

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY

Court of Common Pleas

Honorable William Jeffrey Young, Presiding Judge

RECEIVED

AUG 20 2013

SC Court of Appeals

Case No. 2010-CP-26-05964

Appellate Case No. 2013-000195

William H. Bailey, Jr. *Appellant,*

v.

City of North Myrtle Beach,
a South Carolina Municipal Corporation *Respondent.*

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS

William H. Bailey, Jr.,

C.A. No. 2010-CP-26-5964

Plaintiff,

vs.

**ORDER ON PLAINTIFF'S MOTION
FOR SUMMARY JUDGMENT**

City of North Myrtle Beach, a South
Carolina municipal corporation,

Defendant.

FILED
2011 NOV 23 PM 5:10
CLERK OF COURT
Horry County

This matter is before the Court pursuant to a Motion for Summary Judgment filed by plaintiff William Bailey. The Court was briefed by both parties and the matter was heard on August 31, 2011. Counsel for both parties were present.

This action revolves around the question of whether Plaintiff is entitled to a grievance hearing relating to his separation from employment with Defendant. The Court has been advised by both parties that since Plaintiff's separation from employment, Defendant has abolished its grievance procedure.

"Generally, this Court only considers cases presenting a justiciable controversy." *Sloan v. Friends of Hunley, Inc.*, 369 S.C. 20, 25, 630 S.E.2d 474, 477 (2006). "A justiciable 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." *Id.* "A moot case exists where a judgment rendered by the court will have no practical legal effect upon an existing controversy because an intervening event renders any grant of effectual relief impossible for the reviewing court." *Id.* 369 S.C. at 25, 630 S.E.2d at 477. "If there is no actual controversy, this Court will not decide moot or academic questions." *Id.*

Since Defendant has abolished its grievance procedure, any decision by the Court would

MHC

be of no effect. Accordingly, Plaintiff's Motion for Summary Judgment is denied; it is further

ORDERED, that the plaintiff's cause of action for a grievance hearing is dismissed as moot, *Willis v. Wukela*, 379 S.C. 126, 665 S.E.2d 171 (2008); it is further

ORDERED, that nothing herein shall prohibit either party from seeking fees and costs in this case by subsequent motion.

IT IS SO ORDERED.


BENJAMIN H. CULBERTSON
FIFTEENTH JUDICIAL CIRCUIT

Georgetown, South Carolina

Nov. 22, 2011

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2010-CP-26-5964

12 JUL 31 PM 2:56

William H. Bailey, Jr.
PLAINTIFF(S)

City of North Myrtle Beach
DEFENDANT(S)

Submitted by: Benjamin H. Culbertson, Presiding Judge

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

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ 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:

Plaintiff's Motion to Amend Complaint is DENIED. The plaintiff's cause of action for declaratory relief is still pending in this case and shall be scheduled for trial.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : Schedule this case for trial in its normal order of priority.

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A	N/A	\$ N/A

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

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

Benjamin H. Culbertson
Benjamin H. Culbertson, Circuit Court Judge

2148
Judge Code

July 23, 2012
Date

For Clerk of Court Office Use Only

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

Kenneth R. Moss

Derwood L. Aydlette, III (not present)

Christopher Wofford Johnson

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: Grace Hurley

COPIES
MAILEDSTATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS

William H. Bailey, Jr.,

C.A. No. 2010-CP-26-5964

Plaintiff,

ORDER

vs.

City of North Myrtle Beach, a South
Carolina municipal corporation,

Defendant.

FILED
CLERK OF COURT
2012 NOV 27 PM 2:59
CLARE HUGGINS-HARD

This matter came before the Court for a non-jury trial on October 11, 2012 on Plaintiff's cause of action for declaratory judgment. The sole issue before the Court was whether Plaintiff, the former Public Safety Director for Defendant City of North Myrtle Beach, was entitled to a grievance hearing stemming from his separation from employment with the City. For the reasons that follow, the Court finds that (1) there is no justiciable case or controversy before the Court for determination and, (2) even if there were, Plaintiff was not entitled to a grievance hearing.

Factual Background

Plaintiff is the former Director of Public Safety for the City of North Myrtle Beach. He testified that he was employed with the City in various capacities for about 20 years and had a good work record until recent events. Those recent events surrounded the theft of Plaintiff's service weapon from the glovebox of his personal vehicle.¹ In the wake of this incident, Plaintiff

¹The parties apparently dispute the details of the incident involving Plaintiff's weapon and his representations following the incident. Those matters, however, were not before this Court for decision, and are not relevant to the instant action. The Court notes that the parties are engaged in other litigation surrounding Plaintiff's separation from employment. *See Bailey v. City of North Myrtle Beach, et al.*, C.A. No. 2010-CP-26-5145.

was demoted. Plaintiff was granted a hearing before the City's grievance committee regarding his demotion, and the committee recommended upholding the demotion.

Former City Manager John Smithson² testified that, during the grievance over Plaintiff's demotion, Plaintiff lied about matters surrounding the theft of his gun and what he had reported to the City about the theft. As a result, Smithson met with Plaintiff on April 28, 2010, and told him that he could resign, or he would be fired, and that he needed the decision by 3:00 p.m. the following day. Plaintiff testified that he understood ^{that} if he resigned, he would not be allowed to grieve his separation from employment. Smithson and Plaintiff both testified that the meeting concluded with Plaintiff's storming out, and Plaintiff testified he told Smithson he would not resign.

The next day, a Thursday, Plaintiff's attorney contacted the City to find out what benefits Plaintiff would receive at separation. This began two days of negotiations between Plaintiff's counsel and Steve Savitz, whose law firm represents the City in employment matters, to determine if an amicable parting could be arranged. Late in the evening Friday, April 30, the negotiations ended without any agreement.

Savitz testified that, after he ended his conversation with Plaintiff's counsel, he spoke with Smithson by phone. Smithson told Savitz that he would consider Plaintiff's termination date to be April 30, instead of April 29 as he had previously indicated in his ultimatum. Smithson testified he made the change because the parties were in negotiations during the initial deadline. Smithson and Savitz also testified that Smithson considered that, by making the termination effective April 30, Plaintiff may qualify for retiree health insurance benefits under the City's

²Smithson was the city manager until July 2010, when he retired.

 ²

group health plan if he retired. As of April 30, however, both believed that Smithson had terminated Plaintiff's employment.

Smithson and Savitz's beliefs notwithstanding, Plaintiff in fact retired from employment on April 30, 2010. Plaintiff testified that he either spoke with a representative of the South Carolina Police Officer's Retirement System ("PORS"), or met with the representative in person, on April 29. At one point, he told the representative he wanted to know if he could retire were he to "quit" on April 29. Plaintiff further testified that, despite his previous assertion that he would not resign, he was considering all of his options in order to ensure he had income. Ultimately, Plaintiff arranged to purchase five years of service in the PORS, which permitted him to retire with a full pension. He completed the purchase on April 30, 2010, by delivering a personal check for the purchase amount to the PORS. At the same time, Plaintiff elected to retire, conceding under questioning that he did so because he believed he was unemployable. According to PORS records, Plaintiff's last day of service was April 30, 2010, and his first day of retirement was May 1, 2010.

On May 28, Plaintiff submitted a request to the City for a grievance hearing over his separation from employment. In the request, Plaintiff asserted that he was "forced into taking early retirement." Just days later, the *Sun News* ran an article concerning the retirement in which Plaintiff's counsel was interviewed. The article read in relevant part:

Bailey filed his retirement paperwork when the state office opened at 8:30 a.m. on April 30, [Plaintiff's Counsel] Moss said – before City Manager John Smithson could take any threatened disciplinary action.

"We were still negotiating with the city at the time William drove to Columbia," Moss said. "The city didn't even know he had

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retired."

(Def. Ex. 2)³. Plaintiff's counsel also wrote to Savitz, informing him on May 24 by email "on the morning of April 30, 2010, . . . , [Plaintiff] elected to retire . . ." (Def. Ex. 1, p. 2).

In response to Plaintiff's request for a grievance hearing, Savitz wrote to Plaintiff's counsel to discuss scheduling and other administrative issues relating to the grievance hearing. Shortly afterward, Plaintiff filed a verified complaint with the Court in his other lawsuit, asserting several causes of action relating to his separation from employment.⁴ In the verified complaint, Plaintiff asserted that he was "constructively dismissed" and that Smithson "engineer[ed] and force[d] a wrongful constructive discharge of Plaintiff." Plaintiff admitted that he swore to the accuracy of the complaint in the verification. He further testified that he believed the terms meant that he had been forced to do something he did not want to do, *i.e.*, retire.

Savitz testified that his law partner, Linda Edwards, was primarily responsible for advising the City concerning its handling of Plaintiff following the incident with his service weapon. Edwards and Savitz both also testified that it was the firm's common practice to select another of the firm's lawyers to advise a grievance committee to avoid any appearance of conflict with the lawyer advising the municipality's management, and that Savitz had handled the separation negotiations in April because Edwards was unavailable those days. Ultimately,

³During cross examination, Plaintiff questioned the veracity of the reporter who authored the article. However, Plaintiff conceded that he had not asked for a retraction, he had not questioned his attorney about the article, and he did not know whether his attorney made the statements attributed to him. Further, Plaintiff offered no testimony from his attorney or anyone else to rebut the statements. Most importantly, Plaintiff did not object to admission of the article into evidence.

⁴See footnote 1, *supra*.

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Edwards reviewed the matter and determined that Plaintiff was not entitled to a grievance hearing. On July 2, she wrote Plaintiff's counsel:

I reviewed William Bailey's request for a grievance hearing. After reviewing his letter, as well as the allegations of his complaint filed in Horry County, I have determined that because Mr. Bailey chose to retire in lieu of being terminated, he is not entitled to a hearing before the City's grievance committee.

(Pl. Ex. 5). Edwards conceded in the letter that Plaintiff may be entitled to a hearing to clear his name and offered such a hearing to Plaintiff.⁵ Plaintiff's counsel responded to Edwards by letter dated July 5, rejecting both the City's conclusion that Plaintiff was not entitled to a grievance hearing and rejecting the offer of a name clearing hearing. (Def. Ex. 3).

Following Smithson's retirement in July 2010, the City hired Mike Mahaney as city manager. Under the city manager form of government in North Myrtle Beach, the city manager makes personnel decisions such as hiring and discharge. See S.C. Code § 5-13-90 (1) (vesting power of employment and discharge in city manager). State law further provides that, if a city has a grievance committee, the committee only makes recommendations to the individual vested with hiring and discharge authority. See S.C. Code § 8-17-140. Assistant City Manager Steve Thomas testified that Mahaney was concerned that he had to make discharge decisions in the first instance, then review the grievance committee's recommendations. He asked Thomas to review

⁵Under federal constitutional law, "a public employer cannot deprive a probationary employee of his 'freedom to take advantage of other employment opportunities.'" *Sciolino v. City of Newport News*, 480 F.3d 642, 645-646 (4th Cir. 2007) (quoting *Board of Regents v. Roth*, 408 U.S. 564, 573 (1972)). Accordingly, a "liberty interest" under the Fourth Amendment is implicated by public announcement of the reasons for an employee's discharge. *Id.* (citing *Johnson v. Morris*, 903 F.2d 996, 999 (4th Cir. 1990)). This liberty interest gives rise to a due process right to notice and to be heard – not for the purpose of remaining employed, but "merely to clear one's name against unfounded charges." *Johnson*, 903 F.2d at 999 (internal citations and quotations omitted).

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whether the City could repeal its grievance procedure, and Thomas submitted a recommendation to City Council that it do so on May 16, 2011. (Pl. Ex. 8). Ultimately, the recommendation was adopted, and the City repealed its grievance procedure during the pendency of this lawsuit.

Plaintiff initially sought a declaratory judgment that (1) he was entitled to a grievance hearing, (2) the city could not provide him with a name clearing hearing pursuant to *Roth, supra*, and (3) that the city's counsel could not advise the grievance committee. He further sought injunctive relief granting him each of those things. Prior to trial, Judge Culbertson ruled that, because the City no longer had a grievance procedure, the Court could not grant him injunctive relief, and that cause of action became moot. At trial, Plaintiff conceded that the only issue remaining for the Court was whether he was entitled to a grievance hearing.

Analysis

1. This Court lacks jurisdiction to hear the cause of action because there is no justiciable case or controversy.

An action for a declaratory judgment proceeds under the state's Uniform Declaratory Judgment Act ("Act"), S.C. Code §§ 15-53-10, *et seq.* Pursuant to the Act, the Court may "refuse to render or enter a declaratory judgment or decree when such judgment or decree, if rendered or entered, would not terminate the uncertainty or controversy giving rise to the proceeding." S.C. Code § 15-53-70. Whether to grant a declaratory judgment rests with the sound discretion of the Court. *Garris v. Governing Bd. of South Carolina Reinsurance Facility*, 319 S.C. 388, 390, 461 S.E.2d 819, 820 - 821 (1995) (citing *Ott v. Tindal*, 297 S.C. 395, 377 S.E.2d 303 (1989)); *Williams Furniture Corp. v. Southern Coatings & Chem. Co.*, 216 S.C. 1, 6-7, 56 S.E.2d 576,

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578 (1949).

Our Supreme Court has held that "the existence of an actual controversy is essential to jurisdiction to render a declaratory judgment." *Power v. McNair*, 255 S.C. 150, 153, 177 S.E.2d 551, 552 (1970) (quoting *South Carolina Electric & Gas Co. v. South Carolina Public Serv. Auth.*, 215 S.C. 193, 54 S.E. 2d 777)). Thus, "to maintain an action under the [Act], there must exist a justiciable controversy." *Id.* In *Power*, the high court cited the following definition of a justiciable controversy:

A justiciable controversy is a real and substantial controversy which is appropriate for judicial determination, as distinguished from a dispute or difference of a contingent, hypothetical or abstract character.

Power, 255 S.C. at 154, 177 S.E.2d at 553 (quoting *Guimarin & Doan v. Georgetown Textile & Mfg. Co.*, 249 S.C. 561, 566, 155 S.E.2d 618, 621 (1967)). Further, the Act does not require the courts to render purely advisory opinions. *Power, supra*; *City of Columbia v. Sanders*, 231 S.C. 61, 67-68, 97 S.E.2d 210, 212 (1957).

The *Power* case is particularly similar to the instant case, and the Court finds it controlling. In *Power*, the police chief and a patrolman of the City of Laurens sought to enlarge their jurisdiction outside the city's borders to aid in the investigation of crimes and apprehending of suspects who fled the jurisdiction. To that end, they sought to be commissioned as constables with state-wide jurisdiction by the governor. *Power*, 255 S.C. at 152, 177 S.E.2d at 552.

The governor refused, believing that making the appointments would constitute dual office holding by the plaintiffs. *Id.* The governor was otherwise willing to make the appointments. *Id.* at 154, 553. Accordingly, the plaintiffs sought a declaratory judgment to

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determine whether their holding both the office of constable and police officer would constitute dual office holding.

The Supreme Court raised the issue of jurisdiction *sua sponte* and concluded that it could not grant the declaratory judgment. Despite the fact that the governor was willing to make the appointment, the decision to do so was discretionary – that is, the court could not force the governor to make the appointment. Accordingly, any decision by the court “would settle no legal rights of the parties.” *Id.* Rather, it “would be only advisory and, therefore, beyond the intended purpose and scope of a declaratory judgment.” *Id.* at 154-155, 553.

Here, Plaintiff seeks a determination that he was entitled to a grievance hearing due to his separation from employment. Granting the requested relief, however, will not settle the legal rights of the parties or have any effect whatsoever on the parties’ legal status with respect to each other. The Court cannot grant injunctive relief and require the City to give Plaintiff a grievance hearing. Whether to have a grievance procedure is left to the discretion of municipal governments. *See* S.C. Code § 8-17-120 (“governing body of any . . . incorporated municipality in this State *may* by ordinance or resolution adopt a plan for the hearing and resolution of employee grievances”) (emphasis added); *Baxley v. City of North Charleston*, 533 F.Supp. 1248, 1254 n.10 (D.S.C. 1982) (state law “does not require any county or municipality to adopt a plan for hearing grievances”). Further, another judge of this Court has already ruled that injunctive relief is not available to Plaintiff. *See Salmonsen v. CGD, Inc.*, 377 S.C. 442, 454, 661 S.E.2d 81, 88 (2008) (one circuit judge may not overrule another). Accordingly, even if the Court were inclined to grant Plaintiff a declaratory judgment, it would not serve any purpose. Plaintiff would not get a grievance, and the parties’ rights as to each other would not change.



Because any ruling by this Court would not serve to clarify the parties' rights or status as to each other, there is no justiciable controversy. Therefore, the Court holds that it is without jurisdiction to grant a declaratory judgment.

2. Even if the Court had jurisdiction, Plaintiff was not entitled to a grievance because he retired.

Although the Court has already disposed of the matter, for the sake of completeness, the Court finds that even if it had jurisdiction to grant a declaratory judgment, Plaintiff is not entitled to it. At issue is whether Plaintiff was terminated from employment, or whether he retired. If he was terminated, the City's grievance procedure allowed him to grieve. If instead he retired, Plaintiff was not entitled to a grievance hearing.

Grievance procedures among municipalities are not required, but where they are in place, they must substantially conform to the South Carolina County and Municipal Employees Grievance Procedure Act. S.C. Code § 8-17-120 (if grievance procedure is adopted, it "shall conform substantially to the guidelines set forth in this article"). The statute provides that grievances include such disciplinary action as "dismissal, suspensions, involuntary transfers, promotions and demotions." *Id.* Likewise, the City's grievance procedure provided:

A grievance is defined as any complaint by an employee that he has been treated unlawfully or in violation of City policies with regard to matters pertaining to his employment by the City. This definition includes, but is not limited to, discharge, suspension, involuntary transfer, promotion and demotion. . . .

(Pl. Ex. 1). No provision is made in either the law, or the City's procedure, for grieving a resignation by retirement from employment. Further, Plaintiff conceded at trial that employees who resign do not get a grievance hearing.

WJF 9

The South Carolina Supreme Court has held that employees who resign under threat of termination are not entitled to a grievance hearing. *Eubanks v. Smith*, 292 S.C. 57, 62, 354 S.E.2d 898, 901 (1987). In *Eubanks*, the City of Myrtle Beach's building department director, electrical inspector and plumbing inspector discovered allegedly falsified test scores on electrical and plumbing exams of applicants and reported the matter to the city manager. The city manager ordered an investigation and brought in the State Law Enforcement Division. During the course of the investigation, the city manager issued press statements implying the employees were guilty of criminal conduct and that disciplinary action would be taken. *Id.* at 899-900. Ultimately, the city manager presented the employees with the choice of resigning or being terminated. The building department director, Wiggins, resigned, and the other two employees were terminated. *Id.*

All three employees requested a grievance hearing. The city provided a hearing for the two employees who were terminated ; however, Wiggins' request was denied because he had resigned. Wiggins sued, claiming he was wrongfully denied a grievance. The Supreme Court summarily rejected Wiggins' contention, holding he was not entitled to a hearing "because he resigned as an alternative to being terminated." *Id.*

Here, like in *Eubanks*, City Manager Smithson presented Plaintiff with a choice: resign or be fired. While Plaintiff adamantly maintained at trial that he did not voluntarily resign, that is not the question. The question is whether, faced with a choice between resigning or being fired, he chose – albeit under pressure – to resign by retiring. The evidence is undisputed that he did so.

Plaintiff admitted at trial that on April 30, 2010, he purchased five years of service and filed his paperwork seeking to retire. More telling, however, is the position he took numerous



times in the days immediately following his retirement. Plaintiff wrote in his grievance request that he was "forced into taking early retirement." (Pl. Ex. 4). Further, Plaintiff's counsel, who was intimately involved in the negotiations that followed Smithson's ultimatum, gave an interview in the *Sun News* in which he claimed that Plaintiff retired before the City could take any threatened disciplinary action. (Pl. Ex. 2). Plaintiff has also sworn under oath in a verified complaint filed in another action that he was "constructively dismissed" and "constructive[ly] discharge[d]." A verified complaint is the equivalent of an affidavit. See *Tommy L. Griffin Plumbing & Heating Co. v. Jordan, Jones & Goulding, Inc.*, 351 S.C. 459, 471, 570 S.E.2d 197, 203 (Ct. App. 2002).

A constructive discharge is a well-settled term of art meaning that an employee is compelled to resign, rather than actually being terminated by the employer. See *Graves v. Horry-Georgetown Technical College*, 391 S.C. 1, 9-10, 704 S.E.2d 350, 355 (S.C. Ct. App. 2010) (constructive discharge where "employer deliberately makes the working conditions intolerable in an effort to induce the employee to quit"); *Cole v. Lexington-Richland School Dist.*, 5, 2011 WL 441974, *2 (D.S.C. Feb. 8, 2011) (unpublished) (allegations employee given "option to resign from her position or be terminated [and who] tendered her letter of resignation under duress . . . to prevent a termination from appearing on her employment record . . . are sufficient to raise a valid claim for constructive discharge in the form of forced resignation"); accord, *Tracey v. Sconnix Broadcasting of South Carolina, Inc.*, 284 S.C. 379, 381, 325 S.E.2d 542, 544 (1985) (noting when employee contracts to fill a position, material change in duties or reduction in rank constitutes "constructive discharge"); *Barr v. Board of Trustees of Clarendon County School Dist. No. 2*, 319 S.C. 522, 528, 462 S.E.2d 316, 319 (S.C. Ct. App. 1995) (analyzing

allegation that an involuntary transfer was a constructive discharge). In the face of Plaintiff's own sworn allegations and coupled with the position he took both in requesting his grievance and in the media, it is impossible to conclude anything other than Plaintiff opted to retire in lieu of being discharged from employment.

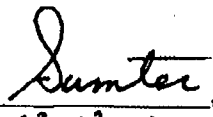
In sum, Plaintiff retired. While he may not have wanted to retire at that particular time, or under the particular circumstances, and while he may not have retired had the City not threatened him with termination, he nevertheless chose retirement instead of termination. Accordingly, even if the Court had jurisdiction to grant a declaratory judgment, Plaintiff is not entitled to that relief because he was not entitled to a grievance hearing.

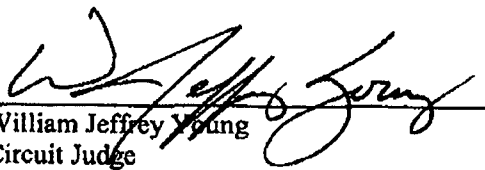
Conclusion

There being no justiciable case or controversy, this Court lacks jurisdiction to grant a declaratory judgment. Even if the Court had jurisdiction, Plaintiff is not entitled to a declaratory judgment that he was entitled to a grievance hearing because he retired.

Accordingly, it is ORDERED that the clerk shall direct entry of judgment in favor of the Defendant in this matter.

AND IT IS SO ORDERED.


 Sumter, South Carolina
 13 Nov, 2012
 PropOrdTrial.wpd


 William Jeffrey Young
 Circuit Judge

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS

William H. Bailey, Jr.,

Plaintiff,

vs.

City of North Myrtle Beach, a South
Carolina municipal corporation,

Defendant.

C.A. No. 2010-CP-26-5964

**ORDER DENYING MOTION
FOR RECONSIDERATION**FILED
HORRY COUNTY
2013 JAN 23 AM 9:14
MELANIE HUGGINS-WARD
CLERK OF COURT

This matter comes before the Court on Plaintiff's motion for reconsideration of the Court's Order following a non-jury trial of the matter. The matter was tried on October 11, 2012 on Plaintiff's cause of action for declaratory judgment. By Order dated November 13, 2012 and filed by the Clerk's office on November 27, 2012, the Court held that there was no justiciable controversy for determination. In the alternative, the Court held that, were there a justiciable controversy, Plaintiff nevertheless was not entitled to the relief he sought. Plaintiff filed the instant motion to reconsider on November 26, 2012.

Analysis

As an initial matter, it is not clear under which rule Plaintiff brings his motion. The rules permit a motion for a new trial in a non-jury matter. S.C.R.Civ.P. 59(a)(2). A motion to alter or amend a judgment under Rule 59(e) may also be made when a party "believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to *reconsider* or rule on it." *Elam v. South Carolina Dept. of Transportation*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004) (emphasis added). And a party may seek relief from a judgment or order when it believes there has been a clerical mistake, or in case of mistake, inadvertence, excusable neglect, fraud, newly discovered evidence, or the like.

S.C.R.Civ.P. 60. Our Court of Appeals has instructed that "[i]t is the substance of the requested

WPH

relief that matters regardless of the form in which the request for relief was framed." *Richland County v. Kaiser*, 351 S.C. 89, 94, 567 S.E.2d 260, 262 (Ct.App. 2002). Since Plaintiff has styled his motion as asking for "reconsideration," and since he essentially argues that the Court erred in its findings, the Court will treat Plaintiff's motion as one made under Rule 59(e).

The Court has thoroughly reviewed the motion and record and finds no error. Plaintiff argues that, despite the mootness of his original request for relief – that the City grant him a grievance hearing – there remains a justiciable controversy. Plaintiff relies on *Sloan v. Greenville County*, 356 S.C. 531, 590 S.E.2d 338 (Ct. App. 2003) and *Ashmore v. Greater Greenville Sewer Dist.*, 211 S.C. 77, 44 S.E.2d 88 (1947). These cases are inapposite. *Sloan* involved a challenge to Greenville County's awarding projects in a manner allegedly inconsistent with the County's procurement code. Although the project was complete at the time the matter was heard, the Court of Appeals held that there was a justiciable controversy because the matter was capable of repetition. That is, the County could again award projects in the same manner. *Sloan*, 356 S.C. at 554, 590 S.E.2d at 350 ("This court may take jurisdiction of a case, despite mootness, if the issue raised is capable of repetition, but evading review."). Likewise, in *Ashmore*, a taxpayer sued to enjoin issuance of bonds to build an auditorium by the Sewer District in part because the Board of Trustees for the auditorium was impermissibly constituted. During the pendency of the action, the electorate approved issuance of the bonds. Holding that "questions of public interest originally encompassed in an action should be decided for future guidance," our Supreme Court went on to decide whether the General Assembly had authority to create a special district for construction and operation of the auditorium in the first place. *Ashmore* 211 S.C. at 96, 44 S.E.2d at 96-97.

The present action does not present any real opportunity for repetition, nor does it present any questions of public interest that need to be decided for future guidance. Here, the City has abolished its grievance procedure. Accordingly, there is little chance that Plaintiff or anyone else

will wind up in similar circumstances. Further, no law requires the City to have a grievance procedure. State statute simply provides that, *if* the City has a grievance procedure, the procedure must conform substantially to the statute. S.C. Code § 8-17-120. Therefore, the City's repeal of its grievance procedure presents no question of public interest on which future guidance is needed.

The remainder of Plaintiff's argument objects to the Court's alternative ruling concerning Plaintiff's right to have a grievance and appears to rest on his contention that, in deciding the matter, the Court's Order may be *res judicata* as to some issue between the parties in other pending litigation. Courts routinely issue orders that reach the same result based on alternative grounds, any one of which alone would support the result. *See e.g., Weeks v. McMillan*, 291 S.C. 287, 353 S.E.2d 289 (Ct. App. 1987); *Dwyer v. Tom Jenkins Realty, Inc.*, 289 S.C. 118, 344 S.E.2d 886 (Ct. App. 1986); *Crews v. W.R. Crews, Inc.*, 390 S.C. 15, 699 S.E.2d 189 (Ct. App. 2010). As for Plaintiff's contention that the alternative ruling may affect the other litigation between the parties, "plaintiff is the master of the complaint." *Caterpillar Inc. v. Williams*, 482 U.S. 386, 398-99 (1987). He could have brought this claim with, or joined it to, the claims in his pending litigation. In any event, whether and to what extent this Court's ruling may affect the other litigation between the parties is not before this Court to decide.

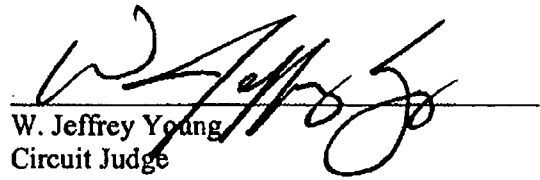
Conclusion

For the foregoing reasons, Plaintiff's motion for reconsideration is denied.

AND IT IS SO ORDERED.

Sumter, South Carolina

12 Jan, 2013


W. Jeffrey Young
Circuit Judge

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION No. 2010-CP-26- **5964**

William H. BAILEY, Jr.,)

Plaintiff,)

-vs.-)

CITY OF NORTH MYRTLE BEACH,)
a South Carolina municipal corporation,)

Defendant.)

VERIFIED COMPLAINT

(Declaratory Judgment; Injunction)

Now comes the Plaintiff William H. Bailey, Jr. ("Plaintiff"), complaining of the Defendant City of North Myrtle Beach, and would show this Honorable Court as follows:

JURISDICTION AND VENUE

1. Plaintiff is a citizen and resident of Horry County, South Carolina and is a former employee of the City of North Myrtle Beach, a South Carolina municipal corporation located in Horry County, South Carolina ("City").
2. City is a South Carolina municipal corporation located in Horry County, South Carolina.
3. This Honorable Court has personal jurisdiction over the parties to this Civil Action, subject matter jurisdiction over the claims asserted herein, and venue is proper for this action in Horry County, South Carolina.

FACTUAL BACKGROUND AND ALLEGATIONS OF FACT

4. All prior allegations, denials, admissions (whether qualified or not) and arguments are repeated here as if set forth verbatim.
5. City is managed under the council-manager form of government as described in South Carolina Code § 5-13-10 *et seq.* (Supp. 2009) by a City Manager.
6. The City Manager's powers and duties are set forth in the Code of Ordinances of the City of North Myrtle Beach ("Code of Ordinances") at Chapter 2, Article III, § 2-56 *et al.* and in the South Carolina Code of Laws at S.C. Code Ann. § 8-15-160 *et al.*

7. Except as set forth in the Code of Ordinances and the South Carolina Code, City Manager's powers and authorities do not include the convening of public hearings and the promulgation of rules for public hearings.
8. City has adopted a Personnel Manual, the provisions of which are incorporated by reference into the Code of Ordinances pursuant to Article 1, § 17-2 ("Personnel Manual").
9. Pursuant to the Personnel Manual, a Grievance Committee has been established for the hearing of employee grievances and other purposes, as set out therein (the "Grievance Committee"). A copy of the sections of the current Personnel Manual describing the scope and operation of the Grievance Committee is attached hereto as Exhibit 1 and incorporated herein by reference.
10. Pursuant to the Personnel Manual, a discharged employee may seek a hearing before the Grievance Committee. *See*, Exhibit 1, page numbered 24, paragraph "A":

"A grievance is defined as any complaint by an employee that he has been treated unlawfully or in violation of City policies with regard to matters pertaining to his employment by the City. This definition includes, but is not limited to, discharge¹, suspension, involuntary suspension, transfer, promotion and demotion."
11. By email dated May 02, 2010, counsel for the City Manager stated that the City Manager had terminated the employment of Plaintiff with the City effective April 30, 2010. A copy of that email is attached hereto as Exhibit 2 and incorporated herein by reference (the "May 02 Email").
12. By letter dated June 08, 2010, counsel for the City Manager acknowledged that Plaintiff *"has appealed his discharge from the City."* The letter went on to suggest *inter alia* some alternative dates on which a Grievance Committee hearing might be scheduled. A copy of that letter is attached hereto as Exhibit 3 and incorporated herein by reference (the "June 08 Letter").
13. In preparing and transmitting the letter attached hereto as Exhibit 3, counsel for the City Manager was responding to a letter from Plaintiff to the City dated May 28, 2010, a copy of which is attached hereto as Exhibit 4 and incorporated herein by reference (the "Grievance Appeal").

¹ Emphasis added.

14. The June 08 Letter was written by counsel for the City Manager with actual knowledge of the circumstances set forth in the Grievance Appeal, including but not limited to the disclosure by Plaintiff that prior to the deadline for his discharge by the City Manager on April 30, 2010 had elapsed, Plaintiff had mitigated his damages by purchasing additional years of service in order to draw full retirement benefits after separation from employment with the City.
15. On July 02, 2010, counsel for the City Manager transmitted electronically a letter denying the Grievance Appeal and stating that the City Manager would not allow a hearing as provided by the Personnel Manual before the Grievance Committee, but had arranged for a "public hearing" on July 08, 2010, at which Plaintiff would be allowed to "*address the City Manager...*" A copy of that letter is attached hereto as Exhibit 5 and incorporated herein by reference (the "**July 02 Letter**").
16. Upon information and belief, there is no provision in the Ordinances of the City, the South Carolina Code, or the approved budget of the City for the holding of such a "public hearing" as suggested by the July 02 Letter.
17. Upon information and belief, the convening of the "public hearing" suggested by the July 02 Letter was undertaken without approval by vote of a majority of the elected members of the City's Council, and is *ultra vires* the authority of the City Manager.
18. In the June 08 Letter, counsel for the City Manager indicated he intended to instruct the Grievance Committee as to what evidence the Committee might receive or consider. Counsel for the City Manager also indicated he would be "advising and consulting" with the Committee.
19. Also in the June 08 Letter, counsel for the City Manager suggested variances from the procedures set forth in the Personnel Manual, including but not limited to the request that any questions to be suggested by the Plaintiff to the members of the Grievance Committee should be disclosed to the City Manager through his counsel two days in advance of the hearing.
20. Upon information and belief, such variances from the Personnel Manual procedures had not been approved by affirmative vote of a majority of the elected members of City's Council.

21. The City Manager has no authority to vary the Ordinances of the City or adopt procedures for the conduct of Grievance Committee hearings except as set forth in the Personnel Manual.
22. Upon information and belief, Rule 1.7(b)(3) of the South Carolina Rules of Professional Conduct for attorneys prohibits counsel for the City Manager representing, advising, counseling or instructing the Grievance Committee in a proceeding in which the conduct of the City Manager is the subject of the complaint by Plaintiff to the Grievance Committee.
23. This Honorable Court has jurisdiction pursuant to S.C. Code Ann. § 15-53-20 (Supp. 2009) to declare the rights, duties and obligations of the parties in this action.

FOR A FIRST CAUSE OF ACTION – DECLARATORY RELIEF

24. All prior allegations, denials, admissions (whether qualified or not) and arguments are repeated here as if set forth verbatim.
25. City Manager has no authority under the South Carolina Code or the Ordinances of the City of North Myrtle Beach to deny Plaintiff a hearing before the City Grievance Committee.
26. City Manager has no authority to vary the Ordinances of the City by expending taxpayer monies on a form of “public hearing” alien to the laws of the State of South Carolina and the City of North Myrtle Beach.
27. Counsel for the City Manager are conflicted from representing, advising, counseling or instructing the Grievance Committee in a proceeding in which the conduct of the City Manager is the subject of the complaint by Plaintiff to the Grievance Committee.

FOR A SECOND CAUSE OF ACTION – INJUNCTIVE RELIEF

28. All prior allegations, denials, admissions (whether qualified or not) and arguments are repeated here as if set forth verbatim.
29. Plaintiff has standing to seek a Temporary, Preliminary and Permanent Injunction against the City, its employees and agents prohibiting deviations from the Code of Ordinances of the City relating to the convening and conduct of Grievance Committee hearings and other public hearings.

PRAYER FOR RELIEF

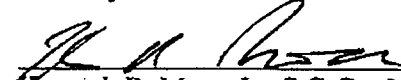
WHEREFORE, having shown just cause, the Plaintiff William H. Bailey, Jr. prays that this Honorable Court render judgment against the Defendant City of Myrtle Beach, and issues its Order finding and declaring as follows:

- A. As to the First Cause of Action (Declaratory Relief) that:
 - a. The City Manager has no authority under the South Carolina Code or the Ordinances of the City of North Myrtle Beach to deny Plaintiff a hearing before the City Grievance Committee; and
 - b. The City Manager has no authority to vary the Ordinances of the City by expending taxpayer monies on a form of "public hearing" alien to the laws of the State of South Carolina and the City; and
 - c. Counsel for the City Manager are conflicted and may be enjoined from representing, advising, counseling or instructing the Grievance Committee in a proceeding in which the conduct of the City Manager is the subject of the complaint by Plaintiff to the Grievance Committee.
- B. As to the Second Cause of Action (Injunctive Relief) that:
 - a. The City, its employees and agents are required to afford the Plaintiff a hearing on the matters set forth in the Grievance Appeal referenced above, in strict accordance with the procedures set forth in the City Personnel Manual; and
 - b. The City, its employees and agents shall be enjoined from conducting any Grievance Committee or other public hearing except in accordance with the provisions of the City Personnel Manual; and
 - c. That counsel for the City Manager be enjoined from representing, advising, counseling or instructing the Grievance Committee in a proceeding in which the conduct of the City Manager is the subject of the complaint by Plaintiff to the Grievance Committee; and
- C. For such other further and ancillary relief as this Honorable Court may find just and proper, including but not limited to an award of costs and expenses to the Plaintiff including his attorneys' fees and the costs of filing this action.

Respectfully submitted.

July 05, 2010

The McGougan Law Firm, LLC.
Attorneys for the Plaintiff



Kenneth R. Moss, , S.C. Bar No. 15520
1180 Highway 17 North, Suite 2
P.O. Box 250, Little River, South Carolina 29566
Tel: (843) 281-9901 Facsimile: (843) 281-9903
krmoss@mcgouganlawfirm.com

EXHIBIT #1

- accident records, purchase orders, time sheets or any other report, record or application.
45. Conviction, plea of guilty or plea of nolo contendere of or to a charge of theft, violation of drug laws or sexual misconduct of or to an offense which affects the City's reputation or which reasonably could create concern on the part of citizens.
 46. Revocation of or failure to report suspension of valid driver's license when employee is required to operate motor vehicles on duty.
 47. Misuse of City funds.
 48. Offering or accepting a bribe.
 49. Knowingly harboring any communicable disease which may endanger other employees.
 50. Receipt from any person of a fee, gift or any other valuable thing in the course of work when such fee, gift or valuable thing is given in hope or expectation of receiving a favor or better treatment than accorded other persons.
 51. Reporting for work or being at work under the influence of alcohol or of controlled and non-prescribed substances, including marijuana. An employee may be required to submit to a blood test or unanalysis to determine if this rule has been violated.
 52. Any other reason, which in the city's sole discretion, warrants disciplinary action.

Types of Discipline.

Disciplinary action which may be taken includes but is not limited to:

- a. Informal counseling
- b. Oral reprimand
- c. Written reprimand
- d. Suspension without pay
- e. Probation
- f. Demotion
- g. Dismissal

Grievance Procedure.

This procedure is adopted in accordance with the "County and Municipal Employees Grievance Procedure Act," Section 8-17-110, et. seq., Code of Laws of South Carolina, 1976.

- A. A grievance is defined as any complaint by an employee that he has been treated unlawfully or in violation of City policies with regard to matters pertaining to his employment by the City. This definition includes, but is not limited to, discharge, suspension, involuntary transfer, promotion and demotion. Written warnings are not grievable. Compensation is not a proper subject for the

EXHIBIT #1

grievance procedure except as it may apply to alleged inequities within a department of the City. However, if an employee believes he has not received or been credited with or has otherwise lost benefits or wages, he must present his grievance in accordance with this procedure or the wages may be forfeited.

B. An employee who feels that he has a grievance must follow the following procedure:

Step 1. He must discuss the grievance with his immediate supervisor within five (5) days of learning the facts on which the grievance is based. If his supervisor is unable or unwilling to adjust the grievance to the satisfaction of the employee, the employee must take Step 2.

Step 2. The employee must follow the chain of command in his department, appeal to each successive level of supervision. All Step 1 and Step 2 appeals may be oral. At each level, each supervisor has five (5) calendar days to render a decision. If no decision is made within this time, the grievance is considered denied. If a supervisor at a particular level is unavailable to consider the grievance, it is considered denied and the employee will appeal to the next level of supervision.

Step 3. If the head of the department in which the employee is employed denies the grievance, this decision is final as to any grievance brought by an introductory employee. A new employee is considered probationary until his probationary evaluation is completed and approved by his department head and the City Manager. The department head should prepare a memorandum documenting his discussion with the employee.

C. Non-introductory employees who have exhausted the procedure(s) outlined in "B" may appeal to the employee grievance committee the denial of their grievance by department heads by filing a written request for appeal at the City's Personnel Division. This must be done within seven (7) calendar days of the department head's denial of the grievance. The written request for appeal must include the following information:

- (a) The purpose of the appeal and what recommendation is requested of the grievance committee to send to the City Manager; and
- (b) A statement that the chain of command has been followed in the appeal as required by the grievance procedure.

The Personnel Division staff will assist in preparing the appeal, if requested.

EXHIBIT #1

- D. Within ten (10) working days of receipt of the employee's request the chairperson of the grievance committee will schedule the requested hearing and notify the grievance committee, the employee requesting the hearing, the affected department and the Personnel Division.

The Employee Grievance Committee.

The City Manager appoints a committee composed of six (6) employees and two (2) alternates to serve for terms of three (3) years so that their terms will be staggered, and approximately one-third (1/3) of the terms shall expire each year. A member continues to serve after the expiration of his term until a successor is appointed. Any interim appointment to fill a vacancy prior to the completion of a member's term is for the unexpired term. Any member may be reappointed for succeeding terms at the discretion of the City Manager. All members are selected on a broadly representative basis from among City employees. Members employed in the same department as the grieving employee and members having formed an opinion on the issues prior to the hearing should not participate in that employee's hearing.

- A. The committee annually selects its own chairperson from among its members. The chairperson serves as the presiding officer at all hearings which he attends but may designate some other member to serve as presiding officer in his absence. The chairperson has the authority to schedule and to re-schedule all hearings.
- B. A quorum consists of at least four (4) members and no hearing may be held without a quorum.
- C. The presiding officer has control of the proceedings and takes whatever action is necessary to ensure an equitable, orderly and expeditious hearing. Parties are to abide by his decisions, except where a committee member objects to a decision to accept or reject evidence, in which case a majority vote of the committee will govern.
- D. The committee has the authority to call for files, records and papers which are pertinent to any investigation and which are subject to the control of the City; to call for or consider affidavits of witnesses; to request and hear the testimony of witnesses; to consider the results of polygraph examinations; and to secure the services of a recording secretary in its discretion. The committee has no authority to subpoena witnesses, documents or other evidence, nor may any City employee be compelled to attend any hearing. All proceedings are tape-recorded. Witnesses, other than the grieving employee and the department representative, are sequestered when not testifying. All witnesses testify under oath.
- E. All hearings are held in executive session unless the grieving employee requests 24 hours in advance of the hearing that it is held in open session. The official tape recording and the official minutes of all hearings are subject to the control and disposition of the City Manager.

EXHIBIT #1

- F. Neither the grieving employee nor the department may be assisted by advisers or by attorneys during the hearing itself. However, the committee will have an attorney available to it at any time it considers necessary and the Personnel Division may provide assistance in reading materials to the committee at the request of a grieving employee.
- G. In disciplinary actions by Department Heads and their subordinate supervisors, the employee is to receive in reasonable detail written notice of the nature of the acts or omissions which are the basis for the disciplinary action. This notice may be amended at any time 24 hours or more before the commencement of the hearing. The department must demonstrate that the disciplinary action is for the good of the City. The department makes the first presentation. The committee (and the City Manager, as set forth below) may base its findings and recommendations (and the City Manager his decision) on any additional or different grounds developed from the employee's presentation.
- H. In non-disciplinary grievances the employee must establish that a right existed and that it was denied him, illegally or in violation of a City policy. The employee makes the first presentation.
- I. In all grievances, the grieving employee and the department are each limited to one (1) hour of initial presentation. The party required to make the first presentation is entitled to a ten (10) minute rebuttal of the other party's presentation. The chairperson will appoint himself or another member of the committee as timekeeper.
- J. In all grievances, presentations may be oral, or in writing or both, and may be supported by affidavits or unsworn signed statements from witnesses, by records, other documentary evidence, photographs and other physical evidence. Presentations will be made by the grieving employee (with reading assistance from a member of the Personnel Division, if the employee desires) and by a managerial employee of the affected department. Parties may request the committee call witnesses, and a list of potential witnesses should be submitted to the committee five (5) calendar days prior to the hearing. However, neither party may call witnesses or question the other party, or question any witness called by the committee.
- K. The committee, within twenty (20) days after hearing an appeal, makes its findings and recommendation and report such findings and recommendation to the City Manager. If the City Manager approves, the recommendation of the committee is his decision and results of the decision are transmitted by the committee to the employee and to the head of the particular department involved. If, however, the City Manager rejects the decision of the committee, the City Manager makes his own decision without further hearing, and that decision shall be final. Copies of the decision are transmitted to the employee and to the head of the particular department involved.

EXHIBIT #1

- L. Nothing in this grievance procedure creates a property interest in employment or a contract of employment, nor does this procedure limit the authority of the City Manager [under Section 5-13-90, Code of Laws of South Carolina, 1976, as amended] to remove any employee when necessary for the good of the City.

SECTION V. EMPLOYEE DRUG USE AND DRUG TESTING POLICY

It is well-recognized that drug abuse has a harmful effect on public health and safety, on the welfare of employees, on morale, and on productivity. Furthermore, it is the policy of the City to comply with the Drug Free Workplace Act, to comply with applicable federal regulations, to establish and maintain drug-free workplaces, and to prohibit the unauthorized or unlawful manufacture, distribution, dispensation, possession, and use of controlled substances on or off the job.

For these reasons, the City adopts the following policy:

I. GENERAL RULE

Effective immediately, all employees of the City are prohibited from swallowing, inhaling, injecting, dealing in, or otherwise using or giving the appearance of using illegal drugs and substances (such as marijuana, cocaine, LSD, heroin, etc.) and prescription drugs which are not prescribed for the employee's own use. This prohibition applies to use at any time, both on the job and off the job. City employees are, of course, permitted to possess any substance when required by their jobs or for the purpose of lawful delivery to another person. These prohibitions also apply to leased employees and contractors employed by the City or working on City property.

II. APPLICANTS FOR EMPLOYMENT

Applicants tentatively selected for employment in safety-sensitive positions must undergo a pre-employment drug test. The City does not hire applicants tentatively selected for employment who refuse to submit to a drug test or who test positive for use of illegal or unauthorized substances. An applicant who is rejected under this policy may be considered for future vacancies if he can demonstrate that he is no longer a user of any such substances. For example, the applicant may successfully complete a drug abuse treatment program and pass a more thorough drug test conducted at the applicant's expense. (This may include participation in and successful completion of a rehabilitation program as well as a negative drug test result on a more thorough drug test.)

EXHIBIT #2

From: Stephen T. Savitz [mailto:ssavitz@gsblaw.net]
Sent: Sunday, May 02, 2010 4:31 PM
To: Ken R. Moss
Cc: Noury, Chris
Subject: RE: draft complaint and draft letter, offered in conjunction with settlement negotiations

PRIVILEGED COMMUNICATION

Dear Ken,

Thank you for email, draft complaint and draft letter. You have also sent it to Chris Noury and he and I will be in discussions. From reading your email and attachments, it is clear that William understood from the City Manager that his employment with the City would end either by resignation or termination on April 29th, unless you and I had reached an agreement by Friday evening. We did not reach an agreement. So, when we ended our telephone conversation, with William in your office on the speaker phone, we parted as amicably as possible under the circumstances with the understanding that William was terminated and you would take whatever steps you deemed necessary. I talked with the City Manager after that call and he decided to make the termination effective April 30, 2010, rather than April 29th. I did not advise you of the change in date, so I understand your confusion as to the exact date. I am sure we will be communicating further.

With kindest personal regards,

Steve
Stephen T. Savitz
900 Elmwood Avenue, Suite 100
Columbia SC 29201
☎ 803.799.9311 • 📠 803.254.6951
✉ ssavitz@gsblaw.net

EXHIBIT #2

This email is intended solely for the addressee. It may contain confidential and/or privileged information. If you have received this message in error, please notify us by return email, and delete it from your system. Reading, copying, or disseminating this message is strictly prohibited. Thank you.

Circular 230 Notice: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. federal tax advice contained in this communication (or in any attachment) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties under the Internal Revenue Code or (ii) promoting, marketing or recommending to another party any transaction or matter addressed in this communication (or in any attachment).

EXHIBIT #3



GIGNILLIAT SAVITZ & BETTIS LLP

STEPHEN T. SAVITZ**
 VANCE J. BETTIS*
 LINDA PEARCE EDWARDS*
 KATHRYN THOMAS*
 DERWOOD L. AYDLETTE, III**
 SHAHIN VAFAI*
 CHRISTOPHER W. JOHNSON*
 CHRISTINA M. SUMMER*
 FRED A. WILLIAMS
 JULIAN H. GIGNILLIAT
 (1939-2002)

*CERTIFIED SPECIALIST
 LABOR & EMPLOYMENT LAW
 **CERTIFIED MEDIATOR

June 8, 2010

TRANSMITTED BY ELECTRONIC MAIL (krmoos@mcgouganlawfirm.com)
AND U.S. MAIL

Kenneth R. Moss, Esquire
 The McGougan Law Firm, LLC
 Post Office Box 250
 Little River, SC 29566

Re: William H. Bailey, Jr., Employee Grievance Committee Appeal

Dear Ken:

Mr. Bailey has appealed his discharge from the City. I will be advising and consulting with the Grievance Committee as to the Appeal. The Committee is aware that since you are unavailable between June 14 and June 25 that it needs to select some date after June 25th to accommodate you. I am not available June 29th and 30th. Are there any other dates we should be aware of as to your schedule?

I am concerned about the argumentative and speculative language you expressed in your letter to the Committee. As you certainly know, the arguments in both your and Mr. Bailey's letters are not evidence, and I will instruct the Committee that they should disregard them, except to the extent that they appeal the decision of the City Manager. The only evidence the Committee will take and consider is that which is presented at the hearing. Since I represent the Committee, if there are any procedural issues to discuss, please direct them in writing to me so I may consult with the Committee and the City if necessary.

At the last hearing, some of the Committee expressed some feelings of being intimidated by the public and press being present and there was some reluctance to ask questions. Mr. Bailey has asked that this hearing be open as well. I request that if either Mr. Bailey or the City has any questions they particularly want asked by the Committee of any witness, to submit them

EXHIBIT #3

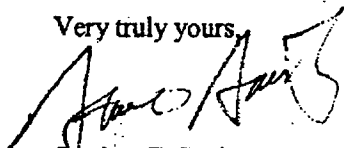
Kenneth R. Moss, Esquire
June 8, 2010
Page 2

to me no later than two days before the Hearing. I will review them and give them to the Committee. The Committee may, of course, ask any questions it wants, but I thought it could help to have some specific suggestions beforehand.

I am in my office most of Tuesday, Wednesday and Thursday of this week.

With kindest personal regards,

Very truly yours,



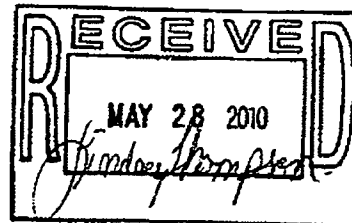
Stephen T. Savitz

STS/kjm

EXHIBIT #4

[REDACTED]
LITTLE RIVER, SC 29566

May 28, 2010



Personnel Department
City of North Myrtle Beach
1018 2nd Avenue South
North Myrtle Beach, SC 29582

Re: Appeal To the Employee Grievance Committee

Dear Sir/Madam:

I believe I have been treated unfairly, unlawfully and in violation of my rights under City policies, and forced into taking early retirement by the City Manager. I believe this is a separate disciplinary action from my earlier Grievance Hearing concerning demotion, and I believe I am entitled to a new Grievance Hearing.

The circumstances that give rise to this Complaint are that:

1. On April 28, 2010 the City Manager summoned me to a meeting and demanded that I resign from employment with the City because of my statements to the Grievance Committee at its hearing on April 19, 2010, including details of the things the City Manager had asked me to do personally for him, and my defense of my own actions related to the theft of my service weapon. He demanded that I resign before 3:00 p.m. on April 29, 2010, failing which he stated he intended to terminate my employment on April 29, 2010, which he understood to be one day before I would be entitled to opt to retire under the State system (he was mistaken).
2. To understand the alternatives I had before me including unemployment, insurance and pension rights, I had my attorney write a letter on April 29, 2010 seeking clarification of my options. I have never received a reply.
3. On May 21, 2010, I received by mail a "COBRA" notice mailed May 20, 2010 but dated April 13, 2010 stating that my employment had been involuntarily terminated as of that date, and that I was obliged to elect for "COBRA" coverage no later than April 30, 2010 (which was before the letter was mailed or received).
4. I believe that these actions – namely a decision to terminate my employment irrespective of the Grievance Committee findings on April 19, 2010, and the demand for my resignation under threat of involuntary termination because of my demand for a Grievance Committee hearing on April 19, 2010 – are further examples of unlawful harassment of me by the City Manager, contrary to the City's policies as set forth in the Personnel Manual and established law of the State of South Carolina.

In accordance with the published Grievance Procedure, I confirm:

EXHIBIT #4

1. I have discussed this matter with the City Manager through his attorneys, and also with the Mayor, but both have confirmed unwillingness to reverse the actions of the City Manager or allow an appeal against the harassment through a Committee of City Council.
2. The purpose of the appeal will be to seek a recommendation that the disciplinary actions be reversed, the harassment by the City Manager should be condemned and sanctioned, and that I should be offered reinstatement with the City.
3. The chain of command in this appeal has been followed as required by the Grievance Procedure.
4. I hereby give notice that I wish to have a Grievance Committee hearing pursuant to the Employment Manual of the City, seeking to reverse any decision to terminate or alter my employment status. I wish that Grievance hearing to be held as soon as possible, in an open forum and with sufficient facilities to accommodate all those that wish to attend, including full media coverage.
5. I also believe that any deliberations of the Grievance Committee should be in public, and that all exhibits should also be made public. This was my understanding as to what should have happened at the earlier Grievance Committee hearing, but the Committee did not do that, apparently under instructions from someone. I had requested that the hearing not be in Executive Session, and I repeat that demand.

Sincerely,

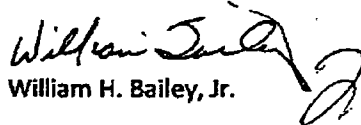

William H. Bailey, Jr.

EXHIBIT #5

July 2, 2010

VIA EMAIL & U.S. MAIL

Kenneth R. Moss, Esquire
The McGougan Law Firm, LLC
Post Office Box 250
Little River, South Carolina 29566
Fax (843) 281-9903

Re: William Bailey Grievance Hearing

Dear Ken:

At the request of the City Manager, I reviewed William Bailey's request for a grievance hearing. After reviewing his letter, as well as the allegations of his complaint filed in Horry County, I have determined that because Mr. Bailey chose to retire in lieu of being terminated, he is not entitled to a hearing before the City's grievance committee.

As you know, the City of North Myrtle Beach is governed by the Council-Manager form of government. S.C. Code of Laws § 5-13-10 *et seq.* Pursuant to statute, the City Manager handles the day-to-day operations of the City. With respect to the grievance procedure, S. C. Code of Laws § 8-17-150 provides that requests for a hearing be submitted to the governing body, in this case, the City Manger. S.C. Code of Laws § 8-17-160.

Our courts have addressed this issue and have ruled that an employee who resigns in lieu of being terminated is not entitled to a due process hearing. Numerous courts throughout the country have ruled similarly and have consistently held that employees who choose to resign in lieu of termination are not entitled to a hearing. Even if the employee believes he is in an untenable position in having to make such a choice, he is not entitled to a hearing if his choice is to resign. In this case, Mr. Bailey chose to retire before any termination took effect. Consequently, he is not entitled to a grievance hearing.

