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**STATE OF SOUTH CAROLINA
In the Court of Appeals**

APR 12 2017

SC Court of Appeals

**Appeal from Richland County
Court of Common Pleas**

The Honorable Doyet A. Early, III, Circuit Judge

Appellate Case No. 2016-001708

Adele J. Pope..... Appellant,

v.

Alan Wilson, in his capacity as Attorney General of South
Carolina.....Respondent.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2010 CP-40-4900

RECEIVED

AUG 18 2016

SC Court of Appeals

Adele J. Pope

Alan Wilson, in his capacity as Attorney
General of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Based on the written motion by the Plaintiff, the Motion to Alter, Amend and/or Vacate the June 14, 2016 Order granting the Attorney General's Motion to Dismiss is hereby DENIED.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk:

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

WBE
Circuit Court Judge

0136
Judge Code

7-27-16
Date

For Clerk of Court Office Use Only

This judgment was entered on the 11 day of August, 2016 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

Jeanette W. McRide

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

SCANNED

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Adele J. Pope,

Plaintiff,

v.

Alan Wilson, in his capacity as
Attorney General of South Carolina and
James Brown Legacy Trust, by
Russell L. Bauknight, its Trustee,

Defendants.

IN THE COURT OF COMMON PLEAS

Case No. 2010-CP-40-4900
[formerly Newberry Co. Case No.
2011-CP-36-379]

ORDER

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AUG 18 2016

SC Court of Appeals

This matter has come before this Court pursuant to various motions of the parties including a motion for judgment on the pleadings of the Defendant Attorney General and a motion for summary judgment of the Plaintiff. After carefully reviewing the filings of the parties and considering the arguments of counsel concerning the motions in Aiken on May 17, 2016, this Court grants the Attorney General's Motion for Judgment on the Pleadings.

The Plaintiff has brought this action under the Freedom of Information Act, S.C. Code Ann. §30-4-10, et seq. seeking the following:

1 and 2. Published policies of the Office of the Attorney General regarding engagement of private attorneys including contingency fee counsel in effect in May, 2010 and in effect on July 19, 2011.

3. The contract of then-AG Henry McMaster and / or the State engaging Kenneth B. Wingate and Everett Kendall, II to commence Civil Action 2010-GC-4000073 in the Probate Court for Richland County on behalf of the AG.

4. Any contract and / or other document authorizing Russell Bauknight to commence case 400000073 on behalf of the AG and/ or the State.

Plaintiff brought suit in Newberry County, but her case was transferred to Richland County and

[Handwritten signature]
[Handwritten initials]

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consolidated with case 2010-CP-40-4900. This Order addresses only the FOIA case.

These documents are potentially discoverable documents under pending litigation in Richland /Aiken counties and will be governed by the South Carolina Rules of Civil Procedure. FOIA is not a tool that may be used to bypass civil discovery in a pending case. The Order of the late Marc Westbrook submitted by the Defendant Wilson (*Lominack v. Myers*, 2002-CP-32-1890, October 25, 2002) stated that "it is well settled case law that the FOIA is not intended as a substitute for discovery and was not enacted to provide procedures for obtaining information during litigation or to benefit private litigants." (copy on file in this case). Although the FOIA at issue in Judge Westbrook's case related to a post conviction case, the reasoning applies to civil cases such as the pending litigation in Richland and Aiken.

Our Supreme Court has not expressly addressed the issue in the civil context, it has recognized that FOIA is not to be used to bypass limits on discovery in criminal proceedings. *State v. Robinson*, 305 S.C. 469, 476-77, 409 S.E.2d 404, 409 (1991); *Evening Post Pub. Co. v. City of N. Charleston*, 363 S.C. 452, 459, 611 S.E.2d 496, 500 (2005). The Supreme Court has also recognized that "[i]n construing the federal FOIA, the United States Supreme Court has held that the FOIA does not supplement or displace the applicable rules of discovery. *John Doe Agency v. John Doe Corp.*, 493 U.S. 146, 153 (1989)¹; *National Labor Relations Board v. Robbins Tire and Rubber Co.*, 437 U.S. 214 (1978)." *State v. Robinson*, 409 S.E.2d at 409.

¹ "[A] court must be mindful of this Court's observations that the FOIA was not intended to supplement or displace rules of discovery. See *Robbins Tire*, 437 U.S., at 236-239, 242; *id.*, at 243, 98 S.Ct., at 2327 (STEVENS, J., concurring). See also *United States v. Weber Aircraft Corp.*, 465 U.S. 792, 801-802 (1984). Indeed, the Court of Appeals acknowledged that this was not a principal intention of Congress. 850 F.2d, at 108." *Id.*

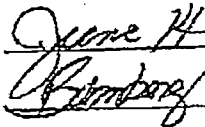
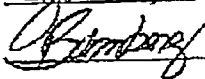
Although *Robinson* involved criminal proceedings, our Supreme Court's recitation of the federal rule suggests that it would apply the same limitation on the use of FOIA as a discovery tool as Judge Westbrook did.

Moreover, FOIA, itself, exempts matters covered by the Rules of Civil Procedure via S.C. Code Ann. §30-4-40(4) for "[m]atters specifically exempted from disclosure by statute or law." (emphasis added). These exemptions under law would include discovery which is strictly controlled by the Rules of Civil Procedure because court rules of procedure are "law." *Magnuson v. Billings*, 152 Ind. 177, 52 N.E. 803, 804 (1899)²; *United States v. Hyatt*, 355 U.S. 570, 575 (1958)³; *State ex rel. Beacon Journal Publ'g Co. v. Waters*, 67 Ohio St. 3d 321, 323, 617 N.E.2d 1110, 1113 (1993).⁴

Because the above documents may be sought through discovery in the pending litigation and for the reasons set forth above, IT IS ORDERED that this FOIA case be dismissed.

AND IT IS SO ORDERED.


DOYET A. EARLY, III
PRESIDING JUDGE

 June H. 2016
 Bimberg, South Carolina

² "[Rules of court] have the force and effect of law, and are obligatory upon the court, as well as upon parties to causes pending before it. . . A rule of court is a law of practice, extended alike to all litigants who come within its purview, and who, in conducting their causes, have the right to assume that it will be uniformly enforced by the court, in conservation of their rights . . ." *Id.*

³ "The phrase 'a law of the United States,' as used in the perjury statute, is not limited to statutes, but includes as well Rules and Regulations which have been lawfully authorized and have a clear legislative base . . ." *Id.*

⁴ "[E]xception [under Ohio discovery statute] for other 'state law' may include procedural court rules, and does include [Ohio] Crim.R. 6(E)." *Id.*

The Supreme Court of South Carolina

Adele Pope,

Plaintiff,

v.

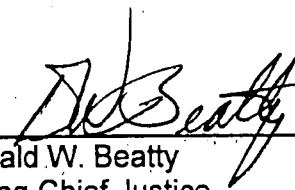
Estate of James Brown, et al.,

Defendants

Aiken County
2013-CP-02-01337

ORDER

IT IS ORDERED that the Honorable Doyet A. Early, III be vested with exclusive jurisdiction to hear and dispose of the above case. Judge Early shall decide all matters pertaining to this case, and pursuant to this assignment shall retain jurisdiction over this case regardless of where he may be assigned to hold court and may schedule such hearings as may be necessary at any time without regard as to whether there is a term of court scheduled.


Donald W. Beatty
Acting Chief Justice

March 24, 2016
Columbia, South Carolina

000006

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2011CP3600364

Adele J Pope

Attorney General Of South
Carolina

Alan Attorney General
Wilson
Russell L. Trustee
Bauknight

James Brown Legacy
Trust
Attorney General Of
South Carolina

SCANNED

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit);
☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Other: _____
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:

☐ See attached order; (formal order to follow)

☒ Statement of Judgment by the Court:

Venue transferred to Richland County.

ORDER INFORMATION

his order ☒ ends ☐ does not end the case.

Additional Information for the Clerk:

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INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Circuit Court Judge

Judge Code

Date

For Clerk of Court Office Use Only

This judgment was entered on January 11, 2012, and a copy mailed first class or placed in the appropriate attorney's box on January 12, 2012, to attorneys of record or to parties (when appearing pro se) as follows:

Adam T Silvernail Po Box 1898 Columbia, SC 29202

J. Emory Smith Jr S.C. Attorney General's Office P.O. Box 11549 Columbia, SC 29211

A. Camden Lewis Lewis & Babcock, LLP P.O. Box 11208 Columbia, SC 29211

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Jackie S. Bowers

Jackie S Bowers - Clerk of Court

Court Reporter

 COPY

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY

IN THE COURT OF COMMON PLEAS

ADELE POPE,
plaintiff,

C.A. No.
11-CP-36-379

-v-

ORDER

ALAN WILSON, *in his*
capacity as Attorney
General,
defendant.

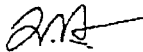
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AUG 18 2016
SC Court of Appeals

THIS MATTER ORIGINALLY CAME BEFORE THE COURT for a hearing on October 26, 2011. Plaintiff moves this Court for summary judgment on her claim that she is entitled to the production of certain documents from the Defendant Attorney General under the State of South Carolina's Freedom of Information Act (hereinafter "FOIA"), S.C. Code Ann. § 30-4-10 *et seq.* Defendant opposes Plaintiff's motion and moves to dismiss the Plaintiff's complaint and to strike the attached affidavits. I find as follows:

I. Facts of the Case.

Although not directly arising out of pending litigation, this matter is otherwise closely related to litigation already pending in Richland County¹. See *Bauknight v. Pope*, 2010-CP-40-04900 (Richland 2010) (hereinafter "fiduciary litigation"). The fiduciary litigation arises out of the Plaintiff's fiduciary responsibilities in relation to the James Brown Legacy Trust. Furthermore, the fiduciary litigation is presently stayed pursuant to an oral order by the

¹ The defendant in this action is one of several plaintiffs in that action, wherein the plaintiff in this action is one of several defendants.

¹ 

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Honorable Casey L. Manning.² At the time of the stay, the parties to the fiduciary litigation (hereinafter "McMaster parties") were in the midst of claims and cross-claims regarding, among other things, the disqualification of the firm Sweeney Wingate & Barrow, P.A. (hereinafter "Sweeney").

During the pendency of the stay, the Plaintiff made an FOIA request for documents pertaining to, *inter alia*, Sweeney's fee agreement with the Defendant's office, documents outlining the Defendant's policies for retaining outside counsel, and documents dealing with the policy of outside counsel speaking on behalf of the Defendant. Because of Judge Manning's earlier ruling, Defendant understandably declined to disclose the requested documents. Thereafter, Plaintiff brought this action and, before the Defendant filed an answer, moved for summary judgment.

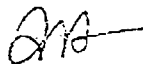
Plaintiff asseverates that she is entitled to production of these documents regardless of the status of the fiduciary litigation. Defendant contends that venue is not proper in Newberry County, that the Newberry Court is without subject matter jurisdiction to hear this matter, and that the Plaintiff may not avail herself of FOIA for the production of documents at issue.

² At the hearing on this matter, there was some dispute as to whether Judge Manning's ruling amounted to an absolute stay. According to the transcript of the hearing in question, the following transpired:

Mr. Wingate: You Honor, just one clarification. When you say maintain the status quo, the status quo is that the case is effectively stayed at this point. [sic]

The Court: Yes, I mean it might last for a week or so. I just need to go chitchat with Judge Lee and say, this is what I have done. How do you want to proceed from here. [sic] And she will either say, bring them back in or whatever. But the idea, if I were Judge Lee I would want her to do the same thing I am doing for my benefit. Thank you all very much.

Judge Manning's ruling will be considered and understood by this court as a stay of proceedings, although the exact legal effect of his comments may be subject to debate. Subsequent to the hearing before this court, the court contacted Judge Lee who informed this judge that she and Judge Manning had agreed that Judge Manning would be handling all the fiduciary litigation.

² 

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II. Subject Matter Jurisdiction & Rule 12(b)(8)

Because a court may not act without subject matter jurisdiction, *DeWitt v. S.C. Dep't of Pub. Transp.*, 274 S.C. 184, 187, 262 S.E.2d 28 (1980) (citing *State v. Funderburk*, 259 S.C. 256, 191 S.E. (2d) 520 (1972); *Ross v. Richland County*, 270 S.C. 100, 240 S.E. (2d) 649 (1978); *Ex parte Harte*, 186 S.C. 125, 195 S.E. 253 (1938)), it is incumbent on the Court to first determine whether it has jurisdiction to resolve the matter before it. "The question of subject matter jurisdiction is a question of law for the court." *Chew v. Newsome Chevrolet, Inc.*, 315 S.C. 102, 104, 431 S.E.2d 631 (Cl.App.1993) (citing *Bargesser v. Coleman Co.*, 230 S.C. 562, 96 S.E.2d 825 (1957)). Defendant argues that because the Richland Court has exercised jurisdiction over the fiduciary litigation, principles of law preclude this Court from exercising subject matter jurisdiction. Accordingly, the Defendant contends that this Court should dismiss this action pursuant to Rule 12(b)(8), SCRCF. I disagree.

In support defendant's position, Defendant cites the cases of *Tucker v. Tucker*³ and *Richardson, Plowden, Grier & Howser v. Pyle*.⁴ These cases are not entirely on point with the issues in this case. Both *Tucker* and *Richardson* deal with the jurisdictional overlap between the Circuit Court and inferior courts over the same subject matter. *Tucker* involved the administration of a probate estate by two executors. *Tucker*, 264 S.C. at 175. The plaintiff brought suit in the Circuit Court to remove the co-executor. *Id.* Citing provisions of the South Carolina Constitution and the South Carolina Probate Code, our Supreme Court held that once an administration of an estate was begun in the Probate Court, all other courts of concurrent jurisdiction were without jurisdiction to hear matters pertaining to that case. *Id.* at 175-78.

The issue in *Richardson* was whether the Fee Disputes Board held exclusive jurisdiction over a matter originally brought in the Circuit Court. *Richardson*, 322 S.C. at 372-73. In that case, after the plaintiff initiated the breach of contract action in Circuit Court, the defendant attempted transfer the case to the board. *Id.* Relying on Rule 2 of Rule 416, SCACR,⁵ the

³ 264 S.C. 172, 213 S.E.2d 588 (1975).

⁴ 322 S.C. 371, 472 S.E.2d 232 (1996).

⁵ This Rule states, in pertinent part, that

Under no circumstances will the Board participate in: (1) a fee dispute involving an amount in dispute of \$50,000 or more; or (2) disputes over which, in the first instance, a court, commission, judge, or other tribunal has jurisdiction to fix the fee.

27A

Supreme Court found that the board could not take jurisdiction over the matter when the matter had already been submitted to the Circuit Court. *Id.* at 374. The Court further held that:

[t]o allow a client to unilaterally remove a fee dispute to the Board when a contract action is pending in circuit court to collect attorney's fees would be inconsistent with the well-settled rule that where there is concurrent jurisdiction, the first tribunal to acquire jurisdiction has exclusive jurisdiction.

Id. (citing *McDonald v. McDonald*, 276 S.C. 573, 281 S.E.2d 109 (1981)). The present case does not involve any inferior court; rather, it involves two circuit courts addressing issues that concern one another. There is no case directly on point to address this issue.

The rule of law, as delineated by cases such as *Tucker* and *Richardson*, is that where the same parties litigate the same matter before courts of concurrent jurisdiction, the court which first takes jurisdiction has exclusive jurisdiction. See *McDonald*, 276 S.C. at 575 ("Here, actions involving the same parties, substantially the same issue (the parties' respective interests in the marital residence), were pending in the family court and circuit court, courts of concurrent jurisdiction."). This judicial principle a great resemblance to the Rule 12(b)(8) standard annunciated by the Court of Appeals in *Capital City Ins. Co. v. BP Staff, Inc.*, 382 S.C. 92, 674 S.E.2d 524 (Ct. App. 2009). The rule stated in *Capital City* is that "[i]n South Carolina, dismissal under Rule 12(b)(8) may be proper when there is (1) another action pending, (2) between the same parties, (3) for the same claim." *Id.* at 105. Thus, an analysis of the Rule 12(b)(8) case law, as applied to the defendant's *Tucker/Richardson* claims, leads me to find that this Court does, in fact, have subject matter jurisdiction.

The first two prongs of the *Capital City* test is met in this case. As already discussed, the fiduciary litigation remains pending in Richland County Circuit Court. Both this litigation and the fiduciary litigation involve many of the same parties, and the Plaintiff and the Defendant are both involved in the exact same capacities, albeit with adversarial roles reversed. In both instances, the Plaintiff is a party in her individual capacity and the Defendant is a litigant in his official capacity. Thus, the parties are the same. See *Cricket Cove Ventures, LLC v. Gilland*, 390 S.C. 312, 321-22, 701 S.E.2d 39, 44-45 (Ct. App. 2010) (stating that where the plaintiffs sue

Rule 416, SCACR (emphasis supplied).

defendants in their official capacities in one suit and in their individual capacities in another, then the identities of the parties are different, even when both suits center on the same set of facts).

However, this case fails to meet the third prong of the *Capital City* test in that the claims in this case and in the fiduciary litigation are not the same. In order for claims to be identical, they "must be *precisely or substantially the same in both proceedings* in order for the drastic remedy of dismissal to be appropriate under Rule 12(b)(8)." *Capital City*, 382 S.C. at 105-06 (emphasis supplied). In *Cricket Cove*, the plaintiffs sought a declaratory judgment and writ of *mandamus* against the defendant municipality and subsequently brought another suit against county officials in their individual capacities for civil conspiracy and injunctive relief. *Cricket Cove*, 390 S.C. at 317-18. Reversing the lower courts dismissal of the latter case under Rule 12(b)(8), the Court of Appeals found that the claims asserted in either action were not identical. *Id.* at 322-23. "Here, the cause of action for civil conspiracy is not covered in the first case, and the writ of *mandamus* cause of action in the present case seeks relief that is different from the relief sought in the causes of action in the first case." *Id.* at 323.

The *Cricket Cove* decision followed the then newly announced standard set forth in *Capital City*. The *Capital City* case concerned a dispute over a modifier to the plaintiff's worker's compensation coverage. *Capital City*, 382 S.C. at 96-97. There, while the modifier issue was on administrative appeal, the plaintiff brought suit against the defendant insurer for breach of contract and fraud. *Id.* at 97. Finding the lower court's dismissal improper, the Court of Appeals concluded that

[h]ere, while we respectfully recognize that the administrative claim may have some relationship or impact upon the circuit court action, we also recognize that the administrative proceeding and the circuit court action are fundamentally and structurally different from each other.

Id. at 106.

The conclusions reached in *Capital City* and *Cricket Cove* are similar to that reached by this Court. The Defendant contends that this action is merely an extension of the discovery dispute in the fiduciary litigation. Looking at the law, this is not the case. Substantively, a FOIA request is a different animal than that of a discovery request. In some instances, a FOIA request may be proper in circumstances where a discovery request would be improper and *vice versa*. See *Columbia v. ACLU of South Carolina*, 323 S.C. 384, 388-89, 475 S.E.2d 747, 749-50 (1996)

(holding that where documents are the subject matter of FOIA litigation, these documents are not discoverable). Procedurally, discovery in civil actions is governed by Part V of the South Carolina Rules of Civil Procedure, whereas the process for obtaining public documents is defined under S.C. Code Ann. § 30-4-40 *et seq.* Looking at this distinction, production of documents under FOIA is statutorily guaranteed to "any person." S.C. CODE ANN. § 30-4-40. Discovery, on the other hand, is available only to litigants. *See* Rule 26(a), SCRCP ("Parties may obtain discovery by one or more of the following methods. . ."). Moreover, the relief afforded under discovery is dissimilar to that of discovery. If an applicant is denied under FOIA, relief may only be achieved by bringing suit in the Circuit Court. S.C. CODE ANN. § 34-4-100(a). If a party is denied discovery, they must bring a motion to compel, which, if denied, may only be appealed at the conclusion of the case. *Lowndes Products, Inc. v. Brower*, 262 S.C. 431, 434, 205 S.E.2d 184, 185 (1974). These are some, but not all, of the distinctions between FOIA and discovery, and for these reasons, the Court concludes the claims placed before this Court and the Richland County Court are not the same. Therefore, this Court has subject matter jurisdiction.⁶

III. Consolidation.

Finding that this Court is vested with subject matter jurisdiction, the Court declines to address any of the additional motions put before it. Already, the underlying subject matter of this case bears the imprimatur of four other courts.⁷ Rule 1 of the South Carolina Rules of Civil Procedure state that the Rules "shall be construed to secure the just, speedy, and inexpensive determination of every action." Rule 1, SCRCP. It is therefore unnecessary and repugnant to interests of expedited justice for yet another court to become involved. For this reason, this case is to be consolidated with the currently pending case of *Bauknight v. Pope*, 2010-CP-40-04900 (Richland 2010), as per the instructions set forth below. *See* Rule 42(a), SCRCP ("When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all matters in issue in the action."); *Creighton v. Coligny Plaza Limited*

⁶ Given this analysis, Defendant's motion to dismiss pursuant to Rule 12(b)(8) is also denied.

⁷ In addition to the fiduciary litigation, aspects of this case have been litigated in the Aiken Circuit Court as well as in federal district court. The Aiken matter is currently on appeal to the Supreme Court. I was subsequently informed that apparently another case in Newberry, 11-CP-36-364, involves apparently identical claims. While that case is currently not before this court and is therefore beyond the scope of this order, the court would strongly encourage all concerned to consent to consolidating that matter in Richland or for Plaintiff to dismiss that case, as it appears duplicative of issues addressed in this order.

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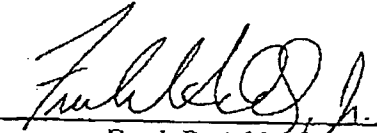
Partnership, 334 S.C. 96, 119-20, 512 S.E.2d 510, 522 (Ct. App. 1998) ("Under Rule 42(a), a trial judge may order the consolidation of actions involving a common question of law or fact.").

IV. Conclusion.

It is the Order of the Court that:

1. The Defendant in this matter will answer Plaintiff's complaint;
2. At the conclusion of the pleadings phase of this case, this matter will be consolidated with *Bauknight v. Pope*, 2010-CP-40-04900 (Richland 2010);
3. Any motions and issues hereafter outstanding, including an oral motion to intervene by an arguably interested party, will thereby be taken up by Richland County Court; and
4. Any claim to attorney's fees, as permitted under the South Carolina Freedom of Information Act, will be preserved for resolution by the Richland County Court.

IT IS SO ORDERED.


Frank R. Addy, Jr.
Eighth Judicial Circuit

November 22, 2011
Greenwood, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY

IN THE COURT OF COMMON PLEAS

Civil Action No. 2011-CP-36- 379

Adele J. Pope,

Plaintiff,

v.

Alan Wilson, in his capacity as
Attorney General of South Carolina,

Defendant.

COMPLAINT

JACKIE S. BOWERS
CLERK OF COURT

2011 AUG 10 A 10:22

FILED
NEWBERRY COUNTY

Plaintiff would respectfully show unto the Court:

**FOR A FIRST CAUSE OF ACTION
(Disclosure of Documents Under FOIA)**

Parties and Jurisdiction

1. Plaintiff is a citizen of South Carolina and a resident of Newberry County.
2. Defendant Alan Wilson is the Attorney General of South Carolina ("AG Wilson"), and is successor in office to Henry D. McMaster ("AG McMaster").
3. Defendant is subject to the jurisdiction and venue of this Court pursuant to S.C. Code Ann. §30-4-20(a) and §30-4-100, and may be served with summons, process and copy of this Complaint at his addresses listed on Exhibit B attached hereto.

Facts and FOIA Request

4. On October 2, 2009 AG McMaster issued an announcement related to the use by his office and the State of private, contingency-fee attorneys known as "special counsel." A copy of that statement is attached as Exhibit A.

5. On May 19, 2010 private, contingency-fee special counsel Kenneth B. Wingate of Sweeney, Wingate & Barrow, PC (the "Wingate Firm"), as sole counsel for AG McMaster and more than 10 additional plaintiffs, filed suit against Plaintiff and Robert L. Buchanan, Jr. in Civil Action No. 2010-CP-40-4900 ("Case 4900").

6. In addition to AG McMaster being a Plaintiff in Case 4900, Russell L. Bauknight acting "on behalf of" Henry D. McMaster as Attorney General of the State of South Carolina is a Plaintiff in Case 4900.

7. In Case 4900 AG McMaster, and Bauknight acting on behalf of AG McMaster, seek tens of millions of dollars in damages from Plaintiff.

8. AG McMaster and Bauknight acting on his behalf assert, among other false allegations, that Plaintiff and Buchanan intentionally overstated the worldwide music empire of entertainment icon James Brown at \$85 Million [\$100 Million less the TIAA Debt] on the estate tax return for the improper purpose of obtaining a large commission.

9. AG McMaster and Bauknight also seek money damages against Plaintiff and Buchanan because they have not signed a document agreeing not to criticize McMaster for destroying James Brown's estate plan by transferring \$50 Million from scholarships for needy and deserving students Brown intended to benefit to relatives and claimed relatives Brown intentionally disinherited from his music empire.

10. Plaintiff is informed and believes that the documents requested herein, and related public documents, will show that AG McMaster, aided by his Senior Assistant C. Havird "Sonny" Jones, and Bauknight, engaged the Wingate Firm with knowledge that the false and unsupported allegations they would make against Plaintiff could subject her to both civil and criminal penalties, and destroy her career as an attorney.

11. The Affidavit of Plaintiff attached hereto as Exhibit E outlines just some of the facts already known about AG Sonny Jones' arbitrary and improper actions with respect to Plaintiff and Buchanan, and the alliance of AG Jones and AG McMaster with Albert Dallas, now-indicted David Cannon, James Brown's companion, and their attorneys.

12. On information and belief, the Retention Agreement and authorization for Bauknight to act on behalf of the State in bringing case 4900 will shed light on whether these relationships fostered the public interest, as was AG McMaster's duty.

13. On or about January 12, 2011 AG Wilson replaced AG McMaster.

14. In May 2011 Bauknight – now acting on behalf of AG Wilson – filed documents asserting Brown's worldwide music empire was worth less than \$4.7 Million at his death on December 25, 2006, making allegations that Plaintiff and Buchanan caused tens of millions of dollars of damage virtually impossible.

15. On information and belief, the actions of AG McMaster, Assistant AG Sonny Jones and AG Wilson were taken under color of State law and in an official capacity, and were or should have been consistent with the public interest and ordinary customs and procedures of the AG's office. Likewise, the actions of Bauknight speaking on behalf of the AGs since May 19, 2010 should have met the same standard.

16. On July 19, 2011, Plaintiff sent to AG Wilson a request for the public records listed below pursuant to the South Carolina Freedom of Information Act ("FOIA"):

1. The published policies and/or rules and regulations of the Office of the Attorney General of South Carolina ("AG") with respect to the engagement of private attorneys, including contingency-fee attorneys, by the AG in

effect in May 2010.

2. The published policies and/or rules and regulations of the Office of the AG with respect to the engagement of private attorneys, including contingency-fee attorneys, by the AG currently in effect (July 19, 2011).
3. The contract of the then-AG [Henry D. McMaster] and/or the State of South Carolina engaging Kenneth B. Wingate and Everett Kendall, II to commence Civil Action No. 2010-GC-4000073 in the Probate Court for Richland County on May 19, 2010 on behalf of the AG. [A copy of the filed Summons, with emphasis added and minors redacted, is attached.]
4. Any contract and/or other document authorizing Russell L. Bauknight to commence Civil Action No. 2010-GC-40-0073 on behalf of the AG and/or the State of South Carolina.

17. A true copy of the July 19, 2011 FOIA request is attached hereto as Exhibit

B.

18. On August 5, 2011 AG Wilson, acting through Senior Assistant AG Tracy Meyers, responded in a letter, a copy of which is attached hereto as Exhibit C, declining her FOIA request for reasons which, on information and belief, do not excuse failure to comply with FOIA.

19. On August 7, 2011 Plaintiff responded to AG Wilson's office's rejection of her FOIA complaint and asked that she be notified by August 9, 2011 if AG Wilson's office would reverse its position. A copy of Plaintiffs letter is attached hereto as Exhibit

D.¹

20. As of the execution of this complaint, the office of AG Wilson has failed to comply with Plaintiff's FOIA request of July 19, 2011.

¹ Earlier drafts, dated and sent on August 7, 2011, contained typographical errors. Plaintiff's final letter, with these errors corrected, was faxed to the office of AG Wilson at approximately 8 a.m. on Monday, August 8, 2011 and placed in the U. S. Mail shortly thereafter.

21. On information and belief, Defendant is entitled to review requested documents in accordance with reasonable rules concerning the time and place of access, and no requested record is specifically prohibited by law from being open to the public.

22. AG Wilson's position is in conflict with the *Public Official's Guide to Compliance with South Carolina's Freedom of Information Act* in which AG Wilson states that the AG's Office uses and recommends the following FOIA guidelines:

When in doubt, disclose requested information.

...
When in doubt, release the document. (p. 1)

23. On information and belief, AG Wilson, by his refusal to disclose public documents which, on information and belief, will show that AG McMaster, AG Sonny Jones and Bauknight acted improperly and without any public purpose, has wilfully violated Plaintiff's right and the right of other members of the public to obtain these public records from the AG.

24. Pursuant to the FOIA, S.C. Code Ann. §30-4-10 et seq., any person has a right to inspect and copy any public record of a public body.

25. Plaintiff, a South Carolina citizen, has no adequate remedy at law, and requires an injunction to prevent interference with her rights, and those of other citizens, to these public records.

26. On information and belief, it was willful and reckless for the office of AG Wilson to prevent Plaintiff from inspecting and copying the Special Counsel Retention Agreement and related policies by which AG McMaster and Bauknight contracted with each other and the Wingate Firm to file suit to obtain the tens of millions of dollars the

State seeks from Plaintiff.

27. AG Wilson's refusal was willful and reckless where the State, through AG McMaster, entered into only about seven Special Counsel Retention Agreements with private counsel, and all, on information and belief, contain a statement that the Retention Agreement is a public document.

28. On information and belief, AG Wilson's refusal was willful and reckless where the Retention Agreement, on information and belief, is the only Special Counsel Retention Agreement where the AG's office has engaged private contingency-fee counsel to sue South Carolina citizens – and not multi-million dollar international corporations.

29. On information and belief AG Wilson's refusal was willful and reckless because the delegation by AG McMaster, speaking for the State, to Bauknight of the authority to bring a tort suit for money damages against private citizens on behalf of the Attorney General of the State is unprecedented in the state and nation.

30. Based upon the facts set forth above, this Court should enter an order declaring that the requested records are public records and should be made available to the public and Plaintiff for inspection and copying as provided by law.

**FOR A SECOND CAUSE OF ACTION
(Attorneys' Fees Under S.C. Code Ann. § 30-4-100(b))**

31. The allegations of paragraphs 1 through 30 are incorporated by reference as if fully and specifically set forth herein.

32. Plaintiff is informed and believes that if she prevails in this case, in whole

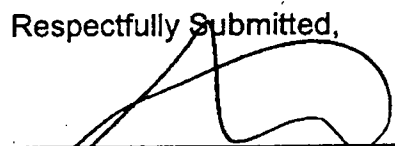
or in part, she should be entitled to reasonable legal fees and costs of litigation pursuant to S. C. Code Ann. § 30-4-100(b).

33. On information and belief, the Court should enter an order awarding Plaintiff her legal fees and other litigation expenses incurred in this case pursuant to S. C. Code Ann. § 30-4-100(b).

WHEREFORE, Plaintiff respectfully prays to this Court for the following:

- a. That this Court issue an order declaring that the above-described documents are public records under South Carolina law and that such records should be made available for inspection and copying to the Plaintiff by Defendant as provided by law;
- b. That this Court should compel Defendant AG Wilson to perform his official duty by permitting Plaintiff to inspect and copy the above-described public records as provided by law, and enjoin him from interfering with such inspection and copying;
- c. That this Court order Defendant to pay the Plaintiff her reasonable attorney's fees and other litigation expenses incurred in pursuing this case pursuant to S.C. Code Ann. § 30-4-100.
- d. That this Court set at the earliest possible time a hearing on the matters set forth herein.
- e. For such other and further relief as this Court deems just and proper.

Respectfully Submitted,



Adam T. Silvernail
Law Office of Adam T. Silvernail, LLC
Post Office Box 1898
1218 Taylor Street
Columbia, South Carolina 29202-1898
Tel: 803/779-1770
Fax: 803/403-8092
Email: adam@silvernaillawfirm.com

August 10, 2011

Attorney for Plaintiff

EXHIBIT A

FILED

NEWBERRY COUNTY

2011 AUG 10 A 10:22

JACKIE S. BOWERS
CLERK OF COURT

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**STATEMENT FROM ATTORNEY GENERAL HENRY McMASTER
ON CAMPAIGN CONTRIBUTIONS BY SPECIAL COUNSEL**

October 2, 2009

FACTUAL NOTE:

In a major fraud case against drug giant Eli Lilly, the company recently made an effort in court to disqualify the attorneys Attorney General Henry McMaster appointed to serve as special counsel to the State of South Carolina, assisting his own attorneys. In a motion to the court, Eli Lilly's attorneys claimed it was illegal for the lawyers chosen to serve as special counsel to have subsequently made contributions to the attorney general's campaigns and therefore should be disqualified from representing the State.

The judge rejected the motion and ruled that the contributions were legal and proper. In fact, attorneys on both sides of the case had contributed to the attorney general's campaigns. Further, no public funds whatsoever were or will be used to compensate the attorneys.

During Attorney General McMaster's two terms in office, he has brought many lawsuits for the State. In several, due to their size, complexity and state government's budget constraints, he has appointed outside attorneys to serve as "special counsel" and to work with his attorneys. These were all contingency cases, meaning the special counsel involved receive no compensation unless they win the case. If special counsel loses, they are paid nothing. If they win, the corporate defendant pays their fees and expenses. Win or lose, no tax funds are used to pay them. This is a wise economic strategy for the State, which is able to recover its damages from the defendant at no cost to the taxpayers in a meritorious case it could not otherwise have been able to bring. Since January 2003, the attorney general has appointed twenty-one (21) special counsel in six cases, one of which (Natural Resource Damage) was terminated in 2008 without any action taken.

Of these 21 special counsel appointments over the past seven years, only five (5), including their firms, subsequently made donations to General McMaster's campaigns, totalling \$32,500.

A statement from General McMaster follows:

"As the judge in the Eli Lilly case confirmed in a ruling last week, the contributions my two campaigns for attorney general received from attorneys who serve as special counsel to the State are legal and proper.

However, these perfectly legal donations should not be allowed to create a distraction from the critically important issues our State faces now or in the future. I believe the best interests of the State will be served by eliminating the issue altogether. Otherwise, other defendants may be tempted to repeat these baseless allegations as a delaying

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CLERK OF COURT

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CLERK OF COURT

tactic in future cases involving special counsel. Further, when it comes to the issue of ethics in government, appearances matter as much as the law. It is important to avoid even the slightest possible appearance of any impropriety.

For all those reasons, I am today returning the \$32,500 in donations special counsel attorneys, or their firms, have made to my campaigns for attorney general. And I will decline future contributions from my office's special counsel attorneys."

A LIST OF SPECIAL COUNSEL DONORS AND AMOUNTS TO BE RETURNED IS
BELOW:

J. Preston Strom, Jr. - \$3,500 - 9-30-08
Strom Law Firm - \$3,500 - 9-30-08
Columbia SC
(Appointment signed 11-22-05)

J. Stephen Schmutz - 9-30-07 - \$3500
Schmutz and Schmutz - 9-30-07 - \$3500
Charleston SC
(Appointment signed 11-28-05)

William E. Hopkins Jr. - 12-31-08 - \$1,500
Hopkins and Campbell LLP - 8-11-08 - \$3,500
Columbia SC
(Appointment signed 1-22-08)

John Belton White, Jr. - 3-31-09 - \$1,500, 11-13-07 - \$2,000
Harrison, White, Smith and Coggins 7-5-07 - \$3,500
Spartanburg SC
(Appointments signed 7-19-06, 7-19-06, 10-17-06)

John S. Simmons - 9-30-08 - \$3,000
Law Offices of John S Simmons - 6-30-07 - \$3,500
Columbia SC
(Appointments signed 7-19-06, 7-19-06, 10-17-06)

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EXHIBIT B

FILED
NEWBERRY COUNTY
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JACKIE S. BOWERS
CLERK OF COURT

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1228 Walnut Street
Newberry, South Carolina 29108

July 19, 2011

CERTIFIED MAIL

Custodian of Records
Office of the South Carolina Attorney General
Post Office Box 11549
Columbia, South Carolina 29211

Re: Request for Documents under the South Carolina Freedom of Information Act

Dear Madam or Sir:

This letter is a request for access to the public records listed below pursuant to the South Carolina Freedom of Information Act ("FOIA").

I would like to receive copies of the following documents:

1. The published policies and/or rules and regulations of the Office of the Attorney General of South Carolina ("AG") with respect to the engagement of private attorneys, including contingency-fee attorneys, by the AG in effect in May 2010.
2. The published policies and/or rules and regulations of the Office of the AG with respect to the engagement of private attorneys, including contingency-fee attorneys, by the AG currently in effect (July 19, 2011).
3. The contract of the then-AG [Henry D. McMaster] and/or the State of South Carolina engaging Kenneth B. Wingate and Everett Kendall, II to commence Civil Action No. 2010-GC-4000073 in the Probate Court for Richland County on May 19, 2010 on behalf of the AG. [A copy of the filed Summons, with emphasis added and minors redacted, is attached.]
4. Any contract and/or other document authorizing Russell L. Bauknight to commence Civil Action No. 2010-GC-4000073 on behalf of the AG and/or the State of South Carolina.

I can be reached at (803) 413-0753 to schedule an appointment to pick up these copies.

Since this request primarily benefits the general public, I request that any search or copying fees be waived, but will pay all required copying costs.

Sincerely,



Adele J. Pope

Enclosure: Summons, Richland County Probate Court Case No. 2010-GC-4000073

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NEWBERRY COUNTY
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CLERK OF COURT

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

RUSSELL L. BAUKNIGHT, as Trustee of
the James Brown 2000 Irrevocable Trust and
the James Brown Legacy Trust, as Personal
Representative of the Estate of James Brown,
and on behalf of Henry Dargan McMaster, in
his capacity as Attorney General of the State
of South Carolina; Tommie Rae Brown,
individually and on behalf of her minor child,
James Brown; Daryl J. Brown, individually
and on behalf of his minor child Janise
Brown; Lindsey Delores Brown;
Deanna J. Brown Thomas; Jason Brown-
Lewis; Yamma N. Brown, individually and
on behalf of her minor children Sydney
Lewis and Carrington Lewis; Tonya Brown;
Venisha Brown Larry Brown; and Terry
Brown

and

HENRY DARGAN MCMASTER, in his
capacity as Attorney General of the State of
South Carolina; TOMMIE RAE BROWN,
individually and on behalf of her minor child,
JAMES BROWN; DARYL J. BROWN,
individually and on behalf of his minor child
JANISE BROWN; LINDSEY
DELORES BROWN; DEANNA J. BROWN
THOMAS; JASON BROWN-LEWIS;
YAMMA N. BROWN, individually and on
behalf of her minor children SYDNEY
LEWIS and CARRINGTON LEWIS;
TONYA BROWN; VENISHA BROWN;
LARRY BROWN; and TERRY BROWN,

Plaintiffs

v.

Adele J. Pope and Robert L. Buchanan, Jr.,
Defendants

IN THE PROBATE COURT

Civil Action No. 2010 - GC - 400073

10 MAR 19 PM 1:10
AMERICAN
PROBATE COURT
RICHLAND COUNTY, S.C.

FILED

SUMMONS

TO: THE DEFENDANTS, ADELE J. POPE AND ROBERT L. BUCHANAN, JR.:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service hereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.

Kenneth B. Wingate

Kenneth B. Wingate

Everett A. Kendall, II

1315 Lady Street

Post Office Box 12129

Columbia, South Carolina 29211

(803) 256-2233

ATTORNEYS FOR THE PLAINTIFFS

Columbia, South Carolina

May 19, 2010

EXHIBIT C

FILED

NEWBERRY COUNTY

2011 AUG 10 A 10:25

JACKIE S. BOWERS
CLERK OF COURT

000030



ALAN WILSON
SECURITIES COMMISSIONER

August 5, 2011

FILED
NEWBERRY COUNTY
2011 AUG 10 A 10:25
JACKIE S. BOWERS
CLERK OF COURT

Adele J. Pope, Esq.
1228 Walnut Street
Newberry, South Carolina 29108

Re: Request for documents under the South Carolina Freedom of Information Act

Dear Ms. Pope:

I am in receipt of one letter from you dated July 19, 2011, and five letters from you dated July 20, 2011, requesting certain documents pursuant to the South Carolina Freedom of Information Act ("FOIA"). I have also been notified by attorneys in the Civil Division of the South Carolina Office of the Attorney General ("SCAG") that you refer to a request dated June 30, 2011 in a motion filed by you in a South Carolina circuit court case. Please be advised the only direct requests I have received from you during the June to August 2011 time period are the six referenced above. If there is a request dated in June 2011 that was not received by this Office, but that you represent you drafted and sent on June 30, 2011, if you will forward it to me within the next five (5) business days, I will expedite the response to it.

Responding to your letters dated July 19, 2011 and July 20, 2011 is difficult, as I have been informed there are several pending motions filed in Case No. 2010-CP-40-4900 in the Richland County Circuit Court and that several of the pending motions relate to the documents you are currently seeking to obtain through the FOIA requests. I have been informed there are at least three related motions that relate to the FOIA request: (1) a "Motion for Protective Order Concerning Various Documents Requested by Defendant Adele J. Pope" filed July 5, 2011, filed by the Plaintiffs; (2) a "Motion to Compel Discovery" dated June 7, 2011, filed by your counsel; and (3) a "Motion to Compel Production of Contingency-Fee Contract and Related Documents Prior to Hearing on Motion for Injunction", dated July 26, 2011, filed by your counsel.

While there exists an ongoing case in which I have been informed both a "Motion for Protective Order" and a "Motion to Compel Discovery" are outstanding, it seems premature for me to release the requested documents. I am not involved in the civil case in any way and believe the wisest thing to do is to let the presiding judge make the decision on which items, if any, are to be produced and which, if any, are not.

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Adele J. Pope
August 5, 2011
Page 2

The FOIA was designed to give the public and the press access to the workings of their government. FOIA is not designed to supplement the rules of civil or criminal discovery. For these reasons, I propose to put your requests on hold pending the outcome of your current litigation. Once litigation is complete, I would then provide you with all of the information you have requested that is available (i.e. not exempt) pursuant to the Act. In the meantime, I will also forward copies of all six letters to the Civil Division and ask that they be treated as discovery requests in the ongoing litigation referred to above, if appropriate.

Sincerely yours,

Tracy Meyers

Tracy A. Meyers
Senior Assistant Attorney General

TAM/tpn

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EXHIBIT D

FILED
NEWBERRY COUNTY
2011 AUG 10 A 10: 25
JACKIE S. BOWERS
CLERK OF COURT

000033

1228 Walnut Street
Newberry, South Carolina 29108

August 7, 2011

BY FAX AND FIRST CLASS MAIL

Tracy A. Meyers, Esquire
Senior Assistant Attorney General
Office of the South Carolina Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Facsimile 803-734-3677

FILED
NEWBERRY COUNTY
2011 AUG 10 A 10:55
JACKIE S. BOWERS
CLERK OF COURT

Re: Request for Documents under the South Carolina
Freedom of Information Act

Dear Ms. Meyers:

I received today your letter of August 5, 2011 (copy enclosed), and respond as follows:

1. I do not address your comments about my June 30, 2011 FOIA request to Attorney General Wilson, with copies provided to AG Wilson's counsel in Case 2010-CP-40-4900 ("Case 4900"). This matter is the subject of pending litigation.
2. With respect to your comments regarding my FOIA requests of July 19 & 20, 2011, which you have denied:
 - a. The difficulty you state you have in complying with my FOIA requests pales in comparison to the difficulty, as here, of a private citizen seeking the truth as found in public documents when she has been falsely accused by the State of South Carolina, through its Attorney General, of civil and criminal impropriety in a tort suit brought by a private, contingency-fee law firm seeking tens of millions of dollars in alleged actual and punitive damages.
 - b. You assert that my not obtaining these public documents through FOIA is "the wisest thing to do." I respectfully submit one does not have to be wise to exercise his rights under FOIA.
 - c. I know of no FOIA provision authorizing you to "put [my] requests on hold pending the outcome of your litigation."
 - d. I know of no FOIA provision which allows the Attorney General to refuse compliance with FOIA until "litigation is complete."

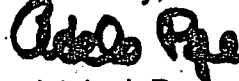
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Ltr. to Ms. Meyers
August 7, 2011
Page 3

I respectfully request that you immediately reverse your denial of my FOIA request for these public documents and notify me by phone at (803) 413-0753 when I may pick them up.

Kindly inform me by noon Tuesday, August 9, 2011 if you will reverse your position and comply with my FOIA requests. If not, it is my intention to take appropriate measures to secure the requested documents.

Sincerely,



Adele J. Pope

AJP/ja
Enclosure: Ltr. of Tracy A. Meyers
Sr. Assistant Attorney General dtd. 8/5/2011

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e. I know of no FOIA provision which allows the Attorney General to refer FOIA requests "to the Civil Division and ask that they be treated as discovery requests in the ongoing litigation referred to above, if appropriate."

f. It is my understanding that from 2003 - 2011 former AG McMaster brought only about 7 lawsuits using outside private counsel ("Special Counsel"), all of whom were engaged on a contingency-fee basis, and required to execute Retention Agreements which had some standard provisions.

g. It is my understanding that all such Retention Agreements require compliance with FOIA.

h. It is my understanding that Case 4900 is the first and only time AG McMaster retained Special Counsel to sue S. C. citizens rather than multi-national corporations.

i. It is my understanding that AG McMaster's Retention Agreements with Special Counsel specifically assert that they are public documents.

j. It is my understanding that all Retention Agreements – other than possibly the Retention Agreement with Sweeney, Wingate and Barrow to sue Robert L. Buchanan, Jr. and me – provide that Special Counsel may not receive compensation from any source other than a portion of the State's recovery.

k. It is my understanding that AG McMaster's announced policy [October 2, 2009] with respect to campaign contributions from Special Counsel was that he would not accept them, but that he accepted a \$1,000 contribution from a principal of the Sweeney, Wingate & Barrow Firm shortly after they were engaged to – and did – sue me.

l. It is my understanding that all other Retention Agreements of AG McMaster require the Attorney General or an assistant sign all pleadings.

m. It is my understanding that before engaging the Wingate Firm to sue Robert Buchanan and me, AG McMaster's announced policy was to use Special Counsel only where the size and complexity of the litigation and government budget restraints made him unable to handle the case himself.

n. It is my understanding that AG McMaster's delegation to Russell Bauknight of the authority to sue Robert Buchanan and me "on behalf of" Henry Dargan McMaster in his Capacity as Attorney General of South Carolina is without precedent both in this State and the Nation.

EXHIBIT E

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JACKIE S. BOWERS
CLERK OF COURT

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STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY

IN THE COURT OF COMMON PLEAS

Civil Action No.

Adele J. Pope,

Plaintiff,

v.

Alan Wilson, in his capacity as
Attorney General of South Carolina,

Defendant.

) AFFIDAVIT SUPPORTING AG WILSON'S
) RELEASE OF FORMER AG McMATER'S
) CONTINGENCY-FEE LITIGATION
) RETENTION AGREEMENT WITH
) SWEENEY, WINGATE & BARROW
) TO SUE BUCHANAN AND POPE,
) AUTHORIZATION BY McMASTER
) TO BAUKNIGHT TO SPEAK ON
) BEHALF OF THE STATE/AG
) IN CASE 4900
) AND RELATED DOCUMENTS

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JACKIE S. BOWEN
CLERK OF COURT

PERSONALLY APPEARED BEFORE ME, ADELE J. POPE, who being duly sworn deposes and says:

1. I am a citizen and resident of Newberry County, South Carolina.
2. This affidavit is based on my personal knowledge and belief, including knowledge gained from my service as personal representative, with Robert L. Buchanan, Jr. ("Bob"), under Brown's Will and as Trustee with Bob of the James Brown 2000 Irrevocable Trust.
3. Bob and I served as PR/Trustees from November 2007 until May 26, 2009 when we were replaced by Russell Bauknight in a settlement (now on appeal) forged by former AG McMaster, working principally through his senior assistant AG Havird "Sonny" Jones.
4. For reasons outlined in the briefs in the appeal Bob and I could not support AG McMaster's settlement because, in James Brown's own words it was "an affront to

[his] wishes", taking \$50 Million from the education trusts Brown set up in 2000 for certain of his grandchildren and scholarships for needy and deserving students.

5. In April 2010 an attorney for Brown's companion Tommie Rae threatened that if we did not drop our appeal, private contingency fee attorney Kenneth Wingate, of Sweeney, Wingate and Barrow, P.C. (collectively "Wingate") had already been engaged by Sr. Assistant AG Sonny Jones to sue us.

6. On May 19, 2010 Wingate, sued us in Case 2010-CP-40-4900 ("Case 4900") for tens of millions of dollars, as sole counsel for, among others:

a. AG McMaster as Attorney General of the State of South Carolina:

b. Russell L. Bauknight "on behalf of" AG McMaster in his Capacity as Attorney General of South Carolina: and

7. The Case 4900 complaint and other filings falsely asserts that Bob and I:

a. Intentionally overstated James Brown's worldwide music empire at about \$85 Million [\$100 Million less a debt to TIAA];

b. Wrongfully challenged McMaster's settlement; and

c. Wrongfully refused to sign documents promising not to criticize McMaster or his destruction of James Brown's estate plan.

8. If the false allegations the AG/State made in the complaint were true, I would be unable to practice law and could be subject to both criminal charges and civil penalties.

9. Even though Case 4900 has been pending for almost 15 months, Wingate, acting for the AG/State, and Bauknight as the AG's agent, refuse to release any documents, including those public documents listed below.

10. By letter dated July 19, 2011, a copy of which is attached as Exhibit 1, I

requested from AG Alan Wilson, under the S. C. Freedom of Information Act ("FOIA"):

1. The published policies and/or rules and regulations of the Office of the Attorney General of South Carolina ("AG") with respect to the engagement of private attorneys, including contingency-fee attorneys, by the AG in effect in May 2010.
 2. The published policies and/or rules and regulations of the Office of the AG with respect to the engagement of private attorneys, including contingency-fee attorneys, by the AG currently in effect (July 19, 2011).
 3. The contract of the then-AG [Henry D. McMaster] and/or the State of South Carolina engaging Kenneth B. Wingate and Everett Kendall, II to commence Civil Action No. 2010-GC-4000073 in the Probate Court for Richland County on May 19, 2010 on behalf of the AG.¹
 4. Any contract and/or other document authorizing Russell L. Bauknight to commence Civil Action No. 2010-GC-4000073 on behalf of the AG and/or the State of South Carolina.
11. On August 5, 2011, AG Wilson's office declined to produce the documents.
12. By letter dated August 7, 2011, a copy of which is attached as Exhibit 2, I asked AG Wilson's office to reconsider. It did not.
13. From published records and his own statements, I understand that AG McMaster used private, contingency fee attorneys about 8 times between 2003 and 2011, and all signed Litigation Retention Agreement with standard provisions.
14. On information and belief, McMaster takes the position that private contingency fee counsel ("Special Counsel") served the public interest by suing:
- a. Eli Lilly [See Litigation Retention Agreement, Ex. 3, with emphasis added]
 - b. Abbott Laboratories
 - c. Baxter International
 - d. Dey
 - e. Boehringer Ingelheim Roxane

¹ Now Case 4900

- f. Schering-Plough
- g. AstraZeneca [See Litigation Retention Agreement, emphasis added, Ex. 4]
- h. Robert L. Buchanan, Jr. and me.

15. McMaster's contributions from Special Counsel to his political campaigns were the subject of considerable controversy, resulting in a 2009 announcement he would not accept political contributions from Special Counsel.

16. Within weeks after Special Counsel sued Bob and me in Case 4900, however, Scott Barrow, a principal in the Wingate Law Firm, made a \$1,000 contribution to McMaster's gubernatorial campaign.

17. On information and belief, Mc Master's Litigation Retention Agreements all state in Article III, Paragraph F, or elsewhere:

This Agreement shall be considered a public document. [Bold supplied.]

18. In the almost 15 months since suing me in what is clearly an attempt to destroy my career in retaliation for our appeal AG McMaster, Wingate, AG McMaster, AG Wilson and Bauknight have not produced a single document to support their false allegations against Bob and me. This is true, even though AG McMaster's standard Retention Agreement says:

F. Public Records

Any material, data...documents..gathered by Special Counsel or in Special Counsel's possession in furtherance of this litigation....shall be considered the exclusive property of the State of South Carolina. Special Counsel agrees to adhere to the South Carolina Freedom of Information Act...and maintain all public records in accordance with State law...[L.R. Agrmt., Art.III, F]

19. I am informed and believe that as a member of the public I am entitled to a copy of the Litigation Retention Agreement AG McMaster relied on to engage private,

contingency fee attorneys to sue me.

20. I am also informed and believe that, as a member of the public, I am entitled to see documents by which McMaster asserts that he has legally authorized Bauknight to act "on behalf of" the Attorney General of South Carolina.

21. I am informed and believe the Retention Agreement will show whether AG McMaster, who acted under color of state law and in his official capacity, and whose actions should have been consistent with the public interest, was in fact acting to punish Bob and me for conducting a proper appeal; not hiring lawyers he tried to force us to hire; and/or not signing a document preventing us from criticizing AG McMaster's destruction of James Brown's estate plan.²

22. On July 21, 2011, defending the AG's use of private counsel in a filing in the AstraZeneca ("AZ") case, AG Wilson stated:

On occasion, the Attorney General, in carrying out his responsibility, has found that it is necessary to hire outside counsel on a contingency-fee basis. These attorneys. . . take on substantial risks, litigating these matters against multi-billion dollar entities, which employ scores of national law firms. . . Private counsel undertake this representation under the direction and control of the Attorney General... [Reply, p.3] [Emphasis supplied.]

23. In support of his AZ Retention Agreement, AG Wilson stated:

Because the Attorney General is in control of the litigation, and possesses final authority over the case, there is no risk of bias or improper enforcement.

² As an attorney advising creators of private foundations, I have a duty to caution clients in S.C., or intending to transfer a private foundation here, that AG McMaster claims the authority to take over any estate or private foundation involved in a formal testacy case; rewrite the Settlor's estate plan to McMaster's liking; and replace the Settlor's properly-serving trustees with AG McMaster's appointees. What AG McMaster and his staff did to destroy James Brown's estate plan is described in "Private Foundation, Copyright Heirs and Musical Millionaires: Why The James Brown 'I Feel Good' Trust doesn't...", filed in Case 4900 [Smith & Pope, Dr., Apr. 2011] I believe AG McMaster's suit violates my First Amendment rights.

24. I am informed and believe that if AG Wilson is required to produce the requested documents listed above, the public and I will be able to ascertain:

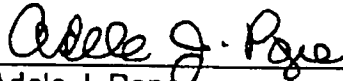
- a. Is Bauknight's assertion that he speak on behalf of the State/AG McMaster in Case 4900 legal?
- b. If so, should Bauknight have threatened me with a lawsuit for exercising my FOIA rights?
- c. Did all the private plaintiffs Wingate simultaneously represents while he represents the State/AG in Case 4900 cede control to the AG so that the State/AG would not trample on our Constitutional rights as citizens?
- d. Is any public policy articulated or served for the State/AG joining with private plaintiffs, many non-citizens of S.C. in this tort suit for money damages against us?
- e. Is any Public Policy violated or served by AG McMaster's sharing a single private law firm and attorney-client privilege with private plaintiffs?
- f. Did AG McMaster violate his own policy and/or the Retention Agreement by not maintaining control over the litigation or signing the complaint?
- f. What does the Retention Agreement provide if private plaintiffs/Bauknight become targets of securities, tax or fraud investigations and their witnesses are under indictment or investigation in South Carolina?
- g. How are the funds recovered from Bob and me, if any, shared?
- h. How is our judgment against Plaintiffs, if any, paid?
- i. May Wingate properly assert the State's privileges and immunities to attempt to relieve Private Plaintiffs from default?
- j. Did the AG McMaster approve seeking money damages against us for not signing an agreement not to criticize AG McMaster ?
- k. What action, if any, has AG Wilson taken to amend the Retention Agreement or Bauknight authorization to act on behalf of the AG?

25. I am informed and believe that the documents requested under FOIA on July 19, along with other public documents which have already been released or

requested, will show:

- a. McMaster, at a minimum, failed to supervise Sr. Asst. AG Sonny Jones.
- b. McMaster, at a minimum, failed to oversee and control AG Jones' relationship with now-indicted former trustee David Cannon; received political contributions from Cannon's attorneys while Cannon was under criminal investigation; brought Case 4900 with Cannon's joint venturers; and has now listed Cannon, awaiting felony trial, as a witness for the AG/State against Bob and me in Case 4900.
- c. McMaster, at a minimum, failed to oversee and control AG Jones' improper alliance with Brown's companion Tommie Rae and her advisors.
- d. McMaster chose outside counsel Wingate who was totally ignorant of the Brown cases, and allowed Wingate, on behalf of the State and AG, to make allegations to the Court McMaster and Jones knew to be false.
- e. McMaster, without basis to do so, delegated the authority of his high office to Bauknight, who abused it with his purported \$4.7 Million valuation of Brown's worldwide music empire, and other actions.
- f. McMaster, at a minimum, authorized -- then failed to oversee -- a complaint which contains false allegations against Bob and me AG McMaster and AG Jones knew to be false and unfounded. For example, Wingate made the false allegation that the Christie's sale was improper where AG McMaster was party to two separate, unappealed circuit court orders approving the Christie's sale -- and AG McMaster asked the Court of Appeals to approve the Christie's sale, which it did, in a third Order.
- g. McMaster, at a minimum, allowed the State to falsely accuse Bob and me of presenting a manipulated value of James Brown's assets to the IRS when he knew there was a sound basis for the \$85 Million (given by all fiduciaries other than Bauknight) and that Bauknight, with the knowledge and/or compliance of AG Jones, was improperly manipulating the value of Brown's assets, resulting in the false \$4.7 valuation of James Brown's worldwide music empire.

FURTHER DEPONENT SAYETH NOT.


Adele J. Pope

SWORN TO BEFORE ME this
10th day of August, 2011

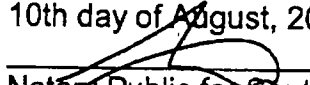
 (L.S.)
Notary Public for South Carolina
My commission expires: 7/13/16

EXHIBIT 3

LITIGATION RETENTION AGREEMENT FOR SPECIAL COUNSEL APPOINTED BY THE SOUTH CAROLINA ATTORNEY GENERAL

This litigation retention agreement ("Agreement") is by and between South Carolina Attorney General Henry McMaster ("Attorney General") and the below-signed attorney(s) ("Special Counsel").

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RECITALS

WHEREAS, the Attorney General has concluded that it is in the best interest of the State of South Carolina to retain Special Counsel specifically for this litigation matter; and

WHEREAS, the Attorney General hereby engages Special Counsel to provide legal representation including, but not limited to, all preparation for, settlement of and/or actual litigation arising from the State of South Carolina's purchase or reimbursement of the pharmaceutical prescription drug Zyprexa, which is manufactured by Eli Lilly and Company.

WHEREAS, Special Counsel specifically represents that he has the skill, experience, expertise, and competence necessary for the meaningful prosecution of this matter.

NOW THEREFORE, in consideration for the mutual promises and covenants set forth herein, and for other valuable consideration, the Attorney General and Special Counsel hereby agree to the following terms and conditions:

Article I. TERM

This Agreement, which shall serve as the appointment of the attorneys whose signatures are affixed below as Special Counsel to the Attorney General, commences on July 19, 2006, and terminates on July 19, 2010, unless this work is concluded earlier or the Attorney General or Special Counsel terminates the appointment earlier pursuant to Article VI of this Agreement. If the work for which this appointment is made is not completed by the date above, then the Attorney General may re-appoint Special Counsel for an additional term or terms to be determined at that time. The Attorney General shall not be liable to compensate Special Counsel for any services rendered after termination of the Agreement.

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Article II. SERVICES

A. Scope of Appointment

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Special Counsel shall provide legal services, advice, and consultation to the Attorney General for this litigation in a manner consistent with accepted standards of practice in the legal profession. In view of the personal nature of the services to be rendered under this appointment, the Attorney General shall be the sole judge of the adequacy of those services. Moreover, all parties recognize that because of its personal nature, this Special Counsel appointment does not extend to any law firm that the Special Counsel is associated with, a partner of, or for which Special Counsel serves as of counsel. The parties agree:

1. The Attorney General shall have final authority over all aspects of this litigation. The litigation may be commenced, conducted, settled, approved, and ended only with the express approval and signature of the Attorney General. The Attorney General at his sole discretion has the right to appoint a designated assistant ("designated assistant") to oversee the litigation, which appointment the Attorney General may modify at will.
2. Special Counsel shall provide legal services to the Attorney General subject to the approval of the Attorney General for the purposes of seeking injunctive relief, monetary relief, and other relief against all entities in this litigation.
3. The Attorney General may provide attorneys and other staff members to assist Special Counsel with this litigation. The identity and responsibilities of such personnel so assigned shall be determined solely by the Attorney General. All pleadings, motions, briefs, formal documents, and agreements must bear the signature of the Attorney General or his designated assistant.
4. Special Counsel shall coordinate the provision of the legal services with the Attorney General or his designated assistant, other personnel of the Office of the Attorney General, and such others as the Attorney General may appoint as Special Counsel. All pleadings, motions, briefs, and other material which may be filed with the court shall first be approved by the Attorney General and provided to his office in draft form in a reasonable and timely manner for review. Regular status meetings may be held as requested by the Attorney General.
5. Special Counsel shall communicate with state entities through the Office of the Attorney General unless otherwise authorized by the Attorney General.
6. Special Counsel shall provide sufficient resources, including attorney time, to prosecute this litigation in accordance with Rule 407, Rules of Professional Conduct, South Carolina Appellate Court Rules.

B. Delegation of Work

Special Counsel may delegate work to other attorneys or paralegals within the firm with which the Special Counsel is affiliated but may not, without express approval of the Attorney General, delegate any work whatsoever to any attorney in any other firm. Special Counsel agrees to accept full responsibility and liability for the work of any delegate.

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C. Attorney-Client Relationship

Special Counsel will render services pursuant to this Agreement as an independent contractor. Neither Special Counsel nor any employee of Special Counsel shall be regarded as employed by, or as an employee of, the Attorney General or the State of South Carolina.

An attorney-client relationship shall exist between the Attorney General and Special Counsel.

Article III. CASE MANAGEMENT

A. Status Reports, Time Records

The Attorney General may at any time request status reports from Special Counsel regarding any aspect of this litigation. Within twenty days after the request is received, Special Counsel shall submit such status reports to the Attorney General. Failure to timely provide such status reports may result in forfeiture of a portion of Special Counsel's compensation at the sole discretion of the Attorney General.

At a minimum, status reports must include a description of the current status of the matter, any significant events that have occurred since the previous status report, and a prospective analysis of any significant future events.

In addition, detailed time and cost records reflecting all work must be maintained by Special Counsel and presented monthly to the Attorney General. Each monthly statement must clearly identify the name or initials of the attorney or paralegal who performed work on a given assignment, the date when the services were rendered, a detailed description of the specified services rendered, and the number of hours or portions thereof worked on each specific item to the nearest tenth of an hour. Examples of specific items for which specific times must be listed include: telephone conferences, legal research, preparation of particular pleadings, preparation of correspondence, preparation for a particular deposition or argument, and time in court at hearings or trials. When initials are used, the invoice must identify all persons whose initials appear on the invoice and indicate whether each is an attorney or paralegal.

B. Notices and Correspondence

All notices, demands, requests, consents, approvals, and other instruments required to be given pursuant to the terms of this Agreement shall be in writing and shall be deemed to have been properly given when: (1) hand delivered; (2) sent by U.S. Registered or Certified mail, receipt requested, postage prepaid; (3) if certified or registered mail is either refused or unclaimed, then by regular U.S. Mail; (4) by overnight delivery service with receipt (Airborne, FedEx, UPS, etc.); (5) by email; or (6) by fax, followed by one of the other methods of delivery described herein. Fax delivery shall be deemed to be on the date of receipt of the fax, and the parties hereto agree that a fax with confirmation shall be adequate proof of receipt of the fax.

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Both Special Counsel and the Attorney General may designate a representative to receive such instruments and correspondence as described herein. While both parties recognize this designation may be changed at any time, and without consent of the other party by giving written notice of the new designated representative, until further notice, such instruments and/or correspondence should be addressed to:

Name: Henry McMaster
Attorney General
Address: P. O. Box 11549
Columbia, SC 29211
Phone: 803-734-3970
Fax: 803-253-6283

Name: C. Havird Jones, Jr.
Senior Assistant Attorney General
Address: P. O. Box 11549
Columbia, SC 29211
Phone: 803-734-3970
Fax: 803-734-3677
Email: cjones@ag.state.sc.us

Name: John S. Simmons
Address: Law Offices of John S. Simmons,
L.L.C.
1711 Pickens Street
Columbia, SC 29206
Phone: 803-779-4600
Fax: 803-254-8874
Email: jsimmons@simmonsllawfirm.com

Name: John Belton White, Jr.
Address: Harrison, White, Smith & Coggins
P. O. Box 3547
Spartanburg, SC 29304
Phone: 864-585-5100
Fax: 864-591-0491
Email: jwhite@spartanlaw.com

Name: F. Kenneth Bailey, Jr.
Address: Bailey Law Firm
The Lyric Centre
440 Louisiana, Suite 1900
Houston, TX 77002
Phone: 713-425-7240
Fax: 713-425-7249
Email:

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C. Communication

Special Counsel agrees to consult in advance, by telephone, fax machine, or in writing, with the Attorney General promptly on all matters that may be precedential, controversial, of particular public interest, or otherwise noteworthy or important, and to keep the Attorney General fully informed at all times.

Special Counsel shall give timely written notice to the Attorney General of any and all of the following legal events in this litigation:

1. Pleadings
2. Dispositive motions
3. Hearings
4. Rulings
5. Trials
6. Settlement negotiations
7. Appeals or Notice of Appeals
8. Briefs filed by any party or entity
9. Appellate arguments or decisions
10. Enforcement efforts

Special Counsel agrees to meet with Attorney General's Office personnel when and where requested by the Attorney General in furtherance of this litigation.

D. Settlement

The Attorney General must approve in advance all aspects of this litigation and shall be included in any settlement discussions. Special Counsel agrees that any settlement in this case must receive the Attorney General's express prior approval in writing. Special Counsel shall confer with the Attorney General as early as practicable in any settlement negotiation process.

E. Appeals

It is important that the Attorney General receives early notice of any potential appellate litigation in any way affecting the State. Therefore, Special Counsel agrees to give prompt oral and written notice to the Attorney General when receiving: (1) any dispositive decision by any appellate court affecting the litigation in any way; or (2) a Notice of Appeal from a court's decision filed by any party to this litigation.

F. Public Records

Any material, data, files, discs, or documents created, produced, or gathered by Special Counsel, or in Special Counsel's possession in furtherance of this litigation, or which fulfills an obligation of this appointment, shall be considered the exclusive property of the State of South Carolina. Special Counsel agrees to adhere to South Carolina's Freedom of Information Act, South Carolina Code of Laws §30-4-10 *et. seq.*, and maintain all public records in accordance with

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State law; provided, however, that Special Counsel shall consult with, and obtain the approval of, the Attorney General before responding to any public records request. Special Counsel agrees to comply with the Attorney General's policy on document retention and to refrain from destroying documents unless otherwise permitted under this policy. Special Counsel agrees to comply with Rule 417 of the South Carolina Appellate Court Rules. Special Counsel agrees to request written confirmation from the Attorney General's Office prior to destroying any documents. This Agreement shall be considered a public document.

Article IV. COMPENSATION

A. Fee Schedule

This is a contingent fee case. Special Counsel shall receive no compensation for any services rendered unless the State of South Carolina receives a settlement or damage award in connection with this litigation. If the State receives such an award, Special Counsel will be compensated for his services pursuant to this Article, as follows:

1. Special Counsel shall be reimbursed all reasonable, normal, and verified "out of pocket" costs and expenses as specified in Article V below.

These costs and expenses necessary for conducting this litigation, as defined in Article V of this Agreement, shall initially be advanced by Special Counsel and shall be deducted from the litigation's gross or total recovery, if any, before any further distribution is made.

Provided, however, that civil penalties shall not be included in calculating the gross or total recovery, and Special Counsel shall not receive any fees or costs from awards of civil penalties with such penalty payments to be made to the Office of the Attorney General for the State of South Carolina.

Provided, further, that as to any federal Medicaid portion of a settlement or award, no reimbursable cost may be deducted, and no settlement or award amount shall be included in calculating the gross or total recovery for the purposes of fees to the Special Counsel; and

2. At least 77% of the remaining or net settlement or judgment proceeds (but not including punitive or exemplary damages, if any) shall be paid or applied to or for the State or the people of South Carolina or the victims in a manner to be determined by the Attorney General in his sole discretion; and
3. Special Counsel shall be paid the remaining 23% or less in fees of said remaining or net settlement or judgment proceeds (but not including punitive or exemplary damages), as follows:

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Amount of net proceeds of judgment or settlement (in millions)	Contingent percentage
First \$0 to \$5	23%
Excess over \$5 up to \$10	19%
Excess over \$10 up to \$25	15%
Excess over \$25 up to \$50	11%
Excess over \$50 up to \$100	7%
Excess over \$100	4%

Provided, however, that the Attorney General shall retain 10% of Special Counsel's fees awarded under this section 3.

4. Special Counsel shall be paid 10% or less of any punitive or exemplary damage proceeds as follows, with the remaining 90% or more to be paid or applied to or for the State or the people of South Carolina or the victims in a manner to be determined by the Attorney General at his sole discretion:

Amount of punitive or exemplary proceeds (in millions)	Contingent percentage
First \$0 to \$10	10%
Excess over \$10 to \$100	5%
Excess over \$100	3%

Provided, however, the Attorney General shall retain 10% of Special Counsel's fees awarded under this section 4.

5. All settlement or judgment proceeds shall be paid by or on behalf of the defendant(s) to the Attorney General's office, which shall transfer them for disbursement to the account of a South Carolina attorney involved in the case. All funds transferred pursuant to this paragraph shall be maintained in a bank licensed to do business and having at least one branch in the State of South Carolina.
6. It is strictly agreed and understood by Special Counsel that if the proposed or actual defendants in this matter agree to a settlement or resolution prior to or upon commencement of the action or shortly thereafter, upon negotiation or consultation or upon only initial responses, then Special Counsel's compensation shall be one-half of that specified in sections 3 and 4 above.
7. This distribution and compensation calculation shall be included in a final order in the case.

B. Settlement or Judgment

The above Fee Schedule applies to any settlement or judgment, whether the settlement or judgment is entirely monetary in nature or is combined with non-monetary relief. Should the litigation be resolved by settlement or judgment involving a combination of monetary and non-

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monetary relief (such as injunctive relief, non-monetary payment, the provision of goods and/or services or any other "in kind" terms, or any combination of those), the Attorney General shall determine the monetary value to the State.

C. Payment of Fees, Costs and Expenses

Neither the State of South Carolina nor the Attorney General shall be required under this Agreement, or otherwise, to compensate or reimburse Special Counsel for his work in this matter, other than as set forth in Articles IV (A), and IV(B), and V herein. Accordingly, except for the fee schedule, expenses, and costs enumerated and outlined herein, Special Counsel shall not be entitled to and shall not accept compensation or reimbursement from any other source.

Article V. EXPENSES AND COSTS

A. Advancement of Expenses and Costs

Special Counsel shall advance all costs, expenses, and disbursements, including expert witness fees and costs, deposition costs, and costs of document production. Special Counsel's agreement to advance all litigation expenses and costs, as well as its agreement to defer fees while any and all litigation (including appeals and enforcement actions) is pending has been taken into consideration in establishing the fee schedule above.

B. Expenses and Cost Reimbursement

Special Counsel shall be reimbursed solely from the litigation's gross recovery as approved by the Attorney General for certain reasonable expenses and costs enumerated below. Proper documentation, by receipts or otherwise shall be submitted with all invoices and all documentation shall be retained by Special Counsel for at least one full year following this Agreement's termination. All expenses must be itemized and no reimbursement may be applied for or requested for "miscellaneous" listings. The Attorney General in his sole discretion may decline to reimburse Special Counsel for improperly documented, unnecessary, or unreasonable costs or expenses.

