

5

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

---

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

J.C. Nicholson, Jr., Circuit Court Judge

---

Appellate Case No. 2016-000712

---

James R. Abbott

Appellant

v.

Michele Blank

Respondent

---

Initial Brief of Appellant

---

James R. Abbott  
241 Paul Drive  
Trenton, NC 28585  
(843) 729-7729  
Appellant *pro se*

Counsel for Respondent:  
Frampton W. Durban, Jr.  
3660 West Montague Ave.  
N. Charleston, SC 29418  
(843) 760-2450

**RECEIVED**  
MAY 02 2016  
SC Court of Appeals

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES.....	iv
STATEMENT OF ISSUES ON APPEAL.....	1
STATEMENT OF THE CASE.....	3
STATEMENT OF FACTS.....	4
ARGUMENT.....	11
INTRODUCTION.....	11
1. ON JANUARY 31, 2013 DID BLANK HAVE THE LEGAL RIGHT TO WRITE A \$10,000 CHECK FROM ABBOTT’S BUSINESS ACCOUNT AND DEPOSIT IT IN HER PERSONAL ACCOUNT, EVEN THOUGH SHE HAD THE POWER OF ATTORNEY? .....	14
2. ON JULY 17, 2013, WHEN BLANK, ALONG WITH HER ATTORNEY FRAMPTON W.DURBAN JR., WERE INTERVIEWED AT THE CHARLESTON COUNTY SHERIFF’S OFFICE, WAS THERE AN ETHICS VIOLATION IN ALLOWING BLANK TO STATE SHE HAD THE POWER OF ATTORNEY TO WRITE THE \$10,000 CHECK AND THUS INFERRING SHE HAD NOT BROKEN THE LAW? .....	15
3. ON JULY 17, 2013, WHEN BLANK, ALONG WITH HER ATTORNEY FRAMPTON W. DURBAN JR. WERE INTERVIEWED AT THE CHARLESTON COUNTY SHERIFF’S OFFICE, BLANK SHOWED THE INTERVIEWER THE TITLE TO THE BOAT WITH HER NAME FORGED ON IT. SHE ALSO STATED THE CHECK NEVER CLEARED THE BANK. DID SHE COMMIT FORGERY AND PERJURY? .....	16

4. ON JULY 17, 2013, DID CHARLESTON COUNTY DEPUTY SHERIFF MARK SCHREFFLER ERR IN NOT ARRESTING BLANK? 16
5. ON AUGUST 14, 2013, DID MAGISTRATE THOMAS E. LYNN, AFTER REVIEWING CORRESPONDENCE FROM BB&T CENTRALIZED FRAUD CLAIMS AND SENT TO ABBOTT ON FEBRUARY 4, 2013, ERR IN NOT ISSUING AN ARREST WARRANT FOR BLANK FOR AN UNAUTHORIZED CHECK THAT BLANK STOLE FROM ABBOTT MARINE CONSTRUCTION CHECKBOOK IN NOVEMBER 2012, MADE OUT FOR \$10,000 AND DEPOSITED IN HER PERSONAL ACCOUNT ON JANUARY 31, 2013?..... 17
6. ON NOVEMBER 21, 2013, DID MAGISTRATE HENRY GUERARD ERR IN ALLOWING COURT ACTION ON SUBJECT MATTER NOT IN COMPLAINT DOCUMENTS OF PLAINTIFF BLANK OR RESPONSE DOCUMENT OF DEFENDANT ABBOTT?..... 18
7. ON FEBRUARY 21, 2014, DID MAGISTRATE HENRY GUERARD ERR IN THE PROCESS OF NOTIFYING ABBOTT OF THE JUDGMENT AGAINST HIM 90 DAYS AFTER THE HEARING, NOT RENDERING AN OPINION ON THE JUDGMENT AND MAILING THE JUDGMENT TO ABBOTT TOO LATE TO REQUEST ANOTHER TRIAL? ..... 18
8. ON NOVEMBER 19, 2014 AT THE ORIGINAL CIRCUIT COURT APPEAL HEARING, DID CIRCUIT COURT JUDGE J.C. NICHOLSON JR. ERR IN NOT ALLOWING ABBOTT TO SPEAK (ABBOTT PROVIDED NO WRITTEN BRIEF NOR THE OPPORTUNITY TO DO SO) AT THE APPEAL AND AFFIRMING THE LOWER COURT'S RULING, THEN DISMISSING THE MOTION AS MOOT?..... 19

9. ON NOVEMBER 19, 2014 AT THE ORIGINAL CIRCUIT COURT APPEAL HEARING; DID CIRCUIT COURT JUDGE NICHOLSON ERR IN ORDERING A BREAK IN THE COURT PROCEEDINGS, THEN MAKING A DECISION ON THE APPEAL WHILE THE LAW CLERK AND COURT REPORTER WERE NOT PRESENT? DID LAW CLERK CHARLIE PATRICK ERR IN NOT UPHOLDING THE STANDARDS OF THE PROCEEDINGS REQUIRED OF HIM BY LAW? ..... 20

10. ON NOVEMBER 19, 2014, DID JUDGE NICHOLSON ERR IN NOT ALLOWING DOCUMENTS SUBPOENED BY APPELLANT ABBOTT FOR THE FIRST CIRCUIT COURT APPEAL AS EVIDENCE OF PERJUERY AND FORGERY COMMITTED BY THE RESPONDENT BLANK IN THE ORIGINAL MAGISTRATE TRIAL? 21

11. ON NOVEMBER 17, 2015 AT THE SECOND CHARLESTON COUNTY MAGISTRATE COURT HEARING, DID MAGISTRATE GUERARD ERR WHEN HE TURNED OFF THE RECORDER AND ANNOUNCED THE HEARING WASN'T NECESSARY? ..... 21

12. DID MAGISTRATE GUERARD ERR IN NOT PROVIDING ABBOTT WITH A RECORDING OF THE PROCEEDINGS OF THE HEARING NOVEMBER 17, 2015?..... 23

13. ON FEBRUARY 3, 2016 DID MAGISTRATE HENRY GUERARD ERR IN HIS SUPPLEMENTAL RETURN BY CONTRADICTING WHAT WAS PRESENTED AT THE HEARING ON NOVEMBER 21, 2013, AS SHOWN IN THE TRANSCRIPT OF THAT HEARING?..... 23

