

THE STATE OF SOUTH CAROLINA
IN THE SOUTH CAROLINA SUPREME COURT

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APPEAL FROM BEAUFORT COUNTY

Marvin H. Dukes III, Master-in-Equity

S.C. SUPREME COURT

Appellate Case No 2017-000555

Mare Baracco,

Appellant

vs.

Beaufort County

Respondent

**APPELLANT'S NOTICE OF MOTION AND MOTION FOR AN ORDER STATING
ALL THE LOWER COURTS LACKED PERSONAL, PROCEDURAL AND/OR
SUBJECT MATTER JURISDICTION OVER APPELLANT**

Mare Baracco
1006 Madrid Avenue
Port Royal, South Carolina 29935
843-592-1062
Pro Se Appellant

Mary Bass Lohr
Howell, Gibson & Hughes PA
PO Box 40
Beaufort SC 29901
843-522-2400/522-2429 (fax)
mlohr@hgpa.com
Counsel for Respondent

Mare Baracco, the Appellant herein, supplements the Appendix to add new information and further moves this Honorable Court, pursuant to the South Carolina Rules of Appellate Procedure, for an Order stating all of the lower Courts lacked personal, procedural and/or subject matter jurisdiction over Appellant based on the following:

South Carolina Magistrate Courts lack procedural jurisdiction to hear appeals or act as Administrative Hearing Officers in any actions, as they are Summary Courts and not a Court of Record. Further, South Carolina Magistrate's Court have never authorized Magistrates to hear administrative appeals and/or any type of appellate review and/or act as Administrative Hearing Officers. Appellant presented to the Beaufort County Sheriff's Office on July 10, 2012, and met with a Beaufort County Sheriff's Department's Supervisor to inquire as to the reason the original Deputy Sheriff, assigned to the Beaufort County Animal Control, under this direct supervision had initially told her she had determined her dog was not dangerous and then four (4) days later delivered a Beaufort County Sheriff's Form, with the Beaufort County Sheriff's Department Logo, entitled *This is an Official Notice – Section 14-35 of the Beaufort County Ordinance States; Dangerous Animal* to her home and required her to take their required corrective actions within seventy-two (72) hours or face penalties (**Exhibit 1**).

Appellant also requested information as to the procedural due process in place involved with the Beaufort County Sheriff's Departments' Beaufort County Sheriff's Form, with the Beaufort County Sheriff's Department Logo, entitled *This is an Official Notice – Section 14-35 of the Beaufort County Ordinance States; Dangerous Animal* It was during this exchange between the Supervisor of the Deputy Sheriff that Appellant discovered the Beaufort County Sheriff's Office nor the Beaufort County Administration had any type of procedural due process instructions, written or otherwise. Thus, Beaufort County's "home cooking folly" ensued.

Appellant was instructed by this Supervisor to appeal directly to the Beaufort County Magistrate Court. The Supervisor told her to write out her appeal and he would have it delivered to the Beaufort County Magistrate, which was done. This case was initially captioned as *The State vs. Baracco* and remained captioned until it reached the desk of an Assistant Attorney General.

Appellant was forced by the Beaufort County Sheriff's Office and Beaufort County to appeal this Administrative Decision to a Beaufort County Magistrate. This process did not afford her the right to a jury, nor discovery. It also did not provide for notice as to the standard of proof they relied upon to prove probable cause in their determination/decision.

Throughout this ordeal, Appellant has continuously told each and every Court involved in this matter they lacked personal and subject matter jurisdiction over her and her property, thus they did not allow her to receive a meaningful opportunity to be heard utilizing the correct and proper due process procedures before depriving her of a property interest. Appellant was never subject to the Beaufort County Ordinance regarding Animal Control as she was, and is, a resident of the Town of Port Royal, who had not adopted this Ordinance at the time of this incident. Additionally, Appellant was never issued a ticket or warrant charging her under the South Carolina State Law. The Town of Port Royal issued her an Ordinance violation for *Animal at Large*, which a jury found her not guilty. The Town of Port Royal had no contract with the Beaufort County Sheriff's Office, nor their Animal Control Division. She never received a ticket/warrant from the Beaufort County Sheriff's Office and/or from a Beaufort County Ordinance Code Officer for any alleged ordinance violation. She only received the Beaufort County Sheriff's Form, with the Beaufort County Sheriff's Department Logo, entitled *This is an Official Notice – Section 14-35 of the Beaufort County Ordinance States; Dangerous Animal* from Beaufort County Sheriff's Office, which could not, and cannot, equate as an Ordinance violation, no matter how times Beaufort County

tries to re-stylize this case to benefit themselves. Beaufort County was able to change the caption from *The State* to *Beaufort County* at the South Carolina Court of Appeals level only after this matter reached the desk of the South Carolina Assistant Attorney General. The records will reflect a letter to the South Carolina Court of Appeals dated December 9, 2013, wherein Respondent, by and through their attorney, Mary Bass Lohr, (who again was, at the time of this occurrence and still is, the Town Attorney for the Town of Port Royal), states this case was erroneously and inappropriately captioned as it was not a criminal case. She further goes on to state: *In fact, this case is an appeal to the magistrate's court of an administrative determination pursuant to Beaufort County Code of Ordinances 14-35 (Exhibit 2)*. She stated the proper party to this matter was Beaufort County or Beaufort County Animal Control. Appellant now wonders that since it was a determination/decision by a Beaufort County Deputy Sheriff, and it was their *Official Notice*, should they not have been the proper party throughout this case? The Beaufort County Sheriff is a constitutional officer and not an employee of Beaufort County. Since the filing of this case, Animal Control is no longer a division of the Beaufort County Sheriff's Office. It is now under the direct control of Beaufort County Administration through their Public Safety Department.