1. Experts

Special Counsel shall be reimbursed for retention of experts, including fees and other reasonable costs, only when expressly authorized by the Attorney General.

2. Lodging

Receipts are required. In-state overnight lodging shall be reimbursed at actual cost up to a maximum of \$75.00 plus tax per day. Any expenses incurred due to out-of-state lodging greater than \$75.00 plus tax per day shall be approved in advance by the Attorney General. If circumstances render Special Counsel

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unable to obtain the prior approval of the Attorney General in this situation, as soon as thereafter practicable, Special Counsel shall notify the Attorney General of the location, the hotel, the daily rate, and the reasons for not obtaining prior approval. Failure to follow these procedures shall result in such lodging costs being borne by Special Counsel.

3. **Meals**

There is no reimbursement for meals.

4. **Travel**

Receipts are required. Airfare shall be reimbursed at actual cost based on coach fares.

5. **Mileage**

Automobile travel shall be reimbursed at the maximum state mileage rate of the State of South Carolina in effect at the time. Travel by car shall not exceed coach fares on commercial airlines. Mileage is to be itemized on the invoice as "Mileage" (number of miles @ rate per mile).

6. **Photocopying**

In-house photocopying (including color copies) shall be reimbursed at the Special Counsel's actual expense, not to exceed 15 cents (\$0.15) per copy and is to be itemized on the invoice as "Photocopies" (number of copies @ rate per copy). Reasonable amounts for outside photocopying shall be reimbursed at actual cost if receipts are provided.

7. **Priority/Overnight Mail**

Charges for priority or overnight mail services shall be reimbursed only if a justifiable basis exists for using the service. In no event shall the Special Counsel be reimbursed for the cost of sending invoices or status reports to the Attorney General by overnight or priority mail services.

8. **Secretarial or Staff Overtime**

There shall be no reimbursement for secretarial or staff overtime unless expressly authorized in writing by the Attorney General prior to invoicing.

9. **Other Expenses**

Actual costs shall be reimbursed for certain routine expenses including transcripts, deposition costs, witness fees, subpoena service, postage, printing,

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cab and bus fares, parking, and long-distance telephone calls when itemized and receipts are provided. Expenses for office space, word processing, secretarial, and paralegal costs are not reimbursable. Westlaw expenses shall be reimbursed only when authorized in advance by the Attorney General.

C. One Invoice

At the conclusion of the litigation, Special Counsel agrees to submit one original invoice to the Attorney General for expenses and costs.

Article VI. TERMINATION

A. Termination by the Parties

The Attorney General reserves the right to terminate this Agreement at any time, in his sole discretion, and without cause or duty of explanation. Special Counsel may terminate its duties and obligations under the Appointment and this Agreement upon thirty (30) days written notice to the Attorney General. Termination on the part of the Special Counsel shall not be effective if the Attorney General finds in his sole discretion that such termination prejudices or has a material adverse effect on the State of South Carolina. Upon termination, all material, data, files, discs, or documents created, produced, or gathered by Special Counsel, or in Special Counsel's possession in furtherance of this litigation, or which fulfill an obligation of this appointment shall be immediately delivered to the Attorney General as directed by him, and without encumbrance or lien or any cost or charge to the Attorney General.

B. Compensation Upon Termination

In the event this Agreement is terminated by either party, or by its terms, or if Special Counsel is terminated without cause, Special Counsel shall be reimbursed only from the litigation's gross recovery and only for all properly documented expenses and costs, as defined in Article V of this Agreement, rendered prior to termination; there shall be no payment of any attorneys' fees unless the Attorney General agrees in writing to the payment of fees for work performed under such terms and conditions as may be set by him in his sole discretion. If Special Counsel is terminated for cause, he will not be reimbursed for any expenses and costs or paid any fee or other compensation for any services relating to the litigation.

Article VII. OTHER TERMS AND CONDITIONS

A. Media Statements

The parties agree that neither Special Counsel nor any partner, associate, employee, or any other person assisting with the legal work contemplated by this Agreement shall speak to any representative of a television station, radio station, newspaper, magazine, or any other media outlet concerning the work outlined or contemplated by this Agreement without first obtaining

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approval of the Attorney General. This Agreement specifically prohibits Special Counsel from speaking on behalf of the Attorney General or the State of South Carolina to any representative of the news media.

B. Jurisdiction and Choice of Law

This Agreement shall be administered in the State of South Carolina and shall be interpreted under the laws of the State of South Carolina. Special Counsel consents to complete jurisdiction in the appropriate courts of the State of South Carolina. This Agreement and any claims arising in any way out of it shall be governed by the laws of the State of South Carolina. Any litigation arising out of or relating in any way to this Agreement or the performance thereunder shall be brought in state courts of appropriate jurisdiction in the State of South Carolina, and Special Counsel hereby irrevocably consents to such exclusive jurisdiction.

C. Code of Professional Responsibility

If, during the appointment as Special Counsel, a complaint is filed against Special Counsel or Special Counsel's firm, alleging a violation of Rule 407, Rules of Professional Conduct, South Carolina Appellate Court Rules, or the applicable rules governing the state bar in which Special Counsel has been admitted, or the Code of Professional Responsibility, Special Counsel shall give prompt written notice of such complaint to the Attorney General. The Attorney General retains the right, in his sole discretion, to immediately terminate this Agreement if he deems the complaint to adversely affect in any way Special Counsel's ability to perform his duties required herein, or to adversely affect this litigation, the Attorney General, or the State of South Carolina.

D. Insurance

Special Counsel agrees to carry adequate professional liability insurance and to provide proof of same to the Attorney General promptly upon request.

E. Conflict of Interest

Special Counsel represents that neither he nor his firm has any conflict of interest with the State of South Carolina, its agencies, or subdivisions at this time. Special Counsel agrees that if a conflict of interest, potential or otherwise, arises, as defined by Rule 407, Rules of Professional Conduct, South Carolina Appellate Court Rules, during the term of this litigation, then Special Counsel will give timely written notice to the Attorney General. Special Counsel must request and obtain a written authorization from the Attorney General prior to undertaking any representation against or adverse to the State of South Carolina, its offices, boards, departments, or institutions during the term of this appointment.

F. Equal Opportunity

Special Counsel hereby represents that neither he nor his law firm discriminates on the basis of race, religion, color, sex, age, national origin, or disability against any person in the employment of personnel in their offices.

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G. Entire Agreement/Integration

This Agreement constitutes the entire understanding of the parties. Both parties agree that there is no other understanding or agreement other than the terms expressly stated herein.

H. Severability of Terms and Conditions

If any provision of this Agreement shall be held invalid, illegal, or unenforceable in any respect, said provision shall be severed. The validity, legality, and enforceability of all other provisions of this Agreement shall not in any way be affected or impaired unless such severance would cause this Agreement to fail of its essential purpose.

I. Amendment or Modification

No amendment or modification of this Agreement shall be effective against either party unless such amendment or modification is set forth in writing and signed by both parties.

J. Headings

The headings herein are for reference and convenience only. They are not intended and shall not be construed to be a substantive part of this Agreement or in any other way to affect the validity, construction, interpretation, or effect of any of the provisions of this Agreement.

K. Counterparts

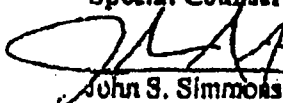
This Agreement may be executed in one or more counterparts, each of which shall be an original and all of which constitute one and the same instrument.

Attorney General of South Carolina


Henry McMaster

Date: July 19, 2006

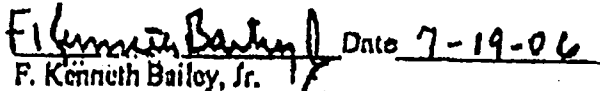
Special Counsel


John S. Simmons

Date: 7-19-06


John Belton White, Jr.

Date: 7-19-06


F. Kenneth Bailey, Jr.

Date: 7-19-06

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EXHIBIT 4

**LITIGATION RETENTION AGREEMENT
FOR SPECIAL COUNSEL APPOINTED BY THE
SOUTH CAROLINA ATTORNEY GENERAL**

This litigation retention agreement ("Agreement") is by and between South Carolina Attorney General Henry McMaster ("Attorney General") and the below-signed attorney(s) ("Special Counsel").

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RECITALS

WHEREAS, the Attorney General has concluded that it is in the best interest of the State of South Carolina to retain Special Counsel specifically for this litigation matter; and

WHEREAS, the Attorney General hereby engages Special Counsel to provide legal representation including, but not limited to, all preparation for, settlement of and/or actual litigation arising from the State of South Carolina's purchase or reimbursement of the pharmaceutical prescription drug Seroquel manufactured by AstraZeneca Pharmaceuticals, LP.

WHEREAS, Special Counsel specifically represents that he has the skill, experience, expertise, and competence necessary for the meaningful prosecution of this matter.

NOW THEREFORE, in consideration for the mutual promises and covenants set forth herein, and for other valuable consideration, the Attorney General and Special Counsel hereby agree to the following terms and conditions:

Article 1. TERM

This Agreement, which shall serve as the appointment of the attorneys whose signatures are affixed below as Special Counsel to the Attorney General, commences on October 23, 2006, and terminates on October 23, 2010, unless this work is concluded earlier or the Attorney General or Special Counsel terminates the appointment earlier pursuant to Article VI of this Agreement. If the work for which this appointment is made is not completed by the date above, then the Attorney General may re-appoint Special Counsel for an additional term or terms to be determined at that time. The Attorney General shall not be liable to compensate Special Counsel for any services rendered after termination of the Agreement.

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Article II. SERVICES

A. Scope of Appointment

Special Counsel shall provide legal services, advice, and consultation to the Attorney General for this litigation in a manner consistent with accepted standards of practice in the legal profession. In view of the personal nature of the services to be rendered under this appointment, the Attorney General shall be the sole judge of the adequacy of those services. Moreover, all parties recognize that because of its personal nature, this Special Counsel appointment does not extend to any law firm that the Special Counsel is associated with, a partner of, or for which Special Counsel serves as of counsel. The parties agree:

1. The Attorney General shall have final authority over all aspects of this litigation. The litigation may be commenced, conducted, settled, approved, and ended only with the express approval and signature of the Attorney General. The Attorney General at his sole discretion has the right to appoint a designated assistant ("designated assistant") to oversee the litigation, which appointment the Attorney General may modify at will.
2. Special Counsel shall provide legal services to the Attorney General subject to the approval of the Attorney General for the purposes of seeking injunctive relief, monetary relief, and other relief against all entities in this litigation.
3. The Attorney General may provide attorneys and other staff members to assist Special Counsel with this litigation. The identity and responsibilities of such personnel so assigned shall be determined solely by the Attorney General. All pleadings, motions, briefs, formal documents, and agreements must bear the signature of the Attorney General or his designated assistant.
4. Special Counsel shall coordinate the provision of the legal services with the Attorney General or his designated assistant, other personnel of the Office of the Attorney General, and such others as the Attorney General may appoint as Special Counsel. All pleadings, motions, briefs, and other material which may be filed with the court shall first be approved by the Attorney General and provided to his office in draft form in a reasonable and timely manner for review. Regular status meetings may be held as requested by the Attorney General.
5. Special Counsel shall communicate with state entities through the Office of the Attorney General unless otherwise authorized by the Attorney General.
6. Special Counsel shall provide sufficient resources, including attorney time, to prosecute this litigation in accordance with Rule 407, Rules of Professional Conduct, South Carolina Appellate Court Rules.

B. Delegation of Work

Special Counsel may delegate work to other attorneys or paralegals within the firm with which the Special Counsel is affiliated but may not, without express approval of the Attorney General, delegate any work whatsoever to any attorney in any other firm. Special Counsel agrees to accept full responsibility and liability for the work of any delegate.

C. Attorney-Client Relationship

Special Counsel will render services pursuant to this Agreement as an independent contractor. Neither Special Counsel nor any employee of Special Counsel shall be regarded as employed by, or as an employee of, the Attorney General or the State of South Carolina.

An attorney-client relationship shall exist between the Attorney General and Special Counsel.

Article III. CASE MANAGEMENT

A. Status Reports, Time Records

The Attorney General may at any time request status reports from Special Counsel regarding any aspect of this litigation. Within twenty days after the request is received, Special Counsel shall submit such status reports to the Attorney General. Failure to timely provide such status reports may result in forfeiture of a portion of Special Counsel's compensation at the sole discretion of the Attorney General.

At a minimum, status reports must include a description of the current status of the matter, any significant events that have occurred since the previous status report, and a prospective analysis of any significant future events.

In addition, detailed time and cost records reflecting all work must be maintained by Special Counsel and presented monthly to the Attorney General. Each monthly statement must clearly identify the name or initials of the attorney or paralegal who performed work on a given assignment, the date when the services were rendered, a detailed description of the specified services rendered, and the number of hours or portions thereof worked on each specific item to the nearest tenth of an hour. Examples of specific items for which specific times must be listed include: telephone conferences, legal research, preparation of particular pleadings, preparation of correspondence, preparation for a particular deposition or argument, and time in court at hearings or trials. When initials are used, the invoice must identify all persons whose initials appear on the invoice and indicate whether each is an attorney or paralegal.

B. Notices and Correspondence

All notices, demands, requests, consents, approvals, and other instruments required to be given pursuant to the terms of this Agreement shall be in writing and shall be deemed to have been properly given when: (1) hand delivered; (2) sent by U.S. Registered or Certified mail, return receipt requested, postage prepaid; (3) if certified or registered mail is either refused or unclaimed, then by regular U.S. Mail; (4) by overnight delivery service with receipt (Airborne, FedEx, UPS, etc.); (5) by email; or (6) by fax, followed by one of the other methods of delivery described herein. Fax delivery shall be deemed to be on the date of receipt of the fax, and the parties hereto agree that a fax with confirmation shall be adequate proof of receipt of the fax.

Both Special Counsel and the Attorney General may designate a representative to receive such instruments and correspondence as described herein. While both parties recognize this designation may be changed at any time, and without consent of the other party by giving written notice of the new designated representative, until further notice, such instruments and/or correspondence should be addressed to:

Name: Henry McMaster
Attorney General
Address: P. O. Box 11549
Columbia, SC 29211
Phone: 803-734-3970
Fax: 803-253-6283

Name: C. Havird Jones, Jr.
Senior Assistant Attorney General
Address: P. O. Box 11549
Columbia, SC 29211
Phone: 803-734-3970
Fax: 803-734-3677
Email: agsjones@ag.state.sc.us

Name: John S. Simmons
Address: Law Offices of John S. Simmons,
L.L.C.
1711 Pickens Street
Columbia, SC 29206
Phone: 803-779-4600
Fax: 803-254-8874
Email: jsimmons@simmonsllawfirm.com

Name: John Belton White, Jr.
Address: Harrison, White, Smith & Coggins
P. O. Box 3547
Spartanburg, SC 29304
Phone: 864-585-5100

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Fax: 864-591-0491
Email: jwhite@spartanlaw.com

Name: F. Kenneth Bailey, Jr.
Address: Bailey Law Firm
The Lyric Centre
440 Louisiana, Suite 1900
Houston, TX 77002

Phone: 713-425-7240
Fax: 713-425-7249
Email:

C. Communication

Special Counsel agrees to consult in advance, by telephone, fax machine, or in writing, with the Attorney General promptly on all matters that may be precedential, controversial, of particular public interest, or otherwise noteworthy or important, and to keep the Attorney General fully informed at all times.

Special Counsel shall give timely written notice to the Attorney General of any and all of the following legal events in this litigation:

1. Pleadings
2. Dispositive motions
3. Hearings
4. Rulings
5. Trials
6. Settlement negotiations
7. Appeals or Notice of Appeals
8. Briefs filed by any party or entity
9. Appellate arguments or decisions
10. Enforcement efforts

Special Counsel agrees to meet with Attorney General's Office personnel when and where requested by the Attorney General in furtherance of this litigation.

D. Settlement

The Attorney General must approve in advance all aspects of this litigation and shall be included in any settlement discussions. Special Counsel agrees that any settlement in this case must receive the Attorney General's express prior approval in writing. Special Counsel shall confer with the Attorney General as early as practicable in any settlement negotiation process.

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E. Appeals

It is important that the Attorney General receives early notice of any potential appellate litigation in any way affecting the State. Therefore, Special Counsel agrees to give prompt oral and written notice to the Attorney General when receiving: (1) any dispositive decision by any appellate court affecting the litigation in any way; or (2) a Notice of Appeal from a court's decision filed by any party to this litigation.

F. Public Records

Any material, data, files, discs, or documents created, produced, or gathered by Special Counsel, or in Special Counsel's possession in furtherance of this litigation, or which fulfills an obligation of this appointment, shall be considered the exclusive property of the State of South Carolina. Special Counsel agrees to adhere to South Carolina's Freedom of Information Act, South Carolina Code of Laws §30-4-10 *et. seq.*, and maintain all public records in accordance with State law; provided, however, that Special Counsel shall consult with, and obtain the approval of, the Attorney General before responding to any public records request. Special Counsel agrees to comply with the Attorney General's policy on document retention and to refrain from destroying documents unless otherwise permitted under this policy. Special Counsel agrees to comply with Rule 417 of the South Carolina Appellate Court Rules. Special Counsel agrees to request written confirmation from the Attorney General's Office prior to destroying any documents. This Agreement shall be considered a public document.

Article IV. COMPENSATION

A. Fee Schedule

This is a contingent fee case. Special Counsel shall receive no compensation for any services rendered unless the State of South Carolina receives a settlement or damage award in connection with this litigation. If the State receives such an award, Special Counsel will be compensated for his services pursuant to this Article, as follows:

1. Special Counsel shall be reimbursed all reasonable, normal, and verified "out of pocket" costs and expenses as specified in Article V below.

These costs and expenses necessary for conducting this litigation, as defined in Article V of this Agreement, shall initially be advanced by Special Counsel and shall be deducted from the litigation's gross or total recovery, if any, before any further distribution is made.

Provided, however, that civil penalties shall not be included in calculating the gross or total recovery, and Special Counsel shall not receive any fees or costs from awards of civil penalties with such penalty payments to be made to the Office of the Attorney General for the State of South Carolina.

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Provided, further, that as to any federal Medicaid portion of a settlement or award, no reimbursable cost may be deducted, and no settlement or award amount shall be included in calculating the gross or total recovery for the purposes of fees to the Special Counsel; and

2. At least 77% of the remaining or net settlement or judgment proceeds (but not including punitive or exemplary damages, if any) shall be paid or applied to or for the State or the people of South Carolina or the victims in a manner to be determined by the Attorney General in his sole discretion; and
3. Special Counsel shall be paid the remaining 23% or less in fees of said remaining or net settlement or judgment proceeds (but not including punitive or exemplary damages), as follows:

Amount of net proceeds of judgment or settlement (in millions)	Contingent percentage
First \$0 to \$5	23%
Excess over \$5 up to \$10	19%
Excess over \$10 up to \$25	15%
Excess over \$25 up to \$50	11%
Excess over \$50 up to \$100	7%
Excess over \$100	4%

Provided, however, that the Attorney General shall retain 10% of Special Counsel's fees awarded under this section 3.

4. Special Counsel shall be paid 10% or less of any punitive or exemplary damage proceeds as follows, with the remaining 90% or more to be paid or applied to or for the State or the people of South Carolina or the victims in a manner to be determined by the Attorney General at his sole discretion:

Amount of punitive or exemplary proceeds (in millions)	Contingent percentage
First \$0 to \$10	10%
Excess over \$10 to \$100	5%
Excess over \$100	3%

Provided, however, the Attorney General shall retain 10% of Special Counsel's fees awarded under this section 4.

5. All settlement or judgment proceeds shall be paid by or on behalf of the defendant(s) to the Attorney General's office, which shall transfer them for disbursement to the account of a South Carolina attorney involved in the case. All funds transferred pursuant to this paragraph shall be maintained in a bank licensed to do business and having at least one branch in the State of South Carolina.

6. It is strictly agreed and understood by Special Counsel that if the proposed or actual defendants in this matter agree to a settlement or resolution prior to or upon commencement of the action or shortly thereafter, upon negotiation or consultation or upon only initial responses, then Special Counsel's compensation shall be one-half of that specified in sections 3 and 4 above.
7. This distribution and compensation calculation shall be included in a final order in the case.

B. Settlement or Judgment

The above Fee Schedule applies to any settlement or judgment, whether the settlement or judgment is entirely monetary in nature or is combined with non-monetary relief. Should the litigation be resolved by settlement or judgment involving a combination of monetary and non-monetary relief (such as injunctive relief, non-monetary payment, the provision of goods and/or services or any other "in kind" terms, or any combination of those), the Attorney General shall determine the monetary value to the State.

C. Payment of Fees, Costs and Expenses

Neither the State of South Carolina nor the Attorney General shall be required under this Agreement, or otherwise, to compensate or reimburse Special Counsel for his work in this matter, other than as set forth in Articles IV (A), and IV(B), and V herein. Accordingly, except for the fee schedule, expenses, and costs enumerated and outlined herein, Special Counsel shall not be entitled to and shall not accept compensation or reimbursement from any other source.

Article V. EXPENSES AND COSTS

A. Advancement of Expenses and Costs

Special Counsel shall advance all costs, expenses, and disbursements, including expert witness fees and costs, deposition costs, and costs of document production. Special Counsel's agreement to advance all litigation expenses and costs, as well as its agreement to defer fees while any and all litigation (including appeals and enforcement actions) is pending has been taken into consideration in establishing the fee schedule above.

B. Expenses and Cost Reimbursement

Special Counsel shall be reimbursed solely from the litigation's gross recovery as approved by the Attorney General for certain reasonable expenses and costs enumerated below. Proper documentation by receipts or otherwise shall be submitted with all invoices and all documentation shall be retained by Special Counsel for at least one full year following this Agreement's termination. All expenses must be itemized and no reimbursement may be applied for or requested for "miscellaneous" listings. The Attorney General in his sole discretion may

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decline to reimburse Special Counsel for improperly documented, unnecessary, or unreasonable costs or expenses.

1. Experts

Special Counsel shall be reimbursed for retention of experts, including fees and other reasonable costs, only when expressly authorized by the Attorney General.

2. Lodging

Receipts are required. In-state overnight lodging shall be reimbursed at actual cost up to a maximum of \$75.00 plus tax per day. Any expenses incurred due to out-of-state lodging greater than \$75.00 plus tax per day shall be approved in advance by the Attorney General. If circumstances render Special Counsel unable to obtain the prior approval of the Attorney General in this situation, as soon as thereafter practicable, Special Counsel shall notify the Attorney General of the location, the hotel, the daily rate, and the reasons for not obtaining prior approval. Failure to follow these procedures shall result in such lodging costs being borne by Special Counsel.

3. Meals

There is no reimbursement for meals.

4. Travel

Receipts are required. Airfare shall be reimbursed at actual cost based on coach fares.

5. Mileage

Automobile travel shall be reimbursed at the maximum state mileage rate of the State of South Carolina in effect at the time. Travel by car shall not exceed coach fares on commercial airlines. Mileage is to be itemized on the invoice as "Mileage" (number of miles @ rate per mile).

6. Photocopying

In-house photocopying (including color copies) shall be reimbursed at the Special Counsel's actual expense, not to exceed 15 cents (\$0.15) per copy and is to be itemized on the invoice as "Photocopies" (number of copies @ rate per copy). Reasonable amounts for outside photocopying shall be reimbursed at actual cost if receipts are provided.

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ATTORNEY GENERAL

7. Priority/Overnight Mail

Charges for priority or overnight mail services shall be reimbursed only if a justifiable basis exists for using the service. In no event shall the Special Counsel be reimbursed for the cost of sending invoices or status reports to the Attorney General by overnight or priority mail services.

8. Secretarial or Staff Overtime

There shall be no reimbursement for secretarial or staff overtime unless expressly authorized in writing by the Attorney General prior to invoicing.

9. Other Expenses

Actual costs shall be reimbursed for certain routine expenses including transcripts, deposition costs, witness fees, subpoena service, postage, printing, cab and bus fares, parking, and long-distance telephone calls when itemized and receipts are provided. Expenses for office space, word processing, secretarial, and paralegal costs are not reimbursable. Westlaw expenses shall be reimbursed only when authorized in advance by the Attorney General.

C. One Invoice

At the conclusion of the litigation, Special Counsel agrees to submit one original invoice to the Attorney General for expenses and costs.

Article VI. TERMINATION

A. Termination by the Parties

The Attorney General reserves the right to terminate this Agreement at any time, in his sole discretion, and without cause or duty of explanation. Special Counsel may terminate its duties and obligations under the Appointment and this Agreement upon thirty (30) days written notice to the Attorney General. Termination on the part of the Special Counsel shall not be effective if the Attorney General finds in his sole discretion that such termination prejudices or has a material adverse effect on the State of South Carolina. Upon termination, all material, data, files, discs, or documents created, produced, or gathered by Special Counsel, or in Special Counsel's possession in furtherance of this litigation, or which fulfills an obligation of this appointment shall be immediately delivered to the Attorney General as directed by him, and without encumbrance or lien or any cost or charge to the Attorney General.

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M. ROSE BLAIR

B. Compensation Upon Termination

In the event this Agreement is terminated by either party, or by its terms, or if Special Counsel is terminated without cause, Special Counsel shall be reimbursed only from the litigation's gross recovery and only for all properly documented expenses and costs, as defined in Article V of this Agreement, rendered prior to termination; there shall be no payment of any attorneys' fees unless the Attorney General agrees in writing to the payment of fees for work performed under such terms and conditions as may be set by him in his sole discretion. If Special Counsel is terminated for cause, he will not be reimbursed for any expenses and costs or paid any fees or other compensation for any services relating to the litigation.

Article VII. OTHER TERMS AND CONDITIONS

A. Media Statements

The parties agree that neither Special Counsel nor any partner, associate, employee, or any other person assisting with the legal work contemplated by this Agreement shall speak to any representative of a television station, radio station, newspaper, magazine, or any other media outlet concerning the work outlined or contemplated by this Agreement without first obtaining approval of the Attorney General. This Agreement specifically prohibits Special Counsel from speaking on behalf of the Attorney General or the State of South Carolina to any representative of the news media.

B. Jurisdiction and Choice of Law

This Agreement shall be administered in the State of South Carolina and shall be interpreted under the laws of the State of South Carolina. Special Counsel consents to complete jurisdiction in the appropriate courts of the State of South Carolina. This Agreement and any claims arising in any way out of it shall be governed by the laws of the State of South Carolina. Any litigation arising out of or relating in any way to this Agreement or the performance thereunder shall be brought in state courts of appropriate jurisdiction in the State of South Carolina, and Special Counsel hereby irrevocably consents to such exclusive jurisdiction.

C. Code of Professional Responsibility

If, during the appointment as Special Counsel, a complaint is filed against Special Counsel or Special Counsel's firm, alleging a violation of Rule 407, Rules of Professional Conduct, South Carolina Appellate Court Rules, or the applicable rules governing the state bar in which Special Counsel has been admitted, or the Code of Professional Responsibility, Special Counsel shall give prompt written notice of such complaint to the Attorney General. The Attorney General retains the right, in his sole discretion, to immediately terminate this Agreement if he deems the complaint to adversely affect in any way Special Counsel's ability to perform his duties required herein, or to adversely affect this litigation, the Attorney General, or the State of South Carolina.

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Special Counsel agrees to carry adequate professional liability insurance and to provide proof of same to the Attorney General promptly upon request.

Special Counsel represents that neither he nor his firm has any conflict of interest with the State of South Carolina, its agencies, or subdivisions at this time. Special Counsel agrees that if a conflict of interest, potential or otherwise, arises, as defined by Rule 407, Rules of Professional Conduct, South Carolina Appellate Court Rules, during the term of this litigation, then Special Counsel will give timely written notice to the Attorney General. Special Counsel must request and obtain a written authorization from the Attorney General prior to undertaking any representation against or adverse to the State of South Carolina, its offices, boards, departments, or institutions during the term of this appointment.

Special Counsel hereby represents that neither he nor his law firm discriminates on the basis of race, religion, color, sex, age, national origin, or disability against any person in the employment of personnel in their offices.

This Agreement constitutes the entire understanding of the parties. Both parties agree that there is no other understanding or agreement other than the terms expressly stated herein.

If any provision of this Agreement shall be held invalid, illegal, or unenforceable in any respect, said provision shall be severed. The validity, legality, and enforceability of all other provisions of this Agreement shall not in any way be affected or impaired unless such severance would cause this Agreement to fail of its essential purpose.

No amendment or modification of this Agreement shall be effective against either party unless such amendment or modification is set forth in writing and signed by both parties.

The headings herein are for reference and convenience only. They are not intended and shall not be construed to be a substantive part of this Agreement or in any other way to affect the validity, construction, interpretation, or effect of any of the provisions of this Agreement.

[illegible]

K. Counterparts

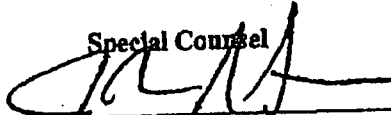
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Attorney General of South Carolina


Henry McMaster

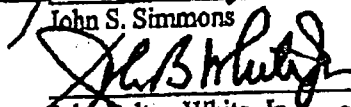
Date: 10/20/06, 2006

Special Counsel


John S. Simmons

Date: 10/17/06

John S. Simmons


John Bolton White, Jr.

Date: 10/18/06

John Bolton White, Jr.


F. Kenneth Bailey, Jr.

Date: 10-18-06

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M. HOPE BLANCHLEY

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

Adele J. Pope,

Plaintiff,

v.

Alan Wilson, in his capacity as
Attorney General of South Carolina,

Defendant.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2011-CP-36-00379

MOTION FOR EXPEDITED HEARING

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NEWBERRY COUNTY
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JACKIE S. BOWERS
CLERK OF COURT

TO: DEFENDANT AND/OR HIS COUNSEL.

YOU WILL PLEASE TAKE NOTICE that ten (10) days after service hereof, or as soon thereafter as counsel may be heard, Plaintiff Adele J. Pope, through her undersigned counsel, will move for an order granting an expedited hearing on the merits and any then-pending motions in this matter and directing Defendant to produce the requested documents to the Court for *in camera* review at or prior to the hearing.

The grounds for this motion are as follows:

1. On July 19, 2011, Plaintiff requested the public records listed below (the "requested documents") from Defendant, pursuant to the South Carolina Freedom of Information Act ("FOIA"):

- a. The published policies and/or rules and regulations of the Office of the Attorney General of South Carolina ("AG") with respect to the engagement of private attorneys, including contingency-fee attorneys, by the AG in effect in May 2010.
- b. The published policies and/or rules and regulations of the Office of the AG with respect to the engagement of private attorneys, including contingency-fee attorneys, by the AG currently in effect

(July 19, 2011).

- c. The contract of the then-AG [Henry D. McMaster] and/or the State of South Carolina engaging Kenneth B. Wingate and Everett Kendall, II to commence Civil Action No. 2010-GC-4000073 in the Probate Court for Richland County on May 19, 2010 on behalf of the AG.
- d. Any contract and/or other document authorizing Russell L. Bauknight to commence Civil Action No. 2010-GC-40-0073 on behalf of the AG and/or the State of South Carolina.

2. Defendant's office declined to provide the requested documents but did not allege that any such document was exempt from being disclosed under FOIA. As a result of the failure to produce requested documents, Plaintiff filed this action on August 10, 2011.

3. Defendant's response to the complaint herein is due on or before September 12, 2011.

4. Plaintiff Adele J. Pope is a defendant in Richland County Case No. 2010-CP-40-4900 ("Case 4900"), in which Defendant herein is one several plaintiffs.

5. The requested documents were among many documents sought in Case 4900 discovery. To date the State has not produced any discovery documents in Case 4900 other than a 2-page witness list.

6. Because certain documents sought in Case 4900 discovery are public documents in the possession of public bodies, Plaintiff attempted to obtain some of those documents through FOIA requests.

7. The Richland County Court has recently set a hearing for September 14, 2011. The requested documents are critical to the determination of certain issues to be heard on that date.

8. Defendant should be directed to produce the requested documents to the Court for *in camera* review prior to or during the hearing, so the Court may confirm that all such documents are public documents before it issues a ruling.

For the reasons stated above, Plaintiff asks that the Court issue its order granting an expedited hearing on the merits and any motions to be filed in this matter and directing Defendant to produce the requested documents for the Court's review prior to or during the hearing. This motion is based on the South Carolina Rules of Civil Procedure, applicable case and statutory law, the affidavit of Adele J. Pope filed herewith, and such additional documentation as shall come before the Court prior to the hearing on this matter.

Respectfully submitted,



Adam T. Silvernail
Law Office of Adam T. Silvernail, LLC
1218 Taylor Street
Post Office Box 1898
Columbia, South Carolina 29202-1898
Telephone: (803) 779-1770
Facsimile: (803) 403-8092
adam@silvernaillawfirm.com

September 1, 2011

Attorney for Plaintiff

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

Adele J. Pope,

Plaintiff,

v.

Alan Wilson, in his capacity as
Attorney General of South Carolina,

Defendant.

IN THE COURT OF COMMON PLEAS

Case No. 11-CP-36-379

MOTION OF ATTORNEY GENERAL
TO DISMISS AND
ALTERNATIVE MOTION TO STRIKE

Without waiving any jurisdictional or other defenses to this complaint, the Defendant Alan Wilson, Attorney General moves for the dismissal of the Complaint herein pursuant to Rules 12(b)(3) and (8), SCRCPP, in that, for reasons set forth below, venue is improper and another action is pending between the same parties for the same claim:

1. Venue is improper in that, in related litigation, the Honorable Casey Manning has already determined that venue should be in Richland County because it is the principal place of administration for the trusts at issue in that case which are also the subject of the instant suit. *Bauknight, etc., McMaster in his capacity as Attorney General, etc., et al, v. Pope and Buchanan*, 2010-CP-40-4900, November 8, 2010 (copy attached as Exhibit A only in support of 12(b)(3) motion). Further, even if, *arguendo*, the *Bauknight* Order were not controlling, under S.C. Code Ann. § 15-77-50 (1976), suits against officials of the State in their official capacities must be brought in the circuit where such question, action or controversy shall arise, and the Complaint does not allege a basis for venue in Newberry County. Venue should be in Richland where the other suit is pending.

2. Another action is pending among the same parties as to the same or substantially the

000073

same claim under Rule 12(b)(8). *Bauknight, etc., et al, supra*. Although the claims in the complaints are not identical, that suit is the subject of a number of allegations in and a lengthy exhibit to the instant complaint. *See, eg.* Complaint at paragraphs 5-9 and Exhibit E to Complaint (all references to this exhibit are subject to Motion to Strike, *infra*). Moreover, the documents requested in the Freedom of Information Act request of the Attorney General are the subject of pending Motions in case 4900. *See*, Exhibit B to Complaint, ¶12b; Attached Exhibit B¹, Motion to Compel, July 26, 2011 (attachments to Motion omitted); Exhibit C, Motion for Protective Order, August 9, 2011. Plaintiff is essentially pursuing through the instant suit the same discovery issues that are pending before the Court in Case 4900. Therefore, this case is subject to dismissal under Rule 12(b)(8).

Subject to the Motion to Dismiss, the Attorney General moves to strike the Affidavit of Plaintiff attached as Exhibit E to the Complaint. The affidavit includes statements that are not based on personal knowledge, that are hearsay and / or that are irrelevant.

Respectfully submitted,

ALAN WILSON
Attorney General

J. EMORY SMITH, JR.
Assistant Deputy Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3680

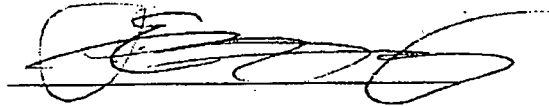
September 12, 2011

BY: 
ATTORNEYS FOR THE ATTORNEY GENERAL

¹ Attached Exhibits B and C are filed in support of the Rule 12(b)(8) Motion only.

Rule 11, SCRCP, statement:

Undersigned counsel affirms that consultation with counsel for Plaintiff as to the foregoing Motion to Strike would serve no useful purpose and consultation as to the Motion to Dismiss is not required.

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke, positioned above a solid horizontal line.

September 12, 2011

ATTORNEY FOR THE ATTORNEY GENERAL

EXHIBIT A

In Support of Rule 12(b)(3) Motion

000076

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

RUSSELL L. BAUKNIGHT, as Trustee of the James Brown 2000 Irrevocable Trust and the James Brown Legacy Trust, as Personal Representative of the Estate of James Brown, and on behalf of Henry Dargan McMaster, in his capacity as Attorney General of the State of South Carolina; Tommie Rae Brown, individually and on behalf of her minor child, James Brown II; Daryl J. Brown, individually and on behalf of his minor child Janise Vanisha Brown; Lindsey Delores Brown; Deanna J. Brown Thomas; Jason Brown-Lewis; Yamma N. Brown, individually and on behalf of her minor children Sydney Lumar and Carrington Lumar; Tonya Brown; Venisha Brown Larry Brown; and Terry Brown

and

HENRY DARGAN MCMASTER, in his capacity as Attorney General of the State of South Carolina; TOMMIE RAE BROWN, individually and on behalf of her minor child, JAMES BROWN II; DARYL J. BROWN, individually and on behalf of his minor child JANISE VANISHA BROWN; LINDSEY DELORES BROWN; DEANNA J. BROWN THOMAS; JASON BROWN-LEWIS; YAMMA N. BROWN, individually and on behalf of her minor children SYDNEY LUMAR and CARRINGTON LUMAR; TONYA BROWN; VENISHA BROWN; LARRY BROWN; and TERRY BROWN,

Plaintiffs

v.

Adele J. Pope and Robert L. Buchanan, Jr.,
Defendants

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Civil Action No. 2010-CP-40-4900

RICHLAND COUNTY
FILED
2010 NOV -9 AM 9:21
JEANETTE W. McBRIDE
C.C.P. & C.S.

ORDER DENYING DEFENDANTS'
MOTION TO CHANGE VENUE

This matter came before the Court on August 30, 2010 for hearing on Defendants' Motion to Change Venue from Richland County to Aiken County. Counsel for all parties were

SCANNED

000077

present. Other motions in this case were also heard on August 30 and separate Orders will issue with regard to those motions.

PROCEDURAL POSTURE

This is a judicial proceeding involving an irrevocable trust of James Brown dated August 1, 2000, as modified by a court-approved settlement agreement, whose sole, professional trustee administers the trust in Richland County, South Carolina. This irrevocable trust is distinguishable from the Estate of James Brown, the administration of which is in the Aiken County Probate Court.

The complaint alleges causes of action for breach of fiduciary duty, breach of trust, and negligence by former fiduciaries. Plaintiffs brought this action against Defendants by way of a Complaint filed May 19, 2010. Pursuant to Rule 8(a)(1), SCRPC, Plaintiffs asserted that jurisdiction was proper in the Richland County Probate Court. Pursuant to S.C. Code Ann. § 62-1-302(d) (1976, as amended), this matter was removed to the Court of Common Pleas of Richland County. Defendants filed a Motion to Change Venue to Aiken County.

FACTS

The original estate plan of James Brown included a Last Will and Testament which "poured over" the bulk of his estate to a separate, irrevocable trust known as the James Brown Irrevocable Trust that was created and funded on August 1, 2000. The James Brown Irrevocable Trust, by its terms, was to be divided into the Brown Family Educational Trust and the James Brown "I feel Good" Trust after his death.

After extensive litigation to determine the identification of beneficiaries, the ownership of assets, and the identification of fiduciaries, all beneficiaries of the estate and trust came to a global settlement and entered into a written settlement agreement. The Settlement Agreement is

attached to the complaint as Exhibit A. The Settlement Agreement was approved by the Honorable Doyet A. Early, III, on May 26, 2009, by an Order Approving Settlement Agreement, which is attached to the complaint as Exhibit B. Pursuant to the Settlement Agreement, the estate plan of James Brown was revised to create a "Settlement Entity" in which are vested all assets, including all royalties, tangible and intangible property of James Brown. The order provides that: "A charitable trust substantially similar to the August 1, 2000 Irrevocable Trust (hereinafter the "Charitable Trust") shall be created and/or maintained and shall be valid and enforceable." The order also affirmed the provision of the settlement agreement that a professional fiduciary, Russell Bauknight, would replace Buchanan and Pope as fiduciaries of both the Estate of James Brown and as trustees of the August 1, 2000, Irrevocable Trust of James Brown.

Plaintiffs are all of the beneficiaries of the settlement trust, including the South Carolina Attorney General. Defendants are former fiduciaries of Brown's estate and trust. This suit alleges mismanagement of the estate and trust by Defendants.

By Order of the Honorable Doyet A. Early, III, dated May 26, 2009, Russell L. Bauknight was named Trustee of the James Brown 2000 Irrevocable Trust and the James Brown Legacy Trust, as well as Personal Representative of the Estate of James Brown. Management of the trust estate has taken place exclusively at Bauknight's offices at 1517 Gervais Street, Columbia, South Carolina, where all of the trust assets and trust records are maintained. This office is located in Richland County, South Carolina.

ANALYSIS

"The distinction between subject matter jurisdiction and venue is an important one in the law. The terms are not synonymous. Subject matter jurisdiction is 'the power to hear and

determine cases of the general class to which the proceedings in question belong.' On the other hand, venue is the place or geographical location of trial." Dove v. Gold Kist, Inc., 314 S.C. 235, 237-238, 442 S.E.2d 598, 600 (1994) (internal citations omitted). In South Carolina, venue refers to the county in which the action should be brought. In re Asbestosis Cases, 276 S.C. 579, 581, 281 S.E.2d 112, 115 (1981) (abrogated on other grounds by Whaley v. CSX Transp., Inc., 362 S.C. 456, 609 S.E.2d 286 (2005)). The Defendants allege that subject matter jurisdiction is improper. They confuse subject matter jurisdiction and venue. Subject matter jurisdiction over this suit is properly laid in the Circuit Court, having been originally filed in Probate Court and then removed from the Probate Court. See Order for Removal of July 19, 2010. Defendants also contend that venue should be in Aiken County. Plaintiffs assert that venue should remain in Richland County.

The South Carolina Trust Code has its own venue statute for proceedings involving trusts:

Except as otherwise provided in subsection (b), venue for a judicial proceeding involving a trust is in the county of this State in which the trust's principal place of administration is or will be located and, if the trust is created by will and the estate is not yet closed, in the county in which the decedent's estate is being administered.

S.C. Code Ann. § 62-7-204(a) (1976, as amended) (emphasis added). As shown above, James Brown did not have a testamentary trust created under his will, but rather an inter vivos trust, so the last phrase about the county in which the estate is administered is inapplicable. Courts must turn to a separate section of the Trust Code to determine what constitutes a trust's "principal place of administration":

Unless otherwise designated by the terms of a trust, the principal place of administration of a trust is the trustee's usual place of business where the records pertaining to the trust are kept, or at the trustee's residence if he has no such place of business. . .

S.C. Code Ann. § 62-7-108(a) (1976, as amended) (emphasis added). The statute designates the trustee's place of business, that is, the place where the records are kept, not the county of the trust settlor's residence or the county of residence of the trust beneficiaries, for a very practical reason. It is necessary for the courts in the place where the trust records are kept and the trust assets are held to deal with trust litigation. In the case at bar, the records of the trust are voluminous and occupy hundreds of bankers boxes.

The professional trustee in this matter is Russell L. Banknight. Mr. Banknight's usual place of business is at his accounting firm, Banknight Pietras & Stormer, P.A., located at 1517 Gervais Street, Columbia, South Carolina 29201. The records pertaining to the trust are kept at this location, which is in Richland County, South Carolina. Further, the trust agreement itself does not designate a different principal place of administration.

Based on Sections 108(a) and 204(a) of the Trust Code, venue is proper in Richland County. Even if this Court were to determine that venue might be proper in either Richland or Aiken Counties, which it does not, the commencement of this proceeding in Richland County prior to any filing in Aiken establishes proper venue in Richland County. See S.C. Code Ann. § 62-7-204(c) (1976, as amended). This Court notes that the prior trustees, Pope and Buchanan, also administered the Irrevocable Trust in Richland County, as the August 10, 2007, order of Judge Early directed the trust records to be delivered to 1218 Taylor Street in Columbia, which was Pope's office.

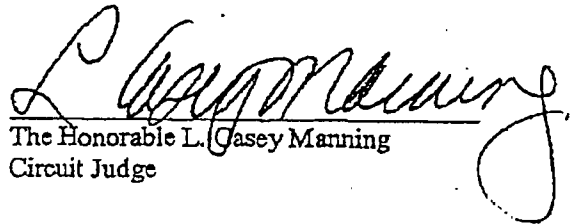
Defendants argue that the matters raised in the complaint relate to an action previously filed in Aiken County. This Court disagrees. The complaint alleges causes of action which are completely distinct from the prior estate litigation among the beneficiaries and the former personal representatives of the estate. Section 62-7-201(b) of the South Carolina Trust Code

provides that "[a] proceeding under this section does not result in continuing supervisory proceedings." This trust litigation against the former trustees is unrelated to the prior litigation involving James Brown's estate or trust.

CONCLUSION

Venue is proper in Richland County because it is the principal place of administration for the trusts at issue in this litigation. Even if venue were also proper in Aiken County, the initial commencement of this action in Richland County requires that venue remain in Richland County.

IT IS THEREFORE ORDERED THAT Defendants' Motion to Change Venue is DENIED.


The Honorable L. Casey Manning
Circuit Judge

Signed this 8 day of Nov, 2010
at Columbia, South Carolina.

EXHIBIT B

In Support of Rule 12(b)(8) Motion

000083

) IN THE COURT OF COMMON PLEAS
)
) Case No. 2010-CP-40-4900

) Case No. 2010-CP-40-4900

) MOTION TO COMPEL
) PRODUCTION OF CONTINGENCY-
) FEE CONTRACT AND RELATED
) DOCUMENTS PRIOR TO HEARING
) ON MOTION FOR INJUNCTION

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YOU WILL PLEASE TAKE NOTICE that ten (10) days after service hereof, or as soon thereafter as counsel may be heard, Defendant Adele J. Pope, through her undersigned counsel, will move for an order compelling the above-named Plaintiffs to to produce the following documents before this Court hears Defendant Pope's pending Motion for injunctions against Plaintiff Russell L. Bauknight and Kenneth B. Wingate and Sweeny Wingate & Barrow, P.A. (collectively, "Wingate") from attempting to act for the Attorney General ("AG") and/or the State of South Carolina (collectively, the "State") while serving all private plaintiffs ("Private Plaintiffs"):

1. The James Brown Legacy Trust under which Bauknight asserts status in the complaint;
2. Any authorization under which Bauknight is authorized to act for the current or former AG;
3. Wingate's contingency-fee contract with Private Plaintiffs and/or the AG/State.

The Grounds of this motion are as follows:

1. That Defendants have sought these and other relevant documents since October 12, 2010.
2. Wingate, Bauknight and Private Plaintiffs have refused to produce these and other documents and 8 Private Plaintiffs have refused to appear at depositions, obstructing Defendant's efforts to obtain these critical documents.
3. Plaintiffs' refusal to produce these critical documents is wholly inconsistent with the policy of the AG as stated in Public Official's Guide to the Freedom of Information Act (FOIA) in which he states that the AG's Office uses and recommends the following FOIA guidelines:

When in doubt, disclose requested information
...When in doubt, release the document

4. Issues of the use of the name and power of the State in violation of Defendant Pope's constitutional rights are at issue in this case, and Plaintiffs should not be allowed to conceal the authority under which Bauknight and Wingate purport to act for the State

4. On or about May 18, 2011, Defendant Pope moved to enjoin Russell L. Bauknight from attempting to act as agent for the State of South Carolina and to enjoin Wingate from representing the State jointly with the dozen-or-more Private Plaintiffs. Defendant Pope does not challenge, and has never challenged, Wingate's representation of Private Plaintiffs in this action.

5. On or about June 30, 2011, Defendant Pope made a FOIA request for these documents from Bauknight as Trustee of the James Brown Legacy Trust and also of the AG. Counsel for Defendant Pope sent a courtesy copy of the requests to Wingate. The time for the AG to respond has not elapsed, but on or about July 15, 2011, Pope received the response attached as Exhibit A from David Black, who represents Bauknight in other matters.

6. On July 13, 2011 a status conference was held before the Honorable Alison Renee Lee, wherein Judge Lee indicated that she would seek to schedule the motion for injunctions against Wingate and Bauknight for hearing as soon as possible and, in any event, before other pending motions in this action.

This motion is based on the United States Constitution; the Affidavit of Nathan Crystal on behalf of the Plaintiff in the case of *AstraZeneca vs. Wilson, as Attorney General*, Spartanburg County Case No. 2011-CP-42-1213, and the entire file in that action, of which the Court is asked to take judicial notice; the entire record herein; and

such additional documentation as shall come before the Court prior to the hearing on this matter.

Respectfully submitted,

Daryl L. Williams
Jeter & Williams, P.A.
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dwilliams@jeterandwilliams.com



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adam@silvermaillawfirm.com

July 26, 2011

Attorneys for Defendant Adele J. Pope

EXHIBIT C

In Support of Rule 12(b)(8) Motion

000088

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

RUSSELL L. BAUKNIGHT, as Trustee of the James Brown 2000 Irrevocable Trust and the James Brown Legacy Trust, as Personal Representative of the Estate of James Brown, and on behalf of Henry Dargan McMaster, in his capacity as Attorney General of the State of South Carolina; Tommie Rae Brown, individually and on behalf of her minor child, James Brown II; Daryl J. Brown, individually and on behalf of his minor child Janise Vanisha Brown; Lindsey Delores Brown; Deanna J. Brown Thomas; Jason Brown-Lewis; Yamma N. Brown, individually and on behalf of her minor children Sydney Lumar and Carrington Lumar; Tonya Brown; Venisha Brown Larry Brown; and Terry Brown

and

HENRY DARGAN MCMASTER, in his capacity as Attorney General of the State of South Carolina; TOMMIE RAE BROWN, individually and on behalf of her minor child, JAMES BROWN II; DARYL J. BROWN, individually and on behalf of his minor child JANISE VANISHA BROWN; LINDSEY DELORES BROWN; DEANNA J. BROWN THOMAS; JASON BROWN-LEWIS; YAMMA N. BROWN, individually and on behalf of her minor children SYDNEY LUMAR and CARRINGTON LUMAR; TONYA BROWN; VENISHA BROWN; LARRY BROWN; and TERRY BROWN,

Plaintiffs

v.

Adele J. Pope and Robert L. Buchanan, Jr.,

Defendants

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH CIRCUIT

Civil Action No. 2010-CP-40-4900

**PLAINTIFFS' MOTION FOR
PROTECTIVE ORDER CONCERNING
FEE AGREEMENT
AND/OR MOTION TO STRIKE
DEFENDANT POPE'S MOTION TO
COMPEL PLAINTIFFS' FEE
AGREEMENT**

000089

TO: DEFENDANTS AND THEIR ATTORNEYS:

YOU WILL PLEASE TAKE NOTICE that the Plaintiffs above-named, by their undersigned attorneys, will move before the Presiding Judge of the Richland County Court of Common Pleas at the Richland County Judicial Center at 9:00 a.m. on the tenth (10th) day after service hereof, or as soon thereafter as counsel may be heard, for a Protective Order prohibiting the production of Plaintiffs' Fee Agreement in the above-referenced action.

On July 26, 2011, Defendant Adele Pope through counsel filed a Motion to Compel production of Plaintiffs' Fee Agreement. Fee Agreements are the epitome of privileged communication. Plaintiffs therefore request that this court issue a Protective Order prohibiting the efforts of Defendant Pope from discovering the Fee Agreement.

Also, or in the alternative, Plaintiffs move the court to strike Defendant Pope's Motion to Compel Plaintiffs' Fee Agreement because the motions seeks to contravene a prior decision of the court concerning the order for hearing motions filed in this complex case.

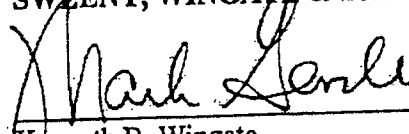
This Motion relies on all applicable statutory and case law and may be supplemented with a memorandum of law, exhibits, affidavits, or other documents.

The Plaintiffs also request costs and fees for the expense in bringing this Motion.

(Signature page to follow)

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.



Kenneth B. Wingate
Mark V. Gende
1515 Lady Street
Post Office Box 12129
Columbia, South Carolina 29211
(803) 256-2233

ATTORNEYS FOR THE PLAINTIFFS

Columbia, South Carolina

August 9, 2011

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

Adele J. Pope,

Plaintiff,

v.

Alan Wilson, in his capacity as
Attorney General of South,

Defendants.

IN THE COURT OF COMMON PLEAS

Case No. 11-CP-36-379

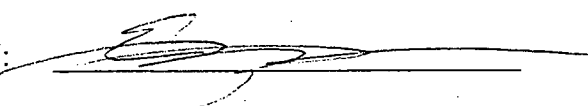
MOTION OF ATTORNEY GENERAL
TO STRIKE

Pursuant to the Rules of Civil Procedure, the Defendant Alan Wilson, Attorney General, moves to strike or exclude the affidavit of Adele Pope "Supporting Expedited Hearing And In Camera Review, etc." in that the affidavit contains statements that are not based upon personal knowledge, that are speculative, that are hearsay and that are irrelevant.

Respectfully submitted,

ALAN WILSON
Attorney General

J. EMORY SMITH, JR.
Assistant Deputy Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3680

BY: 

September 14, 2011

ATTORNEYS FOR THE ATTORNEY GENERAL

000092

Rule 11, SCRCP, statement:

Undersigned counsel affirms that consultation with counsel for Plaintiff as to the foregoing Motion to Strike would serve no useful.

A handwritten signature in black ink, appearing to be "R. J. [unclear]", written over a horizontal line.

September 14, 2011

ATTORNEY FOR THE ATTORNEY GENERAL

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

Adele J. Pope,

Plaintiff,

v.

Alan Wilson, in his capacity as
Attorney General of South Carolina,

Defendant.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2011-CP-36-00379

PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT

TO: DEFENDANT AND/OR HIS COUNSEL.

YOU WILL PLEASE TAKE NOTICE that on October 3, 2011 or at such other date as the Court shall direct at the Newberry County Courthouse, 1226 College Street, Newberry, South Carolina, Plaintiff Adele J. Pope, through her undersigned counsel, will move for an order granting her summary judgment on all claims in her complaint.

The grounds for this motion are that, viewing the evidence in the light most favorable to Defendant, there is no genuine issue of material fact as to the following:

1. The Office of the South Carolina Attorney General is a public body under the South Carolina Freedom of Information Act ("FOIA").

2. On July 19, 2011, Plaintiff requested the public records listed below (the "requested documents") from Defendant, pursuant to FOIA:

- a. The published policies and/or rules and regulations of the Office of the Attorney General of South Carolina ("AG") with respect to the engagement of private attorneys, including contingency-fee attorneys, by the AG in effect in May 2010.
- b. The published policies and/or rules and regulations of the Office of

the AG with respect to the engagement of private attorneys, including contingency-fee attorneys, by the AG currently in effect (July 19, 2011).

- c. The contract of the then-AG [Henry D. McMaster] and/or the State of South Carolina engaging Kenneth B. Wingate and Everett Kendall, II to commence Civil Action No. 2010-GC-4000073 in the Probate Court for Richland County on May 19, 2010 on behalf of the AG.
- d. Any contract and/or other document authorizing Russell L. Bauknight to commence Civil Action No. 2010-GC-40-0073 on behalf of the AG and/or the State of South Carolina.

3. Defendant's office declined to provide the requested documents but did not allege that any such document was exempt from being disclosed under FOIA. As a result of the failure to produce requested documents, Plaintiff filed this action on August 10, 2011.

4. S.C. Code Ann. § 30-4-30(b) provides as follows:

If written notification of the determination of the public body as to the availability of the requested public record is neither mailed nor personally delivered to the person requesting the document within the fifteen days allowed herein, the request must be considered approved.

5. A member of Defendant's office wrote to Plaintiff on August 5, 2011, stating that determination of the FOIA request was "premature" and suggesting that the requests would be held for determination after the conclusion of certain other litigation. (See Letter of Tracy Meyers to Adele Pope, dated August 5, 2011 [Exhibit C to the Complaint herein].)

6. FOIA does not provide for such a delay under any circumstances. Far more than 15 days have now passed since Plaintiff made her July 19, 2011 FOIA request,

and, pursuant to S.C. Code Ann. § 30-4-30(b), the request must now be considered approved.

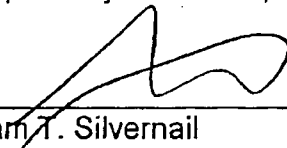
7. On September 14, 2011 *The State* newspaper ran an article entitled "Wilson, Loftis Spar Over Hiring Law Firms," a copy of which is attached hereto as Exhibit A which included the following language:

Wilson's office said it is transparent. Contingency agreements with outside law firms are available to members of the public who request them. The office [is] in the process of posting all such agreements on its Web site, said an agency spokesman.

8. Additionally, an article in the September 21, 2011 edition of the *Newberry Observer* entitled "AG's Promise to Release Contracts May Resolve Newberry James Brown FOIA Case" told that the article's author had received an email from a member of Defendant's staff agreeing to send the author a copy of the fee agreement requested herein. A copy of the article is attached hereto as Exhibit B.

For the reasons stated above, Plaintiff asks that the Court issue its order granting her summary judgment on all claims in the complaint herein. This motion is based on the South Carolina Rules of Civil Procedure, applicable case and statutory law, the affidavit of Adele J. Pope filed herewith, all earlier affidavits of Plaintiff on file herein, and such additional documentation as shall properly come before the Court prior to the hearing on this matter.

Respectfully submitted,



Adam T. Silvernail
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Facsimile: (803) 403-8092
adam@silvernaillawfirm.com

September 21, 2011

Attorney for Plaintiff



EXHIBIT A

The State

South Carolina's Homepage™

[Back](#)

Wednesday, Sep 14, 2011

Posted on Wed, Sep. 14, 2011

Wilson, Loftis spar over hiring law firms

Being 'proactive' or 'pay for play'?

By GINA SMITH

gnsmith@thestate.com

State Attorney General Alan Wilson wants two law firms, accused of making pay-to-play political contributions in other states, to monitor transactions in South Carolina's multi-billion-dollar retirement system.

Wilson received \$12,000 in campaign contributions from one of the firm's partners in 2010 although he says that money played no role in his recommendation.

State Treasurer Curtis Loftis opposes Wilson's proposal, saying its unnecessary. Their disagreement also is a sign of friction between two rising stars in S.C. Republican politics.

At issue is an announcement last month by Wilson, elected the state's top lawyer in November, that he wants to hire the two firms, one in Charleston and one in New York, to monitor transactions in the state's retirement system for fraud.

That system has \$26 billion in assets.

Wilson said he has been in talks with Loftis to hire the firms to ensure the investments are watched closely. "In other states, we've seen problems with fraud," Wilson said. "I'm trying to be proactive here in South Carolina."

Loftis said monitoring by outside attorneys is not needed.

"As treasurer, I am the custodian of the state's funds," Loftis said in a statement. "It is important that these large-dollar contracts be without political involvement or interference. Campaign contributions have no place in the decision process of protecting our \$26 billion trust fund.

"We currently monitor for fraud, waste and abuse utilizing several entities and a variety of methods," he said. "Our custodial bank has extensive abilities to monitor our securities, as well as the Retirement System Investment Commission and the State Treasurer's office."

The state recently sued a New York bank, saying it sold the retirement fund improperly risky investments.

Wilson says the S.C. Retirement System Investment Commission has the final say on whether the firms are hired, not Loftis. He plans to pitch the idea to commissioners during a Thursday meeting.

Wilson said the campaign contributions did not affect his recommendation of the firms. Instead, he said it was based on the firms' experience in monitoring pension plans and rooting out fraud.

"All a contribution gets you is my gratitude," he said, adding, if the commission would rather work with other firms instead of the two he is recommending, he will engage them instead.

"I don't care who does the work," Wilson said. "What matters to me is they do it well."

"I'm looking at their ability to perform a free service to protect the system," he added.

Under Wilson's proposal, the attorneys of Labaton Sucharow of New York, whose partners have contributed to Wilson, and Motley Rice in Charleston, who did not contribute, would review pension fund transactions free of charge for signs of fraud. They would be paid legal fees only if subsequently hired by the state to recover money.

Both law firms have been accused of taking part in pay-to-play arrangements in other states, contributing to

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the election funds of public officials who award them contracts.

In 2010, partners of Labaton Sucharow contributed nearly \$43,000 to New York Comptroller Thomas DiNapoli, who is in charge of the state's pension fund, according to media reports. The contributions came after DiNapoli tapped Labaton Sucharow to represent his office in litigation against a mortgage lender.

And after Jack McConnell Jr. opened a Motley Rice branch in Providence, R.I., becoming one of that state's top political contributors for the 2000 elections, that state's attorney general hired Motley Rice to conduct Rhode Island's highly-publicized lawsuit against lead paint manufacturers.

Efforts to reach both firms for comment Tuesday were unsuccessful.

Wilson said accusations are not proof of anything.

However, the relationship between some politicians and some law firms is the subject of increasing scrutiny.

Lisa Rickard, president of the U.S. Chamber Institute for Legal Reform, a national campaign founded by the U.S. Chamber of Commerce to clamp down on litigation, said her organization is speaking out against state attorney generals taking contributions from law firms and awarding them contracts.

"The reality is that these plaintive firms are traveling around the country, visiting with the state attorney generals and selling them on ideas for lawsuits," Rickard said, adding attorney generals should not use outside counsel.

"It's an appearance of impropriety," she said. "If they (attorney generals) are taking contributions and then giving contracts out without going through some kind of process where they're looking at other firms who can also do the work, then there's a problem. It looks like a quid pro quo is going on. These are elected officials who should have a transparent process for bidding out this work."

Wilson's office said it is transparent. Contingency agreements with outside law firms are available to members of the public who request them. The office in the process of posting all such agreements on its Web site, said an agency spokesman.

Reach Smith at (803) 771-8658.

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EXHIBIT B

[print](#)

AG's promise to release contracts may resolve Newberry James Brown FOIA case

by Sue Summer
For The Observer
09.21.11 - 08:07 am

In Newberry on Sept. 12, Attorney General (AG) Alan Wilson filed a motion to dismiss a Freedom of Information Act (FOIA) lawsuit in which he was asked to release copies of public documents related to the James Brown music empire.

Among the requested documents was a contingency-fee agreement between former AG Henry McMaster and outside counsel, Columbia attorney Ken Wingate. Wingate represents the State and about 15 private plaintiffs in a Brown suit in Richland County.

Other Brown cases are pending in the Aiken County Circuit Court, the S.C. Court of Appeals, and the S.C. Supreme Court.

The FOIA lawsuit was filed by Newberry resident Adele Pope in August. She and Aiken attorney Robert Buchanan, former Brown trustees, have repeatedly attempted to obtain the fee agreement and other documents for 10 months.

Only two days after Wilson's motion to dismiss the Newberry FOIA suit, on Sept. 14, The State newspaper reported Wilson had announced, through an agency spokesperson, that contingency agreements with outside law firms are available to members of the public who request them and that the AG's office is in the process of posting all such agreements on its website.

"We hope this announcement means that the AG will release the public documents which Pope and Buchanan have been trying to obtain for almost a year, first from McMaster and now from Wilson," said Adam Silvernail, Pope's attorney.

The unreleased contingency-fee contract between McMaster and Wingate authorized Wingate to sue Buchanan and Pope on behalf of the state while simultaneously representing about 15 private plaintiffs.

In a hearing scheduled for Richland County Sept. 14, Pope and Buchanan sought to disqualify Wingate from representing both the state and the private individuals.

In a brief filed last week, Pope also asked that current Brown trustee, Columbia CPA Russell Bauknight, be enjoined from asserting that he acts for the state or the AG. Bauknight replaced Pope and Buchanan as trustee and serves at the AG's pleasure.

Bauknight and AG Wilson have both refused to produce the contingency-fee contract and other documents requested by Pope's two FOIA lawsuits, including documents related to the value of Brown's assets and a copy of McMaster's "Legacy" trust.

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In 2008 McMaster forged an agreement with some of Brown's claimed heirs, all of whom were disinherited from his worldwide music empire, and gave them more than half of Brown's assets.

In late 2008 or early 2009, McMaster set up the "Legacy" trust with Bauknight as trustee. To date, no signed complete copy of the Legacy trust has been produced, but at least two incomplete drafts are on file in Aiken County.

Before the McMaster agreement, Brown's estate plan gave his music empire to the "I Feel Good" trust to provide scholarships for needy and deserving students.

Brown's music empire—with royalties to about 850 songs, as well as publicity rights—was widely reported to have a value of \$100 million at his death, less a \$15 million debt. At about \$80 million, the "I Feel Good" trust would have been South Carolina's largest private foundation dedicated solely to scholarships for needy and deserving students.

In December 2010, however, Bauknight filed documents with the Internal Revenue Service placing a \$4.7 million value on Brown's worldwide music empire at his death in 2006.

According to J. David Black of the Columbia law firm Nexsen/Pruet, which represented Bauknight in the IRS filing, Bauknight's \$4.7 million value for Brown's music empire at death is based upon an independent professional appraisal, authorized by Bauknight. When reached by email, Black failed to disclose the name of the New York appraiser.

In Black's email, he claimed Brown's music empire was worth \$4.7 million "because of outstanding debt and bond issues as well as Mr. Brown's prior advisors' mismanagement of his assets." He said further that all of Brown's assets, including the music, had a value of only \$5.7 million.

In 2007 David Cannon, one of three original trustees appointed by Brown, resigned after Pope and Buchanan discovered he had taken \$900,000 from Brown's Trust the previous year. Cannon was indicted in 2010 for felony breach of trust with respect to Brown's assets between 1999 and 2006. He was also indicted for a 2008 forgery related to Brown.

Cannon has not yet been tried, but in November 2010 he was placed, along with former trustee Albert "Buddy" Dallas, on Wingate's witness list in the Richland County case.

Pope and Buchanan, who valued Brown's music assets at about \$85 million, have challenged McMaster's agreement and Bauknight's valuation.

When asked by email when the Wingate contract would be available on the AG's website, spokesperson Mark Plowden responded Tuesday morning, "I am on medical leave, but will have someone send it to you."

Judge Casey L. Manning continued the Richland County hearing to consult with Chief Administrative Judge Alison Renee Lee.

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STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

Adele J. Pope,

Plaintiff,

v.

Alan Wilson, in his capacity as
Attorney General of South,

Defendants.

IN THE COURT OF COMMON PLEAS

Case No. 2011-CP-36-379

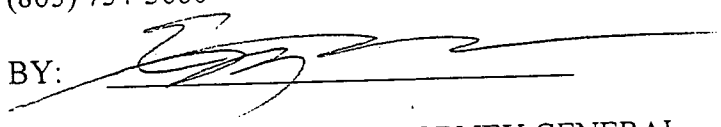
MOTION OF ATTORNEY GENERAL
TO STRIKE SUPPLEMENTAL
AFFIDAVIT DATED 09/26/11

Pursuant to the Rules of Civil Procedure, the Defendant Alan Wilson, Attorney General, moves to strike or exclude Plaintiff's Supplemental Affidavit dated September 26, 2011 in that it contains statements that are not based upon personal knowledge, that are speculative, that are hearsay and that are irrelevant.

Respectfully submitted,

ALAN WILSON
Attorney General

J. EMORY SMITH, JR.
Assistant Deputy Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3680

BY: 

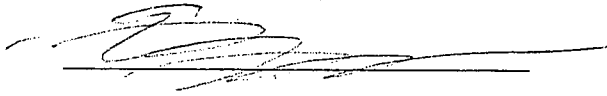
ATTORNEYS FOR THE ATTORNEY GENERAL

September 28, 2011

000103

Rule 11, SCRCP, statement:

Undersigned counsel affirms that consultation with counsel for Plaintiff as to the foregoing Motion to Strike would serve no useful purpose.

A handwritten signature in black ink, appearing to be "J. B. ...", written over a horizontal line.

September 28, 2011

ATTORNEY FOR THE ATTORNEY GENERAL

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

Adele J. Pope,

Plaintiff,

v.

Alan Wilson, in his capacity as
Attorney General of South,

Defendants.

IN THE COURT OF COMMON PLEAS

Case No. 2011-CP-36-379

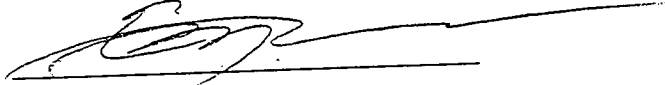
MOTION OF ATTORNEY GENERAL
TO STRIKE AFFIDAVIT AND EXHIBITS
ATTACHED TO PLAINTIFF'S MOTION
FOR SUMMARY JUDGMENT

Pursuant to the Rules of Civil Procedure, the Defendant Alan Wilson, Attorney General, moves to strike or exclude the affidavit and exhibits attached to Plaintiff's Motion for Summary Judgment. The affidavit of Adele Pope "In Support of Summary Judgment" contains statements that are not based upon personal knowledge, that are speculative, that are hearsay and that are irrelevant. The newspaper articles attached as Exhibits A and B are not affidavits, are hearsay and contain irrelevant material.

Respectfully submitted,

ALAN WILSON
Attorney General

J. EMORY SMITH, JR.
Assistant Deputy Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3680

BY: 

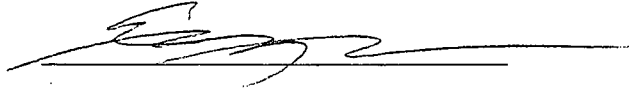
September 28, 2011

ATTORNEYS FOR THE ATTORNEY GENERAL

000105

Rule 11, SCRCP, statement:

Undersigned counsel affirms that consolation with counsel for Plaintiff as to the foregoing Motion to Strike would serve no useful purpose.



September 28, 2011

ATTORNEY FOR THE ATTORNEY GENERAL

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

Adele J. Pope,

Plaintiff,

v.

Alan Wilson, in his capacity as
Attorney General of South,

Defendants.

IN THE COURT OF COMMON PLEAS

Case No. 2011-CP-36-379

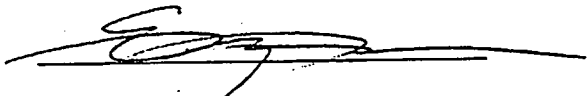
MOTION OF ATTORNEY GENERAL
TO STRIKE OR EXCLUDE POPE
AFFIDAVIT DATED 10/06/11

Pursuant to the Rules of Civil Procedure, the Defendant Alan Wilson, Attorney General, moves to strike or exclude the Affidavit of Adele Pope dated October 6, 2011, and filed in this case in that it contains statements that are not based upon personal knowledge, that are speculative, that are hearsay and that are irrelevant.

Respectfully submitted,

ALAN WILSON
Attorney General

J. EMORY SMITH, JR.
Assistant Deputy Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3680

BY: 

ATTORNEYS FOR THE ATTORNEY GENERAL

October 13, 2011

000107

Rule 11, SCRCP, statement:

Undersigned counsel affirms that consultation with counsel for Plaintiff as to the foregoing Motion to Strike would serve no useful purpose.



October 13, 2011

ATTORNEY FOR THE ATTORNEY GENERAL

STATE OF SOUTH CAROLINA)
)
COUNTY OF NEWBERRY)
)
Adele J. Pope,)
)
Plaintiff,)
)
v.)
)
Alan Wilson, in his capacity as)
Attorney General of South Carolina,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS

Civil Action No. 2011-CP-36-379

BRIEF IN SUPPORT
OF SUMMARY JUDGMENT
AND OPPOSING MOTIONS TO
DISMISS AND STRIKE OF
ATTORNEY GENERAL ALAN WILSON

Plaintiff submits this Brief in support of Summary Judgment as to all causes of action in this South Carolina Freedom of Information Act ("FOIA") case, and in opposition to the motions of Defendant Attorney General Alan Wilson to dismiss and strike.

Background - James Brown Cases in Aiken and Elsewhere

Entertainment icon James Brown, one of South Carolina's most talented and generous citizens, died on Christmas Day 2006. Brown's 2000 Estate Plan left his worldwide music empire entirely to education, with the bulk – about \$80 Million – to The James Brown "I Feel Good" private foundation. The "I Feel Good" Trust's exclusive mission is to provide scholarships for needy and deserving students.

Between 1999 and 2007 Brown's trusted fiduciaries had misappropriated about \$12 Million. These misappropriations were discovered by Plaintiff and Robert L. Buchanan, Jr., during their service as Special Administrators. All three of the original fiduciaries later resigned, and Plaintiff and Buchanan were appointed to serve in their

place.

With the stroke of a pen on August 10, 2008 then-Attorney General Henry D. McMaster became part of a purported settlement which did more damage to the "I Feel Good" Trust than his fiduciaries had done in 7 years of misdeeds.

McMaster agreed to give about \$50 Million of Brown's assets to some of the dozen or more claimed heirs Brown had specifically disinherited from any interest in his music empire.