CONCLUSION..... 27

TABLE OF AUTHORITIES

<u>Statutes</u>	Page
1. South Carolina Code 16-13-230 Breach of Trust with fraudulent intent...	14
2. South Carolina Code 15-36-10 Frivolous Civil Proceedings Sanctions Act	All
	Appellant's Designation of Matter # 43
3. South Carolina Code 16-9-10 Perjury.....	Throughout
	Appellant's Designation of Matter # 44
4. South Carolina Code 16-13-10 Forgery.....	Throughout
	Appellant's Designation of Matter # 45
5. South Carolina Code 23-13-10. General Powers and Duties of Sheriffs...	17
6. South Carolina Code 22-5-110. Magistrate's Powers and Duties in Criminal Matters.....	17

Other Authorities

1. <u>South Carolina Rules of Professional Conduct</u> PREAMBLE: A LAWYER'S RESPONSIBILITIES; CLIENT-LAWYER RELATIONSHIP	
Rule 8-4	
Misconduct.....	15
2. <u>American Bar Association</u> APPEAL PROCEDURE.....	19
3. <u>South Carolina Judicial Department</u> Rule 407, Rule 1.2.....	16
<u>South Carolina Judicial Department</u> Rule 506.....	20
<u>South Carolina Judicial Department</u> MAGISTRATES.....	18
<u>South Carolina Judicial Department</u> APPEALS.....	23

4. Wikipedia-open content online encyclopedia

- a. Power of Attorney..... Appellant's Designation of Matter # 37
- b. Fiduciary..... Appellant's Designation of Matter # 38

### ISSUES ON APPEAL

1. On January 31, 2013 did Blank have the legal right to write a \$10,000 check from Abbott's business account and deposit it in her personal account, even though she had power of attorney?
2. On July 17, 2013, when Blank, along with her attorney Frampton W. Durban, Jr. were interviewed at the Charleston County Sheriff's Office, was there an ethics violation in allowing Blank to state that she had the power of attorney to write the \$10,000 check and thus inferring she had not broken the law?
3. On July 17, 2013, when Blank, along with her attorney Frampton W. Durban, Jr. were interviewed at the Charleston County Sheriff's office, Blank showed the interviewer the title to the boat with her name forged on it. She also stated the check never cleared the bank. Did she commit forgery and perjury?
4. On July 17, 2013, did Charleston County Deputy Sheriff Mark Schreffler err in not arresting Blank?
5. On August 14, 2013, did Magistrate Thomas E. Lynn, after reviewing correspondence from BB & T Centralized Fraud Claims and sent to Abbott on February 4, 2013, err in not issuing an arrest warrant for Blank for an unauthorized check that Blank stole from Abbott Marine Construction checkbook in November 2012, made out for \$10,000 and deposited in her personal account on January 31, 2013?
6. On November 21, 2013, did Magistrate Henry Guerard err in allowing court action on subject matter not in complaint documents of Plaintiff Blank or response document of Defendant Abbott?
7. On February 21, 2014, did Magistrate Henry Guerard err in the process of notifying Abbott of the judgment against him 90 days after the hearing, not rendering an opinion on the judgment, and mailing the judgment to Abbott too late to request another trial?

8. On November 19, 2014 at the original Charleston County Circuit Court appeal hearing, did Circuit Court Judge J.C. Nicholson Jr. err in not allowing Abbott to speak (Abbott provided no written brief nor the opportunity to do so) at the appeal and affirming the lower court's ruling, then dismissing the motion as moot?
9. On November 19, 2014, at the original Circuit Court appeal hearing, did Circuit Court Judge Nicholson err in ordering a break in the court proceedings, then making a decision on the appeal while the law clerk and court reporter were not present? Did law clerk Charlie Patrick err in not upholding the standards of the proceedings required of him by law?
10. On November 19, 2014, Did Judge Nicholson err in not allowing Documents subpoenaed by Appellant Abbott for the first circuit court appeal as evidence of perjury and forgery by the respondent Blank in the original magistrate trial?
11. On November 17, 2015 at the second Charleston County Magistrate Court Hearing, did Magistrate Guerard err when he turned off the recorder and announced the hearing wasn't necessary?
12. Did Magistrate Guerard err in not providing Abbott with a recording of the proceeding of the hearing November 17, 2015?
13. On February 3, 2016, did Magistrate Henry Guerard err in his supplemental return by contradicting what was presented at the hearing on November 21, 2013, as shown in the transcript of that hearing?

STATEMENT OF THE CASE

This matter arises from (1) errors committed by Magistrate Thomas E. Lynn, (2) a decision by Charleston County Deputy Sheriff Mark Schreffler, (3) a contradiction by Magistrate Henry Guerard on his supplemental return dated February 3, 2016 and the transcript of the original Magistrate court case heard on November 21, 2013 (4) an error in the process of an appeal hearing by Circuit Court Judge J. C. Nicholson, Jr. on November 19, 2014, (5) errors committed by Magistrate Henry Guerard and his office concerning the 2<sup>nd</sup> trial held at his court on November 17, 2015.

## STATEMENT OF THE FACTS

James Abbott is a licensed general and marine contractor in North (55059) and South Carolina (G103854). He is a graduate of the United States Air Force Academy and a Viet Nam veteran. Michele Blank is a professional glass artist.

In August 2009, at the Veterans of Foreign Wars Post 3137 on the Isle of Palms, Michele Blank introduced herself to Abbott through a friend. Abbott and Blank entered into a relationship that lasted until December 2012. At Blank's request (she said she needed additional income) she became Abbott's book keeper and assistant manager even though she had no prior experience in construction and no experience at keeping books for another party.

In January 2012, Abbott was employed to be project manager for a NAVFAC SE administered contract in Hinche, Haiti, part of the relief effort after the earthquake in January 2010. On January 30, 2012 and prior to Abbott's departure, and also at Blank's suggestion, Abbott authorized Blank to be a signatory on Abbott Marine Construction's checking account and also given the power of attorney to conduct business Abbott approved of but wouldn't be available to conduct in person. **Item # 1**

Upon Abbott's return in May 2012, Abbott resumed handling all Abbott Marine Construction business affairs, financial and managerial. At this time their relationship was beginning to cool. Blank's heavy drinking was a strain on the relationship.

