

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY

Court of Common Pleas

The Honorable Clifton B. Newman, Presiding Judge

Case No.: 2010-CP-26-10848
Appellate Court Case No.: 2015-001398

RECEIVED
JUL 14 2016
SC Court of Appeals

PAUL CURRY,

Appellant,

v.

TOWN OF ATLANTIC BEACH,

Respondent.

RECORD ON APPEAL

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Pro se, per Order dated

July 5, 2016.

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STATE OF SOUTH CAROLINA

COUNTY OF HORRY

PAUL CURRY,

PLAINTIFF,

TOWN OF ATLANTIC BEACH,

DEFENDANT.

IN THE COURT OF COMMON PLEAS
Civil Action No.: 2010-CP-26-10848

**ORDER DENYING PLAINTIFF'S
MOTION FOR
RECONSIDERATION**

FILED
CLINTON COUNTY
15-14722 PM 4-27

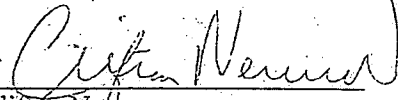
This matter came before the Court pursuant to the Plaintiff's Motion for Reconsideration of the Order of the Court Denying Injunction and Declaratory Relief.

Based on the arguments and memoranda of counsel and a review of the applicable law, I find that the Motion for Reconsideration should be denied.

The Court's reference to the order of Horry County Master in Equity, Cynthia Graham Howe, dated January 25, 2010 as essentially addressing the same issues between the same parties was clearly enunciated and the Court's failure to cite that case number in its Order is of no significance.

Having fully considered this and all other issues raised by the Plaintiff, the Motion for Reconsideration is hereby **DENIED**.

AND IT IS SO ORDERED.


Clifton Newman
Presiding Judge

Columbia, South Carolina
May 18, 2015

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

PAUL CURRY,)

PLAINTIFF,)

V.)

TOWN OF ATLANTIC BEACH,)

DEFENDANT.)

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2010-CP-26-10848

**ORDER DENYING
INJUNCTION AND DECLARATORY
RELIEF**

FILED
HORRY COUNTY
4 SEP - 8 PM 1:18
CLERK OF COURT

This matter came before the Court on January 13, 2014 pursuant to an action Plaintiff, Paul Curry, brought against the Defendant, the Town of Atlantic Beach, seeking an Injunction and a Declaratory Judgment. Randall Mullins appeared on behalf of Plaintiff and Leah B. Moody appeared on behalf of Defendant. Based upon evidence presented, argument of counsel, and a review of applicable law, the Court denies the relief sought by Plaintiff.

PROCEDURAL HISTORY

The parties were involved in prior litigation, which commenced on February 28, 2005, when Plaintiff filed an action seeking a declaratory judgment and permanent injunction against Defendant. The previous action was based on alleged violations of the Freedom of Information Act (FOIA). On January 25, 2010, the Horry County Master in Equity, the Honorable Cynthia Graham Howe, issued an order making final a settlement negotiated between the parties.

On November 17, 2010, Plaintiff filed this action against Defendant again seeking an injunction and declaratory judgment alleging a violation of the FOIA. *See* S.C. Code Ann. §§ 30-4-40; 30-4-100 (2007 & Supp. 2013). Additionally, Plaintiff sought to have the court review the codified ordinances of the Town of Atlantic Beach to determine compliance with the

requirements of the Municipal Ordinance Codification statute (MOCS). *See* S.C. Code Ann. § 5-7-290 (2004).

On April 7, 2011, Plaintiff filed a Motion to Compel. On July 27, 2011, the Honorable Benjamin H. Culbertson heard and granted the motion, awarded attorney fees, and ordered Defendant to answer Interrogatories and a Request to Produce.

This matter was originally scheduled on the non-jury trial roster for January 14, 2013, and was rescheduled on October 14, 2013, before reaching trial on January 13, 2014. At trial, Plaintiff sought to exclude three defense witnesses. Plaintiff argued that allowing these witnesses to testify would result in unfair surprise to Plaintiff due to failure of Defendant to file discovery responses. The Court denied the Motion to Exclude and instead continued the case for several hours.

Plaintiff renewed his objection when the Court reconvened, but affirmed that he was prepared to proceed. The Court indicated that if the testimony provided by the three defense witnesses raised additional concerns during the trial, the Court would entertain a request for a continuance or adjournment of the proceedings.

FINDINGS OF FACT

In the 2005 action, Plaintiff sought access to public records from the Atlantic Beach Town Hall. The Plaintiff alleged that Defendant violated the FOIA by refusing to provide him with requested documents. Judge Howe found that Defendant violated the FOIA by failing to: (1) notify Plaintiff of Town Council meetings; (2) note in the minutes of the meetings the efforts of Defendant to comply with the requests of the Plaintiff; (3) provide Plaintiff with the prepared

minutes of the meetings; and (4) make requested public records available to Plaintiff. Judge Howe also granted a permanent injunction and awarded attorney fees to the Plaintiff.

In this action, Plaintiff makes the same allegations: that Defendant violated the FOIA. Plaintiff alleges that Defendant failed or refused to respond to his requests to review the ordinances of Defendant from June 2003 to August 2010. Plaintiff seeks an injunction, requiring Defendant to make its ordinances available to the public for review and inspection. Defendant contends that the FOIA claim of the Plaintiff involves the same issues that were settled in the 2010 order issued by Judge Howe, and the Plaintiff is, therefore, collaterally estopped from re-litigating the same allegations.

Plaintiff also alleges that Defendant has not made its ordinances available to the public for review and inspection, as required under the MOCS. He alleges that Defendant "is required to codify and index all ordinances," though he fails to specify the manner in which codification is required for compliance with the statute. *See* Complaint at 5, *Curry v. Town of Atlantic Beach*, No. 2010-CP-26-10848 (Cir. Ct. S.C. 2010). Plaintiff posits that a codified ordinance must be bound, indexed, and current with respect to amendments and repeals. Plaintiff concedes that, while the ordinances of Defendant are organized by year, they are unbound and lacking of an index and ordinance history. Plaintiff, in effect, seeks a declaratory judgment in which the Court is to declare the meaning of codification under the MOCS.

Defendant concedes that the ordinances of Defendant are not bound in a set and published by a third party vendor, as would be ideal under optimal circumstances. Defendant asserts, however, that it is in compliance with the MOCS in that the ordinances are organized by year, properly indexed, reflective of ordinance history and amendments, and exist in two copies—one for the public and the other for the administrative office.

LEGAL ANALYSIS

In this action, Plaintiff seeks an injunction and declaratory judgment. For a court to grant an injunction, a party must demonstrate: (1) irreparable harm; (2) a likelihood of success on the merits; and (3) an inadequate remedy at law. *See Scratch Golf Co. v. Dunes W. Residential Golf Props., Inc.*, 361 S.C. 117, 121, 603 S.E.2d 905, 908 (2004). In addition, a court may balance the equities between the parties to determine if the injunction is warranted. *See Kneale v. Bonds*, 317 S.C. 262, 268, 452 S.E.2d 840, 843 (Ct. App. 1994).

For a court to review a cause of action under the Declaratory Judgment Act, a party must demonstrate the existence of a justiciable controversy; such a controversy "exists when there is a real and substantial controversy which is appropriate for judicial determination, as distinguished from a dispute that is contingent, hypothetical, or abstract If there is no actual controversy, [a court should] not decide moot or academic questions." *Sloan v. Friends of Hunley, Inc.*, 369 S.C. 20, 25-26, 630 S.E.2d 474, 477 (S.C. 2006). The Declaratory Judgment Act, however, is not an independent grant of jurisdiction, and thus an actual controversy must exist before a court can render a judgment. *See Tourism Expenditure Review Committee v. City of Myrtle Beach*, 403 S.C. 76, 82, 742 S.E.2d 371, 374 (S.C. 2013). The proper party to file for declaratory judgment is, "[a]ny person . . . whose rights, status, or other legal relations are affected by a statute [or] municipal ordinance" S.C. Code Ann. § 15-53-30 (Supp. 2013 & 2005). Any person "may have determined any question of construction or validity arising under the statute [or] ordinance . . . and obtain a declaration of rights, status or other legal relations thereunder." *Id.* A declaratory judgment may be proper when the meaning of a statute is in question, but questions of statutory interpretation by themselves do not rise to the level of an actual

controversy. See *Tourism Expenditure*, 403 S.C. at 81, 742 S.E.2d at 374; *Ott v. Tindal*, 297 S.C. 395, 398, 377 S.E.2d 303, 305 (S.C. 1989).

I. FREEDOM OF INFORMATION ACT

The parties have a longstanding history, with the first alleged violation occurring eleven years ago and litigation commencing over nine years. The issues raised in this case by Plaintiff under the FOIA were adjudicated in the 2010 order. Re-litigating these issues in this action is barred by the doctrine of collateral estoppel.

For an action to be barred by collateral estoppel, Defendant must show that the issue in the present lawsuit was: "(1) actually litigated in the prior action; (2) directly determined in the prior action; and (3) necessary to support the prior judgment." *Carolina Renewal, Inc. v. S.C. Dep't of Transp.*, 385 S.C. 550, 554, 684 S.E.2d 779, 782 (Ct. App. 2009). The doctrine only bars particular issues that were actually litigated; therefore, collateral estoppel is inapplicable when a party argues that the other party should have litigated a particular issue in the prior action. See *Crestwood Golf Club, Inc. v. Potter*, 328 S.C. 201, 216, 493 S.E.2d 826, 835 (S.C. 1997). The availability of the ordinances of Defendant for public review was an issue that the parties litigated in the prior action. The order of Judge Howe provided injunctive relief and established the right of Plaintiff to review the ordinances. Plaintiff is not entitled to additional injunctive relief herein as he is collaterally estopped from obtaining the relief sought under the FOIA.

II. MUNICIPAL ORDINANCE CODIFICATION

In seeking to have the Court review the ordinances of Defendant under the MOCS, the Declaratory Judgment Act requires Plaintiff to demonstrate that a justiciable controversy exists. The granting of a declaratory judgment "rests in the sound discretion of the trial court." Plaintiff has failed to make a clear showing of the existence of an actual controversy and he is not entitled to the relief sought. *Ott v. Tindal* 297 S.C. at 398, 377 S.E.2d at 305.

In the absence of a justiciable controversy, the court lacks subject matter jurisdiction to provide relief. *See Tourism Expenditure*, 403 S.C. at 81, 742 S.E.2d at 374 ("holding that parties cannot by consent or agreement confer jurisdiction on the court to render a declaratory judgment in the absence of an actual justiciable controversy.") (citing *Power v. McNair*, 255 S.C. 150, 153, 177 S.E.2d 551, 552 (1970)). A justiciable controversy exists when "there is a definite assertion of legal rights and a positive legal duty which is denied by the adverse party." *Graham v. State Farm Mutual Automobile Insurance Co.*, 319 S.C. 69, 71, 459 S.E.2d 844, 846 (S.C. 1995). If the judgment would not settle legal rights of the parties, the judgment would be merely advisory, and therefore beyond the scope of the purpose of a declaratory judgment. *See Tourism Expenditure*, 403 S.C. at 81, 742 S.E.2d at 374.

In *Ott*, the South Carolina Supreme Court upheld a declaratory judgment in which a trial court construed terms concerning compensation and the time frame to present a claim under the Guaranty Fund Act. 297 S.C. at 399, 377 S.E.2d at 306. There, a justiciable controversy existed because the statutory interpretation concerned terms affecting the parties' legal rights to full compensation. Conversely, Plaintiff seeks a statutory interpretation without a showing of a legal right or duty. Whether Defendant organizes its ordinances in a bound volume versus an unbound

volume neither affects the positive legal duty of Defendant to make those ordinances available to the public, nor the legal right of Plaintiff to review those public ordinances. If the ordinances are readable so as Plaintiff can exercise his right to review them, interpretation under the MOCS would not resolve any further legal rights of the parties. In essence Plaintiff seeks to have the court issue an advisory opinion involving statutory interpretation which is contrary to case precedent in that no justiciable controversy exists. Our law does not permit this Court to issue merely advisory opinions and this Court therefore denies the request of Plaintiff to construe the meaning of codification under the MOCS.

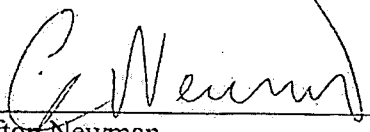
CONCLUSIONS OF LAW

IT IS THEREFORE ORDERED that the FOIA action is barred by the doctrine of collateral estoppel, and thus injunctive relief is denied.

IT IS FURTHER ORDERED that declaratory judgment is denied.

IT IS SO ORDERED.

June 2, 2014
Charleston, South Carolina



Clifton Newman
Presiding Judge

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)
PAUL CURRY,)
Plaintiff,)
vs.)
TOWN OF ATLANTIC BEACH,)
Defendant.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
C/A No.: 2010-CP-26-_____

COMPLAINT
(Declaratory Judgment, Injunction)

HORRY COUNTY
10 NOV 17 PM 2:30
MELANIE JONES-WARD
CLERK OF COURT

NOW COMES the Plaintiff, complaining of the above-named Defendant, alleges and shows unto this Court:

FOR A FIRST CAUSE OF ACTION
(Injunction)

1. That the Plaintiff is a citizen and resident of the Town of Atlantic Beach, Horry County, South Carolina.
2. That the Defendant, Town of Atlantic Beach, is a political subdivision of the State of South Carolina, more particularly, the Town of Atlantic Beach is an incorporated municipality located in Horry County, South Carolina.
3. That this Court has jurisdiction over the subject matter of this action and that venue is proper in Horry County, South Carolina.
4. That the Defendant, Town of Atlantic Beach, was incorporated in 1966, and constitutes a municipality as defined in §5-1-20, S.C. Code Ann. That further, by virtue of its certificate of incorporation, the Town of Atlantic Beach constitutes a body politic pursuant to §5-1-10, S.C. Code Ann.

5. That the Defendant, Town of Atlantic Beach, as an incorporated municipality of the State of South Carolina is within the definition of a "Public body" as defined in §30-4-20, S.C. Code Ann.

6. That sometime in 2003, the Plaintiff requested, via correspondence, to review and inspect the Ordinances of the Town of Atlantic Beach.

7. That on June 25, 2003, the Defendant, by and through the Town Clerk, responded to the Plaintiff's request via correspondence, whereby the Defendant through its representative stated to wit:

You requested to inspect the Town's ordinances, however I am unclear of what you are asking. Please specify. Let me know when you are available so that I can assist you if you wish to sit down and review the ordinances. Let me know what ordinances you need to review and from what year.

A copy of the letter dated June 25, 2003 is attached hereto and incorporated by reference as Exhibit A.

8. That as a result, the Plaintiff completed a "Freedom of Information Act Request Form" dated July 3, 2003, whereby the Plaintiff again requested an opportunity to review and inspect the Town's Ordinances. A copy of the "Freedom of Information Act Request Form" is attached hereto and incorporated by reference as Exhibit B.

9. That after the Plaintiff requested access to the Town of Atlantic Beach's Ordinances; the Defendant denied such access to the Plaintiff.

10. That on January 3, 2005, the Plaintiff attended a Town Council Meeting, whereby Town Councilmember Charlene Taylor advised those in attendance that the public was allowed to view the Ordinances at the Town Hall, instead of paying for copies of said Ordinances.

11. That on January 4, 2005, based upon Councilmember Taylor's statement and in good faith, the Plaintiff again requested to review and inspect the Town of Atlantic Beach's

Ordinances at the Town Hall. That further, after the Plaintiff made such request, he was informed by Louise Blodis, an employee of the Town of Atlantic Beach, that "the person with the Ordinances was not present".

12. That on January 5, 2005, the Plaintiff gave a voluntary statement to the Town of Atlantic Beach Police Department concerning the failure of the Defendant to allow the Plaintiff to review and inspect the Town's Ordinances. A copy of the Voluntary Statement dated January 5, 2005 is attached hereto and incorporated by reference as Exhibit C.

13. That on May 18, 2006, the Plaintiff again requested an opportunity to review and inspect the Town's Ordinances, via Certified Mail, Return Receipt Requested addressed to Marcia Conner, Town Manager for the Town of Atlantic Beach. That further, the letter was signed for by a J. Woods on May 19, 2006. A copy of the correspondence is attached hereto and incorporated by reference as Exhibit D.

14. That the Plaintiff never received a response to the request dated May 18, 2006.

15. That on or about March 24, 2009, the Plaintiff again requested an opportunity to review and inspect the Town's Ordinances, via Certified Mail, Return Receipt Requested addressed to Kenneth McIver, Town Manager for the Town of Atlantic Beach. That further, the letter was delivered March 25, 2009. A copy of the correspondence is attached hereto and incorporated by reference as Exhibit E.

16. That the Plaintiff never received a response to the request made on or about March 24, 2009.

17. That on or about August 10, 2010, the Plaintiff again requested an opportunity to review and inspect the Town's Ordinances, via certified Mail, Return Receipt Requested addressed to William Booker, Town Manager for The Town of Atlantic Beach. That further, the letter was

delivered August 11, 2010. A copy of the correspondence is attached hereto and incorporated by reference as Exhibit F.

18. That the Plaintiff never received a response to the request made on or about August 10, 2010.

19. That §5-7-290, S.C. Code Ann. provides: "each municipal council shall provide by ordinance for the codification and indexing of all ordinances . . . and the maintenance of ordinances in a current form reflecting all amendments and repeals. All ordinances as codified shall be available for public inspection at reasonable times."

20. That the Plaintiff, on numerous occasions, has requested pursuant to §§5-7-290 and 30-4-10, et seq., S.C. Code Ann., during business hours, the opportunity to review and inspect the Ordinances of the Town of Atlantic Beach. That further, each request has been refused or ignored by the officials of the Defendant Town of Atlantic Beach.

21. That the Plaintiff's request is reasonable and the information sought is not exempted from disclosure under the Freedom of Information Act, §30-4-10, et seq., S.C. Code Ann.

22. That the Plaintiff, as a resident of the Town of Atlantic Beach, has a right to review and inspect the Town's Ordinances and that the refusal by the Defendant Town of Atlantic Beach is wrongful.

23. That as a result, the Plaintiff is informed and believes that he is entitled to injunctive relief, specifically, a mandatory injunction requiring the Defendant Town of Atlantic Beach to make the Town's Ordinances available for review and inspection as required under §5-7-290, S.C. Code Ann. on a temporary and permanent basis.

24. That the Plaintiff is informed and believes that due to the culture of non-compliance with the Freedom of Information Act, §30-4-10, et seq., S.C. Code Ann., that he is entitled to recover

attorney fees and costs associated with the maintenance of this action as allowed under §30-4-100, S.C. Code Ann.

25. That as a result of the foregoing, the Plaintiff requests an Order of this Court requiring the Defendant Town of Atlantic Beach to allow the Town's Ordinances to be available for review and inspection, and awarding the Plaintiff attorney fees, costs and disbursements of this action.

FOR A SECOND CAUSE OF ACTION
(Declaratory Judgment)

26. The Plaintiff would re-allege and incorporate by reference the prior cause of action as if set forth verbatim herein.

27. That this action is brought pursuant to the Uniform Declaratory Judgments Act, §15-53-10, et seq., S.C. Code Ann.

28. That the Plaintiff has requested an opportunity to review and inspect the Defendant Town of Atlantic Beach's Town Ordinances on several occasions.

29. That the Defendant Town of Atlantic Beach has refused to ignored each request made by the Plaintiff.

30. That the Defendant Town of Atlantic Beach is required to codify and index all ordinances and allow said Ordinances to be reviewed and expected by the public at reasonable times pursuant to §5-7-290, S.C. Code Ann.

31. That the Defendant Atlantic Beach has failed to act in accordance with §5-7-290, S.C. Code Ann.

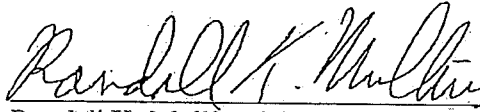
32. That due to the failure of the Defendant Town of Atlantic Beach to allow review and inspection of the Town's Ordinances, a justiciable controversy exists between the Defendant Town of Atlantic Beach and the Plaintiff.

33. That the Plaintiff is a person interested pursuant to §15-3-30, S.C. Code Ann.
34. That under §30-4-100, S.C. Code Ann., the Plaintiff requests this Court inquire into the failure of the Defendant Town of Atlantic Beach to make the Town Ordinances available to the public for review and inspection as required under §§5-7-290 and 30-4-100, S.C. Code Ann.
35. That the Plaintiff is informed and believes that he is entitled to an Order of this Court declaring the actions of the Defendant Town of Atlantic Beach to be wrongful and require that the Defendant Town of Atlantic Beach make the Town's Ordinances available for review and inspection by the public.
36. That the Plaintiff is informed and believes that due to the numerous requests made to no avail in addition to the culture of non-compliance under the Freedom of Information Act, the Plaintiff is entitled to an award of attorney fees and costs associated with the maintenance of this action.
37. That the Plaintiff requests an Order of this Court awarding attorneys fees and costs to the Plaintiff due to the failure of the Defendant to comply with the Freedom of Information Act.

WHEREFORE, the Plaintiff prays for judgment against the Defendant as follows:

- A. For an Order declaring the Defendant to be in violation of the Freedom of Information Act by refusing to allow the public to review and/ or inspect the Town's Ordinances;
- B. For an mandatory injunction requiring the Defendant to make the Town Ordinances available for review and/ or inspection;
- C. For an award of attorneys fees, costs and disbursements of this action;
- D. For such other and further relief as this Court deems just and proper.

MULLINS LAW FIRM, P.A.



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North Myrtle Beach, SC 29597
(843) 272-8902 Telephone
(843) 272-3075 Facsimile
Mullinslawfirm@aol.com
Attorneys for Plaintiff

Dated: November 11, 2010
North Myrtle Beach, SC



Exhibit A
Town of

Atlantic Beach

717 30th Avenue, South
Atlantic Beach, SC 29582

Mayor Irene Armstrong
Mayor Pro Tem John Sketers

Council Members
Gloria Lance
Delores Wilson
Charlene Taylor

June 25, 2003

Mr. Paul Curry
P.O. Box 2245
North Myrtle Beach, SC 29598

Dear Mr. Curry:

You requested to inspect the Town's ordinances, however I am unclear of what you are asking. Please specify. Let me know when you are available so I can assist you if you wish to sit down and review the ordinances. Let me know what ordinances you need to review and from what year.

If you have any questions, please free to come to the office or contact me, at 843-663-2284 Ext. 2

Sincerely,

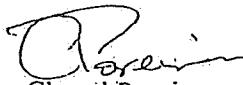

Cheryl Pereira
Town Clerk



Exhibit B
**Town of
Atlantic Beach**

FREEDOM OF INFORMATION ACT REQUEST FORM

DATE OF REQUEST: 7-3-03 JULY 3, 2003

NAME: PAUL CURRY

ADDRESS: P.O. BOX 2245

CITY: N.M.B. STATE: SC ZIP: 29598

PHONE NUMBER: ()

SIGNATURE _____

INFORMATION REQUESTED: REQUEST TO INSPECT THE TOWN'S
ORDINANCES

ALL COPIES \$~~10~~ EACH- CASH OR MONEY ORDER- NO PERSONAL CHECKS ACCEPTED

Section 30-4-30(B) S.C. Code of Laws, 1976, as amended, provides as follows;

The public body may establish and collect fees not to exceed the actual cost of searching for and making copies of records. Documents may be furnished when appropriate without charge or at a reduced charge when the agency determines that waiver or reduction of the fee is in the public interest. The custodian of the public records may charge a reasonable hourly rate for making records available to the public and may receive a reasonable deposit of these rates before searching for or making copies of the records.

IMPORTANT NOTICE

Section §30-2-50(B) S.C. Code of Laws, provides that personal information obtained from public records is prohibited from being used for commercial solicitation purposes.

FOR OFFICE USE ONLY

REQUEST ASSIGNED TO: _____ DATE OF COMPLETION: _____

DATE OF ASSIGNMENT: _____ FEE FOR SERVICES: _____

DATE RESPONSE DUE: _____ METHOD OF PAYMENT: _____

ATLANTIC BEACH POLICE DEPARTMENT

VOLUNTARY STATEMENT

WONT INVESTIGATE FOIA CRIMES
Exhibit C
CASE # _____

TIME 8:38AM PLACE TOWN HALL PAGE 1 OF 1
I, PAUL CURRY AM 55 YEARS OLD AND I LIVE AT
608 31ST AVE. S.; ATLANTIC BEACH PHONE NO. _____

I AM GIVING THIS STATEMENT TO ATLANTIC BEACH POLICE DEPT I VOLUNTEER THE
FOLLOWING INFORMATION OF MY OWN FREE WILL, FOR WHATEVER PURPOSE IT MAY SERVE.
TO OBTAIN ARREST WARRANT(S)

ON JAN. 4, 2005, I WENT IN PERSON TO THE AB TOWN HALL, SOON AFTER
9:12AM, I ASKED LOUISE BLODIS TO BE ALLOWED TO INSPECT AB'S
PUBLIC NUISANCE ORDINANCE. I LOGGED IN MY REQUEST ON THE "TOWN
OF ATLANTIC BEACH VISITORS LOG IN SHEET." I VIDEOTAPED THE
INCIDENT. MS. BLODIS DENIED MY REQUEST STATING THAT THE "PERSON"
WITH THE ORDINANCE WASNT PRESENT, SC CODE OF LAWS § 5-7-290
STATES: "EACH MUNICIPAL COUNCIL SHALL PROVIDE BY ORDINANCE FOR
THE CODIFICATION AND INDEXING OF ALL ORDINANCES, EITHER TYPEWRITTEN
OR PRINTED, AND THE MAINTENANCE OF ORDINANCES IN A CURRENT FORM
REFLECTING ALL AMENDMENTS AND REPEALS. ALL ORDINANCES AS CODIFIED
SHALL BE AVAILABLE FOR PUBLIC INSPECTION AT REASONABLE TIMES."
I NOTE THAT, AFTER COMPLAINTS FROM THE PUBLIC AND SOME COUNCIL
MEMBERS THAT THERE WAS INSUFFICIENT TIME TO REVIEW DRAFT
ORDINANCES PRIOR TO ADOPTION, COUNCIL WOMAN TAYLOR INFORMED THE
AUDIENCE AT THE JAN 3 COUNCIL MEETING THAT THEY COULD READ THE
ORDINANCES AT TOWN HALL, RATHER THAN HAVING TO PAY FOR A COPY. THE
CODE OF HAMMURABI IS REGARDED AS THE FIRST INSTANCE IN HISTORY
THAT A RULER PROCLAIMED PUBLICLY A BODY OF LAWS, SO THAT ALL WOULD
KNOW. THAT WAS AROUND 1750 B.C. IN THE 21ST CENTURY, WE PEOPLE

IN AB ARE THREATENED WITH ARREST FOR LOITERING - POTENTIALLY A
FIRST AMENDMENT VIOLATION, AND WERE NOT ALLOWED TO READ THE ORDINANCE.
I HAVE READ EACH PAGE OF THIS STATEMENT CONSISTING OF 1 PAGE(S), EACH PAGE OF
WHICH BEARS MY SIGNATURE, AND CORRECTIONS, IF ANY, BEAR MY INITIALS AND I CERTIFY
THAT THE FACTS CONTAINED HEREIN ARE TRUE AND CORRECT. I ALSO CERTIFY THAT I HAVE
RECEIVED A COPY OF THIS STATEMENT.

SIGNATURE Paul Curry

WITNESS LT. [Signature]

18

THIS 5TH DAY OF JAN, 2005

WITNESS _____

Disclaimer

This statutory database is current through the 2003 Regular Session of the South Carolina General Assembly. Changes to the statutes enacted by the 2004 General Assembly, which will convene in January 2004, will be incorporated as soon as possible. Some changes enacted by the 2004 General Assembly may take immediate effect. The State of South Carolina and the South Carolina Legislative Council make no warranty as to the accuracy of the data, and users rely on the data entirely at their own risk.

CHAPTER 7.

GENERAL STRUCTURE, ORGANIZATION, POWERS, DUTIES, FUNCTIONS AND RESPONSIBILITIES OF ALL MUNICIPALITIES

SECTION 5-7-290. Municipal ordinances to be codified; public inspection.

Each municipal council shall provide by ordinance for the codification and indexing of all ordinances, either typewritten or printed, and the maintenance of ordinances in a current form reflecting all amendments and repeals. All ordinances as codified shall be available for public inspection at reasonable times.

May 18, 2006

Paul Curry
Coastal Station
P.O. Box 2245
North Myrtle Beach, SC 29598-2245

CERTIFIED MAIL
7005 1160 0001 7706 8002
RETURN RECEIPT REQUESTED

Ms. Marcia Conner, Town Manager
Town of Atlantic Beach
717 30th Avenue S.
Atlantic Beach, SC 29582-4633

RE: Public inspection of codified municipal ordinances

Dear Ms. Conner:

Several recent incidents have raised questions concerning purported ordinances of the Town.

By this letter, I am requesting to inspect the codified ordinances and index of the Town of Atlantic Beach, which statutory right is granted by virtue of the Code of Laws of South Carolina, Section 5-7-290, which also mandates that the Town codify its ordinances:

SECTION 5-7-290. Municipal ordinances to be codified; public inspection.

Each municipal council shall provided by ordinance for the codification and indexing of all ordinances, either typewritten or printed, and the maintenance of ordinances in a current form reflecting all amendments and repeals. All ordinances as codified shall be available for public inspection at reasonable times.

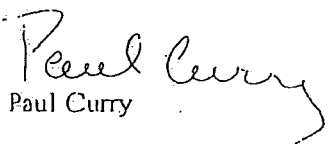
Former Town Manager Carolyn Cole Montgomery and former Interim Town Manager Charles Williams both refused my repeated requests for the Town to comply with state law in this area.

I note that this request is not made under this state's Freedom of Information Act (the "FOIA"), thus the fifteen working day deadline for a response under the FOIA does not apply. I take the position that "reasonable times," as referred to in the above section, means during the regular hours of operations of the Town Hall.

On or after the date of the Town's receipt of this letter, I will be at the Town Hall to inspect the codified ordinances of the Town, and index. No appointment will be necessary with you or any other staffer.

The encounter will be videotaped both to protect me from malicious allegations, such as "harassment," and to memorialize statements such as Charles Williams infamous response on March 30, 2005, that if I wanted to inspect any town documents, I should, "[g]o get a court order."

Yours truly;


Paul Curry

SENDER: COMPLETE THIS SECTION

Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits.

Article Addressed to:

Ms. Marcia Conner
Interim Town Manager
Town of Atlantic Beach
117 30th Avenue, South
Atlantic Beach, SC
29582-4633

Article Number:

7005 1160 0002 7706 8002

(Transfer from service)

7005 1160 0002 7706 8002

S Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

COMPLETE THIS SECTION ON DELIVERY

A. Signature

[Signature]

☐ Agent

☐ Addressee

B. Received by (Printed Name)

[Signature]

C. Date of Delivery

[Signature]

D. Is delivery address different from item 17 ☐ Yes.

If YES, enter delivery address below:

☐ No

3. Service Type

☒ Certified Mail

☐ Express Mail

☐ Registered

☐ Return Receipt for Merchandise

☐ Insured Mail

☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

U.S. Postal Service CERTIFIED MAIL™ RECEIPT

(Domestic Mail Only; No Insurance Coverage Provided)

For delivery information visit our website at www.usps.com

OFFICIAL USE

Postage

\$ 40.36

Certified Fee

\$2.40

0598

01. Postmark
Here

Return Receipt Fee
(Endorsement Required)

\$1.95

Restricted Delivery Fee
(Endorsement Required)

\$0.00

05/18/2006

Total Postage & Fees

\$ 44.71

Sent To Marcia Conner, Interim Town Manager
Town of Atlantic Beach

Street, Apt. No.,
or PO Box No. 717 30th Avenue, South

City, State, ZIP+4
Atlantic Beach SC 29582-4633

PS Form 3811, June 2002

See Reverse for Instructions

COASTAL STATION

NORTH MYRTLE BEACH, South Carolina

29582-4633

05/18/2006

9518030536-0094

(843) 272-3004

12:40:29 PM

Sales Receipt

Product Sale Unit Price

Description Qty Price Price

0.50 02

Return Post (Green Card)

0.50 02

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Exhibit E

Paul Curry
Coastal Station; Post Office Box 2245; North Myrtle Beach, SC 29598-2245

Mr. Kenneth McIver; Town Manager
Town of Atlantic Beach
717 30th Avenue S.
Atlantic Beach, SC 29582-4633

CERTIFIED MAIL
7005 3110 0003 9002 7237
RETURN RECEIPT REQUESTED

RE: Request for inspection of codified ordinances of the Town of Atlantic Beach and indexing
Freedom of Information Act request for inspection of codified ordinances of the Town of
Atlantic Beach and indexing

Dear Mr. McIver:

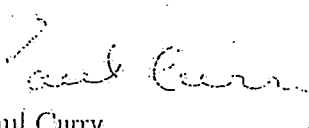
South Carolina Code of Laws, Ann. Section 5-7-290, entitled "Municipal ordinances to be
codified; public inspection." states:

Each municipal council shall provide by ordinance for the codification and
indexing of all ordinances, either typewritten or printed, and the maintenance of
ordinances in a current form reflecting all amendments and repeals. All
ordinances as codified shall be available for public inspection at reasonable times.

Pursuant to the above section and pursuant to the South Carolina Freedom of Information Act,
South Carolina Code of Laws, Ann. §§ 30-4-10, *et seq.*, I request to inspect the codified Town
ordinances in a current form reflecting all amendments and repeals and the indexing of all Town
ordinances, at the first opportunity.

Should the codified ordinances in a current form reflecting all amendments and repeals and
indexing not be available for public inspection, then I request a copy of this letter, as received by
the Town, as confirmation of my request and the Town's failure to produce the public records
required to be available for public inspection at reasonable times.

Yours truly;


Paul Curry

Paul Curry
Coastal Station
P.O. Box 2245
North Myrtle Beach, SC
29598-2245

Mr. Kenneth Melver Town Manager
Town of Atlantic Beach
717 30th Avenue S.
Atlantic Beach, SC 29582-4633



7005 3110 0003 9002 7237
7005 3110 0003 9002 7237

U.S. POSTAL SERVICE	
CERTIFIED MAIL RECEIPT	
(Domestic Mail Only, No Insurance Coverage Provided)	
Postage	\$
Certified Fee	
Return Receipt Fee (Endorsement Required)	
Restricted Delivery Fee (Endorsement Required)	
Total Postage & Fees	\$
Postmark Here	
Sent to: Kenneth Melver Town Manager	
Town of Atlantic Beach	
717 30 th Avenue S.	
Atlantic Beach, SC 29582	

SENDER COMPLETE THIS SECTION

- ☒ Complete Items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired.
- ☒ Print your name and address on the reverse so that we can return the card to you.
- ☒ Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Mr. Kenneth Melver
Town Manager
Town of Atlantic Beach
717 30th Avenue S.
Atlantic Beach, SC 29582

2. Article Number

(Transfer from service label)

7005 3110

COMPLETE THIS SECTION FOR DELIVERY

A. Signature

X

☐ Agent

☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

- D. Is delivery address different from item 1? ☐ Yes
(If YES, enter delivery address below: ☐ No

3. Service Type

- ☒ Certified Mail ☐ Express Mail
☐ Registered ☐ Return Receipt for Merchandise
☐ Insured Mail ☐ C.O.D.

4. Restricted Delivery? (Extra Fee)

☐ Yes

0003 9002 7237

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[Sign In](#)[Track & Confirm](#)[FAQs](#)

Track & Confirm

Search Results

Label/Receipt Number: 7005 3110 0003 9002 7237

Status: Delivered

Your item was delivered at 3:22 pm on March 25, 2009 in NORTH MYRTLE BEACH, SC 29582. A proof of delivery record may be available through your local Post Office for a fee.

Additional information for this item is stored in files offline.

[Track & Confirm](#)

Enter Label/Receipt Number.

[Go >](#)[Restore Offline Details >](#) [Return to USPS.com Home >](#)[Site Map](#)[Customer Service](#)[Fairs](#)[Gov't Services](#)[Careers](#)[Privacy Policy](#)[Terms of Use](#)[Business Customer Gateway](#)

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No FEAR Act EEO Data.

FOIA



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Track & Confirm FAQs	
Track & Confirm	
Search	
Label/Receipt Number: 7005 3110 0003 9002 7237	
Associated Label/Receipt:	
Detailed Results:	
Delivered, March 25, 2009, 3:22 pm, NORTH MYRTLE BEACH, SC 29582	
Acceptance, March 24, 2009, 3:51 pm, NORTH MYRTLE BEACH, SC 29582	
Go	
Notification	
Track & Confirm by email	
Get current event information or updates for your item sent to you or others by email. ☐	

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Paul Curry
Coastal Station; Post Office Box 2245; North Myrtle Beach, SC 29598-2245

August 10, 2010

Mr. William U. Booker, Jr.; Town Manager
Town of Atlantic Beach
717 30th Avenue S.
Atlantic Beach SC 29582-4633

CERTIFIED MAIL
7007 2680 0000 0201 5008
RETURN RECEIPT REQUESTED

RE: Public inspection of codified municipal ordinances

Dear Mr. Booker:

Several recent incidents have raised question concerning purported ordinances of the Town.

By this letter, I am requesting to inspect the codified ordinances and index of the Town of Atlantic Beach, which statutory right is granted by virtue of South Carolina Code of Laws § 5-7-290, which also mandates that the Town codify its ordinances:

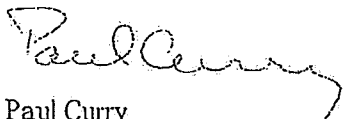
Section 5-7-290. Municipal ordinances to be codified; public inspection.

Each municipal council shall provide by ordinance for the codification and indexing of all ordinances, either typewritten or printed, and the maintenance of ordinances in a current form reflecting all amendments and repeals. All ordinances as codified shall be available for public inspection at reasonable times.

Former Town Manager Carolyn Cole Montgomery, former Interim Town Manager Charles Williams, of the Municipal Association of South Carolina (MASC), and former Town Manager Kenneth McIver have all refused my requests for the Town to comply with state law in this area.

This request is also made under this state's Freedom of Information Act (FOIA), South Carolina Code of Laws §§ 30-4-10, *et seq.*

Yours truly;



Paul Curry

PAUL CURRY
COASTAL STATION
P.O. BOX 2245
NORTH MYRTLE BEACH, SC
29598-2245

MR. WILLIAM U. BOOKER, JR.
TOWN MANAGER
TOWN OF ATLANTIC BEACH
717 30TH AVENUE S.
ATLANTIC BEACH SC 29582-4633

SENDER COMPLETES THIS SECTION		COMPLETE THIS SECTION ON DELIVERY	
Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits.		A. Signature <i>X</i> ☐ Agent ☐ Addressee	
1. Article Addressed to: <i>Mr. William U. Booker, Jr.</i> <i>Town Manager</i> <i>Town of Atlantic Beach</i> <i>717 30th Ave. S.</i> <i>Atlantic Beach, SC</i> <i>29582-4633</i>		B. Received by (Printed Name) C. Date of Delivery	
2. Article Number <i>7007 2680 0000 0201 5008</i> (Transfer from service label)		D. Is delivery address different from item 1? ☐ Yes If YES, enter delivery address below: ☐ No	
PS Form 3811, February 2007		3. Service Type ☒ Certified Mail ☐ Express Mail ☐ Registered ☐ Return Receipt for Merchandise ☐ Insured Mail ☐ C.O.D.	
		4. Restricted Delivery? (Extra Fee) ☐ Yes	

102595-02-M-1540

U.S. Postal Service	
CERTIFIED MAIL RECEIPT	
(Domestic Mail only. No insurance coverage provided.)	
For Official Use Only. Do Not Write on This Form	
Postage	
Certified Fee	
Return Receipt Fee (Endorsement Fee/Label)	
Restricted Delivery Fee (Endorsement Fee/Label)	
Total Postage & Fees	
Postmark Here	
Sent to: <i>William Booker, Town Manager</i>	
Street Apt. P.O. <i>717 30th Ave. S.</i>	
City, State, ZIP+4 <i>Atlantic Beach, SC 29582-4633</i>	

COASTAL STATION
NORTH MYRTLE BEACH, South Carolina
295825060
4518030598 -0099
08/10/2010 (843)272-5864 03:58:22 PM

Product Description	Sale Qty	Unit Price	Final Price

NORTH MYRTLE BEACH SC			\$0.44
29582 Zone-0			
First-Class Letter			
0.50 oz.			
Expected Delivery: Wed 08/11/10			
Return Rcpt (Green Card)			\$2.30
Certified			\$2.80
Label #:	70072680000002015008		

Issue PVI: \$5.54

Total: \$5.54

Paid by:
Cash \$5.55
Change Due: -\$0.01

Order stamps at USPS.com/shop or call 1-800-Stamp24. Go to USPS.com/clicknship to print shipping labels with postage. For other information call 1-800-ASK-USPS.

Get your mail when and where you want it with a secure Post Office Box. Sign up for a box online at usps.com/poboxes.

Bill #: 1000102217907
Clerk: 01

All sales final on stamps and postage
Refunds for guaranteed services only
Thank you for your business

HELP US SERVE YOU BETTER

Go to: <https://postalexperience.com/Pos>

TELL US ABOUT YOUR RECENT
POSTAL EXPERIENCE

YOUR OPINION COUNTS

Customer Copy

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only, No Insurance Coverage Provided)

Force Majeure, Inclement Weather, and Other Unavoidable Circumstances
NORTH MYRTLE BEACH SC 29582

Postage	\$ 10.44	0598
Certified Fee	\$2.80	01
Return Receipt Fee (Endorsement Required)	\$2.30	Postmark Date
Restricted Delivery Fee (Endorsement Required)	\$0.00	
Total Postage & Fees	\$ 15.54	08/10/2010

Send To: William Becker, Town Manager
Street Apt. No. 717 3rd Ave S
City State ZIP+4 Atlanta, GA 30333-4633

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Track & Confirm

Search Results

Label/Receipt Number: 7007 2680 0000 0201 5008

Class: First-Class Mail®

Service(s): Certified Mail™

Return Receipt

Status: Delivered

[Track & Confirm](#)

Enter Label/Receipt Number.

[Go >](#)

Your item was delivered at 2:51 pm on August 11, 2010 in NORTH MYRTLE BEACH, SC 29582.

Detailed Results:

- Delivered, August 11, 2010, 2:51 pm, NORTH MYRTLE BEACH, SC 29582
- Acceptance, August 10, 2010, 3:57 pm, NORTH MYRTLE BEACH, SC 29582

Notification Options

Track & Confirm by email

Get current event information or updates for your item sent to you or others by email. [Go >](#)

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No FEAR Act EEO Data

FOIA



STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
Case No.: 2010-CP-26-10848

Paul Curry.)
Plaintiff.)
v.)
Town of Atlantic Beach)
Defendant.)

DEFENDANT'S ANSWER

HORRY COUNTY
11 JAN 21 PM 1:46
MELANIE HUGGINS-WARD
CLERK OF COURT

The Defendant in the above-captioned action, ("Defendant"), answering the Plaintiff's Complaint, would show unto this Honorable Court as follows:

ANSWER TO FIRST CAUSE OF ACTION
(Injunction)

1. Each and every allegation of the Complaint not hereinafter specifically admitted, explained, or denied is denied, and strict proof is demanded thereof.
2. Defendant admits the allegations of Paragraphs One, Two, Three, Four, and Five of the Complaint.
3. Defendant admits the allegations of Paragraphs Six, Seven, and Eight of the Complaint upon information and belief.
4. Defendant denies the allegations of Paragraphs Nine, Ten, and Eleven of the Complaint.
5. Defendant admits the allegations of Paragraphs Twelve and Thirteen of the Complaint upon information and belief.
6. Defendant denies the allegations of Paragraph Fourteen of the Complaint.



7. Defendant admits the allegations of Paragraph Fifteen of the Complaint upon information and belief.

8. Defendant denies the allegations of Paragraphs Sixteen, Seventeen, and Eighteen of the Complaint.

9. Defendant admits the allegations of Paragraph Nineteen of the Complaint.

10. Defendant denies the allegations of Paragraph Twenty of the Complaint.

11. As to Paragraph Twenty-One of the Complaint, Defendant admits so much of the Paragraph as alleges that a request to review copies of Town Ordinances at Town Hall is reasonable and not exempt from disclosure under the Freedom of Information Act.

12. As to Paragraph Twenty-Two of the Complaint, Defendant admits that the Plaintiff has a right to review and inspect the Town's Ordinances, but it denies that it has refused him this right.

13. Defendant denies the allegations of Paragraphs Twenty-Three, Twenty-Four, and Twenty-Five of the Complaint.

ANSWER TO SECOND CAUSE OF ACTION
(Declaratory Judgment)

14. In response to Paragraph Twenty-Six of the Complaint, Defendant repeats Paragraphs One through Thirteen of this Answer as fully as if set forth herein verbatim.

15. Defendant admits the allegations of Paragraph Twenty-Seven of the Complaint.

16. Defendant denies the allegations of Paragraphs Twenty-Eight and Twenty-Nine of the Complaint.

17. Defendant admits the allegations of Paragraph Thirty of the Complaint.



18. Defendant denies the allegations of Paragraphs Thirty-One, Thirty-Two, and Thirty-Three of the Complaint.

19. As to Paragraph Thirty-Four of the Complaint, Defendant denies that it has failed to comply with S.C. Code Ann. §§ 5-7-290 and 30-4-100.

20. Defendant denies the allegations and/or opposes the requests of Plaintiff as contained in Paragraphs Thirty-Five, Thirty-Six, and Thirty-Seven of the Complaint.

AFFIRMATIVE DEFENSE

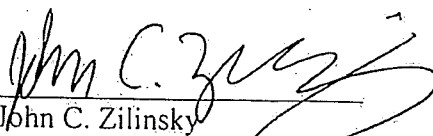
(Laches)

21. Defendant repeats Paragraphs One through Twenty of this Answer as fully as if set forth herein verbatim.

22. As to those allegations in the Complaint regarding conduct prior to the administration of the current Town Manager, William Booker (who began his service on or about June 1, 2009), they are barred by the equitable doctrine of laches.