In fact, despite appealing the lower court's decision to the Court of Appeals, Beaufort County assisted in the creation of a Rule to Show Cause against the Appellant. Again, despite Appellant again raising subject matter jurisdiction over her and her property, she was found in contempt based on an alleged Order deriving from an unauthorized court proceeding. She was sentenced to a 10-day suspended jail sentence pursuant to specifically "following his Order as it pertained to her property interest or immediately be jailed". The Appellant appealed this decision to the Circuit Court, where the attorney she hired explained to the Beaufort County Master-In-Equity that the underlying matter was under Appeal to the South Carolina Court of Appeals and

there were no remedies for the jail sentence, except to accept the determination as to her property interest and do as Beaufort County wanted. The Master-In-Equity has suspended the suspended sentence until the current Appeal before this Honorable Court has been determined.

The Respondent admitted again recently, in oral argument on June 22, 2017, before the Honorable Lawton McIntosh, presiding Judge for Beaufort County Court of Common Pleas, that this case before the Supreme Court is based on an “*appeal to the magistrate*” (Exhibit 3, Transcript of June 22, 2017, page 2, lines 9-16).

Appellant agrees with Respondent’s statement that their procedural fly-by-the-pants process required, among other things, appealing these *Official Notices (aka) Notices of Determination and Declaration of Dangerous Dog Administrative Decision pursuant to Beaufort County Code of Ordinances 14-35* to a Beaufort County Magistrate. They then required individuals, such as Appellant, to remain on the fly-by-the-pants merry-go-round because of this erroneous requirement in appealing an Administrative Decision. The problems with these requirements are:

1. Appellant was not, and is not, a resident of Beaufort County. She is a resident of the Town of Port Royal.
2. At the time of this incident, the Town of Port Royal had not adopted the Animal Control Ordinance language in the Animal Control Beaufort County Ordinance. Nor was there a contract for services between the Town of Port Royal and the Beaufort County Sheriff’s Office or their Animal Control Division.
3. Respondent’s Attorney knew the facts in 1 and 2 above and could have at any time stopped this folly by also admitting the Respondent lacked procedural and subject matter jurisdiction over a resident of the Town of Port Royal, who did not have the same Ordinance as Beaufort County and no contracts existed which gave the Beaufort County Sheriff’s Department nor Beaufort County any authority to act upon the Town of Port Royal’s behalf.
4. Beaufort County Animal Control Ordinance failed to establish an adequate standard of proof; therefore, it violates procedural due process.

5. The Beaufort County Sheriff and/or Beaufort County never had, and Beaufort County still does not have, a known procedural due process that afforded, and affords, individuals such as the Appellant meaningful opportunity to be heard prior to depriving them of a property interest, their pets. For them or any of the lower courts to determine what process was, and is, due in a given situation would require consideration of (1) the private interest involved; (2) the risk that the current procedures would erroneously deprive a party of that interest; and (3) the governmental interest involved. The Respondent nor any of the lower courts recognized the private interest of Appellant and other pet owners in keeping their pets, in not having to pay for and seek the approval of County and/or Municipal Building Codes, Homeowners' Associations, Property Owners' Association, variance requests for zoning, necessary appeals to any of these entities as to the construction of the type of required structure for said pet, or even being allowed to keep them during the appeal process in any HOA or POA decision based on their decision; muzzling said pets; paying fees required by Respondent; purchasing liability insurance, all in a limited 72 hour time frame; and in potentially being subjected to criminal liability for violation of dangerous animal regulation. Respondent and the lower courts failed, and still fail, to recognize the high risk of erroneous deprivation of individual's property interest, if a pet owner cannot pay these costs without first being given the opportunity to an evidentiary hearing before the proper and correct Court or an Administrative Appeals Board or an S.C. Administrative Judge that have the authority and jurisdiction to hear these types of cases.
6. The South Carolina Supreme Court Chief Justices have never authorized any South Carolina Magistrate to hear administrative appeals and/or any type of appellate review and/or act as Administrative Hearing Officers. South Carolina Magistrate Courts are Summary Courts and not Courts of Record. Therefore, there would not have been, nor are they required to create a reviewable record from which to further appeal these types of decisions. *Another benefit to Respondent.*
7. Appellant, recognizing South Carolina Magistrates are not authorized to hear cases such as hers, notifies this Court that Respondent's Attorney in the oral argument on June 22, 2017, before the Honorable Lawton McIntosh, presiding Judge for Beaufort County Court of Common Pleas, stated Beaufort County Magistrates are Beaufort County Employees. If this is indeed true, then how was Appellant ever afforded impartial, unbiased hearings during any of this matter? *Was this another benefit to the Respondent?* (**Exhibit 4**, Transcript of June 22, 2017 Page 12, Lines 23-25; Page 13, lines 1-25; Page 14, Lines 1-25; Page 15, Lines 1-9)
8. Individuals, in normal circumstances, would be required to pay a fee to file an appeal before a proper and correct court of record, which would then be distributed pursuant to the direction of Court Administration. This matter involves an Administrative Decision, which can only be appealed to an Administrative Board and then to a South Carolina Administrative Law Judge in order to provide a non-biased forum for the individuals, such as Appellant, to receive a fair impartial hearing. Appellant states that all fees and costs she has incurred the Respondent knew would be an erroneous

deprivation if she was not able to pay them. Appellant was forced to pay them and continue her efforts to seek proper redress in the protection of her private and property interests. (**Exhibit 5**– Fee Schedules)

Appellant feels the reason the Respondent has repeatedly misled each and every Court is because Beaufort County has far more monetarily to lose than just this one case – they have been forcing, threatening and terrifying all dog owners into submission by way of extraordinary provisions, including the required provision of insurance (generally regulated by the South Carolina Insurance Commission) or by the taking of a property interest, a family pet, (which South Carolina sees only as property/chattel), by seizure and destruction without benefit of proper due process and the right to be fairly heard before a court of competent jurisdiction. The Respondent knew or should have known Magistrate Court(s) lacked authority and jurisdiction to hear appeals of any cases. Additionally, Respondent has forcefully subjected citizens (and those not under their jurisdiction) into appearing before a sham court with sham documents, knowing they were acting outside of the procedures of the unified judicial system and in violation of the Order(s) of the South Carolina Supreme Court.

