



*James F. Howell*

Circuit Court Judge

2110

Judge Code

11/17/2015

Date

**For Clerk of Court Office Use Only**

This judgment was entered on <sup>11-25-15</sup>, and a copy mailed first class or placed in the appropriate attorney's box on <sup>11-25-15</sup>, to attorneys of record or to parties (when appearing pro se) as follows:

**James Stephon McDowell #332105** Lieber Correctional  
Institute P O Box 205 Ridgeville, SC 29472

**Stephen Hollis Lunsford** 4444 Broad River Rd. Columbia,  
SC 29221

**ATTORNEY(S) FOR THE PLAINTIFF(S)**

**ATTORNEY(S) FOR THE DEFENDANT(S)**

*Paul B. Wickensimer*

**Paul B. Wickensimer** - Greenville County Clerk Of  
Court - Clerk of Court

**Court Reporter**

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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SCDC which were un-processed because Plaintiff consistently failed to follow policy and procedures laid out by SCDC on how to file a grievance. Plaintiff cannot now seek judicial review in this Court after failing to properly follow the procedures of the APA. Instead an appeal from SCDC's final decision should have been directed to the ALC and then the Court of Appeals. S.C. Code Ann. § 1-23-610(A)(1) (Supp. 2008); *Al-Shabazz*, 338 S.C. at 376-77, 527 S.E.2d at 754 (2000).

Therefore, because this action is not properly before this Court, the Complaint is dismissed pursuant to Rule 12(b)(1), SCRPC.

#### **THIS COURT LACKS PERSONAL JURISDICTION**

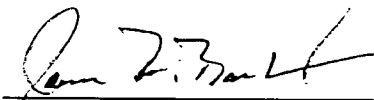
The Court lacks personal jurisdiction over the Defendant under Rule 12(b)(2) because this action was never properly served pursuant to Rule 4, SCRPC. *See, e.g., Mull v. Ridgeland Realty, LLC*, 387 S.C. 479, 485, 693 S.E.2d 27, 30 (Ct. App. 2010) (stating that the purpose of proper service pursuant to Rule 4 is, in addition to giving notice, to “confer[] personal jurisdiction on the court”). Rule 4(d) requires an agency of South Carolina be served by “delivering a copy of the summons and complaint to such officer or agency...”. Service can only be accomplished on a State agency by personal service. *See*, SCRPC 4(d) (5-9). The rule also requires the Plaintiff to “send[] a copy of the summons and complaint by registered or certified mail to the Attorney General at Columbia.”

Here, Plaintiff properly served the Department through service by the Sheriff. However, Plaintiff failed to properly serve the South Carolina Attorney General by certified mail. Included in the Defendant's motion to dismiss, as an attachment, is the affidavit of Brianna Arnone Legal Assistant at the Attorney General's office stating on June 5<sup>th</sup> a Summon and Complaint was hand delivered to the Attorney General's Office, not through certified mail as required by the rules.

Therefore, because the Attorney General were not properly served, this action is dismissed under 12(b)(2) for lack of personal jurisdiction and 12(b)(5) for insufficient service of process.

**THEREFORE**, because this action is not properly before this Court and because the Attorney General were not properly served I find the present case should be **DISMISSED WITH PREJUDICE**.

**AND IT IS SO ORDERED.**

  
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Hon. JAMES R. FRAZIER III

Judge, Thirteenth Judicial Circuit

NOV 2, 2015  
\_\_\_\_\_, South Carolina