WHEREFORE, having fully answered the Complaint, Defendant requests: (a) that the Complaint be dismissed with prejudice, and (b) for such other relief which to this Court shall seem just and proper.

Respectfully Submitted,



John C. Zilinsky
ZILINSKY & GORDON, LLC
SC Bar # 10139
Post Office Box 1851
Conway SC 29528-1851
843.248.7009 (Phone)
843.248.0730 (Fax)
e-mail: john@horrycountylaw.com
Attorney for Defendant

January 21, 2011

Conway, South Carolina

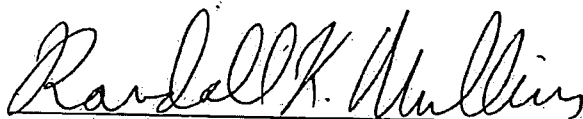
Therefore, the Plaintiff, pursuant to the South Carolina Rules of Civil Procedure, hereby moves for an Order compelling the Defendant to respond to its Interrogatories and Request for Production of Documents and for a reasonable amount of attorney's fees and for such other and further relief as the court may deem proper.

This motion was communicated by the movant's counsel prior to filing in an attempt in good faith to resolve the matter herein pursuant to Rule 11, S.C.R.C.P. (see attached letter).

PLEASE BE PRESENT TO OPPOSE IF SO MINDED.

"I SO MOVE."

MULLINS LAW FIRM, PA



RANDALL K. MULLINS
ATTORNEY FOR PLAINTIFF
Post Office Box 585
North Myrtle Beach, South Carolina 29582
843-272-8902
843-272-3075 Facsimile
mullinslawfirm@aol.com

April 7 2011



MULLINS LAW FIRM, P.A.
ATTORNEYS AT LAW

Randall K. Mullins*
Jarrod E. Ownbey

*Certified Family/Divorce Mediator

Physical Address:
1312 Madison Drive
North Myrtle Beach, SC 29582
(843) 272-8902
Fax: 272-3075
Real Estate: Lizbi@sc.rr.com

Mailing Address:
Post Office Box 585,
North Myrtle Beach, SC 29597
www.mullinslawfirm.com
mullinslawfirm@aol.com
mullinslawfirm@sc.rr.com

February 18, 2011

John C. Zilinsky
204 Elm St, Suite 201
PO Box 1851
Conway, SC 29528

Re: Paul Curry v Town of Atlantic Beach
Case No.: 2010-CP-26-10848
MFL No.: 10-312

Dear Ms. Zilinsky:

In regard to the above mentioned case please find enclosed Plaintiff's Amended First Set of Interrogatories, Amended Request for Production and First Request to Admit.

With warmest regards, I am

Very truly yours,

MULLINS LAW FIRM, PA

Kimberly A Moore
Paralegal for Randall K. Mullins

/kam
Enclosures
cc: Paul Curry

2010-CP-26-10848

DEFENDANT

**PLAINTIFF'S AMENDED FIRST SET
OF INTERROGATORIES TO THE
DEFENDANT**

known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witness.

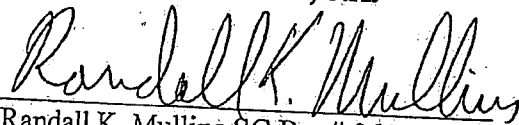
5. Has the Defendant ever been involved in any other legal action, either as a Defendant or a Plaintiff? If so, please state:

- a. The date and place each such action was filed, giving the name of the other party or parties involved, the number of such actions, and the names of the attorneys representing each party;
- b. A description of the nature of each action;
- c. The result of each such action, whether or not there was an appeal and the result of the appeal, and whether or not such case was reported, and the name, volume and page citation of such reports.

6. Please set forth a list of any and all agents, servants and/or employees of the Defendant who have access to the Codified Town Ordinances. This would include and not be limited to, their name, address, phone number, and a complete description of their job and/or responsibilities.

7. Identify the specific facts that prove the Defendant's position or disprove the Plaintiff's position in this lawsuit, also identify each fact witness and/or exhibit you propose to use to establish such facts.

MULLINS LAW FIRM, P.A.



Randall K. Mullins SC Bar # 06466

Jarrod E. Ownbey SC Bar # 75417

Post Office Box 585

North Myrtle Beach, SC 29597

(843) 272-8902 Telephone

(843) 272-3075 Facsimile

Mullinslawfirm@aol.com

Attorneys for Plaintiff

Dated: February 18, 2011
North Myrtle Beach, SC

2010-CP-26-10848
2010-CP-26-10848

Page 2

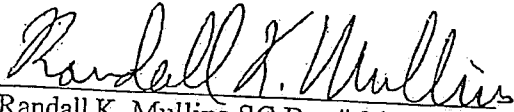
DEFENDANT

**PLAINTIFF'S AMENDED FIRST
REQUEST FOR PRODUCTION TO
THE DEFENDANT**

7. Any and all documents that reflect any claims against or remuneration from other persons or entities as a result of similar incidents as those alleged in the Complaint.
8. Any and all documents and writings in the possession, custody, or control of Defendant or Defendant's counsel that Defendant contends are relevant to the case or are intended to be produced in the trial of the case.
9. A full and complete copy of the Defendant's codified ordinances from 2003 to the present date. This would include and not be limited to any and all amendments and/or changes made.
10. Please provide a copy of any and all requests made to the Defendant to copy and/or inspect their codified ordinances (either through FOIA or otherwise) from 2003 to the present.
11. Please provide a copy of any and all Town Counsel Meeting minutes whereby a member of the Counsel addressed the public regarding their right to view and/or inspect the codified ordinances from 2003 to the present.
12. Please provide the personnel and/or employee files for the following: Charles Williams, Carolyn Cole Montgomery, Cheryl Pereira, Charlene Taylor, Louise Blodis, Marcia Conner, J. Woods, Kenneth McIver, Eric Lewis and William Booker.
13. Please provide copies of any and all estimates and/or proposals from contractors to codify the Town Ordinances. This would include and not be limited to any and all plans, budget proposals, bills, requests for proposal, etc.

BKM

MULLINS LAW FIRM, P.A.



Randall K. Mullins SC Bar # 06466

Jarrod E. Ownbey SC Bar # 75417

Post Office Box 585

North Myrtle Beach, SC 29597

(843) 272-8902 Telephone

(843) 272-3075 Facsimile

Mullinslawfirm@aol.com

Attorneys for Plaintiff

Dated: February 18, 2011
North Myrtle Beach, SC

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

PAUL CURRY,

PLAINTIFF,

vs

TOWN OF ATLANTIC BEACH,

DEFENDANT

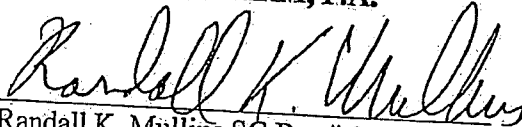
IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2010-CP-26-10848

PLAINTIFF'S FIRST SET OF
REQUEST TO ADMIT TO THE
DEFENDANT

TO: JOHN C. ZILINSKY, ESQUIRE, ATTORNEY FOR THE DEFENDANT

1. Admit that there are no codified ordinances for the Town of Atlantic Beach.
2. Admit that the \$10,700.00 allocated in the 2010-2011 Proposed Budget was never realized and/or executed towards the purpose of codifying the Town Ordinances.

MULLINS LAW FIRM, P.A.



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Attorneys for Plaintiff

Dated: February 18, 2011
North Myrtle Beach, SC

2010-CP-26-10848

2010-CP-26-10848

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DEFENDANT

CERTIFICATE OF SERVICE



MULLINS LAW FIRM, P.A.
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March 24, 2011

John C. Zilinsky
204 Elm St, Suite 201
PO Box 1851
Conway, SC 29528

Re: *Paul Curry v Town of Atlantic Beach*
Case No.: 2010-CP-26-10848
MFL No.: 10-312

Dear Ms. Zilinsky:

Please allow this letter to follow up on my letter to you with enclosed discovery requests dated January 26, 2011 which were amended and forwarded to you on February 18, 2011. To date I have received no answers and/or responses to these requests. Therefore, if I do not receive full and complete responses on or before Friday, April 1, 2011 I will be forced to file the appropriate Motion to Compel.

With warmest regards, I am.

Very truly yours,

MULLINS LAW FIRM, P.A.

Randall K. Mullins

RKM/kam
cc: Paul Curry

2010-CP-26-10848

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

Paul Curry,)

Plaintiff,)

v.)

Town of Atlantic Beach,)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
Civil Action No.: 2010-CP-26-10848

PLAINTIFF'S MOTION TO
RECONSIDER PRIOR ORDER FILED
ON SEPTEMBER 8, 2014 AND
RECEIVED BY PLAINTIFF'S COUNSEL
ON SEPTEMBER 15, 2014

TO: THE DEFENDANT ABOVE-NAMED AND ITS ATTORNEY, LEAH B. MOODY,
ESQUIRE AND TO THE HONORABLE CLIFTON B. NEWMAN, PRESIDING
TRIAL JUDGE

FILED
HORRY COUNTY
2014 SEP 24 AM 10:13
MELANIE HODGSON
CLERK OF COURT

Please take notice that the Plaintiff, Paul Curry, by and through his undersigned counsel hereby moves pursuant to Rule 59(e) and Rule 52(b) of the South Carolina Rules of Civil Procedure to alter or amend the Court's Order Denying Injunctive and Declaratory Relief. The prior Order was filed with the Horry County Clerk Court on September 8, 2014, and received by Plaintiff's counsel on September 15, 2014. This Motion is made on the grounds that:

1. The Court erred in either making findings of fact, or failing to make findings of fact as set forth below, in that they were not supported by the evidence introduced at trial;
2. The Court did not make findings of fact that were supported by the evidence introduced at trial; and
3. The Court erred in making various conclusions of law as set forth below, and the Court failed to consider and/or rule on various issues raised at trial that have a direct and substantial bearing on the determinate issues of fact and law.
4. The Court erroneously ruled that the prior litigation between the parties is barred by the prior Order which was alleged to have been initiated in 2010. The Court failed to cite the case number that the Court was relying upon in its ruling. Plaintiff seeks a clarification in the Order

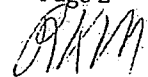
2010-CP-26-10848

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as to the exact case number that the Defendant is relying upon in the Order signed by the Court.

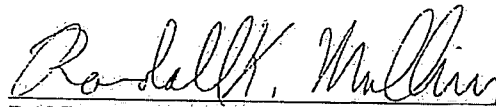
5. Plaintiff seeks a finding of fact that, since the entry of any alleged prior Order, the Plaintiff has made numerous requests for the codified municipal ordinances for the Town of Atlantic Beach which were not produced by prior Order or Settlement Agreement and/or Plaintiff seeks a finding in the record that the Town of Atlantic Beach has not codified its municipal ordinances as required by state law under Section 5-7-280, South Carolina Code of Laws, et seq., as amended.
6. The Order as drafted by the Court in effect denies the Plaintiff the right to review the codified ordinances which are the subject of this action. In addition, the Defendant failed to respond to the Plaintiff's Requests to Admit, that are clearly within the record, that the codified ordinances do not exist.
7. Plaintiff seeks a finding that that there is an actual case or controversy between the parties in that the Defendant failed to respond to the Freedom of Information Act requests in a timely manner.
8. Plaintiff seeks a finding that the Plaintiff has incurred attorneys fees and costs for pursuing the litigation for the Defendant's failure to timely respond to both Freedom of Information Act requests and discovery and the requirement under 5-7-280, South Carolina Code of Laws, et seq., as amended that codified ordinances shall be available for inspection.
9. Plaintiff seeks a finding that the Defendant did not submit its proposed Order within fifteen (15) days as required by the Court.
10. Plaintiff seeks a finding that the Defendant's Order, as drafted by Defendant's counsel, relies upon defenses which were not raised in the Answer filed in the case. In addition, the Defendant did not make a Motion to Amend to conform to the evidence produced at trial.



11. Plaintiff seeks an Order of the Court reversing its finding and finding that the Plaintiff is entitled to injunctive relief due to the uncodified ordinances upon which the Defendant is operating.
12. Under Rule 11, SCRCP consultation with opposing counsel would serve no useful purpose and is exempt thereto.

I SO MOVE.

MULLINS LAW FIRM, P.A.



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JARROD E. OWNBEY SC Bar No. 75417

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Email: mullinslawfirm@aol.com

Dated: 9-23-14
North Myrtle Beach, South Carolina

1 STATE OF SOUTH CAROLINA) TRANSCRIPT OF RECORD
2 COUNTY OF HORRY) CASE NO: 2010-CP-26-10232
3 -----

4 B E F O R E: The Honorable Clifton Newman
5 January 13, 2014
6 -----

7 PAUL CURRY,
8 Plaintiff,
9 vs.

10 TOWN OF ATLANTIC BEACH,
11 Defendant.
12 -----

13 APPEARANCES:

14 Randall Mullins, Esq.
15 For the Plaintiff.
16

17 Leah B. Moody, Esq.
18 For the Defendant.
19
20
21
22
23
24
25

P R O C E E D I N G S

MR. MULLINS: Your Honor, this is Curry versus Town of Atlantic Beach, 2010-CP-26-10848. Your Honor, I had sent you a pretrial brief on Friday, and I have an extra copy for the Court and opposing counsel.

This morning, Your Honor, Ms. Moody announced three witnesses that would be testifying in this matter. We had previously filed a motion back in May of 2011 -- April 7, I'm sorry, 2011 was the date of the file, and Judge Culbertson issued an order on that day requiring the defendant to fully answer interrogatories and requests to produce within 30 days of the date of the service of the order.

The order is going on a year-and-a-half old at this point and we have not received responses to interrogatories nor the requests to produce. To allow those witnesses to be called today would be a surprise to us this late in the case, and we have no responses, whatsoever, as to any discovery that the town was ordered to provide.

In addition, the \$871 that Judge Culbertson ordered has not been paid either. So at this time, we think, in all fairness, plaintiff would move to exclude those witnesses that the town announced they are going to call this morning and be ready to proceed

1 to trial.

2 MS. MOODY: Thank you, Your Honor. May it please
3 the Court. I'll address the \$871.52 addressed by
4 opposing counsel. Based on my research trying to
5 figure out whether or not these fees have been paid
6 according to Judge Culbertson's order, I received a
7 letter from Mr. Mullins prior to a hearing the last
8 term before Judge John alleging that the town had not
9 paid Mr. Curry any money; however, upon researching
10 the town's records, as I had requested the general
11 ledger for another case, I ran upon the payments that
12 had been made to Paul Curry in that amount. I
13 requested a copy of the check from the town manager
14 this past week. I wanted a certified copy cash check.
15 The copy I have addresses Mr. Curry at his PO Box. It
16 is a copy that was -- his address was placed on the
17 handwritten check, and I received that from the town's
18 accountant last week. She indicated to me that it had
19 not cleared. I sent Mr. Mullins a letter stating that
20 the check was sent to his client and that his client
21 had been paid, and I thought we had addressed that
22 issue.

23 From the file that I have from Mr. Davis, which I
24 think there were at least three other attorneys in
25 this case, and I believe that initial order started

1 off with Mr. Johnson Zalinsky, as well as Ms. Hill,
2 and went to Kenneth Davis at some point in time, and
3 then it found its way to me. So in my copy of the
4 file I have from Mr. Davis, which I picked up from his
5 office, I don't have any discovery requests. So I
6 would have responded to discovery requests as my
7 effort to try to resolve the unpaid amounts of money
8 to Mr. Curry and his attorney for \$871. He sent a
9 letter that indicated the amount of interest, so I put
10 the town on notice that if it hadn't been paid, we
11 need to pay that money off to Mr. Curry and his
12 attorney.

13 In my research, I found request -- discussions in
14 the budget talking about payment to Mr. Curry. I
15 don't have a copy of the discovery requests or any
16 interrogatories, and I would be happy to comply with
17 those. I think they submit -- looking at the pretrial
18 brief, he submitted some documents that came from the
19 town that I would not dispute came from the town.
20 There is other documents that he submitted that I
21 think have no bearing on this matter, and I would
22 object to them.

23 My witnesses are people who served as the town
24 manager and who were not in place at different points
25 in time because the administration of the Town of

1 Atlantic Beach is not stable as most other towns. The
2 three witnesses I would think that he would be -- I
3 don't think there is any undo surprise to him as to
4 the current town manager presenting evidence or me
5 calling the interim town manager who was in that
6 position at the time. I think that all of these
7 hearings were heard for monies and as to who was hired
8 to represent the town. The only other witness would
9 be the custodian of records. They actually submit a
10 letter from her that is dated -- I believe it is the
11 letter they submitted -- but I might be misspeaking --
12 from the town manager.

13 THE COURT: Who are the three witnesses?

14 MS. MOODY: Linda Cheatham, interim town manager;
15 William Booker, who is the current town manager, and
16 at some points between he was town manager when
17 dealing with Mr. Curry, and then Cheryl Pereira, who
18 is the custodian of records -- well, the clerk.

19 THE COURT: And the testimony generally would be
20 what?

21 MS. MOODY: As to?

22 THE COURT: What are the issues I'm supposed to
23 be hearing in this case?

24 MS. MOODY: As to FOIA, and there is a statute
25 section that he cites as to providing town records

1 under Section 5-7-290, South Carolina Code.

2 THE COURT: Yes.

3 MR. MULLINS: May it please the Court. Your
4 Honor, in response to the Court's file, when I file a
5 motion to compel I normally attach the discovery that
6 I'm asking to be compelled on directly to the motion.
7 I've tried to follow all of the rules meticulously in
8 this matter. We asked certain questions of them,
9 which I think are relevant to this case. They never
10 answered them. They come in here over a
11 year-and-a-half later saying, Here are our witnesses
12 and we may have documents. I think that is just not
13 fair to the plaintiff in this case.

14 THE COURT: Do you foresee something that is so
15 complicated -- I'm not sure, you know -- I won't
16 exclude witnesses without me having no appreciation as
17 to what is the real controversy. Other than looking
18 at the documents you E-mailed -- was it yesterday or
19 Saturday night?

20 MR. MULLINS: Friday.

21 THE COURT: Friday.

22 MR. MULLINS: I can back up. I didn't want to
23 get too long winded on this. The basis, like I said,
24 is simply the fact that they haven't answered the
25 discovery. There has not been a partial response or

1 an attempted response. The response has been zero.
2 So that puts me at having to be surprised today to
3 cross-examine three witnesses, of which I didn't know
4 about before this morning, and, secondly, the fact
5 that they haven't answered any of the discovery, some
6 which I thought was relevant to this matter, and they
7 were attached to our motion. The time to say whether
8 they were relevant or not would have been in front of
9 Judge Culbertson when that hearing was held, and they
10 had counsel then.

11 So, you know, this is an F-O-R request. Mr.
12 Curry was trying to look at the codified ordinances
13 for the Town of Atlantic Beach since 2003, and it is
14 now 2014. We want to be shown the ordinances. We
15 think they've drug their feet, and that is how we've
16 asked for fees and expenses on the matter.

17 I appreciate Ms. Moody's difficulties. Prior
18 counsel was in this, and I tried to be kind to
19 Mr. Davis. I like him, and I consider him a friend.
20 He got this continued back in January because his back
21 was out. I have back problems, and I understand. But
22 at some point, Judge, it seems like they need to
23 answer discovery like everybody else. I don't like
24 answering discovery, I find it one of the most taxing
25 things as a lawyer that I have to do, but it just

1 isn't fair to us to come in here and say, By the way,
2 we'll tell you what we're testifying to today, when
3 this case has been going for almost four years.

4 MS. MOODY: If I may, Your Honor?

5 THE COURT: Yes.

6 MS. MOODY: We have no problems with allowing him
7 to talk to the town manager, interim town manager,
8 custodian of records. This case -- I mean, he couches
9 it as we don't want to give him discovery. He
10 specifically is asking -- if I'm correct, and I'm
11 guessing because I don't have a copy -- he's asking
12 for codified ordinances. There aren't any codified
13 ordinances. There are ordinances. Mr. Curry was made
14 aware of that.

15 I'll be happy to make my witnesses available for
16 him, and if the Court would allow us the opportunity
17 for him to talk to them, I'll be happy for him to talk
18 to them. He has regular communications with them as
19 this is not the only case he has with the town. He
20 knows the individuals. He lives here, and I don't see
21 that it would be a difficulty to let him talk to
22 Mr. Booker, Ms. Cheatham or Mr. Pereira. If that is
23 his issue, I'll be happy to look at a copy of the
24 discovery response and respond. I don't have a copy
25 to be able to respond to them.

1 THE COURT: All right. With regard to the first
2 issue of the town mailing a check to Mr. Curry to pay
3 the cost and not being cashed --

4 MR. MULLINS: I forgot to address that, Your
5 Honor.

6 THE COURT: Yes, sir.

7 MR. MULLINS: Your Honor, Mr. Curry assured me he
8 didn't get that check. I had added my office manager
9 as a witness on the pretrial brief just to say that we
10 didn't get the check. Obviously, I was counsel of
11 record for Mr. Curry. This was an ongoing case. My
12 office hasn't moved since 1994. Why they wouldn't
13 send the check to me, I have no idea. That is the way
14 it is normally handled among civilized counsel. I
15 would have given them a credit. It is not worth my
16 reputation to lie over \$871.

17 MS. MOODY: Your Honor, I'm not suggesting that
18 he's lying over it -- on it. At the beginning when he
19 brought this to my attention, I informed my clients
20 they need to make payment to him. Again, as I said,
21 when I was reviewing documents for another case, that
22 is when I discovered the exact amount of the check, as
23 well as the budget talks from the town council
24 meetings that indicated Mr. Curry was paid.

25 I checked the address that Mr. Curry had, and it

1 seems that that check was mailed to that. I know now
2 from the accountant, as of Friday evening, that that
3 check was never cleared. We have no problem with
4 reissuing a check, as well as including the interest
5 cost that Mr. Mullins indicated to us in his letter,
6 and I guess the interest would be more now.

7 THE COURT: All right. Ms. Lilly, what is going
8 on with the jury?

9 THE CLERK: Judge Jefferson hasn't gotten here
10 yet.

11 THE COURT: We started talking, and I'm supposed
12 to qualify the jury panel at 10 o'clock. I came in
13 here and got wound up with you all, so I need to
14 qualify the jury panel.

15 I noticed that -- a few things come to mind, and
16 I'll think on this a little more. I was just reading
17 a case from the other day, I guess Mr. Calamari is a
18 big construction defects counsel and probably read
19 some of it. The judge was reversed down in Charleston
20 for excluding witnesses -- where the opportunity to --
21 when a witness was offered to be made available to
22 counsel overnight. There were a lot more facts than
23 just the one I am mentioning, but the verdict --
24 judgment was reversed based on the exclusion of
25 witnesses that was made available to counsel, and that

1 is part of that case, a small snippet, that makes me
2 think of that.

3 Secondly, I noticed that the pleadings were to be
4 served on Mr. Booker in an order issued by Judge Hyman
5 until new counsel -- until they get new counsel,
6 pleadings and other matters are to be served on
7 Mr. Booker, and that is one of the persons you
8 indicated that is a possible witness?

9 MS. MOODY: Yes.

10 THE COURT: I'll qualify the jury. Those
11 witnesses are here. Mr. Mullins, I'll give you during
12 that time which will be at least for an hour, I guess,
13 close to it, to talk with them, and if you -- whatever
14 it is that they intend to -- appears they are going to
15 say is surprising to you and you want to depose them,
16 we're here all week.

17 My approach, generally, is not to strike
18 witnesses when witnesses can be made available, and
19 the Court is always -- the Court can fashion various
20 remedies, but excluding a witness as one is often
21 considered extreme, especially when you can delay a
22 trial and create a situation where both sides will
23 have an opportunity to be heard. So in the interim,
24 if you would make the witnesses available, and we'll
25 see where we stand after that.

1 (Whereupon, a recess was taken.)

2 THE COURT: All right. Where do we stand now,
3 Counsel?

4 MR. MULLINS: Randy Mullins on behalf of the
5 plaintiff, Your Honor. During the interim I was able
6 to informally interview William Booker, Linda Cheatham
7 and Cheryl Pereira, and I've been given two additional
8 documents, copies of town ordinances, and I made a
9 copy of the check that Ms. Moody gave me this morning.
10 I still feel that we're being unfairly prejudiced
11 by having to proceed -- by having to proceed -- by
12 having these witnesses at the last minute after a
13 year-and-a-half delay.

14 THE COURT: You want it continued?

15 MR. MULLINS: If that is my only available
16 remedy. You are the last word on that, Judge.

17 THE COURT: Well, you know, I'm here and ready to
18 hear whatever matters should be heard in this county.
19 This is a case that is scheduled. As I recall from
20 the roster meeting, we started out with about 40 or 50
21 and down to about three or four. We're here all week.
22 If you need to depose any witnesses, we can adjourn
23 and you can depose them. I'm not sure what other --
24 other than wanting me to not fully hear the matter or
25 to exclude witnesses, I'm not sure how that would

1 affect the Court's ability to be able to hear the
2 matter scheduled if I'm unable to hear witnesses who
3 may have something to add or subtract from the
4 proceeding itself.

5 MR. MULLINS: I understand, Your Honor. I'm
6 trying to preserve my objection for the record, and I
7 haven't received written discovery responses at all
8 during this case.

9 THE COURT: Ms. Moody.

10 MS. MOODY: Well, Your Honor, as I understand it,
11 the written discovery responses that he wishes to
12 receive -- or documents -- does that include documents
13 as well?

14 MR. MULLINS: Your Honor, it is interrogatories
15 and request to produce. I haven't received any
16 responses, whatsoever, to any of those.

17 MS. MOODY: So I just want to be clear for the
18 record. As it relates to his interrogatories, he's
19 asking -- the one question I think that we may not
20 have for him here today is, Has the defendant ever
21 been involved in any other legal action, either as a
22 defendant or plaintiff. I mean, we can print him off
23 a roster on that.

24 THE COURT: Is that the Town of --

25 MS. MOODY: Town of Atlantic Beach. I'm assuming

1 it is any legal action that he's talking about,
2 because he's asking for the nature of each action and
3 the result. He asked for -- first, I have to go ahead
4 and say we'll stipulate that the town doesn't have
5 codified town ordinances, and so one of the questions
6 he asked is for a list of all agents and/or employees
7 of the defendant that have access to the codified town
8 ordinances. We don't have any town ordinances, and
9 all of my witnesses would testify to that -- not town
10 ordinances, I mean codified town ordinances.

11 He wants to know our position -- our position to
12 disprove the plaintiff's position. He talked to my
13 witnesses that I would call to the stand. As it
14 relates to the actual documents he would like to
15 receive, I think mostly it would be the codified
16 ordinances from 2003 and present day. We can't
17 produce what we don't have. We have the ordinances
18 that are in the town hall made available to anyone who
19 wants to review them. He asked for a copy or an
20 inspection of the codified ordinances, either through
21 FOIA or otherwise, through the present from 2003 for
22 any requests. To our knowledge, the only request we
23 have for codified ordinances comes from his client,
24 and he's -- I think he intends to introduce that
25 evidence.

1 He asks for town minutes -- or meeting minutes
2 where they talk about or address the public regarding
3 their right to view and/or inspect the codified
4 ordinance from 2003 to the present. We would have to
5 go back and pull those. Then he would like to have
6 the personnel and/or employee files for the following:
7 Charles Williams, Carol Cole Montgomery, Cheryl
8 Pereira, Charlene Taylor, Louise Blotus, Marcia
9 Conner, Jay Woods, Kenneth McIver, Eric Lewis and
10 William Booker. Some of these individuals we can
11 produce because there are employees, but town council
12 members, we don't have personnel records on. We have,
13 I guess, maybe records where they have been paid
14 because they serve on town council, but we would have
15 to be able to pull that.

16 Then the other thing he asks for is codified --
17 an estimate or proposal regarding codifying the town
18 ordinances. I think they've talked about it, but I
19 don't know if there are any documents as to that.
20 These witnesses would be able to testify as to some of
21 this information. They would not be able to testify
22 as to the personnel employment files. He actually
23 wants those documents, and I'm assuming he wants to go
24 through those documents on his own. For what reason,
25 I don't know.

1 THE COURT: All right.

2 MS. MOODY: I would say to the Court we would be
3 happy to produce whatever we need to produce subject
4 to any objections we may have as to the relevance.

5 THE COURT: Well, let me say this about them.
6 This is the scheduled court term, and conversations
7 with other court personnel regarding -- almost a glut
8 of court that is scheduled here for Horry County, this
9 is the week of January 3rd. You have Judge Culbertson
10 set for non-jury matters. The week of
11 January 13th you have Judge Cottingham, Judge Newman,
12 Judge Culbertson all set to do common pleas non-jury
13 matters. Next week, Judge Culbertson, Judge Hyman are
14 set for common pleas non-jury matters. The week of
15 January 27 you have Judge Hyman, Judge Newman and John
16 all scheduled for common pleas non-jury matters. So
17 this county over the next -- the first quarter this
18 year seems to have an extraordinary amount of common
19 pleas court scheduled. I'm scheduled to be here four
20 times in the next three months for common pleas
21 matters. I'm happy to hear this matter. The next
22 matter scheduled before me is Wednesday morning -- no
23 -- yeah, Wednesday is the next matter scheduled. I'm
24 happy to hear this matter, if it is ready to be heard.
25 It is a dispute that has been pending. You know,

1 certainly I understand there has to be a fair process
2 as far as a trial is concerned.

3 MS. MOODY: Your Honor, I'm ready to proceed. If
4 the Court sees that we need to go forward, I'm ready
5 to proceed. He's indicating that he wants these
6 documents. Again, I didn't have a copy until today.
7 I made my witnesses available. There aren't any other
8 witnesses. I don't see the need for the town council
9 members files, I don't know the relevance of that. I
10 don't know the relevance of any other council members
11 -- excuse me, employees of the town's records. I
12 don't understand what he needs it for, but I'm not
13 trying to prejudice him in any kind of way. He's had
14 an opportunity to ask them what they know of
15 codification, they explained it. He asked the
16 questions. I believe I haven't had an opportunity to
17 depose his client. I don't see any documents of any
18 depositions with his client. All I know is these
19 letters that he presents, we can go off of those
20 letters and proceed and let the Court decide.

21 THE COURT: This matter was filed in 2010 and
22 we're now in 2014 and been through three lawyers, at
23 least for the defense.

24 MS. MOODY: At least four lawyers and maybe two
25 councils. And I guess the lawyers -- I'm not sure

1 they were entertaining settlement. I'm not in a
2 position to entertain settlement here today. I just
3 think we need to go forward on the case, actually, but
4 he wants discovery documents.

5 THE COURT: All right. Yes, sir.

6 MR. MULLINS: I'm not trying to be obtuse in this
7 matter. I understand, and we're ready to go forward,
8 but I don't think it is fair for there to be a last
9 minute defense and witnesses disclosed, that is my
10 objection. If the Court says no, well, Your Honor,
11 obviously I'm old and have gray hair, so it won't be
12 the first time even Your Honor has told me no.

13 THE COURT: Let's proceed with the matter, and if
14 at any point in the process because of unavailability
15 of any documents or witnesses, or whatever, if there
16 needs to be a continuance, an adjournment or anything
17 of the proceedings, we'll entertain that. I'm here to
18 hear the matter, and all of the parties are present,
19 so there is no better time than now.

20 MR. MULLINS: Am I to assume my motion is denied,
21 for the record, so I can proceed?

22 THE COURT: Yes, sir.

23 MR. MULLINS: In that case, Your Honor, to start
24 off, plaintiff would like to publish the request to
25 admit that was placed during discovery and unanswered

1 as to plaintiff's --

2 MS. MOODY: I believe we would be -- I meant to
3 address that. We have no problem with stipulating to
4 the fact that -- we admit there are no codified
5 ordinances for the Town of Atlantic Beach. We admit
6 that the \$10,700 allocated in the 2010/2011 proposed
7 budget was not realized and/or executed for the
8 purpose of codifying the town ordinances, it did not
9 go forward, they were not able to.

10 THE COURT: All right. Of course when a request
11 to admit is filed and not responded to, it is deemed
12 admitted even though not stipulated, but Counsel says
13 she stipulates. Is there other matters?

14 MR. MULLINS: The only -- that was part of the
15 discovery I gave Counsel a copy of, and I would like
16 to mark that as Plaintiff's 1, please.

17 (Plaintiff's Exhibit 1 marked.)

18 (PAUL CURRY, having been duly sworn, testified
19 as follows:)

20 THE CLERK: State your name and spell your
21 last for the Court.

22 THE WITNESS: My name is Paul Curry, C-U-R-R-Y.

23 DIRECT EXAMINATION

24 BY MR. MULLINS:

25 Q Mr. Curry, you are the plaintiff in this case?

- 1 A I am.
- 2 Q And tell the Court -- first of all, how old are
3 you?
- 4 A I'll be 65 years of age this year.
- 5 Q Are you employed?
- 6 A I am employed.
- 7 Q Where are you employed at?
- 8 A I'm employed at a convenience store in North
9 Myrtle Beach.
- 10 Q At the time of the filing of this case, where did
11 you live?
- 12 A I lived in the Town of Atlantic Beach in Horry
13 County.
- 14 Q How long did you live there?
- 15 A If I filed the case in 2010, I would have been
16 there approximately eight years.
- 17 Q And, Mr. Curry, do you have any certain interest
18 in town government?
- 19 A I do.
- 20 Q What is that interest?
- 21 A I believe good government is essential and that
22 citizens should be involved in that process.
- 23 Q And in 2003 did you have an occasion to have a
24 dispute over a town ordinance?
- 25 A I did.

1 Q What was that dispute?

2 A The dispute was a law enforcement officer for the
3 town cited me for a violation, and I questioned
4 whether there was a town ordinance.

5 Q Were you arrested for that violation?

6 A I was cited with a criminal charge, but not
7 physically taken into custody.

8 Q Were you convicted of it?

9 A I was convicted of it by the municipal court in
10 the Town of Atlantic Beach.

11 Q Were you shown a copy of the town ordinance
12 before the trial?

13 A I was not. Despite my repeated requests to be
14 shown the ordinance that I was accused of violating,
15 it was not produced for me.

16 Q Did you ever make an oral request to the town to
17 inspect the town's ordinances?

18 A I did. I made written requests and oral requests
19 in person at the town hall to inspect this particular
20 ordinance.

21 Q Let me show you a document and ask if you
22 recognize this.

23 MR. MULLINS: I gave a copy to counsel, Your
24 Honor.

25 Q Do you recognize that document?

1 A I do.

2 Q What is that?

3 A It is a reply on the Town of Atlantic Beach
4 letterhead, June 25, 2003, addressed to me. It is in
5 response to my request to inspect the town's
6 ordinances, and it is signed by the town clerk, Cheryl
7 Pereire.

8 MR. MULLINS: We would like to mark and admit
9 that as Plaintiff's 2.

10 THE COURT: Any objection?

11 MS. MOODY: No objection.

12 (Plaintiff's Exhibit 2 marked and admitted.)

13 Q (MR. MULLINS) Mr. Curry, in that document were you
14 allowed access to the town's ordinances?

15 A No. The letter asked for more specificity in
16 what town ordinances I was looking for.

17 Q Did you ever go to the town and fill out any
18 documents asking for access to the town ordinances?

19 A Would you repeat it?

20 Q Did you go to city hall and fill out any
21 documents requesting access to the town's ordinances?

22 A I have filled out Freedom of Information Act
23 requests at the town hall, yes.

24 Q Let me show you and ask if you recognize this
25 document?

1 A I do recognize it.

2 Q What is that?

3 A It is the Town of Atlantic Beach Freedom of
4 Information Act Request Form, which I've hand printed
5 information.

6 Q And did you create that form at the town hall?

7 A Either at the town hall or prepared it in advance
8 prior to going to the town hall.

9 Q Did you submit that to the town hall?

10 A I did submit it to the town hall.

11 MR. MULLINS: We would ask to mark and admit as
12 Plaintiff's 3.

13 MS. MOODY: No objection.

14 (Plaintiff's 3 marked and admitted.)

15 Q (MR. MULLINS) What was the dates of the request?

16 A The date of my Freedom of Information Act request
17 is July 3, 2003.

18 Q Did you receive access to the town ordinances as
19 a result of that request?

20 A I was not shown the codified ordinances of the
21 town as a result of that request.

22 Q There seems so be dispute regarding codified and
23 non-codified. Have you ever seen or been allowed
24 access to just the ordinances themselves, codified or
25 uncodified?

1 A I have been allowed access to papers that are
2 alleged to be town ordinances, but without signatures
3 of council to know whether or not they actually passed
4 or were recommended or perhaps even came from other
5 municipalities.

6 Q Has this dispute continued?

7 A It has. I've made several subsequent requests.

8 Q Did you make a request to the police department
9 in 2004 regarding access to the public records?

10 A I did.

11 Q Let me show you a document and ask if you
12 recognize that document?

13 A I do recognize this document.

14 Q Did you create that document?

15 A I did create this document. It is a voluntary
16 statement from the Atlantic Beach Police Department on
17 which I handwrote information.

18 MR. MULLINS: Your Honor, I would like to mark
19 and admit that as Plaintiff's 4.

20 THE COURT: Any objection?

21 MS. MOODY: No.

22 (Plaintiff's Exhibit 4 marked and admitted.)

23 THE COURT: Admitted.

24 Q (MR. MULLINS) In that document, did you reference
25 any of your prior requests?

1 A. If the Court will allow me a minute to look it
2 over.

3 THE COURT: Yes, sir.

4 THE WITNESS: (Witness examines document.) It
5 does reference a prior request that I made on January
6 the 4th of 2005.

7 Q (MR. MULLINS) What happened on that occasion?

8 A The person to whom I made the request at the town
9 hall, a person known as Louise Blotus (phonetic), who
10 I believe was a contract employee for the town, told
11 me that the person who could provide access to those
12 was not present.

13 Q All right. Did you renew your request after
14 that?

15 A I have made subsequent renewals of my requests.

16 Q I'll show you a document and ask if you can
17 identify it, Mr. Curry.

18 A I can.

19 Q What is that?

20 A It is a letter that I prepared on or about
21 May 18, 2006 addressed to the then town manager,
22 Ms. Marcia Conner, M-A-R-C-I-A, C-O-N-N-E-R.

23 Q Was that sent certified?

24 A I did send it certified mail, return receipt
25 requested.

1 Q -- Was that sent through the United States Postal
2 Service?

3 A It was sent through the USPS.

4 Q Is attached the documents where you sent it
5 certified?

6 A Let me check to make sure it is the same
7 certified number. Yes. Attached is the return -- a
8 copy of the return receipt is my receipt for mailing,
9 both the official certified mail receipt and the point
10 of sale receipt from the post office.

11 MR. MULLINS: Your Honor, we would like to mark
12 and admit that as 5.

13 THE COURT: Any objection?

14 MS. MOODY: No objection.

15 THE COURT: Admitted.

16 (Plaintiff's Exhibit 5 marked and admitted.)

17 Q (MR. MULLINS) What did you request in your May 18,
18 2006 correspondence to the town?

19 A The reference line says, Public inspection of
20 codified municipal ordinances, and I made a request of
21 this town manager, I am requesting to inspect the
22 codified ordinances and index of the Town of Atlantic
23 Beach.

24 Q After you sent that written request, did you get
25 a response back in 2006?

1 A I did not receive a response from Ms. Conner.

2 Q Were you allowed access to the ordinances at that
3 time?

4 A I was not allowed access to codified ordinances.

5 Q Did you make another written request after that?

6 A I did.

7 Q Let me show you a document and ask if you
8 recognize it, Mr. Curry?

9 MS. MOODY: Your Honor, if I may at this time, I
10 believe we've already stipulated that there are no
11 codified ordinances within the town. I'm not
12 understanding why we're going back to 2003 to prove
13 there was no codified ordinances.

14 THE COURT: Mr. Mullins.

15 MR. MULLINS: It goes to pattern, routine, habit
16 and routine practice, and also to the issue of fees
17 and expenses on this case.

18 MS. MOODY: Your Honor, I think it is not
19 expenses on this case as it relates to him having an
20 attorney. I believe he filed this case in 2010, and
21 attorney's fees as to these would be barred because
22 they are beyond the statute of limitations, as well as
23 2003 to 2014 there are no codified ordinances.

24 MR. MULLINS: In addition, Your Honor, the
25 witness has been disclosed to me this morning saying

1 Mr. Curry had access to all of it. It goes to show --
2 and they can't give me specific dates. It goes to
3 show that we have been requesting this for over ten
4 years, and it hasn't been granted until after the case
5 was filed.

6 MS. MOODY: I believe, Your Honor, what they've
7 asked for is codified ordinances, that would be a
8 different issue, and he'll be able to cross-examine
9 them. But as to codified ordinances, they seem to be
10 make a distinction, we have no codified ordinances.

11 THE COURT: A stipulation is an agreement among
12 counsel. Where there is no agreement among counsel as
13 to the stipulation, counsel may proceed as counsel
14 sees fit. In effect, he does not accept the
15 stipulation for purposes of presentation of his case,
16 so he can proceed.

17 MS. MOODY: Thank you. Your Honor.

18 MR. MULLINS: We ask to have that marked and
19 admitted as 6.

20 THE COURT: Can you restate your previous
21 question? What did you ask him about?

22 MR. MULLINS: Let me back up.

23 Q I asked you if you made a request after
24 Plaintiff's No. 5 to inspect the ordinances?

25 A My answer was I did make a subsequent request.

1 Q Is that the document you made a subsequent
2 request for?

3 A This is one of the additional requests,
4 subsequent requests.

5 MR. MULLINS: That is the basis for Plaintiff's
6 6.

7 THE COURT: All right. Is there any objection to
8 No. 6?

9 MS. MOODY: No. 6 is the letter to Mr. McIver?

10 THE COURT: Yes.

11 MS. MOODY: No objection.

12 (Plaintiff's Exhibit 6 marked and admitted.)

13 A The reference line is, Request for inspection of
14 codified ordinances of the Town of Atlantic Beach.

15 Q Once again, was that sent through the United
16 States Post Service?

17 A It was. And to finish my thought, in my second
18 paragraph I state, I request to inspect the codified
19 town ordinances, and, yes, it was sent through the
20 United States Post Service.

21 Q Did you also reference the South Carolina Freedom
22 of Information Act?

23 A I did reference the South Carolina Freedom of
24 Information Act, yes.

25 Q Did you receive a written response to that

1 document?

2 A I have found in my files that I did receive a
3 letter from the addressee, Mr. Kenneth McIver, town
4 manager, some two months later.

5 Q Let me show you a document and ask if you
6 recognize it?

7 A I do.

8 Q What is that?

9 A A letter I just found in my files last week on
10 the Town of Atlantic Beach letterhead, May 12, 2009,
11 addressed to me and signed by the then town manager,
12 Kenneth McIver?

13 Q Was that the response you received back from the
14 last request?

15 A As far as I know, that was the only response I
16 received.

17 MR. MULLINS: Move to admit as Plaintiff's 7.

18 THE COURT: Objection?

19 MS. MOODY: No, Your Honor.

20 THE COURT: So admitted.

21 (Plaintiff's Exhibit 7 marked and admitted.)

22 Q Mr. Curry, in that particular letter does Mr.
23 McIver discuss the codified ordinances?

24 A He does.

25 Q And was there also a reference to the 2009/2010

1 budget?

33

2 A He includes such a reference in the first
3 paragraph.

4 Q Now, did you wait an appropriate amount of time
5 to let the town manager get this matter taken care of
6 before you made another request?

7 A I recall I gave them sufficient time to codify
8 the ordinances, yes.

9 Q Did you make another written request to the town
10 manager for the Town of Atlantic Beach?

11 A I did.

12 Q Let me show you a document and ask if you
13 recognize that document?

14 A I do.

15 Q What is that?

16 A It is a letter written by me addressed to
17 Mr. William Booker, Junior, town manager, August 10,
18 2010.

19 Q Did you once again reference the South Carolina
20 Freedom of Information Act?

21 A I referenced not only that, but also the South
22 Carolina Code of Laws, Section 5-7-290.

23 MR. MULLINS: Your Honor, we move to admit
24 Plaintiff's 8.

25 THE COURT: Any objection?

1 MS. MOODY: No, sir.

2 THE COURT: It is admitted.

3 (Plaintiff's Exhibit 8 marked and admitted.)

4 Q Let me hand you another copy of that, Mr. Curry.
5 Who was that addressed to?

6 A This letter of August 10, 2010 was addressed to
7 Mr. Booker, Junior, town manager.

8 Q Is that the same gentleman present the courtroom?

9 A It is -- well, yes, he is sitting at the defense
10 table, yes.

11 Q Did you get a response back from Mr. Booker?

12 A I do not recall receiving a written response back
13 from Mr. Booker.

14 Q When you did not receive a response, did you
15 initiate this case?

16 A About this time I did initiate this case in 2010,
17 yes.

18 Q And what is it that you are seeking in this case?

19 A I'm seeking that the town be required to comply
20 with the South Carolina Code of Ordinances.

21 Q Have you ever gotten access to the full
22 ordinances in whatever shape they appear?

23 A I have never been allowed to inspect the
24 ordinances in a current form complete with all
25 amendments and repeals with an index so I can find my

1 way around.

2 Q Do you know where the ordinances are physically
3 located?

4 A I'm told they are kept in the public lobby area
5 of the town hall in an area where town personnel have
6 access to them.

7 Q Let me ask you, has Mr. Booker allowed you access
8 to those records?

9 A I can't think of an occasion when he has pulled
10 an ordinance for me to look at, but that doesn't mean
11 that it did not happen.

12 Q How about Ms. Cheatham, Linda Cheatham?

13 A Again, I don't recall a specific instance when
14 she showed me an ordinance.

15 Q How about Cheryl Pereira?

16 A I don't recall.

17 Q Now, on your behalf, as your counsel, did I send
18 discovery to the town in this matter?

19 A I believe you did.

20 Q And do you review -- does my office copy all of
21 documents we send out?

22 A Your office is very good about keeping me
23 informed of the progress of the case.

24 Q Did you ever get any discovery responses to
25 review regarding your request for discovery in this

1 matter?