According to the provisions of the South Carolina Constitution, the Supreme Court Chief Justice is in charge and oversees all of the Courts, as well as all South Carolina Attorneys, by way of Court Administration and therefore controls the actions of said Courts, in order to keep the Courts unified.

Appellant again states that the matter of subject matter jurisdiction may be pled at any time. And for that reason, and the reasons noted above, the Appellant moves for an Order stating all of the lower Courts lacked personal, procedural and/or subject matter jurisdiction over the Appellant based on these reasons. Finally, the Appellant submits the documents attached as a Supplement to the Appendix for this Honorable Court's review and consideration.

Respectfully submitted, this the 10th day of July, 2017.

A handwritten signature in black ink, appearing to read 'Mare Baracco', is written over a horizontal line.

Mare Baracco, *Pro Se* Appellant
1006 Madrid Avenue
Port Royal South Carolina 29935
(843) 592-1062

AUTHORITIES

.....

OTHER AUTHORITIES

Exhibit 1 – BCSO Form Notice

Exhibit 2 – Letter to Court of Appeals dated December 9, 2013
from Respondent Mary Bass Lohr

Exhibit 3 and 4 – June 22, 2017 Transcript

Exhibit 5 – Court Fee Schedule

Exhibit 1

This is an Official Notice

Section 14-35 of the Beaufort County Ordinance States:

"Dangerous animal" means any animal which the owner knows or reasonably should know has a propensity, tendency or disposition to attack unprovoked, cause injury, or otherwise endanger the safety of human beings or domestic animals.

The animal described below has hereby been declared dangerous. You are required by law to comply with the following requirements within seventy-two (72) hours of:

Date / Time July 9, 2012 / 2:30 PM
 Species: Canine Breed: Rhodesian Ridge Back mix
 Name: Bodi Age: 3yrs Gender: M
 Description: Red w/ white chest
 Owner / Address / Location of Animal: MATE BARABCO
1006 Madrid Avenue, Port Royal SC 29935

Requirements:

(1) The dangerous animal shall be securely confined within an occupied house or residence or in a securely enclosed and locked pen or kennel appropriate to the size of the animal. All pens or structures used to confine dangerous animals must be locked with a key or combination lock when such animals are within the structure. Such structure must have a secure floor (such as concrete) attached to the sides of the pen, or the sides of the pen must be embedded in the ground no less than two feet so as to prevent digging under the walls by the confined animal. The pen or run area must be clearly marked as containing a dangerous animal and must be designed to prevent the entry of the general public, including children, and to prevent the escape or release of the animal.

(2) All structures erected to house dangerous animals must be adequately lighted and ventilated and kept in a clean and sanitary condition.

(3) The dangerous animal must not go outside its kennel or pen unless the animal is securely leashed and muzzled with a leash no longer than six feet in length and under the actual physical control of a person 18 years of age or older. Such animals may not be leashed to inanimate objects such as trees, posts, buildings, or any other object or structure.

(4) The person owning, keeping, sheltering or harboring the animal must register the animal with the Beaufort County Animal Shelter within the required seventy-two hour timeframe and provide proof of liability insurance of at least fifty thousand dollars insuring or securing the owner for personal injuries inflicted by the dangerous animal. The Beaufort County Animal Shelter will issue Dangerous Animal tags which must be displayed on the animal's collar at all times. The dangerous animal must also display its current rabies tag on its collar at all times. The person owning, keeping, sheltering or harboring the dangerous animal shall have an identification microchip implant placed under the animal's skin by a licensed veterinarian within the required seventy-two hour timeframe.

Receipt left with: [Signature] Date 7/9/12

Deputy: Lcpt B. Chaplin Date 7-9-12

Signing under duress; app

Penalties:

Failure to comply with these requirements within seventy-two (72) hours of the date and time listed on this notice will result in the responsible party being fined in the amount up to \$1092.50. The dangerous animal will be removed from the premises and secured at the Beaufort County Animal Shelter in accordance with Section 14-35 of the Beaufort County Ordinance pending the decision of the Court.

Reasons for declaration of dangerousness: Reference case # 12-01444 (PRPD) and 20120709-508 (BCSO) involving an animal attack which the victim's K9 died.

Exhibit 2

HOWELL, GIBSON AND HUGHES, P.A. ATTORNEYS AT LAW

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JAMES S. GIBSON, JR *
Of Counsel

* Certified Mediator

December 9, 2013

Ms. V. Claire Allen
Deputy Clerk
South Carolina Court of Appeals
Post Office Box 11629
Columbia, SC 29211

Re: The State of South Carolina vs. Mare Baracco
Civil Action No.: 2013-CP-07-00918
Our File No: 11369 MBL

Dear Ms. Allen:

Please find enclosed a copy of my Notice of Appearance on behalf of Beaufort County. I wanted to bring to your attention two related issues which I believe require the Court's attention. Initially, I believe that this case has been erroneously captioned "The State vs. Mare Baracco". This designation is, to my mind, inappropriate in as much as this is not a criminal case and The State is not a party. In fact, this case is an appeal to the magistrate's court of an administrative determination pursuant to Beaufort County Code of Ordinances 14-35, which I have attached for your review along with the order of the circuit court from which this appeal arises. I believe the proper party in this matter would either be Beaufort County or Beaufort County Animal Control as opposed to "the State." Moreover, as you can see the issue before the court is the classification of an animal owned by the Appellant as a "dangerous animal" pursuant to Beaufort Code of Ordinances Section 14-35, and does not involve any criminal penalty or sanction. Therefore, I would respectfully request that the Court reconsider its designation of this appeal as a Criminal Appeal and correct the caption in this matter to accurately reflect the proper nature of the case and appropriate parties in interest. If you have any questions, please do not hesitate to contact me at your convenience.

