENT  
MOTION BY THE DOCTRINE  
OF RES JUDICATA, COLLATERAL  
ESTOPPEL, LACHES, WAIVER,  
AND STATUTE OF LIMITATION

PERSONALLY APPEARED before me, CLARENCE S. GREGORY, #227394, who, being  
first duly Sworn depose and says:

- 1). That, I am the Affiant and Plaintiff in the above-captioned matter, and I hereby make these statements;
- 2). That, on/or about January 10, 2008, a Summary Judgment Motion Hearing was held at the Richland County Court of Common Pleas, 1701 Main Street, Columbia, South Carolina, before the presiding Judge G. Thomas Cooper, Jr.;
- 3). That, I, and the Defendants' Counsel Heath M. Stewart, III, was present during the said hearing;
- 4). That, on/or about, March 26, 2008, the same Honorable Judge G. Thomas Cooper, Jr., Ordered and Decreed on March 26, 2008, that the Defendants' Counsel Summary Judgment Motion is denied and inappropriate, that there is issues of facts to be resolved at a jury trial;

FURTHER, I SAYTH NAUGHT!

S/

CLARENCE S. GREGORY, #227394

Sworn and Subscribed to and before me,  
this 11th day of June, 2009.

Susan J. Johnson  
Notary Public, State of South Carolina

My Commission Expires: My Commission Expires

March 5, 2018

STATE OF SOUTH CAROLINA )

COUNTY OF RICHLAND )

Clarence S. Gregory, #227394,

Plaintiff,

vs.

Jonathan E. Ozmint, Commissioner  
of South Carolina Department of  
Corrections, et al., and  
South Carolina Department of  
Corrections, et al.,

Defendant.

IN THE COURT OF COMMON PLEAS

FIFTH (5TH) JUDICIAL CIRCUIT

C/A No.: 2007-CP-40-03742

AFFIDAVIT OF SERVICE

BY U.S. VIA REGULAR MAIL

PERSONALLY APPEARED before me, CLARENCE S. GREGORY, #227394, who, being  
first duly Sworn depose and says:

That, I am the Affiant and Plaintiff in the above-captioned matter, and I hereby have mailed an Original Cover Letter(s), Notice/Motion/Affidavit In Support of Motion To Barr Defendants' Counsel Summary Judgment Motion, By Doctrine Res Judicata, Collateral Estoppel, Laches, Waiver, And Statute of Limitation, October 26, 2007, Defendants' Counsel Summary Judgment Motion, May 07, 2009, Defendants' Counsel Summary Judgment Motion, with an Affidavit of Service By U.S. Via Regular Mail, to: The Honorable Jeanette W. McBride, Clerk, Court of Common Pleas, Richland County, 1701 Main Street, Room 205, Post Office Box 2766, Columbia, South Carolina 29202-2756; Riley Pope & Laney, LLC, Attorney(s) & Counselor(s) at Law, 2838 Devine Street, Post Office Box 11412, Columbia, South Carolina 29211-1412; and To: Vanessa A. Richardson, Bell Law Firm, Attorney at Law, 232 King Street, Post Office Box 2590, Georgetown, South Carolina 29442-2590; from within the South Carolina Department of Corrections, at Broad River Correctional Institution (BRCI), 4460 Broad River Road, Richland County, Columbia, South Carolina 29210; bearing proper Via United States Regular Mail as postage as it appears on this 11 day of June, 2009.

Respectfully Submitted,

s/ Clarence S. Gregory  
CLARENCE S. GREGORY, #227394

Sworn and Subscribed to and before me,  
this 11th day of June, 2009.

Sharon J. Johnson  
Notary Public, State of South Carolina  
My Commission Expires: \_\_\_\_\_

My Commission Expires  
March 5, 2018

Clarence S. Gregory #227394  
C/O Broad River Correctional Inst.  
MURRAY Unit, B-Wing Rm. 214  
4460 Broad River Road  
Columbia, SC.