2 A I don't recall any response from the Town of
3 Atlantic Beach to our interrogatories or to request
4 for discovery.

5 Q Were you present in the courtroom regarding an
6 order issued by Judge Culbertson ordering the town to
7 respond to the discovery?

8 A I was.

9 Q Let me show you a document and ask if you
10 recognize that?

11 A I do.

12 Q Is that the order that was issued in this matter?

13 A It is an order signed by Judge Culbertson in the
14 matter of Curry versus Town of Atlantic Beach.

15 Q And did you ever receive discovery responses
16 after Judge Culbertson's order?

17 A I personally did not receive them, nor do I
18 believe my attorney received them.

19 Q How about the \$871 that Judge Culbertson ordered
20 to be paid, have you received that money?

21 A I have not received that.

22 MR. MULLINS: We ask that to be marked and
23 admitted as Plaintiff's 9?

24 MS. MOODY: No objection.

25 THE COURT: Part of the record.

1 (Plaintiff's Exhibit 9 marked and admitted.)

2 Q Mr. Curry, have you seen -- in regards to the
3 \$871, did you receive a copy today from Ms. Moody of a
4 check that was purportedly sent to you?

5 A I did see such an item today, yes.

6 Q I'll show you that document. When was the first
7 time you saw that document?

8 A Within the last two hours.

9 Q And did you actually receive a check drawn on the
10 Town of Atlantic Beach for \$871.52?

11 A I did not.

12 MR. MULLINS: We ask that it be marked and moved
13 as Plaintiff's 10.

14 MS. MOODY: No objection.

15 (Plaintiff's Exhibit 10 marked and admitted.)

16 Q (MR. MULLINS) Let me show you a copy of Exhibit 10.
17 Do you know any of the individuals that would have
18 signed that check?

19 A I do recognize the names of the two co-signers of
20 the check.

21 Q Who are they?

22 A The upper signature is Benny, middle initial L,
23 last name, Webb, W-E-B-B. The signature below is
24 Carolyn, middle initial unclear, but I believe it is
25 D, last name Cole, C-O-L-E.

1 Q Have you ever had any difficulties with Mr. Benny
2 Webb when he was town manager?

3 A Lord, yes.

4 Q What difficulties was that, Mr. Curry?

5 A One of my first confrontations with him was at a
6 public meeting where he had recently been appointed
7 the police chief. He pointed me out to the attendees
8 and informed them that he was going to be letting the
9 drug dealers know that I was cooperating with the
10 police department.

11 Q Was Mr. Webb, during the time he was employed by
12 the town, ever convicted of anything?

13 A He was. He was convicted approximately one year
14 ago, January of 2013, for assault and battery third
15 degree, an offense committed on me.

16 Q Is Mr. Webb the same person that allegedly signed
17 this check that you were supposed to have gotten?

18 A It is, indeed, the same person.

19 Q Now, did you --

20 THE COURT: Excuse me. Mr. Webb is convicted of
21 what?

22 THE WITNESS: Of assault and battery, third
23 degree, at a jury trial in magistrate's court here in
24 Horry County in January of 2013. His case is on
25 appeal to the circuit court and has not been heard

1 yet.

2 Q (MR. MULLINS) Mr. Curry, was there a prior Freedom
3 of Information case that you filed against the Town of
4 Atlantic Beach?

5 A There had been several.

6 Q Was there one in 2008 where you had reached a
7 settlement with the town when Mr. Jim Bain was
8 representing?

9 A Could you repeat the question?

10 Q Do you recall entering into a settlement on a
11 2008 case when Mr. Bain was representing you?

12 A I believe you may be referring to a case
13 involving the town's annual Bike Fest rather than a
14 Freedom of Information Act case.

15 Q Okay. Was there an order to pay you \$5,000 in
16 attorney's fees for that case?

17 A There was an order issued by Judge Hyman, I
18 believe, to pay \$5,000 in attorney's fees as
19 settlement of a case I brought against the town
20 involving the Memorial Day Bike Fest.

21 Q Did you have to bring a contempt proceeding to
22 enforce that?

23 A I did. I never received the \$5,000 from the
24 town, nor did my attorney, James E. Bain.

25 Q Did you -- due to Mr. Bain -- ask that I assist

1 in that matter?

2 A You did.

3 Q Let me show you a document and ask if you
4 recognize that document?

5 A I do.

6 Q What is that?

7 A It is an order signed by Circuit Court Judge
8 Larry Hyman in the matter of Paul Curry versus Town of
9 Atlantic Beach.

10 Q And have you been paid the thousand dollars that
11 Judge Hyman ordered to be paid?

12 MS. MOODY: Objection, Your Honor.

13 THE COURT: Basis for the objection?

14 MS. MOODY: I don't see the relevance in this
15 particular case as to a thousand dollars.

16 THE COURT: Relevance of that case to this?

17 MR. MULLINS: It shows a pattern and practice of
18 the town, and noncompliance with the orders of this
19 court and their willful failure to disobey them, which
20 is why we're here today, wilful failure to disobey
21 state law.

22 MS. MOODY: I believe that is -- he's bringing a
23 suit, I don't think that necessarily proves disobeying
24 -- never mind. I withdraw my objection.

25 THE COURT: All right. As the finder of the

1 fact, the Court, the rules of evidence are more
2 loosely applied since the judge as the finder of fact
3 are supposed to be able to fair out what is important
4 and what is not.

5 MR. MULLINS: We move to admit that as
6 Plaintiff's 11.

7 THE COURT: All right.

8 (Plaintiff's Exhibit 11 marked and admitted.)

9 Q (MR. MULLINS) I'll show you Plaintiff's 11. Mr.
10 Curry, did you get the \$5,000 that day in the
11 courtroom?

12 A The town manager did have a \$5,000 check for me
13 that day in the courtroom.

14 Q And the other fees that Judge Hyman awarded, have
15 you gotten a response to that?

16 A I have not received the money, nor, as far as I
17 know, has my attorney received the money.

18 Q Did I, as your attorney, request the town to
19 bring itself in compliance with this court's orders?

20 A You have.

21 Q And let me show you a document. Do you recognize
22 this particular document?

23 A I do recognize it.

24 Q All right. And was that sent on your behalf to
25 counsel for the town?

1 A It was. It references two outstanding cases I
2 have with the town.

3 Q Is one of those this case?

4 A One of those is this case.

5 Q And does it ask for compliance with the Court's
6 orders?

7 A It does ask for compliance.

8 MR. MULLINS: Move to admit as 12.

9 THE COURT: Any objection?

10 MS. MOODY: No objection.

11 THE COURT: Admitted without objection.

12 (Plaintiff's Exhibit 12 marked and admitted.)

13 Q (MR. MULLINS) I'll hand you a copy of Plaintiff's
14 12. Who was counsel for the town when that occurred?

15 A The letter is addressed to Ms. Moody. It is
16 dated October 24, 2013. I believe she had been
17 retained either as the town attorney or retained to
18 represent the town in particular in the court
19 litigation.

20 Q Do you keep track of the budget for the Town of
21 Atlantic Beach?

22 A I try to.

23 Q Let me show you a document and ask if you
24 recognize it?

25 A I do.

1 Q What is that?

2 A It is the Town of Atlantic Beach's proposed
3 budget for fiscal year 2010/2011.

4 Q Was that freely available in the town?

5 A It was.

6 Q And is that true and accurate and unaltered in
7 any way?

8 A Not altered in any way I know of.

9 MR. MULLINS: Move to admit as Plaintiff's 13.

10 MS. MOODY: No objection.

11 THE COURT: Admitted.

12 (Plaintiff's Exhibit 13 marked and admitted.)

13 Q (MR. MULLINS) I'll show you another copy of that.
14 Was there one item in that budget for codification of
15 the ordinances?

16 A There is such a line item in the budget listed as
17 a potential expenditure for that year.

18 Q Mr. Curry, during the course of this litigation
19 when was it first announced that there was no codified
20 ordinances for the town?

21 A Today.

22 Q Is that the question you have been seeking to
23 have answered, sir?

24 A Yes, since that is what the code of law requires.

25 Q Have you incurred attorney's fees and costs for

1 bringing this case?

2 A Substantial attorney's fees and costs.

3 Q Did you have a written fee agreement with my
4 office?

5 A I did sign such an agreement when I retained your
6 firm.

7 Q And does my firm tell you what we did and how
8 long we spent doing it?

9 A Your firm sends me a statement monthly.

10 Q And have you had an opportunity review our
11 Affidavit of Attorney's Fees and Attorney's Cost prior
12 to court today?

13 A I have.

14 Q Let me hand you the original document and ask you
15 if you recognize that?

16 A I do recognize it.

17 Q Does that have attached to it the bills you
18 receive on a monthly basis for this case?

19 A Attached to it are the itemizations of the costs
20 and expenses.

21 Q Have you been given a credit for all payments?

22 A Yes, I have.

23 Q Is this the fee that you are asking the Court to
24 consider for the Freedom of Information violation?

25 A It is indeed.

1 MR. MULLINS: Move to admit as Plaintiff's 14.

2 THE COURT: Any objection?

3 MS. MOODY: No, Your Honor.

4 (Plaintiff's Exhibit 14 marked and admitted.)

5 THE COURT: Admitted.

6 Q (MR. MULLINS) If you would -- giving you another
7 copy of Plaintiff's 14, Mr. Curry, did you pay an
8 initial retainer of \$5,000?

9 A I did.

10 Q And is the fee prior to starting this trial today
11 \$10,634.92?

12 A Looking at the last page, yes.

13 Q And was there costs of \$549.94?

14 A There were.

15 Q Is there any notation there of the payment of the
16 871 that was in controversy from the town?

17 A I could look through all eight pages of the
18 affidavit. I don't believe that it is here.

19 Q If you would have received that check, Mr. Curry,
20 what would you have done with it?

21 A I would have made a copy of it, probably scanned
22 it onto my computer, let my attorney know that I had
23 received it and get instructions as to whether to cash
24 it or not.

25 Q Have you ever taken the pictures of the front

1 desk area there of Atlantic Beach?

2 A On several occasions, of the public lobby area.

3 Q I'll show you a picture and ask if you recognize
4 that?

5 A I do.

6 Q Who took that?

7 A A picture taken by me.

8 Q And when was it taken?

9 A It is time and date stamped 12/18/2013,
10 December 18th of last month, and that is consistent
11 with the Christmas decorations shown in the picture.

12 Q Has that picture been altered about in any way by
13 you?

14 A It has not.

15 Q Is it a true and accurate picture of what you saw
16 in that occasion?

17 A It is.

18 Q Are you the one that took that?

19 A I am the one who took it.

20 MR. MULLINS: Move to admit Plaintiff's 15.

21 MS. MOODY: No objection.

22 (Plaintiff's Exhibit 15 marked and admitted.)

23 THE COURT: It is admitted.

24 Q (MR. MULLINS) I'll show you another copy of that,
25 Mr. Curry, Plaintiff's 15. Is there any certain sign

1 there in the front desk area of the Town of Atlantic
2 Beach?

3 A There is.

4 Q What does it warn you not to do?

5 A Do not enter beyond this door, authorized
6 personnel only.

7 Q Now, there is binders that appear in that
8 picture?

9 A There are.

10 Q Have you ever been told that those were the
11 ordinances of the town?

12 A Today I was told that. I'm not sure I was told
13 that in the past.

14 MS. MOODY: Objection, Your Honor.

15 THE COURT: The basis for the objection?

16 MS. MOODY: He is referring to today as him being
17 told. This is the first time I've seen this picture.
18 I'm not sure who told him that today.

19 THE COURT: Objection is to the form of the
20 question.

21 MR. MULLINS: All right.

22 Q (MR. MULLINS) Mr. Curry, prior to today, has anyone
23 ever told you that the ordinances were available there
24 behind the front desk?

25 A I believe I have been told that ordinances by

1 year are kept in this area.

2 Q When did you learn that?

3 A I'm not sure when.

4 Q All right. Have you ever been allowed access to
5 these binders behind the front desk of the Town of
6 Atlantic Beach?

7 A No.

8 Q Did you take any other pictures on that occasion?

9 A I took a picture subsequent to this one.

10 Q Let me ask you if you can identify this
11 particular picture?

12 A I do recognize it.

13 Q Did you take that photograph?

14 A I did take it.

15 Q And was it taken on or about the date stamp on
16 the photograph?

17 A It was.

18 Q Is it true and accurate and unaltered by you?

19 A It has not been altered by me and represents what
20 I saw.

21 Q Do you know where that was taken?

22 A In the lobby, public lobby area, of the town hall
23 Atlantic Beach in Horry County.

24 Q Okay.

25 MR. MULLINS: We move to admit that as

1 Plaintiff's 16.

2 MS. MOODY: No objection.

3 (Plaintiff's Exhibit 16 marked and admitted.)

4 Q (MR. MULLINS) I'll show you Plaintiff's 16 again.

5 Do you recognize that gentleman?

6 A I do recognize him.

7 Q Who is that?

8 A That is Mr. Booker, Junior, the town manager for
9 the Town of Atlantic Beach.

10 MR. MULLINS: If I may have a minute to confer
11 with my staff, Judge.

12 THE COURT: Regarding Exhibit 16, is there
13 testimony when it was taken?

14 MR. MULLINS: I'm sorry, Your Honor.

15 Q (MR. MULLINS) That particular document, Mr. Curry,
16 does your phone date and time stamp things?

17 A There is a time and date stamp on the image.

18 Q Is that when it was taken?

19 A It was when it was taken, 12/18/2013 at 13:41,
20 1:41, in the afternoon on December 18th, 2013.

21 MR. MULLINS: If I may have a minute, Your Honor.

22 (A brief pause in the proceedings.)

23 Q (MR. MULLINS) Mr. Curry, in summary, you are asking
24 for access to the ordinances?

25 A I'm asking for access to the codified ordinances.

1 Q Are you asking for attorney's fees and costs?

2 A I'm asking for attorney's fees to be paid.

3 Q Are you asking for injunctive relief for this
4 Court to fashion for compliance with the state
5 statute?

6 A I'm asking for the Court for injunctive relief.

7 MR. MULLINS: Answer any questions opposing
8 counsel may have.

9 THE COURT: Do you want to proceed before lunch,
10 or break for lunch?

11 MS. MOODY: What time are you breaking for lunch?
12 I can wait.

13 THE COURT: We have to have lunch at some point.
14 It is now 1:30. I think we need a break for one hour
15 until 2:30 and proceed at that time.

16 MR. MULLINS: I normally buy my client lunch here
17 in Conway. Since we're in the middle of the
18 cross-examination, and to avoid any unpleasantries
19 with Ms. Moody, I would ask the --

20 THE COURT: Yes. You are about to be
21 cross-examined, so you cannot discuss your testimony
22 with anyone.

23 THE WITNESS: I understand, Judge.

24 (Whereupon, a lunch recess was taken.)

25 MR. MULLINS: We're waiting for Mr. Curry.

1 (A brief pause in the proceedings.)

2 MR. MULLINS: All right.

3 CROSS-EXAMINATION

4 BY MS. MOODY:

5 Q Could you state exactly where you are currently
6 residing?

7 A Windy Hill section of North Myrtle Beach.

8 Q How long have you been residing there?

9 A Ever since the landlord in Atlantic Beach evicted
10 every person in the building just before Bike Fest two
11 years ago.

12 Q So 2012?

13 A To the best of my recollection, yes.

14 Q Earlier you testified that your request for
15 ordinances or documents from the town began in 2003?

16 A Specifically requested for ordinances began in
17 2003, but I had made prior requests for other
18 information.

19 Q So in 2003 you received a citation from law
20 enforcement for what exact violation?

21 A The violation I received the citation for was
22 drinking an alcoholic beverage in a public place.

23 Q Were you represented by an attorney?

24 A No, I was not.

25 Q And then with that citation you asked them for a

1 copy of the ordinance, correct?

2 A I did.

3 Q And you received a response back from the town
4 clerk, Mr. Cheryl Pereire?

5 A That may well be the response I received. The
6 citation was in May and I believe my request to the
7 town was in June, so the time line is right.

8 Q So that would have been the June 25, 2003
9 request?

10 A I'm going back ten years, but, yes, I believe
11 that is correct.

12 Q And Ms. Pereire responded to you and asked you to
13 contact her to say what specifically you were seeking,
14 correct?

15 A That is what her letter says. She was unclear of
16 what my request was.

17 Q And when she contacted you, you didn't contact
18 her again, did you?

19 A I don't know that that is true.

20 Q Well, I mean, your testimony was that you got a
21 letter from her. You didn't receive the ordinance,
22 correct?

23 A As a result of my request to see the town's
24 ordinances, I was not allowed to inspect the codified
25 ordinances of the town.

1 Q Okay. So the answer to my question is that you
2 did not go back and talk to Ms. Pereire?

3 A The answer to your question is I don't know that
4 I did not go back to talk with her after I received
5 her letter. I may well have gone back to the town
6 hall.

7 Q Did you see any ordinance -- any ordinance, not
8 codified, but any ordinance related to your charge?

9 A No, I never saw any ordinance signed by council
10 members indicating that it had gone through first and
11 second reading.

12 Q What happened with those charges, citation? Did
13 you pay the ticket, go to trial?

14 A We did go to trial. It was a bench trial before
15 the municipal judge in Atlantic Beach, and I have
16 thought about this matter, I was found guilty, but I
17 don't recall that I was fined an amount. I know I
18 didn't get jail time, and I did file an appeal to the
19 circuit court.

20 Q What happened with that appeal?

21 A I had to hire an attorney, or felt I needed to
22 hire an attorney, and the appeal resulted in the
23 charge being dismissed, I guess -- well, it got
24 remanded back to the Town of Atlantic Beach judge to
25 answer one particular question, and that was whether

1 the private property I was on had ever authorized the
2 police department to enforce town ordinances on that
3 private property, and the answer from the police
4 department was, no, they had not received that, and
5 based on that, Judge Steven John dismissed it.

6 Q And so the only thing that you were challenging
7 in that appeal was whether was the private -- or
8 whether the property was such that the law enforcement
9 could enforce that ordinance?

10 A No. What I was challenging on appeal was the
11 validity of the very town ordinance I was accused of
12 violating. I had never seen either the codified
13 ordinances or an ordinance -- one or two or however
14 many sheets of paper -- signed by town council members
15 indicating it had gone through a first and a second
16 reading.

17 Q Did you have your attorney look for that
18 ordinance or that signed copy?

19 A I was pro se at the bench trial and --

20 Q I'm sorry. I'm talking about on the appeal.

21 A I don't recall if my attorney asked for it or
22 not.

23 Q Who was your attorney then?

24 A It was Johnny Gardener here in Conway.

25 Q You testified you weren't ever shown any codified

1 ordinances, ever, with the Town of Atlantic Beach?

2 A I've never seen a codified set of ordinances with
3 an index for the Town of Atlantic Beach.

4 Q What is a codified ordinance, in your opinion?

5 A Exactly what the code of laws of South Carolina
6 says, a set of ordinances that are kept current
7 reflecting all amendments and appeals with an index so
8 you can find what it is you are looking for.

9 Q So your position today, as it relates to the Town
10 of Atlantic Beach's current ordinances, is that they
11 are not in that order? Do you on know what order they
12 are in? How are they kept other than just in a
13 notebook?

14 A Can you repeat the question?

15 Q Your testimony today is that the Town of Atlantic
16 Beach's ordinances are not kept in the state required
17 order as being codified, right?

18 A I maintain they are not codified as required by
19 the state, yes.

20 Q So what order are they kept in, to your
21 knowledge?

22 A I understand they are kept by year, but then no
23 one ever goes back to the prior year's ordinances to
24 reflect that those had been amended or repealed.

25 Q Have you ever received any of those ordinances,

1 copies of those ordinances, from the Town of Atlantic
2 Beach?

3 A There is a problem with terminology here.

4 Q Let me just ask you the question first.

5 A Okay.

6 Q I need you to answer the question, yes or no.
7 Have you received a copy of those ordinances, any of
8 those ordinances, any one, two, ten of those
9 ordinances, that are not kept appropriately as you are
10 sitting here today? Have you ever gone to the town
11 and asked them for a copy of one of those ordinances
12 out of their notebooks?

13 A I have asked for copies of ordinances, specific
14 ordinances, yes. One in particular I recall was the
15 fireworks ordinance, whether they were allowed in town
16 or not.

17 Q And you've received a copy of it?

18 A Ma'am, what I received was some photocopy pages
19 that had absolutely no indication as to that was what
20 the town council voted on, whether it went through
21 first reading, second reading, whether it was
22 advertised to the public, whether the public attended,
23 whether it had ever been amended in a later year,
24 repealed in a later year. They were simply pages. I
25 don't know where they came from.

1 Q While you were down there, when you asked them
2 for a copy of the ordinance, whatever they gave you,
3 did you ever -- just like you gave me that list, did
4 you ever tell them all of the things you needed to go
5 along with that piece of paper?

6 A You prefaced your question about a list I gave
7 you?

8 Q You just testified -- gave me a list of things
9 that is supposed to come along with your copy of the
10 ordinances.

11 A Are you referring to the signatures and the first
12 and second reading dates?

13 Q Yes.

14 A And so now that we've established that, your
15 question is what?

16 Q When you received a piece of paper that was
17 purported to be the ordinance for the town, and it was
18 not to your liking, did you ask them specifically for
19 the second reading information, the appeal, repeal of
20 the ordinance, or what have you, whatever information
21 you felt should have been on that piece of paper, did
22 you ask them for it?

23 A Ma'am, I believe there is admitted into evidence
24 at least four requests to four different town
25 managers.

1 Q Okay. Let's back up. Start over. My question
2 to you is, have you ever requested a copy of an
3 ordinance from the Town of Atlantic Beach, and to that
4 question, you answered, yes.

5 A I do recall the specific one about fireworks,
6 yes.

7 Q When you received that ordinance copy of the
8 fireworks, that piece of paper, and it did not list
9 the things that you think should have been with a
10 codified ordinance or the ordinance, period, such as
11 the signature, the date of first reading, any of that
12 information, on that document did you tell the person
13 who gave you the copy that you needed all of those
14 things?

15 A I don't recall that I did, but I may have. I may
16 have indicated that I didn't believe it was a valid
17 ordinance.

18 Q So you would say, no, that you did not tell them
19 specifically that you needed all of those things?

20 A With the fireworks ordinance, that was back in
21 2003 so I don't recall following up. Certainly with
22 the ordinance I was cited for, yes, I requested more
23 specificity, and it was not forthcoming.

24 Q Okay. So you would agree with me that you have
25 been shown what the town considers to be the

1 ordinance, a copy of ordinance, or the fireworks in
2 this particular one, I believe?

3 A Fireworks.

4 Q You were shown an ordinance?

5 A I was shown copies of papers. Whether they were
6 real ordinances, whether they were drafts that were
7 going to be presented to the council, whether they
8 were copied from other municipality, I don't know.

9 Q So you don't know if they came out of the
10 notebooks for that current year?

11 A I don't recall anyone going to a binder to a
12 particular year and pulling out an ordinance. A lot
13 of times these requests were handled -- I would go to
14 town hall, told you will have to come back another
15 time, and when I returned, they had papers for me to
16 look at.

17 Q Okay. Now, you were at the time, in 2003, living
18 in the Town of Atlantic Beach, and during that time,
19 you were going to all of the town council meetings?

20 A Not when I first moved to town, no. I became
21 concerned when the town was going to drop its
22 agreement with Horry County for code enforcement in
23 town.

24 Q What year was that, do you recall?

25 A It was when Carolyn Montgomery was town manager,

1 about eight months after I moved into town.

2 Q What year would that be?

3 A I believe I moved into town in July of 2002, and
4 I believe I didn't become involved in the town's
5 affairs, as to looking after government, until,
6 perhaps, spring of the following year, 2003.

7 Q So spring of 2003 you started going to all of the
8 town council meetings?

9 A I don't know that I started to going to all of
10 the town council meetings, but I certainly recall
11 making the request for this resolution that was going
12 to drop the agreement with Horry County.

13 Q Isn't it true you videotaped all of the town
14 meetings?

15 A I didn't own a video recorder at that time.

16 Q But at some point between 2003 and today's date,
17 you video recorded town council meetings?

18 A I subsequently obtained a camcorder, and I did
19 regularly videotape the events until the town seized
20 my camcorder and computer equipment.

21 Q But the answer to my question is, yes?

22 A I did have videotape them -- video record them is
23 the proper way to say it.

24 Q You also indicated that you renewed that 2003
25 request for a look at the ordinances. In fact, you

1 actually filed that police report; isn't that correct?

2 A I did file a police report or asked that a police
3 report be taken of a violation of the Freedom of
4 Information Act.

5 Q So Plaintiff's Exhibit 4 that we had introduced
6 into evidence --

7 THE COURT: Number what?

8 MS. MOODY: No. 4. Thank you.

9 Q (MS. MOODY) That is Plaintiff's Exhibit 4. This is
10 the renewal of the request to see the ordinances,
11 correct?

12 A It is such a request dated the 5th day of
13 January, 2005.

14 Q In 2005, who was the clerk for the Town of
15 Atlantic Beach?

16 A I don't know, to be sure.

17 Q So when you said you spoke to Louise
18 Blotus (phonetic) -- is that her name?

19 A I believe it is Blotus and, yes, you've refreshed
20 my memory. As far as I know, she was a contract
21 employee working at the town hall at that time.

22 Q What exactly did she do at the town?

23 A She responded to requests for information. If
24 you walked into the town hall lobby, she was your
25 point of contact with the town.

1 Q Who was the town manager then?

2 A 2005? I believe it was still Carolyn Montgomery,
3 now known as Carolyn Cole, C-O-L-E.

4 Q Between that time, did you give her or the town
5 manager a copy of this police report?

6 A Again, this is not a police report. This is
7 simply a voluntary statement that I completed asking
8 that a police report be taken, and I don't know that
9 they ever did an incident report for it.

10 Q So this is a voluntary statement. Did you give a
11 copy of your voluntary statement to the town manager
12 at the time?

13 A I don't recall.

14 Q And so between 2003 and 2005, you didn't go back
15 to the town hall requesting a copy of the town
16 ordinances?

17 A Oh, I don't know that that is true.

18 Q Did you put any of the council members at the
19 time on notice that there needed to be a codified town
20 ordinance for your concern?

21 A I don't recall if I addressed council or not.

22 Q You are not sure if you gave it to town manager.
23 You're not sure if you gave it to council, but you
24 know you gave it to the police department?

25 A This particular statement, yes.

1 Q And you don't know whether they gave it to town
2 council?

3 A I don't know.

4 Q Do you know what they did exactly with this
5 statement, or just filed it away?

6 A As far as I knew they threw it in the trash can.

7 Q And who is the lieutenant that signed this,
8 witnessed this?

9 A That is a good question. It would be useful to
10 know.

11 Q So you don't recall who you talked to?

12 A Ma'am, this is 2005, you know, eight years ago.
13 No.

14 Q So now you, in 2006, May 18th, you submitted
15 another request, and I believe you submitted that --
16 Plaintiff's Exhibit No. 5?

17 MS. MOODY: Can I get Exhibit 5, Judge?

18 Q (MS. MOODY) As for Plaintiff's Exhibit 5, you
19 indicated you submitted that to Marcia Connor. Who
20 was the clerk of the -- clerk of the town at that
21 time; was it Ms. Blotus still?

22 A No. I believe that when Carolyn Montgomery left
23 as town manager, Ms. Blotus also left.

24 Q Okay. Do you recall who was the clerk then?

25 A I don't recall in 2006.

1 Q So now this is not a FOIA request, according to
2 your letter?

3 A Well, on the reference line it is "Public
4 Inspection of Codified Municipal Ordinances," and it
5 references the Freedom of Information Act.

6 Q Could you read that paragraph that references the
7 Freedom of Information Act?

8 A I note that this request is not made under the
9 state's Freedom of Information Act. The
10 15-working-day deadline for a response under the FOIA
11 does not apply. I take the position that reasonable
12 times, quote, end quote, as referred to in the above
13 section means during the regular hours of operation of
14 the town hall.

15 Q So you agree with me that there is not a Freedom
16 of Information Act request?

17 A Oh, I believe it is. I believe since the
18 reference line is "Public Inspection of Codified
19 Ordinances," and that is a public record, I was asking
20 to inspect a public record. I may not have include
21 the citation, the chapter -- Title 30, Chapter 4 of
22 the Code of Laws, but it is clearly a request to
23 inspect public records.

24 Q Well, why did you say it wasn't made?

25 A Because I was tired of the town's constant

1 telling me I have to come back, that they had 15
2 working days when you ask for the simplest documents,
3 like an agenda for a meeting.

4 Q So what specifically were you asking for from the
5 town that could have taken them a couple of seconds
6 for the simplest document?

7 A I would think the reference line says it all,
8 "Public Inspection of the Codified municipal
9 Ordinances." I would think a person could go to town
10 hall, ask what is the zoning for this particular
11 address that I'm thinking about buying, and be able to
12 get an answer while you are there at the town hall.

13 Q But you would agree that your reference line
14 says, Public inspection of codified municipal
15 ordinances, ordinances being plural, meaning you want
16 more than one, that is your reference line. You wrote
17 this letter, correct?

18 A That is exactly what the code section says,
19 Section 5-7-290, municipal ordinances, plural, to be
20 codified.

21 Q Okay. So you wanted to see all of the
22 ordinances? One could reasonably --

23 A I wanted to see the complete codified ordinances
24 with the index, yes.

25 Q And you signed this letter, and when you wrote

1 this letter, you stated specifically what you wanted,
2 correct?

3 A I don't know that I could have made it any
4 clearer.

5 Q And also that paragraph where you say you note
6 that this request is not made under Freedom of
7 Information Act, you were clear on that, too?

8 A I was clear that they did not have a
9 15-working-day deadline to respond to it.

10 Q So now did you go back up to town hall after you
11 submitted this letter?

12 A I assume that I did.

13 Q Did you get an opportunity to look at any
14 ordinances?

15 A I did not get a chance to look at the codified
16 ordinances with an index complete with all amendments
17 and repeals.

18 Q What did you look at?

19 A I don't know what they may have shown me or not
20 have shown me.

21 Q They would have shown you what they considered to
22 be the ordinance, right?

23 A I don't...

24 Q We can agree that you don't think that what they
25 consider ordinances are codified ordinances, correct?

1 A I think we do agree on that, yes.

2 Q So if they pulled out something and said these
3 are our ordinances, they are not codified, but these
4 are ordinances, they made it available to you?

5 A They did make information available to me, yes.

6 Q But it happened not to be codified?

7 A And they came with no proof that they actually
8 had been passed at a town council meeting.

9 Q So in the notebooks -- the documents where they
10 pulled them out of the notebooks, because you're
11 asking for all of the ordinances, they would have to
12 show you the notebook, correct?

13 A Ma'am, at this time I don't know how they were
14 keeping these ordinances. As I said, usually they
15 would not give them to me. They would tell me I would
16 have to return. By the time I returned, there would
17 be pages in front of me. Where they came from, I
18 don't know.

19 Q In 2006 you were attending the town council
20 meetings?

21 A I believe I was.

22 Q And you observed them approve different
23 ordinances in the town council meetings, correct?

24 A It is interesting that you mentioned that,
25 because there was an ordinance about amending the town

1 council procedures, and town council couldn't agree on
2 how many prior amendments there were. They weren't
3 even sure whether they were amended.

4 Q Did they approve any ordinances in 2006 in
5 council meetings at all?

6 A I suspect they did. I couldn't name you a
7 particular one.

8 Q So they would have a notebook that said 2006 that
9 has these approvals?

10 A Ma'am, I don't know. One of the purposes of my
11 photographs in December was to try to get a close-up
12 picture of the wording on the side of the binders that
13 were visible. Those cupboard doors, or credenza
14 doors, are not usually open. I didn't know.

15 Q I'm asking you from your own personal observation
16 when you went to the meetings, did you hear them
17 approve any ordinances within 2006?

18 A I don't remember that year.

19 Q Okay.. So it is possible -- you are saying it is
20 possible they didn't introduce any ordinances for the
21 Town of Atlantic Beach in that year?

22 A It is possible, but unlikely they would have.
23 They would have done at least a budget ordinance, I
24 would think. I just can't recall one.

25 Q So in 2006 you sent your letter to Marcia Connor,

1 and you sent a letter to another individual who was
2 the town manager?

3 A Kenneth McIver was the subsequent town manager,
4 yes.

5 Q Before him, was there anybody else before him
6 that was a town manager?

7 A There was probably at least an interim or acting
8 town manager. Ms. Conner, I believe, was removed by
9 order of the governor because of an indictment on a
10 charge that would allow the governor to remove a
11 public official.

12 Q I just want to know if there is another person.
13 We're not here about Ms. Connor's prior acts. The
14 person that you are thinking might have been interim,
15 was it Charles Williams?

16 A It could well have been.

17 Q Did you ever send him any letter following up on
18 any documents that you needed or any review of any
19 documents you needed?

20 A I don't recall -- I believe I did send him
21 letters, yes. I certainly recall asking him in
22 person, and him telling me that he was not going to
23 cooperate because I was a harasser.

24 Q So you didn't receive -- look at any ordinances
25 with him?

1 A I don't recall him ever showing me an ordinance,
2 no -- or ordinances, plural.

3 Q But then you talked to Mr. McIver? You submitted
4 Plaintiff's 6 that you wrote to Mr. McIver?

5 A I did write that letter.

6 Q So Mr. McIver responded to you on May 12, 2009?

7 A It does appear to be a response, although, I
8 question it because the letter I sent to Mr. McIver
9 apparently was delivered sometime in March, and I
10 don't know if there was any interim communication
11 between myself and Mr. McIver by the time he finally
12 responded in May.

13 Q So, now, when was this letter written?

14 A There is no date. Unfortunately, I left it off.
15 Sometimes I get in a hurry, but I do have the
16 information from the United States Postal Service's
17 on-line site that shows when that certified letter was
18 delivered in North Myrtle Beach.

19 Q How long did Mr. McIver work for the town, do you
20 recall?

21 A Oh, boy.

22 Q Was it longer than a year?

23 A The answer is, I don't know.

24 Q If I told you it was only six months, would you
25 agree with me?

1 A I would not be surprised.

2 Q Okay. So you sent him this letter. He replied
3 to you in May of 2009, and in this letter he tells you
4 that there are no codified ordinances, correct?

5 A Correct. In the first paragraph he admits the
6 town has not codified its ordinances.

7 Q When you testified earlier today that you just
8 found out today there was no codified ordinances, that
9 was incorrect?

10 A I had forgotten about his response here that
11 there was an admission that they had not been
12 codified.

13 Q And shortly thereafter, maybe a year, I guess,
14 you filed your lawsuit, this lawsuit?

15 A The time line is about right. This letter is May
16 of 2009, my lawsuit has a 2010 case number it.

17 Q And in that letter he told you that in the
18 2009/2010 budget it sets aside money to codify the
19 ordinances?

20 A That is what he states.

21 Q And did you actually get a copy of that budget?

22 A I suspect that I did.

23 Q So what you introduce here today would you --
24 this is not the first time you've seen this budget
25 when your lawyer produced it, correct, Plaintiff's 13?

1 A It would not be the first time I had seen it from
2 my attorney. I suspect I provided this to my
3 attorney, but there is a discrepancy here in that the
4 budget, your Exhibit 13, Plaintiff's Exhibit 13, is
5 for fiscal year 2010/2011, whereas Mr. McIver's letter
6 from May 12, 2009 specifically references the
7 2009, slash, 2010 budget, so we're talking about two
8 different budgets here.

9 Q But your lawyer gave you this, or you gave it to
10 your lawyer?

11 A I believe I gave it to him, yes.

12 Q And so where did you get it from?

13 A I suspect it was a handout at a town meeting.

14 Q So you would have been present when they -- in
15 2010 and 2011 to receive this document?

16 A Again, I can't be sure. Too often -- when it
17 gets close to budget time, they are supposed to pass
18 their budget by the end of June 30th for the year
19 beginning July 1. They frequently hold meetings on
20 short notice, and those often conflict with my work
21 hours.

22 Q But this is a second reading of the 2010/2011
23 budget, and in this budget it makes provision for a
24 codification?

25 A Well, you say "second reading." I think it says

1 "proposed" on it.

2 Q Right. But I'm reading what the document says
3 too, Second reading, 2010/2011 proposed budget; is
4 that what it says?

5 A I can't focus from that distance. (Witness
6 examines document.) It does say "second reading."

7 Q This is a document that your lawyer submitted
8 into evidence, correct?

9 A That is the one that we've submitted into
10 evidence.

11 Q And your lawyer pointed out -- or you testified
12 that in this document it has under the expenditures,
13 on that page, a line item for codification of \$10,700
14 estimated, correct?

15 A That is what this paper reflects, yes, and as far
16 as I know, that money was not spent and the town's
17 ordinances were not codified.

18 Q Now, did you ever discuss with the town council
19 members your concern about the codification?

20 A Yes, I did.

21 Q When did you do that?

22 A I don't know the dates specifically, but I would
23 frequently speak at what is called "public time" when
24 town council pauses to receive input from the public.

25 Q So that would have been before this budget line

1 item was?

2 A It may have been after, also.

3 Q But you agree with me that you probably set it in
4 a meeting prior to 2010?

5 A I think it is almost a certainty that I did.

6 Q Okay. So you discussed it with them, and at the
7 time --

8 A Well --

9 Q Let me ask the question. You discussed it with
10 them, and at the time, Mr. McIver was the town's
11 manager for about six months, Mr. Williams was --
12 proceeded him. Who came behind Mr. McIver as the town
13 manager?

14 A The point I was going to make --

15 Q My question was, who was the town manager after
16 Mr. McIver?

17 A I don't know.

18 Q Would you agree it was Mr. Booker?

19 A It could well have been.

20 Q Did you discuss codification with Mr. Booker?

21 A I believe I have.

22 Q And when you came to the town office -- and I'm
23 assuming you discussed it with him at town hall,
24 correct?

25 A I don't know.

1 Q When you talked to him about codification, how
2 did that conversation arise? Did you go up there
3 specifically to tell him on that day that the town
4 needed to codify their ordinances, or were you there
5 to see codified ordinances?

6 A It could have been both.

7 Q So when you asked Mr. Booker for documents
8 related to codified ordinances, did he ever give you
9 anything or try to show you anything that he thought
10 was an ordinance?

11 A I don't understand your question.

12 Q Did Mr. Booker pull out any of those notebooks
13 that they say contain the ordinances and try to let
14 you review those books?

15 A I don't believe he did.

16 Q Now, did Mr. Booker ever give you a verbal
17 response about codified ordinances?

18 A He may well have.

19 Q So that could have possibly happened during your
20 conversation about the need for codified ordinances?

21 A It could well have.

22 Q Now, you continuously work with Mr. Booker at the
23 Town of Atlantic Beach, whenever you need something
24 you talk to Mr. Booker?

25 A I have up until about two months ago.

1 Q So during that time, up until about two months
2 ago, he's been helpful to you or tried to give you
3 whatever you've asked for?

4 A I would say that is generally correct.

5 Q Has Ms. Cheatham ever done that, had to give you
6 -- provide you with any documents?

7 A No. One example, she refused to provide me with
8 a contract between the town and the town's attorney --
9 actually, I guess it was the termination letter, why
10 the town's attorney was terminating its agreement with
11 the town.

12 Q So is that the only time you've ever asked
13 Ms. Cheatham for documents?

14 A Oh, no. There were other times when I was
15 refused documents related to the vendor licenses for
16 Bike Fest, who got them, whether they were paid for or
17 not.

18 Q Anything else?

19 A Oh, at one point I submitted a list that had
20 probably ten items on it, most of those have still not
21 been fulfilled.

22 Q So you are saying Ms. Cheatham is --

23 A I'm saying there may be -- there are times --
24 there were times when she did not provide me the
25 information I requested.

1 Q Now, when you asked for these documents you are
2 expecting for her to give them right then when you are
3 asking for them?

4 A If they are readily available and something
5 current, I think that is reasonable, but even allowing
6 for the fact that they may not have been produced the
7 right away, they weren't produced at any point.

8 Q How often do you go to town hall asking for
9 documents?

10 A When I lived in town it was not uncommon for me
11 to be there two, three times a week.

12 Q So now that you don't live there in the Town of
13 Atlantic Beach, how often do you go to the town
14 requesting documents?

15 A It's probably once a week or less.

16 Q Now, you referred to a person that, I guess, was
17 a town manager, you testified, Mr. Webb?

18 A Mr. Webb was at one time a police chief, and
19 during another period of employment was the town
20 manager.

21 Q So this incident that you discussed with your
22 lawyer earlier where he had been arrested for charges
23 of assault, that occurred when he was town manager?

24 A It did.

25 Q And do you recall the date that that occurred?

1 A To the best of my recollection, it was in January
2 of 2012.

3 Q Was he the town manager then?

4 A He was the town manager on whatever date this
5 incident occurred, yes.

6 Q And when did he cease to be the town manager?

7 A Within two to three months, I believe. He had
8 left by March or April of that year.

9 Q Now, this assault that took place, isn't it true
10 this assault took place based on his being angry with
11 you?

12 A I think that is fair to say, that he assaulted me
13 because he was angry with me, yes.

14 Q So what did he allege that you did to him that
15 made him angry?

16 A He alleged that I was harassing him and the town
17 by continually coming to the town hall asking for
18 public records.

19 Q Was there anything else that he alleged that you
20 did to him?

21 A Well, not to him, but he alleged that I wasn't
22 filling out the proper visitor sign-in form at the
23 town hall and, therefore, he wasn't going to provide
24 me with public records.

25 Q Didn't he also say that -- or indicate that you

1 were taking pictures of him and showing up at his
2 house taking pictures of his car, that is why he felt
3 you were harassing him?

4 MR. MULLINS: Objection, Your Honor, relevance.
5 I've tried to let this go far afield as I realize
6 there is no jury here, but --

7 THE COURT: And the relevance, Ms. Moody?

8 MS. MOODY: He indicated that Mr. Webb -- he made
9 it appear that Mr. Webb was attacking him for no
10 reason and that he was just in the town hall, or
11 wherever he was, minding his own business. I just
12 wanted to know more information about it.

13 THE COURT: Well, we have a conviction from a
14 municipal court which was -- which court?

15 THE WITNESS: In the Horry County Magistrate
16 Court.

17 THE COURT: An Horry County Magistrate Court
18 conviction on appeal to the circuit court, so there is
19 no final adjudication of that matter. It is an open
20 matter, as far as the Court is concerned. We have
21 testimony in direct concerning the matter, so I will
22 overrule. You may proceed.

23 MS. MOODY: Thank you, Your Honor.

24 Q (MS. MOODY) Mr. Curry, in terms of getting FOIA
25 requests for getting documents from the town, you say

1 that you go to the town, you ask Ms. Cheatham or
2 Mr. Booker, or whoever, for documents, and you don't
3 receive them right away?

4 A No. Sometimes they do, sometimes they don't,
5 sometimes I never receive them.

6 Q Okay. So you don't have to put anything in
7 writing?

8 A There is currently a court order in place
9 resolving a prior Freedom of Information Act request
10 that specifically states that, no, a requester is not
11 required to put a Freedom of Information Act request
12 in any particular form.

13 Q And when was that -- do you recall when you filed
14 that matter?

15 A It was a 2005 case.

16 Q And in 2005 it was specifically because you had
17 not received public records?

18 A In 2005, I believe my complaint alleged that the
19 town was not providing me notice and agenda of the
20 council meetings as required by the Freedom of
21 Information Act.

22 Q So that matter got settled, correct?

23 A The town and I, through my attorney, entered into
24 a consent agreement in, I believe, 2010.

25 Q And the person representing the town, they had a

1 lawyer at that time, John Zalinsky?

2 A Correct.

3 Q And he, along with Mr. William Booker, came up
4 with the settlement that you all ultimately signed?

5 A Their signatures are on the settlement agreement
6 along with mine and my attorney, James E. Bain,
7 B-A-I-N.

8 Q And this particular order you are talking about,
9 I'll -- I guess I need to get it marked.

10 (Defendant's Exhibit 1 marked.)

11 Q (MS. MOODY) I'll show you Defendant's 1. Is that
12 an order -- or the order that you testified to?

13 A It is, with some additional underlining not in
14 the original.

15 Q We can agree it is my document, right?

16 A Okay.

17 Q So this order that your lawyer signed, along with
18 Mr. Zalinsky and Mr. Booker, it addresses FOIA issues
19 that you've had in the past with the town?

20 A And some that were anticipated, that we were
21 trying to prevent them from occurring in the future.

22 Q So looking at public records, does this order
23 address that?

24 A It does.

25 Q And you would agree with me that an ordinance is

1 a public record?

2 A Yes.

3 Q And so Mr. Booker and the rest of the members of
4 the town have a requirement to show you and make
5 available to you these public records?

6 A Yes.

7 Q And so the issues that you had prior to the town,
8 other than the ordinances being codified, being able
9 to see those public documents, it was addressed in
10 this 2009 order?

11 A I'm sorry, repeat the question.

12 Q Regarding FOIA and looking at public documents,
13 you addressed those issues in this case -- it was a
14 2005 case, but the order was signed in 2009 -- excuse
15 me, 2010, it was addressed in this order?

16 A Certainly the order contains requirements for the
17 town to produce public records for inspection. It may
18 not be the definitive be-all-end-all, but it does
19 impose requirements upon the town.

20 Q Including providing you with minutes, giving you
21 the agendas, correct?

22 A Well, I would like to broaden this. I believe it
23 requires that this be available for everyone. I tried
24 to make it inclusive. The only part to the order, I
25 believe, that is specific to me is that I'm not

1 required to put a request in writing.

2 Q Right. But it allows everybody, including
3 yourself, to get copies or review and inspect any
4 public record that the Town of Atlantic Beach has?