C
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Y

With kindest regards, I am

Yours truly,

HOWELL, GIBSON & HUGHES, P.A.

Mary Bass Lohr
MBL/ad
Enclosure

cc: Ms. Mare Baracco
Josh Gruber
Ms. Salley W. Elliott

C

O

P

Y

Exhibit 3 and 4

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF BEAUFORT) Court of Common Pleas
3) Case No. 2017-CP-07-00389
4 MARE BARACCO,)
5 Plaintiff,)
6 VS.) Transcript of Record
7 BEAUFORT COUNTY,)
8 Defendant.) DATE: June 22, 2017
9)

10 B E F O R E:

11 THE HONORABLE LAWTON McINTOSH

13 A P P E A R A N C E:

14 JAMES ARTHUR BROWN, JR.
15 Attorney for the Plaintiff

16 MARY BASS LOHR
17 Attorney for the Defendant

18 Karen V. Andersen, RMR, CRR
19 Circuit Court Reporter

20
21
22
23
24
25

1 THE COURT: This is your motion to dismiss?

2 MS. LOHR: Yes, Your Honor.

3 THE COURT: Glad to hear from you. Give me the
4 factual background.

5 MS. LOHR: Yes, sir. May it please the Court. My
6 name is Mary Lohr. I'm here today on behalf of Beaufort
7 County. This is a part of a series of ongoing litigation.

8 Ms. Baracco was ticketed with a violation of a
9 Beaufort County ordinance regarding a dangerous animal. She
10 appealed that to the magistrate's court. That issue is up on
11 appeal at the Supreme Court right now.

12 THE COURT: How do you appeal to the magistrate's
13 court?

14 MR. BROWN: That's a big issue.

15 MS. LOHR: That's the issue that the Supreme Court
16 has in front of them right now.

17 THE COURT: Okay.

18 MS. LOHR: There was an order -- for our purposes
19 today, there was an order issued by the magistrate's court
20 saying that she had -- that the animal was dangerous and that
21 she needed to take certain precautions and that while this
22 matter was under appeal, those precautions needed to
23 continue. Okay?

24 So we were at the Court of Appeals on that issue.
25 The County was successful in its appeal. It's now petitioned

1 for cert pending at the Supreme Court. The issue that we are
2 dealing with today arises more out of a rule to show cause
3 that was filed on the order from the magistrate's court.

4 The plaintiff lays out several facts. They've got
5 two causes of action, abuse of process and conspiracy.
6 There's one defendant, and that's Beaufort County.

7 Basically, February the 23rd, Beaufort County
8 attorney purportedly served the plaintiff with a motion and
9 rule to show cause with attachments by deposit in the mail.
10 There was an e-mail that went out later on, on March 26th,
11 2015, from the county administrator to multiple individuals,
12 one of whom was the chief magistrate of Beaufort County. The
13 chief magistrate forwarded the e-mail to a member of Beaufort
14 County Council. Chief magistrate's e-mail was not addressed
15 to the plaintiff. And chief magistrate forwarded the
16 previous e-mail that was sent by the administrator.

17 So the allegations, the specific allegations in this
18 case -- and I have a copy of the complaint, but,
19 unfortunately, I wrote on it.

20 THE COURT: That's okay. I can read through it.

21 MS. LOHR: Do you have a clean copy?

22 MR. BROWN: I do.

23 MS. LOHR: They specifically lay out the series of
24 events involving the rule to show cause and an e-mail that
25 subsequently came from the administrator and who that e-mail

1 went to. And that subsequently, a subordinate magistrate,
2 who was not the magistrate on that chain, heard the ruling
3 and ruled on the rule to show cause against Ms. Baracco.

4 So they filed a -- those are the facts alleged in
5 the case.

6 THE COURT: I am not following that very clearly, I
7 will be honest with you. Walk me through it again, please.

8 MS. LOHR: Okay. We have a case that goes to the
9 magistrate. Magistrate finds --

10 THE COURT: Violation of local ordinance for having
11 a dangerous animal?

12 MS. LOHR: Yes, sir.

13 THE COURT: And the magistrate ruled against her.
14 And then somehow that's under appeal presently?

15 MS. LOHR: Yes, sir.

16 THE COURT: And then there's a rule to show cause
17 saying while this is pending, you have to take precautions to
18 keep this animal from being a danger to the community?

19 MS. LOHR: That was actually part of the original
20 order.

21 THE COURT: Okay.

22 MS. LOHR: That, you know, the court said that -- it
23 was part of the original order that she had to take these
24 precautions starting immediately.

25 THE COURT: So the rule to show cause here could

1 force her, allegedly, to make sure that these precautions are
2 taken --

3 MS. LOHR: There was information that the
4 precautions weren't being taken. And the rule to show cause
5 was filed because of that.

6 THE COURT: And what did the court rule? Did they
7 put her in jail or --

8 MS. LOHR: The court found that she was in violation
9 of the order and gave her consequences subsequent to that.

10 MR. BROWN: Essentially, they ruled that she would
11 go to jail if she continued to do that. They did find her in
12 contempt. And that's actually on appeal.

