STATE OF SOUTH CAROLINA
In the Court of Appeals

ORIGINAL

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Marvin H. Dukes, III

Appellate Case Number 2014-000636

Mare Baracco,.....Appellant

v.

Beaufort County, South Carolina.....Respondent,

APPELLANT'S FINAL BRIEF

Mare Baracco
Pro Se Appellant

Mare Baracco
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Port Royal, SC 29935

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

STATUTES

OTHER AUTHORITIES

STATEMENT OF ISSUES ON APPEAL

I. DID THE ADMINISTRATIVE AGENCY (BCSO) HAVE JURISDICTION TO ISSUE THEIR ORDINANCE VIOLATION (OFFICIAL NOTICE) TO THE APPELLANT AND DID THE AGENCY/BEAUFORT COUNTY VIOLATE THE APPELLANTS DUE PROCESS RIGHTS?

II. DID THE LOWER COURT HAVE JURISDICTION IN THIS MATTER?

III. DID THE RESPONDENT ENGAGE IN EX PARTE COMMUNICATION WITH THE MAGISTRATE COURT AND THE ADMINISTRATION OF THE TOWN OF PORT ROYAL, TO GAIN AN UNFAIR ADVANTAGE AND ILLEGALLY CONTINUE A CASE AGAINST THE APPELLANT?

IV. AS THE MAGISTRATE COURT USED TO CIRCUMVENT THE APPELLANT'S RIGHT TO DUE PROCESS AND HER RIGHT TO AN "ADMINISTRATIVE HEARING"?

V. DID THE MAGISTRATE COURT ERR IN NOT DISMISSING THIS CASE WHEN THE RESPONDENT INFORMED THE COURT IT WAS NOT A CIVIL MATTER?

VI. DOES THE "OFFICIAL NOTICE" VIOLATE THE APPELLANT'S RIGHT TO DUE PROCESS?

VII. DO THE RESPONDENTS ACTIONS CONSTITUTE FRAUD, A "SHAM LEGAL PROCESS", BARRATRY, AND POLLUTION OF THE ADMINISTRATION OF JUSTICE?

STATEMENT OF THE CASE

There was a brief incident, in the incorporated municipality of the Town of Port Royal, involving two dogs belonging to residents of the municipality, Sally Germer/Buddy(Homer) Brown, and the Appellant, July 4, 2012 (the Germer/Brown's dog died later, as a result). That same day, July 4 Appellant was issued a ticket for an (alleged) violation of Port Royal Ordinance 3-53, ROA p. 90 (*"Animal at Large"* et. seq.), pursuant to Port Royal's Code of Ordinances, by Officer Lance Puryear with the Port Royal Police Department. ROA p. 90, ROA p. 105. The matter was adjudicated November 8, 2012 by a jury trial, presided by Judge Ned Tupper, in Port Royal Municipal Court, which had territorial, personal, and subject matter jurisdiction over this case. The jury heard testimony from Officer Puryear, the Germer/Browns, and the Appellant. The jury found for the Appellant and she was acquitted of violating Ordinance 3-53. ROA p. 91, ROA p. 103-104.

The same day of this incident, July 4, 2012 Beaufort County Sheriff's Office (BCSO) Animal Control (AC) was also contacted (as Animal Control was under the administrative agency of BCSO at that time). However, BCSO AC was closed for the holiday. Therefore, as stated above, the incident was addressed by the Town of Port Royal Police Department, pursuant to their code of ordinances. Unless the Port Royal Officer determined the Appellant's dog should be impounded, which he did not, the services of BCSO AC were not needed.

It is the issuance of an "*Official Notice*" of Dangerous Animal July 9, 2012, by the Agency BCSO/Beaufort County, to the Appellant, and the events leading up to the March

12, 2013 hearing in the Beaufort County Magistrate Court and the subsequent Order from this hearing, that are the subject of this Appeal.

I. DID THE ADMINISTRATIVE AGENCY (BCSO) HAVE JURISDICTION TO ISSUE THEIR ORDINANCE VIOLATION (OFFICIAL NOTICE) TO THE APPELLANT AND DID THE AGENCY/ BEAUFORT COUNTY VIOLATE THE APPELANT'S DUE PROCESS RIGHTS?

BCSO ACO Deputy Chaplin entered the municipality July 5, 2012 and proceeded to conduct an investigation and *determination* of the incident from July 4, 2012 on behalf and pursuant to, *Beaufort County's Code of Ordinances for Animal Control 14-35,* which was in direct violation of both the Home Rule Act of 1975 and Article VIII of the South Carolina Constitution. ROA p. 106-108.

The only way BCSO ACO Chaplin could have legally issued an ordinance violation, to the Appellant, a resident of the Town of Port Royal, under Beaufort County Ordinances for Animal Control 14-35, was if Beaufort County and the Town of Port Royal had either adopted each other's Ordinances, which they did not, or the Town of Port Royal had a contract for Animal Services, which they did not.

