

THE STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM CHESTERFIELD COUNTY  
Court of Common Pleas

RECEIVED

MAR 29 2019

Case No. 2018-CP-13-00621

Appellant Case No. 2019-000147

S.C. SUPREME COURT

Glenn Odom, ..... Respondent,

v.

Town of McBee Election Commission and  
Shilon Green, ..... Appellants.

APPELLANTS' MOTION FOR LEAVE  
TO SUPPLEMENT THE RECORD ON APPEAL

Pursuant to Rule 240(a), SCACR and 212(b), SCACR, Appellant Town of McBee Election Commission ("MEC") and Shilon Green ("Green") request leave of Court to supplement the Record on Appeal with certain documents that were not included in the original Record on Appeal that rebut a contention made by Respondent Glenn Odom ("Odom") in his Final Brief of Respondent.

## **BACKGROUND<sup>1</sup>**

On March 13, 2019, Appellants filed their Brief of Appellants. In Appellants' Brief, one of Appellants' arguments was that Odom failed to preserve the issue of challenging the election under S.C. Code Ann. § 7-13-810 and 830 because he never informed the MEC he was filing his appeal under those code sections. On March 26, 2019, Respondent filed Final Brief of Respondent. In his Final Brief of Respondent, Odom, responding to the argument that he did not preserve the argument that he was appealing under S.C. Code Ann. § 7-13-810 and 830, argued that the MEC must not have believe the contest was being made under S.C. Code Ann. § 5-15-130 because it did not conduct the hearing within forty-eight hours of the filing of the Notice of Contest.

This argument is directly contradicted by both the Notice of Hearing which was created by the MEC and e-mailed to counsel for Odom and Green, and by e-mails in which counsel for Odom and Green directly request the MEC to continue the hearing until September 25, 2018 (Exhibit 1).

## **ARGUMENT**

Except as provided by Rule 212 and Rule 208(b)(1)(C) and (2), the appellate court will not consider any fact which does not appear in the Record on Appeal. S.C. R. A. Ct., Rule 210(h). Without consent of all attorneys of record, "a party desiring to supplement the Record on Appeal must move the appellate court for leave to do so." S.C. R. A. Ct., Rule 212(b). Counsel for Odom has refused to consent to allow the MEC to supplement the Record on Appeal to include the Notice of Hearing and the e-mail exchange where Green and Odom jointly requested the MEC continue the Hearing until September 25, 2018.

---

<sup>1</sup> For a more detailed factual and procedural background, Appellants would rely upon the Background section in their Brief of Appellants.

In Final Brief of Respondent, counsel for Odom argued that the MEC must have believed that the hearing was not being conducted under S.C. Code Ann. § 5-15-130 because it failed to conduct the hearing within forty-eight hours of the filing of the notice of contest. Setting aside the fact that the hearing was started within forty-eight hours of the filing of the notice of contest under the South Carolina Rules of Civil Procedure, counsel for Green and Odom jointly requested the MEC continue the hearing past September 10, 2018 in an e-mail dated September 10, 2018 at 10:55 a.m.

Additionally, from the very beginning the MEC and Odom understood the Notice of Contest had been filed under S.C. Code Ann. § 5-15-130 as the Notice of McBee Election Protest, which was e-mailed to counsel for both Odom and Green clearly stated that Odom had filed his Notice of Contest pursuant to S.C. Code Ann. § 5-15-130.

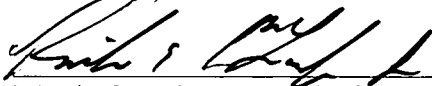
While these documents were not submitted to the circuit court as part of the initial appeal, Odom did not attempt to argue during those proceedings that the MEC did not understand the code provisions under which it was holding the proceeding were anything other than S.C. Code Ann. § 5-15-130. With Odom making this new allegation, the MEC should be permitted to rebut it with the clear evidence showing his own actions, not the MEC's lack of understanding of the code provision under which the hearing was being held, was the reason the hearing occurred on September 25, 2018. It would be inequitable to allow a party to open the door to make such an allegation while denying the opposing party the right to rebut it with evidence showing the clear error in the argument.

### **CONCLUSION**

Because Odom has alleged for the first time that the MEC did not believe that the Notice of Contest Hearing was being conducted under S.C. Code Ann. § 5-15-130 because it did not

hold the hearing within forty-eight hours of the filing of Odom's Notice of Contest, the MEC should be allowed to supplement the Record on Appeal and produce documents showing both that the Notice of Contest Hearing was continued to September 25, 2018 at Odom's request, and that the MEC's understanding from the very beginning was that Odom's Notice of Contest was being filed under S.C. Code Ann. § 5-15-130.