13 MS. LOHR: Right, that's on appeal.

14 MR. BROWN: Also on appeal.

15 MS. LOHR: So we have the series of events based on
16 the original order that's now on appeal, and then the rule to
17 show cause. We have -- they have filed this lawsuit as an
18 abuse of process and conspiracy cause of action. The facts
19 that allege have to do with the filing of the rule to show
20 cause and with the series of e-mails that subsequently
21 followed the filing of the rule to show cause, the e-mail
22 going from the chief administrative officer, the county
23 administrator to county staff attorney and the chief
24 magistrate. The chief magistrate then forwards it to a
25 member of county council.

1 And so best I can tell from the complaint, it has to
2 do -- the factual allegations have to do with this e-mail
3 chain and the filing of the rule to show cause.

4 So -- and I'm with you not understanding it, because
5 that's why I filed this motion, because I don't, quite
6 frankly, understand how this gives rise to an abuse of
7 process cause of action either.

8 Specifically, the plaintiffs have, while they have
9 filed -- made in their filing under the first cause of action
10 abuse of process, they did specifically say magic words, such
11 as, the actions weren't proper in the regular conduct of
12 judicial proceedings and were performed to perpetrate an
13 ulterior purpose.

14 We have no idea what the actions are that the County
15 are supposedly in violation of or are in abuse of process.
16 And we have no idea what the ulterior purpose is supposed to
17 be.

18 There's a case that's directly on point. And it is
19 *Food Lion v. United Food Commercial Workers International*
20 *Union*. And that case basically says, you can't just say that
21 the action taken in a litigation in that case or the process
22 that was taken was done for an ulterior purpose. It has to
23 be primarily done for an ulterior purpose.

24 Furthermore, you have to plead the facts that
25 specifically show what that ulterior purpose might have been.

1 Because, otherwise, you just say there was an ulterior
2 purpose and nobody knows exactly what that ulterior purpose
3 was supposed to be. So you have to -- you have to plead with
4 a certain amount of specificity beyond it just being that the
5 process was initiated for an ulterior purpose.

6 That case is -- and, again, I have a copy of it, but
7 it does have some writing on it. And I apologize for that.
8 *Food Lion v. United Food and Commercial Workers International*
9 *Union* and the citation is 567 S.E. 2nd at 251. I can hand
10 that up.

11 THE COURT: I'm familiar with that.

12 MS. LOHR: Okay. I don't think the facts pled
13 actually give rise to a cause of action for abuse of process
14 in the first place. I think that, obviously, an action to
15 enforce an order that was issued by the court and the court
16 rules in favor that the person is in contempt of court, all
17 you are doing is asking the court to enforce its order.
18 There's no -- that litigation took place previously. You are
19 not initiating that. You can't be initiating that for any
20 purpose because it's already sitting out there. It's not new
21 litigation.

22 Also, the *Food Lion* case says it has to be primarily
23 for an ulterior purpose. There's no fact alleged in this
24 complaint that indicates this was primarily for an ulterior
25 purpose other than enforcing an order that was already --

1 that Ms. Baracco had to comply with.

2 So I have another -- I don't know if you want to
3 handle the causes of action separately.

4 THE COURT: Let me look through the complaint real
5 quick, if you don't mind, please.

6 MS. LOHR: Yes, sir.

7 THE COURT: Go ahead, please, ma'am.

8 MS. LOHR: Quite frankly, Your Honor, with regard to
9 this cause of action for abuse of process, earlier, the court
10 heard a proceeding about a claim for restitution. It would
11 be my position this is really no different from that, because
12 we were just seeking to enforce an order that was already
13 applicable to the plaintiff. It's not the initiation of a
14 new process. It's the enforcement of a current pending
15 process that was before the plaintiff.

16 The motion was filed in order to bring the Court's
17 attention to the fact that the order was not being complied
18 with. Really, that is exactly the same circumstance as the
19 restitution claim that was before this Court earlier.

20 Additionally, the improper conduct, there's no
21 specific pleading as to what conduct is improper in this
22 case.

23 THE COURT: I may tend to disagree. I think that
24 the e-mails ex parte without bringing this lady involved in
25 it about having a hearing is concerning at the minimum.

1 MS. LOHR: But, Your Honor, it's not improper in the
2 meaning of an abuse of process. It's improper in the meaning
3 of maybe an ethical obligation.

4 THE COURT: Well, that very well may be correct.

5 MS. LOHR: That's improper, not meaning improper for
6 the purposes of an improper --

7 THE COURT: Let me just tell you this. First, I
8 think your pleadings are deficient. I'm going to grant your
9 motion to dismiss, but I'm going to give you 10 days to
10 replead under abuse of process. See if you can straighten
11 that up better.

12 Now, the next one would be conspiracy.

13 MR. BROWN: Your Honor, I am not trying to --

14 THE COURT: It's not going to do any good.

15 MR. BROWN: No. We don't mind it -- I was going to
16 mention that in time. I don't mind making it more definite.
17 I am curious, since you did -- she said there's two things
18 that were deficient. One was that there was no allegation of
19 improper conduct. And I think you --

20 THE COURT: She's concerned about the ulterior
21 motive.

22 MR. BROWN: Got it. Okay. So that's the deficiency
23 that you found? I'm trying to cure the ruling.

24 THE COURT: Trying to cure the ruling?

25 MR. BROWN: Cure the pleading in light of your

1 ruling.

2 THE COURT: There's no cure for my ruling.

3 MR. BROWN: Yes. I didn't mean it that way. What
4 I'm saying is, it sounds to me like we did successfully plead
5 the improper conduct, being the ex parte part.