432

29200 (29210)

VIA U.S. REGULAR MAIL

DATED: May 27, 2009

2009 JUN - 1 AM 10:05  
JEANETTE W. MCBRIDE  
C.C.P. & C.S.  
RICHLAND COUNTY  
FILED

TO: THE Honorable Jeanette W. McBride, Clerk  
Court of Common Pleas, Richland County  
5TH JUDICIAL CIRCUIT  
1701 MAIN STREET, Rm 205  
P.O. Box 2766  
Columbia, SC.  
29202-2766

RE: Gregory #227394 vs. JON. E. OzminT, SCDC et. al  
CIA NO: 2009-CP-40-02442

Dear Ms. McBride / Clerk:

Please find enclosed for filing an original  
Cover Letter, Motion For Discovery And Production  
of documents, with an Affidavit of Service.

Please file clocked-stamped, date and return to  
me. I don't have any funds for return postage!

Please provide with me, postage!

I've <sup>been</sup> again Transferred from EVANS TO Broad River  
Correctional INST.

Respectfully Submitted,  
S/ Clarence S. Gregory  
Clarence S. Gregory  
#227394

cc. Riley Pope & Laney, LLC, Esquire For Defendant, SCDC

CLARENCE S. GREGORY # 227394  
C/O Broad River Correctional Inst.,  
Murray Unit, B-Wing, Rm. 214  
Columbia, SC. 29210

433

VIA U.S. REGULAR MAIL

Dated: May 27, 2009

To: Riley Pope & Laney, LLC  
Attorney(s) And Counselor(s) AT LAW  
2838 Devine Street  
P.O. Box 11412  
Columbia, SC. 29211-1412

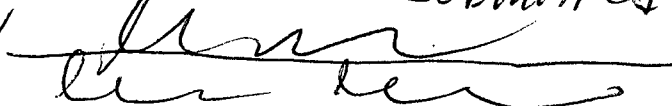
2009 JUN - 1 AM 10:05  
JEANETTE W. MCBRIDE  
C.C.P. & C.S.  
RICHLAND COUNTY  
FILED

RE: GREGORY # 227394, vs. JON. E. DZMINT, SCDC et al  
CIA NO: 2009-CP-40-02442 (02442)

Dear Mr. Pope & Laney:

Please find enclosed an Original Cover Letter,  
Request For Discovery Production of documents, with  
an Affidavit of Service.

BY serving you this  
original you have been served. You have (30) days  
to produce said request.

Respectfully Submitted  
C/   
#227394

cc: The Hon. Jeanette W. McBride, Clerk,  
Court of Common Pleas, Richland County  
05/27/09

434

STATE of South Carolina )  
COUNTY OF RICHLAND )

IN THE COURT of Common Pleas  
5TH JUDICIAL CIRCUIT

CLARENCE S. GREGORY #221394, )  
PLAINTIFF, )

) C/A NO: 2007-CP-48-02442

VS. )

JONATHAN E. DUMIN, Commissioner )  
OF SOUTH CAROLINA DEPARTMENT OF )  
CORRECTIONS, ET AL., and )  
SOUTH CAROLINA DEPARTMENT OF )  
CORRECTIONS, ET AL., )

Defendant, )

PLAINTIFF NOTICE  
AND MOTION FOR  
DISCOVERY &  
PRODUCTION OF  
DOCUMENTS,  
SCRPC RULE 26-37

TO: RILEY POPE & LANEY, ESQUIRE(S) & COUNSELOR(S)  
FOR DEFENDANT, SCDC:

Pursuant To the South Carolina Rules of Civil Procedure, Rule 26 thro 37, The Plaintiff request for the Production OF documents & things, which is mandatory disclosure as listed below: within thirty (30) days, after you receive of this request, as a matter of Law, as follows:

RICHLAND COUNTY  
CLERK OF COURT  
JULIE M. McBRIDE  
C.C.P. CLERK  
2009 JUN - 26  
AM 10:05

435

DOCUMENT(S) TO BE Produced

- 1) ANY and all documents reflecting ANY grievance(s), COMPLAINTS, SCDC 19-11 Request to STAFF, regarding TO THE asserted misconduct of Party defendant, Ms. Jennifer BUTLER, Mr. Robert Reeves, AND other SCDC Food Service Supervisors(s), DATED TO JANUARY 2006, Thru 2009;
- 2) LIST AND NAME ANY and all disciplinary ACTION taken against SAID PARTIES OR PARTY NAMED IN PARAGRAPH ONE (1), by the SCDC Administration Warden(s), Stanley BERTS, or BODISON, OR ANY other Associates Warden's, ON/OR about dated, JANUARY 2006 Thru 2009;
- 3) Name(s) of ANY and all INMATE(S), WHO were OR claimed to have been assaulted OR Battered by the same, Jennifer BUTLER, etc., which IS OR have filed a COMPLAINT.
- 4) Produce the aforesaid copies.
- 5) Give specific dates, when SCDC Food Service, Supervisors Jennifer BUTLER, Robert Reeves, & NATHAN A. HELMS, were hired;

436

Admission

- 6). State whether Foodservice Supervisor, Jennifer Butler, Struck Plaintiff in the UPPER BACK WITH AN "STAINLESS STEEL SPOON, ON THE BACK-DOCK area OF THE Cafeteria, on/or about 2008;
- 7). STATE Who witnessed the incident, IN PARAGRAPH Six(6);
- 8). State, Prior to the alleged incident, Whether or NOT The Foodservice Supervisor had meetings or warnings, regarding Touching or making unauthorized contacts To The Inmate Workers by any Previous WARDEN's IN 2007 OR 2008;
- 9) State whether or not any Foodservice Supervisors, namely Ms. Butler had any Personal relationship(s) with any INMATES Currently or in the PAST, while working in The Lieben facility Foodservice;



## INTERROGATORY

- 10) Why did the SCDC, Food Service Supervisor MS. Jennifer Butler, STRIKE Plaintiff IN the BACK, with a SERVING SPOON?
- 11) Who or What other PERSONS or OFFICER witnessed the incident?
- 12) Why did MS. Butler, did NOT write AN SCDC 29 A INCIDENT Report, and another DID?
- 13) Why did MS. Butler, THREATENED the Plaintiff to keep the incident CONCEALED and if the Plaintiff, reported the matter, the Plaintiff would NO LONGER work in Food Service?
- 14) Why did the Defendant, SCDC, in REGARDING to the Plaintiff reporting the matter, TO the Warden Bodison, TRANSFERRED the Plaintiff, because the Plaintiff reported the INCIDENTAL matter?

PAGE Five (5)

Documents To be Produced

INTERROGATORY (5)

438

15). Why did FS-Director, Robert Reeves, Fired / Terminated the Plaintiff, because of filing or initiated a complaint against Foodservice Supervisor Mr. Butler, on the same day, she discovered that a complaint is being served on her the same day?

16) State why, Jennifer Butler, stated that the Plaintiff "got what he deserve?"

IN the event that you claim that ANY documents requested herein, is not subject to production by reason of ANY privilege, you are required to state the basis for your claim of Privilege in your written response hereto:

Richland County  
Columbia, SC. 29210

This 28<sup>th</sup> DAY of MAY, 2009

Respectfully Submitted

SI [Signature]

CLARENCE S. GREGORY

# SCDK 227394

STATE OF SOUTH CAROLINA )  
COUNTY OF RICHLAND )

IN THE Court of Common Pleas  
5th Judicial Circuit

CLARENCE S. GREGORY<sup>#227394</sup> )  
PLAINTIFF )

CL NO: 2009-CP-40-02442

VS. )

JONATHAN E. DZIMINT, Commissioner )  
of South Carolina Department of )  
Corrections, et al, )  
South Carolina Department of )  
Corrections, et al. )

Defendant. )

Affidavit of  
Service

JEANETTE W. McBRIDE  
J.C.P. & G.S.  
2009 JUN -1 AM 10:05  
RICHLAND COUNTY  
FILED

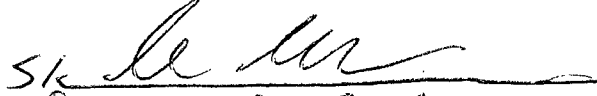
Personally Appeared before me, Clarence S. Gregory,  
#227394, who, being first duly sworn depose and say:

- 1.) That, I am the Plaintiff / Affiant in the captioned  
Matter action, I hereby have served an original  
Cover Letter, Request For Discovery Production, with  
an Affidavit of Service, UPON The Following  
Parties:

