

STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM NEWBERRY COUNTY
Court of Common Pleas

The Honorable Thomas A. Russo, Circuit Court Judge

RECEIVED

JUN 12 2018

SC Court of Appeals

Appellate Case No. 2017-002429

Desa Ballard.....Appellant/Respondent,

v.

Newberry County Respondent/Appellant.

**RECORD ON APPEAL
VOLUME II OF III**

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Certificate of Counsel

STATE OF SOUTH CAROLINA)
COUNTY OF NEWBERRY)
Desa Ballard,)
Plaintiff,)
vs.)
Newberry County,)
Defendant.)

IN THE COURT OF COMMON PLEAS

C.A. No. 2015-CP-36-00141

**ANSWERS TO PLAINTIFF'S FIRST
INTERROGATORIES TO DEFENDANT**

Pursuant to Rule 33 of the South Carolina Rules of Civil Procedure, Defendant answers Plaintiff's First Interrogatories to Defendant, as follows:

INTERROGATORY NO. 1: Identify the types, makes and models of computers (including PCs, desktops, laptops, handhelds, etc.) used by Newberry County, at any time from 2009 through the current. If any of the computers are networked or inter-connected, please describe the configuration.

ANSWER:

DESKTOPS/WORKSTATIONS:

- Dell Optiplex 755-980
- Dell Optiplex 3010-9010
- Dell Precision 5810
- Apple iMac 21.5 Intel core i7

LAPTOPS:

- Dell Latitude E5530/40
- Dell Latitude E6540

All machines with the exception of laptops are networked through a Cisco network infrastructure. The configuration is a Star-mesh topology.

INTERROGATORY NO. 2: Identify by make and model any and all printers, fax machines, copy machines, scanners, or any other digital peripheral device used by Newberry County personnel, at any time from 2009 through the current.

ANSWER:

PRINTERS:

HP Color LaserJet CP2025
HP OfficeJet 8600 Series
HP LaserJet P1006
HP LaserJet P1606DN
Lexmark E260D
Lexmark MS811DN
Lexmark T652
Toshiba EStudio 5540c
Xerox WorkCentre 7345

INTERROGATORY NO. 3: Identify the operating system and all software programs or other applications used on any of the computers identified in your answer to Interrogatory No. 1 above (e.g., Windows XP, Windows 7, Microsoft Office suite, Norton Antivirus, etc.). State your standard configuration, any exceptions to this configuration and outline the schedule for any automatic backups, virus scanning or other programs that are scheduled.

ANSWER: SOFTWARE:

Microsoft Windows XP Professional
Microsoft Windows 7 Professional
Microsoft Office 2007 Professional
Microsoft Office 2010 Professional
Microsoft Office 2013 Professional Plus
Kaspersky Endpoint Security 10
CleverBridge Malwarebytes Anti-Malware

Standard computer configuration consists of a Windows Operating System, Microsoft Office Suite, Malwarebytes, and Kaspersky. Computers are updated via Windows Updates.

There are no automated backups of end user devices. This is left up solely to the end user.

Virus Scans are set up to scan daily at 6:00 PM.

INTERROGATORY NO. 4: Identify the email programs and servers used by Newberry County since 2009. (e.g., Outlook/Exchange 2007, Eudora, AOL, etc.).

ANSWER: Microsoft Outlook 2007-2013, IncrediMail, Outlook for Mac, Android and Apple Mobile email apps.

INTERROGATORY NO. 5: Provide all email addresses and passwords used by Wayne Adams, personally or through Newberry County, from 2009 through the present.

ANSWER: Mr. Adams' County e-mail address is:

wadams@newberrycounty.net.

The County objects on the grounds of relevance, privacy concerns, and security issues to producing private e-mail addresses for Mr. Adams and any e-mail or other computer passwords that Mr. Adams uses or has used.

INTERROGATORY NO. 6: Identify all ISPs (Internet Service Providers) and email accounts Newberry County has used since 2009.

ANSWER: PRTC (Piedmont Rural Telecomm) and Comcast.

INTERROGATORY NO. 7: Identify all types of email system used (Web-based, POP3, etc.) by Newberry County, including email systems used by Wayne Adams personally since 2009.

ANSWER: Web-based and POP3 for Newberry County. The County objects on the grounds of relevance, privacy concerns and security issues to providing information concerning e-mail systems used by Mr. Adams personally.

INTERROGATORY NO. 8: Describe with particularity all methods used to segregate, retain and maintain email (e.g., do you use a spam filter, do you have certain rules set up to automatically manage certain email, do you save emails in various folders, etc.).

ANSWER: A spam filter is enabled by default when an email address is created through Newberry County's POP email server. The end user has the responsibility of checking this spam folder and for changing any spam folder settings. Office Outlook also has a spam folder enabled by default. It is up to the end-user to check and maintain these folders. There is no current Microsoft Exchange server.

INTERROGATORY NO. 9: Describe all computer programs and data that are backed up, the software used to create the backups and the timing or frequency of the backups.

ANSWER: Newberry County does not use end user backups.

INTERROGATORY NO. 10: Describe the media used for backing up your computer programs (e.g., DAT tapes, burning to CD or DVD, etc.).

ANSWER: See Interrogatory No. 9.

INTERROGATORY NO. 11: Identify the applications, programs, data and time period for which you have backup media.

ANSWER: See Interrogatory No. 9.

INTERROGATORY NO. 12: Describe any utilities that have been run on any of the hard drives described in your answer to Interrogatory No. 1 above. (e.g., defragging, reformatting, etc.)?

ANSWER:

Disk Cleanup
Disk Defrag

INTERROGATORY NO. 13: Describe any policy of purging electronic data from your computers. If you have published guidelines or handbooks which describe or dictate this process, identify all documents with sufficient particularity to enable the Plaintiff to request production of all such documents.

ANSWER: Newberry County has written no policy concerning the purging of electronic data.

INTERROGATORY NO. 14: Describe any files, data or programs used by Newberry County that have been archived since 2009.

ANSWER: See Interrogatory No. 9.

INTERROGATORY NO. 15: Identify any company or individual that provides maintenance or support for the computers identified in your answer to Interrogatory No. 1 above.

ANSWER: Dylan Snyder, IT Director for Newberry County.

INTERROGATORY NO. 16: Describe all methods, by which data or information is exchanged between all computers you have used since 2009 (e.g., networked, remote access, floppy disks, CD(s), thumb drives, etc.).

ANSWER: E-mail, Network, Thumb Drive, Remote access, Wi-Fi and CDs.

INTERROGATORY NO. 17: Identify any employees, agents, vendors, contractors, attorneys or consultants that have been involved in efforts to retain or restore electronic media potentially relevant to this action, both before and after the service of the Freedom of Information Act request that is the subject of this lawsuit. As to each such individual or entity,

please identify their name, title, period of employment (or retention) and the activities they performed in connection with the retention or restoration of electronic media.

ANSWER: Dylan Snyder, IT Director for Newberry County.

INTERROGATORY NO. 18: Identify all User Profiles and User IDs maintained on any of your computer systems.

ANSWER: All user profiles are managed/maintained through Microsoft Active Directory. There is a local administrative profile that is used by Information Technology for maintenance.

INTERROGATORY NO. 19: Identify any web-based (Cloud) storage locations used by Newberry County to store electronic data.

ANSWER: None

INTERROGATORY NO. 20: Give the names and addresses of persons known to this Defendant or his counsel to be witnesses concerning the facts of the case and indicate whether written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

ANSWER:

Wayne Adams, County Administrator
Desa Ballard, Plaintiff
Debbie S. Cromer, Finance Director
Wanda B. Hill, Risk Management and Human Resources Director
Arthur Jayroe, Former Chief Magistrate
Dylan Snyder, IT Director
A. J. Tothacer, Jr., County Attorney

INTERROGATORY NO. 21: For each person known to this Defendant or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform

Plaintiff of the important facts know to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

ANSWER: Mr. Tothacer was the point person in assembling the documents requested by Plaintiff pursuant to the Freedom of Information Act requests described in the Complaint. The other witnesses listed here, except Mr. Snyder and Ms. Ballard, either helped to gather or were asked to help to gather these documents. Mr. Snyder helped to provide answers concerning the County's Information Technology Department. Ms. Ballard issued the FOIA requests.

INTERROGATORY NO. 22: Identify the individual person(s) who was tasked with gathering documents and/or responding to the Plaintiff's Freedom of Information request, and set forth each in detail, including dates and times, each task undertaken by that individual person(s) to collect materials that were provided to Plaintiff as well as materials that were gathered but not provided to the Plaintiff for any reason. Also identify all individual person(s) with whom the tasked individual communicated, verbally or in writing, in gathering materials and/or responding to Plaintiff's Freedom of Information Request.

ANSWER: See answers to numbers 20 and 21 above. The County is unsure of the exact dates when documents were located or attempted to be located. Those efforts would have generally taken place between the dates of each FOIA request and the responses to them.

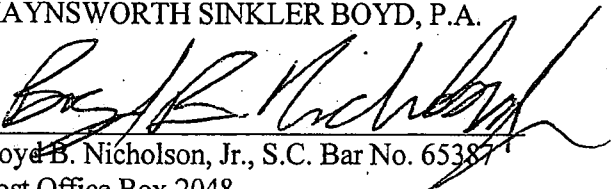
INTERROGATORY NO. 23: Identify each document withheld by Dirk Aydlette or by the Defendant which was otherwise responsive to Plaintiff's Freedom of Information request, and as to each, set forth: (1) date of document; (2) nature of document; (3) all persons to whom the document was transmitted at any time; (4) all persons to whom copies were shown as being transmitted; and (5) identify all persons who may have copies of each document.

ANSWER: See privilege log prepared by Mr. Aydlette and previously provided to **ROA 00495**

Plaintiff's counsel via e-mail on June 5, 2015.

Respectfully submitted,

HAYNSWORTH SINKLER BOYD, P.A.


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Attorneys for the Defendant

August 11, 2015

Greenville, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF NEWBERRY)

Desa Ballard,)

Plaintiff,)

vs.)

Newberry County,)

Defendant.)

IN THE COURT OF COMMON PLEAS

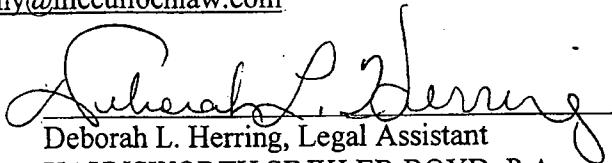
C.A. No. 2015-CP-36-00141

ROA 00496

CERTIFICATE OF SERVICE

This is to certify that Answers to Plaintiff's First Interrogatories to Defendant were served in the above-referenced case by e-mailing a copy of same on August 11, 2015 and by placing a copy of same in the United States mail on this the 12th day of August, 2015, upon the following:

Kathy R. Schillaci, Esq.
Law Offices of Joe McCulloch, Jr.
Post Office Box 11623
Columbia, SC 29211
Kathy@mccullochlaw.com


Deborah L. Herring, Legal Assistant
HAYNSWORTH SINKLER BOYD, P.A.
Post Office Box 2048
Greenville, SC 29602-2048
864.240.4567

August 12, 2015

Greenville, South Carolina

ROA 00496

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BOYD B. NICHOLSON, JR.
ATTORNEY
DIRECT DIAL NUMBER 864.240.3247
nnicholson@hsblawfirm.com

October 22, 2015

VIA E-MAIL: Kathy@mccullochlaw.com

Kathy R. Schillaci, Esq.
Law Offices of Joe McCulloch, Jr.
Post Office Box 11623
Columbia, SC 29211

Re: Desa Ballard v. Newberry County
C.A. No. 2015-CP-36-00141

HSB File No.: 03657.0064

Dear Kathy:

In response to your letter of August 24, 2015 and following our conversation of yesterday, I write to address the issues raised in your letter.

Regarding interrogatory numbers five and six, it is my understanding from our conversation yesterday that the attestation that you reference can be accomplished via responses to the request to admit that you served yesterday. I anticipate being able to provide you with responses to these requests prior to Jay Tothacer's deposition, which is now scheduled for November 4 (thank you for changing that date).

Regarding interrogatory number eight, in our response we state that "[i]t is up to the end-user to check and maintain these folders." We did not reference "retaining" email, but Newberry County considers the words "maintain" and "retain" in this context to be synonymous.

Regarding interrogatory number 13, Newberry County does not have unwritten policies concerning the purging of electronic data.

Regarding interrogatory 18, I indicated yesterday the County would object to providing the information requested to employees reporting directly to Wayne Adams, and I understood that you responded that for the time being you only wanted to know the identities of those individuals who directly report to Mr. Adams. In response to that request, I have attached a document that contains the names and contact information of those individuals employed by Newberry County who report directly to Mr. Adams.

Kathy R. Schillaci, Esq.
October 22, 2015
Page 2

Regarding interrogatory number 20, it is my understanding that none of the witnesses that we have identified have provided any statements. However, I will check again.

If you would like something more formal, or if you have additional questions, please not hesitate to contact me.

With kind regards, I am

Sincerely yours,

HAYNSWORTH SINKLER BOYD, P.A.



Boyd B. Nicholson, Jr.

BBNjr:dlh

Enclosure

Direct reports to Newberry County Administrator

ROA 00499

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Assistant to County Administrator/Finance Director
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Rick Farmer
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ROA 00499

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Ervin West
Facilities Manager
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ewest@newberrycounty.net

ROA 00501

ROA 00501

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JOSEPH M. McCULLOCH, JR.

ROA 00502

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JOSEPH M. McCULLOCH, JR.

KATHY SCHILLACI

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FACSIMILE (803) 779-0666
E-MAIL: joe@mccullochlaw.com
E-MAIL: kathy@mccullochlaw.com

August 24, 2015

Via E-Mail and U.S. Mail

Boyd B. Nicholson, Jr.
Haynsworth, Sinkler, Boyd, P.A.
1201 Main Street, 22nd Floor
Columbia, SC 29201

Re: Desa Ballard v. County of Newberry; Case No. 2015-CP-36-00141

Dear Nick:

We have reviewed the answers to interrogatories dated August 11, 2015, and are sending this letter by way of consultation to see if we can resolve some of your objections.

As to Interrogatory No. 5, we would agree that Mr. Adams' personal email and passwords are not relevant, unless he conducted any county business from his personal email. If Mr. Adams can attest that he never used his personal email for county business, we can resolve Interrogatory No. 5. If, however, any county business was conducted using his personal email, those documents are public and are required to be produced. Same inquiry necessary on Interrogatory No. 6.

The same will be true of his cell phone for purposes of communications of any kind related to county business. Please insure that the carrier used by Mr. Adams for his personal cell phone is already on notice of their obligation to preserve all records related to Mr. Adams' cell phone use, so we do not encounter spoliation issues. This should have been done when the original FOIA requests were received by the county, and Ms. Ballard says Mr. Tothacer was in touch with Mr. Adams' personal cell carrier at the time, so this should have already been done.

Interrogatory No. 8 does not provide any information regarding retention or maintenance of county emails. Please supplement your response.

ROA 00502

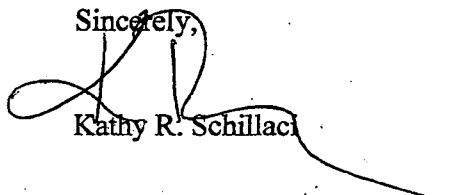
Your response to Interrogatory No. 13 is incomplete in that the question is limited to "written" policies. Please supplement your response. ROA 00503

Interrogatory No. 18 is not answered at all, other than to confirm that user profiles exist. Please provide the information requested, at this time limited to Wayne Adams or anyone working directly for him.