In August 2012, Abbott and Blank had a personal confrontation that led to the discussion of the separation of assets, one being a 41' trimaran bought March 9, 2012. Blank had invested \$5,000 and Abbott agreed to pay her back as part of the separation agreement. **Item #2** Blank, being Abbott's personal secretary, handled the paperwork for the purchase of the boat at the Coconut Grove Sailing Club in Miami. Blank never transferred the title to Abbott's name but kept the title and bill of sale.

In September 2012 Trader Construction of New Bern, NC offered Abbott a job as Quality Control/Site Safety and Health Officer for a federal contract at Cherry Point MCAS from November 2012 to September 2013. The job required a qualified assistant. Once, for a brief period of time during their relationship, Blank quit drinking and said she would quit again if Abbott allowed her to go with him to North Carolina. Blank was trained and approved by Trader Construction and the federal government to be Abbott's assistant. Abbott paid for all her expenses while she was in North Carolina. In November 2012 they began work at Cherry Point.

December 18, 2012 because of her behavior while drinking alcohol, Abbott asked Blank to leave his house and office in Trenton, NC. Abbott gave Blank 2 weeks' severance and was terminated. Abbott admitted and agreed to pay Blank the \$5,000 for her investment in the sailboat. Since Blank had been accustomed to receiving \$2,500/month for salary at her job, Abbott agreed to pay her the \$5,000 for her investment in the sailboat in two \$2,500 installments when he was paid his salary from Trader Construction for January and then February. December 20, 2012 she left Abbott's house in Trenton, NC and went back to her house in Mt Pleasant, SC .

They spent Christmas together in Mt. Pleasant, SC.

Abbott sent Blank via email a written contract on January 10 to return to her job responsibilities for a month, from February 11-March 10, 2013. **Item # 3** Prior to this contract there were no written contracts between Abbott and Blank. Abbott's contract of January 10 to Blank allowed for a separate residence in NC. Abbott was scheduled to have a hip replacement February 13, 2013 and needed a qualified person to fill in during his surgery and recovery. The main purpose of Blank's training and employment was for Blank to be present for Abbott at his job during Abbott's surgery and recovery. She refused the offer to come back to work. **Item # 4**

Before Abbott was paid by Trader Construction of New Bern for January, and even though Abbott had emailed Blank to expect \$2,500 around February 8 **Item # 5**, Blank wrote an unauthorized check for \$10,000 from a stolen Abbott Marine Construction check and deposited it in her account on January 30, 2013. **Item # 6** The check was one of three checks she stole in November 2012. Abbott caught this unauthorized \$10,000 check transaction action on-line on February 4, 2013 and reported to BB & T that it was not authorized. **Item # 7** BB & T said because Blank was a legal signatory the bank had no authority over the matter, but Abbott did. BB & T made an offer. If Abbott had Blank arrested and agreed to testify against her they would cover the debit. **Item # 8** Abbott agreed to the offer and BB & T covered the debit on February 4, 2013. **Item # 9**

Abbott travelled to Charleston, SC about February 6 and for \$1,000 retained Charleston attorney Robert G. Howe **Item # 10** to handle the arrest. Abbott went back to NC and had his scheduled hip replacement.

On July 1, 2013, after learning Blank was not arrested, Abbott went to the Charleston County Sheriff's office on 3505 Pinehaven Drive in Charleston with BB & T paperwork and explained the situation to Detective Mark Schreffler and filed a complaint. Still no arrest. Abbott telephoned the sheriff's office for an explanation and was told that the case was determined to be a civil matter. **Item # 11**

On August 14, 2013 Abbott was told the matter was in the jurisdiction of Magistrate Thomas E. Lynn. Abbott met Lynn at his office where Abbott showed him the correspondence from BB & T Centralized Fraud Claims, but Lynn refused to take any action in spite of information received by Abbott from Attorney Lionel Lofton. **Item # 12** Blank was never arrested.

On July 9, 2013 a summons was issued by Magistrate Henry Guerard's court in Charleston ordering Abbott to answer allegations brought by Blank. In her complaint Blank claimed Abbott owed her \$5,000 for back pay. **Item # 13** Abbott responded that the \$5,000 was for money owed on the purchase of a sailboat, not back pay and elected to have a jury trial. **Item # 14** Present for the pre-trial on October 22, 2013 was Abbott, the defendant, and Blank, the Plaintiff, both *Pro Se*. **Item # 15** Magistrate Guerard heard both testimonies and suggested a settlement then. Abbott agreed but Blank asked for a continuance. Abbott prepared for the trial on the advice of Attorney Dottie Fort Reed. **Item # 16** Reed's advice was, "...the

magistrate court action is only about what Michele and you put in the documents you filed with the court.”

Between the pre-trial and the trial Abbott dropped his request for a jury trial and asked that the matter be decided by Magistrate Guerard. **Item # 17** On November 21, 2013 at the trial Blank was represented by Frampton Durban, Jr., Abbott was *Pro Se*. **Item # 18** The decision, awarding Blank the money, was filed 3 months later, February 21, 2014 and sent to Abbott via regular mail. **Item # 19** The judgment by Magistrate Guerard was rendered with no opinion. Abbott received the Judgment in regular mail to Trenton NC too late to request a new trial. **Item # 20 & 21** Abbott appealed to the circuit court. **Item # 22**

July 31, 2014 Blank filed a complaint in Jones County North Carolina. The complaint stated Abbott owed her \$5,000 for a sailboat and that the title was made out in both their names and entered a copy into evidence. **Item # 23** At the hearing she also stated her \$10,000 check never cleared the bank. Blank was awarded the judgment and Abbott appealed. For the appeal in North Carolina on November 11, 2014, Abbott subpoenaed the original title she had in her possession and a copy of her bank statement for February 2012, the period of time in which she deposited the \$10,000 check. **Item # 24** She didn't answer the subpoenas and failed to appear, the complaint was dropped and Abbott prevailed.

Durban, representing Blank, vigorously attempted to dismiss the Charleston County circuit court appeal as events unfolded. The matter was continued. **Item # 25** Present at the appeal November 19, 2014 were Durban representing Blank and Abbott *Pro Se*. Durban stood and requested to approach the bench. He gave the judge, J.C. Nicholson, Jr., a paper. The judge dismissed the court reporter and directed this comment to Abbott, "She sued you for \$5,000 and you say you owe her \$5,000. I don't see the problem. Case dismissed." He affirmed the magistrate's decision.