The initial error in this matter began when the Port Royal Police Department did not inform BCSO ACO Chaplin this issue had already been addressed by Port Royal. This error was compounded by BCSO ACO Chaplin who, acting as an "Ordinance Officer", did not understand she *lacked jurisdiction* to extend Beaufort County's "*Official Notice*" and Ordinances into the municipality, and/or that she lacked proper training and/or did not understand the jurisdiction of her agency and the limitations thereof.

In regard to "*Determinations*", it was ***always*** the Port Royal officer, who issued the ticket, whose determination was controlling, not BCSO ACO Chaplin – she was subordinate to the host jurisdiction, pursuant to "Home Rule", and thus lacked any legal

authority to act as the controlling law enforcement agency in this situation.

Even if BCSO AC had been open July 4, 2012, and Chaplin came out first, she was *still* legally obliged, under "Home Rule" and Article VIII of the South Carolina Constitution, as an *Ordinance Officer*, to follow the Ordinances of the host jurisdiction, in this case Port Royal, and would still have had to act pursuant to the municipality's Code of Ordinances 3-53.

BCSO/Beaufort County knew or should have known, since Appellant was a resident of the *municipality*, the Town of Port Royal, any actions they took in regard to this matter were void in the following ways: (1) they acted without authority in another jurisdiction; (2) they were not in pursuit of the Appellant to enforce one of their own ordinances that Appellant would have had to violate while in their jurisdiction to confer their jurisdiction upon her (Section 17-13-40 of the *South Carolina Code of Laws, 1976, as Amended.*). They, in fact, pursued her without warrant or any other authority when they entered upon her property to observe her personal property, investigated a matter that was not within their proper perusal, and acted without any proper jurisdiction when they issued an **unapproved** "*Official Notice*" pursuant to an Ordinance of their jurisdiction. Therefore, they were not, and could not confer upon themselves they were the proper Administrative Agency, under whose ordinances Appellant was subject to and required to be subject to their procedures when contesting the same. The Town of Port Royal did not adopt the ordinances of Beaufort County, and when Beaufort County acted within the jurisdiction of the Town of Port Royal, it was required to act upon the direction and control of the municipality.

In spite of this lack of jurisdiction and authority, BCSO ACO Chaplin conducted an investigation on behalf of BCSO and Beaufort County on July 5, 2012 and provided to the Appellant a report that she found the Appellant's dog, Bodi "*not dangerous and she was impressed with the canine's behavior"(*ROA p. 93-94). She returned on July 9, 2012 and served upon the Appellant an "*Official Notice*" of Dangerous Animal pursuant to Beaufort County Ordinance 14-35, which set in motion a series of astounding events that have led the Appellant to the steps of this Honorable Court. ROA p. 92.

The Appellant immediately contacted BCSO July 9 to contest the "*Official Notice*". BCSO AC Supervisor Lt. Jerry Spencer instructed the Appellant to write to the Chief Magistrate of Beaufort County to request a hearing before the Beaufort County Magistrate Court. ROA p. 101-102. (Note: the Appellant referenced SC Title 43 in her letter; this was a typo – she meant Title 47). This was the wrong procedure to direct the Appellant to; Lt. Spencer should have known ACO Chaplin improperly/illegally issued this "*Notice*" to the Appellant, because Beaufort County had no contract with the municipality to provide services, and they had not adopted each other's Ordinances. Further, that the Appellant was contesting the "*determination of an employee of an agency*", and therefore she was entitled, by law, to an "Administrative Hearing" pursuant to Title One, Chapter 23, Article 3 1-23-310 et. seq. (if Beaufort County had jurisdiction in this matter). This was not a civil matter; therefore, this direction by Spencer was wholly wrong and thus continued the vitiation of the Appellant's right to due process and a fair hearing. Due to these failures, Appellant lacks, and lacked throughout this unlawful procedure, the pre-requisite important documents, including, but not limited to, the (most important

document) the written Administrative Decision/Order, a proper Notice of Hearing, and a complete Administrative Agency Contested Hearing Record from which she would not be further prejudiced in the review of any appellant judicial entity. By instructing the Appellant to (essentially) request a hearing against her own interests and then establishing this hearing in the incorrect court, it is clear the Agency's own agent, Lt. Spencer, had no idea of the correct avenue with which to proceed when a citizen contested this "*Official Notice*", particularly as the "*Notice*" does not contain any reference to the correct process and/or procedure by which to challenge it. Given that the fifth and fourteenth amendments of the Constitution provide that no one shall be "deprived of life, liberty or property without due process of law", it's the Appellant's contention that *the agency itself* had no idea how to proceed, because they had no written policy statements, written procedures, or description of the forms used by the Agency; therefore they could not, and did not, act in a manner consistent with upholding the Appellant's federally guaranteed due process rights.