Riley Pope & Lavey, LLC  
Attorney & Counsel AT LAW  
2838 Devine Street  
PO. Box 11412  
Columbia, SC, 29211-1412

The Honorable Jeanette W. McBride,  
Clerk, Court of Common Pleas  
Richland County, 5th Judicial  
Center, 1701 Main Street, Room 205  
PO. Box 2766  
Columbia, SC, 29202-2766

Sworn and Subscribe to and Before  
me, this 28th day of May 20, 09.  
Susan J. Johnson

Sl.   
Clarence S. Gregory  
#227394

Notary Public, State of South Carolina  
My Commission Expires

My Commission Expires  
March 5, 2018

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS  
) FIFTH JUDICIAL CIRCUIT

Clarence S. Gregory, #227394,

) Civil Action No.: 2009-CP-40-02442  
)

Plaintiff,

v.

Jonathan E. Ozmint, Commissioner  
of South Carolina Department of  
Corrections, et al., and South  
Carolina Department of  
Corrections, et al.,

Defendants.

**DEFENDANTS' RESPONSES TO  
PLAINTIFF'S FIRST REQUESTS FOR  
PRODUCTION, REQUESTS FOR  
ADMISSION AND FIRST SET OF  
INTERROGATORIES**

2009 SEP 22 AM 9:30  
JANETTE W. McBRIDE,  
S.C.P. & G.S.

RICHLAND COUNTY  
FILED

TO: CLARENCE GREGORY, #227394, PRO SE:

Pursuant to Rules 34 through 36 of the South Carolina Rules of Civil Procedure, the Defendants, Jonathan E. Ozmint, Commissioner, of South Carolina Department of Corrections and the South Carolina Department of Corrections ("SCDC") (herein collectively referred to as "Defendants"), respond to the Plaintiff's First Requests for Production, Requests for Admission and First Set of Interrogatories as follows<sup>1</sup>:

**REQUESTS TO PRODUCE**

1. Any and all documents reflecting any grievance(s), complaints, SCDC 19-11 Request to Staff, regarding to the asserted misconduct of party defendant Ms. Jennifer Butler, Mr. Robert Reeves, and other SCDC Food Service Supervisor(s), dated to January 2006 through 2009.

**RESPONSE:**

**Defendants object to the above Request on the grounds that it overbroad, unduly burdensome and calls for the disclosure of irrelevant information and is not**

<sup>1</sup> Plaintiff included Requests for Production, Requests for Admission and Interrogatories in one single document and Defendants have reproduced and responded to the same in their original form.

441

reasonably calculated to lead to the discovery of admissible evidence. Defendants further object to the above Request on the grounds it seeks the production of confidential information regarding individuals that are currently employed by Defendant SCDC.

2. List and name any and all disciplinary action taken against said parties or party named in paragraph one (1), by the SCDC Administration Warden(s), Stanley Burt, or Bodison, or any other Associates Wardens on/or about dated January 2006 through 2009.

**RESPONSE:**

Defendants object to the above Request on the grounds that it overbroad, unduly burdensome and calls for the disclosure of irrelevant information and is not reasonably calculated to lead to the discovery of admissible evidence. Defendants further object to the above Request on the grounds it seeks the production of confidential information regarding individuals that are currently employed by Defendant SCDC.

3. Name(s) of any and all inmate(s) who were or claimed to have been assaulted or battered by the same Jennifer Butler, etc., which is or have filed a complaint.

**RESPONSE:**

Defendants object to the above Request on the grounds that it overbroad, unduly burdensome and calls for the disclosure of irrelevant information and is not reasonably calculated to lead to the discovery of admissible evidence. Defendants further object to the above Request on the grounds it seeks the production of confidential information regarding individuals that are currently employed by Defendant SCDC and other inmates.

442

REQUESTS FOR ADMISSION

6. State whether Food Service Supervisor, Jennifer Butler, struck Plaintiff in the upper back with an "stainless steel spoon" on the back-dock area of the cafeteria on/or about 2008.

RESPONSE:

Defendants object to the above Request on the grounds that it is not addressed to a party Defendant. Subject to and without waiving this objection, Defendants deny the above Request to Admit.

State who witnessed the incident in paragraph six 6.