Your answer to Interrogatory No. 20 is incomplete insofar as it does not identify witness statements, if any.

Once we have complete responses to the Interrogatories we can issue Requests to Produce. I look forward to hearing from you.

Sincerely,


Kathy R. Schillaci

KRS:Sy

ROA 00503



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF NEWBERRY	)	C.A. No. 2015-CP-36-00141
	)	
Desa Ballard,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	DEFENDANT'S RESPONSES
	)	TO REQUESTS FOR PRODUCTION
	)	TO NEWBERRY COUNTY
Newberry County,	)	
	)	
Defendant.	)	

Pursuant to Rule 36 of the South Carolina Rules of Civil Procedure, Defendant responds to the Requests for Production as set forth below. Documents containing communications involving the Defendant's County Attorney and/or outside counsel are produced without waiver of other rights to privilege that the Defendant may have with respect to other privileged documents not being produced herewith. Defendant will produce a privilege log with respect to those documents.

REQUEST NO. 1: All document retention policies, rules, or guidelines in use or relied upon by Newberry County from 2013 to present.

RESPONSE: Please refer to answer to Interrogatory No. 13: "Newberry County has written no policy concerning the purging of electronic data."

REQUEST NO. 2: All FOIA policies, rules, or guidelines in use or relied upon by Newberry County from 2013 to present.

RESPONSE: None.

REQUEST NO. 3: All documents evidencing A.J. Tothacer's efforts to comply with the FOIA requests at issue, including but not limited to e-mails, memoranda, and texts.

ROA 00504

RESPONSE: See documents produced herewith and pursuant to Freedom of Information Act (FOIA) requests that are the subject of this lawsuit.

REQUEST NO. 4: All documents evidencing Wayne Adams' efforts to comply with the FOIA requests at issue, including but not limited to e-mails, memoranda, and texts.

RESPONSE: See documents produced herewith and pursuant to FOIA requests that are the subject of this lawsuit.

REQUEST NO. 5: All documents evidencing Dylan Snyder's efforts to comply with the FOIA requests at issue, including but not limited to e-mails, memoranda, and texts.

RESPONSE: See documents produced herewith and pursuant to FOIA requests that are the subject of this lawsuit.

REQUEST NO. 6: All documents evidencing the alleged "computer crash" of Wayne Adam's county computer in 2014 and the efforts to locate FOIA responsive documents on the computer(s) at issue.

RESPONSE: None located.

REQUEST NO. 7: All documents evidencing the alleged "computer crash" of Thomas Abraham's computer, including but not limited to documents evidencing its last known location and efforts to locate FOIA responsive documents on the computer(s) at issue.

RESPONSE: None located.

REQUEST NO. 8: All documents evidencing all phones, computers, and other electronic devices provided to Wayne Adams by Newberry County or its agents from 2010 to present.

RESPONSE: See documents produced herewith and pursuant to FOIA requests that are the subject of this lawsuit.

Defendant reserves the right to supplement these responses.

Respectfully submitted,

HAYNSWORTH SINKLER BOYD, P.A.

A handwritten signature in black ink, appearing to read "Boyd B. Nicholson, Jr.", written in a cursive style.

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Attorneys for the Defendant

March 25, 2016
Greenville, South Carolina

1 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
2 COUNTY OF NEWBERRY) CIVIL ACTION NO.: 2015-CP-34-00141
3

4 Desa Ballard,)
5 Plaintiff,) DEPOSITION OF
6 vs.) A. J. TOTHACER, JR.
7 Newberry County,) NOVEMBER 4, 2015
8 Defendants.)
9 _____)

10
11 Deposition on oral examination of A. J. Tothacer, Jr.,
12 reported by Frances C. Moyd, Court Reporter and Notary
13 Public in and for the State of South Carolina; pursuant to
14 Rule 30 of the South Carolina Rules of Civil Procedure;
15 said deposition was taken at the law offices of Lake and
16 Lake, 1325 Main Street, Newberry, South Carolina, on
17 Wednesday, the 4th day of November, 2015, scheduled for
18 10:00 a.m. and commencing at the hour of 9:58 a.m.
19
20
21
22
23
24
25

APPEARANCES:

Representing the Plaintiff:

KATHY R. SCHILLACI, ESQUIRE

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Representing the Defendants:

BOYD B. NICHOLSON, JR, ESQUIRE

HAYNSWORTH SINKLER BOYD, P.A.

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Greenville, South Carolina 29601

nnicholson@hsblawfirm.com

Also Present: Desa Ballard, Esquire

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10 * * * * *

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1/21/15	

* * * * *

Court Reporter's note:

-- indicates interruption; incomplete phrases; unfinished sentences

1 This deposition is taken in accordance with the
2 South Carolina Rules of Civil Procedure.

3 WHEREUPON:

4 A. J. Tothacer, Jr., being duly sworn and
5 cautioned to speak the truth, the whole truth and nothing
6 but the truth, testifies as follows:

7 DIRECT EXAMINATION

8 BY MS. SCHILLACI:

9 Q. Mr. Tothacer, am I pronouncing that correctly?

10 A. Yes.

11 Q. All right. I introduced myself earlier, but my name
12 is Kathy Schillaci and I work and I work with Joe
13 McCulloch at a law firm in Columbia, South Carolina.
14 And as you know, we represent Desa Ballard in the FOIA
15 action against Newberry County, and I'm going to be
16 asking you some questions. Have you ever had your
17 deposition taken before?

18 A. No.

19 Q. Have you ever participated in a deposition?

20 A. Yes.

21 Q. Okay. Then you know that if you have any questions or
22 if you need a question clarified, you need to address
23 those issues to me and not to your counsel, okay? I
24 do not anticipate that this deposition is going to
25 take too long, but at any time if you need a break we

1 will be happy to accommodate that, all right? Can you
2 start out by telling me where you live.

3 A. I live in Greenville, South Carolina. Do you need the
4 street address or is that good enough?

5 Q. Yeah. What's your street address?

6 A. 210 Quail Creek Lane.

7 Q. And is that in a home that you own?

8 A. Yes.

9 Q. And you own that in your name?

10 A. My wife and I.

11 Q. And what is your wife's name?

12 A. Marilyn, M-A-R-I-L-Y-N.

13 Q. Okay. And, Tothacer?

14 A. Tothacer.

15 Q. And you're represented here today by counsel, correct?

16 A. Yes.

17 Q. And just to clarify, is he your counsel or is he the
18 counsel for Newberry County?

19 A. He's the counsel for Newberry County. I mean, he's
20 probably my counsel, too, but --

21 Q. Okay. And where did you go to college?

22 A. College? Clemson.

23 Q. And do you remember what year you graduated?

24 A. Seventy-seven.

25 Q. And after attending Clemson, did you then go to law

1 school?

2 A. No. For three years, I worked for South Carolina

3 Nation Bank and --

4 Q. And what did you do there?

5 A. I was a branch manager. Or in their technical term,

6 an assistant cashier.

7 Q. Okay. And where was that?

8 A. Greenville.

9 Q. Greenville. And what did you do after South Carolina

10 National Bank?

11 A. Went to law school.

12 Q. And did you attend USC?

13 A. I did.

14 Q. And do you remember when you graduated?

15 A. Eighty-three.

16 Q. Okay. And after graduating law school, what was your

17 first job?

18 A. I worked in Berkeley County as the director of the

19 legal department. That's Berkeley, South Carolina.

20 Q. And how long did you work for Berkeley County?

21 A. I left there in January of 1999. I eventually became

22 the county attorney while I was there. In September

23 of '89, I think.

24 Q. Okay. So you were at Berkeley County well over a

25 decade?

1 A. Yes.

2 Q. Okay. And how long were you the county attorney?

3 A. From September of '89 until I left in January of '99.

4 Q. And when you left, January of '99, where did you go?

5 A. Greenville County as the county attorney.

6 Q. And how long were you the Greenville County attorney?

7 A. Until the end of 2013, although with my severance
8 package, I stayed on the payroll until June or July of
9 2014.

10 Q. Okay. And were you at Greenville County as the
11 attorney the entire time from '99 to 2013?

12 A. Yes.

13 Q. Okay. And at the end of 2013, what did you do?

14 A. Floundered. Or as I refer to it, I was in the
15 wilderness. For a period of time, I opened up -- hung
16 out my own shingle for a year -- can't remember
17 exactly when that was. And then a colleague of mine
18 who works at McNair asked me if I could help them
19 temporarily. So for about ten months -- let's say I
20 did -- opened a law office in July of 2004, shut it
21 down in July of 2005, went with McNair for ten months,
22 starting I think in September of 2005, 2006.

23 Q. Okay. So, just so I'm clear, you were at Greenville
24 County from '99 to the end of 2003?

25 A. Thirteen.

1 Q. Two thousand thirteen, okay. And then you said --

2 A. No. I'm sorry, 2003. I'm sorry.

3 Q. Okay. I just wanted to make sure we're clear.

4 A. Yeah, 2003.

5 Q. And then you hung out your own shingle for about a
6 year in 2004?

7 A. Right.

8 Q. And would that have been in Greenville?

9 A. In Greenville. I shared an office on Pettigru.

10 Q. And was there anyone else in the practice --

11 A. No. No.

12 Q. Or was it just you? And then you were at McNair for
13 about ten months in 2005?

14 A. Until 2006.

15 Q. And what did you do for McNair.

16 A. I was special counsel, basically assisting the fellow
17 I worked with is, Tom Martin, and he's a partner or a
18 shareholder or whatever they call it. And he mainly
19 was doing Anderson County work as the county attorney
20 so I helped him and other partners, as needed. Or
21 other attorneys as needed, kind of specializing in
22 local government.

23 Q. And what did you do after McNair?

24 A. Sold insurance.

25 Q. Okay.

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1 A. And I can't remember those dates. It went -- went
2 from probably 2006 through 2008, part of 2008.

3 Q. And was it for one particular insurance company or
4 were you a broker?

5 A. Banker's Life.

6 Q. And what kind of insurance did you sell?

7 A. Life insurance, health, and accident. And also, on
8 occasion, annuities.

9 Q. And was that in Greenville, as well?

10 A. It was in Greenville. I was trying to keep my -- my
11 sons were in high school at the time or school, and I
12 was trying to stay in Greenville as opposed to moving.

13 Q. Makes sense. Now, what did you do after 2008?

14 A. Well, in April or May of 2008, I was appointed a part-
15 time magistrate for Greenville County at the detention
16 center. And then in June of 2008, while still a
17 magistrate, I accepted my present employment with
18 Newberry County as the county attorney.)

19 Q. I'm sorry. When did you say?

20 A. June of 2008.

21 Q. So have you been -- and you're currently the Newberry
22 County attorney?

23 A. County attorney, yes.

24 Q. And have you been in that position consistently since
25 June 2008?

1 A. Yes.

2 Q. Okay.

3 A. Just so you'll know it, I wasn't reappointed in 2010
4 to the magistrate. So it was about two years that I
5 was a part-time magistrate, if that's any significance
6 to you.

7 Q. Okay. So you were a part-time magistrate from 2008 to
8 2010?

9 A. Yes.

10 Q. And you were a part-time magistrate for what county?

11 A. Greenville County at the detention center.

12 Q. And you were appointed by who?

13 A. Officially appointed by the senate as recommended by
14 the governor, but the senator who sponsored me was
15 David Thomas.

16 Q. Okay. And you're admitted to the South Carolina Bar?

17 A. Yes.

18 Q. Are you admitted to any other jurisdictions?

19 A. District court, federal district court.

20 Q. And are you a member of any other state bars?

21 A. No.

22 Q. And have you been a party to any lawsuits, as either
23 the plaintiff or the defendant, and I mean in your
24 individual capacity, or your capacity as Newberry
25 County attorney?

1 A. No.

2 Q. And again, I believe you stated that you have never
3 been deposed before, correct?

4 A. (Nods head.) I'm sorry, correct.

5 Q. And have you ever served as an expert witness?

6 A. No.

7 Q. In Newberry, as the county attorney, what are your job
8 responsibilities?

9 A. Pretty much everything. The only thing that I really
10 don't do is, I don't do criminal work. I represent
11 county council and provide them with whatever
12 assistance they need: draft ordinances, resolutions, I
13 review contracts. I actually, under state law, work
14 for the county administrator, but I also assist all
15 elected officials which include: sheriff, auditor,
16 treasurer, coroner, -- I'm sure I'm leaving out some.
17 And I also do what I'd call some administrative
18 duties, so they're not just purely legal duties.

19 Q. Okay. So you said you work for the county
20 administrator.

21 A. That's who I respond to. He's my supervisor.

22 Q. Okay. So he would be your direct supervisor?

23 A. Yes.

24 Q. And just for the record, who is the county
25 administrator?

1 A. Wayne Adams.

2 Q. Okay. And has Wayne Adams always been your direct
3 supervisor?

4 A. At Newberry County, yes.

5 Q. And who is the -- what we would call the "I-T" the
6 tech person for Newberry County?

7 A. Presently, it's a fellow named, Dylan Snyder, and he
8 has an assistant, but Dylan is the head of it.

9 Q. Okay. Do you remember his assistant's name?

10 A. I think his name is Charles. I don't know his last
11 name.

12 Q. And how long has Dylan been the IT person?

13 A. That's a good question. I don't think it's any more
14 than three years, if it's that long. It might be two
15 years. When I first started with Newberry in 2008,
16 the gentleman who handled IT was a fellow named, Tom
17 Barber. And when he left, Dylan was hired to take his
18 place.

19 Q. And do you recall when Tom Barber left?

20 A. No. It's been, obviously, since I've been here.

21 Q. Okay. And do you know where Tom Barber went?

22 A. He lives in Newberry. He retired. He was an older
23 gentleman.

24 Q. Okay. So, to your knowledge, he's retired in
25 Newberry?

1 A. As far as I know.

2 Q. Now, do you have a written job description?

3 A. There may be one. You know, I don't keep it with me.

4 I know that the way that I got the position was the
5 county had advertised for a county attorney and looked
6 for, like, an RFQ or a response to it. That was in
7 2007. I provided a response to it. The county
8 attorney, at that time, had resigned and I came and
9 talked to council and they were interested, but then
10 the county attorney, at that point, decided he wanted
11 to unresign. And the following year, he finally
12 resigned and Wayne told him -- you know, is this it?
13 And Wayne contacted me again and asked me if I was
14 interested at that point. So, I know there was kind
15 of an expectation of what the county attorney would
16 do. I -- there may be a job description, but it's not
17 something I'm --

18 Q. Aware of.

19 A. Yeah.

20 Q. Okay. And who was the prior county attorney?

21 A. Gary Pope.

22 Q. Okay. And do you know where Gary Pope is now?

23 A. I believe he has finally retired from practice and
24 lives in Columbia.

25 Q. Now, what involvement, if any, do you have with IT

1 purchases? So computers --

2 A. None. None.

3 Q. None. And do you have any involvement in the
4 operation of the county computer system?

5 A. No. Other than my own personal computer -- you know,
6 my work computer. I shouldn't say "personal", but the
7 P-C that I work at.