5 A That was my intent, that it would be a road map
6 to be followed, yes.

7 Q So the issues that you testified to as to the
8 2003 incident where you had the citation, the 2006
9 issue where you wrote to Marcia Connor, the 2009 issue
10 you had with Mr. McIver asking him for copies of
11 documents, public records, they are addressed in this
12 order?

13 A Not specifically, no.

14 Q I'm going to come back to the codified
15 ordinances, but everything else is addressed in this
16 order?

17 A The order addresses that the town should produce
18 public records for inspection and copy. Codified
19 ordinances are public records so, therefore, they
20 would be included even if not specifically referred
21 to.

22 Q So if they don't have a codified ordinance, but
23 they have ordinances -- whatever they show you -- and
24 they proclaim it to be an ordinance, that is giving
25 you the documents and they have complied under this

1 order?

2 A No, I don't agree they have. I believe if you
3 are going to prosecute someone claiming they have
4 committed a criminal offense, you have an obligation
5 to prove that it is a valid law, and simply producing
6 a couple of photocopies of sheets of paper with no
7 attribution, I don't believe that is producing an
8 ordinance, it is just producing paper.

9 Q Okay. So the only issue we can say that you
10 have, really, is with it being codified? The
11 documents are not codified?

12 A They are not codified, no index and not kept
13 up-to-date. The best example is the most recent
14 election in November. One faction in town says the
15 town's ordinances claim the election is the first
16 Tuesday of November, and another claims it is the
17 second Tuesday of November. It can't be both. It has
18 to be one or the other. Which one is the correct
19 version? If we had codified ordinances, we could
20 tell.

21 Q You are missing my point. What I'm trying to get
22 at is they haven't refused showing you any codified
23 ordinances if they don't have any, correct?

24 A I would agree that if they don't have -- they
25 can't produce something they do not have, yes.

1 Q So your only issue the ordinances are not
2 codified, right, as required by that Section 5 -- I
3 can't recall it off the top of my head, but the state
4 law, correct?

5 A No. It is also that the town is failing to
6 comply with the state or the with the South Carolina
7 Code of Ordinances that requires them to do this. It
8 is not merely just a Freedom of Information Act
9 violation.

10 Q Okay. You just said that they produced the
11 documents, right?

12 A They produced papers. I don't know if they are
13 actual ordinances, if they came from Hilton Head
14 Island, came from the City of Saluda. If there are
15 not council signatures on there and dates showing
16 first and second reading, I don't know that it is an
17 ordinance. They may say it is, but they couldn't
18 produce one at my trial, my bench trial.

19 Q I guess I'm getting to the point that your
20 testimony earlier was that you have not been given
21 anything?

22 A Oh, no, I don't believe that is true at all. In
23 fact, I received -- no. I've received ordinances that
24 show when first and second readings were, but they are
25 one ordinance and I never know subsequently if they

1 have been repealed or not, or amended.

2 Q So in terms of the Freedom of Information Act,
3 them providing you documents, they have not not given
4 you any documents? Even though you are saying it is
5 not what you want, they have not not given you
6 documents? They have given you documents?

7 A On occasion, yes.

8 Q So when we boil it down, the only thing we're
9 talking about is whether the documents, or the
10 ordinances, that you have requested to review are
11 codified?

12 A No. In respect to the conviction and the
13 municipal court --

14 Q Which year was that?

15 A I'm thinking it was 2003.

16 Q So, again, when you filed -- when you had that
17 issue, and it was based on Freedom of Information,
18 that order from the 2005 case would have addressed
19 that, correct?

20 A Now, wait a minute, ma'am. If I'm a defendant in
21 a criminal case, I'm entitled to discovery. I think a
22 basic fact for discovery is that you should be allowed
23 to see what it is -- the law that you are alleged to
24 have violated and some proof it is a valid ordinance,
25 and the --

1 Q Did you bring that up in 2003?

2 A I absolutely did at the bench trial.

3 Q And when you appealed it, it was brought up then?

4 A I left it to my attorney as to what he chose to
5 put in the appeal or not. I assume he did.

6 Q So that matter -- what you were trying to achieve
7 in that was a dismissal of those charges, right?

8 A That, and then that got me interested in whether
9 or not the town knew what its ordinances were. To
10 this date, I have not seen that ordinance that I was
11 charged with with signatures on it indicating that it
12 ever passed council.

13 Q To this date, did you request another specific
14 copy of that particular ordinance?

15 A I did, while the appeal was pending.

16 Q And after that appeal, did you request a specific
17 copy of that ordinance?

18 A No.

19 MR. MULLINS: Objection. This is becoming
20 repetitive at some point. I mean, we've been on the
21 same matter for quite some time. I realize there is
22 no jury here and it's late, but it is becoming
23 repetitive.

24 THE COURT: Ms. Moody.

25 MS. MOODY: I don't think it is repetitive. When

1 I ask him a question, it is a yes or no answer, and he
2 doesn't answer that, he changes his response to it. I
3 asked him earlier did he not receive any FOIA
4 documents that he's requested, and he said he has, yes
5 and no. In this case, he's specifically pointing to
6 codified ordinances, a group of ordinances. We
7 established that there is no codified ordinances. He
8 received everything they have under any FOIA request
9 that he's requested.

10 THE COURT: I think the time line is important
11 for the Court to understand who did what when and
12 whether it has been addressed by the Court.

13 MS. MOODY: I'll try to speed it up and clarify.

14 THE COURT: You may proceed.

15 Q On that particular ordinance, you went through
16 the Court of Appeals, you requested a copy of it, you
17 had an attorney. That particular conviction was --
18 that case was dismissed against you?

19 A It was.

20 Q So that is resolved?

21 A I haven't been reimbursed my money for hiring an
22 appeal attorney.

23 Q Do you have an order for that?

24 A No.

25 Q Okay. So that charge was taken care of where

1 they dismissed the charge against you?

2 A Yes.

3 Q In 2005, you filed another case on FOIA, and you
4 resolved that by settling it with the town in 2010,
5 correct?

6 A I thought I did, but the town is not complying
7 with it.

8 Q Is it yes or no that you resolved the issue by a
9 settlement agreement?

10 A I would have to say, no, the issue is not
11 resolved by signing the settlement agreement because
12 the town is not complying.

13 Q Did the Court acknowledge the settlement of the
14 case and grant you attorney's fees in that case?

15 A It did, and the town didn't pay them.

16 Q Isn't there something of a record that as of
17 January 25, 2010, you settled that case?

18 A Yes.

19 Q Did you ultimately receive the \$5,000 for that
20 case?

21 A Ultimately, yes.

22 Q Okay. So that addresses anything from 2010 on
23 back, because you and your lawyer, along with the
24 town's manager and their town attorney, talked about
25 the issues with FOIA and put it in a written document

1 and presented it to the court, correct? I'm not
2 saying there haven't been violations, but on
3 January 25, 2010 you all addressed the issues that you
4 were having with FOIA in this settlement?

5 A I don't believe that disposed of any of my prior
6 requests that had not been fulfilled on the date of
7 that order.

8 Q The attempt was to dispose of it, right?

9 A The attempt was to dispose of my complaint, yes,
10 and to remedy past violations and to try to prevent
11 future ones.

12 THE COURT: Can I see whatever document
13 addressing --

14 MS. MOODY: I'm sorry, I ask that to be moved
15 into evidence.

16 MR. MULLINS: No objection.

17 THE COURT: It is admitted, Defendant's 1.

18 (Defendant's Exhibit 1 admitted.)

19 THE COURT: The Court would take judicial notice
20 of it, in any regard.

21 MS. MOODY: I beg the Court's indulgence.

22 (A brief pause in the proceedings.)

23 MS. MOODY: No further questions.
24
25

REDIRECT-EXAMINATION

BY MR. MULLINS:

Q You used to attend town meetings?

A I used to.

Q Why don't you attend them anymore?

A The municipal judge threatened me with another -- or threatened me with sanctions if I photographed an individual who was harassing me in the vicinity of the building that these town council meetings are held in, and that the municipal court is held in. In addition, I was issued a so-called trespass warning by the acting chief of police in town that prevents me from going on or near the address where this community building is.

Q Where are the town council meetings held?

A At the Atlantic Beach Community Center, 1010 32nd Avenue South in the Town of Atlantic Beach, Horry County.

Q I'll show you what previously was marked and admitted as Plaintiff's No. 4. Counsel asked you questions about?

MS. MOODY: Can I see the document you handed him, because your exhibit is already up there.

Q (MR. MULLINS) I'll show you what was -- here is the one with the court reporter's sticker. Have you ever

1 been threatened with being arrested with loitering?

2 A Yes.

3 Q And look Plaintiff's 4 at the bottom line. Did
4 you reference that in Plaintiff's 4?

5 A I did reference that.

6 Q Have you ever been shown the loitering statute?

7 A I can't recall that I have ever seen that. In
8 fact, I think that was a request for the public
9 nuisance ordinance.

10 Q Have you ever reviewed that for the Town of
11 Atlantic Beach?

12 A Eventually, I believe, I have seen a public
13 nuisance ordinance as a results of the Bike Fest
14 litigation involving excessive noise in town.

15 Q And, also, was there a 2008 case where you asked
16 for declaratory judgment regarding the town's
17 violation of certain municipal ordinances?

18 A Yes.

19 (A brief pause in the proceedings.)

20 Q (MR. MULLINS) Mr. Curry, I'll hand you a certified
21 copy of the order 2008-CP-26-3990. Do you recognize
22 that document?

23 A I do.

24 Q What is that?

25 A It is an order, Paul Curry versus Town of

1 Atlantic Beach, a declaratory judgment and permanent
2 injunction.

3 MR. MULLINS: And we ask, Your Honor, to mark and
4 admit that, please, as Plaintiff's No. 17, and ask the
5 Court to take judicial notice of the order of this
6 court.

7 THE COURT: All right.

8 (Plaintiff's Exhibit 17 marked and admitted.)

9 THE COURT: So ordered.

10 Q (MR. MULLINS) You were asked about a \$5,000 fee on
11 cross-examination that was ordered by this court, was
12 that the \$5,000 you were speaking of?

13 A Yes. In two cases I was ordered \$5,000, this is
14 one of two.

15 Q And did you have to have the town held in
16 contempt of court per the order that we've previously
17 submitted in this matter to get that money?

18 A Yes. I retained counsel.

19 Q And in a prior exhibit you had identified a
20 photograph you had taken. As I recall, it was
21 Plaintiff's No. 15?

22 A If I could refresh my memory.

23 Q Do you recall that document?

24 A I don't know that we admitted that one into
25 evidence. I think we submitted at different one.

1 Q Oh, how about this document. Have you ever seen
2 that document before? It is not Plaintiff's 15, I
3 apologize. Do you recognize that document?

4 A I think you just handed me the same one. Do I
5 recognize it? Yes, I do.

6 Q Who took that photograph?

7 A I did, with my cell phone camera.

8 Q And is that the same cabinets you have seen
9 before?

10 A This is the same credenza, but a different set of
11 double doors. It is at least four doors wide.

12 Q And was that document altered or amended in any
13 way since you took it?

14 A No.

15 Q Is it a true and accurate representation as you
16 saw it on that occasion?

17 A It is.

18 MR. MULLINS: Move to admit that as Plaintiff's
19 18.

20 MS. MOODY: I don't know when this was taken.

21 THE COURT: When was it taken?

22 THE WITNESS: My cell phone camera documents it.
23 It was taken on October 22, 2013.

24 Q (MR. MULLINS) Is there a fall decoration?

25 A There appears to be like a Raggedy Ann doll, yes,

1 for Halloween.

2 MR. MULLINS: Renew our motion.

3 MS. MOODY: Where are you looking? I'm not
4 walking about the doll, I'm talking about the date.

5 MR. MULLINS: October of 2013. It is not marked.

6 THE COURT: On the original, but not on the copy?

7 MR. MULLINS: Not on the copy.

8 THE COURT: Confirm it is the same picture.

9 (Plaintiff's Exhibit 18 marked.)

10 MS. MOODY: I don't know if it is the date that
11 he took it. It is not on that document or this
12 document.

13 THE COURT: You said a time stamp is on the
14 document?

15 MR. MULLINS: No. He said his phone time stamped
16 it, and he checked the time.

17 THE WITNESS: Correct. It is still on my cell
18 phone.

19 THE COURT: All right. It is admitted, 18.

20 (Plaintiff's Exhibit 18 was admitted.)

21 Q (MR. MULLINS) Are there any doors on that
22 particular credenza?

23 A Yes.

24 Q Was that some of the doors you testified to
25 during cross-examination with counsel regarding where

1 the ordinances are supposed to be kept?

2 A That is what I'm learning.

3 Q And you said there was a question regarding the
4 -- your videotaping of the council meetings. Why are
5 you not videotaping them anymore?

6 A The town seized my camcorder, all of my
7 electronic media and my computer.

8 Q And where there criminal charges pending against
9 you?

10 A There were.

11 Q And were those all dismissed?

12 A They all have been.

13 Q Was the town order to restore all evidence
14 seized?

15 A The town was ordered in July of last year to turn
16 that material seized as a result of a search warrant
17 back to me within ten days.

18 Q Was that Judge Livingston's order?

19 A It was, Judge Livingston, Chief Magistrate in
20 Horry County.

21 Q I'll ask you if you can identify that document?

22 A That is Judge Livingston's order dismissing two
23 warrants and a uniform traffic ticket.

24 MR. MULLINS: Move to admit that as Plaintiff's
25 19 and as the Court to take judicial notice of the

1 dismissal of those actions in the Summary Court for
2 Horry County.

3 MS. MOODY: No objection.

4 (Plaintiff's Exhibit 19 marked and admitted.)

5 THE COURT: Admitted.

6 Q (MR. MULLINS) Has the city complied with that
7 order?

8 A They have not.

9 MR. MULLINS: If I may have a moment, Judge.

10 (A brief pause in the proceedings.)

11 MR. MULLINS: Thank you. Answer any further
12 questions the Court or opposing counsel has.

13 RECROSS-EXAMINATION

14 BY MS. MOODY:

15 Q As to the golf cart 2008 case, can you give me
16 some information, how did you come to file that
17 lawsuit that the town had violated ordinances?

18 A When I witnessed the town leasing a fleet of
19 unlicensed golf carts, operating them on public
20 roadways, including after dark, I inquired whether the
21 town had some ordinance that superseded state law that
22 prohibited both of those activities.

23 Q Who did you inquire with?

24 A The current town manager. One of the specific
25 persons I inquired about was acting town manager

1 Charles Williams.

2 Q And so did he give you ordinances?

3 A No. Of course he can't produce a town ordinance
4 that trumps a state law.

5 Q So he researched it to find there was no
6 ordinances on the book?

7 A I don't think that he researched. He didn't
8 produce anything, because there probably isn't such a
9 thing to produce. They just decided they are going to
10 violent state law.

11 Q So when you requested those documents from
12 Mr. Williams, and he didn't produce anything, that is
13 when you filed the lawsuit, or did you file the
14 lawsuit and then request those documents?

15 A No. I requested this information in advance. It
16 is more than just the golf carts. They were allowing
17 the sale of alcoholic beverages and consumption on
18 public streets, which is something they had just
19 convicted me for. I said, What gives you the right to
20 convict me when I'm on my private property where I
21 live and three weeks later people are walking around
22 in the street with open cups of alcohol? Where is
23 your ordinance about that? The town never produced
24 that one that says that that is allowed.

25 MS. MOODY: Nothing further.

1 MR. MULLINS: I'll let Ms. Moody have the last
2 word. I've never gotten it before (laughing). No
3 further questions.

4 EXAMINATION

5 BY THE COURT:

6 Q You have sued the Town of Atlantic Beach how many
7 times?

8 THE WITNESS: I would say five, maybe six times.

9 Q And how many of those six times have been in
10 circuit court?

11 A I would say -- well, even the appeal would have
12 been in circuit court.

13 Q So somewhere in this courthouse there is six
14 different lawsuits that you have against the Town of
15 Atlantic Beach that involves entered into or by
16 judgment by the court, except this one?

17 A No, sir. There is at least one outstanding, I
18 believe.

19 Q Outside of those five or six that you filed
20 against the Town of Atlantic Beach, have they all
21 originated in this court, or are there others that
22 have been filed in some other court?

23 A The only one that did not originate here would
24 have been the municipal conviction, which originated
25 in lower court and then came to the circuit court,

1 sitting as an appeal court.

2 Q And how many times have you been arrested by the
3 Town of Atlantic Beach?

4 A Three times.

5 Q And --

6 A I'm sorry, that is not correct. Four times.

7 Q And have they all been resolved, or still
8 outstanding?

9 A My bond has not been returned on one of the
10 cases. My material seized as a results of a search
11 warrant has not been returned to me, and I still don't
12 have the discovery in two of the cases. The town
13 prosecutor never turned it over.

14 Q And this case -- or this ordinance that is the
15 primary subject of this lawsuit is -- was that the
16 oldest complaint, stems from the first time you were
17 arrested?

18 A I'm sorry?

19 Q This lawsuit contending there is Freedom of
20 Information info that you have not gotten and the
21 noncompliance that you are seeking lawyer fees and an
22 injunction concerning, does that -- I see part of the
23 complaint says a copy of a letter dated June 25, 2003,
24 so is this the oldest complaint, the first complaint,
25 and you've had four, five, six lawsuits since then, or

1 how does this one stack -- not in order of the filing,
2 but in order of when the basis for it arose?

3 A The basis for this one arose at approximately the
4 same time as the order signed in 2010 in a 2005 case.

5 Q And the arrest was in?

6 A I believe it was 2003 in May, just before
7 Memorial Day week.

8 Q So the rest is in 2003, but you asked for the
9 information in 2010, nine?

10 A I've been asking for information since 2003.

11 THE COURT: Any additional questions?

12 REDIRECT-EXAMINATION

13 BY MR. MULLINS

14 Q Have you received that letter from Mr. McIver as
15 town manager, did you give the town time to codify the
16 town ordinances?

17 A I did. I took no further action at that point.

18 Q In 2010, prior to initiating this case, did you
19 once again request the codified ordinances in writing?

20 A Yes. With the change of town managers, I made
21 the same request to the then current town manager.

22 RE CROSS-EXAMINATION

23 BY MS. MOODY:

24 Q I believe your first request for codified
25 ordinances began in 2005 with your voluntary

1 information -- voluntary statement, correct?

2 A I believe there is one that predates that; the
3 one that Cheryl Pereire responded to, maybe
4 Plaintiff's 1.

5 Q Did you submit a copy of your letter to her?

6 A I believe I mailed a letter to the town hall or
7 hand-delivered a written communication.

8 Q I'm saying from your plaintiff's exhibits here
9 today, you didn't submit that letter, you just
10 submitted Cheryl's letter?

11 A The original may well be on my computer, which I
12 don't have access to.

13 Q But this letter talks about -- I thought your
14 earlier testimony was that in May you got arrested,
15 you requested a copy of the ordinance and then this
16 letter comes in June 25, 2003 requesting an ordinance,
17 and she asked you which one specific ordinance you
18 were looking for?

19 MR. MULLINS: Objection to the form of the
20 question. I'm not sure...

21 THE COURT: All right. Let me have it again.

22 Q (MS. MOODY) Plaintiff's Exhibit No. 2, when you
23 testified earlier I asked you if that was in response
24 to your arrest in 2003; is that not the case?

25 A It may have been that or the fireworks, asking to

1 see the fireworks ordinance.

2 Q So it wasn't for the entire codified ordinances,
3 because you don't -- we don't have a letter stating
4 something like that?

5 A I don't know that I was aware at the time that
6 the South Carolina code required codified ordinances.
7 I was used to going to municipalities and given a book
8 with an index that told me what the laws were.

9 Q So then your exhibit -- July 2003, the form that
10 you submitted as Plaintiff's Exhibit No. 3 requested
11 to inspect the town's ordinances, correct?

12 A I believe that is what it says, yes.

13 Q And then you filed the voluntary statement,
14 July 2005, that requests -- and this is -- I believe
15 your attorney pointed this out -- because you had been
16 threatened with loitering, and you filed this
17 voluntary statement requesting a copy of the codified
18 ordinances January of 2005, Plaintiff's Exhibit No. 4?

19 A I believe that is correct, on the voluntary
20 statement that I did, yes.

21 Q And then you again requested this codified
22 ordinance to Kenneth McIver on Plaintiff's Exhibit 6?

23 A I did make a written request to the town manager.

24 MR. MULLINS: Objection, Your Honor. We're
25 getting outside of the redirect.

1 MS. MOODY: No, we're not. We're talking about
2 how many times he requested before this lawsuit, I
3 thought.

4 THE COURT: Yes, sir.

5 MR. MULLINS: We're going back over the exact
6 same testimony again, it is not redirect.

7 THE COURT: Well, when the Court asks questions,
8 it kind of reopens -- counsel has an opportunity to
9 follow-up on any areas opened up by the Court or asked
10 by the Court.

11 Q (BY MS. MOODY) I'm pointing out that -- 6 and 5
12 are asking for the codified ordinances. You ask for
13 Marcia Connor on May 18, 2006, and on this letter it
14 is from Kenneth McIver, and we think it is 2009 based
15 on your receipt from the tracking?

16 A Yes.

17 Q After Kenneth told you there wasn't one, you
18 asked it from Mr. Booker and that is when you gave him
19 enough time to allow him to get it codified?

20 A I agree with the first part of that, that I made
21 another request with a new town manager coming in.

22 Q Mr. Booker?

23 A Booker, yes.

24 Q 2010?

25 A (No verbal response.)

1 MS. MOODY: Nothing further.

2 THE COURT: You may step down. Next witness?

3 MR. MULLINS: Plaintiff rests.

4 MS. MOODY: If we may take a momentary break?

5 THE COURT: Sure. We'll take a break of about
6 ten minutes.

7 (A recess was taken.)

8 THE COURT: Any other matters?

9 MR. MULLINS: Your Honor, just so I don't have to
10 keep continuing interrupting Ms. Moody's, and I'm just
11 paranoid because appellant courts always say if we
12 don't preserve objections and I do PCR's where I
13 constantly have to put some trial counsel on the
14 stand, so if I could have my objection to any of the
15 witnesses who are testifying for Atlantic Beach be
16 preserved for the record, that way I don't have to
17 keep jumping up time and time again.

18 THE COURT: And I think the record should show
19 that the notice of these witnesses were given this
20 morning. We had a break in the proceedings during
21 jury selection to give counsel an opportunity to talk
22 with the witnesses, and the Court indicated that if
23 the counsel wanted to depose any witnesses that we
24 could break to allow that as well. We had a break of
25 about an hour-and-a-half for qualifying the jury. Ms.

1 Moody also indicated the substance of all of the
2 witnesses' testimony. We'll see where it goes, but
3 your objection is noted.

4 MR. MULLINS: Thank you, Your Honor.

5 THE COURT: Your first witness.

6 MS. MOODY: Thank you, Your Honor. We would call
7 Cheryl Pereire to the stand.

8 (CHERYL PEREIRE, having been duly sworn,
9 testified as follows:)

10 THE CLERK: Please state your name spell your
11 last name for the Court.

12 THE WITNESS: Cheryl Pereire, P-E-R-E-I-R-E.

13 DIRECT-EXAMINATION

14 BY MS. MOODY:

15 Q Could you state where you currently work?

16 A Town of Atlantic Beach.

17 Q How long have you worked for the Town of Atlantic
18 Beach?

19 A Approximately 10 to 11 years.

20 Q Have there been intervals which you haven't
21 worked for the town?

22 A Yes. I did not work for the town from February
23 of 2004 to until 2007 when I went back.

24 Q So what was the beginning date you worked for the
25 town?

1 A 1995 to 2004, 1997 to 2011, 2013 to present, July
2 of 2013 to present.

3 Q And in 1995, what was your role?

4 A Clerk.

5 Q Clerk for the town?

6 A For the town -- not town clerk, admin clerk,
7 clerical.

8 Q Have you ever held any other positions for the
9 town?

10 A Administrative assistant for personnel, and in
11 2002 to 2004 of February I was the town clerk, then in
12 2007 to July of 2011, town clerk. July to present,
13 admin assistant.

14 Q And each time -- each period of time you worked
15 for the town, was it based on administration that you
16 had your job, or did you just leave for your own
17 personal reasons?

18 A It was based on administration. I was laid off
19 twice.

20 Q Now, as you are aware why we're here today,
21 dealing with town ordinances and FOIA requests?

22 A Yes.

23 Q Do you have any involvement with either of those
24 two matters?

25 A In reference to Freedom of Information requests?

1 Q Yes.

2 A Yeah. If someone comes in for Freedom of
3 Information Act request, we have them fill out a form
4 and you have 14 days to fill that request.

5 Q And are you involved with any of the upkeep of
6 the ordinances or anything?

7 A Yes. Like when council passes ordinances first
8 and second reading and they sign it, I file it and
9 have it available if anyone requests to see it.

10 Q So every time -- what, if anything, does the
11 council have to do when they introduce an ordinance?

12 A When they introduce an ordinance they would have
13 first reading, then they have seven days to do the
14 second reading, and when the second reading is done
15 then, it is filed.

16 Q So how do you know whether an ordinance has --
17 had a first reading?

18 A From the minutes. When you attend that meeting,
19 you have the minutes where you can go back and see
20 that council did the first reading, and then an
21 ordinance is not legible -- not legible, legal until
22 they have the second reading.

23 Q Okay. So was that your responsibility to keep up
24 with first and second readings?

25 A Yes. Like having ordinances available if council

1 or anyone needs to go back to an ordinance to see when
2 it was passed or someone from the public requests to
3 see it.

4 Q What, if anything, is kept with the ordinance or
5 on the ordinance that indicates the first reading?

6 A On the -- well, on all of the pages, on the
7 right-hand side, you will have first reading on the
8 top of the page. On the last page of an ordinance you
9 have the signatures of all of the council members and,
10 plus, you have a line for the town clerk to sign, and
11 then you have two lines that states it's the first
12 reading and the date, the second reading and the date.

13 Q Now, is that something -- how long have you all
14 done it or proceeded with the ordinance in that form?

15 A From what I can recall, since I was in in 1995.
16 I have seen other town clerks do the same thing.

17 Q So what, if anything, does the town do to keep
18 the ordinances together or in a place where you would
19 be able to find the ordinances?

20 A We have a condenser (sic) where it is the only
21 ordinances, resolutions and minutes are kept. They
22 are kept by year, 1995 up to present, 2013.

23 Q There are no ordinances before 1995?

24 A Yes, there are ordinances before 1995. I'm just
25 responding to when I've been there.

1 Q So you kept all of the ordinances by year. Any
2 other format or way you keep the ordinances?

3 A No. That is what I know so far.

4 Q Where would the ordinances be kept?

5 A The ordinances were kept in the office in a
6 condenser (sic) when I was there in -- when I was
7 there in 2011, when I came back in 2013, it was moved
8 to the reception area.

9 Q So when you say it was kept in a condenser (sic),
10 what room or what floor of the town hall --

11 A You only have one floor, and it was kept more in
12 the administration building. The way it is, in the
13 reception area, the public can see any of those
14 ordinances, plus they also keep the originals inside
15 the office in cabinets.

16 Q When you say "inside the office" --

17 A The administration office. So there are two sets
18 of ordinances. In case the public comes someone goes
19 through the ordinances and they remove it, we can
20 simply replace it because we have originals.

21 Q Okay. And how are the originals kept?

22 A The originals are kept in files listing the dates
23 and everything so it is easy for us to go in those
24 cabinets and pull out what year and replace it if any
25 has been removed from the public.

1 Q Is there any other way you keep the ordinances?

2 A Not that I'm aware of.

3 Q So how do you -- what, if anything, do you have
4 to do to find a specific ordinance?

5 A I will know an ordinance by the year. Usually,
6 from what I have experienced, if it is a request for
7 an ordinance, it is because someone came to a meeting
8 and is interested in what ordinance was passed, and
9 they would say I would like to get that ordinance that
10 was passed for the first meeting in February, or
11 whatever.

12 Q They give you a title?

13 A Yeah. They will say a title, because at the
14 meetings we usually give out copies of the ordinances
15 for the public.

16 Q So where would you look if you had to find a
17 criminal ordinance?

18 A A criminal ordinance?

19 Q Yes.

20 A Could you be specific?

21 Q If someone asked you for an ordinance that deals
22 with a criminal act in the town?

23 A Oh, right. There is a binder, it is in the
24 administrative office. I think there is one in the
25 police department that we go through if we're looking

1 for anything with criminal intent.

2 Q Is it listed by the year? How is it listed?

3 A Listed by the year. I believe it is by the year.
4 The last time -- I don't know if there have been any
5 changes since I left in 2011, since I'm not presently
6 the town clerk.

7 Q What is your present position?

8 A Administrative assistant.

9 Q That causes you to do what?

10 A I do Freedom of Information requests, I would
11 hand it to the town clerk. I do external and internal
12 correspondence, personnel, things like that, at the
13 moment.

14 Q Okay. At the time when you were the clerk, were
15 you the clerk between 2003 to 2010?

16 A 2004, and I came back in 2007, yes.

17 Q And did you -- what, if any, other matters did
18 you help the council with as the clerk?

19 A Notices, agendas, minutes, resolutions and then I
20 also kept ordinances on my computer, because I typed
21 them up. I had like 2007, 2008, 2009, so I would
22 simply could go back and get an ordinance on my
23 computer.

24 Q So if someone came in and requested an ordinance,
25 that is what you mean you could go back --

1 A I can go to my computer, go to the file where it
2 is in the condenser (sic) and get it.

3 Q What, if anything, did you have to do with the
4 budget?

5 A The budget? Well, what I did with the budget is
6 the cover, type the cover for the budget and file it.

7 Q What do you mean by file it?

8 A File it with an ordinance, whatever ordinance
9 passed with the budget, it will be filed with the
10 ordinance.

11 Q Okay. As it relates to this particular case,
12 I'll hand you what has been marked as Plaintiff's
13 Exhibit No. 2. Do you recognize that letter?

14 A Yeah, I recognize my signature.

15 Q So did you write that letter?

16 A I typed, I believe.

17 Q And did you receive anything from Mr. Curry
18 regarding -- obviously you received it because you
19 were typing a response?

20 A Since it was a 2003, I cannot recall what I
21 received, but I had to receive something to respond.

22 Q Do you recall after sending that letter ever
23 meeting with Mr. Curry?

24 A No, because I left in 2004. I was gone for two
25 years.

1 Q In 2003, you didn't meet with him?

2 A Not that I can recall.

3 Q Now, I'll hand you what is marked as Plaintiff's
4 Exhibit No. 3. Do you recognize that documents?

5 A No, I can't remember this.

6 Q Can you identify that document, what it is?

7 A Request to inspect the town ordinances.

8 Q Now, back in 2006 were you with the town?

9 A No.

10 Q 2009, were you with the town?

11 A Yes.

12 Q Have you ever seen this particular -- it is
13 marked as Plaintiff's Exhibit No. 6?

14 A No. I can't recall. If this came in, it went
15 straight to the town manager. He will have to give it
16 -- I can't recall him giving it to me to fill out.

17 Q So if it would have gone to the town manager, can
18 you walk me through the process of what happens if the
19 FOIA request goes to town manager?

20 A It goes to the town manager, usually he makes --
21 he would give it to the town clerk to say, look, this
22 request needs to be...

23 Q Needs to be?

24 A This request needs to be done. Like, Freedom of
25 Information requests, you mark 14 days, when it is

1 due, and you fill out that request, get the
2 documentation needed. At this time, I cannot say if
3 it was given to me.

4 Q Do you ever recall looking at the ordinances and
5 making sure they were codified?

6 A No, I can't recall that.

7 Q Do you understand what "codified" means?

8 A Yes, I follow what it means, but what I remember
9 is that Mr. McIver said it was -- none of the
10 ordinances were codified.

11 Q Since you have been back with the town working
12 with the town, what, if anything, have you produced or
13 had to work on in terms of FOIA for Mr. Curry?

14 A I just recently sent, I think it was -- what was
15 it -- I believe it was -- sorry, let me see if I can
16 remember. I recently send information to -- a letter
17 to Mr. Mullins' law firm. I believe it was four pages
18 of a request. I cannot recall if it was information
19 from the police department where I sent a letter
20 stating how much it costs, 25 cents per page, and I
21 think I spoke to someone in Mr. Mullins' office, and
22 they told me to send the documentation and they would
23 send the fee after.

24 Q As it relates to Mr. Curry?

25 A Yes.

1 Q Have you sent something to Mr. Curry or provided
2 -- handed it to him in the office that relates to
3 FOIA?

4 A Any kind of FOIA?

5 Q Yes.

6 A Yes. Mr. Curry would come in for a copy of
7 ordinances, resolutions or whatever, and I have handed
8 it to him.

9 Q And so prior to your leaving the town, had you
10 had an opportunity to work with Mr. Curry while giving
11 him documents?

12 A Yes.

13 Q What was your experience working with Mr. Curry?

14 A Well, usually Mr. Curry is in the office either
15 twice or three times a week for information, and to
16 the best of my ability, if it is an ordinance or
17 anything that is available, I'll give it to him. The
18 only time I may not be able to give him something is
19 when he usually requests copies of incident reports
20 from the police department, like two weeks, that is
21 something I would have to ask -- request from the
22 police department.

23 Q What do you mean by two weeks?

24 A He wants reports, incident reports of two weeks,
25 whatever took place in the town in reference to

1 incident reports. There was a time when it was not
2 readily available because there was no one at the time
3 at the police department, but the town manager spoke
4 with the police department and they had a file that
5 they will have of two weeks of incident reports just
6 in case Mr. Curry comes in.

7 Q So they set up a file specifically for Mr. Curry?

8 A Yes.

9 Q And they would provide him with these --

10 A Two weeks of incident reports, yes.

11 Q These incident reports, they related to Mr. --
12 obviously they couldn't have related to Mr. Curry?

13 A No. Any incidents that happened with the
14 residents of the town, cases reported, who was
15 arrested, whatever.

16 Q So since you have been back -- I don't know if I
17 asked you -- do you still do that with Mr. Curry?

18 A Yes, we do.

19 Q So you still provide him with documents you can
20 give him within the town hall where you are working,
21 and then you have a special box --

22 A Well, the police leave for us, yes, in case he
23 comes in for incident reports, yes.

24 Q Now, what has been the experience when Mr. -- has
25 Mr. Curry -- when you don't have something readily

1 available, what has your experience been with Mr.
2 Curry?

3 A Mr. Curry, he is not pleased because he said that
4 we are not following the Freedom of Information
5 request.

6 Q What do you mean?

7 A When he comes for documentation that we are
8 supposed to give it to him right away.

9 Q What do you mean by "right away"? Right then?

10 A Yeah.

11 Q And --

12 A Well, a few times -- like say an ordinance was
13 passed and I didn't get it signed and he came for it,
14 I would let him know he has to come back the following
15 day to receive it because I couldn't give it to him
16 without it being signed, things like that. With the
17 police department that is how they came about in order
18 to make sure that our town manager, Mr. Booker, made
19 sure that the police department had those incident
20 reports always there for when he comes.

21 Q Okay. Because he would get -- because Mr.
22 Curry --

23 A Say we are not following Freedom of Information
24 that was passed down by the judge.

25 Q How often is the town hall opened?

1 A How often?

2 Q Yes. What are the hours?

3 A The hours of the town hall is 10:00 a.m. to

4 3:00 p.m. now.

5 Q Every day?

6 A Every day.

7 Q What was it back in 2000 --

8 A 8:30 to 5:00.

9 Q Every day?

10 A Every day.

11 Q So since you have been back, it is 10:00 to 3:00

12 p.m. every day?

13 A Yes.

14 Q And Mr. Curry comes in at least two, three times

15 a week?

16 A Not -- not -- not as before, but he will be there

17 at least once a week.

18 Q And is there -- what, if anything, is sent out to

19 Mr. Curry? Do you see --

20 A The town clerk, if we are having any council

21 meeting, he gets an agenda, it is mailed to.

22 Q Do you mail that agenda to anybody else?

23 A No.

24 Q To the council members?

25 A They would send it to the council members maybe

1 in an E-mail or place it in their boxes.

2 Q For Mr. Curry, you all mail --

3 A He's the only one we mail out to, yeah.

4 Q Any notices, what do you do with those notices?

5 A We send out an agenda of the meeting.

6 Q I understand. Do you have any notices you have
7 to send to Mr. Curry?

8 A No, just agendas.

9 Q Do you have any minutes you have to send to Mr.
10 Curry?

11 A No, unless he requests it. If he wants minutes,
12 he comes to the town hall to get it or view it -- or
13 view them.

14 Q So right now you are not working as clerk?

15 A No.

16 Q Prior to when you were working at the clerk, you
17 only sent him the agendas?

18 A Yes. They came as a notice of the meeting for
19 him.

20 Q Okay. So you sent him notice --

21 A Yeah. That is the notice I send, yes.

22 Q Is there anything else that you provide to Mr.
23 Curry?

24 A No. That is it, unless he comes in for his
25 Freedom of Information request to inspect ordinances

1 or minutes, whatever he wants to see.

2 Q Have you had any negative experiences with Mr.
3 Curry?

4 A Well, we have our experiences since 1995. I've
5 known Mr. Curry and I have learned to deal with him
6 when he comes.

7 Q What do you mean "deal with him"?

8 A You get accustomed if he comes every week or
9 twice a week, you try to work with him. We've had our
10 clashes in the past.

11 Q You and Mr. Curry?

12 A Yes.

13 Q What kind of clash?

14 A Clashes, like if it is not readily available.

15 MR. MULLINS: Objection. I realize there is no
16 jury, but relevance as to whether she likes Mr. Curry
17 or doesn't like his tone or clashes over the
18 litigation happening in this court over the years, it
19 isn't relevant as to the case we're here on.

20 THE COURT: I think it is relevant in regard to
21 the statute cited by the plaintiff contending that the
22 town should make things available as is reasonable,
23 and so the circumstances surrounding the relationship
24 would bear on reasonableness, in my view. I overrule.

25 A Let me give an example. We do not accept cash,

1 we accept money orders. So you will come in let's say
2 it is 25 cents a copy for a page for Freedom of
3 Information and you have 23 pages. It might come up
4 to 75 cents. Mr. Curry wanted to pay with cash, and I
5 told him I could not accept it, he needed a money
6 order. So he wasn't too happy at first, but then he
7 said, okay, because he understood. So what he did is
8 take pictures of the three pages.

9 Q (MS. MOODY) Okay. So when you say clashes or
10 incidents occurred, you are not --

11 A It's like he comes in and he wanted an incident
12 report from the police department, I could not give it
13 to him because the police was not there at the time,
14 little things like that.

15 Q So you are saying he got upset or --

16 MR. MULLINS: Objection, leading.

17 THE COURT: Yes, sir.

18 MR. MULLINS: I realize this witness has a
19 language issue, but she's been leading constantly,
20 Judge.

21 THE COURT: Don't lead the witness, if you have
22 --

23 MS. MOODY: I'm trying to think of my question.

24 A Your question was if Mr. Curry would get upset.

25 Q What happens?

1 A He would get upset and just say we are not
2 following the rulings of Freedom of Information that
3 he requested, we are not giving it to him. It is a
4 little difficult -- I cannot automatically give him
5 information from the police department. They have to
6 give it to me. That is why they have now a folder
7 with reports, so when he comes in and he wants to
8 inspect or view it, it is there.

9 MS. MOODY: Beg the Court's indulgence. Nothing
10 further.

11 CROSS-EXAMINATION

12 BY MR. MULLINS:

13 Q I believe you are from Trinidad?

14 A Yes.

15 Q If I repeat something it's because I don't
16 understand, it is not to be disrespectful. I visited
17 there, and you have a very lovely country, but your
18 accent throws me a little bit.

19 A Thank you. I know.

20 Q There is a word you were saying in your prior
21 testimony, was that word "credenza"?

22 A Condenser.

23 Q What is a "condenser"?

24 A A condenser is a big cabinet where you pull
25 files.

1 Q Like this?

2 A That is it.

3 Q Okay. Sorry.

4 A I'm sorry.

5 Q That's all right.

6 MR. MULLINS: If I could have the court
7 reporter's marked version of that, Your Honor.

8 Q Plaintiff's 18, is that what you are saying?

9 A Yes.

10 Q I call it a credenza, but you call it whatever
11 you want. You came back to work for the Town of
12 Atlantic Beach in July of 2013; is that correct?

13 A Yes.

14 Q And when you came back in July of 2013, the
15 ordinances were in the front reception area in a
16 credenza?

17 A Yes.

18 Q That is what I was trying to figure out.

19 A Yeah.

20 Q You have no idea when they were moved there?

21 A Pardon me?

22 Q You have no idea when they were moved there?

23 A No.

24 Q But they were not there when you left in July of
25 2011?

1 A No.

2 Q Were you aware of this lawsuit pending when you
3 left in July of 2011?

4 A No. I don't recall.

5 Q You were not?

6 A I cannot recall.

7 Q You can't recall?

8 A No.

9 Q Now, isn't it true that there is no index to any
10 of the town ordinances?

11 A I'm trying to -- I think there is one, but I
12 cannot say for sure. What I have been dealing with is
13 just the ordinances.

14 Q Now, if I were to pick up this index and look
15 under, say, "loitering," does it show me what page and
16 book I can go to for the loitering statute?

17 A I believe there is one like that, I'm not too
18 sure.

19 Q You said the criminal ordinances of the town were
20 kept in two separate places; is that correct?

21 A I believe there is a binder, a big black binder,
22 one is in the administrative office and one is in the
23 police department.

24 Q Are those the only two binders --

25 A That I can recall.

1 Q Are those the only two binders in existence, to
2 the best of your knowledge, of the criminal
3 ordinances?

4 A To the best of my knowledge, yes.

5 Q And they are kept separate from the ordinances in
6 the public area, correct?

7 A I'm not too sure if there is one there now. I'm
8 not town clerk now, so I'm not sure if there is one in
9 there.

10 Q You were the town clerk, weren't you, from 1995
11 to 2001?

12 A No.

13 Q No?

14 A 2002 to 2004, 2007 to 2011.

15 Q And what were you before from 1995 to 2001?

16 A Just clerical clerk.

17 Q Just a clerical clerk?

18 A Uh-huh.

19 Q I'm sorry, your accent got me.

20 A No, that's okay.

21 THE COURT: What do you do now?

22 THE WITNESS: Administrative assistant.

23 Q (MR. MULLINS) So right now you are not in charge of
24 keeping the ordinances passed by the town?

25 A No.

1 Q Who is the town clerk right now?

2 A Sheila Singletary.

3 Q And you haven't been town clerk since 2011?

4 A That is correct.

5 Q Now, ma'am, were you aware of Judge Howe's, the
6 master in equity for Horry County, order regarding
7 Freedom of Information Act requests by Mr. Curry?

8 A Yes.

9 Q Isn't that why you have to take special care to
10 abide by the court's order?

11 A Yes.

12 Q So that wasn't a procedure that the town
13 voluntarily put in place, was it?

14 A No.

15 MS. MOODY: Objection.

16 THE COURT: Objection basis?

17 MS. MOODY: I think that is misstating the
18 document. There is an order that the town agreed to.

19 THE COURT: Consent order signed by the attorney
20 for the plaintiff, attorney for the Town of Atlantic
21 Beach and the town manager.

22 MS. MOODY: They drafted the order.

23 THE COURT: You may proceed.

24 Q (MR. MULLINS) Isn't it true that you have to take
25 special procedures to abide by this court's order,

1 don't you?

2 A Yes.

3 Q And Mr. Curry had to go to court and get that
4 order, didn't he?

5 A Yes.

6 Q When you said these things are available on my
7 computer, I'm confused, and here is why. In my office
8 sometimes I'll pick up the secretary's pen -- I don't
9 have a secretary -- I have a paralegal, so I'll pick
10 up her pen and she'll tell me, That is my pen. Since
11 I paid for all of them, I think they are all mine, but
12 when you say "my computer" --

13 A The town's computer.

14 Q The town has a computer?

15 A Right. So in 2011, that is the only time I can
16 say. I don't have that computer anymore because I'm
17 not the town clerk, I'm the administrative assistant.
18 So what I left, I'm not sure if it is still there,
19 because there was different management at the time.

20 Q So if I can understand what you are saying, you
21 kept these records on a town computer until you left
22 in 2011?

23 A I didn't keep it, it was on the town's computer.
24 It was in the credenza. It was on the computer
25 because I typed the ordinances. When they were

1 signed, they were kept in -- copies were kept in the
2 credenza.

3 Q You recall me interviewing you at recess?

4 A Yes.

5 Q And didn't I ask you at that time when was the
6 last time you remember Paul Curry coming in to see an
7 ordinance?

8 A I believe you did.

9 Q And did you tell me you couldn't say when and
10 can't say when the last time was?

11 A Right.

12 Q All right. Do you recall me asking you about
13 this case?

14 A Yes.

15 Q Did you tell me anything about the difficulties
16 you had with Mr. Curry in that meeting this morning?

17 A Did you ask me about difficulties with Mr. Curry?

18 Q I asked you what you knew about this case.

19 MS. MOODY: Objection, Your Honor.

20 THE WITNESS: What I understand --

21 THE COURT: Just a moment, ma'am. Overrule the
22 objection. Typically, lawyers can't ask questions
23 that might pit the credibility of the lawyer against
24 the witness because it forces the lawyer to be a
25 witness, but in this instance, considering the

1 lateness of the notice of this witness, I'll allow it
2 more latitude than otherwise.

3 MS. MOODY: If I may, I'm not saying he can't ask
4 the question, I think he asked two different
5 questions.

6 THE COURT: All right. Separate them out.

7 Q (MR. MULLINS) Do you recall me asking what you knew
8 about this case?

9 A Yes.

10 Q Did you tell me anything about the difficulties
11 you had with Mr. Curry at that time?

12 A Did you ask me? I can't recall you asking me
13 about any difficulties with Mr. Curry.

14 Q Oh, okay.

15 MR. MULLINS: Just a moment, Judge. Nothing
16 further.

17 EXAMINATION

18 BY THE COURT:

19 Q Did you all have a special binder for Mr. Curry
20 containing information for him?

21 A In reference to what? The police department?

22 Q Yes, or in reference to anything that Mr. Curry
23 might want from the town?

24 A Since -- yes. I think there were files of
25 whatever requests he made. I think there was a file

1 when I left. When I came back, the town clerk
2 presently -- whatever he requests, although he does
3 not fill out a request form -- she will fill it out
4 and have it there for him.