On May 26, 2009 an Aiken County Circuit Court Order said AG McMaster could do this. In November 2011 our S. C. Supreme Court will hear arguments in the appeal of the Circuit Court's approval of the settlement (the "Case 1647 Appeal").

About 20 other Aiken County cases were filed after Brown's death. Two appeals from Aiken County were filed by Brown's original fiduciaries and have been resolved.

Original fiduciary David Cannon was indicted on 7 felony counts in 2010, and awaits trial. Additional cases have been filed in S.C. Federal District Court and Richland County.

In April 2010 Buchanan and Pope were threatened with a lawsuit, said to have been authorized by McMaster's Sr. Assistant Havird Jones, who had hired contingency-fee attorney Kenneth Wingate to sue them if they did not drop the Case 1647 appeal and sign the agreement not to criticize McMaster or what he had done.

On May 19, 2011 AG McMaster made good on the threat. Kenneth Wingate filed the first-ever tort suit by the Attorney General/State in which neither the Attorney General nor any member of his staff is attorney of record or has ever signed a pleading or motion.

None of the more than 20 Aiken County and other cases includes claims under FOIA.

The Attorney General's Motion to Dismiss Should Be Denied

The Attorney General has moved for dismissal on multiple grounds, none of which has merit.

Venue is Proper in Newberry County

As alleged in the Complaint herein, Plaintiff lives and works in Newberry County. Her requests for documents under the South Carolina Freedom of Information Act ("FOIA") were made from Newberry, and the responses of Defendants were sent to Plaintiff in Newberry. Venue is thus proper under S.C. Code Ann. § 15-77-50 (1976), because Newberry is within the "circuit in which the question, action or controversy arose."

Defendant Attorney General's argument that the filings, orders or claims in Richland County Case No. 2010-CP-40-4900 ("Case 4900") have any effect on the venue for this action is unfounded. Although that action involves some of the same parties and facts, it does not involve any claim for relief under FOIA. The venue for Case 4900 has no bearing on the proper venue for this action.

There is No Basis for Dismissal Under Rule 12(b)(8), SCRCF

Defendant Attorney General's assertion that the claims herein are "the same or substantially the same" as those pending in Case 4900 is simply incorrect. No claim or counterclaim in that action involves FOIA.¹ The attachments to Defendant Attorney

¹ Defendant Attorney General does not mention the more than 20 cases pending in Aiken County which involve some of the same parties and facts. Because

General's motion to dismiss are correspondence and motions related to Plaintiff's efforts to obtain discovery documents from the the Wingate Firm's public and private clients, as well as the State, in case 4900. To date, the Case 4900 Plaintiffs have produced no documents apart from a 2-page witness list.

The documents sought herein are just a few documents which, because they are public documents held by public bodies, are available under FOIA.

Plaintiff has never asserted her rights under FOIA as grounds for the documents sought in Case 4900 discovery to be produced. Such an assertion would be misplaced, since Plaintiff's rights under FOIA are entirely distinct from her right to receive documents requested through Case 4900 discovery. Likewise, issues which have arisen in Case 4900 discovery have no bearing on Plaintiff's right under FOIA to view and copy public documents held by public bodies.

Although the documents sought in this action are among the many sought in Case 4900 discovery, the Freedom of Information Act has no provision which could be construed to curtail a person who has been sued by the State from obtaining public documents held by public bodies.

Defendant Attorney General has, on information and belief, filed his baseless motion to dismiss for the improper purpose of delaying the hearing on the merits in this action and thereby denying Plaintiff her rights under FOIA. On information and belief, Defendant Attorney General seeks to conceal public documents which would show improper acts by members of the Attorney General's office, the previous Attorney

no claims under FOIA have been made in any of those actions, they also have no effect on this case.

General and/or a person purporting to act as an agent of the State.

Plaintiff's Motion for Summary Judgment Should be Granted

Standard for Summary Judgment

"Summary judgment is appropriate when it is clear there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." *American Heart Association v. County of Greenville*, 331 S.C. 498, 489 S.E.2d 921, 922 (1997).

Facts of this Case

The material facts which support Summary Judgment as to all issues in this FOIA case are not in dispute:

1. AG Wilson has never denied, and now affirmatively agrees, that all of the AG's Litigation Retention Agreements with outside counsel, including the McMaster/Wingate Agreement to sue Buchanan/Pope, are public documents.
2. On July 19, 2011 Plaintiff made a proper FOIA request for four categories of documents, briefly described as follows:
 - a. AG McMaster's policies (May 2010) related to outside counsel;
 - b. AG Wilson's current policy with respect to retention of outside counsel;
 - c. The Wingate/McMaster contract to sue Buchanan/Pope, and any amendments.
 - d. Bauknight's authorization to sue Buchanan/Pope "on behalf of" the State/AG.
3. AG Wilson has never asserted that the requested documents are not public but has refused to deliver them.
4. On September 13, 2011 AG Wilson announced to the press that all Litigation Retention Agreements with outside counsel were public documents and would be posted on his website. See "Wilson, Loftis Spar Over Hiring Law Firms," *The State*, September 14, 2011.
5. Later in September a member of the press reportedly requested a copy of the McMaster/Wingate Agreement to sue Buchanan/Pope. See

"Attorney General Still Refuses to Release Documents in Two Newberry FOIA Cases Related to James Brown's Music Empire," *Newberry Observer*, September 28, 2011.

6. On September 22, 2011 AG Wilson's Senior Assistant Havird Jones, who is not counsel of record in the Wingate Case, wrote the judge in the Wingate Case asserting that AG Wilson desired to release the McMaster/Wingate Agreement to sue Buchanan/Pope to a member of the press, but then asserted that the Agreement was the subject of a purported "oral stay" order which prevented its release.² [See Exhibit A]
7. On September 28, 2011, a one-word order in the Wingate Case made it clear that there was no oral stay or other prohibition. [See Exhibit B] No additional Orders have resulted from the hearing in which Mr. Jones asserts that Judge Manning contemplated a stay.
8. On or about October 10, 2011 AG Wilson posted on his Website what he represented to be all active Litigation Retention Agreements with outside counsel "except those matters in which disclosure is currently under review by a court."
9. The only known Litigation Retention Agreement AG Wilson refused to post was the McMaster/Wingate Litigation Agreement to sue Buchanan/Pope.³
10. A review of the 10 Litigation Retention Agreements posted shows:
 - a. All clearly state they are public documents, as the AG has now confirmed.
 - b. All are contingency-fee arrangements.
 - c. All provide that the AG will sign and review all pleadings and other documents.
 - d. All require that Outside counsel comply with FOIA.

² Although this case had been pending for about 45 days at that time, the Attorney General has never alerted this Court to either the Attorney General's willingness to release the document or the purported "oral stay" as grounds to deprive Pope of her FOIA rights. Instead, the Attorney General has filed a baseless motion to dismiss this case and motions to strike Plaintiff's affidavits from the record herein.

³ The Court is asked to take judicial notice of the Statement and Contracts contained on the Home Page of AG Wilson, including 10 Litigation Retention Contracts. Currently found at <http://www.scag.gov/litigation-retention-agreements> (Last accessed October 20, 2011).

11. Any purported impediment to the release of the requested documents has been created by AG Wilson and his staff since the valid FOIA request was made. Tellingly, these actions have been taken before another Court, where Plaintiff's FOIA rights – and the Attorney General's compliance duties – are not at issue.
12. There is no basis for AG Wilson's office not to have released the requested documents on or about August 5, 2011 - nearly three months ago.
13. The only impediments to the release of these public documents has been roadblocks set up on behalf of the AG after the FOIA request was made.

Plaintiff is Entitled to Judgment as a Matter of Law

On the above facts, summary judgment is appropriate on either of two bases.

First, the Attorney General's failure to give "written determination" of Plaintiff's FOIA request within 15 days means that the request "must be considered approved." S.C. Code Ann. § 30-4-30(b).⁴ Under the statute, Plaintiff is entitled to judgment as a matter of law.

Nonetheless, Plaintiff would be entitled to summary judgment notwithstanding § 30-4-30(b). As outlined above, the Attorney General has acknowledged that the requested documents are public and has not to date suggested different to this Court.

"The purpose of summary judgment is to obviate delay where there is no material issue of fact involved." *Manley v. Manley*, 291 S.C. 325, 329, 353 S.E.2d 312, 314 (Ct. App. 1987) In the case at bar, Defendant Attorney General has, without basis in law or fact, delayed releasing the requested documents to Plaintiff. Because the facts are not in dispute, summary judgment should be granted and the Attorney

⁴ Plaintiff's Motion for Summary Judgment, which is incorporated herein by reference, contains a full explanation of the Attorney General's failure to determine Plaintiff's request within the prescribed time period.

General's continued deprivation of Plaintiff's FOIA rights thereby ended.

Plaintiff's Affidavits are Appropriate

Where, as here, a Public Body has vigorously resisted compliance with FOIA, it is appropriate for Plaintiff to explain to the Court, through affidavits and documents, both what has happened and why she asserts, on information and belief, that the refusal to comply with FOIA is intentional and in bad faith.⁵

Plaintiff's affidavits filed herein are based on her personal dealings with the Office of the Attorney General and express her concerns related to the actions of the office of AG Wilson and his predecessor, of which she has knowledge.

AG Wilson has publicly asserted that transparency in government is essential. As the office of State Official who guides state agencies regarding that transparency, and is charged with the criminal enforcement of violations of FOIA, AG Wilson's office must meet or exceed the standards of all other Public Bodies.

The statements and documents presented by Plaintiff are contained within the voluminous public Aiken County Record⁶, some of which is contained in the more-than-2500 page record on appeal ("ROA") in Case 1647. Defendant participated in the compilation of the ROA and has never asserted in any Court that any document contained therein is not genuine. For the reasons set out in Plaintiff's Return to All

⁵ Although not necessary to demonstrate her entitlement to the requested documents, the background and facts stated in Plaintiff's affidavits and the attachments thereto are relevant to the Attorney General's intentional and continuing efforts to deprive Plaintiff of her rights under FOIA.

⁶ AG McMaster, joined by others, asked the Court in Case 1647 to admit all of the filings in all Aiken County James Brown Cases into evidence. It was done without objection.

Motions of Defendant Attorney General to Strike, all of the statements and documents offered by Plaintiff in this matter are admissible.

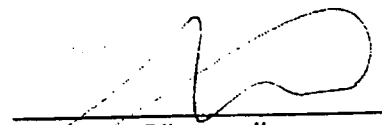
The documents and statements are also relevant to this matter. In any case, it is the Court's prerogative to weigh the evidence. Striking Plaintiff's affidavits in their entirety would be extreme and unwarranted, even if the Court should find that any portion of any affidavit is not relevant to its consideration of this matter.

AG Wilson's multiple motions to strike are without merit. They are a transparent attempt to further delay and deny Plaintiff the public documents which should have been sent to her without fanfare in August 2011.

Conclusion

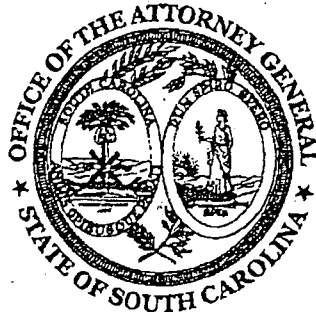
For the reasons stated herein, the Attorney General's motions to dismiss and strike should be denied, and Plaintiff should be granted summary judgment on all causes of action herein.

Respectfully submitted,



Adam T. Silvermail
Law Office of Adam T. Silvermail, LLC
Post Office Box 1898
1218 Taylor Street
Columbia, South Carolina 29202-1898
Tel: 803/779-1770
Fax: 803/403-8092
adam@silvermaillawfirm.com

EXHIBIT A



ALAN WILSON
ATTORNEY GENERAL

September 22, 2011

VIA HAND DELIVERY AND E-MAIL

The Honorable L. Casey Manning
Richland County Circuit Court
PO Box 192
Columbia, SC 29202

RE: Russell L. Bauknight, et al. v. Adele J. Pope and Robert L. Buchanan, Jr.
Case No.: 2010-CP-40-4900

Dear Judge Manning:

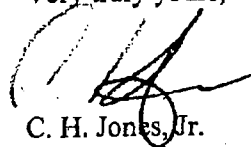
At the hearing before your Honor in the above-referenced matter on September 14, 2011, the Court continued the pending Motions and stated that everything would be stayed pending your consulting with Judge Lee regarding the appointment of a single judge to handle all matters related to this case.

This Office received a request from the media for a document that is arguably the subject of at least two motions pending in the case: (1) Defendant Pope's Motion to Compel Production of Contingency-Free Contract and Related Documents Prior to Hearing on Injunction, and (2) Plaintiffs' Motion for Protective Order Concerning Various Documents Requested by Defendant Adele J. Pope.

Because the document which is the subject of the request is also the subject of at least two pending motions and the Court has stayed all matters in the case, the Attorney General seeks guidance from the Court as to whether it would be a violation of your Order to provide the document pursuant to the request. The Office is ready and more than willing to provide the document at this time. However, in an abundance of caution the Office will not provide the document until it receives further guidance from the Court as to whether it would be a violation of the Court's order to provide the document. Please advise if you would be available for a brief status conference to provide guidance to this Office on this matter.

Thank you for your assistance in this matter.

Very truly yours,

A handwritten signature in black ink, appearing to be "C. H. Jones, Jr.", written over a circular stamp or seal.

C. H. Jones, Jr.
Assistant Deputy Attorney General

cc (via e-mail):

Mark V. Gende, Esq.

J. Calhoun Watson, Esq.

Daryl L. Williams, Esq.

Adam Silvernail, Esq.

Robin A. Braithwaite, Esq.

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EXHIBIT B

Form 4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO: 2010CP4004900

Russell Bauknight

vs.

Henry Dargan McMaster

Plaintiff

Defendant

RICHLAND COUNTY
FILED
2011 SEP 30 PM 10:39
JEANETTE W. McBRIDE
C.C.F. & G.S.

CHECK ONE:

☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. **continued**

☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a),
SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other:

☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j) SCRCP; ☐ Bankruptcy:
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other: _____

☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):

☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

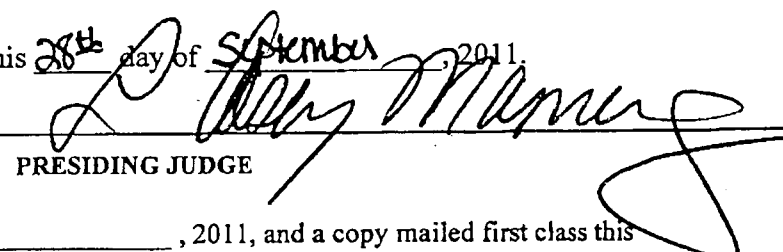
IT IS ORDERED AND ADJUDGED:

☐ See attached order;

☐ Statement of Judgment by the Court:

continued

Dated at Columbia, South Carolina, this 28th day of September, 2011.


PRESIDING JUDGE

This judgment was entered on the _____ day of _____, 2011, and a copy mailed first class this 3 day of Oct, 2011, to attorneys of record or to parties (when appearing pro se) as follows:

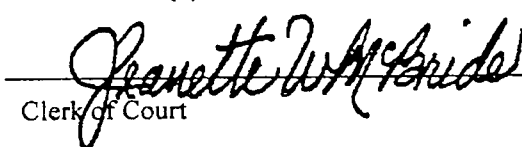
Kenneth B. Wingate
Everett Augustus Kendall II
Mark V. Gende

Daryl L. Williams
J Calhoun Watson
Robin A. Braithwaite
Adam T. Silvernail

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

SCRCP APP-24/FORM 4


Clerk of Court

000120

SCANNED

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF NEWBERRY	)	FOR THE EIGHTH JUDICIAL CIRCUIT
	)	
	)	
Adele J. Pope,	)	Civil Action No.: 2011-CP-36-00379
	)	
	)	
Plaintiff,	)	
	)	
v.	)	MOTION TO INTERVENE
	)	
	)	
Alan Wilson, in his capacity as	)	
Attorney General of South Carolina	)	
	)	
Defendant.	)	

Pursuant to 24 of the South Carolina Rules of Civil Procedure, the parties below-listed plan to move before the Court, and do hereby so move, for an Order allowing their intervention in this matter as Defendants. The parties so moving are: ALAN WILSON, in his capacity as Attorney General of the State of South Carolina; RUSSELL L. BAUKNIGHT, as Trustee of the James Brown 2000 Irrevocable Trust and the James Brown Legacy Trust, as Personal Representative of the Estate of James Brown; TOMMIE RAE BROWN, individually and on behalf of her minor child, JAMES B.; DARYL J. BROWN, individually and on behalf of his minor child, JANISE B.; LINDSEY DELORES BROWN; DEANNA J. BROWN THOMAS; JASON BROWN-LEWIS; YAMMA N. BROWN, individually and on behalf of her minor children, SYDNEY L., CARRINGTON L., and TONYA BROWN; VENISHA BROWN; LARRY BROWN; and TERRY BROWN. The afore-listed parties are all of the Plaintiffs in the Richland County case, case no. 2010-CP-40-4900.

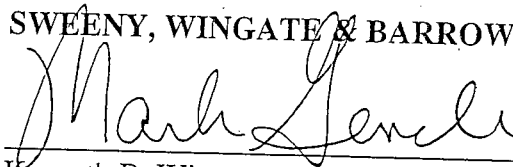
This Motion is made pursuant to the provisions of Rule 24 of the South Carolina Rules of Civil Procedure, and is based upon the facts and law set forth in a Memorandum of Law (to

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provided to the Court in the future). Defendant-Intervenors only make this Motion if the Court denies the Defendant Attorney General's Motions to Dismiss for lack of subject matter jurisdiction and improper venue.

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.



Kenneth B. Wingate
Mark V. Gende
1515 Lady Street
Post Office Box 12129
Columbia, South Carolina 29211
(803) 256-2233

**ATTORNEYS FOR DEFENDANT-
INTERVENORS**

Columbia, South Carolina

October 26, 2011

000122

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF NEWBERRY	)	Civil Action No. 2011-CP-36-00379
	)	
Adele J. Pope,	)	
	)	
Plaintiff,	)	PLAINTIFF'S RETURN AND OPPOSITION
	)	TO MOTION TO INTERVENE
v.	)	
	)	
Alan Wilson, in his capacity as	)	
Attorney General of South	)	
Carolina,	)	
Defendant.	)	

TO: DEFENDANT AND PURPORTED INTERVENORS, NAMELY ALAN WILSON, IN HIS CAPACITY AS ATTORNEY GENERAL OF THE STATE OF SOUTH CAROLINA; RUSSELL L. BAUKNIGHT, AS TRUSTEE OF THE JAMES BROWN 2000 IRREVOCABLE TRUST AND THE JAMES BROWN LEGACY TRUST, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF JAMES BROWN; TOMMIE RAE BROWN, INDIVIDUALLY AND ON BEHALF OF HER MINOR CHILD, JAMES B.; DARYL J. BROWN, INDIVIDUALLY AND ON BEHALF OF HIS MINOR CHILD, JANISE B.; LINDSEY DELORES BROWN; DEANNA J. BROWN THOMAS; JASON BROWN-LEWIS; YAMMA N. BROWN, INDIVIDUALLY AND ON BEHALF OF HER MINOR CHILDREN, SYDNEY L. AND CARRINGTON L.; TONYA BROWN; VENISHA BROWN; LARRY BROWN; AND TERRY BROWN AND/OR THEIR COUNSEL.

Plaintiff opposes the Motion to intervene for the reasons set out below:

1. Intervention is unwarranted and improper as to all purported intervenors as follows:
 - a. Alan Wilson, in his capacity as Attorney General of the State of South Carolina, is already a party to this action and is properly represented by a member of his office herein.¹ The sole Defendant

¹ Plaintiff has vigorously objected to the purported representation of the Attorney General by contingency-fee counsel which simultaneously represents private individuals. Plaintiff reserves the right to raise her objections herein if the Court grants

herein to filing a motion to intervene in this action is a patent attempt to further delay the outcome of this matter and deprive Plaintiff of her rights under FOIA.

- b. The Legacy Trust, although it is a public body and must comply with FOIA, was not named as a Defendant herein because Plaintiff has not yet sought the documents in question from the Legacy Trust.
- c. The remaining purported Intervenor are persons or entities not subject to compliance with requests made under FOIA. Plaintiff has never made a FOIA request to any of these persons or entities, and none is a public body as defined in FOIA.

2. Defendant Attorney General has thus far deprived Plaintiff of her rights under FOIA by refusing, without justification under FOIA, to produce the requested documents and mounting a dilatory defense to this action. At the center of the Attorney General's attempts to have this proper action dismissed are his assertions that this case is an alter ego of discovery proceedings in a Richland County case involving Plaintiff, Defendant and numerous other parties.

3. By participating in the motion to intervene, the Attorney General attempts to bolster his incorrect argument that the Richland County proceedings preclude this action. Instead, the absurdity of these private individuals intervening in a simple FOIA action brings into stark relief the differences between this action and the Richland County case. As the U.S. Supreme Court made clear in *North v. Walsh*, 881 F.2d 1088 (D.C.Cir. 1989), discovery proceedings in other cases do not affect FOIA claims.

4. The only portion of FOIA which implicates the individual purported intervenors is S.C. Code Ann. § 30-4-110, which states in part:

the motion to intervene.

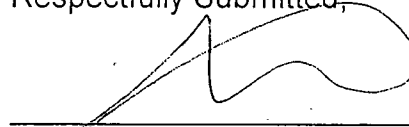
Any person or group of persons who willfully violates the provisions of this Chapter shall be deemed guilty of a misdemeanor and upon conviction shall be fined not more than one hundred dollars... [emphasis supplied]

5. Although the purported intervenors are, for the most part, not public bodies subject to FOIA, they do, jointly or severally, constitute persons or a group who have worked with the Attorney General to deprive Plaintiff of her rights under FOIA.

6. Because the Attorney General is already a party to this action and the other purported intervenors have no interest in this action, their motion to intervene should be denied.

This return is based on the Affidavit of Plaintiff filed herewith; Plaintiff's Complaint, prior affidavits and other filings herein; the *South Carolina Rules of Civil Procedure*; the South Carolina Freedom of Information Act; other applicable statutory and case law; and such additional documents as Plaintiff shall file herein prior to the hearing.

Respectfully Submitted,



Adam T. Silvernail
Law Office of Adam T. Silvernail, LLC
Post Office Box 1898
1218 Taylor Street
Columbia, South Carolina 29202-1898
Tel: 803/779-1770
Fax: 803/403-8092
Email: adam@silvernaillawfirm.com

November 7, 2011

Attorney for Plaintiff

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

Adele J. Pope,

Plaintiff,

v.

Alan Wilson, in his capacity as
Attorney General of South,

Defendant.

IN THE COURT OF COMMON PLEAS

Case No. 11-CP-36-379

ANSWER

The Defendant, answering the Complaint herein subject to, and without waiving his Motion to Dismiss and Motions to Strike, or the response of his Office to the Freedom of Information Act (FOIA) request at issue, alleges the following:

FOR A FIRST DEFENSE

1. The Defendant denies each and every allegation of the Complaint not hereinafter specifically admitted.
2. The Defendant admits Paragraphs 1 and 2 of the Complaint.
3. The Defendant admits Paragraph 3 only as to service and specifically denies that this Court has subject matter jurisdiction and that venue is proper.
4. As to Paragraph 4 of the Complaint, the Defendant craves reference to the statement attached to the Complaint as Exhibit A and denies any allegations inconsistent with that statement.
5. As to Paragraphs 5, 6 and 7, the Defendant craves reference to the suit (2010-CP-40-4900) and denies any allegations inconsistent therewith.

000126

6. As to Paragraph 8, the Defendant craves reference to the suit (2010-CP-40-4900) and denies any allegations inconsistent therewith and specifically denies that the case 4900 Plaintiffs have made false and unsupported allegations in case 4900. The Defendant denies that the instant Plaintiff may litigate issues in the instant case that are before the Court in case 4900 or that could be raised in that suit.

7. As to Paragraph 9, the Defendant craves reference to the suit (2010-CP-40-4900) and denies any allegations inconsistent therewith and specifically denies that the former Attorney General destroyed the Brown estate plan. The Defendant denies that Plaintiff may litigate issues in the instant case that are before the Court in case 4900 or that could be raised in that suit.

8. As to Paragraph 10, the Defendant craves reference to the suit (2010-CP-40-4900) and denies any allegations inconsistent therewith and specifically denies that the Plaintiffs have made false and unsupported allegations in case 4900. The Defendant denies that Plaintiff may litigate issues in the instant case that are before the Court in case 4900 or that could be raised in that suit.

9. As to Paragraph 11, the Defendant admits only that the Affidavit is attached, but he denies that any actions were arbitrary or improper and alleges that the Affidavit should be struck for reasons set forth in the Defendant's pending Motion to Strike. The Defendant denies that Plaintiff may litigate issues in the instant case that are before the Court in case 4900 or that could be raised in that suit.

10. In Paragraph 12, Plaintiff engages in speculation about a document that is a subject of this suit and has not been produced for that reason and because of pending litigation (case 4900). Without waiving any defenses to this suit, the Defendant denies any allegations in Paragraph 12 that are inconsistent with the document at issue. The Defendant denies that

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Plaintiff may litigate issues in the instant case that are before the Court in case 4900 or that could be raised in that suit.

11. The Defendant admits Paragraph 13.

12. As to Paragraph 14, the Defendant craves reference to documents filed by the Plaintiffs in case 4900 and denies any allegations in this Paragraph that are inconsistent with those documents. The Defendant denies that Plaintiff may litigate issues in the instant case that are before the Court in case 4900 or could be raised in that suit.

13. As to Paragraph 15, the Plaintiff fails to describe the actions to which she refers, but the Defendant specifically denies that the attorneys referenced in the first sentence have acted outside the scope of their duties or inconsistently with the public interest or any customs or procedures of the Attorney General's Office. As to the second sentence, the Defendants deny that Mr. Bauknight is a public official. The Defendant denies that Plaintiff may litigate issues in the instant case that are before the Court in case 4900 or could be raised in that suit.

14. The Defendant admits Paragraphs 16 and 17 and craves reference to the Freedom of Information Act (FOIA) request for its exact content and denies any allegations inconsistent therewith.

15. The Defendant admits Paragraph 18 only as to the allegation that Ms. Meyers of his Office sent the letter attached as Exhibit C which are the first two lines of this Paragraph up through the words "Exhibit C". He specifically denies that the letter and the reasons set forth therein do not comply with FOIA. He craves reference to the letter for a complete statement of its contents and denies any allegations inconsistent therewith.

16. As to Paragraph 19, the Defendant admits only that the letter is attached as Exhibit D. He denies that Plaintiff's FOIA request constitutes a "Complaint" or that Ms. Meyers' letter at Exhibit C is a "rejection." The Defendant craves reference to Exhibit C.

17. As to Paragraph 20, the Defendant craves reference to Ms. Meyer's letter attached to the Complaint at Exhibit C and denies any allegations inconsistent therewith. The Defendant specifically denies that his Office has failed to comply with FOIA.

18. The Defendant denies Paragraph 21 for reasons set forth in Ms. Meyers' letter.

19. The Defendant denies Paragraph 22 and craves reference to the Guide.

20. The Defendant denies Paragraph 23, and without waiving any defenses to this suit, the Defendant denies Plaintiff's allegations that the referenced lawyers acted improperly and without any public purpose.

21. As to Paragraph 24, the Defendant craves reference to FOIA (S.C. Code Ann. §30-4-10, *et seq.*) and denies any allegations inconsistent therewith.

22. The Defendants denies Paragraphs 25 and 26,

23. The Defendant denies Paragraph 27 including, but not limited to, allegations of willful and reckless conduct and any allegations inconsistent with the actual number or content of the referenced Agreements.

24. The Defendant denies Paragraph 28 including, but not limited to, allegations of willful and reckless conduct and any allegations inconsistent with the referenced agreement. The Defendant denies that Plaintiff may litigate issues in the instant case that are before the Court in case 4900 or could be raised in that suit.

25. The Defendant denies Paragraph 29 including, but not limited to, allegations of willful and reckless conduct and any allegations that the authorization of Mr. Bauknight was

unlawful or improper. The Defendant denies that Plaintiff may litigate issues in the instant case that are before the Court in case 4900 or could be raised in that suit.

26. The Defendant denies Paragraph 30.

27. Paragraph 31 is a cumulative Paragraph to which no response is necessary. To the extent that, *arguendo*, a response is necessary, the Defendant incorporates by reference his answers to the previous allegations and Paragraphs of the Complaint and reasserts them.

28. The Defendant denies Paragraphs 32 and 33.

29. The Defendant denies the prayer for relief.

30. In each of the following defenses, the Defendant realleges and incorporates all the defenses contained in this Answer as fully as if repeated herein.

FOR A SECOND DEFENSE

31. Venue is improper in this Court.

FOR A THIRD DEFENSE

32. Plaintiff cannot use FOIA to overrule or bypass proceedings in case 4900 in Richland County.

FOR A FOURTH DEFENSE

33. Another action is pending among the same parties as to the same or substantially the same claim under SCRCP, Rule 12(b)(8).¹

FOR A FIFTH DEFENSE

34. The Richland County Court of Common Pleas has exclusive jurisdiction of matters related to the documents at issue.

¹ The Defendants respects that this Court has already ruled on this ground, and the Sixth Defense, *infra*, in its Order dated November 22, 2011. The Defendant asserts these grounds in this Answer to preserve them in the event of an appeal.

FOR A SIXTH DEFENSE

35. This Court lacks subject matter jurisdiction of this case. *See* note 1, *supra*.

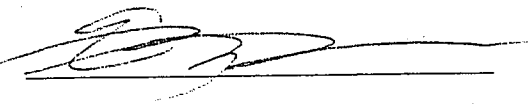
WHEREFORE, having fully answered the Plaintiff's Complaint, the Defendant prays as follows:

1. That judgment for the Defendant be entered as to the Complaint and that the relief sought by the Plaintiff be denied.

2. For such further relief as the Court deems just and proper.

ALAN WILSON
Attorney General

J. EMORY SMITH, JR.
Assistant Deputy Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3680
S.C. Bar No. 5262

BY: 

December 6, 2011

ATTORNEYS FOR DEFENDANT

000131

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

Adele J. Pope,
Plaintiff,

Case No. 2010-CP-40-4900
[formerly Newberry Co. Case No.
2011-CP-36-379]

v.

Alan Wilson, in his capacity as
Attorney General of South Carolina,
Defendant.

MOTION FOR JUDGMENT
ON THE PLEADINGS

Russell L. Bauknight, etc., Henry Dargan
McMaster, in his capacity as Attorney
General, etc, et al,
Plaintiffs,

POPE V. WILSON [former case 36-379]

v.

Case No. 2010-CP-40-4900

Adele J. Pope and Robert L. Buchanan, Jr.,
Defendants.

The Defendant Alan Wilson, Attorney General moves for judgment on the pleadings pursuant to Rule 12 (c), SCRCP, in that the moving party is entitled to judgment as a matter of law in this case:

1. The items demanded in the Freedom of Information Act request at issue in this proceeding are exempt from disclosure under FOIA because they are subject to the rules regarding discovery in the Rules of Civil Procedure.

2. FOIA is an important statute, but it cannot be used to bypass the rules regarding discovery.

3. FOIA cannot be used as a substitute for or as an addition to discovery of a party opponent.

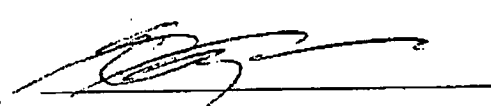
4. The Court lacks subject matter jurisdiction of this action because the matters at issue are governed by the Rules of Civil Procedure regarding civil discovery in the pending main action of Bauknight v. Pope, with which this case has been consolidated.

For the foregoing reasons, the Defendant Wilson respectfully requests that he be granted judgment in this action.

Respectfully submitted,

ALAN WILSON
Attorney General

J. EMORY SMITH, JR.
Assistant Deputy Attorney General
Post Office Box 11549
Columbia, SC 29211
S.C. Bar No. 5262
(803) 734-3680
Email: Esmith@scag.gov

BY: 

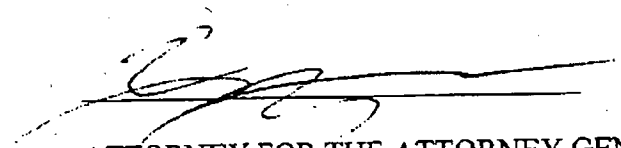
December 20, 2012

ATTORNEYS FOR THE ATTORNEY GENERAL

Rule 11, SCRCP, statement:

Undersigned counsel affirms that consultation with counsel for Plaintiff as to the foregoing Motion for Judgment on the Pleadings would serve no useful purpose.

December 20, 2012


ATTORNEY FOR THE ATTORNEY GENERAL

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

Adele J. Pope,

Plaintiff,

v.

Alan Wilson, in his capacity as
Attorney General of South Carolina and
James Brown Legacy Trust, by
Russell L. Bauknight, its Trustee,

Defendants.

IN THE COURT OF COMMON PLEAS

Case No. 11-CP-36-364

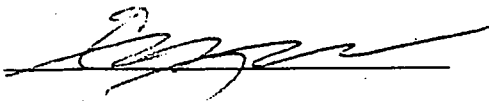
MOTION OF ATTORNEY GENERAL
TO STRIKE OR EXCLUDE
AFFIDAVIT OF JEFFREY SMITH

Pursuant to the Rules of Civil Procedure, the Defendant Alan Wilson, Attorney General, moves to strike or exclude the Affidavit of Jeffrey Smith dated December 9, 2011, and attachments thereto, in that the Affidavit contains statements that are not based upon personal knowledge, that are speculative, that are hearsay and that are irrelevant. The attachments are all irrelevant and the Pope and Spence affidavits and draft article contain hearsay and speculation.

Respectfully submitted,

ALAN WILSON
Attorney General

J. EMORY SMITH, JR.
Assistant Deputy Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3680

BY: 

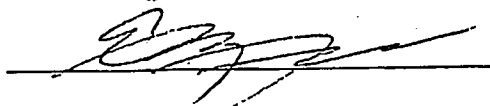
December 22, 2011

ATTORNEYS FOR THE ATTORNEY GENERAL

000134

Rule 11, SCRCP, statement:

Undersigned counsel affirms that consolation with counsel for Plaintiff as to the foregoing Motion to Strike would serve no useful.

A handwritten signature in black ink, appearing to be "R. J. ...", is written over a horizontal line.

December 22, 2011

ATTORNEY FOR THE ATTORNEY GENERAL

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Adele J. Pope,)
)
Plaintiff,)
)
v.)

Case No. 2010-CP-40-4900
[formerly Newberry Co. Case No.
2011-CP-36-379]

Alan Wilson, in his capacity as)
Attorney General of South Carolina,)
)
Defendant.)

MOTION TO STRIKE
ADDITIONAL AFFIDAVITS
POPE V. WILSON [former case 36-379]

Russell L. Bauknight, etc., Henry Dargan)
McMaster, in his capacity as Attorney)
General, etc, et al,)
)
Plaintiffs,)

Case No. 2010-CP-40-4900

v.)

Adele J. Pope and Robert L. Buchanan, Jr.,)
)
Defendants.)

Pursuant to the Rules of Civil Procedure, the Defendant Alan Wilson, Attorney General, moves to strike or exclude the following four affidavits in addition to the numerous other affidavits submitted by Plaintiff in this case which are already subject to motions to strike:

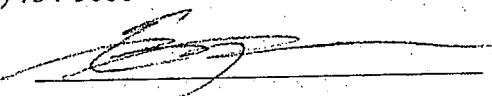
1. Affidavit of Adele Pope dated January 9, 2012 in support of Attorney's fees.
2. Affidavit of Steven Farrar dated January 4, 2011
3. Affidavit of Sue Summer, January 5, 2012 including attachments which are all irrelevant to the instant case.
4. Affidavit of Daryl Williams dated January 6, 2012

The affidavits and referenced attachments are irrelevant to the legal issues before this Court in the instant case. The affidavits referenced at items 1 -3, *supra*, also contain statements that are not based upon personal knowledge, that are speculative, or that are hearsay. Affidavits 2 – 4 may be moot if offered in support of Plaintiff's Motion for Reconsideration which has been denied.

Respectfully submitted,

ALAN WILSON
Attorney General

J. EMORY SMITH, JR.
Assistant Deputy Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3680

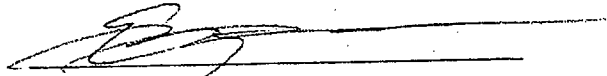
BY: 

March 28, 2012

ATTORNEYS FOR THE ATTORNEY GENERAL

Rule 11, SCRCP, statement:

Undersigned counsel affirms that consultation with counsel for Plaintiff as to the foregoing Motion to Strike would serve no useful purpose.



March 28, 2012

ATTORNEY FOR THE ATTORNEY GENERAL

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	Civil Action No. 2010-CP-40-4900
	)	[Formerly Newberry County Case No.
	)	2011-Cp-36-379]
Adele J. Pope,	)	
	)	PLAINTIFF'S RETURN AND OPPOSITION
Plaintiff,	)	TO MOTION FOR JUDGMENT ON
	)	THE PLEADINGS
v.	)	
	)	
Alan Wilson, in his capacity as	)	
Attorney General of South	)	
Carolina,	)	
Defendant.	)	
	)	

TO: DEFENDANT AND PURPORTED INTERVENORS, NAMELY RUSSELL L. BAUKNIGHT, AS TRUSTEE OF THE JAMES BROWN 2000 IRREVOCABLE TRUST AND THE JAMES BROWN LEGACY TRUST, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF JAMES BROWN; TOMMIE RAE BROWN, INDIVIDUALLY AND ON BEHALF OF HER MINOR CHILD, JAMES B.; DARYL J. BROWN, INDIVIDUALLY AND ON BEHALF OF HIS MINOR CHILD, JANISE B.; LINDSEY DELORES BROWN; DEANNA J. BROWN THOMAS; JASON BROWN-LEWIS; YAMMA N. BROWN, INDIVIDUALLY AND ON BEHALF OF HER MINOR CHILDREN, SYDNEY L. AND CARRINGTON L.; TONYA BROWN; VENISHA BROWN; LARRY BROWN; AND TERRY BROWN AND/OR THEIR COUNSEL.

Plaintiff opposes the Motion for Judgment on the Pleadings (the "Motion") for the reasons set out below:

The Motion is Baseless and Filed in Bad Faith

1. This motion is a continuation of the South Carolina Attorney General's attempts to delay this case and deny Plaintiff her rights under the Freedom of Information Act, which attempts have successfully prevented this matter from being heard for more than 15 months since it was filed in August 2011.

2. The Attorney General ("AG") asks that the Court summarily dispose of Plaintiff's

suit, brought pursuant to the South Carolina Freedom of Information Act ("FOIA"). Despite seeking this drastic relief, the AG tells the Court that the documents sought herein are "exempt from disclosure under FOIA because they are subject to the rules regarding discovery in the Rules of Civil procedure." [Motion, ¶1]

3. The AG cites no law and no rule in support of this assertion, and the undersigned has been unable to find a single case which supports it. Instead, there is a wealth of Federal law which holds that FOIA and discovery are separate procedures which may proceed separately or in tandem.

4. Because it has been cited and argued *in this case*, the AG is well aware of *North v. Walsh*, 881 F.2d 1088 (D.C. Cir. 1989), which included an exhaustive and thoroughly supported evaluation of an argument similar to that which the AG attempts to advance here:

An attempt to interject FOIA "does not extend the scope of discovery under Rule 16" when done as part of criminal discovery. *DeLorean*, 717 F.2d at 480; accord *Murdock*, 548 F.2d at 602. Discovery limitations, civil or criminal, however, do not apply when FOIA requests are presented in a discrete civil action. **The plaintiff's rights in a FOIA action do not depend on his or her identity;** " '[t]he Act's sole concern is with what must be made public or not made public.' " *United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, --- U.S. ---, 109 S.Ct. 1468, 1481, 103 L.Ed.2d 774 (1989) (citation omitted); see *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 n. 23, 98 S.Ct. 2311, 2327 n. 23, 57 L.Ed.2d 159 (1978) (stating that person's **rights under FOIA are neither diminished nor enhanced by his "litigation-generated need"** for agency documents); accord *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 143 n. 10, 95 S.Ct. 1504, 1513 n. 10, 44 L.Ed.2d 29 (1975); see also *United States v. Buckley*, 586 F.2d 498, 506 (5th Cir.1978) (stating that **"FOIA provides an**

independent basis for obtaining information potentially useful in a criminal trial"), cert. denied, 440 U.S. 982, 99 S.Ct. 1792, 60 L.Ed.2d 242 (1979); *Comstock Int'l (U.S.A.), Inc. v. Export-Import Bank of the United States*, 464 F.Supp. 804, 805 n. 2 (D.D.C.1979) (noting that FOIA plaintiff presumably sought documents for use in an arbitration proceeding, but holding that "a party's rights under the FOIA are neither enhanced nor diminished by its status as a private litigant"); see generally Toran, *Information Disclosure in Civil Actions: The Freedom of Information Act and the Federal Discovery Rules*, 49 GEO.WASH.L.REV. 843, 861 (1981) ("[A] party's desire to use information obtained under the FOIA in subsequent litigation is not a basis for denying an otherwise legitimate FOIA request. Indeed, there are situations in which FOIA will permit access to information that would not be available through discovery.") (footnote omitted); Tomlinson, *Use of the Freedom of Information Act for Discovery Purposes*, 43 MD.L.REV. 119, 121 (1984) (same).

North v. Walsh, 881 F.2d 1088 (D.C. Cir. 1989) [emphasis supplied]

5. In addition, the Court in *Hoover v. United States Dept. Of the Interior*, 611 F.2d 1132 (5th Cir. 1980), specifically held that a FOIA plaintiff's status as a defendant in civil litigation filed by the government *does not affect his rights under FOIA*:

The appellant landowner's right under the FOIA, where he is in effect asserting the rights of the public to obtain such appraisals, is inherently different than his particularized status as the landowner in the condemnation proceeding. He is entitled to vindicate his public rights in the instant FOIA suit in accordance with the requirements of the FOIA. *Id.*

The AG Seeks to Violate Plaintiff's Right to Equal Protection

6. The AG's argument seeks to deprive Plaintiff of her Constitutional right to equal protection of the laws.

7. The documents sought herein are public and are subject to disclosure to any citizen under FOIA. The State, however, asks the Court to find that FOIA bars *Plaintiff* from receiving the documents due to her status as a defendant in a tort case.

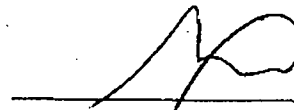
8. The AG asks the Court to find that a class of citizens (those who have been sued by the State) have no rights under FOIA. To do so would violate Plaintiff's right to equal protection under the Fourteenth Amendment to the United States Constitution.

9. Plaintiff is aware that another resident of Newberry County has recently filed suit against the AG under FOIA.¹ That individual seeks numerous documents, including the fee contract which is the subject of this action. Based on the AG's argument in the Motion, the Newberry plaintiff would be entitled to the same documents sought by Plaintiff herein. To arbitrarily treat Plaintiff differently from other individuals making similar FOIA requests is to violate her right to equal protection.

This return is based on the Complaint, prior affidavits and other filings herein; the *South Carolina Rules of Civil Procedure*; the South Carolina Freedom of Information Act; other applicable statutory and case law; and such additional documents as Plaintiff shall file herein prior to the hearing.

¹ That case is captioned *Susan D. Summer vs. Alan Wilson, in his Official Capacity as Attorney General of South Carolina*, Newberry County Case No. 2012-CP-36-688 (filed December 18, 2012).

Respectfully Submitted,



Adam T. Silvernail
Law Office of Adam T. Silvernail, LLC
Post Office Box 1898
1901 Hampton Street
Columbia, South Carolina 29202-1898
Tel: 803/779-1770
Fax: 803/403-8092
Email: adam@silvernaillawfirm.com

January 11, 2013

Attorney for Plaintiff

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	
Adele J. Pope,	)	Case No. 2010-CP-40-4900
	)	[formerly Newberry Co. Case No.
Plaintiff,	)	2011-CP-36-379]
	)	
v.	)	
	)	
Alan Wilson, in his capacity as	)	
Attorney General of South Carolina,	)	
	)	
Defendant.	)	
	)	MOTION TO AMEND ANSWER OF
	)	DEFENDANT ATTORNEY GENERAL
Russell L. Bauknight, etc., Henry Dargan	)	
McMaster, in his capacity as Attorney	)	POPE V. WILSON [former case 36-379]
General, etc, et al,	)	
	)	
Plaintiffs,	)	
	)	Case No. 2010-CP-40-4900
v.	)	
	)	
Adele J. Pope and Robert L. Buchanan, Jr.,	)	
	)	
Defendants.	)	
	)	

Pursuant to Rule 15 (a), SCRCP, and without waiving his pending Motions to Strike, his Motion for Judgment on the Pleadings, any defenses raised in his Motion to Dismiss, and the response of his Office to the Freedom of Information Act (FOIA) request at issue, the Defendant Attorney General moves for leave to amend his answer to the Complaint in this action so as to make the following changes which are included in the attached draft proposed Amended Answer including responses to the FOIA at issue at pages 4-10 and 20 to the Answer:

1. Striking the introductory paragraph and adding the following updated paragraph to reflect a motion filed since the original Answer and the attachment of documents that could be

considered responsive to the FOIA at issue:

The Defendant Attorney General, answering the Complaint herein subject to, and without waiving his pending Motions to Strike, his Motion for Judgment on the Pleadings, any defenses raised in his Motion to Dismiss, and the response of his Office to the Freedom of Information Act (FOIA) request at issue, alleges the following, including, subject to all of his motions and defenses, that he has no documents that could be considered responsive to the Freedom of Information Act request at issue other than as set forth below in the Fourth Defense and attached hereto as exhibits except for a three page document currently under judicial review which he will release if authorized by the Court:

2. Dropping the former second defense regarding improper venue because it is now moot, and incorporating the former third, fifth and sixth defenses into a new second defense that is consistent with the Motion for Judgment on the Pleadings and the earlier defenses:

The Court lacks subject matter jurisdiction of this action because the matters at issue are governed by the Rules of Civil Procedure regarding civil discovery in the pending main action of Bauknight v. Pope (case 4900), with which this case has been consolidated. FOIA is an important statute, but it cannot be used to bypass the rules regarding discovery or motions or review pending in the main action of case 4900. The items demanded in the FOIA request at issue in this proceeding are exempt from disclosure under FOIA §30-4-40(a)(4) because they are subject to the rules regarding discovery in the Rules of Civil Procedure.

3. Renumbering the former Fourth Defense as the Third Defense and adding a new Fourth Defense as follows:

Subject to and without waiving any defenses raised as to this complaint by this Answer or by Motion, including all grounds for lack of subject matter jurisdiction, the Attorney General responds herein that the Freedom of Information Act is very important to his Office and that his Office has no documents that could be considered responsive to the FOIA at issue other than as set forth below and attached hereto as an exhibit except for a three page document currently under judicial review which he will release if authorized by the Court.

A. The Office of the Attorney General responded to essentially the same FOIA request in another matter as Plaintiff's request 3 for "[t]he contract of then-AG Henry McMaster and / or the State engaging Kenneth B. Wingate and Everett Kendall, II to commence Civil Action 2010-GC-4000073 in the Probate Court for Richland County on behalf of the AG ." That other request was made by Plaintiff Summer who later brought the case *Summer v. Wilson*, 2012-CP-36-0688. The Defendant craves reference to his Office's response to the Summer FOIA which are at Exhibits pp. 1-10, *infra* and of public record in *Summer*. These responses make clear that the only document not of record that could be considered responsive to Plaintiff's request and provided herewith to Plaintiff is the three page document under judicial review in the main part of the instant case 4900. The Attorney General has no objection to disclosing this document if the Court rules that it may be released.

B. As to Plaintiff's FOIA requests 1 and 2. [Published policies of the Office of the Attorney General regarding engagement of private attorneys including contingency fee counsel in effect in May, 2010 and in effect on July 19, 2011], the Defendant attaches the policy from his Office manual: Exs. p 11 *infra* [Other parts of the page of the Office

manual on which the policy appears are redacted only because they are not related to the FOIA request]

C. As for Plaintiff's FOIA request 4 [Any contract and / or other document authorizing Russell Bauknight to commence case 400000073 on behalf of the AG and/ or the State], the Office of the Attorney General does not have such documents.

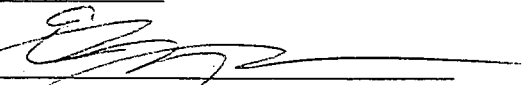
Rule 15 provides that leave to amend "... shall be freely given when justice so requires and does not prejudice any other party." Plaintiff is not prejudiced because the changes in the subject matter jurisdiction paragraph are consistent with defenses already included in the Defendant's Motion for Judgment on the Pleadings and an earlier memorandum, and lack of subject matter jurisdiction can be raised at any time. The new Fourth Defense serves to bring all issues and responses before the Court subject to the existing defense motions and defenses and should be considered under the Defendant's pending Motion for Judgment on the Pleadings along with the other defenses in the original and proposed amended answer.

For the foregoing reasons, the Defendant Attorney General respectfully requests that this Motion to Amend his Answer be granted.

Respectfully submitted,

ALAN WILSON
Attorney General

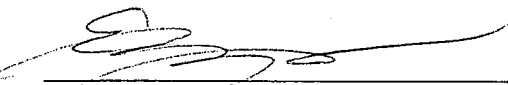
J. EMORY SMITH, JR.
Assistant Deputy Attorney General
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3680
Email: ESmith@scag.gov
SC Bar No. 5262

By: 
ATTORNEYS FOR THE DEFENDANTS

March 7, 2013.

RULE 11, SCRCP CERTIFICATION:

Undersigned counsel affirms that consultation with counsel for Plaintiff as to the foregoing Motion for Judgment on the Pleadings would serve no useful purpose.

BY: 

March 7, 2013

J. EMORY SMITH, JR.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

Adele J. Pope,
Plaintiff,

Case No. 2010-CP-40-4900
[formerly Newberry Co. Case No.
2011-CP-36-379]

v.

Alan Wilson, in his capacity as
Attorney General of South Carolina,
Defendant.

AMENDED ANSWER OF DEFENDANT
ATTORNEY GENERAL

Russell L. Bauknight, etc., Henry Dargan
McMaster, in his capacity as Attorney
General, etc, et al,

POPE V. WILSON [former case 36-379]

Plaintiffs,

Case No. 2010-CP-40-4900

v.

Adele J. Pope and Robert L. Buchanan, Jr.,
Defendants.

The Defendant Attorney General, answering the Complaint herein subject to, and without waiving his pending Motions to Strike, his Motion for Judgment on the Pleadings, any defenses raised in his Motion to Dismiss, and the response of his Office to the Freedom of Information Act (FOIA) request at issue, alleges the following, including, subject to all of his motions and defenses, that he has no documents that could be considered responsive to the Freedom of Information Act request at issue other than as set forth below in the Fourth Defense and attached hereto as exhibits except for a three page document currently under judicial review which he will release if authorized by the Court:

FOR A FIRST DEFENSE

1. The Defendant denies each and every allegation of the Complaint not hereinafter specifically admitted.

2. The Defendant admits Paragraphs 1 and 2 of the Complaint.

3. The Defendant admits Paragraph 3 only as to service and specifically denies that this Court has subject matter jurisdiction and that venue is proper.

4. As to Paragraph 4 of the Complaint, the Defendant craves reference to the statement attached to the Complaint as Exhibit A and denies any allegations inconsistent with that statement.

5. As to Paragraphs 5, 6 and 7, the Defendant craves reference to the suit (2010-CP-40-4900) and denies any allegations inconsistent therewith.

6. As to Paragraph 8, the Defendant craves reference to the suit (2010-CP-40-4900) and denies any allegations inconsistent therewith and specifically denies that the case 4900 Plaintiffs have made false and unsupported allegations in case 4900. The Defendant denies that the instant Plaintiff may litigate issues in the instant case that are before the Court in case 4900 or that could be raised in that suit.

7. As to Paragraph 9, the Defendant craves reference to the suit (2010-CP-40-4900) and denies any allegations inconsistent therewith and specifically denies that the former Attorney General destroyed the Brown estate plan. The Defendant denies that Plaintiff may litigate issues in the instant case that are before the Court in case 4900 or that could be raised in that suit.

8. As to Paragraph 10, the Defendant craves reference to the suit (2010-CP-40-4900) and denies any allegations inconsistent therewith and specifically denies that the Plaintiffs have

made false and unsupported allegations in case 4900. The Defendant denies that Plaintiff may litigate issues in the instant case that are before the Court in case 4900 or that could be raised in that suit.

9. As to Paragraph 11, the Defendant admits only that the Affidavit is attached, but he denies that any actions were arbitrary or improper and alleges that the Affidavit should be struck for reasons set forth in the Defendant's pending Motion to Strike. The Defendant denies that Plaintiff may litigate issues in the instant case that are before the Court in case 4900 or that could be raised in that suit.

10. In Paragraph 12, Plaintiff engages in speculation about a document that is a subject of this suit and has not been produced for that reason and because of pending litigation (case 4900). Without waiving any defenses to this suit, the Defendant denies any allegations in Paragraph 12 that are inconsistent with the document at issue. The Defendant denies that Plaintiff may litigate issues in the instant case that are before the Court in case 4900 or that could be raised in that suit.

11. The Defendant admits Paragraph 13.

12. As to Paragraph 14, the Defendant craves reference to documents filed by the Plaintiffs in case 4900 and denies any allegations in this Paragraph that are inconsistent with those documents. The Defendant denies that Plaintiff may litigate issues in the instant case that are before the Court in case 4900 or could be raised in that suit.

13. As to Paragraph 15, the Plaintiff fails to describe the actions to which she refers, but the Defendant specifically denies that the attorneys referenced in the first sentence have acted outside the scope of their duties or inconsistently with the public interest or any customs or procedures of the Attorney General's Office. As to the second sentence, the Defendants deny

that Mr. Bauknight is a public official. The Defendant denies that Plaintiff may litigate issues in the instant case that are before the Court in case 4900 or could be raised in that suit.

14. The Defendant admits Paragraphs 16 and 17 and craves reference to the Freedom of Information Act (FOIA) request for its exact content and denies any allegations inconsistent therewith.

15. The Defendant admits Paragraph 18 only as to the allegation that Ms. Meyers of his Office sent the letter attached as Exhibit C which are the first two lines of this Paragraph up through the words "Exhibit C". He specifically denies that the letter and the reasons set forth therein do not comply with FOIA. He craves reference to the letter for a complete statement of its contents and denies any allegations inconsistent therewith.

16. As to Paragraph 19, the Defendant admits only that the letter is attached as Exhibit D. He denies that Plaintiff's FOIA request constitutes a "Complaint" or that Ms. Meyers' letter at Exhibit C is a "rejection." The Defendant craves reference to Exhibit C.

17. As to Paragraph 20, the Defendant craves reference to Ms. Meyer's letter attached to the Complaint at Exhibit C and denies any allegations inconsistent therewith. The Defendant specifically denies that his Office has failed to comply with FOIA.

18. The Defendant denies Paragraph 21 for reasons set forth in Ms. Meyers' letter.

19. The Defendant denies Paragraph 22 and craves reference to the Guide.

20. The Defendant denies Paragraph 23, and without waiving any defenses to this suit, the Defendant denies Plaintiff's allegations that the referenced lawyers acted improperly and without any public purpose.

21. As to Paragraph 24, the Defendant craves reference to FOIA (S.C. Code Ann. §30-4-10, *et seq.*) and denies any allegations inconsistent therewith.

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22. The Defendants denies Paragraphs 25 and 26,
23. The Defendant denies Paragraph 27 including, but not limited to, allegations of willful and reckless conduct and any allegations inconsistent with the actual number or content of the referenced Agreements.
24. The Defendant denies Paragraph 28 including, but not limited to, allegations of willful and reckless conduct and any allegations inconsistent with the referenced agreement. The Defendant denies that Plaintiff may litigate issues in the instant case that are before the Court in case 4900 or could be raised in that suit.
25. The Defendant denies Paragraph 29 including, but not limited to, allegations of willful and reckless conduct and any allegations that the authorization of Mr. Bauknight was unlawful or improper. The Defendant denies that Plaintiff may litigate issues in the instant case that are before the Court in case 4900 or could be raised in that suit.
26. The Defendant denies Paragraph 30.
27. Paragraph 31 is a cumulative Paragraph to which no response is necessary. To the extent that, *arguendo*, a response is necessary, the Defendant incorporates by reference his answers to the previous allegations and Paragraphs of the Complaint and reasserts them.
28. The Defendant denies Paragraphs 32 and 33.
29. The Defendant denies the prayer for relief.
30. In each of the following defenses, the Defendant realleges and incorporates all the defenses contained in this Answer as fully as if repeated herein.

FOR A SECOND DEFENSE

31. The Court lacks subject matter jurisdiction of this action because the matters at issue are governed by the Rules of Civil Procedure regarding civil discovery in the pending main action of Bauknight v. Pope (case 4900), with which this case has been consolidated. FOIA is an important statute, but it cannot be used to bypass the rules regarding discovery or motions or review pending in the main action of case 4900. The items demanded in the FOIA request at issue in this proceeding are exempt from disclosure under FOIA §30-4-40(a)(4) because they are subject to the rules regarding discovery in the Rules of Civil Procedure.

FOR A THIRD DEFENSE

32. Another action is pending among the same parties as to the same or substantially the same claim under SCRCF, Rule 12(b)(8).¹

FOR A FOURTH DEFENSE

33. Subject to and without waiving any defenses raised as to this complaint by this Answer or by Motion, including all grounds for lack of subject matter jurisdiction, the Attorney General responds herein that the Freedom of Information Act is very important to his Office and that his Office has no documents that could be considered responsive to the FOIA at issue other than as set forth below and attached hereto as an exhibit except for a three page document currently under judicial review which he will release if authorized by the Court.

A. The Office of the Attorney General responded to essentially the same FOIA request in another matter as Plaintiff's request 3 for "[t]he contract of then-AG Henry

¹ The Defendants respects that this Court has already ruled on this ground, and and a related subject matter jurisdiction defense in its Order dated November 22, 2011. The Defendant asserts these grounds in this Answer to preserve them in the event of an appeal. The subject matter ruling did not the exemption argument set forth in the Second Defense, *supra*.

McMaster and / or the State engaging Kenneth B. Wingate and Everett Kendall, II to commence Civil Action 2010-GC-4000073 in the Probate Court for Richland County on behalf of the AG ." That other request was made by Plaintiff Summer who later brought the case *Summer v. Wilson*, 2012-CP-36-0688. The Defendant craves reference to his Office's response to the Summer FOIA which are at Exhibits pp. 1-10, *infra* and of public record in *Summer*. These responses make clear that the only document not of record that could be considered responsive to Plaintiff's request and provided herewith to Plaintiff is the three page document under judicial review in the main part of the instant case 4900. The Attorney General has no objection to disclosing this document if the Court rules that it may be released.

B. As to Plaintiff's FOIA requests 1 and 2. [Published policies of the Office of the Attorney General regarding engagement of private attorneys including contingency fee counsel in effect in May, 2010 and in effect on July 19, 2011], the Defendant attaches the policy from his Office manual: Exs. p 11 *infra* [Other parts of the page of the Office manual on which the policy appears are redacted only because they are not related to the FOIA request]

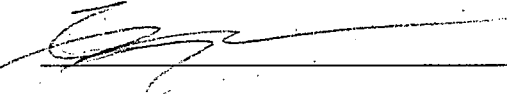
C. As for Plaintiff's FOIA request 4 [Any contract and / or other document authorizing Russell Bauknight to commence case 400000073 on behalf of the AG and/ or the State], the Office of the Attorney General does not have such documents.

WHEREFORE, having fully answered the Plaintiff's Complaint, the Defendant prays as follows:

1. That judgment for the Defendant be entered as to the Complaint and that the relief sought by the Plaintiff be denied.
2. For such further relief as the Court deems just and proper.

ALAN WILSON
Attorney General

J. EMORY SMITH, JR.
Assistant Deputy Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3680
S.C. Bar No. 5262

BY: 

March 7, 2013

ATTORNEYS FOR DEFENDANT

000155



ALAN WILSON
ATTORNEY GENERAL

January 5, 2012

VIA E-MAIL TO SUESUMMER@COMCAST.NET AND U. S. MAIL

Ms. Sue Summer
1903 Main Street
Newberry, South Carolina 29108

Dear Ms. Summer:

I am in receipt of a letter from you dated December 6, 2011 (received in this office December 9, 2011) in which you ask multiple questions (items numbered 1-5) and request one document (item 6). As you titled the request one pursuant to the Freedom of Information Act ("FOIA"), it has been referred to me for reply. Pursuant to the Act, public bodies are to provide persons the right to inspect and/or copy public records in accordance with reasonable rules concerning time and place of access, unless such records are or involve matters exempt from disclosure. While there is no provision in the Act for the asking or answering of questions such as those listed in items 1 through 5 of your letter, please be advised that all of the Attorney General's contingency-fee litigation retention agreements are currently posted on the Attorney General's website at <http://www.scag.gov/litigation-retention-agreements> with the exception of the "contract" that is at issue in the Richland County Circuit Court case referenced below. Additionally, the response to item 6 referenced below may be of assistance to you as to your inquiries addressed in items 1-5.

Regarding the document you request (item 6), which you refer to as the "McMaster/Wingate contract," there is a pending motion filed in Case No. 2010-CP-40-4900, hereinafter referenced as the "civil case," in the Richland County Circuit Court that seeks a Protective Order concerning, among other items, any such "contract." The document that this Office has in its possession that could be considered as responsive to your request and subject to the subject Protective Order consists of sixteen pages: A one-page letter from Attorney General McMaster to Russell Bauknight, three pages of a "draft" "private" "AGREEMENT FOR LEGAL SERVICES" and an eleven-page unexecuted copy of the standard Attorney General "Litigation Retention Agreement For Special Counsel Appointed by the South Carolina Attorney General" that has been designated as EXHIBIT A.

Exs. 1

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Ms. Sue Summer
Page 2
January 5, 2012

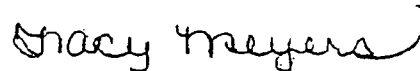
This Office does not object to providing the public portions of that item and, in fact, previously attempted at a status conference in the civil case to have turned over documents which would be subject to your request in item 6 but were stopped by Ms. Pope's counsel from doing so because they wanted the entire "contract." Based upon Ms. Pope's counsel's position, the court in the civil case is in the process of scheduling a review of the private portion of the fee contract in order to determine if it is confidential.

While this Office takes no position with respect to the disclosure of the contract involving private attorneys, those attorneys vigorously dispute the disclosure of the private portion of the fee contract and, therefore, it would only be prudent to allow the court to make a determination as to such disclosure.

In summary, at the very least, the public portion of the "contract" is subject to disclosure pursuant to a FOIA request. Such a position does not appear to be contested by any of the parties in the litigation. However, in that this "contract" is an issue in the civil case, I believe the wisest thing to do concerning public documents responsive to your request in item 6 is to put all parties on notice today that, unless I am notified by Friday, January 20, 2012, that a court of competent jurisdiction has placed such documents under seal or otherwise acted in a way that instructs me not to provide this information, I will provide it to you on that date.

Please note that I have copied the Honorable L. Casey Manning and the counsel of record in the civil case as to this correspondence.

Sincerely yours,



Tracy A. Meyers
Senior Assistant Attorney General

cc: The Honorable L. Casey Manning
C. Havird Jones, Jr., Esq.
Mark V. Gende, Esq.
Adam T. Silvernail, Esq.
Daryl L. Williams, Esq.
J. Calhoun Watson, Esq.
Robin A. Braithwaite, Esq.
Kenneth B. Wingate, Esq.

Exs. 2

000157



ALAN WILSON
ATTORNEY GENERAL

January 20, 2012

Ms. Sue Summer
1903 Main Street
Newberry, SC 29108

RE: Freedom of Information Act ("FOIA") request

Dear Ms. Summer:

Pursuant to your request dated December 6, 2011, and my response of January 5, 2012, enclosed please find Henry McMaster's letter dated May 18, 2010, and an accompanying public document. The portion of the May 18th correspondence that we consider private is not enclosed. Our disclosure to you herein should not be deemed to be a waiver of any privilege authorized by law. As Attorney General McMaster stated in his letter of May 18, 2010, "this office has no authority over [the] agreement with Messrs. Wingate and Kendall concerning the other portions of this matter." Inasmuch as this agreement is between private parties, we deem such agreement to be exempt from disclosure pursuant to § 30-4-40(a)(2) and it, therefore, is not included.

Sincerely yours,

Tracy A. Meyers
Senior Assistant Attorney General



HENRY McMASTER
ATTORNEY GENERAL

May 18, 2010

Mr. Russell Bauknight
Bauknight, Pietras & Stormer, P.A.
1517 Gervais Street
Post Office Box 1330
Columbia, South Carolina 29202

Re: James Brown Litigation

Dear Mr. Bauknight:

I have met with Ken Wingate and Everett Kendall of Sweeney Wingate & Barrow of Columbia, South Carolina, regarding the action to be filed against Adele J. Pope and Robert L. Buchanan, Jr., in the Richland County Probate Court in connection with the James Brown Estate and Trust. I am writing to confirm our understanding that you will be retaining Mr. Wingate and Mr. Kendall to file this action on behalf of the beneficiaries of the James Brown Estate and Trust, including the charitable interests. As you know, by law this office has a duty to protect charitable trusts. Also, per your conversation with Senior Assistant Attorney General C.H. Jones, Jr., in connection with the charitable trust portion of this matter, you have agreed to use the terms and conditions as outlined in the attached "Agreement for Legal Services" which references and incorporates the Attorney General's standard Litigation Retention Agreement. Of course, this office has no authority over your agreement with Messrs. Wingate and Kendall concerning the other portions of this matter.

Yours very truly,

Henry McMaster

Enclosures

HMcM/mfj

EXHIBIT A

LITIGATION RETENTION AGREEMENT FOR SPECIAL COUNSEL APPOINTED BY THE SOUTH CAROLINA ATTORNEY GENERAL

This litigation retention agreement ("Agreement") is by and between South Carolina Attorney General Henry McMaster ("Attorney General") and the below-signed attorney(s) ("Special Counsel").

RECITALS

WHEREAS, the Attorney General has concluded that it is in the best interest of the State of South Carolina to retain Special Counsel specifically for this litigation matter; and

WHEREAS, the Attorney General hereby engages Special Counsel to provide legal representation including, but not limited to, all preparation for, settlement of and/or actual litigation arising from [matter]; and

WHEREAS, Special Counsel specifically represents that he has the skill, experience, expertise, and competence necessary for the meaningful prosecution of this matter;

NOW THEREFORE, in consideration for the mutual promises and covenants set forth herein, and for other valuable consideration, the Attorney General and Special Counsel hereby agree to the following terms and conditions:

Article 1. TERM

This Agreement, which shall serve as the appointment of the attorneys whose signatures are affixed below as Special Counsel to the Attorney General, commences on _____, and terminates on _____, unless this work is concluded earlier or the Attorney General or Special Counsel terminates the appointment earlier pursuant to Article VI of this Agreement. If the work for which this appointment is made is not completed by the date above, then the Attorney General may re-appoint Special Counsel for an additional term or terms to be determined at that time. The Attorney General shall not be liable to compensate Special Counsel for any services rendered after termination of the Agreement.

Exhibit A

delegate any work whatsoever to any attorney in any other firm. Special Counsel agrees to accept full responsibility and liability for the work of any delegate.

C. Attorney-Client Relationship

Special Counsel will render services pursuant to this Agreement as an independent contractor. Neither Special Counsel nor any employee of Special Counsel shall be regarded as employed by, or as an employee of, the Attorney General or the State of South Carolina.

An attorney-client relationship shall exist between the Attorney General and Special Counsel.

Article III. CASE MANAGEMENT

A. Status Reports, Time Records

The Attorney General may at any time request status reports from Special Counsel regarding any aspect of this litigation. Within twenty days after the request is received, Special Counsel shall submit such status reports to the Attorney General. Failure to timely provide such status reports may result in forfeiture of a portion of Special Counsel's compensation at the sole discretion of the Attorney General.

At a minimum, status reports must include a description of the current status of the matter, any significant events that have occurred since the previous status report, and a prospective analysis of any significant future events.

B. Notices and Correspondence

All notices, demands, requests, consents, approvals, and other instruments required to be given pursuant to the terms of this Agreement shall be in writing and shall be deemed to have been properly given when: (1) hand delivered; (2) sent by U.S. Registered or Certified mail, return receipt requested, postage prepaid; (3) if certified or registered mail is either refused or unclaimed, then by regular U.S. Mail; (4) by overnight delivery service with receipt (Airborne, FedEx, UPS, etc.); (5) by email; or (6) by fax, followed by one of the other methods of delivery described herein. Fax delivery shall be deemed to be on the date of receipt of the fax, and the parties hereto agree that a fax with confirmation shall be adequate proof of receipt of the fax.

Both Special Counsel and the Attorney General may designate a representative to receive such instruments and correspondence as described herein. While both parties recognize this designation may be changed at any time, and without consent of the other party by giving written notice of the new designated representative, until further notice, such instruments and/or correspondence should be addressed to:

Name: Henry McMaster
Attorney General
Address: P. O. Box 11549

Exhibit A

receive the Attorney General's express prior approval in writing. Special Counsel shall confer with the Attorney General as early as practicable in any settlement negotiation process.

E. Appeals

It is important that the Attorney General receives early notice of any potential appellate litigation in any way affecting the State. Therefore, Special Counsel agrees to give prompt oral and written notice to the Attorney General when receiving: (1) any dispositive decision by any appellate court affecting the litigation in any way; or (2) a Notice of Appeal from a court's decision filed by any party to this litigation.

F. Public Records

Any material, data, files, discs, or documents created, produced, or gathered by Special Counsel, or in Special Counsel's possession in furtherance of this litigation, or which fulfills an obligation of this appointment, shall be considered the exclusive property of the State of South Carolina. Special Counsel agrees to adhere to South Carolina's Freedom of Information Act, South Carolina Code of Laws §30-4-10 *et. seq.*, and maintain all public records in accordance with State law; provided, however, that Special Counsel shall consult with, and obtain the approval of, the Attorney General before responding to any public records request. Special Counsel agrees to comply with the Attorney General's policy on document retention and to refrain from destroying documents unless otherwise permitted under this policy. Special Counsel agrees to comply with Rule 417 of the South Carolina Appellate Court Rules. Special Counsel agrees to request written confirmation from the Attorney General's Office prior to destroying any documents. This Agreement shall be considered a public document.

Article IV. COMPENSATION

A. Fee Schedule

This is a contingent fee case. Special Counsel shall receive no compensation for any services rendered unless the State of South Carolina receives a settlement or damage award in connection with this litigation. If the State receives such an award, Special Counsel will be compensated for his services pursuant to this Article, as follows:

1. Special Counsel shall be reimbursed all reasonable, normal, and verified "out of pocket" costs and expenses as specified in Article V below.

These costs and expenses necessary for conducting this litigation, as defined in Article V of this Agreement, shall initially be advanced by Special Counsel and shall be deducted from the litigation's gross or total recovery, if any, before any further distribution is made.

Provided, however, that civil penalties shall not be included in calculating the gross or total recovery, and Special Counsel shall not receive any fees or costs from awards of

5. All settlement or judgment proceeds shall be paid by or on behalf of the defendant(s) to the Attorney General's office, which shall distribute them or have them distributed.

6. It is strictly agreed and understood by Special Counsel that if the proposed or actual defendants in this matter agree to a settlement or resolution prior to or upon commencement of the action or shortly thereafter, upon negotiation or consultation or upon only initial responses, then Special Counsel's compensation shall be one-half of that specified in sections 3 and 4 above.

7. This distribution and compensation calculation shall be included in a final order in the case.

B. Settlement or Judgment

The above Fee Schedule applies to any settlement or judgment, whether the settlement or judgment is entirely monetary in nature or is combined with non-monetary relief. Should the litigation be resolved by settlement or judgment involving a combination of monetary and non-monetary relief (such as injunctive relief, non-monetary payment, the provision of goods and/or services or any other "in kind" terms, or any combination of those), the Attorney General shall determine the monetary value to the State.

C. Payment of Fees, Costs and Expenses

Neither the State of South Carolina nor the Attorney General shall be required under this Agreement, or otherwise, to compensate or reimburse Special Counsel for his work in this matter, other than as set forth in Articles IV (A), and IV(B), and V herein. Accordingly, except for the fee schedule, expenses, and costs enumerated and outlined herein, Special Counsel shall not be entitled to and shall not accept compensation or reimbursement from any other source.