**SWEENEY, WINGATE & BARROW, P.A.**



Martin S. Driggers, Jr. (S.C. Bar No. 13668)  
Richard E. McLawhorn, Jr. (S.C. Bar No. 100179)  
115 Cargill Way, Suite B  
Hartsville, South Carolina 29211  
T: (803) 256-2233  
F: (803) 256-9177  
[msd@swblaw.com](mailto:msd@swblaw.com)  
[rem@swblaw.com](mailto:rem@swblaw.com)

**ATTORNEYS FOR TOWN OF MCBEE  
MUNICIPAL ELECTION COMMISSION**

**BOWERS LAW OFFICE, LLC**



Karl S. Bowers, Jr.  
S.C. Bar No. 0016141  
P.O. Box 50549  
Columbia, SC 29520  
Telephone: (803) 753-1099  
Fax: (803) 250-2985  
[butch@butchbowers.com](mailto:butch@butchbowers.com)

**ATTORNEY FOR SHILON  
GREEN**

March 29, 2019

**Richard E. McLawhorn**

---

**From:** Linda Sterling <stolatte@hotmail.com>  
**Sent:** Tuesday, September 11, 2018 8:25 AM  
**To:** Richard E. McLawhorn; Butch Bowers; Law Firm Spencer  
**Cc:** Danyelle V. Young  
**Subject:** Re: Odom Appeal  
**Attachments:** Notice Protest Hearing Sept 24 2018.docx

*We write to taste life twice ....*

*Writing is like giving yourself real hard homework,  
every single day ... for the rest of your life. Y 'all want glamorous? Throw glitter @ the  
computer screen!*

---

**From:** Richard E. McLawhorn <rem@swblaw.com>  
**Sent:** Monday, September 10, 2018 4:44 PM  
**To:** Butch Bowers; Law Firm Spencer  
**Cc:** Linda Sterling; Danyelle V. Young  
**Subject:** RE: Odom Appeal

All,

I have confirmed that Monday, September 24, 2018 works for all parties involved. We will begin at 10:00 a.m. on the 24<sup>th</sup>.

Thanks,

Richard

---

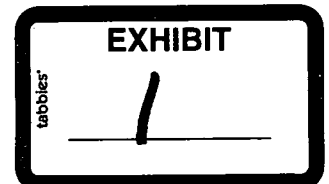
**From:** Butch Bowers <Butch@ButchBowers.com>  
**Sent:** Monday, September 10, 2018 10:55 AM  
**To:** Linda Sterling <stolatte@hotmail.com>; Richard E. McLawhorn <rem@swblaw.com>  
**Cc:** Law Firm Spencer <spencerlaw@shtc.net>  
**Subject:** Odom Appeal

Madam Chairwoman – this is to confirm that Billy Spencer and I have conferred and would respectfully request that the McBee MEC schedule a hearing on Mr. Odom’s election protest for Friday, September 21, 2018 at 9:00 am.

Please let us know if you have any objections or questions. Thank you,

Butch Bowers

**Bowers Law Office LLC**  
1419 Pendleton St.  
Columbia, SC 29201  
[www.butchbowers.com](http://www.butchbowers.com)



Linda Sterling, *MEC Chairperson*  
157 S Seventh Street  
McBee, SC 29101  
843 335 6404

11 September 2018

## Notice of McBee Election Protest Hearing

Pursuant to S.C. Code of Laws 5-15-130, Petitioner Glenn C. Odom has filed a written ***Notice of Contest*** on September 6, 2018 protesting the results of the September 4, 2018 *McBee Town Council Election*.

Continuation of the ***Protest Hearing*** of September 10, 2018 will be held at 10 am on Monday, September 24, 2018 at the McBee Town Hall.

Respectfully,

Linda Sterling, *MEC Chairperson*

THE STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM CHESTERFIELD COUNTY  
Court of Common Pleas

RECEIVED

MAR 29 2019

S.C. SUPREME COURT

Case No. 2018-CP-13-00621

Glenn Odom, ..... Respondent,

v.

Town of McBee Election Commission and  
Shilon Green, ..... Appellants.

PROOF OF SERVICE

I certify that I have served Appellants Town of McBee Election Commission and Shilon Green's Motion for Leave to Supplement the Record on Appeal by delivering a copy of each by electronic transmission on March 29, 2019 addressed to their attorney of record, listed as follows:

John E. Parker, Esquire  
Peters, Murdaugh, Parker, Eltroth & Detrick, PA  
PO Box 457  
Hampton, SC 29924  
Attorney for Respondent

Kathleen Chewning Barnes, Esquire  
Post Office Box 897  
602 2nd Street East  
Hampton, SC 29924

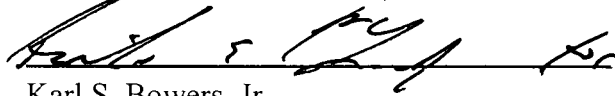
*(Signature Page Following)*

**SWEENEY, WINGATE & BARROW, P.A.**



Martin S. Driggers, Jr. (S.C. Bar No. 13668)  
Richard E. McLawhorn, Jr. (S.C. Bar No. 100179)  
115 Cargill Way, Suite B  
Hartsville, South Carolina 29211  
T: (803) 256-2233  
F: (803) 256-9177  
[msd@swblaw.com](mailto:msd@swblaw.com)  
[rem@swblaw.com](mailto:rem@swblaw.com)

**ATTORNEYS FOR TOWN OF MCBEE  
MUNICIPAL ELECTION COMMISSION  
BOWERS LAW OFFICE, LLC**



Karl S. Bowers, Jr.  
S.C. Bar No. 0016141  
P.O. Box 50549  
Columbia, South Carolina 29250  
Telephone: (803) 753-1099  
Telecopier: (803) 250-3985  
E-Mail: [butch@butchbowers.com](mailto:butch@butchbowers.com)  
**ATTORNEY FOR SHILON GREEN**