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**SC Court of Appeals**

IN THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM PICKENS COUNTY

Court of Common Pleas

Letitia H. Verdin, Circuit Court Judge

Case No. 2014-CP- 39- 0259

Mark Ostendorff,.....Appellant,

v.

School District of Pickens County,  
Board of Trustees, School District of Pickens County,  
Alex Saitta, Judy Edwards, Jimmy Gillespie,  
Herbert Cooper, Jim Shelton, Ben Trotter,  
Kelly Pew, Henry Hunt, Robert Folkman,.....Respondents.

RECORD ON APPEAL

Mark Ostendorff  
135 Cedar Creek Circle  
Central, SC 29630  
(864) 640-3340  
Appellant, Pro Se  
Mary Allison Caudell, Esquire  
Thomas K. Barlow, Esquire  
Childs & Halligan Law Firm  
P O Box 11367  
Columbia ,SC 29211  
Attorney for Respondent

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NOTICE OF APPEAL

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM YORK COUNTY  
Court of Common Pleas

Letitia H Verdin, Circuit Court Judge

Case No 2014 – CP- 3900259

School District of Pickens County, et al, . . . . . Respondent,

v

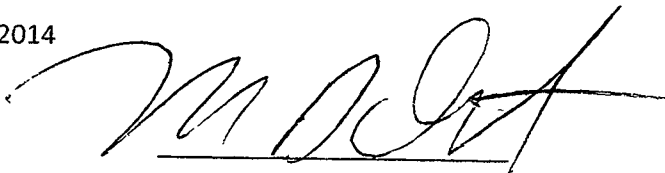
Mark Ostendorff,..... Appellant.

NOTICE OF APPEAL

Mark Ostendorff appeals the judgment (decision) of the Honorable Letitia H. Verdin dated July 2, 2014.

Appellant received notice of entry of this decision on July 14, 2014

August 9, 2014



Mark Ostendorff  
135 Cedar Creek Circle  
Central, SC 29630  
(864) 640-3340  
Appellant, Pro Se

Other Counsel of Record:  
Thomas Kennedy Barlow  
Mary Allison Caudell  
PO Box 11367  
Columbia, SC 29211  
(803) 254-4035

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

CLERK OF COURT  
PICKENS COUNTY  
SOUTH CAROLINA

JUDGMENT IN A CIVIL CASE  
CASE NUMBER 2014CP3900259

2014 JUL 10 P 3:45

Mark D. Ostendorff

School District of  
Pickens County, et al.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: The Court

Attorney for:  Plaintiff  Defendant  
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):  Rule 12(b), 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:  
This matter came before the Court on Defendant's Motion to Dismiss Improperly Named Defendants. After hearing argument from all parties, the motion is hereby GRANTED.

ORDER INFORMATION

This order  ends  does not end the case.

Additional Information for the Clerk:

*Chis*

**INFORMATION FOR THE JUDGMENT INDEX**

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

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

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

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

*[Signature]*

Circuit Court Judge

2162

Judge Code

7/2/14

Date

**For Clerk of Court Office Use Only**

This judgment was entered on 7/9/14, and a copy mailed first class or placed in the appropriate attorney's box on 7/9/14, to attorneys of record or to parties (when appearing pro se) as follows:

Mark D. Ostendorff  
135 Cedar Creek Circle, Central SC  
 ATTORNEY(S) FOR THE PLAINTIFF(S)      29630

Thomas Kennedy Barlow and Mary Allison Caudell  
 PO Box 11367, Columbia, SC 29211

ATTORNEY(S) FOR THE DEFENDANT(S)

*Cheryl Watson - Deputy*  
Harold P. Welborn, Sr. - Pickens County  
 Paul B. Wickensimer - Greenville County Clerk Of  
 Court - Clerk of Court

Court Reporter

*[Handwritten Signature]*

3



the District or elected Board members of the District's Board of Trustees, is alleged to have been committed in the course and scope of their employment with the District or as an elected official. Pursuant to the South Carolina Tort Claims Act, Defendants Alex Saitta, Judy Edwards, Jimmy Gillespie, Herbert Cooper, Jim Shelton, Ben Trotter, Kelly Pew, Henry Hunt, and Robert Folkman cannot be held liable in their individual capacities for acts that they allegedly performed or failed to perform in their official capacities a matter of law.

Defendant School District of Pickens County is the only proper defendant in this action.

Defendants Pickens County School District Board of Trustees, Alex Saitta, Judy Edwards, Jimmy Gillespie, Herbert Cooper, Jim Shelton, Ben Trotter, Kelly Pew, Henry Hunt, and Robert Folkman will file and serve a memorandum of law more fully explaining and supporting these grounds for dismissal upon receiving notice of a hearing from the Court.

Respectfully submitted,

CHILDS & HALLIGAN, P.A.

By: Mary Allison Caudell  
Thomas K. Barlow, S.C. Bar No. 8995  
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P.O. Box 11367  
Columbia, South Carolina 29211  
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Attorneys for Defendants

April 23, 2014

Columbia, South Carolina

5

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF PICKENS )

IN THE COURT OF COMMON PLEAS

Mark D. Ostendorff, )  
 )  
Plaintiff, )

C.A. No. 2014-CP-39-00259

vs. )

**DEFENDANTS' MEMORANDUM OF LAW  
IN SUPPORT OF MOTION TO DISMISS  
IMPROPERLY NAMED DEFENDANTS**

School District of Pickens County, Board )  
of Trustees, School District of Pickens )  
County, Alex Saitta, Judy Edwards, )  
Jimmy Gillespie, Herbert Cooper, Jim )  
Shelton, Ben Trotter, Kelly Pew, Henry )  
Hunt, Robert Folkman, )  
 )  
Defendants. )

**I. INTRODUCTION**

The Defendants respectfully submit this memorandum of law in support of their Motion to Dismiss under Rule 12(b)(1) and (6), Federal Rules of Civil Procedure. Plaintiff, who is proceeding *pro se* in this matter, filed this action against School District of Pickens County ("District"); Board of Trustees, School District of Pickens County ("Board"); Alex Saitta, Judy Edwards, Jimmy Gillespie, Herbert Cooper, Jim Shelton (current Board members); Ben Trotter (former Board member); Kelly Pew (former Director of Personnel); Henry Hunt (former Superintendent); and Robert Folkman (former District employee).

As background, Mr. Ostendorff was employed by the District from June 2008 to March 2011 as a Building Project Manager. Due to the scheduled completion of Building Fund projects, Mr. Ostendorff was notified in December 2010 that his employment would end on June 30, 2011. However, due to performance concerns including taking time off without approval, failing to maintain established work hours, and not completing assigned tasks, Mr. Ostendorff's employment was terminated on March 1, 2011. As a result of the termination, Plaintiff has asserted the following eleven causes of action: fraud, intentional fraud, civil conspiracy, false

testimony under sworn oath, subordination of false testimony under sworn oath, negligence, gross negligence, reckless (willful) negligence, retaliatory discharge, unequal treatment, and wrongful discharge.

## II. STANDARD FOR CONSIDERING MOTIONS

A Rule 12(b)(6) motion to dismiss should be granted when the pleadings, construed in the light most favorable to the nonmoving party, fail to allege sufficient facts to state a cause of action. S.C. R. Civ. P. 12(b)(6); *Haskell Co. v. Morgan*, 274 S.C. 261, 262 S.E.2d 737 (1980). A motion under Rule 12(b)(6) admits the well-pleaded facts in the complaint, but it does not admit the inferences drawn by the plaintiff from such facts, nor does it admit conclusions of law. *See Deberry v. McCain*, 275 S.C. 569, 274 S.E.2d 293 (1981). Additionally, although the Court is required to liberally construe *pro se* pleadings, *pro se* plaintiffs must follow the rules of procedure and the substantive law.

## III. ARGUMENT

### A. Pickens County School Board of Trustees Is Not A Proper Party To This Case.

South Carolina Code Ann. § 59-17-10 provides that "[e]very School District is and shall be a body politic and corporate, by the name and style ...[and] in that name it may sue and be sued...[.]" Plaintiff has brought this action pursuant to the South Carolina Tort Claims Act, S.C. Code Ann. § 15-78-10, *et seq.*, which provides the exclusive remedy in tort cases filed against governmental entities, and has named Defendant District as a party to this action. Plaintiff has also named the Pickens County School Board of Trustees as a separate Defendant to this action. However, the Board should be dismissed from this action because it is not a separate legal entity subject to suit. The Board is the elected governing body of the School District, not a separate legal entity, and thus, is not subject to suit. *See also* S.C. Code Ann. § 15-78-70 (Tort Claims Act requires a plaintiff to name the agency or political subdivision as the party defendant).

**B. Defendants Alex Saitta, Judy Edwards, Jimmy Gillespie, Herbert Cooper, Jim Shelton, Ben Trotter, Kelly Pew, Henry Hunt, and Robert Folkman Are Not Proper Parties To This Suit.**

---

The Tort Claims Act, which provides the exclusive remedy for any tort committed by an employee of a governmental entity while acting within the scope of the employee's official duty, states in relevant part that "[w]hen bringing an action against a governmental entity under the provisions of this chapter, [the plaintiff] shall name as a party defendant only the agency or political subdivision for which the employee was acting . . ." See S.C. Code Ann. §§ 15-78-70(c), 15-78-200. Additionally, "employee" is defined as "any officer, employee, agent or court appointed representative of the state or its political subsidiary including elected or appointed officials...." See S.C. Code Ann. § 15-78-30(c). While Defendants Alex Saitta, Judy Edwards, Jimmy Gillespie, Herbert Cooper, Jim Shelton, Ben Trotter, Kelly Pew, Henry Hunt, and Robert Folkman are named in their individual capacities, the Complaint fails to state facts to establish that they were acting outside of their official capacity or course and scope of their official duties at the time of the alleged injury giving rise to this lawsuit. The Complaint makes a bare conclusory assertion in this regard, but does not plead one single fact to support the claim that any of the Defendants were acting outside the scope or their duties. These Defendants are not a proper party to this action under the Tort Claims Act and are immune from liability in this suit. See *Faile v. South Carolina Dept. of Juvenile Justice*, 350 S.C. 315, 566 S.E.2d 536 (S.C. 2002); *Flateau v. Harrelson*, 355 S.C. 197, 584 S.E.2d 413 (Ct. App. 2003). Accordingly, all claims should be dismissed against Defendants Alex Saitta, Judy Edwards, Jimmy Gillespie, Herbert Cooper, Jim Shelton, Ben Trotter, Kelly Pew, Henry Hunt, and Robert Folkman.

**IV. CONCLUSION**

For the foregoing reasons, Defendants Pickens County School District Board of Trustees, Alex Saitta, Judy Edwards, Jimmy Gillespie, Herbert Cooper, Jim Shelton, Ben Trotter, Kelly Pew, Henry Hunt, and Robert Folkman's motion to dismiss should be granted.

Respectfully submitted,

CHILDS & HALLIGAN, P.A.

By: Mary Allison Caudell  
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P.O. Box 11367  
Columbia, South Carolina 29211  
(803) 254-4035

Attorneys for Defendants

June 10, 2014

Columbia, South Carolina

IN THE STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

Mark D. Ostendorff,

Plaintiff,

v.

School District of Pickens County, Board of Trustees,  
Alex Saitta, Judy Edwards, Jimmy Gillespie,  
Herbert Cooper, Jim Shelton, Ben Trotter, Kelly  
Pew, Henry Hunt, Robert Folkman,

Defendants.

IN THE COURT OF COMMON PLEAS

Case No. 2014-CP-39-00259

PLAINTIFF'S OPPOSITION TO  
DEFENDANT'S MOTION TO  
DISMISS IMPROPERLY NAMED  
DEFENDANTS

Plaintiff, Ostendorff, opposes Defendants' motion.

1) The Pickens County School Board is a separate entity from the School District of Pickens County. The School Board gives policy, awards contracts, etc. It is not involved, nor is it allowed to give direction to individual employees. It sends its directives through the Superintendent of the school district.

2) The only employees are Pew, Hunt, and Folkman.

In South Carolina, the general test used to determine if there is a relationship of master and servant, or employer and employee, is whether the master has the right or power to direct and control the servant in the performance of the servant's work and the manner in which the work is done.

The factors used to determine if this right to control exists are (1) evidence of the right to or exercise of

Ostendorff and voted to reinstate or compensate, as they would be considered carrying out their duties.

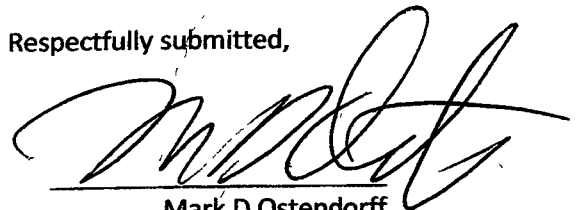
If a Board member knew in advance of Ostendorff's dismissal and/or did not vote to reinstate or compensate Ostendorff, then they acted in their own personal interest and should remain as a defendant.

Plaintiff asked before the suit each's involvement and vote but got no response from any of the defendants.

Defendants have provided no affidavits showing they acted within their official duty.

Plaintiff asks this Court to deny Defendant's Motion. Again, Plaintiff plans to amend complaint as discovery is provided by Defendants. Plaintiff will also claim Unfair Trade Practices as a result of the civil conspiracy.

Respectfully submitted,



Mark D Ostendorff  
Plaintiff, Pro Se  
135 Cedar Creek Circle  
Central, SC 29630  
(864) 640-3340

June 18, 2014

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF PICKENS

Mark D. Ostendorff,

Case No. 2014-CP-39-00259

Plaintiff,

v.

School District of Pickens County, Board of Trustees, Alex Saitta, Judy Edwards, Jimmy Gillespie, Herbert Cooper, Jim Shelton, Ben Trotter, Kelly Pew, Henry Hunt, Robert Folkman,

PLAINTIFF'S REPLY TO DEFENDANTS' MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS IMPROPERLY NAMED DEFENDANTS

Defendants.

Plaintiff, Ostendorff, replies to memorandum:

INTRODUCTION- Lines 10, 11, 12 – Defendant has alleged that “ However, due to performance concerns Including taking time off without approval, failing to maintain established work hours, and not completing assigned tasks ,...”. Defendant has never provided any supporting evidence to substantiate this claim. Only at the May 4, 2011 hearing with SCDEW did Folkman produce my Request for Time Off saying my request was not approved. My method of requesting time off was a well established and accepted by Folkman. Folkman presented the document to a SC Investigative Officer in support of his false testimony under sworn oath. Folkman never even mentioned these allegations at the time of Ostendorff's dismissal. Kelly Pew first mentioned these allegations to Ostendorff on the AM of dismissal but refused to provide any evidence whatsoever. It is believed that Folkman was the author of

numerous allegations made to SCDEW but did not give any evidence. Ostendorff denied and asked for supporting evidence from SCDEW but never received any.