Article V. EXPENSES AND COSTS

A. Advancement of Expenses and Costs

Special Counsel shall advance all costs, expenses, and disbursements, including expert witness fees and costs, deposition costs, and costs of document production. Special Counsel's agreement to advance all litigation expenses and costs, as well as its agreement to defer fees while any and all litigation (including appeals and enforcement actions) is pending has been taken into consideration in establishing the fee schedule above.

B. Expenses and Cost Reimbursement

Special Counsel shall be reimbursed solely from the litigation's gross recovery as approved by the Attorney General for certain reasonable expenses and costs enumerated below. Proper documentation by receipts or otherwise shall be submitted with all invoices and all

per copy). Reasonable amounts for outside photocopying shall be reimbursed at actual cost if receipts are provided.

7. Priority/Overnight Mail

Charges for priority or overnight mail services shall be reimbursed only if a justifiable basis exists for using the service. In no event shall the Special Counsel be reimbursed for the cost of sending invoices or status reports to the Attorney General by overnight or priority mail services.

8. Secretarial or Staff Overtime

There shall be no reimbursement for secretarial or staff overtime unless expressly authorized in writing by the Attorney General prior to invoicing.

9. Other Expenses

Actual costs shall be reimbursed for certain routine expenses including transcripts, deposition costs, witness fees, subpoena service, postage, printing, cab and bus fares, parking, and long-distance telephone calls when itemized and receipts are provided. Expenses for office space, word processing, secretarial, and paralegal costs are not reimbursable. Westlaw expenses shall be reimbursed only when authorized in advance by the Attorney General.

C. One Invoice

At the conclusion of the litigation, Special Counsel agrees to submit one original invoice to the Attorney General for expenses and costs.

Article VI. TERMINATION

A. Termination by the Parties

The Attorney General reserves the right to terminate this Agreement at any time, in his sole discretion, and without cause or duty of explanation. Special Counsel may terminate its duties and obligations under the Appointment and this Agreement upon thirty (30) days written notice to the Attorney General. Termination on the part of the Special Counsel shall not be effective if the Attorney General finds in his sole discretion that such termination prejudices or has a material adverse effect on the State of South Carolina. Upon termination, all material, data, files, discs, or documents created, produced, or gathered by Special Counsel, or in Special Counsel's possession in furtherance of this litigation, or which fulfills an obligation of this appointment shall be immediately delivered to the Attorney General as directed by him, and without encumbrance or lien or any cost or charge to the Attorney General.

B. Compensation Upon Termination

Exhibit A

complaint to adversely affect in any way Special Counsel's ability to perform his duties required herein, or to adversely affect this litigation, the Attorney General, or the State of South Carolina.

D. Insurance

Special Counsel agrees to carry adequate professional liability insurance and to provide proof of same to the Attorney General promptly upon request.

E. Conflict of Interest

Special Counsel represents that neither he nor his firm has any conflict of interest with the State of South Carolina, its agencies, or subdivisions at this time. Special Counsel agrees that if a conflict of interest, potential or otherwise, arises, as defined by Rule 407, Rules of Professional Conduct, South Carolina Appellate Court Rules, during the term of this litigation, then Special Counsel will give timely written notice to the Attorney General. Special Counsel must request and obtain a written authorization from the Attorney General prior to undertaking any representation against or adverse to the State of South Carolina, its offices, boards, departments, or institutions during the term of this appointment.

F. Equal Opportunity

Special Counsel hereby represents that neither he nor his law firm discriminates on the basis of race, religion, color, sex, age, national origin, or disability against any person in the employment of personnel in their offices.

G. Entire Agreement/Integration

This Agreement constitutes the entire understanding of the parties. Both parties agree that there is no other understanding or agreement other than the terms expressly stated herein.

H. Severability of Terms and Conditions

If any provision of this Agreement shall be held invalid, illegal, or unenforceable in any respect, said provision shall be severed. The validity, legality, and enforceability of all other provisions of this Agreement shall not in any way be affected or impaired unless such severance would cause this Agreement to fail of its essential purpose.

I. Amendment or Modification

No amendment or modification of this Agreement shall be effective against either party unless such amendment or modification is set forth in writing and signed by both parties.

J. Headings

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Use of Private Counsel

If necessary, the Division Directors may request the Chief Deputy Attorney General to approve retaining outside counsel. Such requests must be approved by the Chief Deputy Attorney General before any case work is initiated by outside counsel.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	Civil Action No. 2010-CP-40-4900
	)	
Adele J. Pope,	)	
	)	PLAINTIFF'S STATUS REPORT
Plaintiff,	)	
	)	
v.	)	
	)	
Alan Wilson, in his capacity as	)	
Attorney General of South Carolina,	)	
	)	
Defendant.	)	

By direction of the Honorable L. Casey Manning on March 18, 2013 Plaintiff Adele J. Pope submits this report of the status of this case in light of S. C. Supreme Court decision No. 27227, issued February 27, 2013 and subsequent events.

Summary of Status and Relief Requested

The following summarizes the status of this case, a FOIA action which was consolidated but not merged with Richland County Case 2010-CP-40-4900:

1. This case, brought under the South Carolina Freedom of Information Act ("FOIA"), has been pending for nearly 18 months and is ready to be heard and finally decided at the Court's earliest convenience.
2. Pursuant to the Supreme Court's suggestion (in footnote 29 of the opinion), the FOIA cases "should be considered by the circuit court in the first instance."
3. In light of the Attorney General's announcement that he will seek to remove himself from Case 4900, the FOIA action should be immediately severed and proceed directly to hearing.
4. Intervention by certain non-parties should be immediately denied to avoid further unnecessary delay and interference.

History of Case

Pope made proper requests under the FOIA for the public documents sought herein in July 2011. Those documents include:

The contract of the then-AG [Henry D. McMaster] and/or the State of South Carolina engaging Kenneth B. Wingate and Everett Kendall, II to commence Civil Action No. 2010-GC-40-00073 in the Probate Court for Richland County on May 19, 2010 on behalf of the AG.

Any contract and/or other document authorizing Russell L. Bauknight to commence Civil Action No. 2010-GC-40-00073 on behalf of the AG and/or the State of South Carolina.

The AG declined to produce the documents, without suggesting that any were not public.

This case was filed on August 10, 2011 in Newberry County. Pursuant to the FOIA, Plaintiff sought a declaration that the requested documents are public; an Order directing their production; and her attorneys' fees incurred in prosecuting this matter. All such relief is provided for by statute. (See S. C. Code Ann. § 30-4-10, et seq.)

The private Plaintiffs in Case 4900 moved to intervene in this case for the express purpose of preventing the AG's release of the fee contract.

At the request of Defendant AG, this case was transferred to Richland County and consolidated (but not merged) with the complex multimillion-dollar tort case No. 2010-CP-40-4900 ("Case 4900").

Despite continuing requests by Plaintiff for a hearing, no motions have been decided since the case was transferred to Richland County more than a year ago.

On March 7, 2013, the AG produced – for the first time – some responsive documents to Pope. It also indicated that it is in possession of at least one additional document which would be produced at this Court's direction.

On March 27, 2013, counsel for the Proposed Intervenors asked this Court to stay this matter. See Exhibit A, attached.

This Matter Should be Heard Right Away

This case is now nearly 18 months old, and it is ready to be heard.

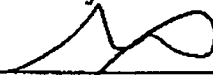
The AG has indicated on more than one recent occasion that his office is ready to proceed with this matter, and the spirit and letter of the FOIA require that no further delay occur.

Proposed Intervenor's recent request to stay this and other matters for a period which (as defined in their letter) could easily be years¹ is further evidence of their improper intentions. Their actions have already caused substantial delay, and their intervention has no basis in law. Plaintiff incorporates her previous filings regarding intervention herein.

As the Supreme Court noted in its February 27 opinion, this matter should be heard "in the first instance."

Plaintiff respectfully submits that intervention should be immediately denied and this matter should proceed to a hearing at the Court's earliest convenience.

Respectfully submitted,



Adam T. Silvernail
Law Office of Adam T. Silvernail, LLC
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Columbia, South Carolina 29202-1898
Telephone: (803) 779-1770
Facsimile: (803) 403-8092
adam@silvernaillawfirm

March 28, 2013

Attorney for Plaintiff

¹ Proposed Intervenor's request for a stay is based on the absurd idea that their "uncertainty" resulting from the Supreme Court's February 27, 2013 decision in *Wilson v. Dallas* is a basis for indefinitely continuing their interference with Plaintiff's FOIA rights. Plaintiff will respond more fully to the stay request in a filing in Case 4900.



SWEENEY WINGATE & BARROW P.A.

March 27, 2013

Reply to: Main Office

Mark V. Gende
(803) 256-2233 x121
mvg@swblaw.com

VIA EMAIL AND U.S. MAIL

Honorable L. Casey Manning, Jr.
Circuit Court Judge
Richland Judicial Center
1701 Main Street, Room 214 (2nd Floor)
Post Office Box 192
Columbia, SC 29202-0192

RE: Russell L. Bauknight, et al. v. Adele J. Pope
Civil Action No.: 2010-CP-40-04900
Our File: 4077-7389

Dear Judge Manning:

This letter is in response to your recent request for a written status report on Case 4900 and the related FOIA matters.

As to Case 4900, it is the Plaintiffs' position that the recent South Carolina Supreme Court ruling concerning the James Brown Estate Settlement Agreement and the removal of Ms. Adele Pope as Personal Representative and Trustee has created significant uncertainty among the Plaintiffs' group.

This uncertainty does not alter the fact that the Plaintiffs still have active and substantial claims against Ms. Pope, but does raise issues as to the capacity in which the Plaintiffs will continue Case 4900 and whether Sweeney, Wingate & Barrow, P.A. will be able to continue their representation as a group. These significant matters will not be resolved at the earliest until the cycle of Petitions for Rehearing in the Supreme Court are either denied or heard and decided and remittitur issues and possibly not until the will contests are re-litigated in Aiken County.

Therefore, the Plaintiffs would respectfully request that all matters in Case 4900 be stayed until these important issues are resolved.

As to the FOIA issues, the Plaintiffs' position is that each of the groups of documents at issue, the Sweeney, Wingate & Barrow, P.A. Fee Agreement and the Legacy Trusts documents,

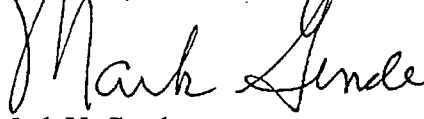
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are subject to pending discovery disputes in Case 4900. We do not believe that any decision can be made in the FOIA matters until the discoverability of these documents has first been determined in Case 4900, because if these documents are deemed privileged or otherwise protected then they are exempt from discovery under FOIA. As we have stated many times, it is our position that the Defendant is seeking to use FOIA simply as a means to do an end run around of the Rules of Civil Procedure governing Case 4900.

Should the Court have any questions concerning this update, I am available to answer those questions at the Court's convenience.

Yours truly,

SWEENEY, WINGATE & BARROW, P.A.



Mark V. Gende

MVG/lda

cc: J. Emory Smith, Jr., Esquire
Adam T. Silvernail, Esquire
Daryl L. Williams, Esquire

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	Civil Action No. 2010-CP-40-4900
	)	
Adele J. Pope,	)	
	)	PLAINTIFF'S BRIEF IN SUPPORT
Plaintiff,	)	OF SUMMARY JUDGMENT AND
	)	IN OPPOSITION TO ATTORNEY
v.	)	GENERAL'S MOTION FOR
	)	JUDGMENT ON THE PLEADINGS
Alan Wilson, in his capacity as	)	
Attorney General of South Carolina,	)	
	)	
Defendant.	)	
	)	

This is a suit filed on August 10, 2011 under the South Carolina Freedom of Information Act ("FOIA") against the Attorney General of South Carolina ("AG"). Plaintiff submits this brief in support of summary judgment on her causes of action for declaratory judgment, injunctive relief and attorneys' fees and costs, and in opposition to the motions of AG Alan Wilson for judgment on the pleadings and to strike.

Summary of Status and Relief Requested

The following summarizes the status of this FOIA action, consolidated (but not merged) for more than four years with Richland County Case 2010-CP-40-4900 ("Case 4900"):

1. This case relates to a FOIA request made by Plaintiff in July 2011. Plaintiff seeks the public Litigation Retention Agreement by which the AG, acting through private counsel, sued her in 2010 in Case 4900 (the "Wingate Agreement").
2. For Four years the AG, his Case 4900 counsel and his Case 4900 co-Plaintiffs have worked in tandem to evade release of the Wingate Agreement under FOIA.
3. Even after the Wingate Agreement was declared public by a federal judge in November 2013, the AG has refused to release it under the FOIA.
4. The AG should be directed to produce all responsive documents, and the Court should grant Plaintiff the attorneys' fees and costs incurred in filing and pursuing this action.

History of Case

Plaintiff made proper requests under the FOIA for the public documents sought herein in July 2011. Those documents include:

The contract of the then-AG [Henry D. McMaster] and/or the State of South Carolina engaging Kenneth B. Wingate and Everett Kendall, II to commence Civil Action No. 2010-GC-40-00073 in the Probate Court for Richland County on May 19, 2010 on behalf of the AG.

Any contract and/or other document authorizing Russell L. Bauknight to commence Civil Action No. 2010-GC-40-00073 on behalf of the AG and/or the State of South Carolina.

The AG declined to produce the documents.

Plaintiff sued the AG under the FOIA in Newberry County, where the FOIA request was made. This case was filed on August 10, 2011 in Newberry County. Pursuant to the FOIA, Plaintiff sought a declaration that the requested documents are public; an Order directing their production; and her attorneys' fees incurred in prosecuting this matter. All such relief is provided for by statute. (See S. C. Code Ann. § 30-4-10, et seq.)

Approximately sixteen of the AG's co-Plaintiffs in Case 4900, including a trust controlled by the AG (the "Legacy Trust"), immediately moved to intervene in this FOIA case and prevent release of the Wingate Agreement.

At the request of Defendant AG and his Case 4900 Co-Plaintiffs, this case was transferred to Richland County and consolidated (but not merged) with Case 4900. Case 4900 is a complex, multimillion-dollar tort suit.

On March 7, 2013, the AG produced to Plaintiff – for the first time – some documents responsive to the FOIA request. The AG indicated that he had possession of at least one additional document which would be produced at this Court's direction.

On March 27, 2013, counsel for the Case 4900 Plaintiffs seeking to intervene in this

FOIA suit asked the Circuit Court to stay this matter. As a result of this request and a subsequent motion to stay, this case has been delayed for an additional three (3) years, despite Plaintiff's efforts to move the matter toward a final conclusion.

On April 18, 2016, the proposed intervenors notified this Court that they were withdrawing their motion to intervene.

The AG Must Comply with the FOIA and Release all Remaining Documents

The AG initially refused to produce documents to Plaintiff based on his assertion that Plaintiff was deprived of her FOIA rights as a result of the AG's having sued her in Case 4900. On March 7, 2013, the AG released certain documents to Plaintiff, but continued his refusal to release his copy of the Wingate Agreement by which private counsel represents the AG and more than a dozen private Plaintiffs, in Case 4900.

After a Federal Court found in another case that the Wingate Agreement is a public document, the AG continued to refuse to release his copy to Plaintiff. Although the Federal Court settled the question of whether that document is public, the AG's refusal to release it has required the continued litigation of this action.

Plaintiff is Entitled to Judgment Against the Attorney General for Reasonable Attorneys' Fees and Costs

Plaintiff's final cause of action is a request for the attorneys' fees and costs incurred in filing and pursuing this action. S.C. Code Ann. §30-4-100 authorizes this Court to award reasonable attorneys' fees and costs to a plaintiff who prevails in whole or in part. See *Sloan v. Friends of the Hunley, Inc.*, 393 S.C.-152, 157, 711 S.E.2d 895, 897 (2011) ("When a public body frustrates a citizen's FOIA request to the extent that the citizen must seek relief in the courts and incur litigation costs, the public body should not be able to preclude prevailing party status to the citizen by producing the documents after litigation is filed."

(internal citations omitted)).

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Plaintiff properly requested public documents from the AG in July 2011. The AG took the position that Plaintiff's FOIA rights were suspended as a result of the AG having sued her in Case 4900. This position was without merit and has been specifically addressed by Federal Courts:

An attempt to interject FOIA "does not extend the scope of discovery under Rule 16" when done as part of criminal discovery. *DeLorean*, 717 F.2d at 480; accord *Murdock*, 548 F.2d at 602. Discovery limitations, civil or criminal, however, do not apply when FOIA requests are presented in a discrete civil action. **The plaintiff's rights in a FOIA action do not depend on his or her identity;** " '[t]he Act's sole concern is with what must be made public or not made public.' " *United States Dep't of Justice v. Reporters Comm. for Freedom of the Press*, --- U.S. ---, 109 S.Ct. 1468, 1481, 103 L.Ed.2d 774 (1989) (citation omitted); see *NLRB v. Robbins Tire & Rubber Co.*, 437 U.S. 214, 242 n. 23, 98 S.Ct. 2311, 2327 n. 23, 57 L.Ed.2d 159 (1978) (stating that person's rights under FOIA are neither diminished nor enhanced by his "litigation-generated need" for agency documents); accord *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132, 143 n. 10, 95 S.Ct. 1504, 1513 n. 10, 44 L.Ed.2d 29 (1975); see also *United States v. Buckley*, 586 F.2d 498, 506 (5th Cir.1978) (stating that "FOIA provides an independent basis for obtaining information potentially useful in a criminal trial"), cert. denied, 440 U.S. 982, 99 S.Ct. 1792, 60 L.Ed.2d 242 (1979); *Comstock Int'l (U.S.A.), Inc. v. Export-Import Bank of the United States*, 464 F.Supp. 804, 805 n. 2 (D.D.C.1979) (noting that FOIA plaintiff presumably sought documents for use in an arbitration proceeding, but holding that "a party's rights under the FOIA are neither enhanced nor diminished by its status as a private litigant"); see generally Toran, *Information Disclosure in Civil Actions: The Freedom of Information Act and the Federal Discovery Rules*, 49 GEO.WASH.L.REV. 843, 861 (1981) ("[A] party's desire to use information obtained under the FOIA in subsequent litigation is not a basis for denying an otherwise legitimate FOIA request. Indeed, there are situations in which FOIA will permit access to information that would not be available through discovery.") (footnote omitted); Tomlinson, *Use of the Freedom of Information Act for Discovery Purposes*, 43 MD.L.REV. 119, 121 (1984) (same).

North v. Walsh, 881 F.2d 1088 (D.C. Cir. 1989) [emphasis supplied]

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In addition, the Court in *Hoover v. United States Dept. Of the Interior*, 611 F.2d 1132 (5th Cir. 1980), specifically held that a FOIA plaintiff's status as a defendant in civil litigation filed by the government *does not affect his rights under FOIA*:

The appellant landowner's right under the FOIA, where he is in effect asserting the rights of the public to obtain such appraisals, is inherently different than his particularized status as the landowner in the condemnation proceeding. He is entitled to vindicate his public rights in the instant FOIA suit in accordance with the requirements of the FOIA. *Id.*

Because the AG has nonetheless continued for more than four (4) years his refusal to produce all responsive public documents to Plaintiff, this Court should tax the entire cost of this action to the AG. In addition, the AG's successful attempt to move this action to Richland County and consolidate it with a multimillion-dollar tort suit have caused additional delay and legal expense.

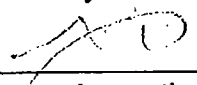
To date, Plaintiff's attorneys' fees (at the rate of \$250 per hour) are \$38,725, with an additional \$1,229.60 in costs. These fees and costs are reasonable in light of the AG's efforts to extend this simple action into multi-year litigation which further stifled Plaintiff's FOIA rights. Plaintiff asks that this Court grant judgment against the AG in the amount of \$39,954.60, plus any additional fees and costs incurred through the May 17, 2106 hearing in this action.

Conclusion

For the reasons set forth above and in Plaintiff's other filings herein, Plaintiff asks that this Court deny the AG's motion for judgment on the pleadings; grant her motion for summary judgment on all causes of action; and enter judgment against the AG for the attorneys' fees and costs sought herein.

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Respectfully submitted,



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803/461-2328
asilvernail@mkb-law.com

May 2, 2016

Attorney for Plaintiff

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STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Adele J. Pope,)

Plaintiff,)

v.)

Alan Wilson, in his capacity as)

Attorney General of South Carolina,)

Defendant.)

Russell L. Bauknight, etc., Henry Dargan)

McMaster, in his capacity as Attorney)

General, etc, et al,)

Plaintiffs,)

v.)

Adele J. Pope and Robert L. Buchanan, Jr.,)

Defendants.)

IN THE COURT OF COMMON PLEAS

Case No. 2010-CP-40-4900
[formerly Newberry Co. Case No.
2011-CP-36-379]

MEMORANDUM IN SUPPORT OF
MOTION TO AMEND ANSWER,
MOTION FOR JUDGMENT ON THE
PLEADINGS, AND
MOTIONS TO STRIKE AND IN
OPPOSITION TO MOTION FOR
SUMMARY JUDGMENT

POPE V. WILSON [former case 36-379]

Case No. 2010-CP-40-4900

Updated May 2, 2016

INTRODUCTION AND BACKGROUND

The Defendant Attorney General strongly supports the Freedom of Information Act, and his Office and his predecessors have a long history of advocating the importance of that law. Subject to all of our pending motions and defenses, the Office of the Attorney General (OAG) has responded to the FOIA at issue in this case by providing documents attached to the Answer except for the three-page document that was under the review of this Court, and is now in the public domain.

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Although the OAG has responded to the FOIA, this case must be dismissed for other reasons that deprive this Court of subject matter jurisdiction. FOIA must be applied in accordance with the law, and that law, as explained below, exempts matters that are governed by the Rules of Civil Procedure, as here, and because Plaintiff's FOIA relates to pending judicial proceedings in Richland County, *Bauknight v. Pope*, 2010-CP-40-4900, and are subject to the discovery process in that case. Under FOIA and the Rules of Civil Procedure, Plaintiff cannot use FOIA in this case to make an end-run around discovery procedure in other ongoing litigation.

Response to Plaintiff's FOIA Request Provided Subject to Defenses

Plaintiff requested the following documents which are described at more length in her July 19, 2011 FOIA request attached as Exhibit B to the Complaint.

1 and 2. Published policies of the Office of the Attorney General regarding engagement of private attorneys including contingency fee counsel in effect in May, 2010 and in effect on July 19, 2011.

3. The contract of then-AG Henry McMaster and / or the State engaging Kenneth B. Wingate and Everett Kendall, II to commence Civil Action 2010-GC-4000073 in the Probate Court for Richland County on behalf of the AG.

4. Any contract and / or other document authorizing Russell Bauknight to commence case 400000073 on behalf of the AG and/ or the State.

The Office of the Attorney General did respond to this request and proposed to put the requests on hold pending the outcome of Richland County litigation, 2010-CP-40-4900. Ex. C to Complaint. The letter noted several motions pending related to discovery requests and that FOIA is not designed to supplement the rules of civil or criminal discovery.

The documents attached to the Defendant's proposed Amended Answer provided the only documents that could be considered responsive to this request except the three page agreement now in the public domain.

A. The Office of the Attorney General responded to essentially the same FOIA request in another matter as Plaintiff's request 3 for "[t]he contract of then-AG Henry McMaster and / or the State engaging Kenneth B. Wingate and Everett Kendall, II to commence Civil Action 2010-GC-4000073 in the Probate Court for Richland County on behalf of the AG." That other request was made by Plaintiff Summer who later brought the case *Summer v. Wilson*, 2012-CP-36-0688. The Defendant craves reference to his Office's response to the Summer FOIA which are at Amended Ans. Exs pp. 1-10 and of public record in *Summer*. These responses make clear that the only document not of record that could be considered responsive to Plaintiff's request and not provided with the Amended Answer to Plaintiff is the three page document previously under judicial review in the main part of the instant case 4900. Plaintiff has had the three page document pursuant to *Brown v. Pope*, 3:08-cv-14-WOB, November 15, 2013 (the Honorable J. Gregory Wehrman, Magistrate Judge)(copy attached).

B. As to Plaintiff's FOIA requests 1 and 2. [Published policies of the Office of the Attorney General (OAG) regarding engagement of private attorneys including contingency fee counsel in effect in May, 2010 and in effect on July 19, 2011], the Defendant attaches the policy from his Office manual: Answer Exs. p 11 [Other parts of the page of the Office manual on which the policy appears are redacted only because they are not related to the FOIA request]

C. As for Plaintiff's FOIA request 4 [Any contract and / or other document authorizing Russell Bauknight to commence case 400000073 on behalf of the AG and/ or the State], the Office of the Attorney General does not have such documents.

Except for the three lines of OAG policy, Plaintiff had access to the same documents through court records prior to the provision of these attachments as Amended Answer exhibits in 2013.

Procedural Background and Summary

In earlier proceedings, the Court of Common Pleas for Newberry County, denied the Defendant Wilson's Motion to Dismiss this case pursuant to Rule 12(b)(8), SCRCP, but ordered that this case be consolidated with *Bauknight v. Pope*, 2010-CP-4900, pending in Richland. The Court did not rule on the motions to strike.

The relationship of the instant action to Richland proceedings in the main *Bauknight v. Pope* action is set forth in Plaintiff's complaint. Instant Plaintiff Pope acknowledges that she is the Defendant in a Richland County suit brought by the former Attorney General McMaster and the current trustee of the James Brown Legacy Trust. (2010-CP-40-4900). She contends that the Richland suit alleges that she caused millions of dollars in damage to the Legacy Trust and that her and her co-defendant's valuation of the trust was incorrect and improper.

Most of the documents requested in the Freedom of Information Act request of the Attorney General are the subject of pending Motions in case 4900 as Plaintiff acknowledges; Plaintiff's Return to MTD, p. 2, ¶6 ["Because certain documents sought in Case 4900 discovery are public documents in the possession of public bodies, Plaintiff attempted to obtain some of those documents through FOIA requests"]; see, exhibits to Motion to Dismiss: Exhibit B,

Motion to Compel, p. 3, ¶ 3, June 7, 2011[requesting contingency fee contract] (attachments to Motion omitted); Exhibit C, Motion for Protective Order regarding fee agreement.

Pending defense motions include Defendant's Motion to Amend Answer, Motion for Judgment on the Pleadings, and Motions to Strike affidavits filed by Plaintiff. The Motion to Amend the Answer should be granted because, subject to all defense motions and defenses, it provides responses to the FOIA at issue, drops the change of venue defense because venue has been changed and adds a subject matter jurisdiction defense consistent with the Motion for Judgment on the Pleadings and earlier defenses. The Motion for Judgment on the Pleadings should be granted because it tracks the defenses and serves to resolve all outstanding issues. The Defendant's Motions to Strike should be granted to remove the multiple affidavits of Plaintiff that are riddled with hearsay, speculation and completely irrelevant material. Plaintiff's Motion for Summary Judgment should be denied for all of these reasons.

THE MOTION TO AMEND THE ANSWER SHOULD BE GRANTED

This Motion should be granted for the reasons set forth above.

II

PLAINTIFF CANNOT USE FOIA TO BYPASS JUDICIAL PROCEEDINGS OR TO AVOID THE RULES OF CIVIL PROCEDURE

Nothing in FOIA, the Rules of Civil Procedure or the Court system of this State would permit Plaintiff to make and enforce a FOIA request outside a pending judicial proceeding involving discovery related to many of the same documents. See exhibits referenced, *supra*. Clearly she is attempting to use FOIA as a discovery tool because her affidavits contain lengthy

accounts regarding the pending Richland litigation from her perspective and she seeks some of the same documents. She cannot avoid the Rules of Civil Procedure regarding discovery by this process, and the Court lacks subject matter of this action

Even if discovery motions were not pending in Richland, legal authority suggests that Plaintiff would not be permitted to use FOIA as a discovery tool regarding those proceedings. The Order of the late Marc Westbrook submitted by the Defendant Wilson (*Lominack v. Myers*, 2002-CP-32-1890, October 25, 2002) stated that "it is well settled case law that the FOIA is not intended as a substitute for discovery and was not enacted to provide procedures for obtaining information during litigation or to benefit private litigants." (copy attached). Although our Supreme Court has not expressly addressed the issue in the civil context, it has recognized that FOIA is not to be used to bypass limits on discovery in criminal proceedings. *State v. Robinson*, 305 S.C. 469, 476-77, 409 S.E.2d 404, 409 (1991); *Evening Post Pub. Co. v. City of N. Charleston*, 363 S.C. 452, 459, 611 S.E.2d 496, 500 (2005). Moreover, our Supreme Court has also recognized that "[i]n construing the federal FOIA, the United States Supreme Court has held that the FOIA does not supplement or displace the applicable rules of discovery. *John Doe Agency v. John Doe Corp.*, 493 U.S. 146, 153 (1989)¹; *National Labor Relations Board v. Robbins Tire and Rubber Co.*, 437 U.S. 214 (1978)." *State v. Robinson*, 305 S.C. 469, 476-77, 409 S.E.2d 404, 409 (1991). Although *Robinson* involved criminal proceedings, the

¹ "[A] court must be mindful of this Court's observations that the FOIA was not intended to supplement or displace rules of discovery. See *Robbins Tire*, 437 U.S., at 236-239, 242; *id.*, at 243, 98 S.Ct., at 2327 (STEVENS, J., concurring). See also *United States v. Weber Aircraft Corp.*, 465 U.S. 792, 801-802 (1984). Indeed, the Court of Appeals acknowledged that this was not a principal intention of Congress. 850 F.2d, at 108." *Id.*

State Supreme Court's recitation of the federal rule suggests that it would apply the same limitation on the use of FOIA as a discovery tool as Judge Westbrook did.

Moreover, FOIA, itself, exempts matters covered by the Rules of Civil Procedure via S.C. Code Ann. §30-4-40 which states, in part, that "(a) [a] public body may but is not required to exempt from disclosure the following information: . . . (4) [m]atters specifically exempted from disclosure by statute or law." (emphasis added). These exemptions under law would include discovery which is strictly controlled by the Rules of Civil Procedure because court rules of procedure are "law." *Magnuson v. Billings*, 152 Ind. 177, 52 N.E. 803, 804 (1899)²; *United States v. Hvas*, 355 U.S. 570, 575 (1958)³; *State ex rel. Beacon Journal Publ'g Co. v. Waters*, 67 Ohio St. 3d 321, 323, 617 N.E.2d 1110, 1113 (1993).⁴ These rules include limitations on the scope of discovery in Rule 26(b) to "matter, not privileged, which is relevant to the subject matter involved in the pending action"

To allow a FOIA request to bypass the Rules of Civil Procedure would be contrary to §30-4-40(a)(4) and Rule 26(c), SCRCP, which provide for judicial involvement in the discovery process through protective orders and discovery conferences. "It is well-settled that 'the scope and conduct of discovery are within the sound discretion of the trial court'" *Palmetto*

2 "[Rules of court] have the force and effect of law, and are obligatory upon the court, as well as upon parties to causes pending before it. . . A rule of court is a law of practice, extended alike to all litigants who come within its purview, and who, in conducting their causes, have the right to assume that it will be uniformly enforced by the court, in conservation of their rights" *Id.*

3 "The phrase 'a law of the United States,' as used in the perjury statute, is not limited to statutes, but includes as well Rules and Regulations which have been lawfully authorized and have a clear legislative base" *Id.*

4 "[E]xception [under Ohio discovery statute] for other 'state law' may include procedural court rules, and does include [Ohio] Crim.R. 6(E)." *Id.*

Alliance, Inc. v. S. Carolina Pub. Serv. Comm'n, 282 S.C. 430, 436, 319 S.E.2d 695, 698 (1984).

“Our judges must use their authority to make sure that abusive deposition tactics and other forms of discovery abuse do not succeed in their ultimate goal: achieving success through abuse of the discovery rules rather than by the rule of law.” *In re Anonymous Member of S. Carolina Bar*, 346 S.C. 177, 194, 552 S.E.2d 10, 18 (2001). To allow a FOIA request to escape this authority would tie the hands of the Court from controlling the discovery process including permitting a party to bypass scheduling orders and motions hearings. FOIA was not intended to work this way nor were our Rules of Civil Procedure intended to be so limited.

III

THE ATTORNEY GENERAL'S MOTION TO STRIKE SHOULD BE GRANTED

The Attorney General has moved to strike five affidavits and some related exhibits of Plaintiff. Many of her affidavits contain vitriolic and baseless speculation. Since then he has filed two motions to strike at least an additional 4 affidavits. They all should be struck because they are not based upon personal knowledge, contain hearsay, and are speculative and irrelevant. Examples abound of these violations by Plaintiff of the basic rules for affidavits:

1. Affidavit attached to Complaint

-p.2, ¶ 5 “agent [of party not involved in instant proceeding] advised that if Bob and I did not drop a pending James Brown appeal AG . . . [note omitted] would to[sic] sue us” [hearsay, irrelevant]

-p. 5, ¶21, “ I believe the Retention Agreement will show whether AG McMaster . . . was in fact acting to punish Bob and me ;” [lack of personal knowledge; speculation]

-p. 6, ¶25 "I am informed and believe that the documents requested under FOIA .
... will show[a list follows of speculation about what the documents will
show][lack of personal knowledge, hearsay]

Affidavit of Pope (September 1, 2011)Supporting Expedited hearing;

-p.8, ¶ 37 "I am informed and believe the requested documents will begin to show
... [speculative, lack of personal knowledge];

Affidavit and attachments in support of Plaintiff's Motion for Summary Judgment;

-Affidavit, p.2, ¶ 4 "refusal to comply with my FOIA requests is not only
covering up. . . ."[lack of personal knowledge, speculative]

Supplemental Affidavit (September 26, 2011);

-p. 3, ¶8 I am informed and believe that the documents will show [speculation,
lack of personal knowledge]

October 6, 2011 affidavit.

-p.4, ¶10 speculation about motives [lack of personal knowledge]

-p.7, ¶¶ 12-14, speculation about what documents will show [lack of personal
knowledge]

"The rule governing summary judgment provides that '[s]upporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify to the matters stated therein.'" Rule 56(e), SCRPC (emphasis added). *Dawkins v. Fields*, 354 S.C. 58, 64, 580 S.E.2d 433, 436 (2003). Because all of the affidavits appear to be directed to summary judgment, they must meet this standard of Rule 56(e) rather than Rule 11(c) which provides that

affidavits and verifications may include matters stated on information and belief.

In numerous respects, the affidavits clearly fail to meet standards of being based upon personal knowledge and containing admissible evidence. They contain inadmissible hearsay and refer to news articles which are not admissible. In particular, all of the affidavits are irrelevant. Many of them contain Plaintiff's account of litigation related to the James Brown estate and the Legacy Trust and allegations about why she needs the documents, but all of those statements are irrelevant to whether she is entitled to the documents under FOIA. All that is relevant to her request is whether Plaintiff is entitled to the documents at issue under the terms of FOIA. That statute does not contain standards of disclosure based upon alleged importance or need. S.C. Code Ann. §§30-4-30 through 30-30-4-50, *et seq.* Plaintiff's lack of entitlement to the documents is discussed *infra* regarding her motion for summary judgment, but those grounds have nothing to do with the alleged need for or importance of the documents.

IV

THE DEFENDANT IS ENTITLED TO JUDGMENT ON THE PLEADINGS PLAINTIFF IS NOT ENTITLED TO SUMMARY JUDGMENT

For all the reasons set forth above including the Defendant's provision of documents subject to the FOIA request, the Defendant is entitled to Judgment on the Pleadings, and Plaintiff is not entitled to summary judgment.

CONCLUSION

The Freedom of Information Act is a very important law, but it does not permit Plaintiff to bypass other judicial proceedings and the Rules of Civil Procedure controlling discovery. For the foregoing reasons, this Court should grant the Defendant's Motion to Amend his Answer and

his Motion for Judgment on the Pleadings and deny Plaintiff's Motion for Summary Judgment. Moreover, subject to all of these defenses, the OAG has responded to Plaintiff's FOIA request with documents that could be considered responsive to that request except for the three page document that Plaintiff now has and is in the public domain. Plaintiff has had access to most of the same documents prior to their attachment as exhibits to the Amended Answer filed in March, 2013. Therefore, the case should be ended for the jurisdictional and other defenses discussed above, but Plaintiff has, subject to these defenses, a response to her FOIA request.

Respectfully submitted,

ALAN WILSON
Attorney General

J. EMORY SMITH, JR.
Deputy Solicitor General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3680
S.C. Bar No. 5262

BY: 

ATTORNEYS FOR THE ATTORNEY GENERAL

May 2, 2016

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Civil Minutes

Columbia Action 3:08-cv-14-WOB

11/15/13

Forlando J. Brown v. Adele Pope, et al.

BEFORE: HON. J. GREGORY WEHRMAN, MAGISTRATE JUDGE

No Court Reporter

No Courtroom Deputy

ATTORNEYS FOR PLAINTIFF

Matt Bodman
David Bell¹

ATTORNEYS FOR DEFENDANT ADELE POPE

Daryl Williams
Adam Silvernail

ATTORNEY FOR DEFENDANT ROBERT BUCHANAN, JR.

Joseph Calhoun Watson

ATTORNEYS FOR TRUSTEE RUSSELL BAUKNIGHT

Burl Williams
J. David Black

Conference call held on November 14, 2013 regarding trustee Bauknight's motion for confidentiality order. Doc. 290. After hearing argument of counsel, the Court **ordered:** the motion for confidentiality order [Doc. 290] is **granted in part and denied in part** as follows. The retention agreement at issue is a public document due to the involvement of the South Carolina Attorney General and, accordingly, it is not protected by the confidentiality order previously entered in this action. See Doc. 83. The estate valuation at issue is discoverable because it potentially relates to the remaining claims in this action. However, during the phone conference the Court was first made aware of the fact that a supplemental inventory and appraisal was filed in state court and that the supplemental inventory set forth only the valuation's bottom line figure regarding the total value of

¹ Mr. Bell's pro hac vice motion is pending and the Court will rule on that motion once briefing has been completed.

James Brown's estate. After reviewing that supplemental inventory and upon further reflection, the Court concludes that the valuation contains confidential information, the disclosure of which to the public at large could potentially harm the Estate in any future negotiations involving the music of James Brown. Because the valuation is discoverable, the Court will require Trustee Bauknight to provide a copy of the valuation to any party upon request. However, the Court orders that the contents of the valuation itself shall be subject to protection under the extant confidentiality order.

TIC		30

JL

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

IN THE COURT OF COMMON PLEAS

Robert E. Leminack,

Plaintiff.

2002-CP-32-1890

ORDER

Donald V. Myers, Solicitor,
Eleventh Judicial Circuit,

Defendant.

ORIGINAL
FILED
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THOMAS H. COVERFORD
CLERK OF COURT
LEXINGTON SC

This matter came before the Court following the Plaintiff's filing of a complaint seeking declaratory and injunctive relief pursuant to the South Carolina Freedom of Information Act ("FOIA"). Prior to the filing of the complaint, the Plaintiff had sent a letter to the Defendant Donald Myers, Solicitor, Eleventh Judicial Circuit, requesting, pursuant to the FOIA, all materials in the possession of the Solicitor's Office relating to a criminal case where the Plaintiff is representing the Defendant in a post conviction relief action against the Defendant's prior legal counsel. By letter dated May 23, 2002, Defendant Myers denied Plaintiff's FOIA request, indicating that Section 17-27-150(B) provides the procedure for discovery in a capital post-conviction relief case, and that the Plaintiff should use that process rather than trying to circumvent the statute by filing a request for these documents under the FOIA. The Plaintiff then filed this Complaint. The issue before the Court is whether to compel compliance with Plaintiff's FOIA request.

I find that Section 17-27-150 of the South Carolina Code details the method of discovery in post-conviction relief proceedings. Further, it is well settled case law that the FOIA is not intended as a substitute for discovery and was not enacted to provide procedures for obtaining information during litigation or to benefit private litigants. U.S. v. Murdock, 544 F.2d 599 (5th Cir. 1976);

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Frushant Corp v. Thornton, 507 F.2d 1253 (6th Cir. 1974); N.L.R.B. v. Sears, Roebuck & Co., 421 U.S. 132 (1975).

Therefore, the information sought in this case cannot be obtained under the State Freedom of Information Act and can only be obtained by utilizing the discovery procedure set out by Statute. Plaintiff's request for declaratory and injunctive relief is denied.

AND IT IS SO ORDERED.

MHW
#2


Marc H. Westbrook
Resident Judge
Eleventh Judicial Circuit

October 25th, 2002.

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Adele J. Pope,)

Plaintiff,)

v.)

Alan Wilson, in his capacity as
Attorney General of South Carolina,

Defendant.)

Case No. 2010-CP-40-4900

[formerly Newberry Co. Case No.
2011-CP-36-379]

RESPONSE TO PLAINTIFF's
BRIEF

Russell L. Bauknight, etc., Henry Dargan
McMaster, in his capacity as Attorney
General, etc, et al,

Plaintiffs,)

v.)

Adele J. Pope and Robert L. Buchanan, Jr.,)

Defendants.)

Case No. 2010-CP-40-4900

Plaintiff's brief raises but a single claim pertaining to her Freedom of Information Act request which is that she is entitled to receive the three page Wingate private agreement that she already has. She falsely contends that "for four years," the Office of the Attorney General has "worked . . . to evade release of the Wingate Agreement under the FOIA" despite her having the document for two and a half years and despite this Office's expression of willingness to release it if the Court would authorize it. *Brown v. Pope*, 3:08-cv-14-WOB, November 15, 2013 (the Honorable J. Gregory Wehrman, Magistrate Judge)(copy attached to Attorney General memorandum of May 2). Undersigned counsel wrote the Honorable Casey Manning about this

matter on March 7 and 28, 2013, expressing a willingness to have a hearing regarding the Wingate agreement, and submit it if the Court so ruled. On November 27, 2013, undersigned counsel wrote the Judge that the Office of the Attorney General had not delayed this matter and that Plaintiff now had the signed Wingate agreement. The November 27 letter explained that the Office of the Attorney General was not a party to that agreement and had previously had only an unsigned copy. The three page agreement had been the subject of still undecided Motions to Compel and for Protective Order in the main part of this case with which this FOIA proceeding was consolidated. See attached copy of Motion to Compel, p. 2, item 3, June 7, 2011 [requesting contingency fee contract] (attachments to Motion omitted) and Motion for Protective Order regarding fee agreement.

The Attorney General is willing to give Plaintiff a copy of the three page agreement although she already has it, but doing so should not be deemed a result of this proceeding. FOIA must be applied in accordance with the law, and that law, as explained in the Defendant's Memorandum of May 2, 2016, exempts matters in this case that are governed by the Rules of Civil Procedure. Plaintiff's FOIA relates to pending discovery motions in the main part of case 4900, and are subject to the discovery process in that case.

In her Return, Plaintiff cites *North v. Walsh*, 881 F. 2d 1088 (D.C. Cir. 1988) and *Hoover v. United States*, 611 F. 2d 1132 (5th Cir. 1980) for the proposition that Federal Freedom Information Act rights are not controlled by discovery limitations. *North* does not apply here because it addressed a limitation related to records compiled for law enforcement purposes under 5 U.S.C. §552 (b)(7). *Hoover*, is inapplicable because it considered a federal FOIA exception for "inter-agency or intra-agency memorandums or letters which would not be available by law to a

party other than an agency in litigation with the agency.” §552(b)(5). Neither federal exemption is similar to the exemption at issue in the instant case nor does the federal FOIA (§552(b)) appear to contain such a limitation. S.C. Code Ann. § 30-4-10(a)(4) (“(a) [a] public body may but is not required to exempt from disclosure the following information: . . . (4) [m]atters specifically exempted from disclosure by statute or law”). As explained in this Defendant’s memorandum, this exemption under South Carolina law would include discovery which is strictly controlled by the Rules of Civil Procedure because court rules of procedure are law. Moreover, a more recent United States Supreme Court decision cited by our own South Carolina Supreme Court (*State v. Robinson*, 305 S.C. 469, 476-77, 409 S.E.2d 404, 409 (1991)) and quoted by the Fourth Circuit Court of Appeals (*Neely v. F.B.I.*, 208 F.3d 461, 464 (4th Cir. 2000)) supports a broader limitation on the use of federal FOIA as to matters related to ongoing litigation. *John Doe Agency v. John Doe Corp.*, 493 U.S. 146, 153 (1989) (“a court must be mindful of this Court’s observations that the FOIA was not intended to supplement or displace rules of discovery”).

The remaining issue raised by Plaintiff is attorney’s fees which she requests at the shockingly high and unsupported respective amounts of \$38,725 and \$1229.60. Plaintiff is not entitled to fees because she has not prevailed in this action. Even if, *arguendo*, she did prevail, she would have to document her hours. She could not claim time for the numerous irrelevant, inadmissible affidavits that she has filed. She is the party that has turned a simple case into one filled with the numerous documents that she has filed.

A fee “award . . . must be reasonable and supported by adequate findings.” *Burton v. York County Sheriff’s Dept.*, 594 S.E.2d 888, 898, 358 S.C. 339, 357-58 (Ct. App., 2004). See

also, *Sloan v. South Carolina Dept. of Revenue*, 762 S.E.2d 687, 689, 409 S.C. 551, 555-56 (S.C.,2014). ("Sloan is entitled to recover his reasonable attorney's fees and costs in this action."). So far, Plaintiff has failed to support her claim. She filed a conclusory affidavit on January 9, 2012, which does not appear to have been updated, asking for \$9,000 in fees at an hourly rate of \$100.00 and \$300.00 in costs. These amounts undermine her quadrupling her fee claim to over \$38,000.00 including the now \$250.00 hourly rate and her quadrupling her costs. Moreover, she cannot testify by affidavit as to the hours expended by her attorney. Only he can do so.

In fact, Plaintiff's claims are so high as to shock the conscience of this Court and warrant barring fees altogether under substantial Federal precedent. "[A] district court may, in its discretion, deny a request for attorneys' fees in its entirety when the request, submitted pursuant to 42 U.S.C. § 1988, is so outrageously excessive it 'shock[s] the conscience of the court.'" (emphasis added) *Fair Hous. Council of Greater Washington v. Landow*, 999 F.2d 92, 96 (4th Cir. 1993), citing *Sun Pub. Co. v. Mecklenburg News, Inc.*, 823 F.2d 818, 819 (4th Cir. 1987), (a request for attorneys' fees, which is so exorbitant as to shock the conscience of the court, may be denied . . .); *Plunkett v. Stephens*, No. C.A. 3:93-0304-19, 1997 WL 907958, at *1 (D.S.C. Dec. 18, 1997)(denying fee request in its entirety quoting *Landow* and *Sun Publishing*).

In the context of fee-shifting provisions, such as those in 42 U.S.C. § 1988 and Title VII of the Civil Rights Act of 1964, "the Supreme Court has recognized that although a prevailing party 'should ordinarily recover an attorney's fee,' 'special circumstances' can render 'such an award unjust.'" (quoting *Hensley v. Eckerhart*, 461 U.S. 424, 429 (1983)). *Doe v. Bd. of Educ. of Baltimore Cnty.*, 165 F.3d 260, 264 (4th Cir. 1998). Such special circumstances are present

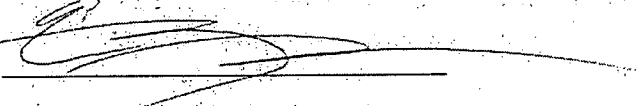
here in the grossly excessive hours and for the other reasons noted below. Although this Court is not required to follow this Federal precedent, the cases do provide a strong guidepost for assessing reasonableness, and Plaintiff's claims are most unreasonable.

For these reasons, and those set forth in the State's Memorandum of May 2, the Attorney General respectfully requests that judgment be granted to the Attorney General and that Plaintiff's case be dismissed.

Respectfully submitted,

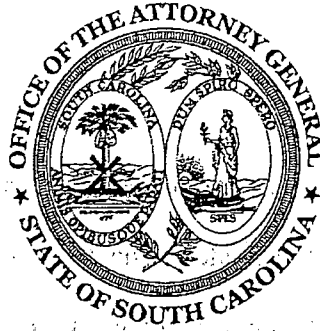
ALAN WILSON
Attorney General

J. EMORY SMITH, JR.
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Post Office Box 11549
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(803) 734-3680
S.C. Bar No. 5262

BY: 

May 16, 2016

ATTORNEYS FOR THE ATTORNEY GENERAL



ALAN WILSON
ATTORNEY GENERAL

March 7, 2013

The Honorable L. Casey Manning
Judge, Fifth Judicial Circuit
P.O. Box 192
Columbia, SC 29202

Re: Pope v. Wilson, Attorney General and Bauknight 2012-CP-40-350 (Pope FOIA I)
Pope v. Wilson 2010-CP-40-4900 (Pope FOIA II consolidated with *Bauknight*)

Dear Judge Manning:

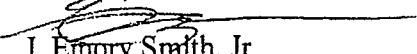
I am hopeful that these cases can be resolved as a result of the hearing set for March 18, 2013.

As you know the Attorney General, strongly supports the Freedom of Information Act as have his predecessors. Without waiving our existing jurisdictional and other defenses to this litigation including all motions, we believe that our Answer and attachments in the Pope I suit that I am filing by mail today and proposed Amended Answer and attachments in Pope II, respond to the FOIA's at issue. These filings in Pope I make clear that we have no documents that could be considered responsive to that FOIA except for a draft of the Legacy Trust attached to our Answer herein. These filings in Pope II provide all the documents that we have that could be considered responsive to that FOIA except for a three page private part of the alleged attorneys fee contract which we have no objection to disclosing if your Honor rules that it may be released. We respectfully request a ruling from the Court regarding the production of this document in the main action in case 4900. We will be prepared to submit this document to the Court and Plaintiff at the hearing on the 18th if the Court rules that it may be produced.

A number of motions are scheduled for the hearing and two new ones are designed to get the above responses before the Court. Although we do not waive these motions, we believe that they may be heard in a relatively summary manner because we have responded to the FOIAs at issue. I am enclosing copies of the additional filings for your reference and an updated motions list reflecting the two additional motions which has not been reviewed by Plaintiff's counsel.

Thank you for your consideration of these matters. If you have questions, please let me know.

Respectfully submitted,


J. Emory Smith, Jr.

Assistant Deputy Attorney General

cc: Adam T. Silvernail, Esquire
Keith M. Babcock, Esquire
Ariail E. King, Esquire
J. Calhoun Watson, Esquire
The Honorable Jeanette W. McBride

Daryl L. Williams, Esquire
Robin A. Braithwaite, Esquire
Kenneth B. Wingate, Esquire
Mark V. Gende, Esquire

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ALAN WILSON
ATTORNEY GENERAL

March 28, 2013

The Honorable L. Casey Manning
Judge, Fifth Judicial Circuit
P.O. Box 192
Columbia, SC 29202

Re: Pope v. Wilson, Attorney General and Bauknight. 2012-CP-40-350 (Pope FOIA I)
Pope v. Wilson 2010-CP-40-4900 (Pope FOIA II consolidated with *Bauknight*)

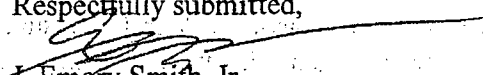
Dear Judge Manning:

Enclosed for your information is a copy of the Reply of the Defendant to the Return to his Motion for Judgment on the Pleadings in Pope case II (Case 4900), *supra*. I also enclose, for your convenience, a copy of my letter to you of March 7, 2013 which provides a brief summary of our position in these cases including that, subject to all defenses and defense motions as to this litigation, we believe that we have responded to the FOIA's at issue.

The Defendant Wilson is prepared to argue pending motions in these cases when scheduled by this Court. Respectfully, I request protection from scheduling on the following dates over the next six weeks: April 8, 11, 12, 19, 23, 26, May 3, May 13, May 14, and May 17. I will be available on all other dates during that period. We take no position as to the Legacy Trust's Motion for Stay but believe that hearing of motions involving the Attorney General should not be stayed and should be heard.

Thank you for your consideration of these matters. If you have questions, please let me know.

Respectfully submitted,


J. Emery Smith, Jr.

Assistant Deputy Attorney General

cc: Adam T. Silvernail, Esquire
Keith M. Babcock, Esquire
Ariail E. King, Esquire
J. Calhoun Watson, Esquire
The Honorable Jeanette W. McBride
Daryl L. Williams, Esquire
Robin A. Braithwaite, Esquire
Kenneth B. Wingate, Esquire
Mark V. Gende, Esquire

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ALAN WILSON
ATTORNEY GENERAL

November 27, 2013

The Honorable L. Casey Manning
Judge, Fifth Judicial Circuit
P.O. Box 192
Columbia, SC 29202

Re: Pope v. Alan Wilson, Attorney General 2010-CP-40-4900
Response to Adam Silvernail's letter of November 22, 2013

Dear Judge Manning:

I am writing in response to Mr. Silvernail's letter to you of November 22.

First, I would like to address, in the bulleted points below his absolutely incorrect allegation that "[i]n the eight months since [March, 2013], the Attorney General has taken no action to move this matter along" (Copies of referenced letters and emails attached):

- The March 7 letter from me to your Honor refers to a hearing scheduled for March 18 and notes that that we have provided all documents responsive to the FOIAs at issue except for the three page private part of the alleged attorneys fee contract which we have no objection disclosing if your Honor rules that it may be released.
- The Court held a status conference, I believe, instead of a hearing on March 18.
- My letter to your Honor of March 28 stated that we were prepared to argue pending motions when scheduled and noted my availability. The letter stated that we believed that the hearing of motions of the Attorney General should not be stayed and should be heard.
- Your Law Clerk emailed on April 18, that your Honor wanted to wait to schedule a hearing until the Supreme Court decided the Petitions for Rehearing in the *Wilson v. Dallas* case.
- Following the Rehearing decisions, I emailed the Court on May 8 that I was prepared and available for hearing the FOIA cases at most any time except for noted conflicts.

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- Until November 22, I do not believe that Mr. Silvernail wrote or emailed the Court about a hearing since I sent the above email on May 8.

Second, I would like to address the three page Wingate retention agreement. The Attorney General was not a party to that agreement. We just received the signed version last week which Mr. Silvernail now has also. Previously, all we had was an unsigned version. We have reported to Mr. Silvernail that we do not have other pertinent documents related to that matter. That issue is moot.

Our proposed amended answer addresses remaining documents in this case. Subject to the defenses therein, we have no other documents responsive to the requests at issue. Although we respectfully request that our motion to amend be granted, we see no further need for a hearing in this matter, but will be glad to attend one if you would like.

We oppose Mr. Silvernail's request for attorneys' fees and maintain that he has no basis for recovery of them.

Thank you for your consideration of this matter.

Respectfully submitted,



J. Emory Smith, Jr.
Deputy Solicitor General
Counsel for Defendant Attorney General

cc: Adam T. Silvernail, Esquire
J. Calhoun Watson, Esquire
Daryl L. Williams, Esquire
Robin A. Braithwaite, Esquire
Kenneth B. Wingate, Esquire
Mark V. Gende, Esquire

) IN THE COURT OF COMMON PLEAS

) Case No. 2010-CP-40-4900

) MOTION TO COMPEL
) PRODUCTION OF CONTINGENCY-
) FEE CONTRACT AND RELATED
) DOCUMENTS PRIOR TO HEARING
) ON MOTION FOR INJUNCTION

;

;

;

;

YOU WILL PLEASE TAKE NOTICE that ten (10) days after service hereof, or as soon thereafter as counsel may be heard, Defendant Adele J. Pope, through her undersigned counsel, will move for an order compelling the above-named Plaintiffs to produce the following documents before this Court hears Defendant Pope's pending Motion for injunctions against Plaintiff Russell L. Bauknight and Kenneth B. Wingate and Sweeny Wingate & Barrow, P.A. (collectively, "Wingate") from attempting to act for the Attorney General ("AG") and/or the State of South Carolina (collectively, the "State") while serving all private plaintiffs ("Private Plaintiffs"):

1. The James Brown Legacy Trust under which Bauknight asserts status in the complaint;
2. Any authorization under which Bauknight is authorized to act for the current or former AG;
3. Wingate's contingency-fee contract with Private Plaintiffs and/or the AG/State.

The Grounds of this motion are as follows:

1. That Defendants have sought these and other relevant documents since October 12, 2010.
2. Wingate, Bauknight and Private Plaintiffs have refused to produce these and other documents and 8 Private Plaintiffs have refused to appear at depositions, obstructing Defendant's efforts to obtain these critical documents.
3. Plaintiffs' refusal to produce these critical documents is wholly inconsistent with the policy of the AG as stated in Public Official's Guide to the Freedom of Information Act (FOIA) in which he states that the AG's Office uses and recommends the following FOIA guidelines:

When in doubt, disclose requested information
...When in doubt, release the document

4. Issues of the use of the name and power of the State in violation of Defendant Pope's constitutional rights are at issue in this case, and Plaintiffs should not be allowed to conceal the authority under which Bauknight and Wingate purport to act for the State

4. On or about May 18, 2011, Defendant Pope moved to enjoin Russell L. Bauknight from attempting to act as agent for the State of South Carolina and to enjoin Wingate from representing the State jointly with the dozen-or-more Private Plaintiffs. Defendant Pope does not challenge, and has never challenged, Wingate's representation of Private Plaintiffs in this action.

5. On or about June 30, 2011, Defendant Pope made a FOIA request for these documents from Bauknight as Trustee of the James Brown Legacy Trust and also of the AG. Counsel for Defendant Pope sent a courtesy copy of the requests to Wingate. The time for the AG to respond has not elapsed, but on or about July 15, 2011, Pope received the response attached as Exhibit A from David Black, who represents Bauknight in other matters.

6. On July 13, 2011 a status conference was held before the Honorable Alison Renee Lee, wherein Judge Lee indicated that she would seek to schedule the motion for injunctions against Wingate and Bauknight for hearing as soon as possible and, in any event, before other pending motions in this action.

This motion is based on the United States Constitution; the Affidavit of Nathan Crystal on behalf of the Plaintiff in the case of *AstraZeneca vs. Wilson, as Attorney General*, Spartanburg County Case No. 2011-CP-42-1213, and the entire file in that action, of which the Court is asked to take judicial notice; the entire record herein; and

such additional documentation as shall come before the Court prior to the hearing on this matter.

Respectfully submitted,

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July 26, 2011

Attorneys for Defendant Adele J. Pope

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

RUSSELL L. BAUKNIGHT, as Trustee of the James Brown 2000 Irrevocable Trust and the James Brown Legacy Trust, as Personal Representative of the Estate of James Brown, and on behalf of Henry Dargan McMaster, in his capacity as Attorney General of the State of South Carolina; Tommie Rae Brown, individually and on behalf of her minor child, James Brown II; Daryl J. Brown, individually and on behalf of his minor child Janise Vanisha Brown; Lindsey Delores Brown; Deanna J. Brown Thomas; Jason Brown-Lewis; Yamma N. Brown, individually and on behalf of her minor children Sydney Lumar and Carrington Lumar; Tonya Brown; Venisha Brown Larry Brown; and Terry Brown

and

HENRY DARGAN MCMASTER, in his capacity as Attorney General of the State of South Carolina; TOMMIE RAE BROWN, individually and on behalf of her minor child, JAMES BROWN II; DARYL J. BROWN, individually and on behalf of his minor child JANISE VANISHA BROWN; LINDSEY DELORES BROWN; DEANNA J. BROWN THOMAS; JASON BROWN-LEWIS; YAMMA N. BROWN, individually and on behalf of her minor children SYDNEY LUMAR and CARRINGTON LUMAR; TONYA BROWN; VENISHA BROWN; LARRY BROWN; and TERRY BROWN,

Plaintiffs

v.

Adele J. Pope and Robert L. Buchanan, Jr.,
Defendants

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH CIRCUIT

Civil Action No. 2010-CP-40-4900

**PLAINTIFFS' MOTION FOR
PROTECTIVE ORDER CONCERNING
FEE AGREEMENT
AND/OR MOTION TO STRIKE
DEFENDANT POPE'S MOTION TO
COMPEL PLAINTIFFS' FEE
AGREEMENT**

TO: DEFENDANTS AND THEIR ATTORNEYS:

YOU WILL PLEASE TAKE NOTICE that the Plaintiffs above-named, by their undersigned attorneys, will move before the Presiding Judge of the Richland County Court of Common Pleas at the Richland County Judicial Center at 9:00 a.m. on the tenth (10th) day after service hereof, or as soon thereafter as counsel may be heard, for a Protective Order prohibiting the production of Plaintiffs' Fee Agreement in the above-referenced action.

On July 26, 2011, Defendant Adele Pope through counsel filed a Motion to Compel production of Plaintiffs' Fee Agreement. Fee Agreements are the epitome of privileged communication. Plaintiffs therefore request that this court issue a Protective Order prohibiting the efforts of Defendant Pope from discovering the Fee Agreement.

Also, or in the alternative, Plaintiffs move the court to strike Defendant Pope's Motion to Compel Plaintiffs' Fee Agreement because the motions seeks to contravene a prior decision of the court concerning the order for hearing motions filed in this complex case.

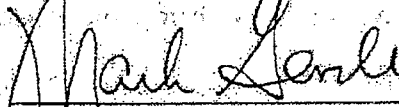
This Motion relies on all applicable statutory and case law and may be supplemented with a memorandum of law, exhibits, affidavits, or other documents.

The Plaintiffs also request costs and fees for the expense in bringing this Motion.

(Signature page to follow)

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.



Kenneth B. Wingate

Mark V. Gende

1515 Lady Street

Post Office Box 12129

Columbia, South Carolina 29211

(803) 256-2233

ATTORNEYS FOR THE PLAINTIFFS

Columbia, South Carolina

August 9, 2011

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	Civil Action No. 2010-CP-40-4900
	)	
Adele J. Pope,	)	
	)	PLAINTIFF'S MOTION TO
Plaintiff,	)	ALTER, AMEND AND/OR
	)	VACATE ORDER GRANTING
v.	)	ATTORNEY GENERAL'S MOTION
	)	TO DISMISS
Alan Wilson, in his capacity as	)	
Attorney General of South Carolina,	)	
	)	
Defendant.	)	

Plaintiff Adele J. Pope ("Plaintiff") hereby moves for an Order altering, amending and/or vacating the Order of the Honorable Doyet A. Early, III, dated June 14, 2016, mailed for filing on June 21, 2016, and received by Plaintiff on June 24, 2016, pursuant to Rule 59(e), *South Carolina Rules of Civil Procedure*. A copy of said Order is attached as **Exhibit A**.

The grounds of this motion are as follows:

1. The Court overlooked or misapprehended that the Attorney General's motion to dismiss this case was heard on October 26, 2011 and denied by Order of the Honorable Frank R. Addy, Jr., on November 22, 2011, at which time the Attorney General was directed to answer the complaint.

2. The Court overlooked or misapprehended that the Attorney General did not seek reconsideration of Judge Addy's denial of the motion to dismiss.

3. The Court overlooked or misapprehended that all Litigation Retention Agreements of the Attorney General related to the engagement of outside counsel are public, and the agreement sought herein should have been produced under FOIA in 2011.

4. The Court overlooked or misapprehended that the Attorney General continued his refusal to produce the Litigation Retention Agreement under FOIA even after it was declared public in November 2013 by an Order of the Federal Court.

5. The Court overlooked or misapprehended that the Circuit Court Order of the Honorable Marc H. Westbrook, issued on or about October 25, 2002, is not binding precedent or applicable to civil cases under the FOIA.

6. The Court overlooked or misapprehended that the FOIA is intended to provide a speedy and inexpensive method for anyone to obtain public documents from public bodies upon proper request, and that the Court's Order herein has denied Plaintiff that right and violates the letter and spirit of the FOIA.

7. The Court overlooked or misapprehended that, under the FOIA, Plaintiff is entitled to reasonable attorneys' fees and costs for the almost-five-years the AG has refused to produce all of the relevant documents, namely:

- a. The published policies and/or rules and regulations of the Office of the AG with respect to the engagement of private attorneys, including contingency-fee attorneys, by the AG currently in effect (July 19, 2011).
- b. The contract of the then-AG [Henry D. McMaster] and/or the State of South Carolina engaging Kenneth B. Wingate and Everett Kendall, II to commence Civil Action No. 2010-GC-4000073 in the Probate Court for Richland County on May 19, 2010 on behalf of the AG.
- c. Any contract and/or other document authorizing Russell L. Bauknight to commence Civil Action No. 2010-GC-40-0073 on behalf of the AG and/or the State of South Carolina.

8. The Court overlooked or misapprehended that Plaintiff, by virtue of being sued by the Attorney General of South Carolina in 2010, did not lose her FOIA rights.

9. The Court overlooked or misapprehended that the 2015 Order of the Honorable Eugene C. Griffith, Jr., in another James Brown FOIA matter, is more apposite to this case than the 2002 Westbrook Order, although neither is controlling.

10. The Court overlooked or misapprehended that making FOIA compliance subject to discovery in two cases in two counties where the FOIA request did not originate would unduly prejudice Plaintiff, the media and citizen non-parties to pending litigation.

11. The Court overlooked or misapprehended that citizens and the media may not freely participate in discovery in cases in which they are not parties.

12. The Court overlooked or misapprehended that its Order prevents the public and the media from reviewing under FOIA the AG's hiring of contingency-fee counsel to be sole counsel for the AG in a civil suit against two private citizens, which, on information and belief, has never occurred before in this State.

13. The Court overlooked or misapprehended that it was improper and inconsistent with the letter and spirit of the FOIA to move a 2011 FOIA case from Newberry to Richland County and subject it to discovery in a third county in which neither the Attorney General nor the McMaster Legacy Trust is a party.

14. The Court overlooked or misapprehended that the "common interest" privilege AG Wilson claims with contestants to James Brown's Will, and their attorneys and agents, in other civil proceedings to which this Court's Order would subordinate the issues in this FOIA case, has no role in FOIA.

15. The Court overlooked or misapprehended that FOIA is an appropriate mechanism for Plaintiff to seek and receive public documents regarding the AG's hiring of contingency-fee counsel to sue private citizens.

16. The Court overlooked or misapprehended that the combined actions of the AG, the Court's Order of November 22, 2011, the Court's refusal to conduct a hearing for more than four (4) years, and the Order of June 14, 2016, have denied Plaintiff not only her FOIA rights, but her Due Process rights under the 5th and 14th Amendments of the United States Constitution and the South Carolina Constitution.

17. The Court overlooked or misapprehended that the combined Orders have violated Plaintiff's Equal Protection rights under the United States Constitution by treating her differently from all other citizens with FOIA rights, solely on the basis that she was sued by the Attorney General of South Carolina and the McMaster Legacy Trust, a Trust controlled by the Attorney General of South Carolina.

18. The Court overlooked or misapprehended that the undisputed facts related to the procedural posture and conduct of this case as set out in the Affidavit of Adele J. Pope filed herewith and incorporated herein, were properly before this Court, as summarized in the attached Affidavit of Plaintiff.

This motion is based on the South Carolina Rules of Civil Procedure, especially Rule 59(e); the positions taken by the Attorney General and the McMaster Legacy Trust in civil cases related to The James Brown "I Feel Good" Trust and the Estate and 2000 Trust of James Brown, including the Attorney General's claimed privilege with Tommie Rae Brown, will contestants and others; the rulings related to persons other than Plaintiff in James Brown FOIA matters since this case was filed on August 3, 2011; and the entire record herein, including the affidavit filed herewith and affidavits in this matter and by journalists and citizens in other James Brown FOIA matters. The Court is asked, pursuant to SCRE Rule 201, to take mandatory judicial notice of these documents in the consideration of this motion to alter, amend or vacate.

Respectfully submitted,



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July 1, 2016

Attorney for Plaintiff

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on July 1, 2016, he has served a copy of the foregoing document on counsel for the Defendants by depositing a copy of same in the United States Mail, first-class postage prepaid, addressed as follows:

J. Emory Smith, Esquire
Office of the Attorney General
PO Box 11549
Columbia, SC 29211



Adam T. Silvernail

EXHIBIT A

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Adele J. Pope,

Plaintiff,

v.

Alan Wilson, in his capacity as
Attorney General of South Carolina and
James Brown Legacy Trust, by
Russell L. Bauknight, its Trustee,

Defendants.

IN THE COURT OF COMMON PLEAS

Case No. 2010-CP-40-4900
[formerly Newberry Co. Case No.
2011-CP-36-379]

ORDER

This matter has come before this Court pursuant to various motions of the parties including a motion for judgment on the pleadings of the Defendant Attorney General and a motion for summary judgment of the Plaintiff. After carefully reviewing the filings of the parties and considering the arguments of counsel concerning the motions in Aiken on May 17, 2016, this Court grants the Attorney General's Motion for Judgment on the Pleadings.

The Plaintiff has brought this action under the Freedom of Information Act, S.C. Code Ann. §30-4-10, et seq. seeking the following:

1 and 2. Published policies of the Office of the Attorney General regarding engagement of private attorneys including contingency fee counsel in effect in May, 2010 and in effect on July 19, 2011.

3. The contract of then-AG Henry McMaster and / or the State engaging Kenneth B. Wingate and Everett Kendall, II to commence Civil Action 2010-GC-4000073 in the Probate Court for Richland County on behalf of the AG.

4. Any contract and / or other document authorizing Russell Bauknight to commence case 400000073 on behalf of the AG and/ or the State.

Plaintiff brought suit in Newberry County, but her case was transferred to Richland County and

000214

consolidated with case 2010-CP-40-4900. This Order addresses only the FOIA case.

These documents are potentially discoverable documents under pending litigation in Richland /Aiken counties and will be governed by the South Carolina Rules of Civil Procedure. FOIA is not a tool that may be used to bypass civil discovery in a pending case. The Order of the late Marc Westbrook submitted by the Defendant Wilson (*Lominack v. Myers*, 2002-CP-32-1890, October 25, 2002) stated that "it is well settled case law that the FOIA is not intended as a substitute for discovery and was not enacted to provide procedures for obtaining information during litigation or to benefit private litigants." (copy on file in this case). Although the FOIA at issue in Judge Westbrook's case related to a post conviction case, the reasoning applies to civil cases such as the pending litigation in Richland and Aiken.

Our Supreme Court has not expressly addressed the issue in the civil context, it has recognized that FOIA is not to be used to bypass limits on discovery in criminal proceedings. *State v. Robinson*, 305 S.C. 469, 476-77, 409 S.E.2d 404, 409 (1991); *Evening Post Pub. Co. v. City of N. Charleston*, 363 S.C. 452, 459, 611 S.E.2d 496, 500 (2005). The Supreme Court has also recognized that "[i]n construing the federal FOIA, the United States Supreme Court has held that the FOIA does not supplement or displace the applicable rules of discovery. *John Doe Agency v. John Doe Corp.*, 493 U.S. 146, 153 (1989)¹; *National Labor Relations Board v. Robbins Tire and Rubber Co.*, 437 U.S. 214 (1978)." *State v. Robinson*, 409 S.E.2d at 409.

¹ "[A] court must be mindful of this Court's observations that the FOIA was not intended to supplement or displace rules of discovery. See *Robbins Tire*, 437 U.S., at 236-239, 242; *id.*, at 243, 98 S.Ct., at 2327 (STEVENS, J., concurring). See also *United States v. Weber Aircraft Corp.*, 465 U.S. 792, 801-802 (1984). Indeed, the Court of Appeals acknowledged that this was not a principal intention of Congress. 850 F.2d, at 108." *Id.*

Although *Robinson* involved criminal proceedings, our Supreme Court's recitation of the federal rule suggests that it would apply the same limitation on the use of FOIA as a discovery tool as Judge Westbrook did.

Moreover, FOIA, itself, exempts matters covered by the Rules of Civil Procedure via S.C. Code Ann. §30-4-40(4) for "[m]atters specifically exempted from disclosure by statute or law." (emphasis added). These exemptions under law would include discovery which is strictly controlled by the Rules of Civil Procedure because court rules of procedure are "law." *Magnuson v. Billings*, 152 Ind. 177, 52 N.E. 803, 804 (1899)²; *United States v. Hyass*, 355 U.S. 570, 575 (1958)³; *State ex rel. Beacon Journal Publ'g Co. v. Waters*, 67 Ohio St. 3d 321, 323, 617 N.E.2d 1110, 1113 (1993).⁴

Because the above documents may be sought through discovery in the pending litigation and for the reasons set forth above, IT IS ORDERED that this FOIA case be dismissed.

AND IT IS SO ORDERED.

June 14, 2016
Brimley, South Carolina

DOYET A. EARLY, III
PRESIDING JUDGE

2 "[Rules of court] have the force and effect of law, and are obligatory upon the court, as well as upon parties to causes pending before it. . . A rule of court is a law of practice, extended alike to all litigants who come within its purview, and who, in conducting their causes, have the right to assume that it will be uniformly enforced by the court, in conservation of their rights . . .," *Id*

3 "The phrase 'a law of the United States,' as used in the perjury statute, is not limited to statutes, but includes as well Rules and Regulations which have been lawfully authorized and have a clear legislative base" *Id*

4 "[E]xception [under Ohio discovery statute] for other 'state law' may include procedural court rules, and does include [Ohio] Crim.R. 6(E)." *Id*

State of South Carolina)
County of Newberry)

In The Court of Common Pleas
Eighth Judicial Circuit
2011-CP-36-00364

Adele J. Pope,)

Plaintiff,)

vs.)