**Item # 26**

On December 19, 2014 Abbott appealed the circuit's court decision to the State of South Carolina Court of Appeals. The appeal was accepted and assigned Appellate Case No. 2014-002751. **Item # 27** Abbott requested a transcript of the November 19, 2014 Circuit Court hearing and was told there was none. **Item # 28** The State Court remitted the case back to the lower court along with order to dismiss without prejudice. **Item # 29** A new appeal was scheduled in the circuit court. **Item # 30**

On May 7, 2015 Charleston County Circuit Court Judge J.C. Nicholson Jr. heard the arguments from Durban, representing Blank, and Abbott *Pro Se*. Although Abbott had subpoenaed the original title for the boat and Blank's First Federal Charleston SC February statement, the items were not produced. Nicholson stated, "It's an appeal....I'm not receiving new evidence." **Item # 30 page 3** According to SC attorney Dottie Reed **Item # 16**, the subjects of the title to the boat and the \$10,000 check should never have been brought up in the original magistrate's court trial along with several other topics. **Item # 29** Abbott was prepared to support his claim of forgery and perjury at the second circuit court appeal and had subpoenaed

these items for the appeal. After the conclusion of arguments Nicholson ordered the Magistrate Henry Guerard, to clarify his return from the trial November 21, 2013

**Item # 33**, “..was the \$5,000 awarded for back pay or for the boat?”

**Item # 30 page 18**

On October 15, 2015 a summons was issued for Abbott to appear in Small Claims court November 17, 2015 **Item # 34**. Present at the hearing were Magistrate Henry Guerard presiding, Durban representing Blank, and Abbott *Pro Se*. Guerard started the court recorder and began. During the proceedings, Guerard made a derogatory remark about Abbott and then shut his recorder off. The hearing continued in an informal manner after which Guerard ruled in Blank’s favor. Abbott immediately requested another trial. Guerard denied the request.

November 18, 2015 Abbott requested a copy of the transcript from Guerard with a hand-written note at his office. None was provided.

On February 3, 2016 Guerard issued a supplementary return stating Abbott owed Blank \$5,000 for back wages. **Item # 35**

On March 3, 2016 Nicholson issued a judgment affirming Guerard’s decision.  
**Item # 36**

On March 29, 2016 Abbott appealed the judgment to the State of South Carolina Court of Appeals and on April 6 was assigned Appellate Case No. 2016-000712.

## ARGUMENT

### INTRODUCTION

This case concerns the attempt by the Respondent Michele Blank to avoid arrest and criminal prosecution for writing an unauthorized check for \$10,000 from Abbott Marine Construction checking account on January 30, 2013. By fabricating a false statement and complaint with the help of Frampton Durban, Jr., attorney, she avoided arrest in South Carolina, falsely accused Abbott of not paying her for work she never did, and attempted to sue Abbott for \$5,000 back wages.

On July 31, 2013, Blank filed another complaint against Abbott in North Carolina for \$5,000 for her purported share of a sailboat. At the hearing Blank was awarded a judgment in her favor. Abbott appealed the North Carolina lower court decision to the circuit court and subpoenaed two items to prove these 2 facts. (1) Ms. Blank forged her name on the title of the boat from the Coconut Grove Sailing Club (the title was entered into evidence in both North Carolina and South Carolina courts) and (2) perjured herself by stating the check she wrote for \$10,000 was never honored at her bank. Ms. Blank failed to appear for the North Carolina circuit court appeal and the lower court order was dismissed.

This appeal is the final action necessary to correct errors in judgment made by government employees in Charleston County.

As to this case, these facts are not disputed. Michele Blank was Abbott's partner

in a relationship that lasted from August 2009 until December 2012. She was Abbott's book keeper for part of that time. January 30, 2012 Abbott authorized her to sign checks on Abbott's business account and gave her power of attorney to transact business for him and his company in his absence while working in Haiti. In March of 2012 Abbott returned to Miami and bought a trimaran from the Coconut Grove Sailing Club for \$15,000, \$10,000 Abbott's money, \$5,000 Blank's money. She handled all the transactions at the seller's office. The title was transferred in Abbott's name only. Blank kept possession of the original paperwork and never transferred it as required.

Abbott relieved Blank of her book keeping responsibilities upon his return from Haiti in May 2012 and resumed control of the checkbook, taking total control by August of 2012.

Their relationship was unstable, alcohol abuse the main problem. They discussed separation and in August of 2012 Abbott gave her a settlement sheet for expenses incurred purchasing and maintaining the trimaran. Sometime in November of 2012 Blank stole a page of 3 checks from Abbott Marine Construction's checkbook while they were at Abbott's residence in North Carolina. Also in November of 2012 Abbott accepted employment with Trader Construction of New Bern NC involving a 4.5 million federal contract at MCAS Cherry Point, Havelock, NC, Hancock Marina repair and renovations. Abbott assumed the responsibilities of Quality Control/ Site Safety and Health Officer. He was required to have an assistant and offered Blank the job at \$2,500/mo. Abbott was also scheduled for a hip replacement in February 2013 and needed someone to assume his responsibilities during his absence for the

surgery and recovery. Blank agreed to assume these responsibilities. Abbott paid for her training, housed her, fed her, clothed her, maintained her vehicle and reimbursed her for gas. She was paid \$2,500 for November and \$2,500 for December, for salary.

December 18, 2012, Abbott asked Blank to leave his house because of her behavior while under the influence of alcohol. Abbott gave her 2 weeks' severance pay, \$1250, and she went back to South Carolina to her home and business. She is a glass artist and had scheduled art shows in Florida for the month of January 2013. Abbott travelled to South Carolina and spent Christmas, December 25, 2012 with her, then returned to North Carolina.

January 10, 2013 Abbott offered Blank a contract to resume her job with him in February. The contract allowed for a separate housing allowance. It was sent via email. She didn't accept it or ask to negotiate. On January 30, 2013 Blank wrote an unauthorized check from Abbott Marine Construction for \$10,000 and deposited it in her personal account. The check debited Abbott Marine Construction's account January 31, 2013.

February 4, 2013 BB & T offered to reimburse the money to Abbott if Abbott agreed to have Blank arrested and testify against her. Abbott accepted and travelled to Charleston, South Carolina on February 6 and hired Robert G. Howe to handle the arrest.