However, because Mr. Bailey has alleged that some things the City said could affect his standing in the community, he may be entitled to a hearing to clear his name. The City Manager

EXHIBIT #5

Mr. Moss
July 2, 2010
Page 2

has scheduled a public hearing for Thursday, July 8, 2010, at 9:00 a.m. at City Hall. Please advise your client that he will not be permitted to revisit his employment history during this hearing but will be given the opportunity to address the City Manager and explain his version of the events and comments he claims could impugn his reputation or be perceived negatively by others.

If you have any questions, please let me know.

With kind regards,

Very truly yours,

Linda Pearce Edwards

LPE/ns
B-Moss-Giffing-07-02-10.wpd

cc: Mr. John Smithson, City Manager
Chris Noury, Esq., City Attorney

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

William H. BAILEY, Jr.)

Plaintiff,)

-vs.-)

CITY OF NORTH MYRTLE BEACH,)
a South Carolina municipal corporation,)

Defendant.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION No. 2010-CP-26-_____VERIFICATION OF COMPLAINT10 JUL -6 AM 9:27
COURT

PERSONALLY APPEARED BEFORE ME the Plaintiff in this above-captioned matter, who having identified himself to me by the production of a South Carolina driving license numbered SCDL#08094996, and being duly sworn, states:

1. That I am the Plaintiff in this matter, and have read the Complaint consisting of five (5) pages plus attachments referenced therein, a listing of which is as follows:

Exhibit	Index to Exhibits
1	Personnel Manual - Grievance Committee Procedures
2	May 02 Email
3	June 08 Letter
4	Grievance Appeal
5	July 02 Letter

2. That the pleadings attached were prepared by my attorney based on information and documents personally supplied by me to my attorney.
3. That the allegations contained in the Complaint are true and correct, and are based on my personal knowledge of facts and events, except those allegations based on information and belief, which allegations I believe to be true, complete and accurate.
4. That I have authorized my attorney to file and serve this Complaint, to present the same to the Court, to secure any Temporary and Permanent Orders based on the pleadings therein, and to secure service upon the adverse parties of the Complaint and any necessary process based thereon.

William H. Bailey, Jr.
William H. Bailey, Jr.

July 6, 2010

Shirsa McCready
Notary Public for the State of South Carolina
My Commission expires: 6-14-2015

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS

William H. Bailey, Jr.,)

C.A. No. 2010-CP-26-5964

Plaintiff,)

ANSWER

vs.)

City of North Myrtle Beach, a South)
 Carolina municipal corporation,)

Defendant.)
 _____)

Defendant City of North Myrtle Beach ("City") answers the Complaint as follows:

FOR A FIRST DEFENSE

I. The Complaint fails to state facts sufficient to constitute a cause of action.

FOR A SECOND DEFENSE

II. Plaintiff's claims are barred by his decision to retire from City employment, which is not grievable under the City's Grievance Procedure or state law.

FOR A THIRD DEFENSE

III. Plaintiff was an at-will employee and, therefore, the City's policies, including but not limited to its Grievance Procedure, give the Plaintiff no rights enforceable by injunctive or declaratory relief.

FOR A FOURTH DEFENSE

IV. Plaintiff's claims are barred by estoppel in that, having pled in this Court in another matter that he retired from employment, he cannot now claim in this matter that he was terminated from employment and demand a grievance hearing.

11/18/25 PM 2:01
 11/18/25 PM 2:01
 11/18/25 PM 2:01

FOR A FIFTH DEFENSE AND BY WAY OF ANSWER

V. A. Each allegation of the Complaint not hereinafter expressly admitted is denied.

B. Defendant responds to the allegations of the Complaint by paragraph numbers corresponding to the respective paragraph numbers of the Complaint as follows:

1. Admitted.
2. Admitted.
3. This is a jurisdictional allegation requiring no response.
4. Defendant incorporates its responses to the allegations of the foregoing paragraphs of the Complaint as if set forth herein verbatim.
5. This is a conclusion of law requiring no response.
6. This is a conclusion of law requiring no response.
7. This is a conclusion of law requiring no response.
8. Admitted.
9. Defendant admits only that the City has a Grievance Committee, that Exhibit 1 to the Complaint appears to contain a correct copy of the City's Grievance Procedure, and that the Grievance Procedure speaks for itself.
10. Defendant admits only that the Grievance Procedure addresses grievances and that the Grievance Procedure speaks for itself.
11. Denied as alleged. Defendant alleges that the author of Exhibit 2 to the Complaint was counsel for the City, that Exhibit 2 appears to contain a correct copy of the email sent by counsel for the City to Plaintiff's counsel, and that the document speaks for itself.
12. Denied as alleged. Defendant alleges that the author of Exhibit 3 to the

Complaint was counsel for the City, that Exhibit 3 appears to contain a correct copy of the letter sent by counsel for the City to Plaintiff's counsel, and that the document speaks for itself.

13. Denied as alleged. Defendant alleges that the author of Exhibit 3 to the Complaint was counsel for the City and that the document speaks for itself.

14. Denied as alleged. Defendant alleges that the author of Exhibit 3 to the Complaint was counsel for the City and that the document speaks for itself. The remainder of the allegations of the paragraph is denied.

15. Denied as alleged. Defendant alleges that the author of Exhibit 5 to the Complaint was counsel for the City, that Exhibit 5 appears to contain a correct copy of the letter sent by counsel for the City to Plaintiff's counsel, and that the document speaks for itself.

16. This is a conclusion of law requiring no response.

17. The allegations of the paragraph asserting that the City Manager is without authority to grant Plaintiff a hearing to clear his name and/or that such a hearing requires a vote of Council are conclusions of law requiring no response. The remainder of the allegations of the paragraph are denied. Defendant further alleges that Plaintiff rejected Defendant's offer to provide him a hearing to clear his name and, therefore, no hearing was convened.

18. Denied as alleged. Defendant alleges that the author of Exhibit 3 to the Complaint was counsel for the City, that Exhibit 3 appears to contain a correct copy of the letter sent by counsel for the City to Plaintiff's counsel, and that the document speaks for itself.

19. Denied as alleged. Defendant alleges that the author of Exhibit 3 to the Complaint was counsel for the City, that Exhibit 3 appears to contain a correct copy of the letter sent by counsel for the City to Plaintiff's counsel, and that the document speaks for itself.

20. Defendant denies that it proposed any variances from the Grievance Procedure.

21. This is a conclusion of law requiring no response.

22. This is a conclusion of law requiring no response.

23. This is a jurisdictional allegation requiring no response.

As to the First Cause of Action
(Declaratory Relief)

24. Defendant incorporates its responses to the allegations of the foregoing paragraphs of the Complaint as if set forth herein verbatim.

25. This is a conclusion of law requiring no response.

26. This is a conclusion of law requiring no response.

27. This is a conclusion of law requiring no response.

As to the Second Cause of Action
(Injunctive Relief)

28. Defendant incorporates its responses to the allegations of the foregoing paragraphs of the Complaint as if set forth herein verbatim.

29. This is a conclusion of law requiring no response.

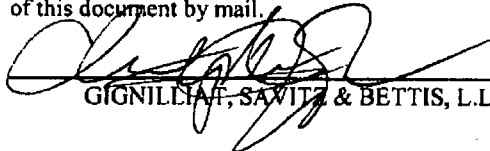
C. Defendant denies Plaintiff's prayer for relief.

April 18, 2011

answer.wpd

Certificate of Service

I hereby certify that on the date indicated above, I caused to be served on counsel of record a true and correct copy of this document by mail.


DERWOOD L. AYDELETTE, III (SC Bar 13011)


CHRISTOPHER W. JOHNSON (SC Bar 68524)

GIGNILLIAT, SAVITZ & BETTIS, L.L.P.

900 Elmwood Avenue, Suite 100

Columbia, South Carolina 29201

Phone: (803) 799-9311 / Fax: (803) 254-6951

Email: daydlette@gsblaw.net

cjohnson@gsblaw.net

GIGNILLIAT, SAVITZ & BETTIS, L.L.P.

ATTORNEYS FOR DEFENDANT

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

FLORENCE DIVISION

William H. BAILEY, Jr.,	)	
	)	C/A No. 4:10-cv-01656-TLW
Plaintiff,	)	
v.	)	VERIFIED
	)	AMENDED
CITY OF NORTH MYRTLE BEACH, a South	)	<u>COMPLAINT</u>
Carolina Municipal Corporation,	)	
John SMITHSON, Steven THOMAS, and	)	
Nicole AIELLO,	)	
	)	
Defendants.	)	
	)	(Jury Trial Demanded)

(Violation of Civil Rights: Article 1, § 3 South Carolina Constitution and S.C. Code § 16-17-560; Denial of Substantive and Procedural Due Process and Equal Protection; Violation of FOIA; Civil Conspiracy; Defamation, Libel & Slander; Wrongful Discharge and Violation of S.C. Code § 16-17-560; Retaliatory Discharge; Intentional Infliction of Emotional Distress/Outrage; Tortious Interference with Contract; Negligence; Violation of Right to Petition for Redress of Grievances; Declaratory Judgment (Violation of S.C. Code § 30-1090(B) and S.C. Code Regs. §§ 12-601.7, 12-605.3, 12-605.8 and 12.605.10 (Records Retention); Injunctive Relief; Negligent Supervision; Injurious Falsehood; Violation of S.C. Code § 23-31-600 *et al.*)

Pursuant to Federal Rule of Civil Procedure 15(a)(1)(B), now comes William H. Bailey, Jr. ("Plaintiff"), complaining of the Defendants the City of North Myrtle Beach, a South Carolina municipal corporation ("City"), John Smithson ("City Manager"), Steven Thomas ("Assistant Manager"), and Nicole Aiello ("PIO") and would show this Honorable Court as follows:

JURISDICTION AND VENUE

1. Plaintiff is a citizen and resident of Horry County, South Carolina and was, at all times relevant hereto, an employee of the City of North Myrtle Beach, a South Carolina municipal corporation located in Horry County, South Carolina.
2. City is a South Carolina municipal corporation located in Horry County, South Carolina.

3. City Manager was formerly the City Manager of City at the time of the claims set forth in this Civil Action, and was at that time and remains a citizen and resident of Horry County, South Carolina.
4. Assistant Manager, and PIO are, upon information and belief, citizens and residents of Horry County, South Carolina.
5. The South Carolina Circuit Court of Common Pleas has personal jurisdiction over each of the Defendants, subject matter jurisdiction over the claims asserted herein, and venue is proper for this action in Horry County, South Carolina.
6. This United States District Court for the District of South Carolina, Florence Division, has personal jurisdiction over the parties hereto, but the claims contained herein do not state any Federal question as such is defined in 28 U.S.C. § 1331, and do not give rise to any right of the Defendants to have removed this Civil Action pursuant to 28 U.S.C. § 1441 or 28 U.S.C. § 1446. Accordingly, this Civil Action must be remanded to the Circuit Court of Common Pleas of the State of South Carolina in Horry County.

FACTUAL BACKGROUND AND ALLEGATIONS OF FACT

7. All prior allegations, denials, admissions (whether qualified or not) and arguments are repeated here as if set forth verbatim.
8. City is managed under the council-manager form of government as described in South Carolina Code § 5-13-10 *et seq.* (Supp. 2009).
9. City has been the subject of intense media scrutiny concerning matters involving the City Public Safety Department for the past two years.
10. City has adopted rules of procedure by Ordinance that include by reference Roberts Rules of Order.
11. City Manager's powers and duties while employed by City are set forth in the Code of Ordinances of the City of North Myrtle Beach ("**Code of Ordinances**") at Chapter 2, Article III, § 2-56 *et al.*
12. City Manager at all times during his employment by City was obliged by his contract of employment to administer the policies of City in accordance with State law and policy.
13. Plaintiff was employed by City under an at-will employee as Public Safety Director for the City until January 2010, reporting to City Manager.

14. Plaintiff's at-will contract of employment by City included an implied term of good faith and fair dealing by City and City Manager on behalf of City.
15. City has adopted a Personnel Manual, the provisions of which are incorporated by reference into the Code of Ordinances pursuant to Article 1, § 17-2 ("**Personnel Manual**").
16. City had a grievance policy in force during Plaintiff's employment by City that set forth procedures applicable to disciplinary actions concerning Plaintiff.
17. City Manager was required by his employment contract with City, under the Code of Ordinances of City and under State law to comply with the grievance policy of City in all matters related to Plaintiff.
18. Pursuant to the Personnel Manual, a Grievance Committee was established for the hearing of employee grievances and other purposes, as set out therein (the "**Grievance Committee**"). A copy of the sections of the current Personnel Manual describing the scope and operation of the Grievance Committee is attached hereto as Exhibit 1 and incorporated herein by reference.
19. City Manager was obliged by his employment contract with City and the Code of Ordinances to follow employee grievance procedures set forth in the Personnel Manual as those pertained to Plaintiff, and had no authority to vary or disregard the procedures set forth therein.
20. Hearings before the Grievance Committee are an adversarial proceeding with two parties each presenting evidence under oath to the members of the Grievance Committee (Exhibit 1, ¶ D), and the Grievance Committee making an independent decision and recommendation for further action (Exhibit 1, ¶ K).
21. Law Firm's Attorney Savitz has admitted that a Grievance Committee hearing is an adversarial proceeding.
22. The grievance procedure adopted by the City provides *inter alia* that an employee who is discharged or demoted has a right to seek a hearing before the Grievance Committee.
23. Christopher Noury ("**City Attorney**") is an attorney licensed in South Carolina, and appointed by the City Council pursuant to Chapter 2, Article IV, § 2-70 of the Code of

- Ordinances, with duties set forth in § 2-71. City Attorney does not report to City Manager.
24. City Attorney's duties include the prosecution of criminal offenses committed inside the jurisdictional limits of the City, including but not limited to offenses under Chapter 23 of Title 16 of the South Carolina Code of Laws.
 25. Upon information and belief, City Attorney has prosecuted one or more persons for offenses in violation of Chapter 23 of Title 16 of the South Carolina Code of Laws.
 26. City Attorney's duties set forth in § 2-71 of the Code of Ordinances of the City do not include the drafting of all City press releases, except that City Attorney may upon request review such documents for legal propriety.
 27. City Attorney's duties do not include providing advice or counsel to the Grievance Committee except at the prior request of the Grievance Committee.
 28. Upon information and belief, City Manager or City Attorney has retained Gignilliat Savitz & Bettis, LLP ("**Law Firm**") as non-exclusive counsel to the City for selected matters limited to employment and labor law.
 29. Law Firm's scope of representation of City does not include providing counsel to the Grievance Committee except at the prior request of the Grievance Committee on each occasion of a hearing before the said Committee and at the specific prior request of the Grievance Committee Chairman.
 30. Law Firm may not represent PIO, Assistant Manager or City Manager in any matter related to their employment by the City, or any claim made or pending by City against PIO, Assistant Manager or City Manager.
 31. City Manager did not delegate any authority to Assistant Manager or PIO to terminate the employment of Plaintiff with the City.
 32. On or about the evening or night of December 20 or the early morning of December 21, 2009, Plaintiff's private vehicle, a Chevrolet Truck, while parked at Plaintiff's house in the unincorporated area of Horry County, was unlawfully entered and a pistol issued to him as City's equipment (the "**Weapon**") was stolen by a person or persons unknown.
 33. At the same time, Plaintiff's other vehicle, a Honda Accord, parked inside Plaintiff's enclosed and attached garage, was also entered unlawfully and items stolen therefrom.

34. Promptly upon discovering the break-ins, Plaintiff contacted the Horry County Police to report the break-ins and the theft and to file an incident report known as a Horry County Police Crime Report, a copy of which is attached hereto as Exhibit 2 and incorporated herein by reference (the "**Police Report**").
35. After meeting with a Horry County Police officer concerning the break-ins and the theft, Plaintiff went to the City's offices to confirm that he would be taking a vacation day.
36. Plaintiff made no written report to City or any agent of City concerning the theft of the Weapon on or after December 21, 2009.
37. During a brief and informal conversation with City Manager, Plaintiff verbally reported to City Manager that his vehicles had been broken into, that the Weapon had been taken and that the Horry County Police were investigating the break-ins and the thefts.
38. Plaintiff did not tell City Manager at that meeting on December 21, 2009 that the Weapon had been located in a locked vehicle or inside a locked compartment of any vehicle belonging to Plaintiff.
39. Plaintiff at no time asserted to City Manager at the meeting on December 21, 2009 that his truck had a lockable glovebox.
40. Plaintiff denied to City's staff on December 21, 2009 that the glovebox in his truck was locked.
41. While passing by City Attorney's office on that same day, Plaintiff paused for a very brief period to speak with City Attorney wherein Plaintiff mentioned the theft of the Weapon, the fact that Plaintiff's truck was unlocked, the fact that two of Plaintiff's vehicles had been entered unlawfully, and what Plaintiff knew about numerous break-ins throughout Plaintiff's neighborhood on that same night.
42. Plaintiff at no time told City Attorney that the Weapon had been located in a locked vehicle or inside a locked compartment of any vehicle belonging to Plaintiff.
43. Plaintiff at no time asserted to City Attorney that his truck had a lockable glovebox.
44. After December 22, 2009 and through December 28, 2009, Plaintiff was on vacation, and did not have any personal meeting with City Manager alone at which the theft of the Weapon was discussed.

45. After December 21, 2009 and until December 28, 2009, Plaintiff did not take part in any telephone call with City Manager via cellular phone or via landline.
46. Upon information and belief, on and after December 22, 2009, PIO, City Manager, Assistant Manager and /or City Attorney communicated with each other about inquiries that PIO received from a local press agency about the theft of the Weapon.
47. Upon information and belief, all communications between PIO, City Manager, Assistant Manager and City Attorney in December 2009 concerning the theft of the Weapon from Plaintiff were not communications whose purpose was to seek legal advice on a matter involving the City's business.
48. Upon information and belief, City did not in December 2009 have written policies on the preservation of legal confidentiality of documents and communications within the City's administration, nor did City have any written policies establishing restrictions on the circulation of confidential legal communications, and cannot produce any affidavits to prove such guidelines were distributed and followed.
49. Upon information and belief, City policy in December 2009 did not permit comment to be released to the Press on behalf of City upon any matter that was under an active law enforcement investigation, other than information on the respective incident report.
50. The voluntary publication of any additional press comment by the City concerning the theft of the Weapon during an active law enforcement investigation was a violation of City policy.
51. Upon information and belief, City Attorney participated with PIO in the drafting of a proposed press release in response to the inquiries made by the local press agency.
52. Any and all communications between PIO and City Attorney concerning the theft of the Weapon in December 2009 were not confidential communications made for the purpose of giving or obtaining legal advice to PIO, to City or to City Manager.
53. Any and all communications between Assistant Manager and City Attorney concerning the theft of the Weapon in December 2009 were not confidential communications made for the purpose of giving or obtaining legal advice to Assistant Manager, to City or to City Manager.

54. Upon information and belief, City Attorney was in possession of a full and complete copy of the Police Report when composing or reviewing all press release drafts to be issued by City.
55. City Attorney knew or should have known at all times from the Police Report that Plaintiff had not asserted or reported to Horry County Police that the vehicle from which the Weapon was stolen had been locked.
56. City Attorney knew or should have known at all times that the word "secured" in relation to the storage of weapons in vehicles in South Carolina had the meaning defined by S.C. Code Ann. § 16-23-20(9)(a).
57. City Attorney knew or should have known at all times from the Police Report that Plaintiff had not asserted or reported to Horry County Police that the vehicle from which the Weapon was stolen had been located inside his garage.
58. Plaintiff at no time told City Attorney that the vehicle from which the Weapon had been stolen was located inside his garage.
59. Plaintiff at no time made any statement to City Attorney that contradicted the statement of facts contained in the Police Report that City Attorney had in his possession.
60. Plaintiff did not participate with City Attorney in the drafting of any press release to be issued by City concerning the theft of the Weapon.
61. Any and all communications between Plaintiff and City Attorney concerning the theft of the Weapon in December 2009 were not confidential communications made for the purpose of giving or obtaining legal advice to Plaintiff, to City or to City Manager.
62. PIO at all relevant times had possession of and knew or should have known from the Police Report that Plaintiff had not asserted or reported to Horry County Police that the vehicle from which the Weapon was stolen had been located inside his garage.
63. PIO knew from the Police Report that Plaintiff had reported his truck was parked overnight in his driveway and that his wife's vehicle was parked in the household garage overnight.
64. Plaintiff at no time told PIO that the Weapon had been located in a locked vehicle or inside a locked compartment of any vehicle belonging to Plaintiff.
65. Plaintiff at no time asserted to PIO that his truck had a lockable glovebox.

66. Plaintiff at no time told PIO that the vehicle from which the Weapon had been stolen was located inside his garage, or that the vehicle was locked.
67. Plaintiff's garage had insufficient space to allow simultaneous parking of Plaintiff's truck and any other passenger motor vehicle on December 20, 2009.
68. Plaintiff at no time made any other statement to PIO that denied the statement of facts contained in the Police Report.
69. PIO never received any written or other communication from Plaintiff asserting that his truck contained a lockable glovebox, or that the Weapon was locked in any compartment of his truck.
70. Upon information and belief, on or about December 28, 2009, PIO forwarded to Plaintiff, City Attorney, and Assistant Manager by email the inquiries she had received from the local press concerning the theft of the Weapon.
71. Prior to realizing that that he had received the email from PIO, Plaintiff met with PIO in her office, during which meeting PIO solicited information from Plaintiff concerning a draft press release. During that meeting, Plaintiff became uncomfortable with the responses that PIO was proposing. Plaintiff rejected numerous alternative wordings and assertions made to him by PIO, and left the meeting prior to any draft being completed.
72. On the night of December 28, 2009, at or about 9:00 p.m., Plaintiff responded to the PIO's earlier email by drafting Plaintiff's own wording of any proposed press release and forwarding it to PIO by email in the form attached hereto as Exhibit 3, in which Plaintiff used the word "secured" rather than "locked" (the "**Bailey Email**").
73. The Bailey Email as drafted by Plaintiff drew attention to the active law enforcement investigation by Horry County Police Department into the theft of the Weapon.
74. Upon information and belief, the PIO did not relay or forward the incoming Bailey Email to City Manager, Assistant Manager or City Attorney.
75. On the morning of December 29, 2009, Plaintiff spoke with PIO by telephone wherein he confirmed that she had received the Bailey Email, which confirmation was initially denied but confirmed after PIO found the Bailey Email in her "junk" mail box. Plaintiff and PIO thereafter in that telephone conversation debated whether to use PIO's draft Press Release as drafted by PIO or to amend the same with wording from Plaintiff's draft.

76. PIO rejected Plaintiff's draft and summoned Plaintiff to her office in order that she could amend her draft to resolve Plaintiff's objections that her draft included therein numerous erroneous factual statements including but not limited to use of the work word "locked" as describing the condition of the glove-box in Plaintiff's vehicle from which the Weapon was stolen.
77. Plaintiff complied with PIO's summons and immediately went to her office to meet with her, during which meeting Plaintiff objected to numerous statements and phrasing in her draft release as containing factual errors. In response, PIO amended more than one passage as previously drafted by her, however, PIO did not want to amend the draft to use the word "secured" rather than "locked" as Plaintiff had insisted.
78. PIO has no legal training, and does not provide support to City Attorney in legal matters concerning the City.
79. PIO at no time on December 29, 2009 told Plaintiff that she disregarded or rejected the substantive contents of the Bailey Email because she considered such contents wholly "sarcastic" or otherwise containing mocking, contemptuous, or ironic language intended to convey scorn or insult to her or to any other person.
80. Either because he was invited by PIO or by chance, Assistant Manager entered PIO's office during the debate, joined in the debate and also insisted on using the word "locked" as being "better for the City."
81. After debating the accuracy and the appropriateness of which word to use, Plaintiff acquiesced to the choice of any form of words to be selected by PIO and Assistant Manager.
82. Plaintiff never approved the final form of the press release drafted by PIO, and left her office before a revised draft was produced for his review or comment.
83. Plaintiff left PIO's office and PIO either individually or under instruction of Assistant Manager released City's response to the press, a copy of which is attached hereto as Exhibit 4 (the "**December Press Release**").
84. The December Press Release was comment by the City on a matter under active investigation by the Horry County Police Department, and as such was in violation of City policy.

85. The December Press Release was not dictated by or otherwise drafted by Plaintiff.
86. Upon information and belief, the words in the December Press Release attributed as information from the Plaintiff were drafted by PIO and/or City Manager or Assistant City Manager. The words chosen for inclusion in the December Press Release were not words spoken by Plaintiff to PIO, City Manager, Assistant City Manager or City Attorney.
87. On or about December 30, 2009 in response to the December Press Release, PIO received emails and telephone calls from a local newspaper, pointing out that the type of vehicle owned by Plaintiff from which the Weapon had been stolen did not have a lockable glove-box.
88. Plaintiff has not approved the contents or publication of any press release in draft form or otherwise by City after the December Press Release.
89. City Manager has testified under oath before the South Carolina Department of Employment and Workforce ("SCDEW") on July 29, 2010 that he cannot remember the words used by the Plaintiff as comment on any press release to be issued by City after the December Press Release.
90. On or about December 30, 2010, City Manager instructed PIO to draft a new press release, a copy of which is attached hereto as Exhibit 5 (the "**Disclaimer Press Release**").
91. The Disclaimer Press Release was not drafted by PIO following any new interview of Plaintiff by PIO, Assistant Manager, City Attorney or City Manager that had taken place after the issuance of the December Press Release.
92. Plaintiff did not volunteer, draft or suggest any words for inclusion into the Disclaimer Press Release before PIO composed the same.
93. City Manager told Plaintiff on December 30, 2009 that the Disclaimer Press Release was to be issued and showed him a copy at that time.
94. Plaintiff had not seen the Disclaimer Press Release before that meeting with City Manager.
95. Plaintiff did not approve or endorse the contents of the Disclaimer Press Release before its publication by City Manager.

96. City Manager cannot remember the words spoken by Plaintiff to him concerning the Disclaimer Press Release.
97. Assistant Manager cannot remember any words spoken by Plaintiff to him concerning the Disclaimer Press Release.
98. City Manager has no audio recording of any discussion between himself and Plaintiff on December 30, 2009.
99. Upon information and belief, City Manager made no contemporaneous written record of any words spoke to him by Plaintiff on December 30, 2009.
100. City Manager has no corroborating witness to any conversation between City Manager and Plaintiff concerning the Disclaimer Press Release on December 30, 2009.
101. Plaintiff denies the authenticity or truth of the words attributed to him in the Disclaimer Press Release.
102. Plaintiff denies that he ever admitted to City Manager that Plaintiff had "lied" about the possibility of locking his truck's glove-box, and at no time offered any "apology" to City Manager concerning the veracity of any earlier statements by Plaintiff concerning the theft of the Weapon.
103. On or about December 31, 2009, City Manager alleged to members of the press and public that Plaintiff had lied to him personally about the "locked" glove-box, that Plaintiff had apologized to City Manager for the alleged "lie," and City Manager announced to the press that Plaintiff was being placed on administrative leave.
104. Upon information and belief, the untruthful statements by City Manager about Plaintiff were malicious and designed to cause proximate and continuing damage to the reputation of Plaintiff, and formed part of a devious and undisclosed plan by City Manager to ruin the reputation of Plaintiff, falsely provide a basis on which City Manager could seek to justify the wrongful or constructive termination of Plaintiff's employment by City, and cause Plaintiff continuing damage to his prospects of future employment with any law enforcement or public safety department in South Carolina and elsewhere.
105. Between December 28, 2009 and April 19, 2010, numerous press and media reports were published asserting that Plaintiff was under suspicion of improper conduct in an

- investigation by the South Carolina State Law Enforcement Division (“SLED”) into an allegation of criminal sexual conduct while Plaintiff was Public Safety Director of City.
106. At no time has Plaintiff been under suspicion of improper conduct in any investigation by SLED into an allegation of criminal sexual conduct while Plaintiff was Public Safety Director of City.
107. Upon information and belief, with actual knowledge of the facts concerning such allegations, PIO, acting at the instructions of City Manager and/or Assistant Manager, failed to correct such press reports or offer rebuttal on behalf of City, thereby causing damage to the reputation of City and Plaintiff by negligence or design.
108. Plaintiff at no time was authorized to issue press releases or to speak on behalf of City, or concerning City business, except with the prior knowledge and consent of City Manager, and after receiving clearance and agreement from City Manager and PIO as to the content of any press release or public statement to be made by Plaintiff on any matter related to the business of the City.
109. On or about on or about February 6th, 2010, when receiving his wage Deposit Slip for salary from the City, Plaintiff discovered for the first time that he had been reduced in pay and demoted to Lieutenant in rank. Plaintiff had not received written notice of this reduction in pay and rank from City Manager prior to that date.
110. On February 25th, 2010, Plaintiff filed an appeal to City’s Grievance Committee in the form attached hereto as Exhibit 6, the contents and attachments to which are incorporated herein by reference.
111. The City Grievance Policy is adopted by reference to S.C. Code Ann. § 8-17-110 *et seq.* (Supp. 2009) (the “**County and Municipal Employees Grievance Procedures Act**”), and is governed by the provisions of that Act, which requires that all Grievance procedures adopted by City shall substantially conform to the provisions of that Act, including but not limited to S.C. Code Ann. § 8-17-330 (Supp. 2009) which provides that an employee must not be disciplined or otherwise prejudiced in employment for exercising rights or testifying at a Grievance Committee hearing.
112. On or about March 9th, 2010 Plaintiff’s attorney received a letter from City Attorney on behalf of City and City Manager, to which was attached a purported “Memorandum”

- from City Manager to Plaintiff outlining a demotion and suspension, plus other disciplinary action against Plaintiff. A copy of City Attorney's letter of March 9th, 2010 and its attachments is attached hereto as Exhibit 7 and incorporated herein by reference.
113. Plaintiff denies the allegations contained in the "Memorandum" and further denies the alleged substance of City Manager's recounting of any conversation between Plaintiff and City Manager in the week of February 3rd, 2010.
 114. Upon information and belief, the purported "Memorandum" was not composed by City Manager contemporaneously with the meeting between Plaintiff and City Manager on March 9th, 2010 but was composed at a later date and back-dated.
 115. On or about March 15th, 2010 Plaintiff renewed his request for a Grievance Committee hearing by letter, a copy of which is attached hereto as Exhibit 8, and incorporated herein.
 116. Plaintiff's request for a Grievance Committee hearing was stated to waive any right to a closed or private hearing.
 117. Plaintiff's request was prior notice to City Manager, PIO, Assistant Manager and City Attorney that any Grievance Committee hearing would be open to the public and press.
 118. In accordance with the Personnel Manual Section 1, "Complaint Procedure and Investigation," on or about March 15th, 2010 Plaintiff wrote to the Mayor of the City, complaining of harassment of the Plaintiff by City Manager. A copy of Plaintiff's letter is attached as Exhibit 9.
 119. The Mayor of the City failed and refused to intervene or conduct any investigation into the allegations, as is required by the City's personnel policy, and responded to Plaintiff by letter (the "**Mayor's Response**", a copy of which is attached as Exhibit 10).
 120. Upon information and belief, one or more of City Attorney and/or a member of Law Firm advised the Mayor on Plaintiff's request contained in Exhibit 9. Such advice was improper due to a conflict of interest for either or both of City Attorney and/or Law Firm, who represented the City Manager.
 121. On March 18th, 2010 Plaintiff filed a request under the South Carolina Freedom of Information Act, S.C. Code Ann. § 30-4-10 *et seq.* (the "**FOIA**") on City for documents and materials necessary for him to prepare for a Grievance Committee hearing on his

appeal against disciplinary action against him. A copy of Plaintiff's letter is attached hereto as Exhibit 11 and incorporated herein by reference.

122. By letter from Leo Bellamy, Chairman of the City Grievance Committee, dated April 9th, 2010, Plaintiff was informed that the Committee would be convened to meet on April 19th, 2010. A copy of Mr. Bellamy's letter is attached hereto as Exhibit 12 and incorporated herein by reference.
123. Upon information and belief, the letter signed by the Chairman of the Grievance Committee dated April 9th, 2010 was drafted by City Attorney and/or a member of Law Firm.
124. On or about April 13th, 2010 an attorney for Plaintiff wrote to the Chairman of the Grievance Committee outlining *inter alia* concern that City Attorney would have a conflict of interest if he advised the Grievance Committee on matters related to the grievance of the Plaintiff. A copy of that letter is attached hereto as Exhibit 13, together with a responsive letter dated April 14th, 2010 from the Chairman of the Grievance Committee.
125. Upon information and belief, the responsive letter signed by the Chairman of the Grievance Committee dated April 14th, 2010 was drafted by City Attorney and/or a member of Law Firm.
126. The actions of City Attorney and/or Law Firm in drafting a response to Plaintiff's concerns expressed in Exhibit 13 were in conflict with the provisions of the Personnel Manual, the City Code of Ordinances and the County and Municipal Employees Grievance Procedure Act and fundamental notions of fairness and due process.
127. On April 12th, 2010, Plaintiff received responses to his FOIA request, but those responses willfully and maliciously omitted salient documents and emails, including but not limited to the Bailey Email, and further violated the text and spirit of FOIA by declining to provide documents known and admitted by City, City Manager, Assistant Manager, PIO and Attorney to exist, be relevant and probative, and not protected by any exception to or exemption from FOIA or attorney-client privilege. A copy of the response received by Plaintiff, signed by PIO is attached hereto as Exhibit 14 and incorporated herein by reference.

128. On April 19th, 2010, the City Grievance Committee convened and allowed City Manager to present testimony concerning the conduct and verbal report of the Plaintiff about the theft of the Weapon in the week of December 21, 2009.
129. The Grievance Committee hearing constitutes an adversary proceeding, in which the Plaintiff had given notice to City that he contested the disciplinary action by City Manager, and Plaintiff was to be afforded an opportunity to contest that action by City Manager before a committee who would render an independent recommendation.
130. Upon information and belief, the procedures allowed by the Grievance Committee on April 19, 2010 were not those set forth in the Personnel Manual at ¶J as governing such proceedings, and accordingly violated the Code of Ordinances of the City and the County and Municipal Employees Grievance Procedure Act.
131. Law Firm was present at the Grievance Hearing.
132. Law Firm objected at the Grievance Hearing to the presentation of evidence by Plaintiff.
133. Law Firm's intervention was on behalf of or in the interests of City Manager.
134. Law Firm's objection was in violation of the Personnel Manual's Grievance Committee procedures, including but not limited to ¶F, the Code of Ordinances of the City, and the County and Municipal Employees Grievance Procedure Act.
135. The Grievance Committee admitted the evidence presented by Plaintiff.
136. In addition to City Manager's testimony, City Manager called for witness testimony from PIO, Assistant Manager, and City Attorney as to alleged facts and alleged statements of Plaintiff in the week of December 21, 2009 concerning the theft of his Weapon.
137. Such calling of witnesses by City Manager was in violation of the Personnel Manual's Grievance Committee procedures, including but not limited to ¶J, the Code of Ordinances of the City, and the County and Municipal Employees Grievance Procedure Act.
138. PIO testified before the Grievance Committee that she had consulted with City Attorney and that City Attorney was involved in drafting all press releases issued by the City concerning the theft of the Weapon and the Plaintiff as and from December 2009.
139. If any part of any communication between PIO and City Attorney concerning the theft of the Weapon was at any time attorney/client privileged, that privilege could be waived by City acting through City Manager.

140. Upon information and belief, based on the proffer of testimony of PIO at the Grievance Committee, City has waived its attorney/client privilege concerning communications between PIO and City Attorney regarding the theft of the Weapon.
141. PIO admitted that she had received the Bailey Email from the Plaintiff on December 28, 2009, and had spoken about it with the Plaintiff on December 29, 2009.
142. PIO's proffered contemporaneous "time-line" omitted mention of the Bailey Email and omitted any reference to the debate between Plaintiff, PIO and Assistant Manger about use of the word "secured" as opposed to the word "locked."
143. PIO offered no evidence that her "time-line" had been composed contemporaneously with the events and alleged events recorded therein.
144. Upon information and belief, the alleged "time-line" prepared by PIO was composed at the instruction of City Manager, Assistant Manager or City Attorney, and was not a voluntary act of PIO undertaken at her own initiative.
145. PIO admitted that the press release proposed by Plaintiff through the Bailey Email had not been adopted by the City when making its press releases on December 29, 2009 and afterwards.
146. Assistant Manager testified before the Grievance Committee as to one or more alleged conversations he had with Plaintiff in December 2009 concerning the theft of the Weapon.
147. Assistant Manager also testified to the Grievance Committee that he had conversations about the theft of the Weapon in December 2009 with City Attorney and the drafting of press releases by City in December 2009.
148. If any part of any communication between Assistant Manager and City Attorney concerning the theft of the Weapon or the drafting of press releases was at any time attorney/client privileged, that privilege could be waived by City acting through City Manager.
149. Upon information and belief, based on the proffer of testimony of Assistant Manager at the Grievance Committee, City has waived any attorney/client privilege concerning communications between Assistant Manager and City Attorney regarding the theft of the Weapon.

150. City Attorney testified before the Grievance Committee as to one or more alleged conversations he had with Plaintiff in December 2009 concerning the theft of the Weapon.
151. If any part of any communication between Plaintiff and City Attorney concerning the theft of the Weapon was at any time attorney/client privileged, that privilege could be waived by City acting through City Manager.
152. Upon information and belief, based on the proffer of testimony of City Attorney at the Grievance Committee, City has waived any attorney/client privilege concerning communications between Plaintiff, PIO, Assistant Manager, or City Manager and City Attorney regarding the theft of the Weapon.
153. City Manager testified before the Grievance Committee as to one or more alleged conversations he had with Plaintiff in December 2009 concerning the theft of the Weapon.
154. PIO, Assistant Manager and City Attorney were not present while City Manager testified to the Grievance Committee on April 19th, 2010.
155. If any part of any communication between City Manager and City Attorney concerning the theft of the Weapon was at any time attorney/client privileged, that privilege could be waived by City acting through City Manager.
156. Upon information and belief, based on the proffer of testimony of City Manager at the Grievance Committee, City has waived its attorney/client privilege concerning communications between City Manager and City Attorney regarding the theft of the Weapon.
157. Plaintiff was not allowed to question any witness, but provided to the Grievance Committee written copies of suggested questions he would have sought to ask each of City Manager, PIO, Assistant Manager and City Attorney.
158. Notwithstanding the provisions of the City Personnel Manual allowing the Grievance Committee to ask questions of witnesses, the Grievance Committee did not ask questions of any witnesses appearing, and did not seek to hear from any witness other than the Plaintiff and the City Manager, PIO, Assistant Manager and City Attorney, or call for additional materials or testimony from any person.

159. City Manager produced documents at the Grievance Committee hearing, and provided copies thereof to members of the Committee, without providing a copy to Plaintiff or swearing that all documents so produced and provided were identical to any and all documents provided to the Plaintiff prior to the hearing.
160. During the Grievance Committee hearing Plaintiff testified that City Manager had asked him to intervene in one or more law enforcement matters involving members of City Manager's family.
161. Upon information and belief, City has records of the incidents concerning members of City Manager's family, which involved the use of City resources and assets and included communications by City law enforcement officers outside the City limits and jurisdiction, including communications into the State of Tennessee.
162. City Manager, both during the Grievance Committee hearing and afterwards, denied ever having directed or requested that Plaintiff intervene in any law enforcement or other personal matters involving members of City Manager's family.
163. Upon information and belief, City Manager was aware during the term of Plaintiff's employment by City as Public Safety Director that Plaintiff would from time to time be requested to intervene or inquire into private matters concerning elected officials and their families, and City Manager took no action to deter such improper requests.
164. Upon information and belief, the actions of City Manager in terminating Plaintiff's employment by City were in part intended to suppress access by Plaintiff to information concerning interference by or direction of City Manager and others in the law enforcement activities of City while Plaintiff was Director of Public Safety, and further intended to scare, intimidate and threaten others in the possession of the same information.
165. Plaintiff provided documents to the Grievance Committee at the hearing on April 19, 2010, a complete copy of which is attached hereto as Exhibit 15 and incorporated herein by reference. In his presentation to the Grievance Committee, the Plaintiff was exercising his right to freedom of speech protected under the Constitution of the State of South Carolina.

166. Upon information and belief, City Attorney and/or Law Firm assisted with the preparation of the presentation of City Manager to the Grievance Committee on April 19, 2010, and also offered legal advice and counsel to the Chairman and members of the Grievance Committee before and after the hearing on April 19, 2010.
167. Upon information and belief, Law Firm acted to offer legal advice and counsel to the Grievance Committee in violation of the Personnel Manual, the City Code of Ordinances, the County and Municipal Employees Grievance Procedure Act and fundamental notions of fairness and due process.
168. Pursuant to the Personnel Manual, the members of the Grievance Committee should be allowed to deliberate for up to twenty (20) days after any hearing before rendering their decision.
169. Upon information and belief, after the Grievance Committee hearing on April 19, 2010, the Grievance Committee Chairman was scheduled for leave to attend and offer comfort at a family funeral. Notwithstanding such scheduled leave and the time allowed for deliberations of the Grievance Committee pursuant to the Personnel Manual, City Manager summoned the Chairman of the Grievance Committee to City's offices, and directly or indirectly instructed him and the other members of the Committee to sign a pre-prepared letter endorsing the actions of City Manager concerning Plaintiff.
170. Upon information and belief, during the deliberations of the Grievance Committee, Law Firm improperly acted on behalf of City Manager to pressure members of the Grievance Committee to alter their conclusions, and upon further information and belief, City Manager rejected the initial conclusions of the Grievance Committee and pressured the members of the Grievance Committee through Law Firm to sign a pre-prepared letter adopting the decision of the City Manager.
171. Upon information and belief, the members of the Grievance Committee reluctantly signed the pre-prepared letter provided to them by Law Firm under the belief that holding to their own conclusions would result in retaliation upon them by City Manager and /or Assistant Manager, and were directly and proximately intimidated by Law Firm acting on behalf of City Manager.

172. On or about April 28, 2010, City Manager summoned Plaintiff to a meeting and verbally pressured him to resign from employment as a voluntary act of Plaintiff, or to be terminated and separated from employment by City Manager no later than 3:00 p.m. on April 29, 2010.
173. City Manager stated on April 28th, 2010 that his sole cause was that Plaintiff had "*caused embarrassment*" to City by requiring the Grievance Committee hearing on April 19th, 2010 to be open to the public, and for disputing in public the cause for which City Manager had demoted Plaintiff as being incorrect and untruthful.
174. Upon information and belief, based on sworn testimony by City Manager before the SCDEW on July 29, 2010, City Manager had already made a decision to separate Plaintiff from employment with City when they met on April 28, 2010.
175. Upon information and belief, City Manager has discussed personnel matters involving Plaintiff with a person or persons not employed by City including but not limited to City Manager's wife, and in the course of so doing disclosed personal and confidential information concerning Plaintiff contained in Plaintiff's confidential personnel file maintained at City expense and on City property.
176. At the same meeting on April 28, 2010, City Manager presented Plaintiff with a longevity award, being a check dated April 29, 2010 awarded to Plaintiff for having completed for twenty years of service to City. A copy of that check is attached hereto as Exhibit 16 and incorporated herein by reference (redacted as to SSN and bank account details of Plaintiff).
177. On April 29, 2010, counsel for Plaintiff wrote to City Attorney requesting explanation of the City's and City Manager's intent as to various matters affecting the employment, benefits and retirement account of Plaintiff. A copy of that letter is attached hereto as Exhibit 17 and incorporated herein by reference.
178. No written response was received from City Attorney. Law Firm discussed various matters by way of settlement negotiations arising from Exhibit 17 with counsel for Plaintiff until approximately 8:00 p.m. on Friday April 30, 2010, but no written response on any matter was provided at that time, nor was any extension proposed or offered to the

deadline set by City Manager on April 28, 2010 for the separation from employment of the Plaintiff as from April 29th, 2010 or agreed at that time.

179. On Saturday May 01, 2010, PIO announced to the press and local news media that Plaintiff was no longer employed by City. Plaintiff was not informed of this announcement in advance by City or City Manager, but learned of his separation by text message to his private cellphone from a member of the local press.
180. On Sunday May 02, 2010 Law Firm emailed to Plaintiff's counsel. The subject title of that email was "*Re: draft complaint and draft letter, offered in conjunction with settlement negotiations.*" A copy of that email is attached hereto as Exhibit 18 and incorporated herein by reference (the "**Settlement Negotiations Email**").
181. The Settlement Negotiations Email confirmed that Plaintiff's employment was terminated by City Manager effective April 30th, 2010 following the breakdown of settlement negotiations between the parties on Friday April 30th, 2010.
182. City Manager swore under oath before SCDEW on July 29, 2010 that he terminated Plaintiff with effect from April 30, 2010.
183. City Manager swore under oath before SCDEW on July 29, 2010 that he terminated Plaintiff from employment because of Plaintiff's testimony before the Grievance Committee on April 19, 2010.
184. City Manager has unlawfully, maliciously and wantonly refused to follow the provisions of the Personnel Manual concerning notice of separation from employment to the Plaintiff, with the objective of causing prejudice to the right of the Plaintiff to seek a Grievance Committee hearing on such separation, in violation of the Ordinances of the City.
185. City Manager's termination of Plaintiff's employment was a violation of public policy and directly contrary to the provisions of S.C. Code Ann. § 8-17-330 (Supp. 2009).
186. In order to mitigate his actual and potential damages, on Friday April 30, 2010, Plaintiff had sought to determine the amount he would have to prepay to the South Carolina Police Officers Retirement System if he wished to supplement his existing paid retirement contributions to that which would vest after twenty-five years' service.

187. On April 30th, 2010 Plaintiff determined that \$161,092.75 (One Hundred Sixty-One Thousand Ninety-Two and 75/100 Dollars) was required to secure his South Carolina Police Officer Retirement System benefits (the "**Retirement Benefits**") at a rate applicable for twenty-five year's service.
188. As of April 30th, 2010 Plaintiff had not applied for any loan to finance the purchase of additional Retirement Benefits.
189. As of April 30th, 2010 Plaintiff had no loan commitment from any lending source to finance any acquisition of additional Retirement Benefits.
190. As of April 30th, 2010 Plaintiff did not have immediately available disposable funds sufficient to pay the \$161,092.75 (One Hundred Sixty-One Thousand Ninety-Two and 75/100 Dollars) required to supplement his Retirement Benefits.
191. Plaintiff elected to claim his Retirement Benefits with an effective date of May 01, 2010, one day after his termination by City Manager.
192. On May 02, 2010 Plaintiff made, through his attorney, a FOIA request for documents from the City and requested copies of documents forming part of his own personnel file with City. A copy of that written request is attached hereto as Exhibit 19.
193. On May 03, 2010 Plaintiff applied for unemployment benefit from the SCDEW for such period as might exist until his Retirement Benefits would be confirmed, which did not occur until May 21st, 2010.
194. On May 03, 2010, Plaintiff sought for the first time a loan commitment to finance his purchase of additional Retirement Benefits, and closed such loan on May 04, 2010.
195. On Monday May 03, 2010 City held a regularly scheduled City Council Meeting, for which an agenda was published in advance. Contained in that Agenda (a copy of which is attached hereto as Exhibit 20) was a provision for an Executive Session of Council. The said agenda item did not include any legal briefing on any personnel matter.
196. However, when moving the Council to go into Executive Session, the Mayor of the City improperly added two items to the business to be discussed in Executive Session, one such item being "Legal briefing on a personnel matter" in violation of the rules of procedure governing City Council meetings.

197. Upon information and belief, that added item was intended to allow private discussion of matters concerning the Plaintiff and his employment and grievance matters with City.
198. On Monday May 17, 2010 City held a regularly scheduled City Council Meeting, for which an agenda was published in advance. Contained in that Agenda (a copy of which is attached hereto as Exhibit 21) was a provision for an Executive Session of Council. The said agenda item did not include any legal briefing on any personnel matter.
199. However, when moving the Council to go into Executive Session, the Mayor of the City improperly added two or three items to the business to be discussed in Executive Session, one such item being "Legal briefing on a personnel matter" in violation of the rules of procedure governing City Council meetings.
200. Upon information and belief, that added item was intended to allow private discussion of matters concerning the Plaintiff and his employment and grievance matters with City.
201. On Friday May 21st, 2010, having received confirmation of the length of his employment service with the City (before the alleged separation from employment with the City) in writing from the South Carolina State Retirement System (copy attached hereto as Exhibit 22)¹ Plaintiff started drawing retirement benefits from the State PORS.
202. On May 22, 2010 Plaintiff received from City a letter asserting that his employment with City had been involuntarily terminated on April 13, 2010 (before the Grievance Committee hearing referenced above) and demanding that he exercise rights to claim continuing insurance benefits and coverage in the South Carolina Local Government Assurance Group Health Plan no later than April 30, 2010. A copy of that letter is attached hereto as Exhibit 23 and incorporated herein by reference. (the "**COBRA Letter**").
203. City Manager later claimed that the COBRA Letter was issued in error and was intended for another employee of City. Upon information and belief, such claims were false and unsupported by the personnel records of City, as no other employee was terminated for cause effective April 30, 2010.
204. Upon information and belief, the COBRA Letter was prepared at the instruction of City Manager and deliberately and maliciously delayed in mailing until after the deadline set

¹ Redacted as to SSN and monetary amounts.

forth therein in order to harass, distress and humiliate Plaintiff in regard to continuing health insurance coverage for himself and his family, and is probative evidence of the malice that City Manager has borne towards Plaintiff.

205. The COBRA Letter is also probative evidence that City Manager did not intend to respect the findings of the Grievance Committee, and had covertly decided as of April 13th, 2010 to terminate the employment of Plaintiff irrespective of the Grievance Committee's findings or any finding of just cause, while protesting and claiming to members of City's council that he had no such intention.
206. On May 28, 2010 Plaintiff made a written appeal to the City Grievance Committee (copy attached hereto as Exhibit 24 and incorporated herein by reference) alleging that City Manager caused Plaintiff to be constructively dismissed from employment by City, had evidenced malice towards Plaintiff irrespective of the findings of the Grievance Committee hearing on April 19, 2010 referred to above. Plaintiff sought a Grievance Committee hearing in order to seek reinstatement as an employee of City.
207. On June 02, 2010, City responded to the FOIA request dated May 02, 2010 (Exhibit 19) by advising Plaintiff's attorney by email that the request was being "processed" and that the "status of the response" would be updated on June 09, 2010. A copy of that email is attached hereto as Exhibit 25.
208. Notwithstanding the promises contained in City's email (Exhibit 25), City failed to produce either any documents or an "update" to "status" on Jun 09, 2010.
209. In response to the refusal of City (as shown by Exhibit 25) to comply with the law pertaining to the production of documents pursuant to FOIA, Plaintiff's attorney responded in writing on June 03, 2010 protesting against the City's violation of the law. A copy of Plaintiff's attorney's letter is attached hereto as Exhibit 26.
210. On June 02, 2010, Plaintiff's attorney wrote to the Chairman of the City Grievance Committee on various matters, including but not limited to past actual and potential future conflicts of interest arising between City Attorney's and Law Firm's relationship with City and City Manager, vis-à-vis their appearances and communications with the City Grievance Committee. A copy of that letter is attached hereto as Exhibit 27.

211. On June 03, 2010, Plaintiff, acting through his attorney, filed a FOIA request on City for copies of City's FOIA policy and a copy of all FOIA requests made on City since June 01, 2010. A copy of that FOIA request is attached hereto as Exhibit 28.
212. On June 08, 2010 City responded to the appeal for a Grievance Committee hearing contained in Exhibit 24 by agreeing to grant Plaintiff a Grievance Committee hearing. A copy of City's response is attached hereto as Exhibit 29, but asserting that Law Firm, who previously appeared for City Manager on April 19, 2010 at the prior Grievance Hearing, and who conducted correspondence with Plaintiff's counsel on behalf of City and City Manager, would provide counsel to the Grievance Committee.
213. On June 02, 2010 a local newspaper had disclosed that Plaintiff had secured Retirement Benefits attendant on more than twenty years service with the City.
214. Upon information and belief, the letter attached hereto as Exhibit 29 was written with actual knowledge by City that Plaintiff had applied for and would be receiving Retirement Benefits.
215. At no time did City Manager or any attorney acting for Defendants request from Plaintiff any information concerning the date on which Plaintiff's Retirement Benefits took effect.
216. The contents of the letter attached hereto as Exhibit 29 evidence that City Manager and Law Firm have no intention of allowing fair and impartial deliberations by the Grievance Committee, and that City Manager through Law Firm intends to "instruct" the members of the Committee as to their deliberations and decisions; such over-reaching and malicious intentions by City Manager and Law Firm acting on behalf of City Manager being in violation of Plaintiff's rights set forth in the Personnel Manual, City's Ordinances, and the laws of South Carolina.
217. Upon information and belief, the decision to grant Plaintiff a Grievance Committee hearing on this matter was taken by City Manager with the advice of City Attorney and/or Law Firm.
218. The intentions of Law Firm to "instruct" the Grievance Committee and to present themselves as counsel to the Grievance Committee violate the provisions of the Personnel Manual and constitute a conflict of interest with independent representation of the Grievance Committee and its members.

219. Upon information and belief, at least three members of the Grievance Committee have tendered their resignations from the Grievance Committee since April 19, 2010, but City Manager has refused the same and instructed such employees of City, under direct or implied threat of retaliation, to continue as members of the said Grievance Committee, and to endorse without question or fair and independent debate, any action of City Manager.
220. On not less than two occasions after his separation from employment from the City, Plaintiff applied to the City for an "Identification Card" as defined in S.C. Code Ann. § 23-31-600(A)(1) (Supp. 2009) to certify his right as a retired law enforcement officer to carry a weapon as permitted under such section.
221. Upon information and belief, acting at the direct instruction of City Manager, City's staff has refused to issue that Identification Card, in violation of the law of South Carolina.
222. On or about June 16, 2010, SCDEW made a finding that the Plaintiff had been discharged by City without evidence of improper actions during his employment, and determined that discharge for cause of the Plaintiff from his employment was not justified. A copy of the finding and determination by the SCDEW is attached hereto as Exhibit 26 and incorporated herein by reference.
223. Upon information and belief, City appealed that finding by SCDEW, and asserted that Plaintiff was terminated from employment for cause effective April 30, 2010.
224. On Monday June 21, 2010 City held a regularly scheduled City Council Meeting, for which an agenda was published in advance. Contained in that Agenda (a copy of which is attached hereto as Exhibit 30) was a provision for an Executive Session of Council.
225. However, when moving the Council to go into Executive Session, the Mayor of the City improperly added two items to the business to be discussed in Executive Session, one such item being intended, upon information and belief, to include discussion of Plaintiff's claims against the City, in violation of the rules of procedure governing City Council meetings.
226. The conduct of the City when adding items to a published agenda for a City Council meeting violates the Ordinances of the City and FOIA.