RESPONSE:

Defendants object to this Request on the grounds that it does not conform to the mandates of Rule 36 of the South Carolina Rules of Civil Procedure, as it does not ask for Defendants to admit or deny anything. However, to the extent that the above Request complies with the South Carolina Rules of Civil Procedure, at this time, the Defendants are informed and believe that there are no witnesses to the alleged "incident," as referenced in Paragraph 6, above.

8. State, prior to the alleged incident, whether or not the Food Service Supervisor had meetings or warnings, regarding touching or making unauthorized contacts to the inmates workers by any previous Warden's in 2007 or 2008.

RESPONSE:

Defendants object to this Request on the grounds that the term "Food Service Supervisor" is unduly vague as Defendants are unsure which Food Service Supervisor Plaintiff is referring to, and therefore Defendants deny same.

443

9. State whether or not any Food Service Supervisors, namely, Ms. Butler had any personal relationship(s) with any inmates currently or in the past while working in the Lieber Facility food Service.

**RESPONSE:**

Defendants object to the above Request on the grounds that it is not addressed to a party Defendant. Subject to and without waiving this objection, Defendants deny the above Request to Admit.

**INTERROGATORIES**

10. Why did the SCDC, Food Service Supervisor Ms. Jennifer Butler struck Plaintiff in the back with a serving spoon?

**RESPONSE:**

Defendants deny that Plaintiff was struck with a serving spoon.

11. Who or what other person(s) or officer witnessed the incident?

**RESPONSE:**

Defendants deny that Plaintiff was struck with a serving spoon and Defendants are therefore informed and believe that there are no witnesses to the alleged "incident."

12. Why did Ms. Butler did not write an SCDC 29A Incident Report and another did?

**RESPONSE:**

Defendants object to the above Interrogatory on the grounds that it is not addressed to a party Defendant.

444

13. Why did Ms. Jennifer Butler threatened the Plaintiff to keep the incident concealed and if the Plaintiff reported the matter, the Plaintiff would no longer work in Food Service?

**RESPONSE:**

**Defendants object to the above Interrogatory on the grounds that it is not addressed to a party Defendant.**

14. Why did the Defendant, SCDC in regarding to Plaintiff reporting the matter, to the Warden Bodison, transferred the Plaintiff because, the Plaintiff reported the incidental matter?

**RESPONSE:**

**Plaintiff was transferred to another SCDC institution in compliance with SCDC Policies and Procedures.**

6. State the facts, whether the party defendant Ms. Butler, struck the Plaintiff in the upper back with an stainless steel spoon?<sup>2</sup>

**RESPONSE:**

**Defendants object to the above Interrogatory on the grounds that it is not addressed to a party Defendant. Subject to and without waiving this objection, Defendants deny that Plaintiff was struck with a serving spoon.**

7. If denied or admitted, state who also witnessed the facts as alleged.

**RESPONSE:**

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<sup>2</sup> Plaintiff's Interrogatories 6 through 9 are mis-numbered in incorrect order and appears as in the original discovery requests.

445

Defendants deny that Plaintiff was struck with a serving spoon and Defendants are therefore informed and believe that there are no witnesses to the alleged "incident."

8. State whether, Ms. Jennifer Butler, were involved in any personal relationship in the storeroom with any inmate(s) at the Lieber Correctional Facility.

**RESPONSE:**

Defendants object to the above Interrogatory on the grounds that the term "personal relationship" is unduly vague and the above Interrogatory is not addressed to a party Defendant.

9. State any facts have the same traffic any unauthorized tobacco products in the Facility at any time or currently.

**RESPONSE:**

Defendants object to the above Interrogatory on the grounds that it is unduly vague and the above Interrogatory is not addressed to a party Defendant.

15. Why did FS Director, Robert Reeves, fired/terminated the Plaintiff, because of filing or initiated a complaint against Food Service Supervisor, Ms. Butler, on the same day she discovered that a complaint is being served on her the same day?

**RESPONSE:**

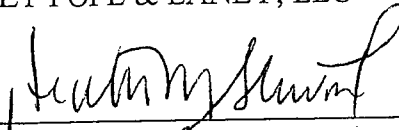
Defendants object to the above Interrogatory on the grounds that it is not addressed to a party Defendant. Subject to and without waiving this objection, Plaintiff was terminated from his position as a cafeteria worker due to his services no longer being needed and in compliance with SCDC Policy and Procedures.