Alan Wilson, in his)

capacity as Attorney General)

of South Carolina and James)

Brown Legacy Trust, by)

Russell L. Bauknight, its)

Trustee,)

Defendants)

2011-CP-36-00379

Adele J. Pope,)

Plaintiff,)

vs.)

Alan Wilson, in his capacity)

as Attorney General of)

South Carolina,)

Defendant.)

Transcript of Record

January 11, 2012

Newberry, South Carolina

B E F O R E:

The Honorable Frank R. Addy, Jr., Judge

1 Freedom of Information Act here. You know, and I get the
2 impression that if any -- from the logic that the attorney
3 general is using, if any of these other folks who have
4 filed an affidavit in this case were to file this -- a
5 similar suit seeking these documents in their home
6 counties, I can't imagine they would argue that that case
7 also had to be consolidated with the litigation in Richland
8 County.

9 MR. SMITH: Your Honor, we don't need to speculate
10 about other parties. The only party that's before us as to
11 FOIA is Ms. Pope, who is a party to the Richland
12 litigation. And -- and -- and certainly, we -- we've put
13 into the record, too, as for the purposes of summary
14 judgment, which Your Honor can consider with regard to
15 these issues, there is an order of Judge Westbrook -- the
16 late Judge Westbrook, when he was a circuit court judge,
17 saying that FOIA can't be used to bypass discovery, which
18 is what they're trying to do here.

19 MR. SILVERNAIL: Well ---

20 MR. SMITH: The judge that considers the FOIA should
21 be the same judge considering the discovery who can
22 determine whether FOIA gives any greater rights than what
23 they would otherwise have under discovery. We've spent all
24 this time, the -- the filing of affidavits, and going
25 around and around in these cases. If they had taken it up

1 in Richland or agreed to move it forward in Richland, we
2 might be getting some answers shortly.

3 MR. SILVERNAIL: Your Honor, I -- Judge Westbrook's
4 order is two pages. It's from a circuit court case. I
5 believe the order is dated in 2002. I -- I had the
6 pleasure of seeing a trial before Judge Westbrook long
7 before I was a lawyer. And I -- he was an excellent judge.
8 This order has almost no facts. I -- it's a circuit court
9 order. As far as I know, it's never been reviewed by an
10 appellate court.

11 And the cases he cites to support the conclusion that
12 you cannot use FOIA instead of discovery or in addition to
13 discovery -- forgive me; I -- I'm paraphrasing here because
14 I don't remember his exact language. The cases he cites,
15 actually say: You get no more and no fewer rights under
16 FOIA if you are a litigant than you would if you were a --
17 a member of the public.

18 Now, I think forcing a properly brought, separate FOIA
19 suit into pending litigation in Richland County with a
20 bunch of other parties is giving my client fewer rights
21 than other members of the general public would have. And
22 that seems like a constitutional problem to me. And we
23 certainly object to doing so.

24 You know, this is separate issues. The fact that
25 these documents are among what seem to be many, many

1 respond to that motion. He's on notice about what you did
2 in 379. We've asked that you take that action here, too,
3 subject to our existing motion.

4 THE COURT: I ---

5 MR. SILVERNAIL: Well ---

6 THE COURT: --- I kind of have a hard time believing
7 that that would come as a surprise that that would be the
8 way I'm leaning.

9 MR. SILVERNAIL: Well, Your Honor, I -- it is our
10 position, this is a separate case. We have moved for
11 reconsideration on the other order. We believe that that
12 motion has merit. It -- and, you know -- no. I -- I don't
13 -- this was not the outcome we foresaw from the motions to
14 dismiss in this case.

15 It -- in any case, I -- I -- you know, I believe I've
16 stated a number of -- of grounds for leaving the case where
17 it is and proceeding to trial. It -- you know, the -- the
18 Richland County case and the discovery issues that are
19 present there are completely separate. You found that in
20 your order in Case 379: Discovery and FOIA are two
21 separate things.

22 The judge in that case doesn't need to worry about
23 FOIA. The discovery issues in that case are ongoing and
24 numerous. It's a 19-month-old case that, you know,
25 nobody's set for a deposition and virtually no documents

1 have been produced. And we are here -- we're all in the
2 room, and -- and we're here in this little FOIA case that's
3 just about releasing public documents from a public body,
4 which are ---

5 THE COURT: With respect to the A.G., but not
6 necessarily the trust.

7 MR. SILVERNAIL: Well, no. I absolutely believe that
8 the trust -- it -- and we haven't gotten to their motion to
9 dismiss yet. I won't get ahead of them by responding. But
10 the -- the James Brown Legacy Trust is, for the purposes of
11 the Freedom of Information Act, a public body. However,
12 that is something that the judge in Richland County would,
13 as far as I know at the moment, have no reason to take up,
14 absent this case being sent there. And we may -- since
15 they seem to be denying that they are a public body -- need
16 to take it up here.

17 It -- you know, these are things that could be going
18 on parallel to the other case. These documents might be
19 subject to discovery in the other case. But there is a
20 world of other discovery from other parties, among other
21 parties, the same parties. There -- you know, this is a
22 very simple question: Are we entitled to these public
23 documents from these public bodies? And to the extent they
24 dispute it, is the James Brown Legacy Trust a public body?

25 Those are the only questions we're here to answer.

1 And this case doesn't need to be transferred to Richland
2 County and combined with this other case that has numerous
3 additional parties and different counsel and -- and it --
4 you know, this should've been simple litigation. And we're
5 still here 5 1/2 months later.

6 MR. SMITH: Your -- Your Honor, you don't -- the --
7 the judge designated Case 4900 and Judge Manning as the
8 judge for a complex case and did that for a reason. And
9 that process should not be avoided by splintering off of
10 this issue and bringing it in a separate county.

11 And regarding the ten-days' notice for an alternative
12 motion for transfer of venue and consolidation, the Court
13 has the power to shorten the response time. They're on
14 notice. All these things that we've discussed today, we
15 discussed in Laurens two months ago. And this -- we
16 believe that this Court certainly has the authority to do
17 what it did in Case 379 and do that here.

18 MR. SILVERNAIL: I -- I -- a -- a correction: I --
19 this is not a splintering of any issue from Case 4900.
20 While the same documents may be at issue in -- among the
21 documents sought in discovery there, and while the parties
22 may be similar, there is no FOIA claim in Case 4900. This
23 issue is decided under different law, different standards,
24 and could have a different outcome.

25 And, you know, we are asking for the documents under

1 Freedom of Information Act here. You know, and I get the
2 impression that if any -- from the logic that the attorney
3 general is using, if any of these other folks who have
4 filed an affidavit in this case were to file this -- a
5 similar suit seeking these documents in their home
6 counties, I can't imagine they would argue that that case
7 also had to be consolidated with the litigation in Richland
8 County.

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10 about other parties. The only party that's before us as to
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12 litigation. And -- and -- and certainly, we -- we've put
13 into the record, too, as for the purposes of summary
14 judgment, which Your Honor can consider with regard to
15 these issues, there is an order of Judge Westbrook -- the
16 late Judge Westbrook, when he was a circuit court judge,
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23 they would otherwise have under discovery. We've spent all
24 this time, the -- the filing of affidavits, and going
25 around and around in these cases. If they had taken it up

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3 MR. SILVERNAIL: Your Honor, I -- Judge Westbrook's
4 order is two pages. It's from a circuit court case. I
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8 This order has almost no facts. I -- it's a circuit court
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11 And the cases he cites to support the conclusion that
12 you cannot use FOIA instead of discovery or in addition to
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15 actually say: You get no more and no fewer rights under
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17 a member of the public.

18 Now, I think forcing a properly brought, separate FOIA
19 suit into pending litigation in Richland County with a
20 bunch of other parties is giving my client fewer rights
21 than other members of the general public would have. And
22 that seems like a constitutional problem to me. And we
23 certainly object to doing so.

24 You know, this is separate issues. The fact that
25 these documents are among what seem to be many, many

1 documents sought in Case 4900 -- you know, and the purpose.
2 -- you mentioned earlier that you doubted my client just
3 had intellectual curiosity about these documents. That may
4 be the case.

5 But the Freedom of Information Act doesn't have -- I
6 mean, if they are public documents, if they are requested
7 and if they are held by public bodies, they must be
8 released. And my client has requested them. We believe
9 they're public documents, and nobody has told us otherwise.

10 We know the attorney general is a public body. We
11 believe the James Brown Legacy Trust is a public body. And
12 so far, we've gotten no response that attempted to place
13 any of these documents in -- under an exemption under FOIA.
14 Instead, what we've gotten are, I -- I think, no response
15 in -- in this case, in -- in other FOIA requests or in the
16 other case -- if I have these backwards -- the response
17 was: We think it's wisest to wait until the Richland
18 County litigation ends. And, you know, in any case, FOIA
19 provides for -- you make the request, you get the
20 documents, unless they are exempt or nonpublic or not held
21 by public bodies.

22 I -- and this seems like a simple question that
23 doesn't need to be tied up in the discovery matters pending
24 in the other case. I -- you know, that may be before a --
25 a judge who's been assigned to it. But I don't know that

1 that -- I -- or I believe that that doesn't provide any
2 reason to force this case before that judge as well.

3 THE COURT: And I agree with almost everything you're
4 saying, Mr. Silvernail. I would have to believe that they
5 have court going on pretty much incessantly in Richland
6 County. And they have common-pleas terms and common-pleas-
7 nonjury terms and a lot more court than we get in Newberry.
8 Would I be mistaken? You practice there.

9 MR. SILVERNAIL: I -- I -- I do practice there, Your
10 Honor. Frankly, I am a young lawyer. And I have not
11 practiced extensively in Richland County. I could not
12 speak to that. I don't -- I -- I would respectfully say
13 that I don't think it's relevant to whether this case
14 should be sent to Richland County. I've seen no
15 affirmative reason for it to be sent there.

16 And -- and we believe, although, you know, the rules
17 do provide for consolidation when it's available and
18 transfer when it's available, consolidation, as far as I
19 can read the rules and the comments, is if you have two
20 cases before the same circuit, they might be able to be
21 consolidated. I -- I don't think that this case can be
22 consolidated with another case in Richland County with no
23 notice to any of the additional parties who aren't in the
24 room today.

25 And -- and I don't think it could be consolidated even

1 -- even with that. I think it's sort of making two steps
2 into one, where neither step might be quite right or
3 available. And, you know, we are here and talking about
4 whether there's any good reason not to do it. And there --
5 you know, my client filed the suit, followed the law in the
6 request, and -- and here we are.

7 The burden under the Freedom of Information Act is, is
8 there any good reason not to produce those documents? And
9 so far, aside from 5 1/2 months of procedural wrangling,
10 nobody's said that there is. And -- and we're still here,
11 waiting for ---

12 THE COURT: I'd be ---

13 MR. SILVERNAIL: --- a document.

14 THE COURT: --- very surprised if some other judge
15 said that you are not entitled to those documents. I'm --
16 I'm with you on that. I ---

17 MR. SILVERNAIL: Well ---

18 THE COURT: --- agree with you on that.

19 MR. SILVERNAIL: --- Your Honor, you -- you have
20 previously found that this Court properly had jurisdiction
21 over -- over the other case. We do not believe that the --
22 the following part about transferring it was proper, and
23 we've asked for reconsideration. And -- and we believe
24 that you were absolutely correct in the portions of the
25 order we did not ask you to reconsider. It ---

1 THE COURT: Okay. I'm inclined to transfer -- at the
2 very least, transfer venue to Richland County, if not
3 consolidate this with Richland County. They'll give you
4 another case number and another track that you can pursue
5 this matter on. I ordered the other case consolidated.
6 Once this matter is transferred to Richland County, in
7 terms of venue -- and that's the grounds that I'm using to
8 transfer this case -- either party may seek consolidation;
9 either party may seek an expedited hearing with the judge.
10 And I hope you get the information sooner, rather than
11 later.

12 But that's what I feel is appropriate to do under the
13 circumstances and based upon everything that has transpired
14 with the -- this case, Case 4900, and Case 379. I've
15 consulted with some other judges on this very issue, and I
16 have yet to hear one of them remark to me that they think
17 that this is a bad idea. There seems to be a consensus, so
18 that's what I'm doing.

19 Now, concerning Case 379, the last correspondence I
20 received from you, Mr. Silvernail, in your motion for
21 reconsideration, that is still pending?

22 MR. SILVERNAIL: Yes, it is.

23 THE COURT: You don't want to do that today?

24 MR. SILVERNAIL: I ---

25 THE COURT: You sure you want a hearing on it?

1 MR. SILVERNAIL: We -- we -- we would like a hearing
2 on it. We would like to have it heard. I mean, I -- we
3 can ---

4 THE COURT: I -- I don't want to send anybody any
5 undue expense. And so I'm trying to be real up-front and
6 real straight with everyone and ---

7 MR. SILVERNAIL: Well ---

8 THE COURT: --- and very ---

9 MR. SILVERNAIL: --- I -- you know ---

10 THE COURT: --- candid.

11 MR. SILVERNAIL: --- we could -- we could proceed to
12 hear that motion today, if Your Honor would like, and --
13 and if -- now, I don't know ---

14 MR. SMITH: There's no objection from us to hearing
15 379 today.

16 MR. GENDE: And -- and, Your Honor, at this point I'll
17 speak up because I have moved to be a proposed intervenor
18 for a group of plaintiffs in that case. We submitted a
19 written motion in opposition to their motion to reconsider.
20 We would rely on that today if you want to go forward.

21 THE COURT: All right. Let me hear from you, Mr.
22 Silvernail, then, on that if you're prepared to go forward.
23 If you need a few moments to think it about it or collect
24 ---

25 MR. SILVERNAIL: I -- I'd ---

1 THE COURT: --- your thoughts ---

2 MR. SILVERNAIL: --- like to ---

3 THE COURT: --- on it.

4 MR. SILVERNAIL: --- take just a few minutes to ---

5 THE COURT: Certainly.

6 MR. SILVERNAIL: --- consult with the -- with our
7 motion again and make sure I'm ready to go.

8 THE COURT: Not a problem. We'll be at ease for a few
9 moments. Y'all can get a glass of water or something like
10 that.

11 (Whereupon, the Court is in recess from 3:51 p.m.
12 until 4:01 p.m.)

13 THE COURT: Okay. Let's go back on the record on Case
14 379 for the motion for reconsideration. Mr. Silvernail,
15 you're okay to go forward at this point?

16 MR. SILVERNAIL: Yes, Your Honor. I -- we have moved
17 for partial reconsideration of your November 22nd order --
18 it -- the -- specifically, the portions of it transferring
19 venue to Richland County and consolidating it with Case
20 4900, as well as, I think, some references to this -- or to
21 Case 364 in a footnote.

22 The -- I would like to incorporate what I've said to
23 you already about transferring to Richland County and
24 consolidation with Case 4900, but add a few things.

25 THE COURT: Please.

1 MR. SILVERNAIL: Initially, effectively, by
2 transferring it to Richland County and consolidating it
3 with Case 4900, you have granted the proposed intervenor's
4 motion to intervene, because they are all parties to that
5 case. We believe that those folks being parties to a
6 Freedom of Information Act case is wholly improper. And we
7 -- we do not believe that it ---

8 THE COURT: I see what you're saying. By ---

9 MR. SILVERNAIL: I ---

10 THE COURT: --- ordering it consolidated with 4900,
11 they're automatically parties to your FOIA request ---

12 MR. SILVERNAIL: I -- well ---

13 THE COURT: --- and that ---

14 MR. SILVERNAIL: --- I, you know ---

15 THE COURT: --- and I left in abeyance -- I held in
16 abeyance the question of whether or not they would be
17 permitted to intervene in this matter for whatever judge
18 heard for Judge Manning to hear at a later time.

19 MR. SILVERNAIL: Well, I -- they -- they are parties
20 to Case 4900. That is one of the problems with sending it
21 -- consolidating it with a case that has completely
22 different legal claims and numerous additional parties.
23 And we believe that's detrimental to my client. She should
24 not have to have 14 extra people her -- who she did make a
25 FOIA request of, who don't have any reason to be involved

1 in the FOIA litigation.

2 Case 4900 has, as -- as everybody here has observed,
3 many parties and numerous claims. And it -- FOIA will be
4 thrown into those and -- and left among them with the input
5 of all these additional parties.

6 Now, you know, in addition to Mr. Wingate's clients,
7 there is an additional defendant who hasn't had any -- any
8 notice or ability to have any input on whether this case
9 ought to be consolidated with Case 4900 in which he is
10 litigating. He is not here. And so we -- we believe that
11 in addition to the lack of basis for transferring venue or
12 for consolidating it with Case 4900, that putting these
13 Freedom of Information Act issues, which have never been
14 implicated in Case 4900, in with all of the tort claims,
15 which seem to be the basis of Case 4900, the counterclaims,
16 and all of the discovery issues, it sure does -- and with
17 all these parties and all these additional counsel -- it --
18 it sure does leave my client with a -- a different battle
19 to fight, whereas here today we've got the essential folks
20 in the room and in Newberry County, where we believe venue
21 is proper.

22 THE COURT: Okay. I understand your concerns. You
23 don't feel that the comments to Rule 40 -- or -- sorry --
24 to Rule 42 would be helpful. I -- in the comments it
25 references that the parties and actions are not necessarily

1 merged when consolidation is ordered.

2 MR. SILVERNAIL: Well, Your Honor, it -- we -- we're
3 -- we're here. We've all appeared. We're in a county that
4 -- that Your Honor has found has -- we're in the court that
5 has subject-matter jurisdiction. We're properly before
6 you. It -- I believe that sending it to Richland County is
7 just opening the door to see what happens. And my client
8 should not have to see what happens at this point after it
9 -- you know, more than six months after she made her FOIA
10 request, which has never been properly responded to.

11 And transfer and/or consolidation will be sending us
12 on to find out what happens in Richland County and/or in
13 Case 4900, whereas we are here. We're here; we're before
14 you. You've found that you have subject-matter
15 jurisdiction over this case. We agree with you.

16 And we believe that there's no basis to send it to
17 Richland County and/or to consolidate it with Case 4900.
18 And, you know, the comments are there. But we -- we don't
19 know what will happen. And -- and we, frankly, beyond that
20 don't think we should bear the burden of keeping this case
21 in a county that properly has -- in a court that properly
22 has jurisdiction over it, where it's been properly brought
23 as -- as the result of a properly made FOIA request. We
24 seem to be adding a lot of hurdles here, where we're all
25 here and -- and really, this case is -- is -- we're --

1 we're all in the Court. We've all appeared. Everybody's
2 been served.

3 In -- in this case, 379, the only defendant has filed
4 an answer. And, you know, here we're waiting. We -- we
5 think the documents are public on their very -- or by
6 definition. But if the Court doesn't find that, we
7 certainly think they are ready for an in-camera review by
8 the Court and a decision on whether they should be
9 released. And so traveling down to Richland County and
10 finding out what happens there certainly doesn't seem to
11 simplify anything.

12 And -- and this Court, in its order, found that there
13 were several other courts that had touched on this issue.
14 And I -- I would again stress James Brown's estate and
15 trust and property and relatives are not an issue. They
16 are a -- a -- a subject that has produced litigation in
17 several counties, different courts -- different states,
18 even. And -- and here were are on a FOIA claim that's --
19 should be very simple and should not be, you know, sent on
20 a riding tour of the state or consolidated with a --
21 another action.

22 We're -- that adds a burden to my client. That treats
23 her differently because she is a litigant in a -- in a
24 lawsuit filed by other people. You know, there are
25 affidavits on file in this case from folks in other

1 counties, including Newberry County, who have -- have an
2 interest in the documents, one of whom I -- I believe, Ms.
3 Summer, a journalist who's here with us today, has made a
4 request. And I got a copy of a letter from the attorney
5 general, sent to me from someone in the attorney general's
6 office in response to Ms. Summer's request, stating that
7 the lady who wrote the letter thought the document was
8 public and would -- would release it later this month,
9 unless somebody got it sealed or got a protective order.

10 I'm afraid, because I was running out the door this
11 morning in the rain, I do not appear to have brought a copy
12 of that letter with me. I'd be, of course, glad to provide
13 it to the Court. Prior to that, Sonny Jones, another
14 member of the attorney general's office, had written the
15 Court in Richland County and -- and stated that the
16 attorney general was, you know, glad to release the
17 document and that, you know -- and here we are, litigating
18 over whether we've got to go to Richland County and find
19 out what happens there or whether -- I mean, Case 379 --
20 Case 364, I believe, is very straightforward.

21 But as we stand here in Case 379, it -- there --
22 sending it to Richland County adds complication, rather
23 than subtracting it.

24 THE COURT: All right. Well, let's handle it this
25 way: The case hasn't been moved yet. We have a

1 representative of the attorney general here. It's been
2 represented to me by Mr. Silvernail that two other
3 individuals with your office have agreed that the document
4 should be released or given some indication that the
5 documents that they're seeking should be released.

6 What's the attorney general's current position on
7 this? I realize what -- the situation that we were in with
8 Judge Manning's directive or suggestion that appeared in
9 the transcript back in November. I understand what our
10 position was then. And I'm sure everyone here understands
11 the limitations I felt I was under at that point in time,
12 based upon what was said in that transcript. But what's
13 the attorney general's opinion as of January 2012?

14 MR. SMITH: Well, Your Honor, I don't have the file or
15 all of those documents with me pertaining to Case 379.
16 However, my understanding is -- is that -- and Mr. Gende
17 can correct me if I'm wrong on that -- is that Judge
18 Manning is already taking up the issue of the fee agreement
19 in -- in Case 4900 that's at issue in Case 379. And he's
20 asked the parties to make submissions to him about
21 releasing the fee agreement, and then he's going to review
22 it in-camera. That's a principal part of the FOIA request
23 that is at issue in Case 364 -- I mean, the -- in -- in ---

24 MR. SILVERNAIL: Sorry.

25 MR. SMITH: --- Case 379, I mean. Sorry.

1 As to these other FOIA requests by Ms. Summer and
2 others, I'm not the one handling all of that. We've got
3 somebody in our office that handles FOIA requests. I'm
4 simply the attorney handling these suits about the FOIA
5 request. And -- and what defenses may exist in the suits
6 may or may not affect what a third party can or cannot get
7 if a third party makes a FOIA request.

8 But this suit today, 379 and 364, is simply about what
9 Ms. Pope can litigate and get. Ms. Pope is not making
10 claims on behalf of other people in Newberry County or
11 elsewhere who -- who may or may not be able to make a FOIA
12 request. This is her litigation over her claim.

13 Her litigation, if not dismissed outright, should be
14 transferred to Richland County, consolidated with Case
15 4900, where the judge there can take up everything. He can
16 take up what she can get under FOIA, what she can get under
17 discovery, whether she's entitled to any type of judgment
18 or fees or anything else as a part of that litigation. And
19 -- and -- and therefore, for these reasons, it all should
20 be sent over there.

21 The -- the hurdles in this case have been added not by
22 the office of the attorney general, but by Ms. Pope's
23 bringing this action in a separate county, in a separate
24 proceeding. Had she gone to Richland over these things, we
25 might have a decision, or at least the matter would be

1 before Judge Manning right now as he takes up discovery
2 issues related to the fee agreement.

3 As for the -- any pending motions in this case, I
4 would think that they would transfer over to Richland and
5 could be dealt with then and that transferring venue in
6 this case, 379 or in 364, won't create any problems for
7 those. So ---

8 THE COURT: Okay. I'm going to clarify my order to
9 indicate and to address your concerns about adding these
10 other parties. I hear what you're saying on that. (To Mr.
11 Gende) And that's something that -- I understand you've
12 got a motion pending to intervene in 370 -- or 3 -- yes --
13 379. So I'll go ahead and hear from you, since you're
14 standing.

15 MR. GENDE: Okay. Good. And I don't want to belabor
16 any points that have already been raised, but I just want
17 to emphasize this: In your order you did -- or as Mr.
18 Silvernail began his arguments, he indicated that -- or
19 painted a scenario that seemed to indicate that it would be
20 a bad thing if the 379 action was consolidated with the
21 4900 action because all these other parties are part of
22 that action and that his client's FOIA claim was only
23 against the attorney general's office.

24 I disagree with that. In your order, although you
25 deferred to rule on whether our motion to intervene would

1 be granted, you recognized that we had a colorable,
2 feasible, or plausible argument to intervene, since it, in
3 fact, is a -- a fee agreement that is at issue on that. So
4 I disagree with that.

5 Your Honor has already alluded to the notes in Rule 42
6 that consolidating doesn't merge the actions. Judge
7 Manning is perfectly capable of deciding, if he doesn't
8 grant the motion for the other parties to intervene, to
9 hear the matter with respect to simply Ms. Pope and the
10 attorney general, and so that -- that should not be a
11 concern.

12 It is also possible that the discovery dispute, with
13 respect to the fee agreement, and the cross-motions on that
14 could recognize privileges that would create exceptions
15 under FOIA. So if you rule one way in a separate FOIA
16 action here in the Newberry case, Judge Manning ruled a
17 different way on the discovery motions and recognized some
18 privilege arguments that we would be making, then there
19 would be an inconsistent ruling, which the -- the horse
20 would already be out of the barn because you might've
21 already ruled that certain documents should be provided
22 under the 379 FOIA action.

23 Also -- and I think this is very important to the
24 interplay of Rule 1 that disputes be resolved in an
25 inexpensive and expeditious way that is consistent with

1 judicial economy. In the 4900 action, we had a status
2 conference with Judge Manning now that the case has been
3 declared complex and he has been declared the judge. At
4 that status conference, which we've already related this to
5 you in e-mails, we offered at that time to provide what
6 some arguably call "the public portions of the fee
7 agreement" for the judge to review in-camera to settle the
8 discovery dispute, and tell us whether those needed to be
9 provided.

10 Mr. Silvernail and Mr. Williams at that point said,
11 "No. Providing those documents for the Court to review
12 would not be adequate. You got to provide the whole -- all
13 the universe of documents that might make up the fee
14 agreement."

15 And Judge Manning said, "That is correct."

16 We assented to that. And we said that we will provide
17 the whole universe of documents. Judge Manning also stated
18 that we could provide an ex-parte brief as to why we felt
19 certain portions of that are privileged and that he would
20 make a decision on that.

21 Several other steps in getting the litigation on track
22 were also discussed, so that that hasn't happened just yet.
23 But it's in the process of happening. So this issue is in
24 the process of being decided. And I think for the Court to
25 change its order in any way potentially risks some

1 inconsistency in what has already been set in motion.

2 MR. SILVERNAIL: I -- I will try to be as brief. I
3 don't want to burden the Court with too much. But I do
4 want to point out some wonderful issues here that are
5 before this Court and not before the Court in 4900, which
6 is FOIA. Now, Mr. Gende's presence here obviously he --
7 he's, I think, arguing his motion to intervene here. We
8 oppose that motion. We -- I incorporate all the things
9 we've filed. We believe that it is outlandish for
10 individuals to attempt to intervene in and -- and interfere
11 with FOIA actions, where there's no provision for that
12 under the statute.

13 This is precisely the problem with going to Case 4900.
14 During that status conference, there was some discussion
15 about the document. Now, that was discovery. And -- and
16 that was discussion by Mr. Gende and Mr. Wingate with Judge
17 Manning in that action. I -- and what Mr. Gende has said
18 sort of brings into stark contrast the issue we have here.

19 The attorney general -- his name appears in the
20 caption of that action. Mr. Gende and Mr. Wingate purport
21 to represent him. There have been -- there are issues to
22 be heard in that court over that.

23 Mr. Gende and Mr. Wingate are the only people who were
24 -- who were there in the status conference for the
25 plaintiffs, including the attorney general. Now, that is

1 -- all of those private plaintiffs -- I think, 12 or 13, if
2 -- two trusts, an estate -- an estate, and -- and the
3 attorney-general plaintiffs. Now, we have only asked for
4 this document in this case from the attorney general.
5 Obviously, he can only give us whatever documents he's got.

6 And in that case, whatever gets produced to Judge
7 Manning, if anything -- that status conference was a month
8 ago; as far as I know, nothing has been forthcoming from
9 that -- then we don't know where that comes from. He has
10 -- his whole review of that was discovery. And, you know,
11 discovery very well might come to different results from
12 FOIA.

13 You know, with this letting the horse out of the barn,
14 if FOIA has the key to the barn on that key ring and -- and
15 discovery doesn't, we still have to let the horse out. I
16 mean, we can't have folks intervening in FOIA actions to
17 say, "No. I'm in another case, and I don't want that
18 coming out in discovery, so I'd like to force the attorney
19 general to keep it under wraps."

20 You know, whatever the attorney general has here
21 that's a public document must be released. Whatever the
22 attorney general has that's -- that's responsive to Mrs.
23 Pope's request should be produced to you for an in-camera
24 review if they will not release it or if you don't find
25 that the documents, by their very nature, are public.

1 In the other case, we have a bunch of extra ripples
2 there. And we have a judge who has not ever been presented
3 with the issue of FOIA, who, you know, isn't thinking about
4 it in that context, who, you know, might, for whatever
5 reason, find that he should release some portion of it or
6 -- or none of it or -- or whatever else. And, I mean,
7 having it before the same judge when he's thinking, Well,
8 you know, in response to this motion, I shouldn't release
9 it; in response to this action, I should release it -- here
10 we are just here to answer the question over: Are they
11 public? Are they held by a public body? If so, they must
12 be released.

13 So I think putting all of that back into the pot, with
14 -- with issues distinct or otherwise, within Case 4900, we
15 have just, at the very least, a great deal of uncertainty
16 and, I think almost certainly, a -- a big issue for my
17 client in her pursuit of these public documents.

18 THE COURT: Thank you. (To Mr. Smith) The record's
19 yours if you want it. I'm pretty comfortable.

20 MR. SMITH: I'm sorry, Your Honor, with what?

21 THE COURT: I -- I said the -- if you want to say
22 anything else, that's fine.

23 MR. SMITH: No.

24 THE COURT: But I ---

25 MR. SMITH: That -- that's fine. If you'd like to

1 STATE OF SOUTH CAROLINA

CIRCUIT COURT

2 COUNTY OF RICHLAND

3 ADELE POPE

2010-CP-40-04900

4 -vs-

5 ALAN WILSON, et al

6 -&-

7 ADELE POPE

8 -vs-

2012-CP-40-00350

9 ALAN WILSON and
10 JAMES BROWN LEGACY TRUST,
et al

11 TRANSCRIPT OF RECORD

12 Heard on May 17, 2016
13 Aiken, South Carolina

14 BEFORE:

15 THE HONORABLE DOYET A. EARLY, III

16 APPEARANCES:

17 Adele Pope, Esq.

J. David Black, Esq,

18 Russell L. Bauknight

J. Emory Smith, Esq.

19 Ariail E. King, Esq.

David Paavola, Esq.

Adam T. Silvernail, Esq.

Mark V. Gende, Esq.

20
21
22 Cheri L. Young, RPR
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25 Aiken, SC 29804-5232

000244

1 ON TUESDAY, MAY 17, 2016 AT 3:17 P.M.:

2 THE COURT: All right, gentlemen. Let's see
3 if we're all on the same page. I have set in 350,
4 the Attorney General's motion to amend, motion to
5 strike, motion for judgment on the pleadings,
6 motion to dismiss, Pope's motion for summary
7 judgment. Does that sound right?

8 MR. SMITH: Yes, Your Honor.

9 MR. SILVERNAIL: Yes, Your Honor.

10 THE COURT: 4900.

11 MR. PAAVOLA: We also have a motion to dismiss
12 in 350

13 THE COURT: Wait a minute now. Whoa, whoa,
14 whoa. You're in what case?

15 MS. KING: 350.

16 MR. PAAVOLA: 350.

17 THE COURT: What do y'all have in 350?

18 MR. PAAVOLA: Motion to dismiss and also --

19 THE COURT: I can't hear you.

20 MR. PAAVOLA: Motion to strike affidavits,
21 Your Honor, and motion to dismiss.

22 THE COURT: You're with the attorney
23 general?

24 THE MR. PAAVOLA: No. We represent the
25 Legacy Trust.

1 THE COURT: So I've got the Attorney
2 General's motion to amend, motion to strike, motion
3 for judgment on the pleadings, motion to dismiss;
4 is that correct?

5 MR. SMITH: Yes, Your Honor.

6 THE COURT: And the Legacy Trust we've got a
7 motion for, what?

8 MR. PAAVOLA: Motion to dismiss and motion to
9 strike affidavits in support of the Plaintiff's
10 motion for summary judgment.

11 THE COURT: And then we've got Ms. Pope's
12 motion for summary judgment.

13 MR. SILVERNAIL: Yes, Your Honor.

14 THE COURT: Are we all on the same page?

15 MR. SMITH: Yes, Your Honor.

16 THE COURT: Who wants to go first?

17 MR. SMITH: Your Honor, I would suggest that
18 the Attorney General's motions in Pope One be heard
19 and because they are similar, then Legacy's motions
20 and then Mr. Silvernail responds and he can argue
21 his motion for summary judgment at that point. But
22 our motion to dismiss would take precedence, if
23 Your Honor granted it, over his motion for summary
24 judgment and our motions to strike the affidavits
25 would have bearing on the summary judgment motion

1 attached an affidavit to our motion to dismiss a
2 Tracy Meyers of our office and she also referred to
3 it in a letter of her on August 5th, 2011. The
4 Plaintiff didn't waste any time and filed suit just
5 a little over a month after she submitted her FOIA
6 request.

7 We believe we provided the documents that the
8 Plaintiff seeks, but we also believe that there are
9 legal defenses that are set forth in our motion to
10 dismiss and reiterated in our motion for judgment
11 on the pleadings. We would move to amend the
12 motion to dismiss to raise lack of subject matter
13 jurisdiction. We believe that motion should be
14 granted because subject matter jurisdiction can be
15 raised at any time including on appeal. The only
16 other change in the motion to dismiss was that, to
17 drop the change of venue ground which had already
18 been decided at that point.

19 The grounds for the motion to dismiss are
20 that the FOIA request was not mailed or delivered
21 as required by Section 30-4-30(C). Upon written
22 request for records made in this chapter, the
23 statute provides: It shall within 15 days of the
24 receipt of any such requests respond. And so it
25 refers to receiving the request. And we never

1 received the request transmitted by the Plaintiff
2 so as to obtain jurisdiction under the Freedom of
3 Information Act.

4 We -- the fact that we provided some
5 documents does not trigger relief against the
6 Respondent but I think that really goes to another
7 motion rather than the motion to dismiss.

8 THE COURT: Well, is it your position you've
9 already given them that material?

10 MR. SMITH: Well --

11 THE COURT: Or are you saying that you've
12 never received the request or given it to them?

13 MR. SMITH: Our position is that there's no
14 jurisdiction because we didn't get the request from
15 her.

16 THE COURT: Okay.

17 MR. SMITH: And because this is an attempt to
18 bypass the rules of civil discovery in the Case
19 4900 by using FOIA instead, and then this relates
20 more to the judgment on the pleadings motion. We
21 believe that we have given her what she seeks and
22 so --

23 THE COURT: When did you give it to her? How
24 did you give it to her if you didn't receive a
25 request?

1 MR. SMITH: Well, we attached the Legacy
2 Trust drafts to our answer. They're an exhibit to
3 our answer. And we also did an answer in this case
4 after moving to dismiss.

5 As to the appraisal, we don't have that. And
6 so we can't produce what we don't have which is
7 what Judge Griffith ruled in the Summer V Wilson
8 case about the request for the same document.

9 She tries to argue that we should pull in
10 Sweeny Wingate firm documents but she did not make
11 a request for documents from the Sweeny Wingate
12 firm. She made the request from our custodian of
13 records. And that is not enough to pull in lawyer
14 files. And so therefore we believe she is not
15 entitled to it.

16 And I've set forth extensive authority in our
17 memoranda as to --

18 THE COURT: But isn't the end result we are
19 going to end up in 4900 which I'm now having to
20 resolve or rule on and preside in, and discovery is
21 going to be wide open in 4900 and all of this stuff
22 is going to be discoverable; is it not? Aren't we
23 just wasting our time?

24 MR. SMITH: I believe that this case is a
25 waste of time, Your Honor, and it's inappropriate.

1 THE COURT: I don't mean a waste of time, but
2 isn't it duplicative? 4900 is going to open to
3 discovery in the James Brown case, everything
4 that's gone on. Why are we fussing about
5 jurisdiction? And why are we fussing about --

6 MR. SMITH: Because the Plaintiff continues
7 to press this FOIA case and is asking for
8 attorney's fees. That's why -- and is not willing
9 to drop it. That's why we're here.

10 We agree that the documents that she is
11 seeking, the efforts to obtain documents, should be
12 made in 4900. In fact, we believe that the,
13 essentially the same requests have been made within
14 4900 as to many of the documents she seeks in both
15 of these cases. And that's where it should be, not
16 here in an independent Freedom of Information Act
17 action.

18 THE COURT: But aside from that, though, you
19 say you've already given her everything that you
20 have and you don't have the other thing that she
21 wants?

22 MR. SMITH: Yes, Your Honor. As to Case 350.

23 THE COURT: Anything else you want to tell
24 me?

25 MR. SMITH: Well, she says we ought to get

000250

1 them from Sweeny Wingate if they have them. Our
2 position is she did not ask for that. She asked
3 for the records from our -- the record for the FOIA
4 request is for the custodian of records. It's not
5 for anybody who might have access to a document.

6 And I've outlined extensive authority about
7 that issue in our brief. And so she can't make us
8 go get stuff from Sweeny Wingate. And I don't know
9 if they even have it. And so --

10 THE COURT: But Sweeny Wingate's the lawyers
11 in 4900, so obviously all of that stuff is
12 discoverable.

13 MR. SMITH: Your Honor, we believe that
14 the -- that this is -- anything that she wants
15 should be sought through discovery in Case 4900
16 rather than through this independent FOIA action,
17 and that the rules of civil procedure control
18 discovery and that a party cannot bypass the rules
19 of civil procedure and judicial control of the
20 discovery process by making FOIA requests and going
21 around and then seeking attorney's fees.

22 It was not set up that way. And that's not
23 what the law reads. And we set forth extensive
24 authority as to -- including responding to their
25 authority that Freedom of Information Act requests

1 cannot bypass the rules of civil discovery.

2 THE COURT: Thank you. All right. Next in
3 line.

4 MR. SMITH: And, excuse me, if I may, Your
5 Honor.

6 It's in the response to their summary
7 judgment but they've asked for attorney's fees.
8 But they're not entitled to fees if they don't get
9 relief. And they haven't documented them. There's
10 no statement as to the hourly, the billing.
11 There's no billing statement. There's no hourly
12 rate that's supported other than through argument
13 of Ms. Pope, I think, by affidavit that she filed
14 in 2012.

15 And, they have quadrupled their fee claim in
16 one of these cases, tripled it in another, over a
17 2012 affidavit of Ms. Pope in which they claimed
18 only a \$100-an-hour hourly rate and that's somehow
19 become inflated to \$250 an hour. So we believe
20 it's completely unsupported and they're not
21 entitled to fees because they should not prevail.

22 MR. SILVERNAIL: Your Honor.

23 THE COURT: Sir?

24 MR. SILVERNAIL: As to the attorney's fee
25 issue, just starting from the last. My

1 who then knew exactly what we were asking for, why
2 and how, just needed to say, gee, golly, we've had,
3 you know, a mail error, something's gone wrong, but
4 here are the documents, here are the public
5 documents.

6 That's a red herring argument in this case.
7 The argument that they have used throughout this is
8 that Mrs. Pope doesn't have any rights to ask for
9 documents from the Attorney General under the FOIA
10 because she's involved in litigation. And I
11 understand Your Honor's concerns about, you know,
12 discovery being wide open in Case 4900. But I've
13 got to point out that the FOIA in discovery, they
14 may intersect at the documents at some point but
15 they run totally separate tracts that don't
16 intersect as far as the analysis.

17 The only question under the FOIA is: Are
18 these documents public. There is no statute under
19 the FOIA that gives us different classes of
20 individuals, different people who can and can't.
21 The law is that if you are a person you are
22 entitled to make a request for public documents and
23 you're entitled to a response. And that response
24 has to be one of three things: Either, here are
25 the documents we've got that are responsive; or, we

1 don't have any documents that are responsive; or,
2 we have documents that are responsive but they fit
3 into one of the few specific exemptions under
4 FOIA. And the response has to identify those and
5 identify the exemption under which they don't
6 release it.

7 And so we've never gotten that response from
8 the Attorney General in this case. We have instead
9 gotten assertions that because discovery was
10 ongoing in Case 4900, and although I think the two
11 are unrelated I would point out that Your Honor
12 inherited all the whatever-number-of-dozens
13 discovery motions there were in 4900. That didn't
14 go anywhere too quick over the last five or six
15 years.

16 These documents were not forthcoming in
17 discovery but it really doesn't matter. If she had
18 gotten them in discovery she would be entitled to
19 ask for them under the FOIA because this law
20 doesn't set out any procedure for differentiating
21 between one person and another. The only thing
22 this laws sets out procedures for differentiating
23 are the documents: If there's a privilege that
24 applies; if there's sensitive personal information;
25 if there's an ongoing criminal probe. And as far

1 as we know they don't claim any of those
2 exemptions. We haven't seen that.

3 And, you know, it's clear the Attorney
4 General did in fact have public records that were
5 responsive to our request because he produced them
6 in his amended answer in 2013, those two drafts of
7 the Legacy Trust documents.

8 THE COURT: So you want -- I'm not sure. You
9 want me to order them to, under FOIA to produce it
10 again even though you've already gotten it?

11 MR. SILVERNAIL: We have sued here for
12 declaratory relief. We would like a declaration
13 that these are public documents and Mrs. Pope is
14 entitled to them. And under the case law including
15 very recent case law in South Carolina, the Supreme
16 Court has found that production of the documents
17 along the way after litigation begins does not moot
18 the question of declaratory relief or attorney's
19 fees.

20 And we've cited in our brief and I bring Your
21 Honor's attention to the 2014 case of Sloan versus
22 the South Carolina Department of Revenue. That was
23 a case in which the Department of Revenue had
24 responded to Mr. Sloan's FOIA request in some way
25 that seemed to defer a final answer until some

1 later date.

2 And, three weeks, I believe, after he filed
3 suit they said, okay, okay, here are your
4 documents. That went all the way to the Supreme
5 Court after the Circuit Court decided we really
6 don't have a case here. You know, you got the
7 documents. We're all finished.

8 The Supreme Court said, no, indeed you are
9 entitled to declaratory relief because you sought
10 it. You're also entitled to your attorney's fees,
11 I believe, including the fees incurred on appeal or
12 at least with the possibility of that.

13 And so, you know, at the very best we've got
14 a similar situation here if that's all the Attorney
15 General has. However, the other argument that we
16 take issue with from the Attorney General is that
17 he doesn't have to produce the valuation because he
18 does not possess it.

19 Now, number one, the Summer versus Wilson
20 case was a Newberry County FOIA proceeding. My
21 client wasn't a party to that. I don't think we're
22 bound by any of the findings in that case.
23 However, I don't know that it matters much because
24 the FOIA does not require a public body to possess
25 a document in order for it to be available under

1 the FOIA. There's a laundry list in the FOIA of
2 documents which have been, among other things,
3 possessed or used by a public body. And the end of
4 that list is an or which indicates any one of those
5 things is satisfactory.

6 Now this idea that Mrs. Pope needed to seek
7 out the Attorney General's lawyers, Sweeny, Wingate
8 and Barrow, and make a specific request to the
9 Attorney General that I would like this from their
10 files is a little bit troubling because I don't
11 know that we ever have to come to a public body,
12 especially a state agency, and identify for them
13 where they will find the documents that we want.

14 This is the Attorney General's lawyer. The
15 fee agreement that was produced, that we'll talk
16 about in a little bit in the other case, in another
17 court says that the lawyer's files are subject to
18 the FOIA. It is the Attorney General's
19 responsibility to figure out what documents are
20 where, if they have been used by him, if they're
21 possessed by him. All right. Otherwise this
22 statute would be meaningless. If it required you
23 to hold the documents then it would just say
24 possessed. It would not have this list that was
25 possessed, used, or other things.

1 And so, we believe that that's not an
2 adequate response. And as far as I can tell in the
3 record in this case the Attorney General has never
4 stated, and Mr. Smith I believe just said, that
5 they don't know whether or not Sweeny, Wingate,
6 Barrow has that. But we're entitled to a proper
7 FOIA response that says what they've got, what
8 they're producing, and if they claim any exemption
9 what that is. And we've never gotten that in what
10 now amounts to nearly five years.

11 Now, you know, this idea that we should have
12 gone and done this through discovery is just way
13 outside the law. There are cases that say FOIA
14 doesn't expand the scope of discovery, it's not a
15 supplement or a replacement. We couldn't go to
16 Judge Manning until the case was sent to him but
17 within Case 4900, you know, it claimed that we have
18 a FOIA right to this so they should give it to us
19 in discovery. Apparently does not fly.

20 Now, this was not that. This was a FOIA
21 request. It was done --

22 THE COURT: Just stop a second. If you were
23 to win, get what you want, tell me succinctly what
24 you're asking for.

25 MR. SILVERNAIL: I am asking for a

1 declaration that Mrs. Pope is entitled to all
2 public documents responsive to her request, an
3 injunctive section directing the Attorney General
4 to turn those over to us and/or give a proper
5 response identifying what would not be turned over
6 and why, and for the attorney's fees in having had
7 to pursue this action rather than getting a
8 response of some sort anywhere along the line
9 between now and 2011.

10 MR. SMITH: Your Honor, may I respond?

11 THE COURT: Sure.

12 MR. SMITH: First of all, I think it's
13 interesting that he said that the only question in
14 this case is, are the documents public --

15 THE COURT: Public.

16 MR. SMITH: -- because Ms. Pope has filed at
17 least 14 affidavits in this case about why she
18 thinks she needs these documents. And we
19 believe -- we've moved to strike all of them, and
20 if he's correct that the only question is whether
21 the documents are public, then this was a complete
22 waste of our time. And we believe it was.

23 THE COURT: Well, are they public?

24 MR. SMITH: Your Honor, we believe that we've
25 given them everything that we have. The Legacy

1 requested and we believe that moots the case as
2 well under Sloan V Friends of the Hunley, 369 SC
3 20.

4 THE COURT: Any response?

5 MR. SILVERNAIL: First, Your Honor, the fact
6 that Mrs. Pope is already in possession of a
7 document from somewhere else is irrelevant under
8 the FOIA. In fact, what we all hope for when we're
9 working under FOIA that we ask the public body for
10 documents, we find that there is no surprise
11 there. That's why the FOIA exists. They call it
12 the Sunshine Law because it lets us look in to see
13 what's going on.

14 And so the provision of documents from
15 another source just doesn't satisfy any public
16 body's FOIA obligations. If you got them you
17 produce them and then your obligations are met.

18 Now as to this about the Legacy Trust not
19 existing, it's a confusing argument to get around,
20 I feel like, because it's got some lawyers from a
21 fine law firm standing here with us today who seem
22 to have a client and it's been here since 2011
23 defending this case as well anybody can defend a
24 case. And so the Legacy Trust additionally appears
25 to have a current asset because it's a Plaintiff in

1 Case 4900 against Mrs. Pope and claims to have a
2 claim worth tens of millions of dollars against
3 her.

4 The Legacy Trust has never notified the Court
5 in that action that it has any doubt about its
6 continued existence, and it's never sought to
7 change anything in that case as far as I'm aware.

8 And as I cited in my brief though, once a
9 trust is created which can be done the property
10 requirement for creating a trust is met even with a
11 revocable designation of a beneficiary to an
12 insurance policy. That, meaning that the trust is
13 created even if you later change the beneficiary,
14 stop paying the premiums on the policy. The trust
15 may never actually have a dollar in its coffers but
16 this expectancy that's revocable is satisfactory to
17 create a trust. I'm not aware of any proceeding
18 that's been brought to terminate the Legacy Trust
19 and it's identified none.

20 This trust was also funded, according to the
21 settlement agreement, with contributions that had
22 already been made or were being made at the time of
23 copyright termination interests by some of the
24 parties to the settlement.

25 And that really brings us to the crux of the

1 situation with the Legacy Trust being a public
2 body. And that is no case that any of the other
3 parties have cited identifies a situation where a
4 public official acting in his official capacity has
5 created an entity. And in this case that's what
6 happened. The Attorney General was one of the
7 identified grantors to the Legacy Trust. At that
8 point I don't believe that we have as harsh a test
9 for public support.

10 Even if we do, though, the Attorney General's
11 office and several members of his staff spent years
12 defending the Legacy Trust's existence in the
13 Supreme Court. And, that wasn't successful
14 though. The settlement was thrown out. But
15 whatever was produced in the meantime doesn't cease
16 to exist. When the restaurant goes out of business
17 there are still dishes in there.

18 And so if it isn't a body at all anymore,
19 okay, the Court still is able to determine whether
20 it was a public body and if it was then those
21 documents are available.

22 Now, in 2013 for the first time the Legacy
23 Trust took the position that it did not exist and
24 as I understood that was an absolute. It did not
25 exist.

1 I've noticed in the briefs in the affidavit
2 of Mr. Bauknight that the Legacy Trust presented
3 shortly before this hearing, their position seems
4 to be a bit more nuanced. And that it does not
5 exist as a court-approved trust, and it does not
6 exist in the form Ms. Pope sought to get documents
7 from it.

8 If it exists it exists. If it did exist
9 there were documents. If there aren't then
10 somebody needs to respond. And mind you, the
11 Legacy Trust has produced nothing because its taken
12 the position it's not a public body. When Ms. Pope
13 made a FOIA request to it it responded by writing
14 her a letter saying if you make another FOIA
15 request to us we'll sue you or seek sanctions or
16 something along those lines.

17 And so here we are just asking the Court to
18 declare the Legacy Trust to be a public body and
19 that we're entitled to the public documents within
20 its possession. Thank you.

21 THE COURT: All right. That brings us down
22 to -- what does it bring us down to? We've done
23 the motion for summary judgment, motion to dismiss,
24 motion to strike the affidavits. Where are we now
25 with 350? Anything else left in 350?

1 MR. SMITH: Yes, Your Honor.

2 THE COURT: And if I'm correct -- or, my law
3 clerk who has done a wonderful job, we have a
4 motion to amend, motion for judgment on the
5 pleadings, motion to strike, and a --

6 MR. SMITH: Motion for summary judgment by
7 the Plaintiff.

8 THE COURT: In 4900; is that correct?

9 MR. SMITH: Yes, Your Honor.

10 THE COURT: What's the most efficient way to
11 handle that?

12 MR. SMITH: I believe if I go forward.
13 Legacy is not a party to this second case. The
14 legal arguments are similar but there are some
15 differences because of the different documents at
16 issue. We move to strike the affidavits for the
17 same reason we set forth earlier. There are 14 of
18 them, I believe. They are hearsay, speculative,
19 irrelevant.

20 The documents requested were -- there were
21 four separate items and two of them are closely
22 related which I summarized as published policies of
23 the Office of the Attorney General regarding
24 engagement of private attorneys including
25 contingency fee counsel in effect May 2010 and in

1 because Mrs. Pope received the fee agreement from
2 another source by order in another court more than
3 two years after this case was filed. And, again, I
4 would submit that the recent case of Sloan versus
5 the DOR is really on point with this.

6 THE COURT: You got an extra copy of that?

7 MR. SILVERNAIL: I certainly do, Your Honor.

8 (Document handed to the Court.)

9 MR. SILVERNAIL: Let me make sure I'm not
10 giving you one I've written on, though.

11 THE COURT: Thank you. Okay.

12 MR. SILVERNAIL: Now, in this case the
13 Department of Revenue responded to Mr. Sloan within
14 the 15 days with a response that said: Your
15 request is currently being researched and
16 reviewed. As soon as the information has been
17 compiled you will be contacted again. And it goes
18 on from there.

19 The Supreme Court labeled this evasive and
20 noted, I believe, in a footnote in this case, that
21 they understand the concern about a short 15-day
22 deadline for a response. But they don't get to
23 write to statutes. That's what the statute says
24 and this was not an adequate response.

25 And this was the case I mentioned a little

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

Adele J. Pope,

Plaintiff,

v.

Alan Wilson, in his capacity as
Attorney General of South Carolina,

Defendant.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2011-CP-36-379

AFFIDAVIT OF ADELE J POPE
SUPPORTING EXPEDITED HEARING
AND IN CAMERA REVIEW OF
DOCUMENTS SOUGHT UNDER FOIA

FILED
NEWBERRY COUNTY
2011 SEP - 1 P
46
CLERK S. BOWEN

Personally appeared before me, Adele J. Pope, who being duly sworn, deposes
and says:

1. On July 19, 2011 I requested from Attorney General Alan Wilson under the
South Carolina Freedom of Information Act ("FOIA") the following public documents.

- a. The published policies and/or rules and regulations of the Office of the Attorney General of South Carolina ("AG") with respect to the engagement of private attorneys, including contingency-fee attorneys, by the AG in effect in May 2010.
- b. The same published policies and/or rules and regulations as currently in effect (July 19, 2011).
- c. The contract of the then-AG [Henry D. McMaster] and/or the State of South Carolina engaging Kenneth B. Wingate and Everett Kendall, II to commence Civil Action No. 2010-GC-4000073 in the Probate Court for Richland County on May 19, 2010 on behalf of the AG.
- d. Any contract and/or other document authorizing Russell L. Bauknight to commence Civil Action No. 2010-GC-4000073 on behalf of the AG and/or the State of South Carolina.

2. I am informed and believe that justice will be served if this Court expedites
the *in camera* review and final hearing on the release of these documents.

3. AG McMaster/the State used Contingency-Fee Outside Counsel to bring only about six lawsuits. In five the AG, assisted by Outside Counsel, sought tens of millions of dollars from giant multinational drug companies.

4. In the sixth the State, represented only by Outside Counsel, seeks tens of millions of dollars from Robert L. Buchanan, Jr. and me, two private citizens and sole practitioners.

5. The State, through the law firm of Kenneth B. Wingate, Esquire (the "Wingate Firm"), falsely accused Bob me of civil and criminal wrongdoing which, I am informed and believe, was intended to ruin our careers, mine being that of trust and estate attorney.

6. I am informed and believe that I am entitled to a copy of the McMaster/Wingate Firm Contingency Fee Contract because it is a public document. I believe it, and other documents I have requested under FOIA, will show wrongdoing on the part of Russell Bauknight, who serves at the pleasure of AG Wilson; former AG McMaster; and one or more members of his staff.

7. I am informed and believe that AG Wilson, by refusing to release the above documents, is helping cover up wrongdoing within and/or overseen by the AG's office, and preventing the public and me from knowing the answer to the following, and other, questions:

- a. Is the McMaster/ Wingate Firm Contingency Fee Contract illegal because AG McMaster did not sign or review the State's Complaint and other pleadings as Due Process requires?
- b. Does the McMaster/Wingate Firm Contract benefit McMaster personally?
- c. Is the \$1,000 political contribution by a Wingate Firm principal just after

we were sued related to the McMaster/Wingate Contract?

d. If so, was it illegal, improper or in violation of the AG's policies?

e. Did the State and Wingate know about/endorse Bauknight's outrageous less-than \$4.7 Million devaluation of James Brown's worldwide music empire when it authorized him to "speak on behalf of" the State/AG in the suit against us?

f. Does the Contract authorize Bauknight to speak for all AGs, or just AG McMaster? Is the authorization legal?

g. What share of the tens of millions the State seeks from Bob and me will go to Bauknight? For whose benefit?

h. Is it legal for the State to share attorney-client privilege in this tort suit against us with Wingate's private clients, including Terry, a joint venturer with indicted David Cannon, who the State knows filed false grievances under oath?

8. On July 19, 2006 AG McMaster executed his Litigation Retention Agreement with Outside Counsel to sue drug maker Eli Lilly.

9. In August 2006 AG McMaster announced that he was suing other international drug companies, including Abbott Laboratories, Baxter International, Dey, Boehringer Ingelheim Roxane & Schering-Plough.

10. On December 25, 2006 James Brown died leaving approximately \$80 Million dollars to The James Brown "I Feel Good" private foundation, slated to be South Carolina's largest private foundation dedicated solely to the education of needy and deserving students.

11. On May 25, 2007 the State/AG McMaster sued Eli Lilly.

12. On April 30, 2008 the State/AG McMaster sued Janssen Pharmaceutica.

13. By Order dated May 26, 2009 the circuit court approved AG McMaster's takeover and destruction James Brown's estate plan, reducing the "I Feel Good" Trust,

by about \$50 Million and putting all of Brown's assets into a trust McMaster and Bauknight created (the "Legacy Trust").

14. As we were required to do, Bob and I, as Brown's fiduciaries opposed this dismantling of Brown's Estate Plan by AG McMaster, which we have asked the Supreme Court to declare improper. That matter is pending.

15. Since May 26, 2009 AG McMaster and the attorney for Brown's companion have used extraordinary means to try to force Bob and me to sign McMaster's agreement, which, I am informed and believe, contains knowingly false information about Brown's heirs and would require me, under penalty of contempt, not to say anything bad about what AG McMaster did to destroy Brown's Estate Plan.

16. On October 2, 2009, after the Wall Street Journal criticized AG McMaster for accepting large donations from his Outside Counsel under the Contingency Fee Contracts, AG McMaster announced:

..[T]hese perfectly legal donations should not be allowed to create a distraction ... Further, when it comes to the issue of ethics in government, appearances matter as much as the law. It is important to avoid even the slightest possible appearance of any impropriety.

... I am today returning the \$32,500 in donations special counsel attorneys, or their firms, have made to my campaigns for attorney general. And I will decline future contributions from my office's special counsel attorneys.

17. In October 2009 McMaster also told the Wall Street Journal:

My Special Counsel Retention Agreement has been heralded nationwide as the pro-business model by tort reform groups and is being considered by our legislature to become law.

...
Yes, I do have 71 attorneys in my office, but only eight try civil cases... Lilly's local firm has over 400 attorneys, its Philadelphia firm over 500.

...So, I must use outside counsel, but every decision is made by me.

18. In April 2010 counsel for Brown's companion threatened AG Sonny Jones would file this lawsuit if we did not drop our appeal. He said AG Sonny Jones had already hired Contingency Fee attorney Ken Wingate, who was working on the Complaint.

19. Unlike other Outside Counsel, the Wingate Firm had no knowledge of the James Brown cases and rulings.

20. Since our mandatory duty to defend Brown's Estate Plan did not allow us to abandon the appeal, as threatened the State, through the Wingate Firm, sued us in what is known as Case 4900. No AG or assistant AG signed the Complaint.

21. In August 2010 AG McMaster, through AG Sonny Jones, predicted in a Supreme Court filing that Bauknight would soon value Brown's assets at less than \$12 Million. All valuation information was, however, concealed by the State through the Wingate Firm, which refused to produce any documents requested in discovery except the State's 2-page Witness List.

22. I am informed and believe that the State and Wingate Firm abused the discovery process by not producing the valuation and in other ways described below.

23. In December 2010 Bauknight learned Brown's TIAA Royalties for 2010 were over \$5 Million. At the same time Bauknight secretly told the IRS that Brown's worldwide music empire at his death was worth only \$4.7 Million, and that Bob and I had overstated its valued under penalties of perjury by about \$79 Million.

24. On January 11, 2011, previously serving at the pleasure of AG McMaster,

Bauknight began serving at the pleasure of AG Wilson, managing the Legacy Trust McMaster had created with Brown's assets.

25. On January 27 the IRS issued a closing letter based on Bauknight's false \$4.7 Million value.

26. On March 14, 2011, represented by Nexsen Pruet, AstraZeneca sued AG Wilson in Spartanburg County Case No. 2011-CP-42-1213, asserting:

27. AG...Wilson... is not permitted to hire financially interested contingent-fee lawyers to prosecute criminal-like proceedings and/or risk the appearance (and, in fact, create an actual) impermissible bias in such matters. Taken in their totality... actions of...Wilson... McMaster in underlying litigation violate AstraZeneca's federal and state Constitutional rights to Due Process of Law. ...

28. The AstraZeneca litigation alleges that AG McMaster and private counsel in their cases against drug makers "created an enterprise whereby they will jointly attempt to exploit the AG's law enforcement authority, so...both profit on ..massive contingency fee;..."

29. The AstraZeneca complaint states that it is the official policy or custom of the AG to enter into similar Litigation Retention Agreements with outside private counsel to pursue such lawsuits.

30. The AstraZeneca complaint and filings make clear that all known Contingency Fee Agreements with Outside Counsel state they are public documents, and private counsel must comply with FOIA.

31. In April 2011 Jeff Smith and I finished basic work on a professional article – "Private Foundations, Copyright Heirs and Musical Millionaires – Why The James Brown "I Feel Good" Trust doesn't..." describing how McMaster's destroyed Brown's Copyrights to more than 800 published and unpublished songs.

32. The "I Feel Good" article also describes my fear that AG McMaster's actions threaten private philanthropy in South Carolina because he has used his public authority to take over a Settlor's private property which he has, in turn, converted into what he is trying to assert is a private \$80 Million personal and political pocketbook.

33. On May 4, 2011 Bauknight's sworn Inventory in Aiken used the false \$4.7 Million value.

34. On May 6, 2011 Bauknight, through Nexsen Pruet, and AG Wilson asked the S. C. Supreme Court to accept Bauknight's false \$4.7 Million value as part of the record to support McMaster's destruction of the "I Feel Good" private foundation. The Supreme Court declined to supplement the record.

35. On July 15, 2011 one of the 10 Nexsen Pruet lawyers representing Bauknight and McMaster's Legacy Trust, threatened me with a lawsuit when I exercised my FOIA right to get a copy of the Legacy Trust, now controlled by AG Wilson.

36. I am informed and believe that the Wingate Firm, acting for the State, has actively participated in the coverup of Bauknight and McMaster's wrongdoing in at least the following ways:

- a. By bringing a false multi-million tort suit against Bob and me with no due diligence to support the complaint;
- b. By bringing the tort suit with specific intent to damage our careers and knowledge that false allegations of civil and criminal wrongdoing would do that.
- c. By simultaneously representing the State and private individuals, including those known to have lied under oath and filed false documents, including false grievances against lawyers in James Brown matters.
- d. By naming an indicted – but not yet tried – felon as the State's witness against us.

- e. By failing for 15 months to produce any documents to support the State's claim, producing only a 2-page witness list.
- f. By refusing to present AG McMaster or any Plaintiff for depositions.
- g. By designating two State's experts who (subpoenas show) a year later have nothing in their files, and apparently not even engaging one of the experts.
- h. By simultaneously representing that the Brown's music empire was worth only \$ 4.7 Million when we became fiduciaries, and that we caused it tens of millions of dollars damage.
- i. By false statements and filings on behalf of the State which AG McMaster and his senior assistant AG knew to be false when made.
- j. By improperly delegating discovery matters to, and taking directions from, attorneys at Nexsen Pruet.

37. I am informed and believe that the requested documents will begin to show the extent to which the State, through former AG McMaster and his Sr. Assistant Havird "Sonny" Jones, were involved in Bauknight's outrageous \$4.7 Million undervaluation of Brown's music empire to less than 1/12 of its actual value.

38. I am informed and believe that the McMaster Retention Agreement, like AG McMaster's others, will state that it is a public document, and should – like others:

- (1) Require that AG McMaster review all pleadings
- (3) Provide Outside Counsel fees only if the State receives an award.
- (4) Place the Case and all settlement negotiations in control of the AG.
- (5) Prohibit Outside Counsel from accepting payment from other sources.
- (6) Require Outside Counsel to advance costs, including the cost of experts.
- (7) Allow outside Counsel to delegate within his firm, but not to others.
- (8) Require Outside Counsel to comply with FOIA

39. I am informed and believe that this and other public documents I seek through FOIA – and which AG Wilson is withholding – will show that AG McMaster improperly used his public office to take over James Brown \$100 Million empire, which he and Bauknight are now trying to operate in secrecy for McMaster's personal and political benefit.

FURTHER DEPONENT SAYETH NOT.

Adele J. Pope
ADELE J. POPE

SWORN TO before me this
1st day of September, 2011

[Signature] (L.S.)
Notary Public for South Carolina
My Commission expires: 7/13/2011

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF NEWBERRY)

Civil Action No. 2011-CP-36-379

Adele J. Pope,)

Plaintiff,)

v.)

Alan Wilson, in his capacity as
Attorney General of South Carolina,)

Defendant.)

SUPPLEMENTAL
AFFIDAVIT OF ADELE J POPE
IN SUPPORT OF SUMMARY JUDGMENT
AND EXPEDITED HEARING

Personally appeared before me, Adele J. Pope, who being duly sworn, deposes and says:

1. I ask the Court accept the letter of C. H. "Sonny" Jones, attached hereto as Exhibit A, received by me at approximately 4:30 on Thursday, September 22nd, as additional evidence that the Attorney General's Office has acted in bad faith by refusing to comply with my FOIA request of July 19, 2011 for more than 60 days.

2. I am informed and believe that the statement of the S.C. Supreme Court in the 2000 Case of State v. Cooper that "[a]s a party to a lawsuit, the Attorney General, acting as an embodiment of the State, becomes subject to the authority of the Court," applies to AG Wilson's office and Sonny's actions.

3. I am informed and believe that Sonny did not follow the South Carolina Rules of Civil Procedure because:

- a. Sonny is not a lawyer in the Case in which he wrote the letter.
- b. Neither AG Wilson, nor any attorney at the AG's Office has ever appeared as counsel of record in the case in which Sonny wrote the letter.

- c. The State's sole lawyer in that case is Ken Wingate's firm, which has repeatedly asserted the State is not willing to produce the documents. [B]
 - d. For an employee of a client – here the State – to write the Court to assert a position directly contrary to the stated position of its counsel is, at best, unprecedented.
 - e. No stay was in place in November 2010 when Bob Buchanan asked the State to produce the McMaster/Wingate Litigation Retention Agreement.
 - f. No stay was in place when Bob had to move for the State/Wingate to produce the Wingate Litigation Retention Agreement.
 - g. No stay was in place on July 19, 2011 when I requested that AG Wilson produce the Wingate/McMaster Litigation Retention Agreement
 - h. No stay was in place on July 26, 2011 when I moved to compel the State/Wingate to produce the Wingate Litigation Retention Agreement.
 - i. No stay was in place on August 5, 2011 when Tracy Meyers, acting for AG Wilson, refused to provide the public documents I requested.
 - j. No stay was in place on September 13, 2011 when AG Wilson's Office told the State paper it would post all of the Litigation Retention Agreements with Outside Counsel on AG Wilson's Website- something he has not yet done .
 - k. No suggestion was made by the 4 Wingate Firm attorneys present at the hearing Judge Manning cancelled on September 14 to Judge Manning or anyone that AG Wilson wanted to release the Wingate/McMaster Retention Agreement.
4. I am informed and believe Sonny's letter to Judge Manning was intended to make it appear that the State/AG wants to comply with FOIA – a standard requirement of the AG's Retention Agreements with Outside Counsel –masking the fact both Wingate and the AG's office have, for almost a year, vigorously resisted release of the McMaster/Wingate Agreement and numerous other public documents.
5. I do not believe there was any written order in place on September 22, when Sonny wrote Judge Manning, that could be construed to prevent AG Wilson from complying with FOIA and/or releasing and posting on his website the Wingate Outside

Counsel Retention Agreement and all other Litigation Retention Agreements - as he has promised.

6. I believe that Sonny Jones, acting for AG Wilson, is stonewalling my valid FOIA requests to cover up Sonny's improper relationships and dealings, especially with Russell Bauknight, Terry Brown, James Brown's companion Tommie Rae and David Cannon and/or their agents.

7. I am informed and believe that the public has a right to know why Russell Bauknight, while serving at the pleasure of the Attorney General, lied to the IRS about Bob Buchanan and me; repeated a portion of that lie to the Supreme Court; then threatened me with lawsuit if I exercised my FOIA rights. [C]

8. I am informed and believe that the documents I have requested will show:

a. AG McMaster, through Sonny, had an improper relationship with David Cannon, including accepting political contributions from Cannon's lawyers during his criminal investigation and naming Cannon, who awaits trial on multiple felonies, as a witness for the State against Bob and me.¹

b. AG McMaster, through Sonny, has an improper relationship with Tommie Rae and/or her agents, who either assisted with and/or condoned Bauknight's fabricated \$4.7 Million value for Brown's worldwide music empire.

c. Sonny has an improper relationship with Terry Brown, his son Forlando and/or their agents.

d. The improper relationships of the AG's Office with persons who do not serve the public interest help explain why Sonny/AG McMaster took control of Brown's private property, then gave away \$50 Million, taking it from scholarships for needy students.

e. With knowledge of some of Sonny's actions, AG Wilson still refuses to comply with my proper FOIA requests.

¹See Wingate Witness List dated 11/12/2010 - the only discovery document the Wingate Firm has produced in Case 4900 in the 16 months since the suit was filed on May 19, 2010.

9. I am informed and believe that Sonny continues to abuse the power and public trust placed in his AG/employers by the laws and people of S. C. by:

- a. Treating James Brown's private property as if it belonged to Henry McMaster, even referring to Brown's private assets as "the Attorney General's money."
- b. Using the power of the AG's Office and James Brown's assets to get even with people who won't hire lawyers McMaster/Sonny select.
- c. Destroying Brown's Estate Plan and taking over his private property, striking what may be a death blow to private philanthropy in South Carolina.
- d. Creating a \$100 Million political pocketbook for the Attorney General to use to grant favors to, then solicit campaign contributions from, more than 30 lawyers and advisors to Bauknight, Terry, Tommie Rae and others, all of whom Brown specifically disinherited from his music empire.² [C, D]

² AG McMaster's \$50 Million "gift" from Brown's "I Feel Good" Foundation to persons Brown intentionally disinherited from the music empire will transfer more than \$13 Million to 30 lawyers, most contingency fee lawyers whose clients' claims to set aside Brown's Estate Plan were baseless; less than 8 months old on August 10, 2008; and had not even entered the discovery stage, as follows:

Tommie Rae - \$20 Million (Lawyers (est'd): \$6.6 Million)
Some Levenson Clients - \$25 Million (Lawyers; \$150,000+30% -about \$7.7 Million.)
Terry Brown - \$5 Million and Right of First Refusal to Buy James Brown assets
(Fees undisclosed)

Loss from McMaster's Legacy Trust may be even greater. Bauknight asserts the Legacy Trust, although controlled by AG Wilson and created by AG McMaster who used his public authority to take over James Brown's private assets, is "private" and not subject to public scrutiny.

Potential for abuse and conflict by a politician through control of private charitable funds (even his own family's money), was addressed in the Spitzer Ethics Opinion, NY Ethics Opinion 06-06.

47 ½% of the funds payed Bauknight's 10 lawyers at NP will come from the "I feel Good" Trust, now also controlled by AG Wilson through Bauknight. [The other 52 ½% of the costs will come from the \$50 Million AG McMaster already "gave" away.]

Bauknight's claimed commissions are not yet known, and he asserts that is private.

- e. Attempting to destroy the careers of anyone who dares to challenge what McMaster did, or tries to save Brown's \$80 Million "I Feel Good" Trust for the needy and deserving students Brown intended to benefit.
 - f. Destroying James Brown's private Trust for the education of 7 designated grandchildren, with each to have about \$285,000.
 - g. Funneling about \$50 Million from the "I Feel Good" scholarships to people Brown intentionally disinherited and their lawyers.
 - h. Hiring Wingate – who knew nothing and conducted no due diligence – to falsely accuse Bob and me of the crime of overstating Brown's music empire at about \$85 Million – which value was both accurate and conservative.
 - i. Working with Bauknight, Tommie Rae and Terry to fabricate the \$4.7 Million alleged value of Brown's music empire to cover up what they did to destroy the "I Feel Good" Foundation.
10. Some of Sonny's actions to destroy the "I Feel Good" private foundation are described below.
11. Brown died on December 25, 2006 leaving The James Brown "I Feel Good" Foundation, about to be S. C.'s largest ever private foundation dedicated solely to the education of needy and deserving students in schools in S.C. and Georgia, about \$80 Million.
12. In two valid Estate Plans – 1999 and 2000 – Brown specifically omitted all heirs and claimed heirs from his \$100 Million worldwide music empire.³

In sharp contrast, if AG McMaster's August 10, 2008 agreement had not been reached or were overturned – Bob and I have projected that attorneys' fees and costs of defense of the Estate Plan, administration and fiduciary commissions will be only 7% of the Estate/Trust. This is less than 1/7 of the \$50 Million AG McMaster gave away.