227. On July 29th, 2010, SCDEW held a hearing to determine the appeal by City against the earlier finding that Plaintiff was entitled to unemployment benefit as from May 02, 2010.
228. City Manager, PIO, Assistant Manager and City Attorney attended the SCDEW hearing on July 29th, 2010 and were accompanied by a member of Law Firm to represent City.
229. City Manager testified under oath that City Manager terminated Plaintiff because of statements made by Plaintiff at the Grievance Committee hearing on April 19th, 2010, and that the effective date of that termination was April 30th, 2010.
230. City Manager further testified under oath that he had been aware that as of Friday April 30th, 2010 settlement negotiations had been ongoing between Plaintiff's counsel and Law Firm.
231. PIO admitted at the SCDEW hearing under oath that she had possession of the Horry County Police Report concerning the theft of the Weapon when discussing draft press releases with Plaintiff, Assistant Manager and City Attorney in December 2009.
232. PIO further admitted that she had no document in which Plaintiff had asserted the glovebox of his truck had been locked.
233. PIO stated she had not been present at the Grievance Committee hearing outside her own testimony, and could not confirm or deny what was said by Plaintiff on that occasion.
234. Assistant Manager testified under oath at the SCDEW hearing that he was not present at all meetings between Plaintiff and City Manager in December 2009, and was not present outside his own testimony at the April 19th, 2010 Grievance Committee hearing.
235. Assistant Manager did not hear Plaintiff telling City Manager at any time that the glovebox in Plaintiff's truck had been locked.
236. On July 30th, 2010 SCDEW found as fact that City Manager had terminated Plaintiff from employment on April 30, 2010.
237. On July 30th, 2010 SCDEW ruled that the City failed to establish cause for discharge of Plaintiff from his employment by City.
238. On July 06, 2010 Plaintiff filed a request pursuant to FOIA for copies of the City's most recent Request for Proposal for tort liability insurance and the responses thereto. City replied on July 26, 2010 through PIO that City did not maintain such documents. A copy of City's response is attached hereto as Exhibit 31 and incorporated herein by reference.

239. On July 16, 2010 Plaintiff filed a request pursuant to FOIA for further information concerning insurances and the cost to City of Law Firm since January 2009. City responded on August 04, 2010 that City does not maintain any copies of requests for proposals for tort liability insurance or responses to requests for proposals. A copy of City's response signed by PIO is attached hereto as Exhibit 32 and incorporated herein by reference.

**FOR A FIRST CAUSE OF ACTION – ALL DEFENDANTS – VIOLATION OF
SUBSTANTIVE DUE PROCESS RIGHTS ACCORDED UNDER ARTICLES 1 § 2 and §
3 OF SOUTH CAROLINA CONSTITUTION *et al.***

240. All prior allegations, denials, admissions (whether qualified or not) and arguments are repeated here as if set forth verbatim.
241. The actions of City, City Manager, Assistant Manager, and PIO have violated the constitutional rights, privileges and immunities of the Plaintiff to substantive due process rights to seek redress for a grievance under the Ordinances of City and the law of South Carolina, in violation of Articles 1 § 2 and § 3 of the Constitution of the State of South Carolina.
242. City has caused or allowed those constitutional violations cited above by not providing for a procedure for just and impartial review of actions by City Manager that have deprived Plaintiff of his liberty and property interests in wages, retirement benefits and other associated benefits of employment by a political sub-division of the State of South Carolina.
243. City Manager has directly and personally, with malice aforethought, sought to deprive Plaintiff of his liberty and property interests in wages, retirement benefits and other associated benefits of employment by a political sub-division of the State of South Carolina, by presenting false testimony to the Grievance Committee by:
- a. Inventing and exaggerating verbal reports to him by the Plaintiff concerning the theft of the City-issued Weapon from the possession of the Plaintiff on or about December 21, 2009 and subsequently in the weeks until December 31, 2009; and
 - b. Denying that City Manager had on several occasions requested Plaintiff to act within and without Plaintiff's authority to assist City Manager or members of the family of City Manager in relation to disputes and legal issues; and

- c. Testifying falsely to the Grievance Committee concerning the time and date of his alleged "Memorandum" to the Plaintiff following their meeting on February 03, 2010; and
 - d. Conspiring with Assistant Manager and PIO to defame, libel and slander the Plaintiff before the Grievance Committee; and
 - e. Making the Grievance Committee hearing on April 19, 2010 a mockery and sham proceeding by having previously instructed staff to terminate the employment of Plaintiff by City as from April 13, 2010; and
 - f. Causing or allowing interference with the deliberations of the Grievance Committee on and after April 19, 2010.
244. City Manager has violated the public policy of the State of South Carolina, as incorporated by reference into the Personnel Manual and Ordinances of City, by separating Plaintiff from employment with the City for exercising his constitutional and statutory right to defend himself by testifying at the Grievance Committee hearing on April 19th, 2010.
245. City Manager has violated the provisions of the South Carolina Constitution and S.C. Code Ann. § 16-7-560 by discharging Plaintiff from his employment by City because Plaintiff exercised a constitutional and statutory right of defending himself before the Grievance Committee.
246. The actions of City Manager on April 28th, 2010 were in violation of the City grievance policy and S.C. Code Ann. § 8-17-330 (Supp. 2009), which provides *inter alia* that "*An employee must not be disciplined or otherwise prejudiced in employment for exercising rights or testifying under these processes.*"
247. The actions of City Manager on April 28th, 2010 were also in violation of Plaintiff's civil rights under Article 1 § 3 of the South Carolina constitution and S.C. Code Ann. § 16-7-560 (Supp. 2009), which provides *inter alia* that "*It is unlawful for a person to ... intimidate a citizen, discharge a citizen from employment or occupation, ... because of the exercise of political rights and privileges guaranteed to every citizen by the Constitution and laws of the United States or by the Constitution and laws of this State.*"

248. The violation by City Manager of the public policy of South Carolina and the City creates an exception to the at-will nature of the employment contract between City and Plaintiff and permits Plaintiff recourse against City for termination of his employment in violation of public policy, because Plaintiff may not be terminated for exercising his constitutional rights.
249. Plaintiff has a cause of action for wrongful termination of his employment against City, since City contractually altered the at-will relationship and terminated Plaintiff in violation of contractual terms set forth in the Personnel Manual, and City is responsible for the actions of City Manager under the doctrine of *respondeat superior*.
250. Assistant Manager has directly and personally, with malice aforethought, sought to deprive Plaintiff of his liberty and property interests in wages, retirement benefits and other associated benefits of employment by a political sub-division of the State of South Carolina, by presenting false testimony to the Grievance Committee by:
- a. Inventing and exaggerating verbal reports to him by the Plaintiff concerning the theft of the City-issued Weapon from the possession of the Plaintiff on or about December 21, 2009 and subsequently in the weeks until December 31, 2009; and
 - b. Abusing his authority by insisting that Plaintiff acquiesce to the use of the word "locked" in the December Press Release despite Plaintiff's assertion that "secured" was the more accurate and proper term; and
 - c. Testifying falsely to the Grievance Committee concerning the conversations and alleged admissions of culpability by the Plaintiff to him concerning whether the glove-box in Plaintiff's truck was capable of being locked, and conspiring with the City Manager and PIO to defame, libel and slander the Plaintiff before the Grievance Committee and in the press.
251. PIO directly and personally, with malice aforethought, sought to deprive Plaintiff of his liberty and property interests in wages, retirement benefits and other associated benefits of employment by a political sub-division of the State of South Carolina, by presenting false testimony to the Grievance Committee by:

- a. Inventing and exaggerating verbal reports to her by the Plaintiff concerning the theft of the City-issued Weapon from the possession of the Plaintiff on or about December 21, 2009 and subsequently in the weeks until December 31, 2009; and
 - b. Suppressing knowledge of the Bailey Email from City Manager, Assistant Manager and City Attorney both prior to and after the December Press Release, and deliberately concealing and destroying exculpatory evidence as to Plaintiff's conduct in December 2009; and
 - c. Composing and tendering to the Grievance Committee a false and admittedly inaccurate and incomplete "time-line" of alleged events and facts concerning the theft of the City-issued Weapon from the possession of the Plaintiff, and conspiring with the City Manager and Assistant Manager to defame, libel and slander the Plaintiff before the Grievance Committee and in the press.
252. Upon information and belief, acting at the insistence and direction of City Manager, City Attorney gave incomplete and thereby misleading testimony to the Grievance Committee by:
- a. Reporting in an incomplete manner those verbal reports to him by the Plaintiff concerning the theft of the City-issued Weapon from the possession of the Plaintiff on or about December 21, 2009 and subsequently in the weeks until December 31, 2009; and
 - b. Despite having before him on December 21, 2010 the full text and copy of the Police Report, testifying falsely to the Grievance Committee concerning the conversations and alleged admissions of culpability by the Plaintiff to him concerning whether Plaintiff's truck was in Plaintiff's garage when the Weapon was stolen.

**FOR A SECOND CAUSE OF ACTION – ALL DEFENDANTS – VIOLATION OF
EQUAL PROTECTION RIGHTS UNDER SOUTH CAROLINA CONSTITUTION**

253. All prior allegations, denials, admissions (whether qualified or not) and arguments are repeated here as if set forth verbatim.
254. The denial of information required for Plaintiff to prepare properly for a Grievance Committee appeal hearing is an act or acts of all Defendants that was or were in violation

- of the equal protection afforded to the Plaintiff by Article I § 3 of the Constitution of the State of South Carolina.
255. The willful and malicious suppression of information required for Plaintiff to prepare properly for a Grievance Committee appeal hearing is an act or acts of all Defendants, and were in violation of the equal protection afforded to the Plaintiff by Article 1 § 3 of the Constitution of South Carolina.
256. The knowing and willful failure of City Manager, with the knowledge and consent of City Attorney and Law Firm, to abide by the prescribed procedures of the City Grievance Committee, was an overt and deliberate act designed and having the effect of depriving the Plaintiff of a fair and impartial Grievance Committee hearing.
257. The false and misleading testimony, proffered under oath to the Grievance Committee by City Manager, Assistant Manager, PIO and City Attorney concerning the verbal reports, casual conversations and acts of the Plaintiff about the theft of his City-issued Weapon and subsequently, were acts in concert and by common design of City Manager, Assistant Manager, and PIO aimed and intended by such Defendants to deny the Plaintiff his constitutional and statutory rights of equal protection.
258. The deliberate and knowing overreaching and intimidation of the members of the Grievance Committee by City Manager, acting through City Attorney and/or Law Firm as his agent, was intended and had the actual effect of depriving the Plaintiff of a fair and impartial Grievance Committee hearing, with the consequential loss of status, standing and monetary reward for service to the City.
259. City Manager's undisclosed intention to terminate the employment of Plaintiff by City effective April 13, 2010 was malicious, intentional and designed to deprive Plaintiff from any redress through the Grievance Committee of City under the City Personnel Manual.

**FOR A THIRD CAUSE OF ACTION – ALL DEFENDANTS – CONSPIRACY TO
DEPRIVE PLAINTIFF OF PROCEDURAL DUE PROCESS RIGHTS UNDER SOUTH
CAROLINA CONSTITUTION**

260. All prior allegations, denials, admissions (whether qualified or not) and arguments are repeated here as if set forth verbatim.
261. By denying Plaintiff access to information to which he is entitled as a matter of law under FOIA, and seeking to shield and suppress information under the guise of attorney-client

privilege, the Defendants have conspired together to violate the constitutional and statutory rights of the Plaintiffs to equal protection of the laws, and equal privilege there under, guaranteed by Article I, Section 3 of the Constitution of the State of South Carolina.

262. The false and/or misleading testimony, proffered under oath to the Grievance Committee by City Manager, Assistant Manager, PIO and City Attorney concerning the verbal reports, casual conversations and acts of the Plaintiff about the theft of his City-issued Weapon and subsequently, were acts in concert and by common design aimed and intended by such Defendants to deny the Plaintiff his constitutional and statutory rights of equal protection.

FOR A FOURTH CAUSE OF ACTION:
VIOLATION OF S.C. CODE ANN. § 30-4-10 et seq.

263. All prior allegations and arguments are repeated here as if set forth verbatim.
264. Upon information and belief, City did not respond lawfully to the FOIA requests made by Plaintiff's letter, and failed to produce correspondence consisting of electronic mail ("email") communications concerning the facts of this case, telephone logs and other material showing correspondence and communications between two or more of the Defendants.
265. Upon information and belief, the actions of City were knowing, willful and intended to thwart Plaintiff's adequate preparation of his presentation to the Grievance Committee, and were undertaken against the advice and counsel of City Attorney with actual knowledge of the requirements of the South Carolina Freedom of Information Act.
266. When moving into Executive Sessions on May 03, May 17, and June 07, 2010 City knowingly violated the South Carolina Freedom of Information Act, S.C. Code § 30-4-80 *et al.* (Supp. 2009) by adding items to the agenda for its Executive Sessions to allow private discussion of matters concerning the Plaintiff without giving the notice required under the law of South Carolina and City's Ordinances to amend a published agenda for a municipal council meeting.

FOR A FIFTH CAUSE OF ACTION – CIVIL CONSPIRACY

267. All prior allegations and arguments are repeated here as if set forth verbatim.

268. Upon information and belief, Assistant Manager and PIO acted outside the scope of their employment in conspiring together on and after December 21, 2009, and also with one or more persons currently unknown to cause Plaintiff to lose his contract of employment with City, by distorting reports made by Plaintiff concerning the loss of the Weapon and drafting, authorizing and issuing knowingly false and misleading statements to the press and public concerning Plaintiff and the circumstances of the loss of the Weapon.
269. Upon information and belief, one reason that Assistant Manager and PIO so acted outside the scope of their employment was to provide a reason for the City Manager to separate Plaintiff from employment and make him a scapegoat for media criticism of the City's Public Safety Department, without lawful cause or excuse.
270. By the acts as aforesaid, Assistant Manager and PIO acted in concert and by common design in a civil conspiracy to deprive Plaintiff of his salary, health insurance, retirement and other benefits of employment by a political subdivision of the State of South Carolina.
271. Upon information and belief, City Manager, Assistant Manager and PIO have acted in concert and by common design outside the scope of their employment by City to deny Plaintiff a fair and impartial appeal hearing before the Grievance Committee in accordance with the applicable rules, the City Code of Ordinances, the County and Municipal Employees Grievance Procedure Act, and common law standards of fairness and equal treatment under the Constitution and laws of the State of South Carolina.
272. By failing to comply with the provisions of the South Carolina Code concerning access to public information, two or more of the Defendants City Manager, Assistant Manager and PIO unlawfully conspired against Plaintiff, joining together to cause injury to the Plaintiff, and causing him special damage unrelated to the merits of his job performance.
273. By their actions in conspiring to deprive Plaintiff of a fair and impartial hearing before the City Grievance Committee, the Defendants City Manager, Assistant Manager and PIO have breached an implied covenant of good faith and fair dealing in the contract of employment entered into between Plaintiff and City.
274. By pressuring members of the Grievance Committee to adopt a decision contrary to their own consensus and judgment, City Manager, acting through Law Firm as his agent and as

an agent for City, violated a stated public policy of the State of South Carolina, namely that grievance procedures should be implemented and conducted so as to contribute to more harmonious relations between public employers and public employees and result in an improvement in public service.

FOR A SIXTH CAUSE OF ACTION – DEFAMATION (SLANDER AND LIBEL)

275. All prior allegations, denials, admissions (whether qualified or not) and arguments are repeated here as if set forth verbatim.
276. Each of City Manager, Assistant Manager and PIO have made and issued written and verbal statements and pleadings to the press and in public concerning Plaintiff in relation to the matters set forth above with actual knowledge of their falsity and likelihood that such statements would be likely to lower the opinion of the Plaintiff in the minds of the general public, cause him to lose respect, and also cause him actual and special monetary damage by loss of income and benefits from employment and upon his separation from employment in public service.

FOR A SEVENTH CAUSE OF ACTION – WRONGFUL DISCHARGE

277. All prior allegations, denials, admissions (whether qualified or not) and arguments are repeated here as if set forth verbatim.
278. Plaintiff was entitled to a Grievance Hearing conducted impartially and in accordance with the provisions of the Personnel Manual, the City Code of Ordinances and the County and Municipal Employees Grievance Procedure Act.
279. The failure by City to provide a meaningful grievance procedure was a breach by City of an implied covenant of good faith and fair dealing in the employment contract between the City and Plaintiff, and a violation of the public policy of the State of South Carolina.
280. The failure by City to conduct its Grievance Committee hearing in accordance with the Personnel Manual, the City Code of Ordinances and the County and Municipal Employees Grievance Procedure Act was a breach of a term implied into the employment contract between City and Plaintiff.
281. The failure of City to conduct a Grievance Hearing in accordance with one or more of the provisions of the Personnel Manual, the City Code of Ordinances and the County and Municipal Employees Grievance Procedure Act, and to allow City Manager to terminate

Plaintiff's employment irrespective of the findings of the Grievance Committee, amounted to the tort of wrongful discharge.

282. The failure of City to require City Manager to comply with the policies of City set forth in the Personnel Manual including but not limited to the hearing of grievances from Plaintiff allowed City Manager to wrongfully and tortiously scheme and plot the termination of Plaintiff from employment by City for ulterior motives, including but not limited to the suppression of information concerning interference in law enforcement matters and misuse of public funds for private purposes.
283. The failure of City to require City Manager to await and respect the decisions of the Grievance Committee and to comply with the City personnel policies adopted by Ordinance of the City allowed City Manager to engineer and force a wrongful constructive discharge of Plaintiff from employment by City.
284. The actions of City Manager, Assistant Manager and PIO as set forth above were an unjustified interference with the employment contract of Plaintiff with City.
285. The acts of City Manager, Assistant Manager and PIO are imputable to City under the doctrine of *respondeat superior*.
286. The action of City Manager in discharging Plaintiff for testifying before the Grievance Committee and defending his actions and conduct was retaliation in violation of the public policy and laws and Constitution of the State of South Carolina, and constituted the tort of wrongful discharge from employment of the Plaintiff.
287. The acts of City Manager are imputable to City under the doctrine of *respondeat superior*.

FOR AN EIGHTH CAUSE OF ACTION – RETALIATORY DISCHARGE

288. All prior allegations, denials, admissions (whether qualified or not) and arguments are repeated here as if set forth verbatim.
289. The acts of City Manager in terminating the employment of Plaintiff were in retaliation for Plaintiff seeking a Grievance Hearing and defending himself at that hearing.
290. The acts of City Manager are imputable to City under the doctrine of *respondeat superior*.

291. The discharge of Plaintiff by City Manager amounted to the tort of retaliatory discharge, in violation of Plaintiff's constitutional, statutory and common law rights.

FOR A NINTH CAUSE OF ACTION
- INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS (OUTRAGE)

292. All prior allegations, denials, admissions (whether qualified or not) and arguments are repeated here as if set forth verbatim.
293. City Manager intentionally and/or recklessly inflicted severe emotional distress upon Plaintiff by making unfounded statements to the press, to members of City Council, and to fellow-employees of Plaintiff concerning the probity of Plaintiff, alleging *inter alia* that Plaintiff had lied repeatedly to City Manager, thereby causing Plaintiff severe emotional distress beyond the level that a reasonable person could be expected to endure.
294. City Manager's conduct was extreme, atrocious, outrageous and beyond the bounds of decency in a civilized community, and calculated to cause Plaintiff such distress that Plaintiff would not be able to exercise judgment properly concerning his continued employment with City, and thereby intending that Plaintiff would voluntarily resign from employment, with consequent and permanent financial and emotional harm to Plaintiff through loss of income, retirement benefits, pension rights, and loss of reputation in the community.
295. The acts of City Manager were his own acts, and also acts imputable to City under the doctrine of *respondeat superior*, and constituted the tort of intentional infliction of emotional distress.

FOR A TENTH CAUSE OF ACTION
- TORTIOUS INTERFERENCE WITH CONTRACT

296. All prior allegations, denials, admissions (whether qualified or not) and arguments are repeated here as if set forth verbatim.
297. Upon information and belief, the acts of Assistant Manager and PIO in authoring, amending and distributing incomplete and incorrect press releases concerning the theft of Plaintiff's Weapon, were deliberate attempts by Assistant Manager and PIO to undermine Plaintiff's standing in the City, and intended to cause and did interfere with Plaintiff's continued employment by City as its Public Safety Director.

298. In the alternative, the aforesaid acts by Assistant Manager and PIO were reckless or grossly negligent acts that interfered unlawfully with Plaintiff's continued employment by City as its Public Safety Director.
299. The willful, reckless or grossly negligent aforesaid acts of Assistant Manager and PIO were outside the scope of their employment with City and breached a duty of care they owed to Plaintiff to issue only truthful press and public statements concerning Plaintiff and the events of December 2009, and constituted tortious interference with the contract of employment of Plaintiff by City.
300. City Manager tortiously interfered with Plaintiff's contract of employment with City by intentionally failing to abide by the rules of procedure set forth in the City Personnel Manual for the conduct of Grievance Committee hearings, and in doing so acted outside the scope of his employment by City and in violation of public policy of the State of South Carolina.
301. Upon information and belief, City Manager further tortiously interfered with Plaintiff's contract of employment with City by overreaching and instructing Law Firm to abuse the deliberative processes set forth in the Personnel Manual for the rendering of a decision by the Grievance Committee, and instructing Law Firm to place pressure on the members of the Grievance Committee to adopt a biased and untruthful finding pre-prepared by Law Firm at the instruction of City Manager.
302. Upon information and belief, City Manager also tortiously interfered with Plaintiff's contract of employment with City by initially instructing City's staff to deny Plaintiff the continued health insurance benefits to which Plaintiff is entitled under the policy set forth in the Personnel Manual.
303. City Manager further tortiously interfered with Plaintiff's contract of employment with City by terminating Plaintiff's employment because of Plaintiff's exercise of his right to defend himself at the Grievance Committee.
304. The acts of City Manager were his own acts and constituted tortious interference with the contract of employment of Plaintiff by City.

FOR AN ELEVENTH CAUSE OF ACTION – NEGLIGENCE

305. All prior allegations, denials, admissions (whether qualified or not) and arguments are repeated here as if set forth verbatim.
306. Upon information and belief, based on the public statements of City Manager at the Grievance Committee Hearing on April 19, 2010, City Manager was not aware of the Bailey Email until shortly before that Hearing.
307. Assistant Manager, PIO and City Attorney all admitted knowledge of the Bailey Email.
308. Assistant Manager and PIO owed a duty of care to their employer and to Plaintiff to ensure that any and all press releases were complete, accurate and truthful.
309. Assistant Manager and PIO owed a duty of care to Plaintiff to ensure full and accurate information was given to City Manager before City Manager made any decision concerning Plaintiff's employment with City.
310. By negligently withholding material facts supportive of Plaintiff's effort to correct the December Press Release, and by failing to do so, have caused Plaintiff actual, proximate and continuing monetary damage in loss of wages, retirement benefits, increased healthcare costs, and loss of reputation in the community.

**FOR A TWELFTH ELEVENTH CAUSE OF ACTION -
VIOLATION OF RIGHT TO PETITION FOR REDRESS OF GRIEVANCES**

311. All prior allegations, denials, admissions (whether qualified or not) and arguments are repeated here as if set forth verbatim.
312. The retaliatory discharge of Plaintiff by City Manager, for speaking in his own defense at the Grievance Committee, was a violation of Plaintiff's right of freedom of speech and to petition for the redress of grievances pursuant to Article 1 § 2 of the South Carolina constitution, and in violation of the statutory public policy of the State of South Carolina.
313. City has endorsed the actions of City Manager, and is responsible for those actions under the doctrine of *respondeat superior*.
314. Plaintiff has suffered actual, proximate and continuing monetary damage in loss of wages, retirement benefits, increased healthcare costs, and loss of reputation in the community, as a result of the violations of his exercise of free speech and to petition for the redress of grievances as protected by the Constitution of the State of South Carolina.

FOR A THIRTEENTH CAUSE OF ACTION – DECLARATORY JUDGMENT

315. All prior allegations, denials and admissions (qualified or not as set forth above) are repeated here as if set forth here verbatim.
316. City Attorney and Law Firm are retained by City and City Manager to offer advice and counsel to those parties.
317. This Honorable Court has jurisdiction to determine pursuant to S.C. Code Ann. § 15-53-10 *et seq.* (Supp. 2009) (Uniform Declaratory Judgments Act) whether City Attorney and/or Law Firm can fairly provide independent advice and counsel to the Grievance Committee of City as required under the policy set forth in the Personnel Manual.
318. Upon information and belief, the allegations set forth in this Complaint represent a judicable controversy affecting not only Plaintiff but all other employees of City who have the right to seek to have grievance hearings pursuant to the Personnel Manual., and to declare pursuant to S.C. Code Ann. § 15-53-20 that the rights and privileges of employees of City have been and would continue to be prejudiced by allowing City Attorney and/or Law Firm to intercede with the Grievance Committee on behalf of their clients.
319. This Court has jurisdiction to declare that City Manager may not terminate an employee of City for testifying at a City Grievance Committee hearing against disciplinary actions taken or proposed against that employee. Such action is contrary to S.C. Code Ann. §§ 8-17-330 and 16-7-560 (Supp. 2009) and the laws and constitution of the State of South Carolina.
320. S.C. Code Ann. § 30-1-90(B) (Supp. 2009) provides that the State Department of History and Archives to promulgate as state regulations general schedules for the retention as public records documents and information concerning the business of the City. In 1993 and 2003 the State General Assembly approved such regulations, including but not limited to Reg. 12-601.7 (Contracts), Reg. 12-605.3 (Audit Reports), Reg. 12.605.8 (Purchase Orders), and 12.605.10 (Paid Invoices).
321. City has violated the above-cited provisions of State law and State Regulations by failing to maintain documents relating to insurance for tort liability of City and its employees and agents. This Court has jurisdiction to declare that City must comply with the law of

South Carolina relating to the retention of public records and must produce those records in compliance with FOIA.

FOR A FOURTEENTH CAUSE OF ACTION – INJUNCTIVE RELIEF

322. All prior allegations, denials, admissions (whether qualified or not) and arguments are repeated here as if set forth verbatim.
323. The participation of City Attorney and Law Firm in any Grievance Committee hearing as advisors to the Grievance Committee is an unconscionable conflict of interest and violative of the due process rights of the Plaintiff to a fair and impartial hearing, since City Attorney is a material witness to the matters giving rise to a demand by the Plaintiff for a grievance hearing, and Law Firm has no standing under the Personnel Manual to advocate and appear for City Manager and then offer advice and counsel to the members of the Grievance Committee as if advising that Committee.
324. Plaintiff is informed and believes that he is entitled to a temporary and permanent injunction against City Attorney or Law Firm acting in any manner as counsel before the Grievance Committee in any matter related to Plaintiff and for such other sanctions against City Attorney and Law Firm for their conduct so far.
325. Plaintiff is informed and believes he is entitled to a Grievance Committee hearing concerning his termination from employment, and an Order of this Honorable Court requiring City to accord him such a hearing.
326. Plaintiff is further informed and believes that the interests of justice, preservation of his rights and reliance by him upon the terms of the Personnel Manual require that this Honorable Court issue a temporary Order prohibiting the City or City Manager from convening a Grievance Committee except after assuring this Honorable Court that the conduct of proceedings will comport with the principles of fair play and common justice, and that City Manager, Assistant Manager and all other employees and agents of City be warned that interference with the deliberations or conclusions of the Grievance Committee members, including but not limited to putting the members of the Grievance Committee in fear of retaliation unless they endorse any prior decision of City Manager without qualification, would be considered by this Honorable Court as contempt of court and punished appropriately.

FIFTEENTH CAUSE OF ACTION – NEGLIGENT SUPERVISION

327. All prior allegations, denials, admissions (whether qualified or not) and arguments are repeated here as if set forth verbatim.
328. City hired City Manager to manage the affairs of the City in accordance with the laws of South Carolina and the Ordinances of City.
329. City owed Plaintiff a duty of care to require City Manager to manage the affairs of the City in accordance with the laws of South Carolina and the Ordinances of City.
330. City knew or should have known that City Manager was ignoring and flouting the laws of the State of South Carolina and the Ordinances of City in regard to the operation of the personnel policies of City as set forth in the Personnel Manual, compliance with the South Carolina Freedom of Information Act, engaging in civil conspiracies with Assistant Manager and PIO, and disregarding the common law and statutory duties of an employer in South Carolina to provide a working environment free from harassment and oppressive conduct.
331. City's failure to supervise and when necessary discipline City Manager constitutes the tortious act of negligent supervision, for which City is liable in damages to Plaintiff.

FOR A SIXTEENTH CAUSE OF ACTION – INJURIOUS FALSEHOOD

332. All prior allegations, denials, admissions (whether qualified or not) and arguments are repeated here as if set forth verbatim.
333. By falsely alleging that Plaintiff admitted lying to City Manager and thereafter apologized to City Manager for lying, all such alleged but false acts of Plaintiff asserted by City Manager to have occurred (but which Plaintiff denies to have occurred) in the period between December 21, 2009 and December 31, 2009, City Manager committed the tort of injurious falsehood against Plaintiff, intending to cause proximate and consequent economic damage to Plaintiff in Plaintiff's future employment with a municipal or other governmental Public Safety or law enforcement department.
334. The tortious acts of City Manager are his own acts, and also imputable to City under the doctrine of *respondeat superior*.

**FOR A SEVENTEENTH CAUSE OF ACTION – VIOLATION
OF S.C. CODE ANN. § 23-31-600(A)(1)**

335. All prior allegations, denials, admissions (whether qualified or not) and arguments are repeated here as if set forth verbatim.
336. The willful refusal of City Manager to comply with the provisions of the South Carolina Code of Laws concerning the issuance of an Identification Card as provided in S.C. Code Ann. § 23-31-600(A)(1) are his own acts, and also imputable to City under the doctrine of *respondeat superior*

PRAYER FOR RELIEF

- A. Plaintiff has been denied the opportunity to seek any meaningful and impartial administrative relief through his employment contract and rights.
- B. The Plaintiff seeks relief from this Honorable Court by way of a Jury Trial and an Order finding (subject only to the limitation on awards of damages against City pursuant to the South Carolina Tort Claims Act):

[1] As to the First Cause of Action alleged (Violation of Civil Rights) that the constitutional rights of Plaintiff to substantive due process under the Constitution of South Carolina have been violated by City and City Manager, causing him proximate and consequential damage by loss of his liberty and property interests in wages, retirement benefits and other associated benefits of employment by a political sub-division of the State of South Carolina; and

[2] As to the Second Cause of Action alleged (Denial of Equal Protection) that such violations of the Plaintiff's constitutional rights of equal protection are actionable under the Constitution and laws of the State of South Carolina, and that consequently that the Defendants are jointly and severally liable in damages to the Plaintiff in an amount to be proven at trial, but not less than \$1,000,000.00 for the violation of the Plaintiff's right to equal protection and privilege under the law; and

[3] As to the Third Cause of Action alleged (Conspiracy to Deny Procedural Due Process) that such actions of one or more of the Defendants to deprive the Plaintiff of his constitutional and statutory right to a fair and impartial Grievance Committee hearing were part of a conspiracy actionable under the Constitution and laws of the State of South Carolina, and that consequently that the Defendants are jointly and severally liable in damages to the Plaintiff in an amount to be proven at trial, but not less than

\$1,000,000.00 for their conspiracy to violate the Plaintiff's right to equal protection and privilege under the law; and

[4] As to the Fourth Cause of Action alleged (S.C. Code Ann. § 30-4-10 *et seq.*) that the Defendants jointly and severally acted and conspired to violate the letter and spirit of the South Carolina Freedom of Information Act, and are subject to the penalties set forth in that Act at § 30-4-100 and § 30-4-110, including but not limited to an award to the Plaintiff of his costs and attorney's fees, and a Declaratory Judgment and Injunctive Relief as this Honorable Court may find appropriate; and

[5] As to the Fifth Cause of Action alleged (Civil Conspiracy) that each of the City Manager, Assistant Manager, and PIO are jointly, severally and individually liable for the special damage they have caused the Plaintiff in his profession as a law enforcement officer with twenty years experience by way of his loss of wages, retirement benefits and other associated benefits of employment by a political sub-division of the State of South Carolina, in an amount to be decided by the trier of fact at trial for the damage and injury done to the Plaintiff, but not less than \$1,000,000.00; and

[6] As to the Sixth Cause of Action alleged (Defamation, Slander and Libel) that each of City Manager, Assistant Manager, and PIO have knowingly and maliciously made false and harmful statements in public about the Plaintiff, thereby committing the torts of defamation, slander and libel against the Plaintiff, for which the Plaintiff is entitled to money damages against each of City Manager, Assistant Manager and PIO in an amount to be decided by the trier of fact at trial for the damage and injury done to the Plaintiff, but not less than \$1,000,000.00; and

[7] As to the Seventh Cause of Action (Wrongful Discharge) that the failure of City to enforce its Ordinances and the County and Municipal Employees Grievance Procedure Act, and the deliberate and flagrant acts of City Manager in regard thereto, was a breach of an implied covenant of good faith and fair dealing in Plaintiff's employment contract with City, for which City and City Manager are jointly and severally liable in damages in an amount to be decided by the trier of fact at trial for the damage and injury done to the Plaintiff, but not less than \$1,000,000.00, being a capitalization of the loss to the Plaintiff

of reasonably predictable wages, retirement benefits and other associated benefits of employment by a political sub-division of the State of South Carolina; and

[8] As to the Eighth Cause of Action alleged (Retaliatory Discharge) that City is liable for the tortious acts of City Manager in retaliating against the Plaintiff for contesting the unjustified disciplinary action against the Plaintiff by seeking and presenting a case through the Grievance Committee adversary hearing, in an amount to be proven at trial, but not less than \$1,000,000.00, being a capitalization of the loss to the Plaintiff of reasonably predictable wages, retirement benefits and other associated benefits of employment by a political sub-division of the State of South Carolina; and

[9] As to the Ninth Cause of Action alleged (Intentional Infliction of Emotional Distress) that City Manager and City are liable for the actions of City Manager in causing outrage to the Plaintiff, in an amount of damages to be decided by the trier of fact at trial, but not less than \$1,000,000.00; and

[10] As to the Tenth Cause of Action alleged (Tortious Interference with Contract) that City Manager, by deliberate and improper tortious acts, has interfered with the contract of employment of the Plaintiff with the City, and caused damage to Plaintiff in an amount to be proven at trial, but not less than \$1,000,000.00, being a capitalization of the loss to the Plaintiff of reasonably predictable wages, health insurance premiums for some fifteen (15) years, retirement benefits and other associated benefits of employment by a political sub-division of the State of South Carolina; and that Assistant Manager and PIO are also jointly and severally liable to Plaintiff for their willful, reckless or grossly negligent interference with the employment contract of Plaintiff by City, and caused damage to Plaintiff in an amount to be proven at trial, but not less than \$1,000,000.00, being a capitalization of the loss to the Plaintiff of reasonably predictable wages, health insurance premiums for some fifteen (15) years, retirement benefits and other associated benefits of employment by a political sub-division of the State of South Carolina; and

[11] As to the Eleventh Cause of Action (Negligence) that Assistant Manager and PIO, by negligently performing their duties to assist and advise City Manager, have caused damage to Plaintiff in an amount to be proven at trial, but not less than \$1,000,000.00, being a capitalization of the loss to the Plaintiff of reasonably predictable wages,

retirement benefits and other associated benefits of employment by a political sub-division of the State of South Carolina; and

[12] As to the Twelfth Cause of Action (Violation of South Carolina Constitutional Rights) that City and City Manager are jointly and severally liable to the Plaintiff for the damage caused by their failure to respect and honor his right to freedom of speech, and have caused damage to Plaintiff in an amount to be proven at trial, but not less than \$1,000,000.00, being a capitalization of the loss to the Plaintiff of reasonably predictable wages, retirement benefits and other associated benefits of employment by a political sub-division of the State of South Carolina; and

[13] As to the Thirteenth Cause of Action (Declaratory Judgment) that City is in violation of its Grievance Committee procedures by allowing or instructing City Attorney and /or Law Firm to advise any Grievance Committee organized by City or City Manager under the policies set forth in the Personnel Manual; and

[14] As to the Fourteenth Cause of Action (Injunctive Relief) that (a) City, City Manager and/or Assistant Manager be temporarily and permanently restrained from convening a Grievance Committee hearing except if conducted in strict accord with the Personnel Manual, and (b) City and City Manager be enjoined temporarily and permanently from employing or using City Attorney and/or Law Firm (i) as participants in any Grievance Committee hearing and/or influencing or (ii) as conduits or agents of City Manager to convey threats of retaliation against the members of the Grievance Committee if such members do not endorse without qualification any decision of City Manager; and

[15] As to the Fifteenth Cause of Action (Negligent Supervision) that City be found liable in damages to the fullest extent allowed by applicable law to Plaintiff for the damage caused to him by the negligent supervision by City of the conduct of City Manager; and

[16] As to the Sixteenth Cause of Action (Injurious Falsehood) that City Manager and City be jointly and severally liable in damages to the fullest extent allowed by applicable law to Plaintiff for the damage caused to him in an amount to be proven at trial, but not less than \$1,000,000.00, being a capitalization of the loss to the Plaintiff of reasonably predictable wages, health insurance premiums for some fifteen (15) years, retirement

benefits and other associated benefits of employment by a political sub-division of the State of South Carolina; and

[17] As to the Seventeenth Cause of Action (Violation of S.C. Code Ann. § 23-31-600) that City Manager shall be ordered to issue an Identification Card for a concealed weapon permit; and

[18] That the Plaintiff is entitled to such further and ancillary relief as this Honorable Court may find proper, including but not limited to an award of his attorney's fees and expenses.

Respectfully submitted.

**The McGougan Law Firm, LLC
Attorneys for the Plaintiff**



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Little River, SC
Dated: August 09, 2010

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA**

FLORENCE DIVISION

William H. BAILEY, Jr.,

Plaintiff,

v.

**CITY OF NORTH MYRTLE BEACH, a South
Carolina Municipal Corporation,
John SMITHSON, Steven THOMAS, and
Nicole AIELLO,**

Defendants.

C/A No. 4:10-cv-01656-TLW

**VERIFICATION OF
AMENDED COMPLAINT**

PERSONALLY APPEARED BEFORE ME the Plaintiff in this above-captioned matter, who having identified himself to me by the production of a South Carolina driving license numbered SCDL#08094996, and being duly sworn, states:

1. That I am the Plaintiff in this matter, and have read the Amended Complaint consisting of 47 pages plus attachments referenced therein, a listing of which is as follows:

Exhibit	Index to Exhibits
1	Personnel Manual - Grievance Committee Procedures
2	Horry County Police Report
3	"Bailey Email"
4	December Press Release
5	Disclaimer Press Release
6	February 25, 2010 Grievance Committee Appeal
7	City Attorney's Letter of March 09, 2010 plus attachments
8	March 15, 2010 Grievance Committee Appeal
9	March 15, 2010 Letter to City Mayor
10	Mayor's Response
11	March 18, 2010 FOIA Request
12	April 09, 2010 Letter from Chairman of Grievance Committee
13	April 13, 2010 Letter to Chairman of Grievance Committee
14	April 09, 2010 Response to FOIA Request
15	April 19, 2010 Submission to Grievance Committee
16	Check dated April 29, 2010 "Longevity Check"
17	April 29, 2010 Letter to City Attorney
18	Settlement Negotiations Email
19	May 02, 2010 FOIA Request
20	May 03, 2010 City Council Agenda
21	May 17, 2010 City Council Agenda

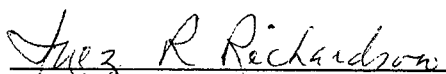
00096

22	May 20, 2010 Letter from South Carolina State Retirement System
23	COBRA Letter mailed May 20, 2010 from City [dated April 13, 2010]
24	May 28, 2010 Letter to City Personnel Department re Grievance
25	June 02, 2010 email from City re FOIA Request of May 02, 2010
26	June 03, 2010 response to City email [Exhibit 25]
27	June 02, 2010 letter to Grievance Committee Chairman
28	June 03, 2010 FOIA Request
29	June 08, 2010 Letter from Law Firm re Grievance Committee hearing
30	June 21, 2010 City Council Agenda
31	July 26, 2010 response to July 06, 2010 FOIA Request
32	August 04, 2010 response to July 16, 2010 FOIA Request.

2. That the pleadings attached were prepared by my attorney based on information and documents personally supplied by me to my attorney.
3. That the allegations contained in the Amended Complaint are true and correct, and are based on my personal knowledge of facts and events, except those allegations based on information and belief, which allegations I believe to be true, complete and accurate.
4. That I have authorized my attorney to file and serve this Amended Complaint, to present the same to the Court, to secure any Temporary and Permanent Orders based on the pleadings therein, and to secure service upon the adverse parties of the Amended Complaint and any necessary process based thereon.


William H. Bailey, Jr.

August 9, 2010


Notary Public for the State of South Carolina
My Commission expires: 5/6/2020

1 that correct, from the defense?

2 MR. JOHNSON: Yes, Your Honor, a motion to
3 dismiss.

4 May it please the Court, Your Honor, briefly,
5 this case originally involved two causes of action,
6 one for declaratory judgment that Mr. Bailey was
7 entitled to a grievance hearing, second, the city
8 manager cannot offer him another form of hearing,
9 name clearing hearing pursuant to case law which we
10 will get to. And third, Mr. Bailey sought a ruling
11 that the city's attorney could not advise the
12 grievance committee as the grievance committee
13 attorney, and then he also sought injunctive relief
14 basically asking the Court to put all that into
15 effect.

16 To sort of briefly, the case comes to court
17 on sort of unusual procedural status. The
18 plaintiff filed a motion for summary judgment and
19 during the argument on motion for summary judgment
20 the Court determined that the injunctive relief,
21 claim for injunctive relief was moot because in the
22 interim the city had repealed its grievance
23 procedure, which it is entitled to do, so all that
24 left was a claim for declaratory judgment.

25 At a hearing a couple months ago the

1 plaintiff made a motion to amend his complaint, it
2 was denied, so we are here today simply on the
3 declaratory judgment matter and really just on the
4 one issue, as we see it, which is whether Mr.
5 Bailey was entitled to a grievance hearing on the
6 issue with the city manager and offering a name
7 clearing hearing. He rejected that, we're
8 certainly not going to offer a name clearing
9 hearing if he didn't want one, and as far as
10 advising the grievance committee, there is no
11 grievance committee, so there is no issue there
12 anymore. The only issue is was he entitled to a
13 grievance hearing.

14 Factually this case stems from the fallout
15 from, Mr. Bailey was a Public Safety, former Public
16 Safety Director for the City of North Myrtle Beach
17 and this case stems from the fallout of Mr. Bailey
18 leaving his gun in his unlocked vehicle and then
19 having it stolen one night and the misinformation
20 that came out in the wake of that.

21 As a result the city manager at the time, Mr.
22 John Smithson, gave Mr. Bailey an ultimatum, told
23 him that he could resign or be terminated, and he
24 needed a decision, this was on April the 28th,
25 2010, that he needed a decision by the next day,

1 5:00 p.m. the next day on the 29th, which was a
2 Thursday.

3 What ensued was two days of negotiations
4 between my law partner Steve Savitz and Mr. Moss
5 who is counsel for Mr. Bailey to see if they could
6 work out terms of an amicable separation.
7 Ultimately that wasn't successful and where the
8 city understood that left things was since he
9 hadn't told us that he was going to quit, he was
10 terminated and the city manager elected to, again
11 the negotiations took place Thursday and Friday,
12 April 29th and April 30, and the city manager
13 elected to make the termination effective April 30
14 since they had been in negotiations during that
15 time.

16 During those negotiations and unbeknownst to
17 the city Mr. Bailey went to Columbia and purchased
18 five years of retirement time, it is called,
19 basically five years time in the system, purchased
20 five years time in the system so he could get to
21 the 25 years he would need to be fully vested in
22 the Police Officers Retirement System.

23 The negotiations that were going on during
24 those two days had to do with getting him enough
25 time, because he still has to be on the city's

1 payroll to do that, he can't do it once he is
2 separated, to get the funds together to go do that.
3 But again, those negotiations weren't successful.
4 But unbeknownst to the city Mr. Bailey had phone up
5 there, he had bought the time and he had actually
6 put in his retirement papers and retired on April
7 the 30, 2010, with an effective date of May 1st,
8 2010, didn't tell the city, the city doesn't learn
9 about this until sometime later through basically
10 an email from Mr. Moss to my law partner Mr.
11 Savitz.

12 Mr. Moss also tells the press that, before
13 the city could take any disciplinary action against
14 Mr. Bailey, Mr. Bailey retired. And then in the
15 interim, around, I think it was mid May or so Mr.
16 Bailey filed a grievance with the city which at the
17 time did have a grievance procedure to grieve what
18 he says was his forced retirement from the city.

19 And then on June the 11th, 2010, he filed a
20 lawsuit. There is another lawsuit that is going on
21 at the time between Mr. Bailey, the city and some
22 individuals that concerns his separation from
23 employment. This issue today is limited just to
24 whether he was entitled to a grievance.

25 And in that lawsuit he says repeatedly in a

1 verified complaint and says it again in a verified
2 amended complaint that he was constructively
3 discharged, in other words, he resigned under
4 pressure. So, the city determined that he was not
5 entitled to a grievance, you can't grieve your
6 resignation, and they informed him of that but at
7 the same time, and through a letter to Mr. Moss,
8 informed him of that, at the same time concluded
9 that he may be entitled to a name clearing hearing.
10 Under federal constitutional principles public
11 employees have liberty interest in their good name
12 and if they are terminated under circumstances that
13 might, that might sully their name, then they are
14 entitled to a hearing in front of the decision
15 maker, which is the city manager in the city
16 manager form of government.

17 Basically they are entitled to put their
18 story out there. He was offered that, rejected it
19 through a letter from his lawyer and then in the
20 interim this lawsuit was filed and at some point
21 the city decided that they didn't want to have a
22 grievance procedure anymore and they repealed it.

23 So, where that leaves us today is the law of
24 this case is that he, based on Judge Culbertson's
25 ruling, that the injunctive relief claim is gone so

1 there is nothing the Court can give him. The Court
2 can't give him a grievance, the city doesn't have
3 to have a grievance procedure and the Court can't
4 force them to constitute a grievance committee and
5 put that into place.

6 So, under the Uniform Declaratory Judgment
7 Act there has to be some live case or controversy
8 for this court to have any jurisdiction to hear
9 anything. Well, even if the Court were to rule
10 that Mr. Bailey was entitled to, at the time to a
11 grievance hearing it doesn't settle the rights
12 between the parties and we believe the case of
13 Powers versus McNair is right on point in this
14 matter and it is cited to the Court.

15 Do you have a copy of the motion, Your Honor?

16 THE COURT: I do.

17 MR. JOHNSON: Okay, good, I should have an
18 extra somewhere. But in that case, and I
19 apologize, the motion obviously doesn't contain a
20 lot of analysis, but in that case, the Powers case,
21 some police officers for I believe it was the City
22 of Laurens, I'm not sure of the city anymore, had
23 determined that it would be easier for them to
24 fight crime in their city if every time they had to
25 go outside their jurisdiction they didn't have to

1 call Laurens County Sheriff's Department and say,
2 "Wait a minute, I need help," so they came up with
3 the idea that they could all be commissioned as
4 constables who have statewide jurisdiction, so they
5 asked the governor to commission them as
6 constables, Governor McNair at the time.

7 And Governor McNair says, "That sounds fine
8 except that I think it violates double office
9 holding so I'm not going to do it." So the
10 officers sought a declaratory judgment from the
11 court saying that this isn't dual office holding,
12 and what the court said is, "We're not going to
13 decide this, this doesn't settle any right between
14 the parties because even though the governor has
15 said that he's amenable to doing this it's
16 discretionary, he is not required to appoint
17 anybody as a constable. So, giving you what you
18 asked for, a declaratory judgment that it is not
19 dual office holding, even if we were to give that
20 to you, you still wouldn't have a right to be a
21 constable."

22 And that is where we are in this case. Even
23 if the Court were to tell Mr. Bailey, "Mr. Bailey,
24 you're entitled to a grievance hearing --"

25 THE COURT: There is no grievance procedure.

1 MR. JOHNSON: There is no grievance
2 procedure, he can't have the hearing, so there is
3 really no reason for us to be here today.

4 The second thing I want to point out to the
5 Court is the case of Eubanks versus Smith which is
6 at 354 Southeastern 2d 898.

7 THE COURT: Have you provided me with those?

8 MR. JOHNSON: I don't know if I have, Your
9 Honor. I have a copy of it, would you like me to
10 hand it up?

11 THE COURT: Yes, sir.

12 MR. JOHNSON: Do you want to see it?

13 MR. MOSS: I have it here.

14 MR. JOHNSON: I apologize I didn't come with
15 an extra copy.

16 THE COURT: All right, you may proceed.

17 MR. JOHNSON: Your Honor, in the Eubanks
18 case, essentially what the Court said was, and this
19 was a case where -- I apologize, I'm trying to pull
20 this up so I have it on my computer.

21 THE COURT: I took your copy.

22 MR. JOHNSON: That's all right, that is my
23 fault, I should have come with an extra one. But
24 in any event, what the Court said was in reviewing
25 these folks' claim that they didn't receive due

1 process in that case, several employees after some
2 turmoil had been told, "You can resign or be
3 fired," it was in Myrtle Beach, similar to the
4 ultimatum that was given to Mr. Bailey, and in that
5 case one of them decided he was going to resign and
6 take the severance, and the others said, "No,
7 you're going to have to fire us." The ones that
8 got fired got a grievance, the fellow who didn't,
9 he didn't get a grievance.

10 What the Court said was, I believe I have
11 actually got it highlighted on the page there, but
12 what the Court said was that Wiggins, I believe was
13 his name, was not entitled to a grievance, he
14 wasn't entitled to a hearing because he retired.
15 The fact, or excuse me, because he resigned. The
16 fact he resigned under pressure, the fact he was
17 going to be fired if he didn't resign, he still had
18 a choice and he chose to resign, and we contend
19 that is exactly what happened here. So even if we
20 did have a live case of controversy, which I don't
21 think we do, where we are with this is Mr. Bailey
22 chose to retire.

23 The grievance committee can't unretire him,
24 he made that choice, he did it, there is nothing
25 they can do for him. So, you don't get to grieve,

1 you don't get to grieve your retirement, and that
2 is our motion in a nutshell, Your Honor.

3 THE COURT: Okay, thank you.

4 Mr. Moss, what relief is your client seeking
5 if I don't have the ability to order a grievance
6 before a grievance committee that is no longer
7 available, what relief are you seeking?

8 MR. MOSS: The declaratory relief we
9 initially sought and the case --

10 THE COURT: So let's say I grant the
11 declaratory relief he is entitled to a grievance,
12 that leads us nowhere, correct?

13 MR. MOSS: Respectfully, that is not
14 accurate, Your Honor, I will be happy to respond to
15 that fully.

16 THE COURT: Yes, sir.

17 MR. MOSS: What has been argued here is a
18 summary judgment motion, not Rule 12(C) motion.
19 I'm glad that happened because it changed the whole
20 standard of review and many of the facts that Mr.
21 Johnson recited in the record he took great liberty
22 with misrepresenting. This case is about whether
23 or not the government is allowed to change the
24 rules in mid stream and we sought declaratory
25 relief that that can't happen.

1 Mr. Bailey asserted his rights were violated,
2 we're entitled to that declaratory relief and under
3 15-77-300, if we get that declaratory relief we're
4 entitled to attorney fees and costs we incurred in
5 bringing this action.

6 What happened in this case was very different
7 than Attorney Johnson told you. There was a
8 controversy involving loss of a weapon, Mr. Bailey
9 was disciplined for that in a prior disciplinary
10 action. He was accused of lying about it in his
11 account of events, which he denies, and he sought a
12 grievance hearing and he had a grievance hearing in
13 April of --

14 THE COURT: So, he got his grievance hearing?

15 MR. MOSS: No, he didn't. He had a grievance
16 hearing on the disciplinary action, that was April
17 19, I believe it was, of 2010. The disciplinary
18 action at that time was he was demoted from Chief
19 of Police-Public Safety Director to the position of
20 Lieutenant and he was suspended for two weeks. He
21 grieved that. He went into his constitutionally
22 protected grievance hearing which didn't have to be
23 done under city policy, admittedly, but it was
24 done. He raised his hand and took an oath and told
25 his account of it. He got fired for doing that.

1 He wasn't fired for what happened in the prior
2 history, he was fired because he testified in the
3 grievance hearing and he had the audacity to
4 testify at the grievance hearing and rebutt the
5 allegations made against him. It was the
6 disciplinary action for which he was not given a
7 grievance, a subsequent disciplinary proceeding and
8 he wasn't given a grievance hearing, and he was
9 entitled to one under the law.

10 THE COURT: Did he resign prior to the
11 grievance hearing?

12 MR. MOSS: He absolutely did not. That is
13 very much a disputed issue of fact. Since they
14 have gone into these facts and they triggered
15 summary judgment burden, it is very much disputed
16 facts whether he resigned. What the lawyer is
17 trying to do, they are trying to use the word
18 retire synonymously with resigning and it's not,
19 particularly for police officers. They are not
20 synonymous terms.

21 Attorney Johnson told you he went and
22 purchased five years so he would be fully vested.
23 That is totally nonsense. He was a fully vested
24 police officer in the South Carolina Police
25 Retirement System. He bought five years so that

1 when he retired he would get full service benefits
2 compensation as opposed to less than full benefits.
3 Actually full benefit would require about thirty
4 years of service but he was entitled to buy five
5 years of service to protect his retirement income
6 and he did that but that is not, I emphasize, not
7 even remotely related to resigning.

8 He was offered an ultimatum to resign or be
9 fired. He said, "I'm not going to resign, you're
10 going to have to fire me." Now, he filed for
11 unemployment, there was an unemployment hearing.
12 The unemployment tribunal found that he was
13 terminated without cause under the Act.

14 Now, that finding is not binding upon this
15 Court in any way but in the transcript from it, in
16 that transcript the city manager who fired Mr.
17 Bailey testified he fired Mr. Bailey and Mr. Bailey
18 has testified that he was fired, so I submit to you
19 that if the city manager who himself said he fired
20 him and Mr. Bailey said he was fired, what are we
21 talking about? We're talking about some offensive
22 lawyer tricks trying to revise history.

23 Now, what this case is about now is a
24 declaratory judgment that he was entitled at the
25 time he was fired, they changed the rules mid

1 stream and that is very much a --

2 THE COURT: It goes back to if I rule for
3 your client and give him a grievance hearing there
4 is no Board by which to give him a hearing, is
5 there?

6 MR. MOSS: No, but that doesn't have to be --

7 THE COURT: So, am I going to be twiddling my
8 thumbs today, no matter what I do it will have no
9 effect on the current situation?

10 MR. MOSS: It will absolutely have an effect
11 on the current situation. There are two other
12 lawsuits and probably a third one coming that this
13 issue will define the rights to those parties in
14 the lawsuits. Those parties have litigation
15 pending between them that this issue will resolve,
16 it will probably resolve one case in its entirety
17 and in the other case it will change the direction
18 of that case so there is relief that will be
19 granted in that case.

20 Now, this case, if anything, it could be
21 consolidated. The reason it is a separate case, by
22 the way, is because at the time that he was
23 terminated and sought the grievance hearing and was
24 denied a grievance hearing, hence this action, at
25 that time there was a pending action, the defense

1 attorneys have removed it to Florence, so in order
2 to get injunctive relief he was required to file
3 this action in state court, so it has always
4 maintained separate status, however it is very much
5 in issue in the other litigation so it is a
6 judiciable controversy. The parties have rights
7 they have asserted, they contradict each other and
8 this case will resolve those rights.

9 In addition to that, Mr. Bailey was entitled
10 to a grievance hearing, he was told he was going to
11 get a grievance hearing, the evidence will show you
12 that Mr. Bailey asked for it, "We're going to give
13 it to him, arrange a mutually agreeable date on
14 which he can have it." That is the evidence we
15 intend to present today. So, they acknowledge he
16 was entitled to it, then changed their mind upon
17 this fabrication that retiring in the State system
18 as a police officer is synonymous with resigning.
19 They are not synonymous.