5 Q Is it kept in a particular format?

6 A It is kept in a filing cabinet.

7 Q A filing cabinet?

8 A Yes.

9 Q Not on the condenser (sic)?

10 A No. Freedom of Information request you are
11 speaking about?

12 Q You said Mr. -- you can expect to see Mr. Curry
13 at least once a week looking for something, so in
14 advance of his coming you said that the town
15 established a practice of preparing copies of
16 information --

17 A That is in reference to the police incident
18 reports, because what he wants is two weeks of
19 incident reports that took place in the Town of
20 Atlantic Beach.

21 Q So everything that occurs in Atlantic Beach, he
22 gets a copy of?

23 A Yeah. He comes to view it, yeah.

24 Q And how much time does it take?

25 A Well, we just go and get the file from the police

1 department and give it to him to view.

2 Q And do you keep that in individual files or
3 binder?

4 A The police keeps it in a folder for him.

5 Q A folder?

6 A Uh-huh.

7 Q So the picture that is in evidence with the --

8 A Here?

9 Q Those big binders on the wall --

10 A Right. This is not with the police department.
11 They have their own folder where they keep the
12 incident reports. These are all the minutes,
13 resolutions, whatever he wants to see. We can simply
14 go in here, get it, or if he wants the binder, we can
15 hand it to him.

16 Q Is that set up basically for Mr. Curry's benefit,
17 or the town's?

18 A It is set up for everyone.

19 Q All citizens?

20 A Every one, yeah. Not just for Mr. Curry alone.

21 Q All right. Okay. Why is it that the town
22 prepares in advance for Mr. Curry to come and get
23 information as to all incident reports written and
24 police activity in the town?

25 A Well, because the first time he came and it

1 wasn't prepared he said we were breaking the rules of
2 his request that the judge passed that he needs
3 information.

4 Q So as a result of this consent order?

5 A Yeah. This set up that they are going to have
6 two weeks of all incident reports that takes place in
7 the Town of Atlantic Beach.

8 Q Everything of significance that happens in the
9 town as a result of this --

10 A Just the incident reports.

11 Q Just the incident reports?

12 A Yeah. Because sometimes the police is not there
13 in the office when he comes, so we would have the file
14 there in order to give it to him.

15 THE COURT: Ms. Moody.

16 REDIRECT-EXAMINATION

17 BY MS. MOODY:

18 Q You didn't know about the specifics of this
19 lawsuit?

20 A None of the specifics, no.

21 Q But in terms of dealing with Mr. Curry, you have
22 had dealings with --

23 A I wasn't talking about presently. I was talking
24 about all the years past when I dealt with him, when I
25 said we had little run-ins, but then I have learned,

1 you know, to deal with Mr. Curry.

2 Q He didn't serve you with a copy of the lawsuit,
3 so you haven't particularly read it?

4 A No.

5 Q You haven't dealt with the lawyers necessarily?

6 A No. No. No.

7 Q So you've had to deal with him, and when the
8 judge asked about the incident reports, you say you
9 prepare them because he's going to town. Is it that
10 he comes to the office and he will ask for two weeks
11 of the incident reports?

12 A Yes.

13 Q And has he done it on so many occasions that you
14 know he's coming?

15 A We don't know when -- yeah, let's put it that
16 way, because he goes like every week to see them.

17 EXAMINATION

18 BY THE COURT:

19 Q How long does he generally stay when he comes?

20 A It depends. Like maybe 15 minutes if he's
21 viewing the incident reports, or a few minutes if he
22 wants copies. Maybe he would want copies, so we just
23 make copies.

24 Q So time wise, his presence is not a burden on the
25 town personnel, or is it?

1 A How to put it? It can depend. If we are busy,
2 we have to stop what we are doing, you know.

3 THE COURT: Thank you. Ms. Moody, anything else?

4 REDIRECT-EXAMINATION

5 BY MS. MOODY

6 Q How does it make you feel when Mr. Curry comes
7 into town?

8 MR. MULLINS: Objection, relevance.

9 MS. MOODY: He just asked if it's a burden, I'm
10 just asking how she feels --

11 THE COURT: There is probably a different way of
12 asking the same question.

13 Q How does it make you feel?

14 A Well, to be honest...

15 THE COURT: Well, you're under oath (laughing).

16 MR. MULLINS: Is this the honest part?

17 A Once upon a time, it used to be a real burden,
18 you understand? But as I said, I have lived to deal
19 with Mr. Curry, so you get accustomed to it, you know.
20 You get accustomed to him coming in every week.

21 THE COURT: Mr. Mullins.

22 RECROSS-EXAMINATION

23 BY MR. MULLINS:

24 Q Have you read the Freedom of Information Act?

25 A I guess I have.

1 Q Isn't it true that in public service and dealing
2 with the public is in general a burden? All?

3 A Let's put it this way. I understand what you are
4 trying to say. Many people can come and ask for
5 Freedom of Information requests, but if somebody comes
6 two, three times a week, sometimes for the same thing,
7 when you tell them, look, give me time to get it, but
8 they tell you, no, they don't have to wait four or
9 five days to get it, that could be a little...

10 Q Let me show you a copy of 30-4-30, that's a
11 Freedom of Information Act that you reviewed, isn't
12 it?

13 A Yeah. Also, Mr. Curry is the only person at this
14 time that we have to give information immediately to.

15 Q Let me ask you a question about that, if I could.
16 Can you go to Page 2 of the act at the top, it starts
17 on page 239, Subsection D.

18 Does it say, The following records of a public
19 body must be made available for public inspection and
20 copying during the hours of operation of the public
21 body without the request or being required to make a
22 written request to inspect or copy the records when
23 the requester appears in person? Does it say that?

24 A Yes, it does.

25 Q The first is, Minutes of a public body for

1 proceeding within the last six months, correct?

2 A Yes.

3 Q Second part says, All reports identified in
4 Section 30-4-50(a)1 for at least the 14-day period
5 before the current date; does it say that?

6 A Uh-huh.

7 Q Let me show you 30-4-50, Section A. Familiarize
8 yourself with that.

9 THE COURT: We're going to take a break for me to
10 shake hands with my former colleague, John Milling,
11 who has graced us was his presence.

12 (A recess was taken.)

13 Q (MR. MULLINS) Have you had a chance to review
14 Paragraph A?

15 A Yes.

16 Q And does Paragraph A seem to say that anybody in
17 the world could walk into Atlantic Beach and ask what
18 happened in the last four days?

19 A Yes.

20 Q So if, say, a reporter came in and said, I need
21 14 days' worth of police reports, you would have to
22 give them to him, wouldn't you?

23 A If I don't have it available at the time, I
24 wouldn't be able to give it to him.

25 Q But you still have to?

1 A Yes, we have to, but there is room for 14 days,
2 always.

3 Q So if I walked in every 14 days and say, Give me
4 the last 14 days, you would have to do that?

5 A Yeah, because we have them available.

6 Q And that is in the statute, isn't it?

7 A Yes.

8 Q Okay. So there is nothing special going on
9 regarding Mr. Curry, is there? You have to have a
10 verbal response.

11 A I guess I would say, no.

12 REDIRECT-EXAMINATION

13 BY MS. MOODY:

14 Q You mean there is nothing special going on with
15 him that -- you are abiding by the law, correct?

16 A I'm abiding by the law.

17 Q You are not saying you have a problem with giving
18 him what the law says?

19 A No, I'm not.

20 Q Are you speaking -- what are you speaking of?
21 Are you speaking of the frequency that he comes in?

22 A Let me see. Okay. I'm just speaking about --
23 okay. As I go back to the police --

24 Q Are you speaking about the frequency?

25 A Sometimes the frequency. If I say, Look, give me

1 a little time, I mean, I would have to give it until
2 tomorrow, that is what I'm speaking about.

3 Q And what happens if you say that?

4 A He said we are not abiding by the law, that is
5 all I'm speaking about. I have no problems in giving
6 Freedom of Information to anyone who requests it.

7 MS. MOODY: Nothing further.

8 THE COURT: Anything further?

9 MR. MULLINS: Nothing further.

10 THE COURT: You may step down. Next witness.

11 MS. MOODY: Linda Cheatham.

12 (LINDA CHEATHAM, having been duly sworn,
13 testified as follows:)

14 MR. MULLINS: Can my objection for discovery be
15 continued as well?

16 THE COURT: Yes.

17 THE CLERK: State your name and spell your last
18 for the Court.

19 THE WITNESS: Linda Cheatham, C-H-E-A-T-H-A-M.

20 DIRECT-EXAMINATION

21 BY MS. MOODY:

22 Q Where are you currently employed?

23 A At the Town of Atlantic Beach.

24 Q How long have you be employed by the town?

25 A Consecutively, since December of 2012 to present,

1 and I was also employed from February 1st of 2011 to
2 July 29, 2011.

3 Q Prior to that, where were you employed?

4 A Prior to February of 2011?

5 Q Yes, ma'am.

6 A Employed with the Commonwealth of Virginia in the
7 Department of Transportation as their director of
8 administration.

9 Q When you came to the Town of Atlantic Beach, what
10 exactly was your role?

11 A Assistant town manager and the chief financial
12 officer.

13 Q And have you held any positions for the town?

14 A I was the interim town manager from December of
15 2012 until July of 2013.

16 Q And currently what is your position?

17 A Assistant town manager, chief financial officer
18 again.

19 Q You are aware of this case now?

20 A Yes.

21 Q Have you been involved in this case when you came
22 in 2011?

23 A No, ma'am.

24 Q And when did you become involved in this
25 particular case, do you remember?

1 A I don't know.

2 Q Would you say you were --

3 A I'm involved in it now. There was a letter that
4 I believe you sent the town in October regarding a
5 letter that Mr. Mullins sent you saying we owed money
6 on this particular case.

7 Q Okay. So as the assistant town manager, could
8 you explain what your job duties are?

9 A Other than whatever the town manager assigns to
10 me, human resources, procurement, the books,
11 accounting, budget, other duties as assigned.

12 Q What do you specifically do with the budgets?

13 A Prepare the budget for the town manager's review,
14 conduct workshops to discuss the proposed budget with
15 the council and monitor the budget every month to make
16 sure to the best of our ability we can stay within the
17 budget that has been adopted by the council.

18 Q In 2011, did you -- you were the assistant, but
19 when you were the interim town manager from
20 December 2012 through July 2013, what were your
21 responsibilities?

22 A Managing the town primarily -- there's been a lot
23 of turnover in the town, and so at the time between
24 December and July I think there was only one police
25 officer, there was a code enforcement officer, there

1 was a town clerk and myself, and so whatever needed to
2 be done just managing the town, dealing with Bike
3 Fest, dealing with council, dealing with legislation,
4 governmental affairs, code enforcement, responding to
5 citizen complaint issues, day-to-day operations of the
6 town.

7 Q So did you have an opportunity to come in contact
8 with Mr. Curry?

9 A Yes, I did.

10 Q And what was your contact with Mr. Curry?

11 A Mr. Curry from -- Mr. Curry from time to time
12 would ask for information about things that had
13 occurred. He would bring letters that had been sent
14 to the previous administration that had not been
15 responded to, and I would try to respond to those
16 issues that he brought. He mentioned that I did not
17 give him an attorney's letter stating his reason for
18 termination, well, the attorney said that it was
19 attorney/client privilege and it wasn't --

20 MR. MULLINS: Hearsay, objection.

21 THE COURT: You are reciting what Mr. Curry said?

22 THE WITNESS: Yes.

23 THE COURT: So the objection --

24 MR. MULLINS: I didn't -- I try not to object
25 frivolously. I thought she said the attorney said not

1 to do it.

2 MS. MOODY: She said that Mr. Curry brought
3 letters in where he hadn't received documents from
4 previous administration, and one was like an
5 attorney's termination letter that he was requesting.

6 THE WITNESS: He was requesting the attorney's
7 termination.

8 Q (MS. MOODY) I can break it down. So Mr. Curry
9 brought in some requests that he previously submitted
10 to the previous administration?

11 A Yes. One issue, yes.

12 Q And then you had another incident?

13 A He wanted information regarding an attorney
14 letter that we received.

15 Q That attorney letter discussed what?

16 A The attorney's termination, the reasons why the
17 attorney was terminating his services with the town.

18 Q So the attorney was advising the town why he
19 would no longer work for the town?

20 A Yes. Yes. Yes.

21 Q And you did not -- why didn't you provide that
22 document to Mr. Curry? Why didn't you --

23 A The document was not provided to Mr. Curry on the
24 advice of the attorney, that it was attorney/client
25 privilege and not to be shared with anyone.

1 Q So you are saying that you specifically --

2 A I sought the advice of the attorney on the matter
3 that Mr. Curry requested and gave Mr. Curry the answer
4 that the attorney provided, and he was not satisfied
5 with that.

6 Q And that is one of the occasions you dealt with
7 Mr. Curry?

8 A Yes. Yes.

9 Q Were there any --

10 A Mr. Curry came in frequently to seek information
11 about things going on in the town.

12 Q What do you mean by "frequently"?

13 A A couple times a week.

14 Q And on any of those occasions, have you ever --
15 what, if anything, have you provided Mr. Curry?

16 A If there is information readily available, we try
17 to provide it. On some cases -- on some occasions,
18 given the shortness of staff, you can't always stop
19 what you are doing and answer or provide
20 documentation. Some things take research. Sometimes
21 Mr. Curry came in -- he came in I remember last year
22 and was asking a question about traffic tickets and
23 why they weren't part of the incident reports and why
24 weren't they made available to him. I told him that I
25 needed to discuss it with the judge whether or not a

1 traffic ticket should be included in the incident
2 reports, and Mr. Curry, when he doesn't get what he
3 wants immediately, he can be very rude and very
4 obnoxious and -- just rude, as if the town is trying
5 to withhold information from him, and that is not the
6 way this administration operates.

7 Q So have you ever had to provide Mr. Curry with
8 any ordinances?

9 A I'm not aware of any.

10 Q Are you aware of the orders from Judge Howe
11 dealing with FOIA responses to Mr. Curry?

12 A Yes, ma'am.

13 Q What, if anything, do you all provide to Mr.
14 Curry based on that order?

15 A We have to send him notices of any meetings that
16 are going to occur, and those notices have to go out
17 on Fridays before Monday's council meeting. He
18 doesn't have to sign in or fill out a FOIA request.
19 That is about all I remember, I'm sorry.

20 Q From the meetings, are you required to give any
21 documentation after a meeting?

22 A I'm not sure. I haven't read it recently, the
23 notice.

24 MS. MOODY: Your Honor, Judge Howe's order.

25 Q (MS. MOODY) I'll hand you what is marked as

1 Defendant's Exhibit 1. Do you recognize that?

2 A Yes. I might have to get my glasses. (Witness
3 examines document.) We have to mail Mr. Curry the
4 notification of the times, dates, places and agendas
5 of all meetings. We are not to amend an agenda. We
6 aren't to have any chance meetings. We have to vote
7 in public on executive sessions. We have to have the
8 minutes available for inspection and conspicuously
9 post FOIA in the public official's guide.

10 Q So in this order -- you all provide Mr. Curry --
11 specifically for Mr. Curry, what do you have to -- let
12 me rephrase.

13 What do you have to specifically provide to Mr.
14 Curry that you don't already have to give to the
15 general public?

16 A The notice of the -- we have to mail to him
17 notice of any meeting that is going to occur, and we
18 just have to post for the general public. We have to
19 specifically mail to him the meeting agenda, the
20 dates, places and agendas of all meetings not later
21 than the last scheduled mail date and pickup on
22 Friday.

23 Q So as far as what you have to do specifically for
24 Mr. Curry, that is something special you have to do
25 for Mr. Curry in that instance?

1 A Yes, ma'am.

2 Q And so with that order in responding to any FOIA
3 request, everybody is aware to give him documents,
4 correct?.

5 A Yes.

6 Q Now, as to the ordinances that are within the
7 town's -- town hall, how are they set up? To your
8 knowledge, how are they set up?

9 A To my knowledge, the ordinances are kept in a
10 number of ways in the front office, in the reception
11 area. The ordinances are kept by year. Back in the
12 administrative area, the ordinances are kept by title.
13 For example, Title 1 would be administration,
14 elections, finance, procurement. There is a title
15 regarding land use. There is a title regarding public
16 safety issues. So they are indexed, if you will, by
17 title, and those are kept in the back in binders. We
18 also have copies of all of the ordinances in a filing
19 cabinet in case someone takes one out of the front,
20 we're able to replace it.

21 Q These three different places that the ordinances
22 are kept, are they unsigned copies of the ordinances,
23 or are they signed copies?

24 A I would say the majority are signed. There are
25 some unsigned ones.

1 Q What are the unsigned ones?

2 A I don't know. Recently, they have all be signed.
3 I've seen some older ones that don't have the
4 signatures of all of the council people on it.

5 Q What else --

6 A To the best of my knowledge, they all say in the
7 right-hand corner "first reading" or "second reading"
8 and the date. They would also address any ordinance
9 that was amended. So, for example, the business
10 license ordinance was first adopted in December of
11 2004, and it is probably been amended five or six
12 times. So all of those amendment dates would be
13 listed in the upper right-hand corner so that one can
14 see that you are looking at the latest one and also go
15 back and find what happened before it was amended.

16 Q So this is on the ordinances that are kept in the
17 front?

18 A Yes.

19 Q And also in the administrative office?

20 A Yes.

21 Q And then obviously on the original?

22 A Yes.

23 Q Now, have you had to provide Mr. Curry -- on what
24 occasion have you had to provide Mr. Curry with a copy
25 of an ordinance?

1 A I don't recall having to provide Mr. Curry with a
2 copy of any ordinances. I had to provide him with
3 information from time to time, but I don't recall
4 ordinances being provided.

5 Q Are you saying he's never come in to ask you for
6 them?

7 A He's never asked me specifically for any
8 ordinances during the time that -- he's never asked me
9 specifically.

10 Q During the time of your employment?

11 A During the time of my employment.

12 Q Have you received any complaints from -- when you
13 were the town manager, what, if any, complaints have
14 you received about Mr. Curry?

15 MR. MULLINS: Objection, Your Honor, relevance.
16 Once again, you know, I assume we're dealing with
17 public bodies and public ordinances, and everybody
18 complains about something. I don't know how relevant
19 it is as to whether they are codified or not, whether
20 we made a valid request or not as to what a request
21 from someone else that I have no idea who it is or in
22 what capacity they are complaining in.

23 MS. MOODY: I would --

24 MR. MULLINS: I assume there is complaints about
25 me in Atlantic Beach.

1 MS. MOODY: No.

2 THE COURT: Yes, ma'am.

3 MS. MOODY: I was asking in terms of her staff,
4 because she hasn't received any requests for
5 ordinances. I think he testified about that earlier,
6 about them not giving him documents and how they have
7 -- basically they have been -- I don't -- I'm not
8 trying to put words in his mouth, but he's alleged
9 things that they have done to him that he feels is
10 wrong that they have not complied with his --

11 THE COURT: The objection is sustained as it
12 relates to general hearsay of complaints. The
13 objection is overruled as it relates to the matters
14 complained about in this litigation.

15 Q (MS. MOODY) Do you -- what, if any, complaints do
16 you have related to this -- I think I'm
17 understanding --

18 THE COURT: The subject matter is addressing in
19 litigation. Personal information that she has, she
20 can testify to.

21 Q (MS. MOODY) Do you have any?

22 A Not regarding staff complaints about this
23 particular case.

24 Q Okay.

25 THE COURT: Not this particular case, but the

1 subject matters contained in the current litigation.

2 Q (MS. MOODY) Do you have any complaints regarding
3 ordinances and Mr. Curry? What, if any, complaints do
4 you have regarding ordinances and requests by Mr.
5 Curry?

6 A I don't think I have any complaints regarding
7 ordinances.

8 Q Did you receive any --

9 A I didn't receive any complaints regarding Mr.
10 Curry's request of ordinances. I have received
11 complaints about other things he's asked for from the
12 staff, but not about an ordinance.

13 Q Would they include FOIA?

14 A Yes, ma'am, they would include FOIA. Yes, ma'am.

15 MS. MOODY: Am I crossing the line?

16 MR. MULLINS: I'll let you know.

17 Q (MS. MOODY) What were the complaints -- it's late
18 in the hour. What were the complaints on the FOIA?

19 A The complaints on FOIA was that Mr. Curry was not
20 feeling -- was not being respectful of our time and/or
21 respectful of the amount of staff that was available
22 in the office, specifically the issue that Ms. Pereire
23 talked about regarding the incident reports. We only
24 have one police officer, and from time to time he is
25 able to key in the incident report of an issue that

1 happened the night before. On one particular
2 occasion, Mr. Curry came in and wanted the incident
3 report, and I told him that the police officer was not
4 available. He began to moan and groan how we are not
5 in compliance with the law. Well, if there is no one
6 there to key the report in, I can't give it to him.
7 Can you come back tomorrow? He would often act as if
8 coming back tomorrow was a big deal. He drives back
9 and forth in the alley and around town, you know, all
10 the time, and so in my opinion, which is my opinion,
11 it is no big deal to come back since you are circling
12 the town. The town is only four blocks. You are
13 always circling the town, so stop by in the office and
14 get the reports. When the officer is back on duty, I
15 can tell him to do it, but -- so.

16 MS. MOODY: Beg the Court's indulgence.

17 (A brief pause in the proceedings.)

18 Q (MS. MOODY) You indicated you are the chief
19 financial officer for the town?

20 A Yes.

21 Q As it relates to the fees that are owed to Mr.
22 Curry, what knowledge do you have of these fees of
23 \$871.52?

24 A I know that there was a letter sent by
25 Mr. Mullins to you, I believe, in October, asking for

1 \$871.26, or some amount. We discussed the fact that
2 the town's cash flow is very precarious during the
3 winter months, so we drafted a letter saying we would
4 be able to pay that after January 20th when we get our
5 tax money in.

6 Q So as it relates to the \$871 -- I'll hand you
7 what is marked as Plaintiff's Exhibit No. 2. Do you
8 recognize that?

9 A Yes. I found this check Thursday, I believe.

10 Q And what prompted you to look for this check?

11 A We were having a discussion about the case, and I
12 went through our accounting system and was able to
13 find this check. I called the bank to see if we could
14 get a copy of the canceled check. I also sent an
15 E-mail to the accountant asking about it, as well as
16 the thousand dollar check that Mr. Mullins said we
17 owed.

18 Q So with that check -- did you write that check?

19 A No. It was written by Benny Webb and Carlton
20 Cole after I left. It was written August 5th, I left
21 July 29th of 2011.

22 Q And so when you contacted the accountant, what,
23 if anything, did you learn?

24 A The accountant said this --

25 MR. MULLINS: Objection, hearsay.

1 Q (MS. MOODY) What, if anything, did you learn
2 about -- you can't say what the accountant said. What
3 did you learn about the check?

4 A I learned the check had not cleared.

5 Q Okay. But from the general ledger, what did it
6 show regarding that check?

7 A It showed that the check had been written and
8 that the funds had been debited from our balance.

9 Q And on that check, does it have any mailing
10 address?

11 A The check is addressed to Paul Curry -- yes, it
12 does.

13 Q What is the address?

14 A PO Box 2245, North Myrtle Beach 29598.

15 Q To your knowledge, is that Mr. Curry's current PO
16 Box number?

17 A To the best of my knowledge, yes.

18 Q But according to what you learned, you now are
19 aware that the check has not cleared?

20 A Yes.

21 Q Now, when this check was ordered to be paid, were
22 you working for the town then?

23 A I have subsequently learned that I was working
24 for the town, but I was not aware that this check
25 needed to be paid.

- 1 Q Did you attend the hearing related to those fees?
- 2 A No.
- 3 Q At that time, who was the attorney on that case?
- 4 A John Zalinsky was the town attorney.
- 5 Q And the town manager?
- 6 A Mr. Booker.
- 7 Q And on July 29, 2011, were they employed by the
- 8 town?
- 9 A No.
- 10 Q What happened?
- 11 A Mr. Zalinsky was relieved of his duties on
- 12 Tuesday, I believe, the 26th. Mr. Booker had been
- 13 sent on vacation, but he really wasn't employed
- 14 anymore.
- 15 Q By whom?
- 16 A By -- there was an administrative turnover, two
- 17 council people were placed on the council, and so they
- 18 fired all of the staff.
- 19 Q Do you recall talking to me on July 29th?
- 20 A No, ma'am.
- 21 Q Do you recall talking to me the day before you
- 22 all left?
- 23 A No, ma'am. So much was going on. It wasn't a
- 24 good time in my life.
- 25 Q Did you settle up anything with my law firm

1 during that period of time? Were you able to that?

2 A No, I wasn't able to do that either.

3 Q What, if any, knowledge do you have of the town
4 refusing Mr. Curry any ordinances -- allowing him to
5 review any codified ordinances?

6 A Well, we can't allow -- we don't have any
7 codified ordinances, so he can't get what we don't
8 have. But I'm not aware that he asked for any
9 ordinances.

10 Q Now, are you aware -- you testified earlier you
11 dealt with the budget?

12 A Yes.

13 Q Are you aware of any steps that were taken to get
14 the ordinances codified?

15 A There were funds placed in the budget to get the
16 ordinances codified.

17 Q And the year -- before you left in July, were
18 they still in the budget?

19 A There were funds in the budget that began July 1,
20 2011, yes. There were funds in that year's budget.

21 Q What about the budget going forward, were there
22 funds in the budget then, 2012?

23 A Well, it was the 2011/'12 budget that there were
24 funds in. There were no funds in the '12/'13 budget.

25 Q Currently, are there funds placed in the budget?

1 A There is no funds in the '13/'14 budget.

2 Q Have you started to discuss your budget?

3 A For '14/'15? No, not yet.

4 Q And for the 2013 -- excuse me, 2013/2014, who
5 decided the budget for the town, which council?

6 A The council that fired me.

7 Q So when you came back in December, what, if
8 anything, did you have to do with the budget at that
9 time?

10 A I worked with the accountant in preparing the
11 budget for the council.

12 Q Were you told what to put in the budget?

13 A I was, yes. Yes.

14 Q So the codification is not in the budget?

15 A It is not in the budget.

16 MS. MOODY: No further questions.

17 CROSS-EXAMINATION

18 BY MR. MULLINS:

19 Q Good afternoon.

20 A Good afternoon, sir.

21 Q Let me see if I can clarify. You are the chief
22 financial officer for the Town of Atlantic Beach?

23 A Assistant town manager and chief financial
24 officer.

25 Q You have been such since July of 2013, correct?

1 A Yes, sir.

2 Q And you have been interim town manager from
3 December 2012 to July 2013?

4 A Correct.

5 Q And you were assistant town manager from
6 February 2011 to July of 2011?

7 A Yes.

8 Q So those times are when you have been in a
9 position of authority in the Town of Atlantic Beach?

10 A I've been in position, yes.

11 Q Well, do you have authority, or do you not?

12 A I have authority sometimes.

13 Q As part of that authority, you were aware of all
14 litigation pending against the city, weren't you?

15 A No.

16 Q You were not?

17 A I was not.

18 Q Who was the person that was supposed to be in
19 charge of all litigation against the city?

20 A You asked me if I was aware of litigation -- of
21 all litigation pending against the city, and the
22 answer was, no, I was not aware of all litigation
23 pending against the city.

24 Q Were you aware of Mr. Curry's case filed in 2010?

25 A I was not aware of this particular case. I was

1 not aware of this particular case.

2 Q When did you become aware of it?

3 A I became aware that there were some fees owed in
4 October of this year.

5 Q October of this year, or last year?

6 A Last year, 2013, sorry.

7 Q So in October of 2013, you became aware there
8 were fees due in a case?

9 A Yes.

10 Q And as the chief financial officer for the Town
11 of Atlantic Beach, when can we expect payment of
12 those?

13 A You can expect payment on the date we told you,
14 January 20th of 2014.

15 Q It is your testimony, under oath today, that you
16 are going to bring the town into compliance with Judge
17 Hyman and Judge Culbertson's order by January 21,
18 2014?

19 MS. MOODY: Objection. I believe he asked her
20 only as to this case.

21 THE COURT: Which case are you asking her about?

22 MR. MULLINS: I'll separate it. If I can
23 withdraw and rephrase.

24 Q (MR. MULLINS) Is it your testimony that as chief
25 financial officer of the town, that you are going to

1 comply with Judge Culbertson's order for payment of
2 fees and expenses on January 21, 2014?

3 A It is my testimony as chief financial officer
4 that we will comply with the letter you received that
5 said we would make payment on January the 20th of
6 2014. Unfortunately, I didn't bring that letter with
7 me today and so I don't know the case specifically
8 that was addressed in that letter, but we made a
9 commitment to you to pay you on January 20th of 2014,
10 and it is -- whatever the word you said -- as chief
11 financial officer, we intend to comply.

12 Q Are you also going to comply with Judge Hyman's
13 order regarding the thousand dollar fee?

14 A Whatever we responded to, we will comply. If
15 that letter was addressing two cases, we will comply.

16 Q That is my question. I reread that letter and it
17 didn't say which cases you were paying. I'm not
18 asking you to be cute, I just want to know when you
19 are going to pay both orders.

20 A It is our intention to pay both of them by
21 January 20th.

22 Q It is your intention, or it's your commitment?

23 A Commitment.

24 Q Because I intend to lose 20 pounds before April.
25 So you are committing to that, that day; is that

1 correct?

2 A That's correct.

3 Q Okay. And you are aware I represent Mr. Curry?

4 A Yes, sir.

5 Q You have been aware of that since 2010?

6 A I don't know that -- I don't know. I can't -- I
7 don't know when I became aware that you represented
8 Mr. Curry.

9 Q Let's ask a couple of questions, ma'am. You went
10 through all of these things, notices you are supposed
11 to give Mr. Curry under the prior order that Judge
12 Howe set out, aren't you?

13 A Yeah.

14 Q Did you read that order?

15 A Yes.

16 Q And I'm sure as town manager or acting town
17 manager or interim, you read the state statute on
18 giving notice of meetings, haven't you?

19 A Yes.

20 Q Let me ask you, ma'am -- I'll show you a copy of
21 30-4-80. Those are very stylish glasses, by the way.

22 A Thank you.

23 Q The last section requires you to do that, doesn't
24 it?

25 A (Witness examines document.) It requires us to

1 give notice of meetings. It does not require us to
2 put things in the mail about the meetings.

3 Q All right. And wasn't it Judge Howe's order
4 issued as a result of the town's failure to comply
5 with Freedom of Information requests?

6 A I was not employed, so I don't have any knowledge
7 of why it was. I just know that there was this order
8 when I got to work.

9 Q So all of these things you testified to regarding
10 Mr. Curry, was that in compliance with Judge Howe's
11 order and state law?

12 A All what things?

13 Q Giving him notices of meetings, copies of the
14 agendas; isn't that what Judge Howe order?

15 A It is in the order, yes.

16 Q And also in the statute, isn't it, ma'am?

17 A The order, in my opinion, goes further than the
18 statute.

19 Q Okay. Wasn't that because you failed to -- the
20 town failed to abide by the statute in the past?

21 MS. MOODY: I think he asked and she answered it.

22 THE COURT: Do you know?

23 THE WITNESS: No, ma'am -- I mean, no, sir.

24 Q (MR. MULLINS) I'm sorry. Have you had a chance to
25 look at that, Judge Howe's order?

1 A Yes.

2 Q And that is because the town in the past failed
3 to abide by the statute?

4 A That is what the order says, yes.

5 Q It does say that, okay. And that is not
6 Mr. Curry's fault, is it?

7 A That's a judgmental statement.

8 Q Let me ask you this. Would you, as a person in
9 authority in the town, be happier if Mr. Curry just
10 went away?

11 A Yes.

12 Q Would you be happy if Mr. Curry just never asked
13 for another piece of paper from the Town of Atlantic
14 Beach, ever?

15 A I would be happy if Mr. Curry changed the
16 demeanor in which he asked for information from the
17 town.

18 Q Now, didn't you testify that Mr. Curry never,
19 ever asked you about receiving copies of an ordinance?

20 A Yes.

21 Q Mr. Curry only comes to you to ask about copies
22 of financial documents, doesn't he?

23 A No. He comes to me and asks for anything that he
24 wants to ask for.

25 Q And no question, ma'am, that the ordinance of the

1 town is not codified?

2 A Correct.

3 Q No question that has been a line item budget
4 since 2009 up until 2011?

5 A In there for two years, as far as I know.

6 Q And still isn't done?

7 A Correct.

8 Q And people are still being arrested for
9 violations of town ordinances in the Town of Atlantic
10 Beach, aren't they?

11 MS. MOODY: Objection, Your Honor.

12 THE COURT: Overruled. People are still getting
13 arrested in Atlantic Beach?

14 THE WITNESS: Yes, people are still being
15 arrested.

16 Q (MR. MULLINS) For violation of town ordinances?

17 A Yes.

18 Q But those ordinances are not codified?

19 A All one has to do is ask for a copy of the
20 ordinance.

21 Q Are the ordinances of Atlantic Beach which people
22 are being arrested on codified?

23 A They are not, but they are available for anyone
24 who wants to ask.

25 Q Isn't that an obligation of a town, to have

1 codified ordinances?

2 A Yes.

3 Q And the town has defaulted on that obligation?

4 A We're in the process and have been for sometime
5 of getting it done.

6 Q But isn't it true you have defaulted on that
7 obligation?

8 A I don't understand the word.

9 Q You have not complied with state law?

10 A We not have been able to codify the ordinances,
11 that is correct.

12 Q Weren't you under suspension for -- the town
13 under suspension for failure to comply with other
14 state law provisions?

15 A I don't understand.

16 Q Is there other things you haven't done, such as
17 audited budgets?

18 MS. MOODY: Objection.

19 THE COURT: Are you saying the town is in
20 suspension? You are saying it is not an entity?

21 MR. MULLINS: No, sir. I'm saying there are
22 other noncompliance. Since we seem to have turned
23 this into a general referendum on the matter, I would
24 bring up the other issues that the town is not in
25 compliance with.

1 THE COURT: The town is under suspension. Is
2 that an order issued by someone?

3 MR. MULLINS: No, sir.

4 THE COURT: Is that like a charter revoked
5 or --

6 MR. MULLINS: I'll withdraw that line of
7 questioning, because that goes way too far afield from
8 why we are here.

9 Q (MR. MULLINS) The town no longer accepts United
10 States currency for the Freedom of Information Act
11 requests?

12 A We do not accept cash for any transactions.

13 Q Okay. So you do not recognize United States
14 currency?

15 A We don't accept cash for any transactions within
16 the town.

17 Q What ordinance is that?

18 A I beg your pardon?

19 Q Is that an ordinance?

20 A It's policy.

21 Q Oh, okay.

22 MR. MULLINS: Just a minute, Judge.

23 THE COURT: Yes. Do you have -- while you are
24 pondering your -- well, do you have additional --

25 MR. MULLINS: No further questions.

EXAMINATION

BY THE COURT:

Q This process of codification, what do you envision that that entails?

A To me, it entails hiring a firm to look at all of the ordinances that have ever been adopted by the town, making an index. I guess I would sort of -- and I can't think of the name of the firm that does it for all the cities in town around, but it would be books of all of the ordinances by title and date.

Q A process of creating a binder of all the laws that exist?

A Right. Sort of like a LexisNexis book, like the South Carolina code is in binders and has titles and things of that nature. It is not -- it is a fairly extensive and expensive process.

Q The process of putting the laws in a book form?

A In a binded book form.

Q So the pictures of things of the papers in binders, are those laws in binders?

A It is laws in binders and, I guess, that would be the poor cousin's attempt to comply with the law to the best of our financial ability, at the moment.

Q All right.

THE COURT: Ms. Moody, anything else of this

1 witness?

2 MS. MOODY: No, sir.

3 MR. MULLINS: Nothing.

4 THE COURT: Thank you.

5 (A discussion was had off the record.)

6 (WILLIAM BOOKER, having been duly sworn,
7 testified as follows:)

8 THE CLERK: State your name.

9 THE WITNESS: William Booker.

10 DIRECT-EXAMINATION

11 BY MS. MOODY:

12 Q Where are you currently employed?

13 A Town of Atlantic Beach.

14 Q How are you employed?

15 A Town manager.

16 Q How long have you been the town manager?

17 A Since July 2013.

18 Q Prior to July 2013, have you ever worked for the
19 town before?

20 A Yes. From June 2009 to July 2011.

21 Q Before 2009, where were you employed?

22 A Last assignment was production manager for a
23 business in Richmond, Virginia.

24 Q In 2011, how did you come to work for the town?

25 A I was asked by one of the council members if I

1 would be willing to take the job, and he brought it
2 before council and they decided to offer me the job,
3 and I accepted.

4 Q When you accepted, what were your day-to-day
5 duties?

6 MR. MULLINS: Your Honor, I hate to interrupt,
7 but can my objection to Mr. Booker be continued for
8 the record under the previous two witnesses?

9 THE COURT: It is noted.

10 A Essentially, the day-to-day operation of the
11 town.

12 Q (MS. MOODY) When you came on, were there pending
13 lawsuits for the town?

14 A Yes, there were quite a few.

15 Q And were you aware of this lawsuit with Mr. Curry
16 against the town?

17 A Not immediately. I mean, there have been so many
18 lawsuits with the town by different individuals, Mr.
19 Curry -- I was surprised he had so many, because I was
20 thinking there was somebody else who had more, but
21 he's right up there with them. There's been so many
22 to keep up with, and oftentimes I leave it to the
23 attorneys to keep me advised because I have these
24 other things in the town to manage as well. I can't
25 say that immediately I was aware, but I'm aware now.

1 Q When you say you left it up to the attorneys,
2 what attorneys have you worked with regarding cases
3 with Mr. Curry?

4 A John Zalinsky was the attorney. He was hired
5 pretty much the same time I was in July 2009, and he
6 was terminated when I was terminated, so I essentially
7 worked with him during that period. You were hired
8 just about the same time I was in 2013, and to it's
9 just been two attorneys, you and he. Apart from those
10 attorneys who had specific cases, like you were
11 working with Tyson Beach and one other case, but
12 primarily Zalinsky and you.

13 Q And so when you worked with Mr. Zalinsky, you
14 worked with him on this particular case?

15 A Yes.

16 Q And you have heard mention of a case that was --
17 there was a consent order entered into. Did you work
18 with Mr. Zalinsky on that case?

19 A I did.

20 Q How did that order come into being?

21 A That order came into being because there was a
22 lawsuit filed by Mr. Curry prior to me coming to the
23 town. I wasn't aware of it. It seemed to have been
24 sort of neglected by my predecessors, and at a point
25 when Mr. Zalinsky got involved and became aware of the

1 case, Mr. Curry was asking for certain things after
2 conversations that Mr. Zalinsky had with Mr. Curry's
3 attorney, he recommended that we try to work out some
4 sort of settlement because the case hadn't been
5 answered and the town was in sort of a weak posture
6 relative to defending itself, because of court
7 requirements and dates and things such as that.

8 Q And so when Mr. Zalinsky gave you that
9 information, you all entered into this consent
10 agreement?

11 A Yes. He presented the agreement to me. We
12 talked about it and, essentially, we had a choice of
13 either to agree or throw ourselves on the mercy of the
14 court, and considering what I knew about the town, I
15 believed that it was in the best interest, after
16 having talked with the council, to agree to the
17 settlement.

18 Q And with that order in 2010, what, if anything,
19 have you tried to do to make sure that order was
20 complied to in terms of FOIA?

21 A Not only with just that order, but with FOIA in
22 general my objective has always been to try to satisfy
23 whatever the request the citizens have. We are there
24 to serve the community, and one of the things that I'm
25 -- I believe that we -- that I know that I stress with

1 my team, but I try to display with the community is
2 that we're there to serve your needs while we're
3 trying to manage all the other things that we have to
4 manage. You know, in -- what we have to do is not
5 very much different than any other town whether it is
6 New York City or Atlantic Beach. The difference is in
7 New York City has departments and levels and so forth,
8 and we have essentially four people in our office to
9 have to take care of all of those things, apart from
10 the police department. So it makes some things a
11 little more challenging, but with that being the case,
12 we don't try to let that be an obstacle with meeting
13 people's needs.

14 Q So you signed the consent order, and that was
15 clocked in -- you signed it on January 25, 2010?

16 A Yes.

17 Q And then you were served with another lawsuit
18 from Mr. Curry on November 17, 2010, which is this
19 case?

20 A Yes.

21 Q When you got served with this lawsuit, what, if
22 anything, did you think regarding the FOIA requests
23 contained within it?

24 A Well, you know, I can't remember the chronology,
25 but one of the things I found immediately when I took

1 this role is that Mr. Curry was a frequent visitor and
2 wanted to be involved in the operation of the town in
3 keeping up with what was going on, and so forth and so
4 on. He came to the town hall quite frequently. So he
5 and I had the occasion to communicate. One of the
6 things that I had done through my career is I'm known
7 for being able to get along well with people and meet
8 their needs. So with Mr. Curry I didn't see it any
9 differently. I tried to work with Paul to get him
10 what he needed and so forth. When I became aware that
11 he was asking for codified ordinances, I clearly said
12 to him then, Paul, we don't have those -- at the time
13 I called him Mr. Curry, we recently switched over to
14 being Paul and I'm William. But I said to him, I
15 don't -- we don't have codified ordinances, we need to
16 get that done, but we do have ordinances that you are
17 free to see and use and whatever you need to do. He
18 and I -- quite frankly, he would talk with me from
19 time to time about what he had seen other people doing
20 in the town that were actually in violation of the
21 town's ordinances, and because he is constantly in the
22 town, going around and observing what people do,
23 taking pictures, he'll send me pictures or E-mails or
24 stop by the office and say I saw so-and-so doing
25 something that violated an ordinance, and so-and-so

1 violated an ordinance.

2 When he came with the codification issue, and I
3 shared we need to work on that, and of course finances
4 has always been an issue with the town, so it fell
5 into the pecking order as it did based on the
6 resources, the financial money we had.

7 Q So when he's asked for ordinances, what, if
8 anything, did you give him in terms of ordinances?

9 A I believe on an occasion I did show him a book
10 that I use in my office which has an index of all the
11 titles with the particular subjects under the title.
12 For example, Title 1 is administration and 1-1-1 is
13 something, 1-1-2, 1-1-3 and so on, that is what we
14 have.

15 Q Is that what you have in the -- out in the
16 reception area?

17 A What we have in the reception area is -- at some
18 point in time, and this is because -- one of the
19 things that we have in Atlantic Beach is we have a
20 significant amount of turnover. The way the turnover
21 occurs, it is like you have a person in place, they
22 get fired and get a new person, so there is no one to
23 bring you up to date or transition to get where you
24 need be. It is always a brand new person who starts
25 from home plate every time.

1 The reason I'm saying that is my -- from what
2 I've seen, the conclusion I come to is at some point
3 in time the town adopted a set of ordinances, and they
4 included what they included. Over time, there have
5 been amended variants of these ordinances, and so what
6 we have in the lobby is the amendments to the original
7 set of ordinances, but we still have a set of books
8 that are in the back that we put in some of the
9 amendments. We keep the amendments in the filing
10 cabinets as well.

11 As I said before, we have a set of books in the
12 back, set of amendments in the front and a set in the
13 filing cabinet, it that is clear. I said a lot.

14 Q What, if anything, has Mr. Curry's response been
15 to you providing him the ordinances?

16 A Well, he hadn't really asked for a lot. The one
17 time he asked, that I remember, was for codified
18 ordinances. I said, Paul, we don't have codified
19 ordinances, this is what we have.

20 Q What did he do with what you had?

21 A That is not what I want. That is not what I'm
22 looking for.

23 Q What, if any, conversation did you all have about
24 codified ordinances? Did you all have a discussion
25 about the town -- I mean, you said you need to get it

1 done, but what, if any, other conversation did you.
2 have specifically about codified ordinances, anything?

3 A Well, I can recall as we were going through
4 budget process and so forth, and he would stop by and
5 get a copy of the budget, or what have you. I made
6 mention of the fact that codification is still a goal
7 of the town, but beyond that, I don't specifically
8 remember any specific conversation.

9 Q Now, has the council been made aware of the need
10 for codification?

11 A Absolutely.

12 Q During your time that you were working for the
13 town, you requested codification?

14 A Yes.

15 Q And there is a budget that currently is in play
16 now; does it have codification as a line item?

17 A It does not.

18 Q Who was working with the town that knew that
19 codification was needed?

20 A Well, there was some council members who knew it
21 was needed. It is just that when I came on, there was
22 already a first reading of the budget. We got held up
23 because of an injunction to do the second reading. We
24 had to wait a couple, three months and finally passed
25 the second reading. My intention is in the 2014/'15

1 budget we will have codification as a line item with
2 the objective of getting it done.

3 Q Have you ever refused Mr. Curry anything that
4 he's requested from the town?

5 A I've never refused him, that I can recall. There
6 have been situations where Mr. Curry came in, and Mr.
7 Curry generally -- when he comes in, he wants things
8 right now. When we can satisfy that, we give it to
9 him right now. When we can't give it right now, he's
10 not necessarily happy. I don't know that he makes
11 sure we all know it, but we do know when he's not
12 happy.

13 Q How do you know?

14 A He shows his disgust, makes his comments about
15 settlement and what we ought to be doing, things such
16 as that. Essentially, one of the things I know is all
17 of the staff that I work with in Atlantic Beach don't
18 really like to Mr. Curry coming. They don't want to
19 really deal with the attitude. I mean, we generally
20 have -- we're a small town. Our staff is very
21 friendly and like to deal with things in a friendly
22 way, even though we don't agree. We have very few
23 tense issues with the staff.