1. ON JANUARY 31, 2013 DID BLANK HAVE THE LEGAL RIGHT TO WRITE A \$10,000 CHECK FROM ABBOTT'S BUSINESS ACCOUNT AND DEPOSIT IT IN HER PERSONAL ACCOUNT, EVEN THOUGH SHE HAD THE POWER OF ATTORNEY?

**South Carolina Code-Section 16-13-230. Breach of trust with fraudulent intent**

(A) A person committing a breach of trust with a fraudulent intention or a person who hires or counsels another person to commit a breach of trust with a fraudulent intention is guilty of larceny.

(B) A person who violates the provisions of this section is guilty of a:

(3) felony and, upon conviction, must be fined in the discretion of the court or imprisoned not more than ten years if the amount is ten thousand dollars or more.

**Quote from General Durable Power of Attorney made January 30, 2012 between Michele Blank and James Robin Abbott: Ref: Appellant's Designation of Matter # 1**

"Know all men by these presents, that I, James Robin Abbott, the undersigned, of Charleston County, South Carolina, do hereby make, constitute, and appoint Michele Blank as my true and *lawful attorney in fact* for me in my name, place and stead, and on my behalf, and for my use and benefit."

Definition of Power of Attorney: [https://en.wikipedia.org/wiki/Power\\_of\\_attorney](https://en.wikipedia.org/wiki/Power_of_attorney)

**Ref: Appellant's Designation of Matter # 37**

A **power of attorney (POA)** or **letter of attorney** is a written authorization to represent or act on another's behalf in private affairs, business, or some other legal matter, sometimes against the wishes of the other. The person authorizing the other to act is the *principal*, *grantor*, or *donor* (of the power). The one authorized to act is the *agent*<sup>[1]</sup> or, in some common law jurisdictions, *the attorney-in-fact (attorney for short)*...

... *As an agent, an attorney-in-fact is a fiduciary for the principal, so the law*

*requires an attorney-in-fact to be completely honest with and loyal to the principal in their dealings with each other...*

Definition of **Fiduciary**: <https://en.wikipedia.org/wiki/Fiduciary>

**Ref: Appellant's Designation of Matter # 38**

A **fiduciary** is a person who holds a legal or ethical relationship of trust with one or more other parties (person or group of persons). Typically, a fiduciary prudently takes care of money or other asset for another person... In a fiduciary relationship, one person, in a position of vulnerability, justifiably vests confidence, good faith, reliance, and trust in another whose aid, advice or protection is sought in some matter.<sup>[2]</sup> *In such a relation good conscience requires the fiduciary to act at all times for the sole benefit and interest of the one who trusts.*

2. ON JULY 17, 2013, WHEN BLANK, ALONG WITH HER ATTORNEY FRAMPTON W.DURBAN JR., WERE INTERVIEWED AT THE CHARLESTON COUNTY SHERIFF'S OFFICE, WAS THERE AN ETHICS VIOLATION IN ALLOWING BLANK TO STATE SHE HAD THE POWER OF ATTORNEY TO WRITE THE \$10,000 CHECK AND THUS INFERRING SHE HAD NOT BROKEN THE LAW?

**Charleston County Sheriff's Office, Incident Report SC0100000, Dispatch number 2013-010166-B, Appellant's Designation of Matter # 12, page 2**

*"...she replied...they both had reciprocal powers of attorney."*

**South Carolina Judicial Department Rule 8-4: Misconduct**

<http://www.judicial.state.sc.us/courtreg/displayRule.cfm?ruleID=407.0&subRuleID=RULE%208.4&ruleType=APP>

It is professional misconduct for a lawyer to:

- (a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

3. ON JULY 17, 2013, WHEN BLANK, ALONG WITH HER ATTORNEY FRAMPTON W.DURBAN JR. WERE INTERVIEWED AT THE CHARLESTON COUNTY SHERIFF'S OFFICE, BLANK SHOWED THE INTERVIEWER THE TITLE TO THE BOAT WITH HER NAME FORGED ON IT. SHE ALSO STATED THE CHECK NEVER CLEARED THE BANK. DID SHE COMMIT FORGERY AND PERJURY?

**Charleston County Sheriff's Office, Incident Report SC0100000, Dispatch number 2013-010166-B, Appellant's Designation of Matter # 12, page 2**

*"Blank also showed me the original title to the boat that is in both her and Abbott's name..."*

*"Blank said she never received any of the money because the check never cleared the bank."*

**South Carolina Judicial Department 407 Rules of Professional Conduct**

**RULE 1.2: SCOPE OF REPRESENTATION AND ALLOCATION OF AUTHORITY BETWEEN CLIENT AND LAWYER**

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

<http://www.judicial.state.sc.us/courtReg/>

4. ON JULY 17, 2013, DID CHARLESTON COUNTY DEPUTY SHERIFF MARK SCHREFFLER ERR IN NOT ARRESTING BLANK?

**Title 23 - Law Enforcement and Public Safety**

**CHAPTER 13**

**Deputy Sheriffs Generally**

**SECTION 23-13-280. Rights, powers and duties of deputies.**

Any such deputy sheriff:

(1) Shall have, do and exercise all the rights, duties and powers prescribed by law for constables or magistrates and such powers as are usually exercised by marshals and policemen of towns and cities;

(2) Shall act as a conservator of the peace;

(3) Shall take into custody and carry before the nearest magistrate any person who may, in his view, engage in riotous conduct or violation of the peace, refusing upon his command to desist therefrom;

*(4) Shall arrest any person who may, in his view, commit any felony or misdemeanor and carry him before a court of competent jurisdiction; and*

*(5) Shall execute any and all criminal process from magistrates' courts.*

5. ON AUGUST 14, 2013, DID MAGISTRATE THOMAS E. LYNN, AFTER REVIEWING CORRESPONDENCE FROM BB&T CENTRALIZED FRAUD CLAIMS AND SENT TO ABBOTT ON FEBRUARY 4, 2013, ERR IN NOT ISSUING AN ARREST WARRANT FOR BLANK FOR AN UNAUTHORIZED CHECK THAT BLANK STOLE FROM ABBOTT MARINE CONSTRUCTION CHECKBOOK IN NOVEMBER 2012, MADE OUT FOR \$10,000 AND DEPOSITED IN HER PERSONAL ACCOUNT ON JANUARY 31, 2013?