³ By 1999 Brown had amassed a \$100 million music empire. He borrowed \$26 million that year to diversify for retirement. Cannon had secretly taken most of the retirement money by 2002. The 7.98% note ("TIAA Debt") was secured by Brown's royalties to more than 800 songs, which earned \$25 Million between 1999 and 2006. Brown earned another \$25 Million during the same period for his Road Show performances. Brown earned about \$6 Million each year his last

13. Brown's fiduciaries were directed to vigorously enforce the Estate Plan against any challenges and *In Terrorem* clauses gave them leverage against expected challenges.⁴

14. In January 2007 Brown's son Terry and 5 siblings agreed to pay Atlanta lawyer Louis Levenson \$150,000 plus 30% of what he could get them by undoing Brown's Estate Plan. [D]

15. Instead of challenging the Estate Plan, the Levenson clients brought suit in Aiken County ("Case 122") claiming their status under the Estate Plan. They sought to remove Brown's PR/Trustees Cannon, Dallas and Bradley. Brown's companion Tommie Rae sought similar relief.⁵

16. Some Levenson clients, through family company Pinnacle, also issued a prospectus to raise \$200 Million to acquire the James Brown assets. [E]

17. On March 7, 2007 Jg. Early appointed Bob Buchanan and me as non-fiduciary SAs to oversee the PR/Trustees.

18. In 2007 Cannon bought a \$200,000 lot and paid \$866,000 cash for a turnkey retirement home on Roatan Island, Honduras.

3 years. The TIAA Debt was reduced to about \$15 Million when Brown died, making the net value of his assets at death about \$85 Million.

⁴ Brown had about a dozen claimed children, including 3 proven biological children he did not acknowledge.

⁵ Brown had a prenuptial agreement with companion Tommie Rae, but she failed to disclose she was married when she and Brown had a marriage ceremony in 2001. When Brown discovered Tommie Rae was married, she obtained an annulment. Then, based on her annulment Order which found Tommie Rae had married Javed Ahmed, Brown sued Tommie Rae to void his marriage to her. The suit was settled with Tommie Rae's contract never to claim to be Brown's common law wife.

19. In February Cannon⁶ hired Atlanta Law Firm Powell Goldstein ("PoGo").
20. By June 2007 Cannon's plans were progressing:
- a. An Atlanta Investor Group (later "TJBL") was expected to buy Brown's assets for \$100 Million; create an IPO; and pay secret options or a "kickback" to Cannon and Dallas; [F]
 - b. Cannon hoped to collect a \$5 Million PR commission. (The three PR/Trustees were seeking \$15+ Million.)
 - c. Cannon could retire to Roatan when his home was finished in 2008.
21. In July 2007, as Bob and I were about to discover Cannon had taken \$900,000 in 2006, PoGo lawyers sent him documents to transfer Brown's 2000 Irrevocable Trust – including the "I Feel Good" Foundation – to Georgia.
22. In July, when Bob and I found the \$900,000 taking, Cannon signed the secret PoGo documents and also a secret resignation and appointment of the Trust's attorney Bill Hammond as his successor.
23. On August 10, after Hammond's secret appointment and the secret transfer failed, Cannon resigned and returned \$350,000 of the \$900,000 he had taken.
24. On September 15, 2007 PoGo billed Cannon (Brown's Estate) \$48,225.
25. On September 24, invited by Cannon and Dallas, Sonny appeared in Case 122. Hammond told Sonny about his secret attempted appointment.
26. On October 12, 2007 TJBL made its first "\$100 Million offer" to buy Brown's assets, concealing the options or "kickback" they would pay Cannon and Dallas.⁷

⁶ PR/Trustee Albert "Buddy" Dallas was involved with Cannon in many of the activities described herein. The AG's Office, so far as I know, never investigated Dallas, who Ken Wingate lists as the State's witness against Bob and me. Al Bradley, the 3d original Trustee, died in June 2010. Bradley took no active part in managing Brown's Trust before Brown's death – or taking the \$12+ Million which took missing before Brown's death.

⁷ The "100 Million Offer" made on October 12, 2007 was a Letter of Intent to purchase the James Brown assets for \$90 Million - \$100 Million plus a 5% Royalty legacy. Cannon,

27. On October 27 Cannon wrote a friend that the tide seemed to be turning because he had told his story to the Attorneys General of SC & GA and they had entered the proceedings. [G]

17. On November 2 Bob and I tried to hire, with Court permission, Kendall Few and James Gilreath to seek recovery of millions of dollars missing since 1999.⁸

18. For 2 months Sonny delayed Kendall and Jim's engagement, trying to force us to hire 2 separate firms McMaster wanted.⁹ Sonny was furious when Jg. Early directed that Jim and Kendall to be hired.

19. On November 15, 2007 Cannon testified he had never hired PoGo. That day he began taking the 5th Amendment, and has done so since.

20. Sonny told the Court he would seek a SLED investigation of Cannon.

20. On November 15, 2007 Dallas and Bradley filed an I&A valuing Brown's assets about \$85 Million. [H]

21. On November 20 Bob and I were appointed PR/Trustees when Dallas and Bradley resigned.

22. On November 30 Bill Hammond, Tax Attorney to the Trust until August 10, filed an affidavit that the net value of Brown's assets was at least \$85 Million. [I]

22. On December 5, 2007 Terry's son Forlando – like Terry, now allied with Cannon -- was secretly given 39% of TJBL. [J]

23. On December 6 Sonny asked us about the \$100 million offer. We explained

Dallas and Bradley each claimed 5% of the sale – about \$15 Million.

⁸ At that time about \$7 Million was identified as missing, including the \$5 Million "check to nobody" which Cannon had cashed at a local bank in 1999.

⁹ Sonny also tried to make us use McMaster's Litigation Retention Agreement, putting Brown's Estate/Trust litigation under the control of the AG.

the former PR/Trustees' \$15 Million commission claim, a TIAA issue, and other factors suggested we should not proceed at that time.¹⁰[K]

24. On December 8 Cannon was held in contempt of court on various issues. [L]

25. On December 14 McMaster/Sonny challenged our appointment as Trustees – not as PRs.

26. Between December 19 and 26, 2007 some of the people who had already ratified the Will and Brown's 2000 Irrevocable Trust challenged the Estate Plan.

27. On December 28 PoGo lawyer Dempsey secretly worked on a brief to help Dallas have Jg. Early recused. [M].

28. On January 2, Forlando, through PoGo, filed suit in Federal Court to return Cannon and Dallas as trustees. Sonny – asserting the 11th Amendment – would not help us defend this frivolous suit.

30. The PoGo/Forlando suit was so close to Sonny's Case 122 filing that Sonny had to remind Jg. Early the AG was not involved in Forlando's federal suit. [M]

31. In January 2008 with Sonny's accusations so inexplicably strong, and false, Bob and I asked Jg. Early to conduct a full hearing on the propriety of both our appointment and service. [O].

32. In a January 8, 2008 Order Jg. Early praised our service and awarded Bob and me \$317,000 in fees, plus costs, for our 8-month service as Special Administrators (SAs) and ongoing time-plus-costs payments as PR/Trustees. No appeal was taken

¹⁰ Within a year, most claims under the suspect "October 18 Letter", which was prepared as Brown declined in late 2006 and not signed by Brown until after everyone else signed, had either been withdrawn, dissipated, or substantially reduced.

from the January 8 Order. [P].¹¹

33. In February 2008 Kendall and Jim sued Cannon and others to recover the \$12+ Million taken between 1999 and 2006.

34. In February 2008 AG McMaster appeared with Forlando on WIS TV, falsely accusing Bob and me of "going past the stop sign of conflict of interest" by working for the family instead of the "poor kids". [Q]

35. In February 2008 Terry/TJBL offered \$90 - \$102 Million for Brown's assets.

36. By March PoGo represented TJBL - now it had all of Cannon, Terry, Forlando and TJBL.

37. In March 2008, trying to avoid Jg. Early's reconfirmation of our appointment, Sonny told Jg. Early he had learned "last night" that Bill was appointed Brown's Trustee. He had known for 5 months that Bill was appointed and did not accept.¹² [R]

38. On March 27 Terry/TJBL made a third \$90 - \$102 Million offer.

39. By March Sonny was relying heavily on Tommie Rae's attorney.¹³

40. By April PoGo made the first of its big campaign contributions to McMaster.

41. In his April 8, 2008 Order, Jg. Early found that Bob's and my appointment and service as both SAs and PR/Trustees had all been ethical and appropriate. [S]

¹¹ Jg. Early's Order of January 8, 2008 approved the SA fees and ongoing payments to us as PR/Trustees. Because the Estate was illiquid, the Order provided that we be paid interest on amounts not timely paid. The amount due on May 26, 2009 when we were replaced was about \$1.9 Million.

¹² Nobody challenged our appointment as PRs - just Trustees.

¹³ The damage Sonny/AG McMaster caused to Brown's \$40 - \$50 Million Royalties through reliance on Tommie Rae's advisors and ignorance of even basic concepts within the copyright laws by AG McMaster's office is described in the April 2010 draft of an article Jeff Smith and I are writing: "Private Foundations, Copyright Heirs and Musical Millionaires - why the James Brown "I Feel Good" Trust doesn't..."

42. I am informed and believe the April 8 Order is binding on the AG and all Case 122 parties.

43. Bob and I met with AG McMaster on May 28, 2008.

44. AG McMaster appeared reasonable, and willing to help us preserve and protect the "I Feel Good" Trust.

45. By the next day, however, and until July 14, Sonny continued to assert we had no authority to act. [T]

46. We wrote AG McMaster expressing our concern about what Sonny was doing to damage Brown's Estate Plan and the "I Feel Good" Foundation. [U]

47. On July 14, when the Ct. of Appeals confirmed our authority to act, Bob and I proceeded to resolve, within 4 months, more than \$31 Million of claims – mostly frivolous – in favor of the Estate. But for Sonny and Bauknight, the Cannon Group's frivolous \$15 Million claim would have already been resolved.

48. On July 30, AG McMaster confirmed that he approved Bob and me as 2 of the 3 permanent trustees. [V]

49. The next day, July 31, Sonny invited Tommie Rae's attorney to a meeting he was having ^{with AG} a TJBL representative. The attorney's report – describing me as "Adolph" and the Cannon Group as "the three As" – is indicative of Sonny's actions. [W]

50. On August 10, 2008 Sonny attended a secret mediation and agreed for AG McMaster to give away \$40+ Million from the "I Feel Good" Trust to: Tommie Rae and her lawyers (about \$20 Million); and Attorney Levenson and his "clients" – with no decision about who would get it (about \$20 Million). McMaster signed it.

51. Brown's entire \$100 Million would be placed in McMaster's "Settlement Entity," now the James Brown Legacy Trust, then disbursed when it was sold.

52. McMaster had just taken more than \$12 Million from needy students and made a gift to Levenson and Tommie Rae's lawyers – who had done virtually nothing to show they even had a basis to challenge Brown's Estate Plan.

53. The plan – which Bob and I could not endorse – was to replace Bob and me, but still require us to sign the Agreement – promising not to criticize McMaster or what he had done to destroy the "I Feel Good" Trust. Our fiduciary duty prevented us from doing that.

54. In September – with the terms of the August 10 Agreement still undisclosed to the public – we asked Sonny/AG McMaster to help us with the Estate Tax Return, due September 25. They would not. [X]

55. On September 25, 2008 the Estate Tax Return, correctly reported Brown's assets at about \$85 Million – \$100 Million less the TIAA Debt. A Charitable Deduction of about \$83 Million was taken for what should have gone to the "I Feel Good" Foundation. [Y]

56. In September 2008 Forlando testified under oath that \$150 Million offers were still available for Brown's assets.

57. On November 12, 2008 Cannon delivered a forged "compensation agreement" intended to frame Bob and me by making it appear the \$900,000 taking we discovered was compensation.

58. So far as I know, Sonny never reported Cannon's forgery to Judge Early.

59. In January 2009 Sonny filed a Motion to approve the McMaster settlement.

60. On January 29-30, 2009 Sonny completed the destruction of Brown's Estate Plan by giving Terry nearly 5% of Brown's assets and a 10-year right of First Refusal to buy Brown's assets. This motivated Terry to be part of the biggest dirty trick

to date – Bauknight's \$4.7 Million valuation of the \$100 Million assets Terry has a right to buy. [Z]

61. A few minutes later Bauknight told the Court this was good for the "I Feel Good" Trust. He did not disclose he was already the trustee for the \$100 Million Legacy Trust McMaster had created to control Brown's assets.

62. Even Dallas and Bradley – who opposed Bob and me in virtually every other respect -- filed a Complaint to remove Bauknight as SA/ST for this destruction of Brown's Estate Plan. [AA]

63. On March 23 Sonny finally revealed that Bauknight was the trustee of McMaster's Legacy Trust.

64. In March Sonny, and later Bauknight stopped an advantageous 2-year Publicity Right contract with GreenLight. [AB]

65. Based on the \$4.7 Million valuation and actions at the time, it now appears that the Publicity Rights contract was sabotaged – and millions lost – as part of the devaluation scheme. Some of the public documents I have requested will shed light on the AG's office's role in this.

66. The May 26, 2009 Order approving what AG McMaster/Sonny did was appealed; has been briefed; and is scheduled to be heard by our Supreme Court. I believe the outcome will not change the public's right to know what Bauknight and AG Wilson are doing with Brown's \$100 Million music empire.

67. On June 5, 2009 Bauknight's attorney David Black directed Jim and Kendall not to speak with Bob and me about anything confidential in the case against the Cannon Group – effectively gutting the attempt to recover the \$12 Million.

68. In February 2010 Cannon was indicted for felony breach of trust for every

year from 1999 - 2006 and for the forgery in November 2008.

69. In April Tommie Rae's agent threatened that Sonny had already engaged Ken Wingate to sue us if we did not drop our appeal.

70. Ken filed suit against us on May 19, 2010, falsely accusing us of crimes, and asserting we caused "tens of millions" of dollars of damages.

71. In November Ken listed Cannon as one of the AG's witnesses against us in his suit.

72. Between his August 10, 2008 takeover of James Brown's assets and the gubernatorial primary on June 8, 2010 McMaster received more than \$12,000 in campaign contributions from attorneys involved in the James Brown litigation and those McMaster had pressed us to hire to represent the Estate/2000 Trust.

73. In December 2010 Russell told the IRS Bob and I had lied on the Estate Tax Return when we valued Brown's music empire at about \$85 Million. It was Russell who lied by asserting it – and the \$12 Million Cannon claim – were worth less than \$4.7 Million when Brown died.

74. When AG McMaster left office in January 2011, Cannon had not been tried, even though the details of what he took from James Brown had been fully uncovered 3 years earlier, in January 2008.

75. On May 3, 2011 Russell filed the false \$4.7 Million value representation with the Probate Court.

76. On May 6, 2011 Sonny and Russell asked our Supreme Court to accept that \$4.7 Million value as correct and supplement the appeal record.

77. In July the Supreme Court declined to supplement the record.

78. I believe my FOIA suits are the appropriate forum – as I have requested – to

decide if the Legacy Trust McMaster created with private assets he took from James Brown is a public body under FOIA, and whether AG Wilson must produce the public documents I have requested.

79. I believe the public has a right to know how AG McMaster, AG Wilson – or any future AG – uses private property taken over under what AG McMaster asserted was his *parens patriae* authority.

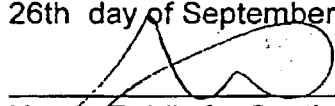
80. I believe the public documents AG Wilson and the Legacy Trust are refusing to produce will reveal some of the answers to these difficult questions.

81. A list of some of the public documents I have relied on, with copies of some, is attached to this Affidavit.

FURTHER DEPONENT SAYETH NOT.


ADELE J. POPE

SWORN TO before me this
26th day of September, 2011


_____. (L.S.)
Notary Public for South Carolina

My Commission expires: 7/13/2016

Public Documents Supporting Affidavit (Partial)
[Emphasis supplied]

Exhibit A - Ltr. of Sonny Jones to Judge Manning, dtd. September 22, 2011 (attached)

- B. See Complaint, Motion for Protective Order and correspondence of Mark Gende, member of the firm of Sweeney, Wingate & Barrow, PC, Case 2010-CP-40-4900 (Case 4900)
- C. See Motion signed by Sonny on behalf of AG Wilson and NP presented to the Supreme Ct. on May 6, 2011(pp 1-3 and service pages), and pages 7- 9 of Proposed Appendix to the Case No. 2008-CP-02-1647 Appeal, attached, which show:

Sonny tells the Supreme Court Bob and I made "misleading representations to this Court" [p.3]

Bob's and my valuation of Brown's Royalties, Image and Persona ("Publicity Rights"); the \$12+ Million claim against the Cannon Group and others; and certain other assets is:

\$84,000,000

Russell's Valuation of Brown's Royalties, Image and Persona ("Publicity Rights"); the \$12+ Million claim against the Cannon Group and others; and certain other assets is:

\$4,697,736

with representation by Russell: "Valuation of these Interests was corrected to fair market value...."

Russell told the IRS Bob and I overstated the value of Brown's Assets by:

\$79,302,264

- D. See Settlement Agreement, Charts contained in ROA, Case 1647; Levenson Contingency Fee Agreement (Chart 1 and 2, attached)
- E. Pinnacle Prospectus
- F. See Developing the James Brown Legacy, Grahm Windsor Group, June 2007 (attached), "... trustees want options or a 'kickback' on the IPO"
- G. Email, David Cannon to Walt Inabinet, October 27, 2008 (attached)
- H. I&A Dallas/Bradley, Aiken Cty. Probate Court (Pg. 1 attached)
- I. Affidavit, Wm. Hammond dtd. 11/30/07 (attached).

- J. Certificate of Formation, State of Georgia, TJBL, LLC, dtd. 12/5/07
- K. Email of Sonny Jones to Bob Buchanan & Adele Pope, 12/6/07 and Ltr. of Buchanan Pope in response.
- L. Cannon Order dtd. 12/8/07
- M. Email J. Dempsey, 12/28/07
- N. Transcript Hg., Case 122, 1/08, p. 72FF.
- O. Mot. Buchanan/Pope, Case 122, 1/4/08, and related filings
- P. Order dtd. 1/8/08 Case 122
- Q. Transcript of WIS TV interview, Forlando Brown, AG Henry Dargan McMaster
- R. Tr. Hearing 3/7/08, Case 122
- S. Order of Jg. Early dtd. 4/8/08, Case 122
- T. Motion for Appointment of SA, ST, Case 122; Filings of AG in S.C. Ct. of Appeals related to Christie's sale, Dallas Appeal, Case 122.
- U. Ltrs. of Buchanan, Pope to AG Henry McMaster between June 1 and August 1, 2008. (Ltr. dtd. June 27, 2008 w/ partial attachments attached)
- V. Ltr of Henry McMaster to Buchanan, Pope dtd. July 30, 2008 (attached)
- W. Email of A. Medlin to Marcia Jones, Chandler, David Michel, Carter, J. Lee, and Robert Rosen dtd. July 31, 2008 (attached)
- X. Ltrs. of Buchanan, Pope to AG McMaster, Sonny, et al dtd. 9/28/08 and 10/2/08 (attached)
- Y. Estate Tax Return, prepared by Wm. Sellars, PRs, Bob Buchanan, Adele Pope.
- Z. Ltrs. of Jones to Bell dtd Jan. 29, 2009, filed 1/30, 2009, Case 1647.
- AA. Complaint of Dallas, Bradley for Removal of Bauknight for cause, pending in Aiken County.
- AB. See Mot. to Dismiss, Mot. of Tommie Rae to Intervene; Memo: Buchanan and Pope to Bauknight re: CORBIS/GreenLight, 6/09

Exhibit A



ALAN WILSON
ATTORNEY GENERAL

September 22, 2011

VIA HAND DELIVERY AND E-MAIL
The Honorable L. Casey Manning
Richland County Circuit Court
PO Box 192
Columbia, SC 29202

RE: Russell L. Bauknight, et al. v. Adele J. Pope and Robert L. Buchanan, Jr.
Case No.: 2010-CP-40-4900

Dear Judge Manning:

At the hearing before your Honor in the above-referenced matter on September 14, 2011, the Court continued the pending Motions and stated that everything would be stayed pending your consulting with Judge Lee regarding the appointment of a single judge to handle all matters related to this case.

This Office received a request from the media for a document that is arguably the subject of at least two motions pending in the case: (1) Defendant Pope's Motion to Compel Production of Contingency-Free Contract and Related Documents Prior to Hearing on Injunction, and (2) Plaintiffs' Motion for Protective Order Concerning Various Documents Requested by Defendant Adele J. Pope.

Because the document which is the subject of the request is also the subject of at least two pending motions and the Court has stayed all matters in the case, the Attorney General seeks guidance from the Court as to whether it would be a violation of your Order to provide the document pursuant to the request. The Office is ready and more than willing to provide the document at this time. However, in an abundance of caution the Office will not provide the document until it receives further guidance from the Court as to whether it would be a violation of the Court's order to provide the document. Please advise if you would be available for a brief status conference to provide guidance to this Office on this matter.

Thank you for your assistance in this matter.

Very truly yours,

A handwritten signature in black ink, appearing to be 'C. H. Jones, Jr.', written over a circular stamp or seal.

C. H. Jones, Jr.
Assistant Deputy Attorney General

cc (via e-mail):

Mark V. Gende, Esq.

J. Calhoun Watson, Esq.

Daryl L. Williams, Esq.

Adam Silvernail, Esq.

Robin A. Braithwaite, Esq.

Exhibit C

**THE STATE OF SOUTH CAROLINA
In The Supreme Court**

**APPEAL FROM AIKEN COUNTY
Court of Common Pleas**

**Doyet A. Early, III, Circuit Court Judge
Case No. 2008-CP-2-1647**

Alan Wilson, in his capacity as Attorney General of the State of South Carolina; Daryl J. Brown, on behalf of his minor children, Lindsey B. and Janise B.; Deanna J. Brown Thomas, on behalf of her minor child, Jason L.; Yamma N. Brown, on behalf of her minor children, Sydney L., Carrington L., and Tonya B.; Vanisha Brown; Larry Brown; Tommie Rae Hynie Brown; and James B., through his Guardian ad Litem Respondents,

v.

Albert H. Dallas, Alfred A. Bradley, and David G. Cannon, Individually and as (purported) Trustees of the James Brown 2000 Irrevocable Trust; Adele J. Pope and Robert L. Buchanan, Jr., Personal Representatives of the Estate of James Brown and Trustees of the James Brown 2000 Irrevocable Trust; Terry Brown; Romunzo Brown; Forlando Brown; Cinnamon N.M. Paris; LaRhonda Pettitt; Jeanette Mitchell; and Russell L. Bauknight, as Special Administrator and Special Trustee for the Estate of James Brown and the James Brown 2000 Irrevocable Trust,

of whom Robert L. Buchanan, Jr. and Adele J. Pope, as Personal Representatives of the Estate of James Brown and Trustees of the James Brown 2000 Irrevocable Trust are Appellants,

And Albert H. Dallas, Alfred A. Bradley, and David G. Cannon, Individually and as (purported) Trustees of the James Brown 2000 Irrevocable Trust; Terry Brown; Romunzo Brown; Forlando Brown; Cinnamon N.M. Paris; LaRhonda Pettitt; Jeanette Mitchell; and Russell L. Bauknight, as Special Administrator and Special Trustee for the Estate of James Brown and the James Brown 2000 Irrevocable Trust are Respondents.

In re: The Estate of James Brown and The James Brown 2000 Irrevocable Trust u/a/d/ August 1, 2000.

**MOTION TO SUPPLEMENT THE RECORD PURSUANT TO
RULE 212(b), SCACR, OR IN THE ALTERNATIVE, TO TAKE JUDICIAL
NOTICE OF RECORDS FILED IN A RELATED PROCEEDING**

TO: THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE
SOUTH CAROLINA SUPREME COURT:

000294

Respondents respectfully request that this Court supplement the record of this appeal to include (1) Internal Revenue Service ("IRS") Federal Estate tax records that were received by Respondents after filing their initial brief on December 22, 2010, and that are related to the date of death valuation of the estate and the tax consequences of the settlement agreement and (2) the Supplemental Inventory and Appraisal of the James Brown Estate ("Estate") related to the date of death valuation and appraisal of assets for the Estate. In the alternative, this Court may take judicial notice of these documents as they were filed in the probate court or issued by the IRS in related proceedings.

FACTUAL BACKGROUND

This appeal presents a unique situation: it concerns an ongoing estate and trust that are continuing to be administered in the normal course of estate and trust administration, and matters relating to their ongoing administration are relevant to this appeal. Although the documents that Respondents seek to include in the record had not been prepared and were thus not available when the circuit court issued its May 26, 2009 Order approving the Settlement Agreement, the Supplemental Inventory and Appraisal should properly be considered in this appeal as it was filed as required by the South Carolina Probate Code in the ongoing probate proceeding, and the IRS tax records should properly be considered because they were created as a result of an independent IRS audit of the Estate.

The Supplemental Inventory and Appraisal and IRS tax records refute factual assertions that the Appellants make to support their legal positions before this Court. Because these documents provide *support* to the circuit court's decision to approve the settlement agreement, their inclusion in the record would neither undercut the circuit court's decision, nor hamper appellate review of it. *Cf. Queen's Grant II Horizontal Prop. Regime v. Greenwood Dev. Corp.*,

368 S.C. 342, 373, 628 S.E.2d 902, 919 (Ct. App. 2006) ("Issue preservation rules are designed to give the trial court a fair opportunity to rule on the issues, and thus provide [the Court] with a platform for meaningful appellate review.").

ANALYSIS

In their brief, Appellants argue: (1) that the settlement will cause serious tax problems for the James Brown Estate and Trust (the "Estate and Trust"); and (2) without the aid of a professional appraisal, Appellants contend that the combined Estate and Trust are worth roughly \$100 Million. Specifically, Appellants make the following misleading representations to this Court:

Tax Consequences:

- On page seven (7) of their brief, Appellants state that "the settlement would cause the loss of the estate tax deduction, resulting in about 50% taxes and interest."
- On pages thirty-eight to thirty-nine (38-39), Appellants devote a section of their brief to argue that the settlement will cause serious tax problems. They note that the "settling parties offered no evidence to refute the evidence of a likely tax disaster. Instead, their counsel reassured the court that they were 'dedicated' to preventing it." *Id.* at 39.

Valuation:

- On page five (5), footnote five (5), of their brief, despite never having obtained a professional appraisal, Appellants state that the late James Brown's assets have been valued at roughly \$80-120 Million.
- On page thirty-two (32) of their brief, Appellants note that the trust could be funded with \$100 Million.

See Final Brief of Appellants at pp. 5, 7, 32, 38-39.

Following the circuit court's approval of the Settlement Agreement and after Appellants entered their notice of appeal, Russell L. Bauknight ("Mr. Bauknight") engaged a nationally recognized firm to conduct the valuation and appraisal of the Estate and Trust. This is the first

STATE OF SOUTH CAROLINA
COUNTY OF: AIKEN
IN THE MATTER OF: JAMES BROWN

IN THE PROBATE COURT
INVENTORY AND APPRAISEMENT
CASE NUMBER: 2007-ES02-0058

☐ ORIGINAL

☒ SUPPLEMENTAL # 1

Personal Representative(s): Russell L. Backnight

Decedent's Social Security Number: 260-32-3801

Decedent's Date of Death: 12/26/2008

Was there a will? ☒ YES ☐ NO

Domicile at Death: Aiken

SC
(state)

The undersigned, being sworn, states: That the following schedule contains a complete and accurate inventory and appraisement of all real and personal property of this estate so far as the undersigned is informed. That he/she has estimated and/or appraised all listed property at its fair market value, according to the best of his/her knowledge and ability.

SWORN to before me this 3rd day of May, 2011.

[Signature]
Notary Public for South Carolina

My Commission Expires: 5/22/12

Signature: [Signature]
Name: Russell L. Backnight
Address: PO Box 1330
Columbia, SC 29202

E-mail:
Telephone (O): 803.771.8943
O:

Signature:
Name:

Address:

E-mail:

Telephone (O):
O:

Attorney: Fred L. Kingmore, Jr.

Address: PO Drawer 2429

Columbia, SC 29202

E-Mail:

Telephone: 803.293.8254

For estate of decedent, the gross fair market valuation of all assets, regardless of situs, should be given as of the date of death. List all out-of-state assets on appropriate schedules. A Supplemental Inventory should be utilized for correcting, adjusting or adding to an original inventory. A qualified and disinterested appraiser may be employed to ascertain the value of any asset, the value of which may be subject to reasonable doubt. If an appraiser is employed, his/her name and address should be indicated with the list of assets he/she appraised.

Within ninety (90) days following appointment, a copy of the inventory and appraisement shall be sent to each interested person who requests it, and the original inventory filed with the Probate Court.

RECAPITULATION

Schedule A - Real Estate
Schedule B - Stocks and Bonds
Schedule C - Notes Due Decedent and Credit
Schedule D - Insurance on Partner's Life
Schedule E - Jointly Owned Property
Schedule F - Other Miscellaneous
Other Assets Payable to Estate
Schedule G - Transfers during Decedent's life
Schedule H - Powers of Appointment
Schedule I - Annuities and Retirement Accounts
TOTAL GROSS VALUE
ENCUMBRANCES
TOTAL NET WORTH

Non-Probate	Probate
\$ 81,000.00	\$ 0
0	202,000.00
0	158,000.00
0	0
0	0
113,000.00	0
0	4,812,244.00
0	0
0	0
0	0
0	0
\$ 0	\$ 5,377,854.00
(0.00)	(0.00)
\$ 0	\$ 5,377,854.00

FORMS 6040PC (12/2004)
62-3-704, 62-3-706, 62-3-707, 62-3-708, 62-3-1203

Filed: May 4, 2011

Sue H. Roe
Judge of Probate

By: [Signature]

FILED May 4 FILED May 4 FILED May 4

[Signature]
C.C.P. & L.R.

[Signature]
Deputy Clerk

Page 1 of 1



SMALL BUSINESS/SELF-EMPLOYED DIVISION

REPLY TO ADDRESS BELOW

December 23, 2010

Mr. Russell L. Bauknight
1517 Gervais St.
Columbia, SC 29202

Mr. Fred Kingsmore, Jr., Esq.
Nexsen Pruet, LLC
1230 Main St., STE 700
Columbia, SC 29201

RE: Estate of James Brown

Dear Mr. Bauknight & Mr. Kingsmore & Mr. Reames:

Enclosed please find a copy of the proposed examination report which details the changes in the estate tax liability, as assessed, for this estate. The report, though not final, shows that the estate is entitled to a refund.

Before this report can be submitted, it will be necessary for the estate to provide a signed Form 890, Waiver of Restrictions (enclosed).

Please also provide a completed Form 58, Notice of Fiduciary Relationship (enclosed).

Please mail the above item so that it is received within two weeks of the date of this letter. If the Form 890 cannot be returned by then, please call me and advise me when it will be returned.

If you have any questions, please call me. Thank you very much for your cooperation in this matter and your prompt attention to this letter.

Sincerely

John Stewart
Attorney (Estate Tax)
Employee ID: 66-02012

RECEIVED

DEC 27 2010

NEXSEN PRUET, LLC

enc: Form 890, Waiver of Restrictions
Proposed Estate Tax Examination Report
Publication 8458, The Examination Process
Form 58, Notice Concerning Fiduciary Relationship

Internal Revenue Service Estate Tax Stop 4106JS, 5971 Chantleridge Blvd., Sarasota, FL 34232
Telephone: 941/378-6435, Fax: 941/377-8391

000298

Form 886A (Rev. 1/99)		Department of the Treasury - Internal Revenue Service Explanation of Items	
Estate of James Brown		Social Security Number	Date of Death 12 25 2008
Schedule F, Other Miscellaneous Property			
	Description	Shown on Return	As Corrected
2	Royalty interests, Reversion Rights, etc.	84,000,000	4,697,736
	Total of these items	84,000,000	4,697,736
	Shown on Return		84,000,000
	Change to schedule		<79,302,264>

Item 2 - Royalty Interests, Reversion Rights, Etc.
Valuation of these interests was corrected to fair market value based upon expert opinion and financial analysis. Adjustment is per section 2031, Internal Revenue Code.

**PROPOSED
ADJUSTMENTS
ONLY**

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM AIKEN COUNTY
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge
Case No. 2008-CP-2-1647

Alan Wilson, in his capacity as Attorney General of the State of South Carolina; Daryl J. Brown, on behalf of his minor children, Lindsey B. and Janise B.; Deanna J. Brown Thomas, on behalf of her minor child, Jason L.; Yamma N. Brown, on behalf of her minor children, Sydney L., Carrington L., and Tonya B.; Vanisha Brown; Larry Brown; Tommie Rae Hynie Brown; and James B., through his Guardian ad Litem Respondents,

v.

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of whom Robert L. Buchanan, Jr. and Adele J. Pope, as Personal Representatives of the Estate of James Brown and Trustees of the James Brown 2000 Irrevocable Trust are Appellants,

And Albert H. Dallas, Alfred A. Bradley, and David G. Cannon, Individually and as (purported) Trustees of the James Brown 2000 Irrevocable Trust; Terry Brown; Romunzo Brown; Forlando Brown; Cinnamon N.M. Paris; LaRhonda Pettit; Jeanette Mitchell; and Russell L. Bauknight, as Special Administrator and Special Trustee for the Estate of James Brown and the James Brown 2000 Irrevocable Trust are Respondents.

In re: The Estate of James Brown and The James Brown 2000 Irrevocable Trust u/a/d/ August 1, 2000.

PROOF OF SERVICE

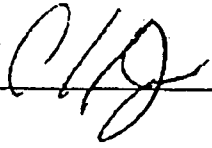
The undersigned certifies that a copy of **RESPONDENTS' MOTION TO SUPPLEMENT THE RECORD** has been served upon counsel of record by depositing a copy of the same, first-class postage prepaid, in the United States Mail, on the 6 day of May, 2011, to the address shown below.

000300

James B. Richardson, Jr., Esquire
1229 Lincoln Street
Columbia, SC 29201
(803) 799-9412

Tressa T. H. Hayes, Esquire
Post Office Box 7346
Asheville, North Carolina 28802

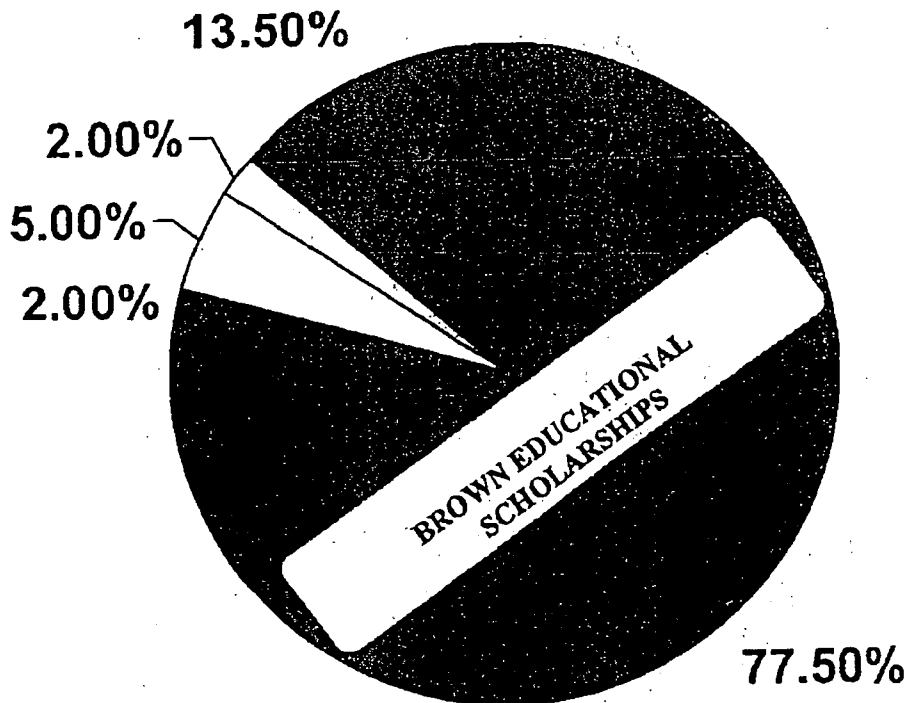
May 6, 2011.



000301

Chart 1
James Brown's INTENTIONS in his
Last Will & Trust (2000)

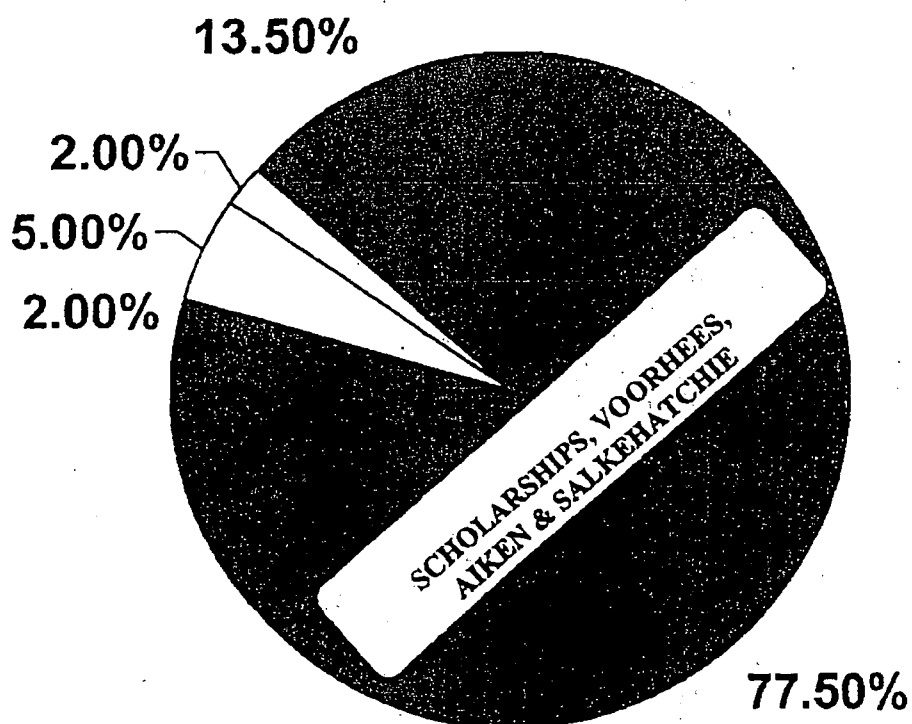
2/09



■ Educational Trust	■ G'children's Education Trust
□ PR/Tr. Comm	□ Legal Fees/Admin
■ Debt to Teachers	

Chart 2
James Brown INTENTIONS in his
1999 Will and Trust

2/09



■ Voorhees, etc. Scholarships	■ G's children's Education Trust
□ PR/Tr. Comm	□ Legal Fees/Admin
■ Debt to Teachers	

Developing the James Brown Legacy

*...transforming intellectual and real property into sustainable
high capital value*

Presented by:
Terry Bradford Cox, PH.D.
The Graham Windsor Group
3340 Peachtree Road
Suite 1800
Atlanta, GA 30326

June, 2007

This report is solely for the use of client personnel. No part of it may be circulated, quoted, or reproduced for distribution outside the client organization without prior written approval from The Graham Windsor Group. This material was used by The Graham Windsor Group during an oral presentation; it is not a complete record of the discussion

000304

EXHIBIT
EXHIBIT 6 F

James Brown Assets and Revenue ...Non-performing assets

Image/Likeness	Property	Music Catalogue
Value: \$40-50 MM (est.) To be determined At present there are no plans or infrastructure in place to produce revenues from Image and music. World-wide market need to be developed. Minimal revenue	Value: 10-15 MM (est.) Intrinsic value added 7 thousand items have been catalogued, 25 thousand still to be catalogued. Items include: house, 40-60 unpublished songs, hand written notes memorabilia, costumes, body, etc No revenue.	Value: \$36-45 MM Industry is 12-15x Revenues 600 songs with little to no promotion. Present revenue pays interest and some principal on 1999 \$25MM bond deal Annual /Rev: \$3-5MM After debt. 0 revenue

Annual Revenues of Deceased Celebrities

Kurt Cobain \$50MM
Elvis Presley \$45 MM
John Lennon \$22MM

George Harrison \$7MM
Johnny Cash \$7MM
Ray Charles \$6MM

000305

The Need for a Creative Approach ...Unusual circumstances have created a situation that requires "outside the box" thinking to take advantage of the opportunity

"James Brown, the hardest working man in show business"

James Brown was an artist ...earnings supported his life style, not wealth creation

In 1999 bonds were sold on the catalogue for \$25MM, making it a non-performing asset

James Brown Enterprises			
Asset	Value	Activities	Revenue
JB/Image	50MM	Perform	3-5MM
Music	35-50MM	Publish, Catalogue	3-5MM
Property	3-5MM	None	0

Revenues came from performances and the royalties from the music catalogue

There was no infrastructure to promote and create revenues from image and music

Last Will

Irrevocable Trust Agreement

Personal and Household Effects to be equally divided between six children

Estate - Children			
Asset	Value	Activities	Revenue
JB/Image	0	None	0
Music	0	None	0
Property	3-5MM	None	0

Trusts - Grandchildren, IFG			
Asset	Value	Activities	Revenue
JB/Image	50MM	Minimal	500K
Music	35-50MM	Publish, Catalogue	3-5MM
Property	3-5MM	None	0

All intellectual and real property equally divided between the two trusts

Trustees have the authority to sell any or all of the property in the trusts

All Property

Cash

An agreed to percentage of profits will go to the two trusts

As part of the sales agreement, the trustees want options or a "kickback" on the IPO

The Industry standard to determine value is 12-15 x revenues

Newco - A Public Company			
Asset	Value	Activities	Revenue
JB/Image	50MM	Plan	500K
Music	35-50MM	Plan	3-5MM
Property	3-5MM	Plan	0

Develop a brand strategy and infrastructure that will transforming non-performing assets

Trustees have the authority to sell any or all of the property in the trusts

000306

Exhibit G

From: "Walt Inabinet" <incomm@bamwellsc.com>
To: "David Cannon" <dcannon@bamwellsc.com>
Subject: RE: Walt
Received: Sun, 28 Oct 2007 08:30:41 -0400

I, too, of course hope and pray the legal proceedings will soon come to a favorable close. Moreover though, I care about you and Maggie personally and how you are doing emotionally, physically, and mentally. You are both too good to be put through any kind of even remotely public ridicule. Knowing a bit what it's like to be a "high profile" person, I know people can be especially inconsiderate, believe only the worst of rumors, forget there are real people and lives involved, and turn their backs on those they called (in name) friends during better times. Just know, I am ready, willing, and able to go to the mat for you and Maggie be it publicly or privately in whatever way you need no matter what the immediate and long-term future may hold. Rosie and I love you both and believe in you no matter how the legal proceedings turn out. Though my talents and abilities may be limited, know I'm here for you both in whatever way you want. Give Maggie my love. Stay strong, my friend.

—Original Message—

From: David Cannon [mailto:dcannon@bamwellsc.com]
Sent: Saturday, October 27, 2007 10:53 AM
To: Walt Inabinet
Subject: Re: Walt

You are not bothering me. The tide seems to be turning. I went to the Attorneys General of SC & Ga and they have entered the proceedings. The Judge and other attorneys have been quite.

I have told my story to both and hopefully we can move on and get this THING over with.

Thanks Again

David

—Original Message—

From: "Walt Inabinet" <incomm@bamwellsc.com>
To: "David Cannon" <dcannon@bamwellsc.com>
Sent: Saturday, October 27, 2007 7:42 AM
Subject: Walt

> David:
>
> Don't mean to bug you but just checking in to see if there's anything I or
> Rosie can do for you or Maggie. Thinking about you both.
>
> Walt
>
>

000307

Exhibit I

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

IN THE COURT OF COMMON PLEAS
SECOND JUDICIAL CIRCUIT

IN RE:)
THE ESTATE OF)
JAMES BROWN A/K/A)
JAMES JOSEPH BROWN)

C/A No. 2007-CP-02-122

AFFIDAVIT OF
WILLIAM F. HAMMOND

AFFIDAVIT OF WILLIAM F. HAMMOND

Before me, the undersigned authority on this day personally appeared
WILLIAM F. HAMMOND, who after being duly sworn, disposes and makes this
affidavit.

1.

I am of the age of majority, of sound mind and memory and depose this
AFFIDAVIT is based on my personal knowledge and observations.

2.

My name is William F. Hammond, and I am a partner/owner of the law
firm of Hull Towill Norman Barrett & Salley, P.C., 801 Broad St., SunTrust Bank
Building, Suite 700, Augusta, Georgia 30901. I was licensed in Georgia as a
Certified Public Accountant and practiced accounting in Augusta, Georgia
immediately prior to attending Law School.

3.

I was admitted to practice law in Georgia in 1980 after graduation from
Mercer University, and subsequently received a Masters of Law in Taxation LLM

000308

degree from New York University in 1982. My practice specialty is taxation and estates and trust law.

4.

I was hired by the Trustees of the Irrevocable Trust (the "Trust"), created by James Brown on August 1, 2000, in February 2007 to provide them with fiduciary guidance and tax advise concerning the estate, gift and income tax issues involving Mr. Brown's estate and trust following his death on December 25, 2006. The Irrevocable Trust was the primary beneficiary of Mr. Brown's estate. His Will passed his personal/household property to his children and then the remainder to the Trust was divided into a \$2,000,000 private education trust for the benefit of certain of his grandchildren under the age of thirty-five (35), with the remainder passing to a tax exempt charitable-scholarship trust for deserving and "poor and financially needy children, youth, or young adults" in need of assistance to obtain and further their education at educational entities and/or institutions in South Carolina and Georgia. Mr. Brown's net estate is believed to exceed \$85,000,000. A true and correct copy of the Irrevocable Trust Agreement, dated August 1, 2000, is attached hereto as Exhibit "A."

5.

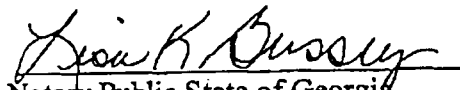
The Trustees of the Irrevocable Trust were also appointed by Mr. Brown and the Probate Court of Aiken County, South Carolina as the Personal Representatives of the Estate of James Brown (the "Estate").

000309

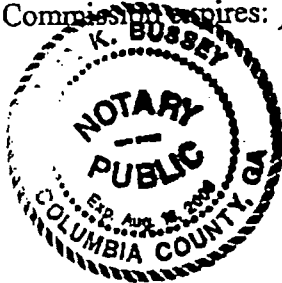
and adverse and detrimental to the intentions of James Brown and the intended beneficiaries of his Estate and the Trusts he created. I also advised the Trustees, after our first meeting with the Special Administrators, that the Special Administrators' goal was not to assist them in the administration of the Estate but, rather, to remove them as fiduciaries of the Estate and Trust and to have themselves appointed. I advised my clients that a Personal Administrator's statutory fee in South Carolina is 5% of the fair market value of an estate worth \$85,000,000 or more, and control of a private charitable foundation with assets over \$80,000,000 and the compensation therefrom, made them sitting ducks for attempted removal.


WILLIAM F. HAMMOND

Sworn to and subscribed
before me this 30th day of
November, 2007.


Notary Public State of Georgia

My Commission Expires: August 18, 2008



000310

Adele J. Pope

Exhibit K

From: Sonny Jones [AGSJONES@ag.state.sc.us]
Sent: Thursday, December 06, 2007 4:04 PM
To: rlbuchananjr@bellsouth.net; adele@popelawfirm.com
Cc: Bob Cook
Subject: James Brown Matter

Attachments: James Brown Legacy initial offer 10-12-07_.doc



James Brown
Legacy initial off...

I, like each of you, have been contacted by Dr. Cox and Tobv Byron as to the purchase (see attached 10/12/07 letter) of the Trust Estate for \$100 million plus 5% of the gross profits from the company to be formed. I, like each of you, have very little time left to devote to the intellectual property issue. However, I do not want to be the one referenced as the one who sat on an offer of \$100 million and lost it. Therefore, please advise as to the following (and more if you have further insight):

1. Is it that we do not have time to deal w/ this now and if so do we need to consult w/ someone who has the expertise
2. I have heard for the last 3 months that the sky will fall and the offer will go away if we do not accept it now...your thoughts. Also, who else is out there that can make an offer if at all
3. Are there some self serving interest w/ some of the local players in this that is causing this push
4. I was given Joe Katz in Atlanta as a person to call to get a feel if these current offer will in fact decrease in the near future...your thoughts on that contact

I would appreciate your thoughts and your indulgence but I would like to discuss now rather than explain later on...

Please advise. Thanks.

PS: When can we talk about the interesting information you recently discovered in the boxes from Keith Babcock.

000311

Exhibit U

Estate of James Brown

212 Newberry Street NW
Aiken, South Carolina 29801

Robert L. Buchanan, Jr., Personal Representative

Adele J. Pope, Personal Representative

June 27, 2008

The Honorable Henry Dargan McMaster
Attorney General for the State of South Carolina
State of South Carolina
P.O. Box 11549
Columbia, SC 29211-1549

BY FAX ONLY
Fax # 803-734-3677

Re: The Estate Plan of James Brown

Dear Attorney General McMaster:

All except the first two paragraphs of this letter were completed yesterday before Mr. Jones elected to file his unfortunate Petition.

We request an opportunity to review all of your office's third-party correspondence, documents and communications, as well as time summaries of Mr. Jones, Ms. Jowers and Ms. Matthews from September 1, 2007.

We appreciate your June 16, 2008 response to our concerns related to the Estate Plan of James Brown. We look forward to working with your office in the defense of Mr. Brown's Estate Plan.

ATTORNEY GENERAL'S EXPRESSED NEUTRALITY WITH RESPECT TO DAVID
CANNON AND ALBERT DALLAS

We are concerned about two assertions made in your June 16th letter. Because we believe that future protection of Mr. Brown's Estate Plan is dependent on an understanding of the secret and improper actions of the former PR/Trustees, we are concerned that the Attorney General asserts that he does not oppose Messrs. Cannon and Dallas. It is our firm position that the defense of Mr. Brown's Estate Plan requires that the Attorney General, if involved, be opposed to Mr. Cannon and Mr. Dallas.

Mr. Cannon and Mr. Dallas are using every means possible to:

1. Conduct a Fire Sale of Mr. Brown's assets for their own benefit;

000312

2. Interfere with the administration of Mr. Brown's Estate and Trust so that will happen;
3. Avoid returning the \$13 Million they received between 1999 and 2007; and
4. Receive more than \$16.5 Million from Mr. Brown's assets:

The Cannon/Dallas plan is to get rid of us and immediately conduct the \$100 Million Fire Sale. This will damage the Estate Plan of James Brown at least as follows:

1. Prevent return of the \$13 Million
2. Pay to them at least:
 - a. Cannon \$ 6 Million
 - b. Dallas \$ 5.5 Million
 - c. Bradley \$ 5 Million
 - d. J. Katz \$ 5 Million
 - e. F. Copsidas \$15 Million
 - f. T. Byron \$ 5 Million (promised by Dallas in November 2007)
 - g. Forlando (William) Brown - as yet undisclosed

AND expose the Estate/Trust to a \$12.5 Million claim of Pullman under Paragraph 7 of the old engagement letter. (Subject of New York litigation.)

Mr. Cannon, Mr. Dallas and Mr. Bradley incurred more than \$900,000 in legal fees last year trying to accomplish this. Mr. Brown's Estate is now saddled with the defense of those claims. Mr. Cannon, Mr. Dallas and their business partner Forlando (William) Brown and his attorney David Bell, are currently represented by Wayne Byrd, Audra Byrd, at least 2 Powell Goldstein lawyers, William Toal, and others. To face this onslaught and defend the Estate Plan, we have about \$3,000 in the bank. [See First Accounting.]

In light of Mr. Cannon's behavior and Mr. Dallas' repeated false representations to the parties, to the Court, and under oath, we believe that the Attorney General should not treat either as some neutral party or source of reliable information. And their Affidavits should certainly not be used to skewer others.

You assert that the Attorney General's office cannot become involved in Forlando (William) Brown's attempts to have Dallas and Cannon reinstated as Trustees and enjoin the Trust from taking any action. You assert "we do not seek out lawsuits in which to get involved."

We respectfully submit that the Attorney General, at the request of Messrs. Cannon and Dallas, did seek to become involved in early September, 2007; and actively supported Cannon and Dallas in their false accusations and attacks on us as Special Administrators.

These matters have now been partially straightened out – but with a great loss of energy and time.

Here is a brief review of what is now known about Mr. Cannon and Dallas' actions, with Forlando (William) Brown, Mr. Bradley and William Hammond, to summon the Attorneys General of two states to their rescue:

July 10, 2007	When Cannon, Dallas and Bradley knew we would shortly see the Trust's records on July 17, they attempted a secret transfer of the Trust to Georgia.
July 17, 2007	We discovered the missing \$900,000.00 [from the Trust].
Late July	Dallas, Cannon and Bradley secretly "appointed" Bill Hammond as Trustee
Early August	Dallas and Bradley pretended to distance themselves from Cannon.
August 10, 2007	Cannon resigned. Dallas and Bradley promised transparent administration of the Estate and Trust.
August 31, 2007	Dallas and Bradley filed a Motion to Declare James Brown Enterprises, Inc. (JBE, Inc.) an Asset of the Estate – Not the Trust. (We refused to join in the motion.)
	In his Federal Lawsuit of Forlando (William) Brown asserts Dallas was forced by us to join in <u>our</u> motion. We never filed any motion. Dallas then "immediately and purposefully contacted the attorneys General of South Carolina and Georgia." [See Attachment A]
Sept. 20, 2007	The SC Attorney General, at the invitation of Cannon and Dallas, moved to intervene in the action. Instead of attacking Cannon and Bradley, they went after us.

Letter to the Honorable Henry Dargan McMaster
June 27, 2008
Page 5

statements, accusations and representations, are still being used by Mr. Cannon, Mr. Dallas and Mr. Bradley [and business partner Forlando (William) Brown] in attempts to paralyze the 2000 Trust; prevent the defense of the Estate Plan; prevent the return of the \$13 Million; and take home more than \$40 Million from the Fire Sale for themselves and their joint venturers.

We understand that the Attorney General's decision to become involved in any aspect of the Defense of Mr. Brown's Estate Plan is discretionary. But you elected in September 2007 to enter, with the Attorney General of Georgia, at the request of Mr. Cannon and Mr. Dallas. Now that the Attorney General is immersed in the whole project of the defense of Mr. Brown's Estate Plan, we think it appropriate, and perhaps critical, for the Attorney General to declare that the State of South Carolina has an interest in seeing that Forlando (William) Brown is not successful in his attempts to paralyze the Trust and return Cannon, Dallas and Bradley, as Trustees. (He characterizes Cannon as "courageous" and "honest." See deposition dtd. 10/31/07.)

Again, we thank you for your work toward what we see as our mutual goals:

1. Defense of Mr. Brown's Estate Plan;
2. Defense of the Elective Share Claim;
3. Avoiding a Fire Sale of this wonderful legacy; and
4. Making sure that Messrs. Cannon, Dallas, Bradley and their agents do not return to any fiduciary position with respect to the Estate/Trust or Brown Entities.

We look forward to working with you.

Sincerely,

Robert L. Buchanan, Jr.

Robert L. Buchanan, Jr.

Adele J. Pope

Adele J. Pope

AJP:ats
Enclosures

Attachment A

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

Forlando J. Brown,

Plaintiff,

v.

Adele J. Pope, individually and
As Trustee of the Irrevocable Trust
established by James Brown in
August 1, 2000, and

Robert L. Buchanan, Jr., individually and
As Trustee of the Irrevocable Trust
established by James Brown in
August 1, 2000,

Defendants.

Case No. _____

COMPLAINT

COMES NOW Plaintiff Forlando J. Brown and hereby files his complaint against Adele J. Pope, individually and as a purported Trustee of an Irrevocable Trust established by James Brown on August 1, 2000 (the Irrevocable Trust"), and Robert L. Buchanan, Jr., individually and as a purported Trustee of the Irrevocable Trust, and for his Complaint, respectfully alleges the following:

000316

63.

In September of 2007, now firmly in charge of the Irrevocable Trust, Pope and Buchanan insisted that Dallas and Bradley consent to their position that James Brown Enterprises was an asset of the Estate of James Brown. Given their precarious position as Trustees, and the ever present threats of removal, Dallas and Bradley filed a motion with the Court to determine that James Brown Enterprises, Inc. was an asset of the Estate of James Brown. At the same time, Dallas and Bradley also purposefully notified the Attorneys General of the States of South Carolina and Georgia, whom they knew would take action to defend the charitable beneficiaries of the Irrevocable Trust in the proceeding. At all prior times, when Dallas and Bradley had suggested calling in the Attorneys General to represent the charitable beneficiaries, Pope would oppose the idea as "unnecessary" as the Estate allegedly did not need additional lawyers.

FALSE -
We welcomed
the AG.
when we
heard -
September
24. Have
continued
to do so.]

64.

Representatives of the Attorneys General for Georgia and South Carolina both appeared at a hearing on the motion determining James Brown Enterprises, Inc. to be an asset of the Estate of James Brown held on September 24, 2007. The Attorneys General were allowed to intervene, opposed the motion, and have subsequently acted to protect the charitable beneficiaries of the Irrevocable Trust.

65.

At the September 24, 2007 hearing, Pope unequivocally informed the Court that she and Buchanan believed that James Brown Enterprises, Inc. was an asset of the Estate as follows:

000317

Attachment B

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

IN RE: THE ESTATE OF JAMES BROWN
a/k/a JAMES JOSEPH BROWN

)
) IN THE COURT OF COMMON PLEAS
) CASE NUMBER: 2007- CP -02-0122
)
) AFFIDAVIT OF PHILLIP G. FARR, CPA
)
)

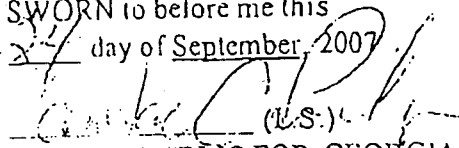
Personally appeared before me, Phillip G. Farr, CPA, who, first being duly sworn, says:

1. I am a resident of McDuffie County, State of Georgia.
2. I am over eighteen years of age.
3. The information contained in this affidavit is based upon my personal knowledge.
4. I am a Certified Public Accountant licensed in the state of Georgia.
5. In my capacity as Certified Public Accountant, I prepared and filed the attached tax returns for James Brown Enterprises, Inc. which are true and correct copies of those tax returns.
6. The attached tax returns are kept in the ordinary course of my business as a Certified Public Accountant for my client James Brown Enterprises, Inc.


Phillip Farr

SWORN to before me this

27 day of September, 2007


(U.S.)
NOTARY PUBLIC FOR GEORGIA

My commission expires

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, Liz Godard, Clerk of Court of Common Pleas and General Sessions for Aiken County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original document which is on file in my office this

JUN 04 2008

000318

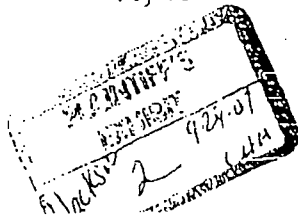


EXHIBIT ~~122~~ V



HENRY McMASTER
ATTORNEY GENERAL

July 30, 2008

Adele J. Pope, Esquire
Robert L. Buchanan, Jr., Esquire
212 Newberry Street NW
Aiken, South Carolina 29801

Re: James Brown Litigation

Dear Mrs. Pope and Mr. Buchanan:

I am writing in response to your letter dated July 25, 2008. I am pleased that we may be able to work together towards our shared goals in connection with the Estate Plan of James Brown. As I mentioned in my last letter, Mr. Brown's Charitable Trust is a wonderful opportunity to further the education of needy children at institutions in South Carolina and Georgia. I hope that we will be able to work together to ensure that scholarships are funded as soon as possible.

While I have no objection to returning to our previous discussions about securing your proper appointment, I have concerns about whether this is possible given your unwillingness to consider the Special Trustee position. On several occasions you have indicated that you do not want to be appointed Special Trustee. I do not believe that you can be properly appointed permanent Trustee if you are not willing to resign and ask to be appointed Special Trustee, which I would support. Once you are appointed Special Trustee, we can ask the Advisory Board for a vote on the Trustee position, as required by Article XIII of the Trust document. If there is not a unanimous vote for you to be Trustee, then we can go to the Probate Court, have the matter removed to the Circuit Court, and have you properly appointed by the Circuit Court.

I am hopeful that as we go through this process, a third Trustee can be put in place along with both of you as required by Article VIII of the Trust. I appreciate your report in connection with my suggestions as to a suitable individual to serve as the third Trustee.

If you are willing to work together, I believe we can secure your proper appointment without further litigation, which would give us all more time to devote to the charitable intentions of Mr. Brown.

Yours very truly,



Henry McMaster

HMCM/mfj

Sent: Thursday, July 31, 2008 5:45 PM
To: amedlin@sc.rr.com; Andrew W. Chandler; david@michellawoffice.com; T Heyward Carter; M Jean Lee
Subject: RE: DNA ORDER Rosen, Robert, 8037791698 - 2:02 min. for x107

Can one of you revise DNA order?

-----Original Message-----

From: Alan Medlin [mailto:amedlin@sc.rr.com]
Sent: Thursday, July 31, 2008 5:15 PM
To: Marcia Jones; Chandler@eckb.com; david@michellawoffice.com; Carter@eckb.com; jlee@eckb.com; Robert Rosen
Subject: Re: DNA ORDER Rosen, Robert, 8037791698 - 2:02 min. for x107

She's right about the grandchildren. I thought we were skirting that because we really didn't have standing so it suited me not to focus on the trust, but if she's for it and thinks that's how the judge ruled, then let's tweak the language per her suggestion. I had a 3.5 hour meeting this morning with AG and Terry Cox. Cox is no longer interested in buying the estate assets. He now wants to be part of a "team" to build back the brand, after which time his group might be interested in buying again. He claims the value of the estate has been significantly diminished because of Adolph. He said they were going to offer in the range of 65-70 M in November. Now he thinks we would get offers for 35-40M. Don't know what I think of him, but that part was interesting. Sonny of course was all over that so he can attack Adolph. Terry, who clearly gets much of his info from Dallas, thinks the kids want to settle because they're afraid of DNA. He says they want to fire Louis but don't want to have to

1

pay him.

I could be wrong, but he strikes me as a desperate snake oil salesman. He said that, based on much due diligence he's conducted, that James was in charge of his "family business" (the family being JB and the 3As) and that they did only what he told them. Seifert gets stronger and stronger.

----- Original Message -----

From: "Marcia Jones" <mjones@rosen-lawfirm.com>
To: <amedlin@sc.rr.com>; <Chandler@eckb.com>; <david@michellawoffice.com>; <Carter@eckb.com>; <jlee@eckb.com>; <rnrosen@rosen-lawfirm.com>
Sent: Thursday, July 31, 2008 12:55 PM
Subject: DNA ORDER Rosen, Robert, 8037791698 - 2:02 min. for x107

Exhibit W

000321

EXHIBIT X

Estate/Trust of James Brown
212 Newberry Street NW
Aiken, South Carolina 29801

Robert L. Buchanan, Jr., Personal Representative

Adele J. Pope, Personal Representative

September 2, 2008

The Honorable Henry Dargan McMaster
Attorney General for the State of South Carolina
C. Havird Jones, Jr., Esquire
Senior Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211-1549

Louis Levenson, Esquire
Levenson & Associates
125 Broad Street, SW
Atlanta, Georgia 30303

Robert N. Rosen, Esquire
Post Office Box 1510
Charleston, South Carolina 29402

Re: Estate of James Brown

Gentlemen:

We are writing you as representatives of those Alan Medlin described to us as speaking as one in connection with working toward a settlement related to the James Brown Estate Plan.

This will confirm our conversation with Alan last Friday, August 29, and raise other matters.

First, we know nothing of any confidential in-camera discussions related to Mr. Brown's Estate Plan, and have specifically instructed Mr. Bailey not to discuss them either with us or with our counsel in other matters.

Facing a Federal Court hearing on November 18 on the serious (and we believe frivolous) attempts by Forlando (William) Brown to shut down Mr. Brown's Trust and return Cannon, Dallas and Bradley as fiduciaries, as well as challenges by most remaining family members to the Estate Plan, we feel that any proposed settlement which we are asked to consider should be open for debate by us, by educators, and by others.

We have encouraged, and will continue to support, the efforts of Mr. Brown's Family and the Attorney General to reach resolution, provided that any proposed settlement:

1. Honors the desires of Mr. Brown as set forth in his Estate Plan;

000322

2. Provides for a smooth and appropriate transition which protects Mr. Brown's Estate Plan, but acknowledges the conflict-of-interest policy which was required and adopted in connection with the application for Charitable Recognition of the "I Feel Good" Trust; sensitive estate, gift and income tax issues at stake; issues related to Mr. Brown's recapture and other rights related to his royalties under Federal and contract law; the proper administration of the ongoing litigation; and the rights and obligations of the Estate, Trust and Brown Entities with respect to federal and state taxing authorities and other creditors

In that spirit, we offered to allow the Estate Tax Returns, due September 25, to be prepared (for our review and signing) by the preparer selected by the Settling Parties. This person presumably would be the accountant you select for work for the Estate/Trust and Brown Entities when there is a change of leadership if the settlement is finalized, presented to us and others, and approved by all appropriate Courts. Alan has advised us that you have not yet selected an accountant.

On Friday we advised Alan, and asked that all be advised, that Bill Sellars' firm appreciates the confidence shown in him, but would not remain after we complete our service with the Estate and Trust. He will complete the Estate Tax Return and other matters pending final settlement as described above.

While there are many issues that would have to be addressed in any transition, there are several matters which we urge all parties who are considering a settlement to address at your earliest convenience. We discuss each below:

1. Appointment of a Representative of the "Settling Parties" to work with us on enhancement of the royalties, image and persona pending final settlement and transition. Our legal authority to enhance the royalties, image and persona was seriously challenged by the AG and former PR/Trustees from our appointment in November, 2007, until July 14, 2008. It has now been clarified by Judge Cureton's July 14 Order. But the Christie's sale is an example of the damage that can still be inflicted when Interested Persons and their agents are working against – rather than to benefit – Mr. Brown's Legacy. The effort to enhance Mr. Brown's legacy should be ongoing. The Settling Parties should support that effort now, through the settlement process, the approval process and into the new regime contemplated by any approved settlement. There is no reason for any Interested Person to interfere with the enhancement of the James Brown Legacy. The appointment of a "Royalty Representative" by the Settling Parties – the AG and most of the family – to work with enhancement of this valuable asset until a final settlement can be reached and approved would be of great value to Mr. Brown's Estate Plan. We urge you to do so immediately.

Letter to Attorney General and Other Counsel

September 2, 2008

Page 3

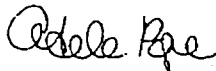
2. Selection by Settling Parties of Accountant/Tax Advisor. As we have discussed with counsel for all family members, Messrs. Dallas, Cannon and Bradley caused tremendous tax problems for Mr. Brown's Estate and Trust. How much we, or any future regime, can do to alleviate the problems remains to be seen. It is absolutely essential that there be clear communication and transition so that our efforts to deal with these critical problems will not be in vain. The first step is for the Settling Parties to designate a "Tax Representative" to speak for the Settling Parties who will understand and be ready to deal with these issues. Please do this.
3. Selection by Settling Parties of Liaison to Work with Estate in Defense of Claims. It would be extremely helpful to us for Settling Parties to appoint a "Litigation Representative" with authority to speak for all of the Settling Parties in connection with the approximately 20 lawsuits by creditors which the Estate is facing. These suits, in total, claim more than \$45 Million of the assets of the Estate/Trust. While it is our responsibility to handle them, we invite and encourage the Settling Parties to assign someone who can represent this important mass of Estate/Trust beneficiaries.

As we advised Alan, we are copying this letter to David Bell. At this point, it is our position that all family members are legally adverse to Mr. Brown's Estate Plan – the Levenson and Rosen clients by challenges to the Will and Trust, and David Bell's clients by attempting to return Cannon, Dallas and Bradley, and purchase assets for their personal gain. Nevertheless, we hope you will all work with the Attorney General toward a settlement that will honor, protect and preserve Mr. Brown's Estate Plan as he intended.

Sincerely,



Robert L. Buchanan, Jr.



Adele J. Pope

AJP:kfr

cc: David B. Bell, Esquire

000324

DISTRIBUTED IN MRS. POPE'S ABSENCE AT THE REQUEST OF MRS.
POPE AND MR. BUCHANAN

Estate/Trust of James Brown

212 Newberry Street NW
Aiken, South Carolina 29801

Robert L. Buchanan, Jr., Personal Representative

Adele J. Pope, Personal Representative

TO: The Honorable Henry Dargan McMaster, Attorney General for the State of South
Carolina;
Louis Levenson, Esquire; Robert N. Rosen, Esquire; and other members of team
of Settling Parties
FROM: Robert L. Buchanan, Jr., Esquire & Adele J. Pope
RE: Estate/Trust of James Brown
Date: October 2, 2008

This is our second request. Can you please let us know immediately the name of the
person the Settling Parties intend to use as an Accountant/Tax Advisor/Preparer.

As you know, the current accountant has indicated that he will not provide services after
any transition. For that reason, we prefer to engage the accountant selected by the Attorney
General now so that the new accountant (assuming a settlement is reached, approved by all
necessary Courts and implemented) will, by helping us prepare 2007 income tax returns,
understand the challenges and needs in any transition.

It is critical that we make this connection immediately as there are returns or additional
extensions due by October 15, 2008 and we want to make sure that we can provide the proposed
new accountant all necessary information.

As you know, virtually all of Mr. Brown's income under his Estate Plan is "paid or
permanently set aside" for charity. This was formerly a big factor in connection with the income
tax returns. If a settlement is reached, approved and implemented as proposed this will not be
the case. For that reason, we need to immediately consult with the proposed new tax team.

Adele will be in the office the afternoon of Monday, October 6 and on Tuesday, October
7. We have a PR/Trustees' meeting in Aiken late afternoon Wednesday, Oct. 8. If possible, we
would like for Adele to provide the new accountant the necessary information before the
meeting, and all of us to meet by telephone on the 8th. Thank you for your immediate response.

Cc: Non-Settling Parties and other Interested Persons

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

Adele J. Pope,

Plaintiff,

v.

Alan Wilson, in his capacity as
Attorney General of South Carolina,

Defendant.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2011-CP-36-379

AFFIDAVIT OF ADELE J POPE
IN FURTHER SUPPORT OF ALL RELIEF
REQUESTED IN COMPLAINT,
EXPEDITED HEARING AND
IN CAMERA REVIEW

JACKIE S. BOGERS
CLERK OF COURT

2011 OCT - 6 PM 3: 38

FILED
NEWBERRY COUNTY

Personally appeared before me, Adele J. Pope, who being duly sworn, Adele J. Pope
and says:

1. This affidavit is based on my personal knowledge and belief.
2. I am informed and believe that information I obtained this week (beginning October 4, 2011) further supports my position that Attorney General Alan Wilson, acting through C. H. "Sonny" Jones, is vigorously covering up important public documents, including those sought in this FOIA Suit, which will help the public decide:

a. Did AG/Candidate McMaster authorize the State's first contingency-fee tort suit against S. C. Citizens Buchanan and Pope, using only private lawyers to falsely accuse them of crimes, for the improper purpose of silencing their criticism of his takeover of James Brown's assets?

b. Did AG McMaster improperly authorize Russell Bauknight to "speak on behalf of" the Attorney General of South Carolina in making the false accusation that Buchanan and Pope caused "tens of millions of dollars" damage to Brown's worldwide music empire while simultaneously supporting Bauknight's "appraisal" of those same assets at less than \$4.7 Million?

c. How involved was the Office of AG McMaster/Wilson in

creating and/or presenting the purported \$4.7 Million value of Brown's music empire to the IRS and Courts and in falsely accusing Buchanan and Pope of criminally overstating Brown's assets at about \$85 Million?

3. Yesterday I printed from the Website of Attorney General Wilson, the 10
Litigation Retention Agreement AG Wilson asserts are:

all active contingency fee litigation retention agreements that the Attorney General has executed, except matters in which disclosure is currently under review by a court. [Emphasis supplied. See Exhibit A]

4. AG Wilson's Website does not assert – as AG Wilson's Assistant Sonny Jones asserted in September -- that a stay prohibits the dissemination of the McMaster/Wingate Contract to sue Buchanan/Pope.

5. The McMaster/Wingate Contract to sue Buchanan/Pope is "under review by a court" for only one reason: Wingate, on behalf of two AGs, has refused for a year to produce it, and on August 9, 2011 – more than a month after my FOIA request and the day before this suit was filed-- sought a protective order asserting it is a private document — a direct violation of the language of all known Litigation Retention Agreements.