24 Now, the police might be a different story with
25 the staff, but that is not necessarily the case with

1 Mr. Curry, often it is kind of tense.

2 Q As to the payment of the fees owed, there is
3 \$871.52; are you aware of that?

4 A I am now.

5 Q And you learned that through me?

6 A Yes.

7 Q Did anyone else talk to you about that fee?

8 A No.

9 Q So indicated to me that the fee would be paid by
10 January 20th?

11 A That is what Ms. Cheatham said we'll pay it, that
12 is when we'll pay it.

13 Q As to the other fee, I believe it is a
14 thousand -- \$1,162, give or take some dollars, when is
15 the town able to pay that fee?

16 A I thought we agreed to February 20, but she just
17 gave another date, so.

18 Q And is that based on when you receive --

19 A Revenue, cash flow. I mean, we want to pay all
20 of our bills, it is just that we haven't been blessed
21 with the cash flow to allow that, so we have to
22 prioritize.

23 Q In addition to your bills, you have other
24 judgments you are paying?

25 A Yes, absolutely. We have a huge one.

1 Q As to the codification of the code, have you
2 talked to any companies or anyone -- who have you
3 talked to regarding the codification of the town's
4 ordinance?

5 A Specifically, I talked with Waccamaw Council of
6 Government extensively. I have done research on
7 another company, because their fee was 10,000 -- just
8 short of \$11,000. I was doing some research to see if
9 I could get it done for less.

10 Q And when you say you talked to them, can you
11 explain what is codification in terms of dealing with
12 Waccamaw?

13 A Well, codification is taking the ordinances that
14 we have and meshing in the amendments so that if you
15 have an ordinance and it's been amended, you sort of X
16 out the amendment and -- X out the original and make
17 the amendment the ordinance and sort of put a date
18 beside it so you know when the amendment was, but you
19 don't get rid of what the previous item was so that
20 you can track changes. It keeps things in order that
21 way.

22 Now, ultimately, they'll end up in a binder, but
23 my vision is that they will be done electronically.
24 It makes it so much easier to make all the
25 modifications and changes and you can print whatever

1 pages you need and put them in the binder.

2 Q Is this something -- the 10,000 that you speak
3 of, is that something you pay each year, or one time?

4 A My expectation is that you pay it once, and then
5 from that point we maintain it throughout whatever
6 electronic system we get.

7 Q When you say you want to do this, is this
8 something you have to take to council?

9 A Yes. That is a budgetary item that goes through
10 council.

11 Q So in terms of you being able to get this done
12 within the next budget, you will have to present that
13 to council?

14 A Yes.

15 Q During the budget time?

16 A That's correct.

17 Q Is there a cutoff when you submit items in the
18 budget?

19 A There is no cutoff. By law, we tried -- we're
20 asked to get the budget approved by the end of the
21 fiscal year prior to the start of the new fiscal year.
22 There is always a budget amendment process.

23 Q As it relates to Mr. Curry coming into the town
24 and the frequency, what, if any, complaints have you
25 received regarding providing him with documents?

1 A Well, the complaints, as I said previously,
2 generally come from my staff. I get complaints from
3 other citizens too, but it is not related to Mr. Curry
4 getting documents, it just relates to Mr. Curry and
5 what he's doing.

6 In terms of my staff, their frequent complaints
7 to me about Mr. Curry and his approach and interaction
8 with the staff, and, mind you, they know that I expect
9 them to be personable and respectful to anyone that
10 comes into town, I mean, they just have to deal with
11 it, but it's frequently that if he doesn't get what he
12 wants, when he wants it, then he's going to show a
13 behavior that the staff doesn't particularly care to
14 deal with, and they view it as disrespect.

15 Q Last question. Have you ever denied Mr. Curry
16 any documents that he's requested that he's entitled
17 to under FOIA?

18 A Never denied. I've had situations where he's
19 wanted something that I didn't have available to me to
20 give to him. I shared with him, We don't have it.
21 The most recent situation has to do with police
22 reports. We were having computer problems with
23 printing the police reports. It took several days to
24 get it done, because for some reason some system was
25 wiped out of the police computers, which is different

1 than the rest of the administration computers. So it
2 took several days and bringing in resources from Horry
3 County to reload stuff. I had to tell Mr. Curry for
4 several days, We don't have it, Paul, I'm sorry.
5 We're working on it, we just don't have it.

6 So, yes, I've had occasion to have to tell him
7 that, but apart from those unique situations, he
8 generally gets what he wants, that's my belief.

9 MS. MOODY: No further questions.

10 CROSS-EXAMINATION

11 BY MR. MULLINS:

12 Q Did you get this letter dated August 10, 2010,
13 previously admitted as Plaintiff's 8?

14 A I don't specifically remember getting it, but if
15 it is addressed to me, I more than likely got it.

16 Q You were town manager around Augusts 10, 2010,
17 weren't you?

18 A Yes, I was.

19 Q Did you ever give a written response back to Mr.
20 Curry about his request for public inspection of the
21 codified ordinances?

22 A No, but I would have had a conversation with him
23 about it.

24 Q Don't you think that would have been proper to
25 put it in writing so there is no question what your

1 position was?

2 A It probably would have been.

3 Q You don't have anything to show that you put that
4 in writing?

5 A I don't have anything, no.

6 Q Mr. Zalinsky was your attorney through some of
7 the time you were there at the town?

8 A Yes.

9 Q As I recall, you took over as town manager
10 June 2009 through July 2011?

11 A Correct.

12 Q And this lawsuit began sometime around
13 November 2010?

14 A That is the date I believe it did.

15 Q I'll show you a copy of a filed lawsuit here. No
16 question that was filed in November of 2010, wasn't
17 it?

18 A Where would I see the date?

19 Q (Indicates.)

20 A Yes, November.

21 Q And no question that that is several months after
22 the written FOIA request from Mr. Curry to you as town
23 manager?

24 A Yes.

25 Q No question you did not make a written response?

1 A I did not.

2 Q How was that served? Was that served on you?

3 A It was -- I don't recall it being served directly
4 to me. It could have been served to the municipal
5 clerk.

6 Q No question that was during the time it was your
7 responsibility as town manager?

8 A That's correct.

9 Q Let me show you a paragraph. Are you familiar
10 with what is called an answer that someone filed in
11 the town?

12 A Yes.

13 Q And through the litigation you've experienced,
14 you are familiar of the court process, the plaintiff
15 files a summons and the defendant files an answer?

16 A Yes.

17 Q And Mr. Zalinsky filed your answer for you?

18 A Yes. If one was filed, he would do it.

19 Q In the Plaintiff's complaint, let me draw your
20 attention to a paragraph here.

21 A Uh-huh.

22 Q Does it say there, starting with Paragraph 33, 34
23 and 35, that Mr. Curry requested a court to declare
24 the actions of the town be unlawful because they did
25 not have codified ordinances; does it say that?

1 A Well, what it says is it doesn't -- don't see the
2 word "codified" here.

3 Q Start with -- Mr. Booker, if I could, start with
4 No. 34. Does it say this, under 30-4-100, South
5 Carolina Code annotated, the plaintiff requests this
6 court inquiring of the failure of the defendant, the
7 Town of Atlantic Beach, to make the town ordinances
8 available to the public for review as required under
9 57-7-290?

10 A That is what it says.

11 Q And no question that he also requested an order
12 of the court declaring the actions of the town be
13 wrongful and require the Town of Atlantic Beach's
14 ordinances to be provided for review and inspection?

15 A That is what it says.

16 Q No question that in your lawyer's answer -- let
17 me hand you a copy of it -- that your lawyer, on Page
18 3 of his answer, denies all of those allegations?

19 A Okay.

20 Q So that was your position when this litigation
21 began, wasn't it?

22 A That is what the lawyer wrote, yes.

23 Q Well, the lawyer worked for you, didn't he?

24 A He did.

25 Q And, in fact, Mr. Booker, I recall you being

1 present when Judge Culbertson ordered you to answer
2 discovery in this case, weren't you?

3 A I don't recall that.

4 Q You don't recall that hearing in July of 2011?

5 A No. At this point, I mean, I don't recall that
6 hearing specifically. I'm not saying it didn't
7 happen, but I don't personally remember it.

8 Q Let's talk about the other hearing. Did Mr.
9 Curry have to bring a contempt proceeding to order the
10 town to pay the \$5,000 in attorney's fees from the
11 2008 order?

12 A Yes.

13 Q And was a hearing scheduled that day?

14 A I went to a hearing where we paid Mr. Curry
15 \$5,000, yes.

16 Q When did you pay it?

17 A At the hearing.

18 Q The date of the letter?

19 A Yes.

20 Q When Mr. Curry asked that the town be held in
21 contempt, that is when you paid?

22 A Whatever was going on during that proceeding is
23 when.

24 Q Have you paid the thousand dollars that Judge
25 Hyman ordered you to pay as a result of not paying it

1 before the hearing?

2 A Based on the investigation on that, we did
3 recently -- I have not seen where that thousand
4 dollars has been paid.

5 Q All right. That was brought to your attention --
6 well, when you returned back to the town in July of
7 2013, didn't you?

8 A I did, yes.

9 Q Did you review the status of all of these
10 lawsuits then?

11 A No, I didn't.

12 Q Well, in October I sent a letter to your lawyer
13 and you reviewed that, didn't you?

14 A Whatever she makes me aware of, I am reviewing.

15 Q Did it take from October until today, in January,
16 to determine that you had not complied with the court
17 order?

18 A We had a conversation recently within the last, I
19 would say, two weeks where I became aware of the
20 thousand dollars, but I think it was last week.

21 Q So the answer to that question would be, yes?

22 A Ask me the question.

23 Q Did it take from October until last week to
24 figure out that you had not complied with this court's
25 order?

1 A I would say the answer is, yes.

2 Q All right. Now, as to the codification of
3 ordinances, let me show you what is marked and
4 admitted as Plaintiff's 13. Is that the budgets for
5 2010/2011?

6 A That is the cover sheet, and I suspect that these
7 are the budgets.

8 Q And no question you were the town manager at that
9 time?

10 A I was.

11 Q And no question at that time that you were aware
12 of Mr. Curry's request for codified ordinances?

13 A Yes. Not only was he requesting it, we wanted to
14 do it.

15 Q Now, to this day you have not done it, correct?

16 A It has not been done, that's correct.

17 Q And isn't that a requirement by state law that
18 the ordinance are codified and available for public
19 inspection?

20 A We can have the public inspection, but they are
21 not codified yet.

22 Q So the town is not in compliance with state law?

23 A Concerning codification, that is correct.

24 Q Anything else that they are not in compliance
25 with state law on?

1 MS. MOODY: Objection, Your Honor.

2 THE COURT: Objection sustained.

3 Q (MR. MULLINS) Since Mr. Curry began this lawsuit
4 back in 2010, have there been any arrests of your
5 citizens or guests for violations of town ordinances?

6 A Since when?

7 Q Since 2010 --

8 A Yes, there have been arrests.

9 Q For violations of town ordinances?

10 A Yes.

11 Q Do you think it is fair to prosecute them for
12 uncodified ordinances?

13 A We have ordinances that are in place, and they
14 are effective and signed off by the council. I think
15 that the ordinance are as effective as any ordinance.

16 Q That wasn't my question. Do you think it is
17 fair --

18 A I think based on the laws that the people were
19 arrested on, the judge makes that determination.

20 Q No question your municipal court is likewise
21 operating under uncodified ordinances, correct?

22 A I mean, whatever ordinances we have, that is what
23 they use.

24 MR. MULLINS: Just a moment, Judge.

25 (A brief pause in the proceedings.)

1 Q (MR. MULLINS) These lawsuits Mr. Curry filed
2 against the town and your personal feelings and the
3 feelings of the staff, aren't there other lawsuits
4 against the town right now?

5 A Quite honestly, I can't really remember exactly
6 what lawsuits.

7 Q Let me see if I can refresh your recollection.
8 How many town council members have sued the town in
9 the last four years?

10 A Three, that I know.

11 Q How many mayors have sued the town?

12 A One.

13 Q And the town settled out on most of those cases?

14 MS. MOODY: Objection.

15 THE WITNESS: The insurance reserve funds --

16 MS. MOODY: Objection. Objection.

17 THE COURT: Objection sustained. He testified
18 earlier that there is many lawsuits against the
19 county, more than he can keep up with and more than he
20 can be personally involved in.

21 MR. MULLINS: Thank you.

22 Q (MR. MULLINS) Mr. Booker, how long have you known
23 you were going to be a witness in this case?

24 A Couple of days.

25 Q Couple of days?

1 A Yes.

2 MR. MULLINS: No further questions.

3 EXAMINATION

4 BY THE COURT:

5 Q How many thousands of dollars has Atlantic Beach
6 paid to Mr. Curry?

7 A Sir, I really don't know.

8 Q Do you have any idea?

9 A I know of 10-, 12,000 to Mr. Curry directly, and
10 then there is indirect costs of attorney's fees and so
11 forth, but I wasn't aware that there was as many
12 lawsuits, so that is what puts me in a position of not
13 being able to say.

14 Q You don't know what else might be contingent
15 or --

16 A Or what else has occurred that I don't know
17 about.

18 Q And do you see Mr. Curry as an overseer or
19 ombudsman of the public good of Atlantic Beach?

20 A What I say about Mr. Curry is that -- I didn't
21 know this terminology, but Mr. Curry, I would
22 consider, a gadfly, and I had to look up that word.

23 Q What does that mean?

24 A That is someone who looks at the laws of a town
25 and then goes around the town to find people who are

1 not in compliance with those laws and makes an issue
2 of it.

3 THE COURT: All right. Anything further, Ms.
4 Moody?

5 REDIRECT-EXAMINATION

6 BY MS. MOODY:

7 Q When you were asked about whether or not you knew
8 about all of the lawsuits in November 2010, as well as
9 you entered into the order -- the consent agreement
10 for the January 25 -- and I hope I'm not misstating
11 the date of that order, but January 25, you dealt with
12 Mr. Zalinsky?

13 A Yes.

14 Q And when Mr. Zalinsky denied the codification
15 issue, did you all have a discussion about what
16 codification meant? Did you tell him what exactly you
17 understood Mr. Curry was asking for?

18 A I can't remember exactly the discussion that John
19 and I had, but we -- because of the budget process,
20 codification was something that had been discussed on
21 more than one occasion. John was in the meetings with
22 us, and so he was quite aware that codification was
23 something that the council and I wanted to accomplish,
24 because we had put it in the budget. So part of this
25 process put him in a position to answer some of these

1 things without having to converse with me.

2 Q Now, as to the 2008 lawsuit, were you employed by
3 the town at that time?

4 A No, ma'am.

5 Q So the order that was issued by the judge on
6 July 27, 2011, when did you get terminated by the
7 town?

8 A I got terminated July 26th of 2011.

9 Q So as to hearing, you were not in a position to
10 make sure that the discovery or the payments on this
11 money was available -- made available to Mr. Curry and
12 Mr. Mullins?

13 A No, I was not in position.

14 Q As to -- I think there was a question about my
15 putting you on notice of the payments that was due,
16 \$871.52?

17 A Yes.

18 Q Who was the attorney that had this file before it
19 was brought to my attention?

20 A I believe it was Kenneth Davis.

21 Q Did you have any discussion with Mr. Davis about
22 any outstanding fees owed to --

23 A No.

24 Q And when I sent you the letter in October about
25 this amount, were there not other lawsuits going on?

1 A Yes.

2 Q And when we discussed this maybe a week ago,
3 what, if anything, did you learn from me regarding
4 what I had found in another lawsuit as it relates to
5 Paul Curry?

6 A Well, we started out thinking that that had been
7 paid. You were aware of the check -- which we weren't
8 aware of the check, and we did lots of conversation
9 about it. We talked with the accountant and came to
10 realize that the check hadn't cleared.

11 Q And do you recall my telling you that I located
12 Mr. Curry's name in a general ledger that gave the
13 same amount of \$871.52?

14 A I do recall that, based on work you were doing on
15 another case.

16 Q Do you recall that I requested from Mr. Cheatham,
17 to her dissatisfaction, that I needed a copy?

18 A I recall you requesting that, and I recall her
19 even calling the bank. I remember specifically her
20 calling the bank asking for a copy of that check.

21 Q Even in that instance, didn't I have you turn
22 around from leaving the office to go back to the
23 office to help me find this?

24 A You did.

25 Q That was after office hours?

1 A You did. It was after office hours, late after
2 office hours.

3 Q That was to everyone's satisfaction, I'm sure.

4 A Yes. Do what we have to do.

5 MS. MOODY: Nothing further.

6 THE COURT: Mr. Mullins.

7 MR. MULLINS: I'm happy that they were
8 dissatisfied with someone other than Mr. Curry
9 regarding documents (laughing.) Just one follow-up.

10 RECROSS-EXAMINATION

11 BY MR. MULLINS:

12 Q If the money was there, is it still there?

13 A I have to refer to my CFO.

14 Q I'm confused. Is there any question in your
15 mind, Mr. Booker, that I represent Mr. Curry?

16 A I know you represent Mr. Curry.

17 Q Is there any question in your mind where you
18 should send the check?

19 A We have determined where we are going to send the
20 check.

21 Q Where is that going to be?

22 A Your office.

23 MR. MULLINS: Thank you so much.

24

25 EXAMINATION

1 BY THE COURT:

2 Q Mr. Booker.

3 A Yes, sir.

4 Q I looked up gadfly. A fly that bites livestock.

5 A fly that irritates livestock by biting them and

6 sucking their blood, that is the first definition.

7 The second one is somebody annoying, somebody regarded

8 as persistently annoying or irritating. Is that the

9 definition you looked up?

10 A No. No, sir.

11 Q You found a different book.

12 A There was another one, and I looked it up, I

13 thought, on the Internet. In my mind, what I

14 interpreted it as -- because I know Mr. Curry and I

15 have worked with him and talk with him often, lots of

16 times, E-mails and so forth, and I know how he is.

17 We've discussed how he is. He wants to know the laws,

18 constantly surveying the town and finding somebody who

19 is violating those laws, and then he brings it to your

20 attention or the police's attention and he expects you

21 to do something about it, and when you don't, then you

22 have a problem.

23 THE COURT: Ms. Moody.

24 MS. MOODY: I was going to say the definition of

25 a gadfly, Martin Luther King talked about it in

1 Birmingham and that being someone who has the
2 uncomfortable, annoying questions.

3 THE COURT: So it can be good.

4 MS. MOODY: According to Martin Luther King.

5 MR. MULLINS: Well, then, Your Honor, every time
6 in front of Judge Milling that I ask the uncomfortable
7 or unfortunate question of why my client was
8 wrongfully convicted of the chair, that would also
9 make me a gadfly.

10 MS. MOODY: That's right.

11 THE COURT: Very good. You may step down.

12 MS. MOODY: No more witnesses.

13 MR. MULLINS: No reply. The hour is late.

14 THE COURT: We've heard all of the testimony.

15 You know, typically, I would like to have the matter
16 summarized, but due to the lateness of the hour, it's
17 too late to have a summary, unless you want to take
18 three, four minutes, otherwise, I would like to have
19 each side submit proposed orders.

20 MR. MULLINS: When would you like them, Judge,
21 not for my benefit, but for the benefit of my
22 associate here.

23 THE COURT: Within 15 days?

24 MR. MULLINS: No objection.

25 THE COURT: We will adjourn.

1 State of South Carolina) Court of Common Pleas
2 County of Horry) 2010-CP-26-10848

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4

Paul Curry)

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vs.)

6

Town of Atlantic Beach)

7

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April 13, 2015
Conway, South Carolina

10

11 BEFORE:

12 Honorable Clifton B. Newman, Judge.

13

APPEARANCES:

14

Randall K. Mullins, Esq.
Attorneys for the Plaintiff

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Lead B. Moody, Esq.
Attorney for the Defendant

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Teresa J. F. Bautz, RPR
Official Court Reporter

22

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1 (The hearing commenced at approximately
2 11:47 a.m.)

3 THE COURT: Thank you, be seated. Good morning.

4 MR. MULLINS: Good morning.

5 THE COURT: Good morning. Mr. Mullins, yes, sir.

6 MR. MULLINS: May it please the Court, Your Honor,
7 this is the motion to reconsider based upon your order
8 denying injunctive and declaratory relief, which I got
9 on September 15, 2014. There was a case tried before
10 Your Honor, and Ms. Moody was counsel as well for the
11 Town. Your written order was filed with the Court
12 September 8th of 2014. My motion follows on
13 September 24th, 2014, and I think I complied with the
14 Supreme Court's administrative directive by sending
15 that to Your Honor.

16 I apologize for taking up additional court time on
17 this, judge, but in the last few years in the Court of
18 Appeals, I can't figure out when they do and do not
19 want me to file a motion to reconsider. When I don't
20 file it, they say, well, I should have taken it up with
21 the trial court. And if I do file it, it seems to have
22 been glossed over, so I'm at a little at a loss.

23 And so out of an abundance of caution for Mr.
24 Curry and his rights, we'd ask the Court to clarify
25 some things.

1 THE COURT: Okay.

2 MR. MULLINS: Most importantly, judge, is that
3 Defendant's -- and I'm not trying to reargue any of
4 Your Honor's rulings on this matter. You were very
5 clear on all of your rulings.

6 THE COURT: Yes, sir. I just wondered, you don't
7 have a copy of your motion; do you?

8 MR. MULLINS: Yes, Your Honor.

9 THE COURT: I have it on my computer, and I have
10 it in the file, but I want to make some notes on it as
11 we talk.

12 MR. MULLINS: May I approach?

13 THE COURT: Yes, sir. Okay, thank you.

14 MR. MULLINS: The prior answer, judge, that was
15 filed by Mr. Zelinski in this matter back in January
16 of 2011 only had a general denial to two causes of
17 action and raised one affirmative defense, and that was
18 latches.

19 In the trial and the resulting order at the end,
20 there are additional defenses that became the final
21 order of the Court. And I wanted to point out to the
22 Court that some of those defenses were not raised in
23 the original answer. So I was unduly surprised that
24 that was the case.

25 It seems that the Court is saying that this is res

1 judicata and collateral estoppel, also lack of standing
2 or no case or controversy in progress. So that was one
3 of the issues.

4 The next issue that kind of dovetails into that,
5 judge, is there has been obviously, as the Court's well
6 aware, some litigation between Mr. Curry and the Town
7 of Atlantic Beach. The Court says, well, this was
8 previously litigated in a case.

9 And there are numerous cases over the years. I've
10 not been counsel for all of them, but if I could, I'd
11 like the order clarified to say what case is this res
12 judicata from.

13 THE COURT: Okay. Let me ask you just on that
14 point, the order references an order by judge --
15 magistrate Judge...

16 MS. MOODY: Judge Howe, the Master in Equity.

17 THE COURT: Judge Howe, that says on November 17th
18 filed an action again seeking -- no, on January 25th,
19 2010, the Master in Equity issued an order making final
20 the settlement negotiated between the parties.

21 Do you have an order that Judge Howe issued that
22 was dated or signed by her on January 25th, 2010?

23 MR. MULLINS: There is an order in a prior case,
24 judge. That case is 2005-CP-26-1091.

25 THE COURT: 2005-CP-26-0091?

1 MR. MULLINS: Yes, sir.

2 THE COURT: 2005-CP-26-0091?

3 MR. MULLINS: That's correct.

4 THE COURT: All right.

5 MR. MULLINS: 1091, Your Honor.

6 THE COURT: 1091, okay.

7 MR. MULLINS: 1091. And that was addressing
8 violations that had occurred from 2000 -- 1999 up to
9 2005.

10 THE COURT: Okay.

11 MR. MULLINS: In this case there were other issues
12 that were raised and litigated in our complaint which
13 occurred after the effective filing date of the 2005
14 case, if that's the one that we're relying upon for res
15 judicata.

16 So my point is that if that were -- if it were res
17 judicata that should have been an affirmative defense
18 that was pled and proved. Secondly, that that would
19 only cover issues, unless there's something about that
20 order that I don't understand, that occurred prior to
21 the date of filing.

22 So we were -- we introduced testimony as to many
23 things, including things that occurred after the date
24 that Judge Howe signed the order in the 2005 case. So
25 not to re-argue the case, judge, but I want to make the

1 point that we had actually put into evidence things
2 that had occurred after that date.

3 THE COURT: Yeah. Let me assure you that I am not
4 a judge who frowns on motions for reconsideration. I
5 welcome them. I'm fine with anyone asking for anything
6 to be reconsidered, because, you know, it's -- not only
7 is it provided by the rules, but it's an important
8 phase of litigation. That's why the rule exists so --

9 MR. MULLINS: I appreciate that, judge.

10 THE COURT: Yes, sir.

11 MR. MULLINS: Because I always like to leave the
12 courthouse from the same door I came in from.

13 THE COURT: Yeah, no, not a problem.

14 MR. MULLINS: So that's our issue with the way the
15 order is worded on that. At this time it was
16 stipulated throughout both the failure to file requests
17 to admit and through by counsel in the trial that there
18 are no codified ordinances for the city. They don't
19 exist. I'd like to make that a little plainer in the
20 order.

21 As to the case or controversy which is once again
22 goes to the standing issue that wasn't raised in the
23 answer, my client was arrested for the violation of
24 municipal ordinance. That arrest was vacated. He has
25 asked in writing to look at the codified ordinances.

1 There was no reply to some of the last ones that
2 occurred.

3 THE COURT: And he was arrested prior to or
4 subsequent to?

5 MR. MULLINS: Yes, sir. That conviction was
6 overturned in February of 2002, according to my notes.

7 THE COURT: Okay.

8 MR. MULLINS: So certainly if someone is being
9 arrested for town ordinance violations and there are no
10 codified ordinances in existence, that gives him a
11 right as a citizen to question that.

12 The discovery issues, judge, there was -- the
13 Court recited the order on page two that Judge
14 Culbertson entered on July 27th, 2011, were Judge
15 Culbertson ordered the Defendant to answer the
16 interrogatories and requests to produce. And that was
17 within 30 days, and that was in 2011.

18 So I wanted to make sure that it was clear from
19 the order that no written discovery responses were ever
20 sent.

21 THE COURT: Page two, paragraph?

22 MR. MULLINS: That would be that first full
23 paragraph that begins, on April 7th, 2011.

24 MS. MOODY: You're saying that -- excuse me, if I
25 may. I guess what I'm trying to make sure I

1 understand, you're saying that the previous attorney,
2 Mr. Zelinski, didn't send reply to those, and that's
3 when you filed the motion?

4 MR. MULLINS: Well, none of the attorneys filed
5 written responses.

6 MS. MOODY: Well, I never received any, so that's
7 why I'm trying to be clear on that.

8 MR. MULLINS: And judge, I understand counsel came
9 in this case late. I've come in cases late too, I've
10 come in criminal cases that are late. But you got to
11 pull the file and read the order, is my only point
12 there.

13 THE COURT: Which paragraph are you referring to?
14 That's my...

15 MR. MULLINS: The one that begins, on April 7,
16 2011, on page two of your order.

17 THE COURT: Okay. Is it -- oh, I see, yeah. I'm
18 looking at your motion, I'm sorry.

19 MR. MULLINS: And I'm just trying to clarify the
20 order there if the Court sees fit to say that --

21 THE COURT: Okay, I understand.

22 MR. MULLINS: -- Judge Culbertson says do it in 30
23 days, it didn't happen. And I'm not trying to blame
24 Ms. Moody for that, it just didn't happen. There were
25 three lawyers in between that time.

1 MS. MOODY: Well, I just want to make it clear on
2 the record that at the point that I came in, it was
3 ready to proceed for trial.

4 So when we appeared for the roster which is, I
5 think you discussed that in your draft of the events
6 that happened in this case, that this case was going
7 forward. And on that date I was present in the Court,
8 and you said you were ready, and I said I was ready.
9 And for whatever reason, we couldn't go.

10 It wasn't because I moved for a continue or
11 anything. And I think in your proposed order, that
12 incorrectly stated the facts as to where I came in. So
13 in terms of pulling a file to state -- you know, to
14 understand what's going on with the case, when I did
15 contact the clerk's office, the only thing I was able
16 to obtain was a summons and complaint.

17 THE COURT: Okay.

18 MS. MOODY: Y'all already had filed a pretrial
19 brief or what have you between you and Mr. Davis, and
20 Mr. Davis and you were engaged in, I guess,
21 negotiations. And the last word that I got from him
22 was, you know, y'all were ready to go to trial.

23 THE COURT: All right. Well, let me say this. My
24 experience is that whenever someone wants to interject
25 to clarify something for the record, it never clarifies

1 anything for me. Because whenever one counsel argues
2 any point, the other counsel has a response or reply to
3 it. So let's wait until Mr. Mullins --

4 MS. MOODY: Okay.

5 THE COURT: -- gets through before clarifying any
6 points.

7 MS. MOODY: Okay.

8 THE COURT: Okay.

9 MR. MULLINS: And, I guess, judge, it just goes to
10 the ultimate ruling, here the remainder of this does,
11 those points are obviously things that I'm disturbed
12 about in that I'm not sure if there's a lawsuit at this
13 finite point if time.

14 And maybe I'm taking an extreme example here,
15 judge. If I walk down the street here in Conway and
16 they hit me with a car and I sue somebody --

17 THE COURT: Okay.

18 MR. MULLINS: -- and then they hit me with the car
19 again three years later, they can't say, well, you
20 already sued over this, is my point. And that
21 dovetails two ways. One is there should be something
22 in the answer that says this is res judicata and here's
23 why. And the second point being that if for planning
24 circumstances so that we know, does one order from 2005
25 cut us off indefinitely? You know, this is a fluid

1 process, freedom of information and open government.

2 So if tomorrow Mr. Curry says, I want to review
3 Ms. Moody's contract with the town, and they say, well,
4 you can't because Judge Newman has decided that you
5 don't have standing --

6 THE COURT: Okay. Let me just order up that other
7 file while we're talking. 2005-CP-26-1091, if you can
8 see if we can get that file.

9 THE CLERK: Okay. 2001 --

10 THE COURT: 2005-CP-26-1091.

11 THE CLERK: 2005 is in retention, judge. It may
12 take a little bit of --

13 THE COURT: It's where?

14 THE CLERK: It's in retention at a different
15 location.

16 THE COURT: In retention, okay. Okay. Well,
17 that's okay. If it's not downstairs or upstairs --

18 THE CLERK: No, sir.

19 THE COURT: -- don't worry about it. But for
20 discussion purposes here today, perhaps one of the
21 counsel may have a copy of Judge Howe's order in that
22 2005 case. And if I can see one of those, one of your
23 copies.

24 MS. MOODY: Do you have a copy of it? It was
25 filed in evidence.

1 MR. MULLINS: I looked for it this morning, and I
2 couldn't find it.

3 MS. MOODY: I think I have a copy of it.

4 MR. MULLINS: Because I wasn't counsel in that
5 case.

6 MS. MOODY: But that was -- did I give you a copy
7 of it?

8 MR. MULLINS: I don't think so.

9 MS. MOODY: We put it in evidence. I have it.

10 THE COURT: If you have it, the clerk will make a
11 copy for me and give it back to you. So let's just do
12 that.

13 THE CLERK: So you're looking for the order of?

14 THE COURT: Order issued by the magistrate in that
15 case on...

16 THE CLERK: Do we have a date?

17 THE COURT: Yes. It was issued on or dated
18 January 25th, 2010, honorable Cynthia Graham Howe.

19 THE CLERK: For granting relief and ending action?

20 THE COURT: Yeah, I'm not looking at it, so I'm
21 not sure.

22 MS. MOODY: I have it. Which exhibit was that
23 one?

24 THE COURT: You're looking at a computer down
25 there?

1 THE CLERK: Um-hum.

2 THE COURT: Does it say -- do you have it on your
3 computer, or is that in retention as well?

4 THE CLERK: No. What I have here I can print out.

5 THE COURT: Oh, good.

6 THE CLERK: I'm just trying to see if this is the
7 one.

8 THE COURT: She probably only issued one, that
9 would be it.

10 THE CLERK: They've got one filed January 27th of
11 2010.

12 THE COURT: That sounds about right. Probably was
13 issued on the one day and signed a day later. Order of
14 declaratory judgment and permanent injunction granting
15 relief ending action.

16 MS. MOODY: I have a copy, here's the copy.

17 THE COURT: Plaintiff's attorney was James E.
18 Bain; do you remember that? Okay, all right. She's
19 printing out a copy as well, okay. I have her copy so
20 you can have your copy back.

21 MS. MOODY: No, I have plenty.

22 THE COURT: Oh, you have more than one?

23 MS. MOODY: For some odd reason I made copies of
24 them, multiple copies.

25 THE COURT: Okay. You can proceed, Mr. Mullins.

1 MR. MULLINS: Yes, sir. And this is, as I recall,
2 involving, this is the Bike Fest case where Mr. Curry
3 had some complaints regarding access to records, access
4 to town documents, minutes, making public records
5 available. The Court issued an injunction on four
6 separate issues. And the Court specifically allowed my
7 client access to public records.

8 THE COURT: And is it your argument that the
9 codified ordinances are not public records?

10 MR. MULLINS: Well, my argument is that there are
11 ordinances, they are not codified and that we did not
12 get access to them from our subsequent requests that
13 were after the 2005 case was filed.

14 THE COURT: Okay. So, in effect, a question is
15 whether if someone violates a permanent injunction,
16 what is the relief, whether the relief when there is a
17 permanent injunction issued, whether the relief is to
18 bring a new action or to seek contempt of court for
19 violating the injunction, if the subject matter of the
20 injunction, the subject matter of the relief provided,
21 is included in that permanent injunction. So this --
22 so that's a question in this case. But you may
23 proceed.

24 MR. MULLINS: And, judge, just looking through
25 that order, if that's the one the Court's relying upon

1 for res judicata. And if that's going to be the
2 Court's ruling, then those four things which are
3 contained on page three of that order under permanent
4 injunction, just as a perusal of it quickly, doesn't
5 appear to apply to the ordinances.

6 MS. MOODY: What are you looking at?

7 MR. MULLINS: Page three of the 2005 order, items
8 2A through 2E. So, you know, I'm challenging that,
9 judge, as saying, well, one, it wasn't pled, and two,
10 if it was relied upon, that that order was a different
11 case or controversy and not this particular case or
12 controversy.

13 The rest of that order dealt with certain
14 procedures regarding town governance, executive
15 sessions, other thing -- town minutes, and it doesn't
16 seem to be dealing with the issue that's been going on
17 with these parties for quite some time, and that is,
18 can we see the ordinances.

19 So the remainder of my motion, judge, kind of goes
20 to the ultimate issue, should you choose to decide to
21 change your mind -- obviously if I don't ask you to,
22 you can't -- but the rest of it goes to the other
23 issues there of if you change your mind, we should have
24 been entitled to the fees and costs that we put in an
25 affidavit before the Court as well as the time.

1 So that being the case, judge, those are the major
2 complaints we've got about the ordinance here today and
3 your ruling and how that all ended up. Thank you for
4 allowing me the time to argue that.

5 THE COURT: Yes, sir. All right. Ms. Moody?

6 MS. MOODY: Since we were recently talking about
7 this order, I'd point the Court and Mr. Mullins to page
8 seven that deals with public records. Starting at 13,
9 this declaratory judgment and permanent injunction
10 granting relief ending action which was a hearing held
11 in November 19th, 2009 and clocked and filed January
12 27, 2010, addresses, I think, what Mr. Mullins is
13 getting at, being circumvented from being able to
14 obtain public records.

15 Page seven, number 13, the Defendant shall make
16 public records available for public inspection and
17 copying with a minimum delay as mandated by South
18 Carolina FOIA, Section 30-4-15. And it also goes on to
19 say, the Defendant shall furnish copies on the
20 second -- excuse me -- on page eight, number 14, the
21 Defendant shall furnish copies of public records at the
22 lowest possibly cost, as mandated by South Carolina
23 FOIA 30-4-30B, and shall prepare justification of that
24 cost.

25 This goes on into -- I think, as far as this

1 particular order was concerned where he was trying to
2 get records and as to the meetings that the town has
3 had, he's entitled to get the records, the meeting
4 notices, all of that information from the town. And
5 this 13 -- my position is 13 and 14 addresses all
6 public records which the ordinances would be public
7 record.

8 And I believe from the testimony that Mr. -- from
9 the Plaintiff's testimony throughout the transcript
10 which I obtained a copy of the full record, he
11 acknowledged receiving copies of what was purported to
12 be the ordinance that or the actions taken by the Town
13 Council. He also alluded to the fact that he didn't
14 receive them the way he wanted -- the way he wanted to
15 receive them. And that was based off of the promises,
16 I guess, or the assurances that he received from
17 Mr. Booker who at the time was the town manager.

18 And so this is subsequent to the 2005 action.
19 However, Mr. Booker was party to the 2005 to 2010
20 period where they signed this order, consent order,
21 from Judge Howe. And that is why I particularly
22 introduced it in evidence, and it came in without
23 objection from opposing counsel.

24 I believe that opposing counsel also went back to
25 question Mr. Curry about the receiving copies of the

1 ordinances, and I recall going through. And in my
2 draft of the order which I acknowledge that I did raise
3 res judicata and collateral estoppel and latches, and
4 on that point, I believe, in the order, and I might
5 have misread the order, is the Court did not -- the
6 Court said collateral estoppel did not apply.

7 But going to my argument, as I point out
8 specifically in my draft, what Mr. Curry testified to
9 as far as the questions that I asked, one specific
10 question I asked, you testified you weren't ever shown
11 any codified ordinances ever with the Town of Atlantic
12 Beach. And his answer was, I never seen a copy -- a
13 codified set of ordinances with an index to the Town of
14 Atlantic Beach.

15 Question, what is a codified ordinance in your
16 opinion? And his answer was, exactly what a code of
17 laws in South Carolina says, a set of ordinances that
18 are kept current reflecting all amendments and appeals
19 with a index, though, that you can find what it is you
20 are looking for.

21 So your position here today is as it relates to
22 the Town of Atlantic Beach's current ordinances is that
23 they are not in that order. Do you on -- do you on
24 know what order they are in how they are kept other
25 than just in a notebook. And he asked me to repeat the

1 question.

2 So we go through all of this testimony where we
3 ask him, was he shown anything. And he says he was
4 shown something, but it wasn't kept in the order that
5 he says that he thinks it should be kept. And I
6 believe the basis for that was because he had some
7 discussion with Mr. Booker who was the town manager at
8 the time that they were going to get the ordinances
9 codified.

10 So as to him never -- him not being shown anything
11 and how it relates it to the FOIA, my simple point is
12 that there was no violation of FOIA subsequent to this
13 2005 action. Because each time he came to the town
14 manager and the office of the city -- of the town hall,
15 he acknowledges in the testimony that he saw something,
16 it just want codified in a way that it should have
17 been. So that's what I would address as far as the
18 order is concerned, and that was the particular point.

19 I don't think that it precludes him from
20 submitting a FOIA request on the Town. I don't think
21 that that is the position that the -- well, that I was
22 taking on behalf of the Town, that he can never get any
23 ordinances or any copies of any public records from the
24 town. This injunction is still, as I know, still in
25 place.

1 The latches argument goes to he didn't bring that
2 action or those things forth to prosecute them. I'm
3 not sure whether he -- well, actually I take that back.
4 It's not that he didn't bring it forth. There was no
5 violation, simply there was no violation.

6 As to -- now, I'll go back to the beginning -- the
7 points, I believe, that -- as to make clear the points
8 that Mr. Mullins speaks of, I can't take a position as
9 to that. There is one on number four. One of his
10 issues he said that the Court failed to cite the case
11 number. I believe that's been resolved in this
12 particular order. I'm not sure, I don't take a
13 position that this is not the case. It is actually
14 2005-CP-26-1091 that I recall being the case dealing
15 before you dealing with Mr. Curry. And I was not an
16 attorney in that matter either.

17 The Plaintiff seeks a finding of fact that since
18 the entry of the -- of any alleged prior order, the
19 Plaintiff has made numerous requests for codified
20 municipal ordinances. I'm not sure, and I have to rely
21 on the record of that, I'm not sure what other dates he
22 made a request for records in which he did not receive
23 the ordinance or that act, legislative act that the
24 Town Council took as it relates to a particular
25 ordinance.

1 I believe his testimony is in the transcript, and
2 he did testify that he saw these things, it just wasn't
3 in the format that he wanted. I think that's
4 corroborated by the other witnesses' testimony when
5 they were questioned.

6 The order as drafted by the Court in effect denies
7 the Plaintiff the right to review codified ordinances
8 which are subject to this action. Again, this goes to,
9 you know, how the Town chooses to keep their
10 ordinances. They are allowed to keep them in
11 notebooks, looseleaf notebooks, where they have them
12 available to the public and they have them in their
13 office.

14 He also in the case, in addition, the Defendant
15 failed to respond to the Plaintiff's request to admit
16 and that are clearly within the record that the
17 codified ordinances do not exist. Well, I guess that's
18 a matter of semantics in that it's not the way the
19 Plaintiff wants the ordinances to appear. It is a
20 request to admit and it was submitted, but I don't
21 think there is anything in the statute that requires
22 them to put them in the format that the Plaintiff
23 wants.

24 Plaintiff seeks a finding that there is a actual
25 case or controversy between the parties and that the

1 Defendant failed to respond to the Freedom of
2 Information Act requests in a timely manner. We went
3 through that all through the transcript, and he
4 indicated that there was no failure to show him the
5 ordinances, and that's by his own testimony, again, not
6 in the form that he wanted.

7 The Plaintiff seeks a finding that the Plaintiff
8 has incurred attorney's fees and costs for litigating
9 the Defendant's failure to timely respond to the FOIA
10 request and discovery. I don't think the discovery
11 he's entitled to attorney's fees. I think under FOIA
12 he would be if there was a FOIA violation. And, again,
13 the testimony yielded that there wasn't a FOIA
14 violation. As it relates to any episodes that he's had
15 with the Town, he's met with Mr. Booker and he was
16 shown the ordinances, again, just not in the format he
17 wanted. That's in the transcript.

18 The Plaintiff seeks a finding that Defendant did
19 not submit its proposed order within 15 days as
20 requested by the Court. This is actually between the
21 lawyers. I remember there was another lawyer who came
22 in the courtroom, and everybody talked to the lawyer.
23 And at the end there was a lot of people talking, we
24 ended, we didn't do closings.

25 Mr. Mullins requested a copy of certain testimony

1 from the transcript but did not request a full
2 transcript. I personally requested a full transcript
3 and needed to recover that transcript from the court
4 reporter. I asked Mr. Mullins, did he have a problem
5 with that. He said no.

6 I received the transcript that I immediately got
7 it to the Court. I received the transcript, the
8 original. I have to look back on the actual invoice
9 note, but I requested a full copy and had to read back
10 through it to make sure that I put in correct
11 information from the transcript, not from my --

12 THE COURT: Is it dated by the -- certified?

13 MS. MOODY: This is the original, and it just has
14 January 13, 2014 on it. It's -- I'd have to get the
15 actual invoice. I think I sent you the original.

16 THE COURT: The last page of it, is it dated by
17 the court --

18 MS. MOODY: I think I have it. February 27th,
19 2014 is when she certified, I do further certify that I
20 am neither of kin, counsel nor interest to any party
21 thereto, February 27, 2014.

22 THE COURT: All right.

23 MS. MOODY: That was more than 30 days. And I
24 needed the transcript so that I could write my draft
25 order.

1 Plaintiff seeks a finding that the Defendant's
2 order, as drafted by the counsel, relies on defenses
3 that were not raised in the answer filed in the case.
4 And I think the Court dealt with that. The Court
5 addressed that in the order, and I may be misreading
6 that order. I think my main argument was that -- I
7 have to look back at my order -- of collateral
8 estoppel.

9 In addition, the Defendant did not make a motion
10 to amend and conform the evidence produced at the
11 trial. I did not make an amendment of the answer.

12 The Plaintiff seeks an order of the counts
13 reversing its finding and the finding that the
14 Plaintiff is entitled to injunctive relief due to the
15 un-codified ordinances upon which the Defendant is
16 operating.

17 As to that, that's just a matter of semantics,
18 because I would argue that they are not -- that there's
19 nothing in the statute that requires them to hire an
20 outside company to come in and bind their ordinances.
21 The testimony that was given from the town manager, the
22 interim town manager and the clerk all indicated their
23 process of how they kept the town ordinances and they
24 have been keeping them like this.

25 And I think that Mr. Curry was fully aware of how

1 they were keeping the ordinances. I think there was an
2 effort through their budget to codify the ordinances in
3 a bound book volume like the South Carolina Code of
4 Laws. Apparently that action failed, and I don't think
5 that that's grounds for an individual to come in and
6 say they want a codified set or a codified copy or a
7 copy of the codified -- or I should take codified
8 out -- a copy of the ordinance, and then when they were
9 given that, they say, no, that's not what I want.

10 And I believe the testimony came from Mr. Booker
11 that he would show Mr. Curry, he would personally show
12 Mr. Curry. And I believe Mr. Curry's testimony himself
13 on the stand was that he was shown those documents, and
14 he agreed that there was no violation of FOIA.

15 So I would simply rest on the transcript as well
16 as what the order says. There are some things in there
17 that I do not take issue with with Mr. Mullins wanting
18 clarity of for him to better understand the order.

19 THE COURT: All right. Mr. Mullins?

20 MR. MULLINS: That's a lot to respond to, judge.

21 MS. MOODY: It's your motion.

22 MR. MULLINS: Well, I never get the last word with
23 Ms. Moody, so I won't try today. Never get the last
24 word with my wife either, so. That being the case,
25 judge, I think this has gotten all kind of scrambled in

1 the course of litigating this case.

2 The answer originally filed by the Defendant says
3 there are codified ordinances. The request to admit
4 says, well, apparently there aren't. But there sort of
5 are, but they don't have, and my client's key words
6 here that's all amendments and appeals with an index
7 from them, they obviously don't have that. And prior
8 to filing suit there wasn't any response from the Town
9 that said, here is our ordinances. There was just
10 complete lack of response, which is why we filed this
11 lawsuit.