20 What Mr. Bailey did with the State Retirement
21 System has nothing to do whatsoever with his
22 relationship with the city. That is, it is true
23 that because the city decided to change the rules
24 during the pendency of this action, the evidence
25 will also show immediately upon him asking for the

1 grievance hearing upon his termination they set in
2 place to change the rules so he couldn't have one.
3 That evidence will be presented.

4 That is wrong and it has got to be dealt with
5 in some case and there is no better case than this
6 one right here because it hones in on this very
7 issue and respectfully it will define the parties'
8 rights in other litigation. He is entitled to the
9 relief requested.

10 There are two issues we requested. He is
11 entitled to declaratory relief on the issue the
12 city manager has no authority under the South
13 Carolina Code or ordinances of the North Myrtle
14 Beach to deny the plaintiff a hearing before the
15 grievance committee. When Attorney Johnson
16 referred to relief to amend, he did file it and the
17 purpose of that was to have the intent of the
18 relief requested to be past tense, he wanted to
19 turn it around, now we can't have a grievance
20 hearing but at the time we were entitled to one.
21 That is the declaratory relief we sought.

22 The second declaratory relief we sought was
23 the city manager had no authority under the
24 ordinance to convene a hearing, a name clearing
25 hearing which is proper to do under ordinances of

1 the city and personnel policies of the city. It is
2 very different than the name clearing hearing
3 referred to in the Eubanks case. The Eubanks case
4 provides an officer when terminated in
5 circumstances which would potentially cause that
6 officer harm and to his reputation and prevent him
7 from being able to find subsequent employment has a
8 protected liberty interest in a name clearing
9 hearing, a right to be heard.

10 In the Eubanks case the name clearing hearing
11 that the Court found was sufficient to satisfy that
12 constitutional right was a hearing in which the
13 officer was cleared, it was a detached, neutral,
14 disinterested, uninvolved body that had a name
15 clearing hearing for two of those employees. The
16 Court said that was a name clearing hearing.

17 Now, they challenged whether or not it was
18 sufficient name clearing hearing because they
19 didn't have the right to cross-examine but the
20 Court found, yes, it is a sufficient name clearing
21 hearing.

22 Mr. Bailey was not given that. When they
23 wanted to assert that he resigned because he
24 retired, which was a fabrication, they said Mr.
25 Smithson, the city manager who fired him, he is

1 going to be presiding over the name clearing
2 hearing, he is going to establish what the rules
3 are and that is what you're going to get.

4 Well, that is not what the city ordinances
5 say, that is not what the personnel manual says he
6 gets and that's not what the personnel manual said
7 he was entitled to. I believe, given the
8 controverys, this needs to be resolved because it
9 will streamline the other cases we have, or in the
10 worse case it needs to be consolidated and we
11 believe Mr. Bailey is entitled to attorney fees and
12 costs at least until the time through the action,
13 until the time they abolished it by legislative
14 action.

15 THE COURT: Well, it is obvious I'm not going
16 to be able to decide this from the bench at this
17 moment. There is enough things going on. What I'm
18 going to go, I'm going to hold your motion in
19 abeyance and I'm going to go ahead and take the
20 testimony, then I will give a ruling one way or the
21 other. Before your motion is granted I think I
22 need to take some testimony. We're here and now is
23 the best time to do it.

24 So, are you ready to call your fist witness?

25 MR. MOSS: I am, Your Honor.

1 JOHN SMITHSON, after being first duly sworn,
2 testified as follows:

3 THE CLERK: Please be seated, please speak
4 your name for the record.

5 THE WITNESS: My name is John Smithson.

6 DIRECT EXAMINATION BY MR. MOSS:

7 Q Mr. Smithson, you were the city manager for
8 the city of North Myrtle Beach when Mr. Bailey was
9 employed, is that correct?

10 A That's correct.

11 Q When did you retire from that job?

12 A I believe it was in July of 2010.

13 Q Okay. And at the time or during the time you
14 worked for the city -- how long were you there, by
15 the way?

16 A How long did I work for the city?

17 Q Yes.

18 A Thirty years.

19 Q Would that be more or less than Mr. Bailey
20 worked for the city?

21 A That would be longer than Mr. Bailey worked
22 for the city.

23 Q Okay. How long were you the city manager?

24 A Approximately seven and a half years.

25 Q Okay. To your knowledge what was the highest

1 Q In an ordinance?

2 A As an attachment to an ordinance.

3 Q Okay. I have had marked an Exhibit 1 that I

4 would like to show you and ask if you recognize it.

5 THE COURT: Any objection to Exhibit 1?

6 MR. JOHNSON: I haven't seen it.

7 THE COURT: Okay.

8 MR. JOHNSON: Mr. Moss, is this part of the

9 procedures manual, personnel manual?

10 MR. MOSS: It is my understanding it is. May

11 I respond directly to counsel?

12 THE COURT: Yes.

13 MR. MOSS: It is my understanding it is.

14 THE COURT: Do you have any objection to it?

15 MR. JOHNSON: I don't have any objection.

16 THE COURT: Without objection Plaintiff's

17 Exhibit Number 1.

18 MR. MOSS: Move to admit it, Your Honor.

19 (Personnel Procedures Manual marked and

20 received in evidence as Plaintiff's Exhibit

21 Number 1).

22 BY MR. MOSS:

23 Q Mr. Smithson, when you have had a chance to

24 review that document please let me know.

25 A I'm familiar with the policy.

1 Q Okay. Pursuant to this policy you were
2 empowered to appoint members to serve on the
3 grievance committee, is that right?

4 A The grievance committee was appointed by the
5 city manager, that's correct.

6 Q That would be you?

7 A Yes.

8 Q Okay. And you did that, right?

9 A Yes.

10 Q And you appointed employees pursuant to this
11 policy to serve on that committee, is that right?

12 A Yes.

13 Q Okay. And this process was part of the
14 personnel policy for the city, is that right?

15 A Yes, it was.

16 Q Okay. So, you didn't make these rules and
17 policies, did you?

18 A No. The policy was put together over a
19 number of years.

20 Q Okay.

21 A This policy I think comes from another policy
22 so it became city policy.

23 Q Okay. Adopted by ordinance, is that right?

24 A Yes.

25 Q So, you weren't as the city manager

1 authorized to change the policy unilaterally, were
2 you?

3 A Not without review from our legal counsel.

4 Q And by city council?

5 A Generally speaking any major changes to the
6 document had to go through city council.

7 Q Okay. At the time that Mr. Bailey's
8 employment with the city ended was the policy set
9 forth in Exhibit 1 the policy that was in effect,
10 to your knowledge?

11 A If this indeed was the, was copied from that
12 particular personnel manual I would say that. I
13 don't know which one you took it from.

14 Q Well, were you employed as city manager for
15 the last year of Mr. Bailey's employment?

16 A Yes.

17 Q Okay. And you were his superior during that
18 time?

19 A Yes.

20 Q During that time do you recall any changes
21 made to the personnel policy which would eliminate
22 the right of an employee to seek a grievance
23 hearing before the grievance committee?

24 A No, I don't.

25 Q Okay. Now, you demoted Mr. Bailey and

1 suspended him in early 2010, is that right?

2 A That is correct.

3 Q Okay. And Mr. Bailey requested and received
4 a grievance hearing on that disciplinary action,
5 didn't he?

6 A That is correct.

7 Q That hearing took place in April of 2010.
8 Correct?

9 A Yes.

10 Q And at that grievance hearing the grievance
11 committee, after that they made a recommendation to
12 you and you accepted their recommendation, is that
13 right?

14 A Yes, I believe I did.

15 Q And all that took place just like this policy
16 says it was going to take place, is that right?

17 A Yes.

18 Q Now, after the conclusion of that protest you
19 terminated Mr. Bailey's employment, didn't you?

20 A Yes.

21 Q You in fact summonsed him to a meeting with
22 then Acting Chief Quattlemeyer and yourself and Mr.
23 Bailey and you gave him an ultimatum to resign or
24 be fired?

25 A That is correct.

1 Q Was anybody else at that meeting?

2 A No, sir.

3 Q And when you gave Mr. Bailey the ultimatum

4 you told him it was because of what he said in the

5 grievance hearing?

6 A I told him he had lied at the grievance

7 hearing.

8 Q Okay. The grievance committee didn't find he

9 lied, isn't that correct?

10 A I don't think the grievance committee was

11 asked to look at that.

12 Q Okay. And they didn't make any findings of

13 fact, did they?

14 A They made no finding of fact about that.

15 Q You decided he would be fired, you decided he

16 lied?

17 A That's correct.

18 Q And that is why you gave him the ultimatum?

19 A Yes, sir.

20 Q Now, did you get the city council's

21 permission to give Mr. Bailey the ultimatum?

22 A I did not get city council's permission.

23 Under the city manager form of government I didn't

24 need city council's permission.

25 Q I know, that is not exactly the question I

1 Q You didn't want him to have another grievance
2 hearing, did you?

3 A I didn't think about him having another
4 grievance hearing.

5 Q Do you recall telling him he embarrassed you
6 in the grievance hearing he had on his first
7 hearing?

8 A I believe in the comments I had prepared that
9 I gave to Mr. Bailey at that time in that meeting
10 with him I made a statement that if he did not give
11 a resignation, if he resigned he would not get a
12 grievance hearing. There was only mention of a
13 grievance hearing that was part of this
14 termination.

15 Q Do you recall Mr. Bailey in that meeting
16 telling you that he was not going to resign, you
17 would have to fire him?

18 A No. He stood up and said he was not going to
19 resign, yes, that's correct. However, he retired
20 instead of resigning.

21 Q Okay. Let's talk about it for a minute. You
22 were involved in some negotiations with, that took
23 place between your attorney Mr. Savitz and myself
24 and Mr. Bailey, you all participated, is that
25 correct?

1 Bailey was trying to get enough funding to take
2 care of his retirement and we were trying to work
3 with you and Mr. Bailey to do that. In other
4 words, to buy some time so that he could retire.

5 Q Okay, that is the part you remember?

6 A I don't remember anything about asking for a
7 general release to be signed in exchange for any
8 cooperation. I don't recall any discussion with
9 Mr. Savitz about a general release. That may have
10 been something that you folks discussed. Now, to
11 say that is not possibly done in a situation like
12 this, that probably would be the case.

13 Q Okay. What was the ultimatum specifically
14 you gave to Mr. Bailey?

15 A The ultimatum?

16 Q Well, I understand it is resign or be fired.
17 What was the time frame you gave him?

18 A Well, on the, I met with him on the 28th and
19 I told him that he would either be terminated on
20 the 29th or I would have to have an unconditional
21 letter of resignation by 3:00 o'clock on the 29th.
22 That was the, my meeting with him on the 28th,
23 those were, that was what I communicated to him.

24 Q Did you receive an unconditional letter of
25 resignation from Mr. Bailey?

1 A No. After that the discussions began with
2 you and Mr. Savitz and Mr. Bailey from that point
3 on until I think late on the 30th of April when
4 those discussions broke down.

5 Q Okay. Did you ever receive a letter of
6 resignation from Mr. Bailey?

7 A No. Again I did not receive a letter of
8 resignation because, again, Mr. Bailey retired.

9 Q Okay. And do you believe that retiring is
10 the same thing as resigning?

11 A I believe that if you retire from the city of
12 North Myrtle Beach you cannot file a grievance with
13 the city of North Myrtle Beach.

14 Q Okay. Now, when you retired you retired
15 under the city retirement policies, is that
16 correct?

17 A That's correct.

18 Q Mr. Bailey wasn't part of that retirement
19 plan, was he?

20 A Mr. Bailey was part of the Police Officers
21 Retirement System at the time he was terminated.

22 Q And a police officer obtains credits and
23 rights in that system for years of service, does he
24 not?

25 MR. JOHNSON: I'm going to object, Your

1 Honor.

2 THE COURT: That is a whole different system.
3 The State has about five different systems, he is
4 not an expert on that. All he knows about is the
5 city. I'm not going to have him testify as to the
6 police one if he is not an expert.

7 Please proceed.

8 MR. MOSS: I will, Your Honor.

9 BY MR. MOSS:

10 Q So, the ultimatum you gave Mr. Bailey was he
11 resign or be fired by the 29th, in short terms, the
12 29th?

13 A That's correct. My discussion with him that
14 day in my office was the 28th but that obviously
15 did not happen because of negotiations that took
16 place through the 29th and into the 30th.

17 Q You didn't fire him on the 29th, did you?

18 A No, I didn't.

19 Q Okay. You made at some point the decision to
20 fire him on the 30th, is that right?

21 A Well, again, remembering that the discussions
22 were going on through the 29th and into the 30th
23 and when Mr. Savitz discussed it with me late in
24 the day on the 30th I felt that it was probably
25 better, more humane on my part to make the

1 termination date the 30th rather than the 29th even
2 though I had given him that date.

3 Q Okay. You didn't tell Mr. Bailey that you
4 were making that change, did you?

5 A I don't believe, I don't know if we had the
6 discussion about the date. Mr. Savitz was, again,
7 communicating with you, he said that termination
8 would occur.

9 Q You didn't tell Mr. Bailey anything
10 different?

11 A I did not talk with Mr. Bailey.

12 Q You didn't tell me anything different?

13 A I can't -- I did not talk with you, Mr.
14 Savitz had conversations with you.

15 Q Okay. Are you aware that your attorney Mr.
16 Savitz told us on the 2nd of May that you made that
17 change? Did you see anything that made you aware
18 of that?

19 A I don't recall.

20 Q Let me show you a document. I would like to
21 show you what has been marked as Plaintiff's
22 Exhibit Number 2.

23 THE COURT: Any objection, counsel?

24 MR. JOHNSON: It is an email, Your Honor, I
25 don't know how it he is going to answer any

1 BY MR. MOSS:

2 Q Do you recall seeing it?

3 A Pardon me?

4 Q Do you recall seeing the email before?

5 A I did not see this email in the time after,
6 right after the retirement of Mr. Bailey.

7 Q Okay.

8 A At some point further down the road it is
9 possible I saw it before I left the city but I
10 don't recall.

11 Q Okay. Have you read it as you sit here?

12 A Yes, briefly. Again --

13 Q I understand you weren't copied on the email
14 but do you see in here the decision that was
15 attributed to you by your attorney?

16 MR. JOHNSON: Your Honor, I object. He
17 continues to --

18 THE COURT: The objection is sustained.
19 Don't answer the question. Objection is sustained.

20 MR. JOHNSON: Thank you, Your Honor.

21 BY MR. MOSS:

22 Q Mr. Smithson, when did you know Mr. Bailey
23 had requested a grievance hearing on his
24 termination, I'm sorry, on his termination?

25 A Termination? At some point, I don't recall

1 the date, it was some point after that request was
2 made.

3 Q Let me show you what has been marked as
4 Plaintiff's Exhibit 4. Let me know when you have
5 had a chance to review it.

6 A As far as when I would have seen this, it
7 would have been somewhere after the May 28th date.

8 Q Have you seen it?

9 A Yes, I recall seeing this.

10 Q Okay. It's written by Mr. Bailey, is it not?

11 A Yes, it is.

12 Q Okay. Addressed to the personnel department,
13 and in your duties as city manager would the
14 personnel department in the usual course of
15 business forward that to you?

16 A I'm sorry, again?

17 Q In the usual course of the city's business
18 would the personnel department have made you aware
19 of that letter when it came in?

20 A I'm sure at some point I was made aware of
21 the letter, yes. Again, I don't remember exactly
22 when or by whom.

23 Q Were you made aware because you were city
24 manager?

25 A I would think that they made me aware of it

1 since I was city manager, that's correct.

2 Q Okay. So, does that help you to recall when
3 he made the request for grievance hearing?

4 A The date is May 28th on this letter.

5 Q Okay. Now, right after you terminated Mr.
6 Bailey you went on vacation, didn't you?

7 A Yes, sir, I did.

8 Q Okay. Are you aware of any communications
9 between your lawyer and Mr. Bailey about when he
10 would be entitled to demand a grievance hearing?

11 A No.

12 Q Mr. Smithson, was the protection of Mr.
13 Bailey's ability to obtain health insurance under
14 the city's policy considered by you in the decision
15 to change his termination date from the 29th to the
16 30th?

17 A You know, again, I was at a point where Mr.
18 Bailey was close to 20 years of service with the
19 city, I mentioned to our attorneys that I thought
20 the 30th would be, it made no difference to me, the
21 29th or the 30th, there were a couple things that
22 were, that favored Mr. Bailey if I chose the 30th,
23 health insurance was one. I was not one to be that
24 cold, if you will, and cut that off so that he
25 could not get health insurance.

1 Again, assuming that he was able to retire
2 from the city and because of what the policy for
3 continuation of health insurance was as a retiree,
4 so, yes, I thought of that, I was aware that the
5 30th would enable him to get his health insurance,
6 again if he was to get retirement with the State
7 and of course as it turned out he had done that on
8 the 30th.

9 Q Now, you retired, is that right?

10 A Yes, sir, I did.

11 Q And when you retired it wasn't a part of that
12 process the city had to confirm your last date of
13 employment to your retirement system?

14 A Yes, they do. Of course I'm on a different
15 retirement system than Mr. Bailey but my retirement
16 date would be part of the record not only for my
17 retirement through the ECMA retirement system but
18 also through Social Security because I was eligible
19 for Social Security.

20 Q There is a lot of paperwork involved in that,
21 isn't there, in retiring?

22 A I guess you would say that.

23 Q Mr. Smithson, other than your attorneys, who
24 did you speak to about Mr. Bailey's request for a
25 grievance hearing, if you recall?

1 A Probably my discussions about the grievance
2 hearing were confined to legal staff.

3 Q Okay. Now, this grievance hearing that Mr.
4 Bailey requested, the one in this letter I think
5 was Plaintiff's 4 before you, that was a different
6 grievance hearing he requested from the first
7 disciplinary action when you demoted him, is that
8 right?

9 A Yes. It would have followed his termination,
10 his retirement.

11 Q Okay. And indeed your termination was a
12 separate disciplinary action from when you demoted
13 him, is that right?

14 A I'm sorry?

15 Q Your termination was a separate disciplinary
16 action, was it not?

17 A My termination of William on the 30th of
18 April was a separate disciplinary action from the
19 first demotion. However, the demotion and those
20 events that were part of that were part and parcel
21 of my decision in terms of --

22 Q Regardless of your motives, it was a separate
23 action, correct?

24 A Yes.

25 Q Let me show you what has been marked as

1 the grievance committee asked for an attorney to be
2 present to represent their interest in that
3 hearing?

4 A I think the grievance committee, again I
5 don't recall, I didn't have, you have to
6 understand, Mr. Moss, the city manager is above the
7 grievance committee, he appoints the committee but
8 the committee does its job based on policy, I did
9 not have contact with the Board, with the Grievance
10 Board about that process. I have to stay above
11 that.

12 Q Mr. Smithson, I will be happy for you to
13 explain your answer but please answer my question
14 first before you explain. Are you aware whether or
15 not the grievance committee asked --

16 A No, I'm not aware. Again, it is not my
17 place.

18 Q Thank you. Did you ever make a decision in
19 your capacity as city manager that Mr. Bailey was
20 not going to get a grievance hearing?

21 A The only decision about not getting a
22 grievance hearing was ultimately made in this
23 particular matter.

24 Q Okay. Again, my question was did you ever
25 make, did you ever make a decision that he was not

1 going to get a grievance hearing?

2 A As the city manager I agreed with the
3 decision from our legal counsel that Mr. Bailey was
4 not entitled to a grievance hearing relative to
5 this because he had retired.

6 Q Okay. You know your legal counsel didn't
7 employ Mr. Bailey, right?

8 A That's true.

9 Q You were the city manager?

10 A That's correct.

11 Q So, who made the decision he wasn't going to
12 get it? Was it the lawyers or was it you?

13 A Well, it would have been me if that is the
14 case.

15 Q Well, it is the case.

16 A I'm sorry?

17 Q It is the case.

18 A He was not entitled to a grievance hearing.

19 Q Okay. So, you made that decision?

20 MR. JOHNSON: Your Honor --

21 A If I did make the decision --

22 THE COURT: Sustained?

23 A -- I'm responsible for that as the city
24 manager, so if there was no grievance hearing I
25 would assume it was my responsibility.

1 Q Okay. Let's talk about the name clearing
2 hearing. In the time you were city manager are you
3 aware of any other disgruntled employee having a
4 name clearing hearing?

5 A No, I'm not aware.

6 Q Have you ever -- well, I will withdraw that.
7 If you go back to Plaintiff's Number 1, is
8 there anything in that portion of the personnel
9 manual that deals with a name clearing hearing?

10 A No.

11 Q Okay. To your knowledge is there anything in
12 any of the personnel policies and procedures that
13 dealt with a name clearing hearing?

14 A I'm not aware -- the name clearing hearing
15 was something that was offered to Mr. Bailey.

16 Q I understand it was offered to Mr. Bailey but
17 that's --

18 A That's as far as I --

19 Q Is that the first time, is that the only time
20 that you ever recall --

21 A That is the only time I recall.

22 Q Please let me finish my question, Mr.
23 Smithson, then I will give you all the time you
24 need to answer it.

25 A Okay.

1 Q If I can remember it. I withdraw it and
2 rephrase.

3 Is there another time when any employee,
4 current or former, of the city received a name
5 clearing hearing while you were city manager?

6 A No, I don't recall any.

7 Q Was that your idea to give him a name
8 clearing hearing or an idea --

9 A No, sir, it wasn't. It was, again, through
10 consultation with the legal staff.

11 Q Okay. Now, you were not employed with the
12 city when the city grievance committee was
13 abolished, is that right?

14 A No, I wasn't.

15 Q Are you aware of when the actions began to
16 abolish that committee?

17 A No.

18 Q Okay. When did you retire from the city as
19 city manager?

20 A As I mentioned early on, it was early,
21 sometime in July of 2010.

22 Q Okay. And you may have answered that before,
23 I'm sorry if you did. And your testimony is, if I
24 understood you, you don't recall when the actions
25 to change the personnel policy were initiated, the

John Smithson -- Redirect Examination by Mr. Moss

1 THE WITNESS: It was a disciplinary action.
2 I gave him the ultimatum to either resign or be
3 terminated, that's correct, and at the time that I
4 filled out the paperwork --

5 MR. MOSS: Your Honor, I'm not sure what
6 question he is answering.

7 THE COURT: Continue. Go ahead.

8 THE WITNESS: Just at the time that I filled
9 out the paperwork on the date of his separation it
10 was my understanding that he had been terminated,
11 because everything had broken down on the evening
12 of the 30th, however as it turned out he had
13 retired and therefore any request for a grievance
14 hearing after that point would not have been
15 honored by me.

16 MR. MOSS: Thank you, Mr. Smithson.

17 THE COURT: What was the date of his
18 retirement?

19 THE WITNESS: I think --

20 MR. MOSS: Your Honor, I object to that
21 question.

22 THE COURT: I will ask the question. What
23 was the date of his retirement?

24 MR. MOSS: The retirement system records
25 which I intend to submit to you confirm that May

Steve Thomas -- Direct Examination by Mr. Moss

1 Q Is that the record you were referring to
2 earlier that you had seen and dealt with the date
3 he retired?

4 A No, this is not.

5 Q I was trying to shorten it. The file you all
6 brought had a bunch of sub-parts. Would you be
7 able to identify from those sub-parts briefly which
8 ones it would be?

9 A What I indicated to you was I have reviewed a
10 copy of a form that is part of the retirement
11 process, I think it is from the State Retirement
12 System itself, that indicates a date of retirement
13 of May 1st and a last day of work of April 30 for
14 Mr. Bailey.

15 Q Okay. And would you know which section of
16 the file you brought this morning that would be in?

17 A I would.

18 Q Okay.

19 THE COURT: If you want to step down it may
20 be easier.

21 MR. MOSS: Thank you, Your Honor.

22 BY MR. MOSS:

23 Q You brought these sub-sections? I'm going to
24 ask you questions when you go back to the stand. I
25 just wanted you to find it.

1 A Sure.

2 Q Would she be the most appropriate person to
3 ask about questions concerning communications with
4 the State Retirement System?

5 A Any communication, most of the communications
6 would probably be between Connie Cox, our payroll
7 clerk, the employee, there could be some
8 communications from time to time with other members
9 of the human resources department as we assist our
10 employees in their retirement.

11 Q Okay. And do you recall after Mr. Bailey's
12 termination from the city that he filed for
13 unemployment?

14 A I was aware of that, yes.

15 Q And you actually went, the city challenged
16 that request for unemployment, didn't it?

17 A Yes, we did.

18 Q You went to a hearing, didn't you?

19 A I did.

20 Q And you testified?

21 A I did.

22 Q Do you recall testifying in that hearing that
23 Mr. Bailey was terminated for cause?

24 A I don't recall.

25 Q You don't recall?

1 A No.

2 Q Would you have received a copy of the
3 findings of the South Carolina Department of
4 Employment and Work Force?

5 A I would probably have reviewed a copy of the
6 findings, yes.

7 Q Okay. Let me show you a document, Mr.
8 Thomas, I will show you what I have marked as
9 Plaintiff's Number 9. Let me know when you have
10 had a chance to look at it.

11 A Okay.

12 Q Have you had a chance to look it over?

13 A I have skimmed it over.

14 MR. JOHNSON: Your Honor --

15 MR. MOSS: Okay.

16 MR. JOHNSON: -- I object. I don't know if
17 this is going to be offered in evidence but I
18 object to it, it is findings of the unemployment
19 tribunal.

20 I will stand up. It is well settled law
21 that's not admissible.

22 MR. MOSS: I don't believe it is well settled
23 law it is not admissible, it is well settled law it
24 is not binding on this Court.

25 THE COURT: If it is not binding on this

1 court I'm not going to admit it. You can question
2 him whether he has seen it.

3 BY MR. MOSS:

4 Q When you went to the hearing of the South
5 Carolina Department of Unemployment you went there
6 to oppose Mr. Bailey's request for unemployment,
7 didn't you?

8 A That was the decision that we made, yes.

9 Q Okay. And the decision was oppose it because
10 he was terminated for cause, was it not?

11 A At the time.

12 Q Okay. And that hearing took place after,
13 well after April 30, didn't it?

14 A Apparently, yes.

15 Q Plaintiff's Number 9, can you tell from that
16 document when the hearing date was? Up at the top.

17 A July 29th, 2010.

18 Q Okay. So at least on July 29th, 2010, the
19 city was taking the position that Mr. Bailey was
20 terminated for cause, is that right?

21 A Apparently.

22 Q And therefore he wasn't entitled to
23 unemployment?

24 A Apparently.

25 Q Okay. Now let me show you what has been

1 marked as Plaintiff's Number 8. Let me know when
2 you have had a chance to review it so I can ask you
3 a question.

4 A That is one document that looks very familiar
5 to me.

6 Q Okay. On the front page it says you drafted
7 it, doesn't it?

8 A Correct.

9 Q Prepared by Steve Thomas, Assistant City
10 Manager. Is that correct?

11 A Correct.

12 Q How about the remaining pages, is that
13 correct, this is a document you assembled and
14 prepared?

15 A It is.

16 MR. MOSS: Your Honor, we move to admit
17 Plaintiff's 8.

18 THE COURT: Any objection?

19 MR. JOHNSON: Eight? No objection.

20 THE COURT: Without objection it's admitted.
21 (Steve Thomas memorandum marked and received
22 in evidence as Plaintiff's Exhibit Number 8).

23 BY MR. MOSS:

24 Q Mr. Thomas, what is this document?

25 A Well, this document was an ordinance

1 introduced in city council May 12, 2011, to adopt
2 revisions to the city employee personnel manual.

3 Q It was done by ordinance?

4 A It was.

5 Q Now, you heard the testimony, you were
6 present when Mr. Smithson testified, right?

7 A I was.

8 Q Did you hear that dialogue we had about
9 whether it was an ordinance or resolution?

10 A I did.

11 Q It was by ordinance, wasn't it?

12 A This was, yes, sir.

13 Q Okay. And what was the purpose, what were
14 some of the purposes of this document? I know
15 there were several.

16 A Well, the purpose was to make revisions to
17 the city's employee personnel manual.

18 Q One such revision was to remove the grievance
19 procedure process completely, right?

20 A It was proposed, yes.

21 Q And ultimately it passed, didn't it?

22 A It did.

23 Q Now, when was it proposed by you to the
24 council?

25 A It was not proposed by me to counsel.

1 Q Okay.

2 A I was asked to participate in preparation.

3 Q Okay. Who were you asked by?

4 A I was asked by the city manager.

5 Q John Smithson?

6 A No, sir. That was Mike Payne.

7 Q Okay. Was Mike Payne working for the city

8 before John Smithson retired?

9 A No, sir.

10 Q Did you hear John Smithson say he retired in

11 July?

12 A Of 2010, yes, sir.

13 Q Okay.

14 A This is 2011.

15 Q Thank you for pointing that out.

16 A Yes, sir.

17 Q So, it was done during the pendency of this

18 litigation?

19 A Pardon me?

20 Q It was done after this lawsuit was filed,

21 wasn't it?

22 A The lawsuit was filed, I believe it was

23 April, 2010, May of 2010, then, yes, sir. This is

24 2011.

25 Q Okay. If I told you this lawsuit was filed

1 earlier, the city has an option when it comes to
2 adopting a grievance procedure or not having a
3 grievance procedure, correct.

4 Q Okay. To your knowledge did city council
5 ultimately accept these recommendations?

6 A They did.

7 Q By ordinance?

8 A Yes.

9 MR. MOSS: Your Honor, I may be through with
10 Mr. Thomas. I would like to confer with my client
11 for a moment.

12 THE COURT: You may.

13 MR. MOSS: Your Honor, we don't have any
14 other questions for Mr. Thomas at this time. We
15 may have other testimony but not at this time.

16 THE COURT: Thank you.

17 Mr. Johnson?

18 MR. JOHNSON: Thank, Your Honor.

19 CROSS EXAMINATION BY MR. JOHNSON:

20 Q Mr. Thomas, there was some testimony about
21 Plaintiff's Exhibit Number 8, a request for city
22 council's consideration that ultimately led to
23 removing the grievance procedure?

24 A Yes, sir.

25 Q Can you, can you tell the Court -- and this

1 was your recommendation, is that correct?

2 A Well, there was some discussion about the
3 grievance procedure process. It was not my
4 recommendation but I did the research -- well,
5 there are three forms of government in this state
6 and one of those forms of government is city
7 manager form of government and I have worked under
8 all three and the other two, the strong mayor form
9 of government, when there is an appeal that is made
10 to the grievance procedure the final decision is
11 made, under the strong mayor form of government, by
12 the strong mayor. Under the council form of
13 government, of course under the city manager form
14 of government it's the city manager, and how we
15 tried to work employee relations and employee
16 disciplinary actions and ultimately that might lead
17 to a grievance process, we anticipated that, what
18 we do is as HR director, so to speak, I consult
19 with the city attorney and we make recommendations,
20 ultimately make recommendations to the city manager
21 and of course the city manager is the only one
22 under our form of government that is authorized to
23 hire and fire.

24 It is difficult as a city manager to be able
25 to separate yourself, as Mr. Smithson indicated

1 earlier, because you are aware of terminations, you
2 have the decision making authority for terminations
3 and disciplinary actions but yet you have to be on
4 the back side of the grievance process as well.

5 And so our new city manager came in and we
6 discussed this quite a bit and he felt like that it
7 would probably be better under our form of
8 government, suggested that maybe we consider
9 eliminating the grievance procedure as it is and
10 the only way I understand we can have a grievance
11 procedure is according to some state law provisions
12 they have to be in such an order, and ultimately we
13 took these recommendations to city council and they
14 agreed to approve the removal of the grievance,
15 formal grievance procedure from our personnel
16 policies.

17 Q So, if I understood your testimony, the
18 reason that the grievance procedure or the reason
19 for the recommendation to council to remove the
20 grievance procedure had to do with the difficulty
21 of the city manager serving as both the decision
22 maker on the disciplinary or discharge --

23 A Right.

24 Q -- plus having to review the recommendation
25 of the grievance committee?

1 A Exactly, and our city manager felt like if
2 there was an option to that, it is a very difficult
3 thing to do, of course, I just mentioned how we try
4 to handle that was myself and the city attorney
5 consulting, and I had management experience myself
6 and so we would make those recommendations to the
7 city manager under our form of government, so yes,
8 we thought that was, or the new city manager Mr.
9 MeHaney felt like that was ultimately too difficult
10 a process to have to deal with and recommended that
11 we take this to city council and city council
12 agreed.

13 Q Had Mr. MeHaney had some grievances that he
14 had had to adjudicate during this time?

15 A Not in his time with us. I expect, I think
16 he had some experience from other municipalities
17 where he had been, and counties where he had been
18 previously employed. I don't recall one that he
19 had had with the city of North Myrtle Beach in his
20 relatively short time before this was changed but
21 he had previous experience with other
22 municipalities.

23 Q You had been involved in grievance procedures
24 in other municipalities before you came to the city
25 of North Myrtle Beach?

Stephen T. Savitz -- Direct Examination by Mr. Moss

1 responsibility, it is not his responsibility to
2 answer this.

3 MR. MOSS: It is your responsibility, Your
4 Honor, and --

5 THE COURT: Stick to what his advice may have
6 been to the city.

7 MR. MOSS: Okay.

8 BY MR. MOSS:

9 Q Now, the city of North Myrtle Beach as far as
10 you know is a city manager or council-manager form
11 of government, is that right?

12 A It is.

13 Q Okay. And in that form of government, the
14 city of North Myrtle Beach has that form of
15 government, the city manager has the powers granted
16 him under city ordinances and state law, does he
17 not?

18 A It does, he does.

19 Q Under a legislative act the city council can
20 infer additional powers open the city manager, is
21 that right?

22 A Can you tell me what you're talking about,
23 what additional powers you are referring to?

24 Q The city council as a body.

25 A What -- I don't understand what you're

1 talking about.

2 Q The city council of North Myrtle Beach, it
3 takes action as a body, does it not?

4 A Do you mean it acts as city council?

5 Q As city council. When they take action they
6 act as a body through resolutions or ordinances,
7 consensus, is that right?

8 A However they act is how they act. I mean,
9 I'm not going to speak for that.

10 Q Okay.

11 A I don't know that I can. If you give me the
12 specific example I will answer it.

13 Q Okay. The powers of the city manager are
14 assigned him, or the powers and duties are assigned
15 him by the city council, his employer, is that
16 right?

17 A For the most part it is set out in the state
18 law for the council-manager form of government.
19 Usually a city, and I think this is true,, North
20 Myrtle Beach also will have it in their own
21 ordinances.

22 Q Okay. So if they want to confer power on him
23 in addition to what he might be given under state
24 law it is done through an ordinance or through a
25 city council action, is that right?

1 A What is your question?

2 Q Can the city manager make a change in the
3 personnel manual of the city without the action of
4 council?

5 MR. JOHNSON: Your Honor, I object. He
6 doesn't have the city ordinances in front of him.

7 THE COURT: He doesn't have them in front of
8 him, so unless he knows from memory.

9 A I really don't. That is not what my role was
10 in this matter.

11 Q How long have you been involved in
12 representing the city of North Myrtle Beach?

13 A I would think for some time over the years I
14 have done work for North Myrtle Beach. In this
15 matter Linda Edwards in our firm has done most of
16 the work for North Myrtle Beach. I got involved in
17 this for the first time in the first grievance
18 because she had been advising North Myrtle Beach
19 and I had nothing, had no knowledge of what was
20 going on there and I advised the grievance
21 committee. That was, I think in 2010.

22 Q That was your first involvement with the city
23 of North Myrtle Beach?

24 A In this matter.

25 Q Okay.

1 A As I said, our firm has represented North
2 Myrtle Beach and I may have done certain things
3 over the years from time to time but in recent
4 years Linda Edwards has done most all the work for
5 North Myrtle Beach.

6 Q That grievance hearing that you attended,
7 that Mr. Bailey had, was that the first time you
8 had attended a grievance hearing on behalf, for the
9 city of North Myrtle Beach?

10 A Yes, to the best of my recollection.

11 Q Do you recall who asked you to be there?

12 A As I recall, Linda Edwards said the city was
13 going to need representation, this is something we
14 do very frequently with cities, she had been
15 advising the city and would I be available to
16 advise the grievance committee on any procedural
17 issues. She didn't think she should do it since
18 she had been advising the city on some of the
19 matters that involved Mr. Bailey's case, so I did.

20 We first thought I simply would be sitting by
21 telephone in my office, which is what normally
22 happens in these grievance hearings, and if the
23 committee had a question for me they would call me
24 and ask me a question and I would answer the
25 question. As it came closer to the day they said,

1 Q I thoroughly understand. My question is when
2 did you first become aware of the ultimatum?

3 A Again, pretty much after that grievance I was
4 involved in some manner, you sent me some emails,
5 you sent some to me and Linda and Chris Noury, I
6 pretty much got out of the situation after the
7 grievance was over.

8 There came a time later about April 27th, on
9 or about April 27th, 27th or 28th, Linda Edwards
10 again had been working I think with perhaps you on
11 this, whether it would be a resignation or whether
12 it would be a termination, and she had to be out of
13 the office on Thursday which, let's see, I don't
14 remember what day that was, it was the 29th, I
15 believe, whatever, 2010, whatever that Thursday, I
16 believe it was the 29th, she had to be out of the
17 office that day, I believe it was something for
18 work that took her somewhere else, she said, "Would
19 you be available to take a phone call?"

20 Q Mr. Savitz, I'm going to stop you for a
21 minute. I'm not asking you to give me any hearsay
22 testimony from Linda Edwards. I asked you
23 specifically when you became aware the ultimatum
24 was given to Mr. Bailey. I don't need a long
25 dialogue to answer that.

1 going to be enough for me to decide.

2 BY MR. MOSS:

3 Q Mr. Savitz, I would like to show you
4 Plaintiff's Exhibit Number 2. When you have had a
5 chance to look at it let me know.

6 A Yes, I certainly do remember this
7 communication.

8 Q Did you write it?

9 A I did.

10 MR. MOSS: Your Honor, we move it in.

11 THE COURT: Any objection?

12 MR. JOHNSON: None, Your Honor.

13 THE COURT: Without objection.

14 (Savitz to Moss email marked and received
15 in evidence as Plaintiff's Exhibit Number 2).

16 BY MR. MOSS:

17 Q It's an email?

18 A Yes.

19 Q In this email to me you confirmed our
20 settlement negotiations had not been successful,
21 you confirmed Mr. Bailey had been terminated, is
22 that right?

23 A That was what I understood from you. You had
24 not advised me that he had in fact, when we were
25 there late at night on that Friday night you had

1 not advised me that he had retired.

2 Q Mr. Savitz, please answer my question.

3 A This --

4 THE COURT: He is answering the question.

5 A I am. Thank you, Your Honor.

6 MR. MOSS: I want to hear his answer.

7 THE COURT: Move back over there, please. I
8 think you're encroaching on his space.

9 MR. MOSS: I'm trying to share a document,
10 Your Honor. Let me find another copy.

11 THE WITNESS: You and I had talked all day
12 just about on the 29th and then we talked on the
13 30th virtually all day, into the evening. I did
14 not know that because you did not tell me, and Mr.
15 Bailey came into your office during our
16 conversation in the evening after I later found out
17 he had been to Columbia and had in fact completely
18 retired, sitting in your office with you and
19 apparently had been on the phone on the way back
20 because you said your phone, your battery, your
21 phone had gone dead, he had been on the phone part
22 of that time, you didn't tell me that he had in
23 fact retired.

24 I thought that, because we left and said we
25 couldn't reach an agreement because at the end of

1 the evening we did not reach an agreement so I
2 said, "Well, that was it, that was the 30th and the
3 city manager had given the option of either
4 retiring or resigning or being terminated," we
5 didn't have any resolution by that time, although
6 we had lots of negotiations by that time, so my
7 understanding was he was terminated and that was
8 the end of it and we were through.

9 BY MR. MOSS:

10 Q And so in your email you confirmed to me he
11 was terminated as of the 30th. Is that right?

12 A That is correct.

13 Q Okay. And you confirmed that Mr. Smithson
14 had changed the date from the 29th to the 30th?

15 A That's correct.

16 Q And you confirmed you didn't tell us of the
17 change of the date, is that right?

18 A That is correct because after I hung up
19 talking to you I then called Mr. Smithson. I said,
20 because he was getting ready to go on vacation, on
21 a cruise for two or three weeks and that is why we
22 needed it done by the 30th, and I said, "I'm sorry,
23 this wasn't, we weren't able to resolve it, so he's
24 been terminated," and the 29th or 30th came up as
25 we talked about the 29th or 30th, the 30th would

1 allow him to have, for the city to pay for his
2 health insurance for the remainder of his life at
3 no cost to Mr. Bailey, the 29th he may not have
4 because under city policy that wouldn't have been
5 twenty years.

6 Mr. Smithson said, "Make it the 30th, that
7 way, you know, he gets his twenty years of health
8 insurance," I mean, "he gets his health insurance
9 paid for by the city because he would have twenty
10 years of employment." That was close to 10:00
11 o'clock at night. I did not call you back and I
12 emailed you because on Saturday the 1st, I think, I
13 got an email from you saying that Mr. Bailey had
14 heard that he had been terminated and you didn't
15 know that or something and that is why I wrote
16 this.

17 I said, "No, he had." About the 29th or
18 30th, I put on here you said something about the
19 29th, I said, "I can see why you might
20 misunderstand that, not understand the 30th because
21 I didn't call you back that night." May 2nd was my
22 anniversary, that was anniversary week-end, I had
23 plans with my wife, which this caused some issues
24 there, but nevertheless this is what, this was work
25 and this took precedence over that but I advised

1 A Right. You and I were in negotiations all
2 day Friday, late into the night, all day Thursday,
3 and this was the end of it, this was what happened.

4 Q Let me show you Plaintiff's 1. This has been
5 admitted. I want you to look down at the bottom of
6 the first page. First off, do you know what the
7 document is?

8 A Yes. This is the grievance procedure that
9 was in effect for the city of North Myrtle Beach.

10 Q Okay. And so if what you understood on the
11 2nd was correct, I understand there is an issue
12 whether or not it is, but if he was terminated as
13 of the 30th he would be entitled to a grievance
14 hearing if he asked for one. Is that right, under
15 that policy?

16 A That's correct.

17 Q Okay. Let me show you Plaintiff's Number 3.
18 Let me know when you have had a chance to look at
19 it.

20 A I'm familiar with this.

21 Q What is it?

22 A This is a letter that I wrote to you on June
23 the 8th about the grievance committee appeal, about
24 the appeal to the grievance committee by Mr.
25 Bailey.

1 MR. MOSS: We move to admit this, Your Honor.

2 THE COURT: Any objection?

3 MR. JOHNSON: No, Your Honor.

4 THE COURT: Without objection Number 3 is
5 admitted.

6 (Savitz to Moss letter marked and received
7 in evidence as Plaintiff's Exhibit Number 3).

8 BY MR. MOSS:

9 Q You confirm in the letter he had demanded a
10 grievance hearing and you would be advising the
11 grievance committee, right?

12 A That is correct.

13 Q Okay. And you provided in there some dates
14 that you would be available and he acknowledged
15 dates he would be available, is that right?

16 A That's part of the letter.

17 Q Okay. So, as of this date on June 8th you
18 understood he was going to have a grievance
19 hearing, is that right?

20 A Yes, that was the way I was looking at it as
21 of that date.

22 Q Okay. Let me show you Plaintiff's 4. Let me
23 know when you have had a chance to look at it.

24 A Yes.

25 Q Now, when you wrote to me in Plaintiff's 3

1 were you writing in response to that particular
2 demand for a grievance hearing made in Exhibit 4,
3 Plaintiff's 4?

4 A That is my best recollection.

5 Q Okay.

6 A That was the demand for grievance.

7 Q Now, you have seen Plaintiff's 5, have you
8 not. Let me show it to you. It is probably not a
9 fair question until I show it to you.

10 MR. JOHNSON: Mr. Moss, what exhibit are we
11 looking at?

12 MR. MOSS: Five.

13 MR. JOHNSON: I don't have it.

14 MR. MOSS: I'm sorry.

15 MR. JOHNSON: I've got it now.

16 THE WITNESS: Yes, I have seen this letter.

17 BY MR. MOSS:

18 Q Were you aware of it at the time it was
19 written?

20 A Yes.

21 Q By a member of your firm?

22 A Yes.

23 Q Okay. And this was dated July 2nd, is that
24 right?

25 A It is.

1 what you said.

2 MR. MOSS: May I approach, Your Honor?

3 THE COURT: You may.

4 Q Let me hold the document, I will try to help
5 you find what I'm referring to.

6 A Nine?

7 Q Paragraph ten.

8 A Okay.

9 Q Would you read that aloud for the record?

10 A "I then called Mr. Smithson to relay the
11 information. Mr. Smithson determined he would make
12 the termination effective April 30, 2010. That
13 would assure he would qualify for medical coverage
14 in accordance with the city policy in which the
15 city may pay the entire medical insurance premium
16 for the employee and spouse because the employee
17 would have worked for twenty continuous years for
18 the city. On May 2, 2010, I emailed Mr. Moss and
19 advised him of that fact. I did not know at the
20 time the plaintiff had purchased his retirement
21 service credit and retired from employment with the
22 city on April 30."

23 Q Let's go back to the first part of that
24 paragraph. I don't have a copy so I will share it
25 with you.

1 question that is relevant to this and these
2 conversations. The city manager chose to move the
3 termination date from the 29th to the 30th?

4 A Correct.

5 Q And that is what he told you?

6 A Correct.

7 Q Okay. Because that wasn't your decision?

8 A No.

9 Q Okay. And according to what you provided in
10 that affidavit it is because it would assure Mr.
11 Bailey would qualify for the insurance, is that
12 right?

13 A That is correct. The city has a policy, it
14 is a very generous policy that allows employees
15 with twenty years of service, as I understand it,
16 to have their medical insurance, I think it says on
17 there, for themselves and their spouse paid for the
18 health insurance I think for the remainder of their
19 life.

20 Q Okay. So, it was what Mr. Smithson told you
21 which you told him about this business of
22 retirement?

23 A He told me?

24 Q He told you that, okay, and that is what I
25 was trying to establish as far as who knew what at

1 the time.

2 A Mr. Smithson was trying to be as generous as
3 he could, as he had been trying to be throughout
4 this process.

5 Q Okay. So when did that conversation happen
6 between you and Mr. Smithson about him making a
7 determination --

8 A I think it is actually in that affidavit.

9 Q Well, let me give it back to you.

10 A Paragraph nine starts with, "From
11 approximately 6:00 o'clock p.m. to 9:17 p.m. Mr.
12 Moss and I continued negotiations by telephone."

13 Q Okay.

14 A There is a whole paragraph after that. Which
15 I finally said, "I had asked you for two days what
16 is it you want and you would never give me a
17 figure," that was when he finally said, "Mr.
18 Savitz, he wants \$160,000." I said, "That is not
19 good, he is going to have to be terminated."

20 MR. MOSS: Your Honor --

21 A So, I called --

22 THE COURT: This is in your affidavit.

23 MR. MOSS: It is in evidence but it is not
24 responsive.

25 THE COURT: Well, I'm going to listen to his

1 answer.

2 MR. MOSS: Okay.

3 THE WITNESS: But that is what we had been
4 talking about for two days, "What is it you're
5 looking for, you never would give me a figure."

6 We kept going more and more and Mr. Smithson
7 kept adding more, adding, because the first was
8 just a termination or resignation, it wouldn't be
9 anything, no release, termination or resignation,
10 then you started wanting money, Mr. Smithson wasn't
11 inclined to do that but he changed some things,
12 "Okay I will give money, I will pay money," but in
13 order, in exchange for paying money, then he wanted
14 some type of release if he was going to be paying
15 money.

16 Well, he offered up to four months, as it
17 says in the affidavit, a paid leave, and you said
18 that wasn't enough, then you asked whether he could
19 work on the beach patrol and Mr. Smithson said no,
20 he can't work on the beach patrol, and so when you
21 finally gave me the figure and you said it was
22 \$160,000, then I advised you, sorry, we couldn't
23 reach a resolution and I would advise them it meant
24 the involuntary termination would become effective.
25 So, at 9:17 I hung up from you and called Mr.

1 Smithson.

2 Q On what date?

3 A On the 30th.

4 Q Okay. And that is when you learned of the
5 change in date?

6 A That's correct.

7 Q And that is all I was trying to elicit with
8 my question. So, he made the change for the
9 purposes of having Mr. Bailey to participate in
10 health insurance? Are you aware under the city
11 policy if you participate in the qualified
12 retirement plan you are entitled to those insurance
13 benefits, is that right?

14 A I really don't know.

15 Q You don't know?

16 THE COURT: If he knows.

17 A I don't know. What is in the affidavit says
18 that would assure, this is what Mr. Smithson
19 advised, that would assure plaintiff would qualify
20 for retiree medical, would qualify for retiree
21 medical coverage in accordance with city policy
22 under which the city pays the entire medical
23 insurance premium for employee and spouse because
24 the employee would have worked twenty continuous
25 years with the city.

Stephen T. Savitz -- Cross-examination by Mr. Johnson

1 Personnel as we called it at that time, and a
2 number of other agencies throughout the State, both
3 from a civil and criminal side.

4 Q So is it fair to say your firm's
5 representation of the city of North Myrtle Beach is
6 generally limited to employment matters?

7 A Yes.

8 Q Okay.

9 MR. JOHNSON: Bear with me just a second,
10 Your Honor.

11 Q Mr. Savitz, I have handed you what was marked
12 Defendant's Exhibit 1.

13 MR. MOSS: Mine is marked B.

14 MR. JOHNSON: Did I mismark it? It is from
15 something else, we're going to mark it one.

16 MR. MOSS: One?

17 MR. JOHNSON: Yes. I should have covered
18 that over, I apologize.

19 BY MR. JOHNSON:

20 Q Can you tell me if you recognize this
21 document?

22 A I do.

23 Q Would you tell us what it is?

24 A What?

25 Q Would you tell the Court what it is, I'm

1 sorry?

2 A This was an email that I received, the second
3 page is from May 24th, from Ken Moss, for the first
4 time telling me that in fact Mr. Bailey had bought
5 his five years of retirement and said, "If you were
6 not aware, on the morning of April 30, 2010, and
7 under a great deal of duress Mr. Bailey elected to
8 retire in the state's retirement system. Mr.
9 Bailey did so at great expense to him but did so in
10 order to mitigate his loses. Obviously I will seek
11 to recover those expenses in Mr. Bailey's lawsuit."

12 MR. JOHNSON: Your Honor, I move to admit
13 this.

14 THE COURT: Any objection, Mr. Moss?

15 MR. MOSS: None.

16 THE COURT: Without objection Defendant's
17 Exhibit Number 1 is admitted.

18 (Email marked and received in evidence
19 as Defendant's Exhibit Number 1).

20 THE WITNESS: I write him back, I said, "Ken,
21 thank you for the updates. I was not aware Mr.
22 Bailey had bought the extra five years of service
23 in order to retire under the state system," and I
24 suggested that he contact Chris Noury to make sure
25 things were running smoothly and he said he would.

1 BY MR. JOHNSON:

2 Q All right. Now, in this, in this email, I
3 believe your testimony was that Mr. Moss informed
4 you for the first time, that you knew that as of
5 April 30, 2010, Mr. Bailey elected to retire in the
6 state retirement system, is that correct?

7 A Yes.

8 Q Well, tell me, tell the Court -- please bear
9 with me just one second. Have you got Plaintiff's
10 Exhibit Number 3?

11 A No.

12 Q Do you recall Plaintiff's Exhibit 3?

13 A Yes.

14 Q Okay. So, tell me, I think the question that
15 I'm curious about and I think the Court is going to
16 be curious about, if Mr. Moss had let you know on
17 the 24th of May that Mr. Bailey has retired, why
18 are you proceeding to schedule a grievance for him
19 on June the 8th?

20 A Well, as I stated earlier, the Retirement
21 System is an animal to me and I understood when we
22 had negotiations what he wanted was \$160,000 to buy
23 the five years of retirement. I kept looking at
24 this, that he had bought the five years of
25 retirement, which is what he was telling me, it

1 just didn't click with me that meant he had
2 actually retired from service, that he bought the
3 five years. The city manager had given him that
4 extra day so he got the health insurance paid for
5 and now he's bought the five years that he wanted
6 to have 25 years of service, I guess, in the state
7 system and that was just what I understood it to be
8 and that is why I thought it was still, I was
9 operating under the assumption it was still a
10 termination even though he had bought the required
11 years.

12 Q So it was not your assumption, it was not
13 your understanding that during the negotiations
14 that Mr. Bailey planned to retire, simply that he
15 was looking for a way to purchase the additional
16 time that he would need to get to 25 years, is that
17 right?

18 A That's exactly the way I continued to look at
19 it. I just didn't stray to say, to think that he
20 had actually retired, that came later.

21 Q Do you know why it was important for him, for
22 Mr. Bailey to make that purchase of those years of
23 service while he was still employed by the city?

24 A He had to, he had to while still employed by
25 the city, he had to be employed by the city or at

1 least a public entity, he had to be employed in
2 order to buy the time. If he was no longer
3 employed he couldn't have bought the time.

4 Q Okay.

5 A That is my understanding. That is why we
6 offered, that is, we offered the additional, I
7 said, "Ken," because we were talking on the
8 telephone, "how much time does he need, can he get
9 the money?" He said he would make telephone calls.
10 One of the things that has been introduced already,
11 I said, "Does he need two months?" He said, "No, I
12 don't think he needs that much time." I said,
13 "Well, how much time, what does he need," because
14 he wasn't talking about the city giving him money
15 at that point, he was just talking about the time
16 he needed to get, it's hard to get together that
17 kind of money and I said, "Well, how much time does
18 he need, tell me and we'll try." This was probably
19 on the 29th, not the 30th, because that is when we
20 talked about trying to get the time. Ken said,
21 "I'm making some phone calls for him, I'm trying to
22 get the money but it just takes time to get that
23 kind of money together," and, you know, I had no
24 idea he had in fact gotten it together and paid it
25 the next morning, so even the next day he was still

1 WILLIAM H. BAILEY, JR., after being first duly
2 sworn, testified as follows:

3 THE CLERK: Please state your name for the
4 record.

5 THE WITNESS: William H. Bailey, Jr.

6 DIRECT EXAMINATION BY MR. MOSS:

7 Q Mr. Bailey, how long did you work for the
8 city of North Myrtle Beach?

9 A Twenty years.

10 Q And you do not work for them now?

11 A No, sir, I do not.

12 Q If you would for me, briefly give me your
13 position when you started and how you progressed
14 and your position when you ended.

15 A I started out as a patrol officer or a public
16 safety officer in the city of North Myrtle Beach,
17 which included fire and police. Their documents
18 would show in my opinion I had a very successful
19 career there up to this occasion. A lot of awards
20 and commendations from different political figures
21 and stuff recognizing my efforts.

22 As the years went by I was promoted through
23 the ranks relatively quickly, attended the FBI
24 Academy, attended technical college, most of it
25 supported by the city, went on and completed a

1 Master's Degree in management. So, as I stated
2 before, it was a very successful career, in my
3 opinion, up to this incident here.