8 Q. Okay. And your PC, is that something that was
9 supplied to you by the county or is that --

10 A. Yes.

11 Q. Yes.

12 A. Yes.

13 Q. And is that a PC or an Apple?

14 A. It's a PC.

15 Q. And, Mr. Adams, your supervisor, what kind of computer
16 does he have? Is it a --

17 A. He uses an Apple, --

18 Q. He uses an Apple.

19 A. I believe.

20 Q. And to your knowledge, is that Apple computer, is that
21 his personal computer or his work computer?

22 A. I believe it's a work computer.

23 Q. And do you know if that Apple computer was supplied by
24 Newberry County or --

25 A. Yes.

1 Q. Okay. Yes. Do you know --

2 A. I believe it was, I should say it that way. I'm not
3 involved in his purchases, but I believe it was.

4 Q. Okay. Now, most of the county computers, are those
5 Apple or PC?

6 A. I think most of them are PC.

7 Q. Okay. Do you know of others, besides Mr. Adams, who
8 have an Apple computer?

9 A. No. It's not to say they don't. For instance, the
10 sheriff sort of has their own -- well, they use Dylan,
11 but they have somebody who sort of is their quote
12 (gesturing) IT person. And I don't have any idea what
13 they use.)

14 Q. Okay. And do you know the name of the sheriff's IT
15 person?

16 A. The fellow who helps them is an officer. I don't know
17 his title, named Wesley Boland.

18 Q. Can you spell that.

19 A. Wesley, or --

20 Q. Well, Boland.

21 A. B-O-L-A-N-D.

22 Q. Okay. And do you know why Mr. Adams would have an
23 Apple computer for county business, when -- because
24 the county system is PC-based, is it not?

25 A. As far as I know.

1 Q. Do you why Mr. Adams would have an Apple computer, if
2 the county system is PC-based?

3 A. His wife is the -- I don't know what the -- media
4 specialist for Chapin High School, whatever the
5 current term for librarians is. She's a big Apple
6 person. And so if they have a computer at home, I'm
7 sure it's Apple. He has a Apple, an iPhone. He's got
8 an iPad -- or they have, personally. And so I would
9 image he's just become accustom to using the Apple
10 format.

11 Q. Okay. So, to your knowledge, Mr. Adams has a personal
12 iPhone, a personal iPad, or is that owned by the
13 county?

14 A. I really don't know. I mean, I hate to say that, but
15 I don't know whether -- I have -- this is my
16 smartphone that the county provides. I don't know
17 whether his is provided or he gets a payment a month
18 for it. And the county recently went to -- I think,
19 iPads for council members. They're trying to
20 streamline the paper process, and I'm pretty sure that
21 all of them have an iPad. So it could be that Wayne,
22 as the county administrator, also has an iPad.

23 Q. Okay. And have you ever inquired of Mr. Adams whether
24 his iPhone or iPad were personal or whether they're
25 owned by the county?

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1 A. No.

2 Q. And your understanding is Mr. Adams, at home, has a
3 personal Apple computer; is that correct?

4 A. I understand there's one at home. Well, I don't know
5 if it's his or his wife's. She's really an Apple
6 knowledgeable person.

7 Q. In the Answers to Interrogatories, did you assist the
8 -- did you assist in preparing those?

9 A. Yes.

10 Q. Okay. Because one of the responses -- I'm going to go
11 ahead and pull that up. And you're welcome to look at
12 these. One of the questions was just concerning
13 witnesses and what information a witness might have.
14 And, again, you did assist Mr. Nicholson in preparing
15 these?

16 A. I certainly reviewed them.

17 Q. Okay. One of the answers -- and this would be the
18 answer to interrogatory number one. I'm not going to
19 make this an exhibit. Is that, (As read): Mr.
20 Tothacer was the point-person in assembling the
21 documents requested by Plaintiff, pursuant to the
22 Freedom of Information Act request described in the
23 Complaint. And, of course, the Freedom of Information
24 Act request would be the Freedom of Information Act
25 request by Desa Ballard, correct?

1 A. Correct.

2 Q. And is this Answer to Interrogatory correct?

3 A. Yes. I mean, there were many people who assisted me,
4 because the request was kind of expansive and it went
5 beyond just what I would normally have access to, but
6 I was the one who collated it, and ended up mailing it
7 to Ms. Ballard. But there were -- you know, there
8 were certain things that HR had privy to, the finance
9 director had privy to, her own client in another
10 action responded, so.

11 Q. And have you been the point-person in other FOIA
12 request?

13 A. On occasion, if you go to our website, the person that
14 you make a county request to is Laurie Renwick, who is
15 the clerk to council. The Sheriff handles his own FOI
16 requests. There maybe other elected officials that
17 handle theirs.

18 Q. Have you ever been the point-person for any other FOIA
19 requests --

20 A. Here --

21 Q. -- prior to the Desa Ballard FOIA request?

22 A. I may have been. I can't recall any that stands out.
23 The reason I'm having that difficulty, Kathy, if I can
24 call you that, when I was at Greenville, I was the
25 point-person they -- or the county attorney's office.

1 was the point-person up there. So this one was
2 addressed to the Administrator. So when he got it, he
3 gave it to me.

4 Q. Okay. And how are FOIA requests normally handled? Is
5 that through Laurie Renwick?

6 A. If they're county requests, they're made -- like I
7 say, the Sheriff handles his own through his staff.
8 And she will also -- you know, she doesn't have
9 information. If you want recently, we just went
10 through a tax sale. And there's people who would like
11 to have tax sale information, property is going to be
12 sold. So if the request is made to her, she is going
13 to involve Wendy Wise, who is the delinquent tax
14 collector, to help her collate the information, but
15 she usually is the one who responds.

16 Q. Okay. Well, why in this case were you tasked with
17 being the point-person, as opposed to Laurie Renwick?

18 A. Part of it, I suppose, is because it was addressed to
19 the Administrator, and when he looked at it, it was
20 quite expansive in what the request was dealing with.
21 Obviously, as the county attorney, I had been involved
22 in some of the issues that seem to be identified to
23 magistrates, and Ms. Renwick -- I think at the time it
24 came in, her father was very ill so she was working
25 not normal hours. And to make sure that it got the

1 attention --. Now, if she gets one that she has
2 concern about, -- you know, she'll refer it to me and
3 I'll try to assist her with it. And this was one,
4 when I saw it, I said, "Let me call Ms. Ballard and
5 ask her about it." because it's -- it was, in my
6 estimation, quite expansive, and I was trying to make
7 sure that we were going to provide a response to what
8 she wanted to find out, if there was any way of
9 lessening it.

10 Q. Okay. And she did, in fact, limit her FOIA request to
11 some extent --

12 A. She did.

13 Q. -- to be more accommodating, correct?

14 A. Yes.

15 Q. Now, as the point-person, how did you go about
16 assembling all the requested documents?

17 A. I took a copy of her letter and sent it to everybody
18 that I thought would have information that would be
19 responsive to it. I even suggested to them, as I saw
20 it, this would be the area that you would have the
21 information for. There might be a couple of people
22 that would have that. And sent it out, asked them to
23 -- you know, let me know how long it would take them,
24 what they anticipated having to go through. As an
25 example, she asked a lot of questions about

1 magistrates, and so I sent it to the Chief Magistrate
2 and asked him to respond to it.

3 Q. Okay. And again, another document I am not going to
4 mark as an exhibit. Do you recognize this document?

5 A. Yes.

6 Q. Can you tell me what that is.

7 A. We were asked -- I was asked, maybe by my attorney, to
8 provide who the direct reports were to the Newberry
9 County Administrator.

10 Q. Okay. So that would be a list that you provided to
11 Mr. Nicholson?

12 A. Yes.

13 Q. Do you know whether or not the FOIA request was sent
14 to the people on this list?

15 A. It was sent to the people on this list that would have
16 had the information. The -- Mary Arrowood, who's the
17 assessor, in my estimation, didn't have any
18 information that was there. Rick Farmer was not here
19 at the time when the request was here. Everybody
20 else, Gerdi Lake would not have had any involvement.
21 Tommy Long. I sent it to the -- I mean, I can name
22 the people that I did not think had any involvement in
23 what the request was. Or I can name the people that I
24 sent it to, whichever way you'd rather me do it.

25 Q. Yeah. Why don't you name the people on that list that

1 you sent the request to.

2 A. Okay. I sent it to: Debbie Cromer, Wanda Hill, and I
3 actually sent it to Laurie, although she doesn't
4 report to him. She reports to county council.

5 Q. And that'd be Laurie West?

6 A. Renwick.

7 Q. Renwick, okay.

8 A. The clerk of council. And then I obviously sent it to
9 Mr. Adams.

10 Q. And did you send this by email?

11 A. Yes. With a copy, a scanned copy, of Ballard's letter
12 attached.

13 Q. And besides this email request, did you make any other
14 kind of, like, a verbal request to anyone?

15 A. I would check with them and ask them where they were
16 in the process because Ms. Ballard was hoping it would
17 be responded to as quickly as possible, so I was
18 trying to gauge where they were in the request. For
19 instance, some of the information that the finance
20 director provided was not readily available. She had
21 to go to our archive area. And so I was trying to get
22 an idea of when responses would be back.

23 Q. Okay. So you're following up with those individuals
24 that you've earlier sent an email to --

25 A. Yes.

1 Q. -- with an attachment of the FOIA request?

2 A. Yes.

3 Q. Besides those people, did you make a verbal request to
4 anyone else to look for documents?

5 A. I spoke to Dylan Snyder, because several of the
6 requests were related to computer -- particularly one
7 that Ms. Ballard let us -- took off, was Tom Abraham,
8 the former magistrate's computer, because he's the
9 person who knows, if we have the computer, what has
10 happened to it. So I spoke to -- as things would
11 arise that related to that, he was the IT person.
12 Beyond that, I don't recall speaking with anybody.

13 Q. And did you give Dylan Snyder a copy of the FOIA
14 request?

15 A. I'm not sure if I did, I think, because what I was
16 asking him about was specifically issues that related
17 to the request itself. Like, as an example, Tom
18 Abraham's computer. And then I'm -- as I was trying
19 to discover what he was able to salvage from Mr.
20 Adams' computer when it crashed, he was the person who
21 provided that.

22 Q. And what was the issue with Mr. Abraham's computer?

23 A. I can't recall. Ms. Ballard wrote something and when
24 I inquired about it, I was told that he was gone
25 before Dylan started, so Dylan had no idea where his

1 computer -- what happened to his computer.

2 Q. And do you know if Mr. Abraham's computer -- was that
3 a personal computer or a Newberry County computer?

4 A. It was a Newberry County computer. Well, let me hedge
5 on that because the magistrate's court operates with a
6 pretty high level of autonomy, and they get grants
7 from court administration where they provide computers
8 and other printers, fax machines, and so I couldn't
9 say whether Mr. Abraham's was one. I know that before
10 Chief Magistrate Jayroe left, there was a list that he
11 was providing to the county where court administration
12 was going to let the county have those. And I
13 couldn't tell you. I know that -- well, I don't know
14 because it wasn't listed by people. So I'd hesitate
15 to say it was a county computer. May have been a
16 court administration computer. I don't believe it was
17 his personal computer.

18 Q. Okay. Now, as the point-person on this FOIA request,
19 did you speak to Tom Barber, who would have been --

20 A. No.

21 Q. -- the former IT person?

22 A. No.

23 Q. Would Tom Barber have been there while Abraham --

24 A. Yes.

25 Q. -- was there in Newberry? Did you direct Dylan Snyder

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1 to speak with Mr. Barber?

2 A. No.

3 Q. Is there a reason you didn't?

4 A. When I asked Dylan about the computer, he said it was
5 no longer here, and I don't know -- you know, what
6 would be gained by telling him to call Tom and ask him
7 about it.

8 Q. But no one has checked with Tom Barber to see whether
9 or not he knows the whereabouts of that computer?

10 A. I haven't.

11 Q. Okay. And you were the point-person for the FOIA
12 request?

13 A. (Nods head.)

14 Q. Is that a "yes"?

15 A. Yes. I'm sorry.

16 Q. Now, did you do any personal searching?

17 A. Yes.

18 Q. Can you tell me about that.

19 A. I looked at everything on my computer several ways,
20 different folders. I'm pretty anal about keeping
21 email folders, so I looked everywhere based on the
22 request that I thought that I might find some document
23 that would be responsive.

24 Q. Now, Wayne Adams email is: wadams@newberrycounty.net;
25 is that correct?

1 A. That's correct.

2 Q. Does he have any other county email addresses that
3 you're aware of?

4 A. Not to my knowledge.

5 Q. Okay. Are you aware of any of his personal email
6 addresses?

7 A. Yes.

8 Q. And what are those personal email addresses?

9 A. I don't know. The reason I say I'm aware of one, I
10 was making the transition from being the magistrate.
11 I was working a limited basis, and he provided me with
12 his email address, both of them, so I'd have a way of
13 getting in touch with him. I have it built into my
14 personal email so I don't have -- I don't know what it
15 is.

16 Q. And have you ever received an email from Wayne Adams
17 on -- from a personal email account?

18 A. No.

19 Q. Okay. So every email you've received from Wayne Adams
20 has been on the -- with the county email address?

21 A. To the best of my knowledge.

22 Q. Okay. And tell me about this assembling the
23 documents. Would people bring the documents to you
24 and you would look through them? How did that work?

25 A. Yes. As they would go through and find the documents,

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1 all that they could find that they felt were
2 responsive based on what -- you know, I sent the
3 letter and what I had told them, they would provide me
4 with, like, a file folder, and I would take a quick
5 glance through them. I'd count, because we were
6 charging for the documents. And generally as soon as
7 I got them, unless it was just a small number, I would
8 group them and send them to Ms. Ballard.

9 Q. Okay. And did you withhold any information that was
10 produced to you? So is there any information that you
11 said, no, I'm not going to give this to Desha Ballard?

12 A. Not to my recollection.

13 MS. SCHILLACI: And I am going to mark this
14 as Defendant's [sic] exhibit number one.

15 [MARKED FOR IDENTIFICATION AS
16 PLAINTIFF'S EXHIBIT NUMBER 1 - COPY OF
17 FOIA REQUEST DATED 12/02/14.]

18 RESUMING EXAMINATION

19 BY MS. SCHILLACI:

20 Q. And I'm going to ask you if you can identify that for
21 me.

22 A. This was the original F-O-I request, and it looks like
23 it has an email from Ms. Ballard on the back.

24 Q. Okay. And is this the document that you forwarded to
25 -- I think you gave us some of the names that you

1 forwarded, asking people to respond?

2 A. Yes.

3 Q. And I believe you gave us a few names earlier. But
4 can you recall the people that you would have
5 forwarded that FOIA request to?

6 A. I think they're the same. Let me see if anybody comes
7 to mind. It would have been the finance director.

8 Q. And that is who?

9 A. It's Laurie Renwick. It would have been -- I'm sorry.
10 The finance director is Debbie Cromer. It would have
11 been also to clerk to council because there's a
12 request about minutes in here, and that's Laurie
13 Renwick. And I also would have sent it to Wanda Hill,
14 who is the HR director. Art Jayroe for all the stuff
15 that deals with magistrate's court. And then
16 obviously since it was to Wayne Adams, he had seen it,
17 but I sent it back to him.

18 [MARKED FOR IDENTIFICATION AS
19 PLAINTIFF'S EXHIBIT 2 - COPY OF LETTER
20 BY MS. BALLARD DATED 12/30/14.]