6 THE COURT: Well, I mean, that's the way I read it.

7 MR. BROWN: That's correct. That's correct.

8 THE COURT: But I am not going to try to advise you.
9 You know what you are doing.

10 MR. BROWN: But it's failing on the second prong of
11 the ulterior purpose?

12 THE COURT: What is your position?

13 MS. LOHR: My position is, he's got to plead
14 specifically what the act is that's the improper act and what
15 the ulterior motive would have been.

16 THE COURT: In other words, both.

17 MR. BROWN: And my only concern, if I say it's ex
18 parte, that's a legal conclusion, which is not a pleading.
19 We have no problem saying ex parte is improper. I don't
20 mind --

21 THE COURT: Okay. Let me ask you this. Do you
22 have -- as far as conspiracy, you're saying there's only one
23 party to this case?

24 MS. LOHR: Right. And you can't --

25 THE COURT: You don't name all co-conspirators, do

1 you?

2 MS. LOHR: No, sir. Principals and agents cannot
3 conspire, cannot form a conspiracy. There's a case law out
4 there that's very clear about that.

5 THE COURT: Really?

6 MS. LOHR: Yes, sir.

7 THE COURT: Go ahead then. I am not familiar with
8 that part of it.

9 MS. LOHR: Okay. Well, there are -- first off, you
10 have to plead -- another deficiency here is that the
11 conspiracy has to be additional acts. These are exactly the
12 same acts that are pled. If you pleaded two causes of
13 action, one's for conspiracy and one's for abuse of process,
14 you have to plead something other than the abuse of process,
15 which has not been done here at all.

16 Additionally, you have to plead special damages.
17 Now, if you look, he breaks out attorney's fees and lost
18 wages, but he also pleads monetary loss in the abuse of
19 process cause of action. So you can't really tell what the
20 monetary -- what monetary loss he's talking about other than
21 attorney's fees and lost wages. So I would assert that if
22 he's pled exactly the same, there aren't special damages pled
23 in this case --

24 THE COURT: Attorney's fees constitute special
25 damages under the rubric of conspiracy.

1 MS. LOHR: I appreciate that, Your Honor. But if
2 those are the same, that's the same monetary loss that she's
3 pled under the abuse of process claim --

4 THE COURT: She doesn't get attorney fees under that
5 cause of action. She can't plead them.

6 MS. LOHR: Well, but I don't know what she means by
7 monetary loss. Lost wages certainly would be part of it,
8 because what we are talking about is having to go to a
9 hearing. I mean, that's what the abuse of -- that's what we
10 are talking about here. That would have been --

11 THE COURT: All right.

12 MS. LOHR: So I think she's pled the same thing. I
13 understand the attorney's fees part. The lost wages I think
14 would not be part of it, if that is, in fact, what her
15 monetary loss is under abuse of process.

16 THE COURT: I agree with her argument to the extent
17 that you are alleging the exact same facts to support your
18 conspiracy allegation, which you cannot do. It has to be
19 acts independent and above the other.

20 MR. BROWN: May I at least try to -- I mean, I get
21 to advocate on behalf of my client. And I apologize.

22 THE COURT: I'm sorry. Go ahead.

23 MR. BROWN: Short version. When the county
24 administrator, who is the head of the county, who is the
25 opposing party in the litigation below, because it's the

1 county versus my client, when he sends the ex parte e-mail to
2 the judiciary who is going to hear the case --

3 THE COURT: Is he also or she also a county
4 employee?

5 MR. BROWN: Actually, I don't believe so. And that
6 goes to the other issue about the principal and the agents
7 conspiring on each other. And there is a word I left out.
8 When I pled it, I pled that the county, agents and employees
9 worked in conjunction with each other. I should have said
10 "and others". I cannot sue the judiciary because they are
11 immune, but they can be a co-conspirator. There's tons of
12 law on that.

13 THE COURT: My sister-in-law is chief magistrate
14 back home. She is a full county employee of Anderson County.
15 And I don't know how -- I assume that's probably the case
16 here.

17 MS. LOHR: It's the same.

18 MR. BROWN: We don't know. I don't know, but, I
19 mean, I hear what they are saying.

20 MS. LOHR: You don't have to do discovery on that.
21 That's a simple matter of is or isn't.

22 THE COURT: So let me ask you this. If they are all
23 employees of the county --

24 MR. BROWN: We may fail on that issue.

25 THE COURT: Quite frankly, I am not familiar with

1 the case you are saying, but if what she tells me is correct,
2 how can there be a conspiracy if it's based on solely
3 communications by county employees?

4 MR. BROWN: Because we don't believe that the
5 magistrate is a county employee, quite frankly.

6 THE COURT: I think you are wrong on that.

7 MR. BROWN: I understand. But they do judicial
8 benefits, which places them under a different department.

9 THE COURT: I imagine the paycheck comes from
10 Beaufort County.

11 MR. BROWN: Well, it's funny, because the sheriff's
12 department gets paid, but they are a state agency or
13 considered a state actor. And I made that very argument with
14 Ms. Lohr, different case. And she was right, sheriff is a
15 state employee even though the county pays --

16 MS. LOHR: But that's because he's an elected
17 official, Your Honor.

18 THE COURT: Constitutional officer.

19 MS. LOHR: Constitutional officer, that's right.

20 THE COURT: Magistrates are constitutional officers
21 too, aren't they?

22 MS. LOHR: No, they are not. County is required to
23 pay. And with regard to -- you know, the chief magistrate is
24 an administrative officer. He runs the office.

25 THE COURT: There was a case that came out a number

1 of years ago that the State was saying you have to pay this
2 salary to these magistrates. And the County was saying, no,
3 they are our employees. And they said, well, guess what,
4 they are your employees, but we tell you how much you have to
5 pay them. And says that they are county employees, I'm
6 pretty sure.