4 It ended after I was a victim of a crime in
5 my driveway. I left an off duty weapon in my
6 pickup truck and there was some discrepancy of
7 whether I said my glove box was locked or whether I
8 didn't say my glove box was locked and it turned
9 into a media frenzy because it came about at the
10 end of, if you're familiar with the Horry County
11 wildfires, several people in the community had
12 decided they were going to brand somebody and I
13 felt like unfortunately I was getting the branding.

14 A series of things happened, including some
15 employees were disciplined and they ended up being
16 terminated and I think as a whole there was a lot
17 of bad press that was occurring that was affecting
18 me, so when this truck incident occurred this kind
19 of followed all that up. Mr. Smithson looked at
20 that incident and for whatever reason he decided
21 that I needed to be demoted. That demotion
22 followed five or six months of being suspended and
23 having to use my vacation time, and on the 28th I
24 was called in to a meeting with Mr. Smithson and
25 Rick Buddlemeyer, I asked at that time if I could

1 do it later on in the day and Rick Buddlemeyer who
2 was the acting Chief of Police in my absence, or
3 excuse me, after that I was suspended, so I would
4 not be the Chief of Police but he was the Acting
5 Chief.

6 THE COURT: You said the 28th, the 28 of?

7 A April, 2008, sir.

8 THE COURT: All right.

9 A Mr. Smithson said, "Absolutely not, we need
10 you in here as soon as possible," or Rick
11 Buddlemeyer said that was Mr. Smithson's words. I
12 was out riding around and I immediately went to Mr.
13 Smithson's office, I entered the office, I could
14 tell by the tone of me entering the office he was
15 getting ready to terminate me, I had already
16 decided in my mind I hadn't done anything to
17 deserve termination and it was absolutely no way I
18 was going to quit or resign.

19 Mr. Smithson told me I had embarrassed him in
20 the grievance meeting, which I felt I had a right
21 to defend myself in and I presented information in
22 front of my peers, and Mr. Smithson said I
23 embarrassed him in that meeting and he told me point
24 blank, "You embarrassed me, I'm going to fire you
25 or you need to resign."

1 I stood up from the chair very angrily,
2 looked at him and told him I wasn't quitting, he
3 needed to do whatever he needed to do. I left Mr.
4 Smithson's office and I went to Mr. Moss' office to
5 find out exactly what I needed to do from that
6 point forward.

7 Mr. Moss had asked me several questions,
8 "What are they going to do about your insurance,
9 what are they going to do about this, what are they
10 going to do about that?" I responded, I responded
11 to Mr. Moss, "I don't know." So, he volunteered to
12 write a letter to the city and find out some
13 particulars on certain questions that he had as far
14 as my termination.

15 There was no doubt whatsoever in my mind on
16 the 29th was my last day to work, Mr. Smithson told
17 me he was going to fire me, he testified that he
18 was going to fire me. Rick Buddlemeyer says he
19 does not remember what was said and I understand
20 why in the position he was in but the people in
21 that room knew I was fired and I never told anybody
22 I was going to resign, never.

23 Q When did you stop working for the city?

24 A I stopped working for the city as far as I
25 know on the 29th. That never changed whatsoever.

1 I was told, "You're going to be fired tomorrow at
2 3:00 o'clock," and I point black told Mr. Smithson
3 do what you got to do.

4 Q So, let me back up a little bit in my
5 outline. What was your position at that time, the
6 last position you worked in?

7 A Well, I never actually went to work but I was
8 a lieutenant. I was demoted and it was, excuse me,
9 it was about a \$36,000 pay cut in that pay and I
10 never actually got a paycheck from the city, it was
11 more like, "You're using your vacation and sick
12 time at lieutenant pay," is what the situation was,
13 but I never went to work again.

14 Q Okay. What is the last position you had that
15 you worked in?

16 A Director of Public Safety.

17 Q Okay. And Chief of Police?

18 A Chief of Police, the same thing, yes, sir.

19 Q At the time it was the same thing?

20 A Yes, sir.

21 Q How long did you serve as Director of Public
22 Safety and Police Chief?

23 A I actually had a very short career. It came
24 under some unusual circumstances where the previous
25 director had basically been terminated, I served in

1 Q Okay. You have seen Plaintiff's Number 1,
2 have you not?

3 A Yes, sir, I have.

4 Q Okay. Do you know what that is?

5 A Yes, sir.

6 Q Or at least the beginning of the lower
7 portion of that page?

8 A Yes, sir.

9 Q What is that?

10 A It's the city of North Myrtle Beach grievance
11 policy when I was employed there.

12 Q Okay. To your knowledge was it in effect at
13 the time you separated from the city?

14 A Yes, sir, it was.

15 Q Now, this ultimatum you got from John
16 Smithson, what were the circumstances that caused
17 the ultimatum, as you understand them?

18 A He told me that I embarrassed him in the
19 grievance committee. I personally feel he was
20 really upset because it was an open meeting, I
21 don't know how it being an open meeting would have
22 embarrassed him.

23 MR. JOHNSON: Your Honor, I object.

24 THE COURT: Sustained. We don't need to go
25 into all that. This is concerning whether or not

1 he's entitled to a grievance hearing. I'm not
2 going to redo the first grievance hearing.

3 BY MR. MOSS:

4 Q Mr. Bailey, were you concerned that your
5 termination in any way would have ramifications on
6 your future employment possibilities and if so,
7 how?

8 A I'm sorry, could you rephrase that question
9 one more time?

10 Q Were you concerned that your termination
11 would compromise or prejudice your future
12 employability and if so, how?

13 A Oh, I was, absolutely, but at the same time I
14 was not going to quit. There is no way I was going
15 to accept the fact that anything that occurred
16 justified what John Smithson was doing to me at
17 that time, so I stood up to him and I told him
18 absolutely this is exactly what happened from my
19 standpoint, and I laid it on the table and for that
20 I was terminated. So, yes, I was concerned about
21 being terminated, I was concerned about what it
22 would do to my future, but that fact was nowhere
23 near what he wanted me to do as far as resigning
24 and accepting some of the responsibility as a
25 whole.

1 Number 10 is admitted.

2 MR. MOSS: Okay, thank you.

3 (City Policy regarding retiree insurance
4 was marked and received in evidence as
5 Plaintiff's Exhibit Number 10).

6 BY MR. MOSS:

7 Q Have you seen Plaintiff's 2? I'm going to
8 ask you a question about it.

9 A Okay.

10 Q When is the first time you recall seeing
11 that?

12 A Days and days after April 30, I don't
13 remember exactly how many days.

14 Q Is there a date on the document?

15 A Yes. It's May the 2nd. It was either the
16 3rd or 4th, I think I went to your office and you
17 said, "I've got something to show you."

18 Q Okay. Would it be fair to say you didn't
19 receive it before it was dated?

20 A No.

21 Q Okay. In this document it provides the city
22 manager made a change in your termination date.
23 Now, prior to you receiving this document had you
24 ever heard of that change in your termination date?

25 A Absolutely not. The 29th, I went home on the

1 28th and told my wife and actually I even called
2 some council members, some people from the
3 community and my direct comment to them was he has
4 fired me.

5 Q Plaintiff's Number 4, I hand it to you. Let
6 me know when you have had a chance to look at it.

7 A Okay, sir.

8 Q Do you recognize it?

9 A Yes, sir.

10 Q What is it?

11 A It's a request for a grievance meeting that I
12 prepared for the city in response to my
13 termination.

14 Q It's a letter?

15 A Yes.

16 Q Did you sign it?

17 A Yes, sir.

18 Q Did you send it to anybody?

19 A Yes, sir.

20 Q Who did you send it to?

21 A To the city of North Myrtle Beach, Mr.
22 Smithson.

23 Q Okay. Well, what does it say in the letter
24 about who you sent it to?

25 A It basically says that on the 28th that Mr.

1 Smithson had given me an ultimatum --

2 A Hold on, I'm going to get into that. I'm

3 just trying to talk about the addressee, who is it

4 addressed to?

5 A Okay. It is addressed to the personnel

6 department, city of North Myrtle Beach.

7 Q Okay. Did you mail it or take it to then?

8 A I actually hand delivered it.

9 Q Okay.

10 MR. MOSS: Your Honor, we move to admit

11 Plaintiff's 4.

12 THE COURT: Any objection?

13 MR. JOHNSON: No, Your Honor.

14 THE COURT: Without objection.

15 (Request for grievance hearing marked and

16 received in evidence as Plaintiff's Exhibit

17 Number 4).

18 MR. MOSS: For just a little bit of

19 housekeeping, my record shows we admitted

20 Plaintiff's Exhibit 1.

21 THE COURT: All right.

22 BY MR. MOSS:

23 Q You were about to tell me about your letter,

24 Plaintiff's 4.

25 A It basically explained the circumstances that

1 occurred in the first grievance and afterwards with
2 the meeting with Mr. Smithson and Mr. Buddlemeyer
3 and the things that had occurred that I felt
4 justified a grievance hearing and I requested and
5 explained those issues inside my document.

6 Q Okay. I show you Plaintiff's 3.

7 MR. MOSS: May we approach?

8 (Unrecorded bench conference).

9 THE COURT: Continue.

10 BY MR. MOSS:

11 Q Mr. Bailey, what document do you have?

12 A I have a letter that came from I guess Mr.
13 Savitz's, it says Mr. Savitz's firm, and it
14 basically addresses the issue of whether or not I'm
15 going to get a grievance and it goes into detail
16 and starts the discussion on dates that everyone
17 will be available and from this, all indications
18 was that I pretty well was operating under
19 assumption I needed to start preparing for my
20 grievance.

21 Q So, they were going to give you one?

22 A Yes. I was in the midst of preparing for my
23 grievance.

24 Q Okay. Did you get a grievance hearing?

25 A No, sir, I did not.

1 Q And to your knowledge why did you not get
2 one?

3 A You know, I do not know the exact reason why
4 I didn't get one. I probably will never know the
5 exact reason but I have been told several things, I
6 have been told it was because I resigned, when I
7 did not resign.

8 MR. JOHNSON: Your Honor, this is hearsay.

9 THE COURT: Sustained.

10 A No one really knows the real reason why I
11 wasn't given a grievance.

12 Q Well, have you been told?

13 A I have been told it was --

14 THE COURT: The objection has been sustained.

15 Q Let me show you Plaintiff's Number 5. Let me
16 know when you have had a chance to review it.

17 A I was told I resigned.

18 Q Well, the document I have handed you, I
19 wanted to ask you questions about it.

20 A Yes.

21 THE COURT: Who is the document from and is
22 it coming into evidence?

23 MR. MOSS: I was about to lay a foundation on
24 it.

25 Q Do you recognize that document?

1 A I have seen this document before, yes, sir.

2 Q What is the document?

3 A It appears to be, and it does not have a

4 heading on it, so it appears to be a letter that

5 came from the city's firm representing them,

6 explaining why I was not going to get a grievance.

7 Q A letter from Attorney Edwards, right?

8 A Yes, it does have her signature at the end,

9 actually her name.

10 Q Did you receive a copy of the letter?

11 A I'm pretty sure I did. I think you showed me

12 the letter.

13 Q Okay. So basically you weren't going to get

14 a grievance hearing as of the date of this letter,

15 right?

16 A Correct.

17 Q Is this the first time you heard you weren't

18 going to get one?

19 A Yes.

20 Q What is the date of the letter?

21 A July 2nd, 2010.

22 Q Okay. Now, Mr. Bailey, did you resign?

23 A No, I did not.

24 Q Did you retire?

25 A I did.

1 will go ahead and admit it.

2 MR. JOHNSON: It's fine.

3 THE COURT: Okay. You don't need to lay the
4 foundation, it's in.

5 MR. MOSS: Thank you.

6 (Retirement System records marked and
7 received in evidence as Plaintiff's
8 Exhibit Number 6).

9 BY MR. MOSS:

10 Q So the Retirement System accepted your
11 application for employment?

12 A Yes, they did.

13 Q Would you turn to -- do you know what a Bates
14 stamp is?

15 THE COURT: You said they accepted your
16 application for employment.

17 Q I'm sorry, they accepted your application to
18 retire?

19 A Yes, they did.

20 MR. MOSS: Thank you, Your Honor, for
21 pointing that out.

22 Q Do you know what a Bates stamp is?

23 A I'm figuring it is a number, the small number
24 on the bottom of each page --

25 Q Right.

1 A -- of a document, yes, sir.

2 Q Can you find the page that says 17 of that
3 exhibit, 017, I think is what it says?

4 A Yes, sir, I'm on that page.

5 Q All right. Can you tell anything about your
6 application on that page, the status of your
7 application? First off, do you see anything in
8 there about a date?

9 A Absolutely, April 30, sir, 2010.

10 Q Does it have a time?

11 A 1445 military time, that would be 2:45 and 19
12 seconds.

13 Q Anything on that page about status of your
14 application on the 30th?

15 A Yes, sir.

16 Q What does it say?

17 A It says received, on hold awaiting --

18 Q Awaiting what?

19 A Awaiting additional information from the city
20 of North Myrtle Beach.

21 Q Okay.

22 A And additional information that I was going
23 to have to provide them. When I went up there I
24 didn't have and didn't know I needed a birth
25 certificate or some of the information that they

1 were going to require, I had no idea what they were
2 going to want or that I was even going to do it
3 when I walked in the door. There was a lot of
4 information they were going to require before they
5 could complete the process.

6 Q Did you provide them all the information on
7 that date you ultimately had to provide them?

8 A Over a week's period of time they ended up
9 getting all the information from me that they
10 needed and on the 19th they got final notification
11 from the city of North Myrtle Beach.

12 Q When is the earliest date of your retirement?

13 A The earliest date, the earliest date I could
14 have retired if I would have been trying to retire
15 I could have retired on April 30 but the earliest
16 date that I officially retired because of the
17 paperwork being completed and submitted to the
18 Retirement Board was May the 19th when the city
19 submitted the paperwork that they needed to submit.

20 Q Okay. Now, did you tell the city what you
21 were doing up there, you were buying time?

22 A Absolutely not.

23 Q Why not?

24 A Because from what I have been through I
25 didn't trust Mr. Smithson or any of the city

1 Q Okay. Flip back to page 6, 006. Do you know
2 what this is, Bates 006?

3 A It appears to be an entry, same entry from an
4 employee of the South Carolina Retirement System
5 stating what they have learned from Connie Cox
6 about that I would be paid, or have, I will be
7 getting payment up to 5/27/2010 and I think that
8 that was from her calculation of our vacation, sick
9 time or any other time that I may have accrued but
10 I'm not absolutely sure.

11 Q Can you tell from the document what the date
12 of termination was as reflected in the Retirement
13 System records?

14 A May the 1st.

15 Q May 1st was the termination?

16 A Is when I -- no, it is when I scheduled or it
17 is when I qualified for retirement, May 1st.

18 Q Do you see down at the middle of the page
19 anything about date of termination?

20 A You know, it is the first time I have ever
21 looked at this document but looking at the center
22 of the page it appears to be May 27, 2010, unless
23 I'm reading it wrong, and then it says --

24 MR. JOHNSON: Your Honor, I object. I'm not
25 sure he really understands what he is looking at.

1 amend his complaint which was heard more recently,
2 within the last couple months, ultimately that was
3 denied but what came of it was Judge Culbertson
4 said, the original complaint had two causes of
5 action, injunctive relief and declaratory judgment.
6 "I have already ruled on injunctive relief, they
7 hadn't moved to dismiss the declaratory judgment
8 and I will schedule that for trial."

9 THE COURT: And that has not --

10 MR. MOSS: It has not been dealt with.

11 MR. JOHNSON: It not been dealt with.

12 MR. MOSS: I'm not going to agree that is
13 exactly what happened because Attorney Johnson
14 wasn't at that summary judgment hearing but Judge
15 Culbertson's order is his order and what I have
16 handed you is the Form 4 from Judge Culbertson that
17 establishes the declaratory judgment case is still
18 pending and will be scheduled for trial and these
19 arguments are exactly those that were made at the
20 time, so Judge Culbertson understood, as evidenced
21 by his Form 4 order, that while the injunctive
22 relief cause of action was mooted and therefore
23 dismissed, the declaratory judgment cause of action
24 was not and the substance of the motion for leave
25 to amend the complaint was to amend, because we

1 were going to ask for relief, at the time Mr.
2 Bailey asked for a grievance hearing he was
3 entitled to one.

4 THE COURT: That was denied.

5 MR. MOSS: Motion to amend was denied. What
6 is before you, of the 40 elements for declaratory
7 releft before you, two have been resolved. For
8 example, the declaratory judgment, defense
9 counsel's claim that the grievance hearing was moot
10 as well.

11 THE COURT: Right.

12 MR. MOSS: In the declaratory judgment cause
13 of action there were, I think, 40 enumerated
14 issues.

15 THE COURT: I think the ones that we seem to
16 be, this is where we need to stay focused, I don't
17 want to try the whole, I mean, I know we're doing
18 that but there is a lot of stuff coming in that I
19 think is irrelevant to my making a ruling as to
20 whether or not the city manager has a right to fire
21 him and not give him a grievance. I mean, that is
22 one of the issues.

23 MR. MOSS: I think you have honed in on
24 particularly on what is before you for decision, I
25 think you have accurately, to my understanding,

1 it.

2 MR. MOSS: Thank you, Mr. Bailey. I'm not
3 going to ask any further questions at this time.
4 Please answer any Mr. Johnson has or the Court has.

5 THE COURT: Mr. Johnson.

6 MR. JOHNSON: Thank you, Your Honor.

7 CROSS EXAMINATION BY MR. JOHNSON:

8 Q Good afternoon, Mr. Bailey.

9 A Good afternoon.

10 Q Bear with me just a second. You testified
11 earlier that on April 28th when you had the meeting
12 with Mr. Smithson and he gave you the ultimatum to
13 resign or be fired, that you told him you were not
14 going to resign, and what I wanted to ask you was
15 did you understand at the time that if you did not,
16 that if you did resign instead of being fired you
17 would not be able to grieve your separation from
18 employment?

19 A That has always been a rule, that is why I
20 absolutely refused it.

21 Q I hand you, and I haven't marked it, I can if
22 we need to, Your Honor.

23 MR. JOHNSON: This is the verified complaint
24 that was filed in the other matter, which a
25 verified complaint is basically an affidavit.

1 THE COURT: Yes.

2 MR. JOHNSON: I was going to ask him some
3 questions about that. If we need to mark it I will
4 be happy to mark it.

5 THE COURT: I don't have a copy.

6 MR. JOHNSON: Would you like me to hand you a
7 copy?

8 THE COURT: Please.

9 BY MR. JOHNSON:

10 Q Mr. Bailey, do you recognize that document as
11 the verified complaint that you filed in your other
12 lawsuit?

13 A Yes, sir.

14 Q Okay. And if you will look with me on the
15 last few pages of the document, at the very end, do
16 you see where it says verification of complaint?

17 A What page would that be?

18 MR. JOHNSON: May I approach, Your Honor?

19 THE COURT: You may.

20 A Yes.

21 Q Do you see that?

22 A Yes, sir.

23 Q And on the next page, the very last page of
24 the document, is that your signature?

25 A Yes, it is.

1 Q Okay. And that's been notarized, correct?

2 A Yes.

3 Q Okay. And look with me, if you would, at

4 item three on that last page where it says, "The

5 allegations contained in the complaint are true and

6 correct and based on my personal knowledge."

7 A Correct.

8 Q You swore to that when you signed this?

9 A Yes, I did.

10 Q Okay. Now would you turn to page 13 of the

11 complaint for me, please?

12 A Okay.

13 Q And if you look at paragraph 101, toward the

14 bottom of that document, or about the last page.

15 Do you see that?

16 A Yes, sir.

17 Q And just take a minute and read that

18 paragraph for me, please.

19 A Okay..

20 Q Okay. Do you see where it says that they

21 caused you to be constructively dismissed? Do you

22 see that?

23 A I do.

24 Q What does that mean?

25 A To me it means I was forced to do something I

1 didn't want to have to do.

2 Q Okay. You were forced to retire, is that the
3 position you're taking?

4 A I was forced to apply for my retirement, yes,
5 sir.

6 Q Okay. And do you understand that
7 constructive dismissal is a term of art?

8 A I understand it is a lawyer term, I do
9 understand that.

10 Q And your lawyer drafted this for you?

11 A Yes, he did.

12 Q And then you read it and swore it was true?

13 A Yes, sir.

14 Q Okay. Look with me again, if you would, on
15 page 21 and if you would look at paragraph 147 at
16 the bottom of page 21 and it carries over to page
17 22. Let me know when you have had a chance to read
18 that paragraph.

19 A Okay.

20 Q All right. You see in paragraph 147 on page
21 22 it talks about wrongful constructive discharge.
22 Do you see that?

23 A Yes.

24 Q Again what does that mean to you?

25 A To me?

1 Q Yes, sir.

2 A To me that means that I was put in a
3 situation where I had to accept something that I
4 did not want to accept.

5 Q You had to retire?

6 A I had to take advantage of my retirement,
7 yes, sir.

8 Q Your other option was to be fired?

9 A Was to not get any retirement. I needed that
10 as an income.

11 Q And once again constructive discharge is a
12 term of art, you're aware of that?

13 A Yes.

14 Q Okay. Mr. Bailey, I have handed you what was
15 marked Defendant's Exhibit 2. Please take a minute
16 to look at it and let me know when you have
17 reviewed that.

18 A I have.

19 Q Did you read it when it came out?

20 A I did.

21 Q Okay. Tell us what it is, please.

22 A It's basically, it is basically an article
23 that was written by a reporter who is just
24 absolutely hounding the city and my estimate of how
25 many articles this reporter, investigative reporter

1 wrote has got to be somewhere around 35, 40
2 articles just about this situation and me in
3 particular and it is just another one of those
4 articles and it talks about how he perceives the
5 story of me getting my retirement and what the city
6 was doing to me and the circumstances of that.

7 Q Okay. And can you read the date on it?

8 A June the 2nd.

9 Q 2010, right?

10 A Yes, sir.

11 Q And that was after you left the city's
12 employment?

13 A Yes, sir.

14 Q Okay. Look with me, if you will, there is,
15 there is an inset, a couple inset paragraphs that
16 are sort of written around a picture of you?

17 A Right.

18 Q Do you see that?

19 A Yes.

20 Q Do you see the one says, "Bailey filed his
21 retirement paperwork"?

22 A Yes, sir.

23 MR. JOHNSON: Your Honor, I would like to
24 move to admit this.

25 THE COURT: Any objection?

1 MR. MOSS: No objection,.

2 THE COURT: Without objection.

3 (Newspaper article marked and received in
4 evidence as Defendant's Exhibit Number 2).

5 BY MR. JOHNSON:

6 Q Do you see where, "Bailey filed his
7 retirement paperwork"?

8 A I see it.

9 Q Would you read that?

10 A "Bailey filed his retirement paperwork when
11 the State office opened at 8:30 a.m. on April 30,
12 before city manager John Smithson could take any
13 threatened discipline action."

14 Q Okay. How about the next paragraph, would
15 you read that?

16 A "We were still negotiating with the city at
17 the time that William drove to Columbia, Mr. Moss
18 said. The city didn't even know he had retired."

19 Q Okay. So, your attorney is basically
20 representing to the press that you retired on April
21 the 30th, 2010, before the city could take any
22 threatened disciplinary action. You see that,
23 right?

24 A I know this was wrote by David Wrenn and I
25 think half the people in this room would testify

1 that is something I believed because that is what
2 he said.

3 Q Do you have a witness here today from the Sun
4 News who will testify that in fact they just made
5 up --

6 A I didn't say they just made it up. I told
7 you I didn't know.

8 Q I don't know whether your attorney said it or
9 whether --

10 A I have no clue.

11 Q Do you have any reason to believe he didn't?

12 A I have no reason to believe he did.

13 Q But you don't know, you just don't know
14 either way?

15 A No.

16 Q That's fine. Do you still have Plaintiff's
17 Exhibit 4 with you, your grievance? No, you don't,
18 it is right here.

19 A No, sir, I don't have it.

20 Q Read the first sentence of that for me,
21 please.

22 A "Dear Sir/Madam. I believe I was treated
23 unfairly, unlawfully violated my rights under city
24 policy and forced me to take an early retirement
25 by," excuse me, "by the city manager. I believe

1 this is a separate disciplinary action from the
2 earlier grievance hearing concerning my demotion
3 and I believe that I am entitled to a new grievance
4 hearing."

5 Q Okay. And in that first sentence you state
6 that you believe you were forced into taking early
7 retirement by the city manager?

8 A Yes, sir.

9 Q Okay. So, I want to go back over just sort
10 of summarily what we have covered here. You state
11 in your grievance -- you did write this grievance,
12 right?

13 A Yes, sir.

14 Q Plaintiff's 4, that is your signature?

15 A Yes.

16 Q Okay. You state in your grievance that you
17 were forced to retire. Correct?

18 A Correct.

19 Q All right. The newspaper is quoting your
20 attorney as stating that you in fact did retire
21 before any discipline could happen.

22 A That's what this article says.

23 Q That's what it says, right. Okay. And in
24 your verified complaint which was filed June the
25 11th, 2010, you claim that you were constructively

1 discharged, which means forced to resign?

2 A Correct. Actually it means I was forced to
3 retire.

4 Q All right, forced to retire, either way. So,
5 you would agree with me that someone who is looking
6 at all these things might actually think that you
7 were forced to retire, is that your contention?

8 A No, sir, I wouldn't.

9 Q You wouldn't agree with me?

10 A No, sir.

11 Q Even though that is what you wrote?

12 A When you read one line of one paragraph --
13 you have to take all the factors into account,
14 especially with this particular situation, it has
15 been an ongoing process for almost three years now
16 so it cannot be defined in one word or one
17 sentence.

18 Q But you agree with me that you wrote
19 constructively discharged?

20 A I agree to that, yes, sir.

21 Q Okay. Do you recall the negotiations that
22 took place on April the 29th and April the 30th?

23 A I was not a party to the ones on the 29th at
24 all and the only part of the negotiations I was a
25 party to on the 30th was I'm guessing sometime

1 around 6:30, 7:00 o'clock at night.

2 Q Did your lawyer keep you apprised of what was
3 going on on the 29th?

4 A We talked about some of it and I don't know
5 exactly how much but he did call me and tell me how
6 things were going and that, you know, what the
7 progress was.

8 Q Okay. And broadly speaking, was your lawyer
9 and the city lawyer, the goal of this was to try
10 and work out some sort of amicable separation for
11 you, correct?

12 A I think it started out to try to get a clear
13 definition of exactly what my benefits were after
14 Mr. Smithson did what he did and that is how it
15 started.

16 Q You testified that the negotiations did take
17 place over possible terms of your leaving the city?

18 A I understand, I understand they did go on
19 that way.

20 Q Okay. But ultimately they were unsuccessful,
21 correct?

22 A Correct.

23 Q Do you still have Plaintiff's Exhibit 6
24 there, the big stack from the Retirement System?

25 A Yes, sir.

1 Q Would you look on page 23 for me, Bates stamp
2 23. Do you have that one in front of you?
3 A Correct.
4 Q And about a quarter of the way down it says
5 the call date was April 29, 2010, do you see that?
6 A Correct.
7 Q And CS rep out to the right, I assume that is
8 customer service rep, is that your assumption, too?
9 A Yes, sir.
10 Q It says April Jones. Do you set see that?
11 A Yes.
12 Q And then under notes, that is where she is
13 making notes about her interaction with you or
14 whoever, correct?
15 A Correct.
16 Q And then it says MBR, I assume that's member,
17 that would be you?
18 A I would assume that, yes, sir.
19 Q States given an ultimatum by his employer,
20 says would like to know if he quits today could he
21 still purchase service.
22 Do you see that?
23 A Correct.
24 Q Okay. And so you went to the State
25 Retirement System on the 29th, correct, did you go

1 to Columbia?

2 A I know this is going to sound hard for you to
3 believe but with all that was going on, I can't
4 remember whether I drove or I made a phone call or
5 there was communication, either/or.

6 Q One way or the other?

7 A Yes.

8 Q On the 29th?

9 A Yes.

10 Q Okay. And you told April Jones at least on
11 the 29th that you wanted to know what would happen
12 if you quit?

13 A Correct.

14 Q Okay. So you were at least thinking about,
15 "All right, maybe I'm going to quit"?

16 A I reviewed every single option I possibly
17 could on the 29th to find out exactly what that
18 window was that I needed to buy my time and I had
19 no clue. This is not the only phone call, you have
20 been through them, I would imagine there is ten
21 phone calls at least me asking questions.

22 Q I understand, and I understand you were
23 reviewing all your options but, you know, from what
24 you're telling me everything was on the table and
25 that certainly is inconsistent with your testimony

William H. Bailey, Jr. -- Redirect Examination by Mr. Moss

1 Q The last sentence, would you read the last
2 sentence?

3 A "Thus, as of May 24th, 2010, the city was
4 under the impression it had fired the plaintiff as
5 of April 30, 2010."

6 Q Thank you. Were you fired?

7 A Yes, sir.

8 Q Did you resign?

9 A No, sir.

10 MR. MOSS: Thank you, Mr. Bailey. I have no
11 more questions.

12 THE COURT: Any recross?

13 MR. JOHNSON: Your Honor, again I hate to do
14 this, I don't want a ping pong match.

15 THE COURT: I know but this is going to be
16 the last.

17 MR. JOHNSON: Okay.

18 RECROSS EXAMINATION BY MR. JOHNSON:

19 Q Mr. Bailey, you don't dispute that you filed
20 your paperwork to retire on April the 30th, 2010,
21 do you?

22 A I don't dispute that I filed an application
23 to receive my retirement on April 30th.

24 Q Okay. You can't receive retirement benefits
25 without actually applying for them, can you?

1 A That's correct.

2 Q Okay. And you don't dispute that your
3 retirement date was May 1st, 2010, do you?

4 A That's what the city said, yes.

5 Q That is what the city says or what the
6 Retirement System said?

7 A It was a combination of both. The Retirement
8 Board said as of May 1st will be considered so I
9 would get that montly check. How it worked out,
10 I'm not sure.

11 Q Did they pay you retroactive to May 1st?

12 A I can't answer that question without looking
13 at the pay stubs.

14 Q Do you have any reason --

15 A I think they did, I don't know. I have no
16 reason to doubt they didn't. That was my goal, was
17 to get a full pay check in May.

18 Q How old are you, Mr. Bailey?

19 A I am, I will be 50, so I'm 49, I will be 50
20 in December.

21 THE COURT: You're 49?

22 A Yes, sir.

23 Q You certainly could have gone on to work
24 someplace else, you didn't have to retire?

25 A Well, no, sir, I don't think I could have. I

1 think I'm unhirable because of what occurred at the
2 city.

3 Q Okay.

4 A I was branded a liar many, many times.

5 Q I understand but you certainly could have
6 tried to find other work?

7 A I could have but there is no way that I would
8 have found a job. I have been told by attorneys,
9 by the press, by the guy who wrote the article that
10 you referred to and on interviews on the news and
11 everywhere else.

12 Q I don't want to get into hearsay.

13 A No, I don't consider myself hirable. My
14 career in law enforcement was over the day that Mr.
15 Smithson sent the information to the media that I
16 had lied.

17 Q Okay.

18 MR. JOHNSON: I appreciate your testimony.

19 THE COURT: Thank you. You may step down.

20 (Witness excused).

21 THE COURT: Let's take a 15 minute recess,
22 we'll resume at 4:00.

23 (Recessed at 3:46 p.m.).

24 (Resumed at 4:02 p.m.).

25 THE COURT: All right, Mr. Moss, any other

1 witnesses you want to present?

2 MR. MOSS: Depending on what happens in our
3 stipulation -- my record shows Plaintiff's Exhibit
4 Number 2 is submitted, the court reporter says it
5 is not. I conferred with Attorney Johnson, he
6 doesn't have any objection to it.

7 MR. JOHNSON: No objection.

8 THE COURT: Without objection.

9 MR. MOSS: And with that, my records now
10 reflect that Plaintiff's 1, 2, 3, 4, 5, 6, 7, 8 and
11 10 are admitted.

12 THE COURT: Is that correct?

13 MR. JOHNSON: That is what I have, Your
14 Honor.

15 MR. MOSS: All right, with that, we do not
16 intend to call any additional witnesses at this
17 time, Your Honor, but we may in rebuttal.

18 THE COURT: All right. Is the defense ready
19 to proceed?

20 MR. JOHNSON: Yes, Your Honor. At this point
21 we would like to move for directed verdict,
22 essentially a motion to dismiss at this stage.
23 Nothing has come out in the testimony that
24 indicates that this Court's decision about whether
25 he might have been entitled to a grievance back

1 when there was a grievance procedure.

2 THE COURT: Yes, sir, and we have gone this
3 far, I'm going to respectfully deny it and see what
4 else is out there.

5 MR. JOHNSON: I understand, Your Honor.

6 THE COURT: Bear with me one second.

7 If you all can work a stipulation that would
8 be good.

9 MR. JOHNSON: Your Honor, call Linda
10 Edwards.

11 THE COURT: All right, Miss Edwards, come
12 forward and be sworn.

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Linda Pearce Edwards -- Direct Examination by Mr. Johnson

1 employment labor law, correct?

2 A Correct, only.

3 Q Mr. Savitz testified earlier that primarily
4 you had been responsible for advising the city at
5 least with regard to the personnel issues that were
6 going on with Mr. Bailey leading up to the, his
7 first grievance and then later his termination,
8 separation from employment, is that correct?

9 A That's correct, most of the day to day advice
10 was advice I provided, although the way our firm is
11 set up anybody can do it but I had a long term
12 relationship with them.

13 Q Miss Edwards, I want to show you what is
14 Plaintiff's Exhibit 5.

15 A Yes.

16 Q And have you confirm that is in fact a letter
17 that you wrote to Mr. Moss?

18 A It certainly appears to be.

19 Q And in that letter, just for the sake of
20 getting to the point, since there is not a jury
21 here, in that letter you essentially tell Mr. Moss
22 that, "We have determined that he is not entitled
23 to a grievance hearing," and just please explain to
24 the Court how it is that you came to that
25 conclusion.

1 A Well, as even Mr. Bailey testified, if you
2 resigned you don't get a grievance hearing, there
3 is nothing that a grievance committee can give you
4 if you resign and that is pretty standard practice
5 for most employers. Mr. Bailey's lawsuit was filed
6 sometime June, mid June, his verified complaint
7 wherein he testified several times that he was
8 constructively discharged, and in employment law
9 constructive discharge is a resignation. You can
10 resign, you can be fired but no matter how horrible
11 the circumstances if you choose to resign that's a
12 resignation.

13 That being the case, when I spoke with the
14 city manager and we were discussing it, it just
15 seemed so clear, once the verified complaint was
16 filed, that he was not entitled to a hearing, he
17 had retired before he was terminated, he even, if
18 he had been terminated he has couched it as a
19 constructive discharge and there just was nothing
20 that a grievance committee could do for him. They
21 could not unretire him. He chose to retire and
22 that was the basis of the letter that I sent to his
23 attorney.

24 One thing that was still outstanding that we
25 did touch on I think earlier, that Mr. Savitz

1 talked about, is what they call a liberty interest
2 hearing and that is a hearing that any public
3 employee is entitled to if they believe their good
4 name has been dishonored and irrespective of what
5 policies there are, whether they have a policy
6 manual or not, if an employee believes their
7 employer has said something that is defamatory the
8 employee is entitled constitutionally, as Mr.
9 Savitz explained, to a name clearing liberty
10 interest hearing.

11 Now, that hearing is not the hearing we all
12 think about when we have a parade of witnesses and
13 you cross-examine witnesses and that sort of thing.
14 It is merely a chance, and there's lots of case law
15 to support this, it is a chance to tell your side
16 of the story and that was what Mr. Smithson offered
17 him, was a public hearing, he could go stand in
18 front of whomever wanted to appear and tell his
19 side of the story but they were not going to
20 convene a grievance committee hearing and ask
21 questions and that sort of thing.

22 So that was the reason for the liberty
23 interest, name clearing hearing that was offered.
24 I don't know that there was anything that was
25 implicated but on the off chance that there was we

1 wanted to give him that opportunity but my position
2 was once I read the complaint and looked at it and
3 looking at the time line of events it was clear to
4 me that he had resigned by retiring before he was
5 terminated and therefore is not entitled to
6 anything.

7 Q And moving back to that issue, this idea that
8 you can't grieve a resignation, can't grieve a
9 retirement, I mean, it seems fairly common sense
10 but do you have some authority for that, did that
11 come out of nowhere?

12 A Right. The case I think Mr. Johnson cited in
13 his motion to dismiss was Eubanks versus the City
14 of Myrtle Beach. That involved, actually a case we
15 handled in the courthouse across the street and in
16 that case three gentlemen were fired by the city
17 manager, excuse me, two were fired, one chose to
18 resign and the Supreme Court just clearly said he
19 resigned, therefore he was not entitled to a
20 hearing, that was it, that simple, it is pretty
21 well understood particularly that is the law.

22 Q That is the hearing, he didn't get a
23 grievance hearing in that case?

24 A Yes. They talked about due process but it
25 was a grievance hearing that the city of Myrtle

1 Beach had very similar to the North Myrtle Beach
2 grievance, grievance procedure.

3 Q Miss Edwards, I have handed you what I have
4 marked Defendant's Exhibit 3. Do you recognize
5 that letter?

6 A Yes. It was Mr. Moss' response to my letter.

7 Q And just in short what does he, with respect
8 to the name clearing hearing, what does he tell
9 you?

10 A He found my analysis disingenuous, in the
11 extreme and unsupported by any provision of the
12 South Carolina Code or ordinance of the city of
13 North Myrtle Beach. I did not respond to the
14 letter because as I said, it was a constitutional
15 issue, it doesn't have to be in the policies.

16 Q Did you reject --

17 A I rejected the public hearing, yes.

18 Q Okay, all right. And to your knowledge the
19 city didn't ever go and hold some sort of hearing
20 that he didn't want?

21 A No. They did not have a duty.

22 MR. JOHNSON: I don't have anything else for
23 Miss Edwards.

24 THE COURT: All right, Mr. Moss.

25 MR. MOSS: Thank you, Your Honor. Indulge us

1 for a moment.

2 THE COURT: Yes, sir.

3 CROSS EXAMINATION BY MR. MOSS:

4 Q I refer you to Plaintiff's Number 5 that you
5 talked about a moment ago.

6 A Uh-huh (Affirmative).

7 Q The top line, not the top line but the first
8 paragraph, do you see that, do you have it in front
9 of you?

10 A Yes.

11 Q The bottom line, it says you have determined
12 Mr. Bailey chose to retire rather than being
13 terminated, he is not entitled to a hearing. Is
14 that correct? You didn't consult Mr. Bailey about
15 it, did you --

16 A No.

17 Q When you made the determination?

18 A No.

19 Q Okay. And that was on July 2nd, right?

20 A Yes.

21 Q Plaintiff's Number 6. Let me show you
22 Plaintiff's Number 6. These are records from the
23 South Carolina Police Officers Retirement System.

24 A I have never seen these.

25 Q You have never seen them?

1 A No.

2 Q Okay, fair enough. So, you didn't consult
3 with the records of the Retirement System?

4 A No, I did not.

5 Q So, without consulting with Mr. Bailey and
6 without consulting with the records of the
7 Retirement System you made the decision he retired
8 instead of being terminated?

9 A I consulted with other people who had
10 information. I did not see those records, no.

11 Q You agree with me the records are the most
12 factual component we can look at, right?

13 A I don't think records are the most factual
14 component. I think lots of evidence is factual.

15 Q Do you think there is any record any more
16 revealing when he retired than what is in the
17 Retirement System's records?

18 A My understanding, records showed he retired
19 on April 30.

20 Q Well, but you hadn't seen them?

21 A I don't remember seeing that packet, no, I do
22 not. I have seen some documents that the city had
23 that showed the date, that his last day of work was
24 April 30, his first day of retirement is May 1st.

25 MR. JOHNSON: Your Honor, I just want to

1 the State Ethics Commission convened a hearing and
2 went to those employees that were charged and
3 decided they were entitled to present their
4 evidence?

5 A I was aware they had a hearing. We weren't
6 present at the hearing, they had hearings, yes.

7 Q From the opinion you know that?

8 A Yes, absolutely.

9 Q And you know from the opinion, because you
10 studied it, that the court determined that was
11 sufficient of a name clearing hearing, too.

12 THE COURT: This isn't about a name clearing
13 hearing, we're not going into that, this is about
14 whether or not he is entitled to a grievance
15 hearing.

16 MR. MOSS: Thank you, Your Honor.

17 MR. MOSS: I would like to confer with my
18 client for a moment.

19 THE COURT: All right.

20 MR. MOSS: Miss Edwards, thank you. I'm not
21 going to ask any further questions at this time.

22 THE COURT: Any redirect, Mr. Johnson?

23 MR. JOHNSON: Just one, please.

24 REDIRECT EXAMINATION BY MR. JOHNSON:

25 Q There was talk earlier about retirement,

1 resigning. I can make things terrible for you but
2 I can't actually make you resign if you refuse to
3 do it, is that correct?

4 A That is correct, there is no such thing as a
5 forced resignation, you choose to resign or you
6 choose to be fired, you choose to retire or you
7 choose to be fired, it is a choice.

8 Q And that was the point I was going to get to,
9 he chose to retire, correct?

10 A Correct.

11 MR. JOHNSON: Thank you. I don't have
12 anything else.

13 THE COURT: Thank you. You may step down...
14 (Witness excused).

15 MR. JOHNSON: Your Honor the defense rests.

16 THE COURT: Any rebuttal testimony?

17 MR. MOSS: No rebuttal, Your Honor.

18 THE COURT: All right. I'm going to have to
19 take this matter under advisement. If both parties
20 would submit me proposed orders within the next ten
21 days I will try to give you a ruling.

22 MR. JOHNSON: Your Honor, just for the record
23 I need to, I want to renew my motion for directed
24 verdict.

25 THE COURT: And I respectfully deny it.



- accident records, purchase orders, time sheets or any other report, record or application.
45. Conviction, plea of guilty or plea of nolo contendere of or to a charge of theft, violation of drug laws or sexual misconduct of or to an offense which affects the City's reputation or which reasonably could create concern on the part of citizens.
 46. Revocation of or failure to report suspension of valid driver's license when employee is required to operate motor vehicles on duty.
 47. Misuse of City funds.
 48. Offering or accepting a bribe.
 49. Knowingly harboring any communicable disease which may endanger other employees.
 50. Receipt from any person of a fee, gift or any other valuable thing in the course of work when such fee, gift or valuable thing is given in hope or expectation of receiving a favor or better treatment than accorded other persons.
 51. Reporting for work or being at work under the influence of alcohol or of controlled and non-prescribed substances, including marijuana. An employee may be required to submit to a blood test or urinalysis to determine if this rule has been violated.
 52. Any other reason, which in the city's sole discretion, warrants disciplinary action.

Types of Discipline.

Disciplinary action which may be taken includes but is not limited to:

- a. Informal counseling
- b. Oral reprimand
- c. Written reprimand
- d. Suspension without pay
- e. Probation
- f. Demotion
- g. Dismissal

Grievance Procedure.

This procedure is adopted in accordance with the "County and Municipal Employees Grievance Procedure Act," Section 8-17-110, et. seq., Code of Laws of South Carolina, 1976.

- A. A grievance is defined as any complaint by an employee that he has been treated unlawfully or in violation of City policies with regard to matters pertaining to his employment by the City. This definition includes, but is not limited to, discharge, suspension, involuntary transfer, promotion and demotion. Written warnings are not grievable. Compensation is not a proper subject for the

EXHIBIT #1

grievance procedure except as it may apply to alleged inequities within a department of the City. However, if an employee believes he has not received or been credited with or has otherwise lost benefits or wages, he must present his grievance in accordance with this procedure or the wages may be forfeited.

B. An employee who feels that he has a grievance must follow the following procedure:

Step 1. He must discuss the grievance with his immediate supervisor within five (5) days of learning the facts on which the grievance is based. If his supervisor is unable or unwilling to adjust the grievance to the satisfaction of the employee, the employee must take Step 2.

Step 2. The employee must follow the chain of command in his department, appeal to each successive level of supervision. All Step 1 and Step 2 appeals may be oral. At each level, each supervisor has five (5) calendar days to render a decision. If no decision is made within this time, the grievance is considered denied. If a supervisor at a particular level is unavailable to consider the grievance, it is considered denied and the employee will appeal to the next level of supervision.

Step 3. If the head of the department in which the employee is employed denies the grievance, this decision is final as to any grievance brought by an introductory employee. A new employee is considered probationary until his probationary evaluation is completed and approved by his department head and the City Manager. The department head should prepare a memorandum documenting his discussion with the employee.

C. Non-introductory employees who have exhausted the procedure(s) outlined in "B" may appeal to the employee grievance committee the denial of their grievance by department heads by filing a written request for appeal at the City's Personnel Division. This must be done within seven (7) calendar days of the department head's denial of the grievance. The written request for appeal must include the following information:

- (a) The purpose of the appeal and what recommendation is requested of the grievance committee to send to the City Manager; and
- (b) A statement that the chain of command has been followed in the appeal as required by the grievance procedure.

The Personnel Division staff will assist in preparing the appeal, if requested.

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- D. Within ten (10) working days of receipt of the employee's request the chairperson of the grievance committee will schedule the requested hearing and notify the grievance committee, the employee requesting the hearing, the affected department and the Personnel Division.

The Employee Grievance Committee.

The City Manager appoints a committee composed of six (6) employees and two (2) alternates to serve for terms of three (3) years so that their terms will be staggered, and approximately one-third (1/3) of the terms shall expire each year. A member continues to serve after the expiration of his term until a successor is appointed. Any interim appointment to fill a vacancy prior to the completion of a member's term is for the unexpired term. Any member may be reappointed for succeeding terms at the discretion of the City Manager. All members are selected on a broadly representative basis from among City employees. Members employed in the same department as the grieving employee and members having formed an opinion on the issues prior to the hearing should not participate in that employee's hearing.

- A. The committee annually selects its own chairperson from among its members. The chairperson serves as the presiding officer at all hearings which he attends but may designate some other member to serve as presiding officer in his absence. The chairperson has the authority to schedule and to re-schedule all hearings.
- B. A quorum consists of at least four (4) members and no hearing may be held without a quorum.
- C. The presiding officer has control of the proceedings and takes whatever action is necessary to ensure an equitable, orderly and expeditious hearing. Parties are to abide by his decisions, except where a committee member objects to a decision to accept or reject evidence, in which case a majority vote of the committee will govern.
- D. The committee has the authority to call for files, records and papers which are pertinent to any investigation and which are subject to the control of the City; to call for or consider affidavits of witnesses; to request and hear the testimony of witnesses; to consider the results of polygraph examinations; and to secure the services of a recording secretary in its discretion. The committee has no authority to subpoena witnesses, documents or other evidence, nor may any City employee be compelled to attend any hearing. All proceedings are tape-recorded. Witnesses, other than the grieving employee and the department representative, are sequestered when not testifying. All witnesses testify under oath.
- E. All hearings are held in executive session unless the grieving employee requests 24 hours in advance of the hearing that it is held in open session. The official tape recording and the official minutes of all hearings are subject to the control and disposition of the City Manager.

EXHIBIT #1

- F. Neither the grieving employee nor the department may be assisted by advisers or by attorneys during the hearing itself. However, the committee will have an attorney available to it at any time it considers necessary and the Personnel Division may provide assistance in reading materials to the committee at the request of a grieving employee.
- G. In disciplinary actions by Department Heads and their subordinate supervisors, the employee is to receive in reasonable detail written notice of the nature of the acts or omissions which are the basis for the disciplinary action. This notice may be amended at any time 24 hours or more before the commencement of the hearing. The department must demonstrate that the disciplinary action is for the good of the City. The department makes the first presentation. The committee (and the City Manager, as set forth below) may base its findings and recommendations (and the City Manager his decision) on any additional or different grounds developed from the employee's presentation.
- H. In non-disciplinary grievances the employee must establish that a right existed and that it was denied him, illegally or in violation of a City policy. The employee makes the first presentation.
- I. In all grievances, the grieving employee and the department are each limited to one (1) hour of initial presentation. The party required to make the first presentation is entitled to a ten (10) minute rebuttal of the other party's presentation. The chairperson will appoint himself or another member of the committee as timekeeper.
- J. In all grievances, presentations may be oral, or in writing or both, and may be supported by affidavits or unsworn signed statements from witnesses, by records, other documentary evidence, photographs and other physical evidence. Presentations will be made by the grieving employee (with reading assistance from a member of the Personnel Division, if the employee desires) and by a managerial employee of the affected department. Parties may request the committee call witnesses, and a list of potential witnesses should be submitted to the committee five (5) calendar days prior to the hearing. However, neither party may call witnesses or question the other party, or question any witness called by the committee.
- K. The committee, within twenty (20) days after hearing an appeal, makes its findings and recommendation and report such findings and recommendation to the City Manager. If the City Manager approves, the recommendation of the committee is his decision and results of the decision are transmitted by the committee to the employee and to the head of the particular department involved. If, however, the City Manager rejects the decision of the committee, the City Manager makes his own decision without further hearing, and that decision shall be final. Copies of the decision are transmitted to the employee and to the head of the particular department involved.

EXHIBIT #1

- L. Nothing in this grievance procedure creates a property interest in employment or a contract of employment, nor does this procedure limit the authority of the City Manager [under Section 5-13-90, Code of Laws of South Carolina, 1976, as amended] to remove any employee when necessary for the good of the City.

SECTION V. EMPLOYEE DRUG USE AND DRUG TESTING POLICY

It is well-recognized that drug abuse has a harmful effect on public health and safety, on the welfare of employees, on morale, and on productivity. Furthermore, it is the policy of the City to comply with the Drug Free Workplace Act, to comply with applicable federal regulations, to establish and maintain drug-free workplaces, and to prohibit the unauthorized or unlawful manufacture, distribution, dispensation, possession, and use of controlled substances on or off the job.

For these reasons, the City adopts the following policy:

I. GENERAL RULE

Effective immediately, all employees of the City are prohibited from swallowing, inhaling, injecting, dealing in, or otherwise using or giving the appearance of using illegal drugs and substances (such as marijuana, cocaine, LSD, heroin, etc.) and prescription drugs which are not prescribed for the employee's own use. This prohibition applies to use at any time, both on the job and off the job. City employees are, of course, permitted to possess any substance when required by their jobs or for the purpose of lawful delivery to another person. These prohibitions also apply to leased employees and contractors employed by the City or working on City property.

II. APPLICANTS FOR EMPLOYMENT

Applicants tentatively selected for employment in safety-sensitive positions must undergo a pre-employment drug test. The City does not hire applicants tentatively selected for employment who refuse to submit to a drug test or who test positive for use of illegal or unauthorized substances. An applicant who is rejected under this policy may be considered for future vacancies if he can demonstrate that he is no longer a user of any such substances. For example, the applicant may successfully complete a drug abuse treatment program and pass a more thorough drug test conducted at the applicant's expense. (This may include participation in and successful completion of a rehabilitation program as well as a negative drug test result on a more thorough drug test.)



From: Stephen T. Savitz [mailto:ssavitz@gsblaw.net]
Sent: Sunday, May 02, 2010 4:31 PM
To: Ken R. Moss
Cc: Noury, Chris
Subject: RE: draft complaint and draft letter, offered in conjunction with settlement negotiations

PRIVILEGED COMMUNICATION

Dear Ken,

Thank you for email, draft complaint and draft letter. You have also sent it to Chris Noury and he and I will be in discussions. From reading your email and attachments, it is clear that William understood from the City Manager that his employment with the City would end either by resignation or termination on April 29th, unless you and I had reached an agreement by Friday evening. We did not reach an agreement. So, when we ended our telephone conversation, with William in your office on the speaker phone, we parted as amicably as possible under the circumstances with the understanding that William was terminated and you would take whatever steps you deemed necessary. I talked with the City Manager after that call and he decided to make the termination effective April 30, 2010, rather than April 29th. I did not advise you of the change in date, so I understand your confusion as to the exact date. I am sure we will be communicating further.

With kindest personal regards,

Steve
Stephen T. Savitz
900 Elmwood Avenue, Suite 100
Columbia SC 29201
☎ 803.799.9311 • 📠 803.254.6951
✉ ssavitz@gsblaw.net

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*CERTIFIED MEDIATOR

June 8, 2010

TRANSMITTED BY ELECTRONIC MAIL (krmoos@mcgouganlawfirm.com)
AND U.S. MAIL

Kenneth R. Moss, Esquire
 The McGougan Law Firm, LLC
 Post Office Box 250
 Little River, SC 29566

Re: William H. Bailey, Jr., Employee Grievance Committee Appeal

Dear Ken:

Mr. Bailey has appealed his discharge from the City. I will be advising and consulting with the Grievance Committee as to the Appeal. The Committee is aware that since you are unavailable between June 14 and June 25 that it needs to select some date after June 25th to accommodate you. I am not available June 29th and 30th. Are there any other dates we should be aware of as to your schedule?

I am concerned about the argumentative and speculative language you expressed in your letter to the Committee. As you certainly know, the arguments in both your and Mr. Bailey's letters are not evidence, and I will instruct the Committee that they should disregard them, except to the extent that they appeal the decision of the City Manager. The only evidence the Committee will take and consider is that which is presented at the hearing. Since I represent the Committee, if there are any procedural issues to discuss, please direct them in writing to me so I may consult with the Committee and the City if necessary.

At the last hearing, some of the Committee expressed some feelings of being intimidated by the public and press being present and there was some reluctance to ask questions. Mr. Bailey has asked that this hearing be open as well. I request that if either Mr. Bailey or the City has any questions they particularly want asked by the Committee of any witness, to submit them

EXHIBIT #3

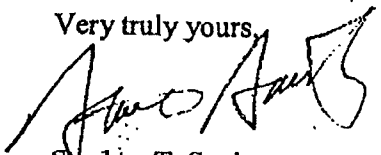
Kenneth R. Moss, Esquire -
June 8, 2010
Page 2

to me no later than two days before the Hearing. I will review them and give them to the Committee. The Committee may, of course, ask any questions it wants, but I thought it could help to have some specific suggestions beforehand.

I am in my office most of Tuesday, Wednesday and Thursday of this week.

With kindest personal regards,

Very truly yours,



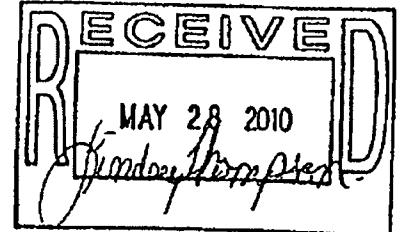
Stephen T. Savitz

STS/kjm



LITTLE RIVER, SC 29566

May 28, 2010



Personnel Department
City of North Myrtle Beach
1018 2nd Avenue South
North Myrtle Beach, SC 29582

Re: Appeal To the Employee Grievance Committee

Dear Sir/Madam:

I believe I have been treated unfairly, unlawfully and in violation of my rights under City policies, and forced into taking early retirement by the City Manager. I believe this is a separate disciplinary action from my earlier Grievance Hearing concerning demotion, and I believe I am entitled to a new Grievance Hearing.