21 Q. Mr. Tothacer, I'm going to show you a document that we
22 have identified as Defendant's exhibit -- actually, it
23 should be Plaintiff's Exhibit Number 2. Can you
24 identify this document.

25 A. It's a letter from Ms. Ballard dated December the

(Page 30)

1 30th.

2 Q. Okay. And do you recall receiving that?

3 A. Yes.

4 Q. And I'm going to direct your attention to the second
5 paragraph and take your time. Second paragraph,
6 second sentence, (As read): It might be wise to have
7 your IT person both assist you with the search for the
8 requested information and reproduce in electronic
9 format. Do you recall reading that?

10 A. Yes.

11 Q. After receiving the letter, did you seek the
12 assistance of an IT person to assist in the
13 production? I know that you mentioned a conversation
14 you'd had with Dylan Snyder, but did you ask Dylan
15 Snyder to assist you in producing documents?

16 A. I may have asked Dylan if it was possible to provide
17 documents, particularly paper-only documents, in an
18 electronic format, and other documents.

19 Q. And would that request have been verbal or through
20 email?

21 A. Verbal.

22 Q. Verbal.

23 A. Would have been, like, through a phone.

24 Q. And did you seek the assistance of any other IT person
25 besides Dylan?

1 A. No. He was the only IT person, I think, at the time.

2 Q. Okay. Now, do you have any other companies that maybe
3 are independent contractors that will work handling IT
4 issues for Newberry County?

5 A. None that I'm aware of. Again, let me sort of put a
6 caveat on that. The sheriff's office has an extensive
7 communications system in keeping up with 9-1-1 calls.
8 They deal with all of those, so there may very well be
9 somebody that they deal with that's IT. But as far as
10 what the county deals with --

11 Q. Did you ask Dylan Snyder to perform any kind of
12 searches in response to Exhibit Number 1, which is Ms.
13 Ballard's FOIA?

14 A. No. Other than when I asked him about the one that
15 relates to Tom Abraham, number six.

16 Q. Okay. And is there a reason you didn't ask him to
17 perform any searches?

18 A. He would not have that capability without going to
19 each individual computer. We're not linked to a
20 server, as I'm told.

21 Q. Okay. At any point in time, in relation to this FOIA
22 request, have you asked Mr. Snyder to perform any kind
23 of computer searches?

24 A. I haven't. I think after you did your request for
25 production, or interrogatory, that my attorney had a

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(1) conversation with his IT person and our IT person to
(2) understand how to respond.

3 Q. Okay. But you have not had --

4 A. No.

5 Q. -- asked him to perform any kind of searches?

6 A. No.

7 Q. Now, do you know when Mr. Adams' computer crashed?

8 A. I responded when it crashed. I can't remember. I
9 want to say maybe it was March 2014, but I wouldn't
10 want to be held to that. It's in the response that I
11 provided to Ms. Ballard, one of my response letters.

12 Q. And do you know what kind of computer he was using
13 when it crashed?

14 A. Do not.

15 Q. Do you know if it was an Apple or a PC?

16 A. Don't know.

17 Q. And what has happened to his crashed computer?

18 A. Don't know.

19 Q. Do you know who has it now?

20 A. The only person I would image that would have it would
21 be Dylan, but I don't know if he has it or not. When
22 I inquired of Dylan, it was a pretty -- there was not
23 much that was salvageable from the crash.

24 Q. And why is that? What's your understanding?

25 A. I think the hard -- hard drive was just fried.

1 Crashed. Gone.

2 Q. And did that concern you? Let me ask first, this
3 computer that crashed, that is a county computer,
4 correct?

5 A. As far as I know.

6 Q. And I guess in March 2014, you would have been the
7 county attorney, right?

8 A. I was.

9 Q. Were you aware in March 2014 that the Administrator's
10 computer had crashed?

11 A. I'm sure I was aware that he was without a computer or
12 down a computer for awhile. I don't know that I was
13 aware why or how it happened.

14 Q. Okay. Did that concern you --

15 A. No.

16 Q. -- in any way?

17 A. No.

18 Q. And why is that?

19 A. Computers crash. I mean, there have been instance
20 where other county computers -- I guess, have crashed
21 or have frozen. And it's not -- unless it's my
22 computer, it's not within my concern.

23 Q. Were you concerned about the loss of public documents?

24 A. No.

25 Q. And why is that?

1 A. I guess I would figure that we had another way of
2 keeping the documents, that they weren't all stored
3 electronically.

4 Q. And do you have another way of keeping documents?

5 A. We have file cabinets full of paper documents in all
6 the different offices.

7 Q. Okay. In responding to the FOIA request and as the
8 point-person, do you know if anyone's gone through
9 those paper documents?

10 A. I -- yeah, I'm sorry. In response to the FOIA
11 request, when I sent the letter out to everybody, they
12 would have looked on their computer to see if they had
13 anything and printed it. They would've also gone
14 through any file that might have contained that
15 information.

16 Q. And do you know whether Wayne Adams kept hard copies
17 of his emails and any documents that would have been
18 on that computer?

19 A. I don't know.

20 Q. Has anyone asked him?

21 A. Not to my recollection. I don't -- as his office is
22 set up, I don't think he does. I say that simply
23 because he doesn't have file cabinets in his office,
24 but that would be a question -- you know, when I asked
25 him about producing it, his response was he could

1 produce whatever was available on the computer back to
2 that date. That would seem to indicate to me that he
3 doesn't print copies. I don't print every email that
4 I have.

5 Q. Okay. But did you ask him specifically whether or not
6 he had emails that were printed prior to this computer
7 crash?

8 A. Don't recall.

9 Q. And who at Newberry County would be in the best
10 position to know where this crashed computer went?

11 A. I would image it'd be Dylan, because it occurred while
12 he was the IT person.

13 Q. Do you know what efforts were made to preserve
14 information on that crashed computer?

15 A. Don't.

16 Q. Have you inquired?

17 A. Well, when Dylan explained to me that everything was
18 gone, I did inquire. I said, "What about before the
19 crash?" and he said there wasn't anything that they
20 were able to -- I guess, gather, get back.

21 Q. And what's your understanding of the role of a county
22 administrator?

23 A. He handles employees for every office in the county
24 that's not an elected official or an appointed
25 official's office. He is the administrator for county

1 council.

2 Q. And do you have any concern about loss of his
3 information of that electronic data that was on the
4 crashed computer?

5 A. No.

6 Q. And why is that?

7 A. I would imagine that if there was anything of extreme
8 significance, it would've been contained in another
9 document. I mean, as an example, he's certainly
10 involved with our economic development deals that are
11 going on. There's a lot of emails that go back and
12 forth, but when the deal is finally done, it's
13 consummated in an agreement and a lot of times, it's
14 consummated in action by county council.

15 Q. And did you ask county council to go through and see
16 if they could find any emails from --

17 A. I did.

18 Q. -- Wayne Adams?

19 A. I did.

20 Q. Was that everyone on county council?

21 A. Everyone on county council was asked.

22 Q. Okay.

23 A. And a few responded and we provided those responses.

24 Q. But you don't recall if you've asked Wayne Adams about
25 hard copies of documents that he might have printed?

1 A. I don't recall.

2 Q. Would you have made any notes or do you have any
3 emails that might help you recall?

4 A. Whether or not I asked Wayne about it?

5 Q. Uh-huh.

6 A. Not that I recall. Not that I'm aware of. I can tell
7 you that in my response, when I searched, there were
8 items that I provided that were emails between Wayne
9 and me prior to the crash.

10 Q. But of course, you're not copied on every email that
11 Wayne Adams sends out.

12 A. Correct.

13 Q. Okay. And I want to turn your attention back to
14 Plaintiff's Exhibit Number 2.

15 A. Uh-huh.

16 Q. If we start with the paragraph that begins "lastly".
17 Do you see that?

18 A. Yes.

19 Q. And this is Desa Ballard to you, December 30, 2014; is
20 that correct?

21 A. Yes.

22 Q. (As read): Lastly, I am not convinced that the crash
23 of Mr. Adams' computer prevents production of his
24 emails. I believe there is an obligation to retrieve
25 documents that involve county business and that simply

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1 saying a crash occurred is not sufficient. I believe
2 the county's IT person needs to get involved, not just
3 for purposes of my FOIA request, and therefore not at
4 my expense, but also for the county's own records.

5 Do you recall reading that?

6 A. Yes.

7 Q. And did you get the county IT person involved?

8 A. I did. I spoke with Dylan.

9 Q. Okay. And what did you ask Dylan to do?

10 A. I asked him if there was any way of recovering
11 whatever had been on the computer before the crash.

12 And to the best of my recollection, he said there
13 wasn't.)

14 Q. Did you talk about getting any kind of third parties
15 involved?

16 A. I did not. And just for the record, I also respond --
17 I'm sure I responded to this position by Ms. Ballard
18 in whatever letter I sent after this date.)

19 Q. And the crashed computer, you do not recall whether
20 that was a personal computer or a county computer,
21 correct?

22 A. Oh, it would've -- well, I believe it would've been a
23 county computer, not a personal computer.

24 Q. Okay. And have you made any inquiries with Dylan
25 Snyder on where that computer might be?

1 A. No.

2 Q. But Dylan Snyder would be in the best position to know
3 where --

4 A. Yes.

5 Q. -- it might be? And did you ask other employes to
6 look through their folders, their inbox to see if they
7 had any responsive Wayne Adams emails?

8 A. I did.

9 Q. And who would those individuals have been?

10 A. The people I've already named. It would've been: the
11 finance director, the HR director, clerk to council, I
12 think I included that in the request to the chief
13 magistrate.

14 Q. And did you get responses back from every one of those
15 individuals?

16 A. Yes.

17 Q. I believe you had mentioned earlier your cell phone,
18 and is that paid for by the county?

19 A. Yes.

20 Q. And how about Wayne Adams, does he have a county
21 provided cell phone?

22 A. I answered that earlier, but I'm not sure whether he
23 has a county provided cell phone or he gets a payment
24 --

25 Q. Stipend, okay.

1 A. -- for it.

2 Q. And what is your cell phone number?

3 A. This cell phone number?

4 Q. Uh-huh.

5 A. Because I have a personal cell phone.

6 Q. No. The county cell phone.

7 A. I'm sorry. I don't call it. (Witness examines cell
8 phone.) 803-940-1805.

9 Q. Okay. And how long have you had this cell phone?

10 A. I've had a cell phone ever since I started working
11 June of 2008.

12 Q. Okay.

13 A. Provided by the county.

14 Q. And has it always been this 1-8-0-5 number?

15 A. I'm not sure. And the reason I say that is when I
16 started with the county, I would -- I think it has
17 been, but when I started with the county -- and I'm
18 sorry, this is just how the county is, the sheriff's
19 office arranges for their own cell phone coverage.
20 And Tom Barber was the person who got cell phones at
21 that time, in addition to being an IT. He provided me
22 with a Blackberry, and it was through the contract at
23 the sheriff's office and have different numbers.
24 There was a point where, whoever the provider was,
25 taken over by AT&T and it was more advantageous to the

1 county to let me switch to the county program. This
2 is now a -- excuse me, a Verizon phone. I think I
3 ported the number, but I don't really recall.

4 Q. Okay. And so you had a Blackberry at one point,
5 issued by the county?

6 A. Yes.

7 Q. And do you remember when you switched from a
8 Blackberry to any other kind of phone?

9 A. This is the third phone I've had with the county. And
10 I switched from the Blackberry because it was no
11 longer supported or something and got a Motorola. It
12 may have been when Dylan came to work with the county.

13 Q. And do you recall Wayne Adams ever having a
14 Blackberry?

15 A. He could have; I don't recall.

16 Q. And does Wayne Adams have a -- well, you don't know if
17 he has a county cell phone or whether it's personal?

18 A. Yeah. I don't know.

19 Q. Do you know whether or not he has two different
20 numbers, one for county business, one for personal
21 business?

22 A. I don't know. I do not have -- the number that I have
23 for him is only the one that I could call the county
24 phone.

25 Q. Okay. And what is that number?

1 A. I'm sorry. I have too much going around so what I end
2 up doing is -- (Witness examines cell phone.) Well,
3 it's 803-924-0980.

4 Q. Zero, nine, eight, zero. Do you have any other
5 numbers for him?

6 A. I have his work number and -- I thought I had a home
7 number, but I don't see it here.

8 Q. And what is his work number?

- 9 A. (Witness examines cell phone.) His direct dial is
10 803-321-1419, and you can get all of us by dialing
11 321-2100.

12 Q. And do you have any knowledge as to how long Wayne
13 Adams has had the cell number, the 0980?

14 A. Do not.

15 Q. Do you recall it changing in the last three years?

16 A. No.

17 Q. And what kind of phone is that?

18 A. Mine?

19 Q. Uh-huh.

20 A. I think it's a Galaxy S4.

21 Q. And I believe you had testified earlier that Wayne
22 Adams has a iPhone, correct?

23 A. He does.

24 Q. Do you know if he has any other kind of phone, like, a
25 Galaxy?

1 A. To my knowledge, he doesn't.

2 Q. And is Dylan Snyder the point-person for all of the
3 cell phone IT, as well? So if you have a problem, do
4 you go to Dylan Snyder for your phone?

5 A. I do. Now, if you're in the sheriff's office, you'd
6 probably go to Wesley Boland.

7 Q. But if you're not in the sheriff's office, all other
8 county employees would go to Dylan Snyder?

9 A. As far as I know. Well, let me back up because this
10 is the quirks of county government. We don't have the
11 ability -- well, elected officials have the right,
12 under state law, to do pretty much whatever they want
13 to do. So I would hate to say they all use Dylan.
14 They may get their own service and go through their
15 own. But if it's going to be a county -- I didn't
16 want to say "county funded" because elected officials,
17 but that would be the difference. If, for instance,
18 the county treasurer wants to go out and get her own
19 phone, she does not have to go through Dylan.

20 Q. Now, do you get any county emails on your cell phone?

21 A. Yes.

22 Q. And again, that is a county cell phone, correct?

23 A. Yes.

24 Q. And do you have a personal cell phone?

25 A. I do.

1 Q. And do you get county emails on your personal cell
2 phone?

3 A. No. It won't get emails.

4 Q. And do you respond to emails on your county cell
5 phone?

6 A. Occasionally.

7 Q. Do you know whether Wayne Adams gets emails on his
8 cell phone, whether county or personal?

9 A. Yes.

10 Q. And how do you know that?

11 A. He and I have exchanged emails and it's apparent when
12 you respond from a -- I guess, what you call a
13 "smartphone", it usually tags it at the bottom, -- you
14 know, from whatever model it is.

15 Q. And I believe I've seen some responses from Wayne
16 Adams at the bottom, it says "iPhone", correct?

17 A. I don't know about that, but I know that usually when
18 I get responses from people on email and they're
19 responding on a phone, there's usually a tag that says
20 what it is.

21 Q. Okay. But you have received a response from Wayne
22 Adams from his phone, correct?

23 A. Yes.

24 Q. Now, at any time within the past three years, have you
25 had occasion to text anyone regarding county business?

1 A. I hate to kind of parse it, but the public works
2 director and I are good friends. He works at a
3 distant location and if we're going to go to lunch
4 together -- you know, I'll say, "Lunch today, Mike?"
5 and he may respond. I'm sure they've probably been
6 some occasions where I may have texted somebody or
7 somebody has texted me.)