16. State why Jennifer Butler stated that the Plaintiff "got what he deserve"?

RESPONSE:

Defendants object to the above Interrogatory on the grounds that the above Interrogatory is not addressed to a party Defendant.

RILEY POPE & LANEY, LLC



Roy F. Laney, Esquire  
Heath M. Stewart, III, Esquire  
Post Office Box 11412  
Columbia, South Carolina 29211  
Telephone: (803) 799-9993  
Facsimile: (803) 239-1414

Attorneys for Defendants Jonathan E.  
Ozmint, Commissioner of South Carolina  
Department of Corrections, et al., and South  
Carolina Department of Corrections, et al.

Columbia, South Carolina  
June 23, 2009

) IN THE COURT OF COMMON PLEAS  
) FIFTH JUDICIAL CIRCUIT

) Civil Action No.: 2009-CP-40-02442

)

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If any Interrogatory cannot be answered in full, it should be answered to the extent possible and should set forth the reasons why it cannot be fully answered.

448

### INTERROGATORIES

1. Give the names and addresses of all persons known to Plaintiff and/or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements. For each person known to Plaintiff and/or counsel to be a witness concerning the facts of the case, indicate whether or not each such witness was employed as an inmate worker in the Lieber Correctional Institution cafeteria in May 2008 and the position held by that person.

2. For each person known to Plaintiff and/or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform Defendants of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witness.

3. Set forth a list of photographs, plats, sketches or other prepared documents in possession of Plaintiff and/or his counsel that relate to any claim or defense in this case and provide a brief description of how each document relates to each and every allegation contained in Plaintiff's Complaint.

4. Set forth the names and addresses of all physicians or other healthcare providers who have treated the Plaintiff and all hospitals or other healthcare facilities to which Plaintiff has been committed in connection with any injuries, including mental, in any way related to this suit and also set forth a statement of all medical costs involved.

5. State the names and addresses of all physicians or other healthcare providers who treated Plaintiff prior to his incarceration in the SCDC.

449

12. Set forth with specificity all facts Plaintiff alleges Defendant Ozmint was made aware of regarding the alleged improper and/or inappropriate actions of Jennifer Butler and/or any other Lieber Correctional Foodservice staff member, including the dates on which these events occurred and the people involved.

13. Set forth with specificity all facts of which Plaintiff is aware that support Plaintiff's claims against Defendant Ozmint.

14. Set forth with specificity all facts which support Plaintiff's allegation that Lieber Correctional Foodservice staff was made aware of improper and/or inappropriate actions by Jennifer Butler as alleged in paragraph 13 of Plaintiff's Complaint.

15. Please provide a detailed description of all injuries Plaintiff alleges he sustained during the May 2008 incident.

16. Set forth the date, time and location of the alleged incident in May 2008.

17. Set forth any previous claims by Plaintiff regarding the same or similar causes of action.

18. Identify any and all complaints, claims, filings, workers compensation claims, disability claims or other legal actions, whether written or oral, Plaintiff has made or filed against any person or entity or in which Plaintiff has ever been a party, for any personal injury, physical condition or accident sustained by Plaintiff. For each instance, please state the following:

a) The nature of the injury, condition or accident;

b) The date upon which the injury or accident occurred or the condition began;

and

450

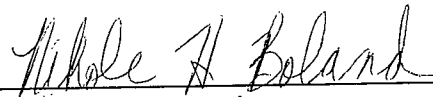
c) The name of the person, company, and/or insurance company against whom the claim was made.

19. Set forth a list of any and all documents which Plaintiff may rely upon or introduce in the trial of this case.

20. Set forth a list of any and all documents not already requested which in any way relate to matters set forth in Plaintiff's Complaint or Defendants' Answer.