## II. STANDARD FOR CONSIDERING MOTIONS

Cause of action- Black's Law Dictionary defines as " A group of operative facts giving rise to one or more bases for suing; a factual situation that entitles one person to obtain a remedy in court from another person; claim.... "What is a cause of action? Jurists have found it difficult to give a proper definition. It may be defined generally to be a situation or state of facts that entitles a party to maintain an action in a judicial tribunal....."

The cause of action was wrongful discharge in which at least employees Pew and Hunt were involved along with at least one Board member, which undoubtedly was Gillespie as he was friend of property owner's father. Ostendorff was damaged by lost wages and lost monthly retirement money.

Also cause of action was for Board not reinstating or compensating Ostendorff. The Board was given substantial information by Ostendorff to show he should be reinstated or compensated for wrongful discharge. The Board members were negligent in not reinstating or compensating Ostendorff, as they were only protecting each Board member and the Board from their unlawful behavior being brought to light of the public regarding misappropriation of the general fund.

All is well explained in the Complaint.

The Complaint follows the SC Rules of Court.

## III. ARGUMENT

A. An entity as defined in Black' Law Dictionary – " An organization ( such as a business or a governmental unit) that has a legal identity apart from its members." The SDPC does not direct the Board. The Board is an independent entity not controlled by the wishes and desires of SDPC.

The Board acted in its own interest and not that of SDPC by not reinstating or compensating Ostendorff.

B. Lines 4.... "... shall name as a party defendant only the agency or political subdivision for which the employee was acting..." .

Section 18-78-60 . Exceptions to the waiver to immunity.

"The governmental entity is not liable for a loss resulting from:

... (17) employee conduct outside the scope of his official duties or which constitute actual fraud, actual malice, intent to harm, or a crime of moral turpitude."

Lines 10... " fails to state facts..."

The Complaint states the facts that shows they acted out of their official duties. The Board members and Hunt were each given(mailed by Ostendorff) information , as stated in the Complaint. They chose to protect their own individual interest and the Board and not SDPC by not reinstating Ostendorff or compensating him.

The Complaint states the facts that show employees Pew, Hunt, and Folkman acted out of their official duties. Folkman and Pew both conspired with at least one Board member to wrongfully discharge Ostendorff in an attempt to cover up unlawful behavior in misappropriating general funds. Hunt at least was negligent in his investigation of Ostendorff's discharge.

#### IV. CONCLUSION

The motion to dismiss any defendant should be denied as on the face, all may have been involved in

Ostendorff's wrongful discharge and all Board members involved in not reinstating or compensating Ostendorff. Not one of the defendants have come forward explaining that they were not involved with Ostendorff discharge or they voted to reinstate or compensate Ostendorff. Only Hunt said he knew nothing of the discharge along with a call from Trotter also saying he knew nothing of the discharge. No affidavits have been provided by any defendants to justify removing them as defendants in this action.

If the Defendants are excused ( dismissed) from this action, then Ostendorff will not have any avenue to recover his losses as any reasonable jury will conclude the defendants wanting to be dismissed were the ones that caused Ostendorff's damages and that they acted outside of their official duties. That jury conclusion would exclude SDPC from liability under:

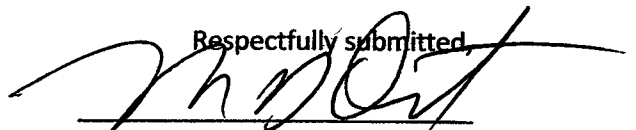
Section 15-78-60. Exceptions to waiver of immunity.

" The governmental entity is not liable for a loss resulting from:

(17) employee conduct outside the scope of his official duties or which constitutes actual fraud , actual malice, intent to harm, or a crime involving moral turpitude."

Thus, Plaintiff Ostendorff asks this Court to deny the Defendants' motion.

Respectfully submitted,



Mark D Ostendorff  
Plaintiff, Pro Se  
135 Cedar Creek Circle  
Central, SC 29630  
(864) 640-3340

JUNE 19, 2014

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

Mark D. Ostendorff,

Plaintiff,

v.

School District of Pickens County, Board of Trustees,  
Alex Saitta, Judy Edwards, Jimmy Gillespie,  
Herbert Cooper, Jim Shelton, Ben Trotter, Kelly Pew,  
Henry Hunt, Robert Folkman,

Defendants.

IN THE COURT OF COMMON PLEAS

Case No. 2014-CP-39-00259

AFFIDAVIT OF MARK OSTENDORFF

I, Mark Ostendorff, submit this affidavit for the above case.

I, Mark Ostendorff, have personally prepared this affidavit and swear to its accuracy and truthfulness to the best of my knowledge. I am over eighteen years old and I am competent to testify to the matters stated therein.

1

I was wrongfully discharged from my employment with the School District on March 1, 2011. This is stated on # 10 of Complaint.

2

Robert Folkman was the Building Program Administrator and my supervisor at the time of my discharge. This is stated on #5 of the Complaint.

3

On Tuesday, March 1, 2011, around 7:30 AM, I received an e-mail from Robert Folkman instructing me to see him in his office. Folkman said "just a minute" (he was typing on his computer). He then said "Mark you're a nice guy and good at civil and I hate having to do this, but I'm going to have to let you go. I'm just having to spend too much time on McKissik and RC Edwards."

I said "OK, thanks" (the thanks was for his compliment on civil) and promptly left his office. This is stated on #17 of Complaint.

The entire conversation probably lasted less than 30 seconds.

16

Folkman's reason was totally absurd since he would have to now spend even much more of his time on my other several projects. I thought the real reason was that he missed his budget that he promised the School Board.

4

Later that AM , I went to see Kelly Pew's, the Director of Human Relations, to find the real reason why I was discharged. She told me that Folkman told her that I was discharged because of " failure to complete assignments, failure to maintain regular work hours, and taking unapproved time off."

I replied to Pew " well , that's the first I've ever heard of it." Pew offered no evidence of Folkman's allegations and quickly escorted me to the door out of her office. This is on # 19 of Complaint.

5

I had a meeting with Henry Hunt, the School District Superintendent, on March 17, 2011, during which time he handed to me a letter from Kelly Pew dated March 16, 2011. The letter stated that Folkman met with me on Monday , February 28, 2011 to discuss reasons for my termination.

I was not a work on that Monday, February 28, 2011 due being out sick from my hayfever allergies.

I responded to Pew's letter on April 5, 2011. This is # 31 and 32 of Complaint.

6

I found out that Folkman had actually terminated me on Monday, February 28, 2011 and not during his notification to me on Tuesday, March 1, 2011, through the School District Benefits Specialist while I was waiting to see Kelly Pew. This is # 18 of Complaint.

7

I called the Senior Project Manager in the evening of March 1, 2011 to discuss Folkman discharging me. The Senior Project Manager told me that I shouldn't have bad mouthed Folkman and that Folkman asked everyone in the Monday morning meeting if anyone heard of Ostendorff bad mouthing the Building Program to anyone on Chastain Road. I was not at the meeting due to being out sick. This is # 23 , 35 of Complaint.

8

I had a discussion with a friend of a school board member on February 22 or 15, 2011 in which I told him that I was aware of possible misappropriation of school funding and Folkman's need to stay with the School District after the Building Program was completed in order to get SC Retirement System retirement. This is item # 24 and 25 of Complaint.

17

I applied for SC Unemployment Insurance benefits through SCDEW. I was required to appear at a hearing since I was penalized for being discharged for cause. The hearing was for April 4, 2011.

At the hearing, the investigative officer for SCDEW asked Folkman what he said to me at the time of discharge. Folkman lied under sworn oath. Folkman produced my request for time off for Friday, February 25, 2011 and said that he did not approve it and the reason for my discharge.

I never saw the subject request for time off since I put it in his basket on Thursday, February 24, 2011.

It was the same method of requesting time off that I had used several consecutive Fridays before and there had been no problem from Folkman in using this method of requesting the usual Friday off.

I asked Folkman during the hearing that if he wasn't at work on Friday, February 25, 2011 and I wasn't at work on Monday, February 28, 2011 how he knew if actually took the day off. He replied "I asked somebody". Folkman did not produce the name of the mystery witness whom would never know if I was at work or not anyway. I often used my own vehicle for School District business and didn't always see my coworkers during the workday.

Folkman produced no other evidence

I was penalized 10 weeks at \$326.00 per week because of Folkman's false testimony

This item is #'s 44, 43, 42, 45, 38, 40,

I have requested a transcript from SCDEW but have not yet received it.

On Tuesday, March 1, 2011, the day of my discharge, neither Folkman nor Pew gave any mention of any appeal process through the School District regarding my discharge. This is # 20 of Complaint

Henry Hunt, School District Superintendant sent me a letter dated March 23, 2011, of Hunt's investigation and findings.

Item 1- Retribution- Hunt stated that "I talked to the board member and does not recall any comments that cause Mr. Folkman to retaliate against you."

I have never met or talked to the probable Board member.

Hunt also stated " Also, Mr. Folkman stated that no board member had talked with him about you."

This is item # 33 of Complaint.

13

A coworker told me in February that he heard Missy Cambell tell Alex Saitta durind a board meeting that the construction salaries were coming out of the general fund.

I asked the coworker if he was sure. He replied " you can't get that wrong."

14

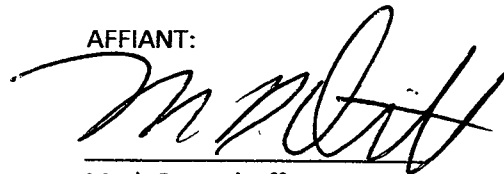
I made proper and timely appeals for reinstatement or compensation but got no offers.

I sent all Board members and Hunt all correspondence and supporting documents and information in which to make an educated decision on my appeal and/or compensation. These are items # 34, 27, 26, 32,

15

I requested in September 2011 to the School District the address for Henry Hunt, then retired, the information he gathered during his investigation. His address was refused by him and the School District. This is item #49.

AFFIANT:



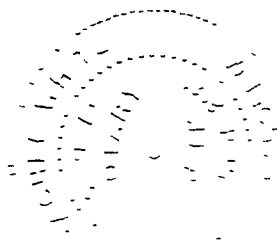
Mark Ostendorff

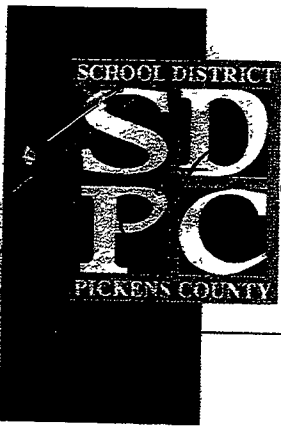
Sworn to and subscribed before me  
This 18<sup>th</sup> day of June 2014



Notary Public

**RACHEL WHITE**  
Notary Public - State of South Carolina  
My Commission Expires February 15, 2021





# School District of Pickens Cour

*Building success beyond the classr*

March 23, 2010

Mr. Mark Ostendorff  
P.O. Box 14846  
Greenville, SC 29610

Dear Mr. Ostendorff:

On March 14, 2011, Alex Saitta, Chairman of the Board of Trustees, received your letter appealing your termination. He gave me the letter and asked that I schedule a conference with you, as outlined in Board Policy GAE, copy attached. The conference was held on March 17, 2011 at 9:00 a.m. In the conference, you shared that you felt your termination was due to retribution, politics, and ulterior motives. You also felt your termination was done with malicious intent.

I have investigated this matter and have made the following findings.

1. Retribution – You reported that you had talked with a neighboring property owner to the new Career Center about the district building program and that he has subsequently talked with a board member. You felt that Bob Folkman terminated you due to talking about the building program. I have talked with the board member and he does not recall any comments that would cause Mr. Folkman to retaliate against you. Also, Mr. Folkman stated that no board member had talked with him about you.
2. Politics – Please see the above comment.
3. Ulterior Motives - You feel that Mr. Folkman was motivated to terminate you so he could save money on the building projects and he could extend his work time with the district since there would be one less Building Project Manager. Due to the building program moving toward completion, you were notified on December 7, 2010 in a letter from me that your job would end with the district on June 30, 2011. The building program is on schedule.
4. Malicious Intent – You feel that Mr. Folkman planned to deny you insurance coverage for a month by terminating you on February 28. Your termination date was set as March 1 and your insurance coverage continues to March 31. Mr. Folkman does not handled insurance issues and was unaware of the length of time insurance coverage continues after termination.

Based on my investigation, I believe your termination was justified and do not believe that your termination was due to the reasons you provided. Mr. Folkman terminated you for performance concerns which

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**Superintendent's Office**

1348 Griffin Mill Road • Easley, SC 29640-6997 • P 864-397-1000 • F 864-850-5205

www.pickens.k12.sc.us

Page 2  
Mark Ostendorff  
March 23, 2010

~~included taking the day off on February 25 without his approval, failing to maintain established work hours, and not completing tasks.~~

If you wish to appeal my decision, you may request to be heard by the Board. Your appeal should be submitted to me within five working days of receiving this letter. If you wish to make such a request, please address your letter to me and I will notify the board.

Sincerely,



Henry H. Hunt, Ph.D.  
Superintendent

Attachment: Policy GAE

CLERK OF COURT  
PICKENS COUNTY COURT OF COMMON PLEAS  
SOUTH CAROLINA

STATE OF SOUTH CAROLINA

COUNTY OF PICKENS

2014 FEB 28 P 1:31

Mark D Ostendorff

Plaintiff

v.

School District of Pickens County ]

Board of Trustees, School District of

Pickens County

Alex Saitta

Judy Edwards

Jimmy Gillespie

Herbert Cooper

Jim Shelton

Ben Trotter

Kelly Pew

Henry Hunt

Robert Folkman

Co-Defendants

\_\_\_\_\_ JUDICIAL CIRCUIT

Case No.

2014-CP- 39-259

COMPLAINT

WRONGFUL DISCHARGE

JURY TRIAL DEMANDED

Comes now, Ostendorff, Plaintiff, to this Court , jury trial demanded, seeking recovery of monetary damages from injury caused to him by the above Co-Defendants. Ostendorff seeks damages for lost income from lost employment and lost retirement that he would be entitled to had he not been wrongfully discharged. Ostendorff was employed as a Project Manager in the Building Program for the School District of Pickens County.