8 Q. And do you preserve those texts in any way?

9 A. No.)

10 Q. Why not?)

11 A. Cost to preserve those. The county doesn't spend
12 money. I'm sorry to be candid about it, but it's my
13 understanding that if you want to preserve the texts,
14 there's an additional fee for that. And we have,
15 literally, hundreds of phones.)

16 Q. Besides the public works director -- and who would
17 that be, by the way?

18 A. Mike Pisano, it's P-I-S-A-N-O.)

19 Q. Besides Mike Pisano, can you recall anyone else that
20 you might have been texting with?

21 A. I think I've exchanged texts with Debbie Cromer, --
22 I'll tell you what, if you'll bear with me for a
23 minute.)

24 Q. And I'm going to limit it to the past three years just
25 to make that a little easier.)

1 A. Oh, I didn't text before three years ago.

2 Q. Okay. When did you start texting?

3 A. I really don't text, except on this phone. My real
4 old phone that I have personally, that's how my son --
5 they deal in texting, so that's how I deal with them.

6 Let's see. (Witness examines cell phone.) Recently,
7 I've texted Debbie Cromer, who's the finance director.

8 And just to give you an idea, she just had a great-
9 niece born so she's texted me with the weight and the
10 height. I've texted Tommy Long, who's the emergency

11 preparedness person; you've got his title. I've got

12 one -- to and from -- or to Wayne. I'm just naming

13 who's on there. Ron Powell, who was the building

14 inspector. Crystal Waldrop, who is the purchasing --.

15 And that's all I've got back through December of last
16 year.

17 Q. And in response to the FOIA request, did you go
18 through and check your text messages to make sure that
19 you had nothing responsive?

20 A. As far as from Wayne, yes. Because that was, I
21 believe, all the request was for, was for Wayne's text
22 messages.

23 Q. Okay. And how long have you had that phone?

24 A. I couldn't tell you. I mean, the reason I say that,
25 when we -- when I went from the sheriff's provider

1 that was becoming AT&T to this, I got another Galaxy
2 that cracked within six months, and then I got this
3 replacement for it. So I would say it's probably been
4 within the last year, year and a half. Could be two
5 years.)

6 Q. Okay. Because I'm trying to figure out if you've been
7 texting a year, two years, --

8 A. I would say probably no more than two years at the
9 maximum. And that would include the personal stuff
10 that I've done on my personal phone.

11 Q. Okay. And within the past three years, you have
12 received texts from Wayne Adams, correct?

13 A. Yes.

14 Q. And that was about county business?

15 A. It may have been sometimes. Let me take a look at
16 this one that's here because I don't think this is
17 county business. Let me see if I can pull up his
18 conversation. (Witness examines cell phone.)

19 Q. And maybe I can ask it another way. Do you recall
20 ever receiving a text from Wayne Adams that related to
21 county business?

22 A. I'm sure I have, but none sticks out because usually
23 Wayne and I are not far enough away that we're texting.
24 We're usually involved if county business is involved.
25 Usually his texts would be something like -- I'll give

1 you an example. I texted him -- he's a big bike
2 rider, and I asked him if he was going to do what's
3 called the Gran Fondo in Greenville. And he said no,
4 and responded that his bike shop owner does it. We
5 generally don't -- I mean, there have been occasions
6 where he texts me because somebody's come in and is
7 talking to him and he says, "I'm meeting with Joe
8 Shabotnik and he wants to talk about recreation. Can
9 you come over here?" because he can't get me because
10 I'm on the phone with somebody. And so that would be,
11 as far as I recall, the extent of it would be when he
12 can't reach me by phone.

13 Q. And have you ever exchanged texts with anyone on
14 county council?

15 A. No.

16 Q. Okay. Have you ever -- and again, I'm going to say
17 within the last three years, exchanged any texts with
18 Senator Cromer, for example?

19 A. No.

20 Q. And of course, within the last three years, you have
21 emails between you and individuals on city council,
22 correct?

23 A. County council.

24 Q. County council, I apologize.

25 A. I'm sure I do, but a lot of times that can be because

1. it's like a broadcast email, where the clerk to
2. council has sent out the agenda and they may respond
3. and say, "Oh, we're going to do this tonight?". There
4. may have been occasions, because obviously if there's
5. a matter that I would be involved in, they would say,
6. "Are you handling this?". I don't routinely email
7. with county council members.

8. Q. And within the past three years, have you had any
9. emails with Senator Cromer?

10. A. Not to my recollection. I mean, there may be some
11. where he was sending something to everybody on
12. council, including me. Or -- but I -- we've never had
13. a kind of individual email, person to person email.

14. [MARKED FOR IDENTIFICATION AS

15. PLAINTIFF'S EXHIBIT 3 - COPY OF MESSAGE

16. DETAIL.]

17. Q. I'm going to show you what I'm marking as Defendant's
18. [sic] Exhibit Number 3, and this really is for
19. discussion purposes. I'm not asking you to
20. authenticate this document, but I will tell you what
21. it appears to be, which appears to be a Desa Ballard
22. message detail, a telephone conversation with you on
23. January 28, 2015. The message, (As read): Tried to
24. conference in Verizon. He -- I'm assuming that's you
25. -- would like to block off time for you to receive a

1 call from Verizon. I selected eleven-thirty, but he
2 would like you to call him back before then.

3 Can you tell me about has there been any
4 conversations with Verizon related to this FOIA?

5 A. Oh, yes.

6 Q. Can you tell me about that.

7 A. Karen Brehmer, who's also on that list of direct
8 reports, she wasn't a direct report at the time, but
9 she works in finance and handles the payment of all
10 bills for cell phones, at least, certainly mine and
11 Mr. Adams. And he is also on Verizon. And when Ms.
12 Ballard asked about the text messages, I asked her if
13 she could get copies of the text messages for the time
14 period requested. She spoke with whoever the
15 representative was that she ordinarily deals with at
16 Verizon, and was told no. They don't have text
17 messages. They don't have a history of text messages.
18 And when she told me that, I said, "We need to
19 have better than that because I know Ms. Ballard's not
20 going to be satisfied with that." And so she called
21 back and explained the situation and was told that
22 Verizon can provide copies of text messages, if you
23 have previously said I'm willing to pay this extra fee
24 to have text messages captured, which we had not done.
25 She also told her that there were three

1 circumstances that they could provide text messages,
2 and those were basically in emergency situation -- I
3 forget what they were. Ms. Ballard got a copy of
4 that. And so then I got involved and I called and
5 talked to who our account representative was, for lack
6 of a better term. Wasn't satisfied with the response
7 I was getting from her, so I asked for her supervisor,
8 got a supervisor, explained what we were trying to do
9 and was told that no, there were only these three ways
10 and they were -- they didn't fit Mr. Adams' text
11 messages. And so then I said, "I really need to have
12 something definitive about that." And she said, "Well
13 I can connect you with our legal."

14 I had already separately tried to go through the
15 legal, but it's a more involved process and I wasn't
16 going to get the answer I was looking for, so I was
17 hoping -- and having gotten correspondence from Ms.
18 Ballard indicating that she didn't believe me, I
19 thought well, let me get her involved in the
20 conversation so as I'm asking the attorneys, she will
21 hear it, and it would not be rehearsed or in any way
22 --. She'd hear what I'm hearing from them about the
23 likelihood that we could get it. And so that was why
24 I messaged her.
25 I think this may have been a voicemail; I don't

1 know. I was trying to find out if she was available
2 because I was going to set up a time since they were
3 going to link us to the attorneys instead of going
4 around the outside and ask them. And since she was
5 not interested, and I think she provided some kind of
6 email response or something, I was satisfied that I
7 had done as much as I could to get the emails -- I'm
8 sorry, the texts.

9 Q. The fee for capturing the emails, did you enquire from
10 Verizon how much that would be?

11 MS. BALLARD: You mean the texts?

12 A. No.

13 Q. The texts.

14 A. Texts. No.

15 Q. Is there a --

16 A. Because -- is there a reason? Yes. Because at the
17 time that we would have requested it, they wouldn't
18 have the information we were looking for. They can't
19 go back that far. I was told the best they can do is
20 go back seven to ten days. So it wasn't going to
21 work. You know, it wasn't going to be responsive to
22 Ms. Ballard's request because we were now -- I don't
23 know how far into the response, but certainly wouldn't
24 go back the three years that she was expecting.)

25 Q. Did you consider that it might be relevant for future

1 FOIA requests?

2 A. No. Because that goes back to me telling you that the
3 county doesn't have funds to just spend unnecessarily.
4 So you get --

5 Q. But --

6 A. I'm sorry.

7 Q. But you did not inquire with Verizon as to how much it
8 would cost to capture emails?

9 A. No.

10 [MARKED FOR IDENTIFICATION AS
11 PLAINTIFF'S EXHIBIT NUMBER 4 - COPY OF
12 EMAIL DATED 2/14/15.]

13 Q. I'm going to show you a document that we're marking as
14 Plaintiff's Exhibit Number 4. And this appears to be
15 an email from Desa Ballard to you. Do you recall
16 receiving that email?

17 A. I'm sure I did.

18 Q. And you can take your time, but I'm going to direct
19 you to the very last paragraph, the first sentence.
20 Can you read that for me?

21 A. (As read): I still have no texts from Mr. Adams to
22 council members or their agents.

23 Q. Okay. Did you respond to this email?

24 A. I did.

25 Q. And do you remember what you said?

1 A. No. I remember sending a letter that detailed where I
2 had provided since she had specifically said we
3 haven't done anything. I responded saying this is
4 everything that we have, and it has been sent to you
5 in this groupings, and tried to go by the original F-
6 O-I request saying you would find what information we
7 had in the response from Art Jayroe or from HR
8 director.

9 Q. Okay. Now, you've testified that you went through and
10 searched your text for anything responsive related to
11 Wayne Adams, correct?

12 A. Correct.

13 Q. Did you ask county council members to go through and
14 review their texts?

15 A. When I asked them to respond, I believe I asked them
16 if they had any electronic communication with him,
17 including emails or texts. Got no response from them.
18 Well, I'm sorry. Other than those that provided a
19 response that we produced.

20 Q. Did you follow up with county council members or their
21 agents to make sure that you had --

22 A. No.

23 Q. -- any texts?

24 A. No.

25 Q. And why is that?

1 A. They responded. I don't harass my county council
2 members.)

3 Q. Okay. So all of the county council members responded
4 either with documents or telling you no, we don't have
5 any texts?

6 A. Or did not respond.

7 Q. Okay. And so for those that did not respond, you
8 didn't follow up, correct?

9 A. I assumed that their lack of response meant they
10 didn't have anything.

11 Q. Okay. So you did not follow up.

12 A. Again, I assumed that their lack of response meant
13 they didn't have anything. As far as I know, Mr.
14 Adams and council members don't usually text. They
15 are involved in emails.

16 Q. Okay. So to answer my question, you did not follow up
17 with county council members?

18 A. Didn't see the need to.

19 Q. So that'd be a "no"?

20 A. Yes. Or, I'm sorry. Correct. It would be a "no".

21 Q. Okay. And again, if you need to take a break at
22 anytime, I'm happy to.

23 A. I'm fine. I'd rather plod through and get out sooner.

24 [MARKED FOR IDENTIFICATION AS

25 PLAINTIFF'S EXHIBIT NUMBER 5 - COPY OF

EMAIL DATED 2/26/15.]

Q. Okay. I'm going to show you what we have marked as Plaintiff's Exhibit Number 5. And this appears to be an email from you to Desa Ballard, dated February 26, 2015. Do you recall sending this email?

A. (Witness reviews document.) I do.

Q. And what was your response, the very top?

A. You want me to read it?

Q. Yes, if you would.

A. (As read): I will review my files and speak with Mr. Aydlette as to number six. We have provided all of Mr. Adams' emails that we have and of the few texts available. There are none germane to your request, so that is my final response.

Q. Okay. And the only text that you were able to review were those on your cell phone, correct, from Wayne Adams?

A. No. Actually, I looked at his cell phone.

Q. Okay. And what did you find on his cell phone?

A. Personal texts. I didn't see any business -- any business texts, I should say, county business texts.

Q. And did you inquire as to whether or not he had any earlier cell phones?

A. No.

Q. Okay. Did you ask Wayne Adams to show you, like, all

1 the cell phones he's had in the last three years?

2 A. No.

3 Q. So you reviewed texts on only one phone, correct?

4 A. On the phone that he had at the time, yes.

5 Q. Okay. And do you remember -- when you say, "at the
6 time," do you remember when that was?

7 A. I would imagine it would have been close in time to
8 February 26th when I sent the email.

9 Q. And you inspected his iPhone?

10 A. Whatever phone he had at the time.

11 Q. Okay. Do you recall what kind of phone that was?

12 A. I don't. It's probably an iPhone, but I don't recall.

13 Q. And did you ask him how long he had had that phone?

14 A. I did not. Before we leave this, can I just point out
15 one thing?

16 Q. Uh-huh.

17 A. The Exhibit 4 that you provided, if you look down at
18 the bottom email, that was my response to Exhibit 4.

19 Q. Okay. Can you describe Newberry County's document
20 retention policy?

21 A. Very generally. I'm not the retention officer. I
22 know that the clerk to council, I believe, for her
23 documents, whether that's ordinances, resolutions,
24 minutes, agendas, has a system in her office that we
25 got through a grant or something that records some

1 things. I don't -- I couldn't tell you what it is
2 that gets scanned into it. It may be that some of HR
3 or finance records are scanned into the retention
4 system. I don't know. And I cannot begin to tell you
5 what elected officials have, including the Sheriff,
6 for retention. I know that generally, like, the
7 treasurer or the auditor are familiar with what
8 they're supposed to keep, as is the clerk of court,
9 but I don't know what their retention is.

10 Q. Okay. Do you know whether or not you, as the county
11 attorney, are under any kind of county retention
12 policy, aside from the South Carolina Bar?

13 A. Not that I'm aware of.

14 Q. Do you know whether Wayne Adams is subject to any kind
15 of Newberry County document retention policy?

16 A. Not that I'm aware of.

17 Q. And is the county governed by the state archives
18 document retention requirements?

19 A. I really don't know. I know that they offer
20 guidelines. I don't know if they're requirements from
21 them.

22 Q. And as the point-person on the FOIA request, have you
23 looked into whether or not Newberry County is subject
24 to the state archives retention policies?

25 A. I have not.

1 Q. Have you ever seen the state archives document
2 retention requirements?

3 A. Since I've been in Newberry, I have not. I believe
4 either when I was in Berkeley County or Greenville, I
5 may have seen parts of it.

6 [MARKED FOR IDENTIFICATION AS
7 PLAINTIFF'S EXHIBIT NUMBER 6 - 42-PAGE
8 S.C. DEPARTMENT OF ARCHIVES DOCUMENT.]

9 Q. I want to show you a document that is going to be
10 Plaintiff's Exhibit Number 6, and ask you if you've
11 ever seen that before.

12 A. If I have, it has been a very long time. It would
13 probably go back to Berkeley County, which would have
14 been prior to '99.

15 Q. So in responding to Ms. Ballard's FOIA request, you
16 have not reviewed this document, correct?

17 A. No. Did not.

18 Q. And what is your understanding of the purpose of
19 having document retention policies?

20 A. State, county, or just generally having --

21 Q. County.

22 A. It would be to retain those items that have some
23 significance or importance. As an example, obviously
24 the clerk of court, who also serves as the registrar
25 of deeds, has to keep all the deeds and all the

1 documents that go with that. I know that for some
2 financial records, we have to maintain those because
3 of IRS terms. But beyond that, I don't know what the
4 records are and how long you have to keep them.