12 So the record's clear about that. Certainly if
13 the Town had responded in writing to Mr. Curry, I'm
14 sure the Town would have put that into evidence, and
15 it's not there. So I don't think the records are
16 properly codified. I'm not sure, I've been through so
17 many positions on that, I'm not sure what the records
18 show down there at this point.

19 But that's not the point of my motion. My point
20 is to ask to the Court to reconsider or not, you know,
21 based upon where we're at, and we'll make a decision
22 from there.

23 So I think you've heard enough on this, judge, at
24 this point. Obviously I was misinformed. The Court
25 wrote the order on this and didn't sign mine or Ms.

1 Moody's drafts.

2 THE COURT: I requested, I may have requested a
3 proposed order but the -- this order is my order, it's
4 not Ms. Moody's order.

5 MR. MULLINS: Yes, sir. And to that extent
6 anything in my motion is withdrawn.

7 THE COURT: Yes, sir.

8 MR. MULLINS: It's the Court's order, not
9 Ms. Moody's order.

10 THE COURT: Okay. What's your view or your
11 response to the portion of the order that the Court
12 concluded that, in effect, the Plaintiff was asking for
13 the Court to make an advisory opinion that the -- I
14 said, in essence, the Plaintiff seeks to have the Court
15 issue an advisory opinion involving statutory
16 interpretation meaning, in effect, whether or not the
17 ordinances were adequate or not adequate, it would
18 constitute an advisory opinion by the Court and not
19 with -- that, as framed, those issues were framed, that
20 question as whether an actual controversy exists on
21 that question?

22 MR. MULLINS: And I would go back to my client's
23 testimony under direct, in my direct is that he was, in
24 fact, arrested for a violation of the town ordinances
25 and has been trying to get access to the codified

1 ordinances, as required by the state law.

2 THE COURT: Yes. And so I think that's where we
3 have the two overlapping issues. We have the -- he's
4 arrested in 2002. We have litigation that came up that
5 I don't know when it was filed, but the judge issued
6 her order, declaratory judgment, granting relief and
7 ending action in 2010.

8 Then this action was -- sort of is an overlapping
9 action in that sense or appears to be. Because this
10 action was filed -- when was it filed?

11 MR. MULLINS: November 17th, 2010.

12 THE COURT: Okay. And so a few months after the
13 magistrate issued her permanent injunction, she issued
14 her permanent injunction addressing a lot of issues in
15 January 2010.

16 So we have the prior order on the one hand, a
17 declaratory judgment on the other hand. The test the
18 Court is dealing with in addressing a declaratory
19 judgment is not the same as a typical action at law.
20 Well, we have an injunction, you filed for an
21 injunction and declaratory relief.

22 So the -- so where one is seeking an injunction,
23 then to a great extent you're dealing with an equitable
24 issue. The declaratory relief, let's see, must be a
25 justiciable controversy.

1 So we're balancing it dealing with a prior order,
2 another action seeking injunctive relief where
3 permanent injunctive relief had just been granted. And
4 so what's the proper means of addressing one who
5 violates or an allegation that one is violating an
6 injunction being violated by initiating a new action,
7 or do you address it by seeking contempt or something
8 for violating an injunction.

9 And then we have the declaratory relief being
10 sought where the Court is not compelled, typically
11 speaking, one way or the other when one is seeking
12 declaratory relief. Now, where, as in the example you
13 mentioned, well, if you're in one car wreck this year
14 and another car wreck two years ago, does the second
15 wreck foreclose your ability to pursue -- the one in
16 this earlier wreck foreclose your ability to pursue
17 relief for the subsequent wreck.

18 So those are actions at law in which the legal
19 test is obviously different than the things that you're
20 dealing with where you're dealing with injunctive
21 relief and declaratory relief.

22 Now, the courts are obviously concerned where
23 there is multiplicity of litigation or where there is
24 ongoing litigation as to whether or not any matter has
25 already been addressed or been addressed through the

1 course of that litigation. And there seems to be a
2 theme that was on my mind in drafting this order that
3 the parties have had their longstanding battle going on
4 since perhaps 2002, perhaps earlier than 2002, that
5 culminated in the judge issuing an order dealing with
6 all of the matters.

7 Now, it's not specifically spelled out in that
8 order that the codified ordinances were adequate or
9 inadequate. But the right of Mr. Curry to have full
10 and complete access to the public records was addressed
11 in that order. And so we're dealing with overlapping
12 litigation, and at least it appears -- would appear to
13 me to be.

14 I certainly understand from the Plaintiff's
15 perspective that the -- that all matters have not been
16 resolved to the Plaintiff's satisfaction. And so the
17 Court is the avenue that you have when you're not
18 satisfied with things. But the question is whether or
19 not the proper avenue is back through the prior
20 litigation where the judge had just settled it all by
21 issuing a declaratory judgment and granting a permanent
22 injunction.

23 So those are the things that were weighing on me
24 when I issued this order. And I'm certainly happy to
25 address the concerns that you've raised in your

1 argument so that there will be a clear record or
2 sufficiently clear in the event that you seek to have
3 it reviewed again by an appellate court, or by me.

4 MR. MULLINS: Your Honor, I got up to answer your
5 question, now I can't remember what it was you were
6 asking me.

7 THE COURT: Oh, I don't know what I asked you.

8 MR. MULLINS: I'll sit back down.

9 THE COURT: This was just addressing the concerns
10 that the Court has. I think my question was that you
11 got up and I started asking you about the advisory
12 opinion, whether the end result is that you're seeking
13 me to issue an advisory opinion as to whether or not
14 the codified ordinances were adequate or inadequate.
15 That was -- I think that's probably what's got you up.

16 MR. MULLINS: I don't see it as advisory, judge,
17 and that we're asking for a finding that there are
18 not -- there aren't any codified ordinances for the
19 Town of Atlantic Beach.

20 THE COURT: Okay.

21 MR. MULLINS: And obviously they haven't furnished
22 us the codified ordinances, as we requested, and the
23 state law requires that.

24 THE COURT: The state law and that -- so that then
25 brings up the question of what constitutes

1 codification. And I think that's part of what we went
2 through. Whether codification means that, you know,
3 the Bible there is in a hard bound book that's at the
4 end of the desk, the telephone book is bound, but it's
5 a paperback cover as opposed to a hard cover. And I
6 think that Atlantic Beach's ordinances are in some
7 notebook of some sort that's not bound.

8 And so does codification mean that they must be
9 bound or must be together someplace in a book form or
10 some sort? So I think that's where we -- that's part
11 of the whole dispute in this case as well, at least
12 that Ms. Moody likes to address.

13 MS. MOODY: Well, I think the reason why
14 Mr. Mullins probably thought that the order was mine is
15 because I did address that. And it came from the
16 Attorney General opinion as to what was codification.
17 And in that opinion, it's the South Carolina Attorney
18 General opinion, 1978 Westlaw 35-175, that states what
19 is codification.

20 Codification is a process of collecting and
21 arranging laws in a code or a complete system of
22 positive laws scientifically ordered. Section 4-9-120
23 Code of Law, South Carolina 1976, required that all
24 county ordinances were permanent or temporary to be
25 codified. However, the codification can most probably

1 be accomplished by looseleaf or pamphlet type or
2 volumes as well as by bound volumes.

3 And so I think what was presented at the hearing
4 without going back to it, I think Mr. Mullins presented
5 pictures as well as the testimony that was presented is
6 they were in looseleaf bounds, like not -- when I say
7 bounds, I'm talking about like a notebook like this.
8 And the only way I can say it without confusing the
9 issue is that it is three-hole ring punch and is out
10 front.

11 And so I think reading the Attorney General's
12 opinion, that is complying. And it is, again,
13 semantics. Mr. Curry refers to codified as what Your
14 Honor just pointed to, a bound book like with a spine
15 to it that you put on a bookshelf like in the library.

16 THE COURT: Right. And a town with no -- I don't
17 know what their budget is, but I think some argument
18 was made as to -- well, maybe there was some testimony
19 about the cost of binding, binding them in a sealed
20 book form or the cost of that that was beyond the
21 budgetary ability of the town. Seems as if I recall
22 some testimony on that.

23 MR. MULLINS: And my point is just, judge, that
24 codification means there is the law, any amendments,
25 repeals or indexes thereto.

1 THE COURT: Yeah.

2 MR. MULLINS: We haven't seen them to this day.

3 Now, I haven't brought a rule to show cause in front of
4 Judge Howe because this case was pending.

5 THE COURT: Yeah.

6 MR. MULLINS: Of course --

7 THE COURT: Well, then maybe that's the critical
8 thing. The rule to show cause is almost like a lost
9 art in -- in South Carolina law, I'm sure when you -- I
10 don't know, you seem to be a lot younger than I am.

11 MR. MULLINS: Not that much, judge.

12 THE COURT: But rules to show cause were sort of
13 like the first pleadings filed seemingly back when.
14 But now we have all these other pleadings, and we don't
15 see as many rules to show cause. I say contempt which
16 is a form of a rule to show cause, I guess.

17 MR. MULLINS: It has fallen in deaf shoes.

18 THE COURT: Yeah. And maybe being a person from
19 that earlier period, when someone didn't comply with an
20 order by the judge, then a rule to show cause was
21 frequently filed saying you should be in contempt
22 because you didn't comply. And the same thing is with
23 contempt.

24 Now, let me pose this to you, counselor. Are
25 there any South Carolina cases that you are aware of

1 that clearly elucidates what constitutes proper
2 codification of an ordinance? Not a dictionary
3 definition but a South Carolina case.

4 MR. MULLINS: No, sir, I don't.

5 THE COURT: So and perhaps that's where -- that's
6 what's spurred me to say that I'm being requested to
7 issue an advisory opinion as to what would be adequate
8 codification, whether adequate codification is in the
9 notebook form or whether adequate codification has to
10 be in a printed form.

11 Because I think that if you were to survey, I
12 don't know, but towns over in America as to what forms
13 their ordinances are put in, I would think you would
14 find a significant number of them do not have bound
15 books.

16 MR. MULLINS: And, judge, I'm not asking that the
17 town bind the book.

18 THE COURT: Okay.

19 MR. MULLINS: I'm asking that they show us the
20 ordinance with any amendments, repeals or actions
21 thereon with an index. That's all we're asking.

22 THE COURT: Yeah. And I think my conclusion was
23 that Judge Howe already ordered that. And if they
24 didn't do that, then, you know, the good thing about
25 a -- having a court order is that it can be enforced.

1 But when there's a new litigation instituted, then to
2 enforce a prior judge's order, then that's where you
3 get resistance like I am putting up saying why are you
4 asking me to enforce her order if you already have an
5 order addressing certain things.

6 Now, of course, you weren't the lawyer in that
7 case, but it's still as far as, you know, like the
8 clerk was able to just go on her computer and spit it
9 out and give me a copy that fast, you know, it's a
10 matter of record in this county. And we are bound to
11 take judicial notice of existing court orders and court
12 records.

13 MR. MULLINS: I didn't know if I answered Your
14 Honor's question.

15 THE COURT: I think you have. And as I said, I
16 don't object to the motion for reconsideration because
17 I am not adverse to reversing myself if I conclude that
18 I've made an error. Because that's the benefit of a
19 motion for reconsideration, that if a judge makes a
20 decision, and we have to make a lot of decisions, and
21 someone asks me to do -- to reconsider, then all of a
22 sudden I sit as a one-man court of appeals to give me
23 an opportunity to reverse myself before sending it to
24 someone else to look at.

25 So I don't mind reexamining and changing my view

1 and reversing myself. I would rather reverse myself
2 than someone else reverse me, you know. So that's why
3 I never have any problem with anyone asking me to
4 reconsider, to review and to determine whether anything
5 should be clarified, modified, changed or whatever.

6 And so I regret that it's taken us so long to get
7 to this point because of scheduling conflicts and the
8 like. But you are here today and the controversy
9 apparently is still ongoing. So I'll address your --
10 I'll issue an order. If I -- if y'all want to
11 voluntarily submit proposed orders or proposed
12 modifications for me to consider, I would be happy to
13 consider that.

14 MR. MULLINS: Judge, I'm getting ready to start a
15 bad four weeks of court, frankly.

16 THE COURT: Okay.

17 MR. MULLINS: So whatever Your Honor's ruling is
18 is what Your Honor's ruling is.

19 THE COURT: Okay. Yes, ma'am.

20 MS. MOODY: I have a question. You indicated
21 that, I guess you were speaking of number nine, your --
22 the Plaintiff, the turning in of the proposed orders.

23 MR. MULLINS: Oh, yes.

24 MS. MOODY: I just want you to clarify that for me
25 which things you're wanting him to clarify.

1 MR. MULLINS: No, I abandoned that.

2 THE COURT: It was abandoned.

3 MS. MOODY: Okay.

4 THE COURT: He was assuming that we were basing it
5 on your proposed orders and the --

6 MS. MOODY: But he didn't abandon everything on
7 here is what I'm saying.

8 THE COURT: Just the number nine.

9 MS. MOODY: Just that, okay.

10 THE COURT: Yeah. And courts are very leery,
11 appellate courts are very leery when one lawyer submits
12 an order and the judge signs it, then it's considered
13 the lawyer's order and not the judge's order. And I
14 try to the extent possible to issue my own orders
15 unless it's something of a routine nature.

16 Okay. Well, thank you all for coming, we
17 appreciate it.

18 MS. MOODY: Thank you, Your Honor.

19 MR. MULLINS: Thank you, Your Honor.

20 THE COURT: All right. This matter is under
21 advisement.

22 (The hearing concluded at approximately
23 12:42 p.m.)

24 (End of Transcript of Record.)

25

Town Of Atlantic Beach



717 30th Avenue South
Atlantic Beach, SC 29582
Phone No. (843) 663-2284 Fax No. (843) 663-0601
Email: kennethmclver@atlanticbeachsc.com

Mayor

Retha Pierce

Council Members

Jake Evans

Donnell Thompson

Charlene Taylor

Town Manager

Kenneth McIver

May 12, 2009

Mr. Paul Curry
Coastal Station
PO Box 2245
N. Myrtle Beach, SC 29598-2245

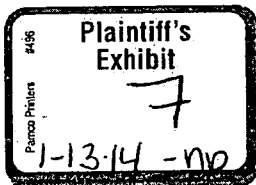
Mr. Curry:

You wrote a letter to Town Hall requesting to view the codified ordinances of the Town. As you have heard me speak at few public meetings, the Town has not codified its ordinances. But it does has, in its 2009/ 2010 budget, set aside money to do so.

I spoke with two companies that have submitted information to me of the services they offer: Municipal Code Corporation and American Legal Publishing Corporation. I hope to engage one of them in the 4th quarter of this year.

Sincerely,

Kenneth McIver



STATE OF SOUTH CAROLINA

COUNTY OF HORRY

PAUL CURRY,

PLAINTIFF,

vs

TOWN OF ATLANTIC BEACH,

DEFENDANT

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2010-CP-26-10848

ORDER PURSUANT TO PLAINTIFF'S
MOTION TO COMPEL
INTERIM ORDER FOR JUDGEMENT
(NOT ENDING ACTION)

DATE OF HEARING:
HEARING JUDGE:
PLAINTIFF'S ATTORNEY:
ATTORNEY FOR DEFENDANTS:

COURT REPORTER:

July 27, 2011
Benjamin H. Culbertson
Randall K. Mullins, Esquire
Jon C. Zilinsky, Esquire and Carolyn Hill
Esquire
Brenda Babb

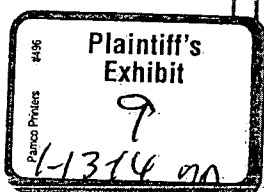
11 SEP 16 AM 9:04
Horry County
Clerk of Court

THIS MATTER is before this Honorable Court upon the Plaintiff's Motion to Compel filed on April 7, 2011. Present at the hearing was Plaintiff and his attorney, Randall K. Mullins, Esquire. Present on behalf of the Defendants was the counsel of record John C. Zilinsky, Esquire, as well as the new interim town attorney, Ms. Carolyn Hill, Esquire. Based upon the arguments of counsel and pleadings of record, and the applicable law, this Court hereby finds that the motion should be granted and costs assessed against the Defendants and costs assessed against the Defendant are to be entered by this order.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. I conclude this Court has jurisdiction over the parties' subject matter of this action and that venue is proper before this Court.

1 | 2010-CP-26-10848/MLF 10-312



1
BKC
281

2. I find and conclude that the parties appeared before this Court at the appropriate time set for this motion hearing, and therefore have submitted themselves to the jurisdiction of this Court.
3. I find and conclude that this Court has authority pursuant to the South Carolina Rules of Civil Procedure to facilitate discovery during the pendency of the case. I find and conclude there has been no motion for protective order filed by the town as to either the Interrogatories or Requests to Produce and that more than 30 days have expired since they were propelled by Plaintiff's attorney to Defendant's attorney.
4. I find and conclude that this Court is proper and has authority to order that the Defendants respond to the discovery within 30 days.
5. I find and conclude that this Court can impose such sanctions as it deems fit regarding the failure to comply with the discover process.
6. I find and conclude that the Plaintiff's counsel has incurred costs and expenses, and therefore the Plaintiff should be granted judgment against the Town of Atlantic Beach in the amount of \$871.52 for attorney's fees and costs for this motion.

IT IS THEREFORE ORDERED that the Town shall fully answer the Interrogatories and Request to Produce due February 18, 2011 within 30 days of the date of service of Order and it is furthered ordered that the Clerk of Court for Horry County shall enter an interim judgment against the Defendant in favor of the Plaintiff in the amount of \$871.52.

"IT IS SO ORDERED."

(SIGNATURE PAGE TO FOLLOW)

2 | 2010-CP-26-10848/MLF 10-312

2
MHC

Benjamin H. Culbertson
HONORABLE BENJAMIN H. CULBERTSON
PRESIDING JUDGE

August Sept. 1, 2011
Georgetown, South Carolina

TOWN OF ATLANTIC BEACH
717 30TH AVE SOUTH
ATLANTIC BEACH, SC 29582
(843) 663-2284

THE NATIONAL BANK OF SOUTH CAROLINA
SUMTER, SOUTH CAROLINA
67-66/532

17194

PAY

Paul J. Curry

Eight hundred seventy-one and 52/100

DATE

8/5/11

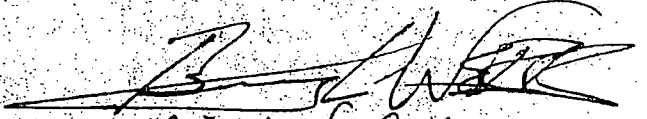
\$871.52
AMOUNT

TO THE
ORDER
OF

Paul J. Curry

P O Box 2245

North Myrtle Beach, SC 29598


Carolyn K. Cole
AUTHORIZED SIGNATURE

⑈017194⑈ ⑆053200666⑆ 190652235201⑈

TOWN OF ATLANTIC BEACH

17194

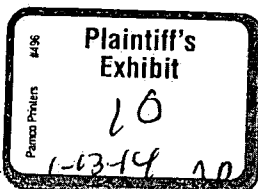
Paul J. Curry

\$871.52

8/5/11

P O Box 2245

North Myrtle Beach, SC 29598



TH CAROLINA

JERRY

Plaintiff,

vs.

TOWN OF ATLANTIC BEACH

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

CASE NO.: 2008-CP-26-3990

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney:

Randall K. Mullins/ Jarrod E. Ownbey, Bar No. 06466/75417

Address:

P.O. Box 585

North Myrtle Beach, SC 29597

Phone: 843.272.8902 Fax: 843.272.3075

E-mail: mullinslawfirm@aol.com Other:

Defendant's Attorney:

John C. Zilinsky, Bar No. _____

Address:

Phone: _____ Fax: _____

E-mail: _____ Other: _____

- ☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: _____

Estimated Time Needed: _____

Court Reporter Needed: ☐ YES/ ☐ NO

SECTION II: Motion/Order Type

☐ Written motion attached

☒ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff / ☐ Defendant

Date submitted

SECTION III: Motion Fee

☐ PAID - AMOUNT: \$ _____

☒ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCR)

☒ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: Henry Young

☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other: _____

JUDGE CODE _____

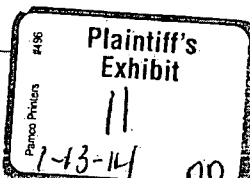
Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____

☐ CONTESTED - AMOUNT DUE: \$ _____



285

097

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) C/A No.: 2008-CP-26-3990

PAUL J. CURRY,

)
)
) Plaintiff,

vs.

) ORDER FOR CONTEMPT OF COURT
) PURSUANT TO AN ORDER & RULE
) TO SHOW CAUSE

TOWN OF ATLANTIC BEACH,

)
)
) Defendant.
)

Date of Hearing: May 31, 2011
Presiding Judge: Larry B. Hyman, Jr.
Plaintiff's Attorney: Randall K. Mullins, Esq.
Defendant's Attorney: John C. Zilinsky, Esq.
Court Reporter: Henry Young

This matter is before the Court pursuant to an affidavit of the Plaintiff and an Order and Rule to Show Cause regarding the Defendant's failure to abide by and perform to a prior agreement which was reduced to a Court Order dated April 27, 2010. Present at this hearing were the Plaintiff and his counsel, Randall K. Mullins, and counsel for the Defendant, John C. Zilinsky.

The affidavit was filed in response to the Defendant's failure to pay \$5,000.00 in attorneys fees and costs within thirty (30) days of the prior Order which was dated April 27, 2010. The Court issued its Order and Rule to Show Cause dated and filed May 9, 2011 requiring the Defendants to appear by and through either the Mayor, Town Manager or City Council to show cause as to why the Defendant should not be held in contempt of this Court. These documents were duly served upon the Mayor, Town Manager and members of the Town Council as well as City Attorney for the Defendant as follows: Charlene Taylor (Acting Mayor) served May 20, 2011; William Booker (Town Manager) served May 20, 2011; Jake Evans (Town Councilman) served May 20, 2011; John C. Zilinsky (City Attorney) served May 11, 2011.

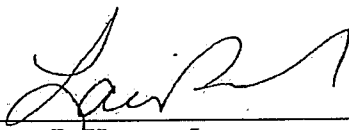
During the Hearing, the Defendant tendered to the Plaintiff a check in the amount of \$5,000.00 drawn upon the Defendant's account at the National Bank of South Carolina. This check was dated May 30, 2011 and had not been previously tendered to the Plaintiff.

Based on the arguments of counsel, this Court makes the following findings of facts and conclusions of law:

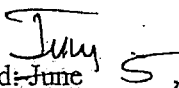
1. That this Court has jurisdiction of the parties, subject matter of this action and that venue is proper.
2. That the parties have appeared at the designated date and time, and have been given proper notice of this hearing.
3. That this Court has authority pursuant to SC Code Ann. §14-5-320 and 15-65-120 (1976) to enforce this Court's Order particularly those which require the deposit or payment of money.
4. That prior to requesting an Order and Rule to Show Cause that the Plaintiff attempted to file an Execution against property. The Sheriff has declined to do an Execution by correspondence dated May 9, 2011 due to a position that the payment of money in this matter is not a judgment. This Court disagrees.
5. That the Defendant has willfully failed to abide by this Court's Order and did not tender the ordered sum until the morning of the Hearing. Although the Defendant has brought itself into compliance with the Court's Order, the Plaintiff has had to expend additional costs and expenditures in order to obtain this result.
6. That the Plaintiff has incurred costs and expenses in the amount of \$3,972.52 for the appearance of co-counsel and the attorneys from Mullins Law Firm to appear in this matter.

7. Since I find that the Defendant willfully failed to obey this Court's Order until such a time as a hearing was convened, they should pay additional attorneys fees and costs in this action.
8. I, therefore, find and conclude that the Defendant shall pay \$1,000.00 in attorneys fees and costs within sixty (60) days from the date of this hearing or be subject to further sanctions for contempt of this Court.

IT IS SO ORDERED.



Larry B. Hyman, Jr.
Chief Administrative Judge
Fifteenth Judicial Circuit


Dated: ~~June~~ July 5, 2011
Conway, South Carolina.

MULLINS LAW FIRM, P.A.

Randall K. Mullins*#
Jarrod E. Ownbey

*Certified Divorce/ Family Mediator
Circuit Court Arbitrator

Post Office Box 585
North Myrtle Beach
South Carolina 29597

Telephone 843.272.8902
Facsimile 843.272.3075

Mullinslawfirm@aol.com
Mullinslawfirm.com

October 24, 2013

VIA FACSIMILE: 803-329-1344
AND FIRST CLASS U.S. MAIL

Leah Moody, Esquire
PO Box 1015
Rock Hill SC 29731

RE: Paul Curry v. Town of Atlantic Beach
Civil Action No.: 2010-CP-26-10848
Paul J. Curry v. Town of Atlantic Beach
Civil Action No.: 2008-CP-26-3990
MLF File Nos.: 10-312 and 11-1197

Dear Ms. Moody:

As a follow up to our conversation at the roster call in which Judge Stephen John granted you a continuance, I am enclosing the Order for Contempt of Court Pursuant to Order and Rule to Show Cause filed July 7, 2011 in Case Number 2008-CP-26-3990. I am also enclosing the Order Pursuant to Plaintiff's Motion to Compel Interim Order for Judgment in Case Number 2010-CP-26-10848. The award on the 2008 case was for of \$1,000.00 in attorney's fees and costs within sixty (60) days. The current payoff as of October 23, 2013 is \$1,167.05, which includes \$167.05 in interest, with a per diem of .1986.

The payoff on the 2010 Order, which required the payment of \$871.52, is now \$1,007.07 with interest at \$135.55. The per diem on this matter is .1731.

To avoid further Motions, Executions, and/or Supplemental Proceedings, please forward these checks to my office, payable to my firm's trust account within ten (10) days of the date that you receive this correspondence. Please accept this correspondence as my request pursuant to Rule 11 prior to proceeding on other matters.

With warmest regards, I remain,

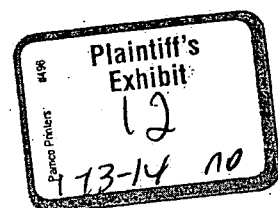
Very truly yours,

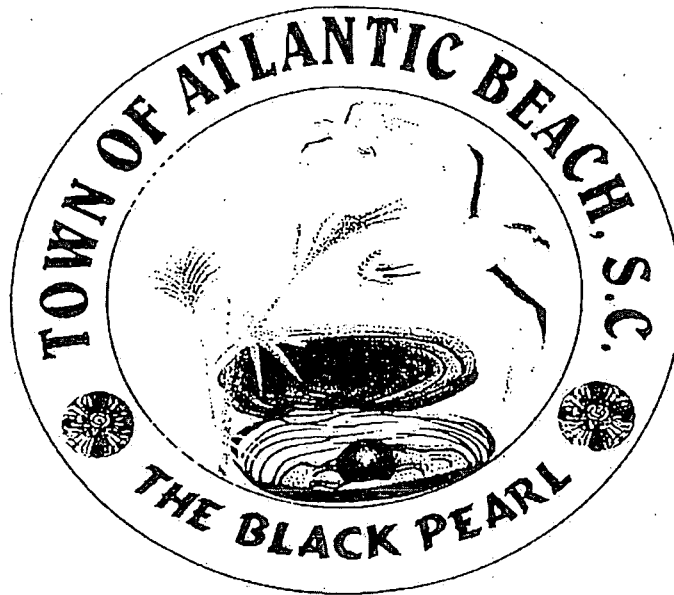
MULLINS LAW FIRM, P.A.



Randall K. Mullins

RKM/klc
cc: Paul Curry





***FY 2010-2011
Proposed Budget***

Town Council

Charlene Taylor, *Acting Mayor*

Jake Evans, *Councilman*

Donnell Thompson, *Councilman*

Josephine Isom, *Councilwoman*

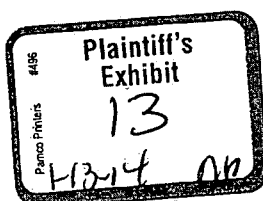
Town Manager

William Booker

For comments or questions regarding the Town's budget, please contact

Town of Atlantic Beach

Phone: (843) 663-2284, Fax (843) 663-0601



Town of Atlantic Beach

2010 – 2011 Budget

Key Points

1. Millage rate will remain the same at 94.5 mils.
2. Business License fees will remain unchanged.
3. Building permit/inspection fees will be adjusted to be more aligned with other local municipalities.
4. Employee benefits will remain as they were at the end of fiscal year 2010. The health insurance policy was changed to a higher deductible during the previous fiscal year. Insurance premiums will be adjusted to reflect the current premiums.
5. Employee pay will essentially remain unchanged.
6. Full salaries are budgeted for all positions except for contract ors (judge, finance).
7. A financial resource will be continued on a contract basis to provide up-to-date financial documentation and analysis for accurate financial performance evaluation and decision making.
8. Four police officers are reflected in the budget; however, one position will remain unfilled in the near term.
9. A new fall family festival, "Atlantic Beach Reunion" will be added as a new community activity and fund raising opportunity.
10. A public relations person will be sought on a part-time, honorarium basis to help promote Atlantic Beach.

REVENUE

	2009-2010	2010 -2011 FCST
Property Taxes	205,000.00	210,000.00
Property Tax Receivables	148,186.04	167,500.00
Hospitality/Accommodation Taxes	26,000.00	14,000.00
Personal Property Taxes	60,300.00	40,000.00
Business Licenses Fee	225,000.00	192,500.00
Franchise Fee	42,000.00	48,000.00
Aid to Subdivision	10,000.00	
Community Center Rental	1,200.00	4,000.00
MASC (Insurance)	46,000.00	42,000.00
Court Fines and Assessments	40,000.00	20,000.00
Administrative Service Fees	3,000.00	100.00
Bike Fest	40,000.00	90,000.00
Permits & Inspections		10,000.00
Uncategorized Income	15,000.00	15,000.00
Fines and Penalties		
Fall Festival		5,000.00
	861,686.04	858,100.00

EXPENDITURES

Administration	107,000.00	154,944.00
Police Department	209,600.00	201,000.00
Town Council	14,250.00	17,000.00
Municipal Court	35,000.00	19,000.00
Legal Services	45,000.00	36,000.00
Contract Services	7,000.00	8,200.00
Utilities	24,514.50	25,000.00
Services (Refuse, Court Reporter, Payroll)	30,000.00	35,000.00
Public Works	3,000.00	10,000.00
Health Insurance	24,000.00	24,000.00
Professional Services:		
Audit (2005 - 2010)	30,000.00	68,000.00
Accounting		12,000.00
Codification		10,700.00
Zoning/ Comprehensive Plan		35,000.00
Insurance/ Bonding	20,000.00	15,000.00
Debt Reduction	312,321.54	142,256.00
Community Promotions		5,000.00
Bikefest		35,000.00
Fall Festival		5,000.00
	861,686.04	858,100.00

NET

0.00

0.00

Legal Settlements

Bellamy , Rutenberg, Copeland (DH Griffin)
Addecco
Battle Vaught

2009 - 2010

50,000.00
18,000.00
2,014.49

\$70,014.49

2010 - 2011 FCST.

22,000.00
satisfie
6,200.00

Past Due Debt

England Enterprise
Federal 941
SC Withholding payments
Doctor's Care
Dell Marketing
Municipal Association
Boys and Girls Club
SC Budget & Control
SC Retirement System
Santee Cooper
CTI Copier
Waccamaw Regional COG

~~6,800.00~~

48,691.69

7,467.69

1,003.55

3,661.51

18,422.00

3,846.00

11,000.00

61,033.11

39,451.50

25,000.00

15,930.00

\$242,307.05

3,000.00

24,000.00

satisfie

satisfied

satisfied

satisfied

3,846.00

Payment terms- Contract services

41,000.00

20,000.00

22,210.00

satisfied

GRAND TOTAL

\$312,321.54

\$142,256.00

**Town of Atlantic Beach
2010 – 2011 Budget**

Budget Details

REVENUE

Property Taxes (Real Estate)

Increased property values at \$2.4MM for 2010 vs. \$2.2MM for 2009.

Forecasted at 95% of assessment.

Work with county/collection agency to improve collection.

Property Tax Receivables (Real Estate)

Increased values at \$205M for 2010 vs. \$175M for 2009.

Forecasted at 78% of assessment – * increased to 82% to cover half of increased audit expense (\$7500)

Work with county/collection agency to improve collection.

Hospitality/Accommodation Taxes

More attention required to improve collections.

Financial system improvements will help.

Personal Property Taxes

Focus on collections.

Vehicles and business audits will continue.

Business Licenses

Reflects 2009 economic downturn.

Focus will be on administering ordinance to include all businesses, i.e. Taxi's

*Reflects revenue in June (\$38M) for the following fiscal year

*Increased by \$7500 to cover increased audit expense

Franchise Fees

Atlantic Water Sports

Santee Cooper

Community Center Rental

Focus on increased rental for community activities.

Working to improve kitchen and overall appearance.

MASC

Slight (5% - 10%) reduction is forecasted.

Debts for JW Hunt, Kimberly Vinson and MASC satisfied.

Court Fines and Assessments

Court is operational and on a schedule.

Focus on enforcement of ordinances and laws.

Administrative Service Fees

Website has reduced revenue significantly.

Bike Fest

Reflects close to 2010 revenue.

Will implement improvement opportunities i.e. vendor management.

Permits & Inspections

Adjust to align with other localities.

Uncategorized Income

Refunds, donations, in lieu of taxes, miscellaneous revenue

Fall Festival

Cover expenses

Plan to ensure breakeven at a minimum

EXPENDITURES

Administration

Town Manager, Municipal Clerk and Town Clerk.

Salaries, unemployment and retirement included.

Travel

Police Department

Four (4) officers – currently three (3).

Salaries, unemployment and retirement included.

Vehicles, certification, training.

Town Council

Salaries and meetings.

Municipal Court

Judge, clerk and administrative costs.

Legal Services

Town Attorney and current legal cases.

Insurance Reserve Fund helps with most new cases.

Contract Services

Code enforcement

Payments on Police vehicles – SC Budget and Control

Utilities

Santee Cooper, NMB, Mansfield

Services

Refuse, Court Reporter, computers, payroll

Public Works

Repairs and maintenance, yard work, trash collection.

Health Insurance

Changed to higher deductible

Professional Services

Audit 2005 – 2010

- Balance for 06-08 (\$23M) includes added work.
- 2009 (\$16M)
- 2010 (\$14M)
- \$15M for additional work

Accountant

Kimberly Vinson

Codification

Waccamaw COG

Zoning/ Comprehensive Plan

Waccamaw COG

Insurance /Bonding

Insurance Reserve Fund

Vehicle, Golf Carts, Building and Tort liability

Debt Reduction

(see attached list of debts on tab two of budget)

Community Promotions

Advertisements, community initiatives/cleanups, Gullah Geechee

Bike Fest

Operating Expenses

Off-set by revenue

Fall Festival

Operating Expenses

Off-set by revenue

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

Paul Curry,

Plaintiff,

v.

Town of Atlantic Beach,

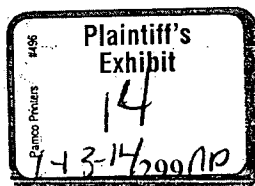
) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) Civil Action No.: 2010-CP-26-10848

) AFFIDAVIT IN SUPPORT OF
) PLAINTIFF'S REQUEST FOR
) ATTORNEY'S FEES AND COSTS
)
)
)
)

PERSONALLY APPEARED before me, Randall K. Mullins and Jarrod E. Ownbey, of Mullins Law Firm, PA, who after being duly sworn, depose and state as follows: That both are practicing attorneys in Horry County, South Carolina. That Randall K. Mullins was admitted to the Bar in 1986, and that since said time, has devoted a substantial portion of his practice to civil litigation law. That Jarrod E. Ownbey, who is an associate of Mullins Law Firm, PA was admitted to the bar in 2007 and that since that time he has devoted as substantial portion of his practice to civil litigation law. Randall K. Mullins and Jarrod E. Ownbey are currently members with the South Carolina Bar. These Affiants would further show that over fifty percent (50%) of the firm's case load is devoted to civil litigation. The undersigned would show that throughout their legal careers, they have attended various seminars for their continuing education in civil litigation law areas.

It is the customary practice of Randall K. Mullins to charge the sum of Three Hundred Fifty and 00/100ths (\$350.00) Dollars per hour and of Jarrod E. Ownbey to charge the sum of One Hundred Seventy-Five and 00/100ths (\$175.00) Dollars per hour for representation of civil litigation cases and that said fee represents the customary and traditional fee charged for said cases in Horry County for attorneys with the general background, experience and skill possessed by persons with similar backgrounds such as these Affiants. In addition, senior paralegals at Mullins Law Firm, PA

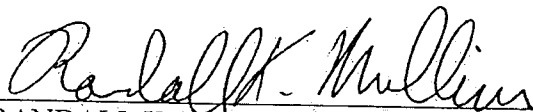
JZD RKM

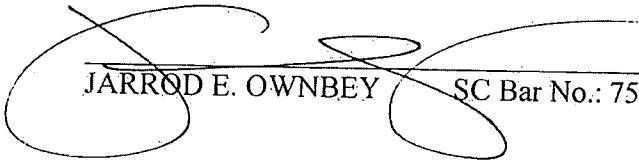


are billed at a rate of Seventy-Five and 00/100ths (\$75.00) Dollars and junior paralegals are billed at a rate of Fifty and 00/100ths (\$50.00) Dollars per hour.

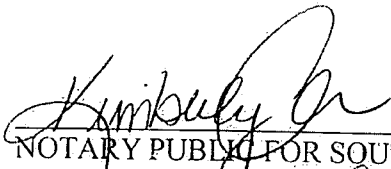
To date Mullins Law Firm, PA has expended Ten Thousand Six Hundred Thirty-Four and 92/100ths (\$10,634.92) Dollars. That this Affidavit is submitted in support of Plaintiff's request for attorney's fees to be paid by the Defendant Town of Atlantic Beach. Costs expended to date in this matter total Five Hundred Forty-Nine and 94/100ths (\$549.94) Dollars. This amount does not include travel time or attendance at trial.

MULLINS LAW FIRM, P.A.


RANDALL K. MULLINS SC Bar No. 06466


JARROD E. OWNBEY SC Bar No.: 75417

SWORN to and subscribed before me
this 10th day of January, 2014.


(L.S.)
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 9-16-2021

Mullins Law Firm
P O Box 585
N. Myrtle Beach, SC 29597

Invoice submitted to:
PAUL CURRY
Post Office Box 2245
North Myrtle Beach, SC 29598
USA

January 10, 2014

Professional Services

	<u>Hrs/Rate</u>	<u>Amount</u>
7/6/2010 R Meeting with client regarding FOI case against Atlantic Beach	1.00	350.00
7/13/2010 K Telephone call to client.	350.00/hr	
	0.33	25.00
K Telephone call to PAUL CURRY	75.00/hr	
	0.20	15.00
K Telephone call to PAUL CURRY	75.00/hr	
	0.20	14.98
8/2/2010 K Drafting documents	75.00/hr	
	0.50	37.50
8/3/2010 J reviewing file and conversation with KAM about her work on case	75.00/hr	
	0.30	52.50
K Drafting documents	175.00/hr	
	2.80	210.00
8/6/2010 J reviewing file to draft action	75.00/hr	
	0.30	52.50
8/9/2010 J SUMMONS AND COMPLAINT, phone call to the client advising that another request need be made to preserve atty fees and costs under 30	175.00/hr	
	2.60	455.00
11/10/2010 J drafting updated complaint	175.00/hr	
	0.50	87.50
11/11/2010 J litigation file review with KAM and RKM	175.00/hr	
	0.20	35.00
K draft ADR exeption certificate; prep for filing	175.00/hr	
	0.40	30.00
R Meeting with staff to review complaint. Corrected same for filing	75.00/hr	
	0.20	70.00
11/18/2010 K Drafting documents	350.00/hr	
	0.50	37.50
K Correspondence to Regional for service	75.00/hr	
	0.40	30.00
	75.00/hr	

PAUL CURRY

Page 2

PAUL CURRY

	<u>Hrs/Rate</u>	<u>Amount</u>
11/18/2010 R Reviewing service documents	0.20	70.00
11/22/2010 K prep certificate of mailing receipt for filing	350.00/hr	
	0.20	15.00
11/23/2010 K email to client w/ copy of filed Complaint	75.00/hr	
	0.20	15.00
11/29/2010 K research court filings and arrest history; update time line	75.00/hr	
	0.80	60.00
12/3/2010 K update amicus w/ Defendant contact info	75.00/hr	
	0.20	15.00
12/14/2010 J Telephone call from JOHN ZILINSKY	75.00/hr	
	0.20	35.00
K telephone call from Town Attorney requesting extension	175.00/hr	
	0.20	15.00
12/17/2010 K fax to Zilinsky re extension	75.00/hr	
	0.20	15.00
12/21/2010 K Discovery preparations	75.00/hr	
	0.80	60.00
K fax to Zilinsky	75.00/hr	
	0.20	15.00
1/24/2011 K email to client w/ Answer; draft discovery requests	75.00/hr	
	0.80	60.00
1/25/2011 K meeting w/ RKM & JEO	75.00/hr	
	0.30	22.50
R Telephone call to Zilinsky, John	75.00/hr	
	0.20	70.00
1/26/2011 K correspondence to Zilinsky w/ Discovery; email to client	350.00/hr	
	0.40	30.00
2/15/2011 K Telephone call from PAUL CURRY	75.00/hr	
	0.20	15.00
2/17/2011 K meeting w/ client & RKM	75.00/hr	
	1.00	75.00
R Meeting with client to discuss discovery	75.00/hr	
	1.00	350.00
2/18/2011 K draft amended discovery requests & RTA; offer of settlement letter to Zilinsky; email to client	350.00/hr	
	1.00	75.00
R Reviewing discovery requests	75.00/hr	
	0.20	70.00
3/4/2011 J meeting with PAul concerning taking on other cases against Atlantic Beach... advised him I would discuss with RKM	350.00/hr	
	0.20	35.00
3/7/2011 K email to client	175.00/hr	
	0.20	15.00
3/9/2011 K meeting w/ client & RKM	75.00/hr	
	0.50	37.50
R Telephone call to Zilinsky, John	75.00/hr	
	0.20	70.00
3/24/2011 K correspondence to Zilinsky	350.00/hr	
	0.40	30.00
4/4/2011 K draft MTC	75.00/hr	
	0.50	37.50
4/7/2011 R Reviewing documents	75.00/hr	
	0.20	70.00
	350.00/hr	

PAUL CURRY

	<u>Hrs/Rate</u>	<u>Amount</u>
4/8/2011 K correspondence to Zilinsky w/ filed MTC; email to client	0.40 75.00/hr	30.00
7/19/2011 R Jim Bain's Hearing On Client O&RTSC for client's criminal case	1.50 350.00/hr	NO CHARGE
7/21/2011 K prep for Motion Hearing [motion to compel]	0.30 75.00/hr	22.50
7/25/2011 K draft affidavit of attorneys fees;	0.80 75.00/hr	60.00
7/26/2011 K Telephone call to PAUL CURRY	0.20 75.00/hr	15.00
R Reviewing file with staff prior to hearing. Call from client	0.20 350.00/hr	70.00
7/27/2011 J research on codification of laws	0.30 175.00/hr	52.50
K Telephone call from PAUL CURRY	0.20 75.00/hr	15.00
R Motion Hearing	2.00 350.00/hr	700.00
8/3/2011 R Telephone call to Zilinsky, John regarding money due from prior order. Telephone call to Hills, Carolyn, spoke to Lynn Jordan, her Assistant regarding past due funds from prior court order.	0.20 350.00/hr	70.00
8/8/2011 R Drafted Order of Judgment from Hearing on 7/27/11	0.80 75.00/hr	60.00
8/24/2011 R sent email to Zilinsky with attached letter and proposed order	0.20 75.00/hr	15.00
R letter and email to atty's Zilinsky and Hill to abide by order and pay fees of 1,000.00 or we will Rule to Show Cause	0.40 75.00/hr	30.00
8/29/2011 R drafted letter to Judge Culbertson with proposed order	0.20 75.00/hr	15.00
11/9/2011 J Telephone call from Jim Bain	0.20 175.00/hr	35.00
12/6/2011 R Organizing file; tabbing subfiles and review of file; TC from Paul on status	1.00 75.00/hr	75.00
12/7/2011 R Completed organization of file; TC to Clerk of Court; review of Public Index	0.30 75.00/hr	22.50
12/8/2011 R Telephone call to PAUL CURRY	0.20 75.00/hr	15.00
12/9/2011 R Email to Client re: status of both cases	0.20 75.00/hr	15.00
3/6/2012 K Review correspondence and motion from Attorney Hills; quick review of file; misc admin	0.30 75.00/hr	22.50
4/9/2012 K Transcription of letter to town manager; transcription of letter to Attorney Bain.	0.30 75.00/hr	22.50
R Reviewing, editing and signing letters	0.20 350.00/hr	70.00
4/11/2012 K Update and complete attorney list; revisions to correspondence.	0.50 75.00/hr	37.50
R Reviewing and editing letters to town manger and to alleged new town attorney	0.20 350.00/hr	70.00
5/3/2012 K Conference call with Jarrod, Randy and Kenneth Davis; scan and email requested documents to Mr. Davis; update file notes.	0.40 75.00/hr	30.00