7 MS. LOHR: I am nearly -- I'm 100 percent positive
8 they are employees. And besides that, it wasn't pled that
9 they weren't.

10 MR. BROWN: And she didn't move to dismiss on that
11 ground, to be fair enough on that. She moved to dismiss the
12 two other reasons.

13 MS. LOHR: No, no, listen to me now.

14 THE COURT: Let me -- go ahead.

15 MR. BROWN: I apologize. So here's the way, there
16 are two different things. And, no, I didn't say this is
17 discreetly one and this is discreetly the other, because --
18 and I started as a public defender, so my civil work comes
19 out of that. But, quite frankly, I pled facts and I've made
20 the assertion. And so the facts support it. That's my
21 understanding.

22 I know she wants me to make it more definite. I
23 have no problem with that. But I believe that the ex parte
24 communication is the abusive -- the improper conduct for the
25 abuse of process. That is a unilateral act by the county. I

1 think the conspiracy is the act with the magistrates. That's
2 assuming that they are not county employees.

3 And, like I said, in there, I did not say the
4 county's employees conspired with each other and others,
5 because I think that cured that. If she wants to, in
6 defense, offer that they are county employees, I think she
7 gets summary judgment, not 12(b)(6), by asserting that they
8 are judicial employees. I think they can be co-conspirators.
9 I assert it on my pleadings. There's not even been an
10 answer. So this is brand-new.

11 So I think she might win if she proves conclusively
12 as a matter of law that the magistrate is a county employee.
13 Then I do have that problem on the conspiracy.

14 But long story short, it's the ex parte that's
15 improper. That's the abuse of process. The ulterior purpose
16 would be that they are communicating with the judge. It's
17 for the purpose of biasing the court. What is the proper
18 purpose of an ex parte communication? Quite frankly, I can't
19 think of one. I think they say scheduling, but this doesn't
20 say scheduling. In the e-mail I plead that they talk about
21 the very facts constituting the contempt. And they did, for
22 what it's worth.

23 THE COURT: Let me tell you this. Just looking at
24 12(b)(6) standard, I'm going to deny the motion on the
25 conspiracy. You need to replead the abuse of process within

1 10 days.

2 MR. BROWN: Yes, sir. And for what it's worth, we
3 actually brought one up here.

4 THE COURT: Very well may be that she's right,
5 summary judgment later, but I'm going to deny your motion.

6 MS. LOHR: Yes, Your Honor. Thank you. With leave
7 to refile the motion to dismiss if he doesn't properly assert
8 it the next time?

9 THE COURT: Sure. Absolutely.

10 MR. BROWN: Thank you, Your Honor.

11 THE COURT: Have a nice day.

12 MR. BROWN: We are going to take a form order?

13 MS. LOHR: I'm assuming he's going to replead that
14 the magistrate isn't an agent. Because right now, my point
15 was he pled that they are.

16 THE COURT: I don't know what he's going to plead.
17 I don't care what he pleads. That's up to you to refile the
18 motion. Okay?

19 MS. LOHR: Yes, sir.

20 THE COURT: You should communicate with each other
21 so y'all don't have to --

22 MR. BROWN: Absolutely.

23 THE COURT: Is Form 4 satisfactory to everybody on
24 this?

25 MS. LOHR: Yes, sir.

1 MR. BROWN: Yes, sir.

2 For what it's worth, I didn't get involved in this
3 case until after the contempt hearing. And any parts of the
4 case that appeal to the Supreme Court has been done pro se by
5 Ms. Baracco.

6 THE COURT: Just as an aside, does the appeal have
7 any effect on this case at all? Doesn't sound like they had.

8 MS. LOHR: I don't see how in the world it could.

9 MR. BROWN: No, sir. I am not knocking Ms.
10 Baracco. I was letting you know that I came in after the
11 contempt --

12 MS. LOHR: Although I think perhaps the appeal of
13 the contempt order could, not the appeal of the underlying
14 order. Because if it's upheld, it's upheld, it's upheld,
15 it's upheld.

16 MR. BROWN: There was nothing about the ex parte
17 presented. It's not in the record on appeal.

18 THE COURT: Thank you. Y'all take care.

19 MR. BROWN: You too. Yes, sir.

20 (Whereupon, proceedings are adjourned.)
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CERTIFICATE OF REPORTER

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I, Karen V. Andersen, Registered Merit Reporter,
Certified Realtime Reporter for the State of South Carolina
at Large, do hereby certify that the foregoing transcript is
a true, accurate and complete Transcript of Record of the
proceedings.

I further certify that I am neither related to nor
counsel for any party to the cause pending or interested in
the events thereof.

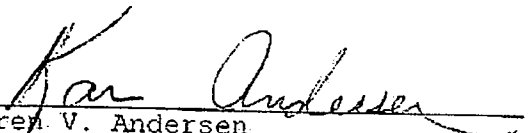

Karen V. Andersen
Registered Merit Reporter
Certified Realtime Reporter

Exhibit 5

South Carolina Circuit Court Fees

I. Filing Fees

\$150 Filing Fee Required

New (never previously filed) cases
Cases restored under Rule 40(j), SCRPC

Appeals to Circuit Court from:

Probate Court
Administrative or Regulatory Agencies (e.g., Workers' Compensation cases)
Arbitration Panels
Magistrate Court (civil only)

Cases transferred from Federal Court that have never been filed in the Circuit Court
Forfeiture cases arising out of drug seizures and DUI 4th convictions
Minor Settlements

\$100 Filing Fee Required

Foreign judgments

\$10 Filing Fee Required

Automobile Arbitration Cases
Lis Pendens (When not accompanied by a Summons and Complaint)
Transcripts of Judgments from Federal & Magistrate's Court
Confession of Judgment
Certificate of Non-Compliance pursuant to a decision of the Resolution of Fee Disputes Board