This civil hearing, at the direction of Lt. Spencer, was heard August 8, 2012 before Beaufort County Magistrate Joseph Kline and "prosecuted" by BCSO ACO Brittany Chaplin. Judge Kline upheld the "*Notice*". However, Judge Kline conducted outside research on the dog's breed and his ruling was appealed to the Master in Equity Marvin Dukes, who overturned Kline's ruling December 28, 2012 and remanded. ROA p. 11-12. In the intervening time, the Appellant was acquitted by the aforementioned jury trial November 8, 2012 in the Port Royal Municipal Court, the correct court of record, with jurisdiction in this case, of the entirety of Port Royal Ordinance 3-53. After the acquittal

(and the overturning of Kline's ruling), there was no probable cause to continue this case. ROA, p. 19; l. 20 -25, p. 20; l. 1-15.

II. DID THE LOWER COURT HAVE JURISDICTION IN THIS MATTER?

Pursuant to Home Rule and Article VIII of the South Carolina, counties and cities are viewed as co-equal political subdivisions which are independent of each other politically, geographically, and governmentally. *City of Richmond v. Board of Supervisors of Henrico County, 199 Va. 679, 101 S.E.2d 641 (1958)*; *Murray v. City of Roanoke, 194 Va. 321, 64 S.E.2d 804 (1951. Hobb v. Abrams, 104 Idaho 205, 657 P.2d 1073 (1983)*. According to the South Carolina Attorney General's Opinion of August 10, 2011 re *"enforcement of a county ordinance within an incorporated municipality"*. ROA p. 110-113. Article VIII, Section 13 of the South Carolina Constitution further supports that "a county could not exercise power within an unincorporated municipality unless such agreement existed or, in effect, the municipality has assented to the county's exercise of power". And, "municipalities are afforded their own sovereign police powers and just because the municipality has not chosen to exercise its powers in a particular area does not give the county the inherent power to regulate the matter within the municipality". Also, "a municipality may choose to enforce a county ordinance within its boundaries by entering into an agreement with the county". There was never any agreement between the Town of Port Royal and Beaufort County to either adopt the other's ordinances for Animal Control. There was and is no contract with the Town of Port Royal for Animal Services.

Further, "Jurisdiction, once challenged, cannot be assumed and must be decided."

Basso v. Utah Power & Light Co., 495 F2d 906, 910. "Defense of lack of jurisdiction over the subject matter may be raised at any time, even on appeal." *Hill Top Developers v. Holiday Pines Service Corp.*, 478 So2d 368 (Fla 2nd DCA 1985).

"A court cannot confer jurisdiction where none existed and cannot make a void proceeding valid. It is clear and well established law that a void order can be challenged in any court." *Old Wayne Mut. L. Assoc. v. McDonough*, 204 US 8, 27 S. Ct. 236 (1907).

"Once jurisdiction is challenged, the court cannot proceed when it clearly appears that the court lack jurisdiction, the court has no authority to reach merits, but rather should dismiss the action." *Melo v. U.S.*, 505 F2d 1026. "Once challenged, jurisdiction cannot be assumed, it must be proved to exist." *Stuck v. Medical Examiners*, 94 Ca2d 751. 211 P2d 389. "There is no discretion to ignore that lack of jurisdiction." *Joyce v. US*, 474 F2d 215. "The burden shifts to the court to prove jurisdiction." *Rosemond v. Lambert,* 469 F2d 416.

Appellant further contends that in each instance she has asserted the lack of jurisdiction or contested any other matters in this case, and the Administrative Agency and their courts have proceeded regardless in their pursuit of this matter, they have deprived her of one or more of her constitutional rights, including, but not limited to, due process.

"The privileges and immunities of citizens of this State and the United States Shall not be abridge, nnor shall any person be deprived of life, liberty, and property without due process of law, nor shall any person be denied the protection of the law." Article 1, Section 3, South Carolina Constitution.

III. DID THE RESPONDENT ENGAGE IN EX PARTE COMMUNICATION WITH THE MAGISTRATE COURT AND THE ADMINISTRATION OF THE TOWN OF PORT ROYAL, TO GAIN AN UNFAIR ADVANTAGE AND TO ILLEGALLY CONTINUE THIS CASE?

Unbeknownst to the Appellant, e-mails and phone calls were exchanged directly after Judge Dukes's remand of December 28 2012, between agents of the Town of Port Royal, Sally Germer (the other party in this case), agents of BCSO, Beaufort County Attorney Josh Gruber, and the Chief Magistrate of the Beaufort County Magistrate Court, in order to, the Appellant contends, illegally continue this case against her. ROA p. 23, l. 14-18. ROA p. 114-121.

