

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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AUG 29 2016  
SC Court of Appeals

APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

Marvin H. Dukes III, Master in Equity and Special Circuit Court Judge

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APPELLATE CASE NO. 2016-000955

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John Alden Bauer, III

Appellant

v

Beaufort County  
School District

Respondent

APPELLANT'S RETURN TO RESPONDENT'S MOTION TO STRIKE PORTIONS OF  
APPELLANT'S SECOND AMENDED DESIGNATION OF MATTER

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August 29, 2016

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Appellant has complied with the Order of the Court, dated July 29, 2016, and has removed 29 exhibits from the Amended Designation of Matter as indicated in the Second Amended Designation of Matter. Respondent's composing trivial inaccurate paper work by the square yard does nothing to answer the genuine issues, and is flawed as noted below:

Error by Respondent, claiming that an exhibit was not entered and 'preserved for appeal':

Respondent wrote: (Font size Emphasis Appellant's)

*"31. BH-A28. George McMaster 5/21/14. Litigation Hold letter to preserve evidence."*

The Document reads:

*"31. BH-P28. George McMaster 5/21/14. Litigation Hold letter to preserve evidence."*

Exhibit 28 ("P28") was the Respondent's exhibit (then *Petitioner*, hence P28) and is listed in the Board Hearing Index, page 5. Respondent is objecting to his own exhibit.

Counsel also objected to "#17. BH = Withheld. Grade Book. True.": Respondent knowingly (having been informed by letter) submitted a false empty attendance/grade book at the hearing. Respondent's counsel, then acting as Advice Counsel to the Board, knowingly (having been informed by letter) allowed the empty Walmart false attendance/grade book to be admitted at the hearing, thereby allowing a violation of the Rules of Professional Conduct, Rule 3.3(a)(3), also 8.4. (Cited more fully below) Appellant objected, thereby preserving the issue for appeal.

Two pages from each are attached as sample exhibits in order to illustrate the outrageous violations of the attorneys involved and by the Respondent who hid the true evidence. (Samples 1 and 2) The false attendance/grade book of empty pages (81% by volume of district's exhibits) is a Walmart Brand. The True book is a district issued attendance/grade book and was extensively used.

Upon discovery of the violations "*Reasonable remedial measures*" are required by the rule. The obvious *minimum* remediation, short of outright reversal, for that violation is to allow the true evidence, #17, that the district had willfully withheld, and hidden.

There was other relevant exculpatory evidence that the Respondent knowingly withheld from Appellant prior to, and during the hearing and is, by acquitat-aequitas, part of the record. Withholding exculpatory evidence is quite damaging, defies justice, violates Rule 3.3(a)(3), and defies the spirit of the SC Constitution, as referenced in Article 24.

There were also spurious documents admitted for which Respondent refused to allow an authentication procedure, a less than one minute operation.

Respondent refuses to provide the folder of "*admitted evidence*" that was placed in a separate *contingency*, or "*in Limbo*", envelope by the court reporter who expressed being confused by the closing motions.

Why would Respondent object to respondent's official minutes, documents etc., that were discussed during the hearing? (See *Richards*, *Laws*, and *Jacoby* cited below).

Appellant believes that the actual document being discussed, and read from, should be included, which is clearly implied stemming from the rules of a “*quasi-judicial*” proceeding (below).

It is appropriate that Affidavits that were submitted to the Court of Common Pleas and/or to the Court of Appeals be considered by the Court of Appeals if the Court deems them to be relevant. Fed. R. Civ. P. 56(c)(4), Singleton v. Wulff, 428 U.S. 106 (1976) No. 74-1393, Rule 12(b) (amendment to the fourth sentence)

Respondent is demanding that highly restrictive measures be enforced regarding evidence on appeal. Appellant believes that the following precedents should be considered:

*“The rules of evidence do not strictly apply to teacher dismissal hearings”* Richards v. City of Columbia, 227 S.C. 538, 552, 88 S.E.2d 683, 689 (1955)

*“It is well established that school board hearings under the Act are ‘quasi-judicial’ administrative hearings.”* Laws v. Richland County School Dist. No. 1, 270 S.C. 492, 243 S.E.2d 192 (1978).

*“Even without the aid of statute it is held that an administrative or quasi-judicial body is not governed by the ordinary legal rules of evidence”*; Jacoby v. S.C. State Bd. Of Naturopathic Examiners, 219 S.C. 66, 90, 64 S.E.2d 138, 149 (1951)

Therefore, Chairman Evan's ruling, during the hearing, was appropriate to allow consideration of evidence presented from the notebooks of Appellant. *"...but we will recognize that all these letters are in the booklet you gave us, so we can take them under advisement when we deliberate."* Page 565 lines 17-19.

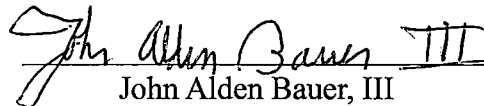
From the South Carolina Supreme Court (Emphasis added)  
*"Due process requires that an administrative board, or body, when acting in a quasi-judicial capacity, must consider all the evidence before rendering its decision upon any particular question. This does not mean that this administrative board, or body, must itself hear the evidence, but it must have the evidence before it, and consider such evidence when rendering its decision."* 27111 - Young v. Charleston County School District THE STATE OF SOUTH CAROLINA In The Supreme Court. April 4, 2012.

Several other sources have the same wording, such as Pettiford v. S.C. State Board of Education; also a letter from the South Carolina Attorney General's office, signed by Paul M. Koch, July 9, 1997.

The fact that Counsel for Respondent attended the Board ("Jury") deliberations appears to have caused exclusion of compelling evidence as well as a violation of Gonzales v. McEuen, 435 F. Supp. 460 (C.D. Cal. 1977) U.S. District Court for the Central District of California - 435 F. Supp. 460 (C.D. Cal. 1977) March 2, 1977.

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Respectfully Submitted,



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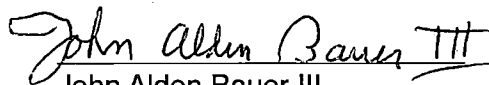
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CERTIFICATE OF SERVICE VIA US MAIL

The undersigned, John Alden Bauer III, pro se, certifies that he has served the following Counsel of Record with the foregoing APPELLANT'S RETURN TO RESPONDENT'S MOTION TO STRIKE PORTIONS OF APPELLANT'S SECOND AMENDED DESIGNATION OF MATTER by making a copy of same, postage prepaid, and return address clearly indicated to the following on the 29th Day of August, 2016.

David Duff, Esq.  
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Sample 1: False Exhibit. Walmart Attendance Book, cover