Ostendorff also seeks monetary damages from the Co-Defendants in his loss of ten (10) weeks of SC Unemployment Insurance compensation. This damage to Ostendorff was caused by Robert Folkman

knowingly providing false testimony under sworn oath at an appeal hearing in front of an Investigative Officer of the State of South Carolina from the Department of Employment and Workforce (SCDEW).

Ostendorff seeks monetary damages of the following dollar amounts:

Lost wages of \$ 132,481.00

Lost retirement of \$ 134,400.00 , less Ostendorff's contribution amount of 7.5% or \$ 12,250.00 equaling \$ 122,150.00

Lost Unemployment Insurance benefits of \$ 3,260.00

Ostendorff also seeks damages for defamation of character.

Ostendorff also seeks punitive damages, actual damages, reasonable attorney's fees, and any compensation that the Court or Triers -of -Fact (Jury) find due to Ostendorff.

Ostendorff seeks actual , compensatory, and punitive damages under tort.

Ostendorff , Plaintiff alleges:

1.

That Ostendorff was a public servant being employed by the School District of Pickens County, South Carolina.

2.

That defendants Saitta, Edwards, Gillespie, Cooper, Shelton, Trotter were Board Members of the Board of Trustees , School District of Pickens County at the time of Ostendorff's discharge.

3.

That defendant Hunt was the Superintendent of the School District of Pickens County at the time of Ostendorff's discharge.

4.

That defendant Pew was the Director or Human Relations for the School District of Pickens County at the time of Ostendorff's discharge.

5.

That Folkman was the Building Program Administrator and Ostendorff's supervisor at the time of Ostendorff's discharge.

6.

That the defendants engaged in fraud , intentional fraud, civil conspiracy, false testimony under sworn oath, subordination of false testimony under sworn oath, negligence, gross negligence, reckless (willful) negligence, retaliatory discharge, unequal treatment, and wrongful discharge of Ostendorff's employment with the School District of Pickens County (SDPC).

7.

That the defendants damaged Ostendorff for reasons of personal gain , political and , or financial gain or prevention of financial loss. Their actions were for their own benefit and not to the public school students of Pickens County.

8.

That Ostendorff was aware of the defendants' misappropriation of School District (SDPC ) funding . The defendants found through a third party that Ostendorff was aware of misappropriation of SDPC funding. The motive of the defendants to wrongfully discharge was to prevent Ostendorff from finding , or being more aware of, additional misappropriation of School District (SDPC) funding. The defendants devised a fraudulent plan to get rid of Ostendorff under the pretense of Ostendorff taking unauthorized time off.

9.

That the defendants engaged in false testimony under oath to hide the true motive of wrongfully discharging Ostendorff. The false testimony under sworn oath was given to an investigative official of the State of South Carolina of the Department of Employment and Workforce. The false testimony under oath materially damaged Ostendorff in being penalized ten weeks of unemployment insurance compensation. Ostendorff is of information and belief that all defendants were involved in the false testimony and subordination of that false testimony under sworn oath. All defendants were given opportunity to explain their involvement in Ostendorff's wrongful discharge but none responded , except Trotter's telephone discussion with Ostendorff after receiving Ostendorff's appeal for reinstatement letter addressed to all Board members

10.

That Ostendorff was wrongfully discharged from his employment with the School District of Pickens County on Tuesday, March 1, 2011. Ostendorff came to employment on June 20, 2008. Ostendorff left employment with The City of Charlotte , North Carolina, where he was an active member of the North Carolina Retirement System. Ostendorff is currently receiving early monetary benefits for his prior participation while being employed with the City of Charlotte.

11.

That Ostendorff was assured that his employment with the School District of Pickens County would be at a minimum of five (5) years , up to seven (7) years. The length of employment from minimum of 5 to 7 years would depend on the completion of the Building Program. Ostendorff accepted the employment offer from the School District of Pickens County with the limiting condition of least 5 years of consecutive employment. The 5 years would meet the minimum requirement to receive a retirement benefit of \$ 400.00 per month for life from the South Carolina Retirement System starting at age 60. Ostendorff was an active member of the SC Retirement System at the time he was wrongfully discharged.

12.

That Ostendorff is owed for 2 years and 4 months at his prior salary of \$ 70,000.00 per year. This amount is lessened by the amounts Ostendorff received from SC Unemployment Insurance and employment he had from the period March 2, 2011, through June 30, 2013. The amount owed Ostendorff may or may not be lessened from money he received in March from unused personal time or vacation. Ostendorff was of the understanding that unused vacation or personal time was a "use it or lose it " policy when leaving employment. The amount may be increased or lessened from any net affect of income taxes due.

13.

That Ostendorff was wrongfully discharged because he had a conversation with a friend of a new school board member about the possible shortfall of the Building Program construction budgets with public funding . Also discussed was the application of Act 388 for funding of school operations and not

to be used for new construction. That discussion was on either Tuesday, February 22, 2011, or Tuesday, February 15, 2011.

14.

That through the conversation with his friend , the new school board member knew that Ostendorff was aware that the Building Program salaries were being paid from the School District Operations fund. ACT 388 is for the Operations of the School District and is funded through SC sales tax . The Building Program is funded by bond and is repaid through Pickens County property tax receipts. They are to be separate .

15.

That Ostendorff was discharged to try to silence him and not enable him to discover any other misappropriation of ACT 388 money .

16.

That the School Board knew that were South Carolina Statutes that provide severe penalties for School Board Members and Superintendents who misappropriate school funding.

17.

That on Tuesday, March 1, 2011, around 7:30 AM, Ostendorff received an e-mail from Robert Folkman , Building Program Administrator, instructing him to see him in his office. Folkman then discharged Ostendorff. Folkman told Ostendorff that " I'm (Folkman ) having to spend too much of my time on RC Edwards and McKissik and going to have to let you go." This made absolutely no sense since Ostendorff had numerous other projects in work that that would require even more of his time .

18.

That on Tuesday, March 1, 2011, in the AM, Ostendorff went to see Kelly Pew, Director of Human Relations , at the School Districts main office to find the real reason why Ostendorff had been discharged. While waiting to see Pew, the School District's Benefit Specialist informed Ostendorff that

she had received word that Ostendorff was no longer employed with SDPC ,but she received that word on Monday ,February 28, 2011, a day before Folkman discharged Ostendorff.

19.

That on Tuesday , March 1, 2011, in the AM, Ostendorff then met with Kelly Pew, then the Director of Human Relations, to ask why Ostendorff had been discharged. Ostendorff was told that that Folkman told her that Ostendorff had been discharged because of "failure to complete assignments, failure to maintain regular work hours, and taking unapproved time off". Ostendorff replied that " well, that's the first I've ever heard of it". Pew quickly walked up to Ostendorff, shook his hand and said "good luck in future employment", and escorted Ostendorff out of her office. Pew made no effort to support what Folkman had told her.

20.

That on Tuesday, March 1, 2011, during the short discussion between Pew and Ostendorff, Pew never mentioned any appeal process within in SDPC policies regarding discharge. Folkman neither mentioned any appeal policies within SDPC. All defendants conspired in a plan not to notify Ostendorff of any appeal process because they knew that if Ostendorff did not make an appeal under SDPC policy within in a prescribed timeframe , Ostendorff would lose all rights to bring about any legal action to recover damages.

21.

That on Tuesday, March 1, 2011, Ostendorff returned to his SDPC office to gather his construction reference books, he found his office ransacked. Ostendorff's computer was gone in which a mess was made of his desk in removing cables, etc. It also appeared that someone had been rifling through Ostendorff's files. It was obvious that someone was in a hurry to find what Ostendorff knew.

22.

That on Tuesday, March 1, 2011, Ostendorff requested the balance of the day off. Ostendorff filled out his request for time form which was signed by Tim Newman. Folkman was not in the office to sign the form.

23.

That on the evening of Tuesday March 1, 2011, Ostendorff called the Senior Project Manager regarding about Folkman discharging Ostendorff. The Senior Project Manager told Ostendorff that "you shouldn't have bad mouthed him". Ostendorff replied that "I've never badmouthed him ". The Senior Project Manager said "during the Monday morning meeting he (Folkman) asked us (SDPC Building Program employees) if we heard anything about Mark (Ostendorff) badmouthing the Building Program to anyone on Chastain Road". Ostendorff told the Senior Project Manager to " make sure you write that down with today's date." Ostendorff was out sick Monday, Febraury 28, 2011, due to allergies.

24.

That the conversation with the friend of the SDPC Board member on February 22 or 15, 2011, revealed that Ostendorff was aware of probable misappropriation was the real cause of Ostendorff's discharge. The conversation came about during road work along Chastain Road in front of the son of the friend of the Board member. Ostendorff had been negotiating with the friend for several months regarding the slope of the road work and the resulting affect on his son's property.

25.

That during the conversation with the friend of the Board member, the friend told Ostendorff that he had a friend that was one of the new School Board Members and he ( the new member) said "the construction (program) money was a mess". Ostendorff then said to the affect " that could be true as I heard that the Financial Director told Alex Saitta during a School Board meeting that the Construction Program salaries were coming out of the general fund". Ostendorff also said to the affect "I don't think that's allowed under the new state funding guidelines separating new construction based on property taxes and the general fund which is funded out of Columbia from state sales taxes". Ostendorff also said to the affect "if the construction budget was short then they (School Board) will have to put Folkman in charge of Operations so he can siphon money over to the Building Program to complete anything not covered in the bond money." Ostendorff said to the affect that " Folkman was trying to get rid of everyone (Building Program) so no one would be watching him and he could get his 5 years in to get retirement money".

26.

That shortly after being discharged , Ostendorff applied for Unemployment Insurance through South Carolina Department of employment and Workforce (SCDEW). SCDEW notified Ostendorff that was denied benefits because SDPC discharge him for cause. Ostendorff promptly contacted SCDEW and was given allegations made by SDPC. The allegations were given to Ostendorff via telephone as SCDEW will not provide allow a written copy to be sent to the clamiant (Ostendorff). Ostendorff responded to the allegations to SCDEW. SCDEW determined that Ostendorff was not eligible for benefits.

27.

That on March 11,2011, Ostendorff sent a letter addressed to Alex Saitta , SDPC Board Chairman, appealing his discharge. A copy was also sent to each SDPC Board member. The letter also made a claim for monetary damages. Ostendorff sent the letter as he found no appeal policy from SDPC, but found on the SDPC website that employees being laid off for budget reasons could appeal to the SDPC Board.

28.

That shortly after sending the letter , Trotter called Ostendorff in which he was not aware that Ostendorff was discharged. He said that Judy Edwards called him to ask if he knew anything about Ostendorff's discharge.

29.

That shortly after sending the letter to Saitta , Ostendorff received a voice mail from Saitta informing Ostendorff that Henry Hunt, then SDPC Superintendent, would contact me on the SDPC policy to any appeal.

30.

That Ostendorff later received a voice mail for me to have a conference with Hunt for March 17,2011. Ostendorff had a discussion with Hunt on that date in Hunt's office. Hunt did not appear of knowledge of my discharge prior to my letter to Saitta of March 11,2011. In that discussion with Hunt, Ostendorff explained his position of his wrongful discharge. In that discussion, Ostendorff assured that it was the conversation with the friend with the new school board member was the reason for Ostendorff's discharge, not the reasons Kelly Pew provided Ostendorff on March 1, 2011. Ostendorff also stated he was due monetary compensation for the additional 2 years and 4 months as for

Ostendorff's assurance of 5 years , up to 7 years, of employment and also the retirement money he would receive after the 5 years of employment. Hunt informed Ostendorff that Hunt would investigate the matter.

31.

That on the March 17, 2011, meeting with Hunt, Ostendorff was given Kelly Pew's letter dated March 16, 2011, addressed to Ostendorff.

32.

That on April 5, 2011, Ostendorff sent a letter to Pew regarding her letter of March 16, 2011. Ostendorff in his letter stated that Bob Folkman did not talk to Ostendorff on Monday , February 28, 2011, as Ostendorff was out sick on Monday , February 28, 2011, which was consistent with what Ostendorff informed Pew on the March 1, 2011, discussion that Ostendorff had with Pew. Ostendorff further reiterated Ostendorff's the very short conversation with Folkman on March 1, 2011, which was consistent with Ostendorff's assertion that Folkman discharged Ostendorff because "he was having to spend too much of his time on RC Edwards and McKissik."

33.

That on March 23, 2011, Hunt sent a letter to Ostendorff of Hunt's investigation and findings.

Item 1- Retribution- Hunt stated that " I talked to the board member and he does not recall any comments that would cause Mr. Folkman to retaliate against you." Ostendorff has never talked to or ever met the board member whom was the friend of the father of the property owner on Chastain Road.

Hunt also stated " Also , Mr. Folkman stated that no board member had talked with him about you."

Items 2 and 3- Regarded my assertion of politics and ulterior motives.

Item 4 – Malicious Intent- Hunt stated " You feel that Mr. Folkman planned to deny you insurance coverage for a month by terminating you on February 28. Your termination date was set as March 1 and your coverage continues to March 31. Mr. Folkman does not handled insurance issues and was unaware of the length of time insurance coverage continues after termination."

The March 1, 2011 date for termination was only set for Ostendorff's insurance because of the March 1, 2011 conversation with the Benefit Specialist that Ostendorff's insurance had stopped as of February 28, 2011. Ostendorff then told Pew and Pew then called the Benefit Specialist to correct the

insurance to run through March 2011, as Ostendorff had not actually been terminated by Folkman until the morning of March 1, 2011, and not February 28, 2011.

Ostendorff was not paid for his day of employment of March 1, 2011.

Ostendorff received health insurance through March 2011.

Hunt's investigation was not credible. Hunt was willfully negligent in his investigation and also in his decision not to reinstate Ostendorff or compensate him for at least the remaining 2 years and 4 months along with retirement benefits.

34.

That on April 5, 2011, Ostendorff sent a letter to Hunt appealing his decision from his letter dated March 23, 2011, as required by the SDPC Grievances Policy. That policy was attached to Hunt's letter of March 23, 2011. A copy of Ostendorff's letter was sent to all board members with attachments.

The letter had attachments of Hunt's letter, Pew's letter, Ostendorff's response to Pew, and Ostendorff's response to SCDEW.

Ostendorff pointed out numerous inconsistencies with Ostendorff's discharge and Folkman's comments to Hunt.

The main point being- how did Folkman know if Ostendorff took Friday, February 25, 2011, off or not? The only thing Folkman knew was that he found a request for time off by Ostendorff in his in-basket on Monday, February 28, 2011.

The board members knew that Ostendorff was applying for unemployment insurance benefits.