\$200 Filing Fee Required

Reinstatement of permanently revoked driver's license (§ 56-1-385)

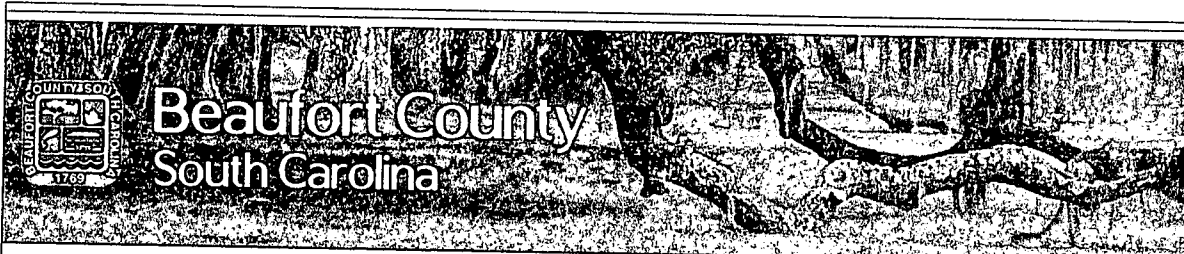
No Filing Fee Required

- Criminal Appeals from Magistrate or Municipal Court [§ 8-21-321(11)]
- Post Conviction Relief Cases (§ 17-27-20)
- Proceedings brought pursuant to the State Employment Security Law (§ 41-39-30)
- Petitions by Minors for Judicial Consent for Abortion [§ 44-41-34(B)]
- Sexual Violent Predator Actions of the Attorney General
- Cases restored after being ended in error
- Cases granted a new trial before appeal to the Supreme Court or Court of Appeals
- Cases remanded by way of appeal from Supreme Court, Court of Appeals, or Federal Court

- Change of Venue Cases (from Circuit Court to Circuit Court)
- Cases transferred from Magistrate's Court (when counterclaim exceeds \$7500)
- Cases returned from Bankruptcy Court
- Orders of the Worker's Compensation Commission
- Confessions of Judgment (if case is filed -- if not, \$10 fee)
- Cases filed accompanied by an order granting a Motion for Leave to Proceed in Forma Pauperis [Rule 3(b)(1), SCRCP].
- Cases filed when a party is represented by an attorney working on behalf of or under the auspices of a legal aid society, a legal services or other nonprofit organization, or the South Carolina Pro Bono Program (written certification from the attorney required) pursuant to Rule 3(b)(2), SCRCP.

II. Motion Fees

Please review the **September 29, 2016 Court Order** and **Motion Fee List**



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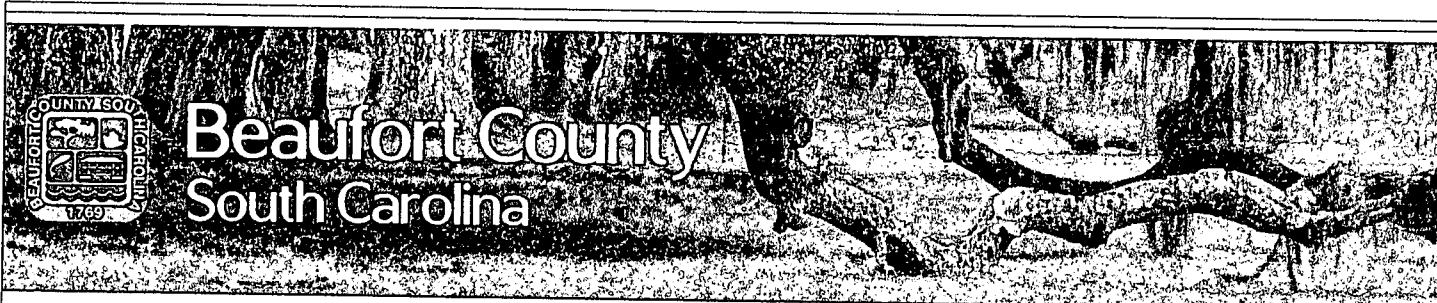
Departments » Legal and Court » Clerk of Court » Fee Schedule

Fee Schedule

Note: We accept Cashier's Check, Money Orders, Business Checks, and Cash Only. Exact Change Only - No Personal Checks Accepted.

Item	Fee
Summons and Complaints	\$150.00
Foreign Judgments	\$100.00
Restored Cases (Rule 40j)	\$150.00
Civil Appeals	\$150.00
All Civil Motions (Orders requiring Judge's signature with the exception of Attorney Protective Orders and Orders of Publication)	\$25.00
Judgments (Transcripts)	\$10.00
Confession	\$10.00
Lis Pendens	\$10.00
Release of Lis Pendens	\$1.00
Public Defender Application	\$40.00
Property Bond Processing (attorney must do Title search)	\$10.00
Surety Certificate	\$10.00
Bondsman License Registration	\$150.00
Bondsman License Registration (Out of County)	\$100.00
Records Search (Civil, Judgment, and General Sessions)	\$25.00
Notary Registration	\$5.00
Certification (All Documents)	\$3.00
Exemplified Copy	\$4.00
Copies Per Page	\$0.50
Copies Per Page (Processed by the Clerk of Court Staff)	\$0.55

- [Beaufort CMS](#)
- [Court Schedule](#)
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Departments » Legal and Court » Magistrate Court » Summons-and-Complaint

Summons and Complaint

Magistrate's Jurisdiction is \$7500.00 or less.

Filing Fees

Filing Fee	\$70.00
Service Fee	\$10.00
Total	\$80.00

There is no fee for filing a Counterclaim.

- [Magistrate Court](#)
- [Traffic & Criminal Court Information](#)
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