6. Wingate and Bauknight - both purporting to speak for the State/AG through Wingate – asserted:

Fee agreements are the epitome of privileged communication. Plaintiffs0 [sic] therefore request that this court issue a Protective Order prohibiting the efforts of Defendant Pope from discovering the Fee Agreement. [See Exhibit B]

7. As relates to the purported less-than \$4.7 Million value of Brown's music empire, on September 9, 2011 I requested, among other documents, the following information from AG Wilson under FOIA:

1. All preliminary appraisal reports and/or other document(s) which support the August 23, 2010 **[in bold]** statement to the Supreme Court of South Carolina by then-Attorney General McMaster and four Assistants, signed by Clyde (C.H.) Jones, placed in context as follows:

6. Respondents dispute Appellants' assertion that the settlement agreement has the potential to divert "tens of millions of dollars" from the Trust. Presumably this representation to the Court is based on Appellants numerous under oath representations about the date-of-death value of the Trust, ranging anywhere from approximately Eighty-Five Million (\$85,000,000.00) Dollars on the federal estate tax return to approximately One Hundred Million (\$100,000,000.00) Dollars in affidavits, pleadings, and testimony...

Valuation assertions by Appellants' predecessors were similarly without any underlying appraisal. **By contrast, Bauknight has pursued the appropriate fiduciary route and engaged a nationally renowned and respected appraisal firm to value the Estate and Trust. Although the expected completion date for the appraisal is a couple of weeks away, a preliminary report indicates that the date-of-death value of the Estate and Trust will not exceed Twelve Million (\$12,000,000.00) Dollars.**

AND

...
4. Any Document(s) which show when and in what form Russell Bauknight, serving at the pleasure of the Attorney General, notified the Office of the Attorney General that he asserted James Brown's assets at his death on December 25, 2006 were worth about \$6.5 Million and his worldwide music empire less than \$4.7 Million on that date.

8. In response to those two requests, on October 3, 2011, AG Wilson, through Sr. Assistant AG Tracy Meyers, said:

Responding to your request (numbers 1 and 4)...this office does not possess any such documents, and therefore, is unable to provide this information to you. [Emphasis supplied.]

9. A copy of my October 5, 2011 response to Ms. Meyers' letter of October 3 is attached hereto as Exhibit C.

10. Based on the documents received this week, as of October 6, 2011, I am informed and believe that AG Wilson's continued refusal to comply with FOIA shows:

a. Attorney General Wilson's Office does not have a single document to support the assertion made by two Attorneys' General, in two separate years (2010-11), to our S. C. Supreme Court – that James Richardson, the *pro bono* counsel in the Aiken County Appeal of Case 2008-CP-02-1647, Bob Buchanan and I were not truthful with the Court when we asserted that the damage McMaster did to The James Brown "I Feel Good" Trust has the potential to divert "tens of millions of dollars" from the Trust which James Brown intended for needy and deserving students.

b. Attorney General Wilson is actively concealing his office's authorization of, and/or participation in false representations made by AG Wilson's agent Russell Bauknight, "on behalf of the Attorney General of South Carolina" that Bob Buchanan and I criminally overstated Brown's assets by \$79 Million in sworn IRS documents (at about \$85 Million)

c. Attorney General Wilson is concealing his Office's participation in and/or support of the false representation by Bauknight to the IRS and two Courts that James Brown's worldwide music empire at his death was worth less than \$4.7 Million.

11. A chronology of some of the actions of the Attorney General's Office follows:

April 2010	Agent for Tommie Rae threatens that AG Sonny Jones has hired Wingate to sue Bob and me if we do not drop Aiken Cty. Appeal – which would require us to sign agreement not to criticize McMaster for destroying The James Brown "I Feel Good" Fdn.
May 19, 2010	Wingate sues Bob and me. Seeks "ten of millions of dollars." for alleged damage to Brown's worldwide music empire.
August 2010	AG Sonny Jones tell Supreme Court our assertion that McMaster's actions have potential to divert "tens of million of dollars" from "I Feel Good" Trust is untrue – appraisal will show James Brown assets less than \$12 Million.
September 2010	Bob and I counterclaim against Wingate's clients.

October 2010	Bob asks for copy of Wingate Litigation Retention Agreement. [I ask shortly thereafter.]
November 2010	Wingate clients default on counterclaim.
November 2010- October 2011	Wingate/AG McMaster/Bauknight/AG Wilson refuse copy of McMaster/Wingate Agreement to sue Buchanan/Pope
December, 2010	Bauknight presents <u>secret</u> \$4.7 Million "appraisal" of Brown's music empire to IRS and secretly asserts Bob and I overstated Brown's assets at \$85 Million to get a big fee – a crime.
January 2011	IRS issues closing letter after Bauknight's false allegations.
May 3, 2011	Bauknight files sworn I&A in Aiken, asserting \$4.7 Million value.
May 6, 2011	Bauknight/AG Jones ask the Supreme Court to supplement Aiken County appeal record with Bauknight's purported \$4.7 Million value.
May 2011	J. Richardson asks Supreme Court not to supplement Record with Bauknight's purported \$4.7 Million value for music empire.
June 30 - July 2011	I ask, under FOIA, for Litigation Agreement and Valuation Info. Goes to Wingate and Wilson.
July 2011	Supreme Court declines to supplement record.
July 15, 2011	Bauknight threatens me with lawsuit if I exercise FOIA rights.
August 2011	Bob and I continue to seek Litigation Retention Agreement. Wingate and Bauknight – both purported agents for the State - continue to refuse to produce agreement. Assert <u>on behalf of</u> <u>the Attorney General</u> it is private.
September 2011	Jg. Manning continues hearing schedule for motion to disqualify/enjoin Wingate as counsel for State and 12 private plaintiffs and Bauknight as State's purported agent. No stay sought or granted.
September 2011	AG Sonny Jones asserts Jg. Manning granted a stay, preventing release of Wingate/McMaster Agreement to sue Buchanan/Pope.

September 28, 2011 Jg. Manning's 1-word order confirms hearing continued. No stay.
[Exhibit D]

October 2011 AG Wilson's Office notifies press that it must stick with AG Jones' story that there is a stay order despite Order of Jg. Manning.

October 5, 2011 AG Wilson's Office posts all Contingency Fee Litigation Agreements except McMaster/Wingate Agreement to sue Buchanan/Pope on Website. Does not assert stay, instead says:

CONTINGENCY FEE LITIGATION RETENTION AGREEMENTS

Below are all active contingency fee litigation retention agreements that the Attorney General has executed, except matters in which disclosure is currently under review by a court. The Attorney General often retains private counsel for matters that require specialized expertise or involve an extensive commitment of financial resources and personnel. By retaining private counsel, the Attorney General is able to pursue effective enforcement of state statutes in large, important cases the Attorney General's Office itself would otherwise be unable to pursue.

Affinion/Trilegiant (marketing and billing) ...

AstraZeneca (Seroquel)...

Cephalon (Provigil, Gabitril, Actiq)...

GSK (Avandia)...

Janssen (Risperdal)...

McKesson (Average Wholesale Price)...

Merck (Vioxx)..

Multiple pharmaceutical companies (Average Wholesale Price)..

Multiple technology companies (liquid Crystal displays)...

Multiple oil companies (underground storage tanks)

October 6, 2011 AG Wilson still refuses to post or comply with FOIA requests for

McMaster/Wingate Agreement to sue Buchanan/Pope.

12. I am informed and believe that the AG McMaster/Wingate Litigation Retention Agreement and other FOIA documents will show that the Wingate suit did not "require specialized expertise or involve an extensive commitment of financial resources and personnel" on the part of the State, but was intended to ruin Bob's and my careers and force us to drop the appeal of McMaster's destruction of James Brown's Estate Plan.

13. I am informed and believe that the date of the contract – expected to be April or early May 2010 – and other FOIA documents will confirm that Wingate, although a certified specialist, conducted no due diligence before using the power of the State, with Bauknight as the State's purported agent, to falsely accuse us – on behalf of the State – of crimes.

14. I am informed and believe that the Wingate contract will show that Wingate, Bauknight as the State's purported agent, and AG Wilson's Office have consistently violated the following requirement, among others, of the Litigation Retention Agreement:

Article III. CASE MANAGEMENT...

F. Public Records

Any material, data, files, discs, or documents created, produced or gathered by Special Counsel or in Special Counsel's possession in furtherance of this litigation, or which fulfills an obligation of this appointment, shall be considered the exclusive property of the State of South Carolina. Special Counsel agrees to adhere to South Carolina Freedom of Information Act, South Carolina Code of Laws, §30-4-10 et seq., and maintain all public records in accordance with State law; provided, however, that Special Counsel shall consult with, and obtain the approval of, the Attorney General before responding to any public records request. Special Counsel agrees to comply with the Attorney General's policy on document retention and to refrain from destroying documents

unless otherwise permitted under this policy. Special Counsel agrees to comply with Rule 417 of the South Carolina Appellate Court Rules. Special Counsel agrees to request written confirmation from the Attorney General's Office prior to destroying documents. This Agreement shall be considered a public document. [Emphasis supplied.]

15. I am also informed and believe that the McMaster/Wingate contract to sue Buchanan/Pope will show that either it does not contain, or Wingate has violated, the constitutionally required provision contained in all other Litigation Retention

Agreements:

All pleadings, motions, briefs, formal documents, and agreements must bear the signature of the Attorney General or his designated assistant.

16. Although I have requested a copy of the McMaster/Wingate contract to sue Buchanan/Pope, I believe that the document – authorizing Wingate to use the power of the State to seek to destroy my career and Bob's for the benefit of private individuals – is void as against public policy, as a violation of my Due Process rights and/or for other reasons.

FURTHER DEPONENT SAYETH NOT.


ADELE J. POPE

SWORN TO before me this
6th day of October, 2011



Notary Public for South Carolina (L.S.)
My Commission expires: 7/13/2011

Exhibit A

Enter keyword here

HOME

CURRENT ISSUES

OPINIONS

IMPORTANT LINKS

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CONTINGENCY FEE LITIGATION RETENTION AGREEMENTS

Below are all active contingency fee litigation retention agreements that the Attorney General has executed, except matters in which disclosure is currently under review by a court. The Attorney General often retains private counsel for matters that require specialized expertise or involve an extensive commitment of financial resources and personnel. By retaining private counsel, the Attorney General is able to pursue effective enforcement of state statutes in large, important cases that the Attorney General's Office itself would otherwise be unable to pursue.

Affinion/Trilegiant (marketing and billing) – litigation retention agreement

AstraZeneca (Seroquel) – litigation retention agreement

Cephalon (Provigil, Gabitril, Actiq) – litigation retention agreement

GSK (Avandia) – litigation retention agreement

Janssen (Risperdal) – litigation retention agreement

McKesson (Average Wholesale Price) – litigation retention agreement

Merck (Vioxx) – litigation retention agreement

Multiple pharmaceutical companies (Average Wholesale Price) – litigation retention agreement

Multiple technology companies (liquid crystal displays) – litigation retention agreement

Multiple oil companies (underground storage tanks) – litigation retention agreement

LATEST NEWS

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Silent Witness Ceremony Honored 2010 Victims of Fatal Domestic Violence

Oct 4, 2011

Attorney General Alan Wilson led participants through the annual Silent Witness Domestic Violence ceremony that was held today on the south steps of the State House in Columbia. The ceremony marked the first week of National Domestic Violence Awareness Month. During the solemn ceremony, Attorney General Wilson called the names of thirty-four (34) women and ten (10) men from across the state who lost their lives as the result of domestic violence in the previous year. Victims' family members, friends, or volunteers carried a life-sized silhouette representing the victim to the State House steps as a bell was rung for

LEARN MORE

Anderson Police Arrest Starr Man In Child Pornography Case

Sep 27, 2011

Attorney General Alan Wilson announced today that the City of Anderson Police Department arrested Kenneth Ray Barnett, 41, of 1642 Mountain Creek Church Road, Starr, South Carolina, on September 22, 2011, on one (1) count of Sexual Exploitation of a Minor.

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PHOTO GALLERY

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Law Enforcement of South

JACKIE S. BOWERS
CLERK OF COURT

2011 OCT - 9 - P 3:39

FILED
NEWBERRY COUNTY

000334

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

RUSSELL L. BAUKNIGHT, as Trustee of the James Brown 2000 Irrevocable Trust and the James Brown Legacy Trust, as Personal Representative of the Estate of James Brown, and on behalf of Henry Dargan McMaster, in his capacity as Attorney General of the State of South Carolina; Tommie Rae Brown, individually and on behalf of her minor child, James Brown II; Daryl J. Brown, individually and on behalf of his minor child Janise Vanisha Brown; Lindsey Delores Brown; Deanna J. Brown Thomas; Jason Brown-Lewis; Yamma N. Brown, individually and on behalf of her minor children Sydney Lumar and Carrington Lumar; Tonya Brown; Venisha Brown Larry Brown; and Terry Brown

and

HENRY DARGAN MCMASTER, in his capacity as Attorney General of the State of South Carolina; TOMMIE RAE BROWN, individually and on behalf of her minor child, JAMES BROWN II; DARYL J. BROWN, individually and on behalf of his minor child JANISE VANISHA BROWN; LINDSEY DELORES BROWN; DEANNA J. BROWN THOMAS; JASON BROWN-LEWIS; YAMMA N. BROWN, individually and on behalf of her minor children SYDNEY LUMAR and CARRINGTON LUMAR; TONYA BROWN; VENISHA BROWN; LARRY BROWN; and TERRY BROWN,

Plaintiffs

v.

Adele J. Pope and Robert L. Buchanan, Jr.,
Defendants

IN THE COURT OF COMMON PLEAS

FOR THE FIFTH CIRCUIT

Civil Action No. 2010-CP-40-4900

**PLAINTIFFS' MOTION FOR
PROTECTIVE ORDER CONCERNING
FEE AGREEMENT
AND/OR MOTION TO STRIKE
DEFENDANT POPE'S MOTION TO
COMPEL PLAINTIFFS' FEE
AGREEMENT**

FILED
NEWBERRY COUNTY
2011 OCT -6 P 3:39
JACKIE S. BOWERS
CLERK OF COURT

TO: DEFENDANTS AND THEIR ATTORNEYS:

YOU WILL PLEASE TAKE NOTICE that the Plaintiffs above-named, by their undersigned attorneys, will move before the Presiding Judge of the Richland County Court of Common Pleas at the Richland County Judicial Center at 9:00 a.m. on the tenth (10th) day after service hereof, or as soon thereafter as counsel may be heard, for a Protective Order prohibiting the production of Plaintiffs' Fee Agreement in the above-referenced action.

On July 26, 2011, Defendant Adele Pope through counsel filed a Motion to Compel production of Plaintiffs' Fee Agreement. Fee Agreements are the epitome of privileged communication. Plaintiffs therefore request that this court issue a Protective Order prohibiting the efforts of Defendant Pope from discovering the Fee Agreement.

Also, or in the alternative, Plaintiffs move the court to strike Defendant Pope's Motion to Compel Plaintiffs' Fee Agreement because the motions seeks to contravene a prior decision of the court concerning the order for hearing motions filed in this complex case.

This Motion relies on all applicable statutory and case law and may be supplemented with a memorandum of law, exhibits, affidavits, or other documents.

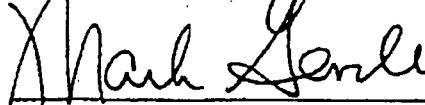
The Plaintiffs also request costs and fees for the expense in bringing this Motion.

(Signature page to follow)

FILED
NEWBERRY COUNTY
2011 OCT -6 P 3:39
JACKIE S. BOWERS
CLERK OF COURT

Respectfully submitted,

SWEENEY, WINGATE & BARROW, P.A.

A handwritten signature in dark ink, appearing to read "Mark V. Gende", is written over a horizontal line.

Kenneth B. Wingate

Mark V. Gende

1515 Lady Street

Post Office Box 12129

Columbia, South Carolina 29211

(803) 256-2233

ATTORNEYS FOR THE PLAINTIFFS

Columbia, South Carolina

August 9, 2011

Exhibit C
1228 Walnut Street
Newberry, South Carolina 29108

October 5, 2011

BY FAX AND FIRST CLASS MAIL
Fax No. 803-734-3677
[Fx. Copy amended to correct Fax #]

Tracy A. Meyers, Esquire
Senior Assistant Attorney General
Post Office Box 11549
Columbia, South Carolina 29211

Custodian of Records
Office of the South Carolina Attorney General
Post Office Box 11549
Columbia, South Carolina 29211

FILED
NEWBERRY COUNTY
2011 OCT - 6 P 3:39
JACKIE S. BOWERS
CLERK OF COURT

Re: Request for Documents under the South Carolina
Freedom of Information Act

Dear Ms. Meyers and Records Custodian:

I received yesterday, and thank you for, the letter of Ms. Meyers dated October 3, 2011. With the mailed copy of this letter I am enclosing a deposit of \$300, and ask that I be able to come to your office at the earliest convenience on the first of the following dates you have available:

This Friday, October 7	9:30 - closing
Tuesday, October 11	1 p.m. until closing
Thursday, October 13	9:30 until closing
Monday, October 17	9:30 until closing

My cell phone number is 803-413-0753. Since I am a little over 40 miles away, I would appreciate your letting me know as soon as possible which dates suit.

Please do not let your answers to the questions below delay scheduling my appointment to review whatever documents you have.

I am prepared, each day, to pay the estimated amount - In addition to the enclosed \$300 - of what the additional work we will need to do will take.

I expect my FOIA inquiries to last a long time, as — in order to receive specific documents — I made my initial inquiries as specific as possible. Since I will be examining records which you apparently do not keep in the form I requested, I want my search to be as efficient as possible. I hope your answers to the following questions will help:

a. The Charges you pose. It is my understanding that FOIA requires you to charge the smallest amount necessary to provide the records. You say \$18.90

000338

per hour is the charge for locating and copying. Is it not possible for me to review the records myself – either computer or hard copy – making notes, and then make specific requests?’

For example: The point of my requests 2, 3 and 5 on September 9, 2009 was to determine what information the State has about how much State money has been devoted to James Brown matters since August 2007, and how much to James Brown/James Brown Legacy Trust matters since 2008.

If the State has not compiled this information, as you indicate, I still want to compile my own estimates from the data requested in 2,3 and 5 of my letter of September 9. I have detailed information about hearings, appearances, meeting, etc., which – together with your data – would help put that together.

Will someone at \$18.90 an hour do this with me? Or may I do it myself on a computer at your office – and perhaps bring a more computer-oriented person to assist me? Can it be a combination of the two?

b. Your Response to Requests 2 and 4 Regarding the \$85 Million vs. \$12 Million vs. \$4.7 Million values placed on James Brown's music empire, assets

My request of September 9, 2011 was for:

1. All preliminary appraisal reports and/or other document(s) which support the August 23, 2010 [**in bold**] statement to the Supreme Court of South Carolina by then-Attorney General McMaster and four Assistants, signed by Clyde (C.H.) Jones, placed in context as follows:

6. Respondents dispute Appellants' assertion that the settlement agreement has the potential to divert "tens of millions of dollars" from the Trust. Presumably this representation to the Court is based on Appellants numerous under oath representations about the date-of-death value of the Trust, ranging anywhere from approximately Eighty-Five Million (\$85,000,000.00) Dollars on the federal estate tax return to approximately One Hundred Million (\$100,000,000.00) Dollars in affidavits, pleadings, and testimony...

Valuation assertions by Appellants' predecessors were similarly without any underlying appraisal. **By contrast, Bauknight has pursued the appropriate fiduciary route and engaged a nationally renowned and respected appraisal firm to value the Estate and Trust. Although the expected completion date for the appraisal is a couple of weeks away, a preliminary report indicates that the date-of-death value of the Estate and Trust**

will not exceed Twelve Million (\$12,000,000.00) Dollars.

AND

4. Any Document(s) which show when and in what form Russell Bauknight, serving at the pleasure of the Attorney General, notified the Office of the Attorney General that he asserted James Brown's assets at his death on December 25, 2006 were worth about \$6.5 Million and his worldwide music empire less than \$4.7 Million on that date.

Ms. Meyer's response was:

Responding to your request (numbers 1 and 4)...this office does not possess any such documents, and therefore, is unable to provide this information to you.

I respectfully suggest that this answer is not correct.

In August 2010 the Office of Attorney General McMaster represented to our Supreme Court what the contents of a draft appraisal contained.

In May 2011, the Office of Attorney General Wilson provided our S. C. Supreme Court with copies of portions of an Estate Tax Closing Letter and related IRS documents from January 2011 directly related to this request, showing that – at least by May 6, 2011 – the AG's Office had this information in that form. Those documents – if no others exist – would be responsive to my request if May 6, 2011 is the first day the AG learned that Russell Bauknight asserted James Brown's worldwide music empire was worth less than \$4.7 Million when Brown died.

If the AG's Office learned this information before May 6, 2011, that is the subject of my request #4 of September 9.

As to Request #1, it is reasonable to assume that the AG looked at something when he represented to the South Carolina Supreme Court on August 23, 2010 that an expected appraisal – already in draft form – showed that James Brown's assets – repeatedly reported by the AG's Office and others to be worth \$100 Million (\$85 Million after the TIAA Debt) – would soon be found to be worth less than \$12 Million, a figure, the AG represented, was already found in a draft proposal.

Because of the importance of understanding the State's involvement, if any, in the representation by the AG's appointee, Mr. Bauknight, to the IRS that Bob Buchanan and I committed a criminal overstatement of James Brown's assets on a sworn Estate Tax Return, I ask that you carefully check to confirm that the AG's Office – as you state – has no documents to support its August 2010 assertion of the less-than-\$12 Million value and no record of when it first learned (before May 6) of the less-than \$4.7 Million for the worldwide music empire it reported to the Court on May 6,

000340

c. My other FOIA Requests Which Are Not the Subject of Pending Litigation.

I hope that your response to my September 9, 2011 FOIA request means that the AG's Office has reconsidered the 5 Requests I made on July 20, 2011, which you did not challenge, but failed to fill, including those briefly described below, which I may now review and copy:

1. July 20, 2011 - 11-Page Memorandum from "tax experts"
referenced by CH Jones in April 6, 2009 Hearing,
Case 122.
2. July 20, 2011 Communications, Meetings, etc., with Toby Byron of
New York. [He is the man who asserted in
December 2007 that Albert H. "Buddy" Dallas had
offered him 5% of a sale of the James Brown
assets, then later recanted that representation.
He wrote several letters to various people 2007 -
2009, with copies to the SC AG. He had a
number of telephone meetings with Sr. Assistant
AG CH "Sonny" Jones as indicated in the email
of Sonny Jones to RL Buchanan, Jr. and me dated
December 6, 2007 re: \$100 Million initial offer for
James Brown assets.]
3. July 20, 2011 Communications, Meetings, Etc. With Dr. Terry
Bradford Cox . Mr. Cox, also mentioned by Sonny
Jones in his December 6, 2007 email related to the
\$100 Million initial offer for the James Brown assets,
also met at least one additional time – on or about
July 31, 2008 – with Sonny Jones, another AG and
an agent for Tommie Rae Hynie. Like Mr. Byron,
Dr. Cox corresponded with various people and copied
that correspondence to the AG's Office.
4. July 20, 2011 Communications, Meetings, etc., with Albert H.
"Buddy" Dallas and/or Forlando Brown. Mr. Dallas
had numerous documented – and as yet
undocumented – meetings with the Office of AG
McMaster, and his joint venturer, Forlando Brown,
also had various communications, including the
joint February 7, 2008 TV appearance with AG
McMaster.
5. July 20, 2011 PG documents.

Please confirm if this is true, so that I may avoid another FOIA suit.

000341

Ltr. to Ms. Meyers, Custodian

October 5, 2011

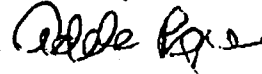
Page 5

As stated above, please do not let your answers to any of these questions delay scheduling a time for me to come review the documents responsive to my September 9, 2011 request, as I want to do that as soon as possible.

I look forward to coming to the Office; obtaining what you have; and spending a day, or more as needed, gathering the information I have already requested; and learning how to make subsequent requests more efficient so that I may acquire the needed public information as efficiently as possible.

Thank you in advance for an immediate response to my cell phone 803-413-0753 or email to allow me to come to begin obtaining this important public information.

Sincerely,



Adele J. Pope

AJP/ja

Enclosure in mailed copy: Check for \$300.00

000342

Exhibit D

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

FILED JUDGMENT IN A CIVIL CASE
NEWBERRY COUNTY
CASE NO: 2011PCP4004900
2011 OCT -6 P 3:39

Russell Bauknight

Plaintiff

JACKIE S. BOWERS
CLERK OF COURT

Henry Dargan McMaster

Defendant

CHECK ONE:

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. **continued**
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other:
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

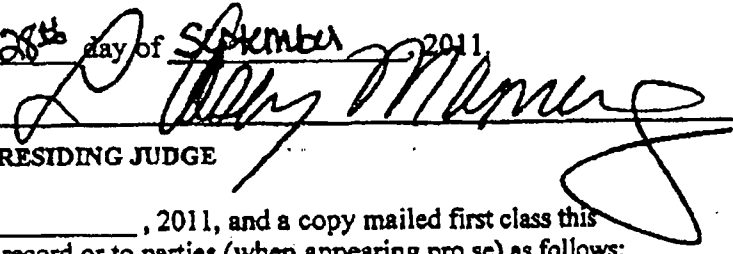
☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):

☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:

☐ See attached order;☐ Statement of Judgment by the Court:**continued**Dated at Columbia, South Carolina, this 28th day of September, 2011.


PRESIDING JUDGE

This judgment was entered on the 3 day of October, 2011, and a copy mailed first class this 3 day of October, 2011, to attorneys of record or to parties (when appearing pro se) as follows:

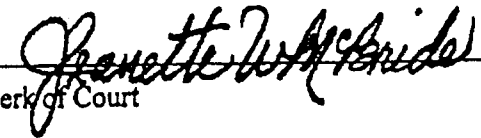
Kenneth B. Wingate
Everett Augustus Kendall II
Mark V. Gende

Daryl L. Williams
J Calhoun Watson
Robin A. Braithwaite
Adam T. Silvernail

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

SCRCP APP-24/FORM 4


Clerk of Court

000343

SCANNED

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

Adele J. Pope,

Plaintiff,

v.

Alan Wilson, in his capacity as
Attorney General of South Carolina,

Defendant.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2011-CP-36-379

AFFIDAVIT OF ADELE J. POPE
OPPOSING ALL MOTIONS TO STRIKE

FILED
NEWBERRY COUNTY
OCT 19 AM 11:16
CLERK OF COURT

Personally appeared before me, Adele J. Pope, who being duly sworn, deposes
and says:

1. Each affidavit I have submitted herein is based on my personal knowledge,
including knowledge gathered and/or obtained by me in one or more of the following
capacities:

a. As Co-Personal Representative of the Estate of James Brown and custodian
of the records of the Estate of James Brown.

b. As Co-Trustee of the James Brown 2000 Irrevocable Trust and custodian of
the records of the said 2000 Irrevocable Trust.

c. As custodian, with Robert L. Buchanan, Jr., of the records of the James
Brown Entities as that term is defined in the Order of the Honorable Doyet A.
Early III dated August 10, 2007 in Aiken County Case No. 2007-CP-02-0122
("Case 122").

d. From Records made public in the said August 10, 2007 Order of Judge
Early.

e. From the public records of Aiken County, the South Carolina Court of
Appeals, the South Carolina Supreme Court, Richland County, the S. C.
Federal District Court, the New York Supreme Court and/or other public
sources.

2. I am informed and believe that I can authenticate each statement and document and its source.

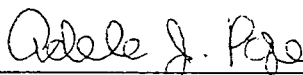
3. On information and belief, the originals of more than 1 million pages of documents related to James Brown previously made public by the said August 10, 2007 Order, fiduciary policy, and/or as part of the voluminous record in Case 2008-CP-02-1647 are in possession of Defendant and others.

4. At the request of Defendant and others the filings in all Aiken County James Brown cases were entered into the record in Aiken County Case No. 2008-CP-02-1647, now on appeal.

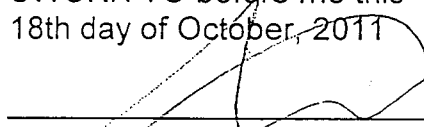
5. I am informed and believe that all statements and documents should be considered by the Court for one or more of the following reasons:

- a. They are relevant to this action.
- b. They are not hearsay.
- c. They show bad faith and intentional delay on the part of Defendant.
- d. They are admissions of Defendant.
- e. If hearsay, they are subject to an exception.

FURTHER DEPONENT SAYETH NOT.


ADELE J. POPE

SWORN TO before me this
18th day of October, 2011



Notary Public for South Carolina

My Commission expires: 7/13/2016

(L.S.)

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF NEWBERRY	)	
	)	
Adele J. Pope,	)	Case No. 11-CP-36-379
	)	
Plaintiff,	)	MEMORANDUM OF
	)	ATTORNEY GENERAL
v.	)	
	)	IN SUPPORT OF:
Alan Wilson, in his capacity as	)	MOTION TO DISMISS AND
Attorney General of South Carolina	)	MOTIONS TO STRIKE
	)	
Defendants.	)	AND IN OPPOSITION TO
	)	SUMMARY JUDGEMENT

INTRODUCTION AND BACKGROUND

This suit raises essentially the same issues as does Pope v. Wilson, 11-36-364 (Pope I). The Memorandum regarding Motions in that case is attached and incorporated by reference and it supports granting the Defendant's Motions and denying Plaintiff's Motion for the same reasons set forth therein. The following differences are present in the instant case 379, but none of them limit the application of the Memorandum in case 364 to the instant case.

The FOIA request at issue:

Plaintiff requested the following documents which are described at more length in her July 19, 2011 FOIA request attached as Exhibit B to the Complaint.

1 and 2. Published policies of the Office of the Attorney General regarding engagement of private attorneys including contingency fee counsel in effect in May, 2010 and in effect on July 19, 2011.

3. The contract of then-AG Henry McMaster and / or the State engaging Kenneth B.

Wingate and Everett Kendall, II to commence Civil Action 2010-GC-4000073 in the Probate Court for Richland County on behalf of the AG.

4. Any contract and / or other document authorizing Russell Bauknight to commence case 400000073 on behalf of the AG and/ or the State.

The Office of the Attorney General did respond to this request, proposed to put the requests on hold pending the outcome of Richland County litigation, 2010-CP-40-4900. The letter noted several motions pending related to the discovery requests. The Defendant notes these motions in his Motion to Dismiss. *See*, Exhibit B to Complaint, ¶2b and attachments to Motion: Exhibit B, Motion to Compel, July 26, 2011 (attachments to Motion omitted); Exhibit C, Motion for Protective Order, August 9, 2011.

MOTIONS TO STRIKE

The Defendant has moved to strike the following Affidavits and Exhibits of Plaintiff for reasons similar to those set forth in case 364 including hearsay, speculation, lack of personal knowledge and irrelevance.

Motion to Strike Affidavit of Plaintiff attached as Exhibit E to Complaint(included in Motion to Dismiss);

Motion to Strike Affidavit of Pope (September 1, 2011)Supporting Expedited hearing;

Motion to Strike Affidavit and Newspaper articles in support of Plaintiff's Motion for Summary Judgment;

Motion to Strike Supplemental Affidavit (September 26, 2011);

Motion to Strike October 6, 2011 affidavit.

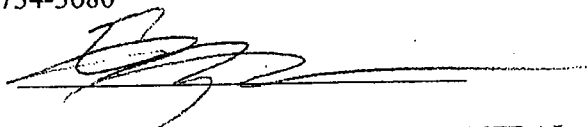
CONCLUSION

The Freedom of Information Act is a very important law, but it does not permit Plaintiff to bypass other judicial proceedings or, in effect, ask one judge to overrule another. The Richland County Court of Common Pleas has exclusive jurisdiction of matters pertaining to the documents at issue. For the reasons set forth in the Memorandum in case 364 attached hereto, this Court should grant the State's Motion to Dismiss, alternatively grant its Motions to Strike and deny Plaintiff's Motion for Summary Judgment.

Respectfully submitted,

ALAN WILSON
Attorney General

J. EMORY SMITH, JR.
Assistant Deputy Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3680

BY: 

ATTORNEYS FOR THE ATTORNEY GENERAL

October 25, 2011

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

Adele J. Pope,

Plaintiff,

v.

Alan Wilson, in his capacity as
Attorney General of South Carolina,

Defendant.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2011-CP-36-379

**AFFIDAVIT
SUPPORTING IMMEDIATE RELEASE
OF McMASTER/WINGATE CONTRACT
TO SUE BUCHANAN AND POPE**

Personally appeared before me, Thomas R. Young, Jr., who being duly sworn,
deposes and says:

1. I am a resident of Aiken County.
2. I am over 18 years of age.
3. I make this affidavit based on my personal knowledge and belief.
4. I am a member in good standing of the South Carolina Bar with Bar
number 11643.
5. Currently, I am attorney of record for Robert L. Buchanan, Jr. and Robert
L. Buchanan Law Office, P.A. in the declaratory judgment action filed against Buchanan
by Cincinnati Insurance Company in federal court.¹ That action involves the malpractice
coverage which is in place to defend and to indemnify Buchanan in the lawsuit filed in
Richland County against Buchanan by the Attorney General of South Carolina
("Richland County lawsuit").

¹ Cincinnati Specialty Underwriters Ins. Co. v. Buchanan Law Office, PA, et al. 3:10-cv-02986-WOB.

TH

6. The litigation retention agreement signed by former Attorney General Henry McMaster to authorize attorney Kenneth Wingate to sue Robert L. Buchanan, Jr. of Aiken is a document relevant to some of the issues in the declaratory judgment action filed by Cincinnati Insurance Company against Buchanan.

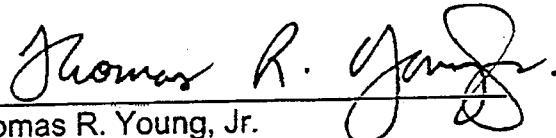
7. My understanding is that Buchanan attempted to obtain a copy of that contract in the Richland County lawsuit. The contract has not been produced in that action.

8. My understanding also is that litigation retention agreements entered into by the Attorney General of South Carolina are public documents.

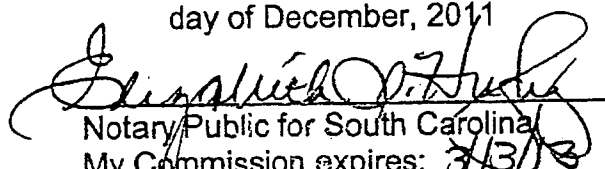
9. I also understand that the Freedom of Information Act is intended to provide members of the general public with prompt access to public documents "at a minimum cost or delay." See S.C. Code Sec. 30-4-15 (emphasis added).

10. While I have the ability to issue a federal court subpoena upon the Attorney General of South Carolina to obtain the contract, it will save my client both time and money by having this Court rule that the contract should be released pursuant to the Freedom of Information Act.

FURTHER THE DEPONENT SAYETH NOT.


Thomas R. Young, Jr.

SWORN TO before me this
day of December, 2011

 (L.S.)
Notary Public for South Carolina
My Commission expires: 3/31/13

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF NEWBERRY	)	CIVIL ACTION No. 2011-CP-36-379
	)	
ADELE J. POPE,	)	AFFIDAVIT OF DEBORAH W. SPENCE
PLAINTIFF,	)	ASKING FOR RELEASE UNDER
	)	FREEDOM OF INFORMATION ACT OF
V.	)	AG HENRY McMASTER'S 2010 CONTRACT
	)	WITH ATTY. KENNETH B. WINGATE TO
ALAN WILSON, IN HIS CAPACITY AS	)	SUE ADELE POPE AND ROBERT
ATTORNEY GENERAL OF SOUTH	)	BUCHANAN FOR APPEALING ORDER
CAROLINA,	)	IN JAMES BROWN AIKEN CASE
	)	
DEFENDANT.)	)	

PERSONALLY APPEARED BEFORE ME, DEBORAH W. SPENCE, WHO BEING DULY
SWORN, DEPOSES AND SAYS:

1. I AM A RESIDENT OF LEXINGTON COUNTY AND OVER 18 YEARS OLD.
2. THIS AFFIDAVIT IS BASED ON MY PERSONAL KNOWLEDGE AND BELIEF.
3. I AM THE WIDOW OF FLOYD D. SPENCE
4. THROUGH THE YEARS I HAVE KNOWN ATTORNEY GENERAL ALAN WILSON
AND HIS FAMILY, AND HAVE BEEN REPRESENTED BY A MEMBER OF FORMER AG
HENRY McMASTER'S FAMILY
5. KENNETH B. WINGATE HAS SERVED BOTH AS MY LAWYER AND ATTORNEY
FOR MY HUSBAND'S ESTATE.
6. MRS. POPE BECAME MY LAWYER IN 2002, RECOMMENDED BY AG
McMASTER'S BROTHER WHO HAD WORKED FOR MY HUSBAND.
7. I LOVE MUSIC AND HAVE BEEN A FAN OF JAMES BROWN FOR DECADES.
8. IN 2007 MRS. POPE BECAME TRUSTEE OF JAMES BROWN'S TRUST,
WHICH INCLUDED THE JAMES BROWN "I FEEL GOOD" PRIVATE FOUNDATION. I
LEARNED THEN THAT BROWN HAD GIVEN HIS ENTIRE MUSIC EMPIRE TO PROVIDE

SCHOLARSHIPS FOR NEEDY AND DESERVING STUDENTS.

9. SINCE LEARNING THAT HENRY MCMASTER -- OVER THE OBJECTION OF BROWN'S TRUSTEES -- GAVE MORE THAN HALF OF THE "I FEEL GOOD" FOUNDATION TO DISINHERITED CLAIMED RELATIVES, I HAVE FOLLOWED THE AIKEN CASE FAIRLY CLOSELY.

10. I WAS DISTURBED IN THE SPRING OF 2010 WHEN I LEARNED THAT HENRY MCMASTER HAD SUED MRS. POPE USING KENNETH WINGATE, A PRIVATE ATTORNEY WHO ALSO REPRESENTED SOME OF BROWN'S DISINHERITED RELATIVES.

11. I WAS TROUBLED AND INCREDULOUS THAT THE AG WOULD ALLOW MR. WINGATE AND MR. BAUKNIGHT TO FIGHT THE PEOPLE WHO WERE TRYING TO SAVE THE "I FEEL GOOD" FOUNDATION AND GET MONEY FOR PEOPLE BROWN LEFT OUT OF HIS ESTATE PLAN, AND I STILL DON'T UNDERSTAND HOW HE COULD DO THAT.

12. IN AUGUST OF 2011 WHEN I READ THAT MRS. POPE HAD FILED A FREEDOM OF INFORMATION ACT SUIT TO GET THE CONTRACT MCMASTER SIGNED WITH KEN WINGATE I THOUGHT IT MIGHT ANSWER SOME OF MY QUESTIONS.

13. I KNOW THAT AG WILSON HAS STATED THAT ALL OF HIS LITIGATION RETENTION AGREEMENTS WITH OUTSIDE COUNSEL ARE PUBLIC DOCUMENTS, AND BELIEVE THAT THEY SHOULD BE.

14. I THINK THAT THE MCMASTER'S CONTRACT WITH KEN WINGATE SHOULD BE DELIVERED RIGHT AWAY BECAUSE THE PUBLIC HAS A RIGHT TO KNOW WHETHER WHAT AG MCMASTER AND WINGATE AGREED TO WAS APPROPRIATE.

15. I AM CONCERNED THAT AG WILSON'S REFUSAL FOR MORE THAN FOUR MONTHS TO RELEASE A PUBLIC DOCUMENT MAKES IT APPEAR THAT HE IS COVERING UP AN INAPPROPRIATE OR QUESTIONABLE AGREEMENT.

16. ON OCTOBER 31, 2011 ATTORNEY DAVID BLACK OF NEXSEN PRUET,

SPEAKING FOR RUSSELL BAUKNIGHT, MADE VICIOUS STATEMENTS ABOUT MRS. POPE AND MR. BUCHANAN THAT WERE REPEATED IN HUNDREDS OF MEDIA OUTLETS.

16. THE NEXT DAY, I HEARD ANOTHER NEXSEN PRUET LAWYER AND MR. JONES FROM AG WILSON'S OFFICE TRYING TO JUSTIFY TO OUR SUPREME COURT WHY HENRY MCMASTER GAVE AWAY WHAT WAS CORRECTLY DESCRIBED AS BROWN'S "NOBLE ESTATE PLAN."

16. SINCE THEN, AG WILSON'S REFUSAL TO RELEASE THE MCMASTER CONTRACT WITH WINGATE HAS FOCUSED MY ATTENTION ON OTHER TROUBLESOME THINGS MCMASTER DID - OR IS SAID TO HAVE DONE - IN CONNECTION WITH JAMES BROWN'S ESTATE AND TRUST, AND I BELIEVE THE PUBLIC HAS A RIGHT TO LEARN WHAT REALLY HAPPENED..

17. I RECENTLY READ THAT JAMES BROWN MADE A TAPE DISCUSSING HIS INTENTIONS IN HIS WILL AND TRUST WHICH MCMASTER APPARENTLY DID NOT CONSIDER WHEN HE GAVE AWAY HALF OF THE "I FEEL GOOD" TRUST.

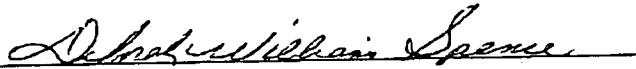
17. THIS MORNING I READ THAT BROWN'S GRANDSON FORLANDO, WHO APPEARED ON TELEVISION IN 2008 WITH MCMASTER TO CRITICIZE MRS. POPE AND MR. BUCHANAN, NOW CONFIRMS THAT THEY PROPERLY DEFENDED BROWN'S ESTATE PLAN.

18. MOST TROUBLESOME, HOWEVER, IS AN ARTICLE BY SUE SUMMER DATED DECEMBER 7, 2011 IN WHICH FORLANDO DESCRIBES A VISIT HE AND HIS FATHER TERRY HAD TO AG MCMASTER'S OFFICE BEFORE TERRY BROWN ABANDONED HIS SUPPORT OF BROWN'S NOBLE ESTATE PLAN WHICH STATES:

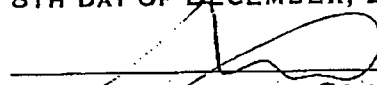
"AFTER MY FATHER REFUSED TO JOIN THE FIGHT (TO CONTEST THE WILL AND TRUST), THEY CALLED US TO SOUTH CAROLINA, TO THE ATTORNEY GENERAL'S OFFICE. THEY SAID THEY COULD SETTLE WITHOUT US, AND THEY'D MAKE SURE WE GOT NOTHING. WE WERE GIVEN AN ULTIMATUM," FORLANDO SAID.

19. I AM INFORMED AND BELIEVE THAT AG WILSON SHOULD IMMEDIATELY
RELEASE THE WINGATE CONTRACT.

FURTHER DEPONENT SAYETH NOT.


DEBORAH W. SPENCE

SWORN TO BEFORE ME THIS
8TH DAY OF DECEMBER, 2011

 (L.S.)
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 7/13/2016

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

Adele J. Pope,

Plaintiff,

v.

Alan Wilson, in his capacity as
Attorney General of South Carolina,

Defendant.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2011-CP-36-379

AFFIDAVIT

SUPPORTING IMMEDIATE RELEASE
OF McMASTER/WINGATE CONTRACT
TO SUE BUCHANAN AND POPE

Personally appeared before me, Thomas H. Pope III, who being duly sworn,
deposes and says:

1. I am a resident of Newberry County and a practicing attorney.
2. I am over 18 years of age.
3. Since the death of James Brown, I have read news reports about the various
James Brown cases.

4. I understand that a request under the S.C. Freedom of Information Act has
been made by at least one newspaper reporter for a copy of the public litigation
retention agreement signed by former Attorney General Henry McMaster to authorize
attorney Kenneth Wingate to sue Robert Buchanan of Aiken and Adele Pope of
Newberry because they appealed an Aiken County settlement related to James Brown.

5. The Freedom of Information Act is intended to provide all members of the
public with easy and prompt access to public documents. As far as I know, it contains
no provisions that tie its application to any pending action in the same or any other
county.

6. To deny prompt relief under the F.O.I.A serves only to encourage secrecy in government.

7. As I understand, all litigation-retention contracts between the Attorney General and private attorneys are public documents, and the documents sought in this suit are the only ones of this type that the Attorney General's office has ever refused to produce.

8. While I am the husband of plaintiff, I affirm that this does not affect my view of the legitimacy of the F.O.I.A. suit to produce what even the Attorney General's office has not denied are public documents.

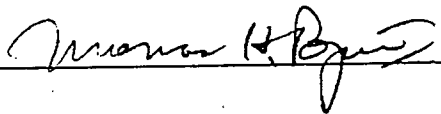
9. I was not asked to write this affidavit by anyone. I do so voluntarily.

10. The public interest in James Brown, legendary musician and philanthropist (per his Will), could not be greater. The public interest in the former Attorney General's decision to hire private attorneys under a cloak of secrecy is equally great.

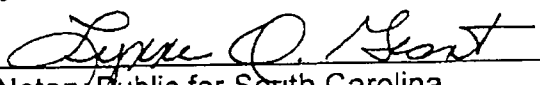
11. As a former legislative sponsor of the Whistleblower statute, I have always been a proponent of openness in government.

12. I believe that any citizen or journalist who asks for this public document should get it without delay.

FURTHER DEPONENT SAYETH NOT.



SWORN TO before me this
8th day of December, 2011



Notary Public for South Carolina (L.S.)
My Commission expires: 8-12-2020

IN THE COURT OF COMMON PLEAS

Civil Action No. 2011-CP-36-379

Plaintiff,

V.

AFFIDAVIT OF W. JEFFREY SMITH
SUPPORTING RELEASE UNDER FOIA
OF
CONTRACT OF ATTORNEY GENERAL
TO SUE ROBERT BUCHANAN AND
ADELE POPE

Defendant.

PERSONALLY APPEARED BEFORE ME, W. Jeffrey Smith, who being
duly sworn deposes and says:

1. I am over eighteen years old.
2. I have been a resident of Newberry County for more than twenty years.
3. This affidavit is based on my personal knowledge and belief.
4. I received a JD degree from Georgetown Law Center and formerly served as a patent examiner with the U. S. Patent Office.
5. I am not a party to any James Brown lawsuit, but have a personal interest in James Brown's musical career and am writing an article with Plaintiff Adele Pope about James Brown's "I Feel Good" private foundation.
6. A copy of the April 2011 draft of our article, *Private Foundations, Copyright Heirs and Musical Millionaires: Why The James Brown "I Feel Good" Trust doesn't...*, is attached to this affidavit as Exhibit A.

7. In April 2011 *Private Foundations* was circulated for comment to entertainment and private foundation professionals, and we hope to complete and publish it in 2012.

8. I am informed and believe that the general public, and especially those involved in estate planning and intellectual property issues, have a right to learn whether by taking over James Brown's private assets and creating the Legacy Trust former Attorney General Henry McMaster – who was acting in his official capacity – was serving the public interest, or promoting his campaign to be governor.

9. I have read with interest the articles of Newberry journalist Sue Summer about what McMaster did and about what appears to her – and to me – to be a coverup by Attorney General Wilson of McMaster's actions.

10. I am informed and believe that immediate release of the contract which former AG McMaster signed to allow attorney Kenneth Wingate to sue Mrs. Pope and Mr. Buchanan to punish them for appealing his takeover of James Brown's private property is important to members of the general public, as well as to me.

11. As the article shows, my writing focuses on three areas:

- a. The manipulation of the value of Brown's securities and other assets, including any participation the AG's office had in this;
- b. False representations made to courts about who are James Brown's heirs under the Federal Copyright Act;
- c. The Public Policy implications of allowing Attorneys General

– as McMaster has done – to take over private foundations,
which are private property.

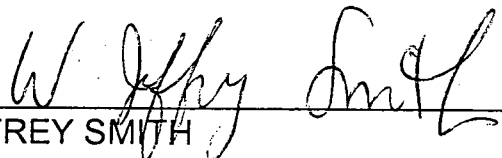
12. The McMaster contract with Wingate to sue Mr. Buchanan and Mrs. Pope is an important piece in my investigation, and I do not believe that anyone's FOIA rights to receive it should be tied to any of the many James Brown lawsuits.

13. I have read the affidavits of Thomas R. Young, Jr., Deborah W. Spence, Thomas H. Pope III and Sue Summer in this case and endorse their position that prompt compliance with FOIA is essential — especially where, as here, there is great public interest in why a public official chose rewrite Brown's estate plan; take it over; and give away the private property he dedicated solely to education of his own grandchildren and needy students.

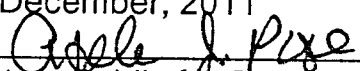
14. I especially endorse Mr. Young's reference to the intent of FOIA, which is to provide members of the general public with prompt access to public documents "at a minimum cost or delay."

15. I am informed and believe that AG Wilson's intentional stonewalling of the FOIA requests of Mrs. Pope and journalist Sue Summer is wrong.

FURTHER DEPONENT SAYETH NOT.


W. JEFFREY SMITH

SWORN TO BEFORE ME this 9th Day
of December, 2011


Notary Public for South Carolina (U.S.)
My Commission expires: 12/11/13

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**Private Foundations, Copyright Heirs and Musical Millionaires:
or
Why The James Brown "I Feel Good" Trust doesn't...**

By Adele J. Pope and W. Jeffrey Smith¹

©²

2011

God has Smiled on Me³

Entertainment icon James Brown died on Christmas Day 2006. Although he was a grammar school dropout, he left the bulk of his \$100 million music empire to The James Brown "I Feel Good" private foundation. The "I Feel Good" Trust was restricted solely to providing scholarships for needy and deserving students.

Over his long career, Brown had earned the reputation as "the hardest working man in show business." Through hard work, tenacity—and years of litigation with publishers, family and others—he had amassed and held onto his fortune, mostly rights in more than 850 copyrights, unpublished works and his publicity rights.

Don't Be a Dropout

About 20 years before his death, Brown decided to create the "I Feel Good" Trust as a monument to his personal philosophy: the way to escape poverty was with education and hard work. Brown's songs such as "Don't be a dropout" underscored this belief.

After four years of work with an estate planning specialist, Brown's final estate plan was completed in 2000. It included a Will that left Brown's residuary estate to his 2000 Irrevocable Trust, which was dedicated solely to education. At Brown's death the 2000 Trust created a \$285,000 education fund for each of seven grandchildren. Everything else went to the "I Feel Good" Trust.

Anticipating trouble from relatives who knew about Brown's estate plan but did

¹ Ms. Pope received a JD degree from the University of South Carolina and an LLM in Estate Planning from the University of Miami. Mr. Smith received a JD degree from Georgetown Law Center and is a former patent examiner with the U. S. Patent Office.

² While the © symbol is not required, it was placed in this article to remind estate planners, fiduciaries and advisors to consider copyrights in all philanthropic estate planning and administration involving authors.

³ The copyright to "God has smiled on me" by James Brown and Al Sharpton was issued in 1981. The earliest date this copyright could be terminated by heirs under the Copyright Act is 2016.

not complain during his lifetime, Brown directed his fiduciaries to defend "vigorously" all attacks on the approximately \$80 million he gave to the "I Feel Good" Foundation as "an affront to my wishes." He armed his fiduciaries with *In Terrorem* forfeiture clauses and other means to defend the 2000 Trust.

Brown also named and then specifically excluded from his music empire some of his 14 or more claimed children, as he did all other claimed heirs and past and future spouses.

Damn Right, I'm Somebody⁴

At Brown's death his philanthropic legacy was poised to be as impressive as his musical legacy. The \$80 million "I Feel Good" Foundation promised to be his home state's largest-ever private foundation dedicated solely to scholarships for needy and deserving students, as well as one of its largest private foundations.

Then in the fall of 2007 an attorney general with gubernatorial aspirations stepped in to "help" the "I Feel Good" Trust.⁵

Bewildered

Three months later, in February 2008, the AG announced before a television camera that the trustees of the "I Feel Good" Foundation must serve only the interest of the "poor kids," and that any failure to do so went "far past the stop sign of conflict of interest."⁶

He was right about that, but sadly, he did not heed his own advice.

On August 10 of the same year, a mere six months later, the AG signed an agreement that in only two years would destroy the "I Feel Good" Foundation – reducing it to \$2 million or less.

Much of the explanation for this bewildering turn of events lies in the failure of

⁴ The Copyright to sound recording "Damn right, I'm somebody," by James Brown and his famous sideman Fred Wesley, was issued in 1974 and renewed in 2002. The earliest possible date it could be subject to termination under the Copyright Act is 2030.

⁵ AG Henry D. McMaster, with the AG of Georgia *pro hac vice* under him, entered Aiken County, SC Case 2007-CP-02-0122 ("Case 122") in October 2007 to help protect the interest of the "I Feel Good" Foundation's charitable beneficiaries.

⁶ WIS TV interview, 2/7/08. Henry D. McMaster. McMaster's conclusion that Brown's then-fiduciaries were simultaneously working for the family and the "poor kids" was incorrect. At the time, Brown's fiduciaries were actively seeking dismissal of newly filed – and unfounded – challenges to Brown's 2000 Trust and Will; claims of Brown's companion; and other claims. [See Ans. Interrogs. Pls., Case 4900; See Mot. Dismiss, TRHB's filing, Case 122.]

the AG's staff, and later the AG's appointee, to understand and apply basic principles necessary for a private foundation to protect its copyright interests, namely:

1. A precipitous and incorrect determination of heirs can cause decades of damage to the copyright interests, resulting in loss and unnecessary litigation.
2. Fiduciaries and advisors to private foundations with copyrights cannot simultaneously serve the interests of the foundation and claimed heirs.

Brown's interest in 850+ copyrights and unpublished songs made these errors fatal to the "I Feel Good" Foundation.

Termination Rights under the Copyright Act -(Give it Up) Turn it Alosee⁷

Termination rights under Section 203 and 304 of the Copyright Act are designed to help authors who assigned the rights to their creative works before these works were tested in the marketplace: authors are given a chance to take back *some* of the interests they gave up. Depending on the date of publication, the earliest opportunity to terminate a copyright (already in its renewal term for older copyrights) comes either 35 or 56 years after the copyright.

In the case of a deceased author *who has not previously exercised his rights*, the author's statutory heirs, as determined at the relevant time, may exercise the author's termination right. [For a good explanation of termination rights and limitations, see "Copyright Reversions, Protecting Your Musical Copyrights" by Lisa Alter, 2008.]

When an author's statutory heirs are not the beneficiaries of copyrights under his estate plan (this is always the case for copyrights held by a private foundation or charity), then the statutory heirs--in limited instances--may be able to "bump" the author's estate plan and retake some of the copyright benefits themselves.⁸

Emerging case law makes it clear that it is not easy to terminate assigned interests in copyrights.

Where, as with James Brown, valuable interests are at stake, private foundations, advised by *their unconflicted* IP/Entertainment counsel, must dance a delicate dance with publishers, claimed heirs and others. The foundations' primary concern, of course, is to protect and enhance the benefits of *each* copyright for the longest reasonable time.

⁷ (Give it up) Turn it Alosee was published in 1969.

⁸ The term "estate bumping" was coined by Professor Lee-Ford Tritt to describe this phenomenon. See Lee-Ford Tritt, "Liberating Estates from the Constraints of Copyright, 38 Rutgers L.J. 109 (2006)

By omitting his heirs from any interest in his copyrights, Brown made it easier for his fiduciaries to protect them from actual and claimed heirs, because in questions related to Brown's copyrights the fiduciaries' duty of loyalty is only to the 2000 Trust — and not to any heir.

For private foundations to be ready to protect copyright benefits given to them, their fiduciaries and advisors⁹ must take at least take the following basic steps, all of which were in progress for James Brown's estate:

1. Learn the basics about the Settlor's copyright interests, including earliest publication dates and other readily-available facts.
2. Promptly and properly identify the "heirs-at-death"¹⁰ to create a baseline.
3. Where appropriate and available, rely on DNA testing for disputed heirs.
4. Acknowledge heirs only if they are legally established or DNA tested.
5. Identify documents such as the Settlor's will, prenuptial agreements, lawsuit settlements and waivers, which may void, limit or delay an heir's claim to copyright termination rights.
5. Update the baseline heirs data until all copyrights expire.
6. Select IP/Entertainment counsel with no commitment to claimed heirs, publishers or other assignees.
7. As and when helpful, "split heirs"¹¹ to maximize benefits for the foundation.

For James Brown, with copyrights issued over the six decades from 1956 until his death, the earliest any termination could have occurred was 2012. There was adequate time to prepare, and in August 2008 Brown's fiduciaries were doing just that.

⁹ Where, as with James Brown, the AG and his appointee undertook to step into the shoes of Brown's fiduciaries, rendering the fiduciaries unable to protect the charity, they should have had, and applied, the same knowledge required of the Foundation's fiduciaries.

¹⁰ The terms "heirs-at-death" is used by the authors to emphasize the timing difference between a traditional determination of heirs (death) and the statutory heirs under the Copyright Act, who cannot be determined until the window to terminate assignments as to a particular copyright opens. Statutory heirs under the Copyright Act may be different with respect to each copyright termination.

¹¹ The heirs must act by majority. This allows foundations to "split heirs" — finding the most cooperative majority of heirs to work with on termination issues related to a specific copyright assignment at the particular time.

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James Brown's Copyrights

A 2007 circuit court order made available to the AG and others interested in Brown's estate about 90 boxes of "Brown Historical Documents." These documents contained virtually everything to be known about Brown's copyrights and related contracts. The documents were placed at a central location that allowed easy access to all.¹²

The available documents, with information from the Copyright Office and other readily available sources, showed that if Brown's copyrights were properly protected any attempt by claimed heirs to take them from the "I Feel Good" Trust was both weak and remote in time.¹³

The known facts included:

1. Brown's royalties continued to earn about least \$3 million per year, as they had for years.
2. Brown's publicity rights – about \$50 million of his music empire – were not subject to any claimed termination rights of heirs.
3. Brown's as-yet-unpublished works would not be subject to termination for decades, perhaps not at all.
4. Copyrights to the many derivative works in which Brown has an interest are not subject to termination right of heirs. [More than 50 CDs, with notes, have been released since Brown's death.]
5. Brown's Will leaves all of his copyrights, most of which are held in his individual or joint name, to the 2000 Trust.
6. Brown's fiduciaries were directed to vigorously protect his estate plan against heirs and claimed heirs.
7. Only 15% or fewer of Brown's many copyright interests faced possible termination before 2016 -- ten years after Brown's death. [See Compilation, Brown copyrights, 1956 - 60 and 1978 - 81.]

¹² Order dtd. 08/10/07, Aiken County, S.C. Case No. 2007-CP-02-0122. Reflecting Brown's understanding of his place in musical history, in addition to Brown Historical Documents, Brown kept more than 60 boxes of his personal musical collection, unpublished works, and masters under lock and key in the bedroom suite and office of his home estate. In February 2008 these were placed in a secure sound storage facility to await review.

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8. Co-authorship of some of Brown's works could make terminations more complex and heirs' rights, if any, less certain. See Geoffrey P. Hull, "Termination Rights and the *Real* Songwriters", Vanderbilt J. of Ent. Law & Practice, Spring 2005.
9. Brown holds an interest in some of his publishers.
10. Between 1968-1978, one of Brown's most prolific periods, about 250 copyrights were issued, none of which faces possible termination before 2024, with others as late as 2033, including:
 - a. Nearly 40 songs from 1968.
 - b. More than 50 songs from 1969, including "Ain't it funky now," "Mashed potato" and "Popcorn."
 - c. "Funky Drummer," 1970, one of the world's most sampled records; "(Get up) I feel like being a sex machine"; and about 25 other songs.
 - d. "Hot pants", "Soul power" and others from 1971.
 - e. More than 35 copyrights from 1972, including "Get on the Good Foot (with new matter)" and other sound recordings for which copyrights became available that year. [Polydor, Inc. and/or UMG Recordings, Inc. are listed on some post-1971 copyrights]
11. In the 1990s Brown and his company JBE, Inc., reached important agreements with Warner/Chappell, Warner-Tamberlane Publishing Corp. and other publishers.
12. Documents related to Brown's 1999 \$26 million loan from TIAA, secured by a pledge of his major royalties, prohibit assignments until the loan is paid in full – 5 or more years after Brown's death.
13. Brown settled a 2002 suit over copyrights with daughters Deanna and Yamma.
14. Brown did not file a termination notice for 2016 for the famous 1956 song, "Please, please, please," which he co-authored, although the window for filing a termination notice was open in 2006. Nor did he do so for certain post-1977 copyrights. [This indicates an understanding that the TIAA Debt (at least) prevents the current exercise of termination rights.]

A host of additional impediments existed to prevent any heirs from substantially damaging the "I Feel Good" Foundation's royalty interests. These efforts included motions to dismiss all claims of Brown's companion as invalid, a waiver signed by one

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of Brown's Heirs for the TIAA Debt, and others.

In order to protect the "I Feel Good" Foundation's copyrights, the estate first had to root out non-heirs and those who had waived any claim to Brown's assets. Then negotiation with heirs could begin.

The Estate's Heirs Protocol

In August 2008 Brown's fiduciaries were nearing the completion of a proper heirs-at-death determination begun just after Brown's death. When concluded, it would have provided the "I Feel Good" Foundation with both a sword and a shield to protect its copyrights for decades.¹⁴

Knowing the importance of this heirs determination, shortly after Brown's death estate attorneys established a brilliant and widely-publicized self-identification protocol to find Brown's claimed heirs. Anyone claiming to be a child of Brown was invited to step forward; pay \$300 for controlled, official DNA testing; and find out the biological truth.

Brown's well-publicized vasectomy about 20 years earlier meant that most requests for DNA testing were made by consenting adults who understood and submitted to the media frenzy surrounding the process.¹⁵

The significance of the heirs procedure was bolstered by the increased acceptance of the accuracy of properly controlled DNA testing.

By August 2008, the DNA protocol resulted in the rejection of a number of claimants and the identification of three biological children of Brown: Jeanette Mitchell (1), LaRhonda Pettit (2) and Cinnamon Mernickle (3).

Brown's fiduciaries rewarded each proven biological child with a public announcement and acknowledgment of her status as an heir. [Like all of Brown's other heirs, they were excluded from the 2000 Trust and Brown's musical empire.]

¹⁴ Brown acknowledged as his "heirs" four of the five children born of his three marriages, Terry, Larry, Deanna and Yamma. He excluded daughter Lisa, acknowledged in his divorce from first wife Velma Warren. [Will. Trust. Div. Decree. Agreement]. He also acknowledged two children not born of his marriages. *In Terrorem* forfeiture clauses threatened termination of the grandchildren's education benefits and the personal effects he gave to the six. A prenuptial agreement, executed by Brown's (married) companion, waived all of her rights under state and federal law. After discovering that companion was married when she married Brown, he brought an action to void the marriage. It was settled with her agreement and a court order by which she waived any claim to be Brown's common law spouse.

¹⁵ Only one minor claimed to be a child of Brown. Through a GAL he refused official testing.

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Brown's other possible but challenged heirs, none of whom had been DNA tested, included:

- a. 5 presumed children: Terry (4) Lisa (5), Larry (6), Deanna (7) and Yamma (8). Teddy is deceased. (9);¹⁶
- b. A minor ordered to take official DNA testing, but who had refused (10);
- c. An incarcerated adult whom Brown supported under court order during minority (11);
- d. Brown's companion who:
 1. Waived all state and federal rights in a 2001 pre-nuptial agreement;
 2. Then had a marriage ceremony with Brown although she was already married;
 3. Separated from Brown in 2003 when he discovered she was married;
 4. Obtained an annulment of her previous marriage in March 2004;
 5. Thereafter settled Brown's suit to void his marriage by Court order, finding they were living together and attaching her agreement never to claim to be Brown's common law spouse (12);
- e. Two other claimed-but-not-presumed children (13), and (14);
- f. A claimed grandchild, claimed child of deceased son (9).

Considering other turmoil surrounding Brown's assets ¹⁷ and the long-term importance of a correct determination of heirs-at-death, the heirs protocol had progressed at lightning speed. It was close to providing a court-sanctioned heirs-at-death baseline which the "I Feel Good" Trust could use and modify in order to help protect the foundation for the duration of the copyrights.

That changed on August 10, 2008.

¹⁶ On August 10, 2008 Brown's grandsons, beneficiaries of the 2000 Trust, or others, were seeking DNA testing of some or all of these, as well as of the minor claimant.

¹⁷ Brown's original fiduciaries all resigned in 2007 under a substantial cloud after more than \$12 million secretly misappropriated since 1999 was discovered. One is now deceased. David Cannon was indicted for felony breach of trust for all years 1999 - 2006 and for uttering a forged compensation agreement in 2008. To date he had not been tried. In 2010 Dallas, Brown's longtime attorney, filed bankruptcy. Schedules related to Dallas' filing show that his largest asset is a \$6 million claim he asserts against Brown's Estate and the 2000 Trust.

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"No, no, no, no (don't leave me this way)"¹⁸

On August 10, 2008 the AG's staff and some of the claimed heirs¹⁹ met privately and reached the following private agreement:

1. Some of Brown's claimed heirs, including Brown's companion and excluding Brown's proven heirs, were declared to be Brown's heirs "for all purposes."
2. The AG proposed to give more than half of Brown's assets to these persons, all of whom had been specifically disinherited by Brown from his copyrights.
3. The AG agreed to prevent DNA testing of the parties to his agreement.
4. The AG agreed to replace Brown's fiduciaries with ones of their mutual choosing.
5. The AG and parties all agreed not to say anything bad about each other or the Agreement they had reached.

After signing the August 10 Agreement, with no apparent knowledge of the devastation he was causing the "I Feel Good" Trust's copyrights, the AG moved on to other matters and left the rest of the destruction of the "I Feel Good" Foundation to his staff and the appointee/fiduciary the AG selected.²⁰

Within months, an AG staffer promised Brown's son an exclusive right to buy the James Brown assets – including his 850+ copyrights. [Ltrs. dtd. 2/39/09 and 2/30/09.]

Certain that Brown's fiduciaries could not support the August 10 deal, the AG's staff sought and obtained an "independent" person to evaluate the secret agreement for the Court.

¹⁸ "No, no, no, no (don't leave me this way)" was published in 1964. The earliest possible year it might be subject to termination is 2020.

¹⁹ The AG did not notify any of Brown's fiduciaries or the three known biological heirs of James Brown of the meeting until after he had signed the August 10, 2008 agreement. [Exhibit B]

²⁰ According to the AG's senior assistant, beginning in the fall of 2007 six attorneys and six staff members worked on James Brown matters, but none undertook to inquire about or understand Brown's copyrights, even though the copyrights were generally known to make up about half the value of Brown's music empire. Beginning August 10, 2008, the AG relied on advice of counsel for the companion and other "settling parties" whose interest in Brown's copyrights was directly adverse to that of the "I Feel Good" Foundation, but who advised that they now "spoke as one" with the AG.

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On January 30, 2009, three weeks after his appointment--with no knowledge of the Federal Copyright Act, Brown's estate plan, or the tax impact of the AG's deal--the AG's appointee recommended it to the court.

Amazingly, appointee had not reviewed a single copyright or contract -- considering it beyond the scope of his assignment.

After the recommendation, the AG announced that he had selected appointee -- already trustee for Brown's companion and the disinherited settling relatives -- to be the fiduciary for Brown's estate plan, including the "I Feel Good" Foundation.

On the strength of appointee's recommendation an overworked circuit court judge approved the AG's deal.

A last glimmer of hope existed for the copyrights given to the "I Feel Good" Foundation -- the circuit court did not specifically determine that the parties to the AG's deal were Brown's heirs.

The AG's appointee would try to fix that.

"Everybody's doing the hustle and dead on the double bump"²¹

At first the AG appears to have been oblivious to the destruction his August 10 Agreement would cause Brown's copyrights and the "I Feel Good" Foundation. On the other hand, Brown's disinherited claimed heirs and companion knew exactly how important their newly-invented status as Brown's sole heirs was. It was this status--a gift not from Brown but from the AG--that would enable them to execute their plan for the destruction of the "I Feel Good" Foundation.

The monster that the AG had inadvertently created was raising its head. And his appointee knew which side to take.

By early 2009 AG's appointee--now trustee for the disinherited claimants--approved language added to the AG's deal after August 10 asserting that the termination rights of the newly-but-incorrectly determined "heirs"-at-death was of enormous value.

These "heirs" asserted that the termination rights belonging to them -- not all properly-determined heirs over the duration of the copyrights -- were likely worth as much or more than Brown's publicity rights, 850+ copyrights and other assets. This sleight of hand became their justification for the AG's giving them about 65% of the "I Feel Good" Foundation *plus* the right to buy it all.

²¹ This copyright to "Everybody's doing the hustle and dead on the double bump" was issued in 1975 and renewed in 2003.

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In March 2009 Brown's fiduciaries used a compromise procedure to try to salvage Brown's copyrights for the "I Feel Good" Foundation by continuing with a correct heirs-at death determination.²² The AG's appointee, now committed to his role as trustee for Brown's companion, purchaser/son and some of the disinherited family rather than for the "I Feel Good" Foundation, declined.

And the AG never complained.

"Almost nothing"²³

When it seemed things could not get worse for the "I Feel Good" Foundation, they did.

Soon after son obtained a right to buy all of Brown's assets and the appointee became his trustee, they began to question the \$100-million value of Brown's assets. This was surprising, since in 2008 son himself was involved in two separate letters of intent to purchase the same James Brown assets he was now devaluing for \$90-\$102 million.

The scheme to dismantle the Foundation proceeded, full steam ahead.

In August 2010, appointee announced he had secured an appraisal which would show that Brown's assets at death were worth less than \$12 million.

A sale to son at \$12 million would drive the final nail into the "I Feel Good" Foundation's coffin – reducing it from \$80 million to \$2 million or less.²⁴

²² In an "offer of compromise" not normally published – but filed in James Brown Case No. 2008-CP-02-1647 – Brown's fiduciaries agreed for the Estate and 2000 Trust to acknowledge 4 of Brown's presumed children, proven children Cinnamon, LaRhonda, and Jeanette, and 3 others as Brown's heirs. Brown's companion, consistent with known facts, was rejected as an heir, but offered a payment to resolve her claim. With ten (10) children acknowledged as a non-exclusive group of Brown's heirs-at-death, Brown's estate and the "I Feel Good" Foundation would have been free to continue the heirs-at-death proceeding as to all others. In the future the "I Feel Good" foundation would have been free to "split heirs" as appropriate to a particular copyright.

²³ The copyright to James Brown's "Almost nothing" was issued in 1979. It will not be subject to possible termination before 2014.

²⁴ Son/prospective purchaser Terry, poised to buy James Brown's assets for as little as \$12 million, was part of two 2008 letters of intent by TJBL, LLC to purchase Brown's assets for \$90 - \$102 million. [Brown's original PR/Trustees sought about \$5 million each from the proposal, as well as options or a "kickback" from the purchaser. [Hg. 11/20/07, Case 122]. In early 2007 Terry's son and some family members issued a prospectus in early 2007 to raise \$200 million for the purchase of the James Brown assets.

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James Brown would have been rolling over in his. Between 2003 and 2006 he had earned about \$9 million each year.²⁵

Think (about it)²⁶

James Brown left two legacies – a musical legacy and a charitable legacy. Whoever benefits from it, Brown's musical legacy will live on. Brown's charitable legacy, the "I Feel Good" Foundation, cannot be recovered once it is lost. The dismantling of that legacy by the AG, his appointee and Brown's disinherited claimed relatives could have easily been avoided.

Unfortunately, it was not.

But it should serve as cautionary tale to other "needy and deserving" foundations holding valuable copyrights. It should also raise an alarm for all philanthropists and their estate planning advisors in states where the government, through activist attorneys general, is moving to take over the private property and operation of the private charitable foundations these private individuals.

²⁵ In 2009 AG and appointee, at the behest of purchaser/son, rejected a 2-year publicity rights contract with GreenLight. Among other deceased celebrities, GreenLight has successfully exploited the publicity rights of Steve McQueen and Einstein. According to a May 2011 New York times Article, Einstein, whose publicity rights are claimed by Yeshiva University in Israel, earned more than \$60 million in 2010.

²⁶ The copyright to "Think (about it)" was issued in 1973.