Ostendorff made a monetary claim in that letter.

35.

That on Monday, February 28, 2011, Folkman terminated Ostendorff for the only reason being that he found a piece of paper that requested time off. The day requested off was Friday, February 25, 2011.

Folkman would not have been of knowledge if Ostendorff was at work or not on Friday, February 25, 2011, because Folkman was not at work on Friday 25, 2011.

Ostendorff was out sick on Monday, February 28, 2011. Folkman could not of asked Ostendorff if Ostendorff took off Friday, February 25, 2011, because Ostendorff was unavailable to answer Folkman on Monday , February 28, 2011.

In an earlier instance, Ostendorff requested, through the same method of requesting time off on the Thursday before a Friday, the following Friday off and the request was approved by Folkman. Ostendorff later decided that he needed to come in to work to monitor a subcontractor that was filling an underground storage tank at RC Edwards. Ostendorff drove his own vehicle to RC Edwards. While at RC Edwards , Folkman asked Ostendorff to locate a Consulting Inspector who was late for the pre-construction meeting being held at RC Edwards. Folkman knew that Ostendorff sometimes used his own vehicle and not always his assigned SDPC vehicle. Thus, weather or not Ostendorffs personal vehicle is at his office is no indication if Ostendorff is at work. Ostendorff never retracted his approved Friday off although he worked the entire day that approved for time off.

SDPC does not terminate employment for employees placing requests for time off in their supervisor's in-basket. That is what the employee is asked to do.

It was a fraudulent plan of Folkman and the other defendants that fell apart . The plan was devised the defendants who didn't "cover their tracks".

36.

That a letter dated April 6, 2011, from Hunt to Ostendorff informed Ostendorff that Hunt would present Ostendorff's letter requesting an appeal to the Board of Trustees.

37.

That a letter dated April 13,2011, from Hunt to Ostendorff stating that the Board of Trustees voted in public session to deny Ostendorff's request for a hearing.

38.

That in March 2011, Ostendorff applied for unemployment insurance benefits from South Carolina Department of Employment and Workforce (SCDEW).

39.

That in March 2011, Ostendorff was contacted by SCDEW regarding allegations by SDPC regarding Ostendorff's discharge. The allegations were read to Ostendorff by SCDEW over the

telephone as SCDEW will not provide a written copy to a claimant. Ostendorff was told by SCDEW that the initials on the allegations were RB/RM.

40.

That Ostendorff responded in writing to SCDEW regarding the SDPC allegations in a letter dated March 27, 2011. The allegations were more of a post-termination performance evaluation in which the employee would have no notification of. Ostendorff responded to all allegations in which most ended with that SDPC would need to be specific and not just general statements.

41.

That the letter Ostendorff sent to Hunt on April 5, 2011, had attached a copy of Ostendorff's letter responding to SCDEW of SDPC's allegations. All Board Members were sent a copy of the letters.

42.

That Ostendorff received letter from SCDEW informing him that he was to be penalized fourteen weeks (14) of unemployment insurance benefits. Ostendorff sent an appeal request to SCDEW on April 7, 2011.

43.

That Ostendorff received a notice from SCDEW dated April 20, 2011, notifying Ostendorff of a SCDEW hearing to consider my appeal of the 14 week penalty. The hearing would be May 4, 2011.

44.

That during the May 4, 2011, SCDEW appeal hearing, Folkman gave false testimony under sworn oath.

The SCDEW hearing officer asked Folkman of what he (Folkman) said at the time when Folkman discharged Ostendorff.

Folkman replied to the affect that "I told him he took time off without authorization. At this point of the Building Program we cannot have employees taking time off."

Folkman produced Ostendorff's request for time off for Friday, February 25, 2011. On that form submitted at the hearing Ostendorff saw comments written request was denied and dated 2/28/2011.

Ostendorff asked Folkman in cross examination to the affect " if you weren't at work on Friday, how would you know if I was at work or not?"

Folkman presented no evidence, no witnesses but just replied " I asked somebody".

Folkman would not say who he asked simply because he didn't ask anyone. Even if he did ask someone, that someone's response would only be hearsay. Folkman was not prepared to come with an answer in advance of Ostendorff's question.

Folkman gave false testimony in the hearing that he discussed the time off request with Ostendorff but Ostendorff was already terminated the day before. That false testimony caused Ostendorff to be penalized 10 weeks of benefits of \$ 326.00 per week.

45.

That upon leaving the hearing room on May 4, 2011, Ostendorff found Folkman waiting on him. Ostendorff, though very surprised at Folkman's waiting, comforted Folkman of his false testimony. Folkman laughed and said "our conversation ( discharge on March 1, 2011) wasn't recorded and it would be just your word against mine". Folkman followed Ostendorff to his car when he volunteered "Kelly Pew sent me here."

46.

That Folkman terminated Ostendorff on Monday, February 28, 2011, and the weight of the evidence presented to the triers-of-fact will show that to be factual. The weight of the evidence will show that Ostendorff was not a work on Monday, February 28,2011.

47.

That Folkman and the defendants devised a fraudulent plan to lure Ostendorff into the usual and accepted method of requesting time off then terminating him for taking unauthorized time off. The plan was flawed as it did not take into consideration that Ostendorff would be sick from work on the following Monday. Keeping to the devised plan, Folkman terminated Ostendorff on Monday, although he was not there.

Folkman told the Building Program employees during the usual Monday morning meeting on February 21, 2011, that he was going to take off the following Friday, February 25, 2011.

Folkman deliberately did not tell Ostendorff that Folkman was also going to take off Thursday afternoon February 24, 2011.

Ostendorff had used this same procedure for requesting time off for Fridays. Ostendorff would wait until at least until Thursday to request time off after he conferred with Folkman and the other two Project Managers. If nothing was pending for Friday, then Ostendorff would then submit the form to Folkman.

Sometimes Folkman was in his office, sometimes not when Ostendorff submitted the request form.

If Folkman was in his office, he would sign the request form. Ostendorff would then give the approved form to the clerk.

If Folkman was not in his office, Ostendorff would leave the request form in Folkman's in-basket in his office. Folkman would then give the approved form to the clerk.

Folkman knew this was the certain method always used by Ostendorff.

Folkman never denied Ostendorff taking a Friday off.

Folkman never informed Ostendorff that Ostendorff would have to see the form with a signature approving the request before taking that time off.

Ostendorff discussed, as usual, with the Senior Project Manager on Thursday, February 24, 2011, if there was anything pending on Friday, February 25, 2011. If not, then Ostendorff would take Friday, February 25, 2011, off and would put the request form in Folkman's in-basket. The Senior Project Manager said ok to take the Friday off. The Senior Project Manager was delegated by Folkman to handle the Building Program when Folkman was out of the office.

48.

That Ostendorff was treated unequally as compared to the other two Project Managers. As examples, Ostendorff was required to be clean shaven every day, whereas another Project Manager would not shave for two or three days on a regular basis. Ostendorff was required to keep his assigned SDPC clean every day, whereas another Project Manager would have dirt covering almost half of his assigned SDPC vehicle for a week at a time without washing it.

35

49.

That Ostendorff in September 2012, requested of SDPC the home address or email address of Hunt, then the former Superintendent, so Ostendorff could request of Hunt the information he gathered during his investigation of Ostendorff's discharge. Hunt would not respond to give his address only that he wanted SDPC involved in giving me any information.

50.

That Ostendorff is defamed as his name in the public. All employment applications ask for reasons leaving previous employers and if ever been terminated or asked to resign.

51.

That the Building Program lacked transparency in funding and monies allocated and spent. Only a graph was produced showing the overall projected Program spending as compared to actual by the month. Ostendorff never saw an auditor or was ever audited for his projects to ensure no impropriety or any appearance of impropriety. It appeared to Ostendorff that the almost one-third billion dollar building program was lacking in oversight.

52.

That Folkman received a promotion shortly after discharging Ostendorff to Director of Operations along with his position of Building Program Administrator. Ostendorff is of information and belief that Folkman received a substantial pay increase at that new promotion. Pew was soon chosen as Superintendent. Ostendorff is of the information and belief that Pew received a substantial pay increase at that new promotion. Both Folkman and Pew were rewarded for their efforts in discharging Ostendorff and providing cover for the Board's handling of public funds

#### Damages

Ostendorff seeks actual, compensatory, and punitive damages under breach and tort for wrongful discharge.

Ostendorff seeks actual and punitive damages under tort for civil conspiracy in the wrongful discharge.

Ostendorff seeks actual and punitive damages under tort for negligence , gross negligence, reckless (willful) negligence for not reinstating and compensating Ostendorff.

Ostendorff seeks actual and punitive damages under tort for fraud and intentional fraud in the origination of the scheme to discharge Ostendorff.

Ostendorff seeks actual and punitive damages under tort for civil conspiracy in the fraud and intentional fraud of the scheme to discharge Ostendorff.

Ostendorff seeks actual and punitive damages under tort for malice in backdating discharge date to reduce health insurance coverage.

Ostendorff seeks actual and punitive damages under tort for fraud and intentional fraud for the false testimony at the SCDEW hearing.

Ostendorff seeks actual and punitive damages under tort for civil conspiracy in the false testimony in the SCDEW hearing.

Ostendorff seeks actual and punitive damages under tort for negligence, gross negligence, and gross(willful) negligence in subordinating false testimony at the SCDEW hearing.

Ostendorff seeks general damages for defamation. Special damages will be sought if discovery reveals monetary loss to Ostendorff due to fraudulent opinions given to prospective employers of Ostendorff's past work history and discharge.

Ostendorff demands of this Court a judgment for relief of his damages the sum of \$ 254,631.00 as well as punitive damages and other relief that the triers of fact (jury) and Court find proper and just to Ostendorff.

Ostendorff affirms :

That I have prepared this pleading and it is to the best of my knowledge

That I have contacted all defendants in writing and have acted in good faith to resolve this matte

February 28 ,2014



Mark D Ostendorff  
135 Cedar Creek Circle  
Central , SC 29630

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF PICKENS )

IN THE COURT OF COMMON PLEAS

Mark D. Ostendorff, )  
 )  
Plaintiff, )

C.A. No. 2014-CP-39-00259

vs. )

**ANSWER AND  
AFFIRMATIVE DEFENSES**

School District of Pickens County, Board )  
of Trustees, School District of Pickens )  
County, Alex Saitta, Judy Edwards, )  
Jimmy Gillespie, Herbert Cooper, Jim )  
Shelton, Ben Trotter, Kelly Pew, Henry )  
Hunt, Robert Folkman, )  
 )  
Defendants. )

Defendants, School District of Pickens County and the Board of Trustees of the School District of Pickens County, and all individually-named Defendants, by and through their undersigned counsel, hereby respond to the Complaint of Plaintiff, Mark D. Ostendorff, in accordance with the numbered paragraphs thereof, as follows:

1. Denied as stated. Defendants admit only that Ostendorff was formerly employed with the School District of Pickens County, South Carolina.
2. Admitted.
3. Admitted.
4. Denied as stated. Defendants admit only that Dr. Pew was the Assistant Superintendent for Human Resources for the School District of Pickens County at the time of Ostendorff's discharge from employment.
5. Admitted.
6. Denied.
7. Denied.
8. Denied.

9. Denied.

10. Denied in part, and denied in part for lack of knowledge. Defendants deny that Ostendorff was wrongfully discharged from his employment with the School District of Pickens County. The remaining allegations of this paragraph are denied for lack of knowledge.

11. Denied.

12. Denied.

13. Denied.

14. Denied.

15. Denied.

16. Admitted in part and denied in part. Defendants admit only that Defendant School Board members and Superintendent are aware that penalties exist for misappropriation of school funds. Defendants vehemently deny any misappropriation of school funds or any other allegation of this paragraph.

17. Admitted in part on information and belief and denied in part. Defendants admit only on information and belief that on Tuesday, March 1, 2011, at 7:30 a.m., Ostendorff received an e-mail from Robert Folkman instructing Ostendorff to see Folkman in the latter's office, and that Folkman terminated Ostendorff's employment effective that date. The remaining allegations of this paragraph are denied or denied for lack of knowledge.

18. Admitted in part and denied in part. Defendants admit only that Plaintiff came to Dr. Pew's office on or about March 1, 2011 to discuss his termination. The remaining allegations of this paragraph are denied for lack of knowledge.

19. Admitted in part and denied in part. Defendants admit only that on or about Tuesday, March 1, 2011, Ostendorff met with Dr. Pew, then Assistant Superintendent of Human Resources, in her office, and inquired as to his discharge; that Pew related that Ostendorff had been discharged because of failure to complete assignments, failure to maintain regular work

hours, and taking unapproved time off, and that Pew shook Ostendorff's hand and wished him good luck in future employment. Any remaining allegations of this paragraph are denied.

20. Denied.

21. Denied.

22. Admitted in part and denied in part for lack of knowledge. Defendants admit only that Plaintiff submitted a leave form bearing what appears to be a signature of Mr. Newman for March 1, 2011. All remaining allegations are denied for lack of knowledge.

23. Denied for lack of knowledge.

24. Denied.

25. Denied for lack of knowledge.

26. Admitted in part and denied in part for lack of knowledge. Defendants admit only that Ostendorff applied for unemployment insurance through the South Carolina Department of Employment and Workforce, and that Ostendorff was determined to be disqualified for benefits. Any remaining allegations of this paragraph are denied for lack of knowledge.

27. Admitted in part and denied in part. Defendants admit only that Plaintiff sent a letter dated March 11, 2011 appealing his discharge. The remaining allegations of this paragraph are denied.

28. Denied for lack of knowledge.

29. Admitted on information and belief.

30. Admitted in part and denied in part. Defendants admit only that Ostendorff had a discussion on March 17, 2011, in Henry Hunt's office; that Ostendorff explained his wrongful discharge theory to Hunt; that Ostendorff alleged that he was due monetary compensation; and that Hunt informed Ostendorff that he would investigate. Any remaining allegations of this paragraph are denied or denied for lack of knowledge.

31. Defendants admit on information and belief only that Ostendorff was provided a copy of Dr. Pew's March 16, 2011 letter on March 17, 2011 during his meeting with Hunt.

32. Admitted in part and denied in part. Defendants admit only that Plaintiff's April 5 letter speaks for itself. Any remaining allegations of this paragraph are denied.

33. Admitted in part and denied in part. Defendants admit only that on or around April 5, 2011, Ostendorff sent a letter appealing Hunt's decision; that the grievance policy was attached to Hunt's letter of March 23, 2011; that a copy of Ostendorff's letter was sent to all Board members with attachments; that the attachments were Hunt's letter, Pew's letter, Ostendorff's response to Pew and Ostendorff's response to the South Carolina Department of Employment and Workforce; that Ostendorff received insurance through March 31, 2011; and that Ostendorff made a monetary claim in that letter. The remaining allegations of this paragraph are denied.