When Lt. Spencer directed the Appellant to the Beaufort Magistrate Court, as a civil matter, as opposed to what was the legally correct venue and process, an "Administrative Hearing", before a council or board, Spencer committed a grievous error in procedure; not intentionally, the Appellant believes, but due to a lack of training, knowledge or competence, and compounded by his failure to recognize the jurisdictional issues. Lt. Spencer should have reviewed the entirety of the matter with his superiors at BSCO prior to making any decisions and should have first confirmed whether they had jurisdiction to proceed.

The Appellant contends, based upon the actions of the Respondent ***after*** the remand by Judge Dukes December 28, 2012, the Respondent knew Beaufort County did not have jurisdiction, they knew by this time that the correct process should always have been an "*Administrative Hearing*", and thereafter used the Beaufort County Courts to circumvent the Appellant's civil rights and right to due process. In addition, on the audio

recording from a "Rule to Show Cause" on May 2, 2013, before Magistrate Richard Brooks, the Respondent, Josh Gruber, states for the record, that *"it's not a civil matter, she's not being asked to pay a fine, it's not a criminal matter, it's administrative"*.

The Appellant received, as previously noted, communications between the Respondent(s) and the Town of Port Royal, including an e-mail referencing communication with the Chief Magistrate of Beaufort County Magistrate Court, which she preserved for the record in the Motion 60 Hearing before Master in Equity Marvin Dukes February 21, 2014, along with preserving the issues of jurisdiction and due process, prior to filing her appeal before this Court:

(ROA, p. 14, l. 22-25; p. 15, l. 6-22; p. 16, l. 19 – 25; p. 17, l. 1-3; p. 20, l. 19-24; p. 22, l. 13-24; p. 27, l. 13-25; p. 31 l. 3-25; p. 32, l. 1-2; p. 33, l. 9-25; p. 34, l. 19-25; p. 35, l. 24-25; p. 36, l. 1-25; p. 37, l. 1-14).

If the agents, *and attorney* of the Town of Port Royal, or the solicitor engaged by the Town of Port Royal, believed the hearing in the Port Royal Municipal Court, the proper jurisdiction for this matter, was in some way deficient or, the cause of justice was not served, the Town of Port Royal had the option to appeal the matter. And they did not. Rather, these agents proceeded, secretly, with the cooperation and assistance of agents of Beaufort County *and* the other party in this matter, Sally Germer, to illegally continue this case and disenfranchise an (innocent) resident, the Appellant. The Court will take specific notice of the e-mail from attorney Josh Gruber, referencing his telephone call to the Chief Magistrate, wherein Gruber requests a different judge be assigned. The

Appellant contends by this action, Gruber gained an unfair advantage in establishing this (unwarranted) case against her Supplemental Memorandum to Rule 60 Motion; ROA p. 28, l. 20-25; p. 29, l. 1-25; p. 30, l. 1-5. ROA p. 99-100. The Respondent claimed in this Motion 60 Hearing that he spoke with the Appellant's former attorney and they mutually agreed to request an alternate magistrate. The Appellant contends this is untrue and the e-mail from the Respondent discussing his conversation with the Chief Magistrates supports her claim. If, in fact, the Appellant's former attorney had been contacted, she would have been cc'd on the email (and most certainly before Port Royal Town Manager Van Willis). In addition, a new judge was *essential* to the Respondent's plan. If the initial Judge, Kline, re-heard the case, Kline would, as a matter of rote, had the Respondent and the Appellant assume the same roles as before, that of *Plaintiff* and *Defendant*, respectively. The Respondent therefore required a new judge for this subsequent hearing, in order to **change the designation of the parties** and thus intentionally use the summary court in order to hold a "quasi-judicial" abridged version of an administrative hearing.

IV. WAS THE MAGISTRATE COURT USED TO CIRCUMVENT THE APPELLANT'S RIGHT TO DUE PROCESS AND HER RIGHT TO AN "ADMINISTRATIVE HEARING?"

A bewildered Appellant was again summoned to the Beaufort County Magistrate Court, by use of a defective, invalid "*Rule to Show Cause*", mailed to the Appellant, summoning her to this hearing under false pretenses. ROA p. 95. Defective, because it was not properly served by either a sheriff or a process server, pursuant to SC Rule 14, it did not contain the requisite affidavit or verified petition, nor the "Order" she was alleged

to have violated, and other supporting documentation required by SCRCP Rule 14. According to Rule 14:

The supporting affidavit or verified petition shall identify the court order, decree or judgment which the responding party has allegedly violated, the specific act(s) or omission(s) which constitute contempt, and the specific relief which the moving party is seeking. Such court order, decree or judgment shall be attached to the affidavit or certified petition.