5 Q. Is there anybody at Newberry County who would be aware
6 of whether or not Newberry County is subject to
7 Exhibit Number 6?

8 A. Not that I'm aware of. And I say that -- when I was
9 in Berkeley, we had somebody who had the title of
10 records retention. I don't know of anybody who has
11 that title here.

12 Q. Can you describe for me the document archiving for
13 emails in Newberry County.

14 A. The only archiving, if you want to call it that, is
15 what individual users do on their computers, as far as
16 I know.

17 Q. And do you know whether or not that fulfills Newberry
18 County's requirements, in terms of document retention?

19 A. As it relates to a records retention schedule or as to
20 the requirements to what they need?

21 Q. As it relates to any kind of records retention
22 schedule.

23 A. I don't know.

24 Q. Do you think it's important for Newberry County, if
25 there are document retention requirements, to be

1 following those?

2 A. If they're applicable to the county, I would say yes.

3 Q. And whose role is it in the county to make sure that
4 county employees are following any applicable document
5 retention policies?

6 A. I'm not sure.

7 Q. Do you believe it's the county attorney's
8 responsibility to make sure the county is --

9 A. No.

10 Q. No. Whose responsibility would it be?

11 A. I suppose you could -- the default position would be
12 the county administrator because he's the
13 representative of county council. But I can tell you
14 another -- two other counties that I've been in, it's
15 not the county administrator. It's somebody who has
16 the title record retention specialist or something
17 like that.

18 Q. Have you had any discussions with Wayne Adams about
19 document retention policies for Newberry County?

20 A. I have not.

21 Q. Now, did you personally search Mr. Adams' emails for

22 --

23 A. No. I did not.

24 Q. -- responsive documents? And why is that?

25 A. I trust Mr. Adams to do the search and provide me with

1 everything that he found. I did not personally search
2 Art Jayroe's emails either to see if his were
3 responsive, or anybody else's other than mine.

4 MS. SCHILLACI: We're going to take a minute
5 break here.

6 (Off the record.)

7 [MARKED FOR IDENTIFICATION AS
8 PLAINTIFF'S EXHIBIT NUMBER 7 - COPY OF
9 EMAIL DATED 3/01/12.]

10 RESUMING EXAMINATION

11 BY MS. SCHILLACI:

12 Q. Okay. I'm showing you a document that has been marked
13 as Plaintiff's Exhibit Number 7. In responding and in
14 reviewing the documents in response to FOIA, do you
15 recall seeing this document?

16 A. There were close to 2200 documents that I looked at,
17 so I'd say I looked at it, but I don't recall it.

18 Q. Okay. It states here, and I'm not asking you to
19 authenticate the document, it appears from Wayne Adams
20 to you. Do you remember receiving this document from
21 Wayne Adams, this email?

22 A. I'm sure I did because -- I mean, I disclosed that I
23 responded. It's got my name at the top which means it
24 was printed off of my email.

25 Q. Okay. It says to you, (As read): Jay, I have not had

1 a chance to look at these yet, but have you completed
2 the agreement between council and Senator Cromer
3 regarding the magistrate court services?

4 Do you know what that was about?

5 A. I don't recall.

6 Q. Okay. Do you recall what occurred, why this would've
7 come about?

8 A. No. I mean, I'm sorry. This was three years ago. I
9 recall the part that I sent to him, because he had
10 asked me to prepare a contract for three different
11 county employees. But I don't recall. I mean, I'm
12 sure I saw his response when it came through, but I
13 don't recall it beyond that.

14 Q. Okay. Do you know what the agreement would be?

15 A. I really don't recall.

16 [MARKED FOR IDENTIFICATION AS
17 PLAINTIFF'S EXHIBIT NUMBER 8 - COPY OF
18 EMAIL DATED 3/01/12.]

19 Q. Okay. This is a document that we are listing as
20 Plaintiff's Exhibit Number 8. And this, similarly,
21 appears to be from Wayne Adams to you, March 1, 2012.
22 Do you recognize this document?

23 A. Yes.

24 Q. Okay. It talks about it, (As read): attaches a draft
25 to the proposed agreement with Senator Cromer,

1 concerning the appointment of magistrates. You'll
2 recall that council and Senator Cromer decided to take
3 this matter up as an executive session item next
4 Wednesday.

5 Do you remember what this was about?

6 A. It appears that it's an agreement between a proposed
7 agreement between the County and the Senator, "the
8 Senator" being Senator Cromer.

9 Q. For what?

10 A. Looks like to go to three full-time magistrates.

11 Q. And do you know if that was accomplished?

12 A. To my recollection, it was not. As far as an
13 agreement between the Senator and county council.

14 Q. And do you know why not?

15 A. I don't. Now, you're just asking about this part of
16 it, correct, and not this part?

17 Q. Let me take a look.

18 A. That's a second email, but you directed me just to the
19 March email.

20 Q. (Examines document.) Yes.

21 MS. BALLARD: That's a second exhibit that
22 shouldn't be attached to that. The last two
23 pages should come off, or were not part of
24 the exhibit.

25 (Ms. Ballard removes pages from document.)

1 A. But you put the original down? Since you made me put
2 them over here, I want to be sure I --

3 Q. Yeah.

4 MS. BALLARD: Yeah. This is a separate
5 document.

6 MR. NICHOLSON: So we're redacting from the
7 -- from Exhibit 8 --

8 MS. SCHILLACI: The last two pages.

9 MS. BALLARD: The last two pages are --

10 THE WITNESS: The last three pages.

11 MR. NICHOLSON: That's the February 25, 2014
12 email from Mr. Adams to J. Tothacer, that's
13 got a two-page draft letter dated May 5,
14 2014?

15 MS. BALLARD: We intended to ask about that
16 separately. It just got stapled.

17 MR. NICHOLSON: Okay. All right.

18 MS. SCHILLACI: Yeah. But -- I mean, we can
19 leave it all as one. That would work, as
20 well.

21 MR. NICHOLSON: It makes no difference to
22 me. Whatever you guys want to do. I just
23 want to make sure that we're good. Okay.

24 THE WITNESS: That's the original?

25 MS. SCHILLACI: Yeah. Yeah.

1 THE WITNESS: So are you leaving it as one?

2 Ms. SCHILLACI: (No response.)

3 THE WITNESS: You asked me a question and
4 when I saw what was on the back, I'd want to
5 modify my answer to your question. Because
6 I responded to the first part of it.

7 MS. BALLARD: Why don't we just take the
8 first part of it? Which one is this marked
9 to be the exhibit?

10 MS. SCHILLACI: Yeah.

11 MS. BALLARD: Okay. Then you can ask about
12 that one at the end maybe.

13 RESUMING EXAMINATION

14 BY MS. SCHILLACI:

15 Q. Okay. I want to show you a document that I am not
16 marking as an exhibit, and ask if you can take a look
17 at that and identify it.

18 A. (Witness complies.) Yes. It appears to be an agenda
19 for -- or I'm sorry, the minutes for the March 7th
20 Newberry County Council meeting.

21 Q. Okay. March 7th of what year?

22 A. 2012. I'm sorry.

23 Q. And does that in anyway relate to Exhibit 8?

24 A. It's the council meeting that follows the date of that
25 exhibit and it has an executive session on it, so I

1 would think it's connected in that regard.

2 Q. Okay. And do you recall the purpose of the executive
3 session on that date?

4 A. As it's stated, I do.

5 Q. Okay. And how is it stated?

6 A. (As read): Discussion of what -- what cites the code
7 section, says: Discussion of negotiations incident to
8 proposed contractual arrangements proposed sale or
9 purchase of property, the receipt of legal advice
10 where the legal advice relates to a pending,
11 threatened, or potential claim or other matters
12 covered by the attorney-client privilege, settlement
13 of legal claims or the position of the public agency
14 in other adversary situations involving the assertion
15 against the agency of a claim.

16 MS. SCHILLACI: Did the court reporter get
17 all that?

18 THE WITNESS: Sorry. I'll be slower.

19 Q. And do you know whether or not the document attached
20 to Exhibit 8 was discussed in executive session? I'm
21 not asking you what was discussed, but whether or not
22 it was.

23 A. I don't recall.

24 Q. And if you did want to find an answer to that
25 question, would there be any way to find out whether

1 or not the document attached to Exhibit Number 8 was
2 discussed in the March 7, 2012 executive session?

3 A. You're kind of asking me what was discussed in the
4 executive session. But let's say generally, if you
5 wanted to know if something was discussed and their
6 documents, I would think the only way you would have a
7 definitive answer would be if there was action taken
8 where council directed the administrator or whoever to
9 do something. As an example, when we do economic
10 development matters, we don't disclose what's there,
11 but if there's going to be an agreement, an incentive
12 agreement, then we would come out, and there would be
13 a motion to authorize whoever, the County
14 Administrator, to enter into an incentive agreement
15 for project green light, and that would show, more
16 than likely, that that document had been discussed in
17 the executive session. So if it's not any formal
18 action that's taken, --

19 Q. Does anyone take notes during executive session?

20 A. No. It's not required.

21 Q. But regardless of whether or not it's required, does
22 anyone take notes during executive sessions?

23 A. I do not take notes, and the clerk to council is not
24 present unless it's something involving her directly.
25 I couldn't tell you if any participants take notes.

1 Q. Okay.

2 [MARKED FOR IDENTIFICATION AS EXHIBIT
3 NUMBER 9 - 4-PAGE COPY OF EMAILS DATED
4 9/06/14 AND 9/09/14.]

5 Q. I wanted to make sure our exhibits were in order
6 before I handed it over to you. So this is going to
7 be the Plaintiff's Exhibit Number 9. I'll ask you to
8 take a look at that, each page.

9 A. (Witness complies.) You realize there's two of them
10 here?

11 Q. That's correct.

12 A. There's a September 6th and a September 9th. Okay.

13 Q. Do you recognize those documents?

14 A. Yes.

15 Q. And can you tell me what they are. What's the subject
16 matter?

17 A. As best I recall, Judge Jayroe had sent a request that
18 never made it to Wayne Adams. He called the Chairman
19 of the county council and complained about it and then
20 either the Chairman forwarded it to Wayne, or the
21 Judge Jayroe resent it. And it was in response to an
22 email, the best I recall, from Judge Jayroe.

23 Q. Okay. And there appears to be a -- is that a draft
24 letter attached?

25 A. To the -- actually, to both of them, yes.

1 Q. Okay. And why was that prepared?

2 A. It was in response to Judge Jayroe's request that was
3 contained in the email, but was late in getting to
4 Wayne Adams.

5 Q. Now, on the first page, it says (As read): I believe
6 the response is straightforward and places the stipend
7 payment squarely on him.

8 A. Correct.

9 Q. What did you mean by that?

10 A. I'll try to simplify it. It gets a little involved.
11 County council, in 1995, decided to offer a stipend of
12 \$4500 to be split among two magistrates. At some
13 point, in January of I believe 2005, Judge Jayroe sent
14 a request or a directive to the finance director. He
15 had been sharing it with another magistrate, and he
16 sent a request saying, "Pay me all of it". And that's
17 why I said, "Squarely on him".

18 Q. Okay. "Him" being Jayroe.

19 A. Judge Jayroe.

20 Q. And do you know the other magistrate he was sharing it
21 with?

22 A. Judge English is who I believe it was. It's contained
23 in the draft.

24 Q. Let me ask you, are you familiar with the statute
25 regarding executive session?

1 A. Thirty-four-seventy? Is that the one you're referring
2 to?

3 Q. Yeah. And I'm just going to show you a copy. I'm not
4 going to mark this.

5 A. (Reviews document.) I am.

6 Q. And what is that section dealing with?

7 A. Meetings which may be closed, procedures circumvention
8 of chapter, disruption of meeting, executive sessions
9 in the General Assembly.

10 Q. Okay. And are Newberry County Council meetings
11 governed by FOIA?

12 A. Yes.

13 Q. And that would be 30-4-70(b) to your knowledge?

14 A. Well, I would say that all sections, except E and F of
15 it.

16 Q. And does Newberry County announce the specific purpose
17 of each executive session?

18 A. Within the requirements of the law, they do.

19 Q. And what does that mean to you, "Within the
20 requirements of the law"?

21 A. The one that you had me read a moment ago, --

22 Q. Uh-huh.

23 A. -- is an example of meeting the requirements of the
24 law.

25 Q. Okay. And what do you think the requirements are?

1 A. That you give one of the reasons for the section and
2 if you can give any additional information, you may
3 include that. But if you give the reason that's
4 stated, like, here's a simple one: Investigative
5 proceedings regarding the allegations of criminal
6 misconduct. That's a specific purpose. You don't
7 say, for example: Personnel matters, because there's
8 not an exemption for personnel matters.)

9 [MARKED FOR IDENTIFICATION AS

10 PLAINTIFF'S EXHIBIT NUMBER 10 - COPY OF
11 MEETING MINUTES DATED 8/11/14.]

12 Q. Okay. I'll give you a second to review that and tell
13 me if you can identify this at all. I'm not asking
14 for authentication.

15 MR. NICHOLSON: Is that ten, Kathy?

16 MS. SCHILLACI: Yes.

17 A. Appears to be minutes from a Public Safety and Courts
18 Committee meeting.

19 Q. And again, this is what we've marked as Exhibit Number
20 10.

21 A. Right.)

22 Q. So do these appear to be minutes?

23 A. Yes.)

24 Q. And based on these minutes, does it appear that
25 council went into executive session?

1 A. There was an executive session scheduled. There's a
2 reason given and actually, it wasn't council, it's a
3 committee.

4 Q. Okay. And what was the specific purpose of the
5 executive session?

6 A. I believe it was to receive legal advice about a
7 contractual matter.

8 Q. Anything else?

9 A. Not to the best of my recollection.

10 Q. So that would be the specific purpose of the executive
11 session?

12 A. Yes.

13 Q. And you believe that's sufficient based on your
14 understanding of what's required by the law, correct?

15 A. Yes. Can I give you an example why I believe that?

16 Q. You can.

17 A. If you look at the reason it was given, (As read):
18 Discussion of negotiations incident to proposed
19 contractual arrangements and proposed sale or purchase
20 of property --. If the county is trying to acquire
21 property, it makes it rather difficult for them to
22 say, "We're going to buy Desa Ballard's lake house and
23 pay her 2 million dollars for it." It's not much
24 negotiation. So that's why I think this is
25 sufficient. You know, generally speaking, as an

1 example when we have an economic development matter,
2 if we can identify the code name for the entity, we
3 will, but a lot of times the nature of what's in the
4 executive session doesn't lend itself to being more
5 specific.

6 Q. And how about the second part of that, the receipt of
7 legal advice. What is this -- do you know nature of
8 the receipt of legal advice?

9 A. I don't know that legal advice was offered in this.
10 We give the entire section that covers part of it. So

11 I -- you know, I don't recall. I have sort of a
12 recollection that -- if you'll notice, and I'm trying
13 to see why else he would have been there, Theo Dubose,
14 is listed as one the attendees. He is an attorney
15 with the Haynsworth firm that generally works in bond
16 and financial matters. And it could be -- if there
17 was legal advice offered, it could be that there was
18 something that related to use of funds. I don't see
19 anything that I recall as being -- actually, he is
20 shown on the paid firefighter service, so possibly it
21 had something to do with that. Or it could have
22 contractual matters, there's a couple of contractual
23 issues that are there.