**CHAPTER 5**

**Magistrates' Powers and Duties in Criminal Matters**

**ARTICLE 3**

**Arrests**

**SECTION 22-5-110. Arrest, examination and commitment or punishment;**

warrant; courtesy summons.

(2) If an arrest warrant is sought by someone other than a law enforcement officer, the court must issue a courtesy summons.

6. ON NOVEMBER 21, 2013, DID MAGISTRATE HENRY GUERARD ERR IN ALLOWING COURT ACTION ON SUBJECT MATTER NOT IN COMPLAINT DOCUMENTS OF PLAINTIFF BLANK OR RESPONSE DOCUMENT OF DEFENDANT ABBOTT?

**According to advice from Attorney Reed, much of the proceedings of the trial should not have been allowed. Appellant's Designation of Matter # 16**

7. ON FEBRUARY 21, 2014, DID MAGISTRATE HENRY GUERARD ERR IN THE PROCESS OF NOTIFYING ABBOTT OF THE JUDGMENT AGAINST HIM 90 DAYS AFTER THE HEARING, NOT RENDERING AN OPINION ON THE JUDGMENT AND MAILING THE JUDGMENT TO ABBOTT TOO LATE TO REQUEST ANOTHER TRIAL?

**Magistrates Court** [www.judicial.state.sc.us/selfHelp/FAQMagistrate.pdf](http://www.judicial.state.sc.us/selfHelp/FAQMagistrate.pdf)

*"As soon as the Magistrate Judge or the jury finishes reviewing the information, the Magistrate Judge or the jury will decide the outcome of the lawsuit. The Magistrate Judge will tell both parties at the same time in the courtroom who won the case. This is called the verdict."*

© 2010 South Carolina Judicial Department. Page 12

**Quote from enclosure included with transcript of judgment dated February 21, 2014 from Guerard's office: Appellant's Designation of Matter # 20**

*"Enclosed is a transcript of Judgment which has been rendered against you. The*

*prevailing party can file this judgment immediately in the Clerk of Courts office.*

*“You have five (5) days from notice of the judgment to make a motion for a new trial. This motion must be submitted in writing.”*

**Abbott was in South Carolina on business, away from his post office in North Carolina until February 28, 7 days from dated Notice of Judgment, February 21, 2014, too late to request a new trial.**

8. ON NOVEMBER 19, 2014 AT THE ORIGINAL CIRCUIT COURT APPEAL HEARING, DID CIRCUIT COURT JUDGE J.C. NICHOLSON JR. ERR IN NOT ALLOWING ABBOTT TO SPEAK (ABBOTT PROVIDED NO WRITTEN BRIEF NOR THE OPPORTUNITY TO DO SO) AT THE APPEAL AND AFFIRMING THE LOWER COURT’S RULING, THEN DISMISSING THE MOTION AS MOOT?



#### **AMERICAN BAR ASSOCIATION**

[http://www.americanbar.org/groups/public\\_education/resources/law\\_related\\_education\\_network/how\\_courts\\_work/appeals.html](http://www.americanbar.org/groups/public_education/resources/law_related_education_network/how_courts_work/appeals.html)

Appeal procedure-

*Sometimes, appeals courts make their decision only on the basis of the written briefs. Sometimes, they hear **oral arguments** before deciding a case. Often the court will ask that the case be set for oral argument, or one of the parties will request oral argument.*

*At oral argument, each side's attorney is given a relatively brief opportunity to argue the case to the court, and to answer questions posed by the judges.*

**Nicholson did not give Abbott the chance to speak or allow him to present a written statement.**

9. ON NOVEMBER 19, 2014 AT THE ORIGINAL CIRCUIT COURT APPEAL HEARING, DID CIRCUIT COURT JUDGE NICHOLSON ERR IN ORDERING A BREAK IN THE COURT PROCEEDINGS, THEN MAKING A DECISION ON THE APPEAL WHILE THE LAW CLERK AND COURT REPORTER WERE NOT PRESENT? DID LAW CLERK CHARLIE PATRICK ERR IN NOT UPHOLDING THE STANDARDS OF THE PROCEEDINGS REQUIRED OF HIM BY LAW?

**South Carolina Judicial Department**

<http://www.judicial.state.sc.us/courtReg/>

**Rule 506**

**Code of Conduct for Staff Attorneys and Law Clerks**

**CANON 1**

**A STAFF ATTORNEY OR LAW CLERK SHOULD UPHOLD THE INTEGRITY AND INDEPENDENCE OF THE JUDICIARY AND OF HIS OFFICE**

An independent and honorable judiciary is indispensable to justice in our society.

A staff attorney or law clerk should himself observe, and should impart to anyone under his supervision, high standards of conduct so that the integrity and independence of the judiciary may be preserved and his office may reflect a devotion to serving the public. The provisions of this Code should be construed and applied to further those objectives. Enforcement of the standards of this Code is generally in the discretion of the employing court, but such enforcement shall not preclude enforcement pursuant to law, court order, or the Rules of Professional Conduct. The standards established by this Code shall not preclude

other more stringent standards required by law, court order or by the Rules of Professional Conduct. For the purpose of this Code, the term 'staff attorney' includes any attorney who is employed by the Judicial Department other than a law clerk or a member of the judiciary.

© 2000-2016 South Carolina Judicial Department

10. ON NOVEMBER 19, 2014, DID JUDGE NICHOLSON ERR IN NOT ALLOWING DOCUMENTS SUBPOENED BY APPELLANT ABBOTT FOR THE FIRST CIRCUIT COURT APPEAL AS EVIDENCE OF PERJUERY AND FORGERY COMMITTED BY THE RESPONDENT BLANK IN THE ORIGINAL MAGISTRATE TRIAL?

**Abbott was not prepared for all the subject matter brought up as testimony in the original magistrate trial. This was part of Abbott's appeal and it was not allowed. Appellant's Designation of Matter # 31**

11. ON NOVEMBER 17, 2015 AT THE SECOND CHARLESTON COUNTY MAGISTRATE COURT HEARING, DID MAGISTRATE GUERARD ERR WHEN HE TURNED OFF THE RECORDER AND ANNOUNCED THE HEARING WASN'T NECESSARY?