The failure to support the "Rule to Show Cause" by an affidavit or verified petition is a "fatal defect" *Toyota of Florence v. Lynch 314 S.C. 257, 442 S.E. 2d 611* (1994)(citing State v. Blackwell, 10 S.C. 35 (1878).

Under false pretenses, as the case was remanded; it was a *new* hearing. The Appellant was not in contempt of an "Order"; the Appellant had never actually been charged with anything by Beaufort County, rather; she contested their "*Official Notice*" a "*determination of an employee of an agency*". This March transcript supports the Appellant's claim; the Respondent(s) knew an "*Administrative Hearing*" pursuant to Chapter 23 should have been afforded the Appellant, to comply with her constitutional right to due process when she contested the "*Notice*" July 10, 2012; Appellant appeared as summoned, as the Defendant, March 12, 2013 for this "*Rule to Show Cause*" hearing before Judge Richard Brooks. As the Court will note from the transcript of this hearing, a meeting was held in chambers. Immediately thereafter, Judge Brooks ruled in the Appellant as the "Defendant", the Respondent made a Motion. ROA, p. 61, l. 1-25; p. 62,

l. 1-4.

Now, instead of a *"Rule to Show Cause"*, with the Appellant summoned to answer to this (alleged) non-existent contempt, with the burden on the Plaintiff to prove a prima facie case against the Defendant, the Appellant's designation was promptly changed from the "*Defendant*" to the "*Appellant*", and the hearing into a "*Court of Appellate Judicial Review"*. A summary court cannot be a court of Appellate Judicial Review; the Appellant contends this action was a total violation of the Rules of Civil Procedure and of her right to due process, and was done intentionally to circumvent/suppress her right to a proper "Quasi-Judicial" hearing before a Council or Board. And, according to the Summary Court Judges Bench Book (SC Judicial Department*) "In all civil actions in magistrates' courts, the party beginning a case is known as the plaintiff and the party defending against the plaintiff's claim is the defendant. The SCRMC and Rule 17 SCRCP, sets out the body of rules applicable to all such matters".*

From this point, the Court will take note this hearing was "seeded" with verbiage and legal jargon, by the Respondent, that's only suitable and relative for an "*Administrative Hearing*". ROA, p. 82; p. 88, l. 5-25; p. 88, l. 1-4.

Judge Brooks upheld the "*Notice*" ; thereafter, the Appellant could not win on Appeal because the decision by Judge Brooks was now considered an "*Administrative Determination",* and the standard to overturn it is from a different judicial process (again Quasi-Judicial) of statutes, standards and methodology, and, the "bar" to overturn an "Administrative Determination" is considerably higher than a ruling by a Magistrate

Court Judge from a summary court hearing. ROA p. 10. The Appellant would request this Court take note of the testimony of the Respondent, Ms. Coppage, regarding this "very high burden". ROA, p. 55, l. 23-25; p. 56, l. 1-25; p. 57, l. 1-7

– Ms. Coppage quotes directly from:

CHAPTER 23, State Agency Rule Making and Adjudication of Contested Cases, **SECTION 1-23-380.** Judicial review upon exhaustion of administrative remedies: **(e)** ***clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record***

Ms. Coppage*: Regarding the last point, the standard for the municipal court finding would have been beyond a reasonable doubt as opposed to here it's arbitrary and capricious. And you are dealing with two different standards and, hence, why we are probably arriving at two different findings.*

Going through the—I did want to address something I did not address earlier is the newly introduced evidence. I think that is separate and apart from this appeal. It doesn't go to showing this was an arbitrary finding.

I do believe that there was substantial evidence in the record that supports the court's finding. And that the fact are not in dispute at this point. The only thing we are looking at is whether or not there is an error of law before us.

And the definition is clear and the facts are also very clear in support of Judge Brook's return.

***Judge Dukes**: And again, the standard I have to live by with regard to an appeal of an administrative decision, which is exactly what this is, is what?—I always have to look it up. We don't do many of these here.*

Ms. Coppage**: A court can reverse an agency's finding, inferences, conclusions, or decisions only if there are clearly erroneous—if they are only **clearly erroneous in view of the reliable, probative, and substantial evidence on the whole of the record.

***Judge Dukes**: So it's a pretty high burden.*

***Ms. Coppage**: It's a very high burden.*

Thus, the Order from Judge Dukes of this Appeal, from October 16, 2013 then states: ***"The issues raised by the pleadings concern whether the Magistrate Court erred as a matter of law in determining that the Respondent met the burden of proof in affirming the administrative decision and whether there was a question of fact as to where the incident occurred."*** *Then Judge Dukes subsequently references S.C. Code Ann. 1-23-380(5).* And the Order from Judge Dukes, from March 20, 2014 (from the Motion 60 hearing) makes the same reference that it's an "Administrative Determination". ROA p. 8-9. ROA p. 4-5.