24 Q. But you don't know whether or not he was attendee
25 during the executive session or not, correct?

1 A. I don't recall.

2 Q. And how would the public know the specific purpose of
3 the executive session?

4 A. Again, if there was action taken, they'd have to take
5 the action formally afterwards.

6 Q. But do we know whether or not the executive session
7 part of that was a discussion of legal advice?

8 A. No. Not from what's presented here.

9 [MARKED FOR IDENTIFICATION AS
10 PLAINTIFF'S EXHIBIT NUMBER 11 - COPY OF
11 MEETING MINUTES DATED 10/20/14.]

12 Q. I want to show you what's been marked at Exhibit
13 Number 11, and ask you if you can identify that
14 document.

15 A. It appears to be minutes from the October 20, 2014
16 Public Safety and Courts Committee.

17 Q. Okay. Do you know whether or not there was an
18 executive session on this date?

19 A. Based on the minutes, it does not appear that there
20 was.

21 Q. But how would this -- would it appear differently if
22 there had been an executive session?

23 A. Yes. It'd look like the Exhibit 10, where it states
24 the purpose for going into an executive session.

25 Q. Okay. But with Exhibit 10, we don't know whether or

1 not there was receipt of legal advice, correct?

2 A. We don't know what went on in the executive session,
3 but I believe there was an executive session. This is
4 a standard agenda format, and the person who prepares
5 these just takes the agenda and fills in afterwards
6 what the minutes were. If you look at our county
7 council meeting for tonight, it will have on there
8 "executive session if needed". If we know that we're
9 going to need an executive session, it would state the
10 purpose for it. Something could happen today that
11 would cause the need for having an executive session
12 before we would go into it, the purpose wouldn't
13 necessarily be printed on the agenda, but we would
14 explain the purpose as I've outlined before we went
15 into executive session. So I would say here, there
16 was not an executive session.

17 Q. Okay. So the specific purpose, would that be included
18 in the minutes or is that something you would announce
19 verbally?

20 A. If we know before the meeting is held that we're going
21 to have an executive session held because I'm there to
22 explain litigation, then it would be announced on --
23 it would be printed on the agenda. If it's something
24 that we actually -- in that case, we'd go into the
25 executive session and you'd see the response, and they

1 either take action or they don't take action. If
2 there's nothing that happens, then it would probably
3 show up like this, where it says, "Executive session
4 if needed". If there's one that arises between the
5 time the agenda is published and the meeting is held,
6 it would show up as an executive session with the
7 purpose.)

8 Q. So let me make sure I'm clear. Exhibit Number 11, is
9 that an agenda or are those minutes?

10 A. It's minutes based on the agenda.

11 Q. And is it your testimony, based on your review of
12 Exhibit Number 11, that there was no executive session
13 on October 20, 2014?

14 A. Yes. Based on what I see in the minutes.

15 [MARKED FOR IDENTIFICATION AS
16 PLAINTIFF'S EXHIBIT NUMBER 12 - COPY OF
17 MINUTES DATED JANUARY 21, 2015.]

18 Q. I'll show you the document that we are marking as
19 Plaintiff's Exhibit Number 12. And ask you if you can
20 identify this document.

21 A. Excuse me. It appears to be the minutes from a
22 regular or from a Newberry County Council meeting on
23 January 21, 2015.

24 Q. And what was the specific -- or let me ask you first,
25 was an executive session held?

1 A. (Reviews document.) Yes.

2 Q. And what was the specific purpose of the executive
3 session?

4 A. Pursuant to two sections of the FOI act, 30-4-
5 70(a)(2) and 30-4-70(a)(5). Which, I believe the 30-4-
6 70 was for the -- concerning the settlement of legal
7 claims and the 30-4-70(a)(5) was discussion of matters
8 relating to the proposed location of industry, which
9 is short-handed by county attorneys as the economic
10 development.

11 Q. Okay. So would the settlement of legal claims and the
12 proposed location industry, is that the specific
13 purpose of the executive session?

14 A. As far as I can tell, yes.

15 Q. And what were the legal claims that were discussed?
16 And we're talking in general. Not asking to get into
17 any privileged information.

18 A. I can't tell you. I don't recall. I mean, if it was
19 something that we would've acted on, then when you see
20 the report out, we would've taken some action. If
21 there was an offer to settle a claim, and we agreed to
22 it, then probably what would've come out is there
23 would've been something where I would've reported the
24 council went into executive session, blah, blah, and
25 authorized the County Administrator to enter into

1 negotiations settlements to resolve the lawsuit.

2 Q. Okay. But for the public, do we know what kind of
3 legal claims were discussed?

4 A. No. From the public standpoint, no.

5 Q. And what was the proposed location of industry?

6 A. I don't recall.

7 Q. How would the public determine what was meant by
8 "proposed location of industry"?

9 A. They would know that we're talking about an industry
10 that wants to locate in the county.

11 I would suggest to you, as an example, that when
12 Volvo decided to locate in Berkeley County, they
13 didn't say when they held the executive session, we're
14 talking with Volvo about locating their plant here.
15 Volvo would not have located here. That's the reason
16 that the exception is there for economic development.

17 Q. These I am not going to mark because we're going to
18 quickly go through those, and just ask if you can
19 identify the document.

20 A. It appears to be minutes from the Newberry County
21 Council meeting held August 20, 2014.

22 Q. Okay. Can you tell me the specific purpose -- first
23 of all, can you tell me whether or not there was an
24 executive session.

25 A. There appears to have been an executive session.

1 Q. And what was the specific purpose?

2 A. Receipt of legal advice about a pending, threatened,
3 or potential claim.

4 Q. Do you know what kind of claim?

5 A. Do not, not based on that.

6 Q. Do you know how the public would know?

7 A. No.

8 Q. Do you know who was in attendance at the executive
9 session?

10 A. Obviously, I was in attendance, and it appears that
11 Mr. Koon and Mr. Cain -- I mean, there's not who goes
12 into executive session; it's not noted.

13 Q. If the public wanted to find out the specific purpose
14 of the executive session, is it your testimony that
15 they would consult these minutes?

16 A. To the extent they're privy to an executive session,
17 yes.

18 Q. And in terms of -- can you tell me what the specific
19 purpose was again of that particular meeting?

20 A. Receipt of legal advice where the legal advice relates
21 to a pending, threatened, or potential claim or other
22 matters covered by the attorney-client privilege.

23 Q. And if the public wanted to know the general nature of
24 that legal advice, whether it was employment matters,
25 contract disputes, how would they go about determining

1 that?

2 A. Well, if you read the last line of the report, it says,

3 (As read): Mr. Koon commented that after receiving the

4 information discussed in executive session, he

5 motioned that Mr. Adams be given permission to send a

6 letter to Senator Cromer requesting that he go to

7 three full-time magistrates and no part-time

8 magistrates. I would say it's a safe assumption that

9 that was discussed in the executive session.)

10 Q. But that would be an assumption. You do not know for

11 sure, correct?

12 A. I know I was in the executive session, but I'm not

13 able to disclose that. I believe that's attorney-

14 client privilege.

15 Q. Okay.

16 A. It's also not required to be disclosed.

17 Q. Let me ask you, was there any other -- and I'm talking

18 in generalities, any other legal claims discussed?

19 A. I really don't recall.

20 Q. So just looking at the minutes, other than the public

21 assuming based on coming out of executive session, how

22 would the public know the general type of legal claims

23 that were being discussed?

24 A. They would not know. That's why it's protected.

25 That's why it's permitted to have an executive

1 session.

2 Q. Okay. Let me show you another one.

3 A. Okay.

4 Q. And what's the date of that document?

5 A. This is Newberry County Council minutes from July 16,

6 2014.

7 Q. And do you know if there was an executive session
8 held?

9 A. Yes. There appears to have been one.

10 Q. And what was the specific purpose of the executive
11 session?

12 A. (As read): Discussion of negotiations incident to
13 proposed contractual arrangements and proposed sale or
14 purchase property, the receipt of legal advice where
15 the legal advice relates to a pending, threatened, or
16 potential claim or other matters covered by the
17 attorney-client privilege, settlement of legal claims,
18 or the position of the public agency in other
19 adversary situations involving the assertion against
20 the agency of a claim.

21 Q. Okay. Do you know how the public would know whether
22 that legal advice related to personnel matters versus
23 contract disputes? How would the public know what
24 kind of --

25 A. When you say "personal matters", what do you mean by

1 that?

2 Q. Personnel.

3 A. There's a separate exemption for personnel matters --
4 for employment matters. It's not personnel, but it's
5 employment matters. So they would know that it was
6 not related to that. They would know that this would
7 be a legal claim or the receipt of legal advice.

8 That's the best that I can offer from this if I were a
9 member of the public.

10 Q. So general public would not know kind of the general
11 nature of that legal advice, correct?

12 A. That's correct.

13 Q. Do you know who was in attendance at that executive
14 session?

15 A. Do not. I do not.

16 Q. Okay. Let me hand you one other. Ask you to identify
17 that.

18 A. Appears to be the minutes from Newberry County Council
19 of May 21, 2014.

20 Q. And was there an executive session held?

21 A. Yes, there appears to be.

22 Q. And what was the specific purpose of that executive
23 session?

24 A. (As read): Discussion of negotiations incident to
25 proposed contractual arrangements and proposed sale or

1 purchase property, the receipt of legal advice where
2 the legal advice relates to a pending, threatened, or
3 potential claim or other matters covered by the
4 attorney-client privilege, settlement of legal claims,
5 or the position of the public agency in other
6 adversary situations involving the assertion against
7 the agency of a claim.

8 Q. Do you know the general nature of the legal advice
9 given?

10 A. Do not.

11 Q. Who was in attendance at that executive session?

12 A. I do not know. (Reviews document.) I would assume,
13 at least, Mr. Adams was because he reported out of it.
14 I'm sure council members were in there, but I couldn't
15 tell you who all was or wasn't.

16 Q. And let me hand you another one. Ask if you can
17 identify that document.

18 A. It appears to be the minutes from the May 7, 2014
19 County Council meeting.

20 Q. Was there an executive session?

21 A. Yes. It appears there was.

22 Q. And what was the specific purpose of the executive
23 session?

24 A. (As read): For discussion of employment, appointment,
25 compensation, promotion, demotion, discipline, or

1 release of an employee, a student, or a person
2 regulated by a public body or the appointment of a
3 person to a public body. I'll read the rest of it,
4 but it says, (As read) However, if an adversary
5 hearing involving the employee or client is held, the
6 employee or client has the right to demand that the
7 hearing be conducted publically. Nothing contained in
8 this item shall prevent the public body in its
9 discretion from deleting the names of the other
10 employees or clients whose records are submitted for
11 use at the hearing. That's actually an anachronism,
12 the last part, because county council doesn't do those
13 adversary hearings anymore for employees.

14 Q. Who was in attendance at that executive session?

15 A. I couldn't tell you.

16 Q. And do you have knowledge of any records that would
17 tell us who was in attendance at the executive
18 session?

19 A. No.

20 Q. I'll give you another one and ask you to identify
21 that.

22 A. This appears to be the minutes from April 16, 2014
23 with county council.

24 Q. Was there an executive session?

25 A. (Witness reviews document.) Yes. Appears to be.

1 Q. And what was the specific purpose of the executive
2 session?

3 A. There were two purposes, (As read): One was the
4 discussion of matters relating to the proposed
5 location, expansion, or the provision of services and
6 encouraging location or expansion of industries or
7 other businesses in the area served by the public
8 body. And the second stated purpose is, (As read):
9 For discussion of employment, appointment,
10 compensation, promotion, demotion, discipline, or
11 release of an employee, a student, or a person
12 regulated by a public body or the appointment of a
13 person to a public body. However, if an adversary
14 hearing involving the employee or client is held, the
15 employee or client has the right to demand that the
16 hearing be conducted publically. Nothing contained in
17 this item shall prevent the public body in its
18 discretion from deleting the names of the other
19 employees or clients whose records are submitted for
20 use at the hearing.)

21 Q. And who was in attendance at that executive session?

22 A. I cannot tell you.)

23 Q. Okay. I'll hand you another one.

24 A. Just to note, there was action taken out of executive
25 session.

1 Q. Okay.

2 A. That's from the minutes.

3 Q. What does that appear to be?

4 A. It appears to be the minutes from Newberry County
5 Council dated December 18, 2014.

6 Q. And was there an executive session?

7 A. Yes.

8 Q. And what was the specific purpose of the executive
9 session?

10 A. To address a legal matter.

11 Q. Do you know what kind of legal matter?

12 A. I do not.

13 Q. If the public wanted to determine what kind of legal
14 matter, how would they do that?

15 A. The same as all the other questions you've asked. The
16 only way they would know if there was something, would
17 be if there was formal action taken after the
18 executive session.

19 Q. Do you know who was in attendance at that executive
20 session?

21 A. I do not.

22 Q. Okay. All right.

23 A. I will tell you I was in it because I reported out, so
24 I know I was there.

25 Q. We just have a few more of these. Can you identify

Page 88

1 this document.

2 A. It appears to be the minutes from Newberry County
3 Council dated October 16, 2013.

4 Q. And was there an executive session?

5 A. Yes.

6 Q. And what was the specific purpose of the executive
7 session?

8 A. Mr. Adams stated it was for three separate purposes:
9 the first is permitted under 30-4-70(a)(5) and
10 pertains to matters relating to the proposed location,
11 expansion, or provision of services, encouraging
12 location or expansion of industries or other
13 businesses in the area served by the public body. The
14 other two purposes are covered under 30-4-70(a)(2)
15 with the first being legal advice that relates to a
16 pending, threatened, or potential claim or other
17 matters covered by the attorney, -- should say, client
18 privilege. And the second being negotiations incident
19 to proposed contractual arrangements and proposed sale
20 or purchase of property.

21 Q. And does it describe the nature of the legal advice?

22 A. Does not.

23 Q. And do you know who was in attendance at that
24 executive session?

25 A. Since I reported out, I can only say I was in

1 attendance.

2 Q. Okay. And I just have two more of these. If you will,
3 identify that document.

4 A. It appears to be minutes from the August 21, 2013
5 Newberry County Council meeting.

6 Q. And was there an executive session?

7 A. (Witness reviews document.) Yes.

8 Q. What was the specific purpose of the executive
9 session?

10 A. (As read): Discussion of negotiations incident to
11 proposed contractual arrangements and proposed sale or
12 purchase property, the receipt of legal advice where
13 the legal advice relates to a pending, threatened, or
14 potential claim or other matters covered by the
15 attorney-client privilege, settlement of legal claims,
16 or the position of the public agency in other
17 adversary situations involving the assertion against
18 the agency of a claim.

19 Q. And do the minutes state the type of legal advice?

20 A. Other than that section of the code, no. They do not.

21 Q. And do you know who was in attendance at that
22 executive session?

23 A. I would -- since I reported out, I was in there. I
24 would say it looks like Mr. Adams was in there.

25 Q. And last one. If you'll identify that document for

Page 90

1 me.

2 A. Appears to be the March 7, 2013 minutes of Newberry
3 County Council.

4 Q. And can you tell me if there was an executive session.

5 A. Yes.

6 Q. And can you tell me the specific purpose of the
7 executive session.

8 A. (As read): Discussion of negotiations incident to
9 proposed contractual arrangements and proposed sale or
10 purchase property, the receipt of legal advice where
11 the legal advice relates to a pending, threatened, or
12 potential claim or other matters covered by the
13 attorney-client privilege, settlement of legal claims,
14 or the position of the public agency in other
15 adversary situations involving the assertion against
16 the agency of a claim.