34. Defendant admits only that on or about April 5, 2011, Ostendorff submitted a written appeal of Hunt's decision, that the letter had attachments and speaks for itself, and board members received the letter and attachments. Any remaining allegations of this paragraph are denied.

35. Denied.

36. Admitted.

37. Admitted.

38. Admitted on information and belief.

39. Denied for lack of knowledge.

40. Denied for lack of knowledge.

41. Admitted.

42. Admitted on information and belief.

43. Admitted on information and belief.

44. Denied.

45. Denied.

46. Denied.

47. Denied.

48. Denied.

49. Denied for lack of knowledge.

50. Denied.

51. Denied.

52. Admitted in part and denied in part. Defendants admit only that Folkman's title changed and Dr. Pew became Superintendent after Plaintiff's termination. Any remaining allegations or insinuations of any connection between Plaintiff's termination and these events is further denied.

#### **Damages**

53. Defendants deny that Plaintiff is entitled to any damages or any other relief in this matter.

54. Any allegations not specifically admitted herein are denied.

#### **FIRST AFFIRMATIVE DEFENSE**

Plaintiff's Complaint fails to state claims upon which relief may be granted.

#### **SECOND AFFIRMATIVE DEFENSE**

Plaintiff is barred from recovery for defamation because Plaintiff consented to any alleged publication of facts about his private life by Defendants, which Defendants expressly deny.

#### **THIRD AFFIRMATIVE DEFENSE**

Plaintiff is barred from recovery for defamation because any alleged defamatory statements made by Defendants were true or substantially true.

**FOURTH AFFIRMATIVE DEFENSE**

Any alleged defamatory statements made by Defendants were qualifiedly privileged and/or made in good faith, and do not constitute actionable defamation.

**FIFTH AFFIRMATIVE DEFENSE**

Any alleged defamatory statements made by Defendants were self-publicized by Plaintiff, and thus do not constitute actionable defamation.

**SIXTH AFFIRMATIVE DEFENSE**

Plaintiff is barred from recovery for civil conspiracy because Defendants were acting in their official capacities at all times the alleged conspiracy occurred.

**SEVENTH AFFIRMATIVE DEFENSE**

On information and belief, Plaintiff's claim is barred, in whole or in part, by Plaintiff's failure to mitigate his alleged damages.

**EIGHTH AFFIRMATIVE DEFENSE**

Plaintiff is barred from recovery for civil conspiracy because Plaintiff has failed to plead special damages aside from the damages already alleged for Plaintiff's defamation claim.

**NINTH AFFIRMATIVE DEFENSE**

Plaintiff is barred from recovery for civil conspiracy because Plaintiff was an at-will employee.

**TENTH AFFIRMATIVE DEFENSE**

Plaintiff's conspiracy claim fails because there can be no liability against corporate officers or directors discussing in good faith whether to terminate an employee.

**ELEVENTH AFFIRMATIVE DEFENSE**

Plaintiff's conspiracy claim fails because there was no concerted activity, nor was there any intent or purpose to injure Plaintiff.

**TWELFTH AFFIRMATIVE DEFENSE**

All individual Defendants are immune from liability in their individual capacities under the South Carolina Tort Claims Act and other applicable law because at all relevant times the individual Defendants were acting within the scope of their official duties or employment.

**THIRTEENTH AFFIRMATIVE DEFENSE**

Defendants, at all times, acted in good faith.

**FOURTEENTH AFFIRMATIVE DEFENSE**

Plaintiff has failed to properly plead the elements of a claim for fraud

**FIFTEENTH AFFIRMATIVE DEFENSE**

At all times, Plaintiff was an at-will employee.

**SIXTEENTH AFFIRMATIVE DEFENSE**

To the extent that Plaintiff seeks punitive damages from Defendant, an award of such damages is precluded by the Tort Claims Act, and further, such an award would violate Defendant's rights to due process and equal protection under the Constitution of the United States and South Carolina.

**SEVENTEENTH AFFIRMATIVE DEFENSE**

All actions by Defendant were taken for legitimate business reasons.

**EIGHTEENTH AFFIRMATIVE DEFENSE**

Plaintiff's claims are barred by contributory/comparative negligence in that Plaintiff contributed to any negligence or gross negligence, which is denied, to a greater degree than Defendant.

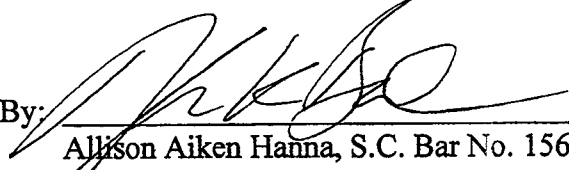
WHEREFORE, having fully answered Plaintiff's Complaint, the Defendants respectfully request that the Complaint be dismissed with prejudice and that the Defendants be awarded the costs of this action, together with a reasonable attorney's fee as permitted by law or equity.


[SIGNATURE PAGE FOLLOWS]

Respectfully submitted,

CHILDS & HALLIGAN, P.A.

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Attorneys for Defendants

March 31, 2014

Columbia, South Carolina

CHAPTER 78.

SOUTH CAROLINA TORT CLAIMS ACT

**SECTION 15-78-10.** Short title.

This chapter may be cited as the "South Carolina Tort Claims Act".

**HISTORY:** 1986 Act No. 463, Section 1.

**SECTION 15-78-20.** Legislative findings; declaration of public policy; extent of, and construction of, waiver of immunity.

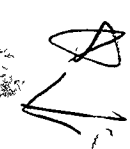
(a) The General Assembly finds that while a private entrepreneur may be readily held liable for negligence of his employees within the chosen ambit of his activity, the area within which government has the power to act for the public good has been without limit and, therefore, government did not have the duty to do everything which might have been done. The General Assembly further finds that each governmental entity has financial limitations within which it must exercise authorized power and discretion in determining the extent and nature of its activities. Thus, while total immunity from liability on the part of the government is not desirable, ~~see McCall v. Batson,~~ neither should the government be subject to unlimited nor unqualified liability for its actions. The General Assembly recognizes the potential problems and hardships each governmental entity may face being subjected to unlimited and unqualified liability for its actions. Additionally, the General Assembly recognizes the impossibility of insuring for acts retrospectively. The General Assembly seeks an orderly transition to the recognition of individuals' rights against the tortious sovereign as defined herein. Consequently, it is declared to be the public policy of the State of South Carolina that the State, and its political subdivisions, are only liable for torts within the limitations of this chapter and in accordance with the principles established herein. It is further declared to be the public policy of the State of South Carolina that to insure an orderly transition from sovereign immunity to qualified and limited liability that the General Assembly intends to provide for liability on the part of the State and its political subdivisions only from July 1, 1986, forward in prospective fashion. No governmental entity which was not insured at the time of the injury for which compensation is sought is liable under this chapter and those which were insured are liable only to the extent provided herein. Liability for acts or omissions under this chapter is based upon the traditional tort concepts of duty and the reasonably prudent person's standard of care in the performance of that duty.

(b) The General Assembly in this chapter intends to grant the State, its political subdivisions, and employees, while acting within the scope of official duty, immunity from liability and suit for any tort except as waived by this chapter. The General Assembly additionally intends to provide for liability on the part of the State, its political subdivisions, and employees, while acting within the scope of official duty, only to the extent provided herein. All other immunities applicable to a governmental entity, its employees, and agents are expressly preserved. ~~The remedy provided by this chapter is the exclusive civil remedy available for any tort committed by a governmental entity, its employees, or its agents except as provided in Section 15-78-70(b).~~

(c)(i) ~~As to those causes of action that arise or accrue prior to the effective date of this act, the General Assembly reinstates sovereign immunity on the part of the State, its political subdivisions and employees, while acting within the scope of official duty provided that sovereign immunity will not bar recovery in any cause of action arising or accruing on or before the effective date of this act if the defendant maintained liability insurance coverage.~~

(ii) In such cases involving governmental health care facilities, as defined in Section 15-78-30(j), recovery shall not exceed the limits of the liability insurance coverage up to a maximum recovery of five hundred thousand dollars.

(iii) In all other such cases recovery shall not exceed the limits of the liability insurance coverage.



(d) Nothing in this chapter affects liability based on contract nor does it affect the power of the State or its political subdivisions to contract.

(e) Nothing in this chapter is construed as a waiver of the state's or political subdivision's immunity from suit in federal court under the Eleventh Amendment to the Constitution of the United States nor as consent to be sued in any state court beyond the boundaries of the State of South Carolina.

(f) The provisions of this chapter establishing limitations on and exemptions to the liability of the State, its political subdivisions, and employees, while acting within the scope of official duty, must be liberally construed in favor of limiting the liability of the State.

(g) The General Assembly recognizes the competing interests of either providing physicians and dentists qualified immunity under the provisions of the South Carolina Tort Claims Act or continuing unqualified liability for medical malpractice actions brought against governmentally employed physicians or dentists. While patients deserve accountable and competent health care, regardless of the public or private character of the provider, governmental entities, in order to attract qualified physicians and dentists, must be able to offer an affordable compensation and employment package, including liability insurance. The General Assembly, in amending this chapter, intends to provide an orderly transition from noninclusion to inclusion of physicians and dentists under the provisions of this chapter. Additionally, the liability limits, and hence mandated insurance coverage, of governmental entities for acts of physicians or dentists, acting within the scope of their profession, are set somewhat higher than those provided for other types of governmental liability. These higher limits and mandated coverages are recognition by the General Assembly of significantly higher damages in cases of medical malpractice. To this end, inclusion of physicians and dentists within this chapter has been delayed until January 1, 1989, when an affordable program of group liability insurance will be instituted.

HISTORY: 1986 Act No. 463, Section 1; 1987 Act No. 7, Section 1; 1988 Act No. 352, Section 2.

#### SECTION 15-78-30. Definitions.

(a) "Agency" means the individual office, agency, authority, department, commission, board, division, instrumentality, or institution, including a state-supported governmental health care facility, school, college, university, or technical college, which employs the employee whose act or omission gives rise to a claim under this chapter.

(b) "Claim" means any written demand against the State of South Carolina or a political subdivision for money only, on account of loss, caused by the tort of any employee of the State or a political subdivision while acting within the scope of his official duty.

~~(c) Prior to January 1, 1989, "employee" means any officer, employee, or agent of the State or its political subdivisions, including elected or appointed officials, law enforcement officers, and persons acting on behalf or in service of a governmental entity in the scope of official duty, whether with or without compensation, but the term does not include an independent contractor doing business with the State or a political subdivision of the State. Custody of prisoners by the State or any of its political subdivisions does not in and of itself create an employer and employee relationship between the State and the prisoner. Provided, the provisions of this section in no way limit or modify the liability of a licensed physician or dentist, acting within the scope of his profession.~~

On or after January 1, 1989, "employee" means any officer, employee, agent, or court appointed representative of the State or its political subdivisions, including elected or appointed officials, law enforcement officers, and persons acting on behalf or in service of a governmental entity in the scope of official duty, including, but not limited to, technical experts whether with or without compensation, but the term does not include an independent contractor doing business with the State or a political subdivision of the State. Custody of prisoners by the State or any of its political subdivisions does not in and of itself create an employer and employee relationship between the State and the prisoner. Provided, the provisions of this section in no way limit or modify the liability of a licensed physician or dentist, acting within the scope of his profession, with respect to any action or claim which involved services for

which the physician or dentist was paid, should have been paid, or expected to be paid at the time of the rendering of the services from a source other than the salary appropriated by the governmental entity or fees received from any practice plan authorized by the employer whether or not the practice plan is incorporated and registered with the Secretary of State.

(d) "Governmental entity" means the State and its political subdivisions.

(e) "State" means the State of South Carolina and any of its offices, agencies, authorities, departments, commissions, boards, divisions, instrumentalities, including the South Carolina Protection and Advocacy System for the Handicapped, Inc., and institutions, including state-supported governmental health care facilities, schools, colleges, universities, and technical colleges.

(f) "Loss" means bodily injury, disease, death, or damage to tangible property, including lost wages and economic loss to the person who suffered the injury, disease, or death, pain and suffering, mental anguish, and any other element of actual damages recoverable in actions for negligence, but does not include the intentional infliction of emotional harm.

(g) "Occurrence" means an unfolding sequence of events which proximately flow from a single act of negligence.

(h) "Political subdivision" means the counties, municipalities, school districts, a regional transportation authority established pursuant to Chapter 25 of Title 58, and an operator as defined in item (8) of Section 58-25-20 which provides public transportation on behalf of a regional transportation authority, and special purpose districts of the State and any agency, governmental health care facility, department, or subdivision thereof.

(i) "Scope of official duty" or "scope of state employment" means (1) acting in and about the official business of a governmental entity and (2) performing official duties.

(j) "Governmental health care facility" means one which is operated by the State or a political subdivision through a governing board appointed or elected pursuant to statute or ordinance and which is tax-exempt under state and federal laws as a governmental entity and from which no part of its net income from its operation accrues to the benefit of any individual or nongovernmental entity. Health care facility includes any facility as defined in Title 44, S. C. Code Ann. for the provision of mental or physical care to individuals, whether or not it is required to be licensed under those provisions.

HISTORY: 1986 Act No. 463, Section 1; 1988 Act No. 352, Sections 3, 4; 1990 Act No. 351, Section 1; 1994 Act No. 380, Section 2; 1996 Act No. 271, Section 1; 2008 Act No. 199, Section 2, eff April 16, 2008.

**SECTION 15-78-40.** Tort liability of State, agency, political subdivision, or governmental entity, generally.

The State, an agency, a political subdivision, and a governmental entity are liable for their torts in the same manner and to the same extent as a private individual under like circumstances, subject to the limitations upon liability and damages, and exemptions from liability and damages, contained herein.

HISTORY: 1986 Act No. 463, Section 1.

**SECTION 15-78-50.** Right of injured person to file claim; non-liability of governmental entity where employee would not be liable if a private person; injunctions against governmental entities.

(a) Any person who may suffer a loss proximately caused by a tort of the State, an agency, a political subdivision, or a governmental entity, and its employee acting within the scope of his official duty may file a claim as hereinafter provided.

(b) In no case is a governmental entity liable for a tort of an employee where that employee, if a private person, would not be liable under the laws of this State.

(c) Nothing herein shall affect the power of a court of equity at the suit of a party complainant to enjoin unlawful acts committed by governmental entities or mandate lawful action by governmental entities.