The Appellant contends the aforementioned supports her argument the Magistrate Court was used to circumvent her rights to due process, right to a fair hearing, and her right (if Beaufort County had jurisdiction) to an "Administrative Hearing".

V. DID THE MAGISTRATE COURT ERR IN NOT DISMISSING THIS CASE WHEN THE RESPONDENT INFORMED THE COURT IT WAS NOT A CIVIL MATTER?

Appellant received a telephone from her (former) attorney Kimberly Smith, the afternoon of May 1, 2013 informing her a hearing had been scheduled for the following

morning, May 2, 2013, because of "unspecified neighbor complaints". Unbeknownst to the Appellant, the Magistrate Court had mailed two (defective) "*Rule to Show Cause*(s)" without supporting documentation, in violation of SCRCP Rule 14, directly

to attorney Smith's office, in violation of her due process rights under Rule 14(ROA, p. 26, l. 24-25, p. 27, l. 1)(ROA p. 96); (Respondent (Allison)

Ms. Coppage: At the time Ms. Baracco was represented by Kimberly Smith who was provided with notice.

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

Note:

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

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

The Appellant asks the Court to take judicial notice, again pursuant to SCRCP Rule 14: "*The supporting affidavit or verified petition shall identify the court order, decree or judgment which the responding party has allegedly violated, the specific act(s) or*

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

Thus was the Appellant was subjected to yet other "alleged" contempt hearing, without proper notice, conformance to Rules, jurisdiction, and a host of other "fatal defects". The Appellant previously referenced an audio recording of this hearing. (ROA, p. 18, l. 8-25; p. 21, l. 6-22; p. 24, l. 9-25; p. 25, l. 1-24).

The Respondent speaks to jurisdiction and also expounds on this *"Administrative Determination"*, from minute 8:40 – minute 10:39, to the Magistrate, Brooks.
Gruber begins by stating that *"Port Royal is a different jurisdiction"* and goes on to say "*the nature (of the case) is an "Administrative Determination"*, then states, in the midst of *a Civil Proceeding* before Magistrate Brooks the following statement: ***"it's not a civil matter, she's not being asked to pay a fine, it's not a criminal matter"***, then Gruber references "*appellate*

rule 241, under "exceptions to the general rule, under section "b", number 11 and recites **verbatim** *"**(11)** Appeals from administrative tribunals as provided in S.C. Code Ann. § 1-23-380(A)(2): "Except as otherwise provided in this chapter, the serving and filing of the notice of appeal does not itself stay enforcement of the agency decision".*

It's the Appellant's contention that at this point, given the Respondent admitted this case was "administrative", and ***not a civil matter***, to the Magistrate, that it should have been promptly dismissed by the lower court.

VI. DOES THE '*OFFICIAL NOTICE*" VIOLATE THE APPELLANT'S RIGHT TO DUE PROCESS?

The unapproved "*Official Notice*" was created by the BCSO, without promulgation from Beaufort County Council; thus Appellant asserts it's illegal *(Lewis & Queens v N.M. Ball and Sons*, 48 Cal.2d 141, 148, 308 P2d 713, 717 (1947), *Muth v Educators Security Ins. Co.*, 114 Cal.App.3d 749, 761-762, 170 Cal.Rptr. 849, 855-856 (1st Dist 1981).

Upon receiving said "*Official Notice*", she went to BCSO to contest the provisions of this "*Notice*", and stated for the record it "violated her right to due process and the requirements were harsher than those in the state statute". There is no such "*Official Notice*" contained in the South Carolina Statute 47-3-710 et. seq. ROA p. 109. This "*Official Notice*" purportedly is based upon the unincorporated Beaufort County Ordinance Section 14-35 and makes reference to State Statutes 47-3-710 et. seq. The "*Official Notice*" pursuant to Beaufort County Ordinance 14-35 states that the Appellant was required within seventy-two (72) hours of said "*Official Notice*" to:

a. Construct a pen on her property as provided for in said notice, without regard to the municipality's zoning and permitting requirements, and the hiring of the licensed contractors and time required for him/her to construct the same; not to mention other time-lines involved in this whole process. It is not possible for a citizen to comply within this arbitrary 72 hour time frame. Further, the construction of a pen pursuant to the requirements of this *Official Notice* is not a requirement of State Statute[1]. And, State Statute allows for a fence as an acceptable "enclosure".

b. Purchase of $50,000 in liability insurance, which is provided for in the State Statute but not in Beaufort County Ordinance 14-35.

c. The dangerous animal must be leashed and muzzled, even when on its property, and under the "actual physical control of a person 18 years of age or older". There is no such requirement anywhere in the State Statute.

d. Non-Compliance would result in a fine in the amount up to $1,092.50.