**Appellant's Designation of Matter # 34**

**October 15, 2015**

**State of South Carolina, County of Charleston**

**RE: Michele Blank Vs. James R Abbott dba Abbott Construction**

**Case# 2013CV1010600794**

Please be advised the above referenced case has been rescheduled. The new court date is **TUESDAY, NOVEMBER 17, 2015 @ 11:00 AM.**

**Magistrates Court** [www.judicial.state.sc.us/selfHelp/FAQMagistrate.pdf](http://www.judicial.state.sc.us/selfHelp/FAQMagistrate.pdf)

### **What happens at the trial?**

If you are the Defendant:

- You will explain your position and any claims that you may have after the Plaintiff explains his or her case.
- You may also question any witnesses you believe will support your position.
- You may give the Magistrate Judge any documents or things that you believe will support or prove your position.
- You may ask the Plaintiff questions that relate to your position and your claims.
- If you do not have an attorney or if the Plaintiff does not have an attorney, the Magistrate Judge will question you, the Plaintiff, and any witnesses. Anything that the Plaintiff, the Defendant, and the witnesses say during the trial will be under oath. In other words, if any individual does not tell the truth, that individual may have committed perjury. After you and your opponent have explained your positions, either the Magistrate Judge or the jury will review the information. As soon as the Magistrate Judge or the jury finishes reviewing the information, the Magistrate Judge or the jury will decide the outcome of the lawsuit. The Magistrate Judge will tell both parties at the same time in the courtroom who won the case. This is called the verdict.

**The trial of November 17, 2015 showed gross disrespect to Abbott, to the title**

of Magistrate of Charleston County, and to the court.

12. DID MAGISTRATE GUERARD ERR IN NOT PROVIDING ABBOTT WITH A RECORDING OF THE PROCEEDINGS OF THE HEARING NOVEMBER 17, 2015?

**South Carolina Judicial Department-Rule 18 Appeals**

<http://www.judicial.state.sc.us/courtReg/displayRule.cfm?ruleID=18.0&subRuleID=&ruleType=MAG>

(b) Within thirty (30) days of the date of filing of the notice of appeal with the Circuit Court, the magistrate shall file the return to the notice of appeal with the Clerk of the Circuit Court for the county wherein the judgment was rendered, together with the record, a statement of all proceedings in the case, and, if necessary, *the testimony taken at trial*. Upon motion for good cause shown, the Circuit Court may allow a definite extension of time in which to file the return.

13. ON FEBRUARY 3, 2016 DID MAGISTRATE HENRY GUERARD ERR IN HIS SUPPLEMENTAL RETURN BY CONTRADICTING WHAT WAS PRESENTED AT THE HEARING ON NOVEMBER 21, 2013, AS SHOWN IN THE TRANSCRIPT OF THAT HEARING?

**Appellant's Designation of Matter item # 31**

**Quoting from the transcript of the hearing in Magistrate Henry Guerard's court November 21, 2013**

Page 38 of the transcript at the top-

The Court: *That, that you thought her share of the catamaran was \$5,000, so you kept telling her she was entitled to \$5,000.*

Abbott: *That's correct*

The Court: *And you kept telling her that she was used to getting \$2500 because that's why you were going to pay it in two installments.*

Abbott: *Yes*

The Court: *Not to be confused with the fact that she was used to getting \$2500 a month for being your employee.*

Abbott: *That's right*

The Court: *I'm on ya.*

Abbott: *Thank you*

Page 39 near the bottom-

Durban: *Did you write that to Michele? (reference #10 Plaintiff's evidence)*

Abbott: *This was written a lot earlier. This is when we were going to sell the trimaran, one of the times we were going to split, okay? I can't remember what the date was, but this was a lot earlier.*

Durban: *But this is about the boat.*

Abbott: *Yes, it is about the boat.*

Durban: *And in that letter that's in your handwriting, in that letter you give her a breakdown of what the value of the boat is and what the cost of the boat is.*

Abbott: *I have the cost of the boat, I have the, and all the expenses, yes.*

Durban: *And at the bottom you said, what? The last paragraph?*

(Continued on top of Page 40)

Abbott: *"I suggest we sell it as is, where it is, you get \$5,000, I get \$16,000, we split the excess above \$20,000. What do you say?" ...*

Durban: *So this is the discussion of the boat, \$5,000 for the boat.*

Abbott: *Yes, it is*

Durban: *Okay, I'd like to put this in as Plaintiff's 10, I believe.*

Page 49, near the bottom

Abbott: *Okay. Well, anyway, I was not, I had no intention, I never paid her ahead, and I never would have. She got paid as she went like everybody else. There was no contract. There was no nothing. The money was for the trimaran.*

Page 50, near the top-

[Judge Guerard leaves and then returns to the bench]

The Court: *In reviewing the evidence and testimony, I became particularly intrigued and challenged by the Plaintiff's exhibit 10, the handwritten letter boat situation from Mr. Abbott. Um, I missed when this got written.*

Blank: *August*

Durban: *I think it was August. I tried to get her to see if she could estimate what when I was talking to her in preparation for this.*

Page 51, near the top-

Your Honor: *Ms. Blank, do you have something that actually dates it?*

Blank: *I did. The cover sheet. I have it here somewhere.*

The Court: *All right. Take your time.*

Blank: *It was like August.*

The Court: *When did you put it in your name?*

Abbott: *I think it was in August about a year later.*

The Court: *Just this past August? '13?*

Abbott: *Yes, a few months ago. Here it is.*

The Court: *I don't need to see it. Just tell me what the date is on it?*

Abbott: *August 5, 2013.*

The Court: *You think it sounds about right you wrote this sometime in August of 2012?*

Abbott: *Yes.*

The Court: *Okay*

**Appellant's Designation of Matter Item # 35**

**Quoting from supplemental return February 3, 2016, paragraph 2**

*"As stated in the Return the emails submitted into evidence show Mr. Abbott admitting he owed Ms. Blank \$5,000 much earlier in the sequence of events than any mention of reimbursing Ms. Blank for her interest in the boat. The court found Mr. Abbott owed Ms. Blank \$5,000.00 for back wages."*

*I admitted that I owed her \$5,000 for the boat in August 2012. That was entered into evidence by the Plaintiff. **That's all Abbott owes her and for that reason.***

**Appellant's Designation of Matter Item # 39 is correspondence received on February 28, 2013 in response to Abbott's questions to the NC Wildlife Resources Commission on how to obtain registration and title to the sailboat. Abbott declared the paperwork stolen and requested the seller to send duplicates of same. The Coconut Grove Sailing Club sent a duplicate Bill of Sale Item # 38 and title to Abbott which he forwarded to NCWRC. Item # 41 is the current legal title to the boat.**

**Item # 42 is a copy of the title Blank forged her name to and entered into evidence in North and South Carolina.**

### Conclusion

This legal action has been ongoing for over 3 years. There is good reason to suspect corruption and ethics violations in the lower courts over this matter.