HISTORY: 1986 Act No. 463, Section 1.

~~SECTION 15-78-60. Exceptions to waiver of immunity:~~

~~The governmental entity is not liable for a loss resulting from:~~

- (1) legislative, judicial, or quasi-judicial action or inaction;
- (2) administrative action or inaction of a legislative, judicial, or quasi-judicial nature;
- (3) execution, enforcement, or implementation of the orders of any court or execution, enforcement, or lawful implementation of any process;
- (4) adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation, or written policies;
- (5) the exercise of discretion or judgment by the governmental entity or employee or the performance or failure to perform any act or service which is in the discretion or judgment of the governmental entity or employee;
- (6) civil disobedience, riot, insurrection, or rebellion or the failure to provide the method of providing police or fire protection;
- (7) a nuisance;
- (8) snow or ice conditions or temporary or natural conditions on any public way or other public place due to weather conditions unless the snow or ice thereon is affirmatively caused by a negligent act of the employee;
- (9) entry upon any property where the entry is expressly or impliedly authorized by law;
- (10) natural conditions of unimproved property of the governmental entity, unless the defect or condition causing a loss is not corrected by the particular governmental entity responsible for the property within a reasonable time after actual or constructive notice of the defect or condition;
- (11) assessment or collection of taxes or special assessments or enforcement of tax laws;
- (12) licensing powers or functions including, but not limited to, the issuance, denial, suspension, renewal, or revocation of or failure or refusal to issue, deny, suspend, renew, or revoke any permit, license, certificate, approval, registration, order, or similar authority except when the power or function is exercised in a grossly negligent manner;
- (13) regulatory inspection powers or functions, including failure to make an inspection, or making an inadequate or negligent inspection, of any property to determine whether the property complies with or violates any law, regulation, code, or ordinance or contains a hazard to health or safety;
- (14) any claim covered by the South Carolina Workers' Compensation Act, except claims by or on behalf of an injured employee to recover damages from any person other than the employer, the South Carolina Unemployment Compensation Act, or the South Carolina State Employee's Grievance Act;
- (15) absence, condition, or malfunction of any sign, signal, warning device, illumination device, guardrail, or median barrier unless the absence, condition, or malfunction is not corrected by the governmental entity responsible for its maintenance within a reasonable time after actual or constructive notice. Governmental entities are not liable for the removal or destruction of signs, signals, warning devices, guardrails, or median barriers by third parties except on failure of the political subdivision to correct them within a reasonable time after actual or constructive notice. Nothing in this item gives rise to liability arising from a failure of any governmental entity to initially place any of the above signs, signals, warning devices, guardrails, or median barriers when the failure is the result of a discretionary act of the governmental entity. The signs, signals, warning devices, guardrails, or median barriers referred to in this item are those used in connection with hazards normally connected with the use of public ways and do not apply to the duty to warn of special conditions such as excavations, dredging, or public way construction. Governmental entities are not liable for the design of highways and other public ways.

Governmental entities are not liable for loss on public ways under construction when the entity is protected by an indemnity bond. Governmental entities responsible for maintaining highways, roads, streets, causeways, bridges, or other public ways are not liable for loss arising out of a defect or a condition in, on, under, or overhanging a highway, road, street, causeway, bridge, or other public way caused by a third party unless the defect or condition is not corrected by the particular governmental entity responsible for the maintenance within a reasonable time after actual or constructive notice;

(16) maintenance, security, or supervision of any public property, intended or permitted to be used as a park, playground, or open area for recreational purposes, unless the defect or condition causing a loss is not corrected by the particular governmental entity responsible for maintenance, security, or supervision within a reasonable time after actual notice of the defect or condition;

~~(17) employee conduct outside the scope of his official duties or which constitutes actual fraud, actual malice, intent to harm, or a crime involving moral turpitude;~~

(18) imposition or establishment of a quarantine by a governmental entity, whether the quarantine relates to persons or property;

(19) emergency preparedness activities and activities of the South Carolina National Guard and South Carolina State Guard while engaged in state or federal training or duty. This exemption does not apply to vehicular accidents;

(20) an act or omission of a person other than an employee including but not limited to the criminal actions of third persons;

(21) the decision to or implementation of release, discharge, parole, or furlough of any persons in the custody of any governmental entity, including but not limited to a prisoner, inmate, juvenile, patient, or client or the escape of these persons;

(22) termination or reduction of benefits under a public assistance program;

(23) institution or prosecution of any judicial or administrative proceeding;

(24) holding or conduct of elections;

(25) responsibility or duty including but not limited to supervision, protection, control, confinement, or custody of any student, patient, prisoner, inmate, or client of any governmental entity, except when the responsibility or duty is exercised in a grossly negligent manner;

(26) failure to supervise or control areas open for public hunting or activities thereon. Failure to control, maintain, and/or supervise the use of and activities in, on, and around public boat ramps except within a reasonable time after actual notice of the defect or condition. Failure to maintain navigational markers, except within a reasonable time after actual notice of the defect or condition.

(27) solicitations on streets and highways as authorized by the provisions of Section 5-27-910.

(28) Notification of any public school student's parent, legal guardian, or other person with whom a public school student resides of the student's suspected use of alcohol, controlled substance, prescription or nonprescription drugs by any public school administrator, principal, counselor, or teacher if such notification is made in good faith.

(29) acts or omissions of members of the state and county athletic commissions or ringside physicians acting within the scope of their official duties pursuant to Chapter 7 of Title 52.

(30) acts or omissions of members of local foster care review boards acting within the scope of their official duties pursuant to Subarticle 4, Article 13, Chapter 7 of Title 20. However, the member shall act in good faith, his conduct may not constitute gross negligence, recklessness, wilfulness, or wantonness, and he must have participated in a training program established by the state foster care review board system.

(31) acts or omissions of employees and volunteers of the South Carolina Protection and Advocacy System for the Handicapped acting within the scope of their official duties pursuant to Article 5, Chapter 33 of Title 43, when such acts or omissions are done or made in good faith, and do not constitute gross negligence, recklessness, wilfulness, or wantonness.

(32) a pre-occupancy housing inspection contracted for by the South Carolina Department of Employment and Workforce pursuant to Section 46-43-40.



(33) the performance of any duty related to the service of members of the Judicial Merit Selection Commission or the Citizens Committees on Judicial Selection.

(34) the performance of any duty related to the service of the members of the Tobacco Community Development Board.

(35) the failure of a library's or media arts center's governing board to adopt policies as provided in Section 10-1-205.

(36) acts or omissions by a special state constable who is appointed pursuant to Section 23-7-10 and acting within the scope of his official duty under conditions of a national emergency or of a serious and immediate risk to the physical security of an energy facility within the special state constable's jurisdiction as provided in Section 23-7-40.

(37) the performance of any duty related to the service of the members of the Tobacco Settlement Revenue Management authority.

(38) conduct of a director appointed pursuant to Section 58-31-20 giving rise to a lawsuit under Section 58-31-57.

(39) the grant or denial by a governing body of a county or municipality as provided in Section 23-35-175 of an application to extend a Fireworks Prohibited Zone beyond the subject property for which a Discharge of Fireworks Prohibited Agreement has been filed.

(40) an injury a student may sustain as a result of self-monitoring or self-administering medications or for an injury that a student may sustain from taking or using medications or self-monitoring devices for which the student does not have a prescription or does not have authorization by the school district.

HISTORY: 1986 Act No. 463, Section 1; 1988 Act No. 352, Sections 5, 6; 1988 Act No. 373, Section 2; 1988 Act No. 664; 1988 Act No. 675, Section 1; 1989 Act No. 132, Section 2; 1990 Act No. 351, Section 2; 1996 Act No. 386, Section 3; 1997 Act No. 35, Section 6; 1999 Act No. 77, Section 4; 2000 Act No. 362, Section 1; 2000 Act No. 387, Part II, Section 69A.5; 2000 Act No. 387, Part II, Section 97B; 2000 Act No. 407, Section 3; 2005 Act No. 6, Section 2, eff January 13, 2005; 2005 Act No. 81, Section 2, eff May 26, 2005; 2005 Act No. 137, Section 2, eff May 25, 2005.

~~SECTION 15-78-70: Liability for act of government employee; requirement that agency or political subdivision be named party defendant; effect of judgment or settlement.~~

(a) This chapter constitutes the exclusive remedy for any tort committed by an employee of a governmental entity. An employee of a governmental entity who commits a tort while acting within the scope of his official duty is not liable therefor except as expressly provided for in subsection (b).

~~(b) Nothing in this chapter may be construed to give an employee of a governmental entity immunity from suit and liability if it is proved that the employee's conduct was not within the scope of his official duties or that it constituted actual fraud, actual malice, intent to harm, or a crime involving moral turpitude.~~

(c) Prior to January 1, 1989, a person, when bringing an action against a governmental entity under the provisions of this chapter, shall name as a party defendant only the agency or political subdivision for which the employee was acting and is not required to name the employee individually, unless the agency or political subdivision for which the employee was acting cannot be determined at the time the action is instituted. In the event that the employee is individually named, the agency or political subdivision for which the employee was acting must be substituted as the party defendant. The provisions of this section may in no way limit or modify the liability of a licensed physician or dentist, acting within the scope of his profession.

On or after January 1, 1989, a person, when bringing an action against a governmental entity under the provisions of this chapter, shall name as a party defendant only the agency or political subdivision for which the employee was acting and is not required to name the employee individually, unless the agency or political subdivision for which the employee was acting cannot be determined at the time the action is instituted. In the event that the employee is individually named, the agency or political subdivision for

which the employee was acting must be substituted as the party defendant. The provisions of this section in no way shall limit or modify the liability of a licensed physician or dentist, acting within the scope of his profession, with respect to any action or claim brought hereunder which involved services for which the physician or dentist was paid, should have been paid, or expected to be paid at the time of the rendering of the services from any source other than the salary appropriated by the governmental entity or fees received from any practice plan authorized by the employer whether or not the practice plan is incorporated and registered with the Secretary of State.

(d) A settlement or judgment in an action or a settlement of a claim under this chapter constitutes a complete bar to any further action by the claimant against an employee or governmental entity by reason of the same occurrence.

(e) Nothing in this chapter may be construed to give a director appointed pursuant to Section 58-31-20 immunity from suit and liability as set forth in Section 58-31-57. The State Budget and Control Board, Insurance Reserve Fund, is prohibited from providing insurance coverage for this individual liability; however, nothing shall prevent the Public Service Authority or its directors from obtaining insurance coverage from any other source.

HISTORY: 1986 Act No. 463, Section 1; 1988 Act No. 352, Section 7; 1994 Act No. 380, Section 3; 2005 Act No. 137, Section 3, eff May 25, 2005.

**SECTION 15-78-80.** Filing of verified claim; handling and disposition of claims; requirement that agencies and political subdivisions cooperate with Budget and Control Board.

(a) A verified claim for damages under this chapter, setting forth the circumstances which brought about the loss, the extent of the loss, the time and place the loss occurred, the names of all persons involved if known, and the amount of the loss sustained may be filed:

(1) in cases against the State, with the State Budget and Control Board, or with the agency employing an employee whose alleged act or omission gave rise to the claim;

(2) where the claim is against a political subdivision, with the political subdivision employing an employee whose alleged act or omission gave rise to the claim;

(3) where the identification of the proper defendant is in doubt, with the Attorney General.

(b) Each agency and political subdivision must designate an employee or office to accept the filing of the claims.

(c) Filing may be accomplished by receipt of certified mailing of the claims or by compliance with the provisions of law relating to service of process.

(d) The verified claim may be received by the Budget and Control Board or the appropriate agency or political subdivision. If filed, the claim must be received within one year after the loss was or should have been discovered.

(e) In all cases in which a claim is filed, the Budget and Control Board or political subdivision has one hundred eighty days from the date of filing of the claim in which to determine whether the claim should be allowed or disallowed. Failure to notify the claimant of action upon the claim within one hundred eighty days from the date of filing of the claim is considered a disallowance of the claim.

(f) The handling and disposition of claims filed under this chapter are not subject to the provisions of Article 3, Chapter 23 of Title 1.

(g) In all cases, where insurance is provided by the Budget and Control Board, the agency or political subdivision involved must cooperate with the Budget and Control Board in the investigation and handling of any claim.

HISTORY: 1986 Act No. 463, Section 1.

**SECTION 15-78-90.** Settlement of claims and actions; institution of action where claim has or has not been filed.

(a) The Budget and Control Board, or the political subdivision where it has not purchased insurance from the Budget and Control Board, may adjust, compromise, settle, or allow any claim or settle or compromise any action.

(b) Whether or not the claim is filed, the claimant is entitled to institute an action against the appropriate agency or political subdivision. Provided, however, if a claimant files a claim, he may not institute an action until after the occurrence of the earliest of one of the following three events: (1) the passage of one hundred eighty days from the filing of the claim with the governmental entity, (2) the governmental entity's disallowance of the claim, or (3) the governmental entity's rejection of a settlement offer.

HISTORY: 1986 Act No. 463, Section 1.

**SECTION 15-78-100.** When and where to institute action; requirement of special verdict specifying proportionate liability of multiple defendants.

(a) Except as provided for in Section 15-3-40, an action for damages under this chapter may be instituted at any time within two years after the loss was or should have been discovered. Provided, that if a claim for damages was filed and disallowed or rejected an action for damages filed under this chapter, based upon the same occurrence as the claim, may be instituted within three years after the loss was or should have been discovered.

(b) Jurisdiction for any action brought under this chapter is in the circuit court and brought in the county in which the act or omission occurred.

(c) In all actions brought pursuant to this chapter when an alleged joint tortfeasor is named as party defendant in addition to the governmental entity, the trier of fact must return a special verdict specifying the proportion of monetary liability of each defendant against whom liability is determined.

HISTORY: 1986 Act No. 463, Section 1; 1988 Act No. 352, Section 8.

**SECTION 15-78-110.** Statute of limitations.

~~Except as provided for in Section 15-3-40,~~ any action brought pursuant to this chapter is forever barred unless an action is commenced within two years after the date the loss was or should have been discovered; provided, that if the claimant first filed a claim pursuant to this chapter then the action for damages based upon the same occurrence is forever barred unless the action is commenced within three years of the date the loss was or should have been discovered.

HISTORY: 1986 Act No. 463, Section 1; 1988 Act No. 352, Section 9.

**SECTION 15-78-120.** Limitation on liability; prohibition against recovery of punitive or exemplary damages or prejudgment interest; signature of attorney on pleadings, motions, or other papers.