While the Beaufort County Ordinance provides for a fine of up to $500.00 or 30 days in jail, the State Statute provides for a fine for a first offense of not more than $200.00 or imprisoned for not more than 30 days. The Beaufort County Sheriff's Office written "Official Notice" pursuant to Beaufort County Ordinance 14-35 is not provided for nor required in the State Statute.

The Appellant states the concept of "*Notice*" is critical to the integrity of legal

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proceedings. Due process requires that legal action cannot be taken against anyone unless the requirements of a *Notice* and an opportunity to be heard are observed. This "*Official Notice*" did not provide her the requirements or process to properly contest it, thus violating her right to be heard in the correct venue and jurisdiction. The Agency itself, by its own improper actions, had no written procedures or instructions by which to legally address the Appellant's constitutional rights.

Political subdivisions cannot adopt an ordinance repugnant to the State Constitution or laws, which ordinance would be void ....Therefore, municipalities and counties are not free to adopt an ordinance which is inconsistent with or repugnant to general laws of the State. [P]olice ordinances in conflict with statutes, unless authorized expressly or by necessary implication, are void. A charter or an ordinance cannot be lower or be inconsistent with a standard set by law. Article VIII, Section 14 of the State Constitution relating to local government states that: *(i)n enacting provisions required or authorized by this article, general law provisions applicable to the following matters shall be set aside...(5) criminal laws and the penalties and sanctions for the transgressions thereof....* These provisions have been interpreted by the State Supreme Court to provide that local governments may not enact ordinances that impose greater or lesser penalties than those established by state law. *City of North Charleston v. Harper,* 306 S.C. 153, *Terpin v. Darlington County Council,* 286 S.C. 112, 332 S.E.2d 771 (1985).

VII. DO THE RESPONDENTS ACTIONS CONSTITUTE FRAUD, A "SHAM LEGAL PROCESS", BARRATRY, AND POLLUTION OF THE ADMINISTRATION OF JUSTICE?

The Appellant stands in the door of this Honorable Court with empty hands, due to the unclean hands of the individuals she has encountered during the pendency of this action. She cannot produce what has never been provided to her, a legal adverse decision/order resulting from a properly noticed and held hearing in her contested case. Nor can she produce the record of the hearing of the contested case for this Honorable Court's review, as it does not exist. However, what does exist, are sham documents, from a "Sham Legal Process", that are adverse to her and her personal property, that have been entered and made part of public records of the Beaufort County Clerk of Court, Beaufort County Sheriff's Department, and other offices of Beaufort County. These sham documents have been of record for almost three (3) years.

(a)"Sham legal process" means a document that is not issued lawfully and that purports to be a judgment, lien, or order of a court or appropriate governmental entity, or otherwise purports to assert jurisdiction over or determine the legal or equitable status, rights, duties, powers, or privileges of a person or property. (b) "Lawfully issued" means adopted, issued, or rendered in accordance with applicable statutes, rules, regulations, and ordinances of the United States, a state, or an agency or a political division of the State of South Carolina. Section 30-9-30, of the *SC Code of Laws, 1976, as Amended.*

"Finally, persons knowingly presenting documents in connection with a sham legal process may be subject to criminal prosecution, not only under the Federal Mail

Statute, but also under the S.C. Sham Legal Documents Statute (Section 16-17-735), and such action may amount to obstruction of justice if they purport to prevent a South Carolina court from exercising its jurisdiction." Letter of Rosalyn W. Frierson, Director, South Carolina Court Administration, South Carolina Supreme Court, August 25, 2010.

The Appellant has presented to this Court transcripts, e-mails and audio which she believes establishes the fraudulent actions of the Respondents and other parties in this matter, which the Appellant contends violates South Carolina Statute Section 16-17-10 (2)(b)(c) and demonstrates the Appellant's constitutionally protected rights were, and are continuing to be intentionally violated by the Respondent.

Also, that the Respondent Ms. Lohr has conflicts of interest in the dual representation of Beaufort County and the Town of Port Royal, as provided for in the South Carolina Rules of Civil Procedure, specifically, but not limited to, Rule 8.4(e)(conduct that is prejudicial to the administration of justice); Rule 1.1 (lawyer shall provide competent representation to a client); Rule 1.7(b)(lawyer shall not represent a client if the representation of that client may be materially limited by the lawyer's responsibilities to another client or to a third person); *Rule 413*, SCACR: Rule 7(a)(5)(conduct tending to pollute the administration of justice). And, that this dual representation has led to conflicts of interest, because of the lack of a "*Chinese Wall*" between the three Respondents and their respective positions. The Appellant contends she has unlawfully been subjected to the powers of **two** separate, equal governmental entities throughout the pendency of this matter: **two** policing agencies, **two** legal departments, **two** councils and **two** administrations, in violation of Home Rule and

Article VIII of the South Carolina Constitution. And, that she's been subjected to conflicts of interest arising from the Respondents Josh Gruber and Allison Coppage working for, and also representing, Beaufort County in this matter, and Mary Bass Lohr, as 1) the Town of Port Royal attorney, as 2) the Respondent in this matter on behalf of Beaufort County, and also 3) an employee of the former in-house counsel for Beaufort County.