The circumstances that give rise to this Complaint are that:

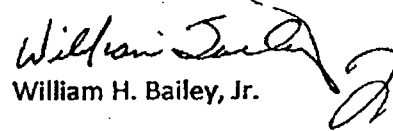
1. On April 28, 2010 the City Manager summoned me to a meeting and demanded that I resign from employment with the City because of my statements to the Grievance Committee at its hearing on April 19, 2010, including details of the things the City Manager had asked me to do personally for him, and my defense of my own actions related to the theft of my service weapon. He demanded that I resign before 3:00 p.m. on April 29, 2010, failing which he stated he intended to terminate my employment on April 29, 2010, which he understood to be one day before I would be entitled to opt to retire under the State system (he was mistaken).
2. To understand the alternatives I had before me including unemployment, insurance and pension rights, I had my attorney write a letter on April 29, 2010 seeking clarification of my options. I have never received a reply.
3. On May 21, 2010, I received by mail a "COBRA" notice mailed May 20, 2010 but dated April 13, 2010 stating that my employment had been involuntarily terminated as of that date, and that I was obliged to elect for "COBRA" coverage no later than April 30, 2010 (which was before the letter was mailed or received).
4. I believe that these actions – namely a decision to terminate my employment irrespective of the Grievance Committee findings on April 19, 2010, and the demand for my resignation under threat of involuntary termination because of my demand for a Grievance Committee hearing on April 19, 2010 – are further examples of unlawful harassment of me by the City Manager, contrary to the City's policies as set forth in the Personnel Manual and established law of the State of South Carolina.

In accordance with the published Grievance Procedure, I confirm:

EXHIBIT #4

1. I have discussed this matter with the City Manager through his attorneys, and also with the Mayor, but both have confirmed unwillingness to reverse the actions of the City Manager or allow an appeal against the harassment through a Committee of City Council.
2. The purpose of the appeal will be to seek a recommendation that the disciplinary actions be reversed, the harassment by the City Manager should be condemned and sanctioned, and that I should be offered reinstatement with the City.
3. The chain of command in this appeal has been followed as required by the Grievance Procedure.
4. I hereby give notice that I wish to have a Grievance Committee hearing pursuant to the Employment Manual of the City, seeking to reverse any decision to terminate or alter my employment status. I wish that Grievance hearing to be held as soon as possible, in an open forum and with sufficient facilities to accommodate all those that wish to attend, including full media coverage.
5. I also believe that any deliberations of the Grievance Committee should be in public, and that all exhibits should also be made public. This was my understanding as to what should have happened at the earlier Grievance Committee hearing, but the Committee did not do that, apparently under instructions from someone. I had requested that the hearing not be in Executive Session, and I repeat that demand.

Sincerely,


William H. Bailey, Jr.



July 2, 2010

VIA EMAIL & U.S. MAIL

Kenneth R. Moss, Esquire
 The McGougan Law Firm, LLC
 Post Office Box 250
 Little River, South Carolina 29566
 Fax (843) 281-9903

Re: William Bailey Grievance Hearing

Dear Ken:

At the request of the City Manager, I reviewed William Bailey's request for a grievance hearing. After reviewing his letter, as well as the allegations of his complaint filed in Horry County, I have determined that because Mr. Bailey chose to retire in lieu of being terminated, he is not entitled to a hearing before the City's grievance committee.

As you know, the City of North Myrtle Beach is governed by the Council-Manager form of government. S.C. Code of Laws § 5-13-10 *et seq.* Pursuant to statute, the City Manager handles the day-to-day operations of the City. With respect to the grievance procedure, S. C.. Code of Laws § 8-17-150 provides that requests for a hearing be submitted to the governing body, in this case, the City Manger. S.C. Code of Laws § 8-17-160.

Our courts have addressed this issue and have ruled that an employee who resigns in lieu of being terminated is not entitled to a due process hearing. Numerous courts throughout the country have ruled similarly and have consistently held that employees who choose to resign in lieu of termination are not entitled to a hearing. Even if the employee believes he is in an untenable position in having to make such a choice, he is not entitled to a hearing if his choice is to resign. In this case, Mr. Bailey chose to retire before any termination took effect. Consequently, he is not entitled to a grievance hearing.

However, because Mr. Bailey has alleged that some things the City said could affect his standing in the community, he may be entitled to a hearing to clear his name. The City Manager

EXHIBIT #5

Mr. Moss
July 2, 2010
Page 2

has scheduled a public hearing for Thursday, July 8, 2010, at 9:00 a.m. at City Hall. Please advise your client that he will not be permitted to revisit his employment history during this hearing but will be given the opportunity to address the City Manager and explain his version of the events and comments he claims could impugn his reputation or be perceived negatively by others.

If you have any questions, please let me know.

With kind regards,

Very truly yours,

Linda Pearce Edwards

LPE/ns
lt-Moss-GrHrg-07-02-10.wpd

cc: Mr. John Smithson, City Manager
Chris Noury, Esq., City Attorney



GIGNILLIAT SAVITZ & BETTIS LLP

STEPHEN T. SAVITZ**
 VANCE J. BETTIS*
 LINDA PEARCE EDWARDS*
 KATHRYN THOMAS*
 DERWOOD L. AYDLETTE, III**
 SHAHIN VAFAI*
 CHRISTOPHER W. JOHNSON*
 CHRISTINA M. SUMMER*
 FRED A. WILLIAMS
 JULIAN H. GIGNILLIAT
 (1939-2002)

*CERTIFIED SPECIALIST
 LABOR & EMPLOYMENT LAW

**CERTIFIED MEDIATOR

August 29, 2011

VIA EMAIL & U.S. MAIL

Kenneth R. Moss, Jr., Esquire
 Wright, Worley, Moss & Ekster, PLLC
 PO Box 250
 Little River SC 29566

Re: *William H. Bailey v. City of North Myrtle Beach, a South Carolina municipal corporation, John Smithson, Steven Thomas, and Nicole Aiello*
 Civil Action No. 4:10-cv-01656-TLW

Dear Ken:

Enclosed please find for service upon you Affidavit of Records Custodian for the South Carolina Retirement Systems. If you have any questions, please do not hesitate to contact us.

Very truly yours,

A handwritten signature in black ink, appearing to read "DLA".

Derwood L. Aydlette, III

DLA/tmh

ltr Moss - srvtrecustaff-scrs.439.AL.wpd

Enclosures

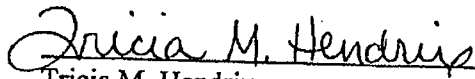
CERTIFICATE OF SERVICE

This is to certify that I have this date caused to be served a copy of the Affidavit of Records Custodian for the South Carolina Retirement Systems on counsel for plaintiff by deposit in the United States mail, First Class postage prepaid, addressed to:

Kenneth R. Moss, Jr., Esquire
Wright, Worley, Moss & Ekster, PLLC
PO Box 250
Little River SC 29566

and by email to:

kennethmoss@wwmelaw.com


Tricia M. Hendrix

August 29, 2011

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS

William H. Bailey, Jr.,

Plaintiff,

vs.

City of North Myrtle Beach, a South
Carolina municipal corporation,

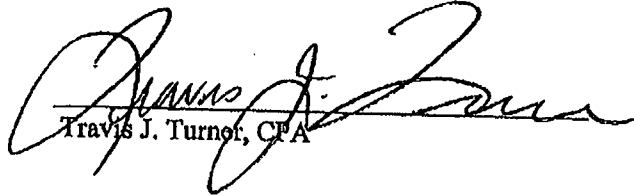
Defendant.

C.A. No. 2010-CP-26-5964

AFFIDAVIT OF RECORDS CUSTODIAN

My name is Travis J. Turner, CPA, and I certify under penalty of perjury the following:

1. That I am a records custodian for the South Carolina Retirement Systems.
2. That the attached records are true and correct copies of records made and maintained in the ordinary course of business.
3. That the attached records were made at or near the time of the event(s) described in the documents or from information given by a person with knowledge of the event(s).


Travis J. Turner, CPA

Sworn to and subscribed before me

this 29th day of August, 2011.


Notary Public for South Carolina

My commission expires: 5/14, 2014.

MARK SANFORD CHAIRMAN
GOVERNOR

CONVERSE A. CHELLIS, III, CPA
STATE TREASURER

RICHARD ECKSTROM, CPA
COMPTROLLER GENERAL



SC BUDGET AND CONTROL BOARD

South Carolina Retirement Systems
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COMMITTEE

FRANK W. FUSCO
EXECUTIVE DIRECTOR

August 18, 2010

Derwood L. Aydlette, III, Esquire
Gignilliat, Savitz & Bettis, LLP
900 Elmwood Avenue, Suite 100
Columbia, SC 29201

COPY

RE: Subpoena Response
William H. Bailey; xxx-xx-6820

Dear Mr. Aydlette:

In response to the subpoena you issued on August 13, 2010, enclosed is a complete copy of Mr. Bailey's Police Officers Retirement System file. The executed Certification of Documents is also enclosed.

If we can assist you further, please call my paralegal, Robin Benson, at 737-6811 or me at 737-6898.

Sincerely,

David K. Avant
Managing Legal Counsel

Enclosure

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
FLORENCE DIVISION

William H. Bailey,

Plaintiff,

v.

City of North Myrtle Beach, a South Carolina
municipal corporation, John Smithson, Steven
Thomas, and Nicole Aiello,

Defendants,

C.A. No. 4:10-cv-01656-TLW-TER

CERTIFICATION OF DOCUMENTS

My name is Lisa M Phipps. I certify:

1. That I am a records custodian for the South Carolina Retirement Systems.
2. That the attached records are true and correct copies of records maintained in the ordinary course of business.
3. That the attached records were made at or near the time of the event(s) described in the documents or from information given by a person with knowledge of the event(s).
4. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Lisa M Phipps
Signature of Records Custodian

Executed on Aug 18, 2010

RCS105N1
Aug 18,10

***** South Carolina Retirement Systems *****
- Maintain Contact Log -

RCS105M1
1 more >

Action (D)

SSN : ██████████-6820

Phone : (803) 799 - 9311

Name: WILLIAM H BAILEY JR

██████████
LITTLE RIVER SC 29566

*Reason : CALLBACK

Start Time : 15:59:59

Call Length: 00:06:27

Call Date : 08 17 2010

CS Rep: JOSEPH RAMSEY Dept: CSCC

Last Updated by: RRAMSJ on: 08-17-2010

Notes :

HAT TIME AS WELL...ADVISED I DID TALK TO EMPLOYER LATER CLARIFYING NEED FOR
6201 BASED ON CONTACT LOGS

Direct Command:

Enter-PF1---PF2---PF3---PF4---PF5---PF6---PF7---PF8---PF9---PF10--PF11--PF12---
confm help retrn quit prev next bkwr frwr left right main
Scrolling performed.

RCS105N1
Aug 18, 10

***** South Carolina Retirement Systems *****
- Maintain Contact Log -

RCS105M1
1 more >

Action (D)
SSN : [REDACTED] 6820
Phone : (843) [REDACTED]

Name: WILLIAM H BAILEY JR
[REDACTED]
LITTLE RIVER SC 29568

*Reason : CLAIMS-RETIRE-S

Start Time : 14:28:52
Call Length: 00:02:05
Call Date : 05/19/2010

CS Rep: SLY PEOPLES Dept: CSCC
Last Updated by: RRMSJ on: 06-07-2010

Notes :

MEMBER CALLING TO ASK IF WE HAD RECEIVED FAXED COPY OF REVISED 6201 FROM
EMPLOYER..ACCORDING TO JEFF'S NOTES IT WAS RECEIVED....
UPDATE: RECEIVED 6202, FORWARDED TO AFC...JCR 6.7.2010

Direct Command:

```
Enter-PF1---PF2---PF3---PF4---PF5---PF6---PF7---PF8---PF9---PF10---PF11---PF12---
confm help retrn quit prev next          bkwrđ frwrđ          left right main
Contact log displayed successfully
```

RCS106N1
Aug 18,10

***** South Carolina Retirement Systems *****
- Maintain Contact Log -

RCS105M1
1 more >

Action (D)

SSN : ██████████-6820

Name: WILLIAM H BAILEY JR

Phone : (843) 280 - 5647

██████████
LITTLE RIVER SC 29566

*Reason : CALLBACK

Start Time : 13:55:10
Call Length: 00:17:07
Call Date : 06 19 2010

CS Rep: JOSEPH RAMSEY Dept: CSCC
Last Updated by: RRAMSJ on: 05-19-2010

Notes :

CALLED CONNIE COX UPSON RECP OF 6201 SHOWING DOR 4.29.2010, LAST DAY
IN WHICH ACTIVE MBR RETIREMENT PRIOR TO RETIR WILL BE WITHHELD FROM
EARNED COMPENSATION 5.27.10 AND DATE OF TERMINATION 4.30.10. WENT OVR
6201 STATES MBR WAS ON PAYROLL BEING PAID FOR LEAVE THROUGH 4.30.2010 AND
TERMED 4.30.10. ADVISE DOR WOULD BE 5.01.2010, SHE WILL FAX AMENDED 6201
TO MY ATTENTION.....LW

Direct Command:

Enter-PF1---PF2---PF3---PF4---PF5---PF6---PF7---PF8---PF9---PF10---PF11---PF12---
confm help retrn quit prev next bkwrwd frwrwd left right main
Contact log displayed successfully

RCS105N1
Aug 18,10

***** South Carolina Retirement Systems *****
- Maintain Contact Log -

RCS105M1
1 more >

Action (D)

SSN : ██████-6820

Name: WILLIAM H BAILEY JR

Phone : (843) 280 - 5555

██████████
LITTLE RIVER SC 29566

*Reason : CLAIMS-RETIRE-S

Start Time : 09:08:27

Call Length: 00:10:27

Call Date : 05 19 2010

CS Rep: JEFF COEFIELD Dept: CSCG

Last Updated by: RCOEFJ on: 05-19-2010

Notes :

CONNIE COX-BA CALLING FOR JOEY.ADV JOEY WAS TIED UP ON ANOTHER CALL.REV'D____
COMPLETION OF 6201,MBR DOR.ADV 6201 NEEDED TO SET MBR UP ON PAYROLL._____

Direct Command:

Enter-PF1---PF2---PF3---PF4---PF5---PF6---PF7---PF8---PF9---PF10---PF11--PF12---
confm help retrn quit prev next bkwrk frwrk left right main
Contact log displayed successfully

RCS105N1
Aug 18,10

***** South Carolina Retirement Systems *****
- Maintain Contact Log -

RCS105M1
1 more >

Action (D)

SSN : ██████████-6820

Name: WILLIAM H BAILEY JR

Phone : (843) ██████████

██████████
LITTLE RIVER SC 29566

*Reason : CLAIMS-RETIRE-S

Start Time : 08:32:35

Call Length: 00:02:53

Call Date : 05 19 2010

CS Rep: PHIL OSBOURNE Dept: CSCC

Last Updated by: ROSBOP on: 05-19-2010

Notes :

ADV NOT SHOWING 6201 BEING RECD YET. MAY WANT TO CHECK LATER TODAY. _____

Direct Command: _____

Enter-PF1---PF2---PF3---PF4---PF5---PF6---PF7---PF8---PF9---PF10--PF11--PF12---
confm help retrn quit prev next bkwrk frwr left right main
Contact log displayed successfully

RCS105N1
Aug 18, 10

***** South Carolina Retirement Systems *****
- Maintain Contact Log -

RCS105M1
1 more >

Action (D)

SSN : ██████████-6820

Name: WILLIAM H BAILEY JR

Phone : (843) 280 - 5647

██████████
LITTLE RIVER SC 29566

*Reason : CALLBACK

Start Time : 09:06:03

Call Length: 00:03:48

Call Date : 05 18 2010

CS Rep: JOSEPH RAMSEY Dept: CSCC
Last Updated by: RRAMSJ on: 05-18-2010

Notes :

RECEIVED 2209 FROM CONNIE COX...CALLED TO ADVISE NEED 6201 NOT 2209...SHE S
TATES HASN'T RECEIVED TERM PAPERWORK ON HIM, WILL CHECK ON THIS AND CALL US
BACK

Direct Command:

Enter-PF1---PF2---PF3---PF4---PF5---PF6---PF7---PF8---PF9---PF10--PF11--PF12---
confm help retrn quit prev next bkwrd frwr left right main
Contact log displayed successfully

RCS105N1
Aug 18,10

***** South Carolina Retirement Systems *****
- Maintain Contact Log -

RCS105M1
1 more >

Action (D)
SSN : ██████████-6820 Name: WILLIAM H BAILEY JR
Phone : (843) ██████████
LITTLE RIVER SC 29566

*Reason : CLAIMS-RETIRE-S

Start Time : 14:14:47
Call Length: 00:02:19
Call Date : 05 14 2010

CS Rep: KELLY HOLLIDAY Dept: CSCC
Last Updated by: RHOLLK on: 05-14-2010

Notes :

MBR WANTED TO KNOW IF WE HAVE REC'D THE 6201 FROM EMPLOYER AT THIS TIME...
ADV NO...

Direct Command: _____

Enter-PF1---PF2---PF3---PF4---PF5---PF6---PF7---PF8---PF9---PF10---PF11---PF12---
confm help retrn quit prev next bkwrk frwr left right main
Contact log displayed successfully

RCS105N1
Aug 18,10

***** South Carolina Retirement Systems *****
- Maintain Contact Log -

RCS105M1
1 more >

Action (D) _____ Name: WILLIAM H BAILEY JR
SSN : _____-6820
Phone : (843) _____ LITTLE RIVER SC 29566

*Reason : CLAIMS-RETIRE-S

Start Time : 09:37:07

Call Length: 00:04:56

Call Date : 05 13 2010

CS Rep: MALIKA CHISOLM Dept: CSCC
Last Updated by: RCHISM on: 05-13-2010

Notes :

MBR ASSISTING ON SAYING THE 6201 WAS REC'D. ADV NO & PROVIDED # TO FAX _____
THE FORM TO US. _____

Direct Command; _____

Enter-PF1---PF2---PF3---PF4---PF5---PF6---PF7---PF8---PF9---PF10---PF11---PF12---
confm help retrn quit prev next bkwrdr frwrdr left right main
Contact log displayed successfully

RCS105N1
Aug 18, 10

***** South Carolina Retirement Systems *****
- Maintain Contact Log -

RCS105M1
1 more >

Action (D)

SSN : ██████████-6820

Name: WILLIAM H BAILEY JR

Phone : (843) ██████████

LITTLE RIVER SC 29566

*Reason : CLAIMS-RETIRE-S

Start Time : 13:36:04

Call Length: 00:03:17

Call Date : 05 12 2010

CS Rep: PHIL OSBOURNE Dept: CSCC

Last Updated by: ROSBOP on: 05-12-2010

Notes :

ADV MEMBER STATUS IS MIC. NEED 6201 AND 6202 FROM EMPLOYER.

Direct Command:

Enter-PF1---PF2---PF3---PF4---PF5---PF6---PF7---PF8---PF9---PF10---PF11---PF12---
confm help retrn quit prev next bkwrk frwr left right main.
Contact log displayed successfully

RCS105N1
Aug 18,10

***** South Carolina Retirement Systems *****
- Maintain Contact Log -

RCS105M1
1 more >

Action (D)

SSN : ██████████-6820

Name: WILLIAM H BAILEY JR

Phone : (843) ██████████

██████████
LITTLE RIVER SC 29566

*Reason : CLAIMS-RETIRE-S

Start Time : 08:22:30

Call Length: 00:01:16

Call Date : 05 04 2010

CS Rep: BRENDA SMITH

Dept: CSCI

Last Updated by: RSMITB on: 05-04-2010

Notes :

RECEIVED VIA FAX: LETTER FROM MBR WITH COPIES OF POB FOR SELF AND BENE. _____
..NO SSN ; THEREFORE I CALLED THE MEMBER AT THE TEL NUMBER HE HAD ON HIS LE
TTER TO VERIFY CORRECT SSN./ FORWARDED TO CLAIMS FOR PROCESSING. _____

Direct Command: _____

Enter-PF1---PF2---PF3---PF4---PF5---PF6---PF7---PF8---PF9---PF10--PF11--PF12---

confm-help--retrn-quit--prev--next

---bkwr-d-frwr-d---

---left--right-main-----

Contact log displayed successfully

RCS105N1
Aug 18,10

***** South Carolina Retirement Systems *****
- Maintain Contact Log -

RCS105M1
1 more >

Action (D) _____ Name: WILLIAM H BAILEY JR
SSN : _____-6820
Phone : (843) _____ CELL _____ LITTLE RIVER SC 29568

*Reason : VISITOR:C/S _____

Start Time : 14:45:19
Call Length: 00:19:31
Call Date : 04 30 2010

CS Rep: BRENDA SMITH Dept: CSCI
Last Updated by: RSMITB on: 04-30-2010

Notes :

MBR BACK IN OFC AGAIN TO COMPLY RETMNT APP AND TO PAY FOR 5 YRS NON QUAL.
CK IN AMOUNT OF \$161,092.75...MBR RECEIVED CALLS FROM ATTY WHILE IN THE OFC .
HE ASKED MBR WHAT DATE OF RETMNT IS HE USING FOR RETMNT.? MBR ADVISED TODA
Y 4 30 2010. ...I EXPLAINED TO MBR THAT IF HE IS RETIRING WITH 25 YRS OF SE
RVICE CREDIT WITH THE PURCHASE OF 5 YRS NON QUALIFIED SERVICE. HOWEVER; HE
MUST RECEIVE A FULL MONTH SERVICE CREDIT FROM HIS EMPLOYR FOR THE MONTH OF
Direct Command:

Enter-PF1---PF2---PF3---PF4---PF5---PF6---PF7---PF8---PF9---PF10---PF11---PF12---

--confm-help--retcn-quit--prev--next--bkwd--frwd--left--right--main--
Contact log displayed successfully

RCS105N1
Aug 18,10

***** South Carolina Retirement Systems *****
- Maintain Contact Log -

RCS105M1
1 more >

Action (D) _____ Name: WILLIAM H BAILEY JR
SSN : _____-6820
Phone : (843) _____ CELL _____
LITTLE RIVER SC 29566

*Reason : VISITOR:C/S _____

Start Time : 14:45:19
Call Length: 00:19:31
Call Date : 04 30 2010

CS Rep: BRENDA SMITH Dept: CSCI
Last Updated by: RSMITB on: 04-30-2010

Notes :

APRIL 2010 IN ORDER TO HAVE THE 25 YRS OF SERVICE CREDIT NEEDED FOR REMNT
FOR THIS DATE. WENT OVER S E V E R A L TIMES AND ADVISED IF THE EMPLYR
REFLECTS ON 6201 AS LAST DATE EARNED ...TO BE APRIL 28 AND DOR APRIL 29 HE
WOULD BE ONE DAY SHORT OF THE 25 YRS OF SERVICE CREDIT NEEDED FOR REMNT AT
HIS AGE. ...HE REQUESTED THE SERVICE AND PAYMENT BE POSTED TO HIS ACCOUNT
TODAY,...ADVISED URGENT "IMPORTANT" THAT HE RECEIVE THIS INFORMATION TODAY
Direct Command:

Enter-PF1---PF2---PF3---PF4---PF5---PF6---PF7---PF8---PF9---PF10--PF11--PF12---
confm help retrn quit prev next bkwrd frwr left right main
Scrolling performed.

RCS105M1
Aug 18,10

***** South Carolina Retirement Systems *****
- Maintain Contact Log -

RCS105M1
1 more >

Action (D) _____ Name: WILLIAM H BAILEY JR
SSN : _____-6820
Phone : (843) _____ CELL _____ LITTLE RIVER SC 29566

*Reason : VISITOR:C/S _____

Start Time : 14:45:19
Call Length: 00:19:31
Call Date : 04 30 2010

CS Rep: BRENDA SMITH Dept: CSCI
Last Updated by: RSMITB on: 04-30-2010

Notes :

DUE TO LEGAL MATTERS WITH HIM AND EMPLOYR AND HIS ATTY IS WITH THE EMPLOYR
AT THIS TIME UNTIL HE GETS BACK TO THE EMPLOYR OFC TODAY AT WHICH TIME
THEY WILL ALL GO OVER THIS AGAIN. ...MR REC'D CALL FROM ATTY AGAIN
AND ASKED AGAIN: " IF MY RETMNT DATE WAS 29TH/ YESTERDAY..I INTERRUPTED
TO SAY HE WILL NOT BE ELIGIBLE ...WOULD BE SHORT
HE NEEDS TO RECEIVE A FULL MONTH CREDIT FROM EMPLOYR FOR THE MONTH OF APRIL

Direct Command:

Enter-PF1---PF2---PF3---PF4---PF5---PF6---PF7---PF8---PF9---PF10--PF11--PF12---

confm help retrn quit prev next bkwrd frwd left right main

Scrolling performed.

RCS105N1
Aug 18,10

***** South Carolina Retirement Systems *****
- Maintain Contact Log -

RCS105M1
1 more >

Action (D) _____ Name: WILLIAM H BAILEY JR
SSN : _____-6820
Phone : (843) _____ CELL _____ LITTLE RIVER SC 29566

*Reason : VISITOR:C/S _____

Start Time : 14:45:19
Call Length: 00:19:31
Call Date : 04 30 2010

CS Rep: BRENDA SMITH Dept: CSCI
Last Updated by: RSMITB on: 04-30-2010

Notes :

TO HAVE 25 YRS. CLAIMS (K. RAWL ASSISTED WITH PRINTING LETR FOR MBR TO
REFLECT APP REC'D ON HOLD AWAITING, 8201 AND POB'S)..K, RAWL ALSO PROVIDED
MBR COPY OF MATRIX THAT REFLECTS THRU MARCH 2010 WITH FULL CREDIT, AND ALSO
ADVISED 25 YRS CONTINGENT UPON SCRS BEING NOTIFIED THRU HIS HR/PAYROLL THAT
HE GAINED FULL MONTH CREDIT FOR MONTH OF APRIL. ...MBR COMMENTED THAT ON N
OTHING HE HAD DID IT REFLECT CONTINGENT UPON RECEIVING FULL MONTH CREDIT; &
Direct Command:

Enter-PF1---PF2---PF3---PF4---PF5---PF6---PF7---PF8---PF9---PF10---PF11---PF12---
confm help retrn quit prev next bkwrld frwrd left right main
Scrolling performed.

RCS105N1
Aug 18,10

***** South Carolina Retirement Systems *****
- Maintain Contact Log -

RCS105M1
1 more >

Action (D) _____ Name: WILLIAM H BAILEY JR
SSN : _____-6820
Phone : (843) _____ CELL _____ LITTLE RIVER SC 29566

*Reason : VISITOR:C/S _____

Start Time : 14:45:19
Call Length: 00:19:31
Call Date : 04 30 2010

CS Rep: BRENDA SMITH Dept: CSCI
Last Updated by: RSMITB on: 04-30-2010

Notes :

I PROVIDED MBR WITH HANDBOOK/ AND WENT OVER QUARTERLY POSTINGS, ETC. _____
MBR ADVISED HE UNDERSTOOD. HE HAD TO BE BACK TO EMPLOYR OFFICE TODAY WITH _____
ALL HIS PAPERWORK. PROVIDED MBR WITH 6201 AND FAX NUMBR FOR FAXING POB _____
AS WELL AS 6201.. EXPLAINED FIRST CK WOULD BE PARTIAL CK (2 DAYS)... _____
FIRST CK MAILED ...CAN'T RELEASE TO BP W/OUT THE 6201. _____

Direct Command: _____

Enter-PF1---PF2---PF3---PF4---PF5---PF6---PF7---PF8---PF9---PF10---PF11---PF12---
-----confm_help_retrn_quit_prev_next-----bkwd_fwrd-----left_right_main-----
Scrolling performed.

RCS105M1
1 more >

Action (D) Name: WILLIAM H BAILEY JR
SSN : [REDACTED]-6820 [REDACTED]
Phone : (843) [REDACTED] LITTLE RIVER SC 29566

Start Time : 13:32:00
Call Length: 00:09:54
Call Date : 04 29 2010

CS Rep: JOSEPH RAMSEY Dept: CSCC
Last Updated by: RRAMSJ on: 04-29-2010

INVOICE HAS BEEN CALC FOR THE 05 00 00, \$161092.75...AS LONG AS ON 8201 VER
IFY TODAY OR LATER AS LDOP, SHOULD HAVE THE 25 00 00...NEED TO STILL BE ON_
PAYROLL WHEN PURCHASE SVC THOUGH...MBR TO COME IN TOMORROW TO PAY FOR SVC_

```

Enter PF1---PF2---PF3---PF4---PF5---PF6---PF7---PF8---PF9---PF10---PF11---PF12...
confm help retrn quit prev next          bkwrd frwrd          left right main
Contact log displayed successfully

```

RCS105N1
Aug 18,10

***** South Carolina Retirement Systems *****
- Maintain Contact Log -

RCS105M1
1 more >

Action (D)

SSN : ████████-6820

Phone : (843) ████████

Name: WILLIAM H BAILEY JR

██████████
LITTLE RIVER SC 29566

*Reason : SERV PURCHASE__

Start Time : 09:27:31

Call Length: 00:07:48

Call Date : 04 29 2010

CS Rep: JOSEPH RAMSEY Dept: CSCC

Last Updated by: RRAMSJ on: 04-29-2010

Notes :

MBR TERMING EMPLOYMENT IN THE NEXT 24 HOURS, NEEDS TO PURCHASE 05-00-00 NON
-QUALIFIED IMMEDIATELY...COMPLETED 2101, WILL WALK 2209 TO SERVICE

***UPDATE: RECEIVED 2209, SHOWS LEAVE OF ABSENCE WITH PAY...MADE ALLISON LA
WLER AWARE ABOUT SITUATION AND WALKED 2209/2101 TO LARISSA, ALSO MADE HER A
WARE...JCR***

Direct Command:

Enter-PF1---PF2---PF3---PF4---PF5---PF6---PF7---PF8---PF9---PF10---PF11---PF12---

confm help retrn quit prev next bkwrk frwr left right main

Contact log displayed successfully

RCS105N1
Aug 18,10

***** South Carolina Retirement Systems *****
- Maintain Contact Log -

RCS105M1
1 more >

Action (D) _____ Name: WILLIAM H BAILEY JR
SSN : _____-5820
Phone : (843) _____ LITTLE RIVER SC 29566

*Reason : VISITOR:C/S_____

Start Time : 09:08:11
Call Length: 00:22:00
Call Date : 04 30 2010

CS Rep: ANNA RUSHING Dept: CSCI
Last Updated by: RRUSHA on: 04-30-2010

Notes :

MBR IN AS HE IS ABOUT TO BE TERMINATED AND CONSIDERING PURCHASE 5 YEARS OF _
NQ TIME SO THAT HE CAN RETIRE...WAITING ON INFO FROM HIS EMPLOYER BEFORE _
PAYING FOR THE SERVICE...GAVE A COPY OF HIS INVOICE AND _DID BE FOR 5/1____

Direct Command:

Enter-PF1---PF2---PF3---PF4---PF5---PF6---PF7---PF8---PF9---PF10--PF11--PF12---
confm help retrn quit prev next bkwd frwd left right main
Contact log displayed successfully

RCS105N1
Aug 18,10

***** South Carolina Retirement Systems *****
- Maintain Contact Log -

RCS105M1
1 more >

Action (D)

Name: WILLIAM H BAILEY JR

SSN : ██████████-6820

Phone : (843) ██████████

██████████
LITTLE RIVER SC 29566

*Reason : SERV PURCHASE__

Start Time : 08:51:57

Call Length: 00:00:15

Call Date : 04 29 2010

CS Rep: TIMOTHY DIAMOND Dept: CSCC

Last Updated by: RDIAMT on: 04-29-2010

Notes :

PROVIDED MBR WITH FORM NUMBER 2101 AND 2209 SO THAT HE MAY ATTEMPT TO PURCHASE SVC TO REACH 25 YEARS. ADV THAT HE MAY CONSIDER WORKING WITH ANOTHER AGENCY FOR A PERIOD OF TIME TO PAY FOR SVC. PROVIDED CUS SVC FAX NUMBER SO THAT IF MBR DECIDES TO ATTEMPT PURCHASE, HE MAY SUBMIT REQUEST IMMEDIATELY.

Direct Command:

Enter-PF1---PF2---PF3---PF4---PF5---PF6---PF7---PF8---PF9---PF10---PF11---PF12---

-----confm-help-petn-quit-prev-next-----bkwd-frwd-----left-right-main-----

Contact log displayed successfully

RCS105N1
Aug 18,10

***** South Carolina Retirement Systems *****
- Maintain Contact Log -

RCS105M1
1 more >

Action (D)

Name: WILLIAM H BAILEY JR

SSN : ██████████ 6820

Phone : (843) ██████████

LITTLE RIVER SC 29566

*Reason : SERV PURCHASE__

Start Time : 08:46:00

Call Length: 00:12:10

Call Date : 04 29 2010

CS Rep: APRIL JONES

Dept: CSCC

Last Updated by: RJONEA on: 04-29-2010

Notes :

MBR STATES HE HAS BEEN GIVEN AN ULTIMATUM BY HIS EMPLOYER .. WOULD LIKE TO
KNOW IF HE QUIT TODAY COULD HE STILL PURCHASE SERVICE. ADVISED HE WOULD NE
ED TO BE ACTIVE TO PURCHASE SERVICE. TURN AROUND TO GET DOCS IN, INVOICE GE
NERATED AND PAID TAKES SOME TIME.. LONGER THAN 1 DAY TO COMPLETE

Direct Command:

Enter-PF1---PF2---PF3---PF4---PF5---PF6---PF7---PF8---PF9---PF10---PF11---PF12---
confm_help retrn_quit prev_next bkwd_fwrwd left_right main

Contact log displayed successfully

RCS106N1
Aug 18,10

***** South Carolina Retirement Systems *****
- Maintain Contact Log -

RCS105M1
1 more >

Action (D)

SSN : ██████████-6820

Phone : (843) ██████████

Name: WILLIAM H BAILEY JR

██████████
LITTLE RIVER SC 29666

*Reason : MEMBERSHIP INFO

Start Time : 11:34:18

Call Length: 00:09:12

Call Date : 01 28 2010

CS Rep: SANDY MCRAE

Dept: CSCC

Last Updated by: RMCRAE on: 01-28-2010

Notes :

EXP COST OF PURCHASING NON-QUALIFIED SERVICE WOULD BE 35% OF CURRENT
EARNABLE COMPENSATION OR CAREER HIGHEST FISCAL YEAR EARNABLE COMPENSATION,
WHICHEVER IS GREATER, FOR EACH YEAR PURCHASED...MBR IS THINKING ABOUT
PURCHASING 5 YEARS TO RETIRE 5/1/2010 WITH 25 YEARS OF SERVICE

Direct Command:

Enter-PF1---PF2---PF3---PF4---PF5---PF6---PF7---PF8---PF9---PF10---PF11---PF12---

confm help retrn quit prev next

bkwrd frwrd

left right main

Contact log displayed successfully

RCS105N1
Aug 18,10

***** South Carolina Retirement Systems *****
- Maintain Contact Log -

RCS105M1
1 more >

Action (D)

Name: WILLIAM H BAILEY JR

SSN : ██████████-6820

Phone : (843) ██████████

██████████
LITTLE RIVER SC 29566

*Reason : CONSULTATION-8_

Start Time : 09:42:33

Call Length: 00:11:39

Call Date : 01 08 2010

CS Rep: JOSEPH RAMSEY Dept: CSCC

Last Updated by: RRAMSJ on: 01-08-2010

Notes :

MBR WORRIED ABOUT REDUCTION IN PAY AFFECTING RETIREMENT CHECK...NO, EXPLAIN
ED AFC BASED ON 12 HIGHEST CONSEC QUARTERS...EXPLAINED HOW ANNUAL LEAVE AFF
ECTS RETIREMENT...NO, DON'T GET THEM TO PAY OUT AL NOW BASED ON HIGHER SALA
RY B/C THEN WE CAN'T FACTOR INTO RETIREMENT...YES, AL PAYOUT WOULD BE ABOUT
\$4K HIGHER BASED ON \$88K SALARY VS \$85K, BUT IF NOT AT RETIREMENT THEN WON
'T INCREASE BENEFIT, APPEARS TO INCREASE ABY ABOUT \$168, WITHIN 4 YEARS MAK

Direct Command:

Enter-PF1---PF2---PF3---PF4---PF5---PF6---PF7---PF8---PF9---PF10--PF11--PF12---

~~confm-help retrn quit prev next bkwrp frwr left right main~~

Contact log displayed successfully

RCS105N1
Aug 18,10

***** South Carolina Retirement Systems *****
- Maintain Contact Log -

RCS105M1
1 more >

Action (D)

Name: WILLIAM H BAILEY JR

SSN : ██████████ 6820

Phone : (843) ██████████

LITTLE RIVER SC 29566

*Reason : CONSULTATION-S_

Start Time : 09:42:33

Call Length: 00:11:39

Call Date : 01 08 2010

CS Rep: JOSEPH RAMSEY Dept: CSCC

Last Updated by: RRAMSJ on: 01-08-2010

Notes :

E UP THAT \$4K

Direct Command:

Enter-PF1---PF2---PF3---PF4---PF5---PF6---PF7---PF8---PF9---PF10--PF11--PF12---

confm help retrn quit prev next bkwd fwd left right main

Scrolling performed.

RCS105M1
Aug 18,10

***** South Carolina Retirement Systems *****
- Maintain Contact Log -

RCS105M1
1 More >

Action (D) _____ Name: WILLIAM H BAILEY JR
SSN : _____-6820
Phone : (843) _____ LITTLE RIVER SC 29566

*Reason : SERV PURCHASE__

Start Time : 10:20:12
Call Length: 00:02:17
Call Date : 01 07 2010

CS Rep: QUANDA JEFFERSO Dept: CSCC
Last Updated by: RJEFFQ on: 01-07-2010

Notes :

EXP THE COST TO PURCHASE NQ TIME IS 35% OF CURRENT OR CAREER HIGHEST
SALARY FOR EACH YEAR ELIG TO BE PURCHASED. _____

Direct Command: _____

Enter-PF1---PF2---PF3---PF4---PF5---PF6---PF7---PF8---PF9---PF10--PF11--PF12---
confm help retrn quit prev next bkwrk frwrk left right main
Contact log displayed successfully

RCS105M1
Aug 18,10

***** South Carolina Retirement Systems *****
- Maintain Contact Log -

RCS105M1
1 more >

Action (D) Name: WILLIAM H BAILEY JR
SSN : ██████████-6820
Phone : (843) ██████████ LITTLE RIVER SC 29566

*Reason : MEMBER CHGS

Start Time : 10:04:24
Call Length: 00:02:59
Call Date : 10 21 2002

CS Rep: MARGARET WEBB Dept: CSCC
Last Updated by: RWEBBM on: 10-21-2002

Notes :

HOME PHONE 843-██████████... CHANGED ADDRESS ONLINE TO ██████████
LITTLE RIVER SC 29566... VERIFIED PREV ADDRESS... MAILED STMT...

Direct Command:

Enter-PF1---PF2---PF3---PF4---PF5---PF6---PF7---PF8---PF9---PF10---PF11---PF12---
confm help retrn quit prev next bkwrđ frwrđ left right main
Contact lbg displayed successfully

South Carolina Retirement Systems

MEMBER STATEMENT AS OF 04/30/2010

WILLIAM H. BAILEY JR
 [REDACTED]
 LITTLE RIVER SC 29566

SSN: XXX-XX-6820
 Account: 4-PORS
 Current Status: Active
 Emp Code: 926.06
 Date of Birth: [REDACTED] 1962

	<u>Prior Year</u>	<u>Current Year</u>	<u>Grand Totals</u>
Non Deferred.....	.00	161,092.75	161,092.75
Deferred.....	54,122.69	4,064.60	58,187.29
Interest.....	25,238.89	.00	25,238.89
Unposted Accrued Interest	.00	2,645.38	2,645.38
Totals.....	79,361.58	167,802.73	247,164.31

The Retirement System does not warrant the correctness of the service credit totals. To ensure accuracy, your service credit will be audited at retirement. Your service total is 24 year(s) 11 month(s) and 01 day(s) through 03-31-2010.

Your earned service total is: 19 year(s) 11 month(s) and 01 day(s) through 03-31-2010. Your purchased service total is: 05 year(s) 00 month(s) and 00 day(s) through the current date.

Your total contributions include service purchase payments through the current date and earned service contributions through: 03-31-2010. Contributions and service credit are received directly from your employer quarterly.

Interest is posted to your account annually and was last posted on 06-30-2009. The unposted accrued interest for the current fiscal year is prorated as of 04-30-2010.

S.C. Budget and Control Board • South Carolina Retirement Systems
 Fontaine Business Center • 202 Arbor Lake Drive • Post Office Box 11960 • Columbia, South Carolina 29211
 803-737-6800 • 800-868-9002

Form 2101 Revised 03/03/2009 Page 1 Print or Type in Black Ink		REQUEST FOR SERVICE PURCHASE COST Service Department South Carolina Retirement Systems PO Box 11960, Columbia, SC 29211-1960		☐ Check if applying for Service and/or Disability Retirement Benefits Date of Retirement: (mm-dd-yyyy)																			
As an active member of one of the South Carolina Retirement Systems, you may be entitled to purchase additional service credit. By completing this form and returning it to the address above, you are initiating the process to purchase service credit. Upon receipt of all necessary documentation, eligibility will be determined, and you will be informed by mail of the status of your request.																							
Last Name & Suffix (Sr., Jr., etc.):		First Name/Middle Name:		Social Security Number:																			
BAILEY JR		WILLIAM H		[REDACTED] - 6820																			
Address: [REDACTED]																							
City: LITTLE RIVER		State: SC		ZIP+4: 29566																			
Home Telephone:		Work Telephone:		Date of Birth: [REDACTED] - 1962																			
				Sex: M ☐ Male ☐ Female																			
Member's full name during period of service to be established:				System(s) in which you are currently contributing:																			
List Current Employer(s): 1. 926.06 2.				☐ SCRS (South Carolina Retirement System) ☒ PORS (Police Officers Retirement System) ☐ GARS (General Assembly Retirement System) ☐ JSRS (Judges and Solicitors Retirement System)																			
Please check the appropriate box(es) for service to be established. PLEASE REFER TO THE DEFINITIONS AND INSTRUCTIONS ON THE BACK OF THIS FORM FOR INFORMATION PERTAINING TO YOUR REQUEST.																							
<table style="width: 100%;"> <tr> <td>☐ Public Service - *Number of Forms: _____</td> <td>☐ Withdrawal Service</td> <td>Date(s) of Injury _____</td> </tr> <tr> <td>☐ Educational Service - *Number of Forms: _____</td> <td>☐ Workers' Compensation</td> <td>(MM-DD-YY)</td> </tr> <tr> <td>☐ State ORP Service - *Number of Forms: _____</td> <td>☐ Transfer from SCRS to PORS</td> <td>(MM-DD-YY)</td> </tr> <tr> <td>☐ Military Service</td> <td>☐ Convert Class I to Class II</td> <td></td> </tr> <tr> <td>☐ Approved Leave of Absence</td> <td>☐ Update Service Cost - _____</td> <td>(Type of Service)</td> </tr> <tr> <td colspan="3"> ☒ Non-Qualified Service - Specify Amount of Service: 05-00-00 (YY-MM-DD) </td> </tr> </table>						☐ Public Service - *Number of Forms: _____	☐ Withdrawal Service	Date(s) of Injury _____	☐ Educational Service - *Number of Forms: _____	☐ Workers' Compensation	(MM-DD-YY)	☐ State ORP Service - *Number of Forms: _____	☐ Transfer from SCRS to PORS	(MM-DD-YY)	☐ Military Service	☐ Convert Class I to Class II		☐ Approved Leave of Absence	☐ Update Service Cost - _____	(Type of Service)	☒ Non-Qualified Service - Specify Amount of Service: 05-00-00 (YY-MM-DD)		
☐ Public Service - *Number of Forms: _____	☐ Withdrawal Service	Date(s) of Injury _____																					
☐ Educational Service - *Number of Forms: _____	☐ Workers' Compensation	(MM-DD-YY)																					
☐ State ORP Service - *Number of Forms: _____	☐ Transfer from SCRS to PORS	(MM-DD-YY)																					
☐ Military Service	☐ Convert Class I to Class II																						
☐ Approved Leave of Absence	☐ Update Service Cost - _____	(Type of Service)																					
☒ Non-Qualified Service - Specify Amount of Service: 05-00-00 (YY-MM-DD)																							
*Additional forms and instructions will be provided upon receipt of this completed form. Note: To establish Public, Educational, and/or State ORP service, please specify the number of forms needed. You must complete a separate form for each employer verification to be made.																							
Comments or Special Instructions: ✓ LKH																							
Please provide a letter from your current employer(s) verifying current annual salary. *(see Page 2 of form)																							
Member Signature: CC/ Jerry Ramey				Date: 4/29/2010																			
(OFFICE USE ONLY) Verification Forms Provided to Member: ☐ Yes ☒ No Service request taken: ☐ Office Visit ☒ Telephone Call																							
THE LANGUAGE USED IN THIS DOCUMENT DOES NOT CREATE ANY CONTRACTUAL RIGHTS OR ENTITLEMENTS AND DOES NOT CREATE A CONTRACT BETWEEN THE MEMBER AND THE SOUTH CAROLINA RETIREMENT SYSTEMS. THE SOUTH CAROLINA RETIREMENT SYSTEMS RESERVES THE RIGHT TO REVISE THE CONTENT OF THIS DOCUMENT.																							
Call our Customer Service Department with any questions: (803) 737-6800 or (800) 868-9002 (within SC only)																							

2209

Forms displayForm.jsp

William H. Bailey Jr

Fnc 8037377594

Page 1 of 4

Joey

Text Field

Form 2209
Revised 03/28/2006

Service Purchase Salary Verification

PRINT

state Budget and Control Board

South Carolina Retirement Systems

Agency Name and Address:

City of North Myrtle Beach

1018 2nd Ave. So

North Myrtle Beach, SC 29582

Re: William H. Bailey Jr.

Employee Name

SSN# [REDACTED] 6820

The employee named above has submitted a request to purchase additional service credit. In order to calculate the payment required, we must have salary information as indicated below. Current annual salary includes base salary plus any additional compensation subject to retirement withholdings (i.e., overtime pay, summer school, additional course load, differentials, stipends, coaching supplement).

I certify the base annual salary during fiscal year (2009 - 2010) for this

employee to be \$58,000.02

I certify this employee will also earn additional compensation during

fiscal year (20____ - 20____) in the amount of \$_____

I certify the current status of this employee to be: (check applicable box)

☐ Actively employed and earning compensation☒ Leave of absence with pay (on paid annual leave and/or paid sick leave)☐ Leave of absence without pay _____ (provide date lwop began)☐ Leave of absence without pay due to receiving Workers' Compensation

_____ (provide date of injury)

☐ Terminated _____ (provide date of termination)

4-29-2010

Date

(843) 280-5647

Telephone Number

Carnie L. Cox

Signature

Payroll Clerk

Title

926.06

Employer Code

THE LANGUAGE USED IN THIS DOCUMENT DOES NOT CREATE ANY CONTRACTUAL RIGHTS OR ENTITLEMENTS AND DOES NOT CREATE A CONTRACT BETWEEN THE MEMBER AND THE SOUTH CAROLINA RETIREMENT SYSTEMS. THE SOUTH CAROLINA RETIREMENT SYSTEMS RESERVES THE RIGHT TO REVISE THE CONTENT OF THIS DOCUMENT.

<https://forms.retirement.sc.gov/formGenericGet.do?formNum=web2209.xdp>

4/29/2010

FOLDER DOCUMENT

NONQUALIFIED SERVICE

Service Type: 79

SSN: █████-6820

Name: WILLIAM H BAILEY JR

Date Request Received: 04-29-2010

System: 2

Account: 04 PORS

Current Salary: \$ 58,000.02 (926.06) Career High Fy Salary: 92,053.00
PORS\2009

Total Service Credit: 05 00 00

Contributions: 161,092.75
Interest:

Member Total: 161,092.75

PAID 04-30-2010
NON DEFERRED 161,092.75
JKE

Calculation Date: 04-29-2010
Calculation Time: 12:21:11.2
Calculation User: RHUFFL
Verify Date: 04-29-2010
Verify Time: 12:21:41.2
Verify User: RHUFFL
Invoice Mail Date: 04-29-2010
Invoice Number: 2503168200479001
Pay Due Date: 05-29-2010

South Carolina Retirement Systems

Member Service Payment Invoice

WILLIAM H BAILEY JR
 [REDACTED]
 LITTLE RIVER SC 29566

Date: April 29, 2010
 Invoice Number: XXXXX68200479001
 Employer Code: 926.06
 System: PORS

The following is provided to allow you to establish: **NONQUALIFIED SERVICE**

Total Service Credit:

05 Years 00 Months 00 Days

Member Payment Required \$ 161,092.75 Invoice Expiration Date: May 29, 2010

You must be an active contributing member at the time your payment is remitted. Please make all checks payable to the South Carolina Retirement Systems and remit a copy of this invoice with payment. Retirement benefits contingent on this service purchase will not be effective until full payment is received.

Please be aware that some types of purchased service may not be used in determining retiree health insurance eligibility. You are strongly encouraged to contact your employer, health care provider, or the Employee Insurance Program (EIP) at 888-260-9430 or 803-734-0678 regarding your insurance coverage.

Upon processing your service payment or payroll deduction request, an additional review will be performed. If this results in changes to the amount of your payment or your service credit, you will be notified.

If you wish to select the installment payroll deduction option, complete and return the following portion of this invoice for an estimate. After processing, you will receive a Payroll Withholding Authorization form indicating a payroll deduction amount for your review and signature.

Select Payment Method: ☐ Deferred (pre-tax) ☐ Non-deferred (after tax)

Member Payment Required: \$ 161,092.75

Less Optional Down Payment: < _____ > (Do Not Send Payment with this Form)
 (____ Please check if the down payment is a rollover)

Amount to be Financed: \$ _____
 (Member Payment less Down Payment)

Number of Months to be Financed: _____ Pay Frequency: _____ (Checks Received Per Year)

Mark Sanford, Chairman
Governor

Converse A. Chellis, III, CPA
State Treasurer

Richard Eckstrom, CPA
Comptroller General

State Budget and Control Board South Carolina Retirement Systems

Peggy G. Boykin, CPA
Director

Hugh K. Leatherman, Sr.
Chairman,
Senate Finance Committee

Daniel T. Cooper
Chairman,
Ways and Means Committee

Frank W. Fusco
Executive Director

Retiring South Carolina's Public Workforce For Life

April 30, 2010

WILLIAM H BAILEY JR

[REDACTED]
LITTLE RIVER SC 29566

RE: Invoice Num XXXXX68200479001

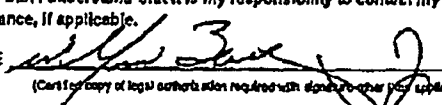
Invoice Amt: \$161,092.75

SSN: XXX-XX-6820

Dear Member:

We acknowledge the receipt of your payment in the amount of \$161,092.75 to establish NONQUALIFIED SERVICE credit for the time representing a total service credit of 5 year(s) 0 month(s) and 0 day(s).

If you should have any questions, please contact our Customer Service Department at (803) 737-6800 or (800) 868-9002 (in state members only).

FOR DATES OF RETIREMENT OF JULY 1, 2005, OR AFTER				OFFICE USE ONLY	
Form 6101P Revised 05/04/2007 Page 1		PORS SERVICE RETIREMENT APPLICATION State Budget and Control Board South Carolina Retirement Systems P.O. Box 11860, Columbia, SC 29211-1860		☐ PORS ☐ Correlated ☐ Disability Pending	
The member must be off the payroll from all employment under South Carolina Retirement System, Police Officers Retirement System, or the State Optional Retirement Program as of the effective date of retirement. Applications for retirement may be filed as early as six months prior to, and up to three months after, your service retirement effective date.					
Section I (Attach Your Birth Certificate)		PERSONAL INFORMATION		TYPE OR PRINT IN BLUE INK	
LAST NAME & SUFFIX BAILEY JR		FIRST/MIDDLE NAME WILLIAM H		SOCIAL SECURITY NUMBER ██████-6820	
Address ████████████████████		Date of Birth (proof required) ██████-1962		Sex ☒ M ☐ F	
City LITTLE RIVER		State SC		ZIP+4 29566	
		Home Phone 843-██████		Work Phone ██████-██████	
Section II PORS RETIREMENT PLAN ELECTION AND BENEFICIARY DESIGNATION					
YOUR PAYMENT PLAN MAY NOT BE CHANGED ONCE BENEFITS ARE FIRST PAYABLE, except as noted on the reverse side. If designating more than three beneficiaries, complete and attach an additional Form 6101P. For all plans, attach a copy of your birth certificate and your current driver's license or special identification card issued by your State Department of Transportation or Public Safety. For any joint retiree-survivor plan, attach your beneficiary's birth certificate.					
☐ Check here if payments are to be paid through a trust and attach a completed Form 1113, Certification of Trust.					
☐ OPTION A (Maximum-Retiree Only) ☒ OPTION B (100% - 100% Joint Retiree-Survivor) ☐ OPTION C (100% - 50% Joint Retiree-Survivor)					
1. Name of Beneficiary K██████ BAILEY		Social Security #/Federal ID# ██████-3794		Sex ☒ M ☐ F	
		Date of Birth ██████-1964		Relationship (Check one) ☒ Spouse ☐ Son ☐ Daughter ☐ Other	
2. Name of Beneficiary		Social Security #		Sex ☐ M ☐ F	
		Date of Birth		Relationship (Check one) ☐ Spouse ☐ Son ☐ Daughter ☐ Other	
3. Name of Beneficiary		Social Security #		Sex ☐ M ☐ F	
		Date of Birth		Relationship (Check one) ☐ Spouse ☐ Son ☐ Daughter ☐ Other	
Section III RETIREE GROUP LIFE INSURANCE					
☒ CHECK IF SAME BENEFICIARY(IES) AS IN SECTION II					
1. Name of Beneficiary		Social Security #/Federal ID#		Sex ☐ M ☐ F	
		Date of Birth		Relationship (Check one) ☐ Spouse ☐ Son ☐ Daughter ☐ Other	
2. Name of Beneficiary		Social Security #		Sex ☐ M ☐ F	
		Date of Birth		Relationship (Check one) ☐ Spouse ☐ Son ☐ Daughter ☐ Other	
3. Name of Beneficiary		Social Security #		Sex ☐ M ☐ F	
		Date of Birth		Relationship (Check one) ☐ Spouse ☐ Son ☐ Daughter ☐ Other	
Section IV EMPLOYMENT INFORMATION					
Current/Former Employer(s) 926.06/CITY OF N MYRTLE BH				Your Position Title DIRECTOR OF PUBLIC SAFETY	
Last day on payroll will be or was: 04-29-2010		Effective Date of Retirement (choose one): ☒ Day following last day on payroll ☐ Specific date:			
Section V SIGNATURE STATEMENT					
Please read the Authorization section of the instructions on the reverse (page 2) before signing this form in BLUE INK. I hereby certify I have read and understand the information on the reverse side (page 2), including the authorization, and I agree to the terms stated. My signature indicates that I understand that it is my responsibility to contact my employer or health insurance provider regarding my eligibility for retiree health insurance, if applicable.					
MEMBER'S SIGNATURE 				DATE 4-20-10	
(Certification of legal authorization required with signature of other party applicant)					
WITNESS _____				DATE _____	
(Required only when signed by clerk)					
THE LANGUAGE USED IN THIS DOCUMENT DOES NOT CREATE ANY CONTRACTUAL RIGHTS OR ENTITLEMENTS AND DOES NOT CREATE A CONTRACT BETWEEN THE MEMBER AND THE SOUTH CAROLINA RETIREMENT SYSTEMS. THE SOUTH CAROLINA RETIREMENT SYSTEMS RESERVES THE RIGHT TO REVISE THE CONTENT OF THIS DOCUMENT.					
Please call SC Retirement Systems Customer Service with any questions: (800) 868-9002 (in state) or (803) 737-6800					

Form 6201 Revised 12/03/2008 Page 1 of 2	EMPLOYER CERTIFICATION OF LAST DAY PAID State Budget and Control Board - South Carolina Retirement Systems Customer Service Annuity Claims PO Box 11960, Columbia SC 29211-1960	
Please attach to retirement application or fax to - Customer Service Annuity Claims (803) 737-7752. The purpose of this information is to determine an effective date of retirement for estimated payroll purposes.		
Retiring Member's Name: <u>William H. Bailey Jr.</u>		SSN: <u>██████-6820</u>
Planned Retirement Date: <u>4-29-10</u> <u>5-1-10</u>		☐ SCRS ☐ PORS ☐ GARS ☐ JSRS
Section I FOR RETIREMENT PURPOSES, PLEASE INDICATE APPROPRIATE TERMINATION DATE BELOW		
Indicate last day from which active member retirement contributions, prior to retirement, will be withheld from earned compensation: <u>5-27-10</u> <u>4-30-10</u>		
If the date of termination will be later than date above, due to an unpaid leave of absence, etc., please indicate actual termination date here: <u>4-30-10</u>		
Note: For members retiring and continuing to work as currently authorized by statute (i.e., TERI participants [§9-1-2210]; SCRS [§9-1-1510]; JSRS [§9-8-60(7)]; GARS [§9-8-60(3)], etc.) please use the last day employed prior to retirement, as an active, contributing member.		
Employer Name: <u>City of North Myrtle Beach</u>		Employer Code: <u>926.06</u>
Completed by: <u>Connie L. Cox</u>		Job Title: <u>Payroll Clerk</u>
Phone Number: <u>(843) 280-5647</u>		Fax Number: <u>(843) 280-5668</u>
Email Address: <u>CCOX@NMB.US</u>		
Authorized Employer Signature: <u>Connie L. Cox</u>		Date: <u>5-11-10</u>
Section II FOR TEACHER AND EMPLOYEE RETENTION INCENTIVE PROGRAM PARTICIPANTS ONLY		
This is to certify that in conjunction with the above-named member's SCRS service retirement, the employer acknowledges the member's participation in the Teacher and Employee Retention Incentive (TERI) program on the TERI start date below and the termination of his or her participation on the TERI end date below:		
TERI Start Date: _____ (DATE OF RESIGNATION)	TERI End Date: _____	Number of Months: _____ (NUMBER OF MONTHS)
* For TERI participation, this termination date should be no more than one day prior to TERI start date (effective date of retirement) so as to certify that the member was actively employed upon TERI participation. For all retirees, complete Section I. For TERI retirees, complete Sections I and II.		
RETIREE HEALTH INSURANCE Please discuss retiree health insurance with your employee who is anticipating retiring or participating in TERI. Although one may be eligible to retire it does not automatically make one eligible for retiree health insurance. Therefore, the consideration of a termination date as it relates to retiree health insurance coverage maybe of vital importance, prior to retirement.		
Please submit a corrected copy as soon as possible should any information change. The TERI participant or employer should notify the Retirement Systems' Payroll Department, either by telephone or in writing, three months prior to the TERI participant's TERI ending date.		
THE LANGUAGE USED IN THIS DOCUMENT DOES NOT CREATE ANY CONTRACTUAL RIGHTS OR ENTITLEMENTS AND DOES NOT CREATE A CONTRACT BETWEEN THE MEMBER AND THE SOUTH CAROLINA RETIREMENT SYSTEMS. THE SOUTH CAROLINA RETIREMENT SYSTEMS RESERVES THE RIGHT TO REVISE THE CONTENT OF THIS DOCUMENT.		
Please call SC Retirement Systems Customer Service with any questions: (800) 868-9002 (in state) (803) 737-6800		

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 MAY 19 2010
 CUSTOMER SERVICE

FORM 6202
Rev 10/2009

SOUTH CAROLINA RETIREMENT SYSTEMS
CERTIFICATION OF FINAL RETIREMENT DEDUCTIONS

RETIREE
05-21-2010

Please complete this form within 10 days after issuance of the employee's final paycheck. Please *do not estimate* any amounts. Your receipt of this form indicates *only* that this employee has filed an application. It does not indicate that the application has been approved.