(a) For any action or claim for damages brought under the provisions of this chapter, the liability shall not exceed the following limits:

(1) Except as provided in Section 15-78-120(a)(3), no person shall recover in any action or claim brought hereunder a sum exceeding three hundred thousand dollars because of loss arising from a single occurrence regardless of the number of agencies or political subdivisions involved.

(2) Except as provided in Section 15-78-120(a)(4), the total sum recovered hereunder arising out of a single occurrence shall not exceed six hundred thousand dollars regardless of the number of agencies or political subdivisions or claims or actions involved.

(3) No person may recover in any action or claim brought hereunder against any governmental entity and caused by the tort of any licensed physician or dentist, employed by a governmental entity and acting within the scope of his profession, a sum exceeding one million two hundred thousand dollars because of loss arising from a single occurrence regardless of the number of agencies or political subdivisions involved.

(4) The total sum recovered hereunder arising out of a single occurrence of liability of any governmental entity for any tort caused by any licensed physician or dentist, employed by a governmental entity and acting within the scope of his profession, may not exceed one million two hundred thousand dollars regardless of the number of agencies or political subdivisions or claims or actions involved.

(5) The provisions of Section 15-78-120(a)(3) and (a)(4) shall in no way limit or modify the liability of a licensed physician or dentist, acting within the scope of his profession, with respect to any action or claim brought hereunder which involved services for which the physician or dentist was paid, should have been paid, or expected to be paid at the time of the rendering of the services from any source other than the salary appropriated by the governmental entity or fees received from any practice plan authorized by the employer whether or not the practice plan is incorporated and registered with the Secretary of State.

(b) No award for damages under this chapter shall include punitive or exemplary damages or interest prior to judgment.

(c) In any claim, action, or proceeding to enforce a provision of this chapter, the signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion, or other paper; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well-grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

HISTORY: 1986 Act No. 463, Section 1; 1988 Act No. 352, Section 10; 1994 Act No. 380, Section 4; 1997 Act No. 155, Part II, Sections 55C, 55D.

**SECTION 15-78-130.** Defense of political subdivision which has not purchased insurance through Budget and Control Board.

The defense for a political subdivision against an action brought pursuant to this chapter, when the political subdivision does not purchase insurance through the Budget and Control Board, must be provided by the political subdivision or its designee.

HISTORY: 1986 Act No. 463, Section 1.

**SECTION 15-78-140.** Procurement of insurance by political subdivisions; exclusivity of remedies provided in this chapter.

(a) (Reserved)

(b) The political subdivisions of this State, in regard to tort and automobile liability, property and casualty insurance shall procure insurance to cover these risks for which immunity has been waived by (1) the purchase of liability insurance pursuant to Section 1-11-140; or (2) the purchase of liability insurance from a private carrier; or (3) self-insurance; or (4) establishing pooled self-insurance liability funds, by intergovernmental agreement, which may not be construed as transacting the business of

insurance or otherwise subject to state laws regulating insurance. A pooled self-insurance liability pool is authorized to purchase specific and aggregate excess insurance. A pooled self-insurance liability fund must provide liability coverage for all employees of a political subdivision applying for participation in the fund. If the insurance is obtained other than pursuant to Section 1-11-140, it must be obtained subject to the following conditions:

(1) If the political subdivision does not procure tort liability insurance pursuant to Section 1-11-140, it must also procure its automobile liability and property and casualty insurance from other sources and shall not procure these coverages through the Budget and Control Board;

(2) If a political subdivision procures its tort liability insurance, automobile liability insurance, or property and casualty insurance through the Budget and Control Board, all liability exposures of the political subdivision as well as its property and casualty insurance must be insured with the Budget and Control Board;

(3) If the political subdivision, at any time, procures its tort liability, automobile liability, property, or casualty insurance other than through the Budget and Control Board and then subsequently desires to obtain this coverage with the Budget and Control Board, notice of its intention to so obtain this subsequent coverage must be provided the Budget and Control Board at least ninety days prior to the beginning of the coverage with the State Budget and Control Board. The other lines of insurance that the political subdivision is required to procure from the board are not required to commence until the coverage for that line of insurance expires. Any political subdivision may cancel all lines of insurance with the State Budget and Control Board if it gives ninety days' notice to the board. The Budget and Control Board may negotiate the insurance coverage for any political subdivision separate from the insurance coverage for other insureds.

(4) If any political subdivision cancels its insurance with the Budget and Control Board, it is entitled to an appropriate refund of the premium, less reasonable administrative cost.

(c) For any claim filed under this chapter, the remedy provided in Section 15-78-120 is exclusive. The immunity of the State and its political subdivisions, with regard to the seizure, execution, or encumbrance of their properties is reaffirmed.

HISTORY: 1986 Act No. 463, Section 1; 1997 Act No. 155, Part II, Section 55E.

**SECTION 15-78-150.** Authority of Budget and Control Board to purchase liability insurance; funding of purchase by participating governmental entities; premiums set according to risk; development of actuarial rating system plan.

(a) The Budget and Control Board is authorized to purchase liability insurance.

(b) The purchase of insurance must be funded by participating governmental entities by payment of premiums as required by the Budget and Control Board. The Budget and Control Board in setting these premiums shall rate the policy according to the risk involved with the general class of insured entity. The Budget and Control Board must develop an actuarial rating system plan based upon the classification of employee and the risk involved by class of employee which must be implemented by July 1, 1990.

HISTORY: 1986 Act No. 463, Section 1; 1987 Act No. 123, Section 2.

**SECTION 15-78-160.** Nonliability of Budget and Control Board where lack of insurance coverage results from agency's or political subdivision's failure to pay premium.

If an agency or political subdivision fails to pay any required premium within sixty days from the date the premium is invoiced, the State Budget and Control Board may cancel the policy for nonpayment of premium by mailing a notice of cancellation giving not less than thirty days' notice of the cancellation to the delinquent agency or political subdivision. Prior to the termination of the insurance coverage, notice of the impending termination also must be published in a newspaper of regular circulation in the county

where the insured's headquarters is located. The State Budget and Control Board is not liable for any risk or loss occurring after the effective date of the cancellation.

HISTORY: 1986 Act No. 463, Section 1; 1996 Act No. 314, Section 3.

**SECTION 15-78-170.** Action or claim for death of person; division of recovery.

An action or claim for the death of a person may be brought under this chapter by the executor or administrator respectively, of the person's estate when death results from bodily injury if the bodily injury would have entitled the injured party to maintain an action or claim if death had not ensued. The provisions and limitations of this chapter are applicable to any such action or claim. Every action or claim must be for the benefit of the wife or husband and child, or children of the person whose death has been so caused and if there is no wife, husband, child, or children, then for the benefit of the parent or parents, and if there is none, then for the benefit of the heirs-at-law or the distributees of the person whose death has been so caused. Any amount recovered must be divided among the before-mentioned parties in those shares as they would have been entitled to if the deceased had died intestate and the amount recovered had been personal assets of his estate.

HISTORY: 1986 Act No. 463, Section 1.

**SECTION 15-78-180.** Applicability of chapter to causes of action arising before or after July 1, 1986.

The provisions of Chapter 78 of Title 15 of the 1976 Code shall only apply to those causes of action arising or accruing after the effective date of this chapter; provided, however, the provisions of Section 15-78-20(c) of the 1976 Code are applicable to all causes of action arising on or before the effective date of the chapter.

HISTORY: 1986 Act No. 463, Section 1.

**SECTION 15-78-190.** Compensation of plaintiff pursuant to underinsured or uninsured defendant provisions of plaintiff's insurance policy.

If the amount of the verdict or judgment is not satisfied by reason of the monetary limitations of this chapter upon recovery from the State or political subdivision thereof, the plaintiff's insurance company, subject to the underinsured and uninsured defendant provisions of the plaintiff's insurance policy, if any, shall compensate the plaintiff for the difference between the amount of the verdict or judgment and the payment by the political subdivision. If a cause of action is barred under Section 15-78-60 of the 1976 Code, the plaintiff's insurance company must compensate him for his losses subject to the aforementioned provisions of his insurance policy.

HISTORY: 1986 Act No. 463, Section 6.

**SECTION 15-78-200.** Exclusive and sole remedy for torts committed by employee of governmental entity while acting within scope of employee's official duty.

Notwithstanding any provision of law, this chapter, the "South Carolina Tort Claims Act", is the exclusive and sole remedy for any tort committed by an employee of a governmental entity while acting within the scope of the employee's official duty. The provisions of this chapter establish limitations on and exemptions to the liability of the governmental entity and must be liberally construed in favor of limiting the liability of the governmental entity.

HISTORY: 1997 Act No. 155, Part II, Section 55B.

**SECTION 15-78-210.** Rights and privileges preserved.

The provisions of Act 27 of 2005 do not affect any right, privilege, or provision of the South Carolina Tort Claims Act as contained in Chapter 78, Title 15 of the 1976 Code or the South Carolina Solicitation of Charitable Funds Act as contained in Chapter 56 of Title 33.

HISTORY: 2005 Act No. 27, Section 13, eff March 21, 2005.

**SECTION 15-78-220.** Rights and privileges not affected.

The provisions of Act 32 of 2005 do not affect any right, privilege, or provision of the South Carolina Tort Claims Act as contained in Chapter 78, Title 15 of the 1976 Code or the South Carolina Solicitation of Charitable Funds Act as contained in Chapter 56 of Title 33.

HISTORY: 2005 Act No. 32, Section 18, eff July 1, 2005.

**RULE 12**  
**DEFENSES AND OBJECTIONS - WHEN AND HOW PRESENTED - BY PLEADING OR**  
**MOTION - MOTION FOR JUDGMENT ON PLEADINGS**

**(a) When Presented.** A defendant shall serve his answer within 30 days after the service of the complaint upon him, unless the Court directs otherwise when service of process is made pursuant to Rule 4(e), and provided further that the State of South Carolina shall answer or otherwise respond to an application for post-conviction relief within 60 days after service of the application, if it arises out of a guilty plea, and 90 days if it arises out of a trial. A party served with a pleading stating a cross-claim against him shall serve an answer thereto within 30 days after the service upon him. The plaintiff shall serve his reply to a counterclaim in the answer within 30 days after service of the answer or, if a reply is ordered by the court, within 30 days after service of the order, unless the order otherwise directs. The service of a motion permitted under this rule alters these periods of time as follows, unless a different time is fixed by order of the Court: (1) if the Court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within 15 days after notice of the Court's action; (2) if the Court grants a motion for a more definite statement the responsive pleading shall be served within 15 days after the service of the more definite statement, and a responsive pleading, if necessary, shall be served within 15 days after notice of the court's action on a motion to strike.

**Note:**

This Rule 12(a) is identical to the Federal Rule except that it changes the time to answer from 20 to 30 days, and the time to plead after motion denied from 10 to 15 days. No other changes in State practice are affected by the Rule.

**Note to 1986 Amendment:**

The amendment to Rule 12(a)(2) sets the time for response after a motion to strike at 15 days, which is the same time set for pleading after a successful motion for a more definite statement.

**Note to 1995 Amendment:**

Rule 12(a) is amended to provide special time periods for the State to respond to applications for post-conviction relief because the thirty day time period for civil litigation is often extended so that the State may obtain a transcript of the proceeding before responding.

**(b) How Presented.** Every defense, in law or fact, to a cause of action in any pleading, whether a claim, counterclaim, cross-claim, or third-party claim, shall be asserted in the responsive pleading thereto if one is required, except that the following defenses may at the option of the pleader be made by motion: (1) lack of jurisdiction over the subject matter, (2) lack of jurisdiction over the person, (3) improper venue, (4) insufficiency of process, (5) insufficiency of service of process, (6) failure to state facts sufficient to constitute a cause of action, (7) failure to join a party under Rule 19, (8) another action is pending between the

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same parties for the same claim. A motion making any of these defenses shall be made before pleading if a further pleading is permitted. No defense or objection is waived by being joined with one or more other defenses or objections in a responsive pleading or motion. If a pleading sets forth a cause of action or defense to which an adverse party is not required to serve a responsive pleading, he may assert at the trial any defense in law or fact to that cause of action or defense. If, on a motion asserting the defense numbered (6) to dismiss for failure of the pleading to state facts sufficient to constitute a cause of action, matters outside the pleading are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

**Note:**

This important Rule 12(b) enables a party to (1) raise by motion or answer all of the defenses now raised by demurrer; and (2) eliminates the necessity of the awkward "special appearance to object to jurisdiction" under present State practice. The motion should be made before answer for early disposition of cases; but the defenses enumerated may be made in the responsive pleading and are not waived by being stated in a pleading rather than by motion. The last sentence eliminates the so-called "speaking demurrer" at trial, by treating such late motion as a motion for Summary Judgment under Rule 56.

**Note to 1986 Amendment:**

The amendment to the fourth sentence of Rule 12(b) clarifies the litigant's right to assert at trial any defenses as well as any claims he could have raised in a permissive pleading but chose not to do so. Consequently, the election not to reply to an affirmative defense does not waive the right to contest that affirmative defense.

**(c) Motion for Judgment on the Pleadings.** After the pleadings are closed but within such time as not to delay the trial, any party may move for judgment on the pleadings. If, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the Court, the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent to such a motion by Rule 56.

**Note:**

This Rule 12(c) preserves the present common law practice in this State, and it is more important than the Federal Rule, because of the requirement for fact pleading. It may also be treated as a motion for summary judgment in proper circumstances

**(d) Preliminary Hearings.** The defenses specifically enumerated (1)-(8) in subdivision (b) of this rule, whether made in a pleading or by motion, motions for judgment on the pleadings under subdivision (c) of this rule, and motions for summary judgment under Rule 56, shall be heard and determined before trial on application of any party, unless the Court orders that the hearing and determination thereof be deferred until the trial.

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**Note:**

This Rule 12(d) is the same as the Federal Rule, and assures timely disposal of 12(b) and 12(c) motions to dismiss or for judgment prior to trial.

**(e) Motion for More Definite Statement.** If a pleading to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably be required to frame a responsive pleading, he may move for a more definite statement before interposing his responsive pleading. The motion shall point out the defects complained of and the details desired. If the motion is granted and the order of the Court is not obeyed within 15 days after notice of the order or within such other time as the Court may fix, the Court may strike the pleading to which the motion was directed or make such order as it deems just.

**Note:**

This Rule 12(e) is the same as the Federal Rule and effects no change in present practice, except time for compliance is changed from 10 days to 15 days.

**(f) Motion to Strike.** Upon motion pointing out the defects complained of, and made by a party before responding to a pleading or, if no responsive pleading is required within 30 days after the service of the pleading upon him or upon the court's own initiative, at any time the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent or scandalous matter.