The Appellant has made reference in her previous motions before this Court of the "Kafkaesque" process she's been subjected to by the Respondent. It is the Appellant's claim that she has not, and cannot, receive due process, fair hearings, and recognition of her civil rights resulting from the (illegal) issuance of this "*Official Notice*" because these Respondents represent the officials, administrations, and agencies that not only created this debacle, but also employ them. Further, the Appellant contends that, as only one of these entities, the Town of Port Royal, ever had jurisdiction in the incident involving the Appellant, it's antithetical to her constitutional right to due process for the attorney for the Town of Port Royal to be representing the interests of Beaufort County as a Respondent in this case, and thus arguing that ***Beaufort County*** has jurisdiction. By doing so, Port Royal's attorney is arguing against the town's own sovereignty as a separate, equal governing body, under Home Rule and Article VIII of the South Carolina Constitution and thus, against their own jurisdiction in this matter, the actions of their policing agency, and the actions of their own court. Further, that the Respondent, as the Town of Port Royal attorney, knew, or should have known:

A) Agents, employees, and the other party to this matter communicated secretly about this case, in order to have it illegally continued it by Beaufort County

B) That Port Royal Town Manager, Van Willis, had ex parte communication with the Beaufort County attorney, Josh Gruber, which he then shared with other agents of Port Royal, to include Tom Klein ***and*** the other party to this matter, Sally Germer.

C) That Beaufort County attorney Josh Gruber has ex parte communication with the Chief Magistrate of the Beaufort Magistrate Court

D) That there was no contract between animal services and the Town of Port Royal, and that the Town of Port Royal did not adopt Beaufort County Ordinances for Animal Control

E) That the Town of Port Royal had an opportunity to follow the correct and **legal** path, if they had any issues with the process and/or conduct of the hearing in which the Appellant was acquitted, by filing an appeal to the next level of adjudication,

F) That the Beaufort County Magistrate Court was used to conduct an "abridged, illegal" version of an "Administrative Hearing" in order to circumvent the admission by the agency, BCSO, that they erred when they initially and incorrectly went outside their jurisdictional boundaries, and then erred again by assigning this matter to a civil proceeding in the magistrate court

The Appellant stated very clearly in the Motion 60 Hearing from February 21, 2014 that this case against her has involved misconduct and misrepresentation (ROA, p. 35, l. 24-25; p. 36, l. 1-25; p. 37, l. 1-14).

It was always incumbent upon the Respondent to act in accordance with the Rules at all times in this matter and had they done so, this matter would not have come before this body. The Respondent was responsible for following the Rules as it applied to the administration of their duties in accordance with the ordinances, laws, statutes and constitutions of the United States and South Carolina. And the Respondent, by its prior motion for substitution as the proper party in this action, admits it was the Administrative Agency responsible to administer the correct procedures and Rules in dealing with the Appellant's contesting the actions of the Beaufort County Sheriff's Office and/or Beaufort County.

CONCLUSION

This controversy being presented to this Court was not a complicated issue when it occurred July 4, 2012 and should never have been adjudicated outside the incorporated municipality of the Town of Port Royal. What has made it a three year debacle has been the conspiratorial and fraudulent actions by agents and employees of the county and municipality, a lack of accountability by the administrative agency and the Town of Port Royal, and interference by numerous other parties. There appears to be no mechanism by the Respondent to acknowledge mistakes, and they have exhibited complete disregard for the Appellant's constitutional rights and civil liberties. The Appellant comes before this Court solely to correct what has been a surreal and wholly unnecessary miscarriage of justice and to clear her good name and petition this court to dismiss this matter, with prejudice, and order such other relief as is just and proper.

Respectfully submitted, this the 15th day of December 2015.

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STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Marvin H. Dukes, III

Appellate Case Number 2014-000636

Beaufort County, South Carolina..... Appellee,

v.

Mare Baracco,.....Appellant.

PROOF OF SERVICE

Mare Baracco hereby certifies that she has prepared and served the Final Brief of Appellant and Record on Appeal on this 15th day of December, 2015, upon the State, by depositing a copy, postage pre-paid, in the United States Mail, addressed to Mary Bass Lohr, Howell, Gibson & Hughes, P.A., Attorney for the Appellee, PO Box 40, Beaufort, South Carolina, 29901.

December 15, 2015

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