Payroll Department
CITY OF NORTH MYRTLE BEACH
1015 SECOND AVE SOUTH
NORTH MYRTLE BEACH SC 29582

SSN: █████-6820
PORS / 250316820-2-6-1
Emp Code: 926.06
WILLIAM H BAILEY JR
Retirement Date: 05-01-2010

SECTION 1: Final Two Quarters of Active Employment (as they will appear on the Quarterly Reports)
NEXT TO LAST QUARTER

Quarter End Date	Period Compensation	Contribution	Contract Length	Months Paid
_____	_____	_____	_____	_____

LAST QUARTER EARNINGS

Quarter End Date	Period Compensation	Contribution	Contract Length	Months Paid
_____	_____	_____	_____	_____

Payment for _____ Annual
Leave Days

+

TOTAL LAST QUARTER*

=

=

*The Total Last Quarter listed above must agree with your final Quarterly Report for this member.

SECTION 2: Accrued Sick Leave at Retirement

____ Unused Sick Leave Days. Member may receive credit for up to 90 days of unused sick leave towards service credit at retirement, regardless of whether the days were paid or unpaid.

SECTION 3: Payroll Information at Retirement

Last day of employee earned compensation	____/____/____	Budgeted annual salary	\$ _____
Date of termination (see instructions)	____/____/____	Daily rate of pay	\$ _____
Date of final pay check	____/____/____	Paychecks per year	_____

If the last day of earned compensation and date of termination are different, please check reason:

☐ Workers' Compensation ☐ Leave of Absence ☐ Other: _____

* If the employee was working other than a 7.5 or 8 hour work day (i.e. 10, 12, 24 hour shift), please enter the following:
Hourly rate of pay: \$ _____ Number of hours in a shift: _____

SECTION 4: Additional Pay Information - Last Four Contract Or Budget Years

If contractual, did this employee complete the contract period? ☐ Yes ☐ No
If no, how many days was this employee compensated? _____ days

Date Effective	Contract Days	Budgeted Salary	Additional Payments	Reason for Additional Payment(s)

(Date)

(Authorized Signature)

(Business Phone)

(Fax Number)

Contact E-Mail Address: _____

Please return original to: South Carolina Retirement Systems, P. O. Box 11960, Columbia, SC 29211-1960

FORM 6202
Rev 10/2009SOUTH CAROLINA RETIREMENT SYSTEMS
CERTIFICATION OF FINAL RETIREMENT DEDUCTIONSRETIREE
05-21-2010

Please complete this form within 10 days after issuance of the employee's final paycheck. Please do not estimate any amounts. Your receipt of this form indicates *only* that this employee has filed an application. It does *not* indicate that the application has been approved.

Payroll Department
CITY OF NORTH MYRTLE BEACH
1015 SECOND AVE SOUTH
NORTH MYRTLE BEACH SC 29582

SSN: █████-6820
PORS / 250316820-2-6-1
Emp Code: 926.06
WILLIAM H BAILEY JR
Retirement Date: 05-21-2010

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CUSTOMER SERVICE

SECTION 1: Final Two Quarters of Active Employment (as they will appear on the Quarterly Reports)
NEXT TO LAST QUARTER

Quarter End Date	Period Compensation	Contribution	Contract Length	Months Paid
March 31, 2010	15002.23	975.14	12	3

LAST QUARTER EARNINGS

Quarter End Date	Period Compensation	Contribution	Contract Length	Months Paid
June 30, 2010	372.54	24.22	12	1
Payment for 28.33 Annual Leave Days	+ 6319.77	410.78		
TOTAL LAST QUARTER*	= 6692.31	= 435.00		

*The Total Last Quarter listed above must agree with your final Quarterly Report for this member.

SECTION 2: Accrued Sick Leave at Retirement

10 Unused Sick Leave Days. Member may receive credit for up to 90 days of unused sick leave towards service credit at retirement, regardless of whether the days were paid or unpaid.

SECTION 3: Payroll Information at Retirement

Last day of employee earned compensation	4/24/2010	Budgeted annual salary	\$58000.02
Date of termination (see instructions)	4/30/2010	Daily rate of pay	\$223.08
Date of final pay check	4/29/2010	Paychecks per year	26

If the last day of earned compensation and date of termination are different, please check reason:
☐ Workers' Compensation ☒ Leave of Absence ☐ Other: _____

* If the employee was working other than a 7.5 or 8 hour work day (i.e. 10, 12, 24 hour shift), please enter the following:
 Hourly rate of pay: \$ _____ Number of hours in a shift: _____

SECTION 4: Additional Pay Information - Last Four Contract Or Budget Years

If contractual, did this employee complete the contract period? ☐ Yes ☐ No
 If no, how many days was this employee compensated? _____ days

Date Effective	Contract Days	Budgeted Salary	Additional Payments	Reason for Additional Payment(s)

6-3-2010
(Date)

Connie L Cox
(Authorized Signature)

(843) 280-5647
(Business Phone)

(843) 280-5668
(Fax Number)

Contact E-Mail Address: _____

Please return original to: South Carolina Retirement Systems, P. O. Box 11960, Columbia, SC 29211-1960

FORM 6202
Rev 10/2009SOUTH CAROLINA RETIREMENT SYSTEMS
CERTIFICATION OF FINAL RETIREMENT DEDUCTIONSRETIREE
05-21-2010

Please complete this form within 10 days after issuance of the employee's final paycheck. Please do not estimate any amounts. Your receipt of this form indicates only that this employee has filed an application. It does not indicate that the application has been approved.

Payroll Department
CITY OF NORTH MYRTLE BEACH
1015 SECOND AVE SOUTH
NORTH MYRTLE BEACH SC 29582

SSN: █████-6820
PORS / 250316820-2-6-1
Emp Code: 926.06
WILLIAM H BAILEY JR
Retirement Date: 05-01-2010

Handwritten:
6-7-10

SECTION 1: Final Two Quarters of Active Employment (as they will appear on the Quarterly Reports)
NEXT TO LAST QUARTER

Quarter End Date	Period Compensation	Contribution	Contract Length	Months Paid
March 31, 2010	15002.23	975.14	12	3

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☐ Workers' Compensation ☒ Leave of Absence ☐ Other: _____

* If the employee was working other than a 7.5 or 8 hour work day (i.e. 10, 12, 24 hour shift), please enter the following:

Hourly rate of pay: \$ _____ Number of hours in a shift: _____

SECTION 4: Additional Pay Information - Last Four Contract Or Budget Years

If contractual, did this employee complete the contract period? ☐ Yes ☐ No

If no, how many days was this employee compensated? _____ days

Date Effective	Contract Days	Budgeted Salary	Additional Payments	Reason for Additional Payment(s)

6-3-2010
(Date)

Connie L. Cox
(Authorized Signature)

(843) 280-5647
(Business Phone)

(843) 280-5668
(Fax Number)

Contact E-Mail Address: _____

RECEIVED

JUN 04 2010

Please return original to: South Carolina Retirement Systems, P. O. Box 11960, Columbia, SC 29211-1960

POSTAL CENTER

South Carolina Retirement Systems

TURNAROUND AND VERIFICATION DOCUMENT

April 30, 2010

Name..... WILLIAM H BAILEY JR
 Appl ID..... XXXXX6820-2-6-1

You provided the following information on your PORS Service retirement application. Please review this information to ensure that it is correct. If any information below is not correct, please strike through it and supply the correct information. In addition, if we have highlighted any items that were missing or improperly completed on your retirement application, please provide this information as well. If the information is correct and we have not highlighted any items, there is no need to return this document. Any additions, deletions, and/or modification to this document must be received by SCRS prior to your date of retirement.

Member Name:
 WILLIAM H BAILEY JR

Mailing Address:
 WILLIAM H BAILEY JR
 [REDACTED]
 LITTLE RIVER SC 29566

Date of Birth..... [REDACTED]/1962

Planned Date of Retirement..... 04/30/2010*

~~*Retirement Date is Subject to Adjustment Based~~
 Upon Employer's Certification of Last Day Paid.

Method of Benefit Payment..... Option B - 100% - 100% Joint Survivor
 If your payment plan listed above is not correct, please
 select one of the following: A, B, C

Employers... CITY OF NORTH MYRTLE BEACH

Name	SSN	Sex	DOB	Relation
Primary Beneficiaries for Survivor Benefits or Refund of Contributions:				
K [REDACTED] BAILEY	[REDACTED]-3794	F	[REDACTED] 1964	Spouse

Retiree Group Life Insurance Beneficiaries:

K [REDACTED] BAILEY [REDACTED]-3794 F [REDACTED] 1964 Spouse

Please make the changes I have indicated above to my retirement records. I understand that these changes must be received by SCRS prior to my date of retirement and that any change in my payment method cannot be made after my monthly annuity begins.

Member Signature _____ Date _____

Witness Signature _____ Date _____

(Required only when signed by mark)

Please call SC Retirement Systems Customer Service with any questions at (800) 868-9002 (in state) or (803) 737-6800 or by e-mail at cs@retirement.sc.gov.

South Carolina Retirement Systems

TURNAROUND AND VERIFICATION DOCUMENT

April 30, 2010

Name..... WILLIAM H BAILEY JR
 Appl ID..... XXXXX6820-2-6-1

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Member Name:
 WILLIAM H BAILEY JR

Mailing Address:
 WILLIAM H BAILEY JR

Date of Birth..... /1962

LITTLE RIVER SC 29566

Planned Date of Retirement..... 04/30/2010*

~~*Retirement Date is Subject to Adjustment Based~~
 Upon Employer's Certification of Last Day Paid.

Method of Benefit Payment..... Option B - 100% - 100% Joint Survivor
 If your payment plan listed above is not correct, please
 select one of the following: A, B, C

Employers... CITY OF NORTH MYRTLE BEACH

Name	SSN	Sex	DOB	Relation
Primary Beneficiaries for Survivor Benefits or Refund of Contributions:				
KIMBERLY BAILEY	-3794	F	/1964	Spouse

Retiree Group Life Insurance Beneficiaries:

KIMBERLY BAILEY -3794 F /1964 Spouse

Please make the changes I have indicated above to my retirement records. I understand that these changes must be received by SCRS prior to my date of retirement and that any change in my payment method cannot be made after my monthly annuity begins.

Member Signature _____ Date _____

Witness Signature _____ Date _____

(Required only when signed by mark)

Please call SC Retirement Systems Customer Service with any questions at (800) 868-9002 (In state) or (803) 737-6800 or by e-mail at cs@retirement.sc.gov.

South Carolina Retirement Systems

THIS DOCUMENT CONTAINS IMPORTANT INFORMATION ABOUT YOUR BENEFITS. DO NOT DISCARD.

NOTICE OF APPLICATION STATUS: HELD

WILLIAM H BAILEY JR

[REDACTED]
LITTLE RIVER SC 29566

SSN: XXX-XX-6820
Appl ID: XXXXX6820-2-6-1
System: PORS
Type: Service
Date: April 30, 2010

We have received your application for retirement benefits as a member of the Police Officers Retirement System, but we are unable to complete processing it. On the enclosed checklist, we have indicated the reason(s) why and specified the appropriate action you should take.

We have also enclosed a turnaround and verification document that reproduces the information you provided on your retirement application. On the turnaround document, we have highlighted the section(s) (if any) you must complete. If we have highlighted any section(s) of the turnaround document, please complete the section(s), sign the turnaround document, and return it to South Carolina Retirement Systems without delay using the enclosed envelope. If we have highlighted any section(s) of the turnaround document, we will not be able to process your retirement application until you return the turnaround document to our office.

In addition, please carefully read the remaining information on the turnaround document. If any of the information on the document is incorrect, please make the necessary corrections on the turnaround document when you return it to our office.

Following an audit of your records to determine if you are eligible to retire, we will send you a letter informing you of your effective date of retirement, projected service credit, and estimated monthly benefit. If you have any doubts about meeting the eligibility requirements for retirement, please do not leave employment until you receive the letter from South Carolina Retirement Systems that officially confirms your date of retirement, service credit, and estimated benefit amount.

Retirement eligibility does not constitute retiree health insurance eligibility. Therefore, please contact your employer or health insurance provider to determine if you will be covered for retiree health insurance prior to finalizing your retirement date, as the Retirement Systems does not govern or administer health insurance for employees or retirees.

If you have any questions or would like any further assistance, please call SCRS Customer Service at 1-800-868-9002 or (803) 737-6800.

Enclosures

State Budget and Control Board • South Carolina Retirement Systems
Fontaine Business Center • 202 Arbor Lake Drive • Post Office Box 11960 • Columbia, South Carolina 29211
803-737-6800 • 800-868-9002

WILLIAM H BAILEY JR

Page: 2
SSN: XXX-XX-6820
Appl ID: XXXXX6820-2-6-1
System: PORS
Type: Service
Date: April 30, 2010

APPLICATION CHECKLIST

You did not include a copy of your birth certificate with the application. Please send a copy of your birth certificate (or other proof of birth if a birth certificate does not exist) to South Carolina Retirement Systems.

You did not include a copy of a birth certificate for each beneficiary you designated. Please send a copy of each designated beneficiary's birth certificate (or other proof of birth) to South Carolina Retirement Systems.

State Budget and Control Board • South Carolina Retirement Systems
Fontaine Business Center • 202 Arbor Lake Drive • Post Office Box 11960 • Columbia, South Carolina 29211
803-737-6800 • 800-868-9002

South Carolina Retirement Systems

THIS DOCUMENT CONTAINS IMPORTANT INFORMATION ABOUT YOUR BENEFITS. DO NOT DISCARD.
NOTICE OF RETIREMENT ELIGIBILITY AND ESTIMATED BENEFIT

WILLIAM H BAILEY JR
 [REDACTED]

LITTLE RIVER SC 29566

SSN: XXX-XX-6820
 Appl ID: XXXXX6820-2-6-1
 System: PORS
 Type: Service
 Date: May 21, 2010

We are processing your application for retirement as a member of the Police Officers Retirement System. Please review the following information carefully:

Effective Date of Retirement	05/01/2010
Payment Option Selected	Option B - 100% - 100% Joint Survivor
Estimated Service Credit	25 years 00 months 01 days
Estimated AFC	\$ 89,470.15
Estimated Full Monthly Benefit	\$ 3,596.26

If you believe any of the above information is incorrect, please contact us without delay. Doing so will prevent unnecessary problems with your retirement account and allow you to begin receiving retirement benefits as soon as possible. We have enclosed a worksheet so that you might better understand our estimated benefit calculation.

Retirement eligibility does not constitute retiree health insurance eligibility. Therefore, please contact your employer or health insurance provider to determine if you will be covered for retiree health insurance prior to finalizing your retirement date, as the Retirement Systems does not govern or administer health insurance for employees or retirees.

If you decide not to retire on the effective date shown above, please notify us in writing immediately. We will then cancel your retirement application or adjust your retirement date, service credit, and monthly benefit accordingly.

Please call SCRS Customer Service at 1-800-868-9002 or (803) 737-6800 if you have any further questions or would like further information about your retirement process.

Enclosure

State Budget and Control Board • South Carolina Retirement Systems
 Fontaine Business Center • 202 Arbor Lake Drive • Post Office Box 11960 • Columbia, South Carolina 29211
 803-737-6800 • 800-868-9002

South Carolina Retirement Systems

ESTIMATED BENEFIT WORKSHEET

WILLIAM H BAILEY JR

SSN: XXX-XX-6820
 Appl ID: XXXXX6820-2-6-1
 System: PORS
 Type: Service
 Date: May 21, 2010

AVERAGE FINAL COMPENSATION (AFC):

Your average final compensation, which is used to calculate your estimated benefit, is typically based on the 12 highest consecutive quarters of salary posted to our system on the date your application was received. These quarters, which have not yet been audited, are shown below:

Worksheet Status.. Estimate

Qtr	FYear	FTE	Salary	Annualize
Dec	2009	1.0000	25592.70	25592.70
Sep	2009	1.0000	21936.60	21936.60
Jun	2009	1.0000	26271.39	26271.39
Mar	2009	1.0000	20773.14	20773.14
Dec	2008	1.0000	24235.33	24235.33
Sep	2008	1.0000	20773.14	20773.14
Jun	2008	1.0000	25023.10	25023.10
Mar	2008	1.0000	19512.72	19512.72
Dec	2007	1.0000	22764.84	22764.84
Sep	2007	1.0000	19512.72	19512.72
Jun	2007	1.0000	22764.84	22764.84
Mar	2007	1.0000	19249.92	19249.92

Calculation: 268,410.44 / 3 years = AFC of 89,470.15

Upon receipt of final information and verification of quarterly earnings from your employer, adjustments may be required to the amounts used for AFC purposes, including the dollar amount of unused annual leave as permitted by law and reported by your employer.

SERVICE CREDIT:

Your estimated benefit does not include service credit for any unused sick leave. After retirement, your service credit will be adjusted to reflect unused sick leave as permitted by law and reported by your employer. When we finalize your account, we will adjust your service credit and benefit accordingly.

State Budget and Control Board • South Carolina Retirement Systems
 Fontaine Business Center • 202 Arbor Lake Drive • Post Office Box 11960 • Columbia, South Carolina 29211
 803-737-6800 • 800-868-9002

FINALIZING YOUR ACCOUNT:

It will typically take a minimum of 90 days to finalize your account, assuming you and your employer submit all required information in a timely manner. During peak season (July and January) or periods with an unexpectedly large number of retirees, finalization may take somewhat longer. Once your final benefit is determined, any difference (positive or negative) between your estimated benefit and final benefit will be retroactively applied to your date of retirement.

FIRST BENEFIT CHECK:

If your date of retirement is any date other than the first of the month, your first check will not be for the same amount as the estimated monthly benefit shown on the Notice of Retirement Eligibility and Estimated Benefit. Rather, it will be a prorated portion based on the number of days in that month that you were actually retired. For example, if your retirement date is the fifteenth of the month (and the month has 31 days), your first check will be for $17/31$ of the amount of your estimated monthly benefit, reflecting the 17 days in that month that you are actually retired.

Checks are issued on the last business day of each month and cover that month's retirement. Checks are not issued in advance.

Jan 8, 2010
09:53 AM

- PORS Monthly Benefit Estimate -
SERVICE RETIREMENT

Page: 1 of 2

Estimated Avg Final Compensation: \$ 88,118.73
Nondeferred Contributions: \$ 0.00
Total Contributions + Interest: \$ 82,374.71

Social Security No: XXX-XX-6820
Date of Retirement: 05-01-2015
Birth Date: [REDACTED]-1962
Age at Retirement: 52 Years 4 Mos 27 Days

BENEFICIARY INFORMATION

Average Age: 50 Years 11 Mos 25 Days
Birth Date(s) Used in Average:
1. 05-06-1964

WILLIAM H BAILEY JR
[REDACTED]
LITTLE RIVER SC 29566

SERVICE CREDIT

Class II: 25 Years 00 Mos 01 Days
Sick Leave: 00 Mos 00 Days

Total Service: 25 Years 00 Mos 01 Days

PAYMENT PLANS

RETIREE LIFETIME BENEFITS

		BENEFICIARY PAYOUT	REDUCTION FROM MAX
\$ 3,928.95 Option A	Max Plan - Standard Basic Annuity	Remaining contributions, if any.	
\$ 3,419.76 Option B	100% Retiree-Revert to Max/100% Surviving Bene(s)	\$ 3,419.76	12.96%
\$ 3,656.67 Option C	100% Retiree-Revert to Max/50% Surviving Bene(s)	\$ 1,828.34	6.93%

** Important Notice **

Estimate is a projection based on information you provided or non-certified system information and is subject to change. It does not qualify you for retirement; change beneficiaries you previously designated; or certify vesting, retirement date, service credit, taxes, or average final compensation (including annual leave payments). Please do not leave employment based on this information.

Note: If benefit is \$0.00, then you may not select the payment plan indicated.

State Budget and Control Board • South Carolina Retirement Systems
Fontaine Business Center • 202 Arbor Lake Drive • Post Office Box 11960 • Columbia, South Carolina 29211
803-737-6800 • 800-868-9002

Jan 8, 2010
09:53 AM

- PORS Monthly Benefit Estimate -
SERVICE RETIREMENT

Page: 2 of 2

Client Name: WILLIAM H BAILEY JR

SSN: XXX-XX-6820

TAX INFORMATION

Status: Married Federal Exemptions: 3 State Exemptions: 3

Payment Plan	Benefit	Exclusion Amount	Federal Tax	State Tax	After Taxes
Option A	3,928.95	0.00	219.00	195.00	3,514.95
Option B	3,419.76	0.00	143.00	159.00	3,117.76
Option C	3,656.67	0.00	178.00	176.00	3,302.67

AVERAGE FINAL COMPENSATION INFORMATION

Average final compensation of \$ 88118.73 calculated using:
~~Unaudited Current System Postings~~

The estimated Average Final Compensation (AFC) used in this benefit estimate is comprised of quarterly contribution amounts that have not yet been audited. Upon receipt of final information and verification from your employer, adjustments may be required to the amounts used for AFC purposes.

ESTIMATED HIGH 12 QUARTERS DETAIL

Cal Qtr	Cal Year	FTE %	Salary	Annualized	Service
Sep	2009	1.0000	21,936.60	21,936.60	3.00
Jun	2009	1.0000	26,271.39	26,271.39	3.00
Mar	2009	1.0000	20,773.14	20,773.14	3.00
Dec	2008	1.0000	24,235.33	24,235.33	3.00
Sep	2008	1.0000	20,773.14	20,773.14	3.00
Jun	2008	1.0000	25,023.10	25,023.10	3.00
Mar	2008	1.0000	19,512.72	19,512.72	3.00
Dec	2007	1.0000	22,764.84	22,764.84	3.00
Sep	2007	1.0000	19,512.72	19,512.72	3.00
Jun	2007	1.0000	22,764.84	22,764.84	3.00
Mar	2007	1.0000	19,249.92	19,249.92	3.00
Dec	2006	1.0000	21,538.44	21,538.44	3.00
				264,356.18	

State Budget and Control Board • South Carolina Retirement Systems
Fontaine Business Center • 202 Arbor Lake Drive • Post Office Box 11960 • Columbia, South Carolina 29211
803-737-6800 • 800-868-9002

Apr 29, 2010
01:39 PM

- PORS Monthly Benefit Estimate -
SERVICE RETIREMENT

Page: 1 of 2

Estimated Avg Final Compensation: \$ 89,470.15
Nondeferred Contributions: \$ 0.00
Total Contributions + Interest: \$ 85,807.03

Social Security No: XXX-XX-6820
Date of Retirement: 04-30-2010
Birth Date: [REDACTED] 1962
Age at Retirement: 47 Years 4 Mos 26 Days

BENEFICIARY INFORMATION

Average Age: 45 Years 11 Mos 24 Days
Birth Date(s) Used in Average:
1. 05-06-1964

WILLIAM H BAILEY JR

[REDACTED]
LITTLE RIVER SC 29566

SERVICE CREDIT

Class II: 25 Years 00 Mos 00 Days
Sick Leave: 00 Mos 00 Days

Total Service: 25 Years 00 Mos 00 Days

PAYMENT PLANS

RETIREE LIFETIME BENEFITS

		BENEFICIARY PAYOUT	REDUCTION FROM MAX
\$ 3,988.80 Option A	Max Plan - Standard Basic Annuity	Remaining contributions, If any.	
\$ 3,595.90 Option B	100% Retiree-Revert to Max/100% Surviving Bene(s)	\$ 3,595.90	9.85%
\$ 3,782.18 Option C	100% Retiree-Revert to Max/50% Surviving Bene(s)	\$ 1,891.09	5.18%

**** Important Notice ****

Estimate is a projection based on information you provided or non-certified system information and is subject to change. It does not qualify you for retirement; change beneficiaries you previously designated; or certify vesting, retirement date, service credit, taxes, or average final compensation (including annual leave payments). Please do not leave employment based on this information.

Notes: If benefit is \$0.00, then you may not select the payment plan indicated.
1st payment will be a partial payment.

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Apr 28, 2010
01:39 PM

- PORS Monthly Benefit Estimate -
SERVICE RETIREMENT

Page: 2 of 2

Client Name: WILLIAM H BAILEY JR

SSN: XXX-XX-6820

TAX INFORMATION

Status: Married Federal Exemptions: 0 State Exemptions: 0

Payment Plan	Benefit	Exclusion Amount	Federal Tax	State Tax	After Taxes
Option A	3,988.80	0.00	381.62	254.21	3,352.97
Option B	3,595.90	0.00	322.69	226.71	3,046.50
Option C	3,782.18	0.00	350.63	239.75	3,191.80

AVERAGE FINAL COMPENSATION INFORMATION

Average final compensation of \$ 89470.15 calculated using:

Unaudited Current System Postings

The estimated Average Final Compensation (AFC) used in this benefit estimate is comprised of quarterly contribution amounts that have not yet been audited. Upon receipt of final information and verification from your employer, adjustments may be required to the amounts used for AFC purposes.

ESTIMATED HIGH 12 QUARTERS DETAIL

Cal Qtr	Cal Year	FTE %	Salary	Annualized	Service
Dec	2009	1.0000	25,592.70	25,592.70	3.00
Sep	2009	1.0000	21,936.60	21,936.60	3.00
Jun	2009	1.0000	26,271.39	26,271.39	3.00
Mar	2009	1.0000	20,773.14	20,773.14	3.00
Dec	2008	1.0000	24,235.33	24,235.33	3.00
Sep	2008	1.0000	20,773.14	20,773.14	3.00
Jun	2008	1.0000	25,023.10	25,023.10	3.00
Mar	2008	1.0000	19,512.72	19,512.72	3.00
Dec	2007	1.0000	22,764.84	22,764.84	3.00
Sep	2007	1.0000	19,512.72	19,512.72	3.00
Jun	2007	1.0000	22,764.84	22,764.84	3.00
Mar	2007	1.0000	19,249.92	19,249.92	3.00
				268,410.44	

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Apr 30, 2010
09:13 AM

- PORS Monthly Benefit Estimate -
SERVICE RETIREMENT

Page: 1 of 2

Estimated Avg Final Compensation: \$ 89,470.15
Nondeferred Contributions: \$ 0.00
Total Contributions + Interest: \$ 86,071.56

Social Security No: XXX-XX-6820
Date of Retirement: 05-01-2010
Birth Date: [REDACTED]-1962
Age at Retirement: 47 Years 4 Mos 27 Days

BENEFICIARY INFORMATION

Average Age: 45 Years 11 Mos 25 Days
Birth Date(s) Used in Average:
1. 05-06-1964

WILLIAM H BAILEY JR

[REDACTED]
LITTLE RIVER SC 29566

SERVICE CREDIT

Class II: 25 Years 00 Mos 01 Days
Sick Leave: 00 Mos 00 Days

Total Service: 25 Years 00 Mos 01 Days

PAYMENT PLANS

RETIREE LIFETIME BENEFITS

		BENEFICIARY PAYOUT	REDUCTION FROM MAX
\$ 3,989.20 Option A	Max Plan - Standard Basic Annuity	Remaining contributions, If any.	
\$ 3,596.26 Option B	100% Retiree-Revert to Max/100% Surviving Bene(s)	\$ 3,596.26	9.85%
\$ 3,782.56 Option C	100% Retiree-Revert to Max/50% Surviving Bene(s)	\$ 1,891.28	5.18%

** Important Notice **

Estimate is a projection based on information you provided or non-certified system information and is subject to change. It does not qualify you for retirement; change beneficiaries you previously designated; or certify vesting, retirement date, service credit, taxes, or average final compensation (including annual leave payments). Please do not leave employment based on this information.

Note: If benefit is \$0.00, then you may not select the payment plan indicated.
This only an estimate.

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Apr 30, 2010
09:13 AM

- PORS Monthly Benefit Estimate -
SERVICE RETIREMENT

Page: 2 of 2

Client Name: WILLIAM H BAILEY JR

SSN: XXX-XX-6820

TAX INFORMATION

Status: Married Federal Exemptions: 0 State Exemptions: 0

Payment Plan	Benefit	Exclusion Amount	Federal Tax	State Tax	After Taxes
Option A	3,989.20	0.00	381.68	254.24	3,353.28
Option B	3,596.26	0.00	322.74	226.73	3,046.79
Option C	3,782.56	0.00	350.68	239.77	3,192.11

AVERAGE FINAL COMPENSATION INFORMATION

Average final compensation of \$ 89470.15 calculated using:

~~12 Highest Quarters Based on System Postings~~

The estimated Average Final Compensation (AFC) used in this benefit estimate is comprised of quarterly contribution amounts that have not yet been audited. Upon receipt of final information and verification from your employer, adjustments may be required to the amounts used for AFC purposes.

ESTIMATED HIGH 12 QUARTERS DETAIL

Cal Qtr	Cal Year	FTE %	Salary	Annualized	Service
Dec	2009	1.0000	25,592.70	25,592.70	3.00
Sep	2009	1.0000	21,936.60	21,936.60	3.00
Jun	2009	1.0000	26,271.39	26,271.39	3.00
Mar	2009	1.0000	20,773.14	20,773.14	3.00
Dec	2008	1.0000	24,235.33	24,235.33	3.00
Sep	2008	1.0000	20,773.14	20,773.14	3.00
Jun	2008	1.0000	25,023.10	25,023.10	3.00
Mar	2008	1.0000	19,512.72	19,512.72	3.00
Dec	2007	1.0000	22,764.84	22,764.84	3.00
Sep	2007	1.0000	19,512.72	19,512.72	3.00
Jun	2007	1.0000	22,764.84	22,764.84	3.00
Mar	2007	1.0000	19,249.92	19,249.92	3.00
				268,410.44	

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South Carolina Retirement Systems

THIS DOCUMENT CONTAINS IMPORTANT INFORMATION ABOUT YOUR BENEFITS. DO NOT DISCARD.

INFORMATION FOR RETIRED MEMBERS

WILLIAM H BAILEY JR

LITTLE RIVER SC 29566

SSN: XXX-XX-6820
Appl ID: XXXXX6820-2-6-1
System: PORS
Type: Service
Date: May 21, 2010

Below you will find some very important information which you should know prior to receiving your first annuity payment. Please review this information carefully and retain it for your records. If you have any questions regarding this letter or require assistance with any other retirement matter, please contact Customer Service at 1-800-868-9002 or 803-737-6800.

Method of Payment

The method of payment may not be changed once benefit payments have begun. If, however, you have a change in marital status, within one year you have the right to revoke the nomination and elect a new beneficiary and/or form of monthly payment. A retired member's form of monthly payment may not be changed more than twice and other restrictions may apply. Please contact our office if you need additional information.

Benefit Taxes

When monthly benefits are paid to you, amounts are subject to federal income tax. If you are a resident of South Carolina, your benefits are also subject to SC state income tax. Each year, a retiree may deduct up to \$3,000 of RETIREMENT INCOME or \$10,000 of RETIREMENT INCOME at age 65. Furthermore, South Carolina taxpayers 65 years old or older may claim a \$15,000 calendar year income tax deduction against ANY SOURCE OF TAXABLE INCOME. However, this deduction is reduced by the amount of your retirement deduction claimed so that the total income tax deduction allowed is limited to \$15,000. Taxpayers reaching their 65th birthday by December 31 can claim the higher deduction. If you are already age 65 and have previously elected to take a deduction on retirement income of \$3,000 or \$10,000 (based on your age at the time you started taking the retirement deduction) you can claim an additional amount that would bring your total tax deduction to \$15,000. Additional information may be obtained from the South Carolina Department of Revenue at 803-898-5709. Retirees not living in South Carolina should check with the tax commission in the state in which they live to determine if benefits are taxable.

Tax Withheld

Taxes are withheld according to your instructions; however if you make no election, federal regulations require we withhold federal taxes based on a status of married with three exemptions. You may be required to file estimated taxes each quarter if you do not have taxes withheld. Check with the Internal Revenue Service, your accountant or tax advisor if you have questions regarding your tax liability. Forms are available to withhold or to make changes to the amount withheld. To request forms, please call our Customer Service Department.

Returning to Work

A retired member who has been retired for at least fifteen (15) consecutive days may return to employment covered by the system without affecting retirement benefits.

State Budget and Control Board • South Carolina Retirement Systems

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803-737-6800 • 800-868-9002

WILLIAM H BAILEY JR

Page: 2
 SSN: XXX-XX-6820
 Appl ID: XXXXX6820-2-6-1
 System: PORS
 Type: Service
 Date: May 21, 2010

Cost of Living Increases

Your retirement benefit may be periodically increased to reflect a cost of living adjustment. To qualify, you must be on our retirement payroll for a complete fiscal year, July 1 through June 30, before you are eligible for this increase. Restrictions apply for members taking early retirement. Increases are granted subject to the availability of funds as determined by the actuary and approved by the SC Budget and Control Board.

Other Information

If it becomes necessary for someone to endorse your checks or handle your affairs, please provide a certified true copy of legal papers notifying our office of the change.

Retiree Group Life Insurance

If you have at least 10 years of service, are not a retired contributing member of SCRS or PORS and your most recent employer was covered by the Group Life Insurance Program, at your death your beneficiary(ies) will receive a one time payment based on your years of retirement service credit. If you are a retired member of SCRS or PORS who has returned to work for a covered employer, upon your death your beneficiary(ies) will receive a one time retiree group life payment equivalent to one year's salary.

Insurance

The Employee Insurance Program (EIP) is available to answer questions about your insurance coverage. The mailing address is: Employee Insurance Program, PO Box 11661, Columbia, SC 29211. You may telephone 803-734-0678 for assistance.

Monthly Annuity Payments

Monthly benefits are mailed, or electronically deposited, the last business day of the month. If you do not receive your check within five (5) business days, call our Customer Service Department. You can help avoid your check being delayed by enrolling in direct deposit. We strongly encourage all retirees to sign up for automatic deposit so you do not have to worry about mail delays, getting to the bank to cash or deposit your check, misplacing your check or having it stolen while you are away from home or on vacation. Once you are enrolled in the program, you will only receive a stub when the net amount of your deposit changes or if there is a change to your bank account information. Changes typically occur in January when the tax withholding tables are updated and in July when the cost of living increases are granted.

State Budget and Control Board • South Carolina Retirement Systems

Fontaine Business Center • 202 Arbor Lake Drive • Post Office Box 11960 • Columbia, South Carolina 29211
 803-737-6800 • 800-868-9002

South Carolina Retirement Systems

NOTICE OF ACTIVE MEMBER BENEFICIARY DESIGNATIONS

April 30, 2010

Name..... WILLIAM H BAILEY JR
 Appl ID..... XXXXX6820-2-6-1
 System..... PORS

The beneficiary designations that you made on your retirement application are shown on the Form 6204 that accompanies this notice. Please note that the retirement beneficiary designations shown on the Form 6204 will not become effective until your date of retirement. The beneficiary designations shown below reflect your active member beneficiaries. The active member beneficiary designations will remain in effect until your date of retirement. If your death occurs prior to your date of retirement, death benefits will be paid to the beneficiaries shown below.

Name	SSN	Sex	DOB
Primary Beneficiaries for Survivor Benefits or Refund of Contributions:			
K[REDACTED] BAILEY		F	[REDACTED]/1964

Group Life Insurance Beneficiaries:
 K[REDACTED] BAILEY

F [REDACTED] 1964

Contingent Beneficiaries:
 - No Contingent beneficiaries are specified.

IMPORTANT MESSAGE FOR DISABILITY RETIREES: If your primary beneficiaries for retirement are NOT the same as your active member primary beneficiaries AND your retiree group life insurance beneficiaries are NOT the same as your active member group life insurance beneficiaries, our office will be unable to offer your beneficiaries a disability retirement annuity if you die while you are still on your employer's payroll. If your retirement and active member beneficiary designations differ and your death occurs while you are on your employer's payroll, your active member beneficiaries shown above will receive only active member benefits—a disability retirement annuity cannot be paid.

If you have any questions about this notice or wish to change your beneficiary designations, please call Customer Service at 1-800-868-9002 or (803) 737-8800.

South Carolina Retirement Systems

NOTICE OF ACTIVE MEMBER BENEFICIARY DESIGNATIONS

April 30, 2010

Name..... WILLIAM H BAILEY JR
 Appl ID..... XXXXX6820-2-6-1
 System..... PORS

The beneficiary designations that you made on your retirement application are shown on the Form 6204 that accompanies this notice. Please note that the retirement beneficiary designations shown on the Form 6204 will not become effective until your date of retirement. The beneficiary designations shown below reflect your active member beneficiaries. The active member beneficiary designations will remain in effect until your date of retirement. If your death occurs prior to your date of retirement, death benefits will be paid to the beneficiaries shown below.

Name	SSN	Sex	DOB
Primary Beneficiaries for Survivor Benefits or Refund of Contributions:			
K [REDACTED] BAILEY		F	[REDACTED] 1964
Group Life Insurance Beneficiaries:			
K [REDACTED] BAILEY		F	[REDACTED] 1964

Contingent Beneficiaries:
 - No Contingent beneficiaries are specified.

IMPORTANT MESSAGE FOR DISABILITY RETIREES: If your primary beneficiaries for retirement are NOT the same as your active member primary beneficiaries AND your retiree group life insurance beneficiaries are NOT the same as your active member group life insurance beneficiaries, our office will be unable to offer your beneficiaries a disability retirement annuity if you die while you are still on your employer's payroll. If your retirement and active member beneficiary designations differ and your death occurs while you are on your employer's payroll, your active member beneficiaries shown above will receive only active member benefits—a disability retirement annuity cannot be paid.

If you have any questions about this notice or wish to change your beneficiary designations, please call Customer Service at 1-800-868-9002 or (803) 737-6800.

NAME: William H Bailey Jr

PHONE: 843-5

ZIP: 29566

Signature of Customer Service Counselor

☒ Phone Number

☐ Employer (name)

Imaged

RCL592N6
Form 6404

South Carolina Retirement Systems
Estimated Pre-Release Report

Date: 05/21/10
Time: 12:26:01
Page: 1

SSN... █████-6320 System.. PORS Type.. Service Seq.. 01
Name.. WILLIAM H BAILEY JR

FIRST RELEASE

DOB... █████1962 ✓
DOD...

Address:

WILLIAM H BAILEY JR
████████████████████
LITTLE RIVER SC 29566

Beneficiary Data:

Type Name	Sex	DOB	SSN	Relation	Received	Updated	Trustee
Both H █████ BAILEY ✓	F	█████1964	█████-3794	Spouse	04-30-2010	04-30-2010	

Application Data:

Date Received..... 04-30-2010 ✓
Option..... Option B ✓
Last Employer..... 926.06
Deferred Annuity....
Date Last Paid..... 04-30-2010 ✓
Date of Retirement.. 05-01-2010 ✓

Appl Status..... PEP

Employment Data:

EmpCode Employer Name
926.06 CITY OF NORTH MYRTLE BEACH

System
2

Forms Data:

Code	Title	EmpCode	Sys	Compt	Received	Last Paid	Term Date	Sicklv	InjuryDate
6201	Retirement Cert of Last Day Pa	926.06	2	Y	05-19-2010	04-30-2010	04-30-2010		

Benefit Calculation:

DOR..... 05-01-2010 Option..... Option B Bene Avg Age at DOR.. 45-10-25
Age at DOR.. 47-04-27

----- Maximum Benefit -----

Maximum Benefit.. 3989.20
Class 1 Max Amt..
Class 2 Max Amt.. 3989.20

----- Benefit for Option -----

Option Benefit... 3596.26
Class 1 Opt Amt..
Class 2 Opt Amt.. 3596.26

----- Service -----

Total.... +25-00-01
Class 1..
Class 2.. +25-00-01

RCLS92N6
Form 6404

South Carolina Retirement Systems
Estimated Pre-Release Report

Date: 05/21/10
Time: 12:26:01
Page: 2

SSN... ██████-6820 System.. PORS Type.. Service Seq.. 01
Name.. WILLIAM H BAILEY JR

Supplement 1.....	SS Estimate.....	Correl....
Supplement 2.....	Option Factor.... 0.901500	Sick Lv..
	Age/Serv Red Ind.	Dis Proj.
	Exclusion Amt.... 192.91	Earned... +20-00-01
	Beneficiary Amt... 3596.26	Tot Earn. +20-00-01

AFC Data:

SSN.. ██████-6820 System.. 2 Seq Number.. 1 User Id.. SYSTEM Last Updated.. 04-30-2010

Current Salary..	Worksheet Status.. E	AFC Earned Service.. 19-11-01
Paid Leave..Qtr.. Fyr.. Qtr-Fyr FTE4 Salary Annualize Service		
Paid Leave Days.. 2 2010 1.0000 25592.70 25592.70 3.00		
Paid Leave Amt... 1 2010 1.0000 21936.60 21936.60 3.00		
Contract Days... 260 4 2009 1.0000 26271.39 26271.39 3.00		
Leave Allowed... 3 2009 1.0000 20773.14 20773.14 3.00		
Elapsed Start.... 2 2009 1.0000 24235.33 24235.33 3.00		
Elapsed End..... 1 2009 1.0000 20773.14 20773.14 3.00		
Correlated Systems.. N 4 2008 1.0000 25023.10 25023.10 3.00		
Concurrent Service.. N 3 2008 1.0000 19512.72 19512.72 3.00		
Service Audited..... Y 2 2008 1.0000 22764.84 22764.84 3.00		
Pre1980 Service..... N 1 2008 1.0000 19512.72 19512.72 3.00		
TBRs Present..... N 4 2007 1.0000 22764.84 22764.84 3.00		
Pre1997 Adj..... N 3 2007 1.0000 19249.92 19249.92 3.00		

**** A F C **** 89470.15

Account Balance Data:

Postings thru.. 05-21-2010 Interest thru.. 05-01-2010

Account: 4

Fiscal Year	Deferred	NonDefer	Interest	Total
2009 AM....	54,122.69		25,238.89	79,361.58
2010	4,064.60	161,092.75	2,545.38	167,802.73
Totals.....	58,187.29	161,092.75	27,884.27	247,164.31

System: 2

Grand Total	58,187.29	161,092.75	27,884.27	247,164.31

RCL592N6
Form 5404

South Carolina Retirement Systems
Estimated Pre-Release Report

SSN... █████-6820 System.. PORS
Name.. WILLIAM H BAILEY JR

Type.. Service Seq.. 01

Date Released to Payroll _____

5/21/10

Released by _____

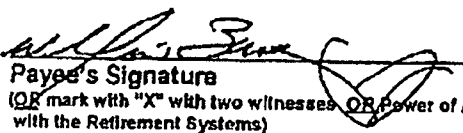
Krewf

QA by Payroll _____

Date: 05/21/10
Time: 12:26:01
Page: 3

080

Form 7202 Revised 07/15/2009		Withholding Certificate for Monthly Annuity Payments SC Budget and Control Board South Carolina Retirement Systems PO Box 11960, Columbia SC 29211-1960				☐ Check if new address
Sign in Blue Ink						
Payee Last Name	Suffix	First Name/Middle Initial	Phone Number with area code	Social Security Number		
BAILEY	JR	WILLIAM H		-6820		
Mailing Address		City	State	ZIP code		
		LITTLE RIVER	SC	29566		
Check appropriate system: ☐ South Carolina Retirement System ☒ Police Officers Retirement System ☐ General Assembly Retirement System		Check appropriate box: ☒ Retired Member Member SSN: _____ ☐ Alternate Payee under OORO (enter MEMBER SSN above) ☐ Beneficiary of deceased member (enter MEMBER SSN above)				
Federal Income Tax Withholding Complete the following applicable lines:						
1 Check box if you do not want any federal income tax withheld from your monthly annuity payment. ☐ (Do not complete lines 2 or 3.)						
2 Total number of exemptions and marital status you are claiming for withholding from each monthly annuity payment. (You may also designate an additional dollar amount on line 3.) Marital Status: ☐ Single ☒ Married ☐ Married, but withhold at higher Single rate (Enter number of exemptions)						
3 Additional amount, if any, you want withheld from each monthly annuity payment. Note: For monthly annuity payments, you cannot enter an amount here without entering the number (including zero) of allowances on line 2. This amount will be withheld in addition to the amount calculated using the marital status and allowances from line 2 above.						
South Carolina State Income Tax Withholding Complete the following applicable lines:						
4 Check box if you do not want any South Carolina state income tax withheld from your monthly annuity payment. (Do not complete lines 5 or 6.) ☐						
5 Total number of exemptions you are claiming for withholding from each monthly annuity payment. (You may also designate an additional dollar amount on line 8.) (Enter number of allowances)						
6 Additional amount, if any, you want withheld from each monthly annuity payment. Note: For monthly annuity payments, you cannot enter an amount here without entering the number (including zero) of allowances on line 5. This amount will be withheld in addition to the amount calculated using the number of allowances from line 5 above.						


 Payee's Signature
 (OR mark with "X" with two witnesses OR Power of Attorney, if on file with the Retirement Systems)

4-50-10
 Date

This form must be signed and dated. See notes on Page 2.

THE LANGUAGE USED IN THIS DOCUMENT DOES NOT CREATE ANY CONTRACTUAL RIGHTS OR ENTITLEMENTS AND DOES NOT
 CREATE A CONTRACT BETWEEN THE MEMBER AND THE SOUTH CAROLINA RETIREMENT SYSTEMS. THE SOUTH CAROLINA
 RETIREMENT SYSTEMS RESERVES THE RIGHT TO REVISE THE CONTENT OF THIS DOCUMENT.

Form 7204
Revised 07/15/2009

Electronic Funds Transfer Authorization for Annuities

SC Budget and Control Board
South Carolina Retirement Systems
PO Box 11960, Columbia SC 29211-1960

Sign in Blue Ink

☐ Check if new address

Print Last Name BAILEY Suffix JR First Name/Middle Initial WILLIAM H Phone Number with area code 843-CELL Social Security Number 6820
Mailing Address [REDACTED] City LITTLE RIVER State SC Zip code 29566

Check appropriate system:

☐ South Carolina Retirement System ☐ Retirement System for Judges/Solicitors
☒ Police Officers Retirement System ☐ Accidental Death Program (PORS only)
☐ General Assembly Retirement System ☐ National Guard Retirement System

Check appropriate box:

☒ Retired Member Member SSN: _____
☐ Alternate Payee under CQRO (enter MEMBER SSN above)
☐ Beneficiary of deceased member (enter MEMBER SSN above)

1. Primary Account Information:

The amount specified below will be electronically deposited into this account

☒ CHECKING Financial Institution Name _____ Trans/Routing Number _____ Account Number _____
☐ SAVINGS

☒ ALL OR You may enter a percent or flat amount: _____

Note: If funds are to be deposited into only one account, you **MUST** select the "ALL" box. If a PERCENT or Dollar AMOUNT is entered, you **MUST** provide secondary account information below for the remaining balance.

WILLIAM H BAILEY JR

2895

67-180/332

LITTLE RIVER, SC 29566

RECEIVED

PAY to the order of

MAY 03 2010

BENEFITS

If this and copy



BANK OF AMERICA AND TRUST COMPANY
1000 BANK BKT BKT 2007

For 00532016071 Signature 3922002895

2. Secondary Account Information:

☐ CHECKING Financial Institution Name _____ Trans/Routing Number _____ Account Number _____
☐ SAVINGS

RECEIVED

TAPE A VOIDED CHECK HERE (No deposit slips or starter checks, please)

APR 30 2010

If this account does not have checks, please attach a form from your financial institution certifying the account and routing numbers.

CUSTOMER INTAKE



Payee's Signature

(OR mark with "X" with two witnesses OR Power of Attorney, if on file with the Retirement Systems)

Date 4-30-10

(Note: This form must be signed and dated. See notes on Page 2)

THE LANGUAGE USED IN THIS DOCUMENT DOES NOT CREATE ANY CONTRACTUAL RIGHTS OR OBLIGATIONS AND DOES NOT CREATE A CONTRACT BETWEEN THE MEMBER AND THE SOUTH CAROLINA RETIREMENT SYSTEMS. THE SOUTH CAROLINA RETIREMENT SYSTEMS RESERVES THE RIGHT TO REVISE THE CONTENT OF THIS DOCUMENT.

00292

-6820



RECEIVED
APR 30 2010
FINANCE

WILLIAM H BAILEY JR		2894
LITTLE RIVER, SC 29568		87-180732
4-30-10		
PAY TO THE ORDER OF	South Carolina Retirement System	\$ 161,092.75
one hundred and sixty one thousand and ninety two dollars and 75/100		
DEBIT	DEWACH BANKING AND TRUST COMPANY 1-800-844-2871 DEWACH.COM	Ellie
As Agent of Service	Signature of William H Bailey Jr	
⑆053201607⑆		892202894

063

*Audited*RSC100PO
Dec-07,09South Carolina Retirement Systems
- AUDITED SERVICE WORKSHEET - PORS -
***** INTERNAL USE ONLY *****RSC100R1
02:49-PM

Valerie Williamson

SSN.....	██████-6820	MEMBERSHIP DATE: 04 30 1990
Name.....	WILLIAM M BAILEY JR	CORR SYS: N DUAL ACCT: N
Auditor..	Valerie Williamson	WORKSHEET COMPLETE: Y

=====

TOTAL UNAUDITED SERVICE:	00 00 00
CLASS 2	06 02 01

=====

VER	F	CL	CD	BEGIN DATE	END DATE	DATE PAID	FTE%	ACTUAL YR MO DA	CREDITED YR MO DA
E	2	00		04 30 1990	06 30 1990	00 00 0000	100	00 02 01	00 02 01
E	2	00		07 01 1990	06 30 1996	00 00 0000	100	06 00 00	06 00 00

TOTAL CLASS 1 SERV: 00 00 00

TOTAL CLASS 2 SERV: 06 02 01

TOTAL ELIG SERV: 06 02 01

VERIFIED BY: _____

UW

DATE: _____

12/7/09

RCS270P0
Apr 30,10

***** South Carolina Retirement Systems *****
- Client Profile -

RCS270M1
12:49 PM

*SSN: [REDACTED] 8820 WILLIAM H BAILEY JR

[Personal Information]

Sex: M DOB: [REDACTED]-1982 DOD:

Legal:

In 12:51

[Correspondence Address]

[REDACTED]
LITTLE RIVER SC 29568

Out 2:30

[Account Information]

Acct 4: PORS Class II ACTIVE EDOM: 04-30-1990 AUD IND: Y PEC: 026.06

[Service Purchase Information]

AC: 04 NONQUALIFIED SERVICE Stat: INVOICE MAILED Rcvd: 04-29-2010
Letter Sent: 04-29-2010

Direct Command: _____ -- More --

Enter-PF1---PF2---PF3---PF4---PF5---PF6---PF7---PF8---PF9---PF10---PF11---PF12---
confm help retrn quit bkwd frwd print main

RCS270PO
Apr 30,10

***** South Carolina Retirement Systems *****
- Client Profile -

RCS270M1
9:05 AM

*SSN: [REDACTED] 3820 WILLIAM H BAILEY JR

[Personal Information]

Sex: M DOB: [REDACTED] 1962 DOD:

Legal:

[Correspondence Address]

LITTLE RIVER SC 29568

[Account Information]

Acct 4: PORS Class II ACTIVE EDOM: 04-30-1990 AUD IND: Y PEC: 028,06

[Service Purchase Information]

AC: 04 NONQUALIFIED SERVICE Stat: INVOICE MAILED

Royd: 04-29-2010

Letter Sent: 04-29-2010

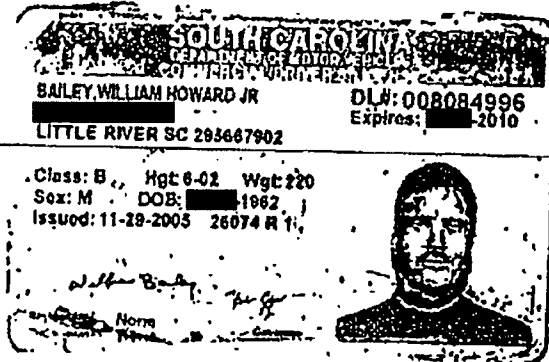
Direct Command:

-- More --

Enter-PF1---PF2---PF3---PF4---PF5---PF6---PF7---PF8---PF9---PF10---PF11---PF12---
confm help retrn quit bkwd frwd print main

3/31 19-11-1
5

Re: Member info
[REDACTED] 6820
DOR: 4-30-2010
SVC Purchase



CHECK ONE

☒ NEW MEMBER☐ CHANGE

SOUTH CAROLINA RETIREMENT SYSTEMS

ENROLLMENT FORM

Instructions on Back

Print or Type in Black Ink

A. A new member should complete all parts of the form.

B To change existing records, check appropriate box(es), then see instructions on back

Name ☐ (Print Name) _____
☐ SS# (Old Number) _____
☐ Address _____
☐ Date of Birth _____
☐ Beneficiary _____

1 Social Security Number [REDACTED]-6820	2 Employer Code Number 926.06	3. Employer Name City of North Myrtle Beach Public Safety 926.06		4 Retirement System (Mark One) SCRS ☐ PORS ☒	
5 Member's Last Name & Suffix Bailey Jr	6 First name William	7 Middle Initial H	8 Date of Birth [REDACTED] 62 MO DA YR	9. Sex MA ☒ F ☐	10 Marital Status Single ☐ Divorced ☐ Widowed ☐ Married ☒
11 Member's Street Address [REDACTED]				12 City Little River	
13 State SC	14 Zip Code 29516	15 Title of Position RSO. Public Safety Officer		16 Hire Date 4/30/90 MO DA YR	
17 Annual Salary 19,900	18 Are you presently working for another agency covered by the SC Retirement System? ___ Yes ___ No If yes, give Employer Name(s) _____				
19 Are you applying for non-member status? ___ Yes ___ No If yes, see instructions		20 Effective Date of Membership 4/30/90 MO DA YR		21 Have you ever been a member of any of the Retirement Systems? ___ Yes ___ No	
22 If #21 is "Yes", name former employer(s) _____ Did you withdraw your contributions? ___ Yes ___ No Are you now receiving a monthly benefit check from any of the SC Retirement Systems? ___ Yes ___ No					
23 Beneficiary (ONE PERSON OR ESTATE) Bailey Jr [REDACTED] Last First MI		24 Beneficiary's Relationship [REDACTED]	25 Beneficiary's Date of Birth [REDACTED] 64 MO DA YR	26 Beneficiary's SS# (if available) [REDACTED] 3794	

IMPORTANT: SEE CONDITIONS AND AUTHORIZATIONS ON REVERSE SIDE

I hereby certify that I have read the conditions and authorizations on the back of this form and agree to those conditions and authorizations

DATE 5/25/90

MEMBER'S SIGNATURE

STATE OF YOUTH AROUND

COUNTY OF

This foregoing instrument was acknowledged before me this date

by William H. Bailey, Jr.
(Name of Member).