**Note:**

This Rule 12(f) preserves present State practice under Code § 15-13-60 and > § 15-13-440 verbatim.

**Note to 1986 Amendment:**

The amendment to Rule 12(f) makes clear that a motion to strike must point out the defects complained of, and is consistent with the language of Rule 12(e).

**(g) Consolidation of Defenses in Motion.** A party who makes a motion under this rule may join with it any other motions herein provided for and then available to him. If a party makes a motion under this rule but omits therefrom any defense or objection then available to him which this rule permits to be raised by motion, he shall not thereafter make a motion based on the defense or objection so omitted, except a motion as provided in subdivision (h)(2) hereof on any of the grounds there stated.

**Note:**

This Rule 12(g) is the same as the Federal Rule. It is new material to help prevent piecemeal presentation of defenses by separate motions.

**(h) Waiver or Preservation of Certain Defenses.**

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**(1)** A defense of lack of jurisdiction over the person, improper venue, insufficiency of process, insufficiency of service of process, or that another action is pending between the same parties for the same claim is waived (A) if omitted from a motion in the circumstances described in subdivision (g) or (B) if it is neither made by motion under this rule nor included in a responsive pleading or an amendment thereof permitted by Rule 15(a) to be made as a matter of course.

**(2)** A defense of failure to state a cause of action upon which relief can be granted, a defense of failure to join a party indispensable under Rule 19, and an objection of failure to state a legal defense to a claim may be made in any pleading permitted or ordered under Rule 7(a), or by motion for judgment on the pleadings, or at the trial on the merits.

**(3)** Whenever it appears by suggestion of the parties or otherwise that the court lacks jurisdiction of the subject matter, the court shall dismiss the action.

**Note:**

This Rule 12(h) should be read together with Rule 12(g) in defining those defenses which are waived if not presented by pleading or motion.

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STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF PICKENS	)	Case No(s) : 2014CP3900259
	)	
Mark D. Ostendorff,	)	
	)	
Plaintiff,	)	
	)	
-VS-	)	TRANSCRIPT OF RECORD
	)	
School District of Pickens	)	
County, et al	)	
	)	
Defendant.	)	
	)	

June 20, 2014  
Pickens, South Carolina

B E F O R E:

**HONORABLE LETITIA H. VERDIN**, Judge.

A P P E A R A N C E S:

**MARK D. OSTENDORFF**  
Plaintiff Pro Se

**THOMAS K. BARLOW**, Esquire  
Attorney for Defendants

**Teresa B. Johnson**  
Certified Verbatim Reporter  
P.O. Box 2812  
Greenville, S.C. 29602

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EXHIBITS PAGE

NO.

DESCRIPTION

ID EV

**PLAINTIFF EXHIBITS**

(No exhibits offered.)

**DEFENSE EXHIBITS**

(No exhibits offered.)

**COURT EXHIBITS**

(No exhibits offered.)

P R O C E E D I N G S

1  
2 (WHEREUPON, the proceedings begin on the 20th  
3 day of June, 2014 at approximately 11:38 a.m.)

4 THE COURT: All right. And this is  
5 defendant's motion to dismiss improperly named  
6 defendants. Is that correct?

7 MR. BARLOW: That's correct, Your Honor.

8 THE COURT: All right. Yes Sir.

9 MR. BARLOW: May it please the Court?

10 THE COURT: Yes Sir.

11 MR. BARLOW: All right. Tom Barlow  
12 representing all the defendants in the case.

13 THE COURT: All right.

14 MR. BARLOW: Mr. Ostendorff is a former  
15 employee of Pickens County School District. He  
16 has filed these claims pro se.

17 THE COURT: Okay.

18 MR. BARLOW: He is not represented today.

19 THE COURT: Okay.

20 MR. BARLOW: So anyway, he has alleged  
21 experience claims arising out of the  
22 termination of his employment with the Pickens  
23 County School District. We filed this motion  
24 to kind of streamline things a little bit. We  
25 haven't asked to dismiss the entity defendant--

1           **THE COURT:**     Right.  Okay.

2           **MR. BARLOW:**     --- Pickens County School  
3           District.  We certainly concede that at least  
4           discovery is warranted on the claims against  
5           the entity.

6           **THE COURT:**     All right.

7           **MR. BARLOW:**     What we have moved to do is,  
8           just like I said, to streamline this case and  
9           move to dismiss the individuals from the  
10          lawsuit as well as the Board of Trustees of  
11          Pickens County School District.  Taking the  
12          easiest one first, the Board of Trustees is not  
13          a legal entity capable of suing or being sued  
14          in its own name.  So we think that one needs to  
15          go out.  As far as the claims against the  
16          individual defendants, we are proceeding under  
17          the Tort Claims Act which has a broad  
18          protection for employees acting within the  
19          scope of their official duties.

20          **THE COURT:**     All right.

21          **MR. BARLOW:**     Now based on the allegations  
22          of the complaint, there are no facts that  
23          alleged that anyone acted outside of the scope  
24          of their official duties in terminating Mr.  
25          Ostendorff's employment or making that decision.

1 So our position is that those claims against  
2 the individuals are not able to proceed in this  
3 matter and only the claims against the Pickens  
4 County School District itself should proceed at  
5 this point.

6 **THE COURT:** All right.

7 **MR. BARLOW:** We have submitted a brief  
8 memorandum of law. I don't know if you have  
9 had a chance to review it.

10 **THE COURT:** I did. I did.

11 **MR. BARLOW:** I'm certainly happy to answer  
12 any questions about that, but that's our  
13 position.

14 **THE COURT:** All right. Mr. Ostendorff, you  
15 understand that, uh, that there -- that the  
16 defendants in this case are saying that the  
17 only properly named defendant under the Tort  
18 Claims Act would be the School District of  
19 Pickens County, that the Board of Trustees is  
20 not actually a legal entity capable of being  
21 sued but the individual defendants would fall  
22 under the umbrella of the School District of  
23 Pickens County.

24 **MR. OSTENDORFF:** I understand that. May  
25 it please the Court, Your Honor?

1           **THE COURT:**     Certainly.

2           **MR. OSTENDORFF:**     My name is Mark  
3           Ostendorff. I'm pro se. As far as being the  
4           Board of Trustees, if that's law, then they are  
5           not an entity.

6           **THE COURT:**     Okay. Okay.

7           **MR. OSTENDORFF:**     Under the Tort Claims  
8           Act, everything is if they acted within the  
9           scope of their official duties. And that, I  
10          think, is an issue of fact and I have demanded  
11          a jury trial. In reading back over this thing,  
12          uh, -- statute, every time you read over it,  
13          they seemed to come out a little bit different.

14          It talks about the, uh, entity is not  
15          liable for damages with the exception of item  
16          17. It talks about employees acting with  
17          malice, harm, whatever. And I've got this  
18          funny feeling that if these nine individuals  
19          are let off the hook with prejudice and do a  
20          motion in limine in the case and they present  
21          these things to the jury -- I'm sitting on the  
22          jury.

23          I am trying to put my place in a jury  
24          member. These people did not act within their  
25          official scope of their duties. Thus, Mark

1 needs to go back and sue those nine people who  
2 got off the hook. The School District really  
3 -- it really didn't do anything wrong. I know  
4 it is strict liability with the employee ---

5 **THE COURT:** Okay.

6 **MR. OSTENDORFF:** --- with the exception of  
7 the Tort Act. I've got three employees who  
8 misbehaved along with collusion of a school  
9 board member to hide unlawful behavior of the  
10 school board and at least one school -- uh, one  
11 employee.

12 That being, I'll just give you a little bit  
13 of background. I was talking to a friend of --  
14 one of the new school board members. There's  
15 two new school board members, Ben Trotter and  
16 Jimmy Gillespie. Well, I was talking to the  
17 property owner when they were doing road  
18 easement on his property and worked with him a  
19 good bit of time. I said, let's make this  
20 quick. I am getting laid off in June. He said  
21 for what. I said, uh, they don't need us  
22 anymore.

23 He said everybody in Pickens County is  
24 upset about this thing. He said I have got a  
25 new -- friend, a new school board member --

1 I've got a friend, a new school board member  
2 and he said that construction money is a mess.  
3 I said you know that might be true because I  
4 just heard from a coworker who was at the  
5 school board meeting who heard that Director of  
6 Finance told Alex Saitta, who was the chairman  
7 of trustees, that the construction salaries  
8 were coming out of the general fund.

9 I told him, I said, you can't do that. We  
10 voted on this thing seven years ago. There is  
11 a firewall between sales tax and property tax.  
12 Property tax covers new construction. That is  
13 Act 383 -- 388. You cannot take money from the  
14 school and put it into new construction.

15 **THE COURT:** Okay. Okay.

16 **MR. OSTENDORFF:** That was what -- I said  
17 something also about Bob Folkman, the guy I  
18 worked for. I said he has got enough time to  
19 retire. If that's true, they have got to put  
20 him Head of Operations. They are going to  
21 siphon that money out of operations. He would  
22 be charging the budget to fix all of these  
23 things that they are short.

24 **THE COURT:** All right.

25 **MR. OSTENDORFF:** When they sold the bond,

1 that was all the money they had. They came up  
2 short or whatever. And, uh, but I mention  
3 these things. I just let the conversation go.  
4 Two weeks later, I'm out of a job. It was  
5 either a week later or two weeks later, I'm out  
6 of a job. Bob Folkman came up with this little  
7 comical scheme to fire me under the -- saying I  
8 took unauthorized time off.

9 I think any reasonable person is going to  
10 see through this little plan he had. The thing  
11 is I got -- I'm saying I got discharged because  
12 I spoke something which any legal citizen in  
13 the United States can talk about and, as a  
14 public servant, I am allowed to say also.  
15 That's why I got the ax.

16 Nobody from the Board of Trustees has ever  
17 given me why they didn't vote to reinstate me.  
18 That's why I want the negligence for not  
19 reinstating me. They have all the facts. They  
20 should have known Bob Folkman was not somebody  
21 credible. Even through Henry Hunt's  
22 investigation -- you have got that. Cause Henry  
23 Hunt, when I --

24 **THE COURT:** All right. Just hand it to  
25 this lady right here.

71

1           **MR. OSTENDORFF:**     I'm sorry.

2           **THE COURT:**       That's okay.

3           **MR. OSTENDORFF:**     I went and talked to  
4           Henry Hunt about my, uh, appeal. He did this  
5           investigation. Mr. Hunt didn't know anything  
6           about me getting fired. He's the  
7           superintendent. That's, number one,  
8           retribution.

9                     I have talked with the board member. He  
10           does not recall any comments that would cause  
11           Mr. Folkman to retaliate against you. Also,  
12           Mr. Folkman said that no board member had  
13           talked with him about you. I think any  
14           reasonable person can put this thing together  
15           that the school board -- the father of the  
16           property owner that I talked to works with this  
17           new school board member. They are hot.  
18           Everybody in Pickens county is hot about this  
19           building program.

20                     So I am out of a job. I come to find out  
21           that he has talked to Bob Folkman. Why did I  
22           lose my job after he's talked to him? It is  
23           about this thing of me knowing that, uh,  
24           there's possibly a misappropriation of money.

25           **THE COURT:**       Okay.

1           **MR. OSTENDORFF:**     I think in looking  
2           through these things, I think that's three  
3           months to a year in the slammer for school  
4           board members and the superintendent. I think  
5           that is mandatory. I'm pretty sure that is  
6           what it is. If they misappropriated money, the  
7           Superintendent of Education of South Carolina  
8           can dismissed them. Then they got to go  
9           through the Court of Appeals. That's money  
10          that is going to cost them out-of-pocket. They  
11          have got a lot of problems if they  
12          misappropriated.

13                 I don't think these people should be -- I  
14                 had never gotten an affidavit. This stuff I  
15                 was sent a little late. I was expecting some  
16                 affidavits. I know you provide affidavits when  
17                 you do the motion but --

18           **THE COURT:**     No. This is a motion to  
19           dismiss. So it's just based only on the  
20           allegations only that are contained in the  
21           complaint.

22           **MR. OSTENDORFF:**     Yes, ma'am.

23           **THE COURT:**     So I am limited to reviewing  
24           the complaint.

25           **MR. OSTENDORFF:**     Yes, ma'am. I

1 understand. I can pretty much prove  
2 everything. Those people are going to be --  
3 all the board members, if they are dismissed --

4 **THE COURT:** If they are -- and I'm going  
5 to need to take the matter under advisement ---

6 **MR. OSTENDORFF:** Yes, ma'am. I certainly  
7 understand.

8 **THE COURT:** --- and look at everything.  
9 Even if they are, that certainly doesn't keep  
10 them from being not involved, in other words,  
11 being subpoenaed or things like that.

12 **MR. OSTENDORFF:** There again, if they --  
13 if they provided me something that explained --  
14 I didn't know anything about getting fired.  
15 We're not misappropriating money. Let me give  
16 you the typical answer that I would buy, that I  
17 would be more than happy to let them go because  
18 I asked them before I brought the lawsuit, what  
19 was your involvement. And there was no  
20 response. All of them came back and said we  
21 didn't know anything about Folkman firing you.

22 **THE COURT:** Okay.

23 **MR. OSTENDORFF:** We just told them to  
24 bring -- elevate any kind of concerns up. We  
25 didn't know anything about him firing you and

1 we're not misappropriating money. We didn't --  
2 we chose -- we voted not to bring you back  
3 because of the simple reason is that it was  
4 just going to be too much hostility at the  
5 workplace. And with your resume and your  
6 experience, you are bound to get a job and you  
7 would mitigate your damages. I actually  
8 thought I would too. Construction is the worst  
9 it has been.

10 **THE COURT:** Yeah.

11 **MR. OSTENDORFF:** At my age, it is. If  
12 they came back with an affidavit --

13 **THE COURT:** I'll tell you what, sir. Let  
14 me take a look at what's been submitted. I see  
15 that you submitted a memo too. I want to read  
16 it. I also need to look at the complaint  
17 itself. But I will be issuing a decision as to  
18 those defendants very shortly.

19 **MR. OSTENDORFF:** Yes, ma'am.

20 **THE COURT:** All right. Thank y'all.

21 **MR. BARLOW:** Thank you.

22 **MR. OSTENDORFF:** Thank you.

23  
24 **(WHEREUPON, the proceedings conclude at**  
25 **approximately 11:50 a.m.)**



Certificate of Counsel

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The undersigned hereby certifies that the Record on Appeal contains all material proposed and not any other material.

April 30, 2015



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