21. Please identify all medications Plaintiff was taking at the time of his alleged injury in May 2008.

RILEY POPE & LANEY, LLC



Roy F. Laney, Esquire

Nikole H. Boland, Esquire

Heath M. Stewart, III, Esquire

Post Office Box 11412

Columbia, South Carolina 29211

Telephone: (803) 799-9993

Facsimile: (803) 239-1414

Attorneys for Defendants Jonathan E. Ozmint, Commissioner of South Carolina Department of Corrections, et al., and South Carolina Department of Corrections, et al.

Columbia, South Carolina  
May 21, 2010



RILEY POPE & LANEY, LLC

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Attorneys for Defendants Jonathan E.  
Ozmint, Commissioner of South Carolina  
Department of Corrections, et al., and South  
Carolina Department of Corrections, et al.

Columbia, South Carolina  
July 30, 2009

RILEY POPE & LANEY, LLC  
ATTORNEYS AND COUNSELORS AT LAW

2838 DEVINE STREET  
POST OFFICE BOX 11412 (29211)  
COLUMBIA, SOUTH CAROLINA 29205

TELEPHONE  
(803) 799-9993

FACSIMILE  
(803) 239-1414

July 30, 2009

Clarence S. Gregory, #227394  
Broad River correctional Institution  
Murray Unit, B Wing, Room 214  
4460 Broad River Road  
Columbia, South Carolina 29210

RE: Gregory, Clarence #227349 v. SCDC  
IRF Claim #: 53541  
Date of Loss: 05/15/08  
C.A. No.: 09-CP-40-02442

Dear Mr. Gregory:

Enclosed and served upon you please find **Defendants' Responses to Plaintiff's Second Requests for Production** in the above referenced matter.

Sincerely,



Heath M. Stewart, III

Enclosure

cc: Ms. Nancy Stevenson  
Mr. Harry Stokes, Esquire

Ex 53

**Defendants object to the above Request on the grounds that it overbroad, unduly burdensome and calls for the disclosure of irrelevant information and is not reasonably calculated to lead to the discovery of admissible evidence.**

2. Produce the Copies to the same;

**RESPONSE:**

**Please see Defendants' Response to Request Number 1, above.**

3. Produce and copy any and all, SCDC 19-41 completed and signed in and out Quarterly Tool Utensil Equipment Inventory Sheet, showing any and all "18 inches or 24 inches Long Solid Stainless Steel Serving Spoon(s), which is listed as "Restricted Equipment Item(s)," dated showing where SCDC FoodService Supervisor, Jennifer Butler, signed the same equipment in and/or out, from the time she either were presently on duty as the Evening shift Superviosr, showing the dates from April 2008 through June 2009, and from January 2009 through March 2009;

**RESPONSE:**

**Defendants object to the above Request on the grounds that it overbroad, unduly burdensome and calls for the disclosure of irrelevant information and is not reasonably calculated to lead to the discovery of admissible evidence.**

4. Produce the copies as is required and is a mandatory disclosure;

**RESPONSE:**

**Please see Defendants' Response to Request Number 3, above.**

*(Signature page to follow)*

454

STATE OF SOUTH CAROLINA  
COUNTY OF RICHLAND

) IN THE COURT OF COMMON PLEAS  
) FIFTH JUDICIAL CIRCUIT

Clarence S. Gregory, #227394,

) Civil Action No.: 2009-CP-40-02442  
)

Plaintiff,

)

v.

)

**CERTIFICATE OF SERVICE**

Jonathan E. Ozmint, Commissioner  
of South Carolina Department of  
Corrections, et al., and South  
Carolina Department of  
Corrections, et al.,

)

)

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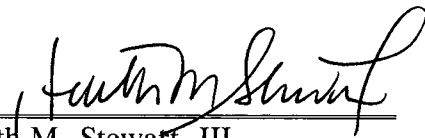
)

Defendants.

)

This is to certify that I, Heath M. Stewart, III, an employee with the law firm of Riley Pope & Laney, LLC, have this day caused to be served upon the person named below the attached the **Defendants' Responses to Plaintiff's Second Requests for Production** in the above-captioned matter via United States mail, first-class postage prepaid, to the following:

**Clarence S. Gregory, #227394  
Broad River correctional Institution  
Murray Unit, B Wing, Room 214  
4460 Broad River Road  
Columbia, South Carolina 29210**

  
Heath M. Stewart, III

Columbia, South Carolina  
July 30, 2009