Abbott has represented himself throughout the process; Blank has used an attorney with whom she had an earlier relationship not involving legal issues.

Although the case appears to be trivial on the surface, it began with a criminal act perpetrated on Abbott by Blank. After Abbott swore out a warrant for her arrest with Deputy Sheriff Mark Schreffler, Blank's attorney negotiated a deal with the sheriff's department to avoid her arrest. Abbott was not represented at that meeting. Abbott contacted BB & T Centralized Fraud Claims and was encouraged to pursue the arrest with the comment, "She broke the law".

The last courtroom appearance in Magistrate Henry Guerard's small claims court on November 17, 2015, was abruptly terminated by the magistrate during the proceedings. Guerard stopped the transcript recorder and asked Abbott to forget derogatory remarks he directed toward Abbott just prior to turning it off. The hearing continued in an informal manner. Guerard allowed no further testimony and then ruled against Abbott. Abbott requested a jury trial, Guerard denied it. The meeting ended with Blank and her attorney absent while the magistrate and Abbott discussed the history of the past courtroom appearances and what had transpired.

Abbott requested a copy of the recorded proceedings the next day with a hand-written note at Guerard's office. None was provided even though the clerk told Abbott the office would call him when the recording was ready for pick

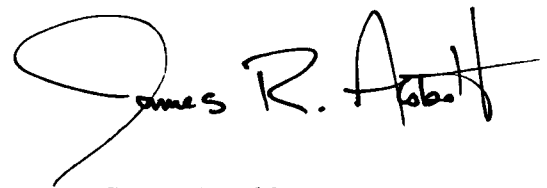
up.

This situation has been a waste of Abbott's time and money as well as the taxpayers of North and South Carolina. Abbott would like to put an end to this situation as soon as possible and hold all those parties complicit responsible for their actions.

Appellant requests that the South Carolina State Court of Appeals rule that Abbott owes Blank \$5,000 for her investment in a sailboat, not \$5,000 owed for back pay.

The entire matter is submitted to the wisdom and discretion of the South Carolina Court of Appeals.

Respectfully submitted,

A handwritten signature in black ink that reads "James R. Abbott". The signature is written in a cursive style with a large, looping initial "J" and a distinct "A".

James R. Abbott

Appellant *pro se*.

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas

J.C. Nicholson, Jr., Circuit Court Judge

**RECEIVED**

Appellate Case No. 2016-000712

MAY 02 2016

**SC Court of Appeals**

Michele Blank

Respondent

v.

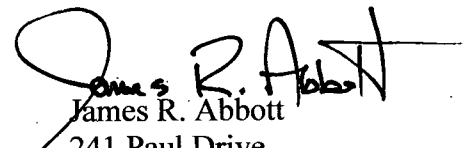
James R. Abbott

Appellant

PROOF OF SERVICE

I certify that on April 25, 2016, I served the Initial Brief of Appellant on the attorney for the respondent by depositing a copy of it in the United States Mail, postage prepaid, addressed to Frampton Durban, Jr., SC Bar No. 1809, 3660 West Montague Avenue, North Charleston, SC 29418

April 25, 2016

  
James R. Abbott  
241 Paul Drive  
Trenton, NC 28585  
Appellant *pro se*

**ABBOTT MARINE CONSTRUCTION, LLC**

<http://www.abbott-marine.com/>

P.O. BOX 7

241 Paul Drive

Trenton, North Carolina

29458

843-729-7729

[abbottconstruction@tds.net](mailto:abbottconstruction@tds.net)

April 25, 2016

The Honorable Jenny Abbott Kitchings  
Clerk of The Court of Appeals  
PO Box 11629  
Columbia, SC 29211

Re: Abbott v Blank  
Case No. 2016-000712

**RECEIVED**

MAY 02 2016

SC Court of Appeals

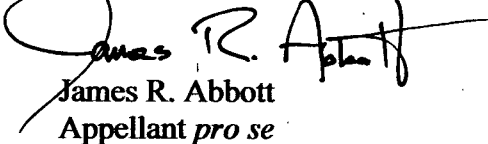
Dear Ms. Kitchings:

In regard to the above, enclosed please find one (1) copy of the Appellant's Initial Brief of Appellant and the Designation of Matter To Be Included in The Record On Appeal, as well as a Certificate of Service.

By copy hereof to counsel, I am providing them with copies of these pleadings.

With kind regards, I am

Yours truly,

  
James R. Abbott  
Appellant *pro se*

Cc: Frampton Durban, Jr.

H2305K142962-03

United States Postal Service®  
**SIGNATURE CONFIRMATION™**



2315 0610 0000 1842 2737

**RECEIVED**  
MAY 02 2016  
SC COURT OF APPEALS

**FROM:**



For Domestic  
and International Use



From  
ABBOTT  
P.O. Box 7  
TRENTON  
NC  
28585

**TO**

THE HONORABLE JENNY ABBOTT KITCHINGS  
CLERK OF THE COURT OF APPEALS  
P.O. Box 11629  
COLUMBIA, SOUTH CAROLINA  
29211

Label 228, January 2008

**VISIT US AT USPS.COM®**  
ORDER FREE SUPPLIES ONLINE



**DuPont™ Tyvek®**  
Protect What's Inside™

This packaging is the property of the U.S. Postal Service® and is provided solely for use in sending Priority Mail® shipment; violation of federal law. This packaging is not for resale. EP14 © U.S. Postal Service; July 2013; All rights reserved.

14 July 2013  
): 11.625 x 15.125

UNITED STATES  
POSTAL SERVICE®  
VISIT US AT USPS.COM®  
Label 106A, Jan 2015

UNITED STATES  
POSTAL SERVICE®  
This product is for  
Misuse may be a

UNITED STATES  
POSTAL SERVICE®  
S AT USPS.COM®  
16A, Jan 2015