My Commission Expires 1-28-91

NOTARY SIGNATURE

COMPLETE AND RETURN FORM TO: SC RETIREMENT SYSTEMS, PO BOX 11860, COLUMBIA, SC 29211

Image as: Matrix
Review Req.

SSN: [REDACTED]-6820

Image to PORS

Image as a BOOK

Allison Lawler

From: Allison Lawler
Sent: Thursday, April 29, 2010 11:38 AM
To: Larissa Huff
Subject: RE: William H. Bailey [REDACTED]-6820

He did give me a heads-up. I find that quarter ending 3/31/10 is low compared to other quarters, and I called Connie Cox at the City of North Myrtle Beach about it -- normally, I'd just email, but I wanted her to know why it was important that we find this out right now. She's going to verify for me via email that he experienced a demotion in February of 2010 that reduced his salary from approximately \$90000 to \$58000, and that he's been using leave and comp time. Once I get that email from her, I'm going to image that and will consider this review finished. Unless she sends me something different from what she told me on the phone, there's nothing for me to adjust on this file. I told her that I really need to get something back as soon as possible from her, so I expect to receive that from her today. ~al

From: Larissa Huff
Sent: Thursday, April 29, 2010 11:14 AM
To: Allison Lawler
Subject: William H. Bailey [REDACTED]-6820

Hi Allison,

It is my understanding that Joey gave you a heads up about this one. Let me know what you find. Thanks!

4-30-10 DOR

POB-B

POB [REDACTED] 64

mi SSN: [REDACTED]

6820

Gene info

VR 115 2008 (Rev) P.O. NO. 12918100

DOCUMENT NO. H 2835

THE CITY OF NEW YORK
DEPARTMENT OF HEALTH
VITAL RECORDS
CERTIFICATION OF BIRTH

This is a certification of name and birth facts on file in the Bureau of Vital Records, Department of Health, City of New York.

DATE OF BIRTH [REDACTED] 1964

CERTIFICATE NO. [REDACTED] 410918

BOROUGH QUEENS

DATE

-64- DATE

11-27-98

NAME

K

PALUCH, [REDACTED]

SEX

FEMALE

MOTHER'S MAIDEN NAME

TODD

FATHER'S NAME

PALUCH

Steven P. Schwartz

STEVEN P. SCHWARTZ
CITY REGISTRAR

Do not accept this transcript unless it bears the raised seal of the Department of Health. The reproduction or alteration of this certification is prohibited by Section 2.27 of the New York City Health Code.

RECEIVED
MAY 03 2010
CUSTOMER INTAKE

al: [REDACTED] 6820
 55#
 MBR info.
 DOR
 4-30-10

POB-M [REDACTED] 162
 DOB [REDACTED]

SOUTH CAROLINA DEPARTMENT OF HEALTH AND ENVIRONMENTAL CONTROL Division of Vital Records, Columbia, S.C.	
DATE OF BIRTH	REGISTRATION NO.
MAR 22 1989	138- 62-056330
NAME ***WILLIAM HOWARD BAILEY JR***	
DATE OF DEATH	SEX
[REDACTED] 1982	MALE
COUNTY HORRY	
This is a true certification of name and date of birth received in this office.	
<i>Michael B. Jamett</i> COMMISSIONER, DIV. OF VITAL RECORDS	<i>Deborah Lewis</i> DEPUTY REGISTRAR, HORRY COUNTY

RECEIVED
 MAY 03 2010
 CUSTOMER INTAKE

Ser email

Larissa Huff

[REDACTED] - 6820
William H Bailey Jr

From: Allison Lawler
 Sent: Friday, April 30, 2010 8:56 AM
 To: Larissa Huff
 Subject: FW: William Bailey, Jr., 6820

Good morning - just wanted you to see the email that I got confirming his demotion. ~al

From: Cox, Connie (mailto:clcox@nmb.us)
 Sent: Friday, April 30, 2010 8:54 AM
 To: Allison Lawler
 Subject: RE: William Bailey, Jr., 6820

Allison,

In response to the information you requested:

William Bailey - salary prior to demotion \$95,058.60 annually
 salary after demotion ~~\$58,000.00 annually~~

Effective date of change 1/27/210 From Director of Public Safety to Lieutenant

If there are any further questions, please feel free to contact me.

Thanks

Connie Cox

c

From: Allison Lawler (mailto:ALawler@retirement.sc.gov)
 Sent: Thu 4/29/2010 11:28 AM
 To: Cox, Connie
 Subject: William Bailey, Jr., 6820

Connie - good morning again! It was nice speaking with you earlier.

As I mentioned on the telephone, I'm emailing for written confirmation of our earlier conversation in which I inquired about the decrease in his reported earnings for quarter ending 3/31/10. If you don't mind, please verify the salary he was earning prior to his demotion, the amount of his salary after his demotion, and the effective date of the salary change.

I appreciate it! ~al

Allison D. Lawler



STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF HORRY

) C.A. No. 2010-CP-26-5145

William H. Bailey,

)

Plaintiff/Counter-Defendant

)

v.

)

City of North Myrtle Beach, a South Carolina
municipal corporation, John Smithson, Steven
Thomas, and Nicole Aiello,

)

)

Defendants/Counter-Plaintiffs

)

)

**AFFIDAVIT OF
STEPHEN T. SAVITZ, ESQ.**

I, Stephen T. Savitz, whose signature appears below, testifies under oath as follows:

1. I am a member in good standing of the South Carolina Bar and am an adult competent to testify to the matters set forth below.
2. On April 28, 2010, North Myrtle Beach City Manager John Smithson gave Plaintiff an ultimatum to resign or be fired effective April 29, 2010. On April 29, 2010, at approximately 11:15 a.m., I discussed via telephone with Smithson and City Attorney Chris Noury that Smithson was leaving on a cruise early Saturday morning May 1, 2010, and would like to get the Plaintiff's resignation finalized before he left. If not, he intended to discharge Plaintiff, since he had made his decision that Bailey should be separated from employment and the action should not be drawn out any longer. This conversation ended at approximately 11:45 a.m.
3. I then immediately telephoned Plaintiff's counsel, Kenneth Moss, Esquire, regarding Plaintiff's intention to either resign or be terminated. Mr. Moss advised me that

A handwritten signature in black ink, appearing to be "AAA" or similar stylized letters.

Plaintiff was unable to afford the purchase of five years of retirement service credits he needed to retire with full benefits with the South Carolina Retirement System. Mr. Moss advised me that Plaintiff needed time to arrange his finances to make that purchase and that he would have to borrow money, which would not happen right away. At some time during the 6.5 hours of telephone conversations that day with the City and Mr. Moss, Mr. Moss advised me that he knew some lenders and either could or had made some calls for Plaintiff in an attempt to secure a loan to make the retirement credit purchase, but that he had no commitments.

4. From approximately 1:45 p.m. until approximately 4:00 p.m. on April 29, I spoke variously with Mr. Moss, Mr. Smithson and Mr. Noury regarding the possible terms of Plaintiff's resignation. Mr. Moss continued to represent to me that Bailey could not immediately afford his retirement credit purchase and that he needed additional time to arrange a loan.

5. From approximately 6 p.m. until approximately 10:00 p.m. on April 29, I continued to discuss the matter with Mr. Moss and my clients. Mr. Moss continued to represent to me that Plaintiff needed additional time to arrange a loan. The City offered Plaintiff, through Mr. Moss, two or more months of paid suspension in light of Plaintiff's request for additional time. At approximately 8:53 p.m., I sent an email to Mr. Noury advising him, "I think we may be very close to resolution." Negotiations continued until approximately 10:00 p.m.

6. As of the close of business on April 29, no action was taken as to the ultimatum Mr. Smithson had given Plaintiff due to the continued negotiations. I assured Mr. Moss that Plaintiff would not be terminated from employment while we were still negotiating and agreed to talk the next day. Mr. Moss stated that he would talk with his client in the meantime.

7. On April 30, 2010, at approximately 10:00 a.m., Mr. Moss advised me that he did

not have an answer from his client regarding whether he would resign, and suggested that we continue negotiations. I then alternated phone calls with Mr. Smithson and Mr. Moss. Mr. Moss called at approximately 10:45 a.m. He continued to represent to me that Plaintiff could not immediately afford his retirement credit purchase. Mr. Moss asked either in this call or late in the evening before whether Plaintiff could continue working in some beach patrol capacity during the period rather than being on paid suspension, which he asserted would benefit the City. This was a change from earlier calls where Mr. Moss was only asking for money while on suspension. The City Manager had no interest in Plaintiff returning to work in any capacity. This call lasted until approximately 12:45 p.m.

8. From approximately 3:00 p.m. to 4:15 p.m. on April 30, I alternated phone calls with Mr. Moss, Mr. Smithson and Mr. Noury. I returned a call from Mr. Moss at approximately 3 p.m. and we continued negotiations. There was no change in Mr. Moss's representation that Plaintiff needed time to arrange a loan for his retirement credit purchase. I repeatedly asked Mr. Moss for a dollar demand to resolve the matter but he refused to give a number. He stated only that Mr. Smithson should not be making the decision as to settlement, that it was not a personnel matter, and that City Council should make any decisions as to settlement. I then spoke with Mr. Smithson who authorized four months pay for Bailey while on suspension, which we believed would be sufficient time for Plaintiff to arrange a loan and purchase his retirement credit. I called Mr. Moss and communicated this offer.

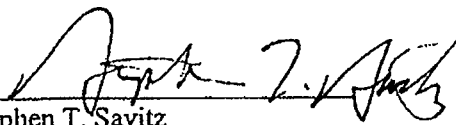
9. From approximately 6:00 p.m. to 9:17 p.m. on April 30, Mr. Moss and I continued negotiations by telephone. At some point Plaintiff joined in the calls, first by cell phone and then in Mr. Moss's office according to Mr. Moss and Plaintiff. While Plaintiff was in Mr. Moss's

office, Mr. Moss put them on a speaker phone. Neither Plaintiff nor Mr. Moss advised me that Plaintiff had already arranged a loan through Anderson Brothers Bank and delivered a check in the amount of approximately \$160,000 to the State Retirement System. In fact, our discussions included Plaintiff stating he may get a line of credit on his house in the future, but that he would need time to do so. At some point in the evening, Mr. Moss finally said he was looking for the City to pay to purchase Bailey's retirement service credit of about \$160,000.00. I told him that would not be feasible. Mr. Moss then advised that he was sorry that we could not reach a resolution. I then advised them that meant the involuntary termination would become effective.

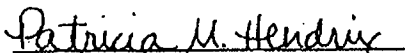
10. I then called Mr. Smithson to relay the information. Mr. Smithson determined he would make the termination effective on April 30, 2010. That would assure Plaintiff would qualify for Retiree Medical Coverage in accordance with City policy under which the City may pay the entire medical insurance premium for the employee and spouse because the employee would have worked for 20 continuous years for the City. On May 2, 2010, I emailed Mr. Moss and advised him of that fact. I did not know at the time that Plaintiff had purchased his retirement service credit and retired from employment with the City on April 30.

11. On May 24, 2010, I received an email from Mr. Moss which states, "If you were not aware, on the morning of April 30, 2010, and under a great deal of duress, Mr. Bailey elected to retire in the State's retirement system." This is the first time I learned that Plaintiff had retired on April 30, 2010. It was also the first time that I realized that Plaintiff had made false representations during the course of our negotiations, claiming that he was unable to arrange a loan and purchase his retirement credit when in fact he had already accomplished both.

[Signature page follows]


Stephen T. Savitz

Sworn to and subscribed before me
this 27th day of January, 2012.


Notary Public for South Carolina

My Commission Expires:

7-13-19

EXHIBIT C

REQUEST FOR CITY COUNCIL CONSIDERATION

Meeting Date: May 16, 2011

Agenda Item: 7. B.	Prepared By: Steve Thomas, Assistant City Manager
Agenda Section: New Business: Ordinance	Date: May 12, 2011
Subject: An ordinance to adopt revisions to the City of North Myrtle Beach Employee Personnel Manual	Division: Administration

Background:

Human Resources staff has recently begun a review of the city's employee personnel manual. This type of review must be performed periodically so that the policies and procedures contained in the manual coincide with generally accepted standards and procedures and provide for effective administration of the city's personnel system. In addition, the policies and procedures must be periodically reviewed so that they are updated in accordance with current federal or state law as well as standards established by federal or state court decisions.

The city's personnel manual states that the city's HR Officer and Assistant City Manager presents to the City Manager policies and revisions for his review and recommendation to City Council for final approval. The revisions proposed in this ordinance comprise the first in a series of proposed revisions for council review and consideration and they are outlined below:

1. Employee Grievance Procedure and Employee Grievance Committee (pg. 24-28 Personnel Manual)

For many years, the City of North Myrtle Beach has utilized an employee grievance procedure adopted in accordance with the "County and Municipal Employees Grievance Procedure Act," Section 8-17-110, et seq. of the Code of Laws of South Carolina, 1976. State law mandates substantial conformance with this Act for any cities or towns opting to adopt formal employee grievance procedures. A City of North Myrtle Beach employee who wishes to appeal certain disciplinary actions (suspension without pay, demotion, or discharge) or other employer decision related to his employment appeals through the "chain-of-command" until reviewed by the department head. An appeal to a decision of the department head is forwarded to an employee grievance committee appointed by the city manager who hears the appeal and makes a recommendation to the city manager who by state statute exercises the powers to make the final decision without further administrative hearing.

The City of North Myrtle Beach operates under Council-Manager form of government. Under this form of government, the city manager has statutory authority under SC Code Section 5-13-90 to appoint and remove all employees of the city and in practice the North Myrtle Beach city manager also approves any disciplinary actions that results in discharge or a loss of compensation for an employee. In effect then and as authorized under SC Code Section 8-17-

EXHIBIT C

160, the city manager is ultimately reviewing an appeal of his own decision through the employee grievance procedure.

In cities and towns which operate either under the Council or Mayor-Council form of government who employ an administrator (and many do), the mayor and council typically empower the administrator to administer all employee matters although they have statutory authority to do this themselves. For those municipalities who operate under Council or Mayor-Council forms that have opted to establish an employee grievance procedure per 8-17-110, the council or mayor respectively are authorized by state statute to review the recommendations of the employee grievance committee after the committee's review of the administrator's employment decisions.

Because the employee grievance procedure is more compatible with the Council and Mayor-Council forms of government as opposed to the Council-Manager form where, as indicated above, the city manager is ultimately reviewing an appeal of his own decision through the employee grievance procedure, the staff's recommendation is to remove from the Employee Personnel the section entitled Grievance Procedure beginning on the bottom of page 24 of the manual as well as the section entitled The Employee Grievance Committee on the top of page 26 and ending on the top of page 24. The City Attorney has consulted with the city's Labor and Employment firm and has confirmed that there is no legal requirement for the city to have a Grievance Procedure and the City can eliminate the same. Furthermore, staff recommends that language be added in the section entitled Rules of Conduct on the bottom of page 21 as highlighted below that clarifies the administrative appeals process the City has already established to address instances where an employee must be suspended or discharged:

Rules of Conduct.

"As is the case with all organizations, instances arise when an employee must be reprimanded, suspended, *placed on disciplinary probation*, demoted, or discharged. When this happens, a supervisor should turn in a report to *his department head* in which he outlines the circumstances involved and the action being taken. *The department head will confer with the Assistant City Manager who will review the report and in turn make recommendations to the City Manager for a final decision.* The supervisor is to show the report (with the exception or oral warnings and terminations) to the employee for his signature with the understanding that this only acknowledges that the employee has seen the report. The employee's signature does not necessarily indicate agreement with the contents of the report or the action taken, nor does it prevent appealing the action. The employee must sign the report.

If the employee refuses to sign the report he is suspended from work without pay and, if he does not sign the form by 5:00 p.m. at the end of his second full scheduled work day, he is presumed to have quit his job."

EXHIBIT C

2. Short Term Disability

The section of the Personnel Manual which outlines the employee extended sick pay benefit is somewhat unclear as to how many times the benefit can be provided per employee in a twelve month period. Staff recommends that the following highlighted language be added to that section of the Personnel Manual on page 50:

*"Any recurring extended absence during a 12-month period from the last day of absence resulting from the same illness or injury for which an initial absence resulted is treated as an extension of the original extended absence and payment of benefits will begin where the previous salary continuation ended. **Extended sick pay shall be provided to each qualifying employee only once during any 12-month period.**"*

3. Workers Compensation

Worker's Compensation coverage is provided by the city for city employees who are injured on the job and are not able to work. The state mandated compensation is equivalent to 66.667% of the employee's base pay which is free from federal or state tax and therefore intended to make the employee's compensation "whole" until they can return to work. Current city personnel policy allows an employee to use sick leave or extended sick leave pay to supplement worker's compensation pay while the employee is recovering from a work related injury; in effect then, this policy allows an employee to earn more while out on worker's compensation than while on the job resulting in additional and unnecessary expense for the city. Staff recommends that the following language found on page 50 of the Personnel Manual be removed:

~~"In connection with worker's compensation benefits, sick leave and extended sick leave are applicable. However, in no case can extended sick leave be used for more than 90 actual days of absence due to on-the-job injury."~~

~~While an employee's sick leave may be used to make up the difference in salary between his worker's compensation benefit and the employee's normal wages, the employee may receive no more than his base salary for the days he qualifies for sick leave.~~

~~After 90 days of extended sick leave, an employee on worker's compensation is required to qualify for long term disability, just like any other employee with a disability."~~

EXHIBIT C

In addition, staff recommends removal of the following language on pages 57 and 58 of the manual:

"If an employee has an accident during the course of employment, he is eligible to receive regular wages for seven (7) days. If unable to return to work after seven (7) days, Worker's Compensation will pay a portion of the employee's salary for a number of weeks as determined by law. ~~The employee may use sick leave or extended sick leave to make up the difference in full salary, if applicable. If an injured employee has used up all sick leave and has been removed from the City's payroll, he will receive only compensation from Worker's Compensation throughout the disability period.~~"

Recommended Action:

Motion to approve Ordinance on first reading.

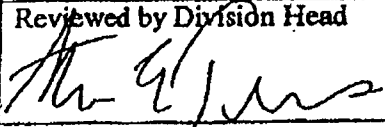
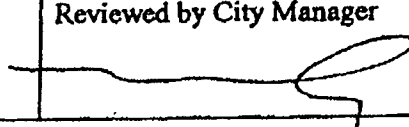
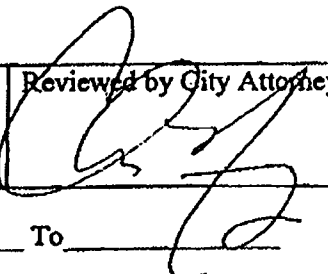
Reviewed by Division Head 	Reviewed by City Manager 	Reviewed by City Attorney 
Council Action: Motion By _____ 2 nd By _____ To _____		

EXHIBIT C

AN ORDINANCE

AN ORDINANCE TO AMEND THE CITY OF NORTH MYRTLE BEACH PERSONNEL MANUAL AS FOLLOWS:

CITY OF NORTH MYRTLE BEACH PERSONNEL MANUAL

1. SECTION IV. EMPLOYEE DEVELOPMENT

Grievance Procedure (pg. 24-26)

Remove subsection in its entirety.

The Employee Grievance Committee (pg. 26-28)

Remove subsection in its entirety.

Rules of Conduct (pg. 21, add italicized)

"As is the case with all organizations, instances arise when an employee must be reprimanded, suspended, *placed on disciplinary probation, demoted, or discharged.* When this happens, a supervisor should turn in a report to *his department head* in which he outlines the circumstances involved and the action being taken. *The department head will confer with the Assistant City Manager who will review the report and in turn make recommendations to the City Manager for a final decision.* The supervisor is to show the report (with the exception or oral warnings and terminations) to the employee for his signature with the understanding that this only acknowledges that the employee has seen the report. The employee's signature does not necessarily indicate agreement with the contents of the report or the action taken, nor does it prevent appealing the action. The employee must sign the report.

EXHIBIT C

If the employee refuses to sign the report he is suspended from work without pay and, if he does not sign the form by 5:00 p.m. at the end of his second full scheduled work day, he is presumed to have quit his job."

2. SECTION VII. EMPLOYMENT BENEFITS

(a) Short Term Disability (pg. 50, add italicized)

"Any recurring extended absence during a 12-month period from the last day of absence resulting from the same illness or injury for which an initial absence resulted is treated as an extension of the original extended absence and payment of benefits will begin where the previous salary continuation ended. *Extended sick pay shall be provided to each qualifying employee only once during any 12-month period.*"

(b) Short Term Disability (pg. 50, remove strikethrough)

~~"In connection with worker's compensation benefits, sick leave and extended sick leave are applicable. However, in no case can extended sick leave be used for more than 90 actual days of absence due to on-the-job injury.~~

~~While an employee's sick leave may be used to make up the difference in salary between his worker's compensation benefit and the employee's normal wages, the employee may receive no more than his base salary for the days he qualifies for sick leave.~~

~~After 90 days of extended sick leave, an employee on worker's compensation is required to qualify for long-term disability, just like any other employee with a disability."~~

EXHIBIT C

(c) Worker's Compensation (pgs. 57-58, remove strikethrough)

"If an employee has an accident during the course of employment, he is eligible to receive regular wages for seven (7) days. If unable to return to work after seven (7) days, Worker's Compensation will pay a portion of the employee's salary for a number of weeks as determined by law. ~~The employee may use sick leave or extended sick leave to make up the difference in full salary, if applicable. If an injured employee has used up all sick leave and has been removed from the City's payroll, he will receive only compensation from Worker's Compensation throughout the disability period.~~"

**NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL
FOR THE CITY OF NORTH MYRTLE BEACH SOUTH CAROLINA:**

Section 1. Council authorizes that the Employee Personnel Manual be amended as provided above.

Section 2. This ordinance shall become effective upon the date of passage.

DONE, RATIFIED AND PASSED THIS THE ____ DAY OF _____, 2011

Mayor Hatley

First Reading: _____

Second Reading: _____

APPROVED AS TO FORM:

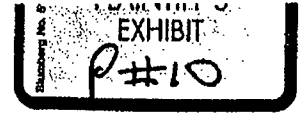
CITY ATTORNEY

ATTEST:

City Clerk

REVIEWED:

CITY MANAGER



B. Police Officers/PSO and Firefighters.

All full-time police personnel, firefighters, detectives, and communication/detention personnel are eligible for retirement under the South Carolina Police Officers Retirement Fund. The state plan also has a five-year vesting period with normal retirement after 25 years of service or at age 55 with at least 5 years of service. All contributions are deferred for tax purposes and both the City and the employee contribute to the retirement fund.

"NOTE: The terms of this benefit are subject to change".

Deferred Compensation. The City offers a Section 457 Deferred Compensation program to all employees. Deferred compensation is a program that allows the employee to save and invest for retirement through the ICMA Retirement Corporation.

Health Insurance.

The City participates in the South Carolina Local Government Assurance Group, which is a self-funded major health insurance plan. Because it is self-funded in order to minimize premium cost, it is important that each employee use the insurance wisely.

Dependent coverage is provided for an additional contribution. A prescription drug card is also provided for each employee with major medical insurance coverage. (A co-pay applies to each prescription eligible under the drug card.) A full schedule of benefits under the City's health plan is available from Personnel. The City is free to select any carrier in providing health coverage. A \$10,000 life insurance policy may be provided through the major medical insurance policy.

"NOTE: The terms of this benefit are subject to change".

Retiree Medical Coverage.

- Any employee who retires (within the definition of retirement in the retirement plan) under a qualified retirement plan of the City with at least 10 years of service has the option of extending his medical coverage for himself and spouse, if his spouse has been covered during the last year of his employment.
- Any employee retiring under a qualified retirement plan with at least 20 years of continuous service also has the option of extending his medical coverage for himself and spouse, if his spouse has been covered during the last year of his employment. For retirees with 20 or more years of service, City Council may, at its discretion, subsidize the monthly cost of

medical coverage at a rate not to exceed the actual cost of coverage. The rate of such subsidy will be set by Council each year during annual budget deliberations. For purposes of this policy, disability retirement is a qualified retirement event with years of service noted above.

- In any case, the employee who retires and extends health coverage is responsible for paying the premium cost of his insurance on a monthly basis, plus whatever surcharge is placed on such coverage.

"NOTE: The terms of this benefit are subject to change".

Group Dental Benefits.

The City offers group dental benefits through the South Carolina Local Government Assurance Group. The dental plan is an adjunct to the medical plan and also is a self-funded program. Employee coverage is paid for by the City. Dependent coverage is available for an additional payroll deduction.

"NOTE: The terms of this benefit are subject to change".

COBRA

If you lose coverage due to termination of employment or reduction of hours, or you dependents are no longer eligible for coverage, coverage for you and/or your dependents may be continued under the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA").

COBRA regulations require that qualified beneficiaries notify the plan of a qualifying event. In the event of a divorce, legal separation, disability, or if a dependent loses eligibility under the plan (usually when the dependent reaches a certain age), the qualified beneficiary must notify the plan within 60 days. If the Social Security Administration rules that a qualified beneficiary is no longer disabled, the qualified beneficiary must notify the plan within 30 days. Proper notification should be in writing and addressed to:

Medical Claims Management Corporation
P.O. Box 12995
Charlotte, NC 28220-2995

The special rules and regulations governing continuation of coverage under COBRA are described in the NOTICE OF RIGHT TO ELECT CONTINUATION OF COVERAGE (COBRA). If you need additional information, you may contact the benefits office.

**DEFENDANT'S
EXHIBIT**

00317

Dirk Aydlette

From: Ken R. Moss [krmosse@mcgouganlawfirm.com]
Sent: Monday, May 24, 2010 10:00 AM
To: Stephen T. Savitz
Subject: RE: Extension of time to file Grievance

Steve,

I will try to contact Chris today.

Kenneth R. Moss

CIRCULAR 230 DISCLOSURE: To comply with Treasury Department regulations, we inform you that, unless otherwise expressly indicated, any tax advice contained in this communication (including any attachments) is not intended or written to be used, and cannot be used, for the purpose of (i) avoiding penalties that may be imposed under the Internal Revenue Code or any other applicable tax law, or (ii) promoting, marketing or recommending to another party any transaction, arrangement, or other matter.

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Please consider the environment before printing this email.

From: Stephen T. Savitz [mailto:ssavitz@gsblaw.net]
Sent: Monday, May 24, 2010 9:53 AM
To: Ken R. Moss
Cc: Noury, Chris; Linda P. Edwards
Subject: RE: Extension of time to file Grievance

Ken,

Thank you for the update. I was not aware that William had bought the additional five years of service in order to retire into the state's system. If I am correct in my assumption that he bought the five additional years and retired on April 30th, my understanding is that he will be covered by the City's retirement policy. Does anyone at the City know about the retirement? I recommend your contacting Chris to assure the process is smooth today when William comes to City Hall.

Thanks,

Steve

Stephen T. Savitz

900 Elmwood Avenue, Suite 100

Columbia SC 29201

☎ 803.799.9311 • 📠 803.254.6951

✉ ssavitz@gsblaw.net

EXHIBIT

B



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From: Ken R. Moss [mailto:krmoss@mcgouganlawfirm.com]
Sent: Monday, May 24, 2010 8:42 AM
To: Stephen T. Savitz
Cc: Noury, Chris; Linda P. Edwards
Subject: RE: Extension of time to file Grievance

Thanks for your email Steve. I confirm that notice to me is sufficient to notify Mr. Bailey that his five days in which to demand a grievance hearing begins today and ends on Friday of this week. I do anticipate that we will be demanding a grievance hearing.

I do not quite understand the notion that the City would pay for Mr. Bailey's insurance for the month of May. I really do not believe that any notice this week would be effective to terminate Mr. Bailey's insurance at the end of May. After all, we are in the last week of May. In any event, I believe that a COBRA notice is unnecessary, as we assert that the City is obligated to continue to provide health insurance for Mr. Bailey, and to make the insurance available to his family members per the Personnel Policy. If you were not aware, on the morning of April 30, 2010, and under a great deal of duress, Mr. Bailey elected to retire in the State's retirement system. Mr. Bailey did so at great expense to himself, but did so in order to mitigate his losses. Obviously we will seek to recover those expenses in Mr. Bailey's lawsuit.

I have asked Mr. Bailey to visit the City's HR department today in order to sign whatever documents are required for him to participate in the City's group insurance, as a retiree. Accordingly, I do not feel that any new COBRA notice is necessary.

I will copy you on Mr. Bailey's demand for a grievance hearing.

Thanks.

Kenneth R. Moss

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NEWS - LOCAL

Wednesday, Jun. 02, 2010

North Myrtle Beach's Bailey secures retirement

NMB's plan to fire ex-safety director comes a day late

By David Wren - dwren@thesunnews.com

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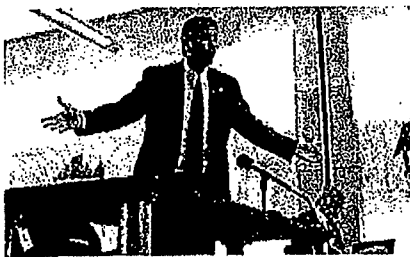
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TEXT ALERTS
 MY YAHOO!

NORTH MYRTLE BEACH -- A discrepancy over William Bailey's employment anniversary helped this city's former public safety director retire just as he was about to be fired, according to Little River lawyer Kenneth Moss.

Bailey now will receive a full state pension and city-paid health insurance, according to Moss - who represents Bailey - and a statement issued Tuesday by city spokeswoman Nicole Alello.

The 48-year-old Bailey will receive city-paid health insurance until he qualifies for Medicare, according to city policy.



Former North Myrtle Beach Public Safety Director William Bailey makes a point during a grievance hearing after filing a harassment complaint against City Manager John

Bailey needed to hit his 20-year employment anniversary to qualify for the retirement and health benefits.

City officials have said Bailey's anniversary date was April 30. Moss said the state's Police Officers Retirement System listed April 29 as the anniversary date.

Bailey filed his retirement paperwork when the state office opened at 8:30 a.m. on April 30, Moss said - before City Manager John Smithson could take any threatened disciplinary action.

"We were still negotiating with the city at the time William drove to Columbia," Moss said. "The city didn't even know he had retired."

The state retirement system notified city officials of Bailey's retirement late last month, according

to Alello.

Moss said Bailey received his first retirement check on Saturday.

Smithson, in the week leading up to Bailey's retirement, had threatened to fire Bailey if he did not resign by the afternoon of April 29, which was a Thursday.

However, that deadline passed without Smithson taking action, Moss said, giving Bailey the opportunity to drive to Columbia the next morning.

It is not clear why Smithson allowed Bailey to remain employed beyond the deadline, thereby allowing him to qualify for retirement.

Moss said Smithson's ultimatum was an attempt to force Bailey to give up his state retirement benefits, but the firing threat came too late.

DEFENDANT'S EXHIBIT

"John Smithson was wrong on his dates," Moss said. "He should have looked at his own cards if he was going to play that poker game."

City officials have not explained Bailey's departure. Aiello issued a one-sentence news release on May 1 that stated Bailey no longer worked for the city, but she provided no details and did not respond to questions.

The state's retirement system requires workers to have 25 years of service for full pension benefits. Employees can buy up to five years of service by making a lump-sum payment to the system that equals 35 percent of the employee's highest annual salary for each year purchased.

That amounted to about \$170,000 for Bailey, according to the state formula. Moss said Bailey made that payment when he filed for retirement on April 30. Bailey would not have been able to buy out his final five years if his employment had been terminated the previous day.

It is not clear how much money Bailey will receive because there are several payment plan options from which he could choose. Bailey's retirement pay will be based on his salary as public safety director, which was \$97,331 per year.

Smithson demoted Bailey to lieutenant and cut his pay in January because he said the former public safety director lied about how his police handgun had been stored on the night it was stolen from the glove compartment of his unlocked truck.

Bailey filed a grievance to object to his demotion and a hearing was held on April 19. Smithson said during that hearing that Bailey told him the glove compartment was locked. An investigation later revealed that the glove compartment has no lock.

Bailey said during the hearing that he told Smithson the gun was secured, but never used the word "locked."

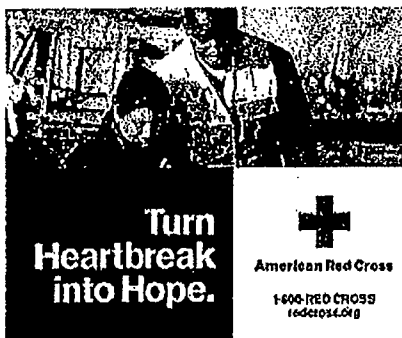
A separate SLED inquiry focuses on whether Bailey improperly changed a criminal domestic violence charge to simple assault and battery for the daughter of a political supporter of Mayor Marilyn Hatley.

SLED spokeswoman Jennifer Timmons did not respond to a question about the status of that inquiry on Tuesday.

Bailey's police handgun was stolen from his truck on Dec. 21, according to an Horry County police incident report. The Sun News inquired about the theft on Dec. 28 and Smithson suspended Bailey two days later, saying he lied about how the gun was stored.

Bailey's retirement capped a contentious year within the city's public safety department in which at least five other police officers were fired or forced to resign.

Some of those firings were related to a former officer's secretly recorded conversations that included descriptions of Bailey and others making police decisions based on political



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alliances. The conversations also included officers making vulgar sexual comments about female co-workers and crime victims.

A survey of public safety employees conducted this year showed most of them fear for their jobs, do not trust their bosses and work in an environment of intimidation. While those concerns were heightened by recent news stories, the survey showed the problems have existed within the department for years. Contact DAVID WREN at 628-0281

Similar stories:

Bailey files wrongful discharge lawsuit against North Myrtle Beach
Date discrepancy helped North Myrtle Beach's Bailey retire
Bailey files suit against North Myrtle Beach
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w4ddrejohn wrote on 06/03/2010 10:42:47 PM

WELL.....WELL...WELL... "WONDERING WHY SMITHSON DID NOT FIRE BAILEY EARLIER ?" THE DEALS THAT ARE CUT BEHIND THE SCENES ARE NOTHING NEW AT NMB. SMITHSON DOES NOT CARE, HE IS OUT OF THERE SOON, SO WHO CARES WHAT THE PUBLIC SAYS ABOUT HIM. JUST ANOTHER CORRUPT DEAL IN NORTH MYRTLE BEACH.

Recommend (0) Report abuse



steyngln wrote on 06/03/2010 06:40:41 AM

What happens if the SLED inquiry turns into charges/conviction against Mr Bailey? Can this affect his pension?

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Poll: Who do you think will win the SEC this season?
» Sun, 29 Aug 2010 22:55 EDT

Poll: How worried are you about the egg recall?
» Mon, 23 Aug 2010 16:09 EDT

Poll: Will you use layaway this year?
» Thu, 19 Aug 2010 18:59 EDT

Poll: Who do you think is the champion of college football this season?
» Sat, 21 Aug 2010 17:13 EDT

Poll: Should concrete batch plants near residential

Hurricane Earl lashes Caribbean, threatens Carolinas
Together for 61 years, couple dies hours apart
Traffic checkpoint on U.S. 17 yields 14 arrests, 43 citations
2-year-old Calif. boy killed by car in SC driveway
Man assaulted while doing yardwork in Myrtle Beach
Roger Clemens pleads not guilty to charge of lying; expected to play golf in Myrtle Beach area
Checkpoint planned for tonight
Facts blur in North Myrtle Beach inquiry
World Amateur Handicap Championship to pack Myrtle Beach area
Teen motorcycle racer killed in crash at Indy

Local Shopping

10-4 PT
20/20 Eyewear (2)
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Affordable Blinds Shutters & Wicker (2)
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Affordables
Alabama Theatre
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Anheuser-Busch Companies, Inc.
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Local Shopping

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Affordable Dentures
Affordables
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American Business Direct



THE MCGOUGAN LAW FIRM, LLC
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 LITTLE RIVER, SOUTH CAROLINA 29566
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 DRC-Certified Family Financial Mediator

D.F. MCGOUGAN, JR.
 (1921 - 1994)

July 05, 2010

Linda Pearce Edwards, Esquire
 Gignilliat, Savitz & Bettis, LLP
 900 Elmwood Avenue, Suite 100
 Columbia, South Carolina 29201

Re: **William H. Bailey, Jr. vs. City of North Myrtle Beach et al.**
My File SC-3922-004

Dear Linda:

I write in response to your letter of July 02, 2010. In that letter you incorrectly assert that Mr. Bailey's election to draw upon his accumulated retirement benefits somehow disentitle him to a hearing before the City's Grievance Committee. In support of that assertion you alleged that there are "decided cases" in South Carolina that support your assertion that the City Manager may ignore the provisions of S.C. Code Ann. § 8-17-150, which mandates that he "shall" convene a grievance committee hearing. You further asserted in your letter that the City Manager plans to organize a "public hearing" at which my client will be able speak to the City Manager (and no-one else) concerning issues limited to a scope you have designated. Nonsense.

First, I have to tell you that a comprehensive search of Westlaw for all decided South Carolina and Fourth Circuit cases citing to S.C. Code § 8-17-150 produces one and only one case result. That case is *Bunting v. City of Columbia*, 639 F.2d 1090 (4th Cir. 1981), in which the Court held that former policemen for the City were entitled to a grievance hearing pursuant to S.C. Code Ann. § 8-17-150. The City appealed the District Court's finding that the former employees were entitled to a grievance hearing: the Fourth Circuit affirmed the ruling of the District Court. 639 F.2d 1092. So while I find that the assertions contained in your letter are unsupported by any case law that you asserted exists, I do thank you for pointing me in that direction. I do feel that the *Bunting* opinion will be helpful to Mr. Bailey's claims.

Next, I find disingenuous the notion that any sort of due process or fairness could occur in a situation where my client is only allowed to have the City Manager preside over a public hearing at which the City Manager sets the scope of matters to be raised and determines the hearing rules,

July 05, 2010

*Linda Pearce Edwards, Esquire
Gignilliat Savitz & Bettis, LLP
Page 2 of 2*

while himself being the subject of the complaints being aired. Not only do I find that disingenous in the extreme, I find it unsupported by any provision of the South Carolina Code or the Ordinances of the City of North Myrtle Beach. I do understand that your firm believes the City Manager has all the authority of the City Council in day-to-day operations pursuant to S.C. Code Ann. § 8-17-160. I also understand that Mr. Smithson feels entitled to make up rules and procedure that suits him. However, I sincerely doubt the City Council would endorse this proposed use of taxpayer money, if they were asked.

My client and I will not participate in any "public hearing" of the sort suggested in your letter. We believe the better forum is now a proper courtroom, not a kangaroo court where the City Manager sets the rules, and is judge and jury while also being the accused.

With kind personal regards, I am

Sincerely yours,


Kenneth R. Moss

cc. Client
Chris Noury, Esq. City Attorney

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS

William H. Bailey, Jr.,)
Plaintiff,)

C.A. No. 2010-CP-26-5964

vs.)

MOTION TO DISMISS

City of North Myrtle Beach, a South)
Carolina municipal corporation,)
Defendant.)

HORRY COUNTY
10 JUL 30 PM 2: 55
MELANIE HUGGINS-WARD
CLERK OF COURT

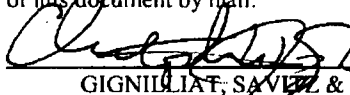
Defendant City of North Myrtle Beach ("City") moves pursuant to Rule 12(b)(6), S.C.R.Civ.P., for an Order dismissing the Complaint for failure to state facts sufficient to constitute a cause of action. Specifically, Plaintiff retired in lieu of discipline and, therefore, his lawsuit is barred by the South Carolina Supreme Court's holding in *Eubanks v. Smith*, 354 S.E.2d 898 (S.C. 1987).

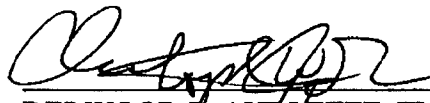
This motion is supported by the pleadings on file, a memorandum of law to be submitted, and such oral argument as the Court may allow.

July 29, 2010
mot-dis.wpd

Certificate of Service

I hereby certify that on the date indicated above, I caused to be served on counsel of record a true and correct copy of this document by mail.


GIGNILLIAT, SAVITZ & BETTIS, L.L.P.


DERWOOD L. AYDLETTE, III (SC Bar 13011)
CHRISTOPHER W. JOHNSON (SC Bar 68524)
GIGNILLIAT, SAVITZ & BETTIS, L.L.P.
900 Elmwood Avenue, Suite 100
Columbia, South Carolina 29201
Phone: (803) 799-9311 / Fax: (803) 254-6951
Email: daydlette@gsblaw.net
cjohnson@gsblaw.net

ATTORNEYS FOR DEFENDANT

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS

William H. Bailey, Jr.,)

C.A. No. 2010-CP-26-5964

Plaintiff,)

vs.)

City of North Myrtle Beach, a South)
Carolina municipal corporation,)

Defendant.)

DEFENDANT'S MOTION TO DISMISS

Pursuant to Rule 12(c), S.C.R.Civ.P., Defendant City of North Myrtle Beach)

moves to dismiss the above captioned action. The grounds for the City's motion are as follows:)

1. This Court held on November 22, 2011 that Plaintiff's cause of action for injunctive relief was moot because the City has repealed its Grievance Procedure.
2. On July 23, 2012, a hearing was held in which the Court determined that:
 - a. the scope of the Court's November 22, 2011 Order was limited to the cause of action for injunctive relief; and,
 - b. the cause of action for declaratory relief remained untouched by the Order.
3. Plaintiff's cause of action for declaratory relief seeks the following:
 - a. a declaration that the City Manager has no authority under the South Carolina Code or City ordinances to deny Plaintiff a hearing before the City Grievance Committee;
 - b. a declaration that the City Manager has no authority to instead offer Plaintiff a "public hearing" other than the grievance hearing; and,

HORRY COUNTY
 12 JUL 31 AM 9:10
 MELANIE HUGHES-WEED
 CLERK OF COURT

- c. a declaration that the City's counsel may be enjoined from representing, advising, counseling or instructing the Grievance Committee.
- 4. Insofar as the cause of action for declaratory relief seeks a determination that the City's counsel may be enjoined from advising the Grievance Committee, such cause of action is moot because the City has repealed its Grievance Procedure and, accordingly, no justiciable controversy exists.
- 5. Insofar as the cause of action for declaratory relief seeks a determination that the City Manager lacks authority to deny Plaintiff a grievance or offer him a public name clearing hearing, no justiciable controversy exists because:
 - a. the City has repealed its Grievance Procedure, no law requires it to have a Grievance Procedure, and repeals operate retrospectively. *See Power v. McNair*, 255 S.C. 150, 177 S.E.2d 551 (1970) (no justiciable controversy); S.C. Code § 8-17-120 (permitting but not requiring establishment of grievance procedures and committees); *South Carolina Dept. of Natural Resources v. McDonald*, 367 S.C. 531, 535, 626 S.E.2d 816, 818 (Ct. App. 2006) (retrospective effect of repeals).
 - b. adjudication of the question would not serve to settle legal rights of the parties and, therefore, would be merely advisory because nothing in the record binds the Grievance Committee or City Manager to provide Plaintiff the relief he would seek from the them, *i.e.*, reinstatement to employment. *See Power, supra*; *Orr v. Clyburn*, 277 S.C. 536, 290 S.E.2d 804 (1982) (advisory nature of relief sought by Plaintiff); S.C. Code § 8-

17-140 (grievance committee makes recommendations only, individual with employment and discharge authority retains final decision); S.C. Code § 5-13-90 (1) (vesting power of employment and discharge in city manager); *Dew v. City of Florence*, 279 S.C. 155, 303 S.E.2d 664 (1983) (discussing role of grievance committee and city manager under state law).

c. Plaintiff has notified the City that he does not want a name clearing hearing, and the City has no intention, and has expressed no intention, of granting Plaintiff a hearing he does not want.

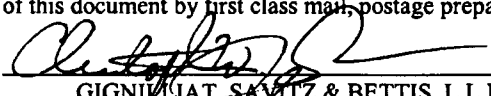
6. There being no justiciable controversy and no cause of action for declaratory relief, the City is entitled to an Order dismissing Plaintiff's Complaint in its entirety.

This motion is supported by the pleadings on file with the Court, any memoranda of law to be submitted, and such oral argument as the Court may allow.

July 26, 2012
Mot-Dis2.wpd

Certificate of Service

I hereby certify that on the date indicated above, I caused to be served on counsel of record a true and correct copy of this document by first class mail, postage prepaid.


GIGNILLIAT, SAVITZ & BETTIS, L.L.P.


DERWOOD L. AYDLETTE, III (SC Bar 17011)
CHRISTOPHER W. JOHNSON (SC Bar 68524)
GIGNILLIAT, SAVITZ & BETTIS, L.L.P.
900 Elmwood Avenue, Suite 100
Columbia, South Carolina 29201
Phone: (803) 799-9311 / Fax: (803) 254-6951
Email: daydlette@gsblaw.net
cjohnson@gsblaw.net

ATTORNEYS FOR DEFENDANT

STATE OF SOUTH CAROLINA)

COUNTY OF HORRY)

William H. BAILEY, Jr.)

Plaintiff,)

-vs.-)

CITY OF NORTH MYRTLE BEACH,)
a South Carolina municipal corporation,)

Defendant.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION No. 2010-CP-26-5964**NOTICE OF MOTION AND
MOTION FOR RECONSIDERATION**FILED
HORRY COUNTY
2012 NOV 26 AM 8:10
MELANIE HUGGINS-REARD
CLERK OF COURT

TO THE DEFENDANT ABOVE NAMED, by and through its attorneys of record
Derwood L. Aydlette, III, and Christopher W. Johnson, Gignilliat Savitz & Betis, LLP, 900
Elmwood Avenue, Suite 100, Columbia SC 29201:

TAKE NOTICE THAT ON THE TENTH DAY AFTER SERVICE HEREOF, or at
such other time as the Court may schedule a hearing on this matter, the Plaintiff will move before
the Court for Reconsideration of the Court's Order dated November 13, 2012 finding [1] that the
matter presented no justiciable controversy, and [2] that the Plaintiff was not entitled to a
grievance hearing. The undersigned has prepared and caused to be filed this motion
notwithstanding that the Court's Order has not yet been served upon the undersigned pursuant to
the South Carolina Rules of Civil Procedure.

The grounds for these Motions shall be such as the Court may allow at the hearing of
these matters, and include but not be limited to the law of South Carolina, the Rules of Civil
Procedure, and such oral argument as the Court may allow at the hearing of these matters,
including but not limited to the following:

1. **The Court erred in finding that no justiciable controversy exists:**

To state a cause of action under the Declaratory Judgment Act, a party must demonstrate a
justiciable controversy; a justiciable controversy exists when a concrete issue is present, there is
a definite assertion of legal rights and a positive legal duty which is denied by the adverse party.
Pond Place Partners, Inc. v. Poole, 351 S.C. 1, 567 S.E.2d 881 (App. 2002); S. C. Code Ann. §
15-53-30 (determination of issues may include municipal ordinances).

In the present case, the Plaintiff sought to have the Court determine his grievance rights under a City Ordinance in effect at the time of his termination and in effect at the time of the filing of his Complaint. The State Legislature found that public policy was served by a uniform procedure to resolve grievances of county and municipal employees arising from their public employment, in order to contribute to more harmonious relations between public employers and public employees and result in an improvement in public service, and that any municipality which adopted a grievance resolution plan or procedure shall substantially conform its procedures to the guidelines set forth in the State statute; S.C. Code Ann. §§ 8-7-110, 8-17-120.

The Defendant abolished all employee grievance review procedures during the pendency of this present action, with this very case in mind. That action flies in the face of the statement of public policy set forth by the State General Assembly, in addition to showing a flagrant attempt by the City to undermine this Court's authority and jurisdiction.

In *Sloan v. Greenville County*, 356 S.C. 531, 590 S.E.2d 338 (App. 2003), a taxpayer brought a declaratory judgment action against the county government, alleging the county failed to comply with ordinances governing procurement of construction services on three public works projects. The defendant county government asserted the cases were not justiciable (in part) because the issues were moot – the public works projects had been completed. 356 S.C. 543, 590 S.E.2d 345. The Court of Appeals held, however, that there remained a justiciable controversy even though the particular projects had become a moot issue as they had all been completed prior to trial; the issue of compliance with the procurement ordinances was a matter of public importance, the issue was capable of repetition and it was improbable that similar challenges could navigate the litigation process before the question at issue became an academic one. 356 S.C. 555, 590 S.E.2d 351; *Ashmore v. Greater Greenville Sewer District*, 211 S.C. 77, 44 S.E.2d 88 (1947) (Justiciable controversy continued to exist over matters of public interest concerning the actions of a governmental agency, even though the original issue had become moot).

2. **If no justiciable controversy existed, the Court erred in finding that the Plaintiff was not entitled to a grievance hearing because he had retired in lieu of being terminated.**

If no justiciable controversy existed and the case was indeed moot, the Court cannot then determine other issues between the parties. I therefore constitute error by the Court to declare that the Plaintiff was not entitled to a grievance hearing because he had retired. Additionally, the

finding of the Court that the Plaintiff retired in lieu of being terminated flies directly in the face of the only probative evidence before the Court. The only sworn testimony submitted and heard by the Court concerning the discussions between the Plaintiff and the (former) City Manager on April 28, 2010 came from those two individuals. Both swore that the Plaintiff would be terminated if he did not resign; both swore that he refused to resign. The City Manager also testified before the South Carolina Department of Employment and Workforce, after the City had full knowledge of the Plaintiff having sought to draw on his State retirement benefits, that the Plaintiff had been terminated from employment with the City by the (former) City Manager.

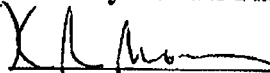
As the Court itself recognized, there is other litigation between the parties concerning the separation from employment of the Plaintiff from the City. This Honorable Court erred in making any finding as to the subsequent events that occurred (or are alleged to have occurred), since this Court found first that it lacked jurisdiction to decide any issue between the parties other than whether there was a justiciable controversy.

"If a decision by the trial court may affect future events, or have collateral consequences for the parties, an appeal from that decision is not moot, even though an appellate court cannot give effective relief in the present case" Curtis v. State, 345 S.C. 557, 568, 549 S.E.2d 591, 596 (2001); Holden v. Cribb, 349 S.C. 132, 138, 561 S.E.2d 634, 638 (Ct. App. 2002). The issue of whether the Plaintiff somehow made moot his rights to seek monetary redress for termination of his employment was not an issue before the Court in this Declaratory Judgment action, but the Court's unsupported finding concerning whether the Plaintiff retired in lieu of being terminated has significant collateral consequences in another action pending between the parties.

ACCORDINGLY, the Plaintiff respectfully moves the Court for Reconsideration of its Order dated November 13, 2012.

Respectfully submitted.

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Dated: November 21, 2012

Sec. 1-1. - How Code designated and cited.

The ordinances embraced in this and the following chapters and sections shall constitute and be designated the "Code of Ordinances, City of North Myrtle Beach, South Carolina" and may be so cited; it may also be cited as the "North Myrtle Beach Code."

State law reference— Codification required, S.C. Code 1976, § 5-7-290.

Sec. 1-4. - Effect of repeal or expiration of ordinance.

The repeal of an ordinance, or its expiration by virtue of any provision contained therein, shall not affect any right accrued, any offense committed, any penalty or punishment incurred or any proceeding commenced before the repeal took effect or the ordinance expired.

When an ordinance which repealed another shall itself be repealed, the previous ordinance shall not be revived without express words to that effect.

Sec. 17-2. - Employee personnel manual incorporated by reference.

The employee personnel manual for the city, adopted by the council, copies of which are on file in the city clerk's office, is hereby incorporated herein by reference and made a part hereof, including all amendments thereto.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

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August 19, 2013

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY

Court of Common Pleas

Honorable William Jeffrey Young, Presiding Judge

Case No. 2010-CP-26- 05964

Appellate Case No. 2013-000195

RECEIVED

AUG 20 2013

SC COURT OF APPEALS

William H. Bailey, Jr. *Appellant,*

v.

City of North Myrtle Beach,
a South Carolina Municipal Corporation *Respondent.*

PROOF OF SERVICE

I certify that I have served a copy of the **Record on Appeal** in the above-captioned appeal of the following individuals by United States Mail, with sufficient first-class postage affixed, addressed as follows:

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*** signature page follows ***

Respectfully submitted,

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& MOSS, PLLC**

A handwritten signature in black ink, appearing to read "K. R. Moss", is written over a horizontal line.

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