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COMPILATION
Registered Copyrights of James Brown
1956 - 60 and 1978 - 81

<u>Date of Publication/ Copyright</u>	<u>Description of Works</u>	<u>Earliest Possible Termination</u>
1956	About a dozen works, including "Please, please, please"	2012
1957	About six songs, including "Fine old foxy self"	2013
1978	About 30 songs	2013
1958	About 12 songs, including "Try me"	2014
1979	About 15 songs, including "Mother popcorn"	2014
1959	About 5 songs, including "Good good lovin' "	2015
1980	About 35 songs, including "Get up offa that thing"	2015
1960	About 8 songs, including "And I do what I want"	2016
1981	About 16 songs, including "God has Smiled on me"	2016

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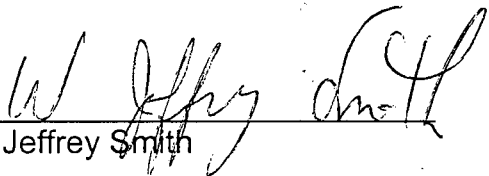
Certificate of Service

I certify that I have today served a copy of the attached Affidavit on each of the parties or their counsel by delivering them first class mail, proper postage, as follows:

Adam T. Silvernail, Esquire
Law Office of Adam T. Silvernail, LLC
1218 Taylor Street
Post Office Box 1898
Columbia, South Carolina 29202

S. Alan Wilson, Attorney General
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211

Camden Lewis, Esquire
Lewis & Babcock
Post Office Box 11208
Columbia, South Carolina 29211


W. Jeffrey Smith

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

AFFIDAVIT OF STEVEN E. FARRAR

PERSONALLY APPEARED before me, Steven E. Farrar, who being duly sworn deposes and says as follows:

1. I am a resident of Greenville County and over eighteen years of age.
2. I make this affidavit based upon my personal knowledge and belief.
3. I am member in good standing of the South Carolina Bar with Bar No. 1960.
4. I am currently the attorney of record for The Cincinnati Specialty Underwriters Insurance Company ("Cincinnati") in two lawsuits pending in the United States District Court for the District of South Carolina, Richland Division captioned as follows:

(a) The Cincinnati Specialty Underwriters Insurance Company, Plaintiff versus Buchanan Law Office, P.A., and Robert L. Buchanan, Defendants, 3:10-cv-02986 WOB; and,

(b) The Cincinnati Specialty Underwriters Insurance Company, Plaintiff versus Adele J. Pope, Defendant, 3:10-cv-02987 WOB (collectively these two actions will be referred to hereafter as the "Coverage Actions").

The Coverage Actions seek the court's declaration as to the rights and obligations of Cincinnati as they relate to a lawsuit filed May 19, 2010, in the Richland County Probate Court captioned Russell L. Bauknight etc. et al. v. Adele J. Pope and Robert L. Buchanan, Jr.; 2010-GC-4000073.

5. Discovery is on-going in the Coverage Actions. There are numerous documents which are relevant to the Coverage Actions which should be produced by various parties. Among those documents which could be relevant for coverage analysis are the final as well as all drafts, signed and unsigned, of the James Brown Legacy Trust as well as various correspondence, email and other communications between members of the office of the South Carolina Attorney

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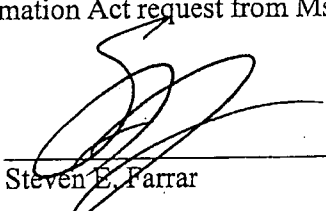
General and Russell L. Bauknight related to the value of the assets of the Estate of James Brown and/or the James Brown 2000 Irrevocable Trust.

6. My understanding is that Pope has attempted to obtain a copy of the foregoing documents pursuant to the South Carolina Freedom of Information Act by Pope on June 30, 2011. I further understand they have not been produced.

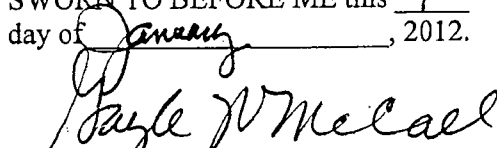
7. My belief is that certain, if not all, of these documents are, and should be, public documents available for inspection or that a full and complete disclosure should be made as to why they are not properly available for public inspection.

8. I understand the Freedom of Information Act is intended to provide members of the general public with prompt access to public documents at minimal costs or delay.

9. While I have the ability to issue federal court subpoenas upon the Attorney General of South Carolina in the Coverage Actions to obtain the aforementioned documents, I believe it will save my client time and money by having this Court rule that the documents should be released pursuant to the Freedom of Information Act request from Ms. Pope.


Steven E. Farrar

SWORN TO BEFORE ME this 4th
day of January, 2012.


Notary Public for South Carolina

My Commission Expires: 3/25/2015

STATE OF SOUTH CAROLINA

COUNTY OF NEWBERRY

Adele J. Pope,

Plaintiff,

v.

Alan Wilson, in his capacity as
Attorney General of South Carolina,

Defendant.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2011-CP-36-379

AFFIDAVIT OF DARYL L. WILLIAMS

Personally appeared before me, Daryl L. Williams, who being duly sworn,
deposes and says:

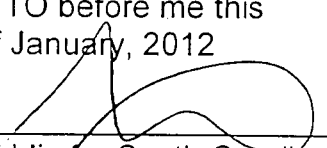
1. Attached is a true and correct copy of the letter I sent to Ms. Tracy Meyers
today.

2. Neither Attorney General Wilson nor any member of his staff is attorney of
record in Case No. 2010-CP-40-4900, and none attended the status conference.

FURTHER DEPONENT SAYETH NOT.


DARYL L. WILLIAMS

SWORN TO before me this
6th day of January, 2012


Notary Public for South Carolina

My Commission expires: 7/13/2016

(L.S.)

FILED
NEWBERRY COUNTY
2012 JAN -9 A 10:19
JACKIE S. BOWERS
CLERK OF COURT

Jeter & Williams, P.A.
ATTORNEYS AND COUNSELORS AT LAW

Edwin Russell Jeter
Daryl L. Williams

1204 Main Street, Suite 200 (29201)
Post Office Box 7425
Columbia, South Carolina 29202

Tel. 803/765-0600
Fax 803/765-0619

January 6, 2012

Hon. Tracy Meyers
Senior Assistant Attorney General
Office of the South Carolina Attorney General
PO Box 11549
Columbia, SC 29211-1549

Re: Letter of January 5, 2012 to Ms. Sue Summer

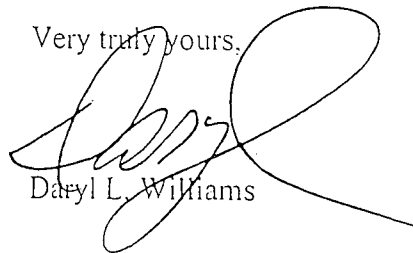
Dear Tracy:

I am in receipt of your letter of January 5, 2012 to Ms. Sue Summer. As you know, I am one of the attorneys representing Adele J. Pope in the Richland County civil case (No. 4900) you mention in that letter, as well as a suit pending in the United States District Court.

Your description of the events at the December 12, 2011 status conference held in No. 4900, at which neither you nor any attorney on the AG's staff were present, reflects a misunderstanding of what occurred. No counsel for Mrs. Pope stopped or attempted to stop the production of any document to the Court or to anyone else.

With best personal regards.

Very truly yours,



Daryl L. Williams

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STATE OF SOUTH CAROLINA)
)
COUNTY OF NEWBERRY)
)
)
Adele J. Pope,)
Plaintiff,)
)
v.)
)
Alan Wilson, in his capacity as)
Attorney General of South Carolina,)
and James Brown Legacy Trust, by)
Russell Bauknight, its Trustee)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS

Civil Action No. 2011-CP-36-364

AFFIDAVIT OF ADELE J. POPE
SUPPORTING ATTORNEY'S FEES
AND COSTS

STATE OF SOUTH CAROLINA)
)
COUNTY OF NEWBERRY)
)
)
Adele J. Pope,)
Plaintiff,)
)
v.)
)
Alan Wilson, in his capacity as)
Attorney General of South Carolina,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS

Civil Action No. 2011-CP-36-379

Personally appeared before me, Adele J. Pope, who being duly sworn, deposes
and says:

1. The Office of Attorney General Wilson and the trustee of the James Brown
Legacy Trust who serves at his pleasure, with the aid of many AG/State-employed and
private attorneys, have refused to comply with my several requests since June 2011

under the South Carolina Freedom of Information Act ("FOIA"), and have vigorously fought release of public documents.

2. The reasonable fee and costs of my attorney Adam Silvernail to attempt to correct this systematic refusal to comply with my FOIA requests are at least:

- a. To obtain the contract and documents by which the AG/State authorized Kenneth Wingate, Esq. to bring a tort suit for tens of millions of dollars of alleged lost in the name of the AG/State against Bob Buchanan and me, and authorized Russell Bauknight to speak for the State/AG in the suit: ("FOIA 1"): \$9,000, plus costs of (approx.) \$300, plus future fees and costs.¹
- b. To obtain a copy of the Legacy Trust and the AG's correspondence about a less-than \$4.7 Million valuation he used as a basis to assert to our Supreme Court that I committed the crime of overstating Brown's assets by \$79 Million: \$9,000 plus \$250 costs, plus additional fees and costs to compliance.
- c. Advice (no fee agreement) about the AG's related failures comply with FOIA. Approx. \$1,300

Total to date: \$19,850

3. I am informed and believe that the fees of Mr. Silvernail are extremely reasonable in light of the factors to be considered, namely:

- a. The nature, extent and difficulty of the case;
- b. The time necessarily devoted to the case;
- c. Professional standing of counsel;
- d. Contingency of compensation;
- e. Beneficial results obtained;
- f. Customary legal fees for similar services. See Donahue v. Donahue, 299 S.C. 353, 384 S.E.2d 741 (1989).

4. While Mr. Silvernail has practiced law for only a year, he has extensive knowledge of the James Brown matters from working in my office for several years when Bob Buchanan and I were SAs, and then PRs under Brown's Will and trustees of

¹ For each case, Mr. Silvernail has contracted to work at a rate of \$100 per hour, with a maximum of \$1,500 per case for each month or part the case has been pending.

the James Brown 2000 Irrevocable Trust.

5. Mr. Silvernail is also working on non-FOIA James Brown matters pending in Aiken County, the S. C. Supreme Court and elsewhere.

6. I am informed and believe that Mr. Silvernail knows as much or more about the Estate, 2000 Trust and James Brown cases as any other single attorney, including:

- a. The 5+ State-paid attorneys who work[ed] for AG McMaster and AG Wilson on James Brown matters;
- b. The 10+ Nexsen Pruet attorneys hired by McMaster's appointee Bauknight to secure for the Legacy Trust what McMaster "gave" the Legacy Trust when he took over Brown's assets;
- c. The Lawyers at Lewis & Babcock, even though they billed hundreds of thousand of dollars for legal services to the Estate/2000 Trust in 2007;
- d. The 4 lawyers at Atlanta firm, Powell Goldstein, LLP, (now Bryan Cave) who have advised Cannon, Dallas, Forlando and Terry Brown since 2007.

7. I am informed and believe that Mr. Silvernail's \$100 per hour is reasonable for legal services of the type and quality rendered by him in the FOIA cases, especially when compared to the rates and charges of those other attorneys, such as:

- a. Lewis & Babcock, whose attorneys and their hourly rates in James Brown matters in 2007 were:

Camden Lewis, Esq.	\$500
Keith Babcock, Esq.	\$300
Arial King, Esq.	\$225
Jonathan Harling, Esq.	\$200

- b. Sweeney, Wingate & Barrow, attorney listed below, with rates unverified:

Kenneth Wingate, Esq.
Rett Kendall, Esq.
Mark Gende, Esq.

- c. State/AG attorneys McMaster, Wilson, Jones, Nicholson, Jowers, Smith, and

Meyers.², for whom A. G. Wilson asserts he has no separate records to show time spent or costs incurred by each on Brown matters.

d. Nexsen Pruet Attorneys:

David Black, Esq.
Wm. Wilkins, Esq.
Wm. Klett, Esq.
F. Kingsmore, Esq. and others

8. I am informed and believe that the nature, extent and difficulty of James Brown work, including this FOIA case, is indicated by a single monthly bill, part of the claim of Lewis & Babcock filed in 2007, attached hereto as Exhibit A.

9. I am personally familiar with the services rendered as described on Exhibit A.

10. The Lewis & Babcock bill, covers a period of just 15 working days during which the firm billed more than Thirty Thousand (\$30,000.00) dollars in legal fees.³

11. While Judge Early has not yet ruled on the Lewis & Babcock claim for payment, Schedule A demonstrates what is involved in working on Brown cases.

12. As for beneficial results, Mr. Silvernail, has not yet obtained the FOIA documents. He has, however, made substantial progress on bringing to light questionable actions and practices of the Office of the AG, including:

a. That the McMaster/Wingate contract to sue Buchanan/Pope which AG Wilson said in September he was ready and more than willing to provide may not even be a contract binding on the State.

b. That AG Wilson is taking direction about how to handle FOIA requests from private attorney Wingate, even though the State's standard Litigation Retention Agreement requires that Wingate, if under contract with the State,

² In response to a FOIA request, AG Wilson, through AG Meyers, notified me in October that AG Wilson has no separate records of the time spent and costs incurred on James Brown matters by the many attorneys in the AG's office who have worked on James Brown matters since 2007.

³ The sole entry by Mr. Lewis (ACL) during the month was a \$300 charge for 6/10 of an hour of "fact investigation."

comply with FOIA and take directions from the AG.

c. Russell Bauknight apparently brought suit against me speaking on behalf of the Attorney General of South Carolina when he had no authorization to do so.

d. Mr. Wingate apparently brought a contingency fee lawsuit against me on behalf of the AG/State with no contract to do so.

e. One page of the 16-page "contract" document is now either missing or has not been identified.

13. I am aware that several attorneys – myself included – have recommended Mr. Silvernail to people seeking legal services because we trust his scholarship and integrity.

14. Both Mr. Silvernail and I have worked vigorously to keep costs down in these FOIA matters, and I am informed and believe we have done so.

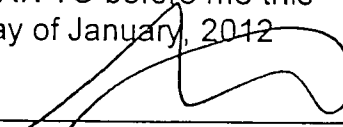
15. I am informed and believe that all of the legal fees I have requested in FOIA 1 and FOIA 2 are reasonable; and should be charged to Defendants, jointly and severally in FOIA 1, with continuing fees and costs until each has fully complied with FOIA.

FURTHER DEPONENT SAYETH NOT.



ADELE J. POPE

SWORN TO before me this
9th day of January, 2012



Notary Public for South Carolina

My Commission expires: 7/13/2016

(L.S.)

Lewis & Babcock, L.L.P.
1513 Hampton Street
PO Box 11208
Columbia, South Carolina 29211

Ph:803-771-8000

Fax:803-733-3534

Estate of James Brown
Post Office Box 463
Aiken, South Carolina 29802

December 18, 2007

File #: 07116

Invoice #: 36871

Attn: Robert L. Buchanan, Jr., Esquire
RE: In Re: The Estate of James Brown
Hourly

DATE	DESCRIPTION	HOURS	AMOUNT	
Nov-01-07	Document, Letter Review (correspondence and Order for protection for counsel for Cannon)	0.20	\$40.00	WJH
Nov-01-07	Document, Letter Review (correspondence from Rosen re: motion for summary judgment)	0.20	\$40.00	WJH
Nov-01-07	Letter to Judge Early re: motion for summary judgment	1.10	\$220.00	WJH
Nov-01-07	Telephone (Dallas)	0.30	\$60.00	WJH
Nov-01-07	Document, Letter Review (docs received from Levenson pursuant to subpoenas)	3.80	\$760.00	WJH
Nov-01-07	Update file organization	0.30	\$24.00	PKM
Nov-02-07	Conference (summary judgment)	0.20	\$60.00	KMB
Nov-02-07	Document, Letter Review (Rosen, SA motion, Richter motion); E-mail	0.40	\$120.00	KMB
Nov-02-07	Document, Letter Review Return to Petition	0.30	\$67.50	AEK
Nov-02-07	Document, Letter Review review/redact billing statement	0.60	\$155.00	AEK
Nov-02-07	Document, Letter Review (Buddy Dallas re: any fees for Tucker)	0.20	\$40.00	WJH

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Nov-02-07	Telephone (Bell re: summary judgment motion)	0.30	\$60.00	WJH
Nov-02-07	Telephone (Dallas re: Bell)	0.30	\$60.00	WJH
Nov-02-07	Telephone (Jackson re: hearing transcripts)	0.30	\$60.00	WJH
Nov-02-07	Document Preparation (return to petition for contempt)	1.80	\$360.00	WJH
Nov-02-07	Document, Letter Review (master file by SA)	0.40	\$80.00	WJH
Nov-02-07	Document, Letter Review (correspondence from SAs re: doc review)	0.20	\$40.00	WJH
Nov-05-07	E-mail all counsel (agenda/motins)	0.50	\$112.50	AEK
Nov-05-07	Telephone w/ Bland	0.30	\$67.50	AEK
Nov-05-07	Telephone (Dallas)	0.30	\$60.00	WJH
Nov-05-07	Telephone (Ray Massey re: I Feel Good Trust)	0.30	\$60.00	WJH
Nov-05-07	Document, Letter Review (prepared hearing agenda from Rosen)	0.20	\$40.00	WJH
Nov-05-07	Document, Letter Review (AG's motion for extension and respond to proposed Order)	0.30	\$60.00	WJH
Nov-05-07	Document, Letter Review (fax from Adele Pope re: documents)	0.20	\$40.00	WJH
Nov-05-07	Telephone (Adele Pope re: docs received per subpoena)	0.30	\$60.00	WJH
Nov-05-07	Research (Bureau of vital statistics)	0.90	\$180.00	WJH
Nov-05-07	Discovery Bates label and index copies of bank statements received from L. Levenson (via subpoena)	4.80	\$384.00	PKM
Nov-06-07	Conference	0.30	\$150.00	ACL
Nov-06-07	Document Preparation opp. to SJ	3.00	\$675.00	AEK

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Nov-06-07	Research	REDACTED	3.00	\$675.00	AEK
Nov-06-07	Document, Letter Review (Petition for contempt from Jackson)		0.40	\$80.00	WJH
Nov-06-07	Research	REDACTED	1.70	\$340.00	WJH
Nov-06-07	Discovery Reproduce bank records received from L. Levenson via subpoena and bates labeled; deliver same to Adele Pope; index bank statements		1.80	\$144.00	PKM
Nov-07-07	Facts Investigation		0.60	\$300.00	ACL
Nov-07-07	Preparation hearing prep.		1.00	\$225.00	AEK
Nov-07-07	Research	REDACTED	0.50	\$112.50	AEK
Nov-07-07	Conference w/ ACL	REDACTED	0.50	\$112.50	AEK
Nov-07-07	Document Preparation redact Hammond bill		0.50	\$112.50	AEK
Nov-07-07	Telephone (Dallas re: motion for summary judgment)		0.30	\$60.00	WJH
Nov-07-07	Conference w/ AEK re: Nov. 15 hearing		0.40	\$80.00	WJH
Nov-07-07	Telephone begin prep for Nov. 15 hearing		1.10	\$220.00	WJH
Nov-08-07	Document, Letter Review (Order); Conference w/ Ariail and Jonathan		1.00	\$300.00	KMB
Nov-08-07	Document, Letter Review w/ KMB (trial prep/outstanding motions)		0.30	\$67.50	AEK
Nov-08-07	E-mail Rosen/Peeples/Levensen		0.20	\$45.00	AEK
Nov-08-07	Preparation for Nov. 15 hearing		1.80	\$360.00	WJH
Nov-08-07	Update file organization		0.20	\$16.00	PKM
Nov-08-07	Update court chronology		0.50	\$40.00	PKM

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Nov-09-07	Document, Letter Review (Levenson): Conference w/ Ariail and Jonathan	1.10	\$330.00	KMB
Nov-09-07	Telephone w/ S. Jackson (hearing)	0.50	\$112.50	AEK
Nov-09-07	Document Preparation memo opp. to SJ	1.00	\$225.00	AEK
Nov-09-07	Telephone (Jackson re: Nov. 15 hearing)	0.30	\$60.00	WJH
Nov-09-07	Document, Letter Review (subpoena from Levenson)	0.30	\$60.00	WJH
Nov-09-07	Document, Letter Review (letter from Levenson re: subpoena)	0.20	\$40.00	WJH
Nov-09-07	Document Preparation (reply to contempt)	1.40	\$280.00	WJH
Nov-09-07	Preparation (Nov. 15 hearing)	1.90	\$380.00	WJH
Nov-11-07	Document, Letter Review (Levenson)	0.10	\$30.00	KMB
Nov-11-07	Other Print and organize e-mails regarding outstanding motions, agenda and other issues related to the case	1.50	\$120.00	PKM
Nov-12-07	Document, Letter Review (Bell, Richter; Levenson (agenda), Jackson (motion re: JBE)); Conference w/ Ariail and Pat ; Preparation for hearing	1.80	\$540.00	KMB
Nov-12-07	Preparation for hrg.	1.20	\$270.00	AEK
Nov-12-07	Telephone (Stan Jackson re: Nov. 15 hearing)	0.30	\$60.00	WJH
Nov-12-07	Conference w/ Keith re: status of case	0.40	\$80.00	WJH
Nov-12-07	Preparation (Nov. 15 hearing)	2.40	\$480.00	WJH
Nov-12-07	Document, Letter Review (proposed hearing agenda from Levenson)	0.30	\$60.00	WJH
Nov-12-07	Document, Letter Review (Brown's response from Tommy Rae's motion for Summary Judgement)	0.20	\$40.00	WJH

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Nov-12-07	Document, Letter Review (Subpoena from Levenson for Buddy Dallas)	0.20	\$40.00	WJH
Nov-12-07	Document, Letter Review (notice of filing affidavits from David Bell)	0.30	\$60.00	WJH
Nov-12-07	Document, Letter Review (Velma Warren Brown's notice of elective share)	0.30	\$60.00	WJH
Nov-12-07	Document, Letter Review (supplemental motion from Jackson)	0.30	\$60.00	WJH
Nov-12-07	Document, Letter Review (Levenson re: red organ)	0.20	\$40.00	WJH
Nov-12-07	Document, Letter Review (counsel for David Cannon re: hearing)	0.20	\$40.00	WJH
Nov-12-07	Document, Letter Review (Levenson re: Forlando Brown depo)	0.20	\$40.00	WJH
Nov-12-07	Telephone (Dallas re: Nov. 15 hearing)	0.30	\$60.00	WJH
Nov-12-07	Letter (PRs re: Nov. 15 hearing)	0.40	\$80.00	WJH
Nov-12-07	Preparation (meeting w/ PRs)	1.90	\$380.00	WJH
Nov-12-07	Travel and meeting w/ PRs to prepare for hearing	8.10	\$1,620.00	WJH
Nov-12-07	Discovery Organize materials related to the agenda for motion on November 11, 2007; update court chronology; update research	4.80	\$384.00	PKM
Nov-13-07	Telephone ; Conference	0.50	\$150.00	KMB
Nov-13-07	Document, Letter Review ; Conference w/ Ariail) ; Preparation ; Conference w/ Jonathan and Ariail	1.30	\$390.00	KMB
Nov-13-07	Document, Letter Review (Jones, Cordle); Conference; Preparation for Hearing	1.40	\$420.00	KMB
Nov-13-07	Conference hrg. prep/conf. WJH	0.50	\$112.50	AEK

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Nov-13-07	Document, Letter Review Levenson's Supp. Petition; Motion; Return	0.80	\$180.00	AEK
Nov-13-07	Document, Letter Review Levenson motions (4)	1.20	\$270.00	AEK
Nov-13-07	Discovery Bates label documents related to subpoenas for 11/15/07 hearing; organize same	1.80	\$144.00	PKM
Nov-13-07	Discovery Review H. Dewain Herring's file at Adele Pope's office re: original signed trust; arrange for Ms. Pope to bring duplicate original to 11/15/07 hearing	1.80	\$144.00	PKM
Nov-13-07	Other Organize correspondence, notes and research	1.20	\$96.00	PKM
Nov-13-07	Discovery Review documents obtained from D. Cannon for response to E. Bland's supplemental responses to discovery.	0.80	\$64.00	PKM
Nov-14-07	Document, Letter Review (Richter - Cannon Discovery) ; Preparation for Hearing ; Telephone conference call w/ PRs	6.90	\$2,070.00	KMB
Nov-14-07	Conference w/ KMB/WJH	0.70	\$157.50	AEK
Nov-14-07	Preparation for hrg.	5.10	\$1,147.50	AEK
Nov-14-07	Telephone w/ Miller (Trust)	0.40	\$90.00	AEK
Nov-14-07	Document Preparation (memo re: meeting w/ PRs)	0.40	\$80.00	WJH
Nov-14-07	Document, Letter Review (AG's response to SA's motion to coningle funds)	0.20	\$40.00	WJH
Nov-14-07	Document Preparation (motion to quash subpoena)	1.10	\$220.00	WJH
Nov-14-07	Letter (Early re: hearing agenda)	1.00	\$200.00	WJH
Nov-14-07	Document, Letter Review (motion to compel inspection by Rosen)	0.30	\$60.00	WJH

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Nov-14-07	Document, Letter Review (proposal from Levenson re: personal property)	0.40	\$80.00	WJH
Nov-14-07	Document, Letter Review (letter to Court from AG's office)	0.20	\$40.00	WJH
Nov-14-07	Preparation (hearing in Bamberg)	7.60	\$1,520.00	WJH
Nov-14-07	Discovery Assist Attorneys Lewis, Babcock, King and Harling with preparation for Motions hearing on 11/15/07; assemble and organize all outstanding motions w/ responses and all correspondence related to the hearing per motion; assemble and organize documents in response to subpoenas	8.30	\$664.00	PKM
Nov-15-07	Court Appearance (hearing in Bamberg); Preparation; Travel to/from Bamberg	12.00	\$3,600.00	KMB
Nov-15-07	Telephone w/ KMB	0.30	\$67.50	AEK
Nov-15-07	Document Preparation memo re: accounting doc's to Levenson	1.50	\$337.50	AEK
Nov-15-07	Travel and Court Appearance in Bamberg, SC	12.00	\$2,400.00	WJH
Nov-16-07	Telephone (Bill Hammond); Conference (Jonathan and Ariail); Letter (Hammond); Document, Letter Review	1.40	\$420.00	KMB
Nov-16-07	Document, Letter Review (GA opposing, Rosen - Brown appraisal; Velma Brown); Preparation (next week)	0.80	\$240.00	KMB
Nov-16-07	Conference w/ KMB	0.20	\$45.00	AEK
Nov-16-07	Conference w/ KMB	0.30	\$67.50	AEK
Nov-16-07	Preparation for Nov. 20 hearing	1.20	\$240.00	WJH
Nov-16-07	Conference w/ Keith re: status of case	0.30	\$60.00	WJH
Nov-16-07	Document, Letter Review (Judge Early re: Nov hearing)	0.30	\$60.00	WJH

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Nov-16-07	Telephone (Jackson	REDACTED	0.50	\$100.00	WJH
Nov-16-07	Telephone (Dallas	REDACTED	0.30	\$60.00	WJH
Nov-16-07	Telephone (Bradley	REDACTED	0.30	\$60.00	WJH
Nov-16-07	Letter (to PRs	REDACTED	0.60	\$120.00	WJH
Nov-16-07	Research		0.60	\$120.00	WJH
Nov-16-07	Conference w/ Keith re: status of case		0.40	\$80.00	WJH
Nov-16-07	Telephone (Jackson	REDACTED	0.20	\$40.00	WJH
Nov-16-07	Preparation for Nov. 20 hearing		1.20	\$240.00	WJH
Nov-16-07	Discovery Bates label and index master file documents		2.80	\$224.00	PKM
Nov-16-07	Update file organization		0.30	\$24.00	PKM
Nov-18-07	Document, Letter Review ; Preparation (Tuesday hearing) ; Conference w/ Jonathan		0.50	\$150.00	KMB
Nov-18-07	Document, Letter Review (Stan Jackson	REDACTED	0.30	\$60.00	WJH
Nov-18-07	Document, Letter Review (proposed order from Rosen re: inspection of residence)		0.30	\$60.00	WJH
Nov-18-07	Letter to Keith re: November hearing		0.30	\$60.00	WJH
Nov-19-07	Telephone (Pope and Buchanan, Tucker, Adele, Rosen, Jonathan, Jones) ; Conference w/ Cam ; Preparation for hearing		3.80	\$1,140.00	KMB
Nov-19-07	Conference w/ KMB/WJH		0.20	\$45.00	AEK
Nov-19-07	Conference w/ Keith re: status of cases		0.30	\$60.00	WJH
Nov-19-07	Telephone (Judge re: Nov. hearing)		0.40	\$80.00	WJH

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STATE OF SOUTH CAROLINA)
)
COUNTY OF: AIKEN)
)
IN THE MATTER OF: JAMES BROWN)
)
) IN THE PROBATE COURT
) STATEMENT OF CREDITOR'S CLAIM
)
) CASE NUMBER: 07-ES-02-0056

Decedent's Date of Death (if known): December 25, 2006
Decedent's Last Mailing Address: 430 Douglas Drive, Beech Island, South Carolina

Creditor: Lewis & Babcock, LLP
Address: P.O. Box 11208
Columbia, SC 29211
Telephone: 803-771-8000

Basis of claim:

Attorney's fees incurred in the representation of the Estate of James Brown, the Brown Family Education Trust, and the I Feel Good Trust. This claim is submitted as a priority expense of estate administration pursuant to S.C. Code § 62-3-801(a)(1).

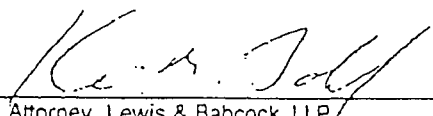
Amount of claim \$ 348,960.43

Date claim will become due (if not already due): , 20

Nature of uncertainty as to amount of claim and due date, if any:

The claim is currently due, and there is no uncertainty as to amount.

Description of any security as to claim:

Signature: 
Title: Attorney, Lewis & Babcock, LLP
Date: December 19, 2007

INSTRUCTIONS: Claims must be filed with the Probate Court of this county and delivered or mailed to the Personal Representative appointed to administer the estate (see section 62-3-803, 62-3-804, and 62-3-806 on next page.)

-0556-



000391

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Adele J. Pope,

Plaintiff,

v.

Alan Wilson, in his capacity as
Attorney General of South
Carolina and James Brown
Legacy Trust, by Russell L. Bauknight,
its Trustee

Defendants.

IN THE COURT OF COMMON PLEAS

Civil Action No. 2011-CP-40-350

PLAINTIFF'S BRIEF IN OPPOSITION
TO MOTION OF ATTORNEY GENERAL TO
CONSOLIDATE CASES

JEANETTE W. McBRIDE
C.C.P. & G.S.

2012 MAR 21 AM 8:56

RICHLAND COUNTY
FILED

TO: DEFENDANT ALAN WILSON, IN HIS CAPACITY AS ATTORNEY GENERAL
OF SOUTH CAROLINA AND/OR HIS COUNSEL

Plaintiff submits this brief in opposition to the Attorney General's motion, dated February 1, 2012, to consolidate this case ("Case 350") with Richland County Case No. 2010-CP-40-4900 ("Case 4900"). The motion should be denied for the reasons set out below, and this FOIA action should proceed to a final hearing.

I. Rule 42 should not ordinarily apply to Freedom of Information Act ("FOIA") cases.

Rule 42, *South Carolina Rules of Civil Procedure*, provides in part:

When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all matters in issue in that action; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

In effect, Rule 42 provides for cases to be consolidated for trial where doing so will

promote judicial economy and/or convenience to the parties and where common questions of law or fact exist in more than one case. Because the sole purpose of FOIA is allowing the media and public at large to have immediate access to documents, the process of consolidation itself would serve to delay and defeat the purpose of FOIA. Further, FOIA cases ordinarily would have no discovery and a single *nonjury* hearing, consistent with its purpose to provide public documents at the earliest time.

Consolidation of any FOIA case, including this one, will cause at least substantial delay and some measure of turmoil for the FOIA Plaintiff, the media and the general public who are entitled to the public documents which are the subject of a FOIA action. To deprive FOIA plaintiffs and the public of such documents through substantial delay will only defeat the letter and spirit of FOIA. In this Case, consolidation with Case 4900, a tort case with substantial jury questions, none of which are common to this FOIA case, will deprive Plaintiff, the media and the general public of information which they should have been given before August 1, 2011, before this suit was commenced.

II. Consolidation of this FOIA case with a two-year-old tort suit will cause substantial delay, thereby depriving Plaintiff of her rights to equal protection and due process, as well as her rights under FOIA.

This case, brought under FOIA in Newberry County on August 3, 2011, seeks a small number of significant public documents from Defendants, as well as a confirmation that Defendant Legacy Trust is a public body. The Legacy Trust was created by former Attorney General Henry McMaster to hold assets he, by use of his public authority, directed to be transferred from a private estate and trust. Plaintiff, McMaster's successor Alan Wilson, and the Legacy Trust are the only parties to this action. Plaintiff's summary

judgment motion has been pending for six months. Should it not be granted, the case is ready for a *nonjury* trial on the merits.

The only material question of fact or law is whether the two Defendant public bodies should produce the requested public documents and pay for the delay. It might also be stated as three simple *non-jury* questions of law:

- a. Must the Attorney General of South Carolina, under FOIA, produce the organizational document of an entity created by a former AG?
- b. Must the entity also produce the organizational document under FOIA?
- c. Must the Attorney General produce public documents related to his office's representation to the S.C. Supreme Court that James Brown's music empire was worth less than \$4.7 Million when he died on December 25, 2006?

Judicial economy, the spirit and letter FOIA demand that these questions be answered and the documents produced immediately.

This FOIA case was not commenced in this County, but rather in Newberry County where Plaintiff and others have made – and been denied – FOIA requests for these and other public documents related to Aiken County resident James Brown, who established The James Brown “I Feel Good” Trust in Aiken County in 2000.

Refusing to produce the public documents in August 2011, Defendants instead sought dismissal, asserting – incorrectly – that the James Brown litigation was centered in Richland County. While delaying, Defendants declined to produce the requested documents to Plaintiff and others.

At a hearing held in January 2011 – 5 months after the request should have been honored – Defendants persuaded the Court to transfer venue – a non-appealable action – to Richland County, where only one of the more than 20 James Brown cases has been

filed.

Defendant Attorney General then declined to join in a request for an expedited hearing, and, instead, moved to consolidate this FOIA case with Case 4900, a tort case filed nearly two years ago, on May 19, 2010. It is a jury case with extraordinarily complex questions of fact and law, including some of first impression in the State and nation. They include:

1. May a private law firm, representing a dozen citizens of various states, simultaneously seek tort relief from S.C. Citizens as attorney for the State of South Carolina *without any Attorney General or assistant* serving as counsel in the case?
2. Do persons intentionally excluded by James Brown from his Estate Plan, but given an interest by former AG McMaster have standing to sue those who defended Brown's estate plan as written?
3. Does private plaintiff Russell Bauknight have the right to assert that he speaks on behalf of the S.C. Attorney General?
4. If Bauknight can speak for former AG McMaster, does he maintain the right to speak on behalf of subsequent AGs, or the State?
6. Is the State of South Carolina bound by the default of the private Wingate Law firm as to the Case 4900 Defendants' counterclaims for:
 - a. Abuse of Process;
 - b. Civil Conspiracy;
 - c. Intentional Interference with Contract;
 - d. Violation of § 62-1-106; and
 - e. Attorneys' fees?
7. Is it a violation of separation of powers or other statutes or rules for the Attorney General to seek tort funds for the benefit of non-citizens of SC?
8. Did Bauknight commit a fraud upon the court by asserting in a sworn document filed in Aiken County that James Brown's music empire was worth less than \$4.7 Million when it was actually worth about \$85 Million?
9. Do Bauknight and Terry Brown have an improper relationship with felon David Cannon?

10. Did Bauknight intentionally cause tens of millions of dollars of damage to James Brown's Royalties by failing to acknowledge that Tommie Rae was not the wife of James Brown, and purporting to acknowledge her as an heir without reviewing her own diaries, waivers, lawsuit by James Brown and other Aiken County documents that prove she is not Brown's wife, and is entitled to nothing?

Twenty-two months after Case 4900 was filed, Plaintiffs have not produced a single document beyond a two-page witness list. Every private Plaintiff has refused to appear at deposition.

Further, counsel for the private plaintiffs – whose right to represent them has never been challenged – has refused for almost a year to allow his many private clients to sit for depositions as to the counterclaims. He asserts, with no basis to do so, that he cannot represent his dozen private clients unless he has the State of South Carolina as his client also.

No hearing has been set on this question, and Plaintiffs' counsel has allowed Case 4900 to languish for nearly two years.

The letter and spirit of FOIA require that actions brought under FOIA be allowed to proceed quickly and efficiently, as this case would have but for the Defendants' time-wasting procedural wrangling.

Because this FOIA case is ready to proceed to a final hearing, consolidation with Case 4900, which is mired in discovery and other issues, serves no purpose other than to delay Plaintiff's receipt of the documents sought herein. To subject Plaintiff to needless delay simply because she is involved in other litigation with the State would be to deprive

her of her rights to equal protection¹ and due process² under the United States and South Carolina Constitutions. Further, S.C. Code Ann. § 30-4-15 provides that FOIA is intended to provide citizens with documents and information "at a minimum cost or delay."

To consolidate one case which is ready for final hearing with another which is years away from trial would serve no reasonable end.

III. There is no common question of law or fact in Case 4900.

As stated above, Case 4900 presents novel, complex questions of fact and law. No such complexity exists in this FOIA case. Nor are the questions common – or even similar.

There is no common question of law between the two cases. The Attorney General asserts the fact that the public documents sought herein are also discoverable in Case 4900 requires Plaintiff's FOIA claims to be joined with the ongoing discovery issues in that case. To do so would fly in the face of FOIA. S.C. Code Ann. § 30-4-100 provides that any citizen who is denied access to public information may bring suit in the Circuit Court for injunctive and declaratory relief. Plaintiff had the right, and, arguably, the *obligation* to bring this suit separately from any pending litigation. Federal caselaw has confirmed that FOIA and discovery proceedings are distinct, even where there are parallel proceedings

¹ "The *sine qua non* of an equal protection claim is a showing that similarly situated persons received disparate treatment." *Grant v. S.C. Coastal Council*, 319 S.C. 348, 354, 461 S.E.2d 388, 391 (1995).

² "[D]ue process is flexible and calls for such procedural protections as the particular situation demands." The requirements in a particular case depend on the importance of the interest involved and the circumstances under which the deprivation may occur. *Sloan v. S.C. Bd. Of Physical Therapy Exam'rs*, 370 S.C. 452, 636 S.E.2d 598 (2006) (internal citations omitted.).

between similar parties. See *North v. Walsh*, 881 F.2d 1088 (D.C. Circuit 1991). The legal questions posed by this FOIA case are entirely different from the myriad issues in Case 4900.

Additionally, the parties to this case are not similar to those of Case 4900. A substantial question exists as to whether the AG/State is even a party to Case 4900. Defendant Pope asserts that he is not because he has never appeared through an authorized representative. No member of his staff has signed any pleading or filed an appearance in Case 4900, even though the Attorney General's own "Standard Litigation Retention Agreement" requires it. The private Plaintiffs' counsel therein brought suit under the Attorney General's name without proper authorization. As Plaintiff argues in Case 4900, that arrangement is illegal. More recently, the Attorney General's office has disclosed that it has no signed agreement with the Case 4900 Plaintiffs' counsel.

IV. Consolidation will allow interference of private individuals with Plaintiff's FOIA rights:

As discussed above, it is impossible for these cases to be consolidated for trial. The cases could not be reasonably consolidated for discovery, seeing as this FOIA case is not expected to require any discovery, whereas Case 4900 awaits the sorting out of massive discovery issues and what will likely be a year or more of actual discovery.

The only possible changes to this FOIA case which will result from consolidation are delay and the participation of the numerous additional parties to Case 4900. The private Case 4900 Plaintiffs have already made attempts to intervene in a separate FOIA case filed by Plaintiff (formerly Newberry County Case No. 2011-CP-36-0379, now consolidated with Case 4900), with the express purpose of minimizing or preventing Plaintiff's receipt

of the documents she seeks therein.

Shockingly, the Attorney General has not opposed the unprecedented attempts by these dozen-or-more individuals to intervene in and attempt to control the outcome of a FOIA case. The Attorney General's conduct in that case, and now his attempt to consolidate this FOIA case with Case 4900, raise a number of important questions. Would the Attorney General support the efforts of State officers to individually intervene in FOIA litigation to stifle the public's access to documents which could be personally or professional embarrassing? If journalists seek public documents related to ongoing litigation, will these journalists be forced into tort cases to fight private individual parties, many of whom (like the private Case 4900 Plaintiffs) have no obligations under FOIA?

Further, the Case 4900 Plaintiffs have stonewalled all discovery requests, including requests seeking some of the documents sought herein. The Case 4900 Plaintiffs have refused to sit for depositions in their nearly two-year-old action.

It is clear from the actions of the Case 4900 Plaintiffs that they will make every effort to stymie Plaintiff's attempts at obtaining important documents, and it would violate Plaintiff's FOIA and Constitutional rights to allow their involvement in this FOIA case.

Conclusion

As set out herein, as well as in all of Plaintiff's filings herein, consolidation of this FOIA case with Case 4900 is unwarranted, improper and would violate Plaintiff's rights. For these reasons, Plaintiff asks that the Court deny the Attorney General's motion and proceed to a hearing on Plaintiff's motion for summary judgment and, if necessary, a final hearing on the merits herein.

Respectfully Submitted,



Adam T. Silvernail
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Tel: 803/779-1770
Fax: 803/403-8092
Email: adam@silvernaillawfirm.com

March 14, 2012

Attorney for Plaintiff

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Adele J. Pope,)
Plaintiff,)

v.)

Alan Wilson, in his capacity as)
Attorney General of South)
Carolina and James Brown)
Legacy Trust, by Russell L. Bauknight,)
its Trustee)
Defendants.)

IN THE COURT OF COMMON PLEAS

Civil Action No. 2011-CP-40-350

CERTIFICATE OF SERVICE

JEANELLE W. McBRIDE
C.O.P. & G.S.

2012 MAR 21 AM 8:56

RICHLAND COUNTY
FILED

I certify that on the 14th day of March, 2012, I have served the Plaintiff's Brief in Opposition to Motion of Attorney General to Consolidate Cases in the above-captioned matter on Defendants and parties to Case 2010-CP-40-4900 or their attorneys of record by first-class mail, postage prepaid, addressed as follows:

J. Emory Smith, Jr., Esquire
Office of the South Carolina Attorney General
Post Office Box 11549
Columbia, South Carolina 29211

Attorney for Defendant Attorney General, Case 2011-CP-40-350

A. Camden Lewis, Esquire
Ariail E. King, Esquire
Lewis & Babcock, LLP
Post Office Box 11208
Columbia, South Carolina 29211

Attorney for Defendant Legacy Trust, Case 2011-CP-40-350

Kenneth B. Wingate, Esquire
Everett A. Kendall, Esquire
Sweeney, Wingate & Barrow, P.A.
1515 Lady Street
Post Office Box 12129
Columbia, South Carolina 29211

Attorneys for Plaintiffs, Case 2010-CP-40-4900.

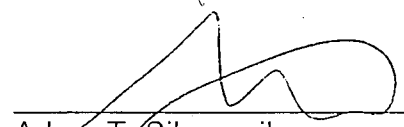
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000401

Robin A. Braithwaite, Esquire
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Aiken, South Carolina 29802

Attorneys for Defendant Robert L. Buchanan, Jr., Case 2010-CP-40-4900

March 14, 2012



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Request for Hearing in James Brown Matters -- Bauknight, et al vs. Pope AND Pope vs. Wilson, Case No. 2010-CP-40-4900 AND Pope vs. Wilson, et al, Case No. 2011-CP-40-0350

4 messages

Adam Silvernail <adam@silvernaillawfirm.com>

Wed, May 8, 2013 at 10:28 AM

To: "Manning, L. Casey Law Clerk (Joy E. Middleton)" <CManningLC@sccourts.org>, "cmanningj@sccourts.org" <cmanningj@sccourts.org>

Cc: Emory Smith <agesmith@scag.gov>, "Mark V. Gende" <MVG@swblaw.com>, "Ken B. Wingate" <kbw@swblaw.com>, "Aaron J. Hayes" <AJH@swblaw.com>, agjwmcinto@scag.gov, agrcook@scag.gov, "agsjones@scag.gov" <agsjones@scag.gov>, Daryl Williams <dwilliams@jeterandwilliams.com>, "kmb@lbglegal.com" <kmb@lbglegal.com>, "Ariail E. King" <aek@lbglegal.com>

Bcc: Adele Pope <adele@popelawfirm.com>

Dear Judge Manning:

We have this morning received notice of the Supreme Court's denial of all Petitions for Rehearing of the Court's February 27th opinion in Aiken County Case No. 2008-CP-02-1647.

We understood from your law clerk that you were awaiting a decision on these petitions to set hearings in these matters. Because of the importance of speedy disposition of FOIA matters and the fact that my client's 2 FOIA cases have now been pending for more than 20 months, we would appreciate your scheduling the FOIA matters for hearing at the Court's earliest convenience.

At the same time, we request that you hear all motions which are delaying the appearance by 5 of the Plaintiffs in Case 4900 at depositions noticed for several months ago. Thank you for your consideration.

Sincerely,
Adam Silvernail

--
Adam T. Silvernail
Law Office of Adam T. Silvernail, LLC
Post Office Box 1898
1901 Hampton Street
Columbia, South Carolina 29202-1898
tel: 803/779-1770
fax: 803/403-8092

Emory Smith <ESmith@scag.gov>

Wed, May 8, 2013 at 10:40 AM

To: Adam Silvernail <adam@silvernaillawfirm.com>, "Manning, L. Casey Law Clerk (Joy E. Middleton)" <CManningLC@sccourts.org>, "cmanningj@sccourts.org" <cmanningj@sccourts.org>

Cc: "Mark V. Gende" <MVG@swblaw.com>, "Ken B. Wingate" <kbw@swblaw.com>, "Aaron J. Hayes" <AJH@swblaw.com>, John McIntosh <JMcIntosh@scag.gov>, Bob Cook <BCook@scag.gov>, Sonny Jones <SJones@scag.gov>, Daryl Williams <dwilliams@jeterandwilliams.com>, "kmb@lbglegal.com" <kmb@lbglegal.com>, "Ariail E. King" <aek@lbglegal.com>

Your Honor, I am prepared and available for a hearing in the FOIA cases at most any time, but note the following conflicts through the end of June and would appreciate protection as to them:

May 13 and 14 – oral argument in Richmond

May 16 – motion hearing in Chas. I should be back by 3 pm

May 22 am – Dr's appt.

June 6 am – oral argument, Sup. Ct.

June 11 – Trial, Chas. Co.

June 24-28 - family travel

Respectfully,

Emory Smith

Counsel for Defendant Wilson

J. Emory Smith, Jr.

Assistant Deputy Attorney General

Office of the Attorney General

P.O. Box 11549

Columbia, SC 29211

Phone: 803-734-3680

From: Adam Silvernail [mailto:adam@silvernaillawfirm.com]

Sent: Wednesday, May 08, 2013 10:28 AM

To: Manning, L. Casey Law Clerk (Joy E. Middleton); cmanningj@sccourts.org

Cc: Emory Smith; Mark V. Gende; Ken B. Wingate; Aaron J. Hayes; John McIntosh; Bob Cook; Sonny Jones; Daryl Williams; kmb@lbglegal.com; Ariail E. King

Subject: Request for Hearing in James Brown Matters -- Bauknight, et al vs. Pope AND Pope vs. Wilson, Case No. 2010-CP-40-4900 AND Pope vs. Wilson, et al, Case No. 2011-CP-40-0350

[Quoted text hidden]

Mark V. Gende <MVG@swblaw.com>

Wed, May 8, 2013 at 11:58 AM

To: Emory Smith <ESmith@scag.gov>, Adam Silvernail <adam@silvernaillawfirm.com>, "Manning, L. Casey Law Clerk (Joy E. Middleton)" <CManningLC@sccourts.org>, "cmanningj@sccourts.org" <cmanningj@sccourts.org>
Cc: "Ken B. Wingate" <KBW@swblaw.com>, "Aaron J. Hayes" <AJH@swblaw.com>, John McIntosh <JMcIntosh@scag.gov>, Bob Cook <BCook@scag.gov>, Sonny Jones <SJones@scag.gov>, Daryl Williams <dwilliams@jeterandwilliams.com>, "kmb@lbglegal.com" <kmb@lbglegal.com>, "Ariail E. King" <aek@lbglegal.com>

Dear Judge Manning:

In response to the email string below, I note that Mr. Silvernail neglects to inform the court that today the Supreme Court not only denied all motions for rehearing, but also issued a new, lengthy opinion in the James Brown Estate matter (45 pages including concurrence). The Supreme Court substitutes this new opinion for its prior opinion.

Case 4900 plaintiffs/proposed FOIA intervenors believe that your decision following the recent status conference that matters in case 4900, including the related FOIA matters, should be held in abeyance at this time is still correct, an potentially even more appropriate in light of the new Supreme Court opinion issued today. I plan to provide to you by the end of the week a more detailed discussion of this position in light of the Supreme Court's new opinion. I respectfully request the court allow time to receive and consider this forthcoming letter before making any decision regarding scheduling any motions.

Respectfully,

Mark Gende

Attorney for Case 4900 Plaintiffs/Proposed FOIA Intervenors

Mark V. Gende, Esq.

Sweeny, Wingate, & Barrow, PA

1515 Lady Street

Columbia, South Carolina 29201

803.256.2233 – Phone

803.256.9177 – Facsimilie

From: Emory Smith [mailto:ESmith@scag.gov]

Sent: Wednesday, May 08, 2013 10:40 AM

To: Adam Silvernail; Manning, L. Casey Law Clerk (Joy E. Middleton); cmanningj@sccourts.org

Cc: Mark V. Gende; Ken B. Wingate; Aaron J. Hayes; John McIntosh; Bob Cook; Sonny Jones; Daryl Williams; kmb@lbglegal.com; Ariail E. King

Subject: RE: Request for Hearing in James Brown Matters -- Bauknight, et al vs. Pope AND Pope vs. Wilson, Case No. 2010-CP-40-4900 AND Pope vs. Wilson, et al, Case No. 2011-CP-40-0350

[Quoted text hidden]

Emory Smith <ESmith@scag.gov>

Wed, May 8, 2013 at 12:27 PM

To: "Mark V. Gende" <MVG@swblaw.com>, Adam Silvernail <adam@silvernaillawfirm.com>, "Manning, L. Casey Law Clerk (Joy E. Middleton)" <CManningLC@sccourts.org>, "cmanningj@sccourts.org" <cmanningj@sccourts.org>

Cc: "Ken B. Wingate" <KBW@swblaw.com>, "Aaron J. Hayes" <AJH@swblaw.com>, John McIntosh <JMcIntosh@scag.gov>, Bob Cook <BCook@scag.gov>, Sonny Jones <SJones@scag.gov>, Daryl Williams <dwilliams@jeterandwilliams.com>, "kmb@lbglegal.com" <kmb@lbglegal.com>, "Ariail E. King" <aek@lbglegal.com>

Our position is that the FOIA cases should NOT be held in abeyance and that they should be scheduled as soon as is convenient for the Court, but we certainly have no objection to the Court's review of Mr. Gende's letter.

Respectfully,

Emory Smith

Counsel for Defendant Wilson

From: Mark V. Gende [mailto:MVG@swblaw.com]

Sent: Wednesday, May 08, 2013 11:59 AM

To: Emory Smith; Adam Silvernail; Manning, L. Casey Law Clerk (Joy E. Middleton); cmanningj@sccourts.org

Cc: Ken B. Wingate; Aaron J. Hayes; John McIntosh; Bob Cook; Sonny Jones; Daryl Williams; kmb@lbglegal.com; Ariail E. King

[Quoted text hidden]

[Quoted text hidden]

000406



SWEENEY WINGATE & BARROW P.A.

May 10, 2013

Reply to: Main Office

Mark V. Gende
(803) 256-2233 x121
mvg@swblaw.com

VIA EMAIL AND U.S. MAIL

Honorable L. Casey Manning, Jr.
Circuit Court Judge
Richland Judicial Center
1701 Main Street, Room 214 (2nd Floor)
Post Office Box 192
Columbia, SC 29202-0192

RE: Russell L. Bauknight, et al. v. Adele J. Pope
Civil Action No.: 2010-CP-40-04900
Our File: 4077-7389

Dear Judge Manning:

Please accept this letter as Richland County Case 4900 Plaintiffs' and Proposed FOIA Intervenor's assessment why all matters in Case 4900 should be held in abeyance pending the outcome of all James Brown Estate matters that the Supreme Court has now unequivocally remanded to Aiken County.

On Wednesday, May 8, 2013 the South Carolina Supreme Court denied all petitions for rehearing and took a significant additional step. The Court substituted a new and revised opinion for its prior decision in the James Brown Estate matter. This new opinion is lengthy and makes certain additions and deletions to the prior, replaced opinion. This new opinion has significant bearing on the continued progress of Case 4900.

First, the new Supreme Court opinion creates significant uncertainty as to what persons or entities constitute the plaintiffs group. The new opinion voids the Section 1102 settlement agreement that had bound the plaintiff's group together. The new opinion also voids the appointment of Russell Bauknight as personal representative and trustee of the James Brown Trust and Estate, but expressly allows Mr. Bauknight the right to reapply and, potentially, be

000407

reappointed as a fiduciary of the Trust and Estate. Therefore, until the individual family members' position with reference to the Trust and Estate is finally determined by the Aiken Court and until fiduciaries are installed for the Trust and Estate, my firm has substantial uncertainty on what basis each named plaintiff will continue in Case 4900. We believe these matters can and will be resolved as each Aiken County matter is resolved.

Furthermore, the Attorney General, for whom Sweeny, Wingate & Barrow, PA is counsel of record in Richland Case 4900, has independently filed a motion to withdraw from the case and made various other representations and filings in related matters. Consequently, Sweeny, Wingate & Barrow, PA today is filing a motion to be relieved as counsel for the Attorney General.

Second, the new Supreme Court opinion upholds the for-cause removal of the Case 4900 Defendant, Mrs. Adele Pope, as a fiduciary of the James Brown Estate. In upholding her for-cause removal, the court relies on some of the very same allegations made by the Case 4900 Plaintiffs against Mrs. Pope. Mrs. Pope is afforded no opportunity to reapply for any fiduciary position with the Trust or Estate. Because of her for-cause removal, she can have no further part in the Estate and Trust.

Third, the Supreme Court, in substituting the new opinion has completely eliminated Footnote 29 of the prior opinion. Footnote 29, while only dicta in the now replaced opinion, addressed, among other items, the FOIA matters and called for them to be heard "in the first instance" without any clear definition of what that meant. Such language is totally absent from the new order. While the court does recognize that the Attorney General is contesting releasing some documents pursuant to FOIA, the court no longer puts any primacy or priority on any court hearing these matters. We believe that such a position is entirely appropriate, because the documents requested under FOIA are subject to a claim of privilege which is the subject of a motion for protective order before this court in Case 4900. The claim of privilege must be decided before any court can make a determination of the application of any FOIA claim.

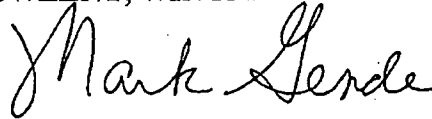
In summary, all of the uncertainty that your honor recognized at the last status conference still exists, and possibly a bit more. With the Supreme Court now having said all it is going to say on the matters that were before it, it is now abundantly clear that all matters related to the James Brown Estate cases must now be heard and decided by the Aiken Court. How the Aiken Court rules on a number of issues across a number of cases will then determine the posture of the group of plaintiffs or individual plaintiffs who will continue on with Case 4900.

Therefore, Case 4900 Plaintiffs and Proposed FOIA Intervenors respectfully request that Case 4900 be held in abeyance in its entirety until all the underlying issues related to the Plaintiffs are resolved by the Aiken Court. Should you deem it best for Plaintiffs to make a formal motion for stay, I would be pleased to do so.

As always, I am available to provide the court any further information it requires in order to fully consider this matter.

Yours truly,

SWEENEY, WINGATE & BARROW, P.A.

A handwritten signature in black ink, appearing to read "Mark Gende". The signature is fluid and cursive, with the first name "Mark" and last name "Gende" clearly distinguishable.

Mark V. Gende

MVG/lda

cc: Adam T. Silvernail, Esquire
Daryl L. Williams, Esquire
J. Emory Smith, Jr., Esquire

000409

Subject: RE: Pope vs. Wilson, et al, Case No. 2012-CP-40-0350; Pope v. Wilson 10-CP-40-4900
Date: Monday, October 13, 2014 at 5:52:40 PM Eastern Daylight Time
From: Emory Smith
To: Mark V. Gende, 'Manning, L. Casey Law Clerk (Eve Goodstein)', asilvernail@mkb-law.com
CC: Ariail E. King, kmb@lbglegal.com

Your Honor, the Defendant Attorney General is ready for motions to be heard as between Plaintiff and him.

I am putting Adam Silvernail's new email address into this email exchange. It has changed and I notice that the old one is in use. The new one is asilvernail@mkb-law.com

Respectfully,

Emory Smith

From: Mark V. Gende [<mailto:MVG@swblaw.com>]
Sent: Monday, October 13, 2014 5:46 PM
To: 'Manning, L. Casey Law Clerk (Eve Goodstein)'; Adam Silvernail
Cc: Ariail E. King; kmb@lbglegal.com; Emory Smith
Subject: RE: Pope vs. Wilson, et al, Case No. 2012-CP-40-0350; Pope v. Wilson 10-CP-40-4900

Eve:

I will prepare a formal response tomorrow, but the position of the plaintiff's has not changed since our correspondence of April 22, 201 in which we requested a stay of the matter (a copy is attached for your reference).

It is our position that we are judicially conflicted from appearing for the plaintiffs' group at this time due to the conflicts generated by the Supreme Court sending all of the will contest cases back to Judge Early in Aiken.

Therefore, in lieu of setting all motions for a hearing, I respectfully request the court to schedule an in-person status conference on these matters.

Mark V. Gende, Esq.
Sweeny, Wingate, & Barrow, PA
1515 Lady Street
Columbia, South Carolina 29201
803.256.2233 – Phone
803.256.9177 – Facsimilie

From: Manning, L. Casey Law Clerk (Eve Goodstein) [<mailto:CManningLC@sccourts.org>]
Sent: Monday, October 13, 2014 4:47 PM
To: Adam Silvernail
Cc: Ariail E. King; kmb@lbglegal.com; Emory Smith; Mark V. Gende
Subject: Pope vs. Wilson, et al, Case No. 2012-CP-40-0350; Pope v. Wilson 10-CP-40-4900

000410

Dear Counsel:

Judge Manning has reviewed Mr. Silvernail's letter of October 8, 2014 and would like to schedule a hearing on all outstanding motions as soon as possible. Judge Manning is available to hear all outstanding motions this Wednesday, Thursday, or Friday. Please let me know if you are available this week to have all outstanding motions heard in the above-referenced matter.

Please do not hesitate to contact me if I may be of assistance.

Thank you,
Eve

Eve S. Goodstein
Law Clerk to The Honorable L. Casey Manning
Fifth Judicial Circuit
Richland County Judicial Center
1701 Main Street, Room 214
Columbia, SC 29201
Office: (803) 576-1774
Fax: (803) 576-1744

From: Emory Smith [<mailto:ESmith@scag.gov>]
Sent: Wednesday, May 07, 2014 4:26 PM
To: Adam Silvernail; Manning, L. Casey; Manning, L. Casey Law Clerk (Eve Goodstein)
Cc: Ariail E. King; kmb@lbglegal.com; Adele Pope
Subject: RE: Pope vs. Wilson, et al, Case No. 2012-CP-40-0350

Your Honor, I am responding to Mr. Silvernail's emailed letter today in which he requested a hearing as to the FOIA matters pending in this case. We have no objection to a hearing at your Honor's convenience although, as stated in previous correspondence and filings, we believe that Plaintiff has all documents that could be considered responsive to her FOIA request at issue in this proceeding. We reserve our positions in filings with this Court.

I do plan to file a response to his supplemental memorandum and Ms. Pope's affidavit.

Respectfully,

Emory Smith
Counsel for the Attorney General

From: Adam Silvernail [<mailto:adam@silvernaillawfirm.com>]
Sent: Wednesday, May 07, 2014 4:08 PM
To: cmanningj@sccourts.org; Manning, L. Casey Law Clerk (Joy E. Middleton)
Cc: Emory Smith; Ariail E. King; kmb@lbglegal.com; Adele Pope
Subject: Pope vs. Wilson, et al, Case No. 2012-CP-40-0350

Dear Judge Manning:

Please see attached letter and enclosures. Thank you for your consideration.

000411

Sincerely,
Adam Silvernail

--

Adam T. Silvernail
Law Office of Adam T. Silvernail, LLC
Post Office Box 1898
1901 Hampton Street
Columbia, South Carolina 29202-1898
tel: 803/779-1770
fax: 803/403-8092

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000412

**Subject:** RE: Pope vs. Wilson, Case 2012-CP-40-0350 and Pope vs. Wilson, Case 2010-CP-40-4900

**Date:** Thursday, November 13, 2014 at 6:14:04 PM Eastern Standard Time

**From:** Emory Smith

**To:** Adam T. Silvernail, 'cmanninglc@sccourts.org', 'cmanningj@sccourts.org'

**CC:** Ken B. Wingate, Mark V. Gende, 'Ariail E. King', 'Keith Babcock'

Your Honor, I will be generally unavailable next week due to other important meetings scheduled and other deadlines. I am the attorney in this Office who has handled the FOIA cases and I need to be present for any hearing in this matter.

Therefore, I respectfully request that you not schedule a hearing before November 24. I am generally available on that date and afterward except for the pm of 11/26 and a few dates in Dec. when I have Court or other appointments. I have noted my availability on earlier dates so this request is not made for purposes of delay.

Thank you for your consideration of this request.

Respectfully,

Emory Smith

J. Emory Smith, Jr.  
Deputy Solicitor General  
Office of the Attorney General  
P.O. Box 11549  
Columbia, SC 29211  
803-734-3642 Direct

-----Original Message-----

From: Adam T. Silvernail [<mailto:asilvernail@mkb-law.com>]

Sent: Thursday, November 13, 2014 5:53 PM

To: 'cmanninglc@sccourts.org'; 'cmanningj@sccourts.org'

Cc: Emory Smith; Ken B. Wingate; Mark V. Gende; 'Ariail E. King'; 'Keith Babcock'

Subject: Pope vs. Wilson, Case 2012-CP-40-0350 and Pope vs. Wilson, Case 2010-CP-40-4900

Please see attached correspondence, which is also being mailed to Judge Manning today.

Sincerely,

Adam Silvernail

---

Adam T. Silvernail  
Moses & Brackett, PC  
1333 Main St., Suite 260  
Post Office Box 100261  
Columbia, SC 29202-3261  
803-461-2328 (direct dial)  
803-461-2309 (fax)

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**Subject:** RE: Pope vs. Wilson, et al, Case No. 2012-CP-40-0350 and Pope vs. Wilson, Case No. 2010-CP-40-4900  
**Date:** Thursday, January 29, 2015 at 2:54:54 PM Eastern Standard Time  
**From:** Emory Smith  
**To:** 'cmanninglc@sccourts.org'  
**CC:** Mark V. Gende, cmanningj@sccourts.org, Adele Pope (adele@popelawfirm.com), Adam T. Silvernail  
**Attachments:** image001.gif

We have no objection to either a status conference or a hearing on any of these days except that I do have conflicts 1:30-3:30 on the 11<sup>th</sup> and possibly the morning of the 12<sup>th</sup>; however, I do not see the value of a conference on the same date as the hearing. If the Court prefers to have a conference before the hearing, I suggest that it be scheduled at least a few days before the hearing.

Thank you.

Emory Smith

---

**From:** Adam T. Silvernail [mailto:asilvernail@mkb-law.com]  
**Sent:** Thursday, January 29, 2015 1:55 PM  
**To:** 'cmanninglc@sccourts.org'  
**Cc:** Mark V. Gende; Emory Smith; cmanningj@sccourts.org; Adele Pope (adele@popelawfirm.com)  
**Subject:** Pope vs. Wilson, et al, Case No. 2012-CP-40-0350 and Pope vs. Wilson, Case No. 2010-CP-40-4900

Dear Ms. Goodstein:

I am available anytime on February 4, 5, 10, 11 or 12<sup>th</sup>, and it appears that Emory is available on those dates (with the exception of the afternoon of the 11<sup>th</sup> and the morning of the 12<sup>th</sup>). My January 22, 2015 letter requested a hearing, rather than a status conference, and I ask that we proceed with hearing these cases immediately after the status conference. The pending motions are all now over a year old and many are over three years old. I would thus suggest that the status conference and motions hearing be set together on one of these dates when the Court has time to hear arguments on the motions.

Best,  
Adam Silvernail

---

Adam T. Silvernail  
Moses & Brackett, PC  
1333 Main St., Suite 260

000415



Post Office Box 100261  
Columbia, SC 29202-3261  
803-461-2328 (direct dial)  
803-461-2309 (fax)

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---

**From:** Emory Smith [<mailto:ESmith@scag.gov>]  
**Sent:** Tuesday, January 27, 2015 10:30 AM  
**To:** Mark V. Gende; Adam T. Silvernail; 'cmanninglc@sccourts.org'  
**Cc:** [cmanningj@sccourts.org](mailto:cmanningj@sccourts.org)  
**Subject:** RE: Case 4900 Issues (re-send to corrected email addresses)

I am available for a status conference any day through Feb. 12 except for early pm on the 11<sup>th</sup> and possibly the am of the 12<sup>th</sup>.

Emory Smith  
Counsel for the Attorney General

---

**From:** Mark V. Gende [<mailto:MVG@swblaw.com>]  
**Sent:** Tuesday, January 27, 2015 9:46 AM  
**To:** [asilvernail@mkb-law.com](mailto:asilvernail@mkb-law.com); Emory Smith; 'cmanninglc@sccourts.org'  
**Cc:** [cmanningj@sccourts.org](mailto:cmanningj@sccourts.org)  
**Subject:** Case 4900 Issues (re-send to corrected email addresses)

Dear Adam, Emory, and Eve:

To follow up my telephone conversation with Adam and Emory, Judge Manning has asked: (1) that we work together to schedule a status conference on the FOIA matters referenced in Adam's January 22, 2015 letter and (2) that Adam and I submit proposed orders on plaintiffs' motion to set aside any default heard December 17, 2012. Adam and I agreed that these proposed orders be submitted within 7 days from today.

I am copying Judge Manning's clerk on this string in order to facilitate scheduling the status conference. I am available Thursday and Friday of this week for the status conference.

Eve, would you please let us know if Judge Manning has any preferred dates and times for the status conference.

Mark Gende

Mark V. Gende | *Member*  
Sweeny, Wingate & Barrow, P.A.

# MOSES & BRACKETT, PC

ATTORNEYS AND COUNSELORS AT LAW

1333 Main Street, Suite 260 (29201)  
Post Office Box 100261  
Columbia, South Carolina 29202-3261

Telephone (803) 461-2300  
Facsimile (803) 461-2309

Adam T. Silvernail  
Direct Dial: (803) 461-2328  
Email: asilvernail@nkb-law.com

April 21, 2015

The Honorable L. Casey Manning  
Post Office Box 192  
1701 Main Street, Room 214  
Columbia, South Carolina 29202-0192

Re: *Pope vs. Wilson, et al*  
Richland County Case No. 2012-CP-40-0350  
*Pope vs. Wilson*  
Richland County Case No. 2010-CP-40-4900

Dear Judge Manning:

I represent Plaintiff Adele J. Pope in the above referenced actions, both of which are brought under the South Carolina Freedom of Information Act.

I have previously written your Honor on the following dates to request that these matters be set for a hearing on the pending motions and the merits as soon as possible:

1. February 8, 2013;
2. March 15, 2013;
3. November 22, 2013;
4. April 17, 2014;
5. April 29, 2014;
6. May 7, 2014;
7. May 28, 2014;
8. October 8, 2014;
9. November 13, 2014;
10. December 2, 2014;
11. February 25, 2014 and
12. March 20, 2015

I renew that request today, and I respectfully remind the Court that no hearing has been held in these matters since 2012.

For the Court's information, I note that the Newberry County FOIA matter captioned *Summer v. Wilson* has now reached a final result, after the Supreme Court dismissed the Wingate firm's appeal of Judge Griffith's denial of Russell Bauknight's attempt to intervene on behalf of the Estate of James Brown and the James Brown 2000 Irrevocable Trust.

As your Honor may recall, Mr. Bauknight and others have moved to intervene in the

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Page 2  
April 21, 2015

above-referenced FOIA matters. We believe that the conclusion of the *Summer* case shows that intervention to be inappropriate.

Again, I ask that your Honor schedule a hearing on these matters at the Court's earliest convenience, so that these nearly four-year-old FOIA matters can move toward a conclusion.

Thank you for your consideration.

Very truly yours,



Adam T. Silvernail

cc: J. Emory Smith, Esquire  
Keith M. Babcock, Esquire  
A. Camden Lewis, Esquire  
Ariail E. King, Esquire  
Adele J. Pope, Esquire  
Mark V. Gende, Esquire

000418

---

What  
Robert Rosen wants.

\$9.7 Million

for 1 ½ years' work destroying James Brown's Estate Plan, including

The James Brown "I Feel Good" Trust

and

Getting Tommie Rae 23.5% of a music  
empire Rosen & Tommie Rae say was  
worth less than \$4.7 Million  
on December 25, 2006 –  
the day that matters.

What  
Louis Levenson wants.

\$8.7 Million

for 1 ½ years' work destroying

The James Brown "I Feel Good" Trust

and for destroying the

\$285,000 Education Trust Funds of  
Lindsey, Janise, Sydney, Carrington & Jason.

---

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# **Aiken County Attorney Fee/Commission Claims Not Part of Case 4900**

## **1. Louis Levenson**

**\$8.7 Million**

(Based on \$100 Million current value of assets. 30% of 28.7% of 6 original clients, plus costs and \$150,000.

Approved by AG McMaster, AG Wilson, and Jg. Early, as part of August 10, 2008 Settlement, approved by Jg. Early May 26, 2009, now on appeal.) Includes Terry which may be payable partly to Levenson and partly to Bell/Bodman

## **2. Robert Rosen/Hynie**

**\$9.7 Million**

(Estimated 40% of 23 ½% of \$100 Million James Brown assets, plus costs. Fee Agreement

filed with Court and ordered to be released to Pope/Buchanan, but not found with clerk.

Approved by AG McMaster, AG Wilson and Jg. Early in McMaster Aug. 10, 2008 Settlement, now on appeal)

## **3. Nexsen Pruet/Bauknight (Estd)**

**\$3.5 Million**

This amount is ESTIMATED ONLY, based on work of 16 Nexsen Pruet lawyers, not yet paid as per representation made to Jg. Early in 2009 by Nexsen Pruet Atty. Wm. Wilkins. Fee not yet approved by any Court. FOIA request to S.C. Atty. General's Office reveals no documentation of amount of fees claimed by Nexsen Pruet.

## **4. Adele Pope**

**\$2. 8 Million**

approximately \$1.9 Million of this is pursuant to unappealed Order of Jg. Early dtd. 1/8/08. Remainder pending in filed claim and other Aiken proceedings.

## **5. Buchanan/Pope counsel**

**\$1.2 Million**

## **6. Bauknight - on file but**

**Undisclosed**

## **7. Powell, Goldstein/Bryan Cave**

**Undisclosed**

## **8. Albert "Buddy" Dallas**

**\$6 Million**

# **Aiken County Attorney Fee/Commission Claims Not Part of Case 4900**

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## **5. Buchanan/Pope counsel**

**\$1.2 Million**

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## **3. Nexsen Pruet/Bauknight (Estd)**

**\$3.5 Million**

This amount is ESTIMATED ONLY, based on work of 16 Nexsen Pruet lawyers, not yet paid as per representation made to Jg. Early in 2009 by Nexsen Pruet Atty. Wm. Wilkins. Fee not yet approved by any Court. FOIA request to S.C. Atty. General's Office reveals no documentation of amount of fees claimed by Nexsen Pruet.

## **4. Adele Pope**

**\$2. 8 Million**

approximately \$1.9 Million of this is pursuant to unappealed Order of Jg. Early dtd. 1/8/08. Remainder pending in filed claim and other Aiken proceedings.

## **5. Buchanan/Pope counsel**

**\$1.2 Million**

## **6. Bauknight - on file but**

**Undisclosed**

## **7. Powell, Goldstein/Bryan Cave**

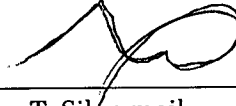
**Undisclosed**

## **8. Albert "Buddy" Dallas**

**\$6 Million**

**CERTIFICATE OF COUNSEL**

The undersigned counsel for Appellant hereby certifies that the foregoing Record on Appeal contains all matter designated by any party to this appeal and no other matter.



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Adam T. Silvernail

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**SC Court of Appeals**

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