PAUL CURRY

		<u>Hrs/Rate</u>	<u>Amount</u>
5/3/2012	R Telephone conference with Attorney Davis regarding prospective representation of the town. Instructions to staff regarding same.	0.20 350.00/hr	70.00
12/12/2012	K Review emails from client.	0.20 75.00/hr	15.00
1/8/2013	R Telephone call to Davis, Kenneth	0.20 350.00/hr	70.00
1/10/2013	K Meeting with Randy.	0.20 75.00/hr	15.00
	K Transcription of correspondence to Attorney Davis; transcription of correspondence to Town of Atlantic Beach; meeting with RKM; review file notes; update file records.	0.70 75.00/hr	52.50
	K Prepare Affidavit of Attorney Fees; prepare Affidavit for filing; forward correspondence to all parties; miscellaneous admin.	0.70 75.00/hr	52.50
	K Update timeline.	0.60 75.00/hr	45.00
	R Telephone call to CURRY, PAUL	0.60 350.00/hr	210.00
	R Travel to Atlantic Beach to post notice on Town Hall and to personally serve the mayor.	0.20 350.00/hr	70.00
1/11/2013	B Researched judgments against Town of Atlantic Beach	0.40 50.00/hr	20.00
	K Review correspondence from Attorney Davis.	0.20 75.00/hr	15.00
	K Revise Affidavit of Attorney fees; conference with Randy; conference call with Randy and Attorney Davis.	0.50 75.00/hr	37.50
	R Telephone call to Davis, Kenneth. Spoke to OC who has filed Notice of appearance. We discussed possible resolutions and case status.	0.50 350.00/hr	175.00
	Telephone call to CURRY, PAUL		
1/14/2013	K Conference with Jarrod.	0.20 75.00/hr	15.00
	J NJ Trial	1.00 175.00/hr	NO CHARGE
	R Court Appearance for Roster call. Meeting with OC Davis. Case continued on Defendant's Motion. Roundtrip to Conway for the same	2.00 350.00/hr	700.00
1/16/2013	R Telephone call to Sonny Frye	0.20 350.00/hr	70.00
1/29/2013	J Telephone call to PAUL CURRY	0.20 175.00/hr	35.00
	J Telephone call to Kenneth Davis	0.20 175.00/hr	35.00
	K Conference with Jarrod.	0.20 75.00/hr	15.00
	K Review files.	0.20 75.00/hr	15.00
	K Meeting with client.	0.60 75.00/hr	45.00
	K Meeting with Jarrod in preparation for upcoming trial.	0.40 75.00/hr	30.00
	K Begin draft of correspondence to Attorney Davis regarding possible settlement.	0.50 75.00/hr	37.50
1/31/2013	R Reviewing and editing offer of settlement	0.20 350.00/hr	70.00

PAUL CURRY

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PAUL CURRY

	<u>Hrs/Rate</u>	<u>Amount</u>
1/31/2013 K Meeting with Randy.	0.20	15.00
K Revisions to correspondence.	75.00/hr	
	0.30	22.50
2/1/2013 K Scan and email draft of correspondence to client.	75.00/hr	
	0.20	15.00
2/11/2013 K Email from/to client; notes to RKM.	75.00/hr	
	0.20	15.00
2/19/2013 K Revisions to correspondence; meeting with Jarrod; email to client. Email from client; email to Jarrod.	75.00/hr	
	0.60	45.00
4/5/2013 R Telephone call to Davis, Kenneth	75.00/hr	
	0.20	70.00
4/26/2013 K Review correspondence and Motion to be Relieved as Counsel from Mr. Davis.	350.00/hr	
	0.20	15.00
7/31/2013 J attended hearing on OC's motion to be relieved	75.00/hr	
	1.00	175.00
8/12/2013 B Telephone call to PAUL CURRY	175.00/hr	
	0.20	10.00
B Telephone call to James E. Bain to tell him that C. Jordan told RKM this morning that they are not going forward with the Motion to Appt Receiver for AB today	50.00/hr	
	0.20	10.00
8/21/2013 K Correspondence to Charles Jordan, Jr., Esq. asking he confirm his client does not intend to move forward with the Motion to Appoint Receiver. Correspondence (FOIA Request) to Atlantic Beach; prepare certified mail. Finalize correspondence and forward to all parties.	0.90	67.50
	75.00/hr	
9/17/2013 K Correspondence to AB enclosing payment for FOIA request.	0.40	30.00
10/3/2013 K Call from process server; prepare correspondence to Town of AB advising of trial date.	75.00/hr	
	0.40	30.00
K Meet with process server re: service of trial notice on AB.	75.00/hr	
	0.20	15.00
10/4/2013 N Scan in FOIA response; Email to client	75.00/hr	
	0.40	30.00
10/7/2013 K Email to client re: upcoming trial and setting appointment to meet.	75.00/hr	
	0.20	15.00
10/8/2013 K Call to client (vm) re: appointment/trial prep.	75.00/hr	
	0.20	15.00
K Email to Paul requesting he confirm tomorrow's appointment.	75.00/hr	
	0.20	15.00
10/9/2013 J Telephone call from Paul Curry	75.00/hr	
	0.20	35.00
K Conference call with RKM & JEO; email to court roster clerk.	175.00/hr	
	0.20	15.00
K Call from roster clerk; draft Motion for Continuance and Motion Coversheet.	75.00/hr	
	0.40	30.00
R Research status with non	75.00/hr	
	0.20	70.00
10/10/2013 K Conference with RKM re: trial prep.	350.00/hr	
	0.20	15.00
K Fax from Attorney Moody; phone conference with RKM and Attorney Moody.	75.00/hr	
	0.30	22.50
	75.00/hr	

PAUL CURRY

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PAUL CURRY

	<u>Hrs/Rate</u>	<u>Amount</u>
10/10/2013 J Client meeting	1.00	175.00
R Telephone call to Moody, Leah	175.00/hr	
	0.40	140.00
10/11/2013 J with KLC about exhibits and email from Leah Moody in case we go forward	350.00/hr	
K Prepare file for trial.	0.30	52.50
	175.00/hr	
	0.90	67.50
K Finalize file preparation for trial.	75.00/hr	
	0.50	37.50
10/14/2013 J NJ Trial	75.00/hr	
	1.00	175.00
R Roster meeting for NJ Trial	175.00/hr	
	1.00	350.00
10/24/2013 R Telephone call to Bain, James E.	350.00/hr	
	0.20	70.00
K Transcription of correspondence to Attorney Moody.	350.00/hr	
	0.20	15.00
K Transcribe/revise correspondence to Attorney Moody.	75.00/hr	
	0.40	30.00
10/30/2013 K Telephone call to PAUL CURRY	75.00/hr	
	0.20	15.00
10/31/2013 K Review Order dismissing client's criminal charges; scan to file.	75.00/hr	
	0.20	15.00
11/1/2013 K Review FOIA responses; scan and label FOIA responses; correspondence to client enclosing same. Review correspondence from Attorney Moody.	75.00/hr	
	0.60	45.00
11/7/2013 K Transcription of correspondence to Attorney Moody re: clarifying what judgments Mr. Booker refuses to pay.	75.00/hr	
	0.20	15.00
K Forward correspondence to Attorney Moody via facsimile and US Mail; copy client.	75.00/hr	
	0.20	15.00
K Email from/to Attorney Moody.	75.00/hr	
	0.20	15.00
R Drafting documents	75.00/hr	
	0.20	70.00
1/2/2014 K Telephone call to PAUL CURRY	350.00/hr	
	0.20	15.00
1/7/2014 K Email from court; email to RKM re: time needed for trial. Telephone call to PAUL CURRY	75.00/hr	
	0.40	30.00
1/8/2014 J PRETRIAL BRIEF	75.00/hr	
	0.20	35.00
1/9/2014 J pretrial brief	175.00/hr	
	0.50	87.50
K Prepare pre	175.00/hr	
	0.40	30.00
1/10/2014 R Trial preparations	75.00/hr	
	1.50	525.00
K Assist Jarrod with trial preparations. Meeting with client; draft/revise/fax correspondence to Attorney Moody; prepare exhibits; prepare file for trial; forward Pretrial Brief to Judge Newman and Attorney Moody, via electronic mail.	350.00/hr	
	5.20	390.00
J pretrial brief	75.00/hr	
	1.40	245.00
	175.00/hr	

PAUL CURRY

PAUL CURRY

1/10/2014 J Client Meeting

For professional services rendered

Additional Charges :

<u>Hrs/Rate</u>	<u>Amount</u>
1.50	262.50
175.00/hr	
70.23	\$10,084.98

11/16/2010 COMPLAINT

Copying cost

11/18/2010 Copying cost

Postage

11/22/2010 Copying cost

11/29/2010 Copying cost

Investigation Services, Regional service on Town of Atlantic Beach, William Booker

12/20/2010 Fax

1/26/2011 Copying cost

Postage

2/18/2011 Copying cost

Postage

3/24/2011 Postage

4/7/2011 Motion to compel

Copying cost

4/8/2011 Postage

4/26/2011 Fax

7/25/2011 Copying cost

8/29/2011 Copying cost

Postage

9/14/2011 Copying cost

<u>Qty/Price</u>	
1	150.00
\$150.00	
52	13.00
\$0.25	
135	33.75
\$0.25	
1	6.83
\$6.83	
2	0.50
\$0.25	
2	0.50
\$0.25	
1	60.00
\$60.00	
2	2.00
\$1.00	
6	1.50
\$0.25	
2	0.88
\$0.44	
10	2.50
\$0.25	
3	1.32
\$0.44	
1	0.44
\$0.44	
1	25.00
\$25.00	
24	6.00
\$0.25	
1	0.88
\$0.88	
3	3.00
\$1.00	
6	1.50
\$0.25	
7	1.75
\$0.25	
1	1.08
\$1.08	
6	1.50
\$0.25	

PAUL CURRY

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PAUL CURRY

	<u>Qty/Price</u>	<u>Amount</u>
4/11/2012 Copying cost	13	3.25
	\$0.25	
Postage	7	3.15
	\$0.45	
1/10/2013 Fax	10	10.00
	\$1.00	
Fax	3	3.00
	\$1.00	
1/14/2013 Court	52	28.60
	\$0.55	
8/21/2013 Copying cost	10	2.50
	\$0.25	
Postage	2	12.22
	\$6.11	
Postage	3	1.38
	\$0.46	
9/13/2013 Copying cost	1	0.25
	\$0.25	
Postage	1	0.46
	\$0.46	
10/3/2013 Copying cost	3	0.75
	\$0.25	
10/9/2013 Investigation Services, Regional service on Town of Atlantic Beach, (posted and delivered)	1	60.00
	\$60.00	
10/10/2013 Copying cost	2	0.50
	\$0.25	
10/11/2013 Copying cost	47	11.75
	\$0.25	
10/24/2013 Copying cost	16	4.00
	\$0.25	
Fax	8	8.00
	\$1.00	
Postage	2	0.92
	\$0.46	
11/1/2013 Copying cost	128	32.00
	\$0.25	
Postage	1	10.86
	\$10.86	
11/7/2013 Copying cost	8	2.00
	\$0.25	
Fax	3	3.00
	\$1.00	
Postage	2	0.92
	\$0.46	
1/10/2014 Copying cost	142	35.50
	\$0.25	
Fax	1	1.00
	\$1.00	
Total additional charges		\$549.94

PAUL CURRY

Page 9

PAUL CURRY

		<u>Amount</u>
For professional services rendered	70.23	\$10,634.92
Accounts receivable transactions		
7/7/2010 Payment		(\$5,000.00)
3/1/2011 Credit for double billed entries from July on February Invoice		(\$14.98)
Total payments and adjustments		(\$5,014.98)

Timekeeper Summary

<u>Name</u>	<u>Hours</u>	<u>Rate</u>	<u>Amount</u>
Barbara Ostrom	0.80	50.00	\$40.00
Kimberly Moore	15.33	75.00	\$1,149.98
Nikki Pitts	0.40	75.00	\$30.00
Randy Mullins	13.80	350.00	\$4,830.00
Randy Mullins	1.50	0.00	\$0.00
Rhonda Richardson	3.30	75.00	\$247.50
Jarrold E. Ownbey	12.30	175.00	\$2,152.50
Jarrold E. Ownbey	1.00	0.00	\$0.00
Kimberly L. Cronos	21.80	75.00	\$1,635.00

Client funds transactions

New balance of Default	<u>\$0.00</u>

1/10/2014

3:40 PM



1984

* MERRY
christmas *

RING BELL
DO NOT ENTER
BEYOND THIS DOOR
AUTHORIZED
PERSONNEL ONLY


TNS SA
SMOKE FREE

18.2013 13:41

Plaintiff's
Exhibit
15
1-13-14 00

12-18-2013 13:41

Plaintiff's
Exhibit
16
1-13-14 no

COPY

STATE OF SOUTH CAROLINA
COUNTY OF HORRY
2010 APR 27 PM 3:24
IN THE CIRCUIT COURT
FOR THE
FIFTEENTH JUDICIAL CIRCUIT

Melanie Hugins-Ward
CLERK OF COURT
HORRY COUNTY

CASE NO.: 2008- CP-26 - 3990

PAUL J. CURRY,

Plaintiff

VS.

THE TOWN OF ATLANTIC BEACH,

Defendant

ORDER
DECLARATORY JUDGMENT AND
PERMANENT INJUNCTION
(Granting Relief; Ending Action)

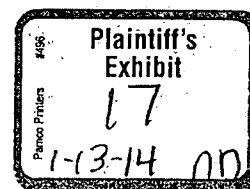
Date of Hearing: April 27, 2010
Presiding Judge: Hon. Larry B. Hyman, Jr.
Plaintiff's Attorney: James E. Bain, Esq.
Defendant's Attorney: John C. Zilinsky, Esq.
Court Reporter: Brenda Babb

FILED
HORRY COUNTY
2010 APR 27 PM 3:24
MELANIE HUGINS-WARD
CLERK OF COURT

This matter comes before me for a final hearing. Present at the call of the case were the Plaintiff and his counsel and counsel for the Defendant. A review of the file indicates this matter was commenced by the filing of a Summons and Complaint on May 21, 2008 and a First Amended Summons and Complaint on September 18, 2008 which was served upon the Defendant September 22, 2008 as evidenced by the Affidavit of Service filed September 26, 2008. An Affidavit of Default was filed on November 14, 2008. A Motion to Set Aside Default and Allow Answer was filed and served by the Defendant on January 25, 2010 and a hearing was held January 28, 2010 which allowed the Answer of the Defendant and set the matter for trial.

Paul J. Curry vs. Town of Atlantic Beach
Case No.: 2008-CP-26-03990
Final Order (Granting Relief, Ending Action)
Page 1 of 6
Initials: _____

JBH #1



Prior to commencement of the hearing counsel for the parties advised the Court that they had been able to reach a settlement as to the issues before the Court and that based upon the admissions of the Defendant, a finding in favor of the Plaintiff would be appropriate and the granting of a Permanent Injunction and such additional relief as hereinafter set forth would be appropriate. Now, therefore, upon review of the pleadings and Orders contained in the file, the statements of counsel upon the record and Exhibits introduced and made a part of the file:

DECLARATORY JUDGMENT

1. The Defendant admits the substantive allegations contained in the Complaint to be true, the Court finds that as alleged in the Complaint herein the Defendant, The Town of Atlantic Beach (the "Town"), has:

- a. Leased golf carts for use by its elected and appointed officials, employees and agents upon the public roads and highways of Atlantic Beach for such purposes including, but not necessarily limited to, conveyance of Town officials to various vendor booths and events when such golf carts fail to display a permit as required by S. C. Code §56-3-115 and were operated other than during daylight hours.
- b. Profited from the sale of Alcoholic Beverage Vendor Permits which allowed the sale of intoxicating beverages to attendees of the Bikefest by street vendors who have set up their booths and serving stations immediately adjacent to the sidewalks and public ways of the Town of Atlantic Beach. Attendees are then permitted by the elected and appointed officials, employees and agents of the Defendant to consume said intoxicating beverages upon the public sidewalks, roads, and areas of the Town of Atlantic Beach in violation of Town Ordinance 9-2-3 which provides that within the Town of Atlantic Beach it is unlawful for any person to drink any kind of intoxicating, alcoholic or nonalcoholic beverages, on the streets, alleyways, highways or other public places.
- c. Allowed an event promoted as a "Block Party" which takes place upon a stage platform provided by the Defendant on which numerous bands, groups, DeeJays or musicians perform amplified noise for undefined periods, closing only at some vaguely defined time of "until" in violation of the Town Ordinance 9-2-14(a) which

JBH #2

prohibits the creation and continuation of any loud, disturbing and unnecessary noise where it can be heard more than fifty feet away.

- d. Attempted to legitimize its actions by the passage of numerous Resolutions authorizing the aforesaid activities in contravention of its own ordinances.

PERMANENT INJUNCTION

2. That an appropriate remedy for the Plaintiff in light of the prior conduct on the part of the Town is a permanent injunction enjoining such future conduct in the following respects:

- a. The Defendant is enjoined and restrained from using leased golf carts during the Atlantic Beach Bikefest in a manner which violates S. C. Code §56-3-115 which mandates the manner and conditions under which golf carts may be operated upon the streets and highways of South Carolina, specifically that any golf carts used must be properly permitted, insured and may only be operated during daylight hours; and,
- b. The Defendant is enjoined and restrained from promoting, encouraging or allowing the sale and consumption of intoxicating beverages in public areas and/or upon public sidewalks, streets and roadways in violation of Town Ordinance 9-2-3; and,
- c. Defendant is enjoined and restrained from requiring vendors to remain open until 3:00 a.m. and to conducting a "Block Party" which it plans to conduct "until" which would violate the Town of Atlantic Beach Noise Ordinance § 9-2-14 (a).
- d. Defendant is enjoined and restrained attempting to modify, supercede, amend or suspend any Town Ordinance by the passage of a mere resolution.

PROVIDED, HOWEVER, that nothing contained in the foregoing shall be construed so as to prevent Defendant from introducing and passing an Ordinance modifying, superceding or altering any Town Ordinance, including those specifically mentioned in subparagraphs 2. (b) and 2. (c) above.

ADDITIONAL RELIEF

3. The Defendant has introduced and passed upon Second Reading that certain Ordinance

No. 3-2010, entitled AN ORDINANCE ESTABLISHING AND ADOPTING THE OPERATIONAL PROCEDURES FOR THE ATLANTIC BEACH MEMORIAL DAY BIKE FESTIVAL in an effort to comply with the foregoing prohibition on attempts to modify Town Ordinances by Resolution, but that said Ordinance No. 3-2010 does not resolve all issues pertaining to the effect of the Atlantic Beach Bike Festival upon Town Ordinances, and that Plaintiff shall have meaningful input through the Town Attorney and or Town Manager as to possible resolutions of conflict between Town Ordinance and Atlantic Beach Bike Festival activity.

4. That during the Atlantic Beach Bike Festival, and at all other times, the Defendant shall strictly adhere to S. C. Code §56-3-115 which mandates the manner and conditions under which golf carts may be operated upon the streets and highways of South Carolina, specifically that any golf carts used must be properly permitted, insured and may only be operated during daylight hours; and, shall implement policies and procedures whereby any person operating a golf cart leased or owned by the Town of Atlantic Beach shall possess a valid driver's license and acknowledge an understanding of the provisions of S. C. Code §56-3-115 and shall agree to abide thereby. Defendant shall send a letter to all law enforcement agencies providing law enforcement services or support services detailing the provisions of S. C. Code §56-3-115 and the statute's effect upon the use of golf carts during the Atlantic Beach Bike Festival.

5. The Defendant shall affirmatively cooperate with all law enforcement and investigative agencies, including, but not necessarily limited to counterfeit goods investigators from the office of the South Carolina Secretary of State, during the Atlantic Beach Bike Festival and shall advise all vendors in writing prior to their opening for the Atlantic Beach Bike Festival that the sale and

RBH #4

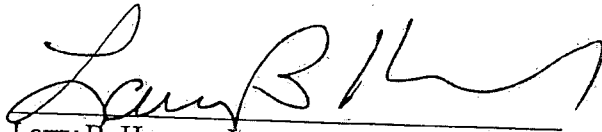
distribution of counterfeit goods will not be tolerated and the possession of such by a vendor shall be grounds for immediate revocation of that vendor's permit.

6. The Defendant, through its Town Manager, shall publicly apologize to the Plaintiff at a regularly scheduled meeting of the Town Council for the comments made by former Town Managers disparaging Plaintiff personally for his efforts to ensure open government and compliance with state and local laws by referring to him in the press and elsewhere as a "harasser."

7. The Defendant shall pay directly to the Plaintiff the sum of Five Thousand and no/100 (\$5,000.00) Dollars not later than thirty (30) days from the date of this Order in contribution towards the Plaintiff's attorney's fees, costs and expenses in this action.

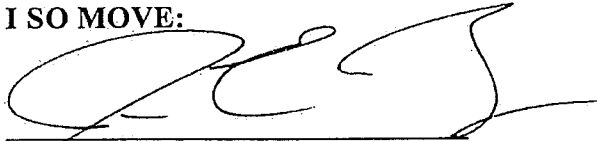
IT IS SO ORDERED.

April 27, 2010
Conway, SC

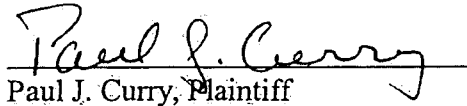

Larry B. Hyman, Jr.
Circuit Court Judge

DBA #5

I SO MOVE:

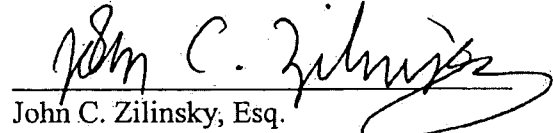


James E. Bain, Esq.
Attorney for the Plaintiff

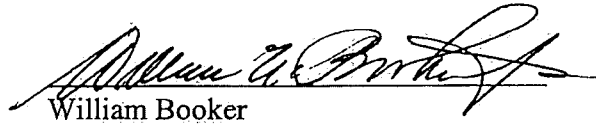


Paul J. Curry, Plaintiff

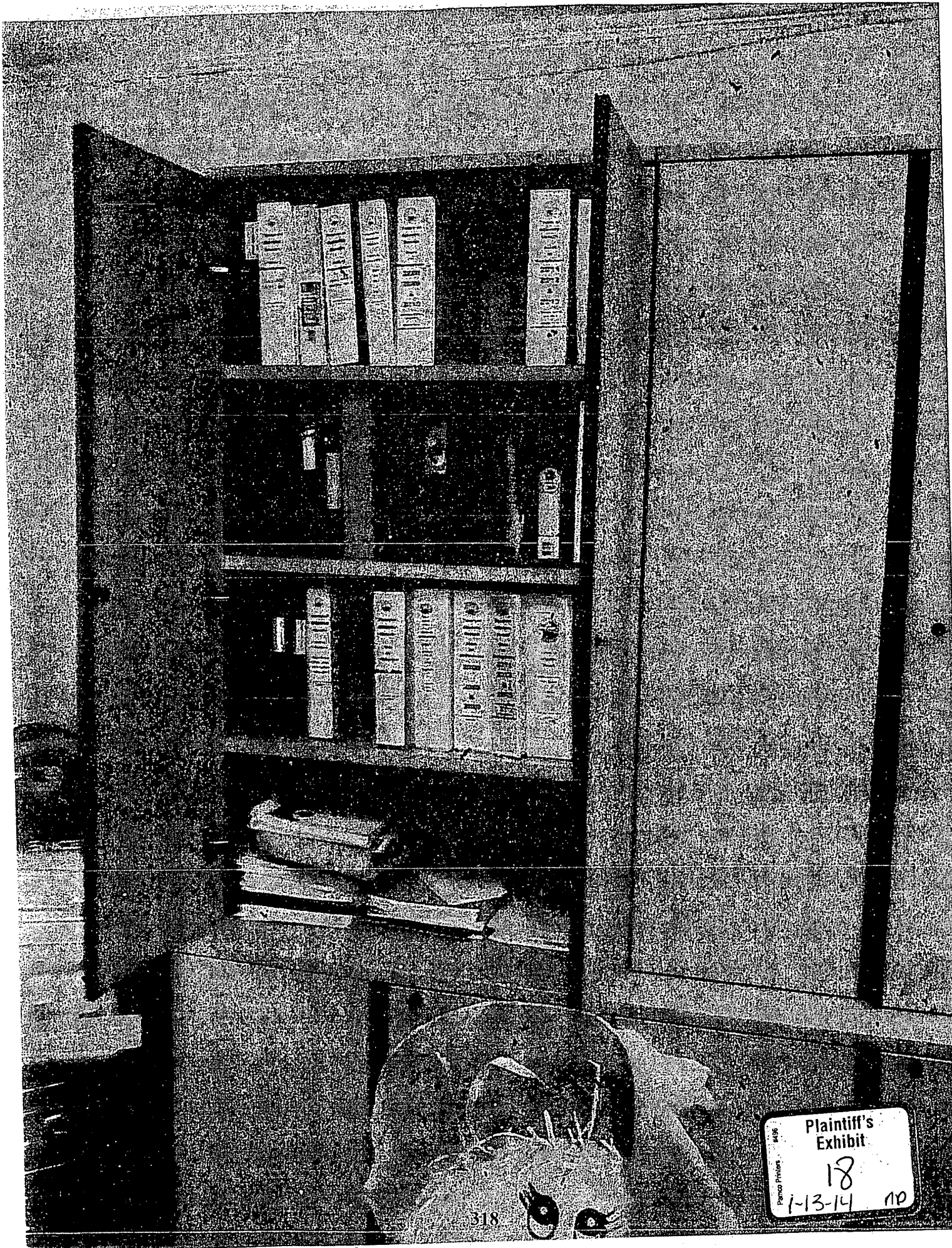
I/WE CONSENT:



John C. Zilinsky, Esq.
Attorney for the Town of Atlantic Beach



William Booker
Town Manager, Town of Atlantic Beach



Plaintiff's
Exhibit
18
1-13-14 10

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE MAGISTRATE'S COURT
CENTRAL JURY COURT

STATE OF SOUTH CAROLINA,)

Warrant Nos.: J 745105 & J 745165
Uniform Citation #: 84509 EQ

Plaintiff,)

vs.)

PAUL J. CURRY,)

Defendant.)

ORDER

(Dismissing with prejudice)

DATE OF HEARING:
PRESIDING JUDGE:
PLAINTIFF'S ATTORNEY:
DEFENDANT'S ATTORNEY:
COURT REPORTER:

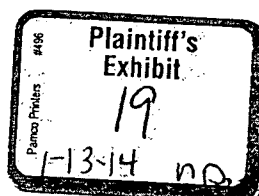
July 9, 2013
Hon. Margie B. Livingston
R. Bentz Kirby, Sr.
James E. Bain
N/A

THIS MATTER COMES BEFORE ME pursuant to an Order setting these matters for trial on date certain. Prior to selecting a jury for this matter, counsel advised the Court that although a Preliminary Hearing had been timely requested in connection with Warrant J745105, one had not been held in this matter and, accordingly, Mr. Bain moved for a Probable Cause Hearing in all matters, to which the State did not object.

Upon receiving such evidence as was presented, a review of the Court's file and upon the arguments of counsel, I find as follows:

1. As to Warrant J-745105, the State has failed to prove probable cause sufficient to justify the charge and, accordingly, the same should be dismissed. As this matter was initially brought in the Fifteenth Circuit Court of General Sessions, was remanded to

State v. Paul J. Curry
Warrant #'s J745105 & J745165
Uniform Citation # 84509 EQ
Final Order
Page 1 of 3
Initials: _____



the Municipal Court for the Town of Atlantic Beach and subsequently transferred to this Court, and the charge has been pending since November, 2010, I further find that this dismissal should be made with prejudice.

2. As to Warrant J-745160, the warrant is, on its face, insufficient to support the charge and should be dismissed. As this matter was initially brought in the Municipal Court for the Town of Atlantic Beach, subsequently transferred to this Court and the charge has been pending since November, 2011, I further find that this dismissal should also be made with prejudice.

3. As to Uniform Citation # 84509 EQ, the charge presented to the Court by this document is one that, under the law of South Carolina at the time of its issuance, is improperly presented through the use of a Uniform Citation and, in fact, was required to be presented by warrant. Further, that the facts and circumstance leading to the issuance of this Uniform Citation are the same facts and circumstances leading to the issuance and service of the above-mentioned Warrant # J745160 and Uniform Citation #74509 EQ was superseded by the issuance of Warrant J-745160 and should have been voided at that time rather than having been entered into the system as a pending charge. Accordingly, I find that Uniform Citation 84509 EQ should be dismissed with prejudice as improvidently written.

In (ABL)
4. In connection with his arrest pursuant to Warrant # J-745105, a Search Warrant was served upon the Defendant and numerous items seized by members of the Atlantic Beach Police Department in connection with said Search Warrant as is fully detailed.

State v. Paul J. Curry
Warrant #'s J 745105 & J745165
Uniform Citation # 84509 EQ
Final Order
Page 2 of 3
Initials: _____

upon the Return To Search Warrant attached hereto. I find that all property of the Defendant seized pursuant to the said Search Warrant, and as itemized and detailed on the attached Return to Search Warrant, including any clones, copies, duplication or replication of electronic storage media (computers, hard drives, memory cards, storage media, etc.) should be returned to the Defendant within ten (10) days of service of this Order.

AND IT IS SO ORDERED.

Margie B. Livingston
Margie B. Livingston
Presiding Judge of the Magistrate's Court
Central Jury Court - Myrtle Beach

Dated: Aug 7, 2013
Myrtle Beach, South Carolina

State v. Paul J. Curry
Warrant #'s J745105 & J745165
Uniform Citation # S4509 EQ
Final Order
Page 3 of 3
Initials: _____

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE CIRCUIT COURT
FOR THE
FIFTEENTH JUDICIAL CIRCUIT

CASE NO.: 2005- CP-26 - 1091

PAUL J. CURRY,)
)
Plaintiff)
)
VS.)
)
THE TOWN OF ATLANTIC BEACH,)
)
Defendant)

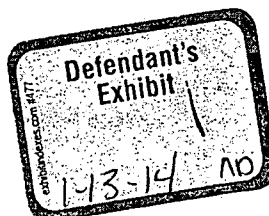
ORDER
DECLARATORY JUDGMENT AND
PERMANENT INJUNCTION
(Granting Relief; Ending Action)

Date of Hearing: November 19, 2009
Presiding Judge: Hon. Cynthia Graham Howe, Master-In-Equity
Plaintiff's Attorney: James E. Bain, Esq.
Defendant's Attorney: John C. Zilinsky, Esq.
Court Reporter: Mabry Court Reporting (Pepper McCarthy)

CH
This matter comes before me for a final hearing as scheduled during the status conference of September 17, 2009.

CH
Present at the call of the case were the Plaintiff and his counsel and counsel for the Defendant. A review of the file indicates this matter was commenced by the filing of a Summons and Complaint on February 28, 2005 and served upon the Defendant as evidenced by the Affidavit of Service and Entry of ^{default} ~~claim~~ filed on June 28, 2005. Further, an Order of Default and Reference to the Master having been filed on August 28, 2007, the Court has jurisdiction of this matter and venue is proper.

Paul J. Curry vs. Town of Atlantic Beach
Case No.: 2005-CP-26-01091
Final Order (Granting Relief; Ending Action)
Page 1 of 10
Initials: *Mabry*



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2009 JAN 27 PM 3:16

Further, prior to commencement of the hearing counsel for the parties advised the Court that they had been able to reach a settlement as to the remaining issues before the Court and that in light of the Defendant's default, a finding of the Court that the Defendant had violated the South Carolina Freedom of Information Act (the "SCFOIA") , S.C.Code Ann. §§ 30-4-10, et seq., would be appropriate and a Permanent Injunction and such additional relief as hereinafter set forth would be appropriate. Now, therefore, upon review of the pleadings and Orders contained in the file, the statements of counsel upon the record and the Plaintiff's Exhibits presented as a part of the record of this hearing, the Court finds as follows:

DECLARATORY JUDGMENT

2
CJH
1. As the Defendant is in default and the allegations contained in the Complaint are deemed to be true, the Court finds that as alleged in the Complaint herein the Defendant, The Town of Atlantic Beach (the "Town"), has violated the South Carolina Freedom of Information Act (the "SCFOIA") , S.C.Code Ann. §§ 30-4-10, et seq., in the following respects:

- a. The Defendant has failed to notify the Plaintiff of the times, dates, places, and Agenda of all meetings, whether scheduled, rescheduled, or called, of the Atlantic Beach Town Council (the "Town Council").
- b. The Defendant has failed to note in the Minutes of the meetings of the Town Council, the efforts made to comply with Plaintiff's requests for notification of the times, dates, places, and Agenda of all meetings, whether scheduled, rescheduled, or called, of the town Council.
- c. The Defendant failed to make available to the Plaintiff, for public inspection and copying, the prepared Minutes whether "approved" or "unapproved," of meetings of the Town Council, for the six months preceding the filing of this action, during the hours of operation of the Atlantic Beach Town Hall (the "Town Hall"), without the Plaintiff being required to make a written request to inspect or copy the records, when the Plaintiff appeared in person to make such request.

- d. The Defendant failed to make requested public records available to the Plaintiff, for inspection and copying, after declining to provide written notification to the Plaintiff within the fifteen days (excepting Saturdays, Sundays, and legal public holidays), allowed by law, when the Plaintiff returned to the Town Hall after the expiration of the above period.

PERMANENT INJUNCTION

2. That an appropriate remedy for the Plaintiff in light of the failures on the part of the Town to comply with the South Carolina Freedom of Information Act (the "SCFOIA"), S.C.Code Ann. §§ 30-4-10, et seq., is a permanent injunction enjoining further violations of the South Carolina Freedom of Information Act in the following respects:

- 3
CH
- a. The Defendant is enjoined from failing to notify the Plaintiff of the times, dates, places, and Agenda of all meetings, whether scheduled, rescheduled, or called, of the Town Council, as mandated by the SCFOIA § 30-4-80(e).
- b. The Defendant is enjoined from failing to note in the written Minutes of the meetings of the Town Council the efforts made to notify the Plaintiff of the times, dates, places, and Agenda of all meetings, whether scheduled, rescheduled, or called, of the Town Council, as mandated by the SCFOIA § 30-4-80(e).
- c. Defendant is enjoined from failing to make prepared Minutes, whether "approved" or "unapproved," of the Town Council, for the preceding six months, available to the Plaintiff for inspection and copying during the hours of operation of the Town Hall without the Plaintiff having to make a written request when the Plaintiff appears in person, as mandated by the SCFOIA §30-4-30(d)(1).
- d. Defendant is enjoined from failing to make available to the Plaintiff for inspection and copying, records previously requested by the Plaintiff, when the Defendant declines to mail or personally deliver a written notification to the Plaintiff within the fifteen days (excepting Saturdays, Sundays, and legal public holidays) allowed by law, of the determination of the Defendant as to the availability of the requested records and the reasons therefore, as mandated by the SCFOIA § 30-4-30(c).

ADDITIONAL RELIEF

3. The Defendant shall notify persons or organizations, local news media, or such other media as may request notification of the times, dates, places, and Agenda of all of the meetings, as defined by the SCFOIA § 30-4-20(d), of the Town Council, whether scheduled, rescheduled or called, and a description of the efforts made to comply with this requirement shall be noted in the written Minutes of the meetings of the Town Council, as mandated by the SCFOIA § 30-4-80(e). Original documentation of the efforts made shall be maintained in the Town records and shall be available for inspection upon request.

4. The Defendant shall mail to the Plaintiff, addressed to the Plaintiff's post office box, Coastal Station; P.O. Box 2245; North Myrtle Beach, SC 29598-2245, notification of the times, dates, places, and Agenda of all meetings of the Town Council, not later than the last scheduled mail pick-up by the United States Postal Service on the Friday immediately preceding such meeting. In the event that a meeting of the Town Council is to be held or is held in circumstances that do not permit the foregoing, an affidavit as to the just cause of the Defendant to fail to comply with this advance mailing requirement shall be included with the mailing to the Plaintiff, as early as is practicable, of the time, date, place and Agenda of the meeting, and a copy of said affidavit shall be attached to the written Minutes of that meeting of the Town Council.

3. The Defendant shall not amend the Agenda for a meeting of the Town Council, after mailing same to the Plaintiff, unless done so in strict compliance with rules and procedures pertaining to amendment of an Agenda which shall include a statement on the record of the meeting as to the purpose of the amendment, the person requesting such amendment and why the amendment

is necessary. Any such amendment shall be documented by a written request setting forth the information required to be included in the statement on the record which must be signed by the person making the request. A copy of the written request shall be attached to the written Minutes of that meeting of the Town Council and the original certificate shall be maintained in the Town records.

4. The Defendant's Town Council shall not circumvent the spirit of requirements of the SCFOIA by chance meeting, social meeting, or electronic communication, to act upon a matter over which the Town Council has supervision, control, jurisdiction, or advisory power, as mandated by the SCFOIA § 30-4-70(c).

5. The Defendant's Town Council shall, prior to holding a meeting closed to the public, vote in public on the question and when the vote is favorable, the presiding officer shall announce the specific purpose(s) and description(s) of the matter(s) to be discussed, as mandated by the SCFOIA § 30-4-70(b), and the specific exemption(s) asserted, for the executive session.

6. The Defendant's Town Council shall not take up any issue in executive session other than what is on the agenda and announced to the public, and then only in so far as an exemption is asserted and applies.

7. The Defendant's Town Council shall not take any action in executive session except to adjourn or to return to public session, and shall not commit the Town to a course of action by a polling of council members in executive session, in strict compliance with the SCFOIA § 30-4-70(b).

8. Immediately upon returning to a regular session meeting after an executive session or any other session closed to the public, the Town Attorney shall certify on the record that only such matters

as were publicly disclosed prior to the vote to close the session to the public were discussed during the closed session, that no votes, polling, decision or other action prohibited by the SCFOIA occurred during the closed session. Said certification by the Town Attorney shall be reduced to a writing and a copy of the writing shall be attached to the written Minutes of that meeting of the Town Council. In the event the Town Attorney is unable to attend a meeting at which a session closed to the public is called, the Defendant's Town Council shall take written Minutes, and or record on audiotape and shall make a transcript of each executive session, and shall make available for public inspection and copying, within fifteen days (excepting Saturdays, Sundays, and legal public holidays) of the expiration of any exemption to the SCFOIA, a redacted transcript and redacted Minutes of any such portion of each executive session.

9. The Defendant shall prepare written minutes of each meeting of the Town Council, as mandated by the SCFOIA § 30-4-90(a) and a draft of said Minutes shall be available for inspection and copying by the public when distributed to members of the Town Council, but not later than twenty-four (24) hours prior to the next regularly scheduled meeting of the Town Council. In the event said draft Minutes shall not be prepared in a timely manner, a written explanation of why staff was unable to prepare and circulate the Minutes shall be provided to the Town Council at such regularly scheduled meeting and included in the Minutes of that meeting and a copy of the written explanation shall be available for inspection and copying by the public not later than the next business day following said meeting. In no event shall Minutes of each meeting of the Town Council not be prepared within thirty (30) days of the date said meeting was held.

10. The Defendant shall conspicuously post, in the public lobby area of the Town Hall, so as to ^{be}readable by the general public, both a copy of the SCFOIA and a copy of the *Public Officials's Guide to Compliance with South Carolina's Freedom of Information Act*.

11. Each elected and appointed Town official, each Town employee, whether paid or voluntary, full-time or part-time, and each Town contractor preparing, owning, using, possessing or retaining "public records," as defined by the SCFOIA § 30-4-20(c); shall read the *Public Official's Guide to Compliance with South Carolina's Freedom of Information Act*, and shall sign a Statement of substantially the following form:

7
Call
I have read the *Public Official's Guide to Compliance with South Carolina's Freedom of Information Act*. I acknowledge that any person or group of persons who willfully violates the provisions of the South Carolina "Freedom of Information Act," shall be deemed guilty of a misdemeanor and upon conviction shall be fined not more than one hundred dollars or imprisoned for not more than thirty days for the first offense, shall be fined not more than two hundred dollars or imprisoned for not more than sixty days for the second offense and shall be fined three hundred dollars or imprisoned for not more than ninety days for the third or subsequent offense. (Code of Laws of South Carolina 1976, as amended, Section 30-4-110, Penalties.)

12. Such Town officials, employees, volunteers and contractors as are regularly and customarily at the Town Hall shall sign a "Master Statement," with multiple signature/printed name/date lines, a copy of which shall be conspicuously posted in the public lobby area of the Town Hall, so as to be readable by the general public and the original shall be maintained by the Town and made available for inspection upon request.

13. The Defendant shall make public records available for public inspection and copying with a minimum delay, as mandated by the SCFOIA § 30-4-15.

14. The Defendant shall furnish copies of public records at the lowest possible cost, as mandated by the SCFOIA § 30-4-30(b), and shall prepare a justification of that cost.

15. The Defendant shall not require that a requestor, when the requestor appears in person at the Town Hall, during the hours of operation of the Town Hall, make a written request to inspect or copy the Minutes, whether "approved" or "unapproved," of the meetings of the Town Council for the preceding six months, as mandated by the SCFOIA § 30-4-30(d)(1).

16. The Defendant shall not require that a requestor, when the requestor appears in person at the Town Hall, during the hours of operation of the Town Hall, make a written request to inspect or copy all reports, for at least the fourteen-day period before the current day, which disclose the nature, substance, and location of any crime or alleged crime reported as having been committed within the jurisdiction of the Town, as mandated by the SCFOIA § 30-4-30(d)(2).

§
CA
17. The Defendant shall not require that a requestor of public records make the request in any particular form. The Defendant shall not require of Plaintiff that an in person request for public records be in writing or in any particular form.

18. The Town of Atlantic Beach Police Department shall prepare an Incident Report upon an in-person, telephoned or written complaint of an alleged violation, within the jurisdiction of the Town, of the SCFOIA, provided, that a written and signed "Voluntary Statement" may be required by the Police Department and, if required, a blank "Voluntary Statement" shall be promptly provided to the complainant.

19. The Defendant shall not require that a requestor of "public records," as defined *supra*, provide personally identifying information, including, but not limited to, name, address, telephone

number, etc., nor make any effort to obtain such personally identifying information, when withheld by the requestor, including a vehicle description or vehicle license plate information. However, a requestor withholding an address for notification waives the provision that the request must be considered approved when written notification is neither mailed nor personally delivered to the person requesting "public records," as defined *supra*, within the fifteen days allowed by law, which determination of the Town as to the availability of the requested public records, and the reasons therefor, shall be given to the requestor upon the requestor's return to inspect and copy the requested public records.

20. The Defendant shall not require that personally identifying information, as above, be placed on receipts for payment for access to "public records," as defined *supra*.

21. The Defendant shall not harass a requestor of "public records," as defined *supra*.

22. The Defendant shall give written notice to the Plaintiff, at his Post Office Box, and permit inspection and copying by the Plaintiff, within fifteen days (excepting Saturdays, Sundays, and legal public holidays) of the creation of any "public records" as defined *supra*, relating to the Plaintiff's efforts to access public records.

23. The Defendant shall from the date of this Order forward, include in the written Minutes of the Town Council, a listing of those persons and organizations who have requested notification of the times, dates, places, and Agenda of all Town Council meetings and shall indicate with specificity the efforts made, or lack of efforts made, to notify those who have requested notification.

24. The Defendant shall conspicuously post in the public lobby area of the Town Hall, so as to be readable by the general public, a copy of this Order of Declaratory Judgment, Permanent

Injunction, and Additional Relief.

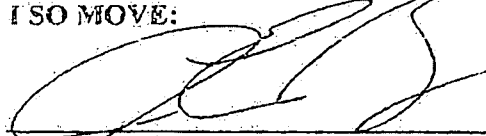
25. The Defendant shall contribute to the Plaintiff's attorney's fees, costs and expenses in this action in the amount of Five Thousand and no/100 (\$5,000.00) Dollars to be paid directly to Law Offices of James E. Bain, P.C. within forty-five (45) days of the date hereof.

IT IS SO ORDERED.

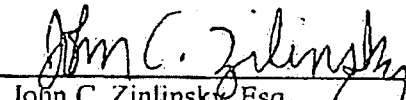
January 25, 2010
December 25, 2009
Conway, SC

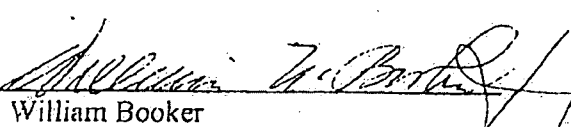

Cynthia Graham-Howe
Master-In-Equity for Horry County

10
GSA
I SO MOVE:


James E. Bain, Esq.
Attorney for the Plaintiff

I/WE CONSENT:


John C. Zinlinsky, Esq.
Attorney for the Town of Atlantic Beach


William Booker
Town Manager, Town of Atlantic Beach

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2005-CP-26-1091

Paul J. Curry

The Town of Atlantic Beach

PLAINTIFF(S)

DEFENDANT(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.

☐

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

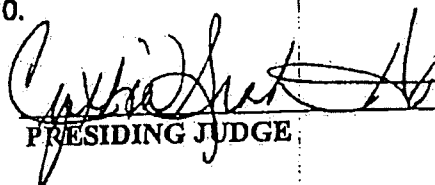
NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED:

☒ See attached order. (Formal order to follow)

☐ Statement of Judgment by the Court:

Dated at Conway, South Carolina, this 25 day of January, 2010.


PRESIDING JUDGE

This judgment was entered on the _____ day of _____, 20____, and a copy mailed first class this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

James E. Bain, PC
P.O. Box 4264
North Myrtle Beach, SC 29597
ATTORNEY(S) FOR PLAINTIFF

John Zilinsky
P.O. Box 1851 Conway, SC 29528-1851

ATTORNEY(S) FOR DEFENDANT

CLERK OF COURT

MELANIE HUGGINS
CLERK OF COURT
HORRY COUNTY

2010 JAN 27 PM 3:17
2010 JAN 27 PM 3:17

FILED
HORRY COUNTY CERTIFIED COPY

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Clifton B. Newman, Common Pleas Court Judge

2010-CP-26-10848
Appellate Case No.: 2015-001398

RECEIVED

JUL 14 2016

SC Court of Appeals

PAUL CURRY,

Appellant,

v.

TOWN OF ATLANTIC BEACH,

Respondent.

CERTIFICATE OF COUNSEL

The undersigned hereby certify that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

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Dated: July 8, 2016
North Myrtle Beach, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court Of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

Clifton B. Newman, Common Pleas Court Judge

2010-CP-26-10848
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PROOF OF SERVICE

I certify that I have served copies of the Final Brief of Appellant, Final Reply Brief of Appellant and Record on Appeal via regular U.S. Mail addressed to the following:

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