17 Q. And did the minutes state the nature of that legal
18 advice?

19 A. Not beyond what I just read.

20 Q. Okay. And who was in attendance at the executive
21 session?

22 A. It appears that at least the chairman, Mr. Livingston,
23 and I were in there. I'm sure there were others in
24 there, but I don't know. Don't recall.

25 Q. Now, since receiving this FOIA lawsuit, has Newberry

1 County Council changed the way it announces the
2 specific purpose of each executive session?

3 A. Not to my knowledge.

4 Q. Since receiving the FOIA lawsuit, has Newberry County
5 Council changed the way that it records or keeps
6 records of the specific purpose of each executive
7 session?

8 A. Not to my knowledge.

9 Q. To your knowledge, has Newberry County consulted any
10 counsel besides you, since this lawsuit was filed
11 regarding its obligations under FOIA?

12 A. Not to my knowledge. We're represented by counsel in
13 this suit. And obviously Mr. Aydlette, who's an
14 attorney that was involved in producing, but I don't
15 -- I would be surprised if a council member had
16 consulted any other attorneys. I shouldn't say -- I'm
17 sorry. Your question was anybody else. To my
18 knowledge, they haven't.

19 Q. To your knowledge, what, if anything, has Newberry
20 County done since this lawsuit was filed in terms of
21 retaining text messages?

22 A. We haven't changed what was in effect before the FOI
23 request was filed, so nothing.

24 Q. And how about emails? Have there been any changes in
25 document retention since this lawsuit?

1 A. Not that I'm aware of.

2 Q. But you're not aware of any document retention
3 policies for Newberry County, correct?

4 A. No.

5 Q. To your knowledge, what, if anything, has Newberry
6 County done to establish a policy about use of
7 personal cell phones to conduct county business?

8 A. At all or since this --

9 Q. At all.

10 A. -- FOI? I believe there's a provision in the
11 personnel handbook that addresses use of electronic
12 devices for personal purposes. I don't recall exactly
13 what it says, but there's something that's in the
14 handbook.

15 Q. Since this lawsuit has been filed, have there been any
16 changes to that?

17 A. No.

18 Q. And to your knowledge, does Newberry County have any
19 problems with an employee using a personal cell phone
20 to conduct county business?

21 A. Let me make sure I understand your question. Do we
22 have problems with a county employee using their
23 personal cell phone to conduct county business, is
24 that --

25 Q. Anything wrong with that?

1 A. No.

2 Q. Okay. Anything wrong with a county employee using
3 personal email to conduct county business?

4 A. I don't believe anybody does that, but there's not a
5 policy that I'm aware of that prohibits them from
6 doing it.

7 Q. Okay. So is it your testimony that there's nothing
8 wrong with a Newberry County employee using personal
9 email to conduct county business?

10 MR. NICHOLSON: I object to the form.

11 A. You're asking me my -- I don't want to say "opinion",
12 but you're asking me what I think about it? I don't
13 think it's something that should be done. I think
14 that's the reason that they're provided computers and
15 an email server -- or I shouldn't say a "server". An
16 email account through Newberry County. As an example,
17 they can use their home -- their personal computer,
18 they can use their personal smartphone to get onto our
19 webmail and review their email through that. I don't
20 see any problem at all with that. That's using their
21 personal computer, their personal cell phone. It's
22 through the Newberry server that you can get to
23 through the website.

24 Q. Now, today, do you believe that Newberry County has
25 fully complied with its obligations under Exhibit 1,

1 which was Ms. Ballard's FOIA? .

2 A. To the best of our ability to provide the information
3 that we have or have access to, I believe that is the
4 case. That, yes, we have fully responded.)

5 Q. You believe you fully complied with your obligations?

6 A. I believe we've fully responded. I don't know how
7 else to couch that.)

8 Q. Does Newberry County intend to take any other actions
9 to provide additional documents or to do anything else
10 to complete its response?

11 A. I believe the response complete, so no.)

12 Q. Okay. So you do not believe it's important to
13 contact, for example, Tom Barber, who is your former
14 IT director?

15 A. No. Because that was something that Ms. Ballard
16 agreed was not part of her request anymore, was Tom
17 Abraham's computer. Since that's not a contested item
18 or an item, I don't know why I would contact Tom
19 Barber.

20 Q. Do you know whether or not Tom Barber would have
21 information as to the location of Wayne Adams'
22 computer? ..

23 A. No. You're talking about the one that crashed?

24 Q. Right.

25 A. That happened after he was gone from the county, so I

1 wouldn't imagine that he would know any better than
2 you would know.

3 **Q. Okay. So again, that would be Dylan Snyder, correct?**

4 **A. Correct.**

5 MS. SCHILLACI: Okay. If we can go off the
6 record for two minutes.

7 (Off the record.)

8 RESUMING EXAMINATION

9 BY MS. SCHILLACI:

10 **Q. Newberry County received a bill from Dirk Aydlette**
11 **related to production of FOIA documents, correct?**

12 **A. We did.**

13 **Q. And has Newberry County paid that bill?**

14 **A. Yes.**

15 MS. SCHILLACI: All right. That's all I
16 have for you. Thank you so much. We
17 appreciate it.

18 Further deponent sayeth not.

19 (There being no further questions, the deposition
20 concluded at 12:13 p.m.)

21

22

23

24

25

1 CERTIFICATE OF REPORTER

2 I, FRANCES C. MOYD, COURT REPORTER AND NOTARY PUBLIC
3 IN AND FOR THE STATE OF SOUTH CAROLINA AT LARGE, HEREBY
4 CERTIFY THAT I REPORTED THE DEPOSITION OF A. J. TOTHACER,
5 JR., ON WEDNESDAY, THE 4TH DAY OF NOVEMBER, 2015, THAT THE
6 WITNESS WAS FIRST DULY SWORN BY ME AND THAT THE FOREGOING
7 95 PAGES CONSTITUTE A TRUE AND CORRECT TRANSCRIPTION OF MY
8 STENOMASK REPORT OF THE SAID DEPOSITION.

9 I FURTHER CERTIFY THAT I AM NEITHER ATTORNEY NOR
10 COUNSEL FOR, NOR RELATED TO OR EMPLOYED BY ANY OF THE
11 PARTIES CONNECTED WITH THIS ACTION, NOR AM I FINANCIALLY
12 INTERESTED IN SAID CAUSE.

13 I FURTHER CERTIFY THAT THE ORIGINAL OF SAID TRANSCRIPT
14 WAS THEREAFTER SEALED BY ME AND DELIVERED TO KATHY R.
15 SCHILLACI, ESQUIRE, LAW OFFICES OF JOE McCULLOCH, 1426
16 RICHLAND STREET, COLUMBIA, SOUTH CAROLINA, WHO WILL RETAIN
17 THIS SEALED ORIGINAL TRANSCRIPT AND SHALL BE RESPONSIBLE
18 FOR FILING SAME WITH THE COURT PRIOR TO TRIAL OR ANY
19 HEARING WHICH MIGHT RESULT IN A FINAL ORDER ON ANY ISSUE.
20 IN WITNESS WHEREOF, I HAVE SET MY HAND AND SEAL THIS 14TH
21 DAY OF NOVEMBER, 2015.

22
23
24 _____
FRANCES C. MOYD, COURT REPORTER

25 MY COMMISSION EXPIRES FEBRUARY 8, 2022

1 VERIFICATION OF DEPONENT

2 I, A. J. TOTHACER, JR., HAVE READ THE FOREGOING
3 DEPOSITION CONSISTING OF 95 PAGES WHICH WAS REPORTED BY
4 FRANCES C. MOYD, VERBATIM COURT REPORTER AND NOTARY PUBLIC
5 IN AND FOR THE STATE OF SOUTH CAROLINA, ON WEDNESDAY,
6 NOVEMBER 4, 2015.

7 I FIND THE TRANSCRIPT OF THIS DEPOSITION TO BE A TRUE
8 AND ACCURATE TRANSCRIPT ACCORDING TO MY TESTIMONY ON THAT
9 DATE, WITH THE EXCEPTION OF _____ CHANGE(S) AND/OR
10 CORRECTION(S) LISTED ON THE ATTACHED ERRATA PAGE WHICH WAS
11 COMPLETED BY ME.

12
13
14 _____
15 SIGNATURE

16
17 DATE: _____, 2015
18
19
20
21
22
23
24
25

PAGE #/LINE # CHANGE AND/OR CORRECTION (AND EXPLANATION)

This image shows a single sheet of white paper with horizontal blue or grey ruling lines. The lines are evenly spaced and run across the width of the page. There are approximately 20 lines visible. The paper appears to be a standard notebook page or a sheet of stationery. There is no handwriting or other markings on the page.

THE ABOVE CHANGES WERE NOTED BY ME ON THIS ERRATA PAGE BEFORE SIGNING THE ATTACHED VERIFICATION OF DEPONENT. I HAVE RETAINED A COPY OF THIS ERRATA PAGE FOR MY RECORDS, AND THE COURT REPORTER IS TO ATTACH THIS PAGE AND MY VERIFICATION TO THE ORIGINAL TRANSCRIPT.

DATED: _____

NAME _____

ROA 00605

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF NEWBERRY)

C.A. No. 2015-CP-36-00141

Desa Ballard,)

Plaintiff,)

DEFENDANT'S PRE-TRIAL BRIEF

vs.)

Newberry County,)

Defendant.)

FOIA REQUEST AND RESPONSE CORRESPONDENCE

ROA 00605

EXHIBIT 1

ROA 00606

FOIA REQUEST AND RESPONSE CORRESPONDENCE

- 1) Ballard FOIA Request 12-2-2014
- 2) Tothacer email re Ballard FOIA Request 12-4-2014
- 3) Tothacer letter to Ballard 12-22-2014
- 4) Ballard email to Tothacer 12-30-2014
- 5) Ballard letter to Tothacer 12-30-2014
- 6) Ballard email to Tothacer 1-5-2015
- 7) Ballard email to Tothacer 1-6-2015
- 8) Tothacer letter to Ballard 1-13-2015
- 9) Tothacer letter to Ballard 1-26-2015
- 10) Ballard email to Tothacer 1-26-2015
- 11) Ballard email to Tothacer 1-27-2015
- 12) Ballard email to Tothacer 1-27-2015
- 13) Ballard email to Tothacer 1-27-2015
- 14) Ballard email to Tothacer 1-27-2015
- 15) Ballard email to Tothacer 1-27-2015
- 16) Ballard email to Tothacer 1-28-2015
- 17) Tothacer email to Ballard 1-28-2015
- 18) Tothacer letter to Ballard 1-29-2015
- 19) Ballard letter to Tothacer 1-29-2015
- 20) Ballard letter to Tothacer 2-4-2015
- 21) Tothacer letter to Ballard 2-9-2015
- 22) Ballard email to Tothacer 2-14-2015
- 23) Ballard email to Tothacer 2-26-2015
- 24) Recap of FOI responses

ROA 00606

ROA 00607

TAB 1

ROA 00607

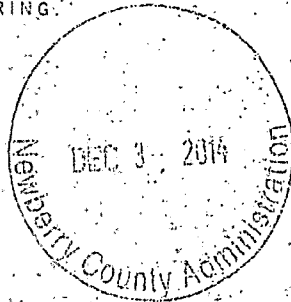


Ballard & Watson
Attorneys at Law
PERSISTENT. UNWAVERING.

ROA 00608
Harvey M. Watson III

December 2, 2014

Via U.S. Mail
Wayne Adams
County Administrator
County of Newberry
Post Office Box 156
Newberry, South Carolina 29108



Post Office Box 6333 | West Columbia, SC 29171
226 State Street | West Columbia, SC 29169
ph 803.796.9299 | fx 803.796.1056 | desaballard.com

Re: Freedom of Information Act Request

Dear Mr. Adams:

This correspondence is addressed to you based upon your position as custodian of records for Newberry County pursuant to S.C. Code Ann. § 30-1-20 or the records officer thereof, for purposes of receiving and responding to the request herein. If you are not the proper individual for receipt of this request, please advise by return mail. Otherwise, the requesting party will consider the request properly received by you in accordance with the Act.

Pursuant to S.C. Code Ann. §§30-4-10 *et seq.*, the Freedom of Information Act (herein "the act"), you are requested to produce to the undersigned copies of the following public records. The term "public records" is defined in Section 30-4-20(c), as amended. This request does not include a request for any materials that are protected by the attorney-client relationship or are otherwise privileged or materials that exempt from disclosure by statutory law. Provided, however, any documents which are responsive to this request that are withheld on the basis of privilege or exemption should be identified, along with the basis upon which such document(s) is withheld from disclosure. Such identification shall include the author and date of the document, a general description thereof, as well as the names of all recipient(s) of such document, in order to allow the requesting party to determine whether there is need for further inquiry to determine the validity of the response.

Within five (5) days of the receipt of this letter, please provide an estimate of the fees you anticipate will be required in order to produce the materials requested. Pursuant to Section 30-4-30(b), fees may not be charged for examination and review to determine if the documents requested are subject to disclosure. Such five (5) day period shall not reduce or extend the response time period provided by Section 30-4-30(c).

1. The records management program for Newberry County Magistrate's Court as required by Section 30-1-80.

ROA 00608

2. Any and all approvals received by Newberry County or any of its agents from the Director of the State Archives authorizing the destruction of any public record regarding the Magistrate's Court of Newberry County at any time since 1995, as required by S.C. Code Ann. § 30-1-110.
3. Documents related to the appointment of magistrates for Newberry County at all times from 2010 to the present, including communication in any form with any member of the South Carolina Senate, including but not limited to Senator Ronnie Cromer.
4. Documents related to the number of full-time or part-time magistrates for Newberry County at all times from 2007 to the present, including communication in any form with any member of the South Carolina Senate, including but not limited to Senator Ronnie Cromer.
5. Any memoranda or document from 2010 to the present in which the operations and/or staffing of the Newberry County Magistrate Court, including its judges and/or employees, is discussed or referenced in any manner, directly or indirectly.
6. Any and all documents related to the case of Thomas Abraham v. Newberry County, Case No. 8:11-cv-03016-TMC (United States District Court for the District of South Carolina) and Case No. 2011-CR-36-464 (Newberry County Court of Common Pleas). Your response should not include any documents that are available of record through the Newberry County Clerk of Court public files or the public files of the United States District Court for the District of South Carolina nor should it include any materials exempt from disclosure pursuant to the attorney-client relationship. It should include any and all correspondence generated or received during the litigation of the case or afterwards, if related.
7. Any and all electronic messages (to or from wadams@newberrycounty.net or any private email address), including texts on private cell phones, sent to or received by you with the members of county council or any of their agents for the period 2010 to the present.
8. Any and all communications of any kind between any officer or agent of Newberry County with Robert L. McCurdy of South Carolina Court Administration regarding the Magistrate's Court for Newberry County.
9. Any and all opinions requested or received from any officer or agent of Newberry County from the South Carolina Attorney General regarding compensation of magistrates.
10. Any and all documents relating to the implementation of the \$4,500.00 payment authorized by county council at its meeting in September, 1995, other than confidential compensation reports, including but not limited to memoranda, documents, emails, notes, or other form of communication or recordation, at any time from September 1995 to the present.

Mr. Wayne Adams
In re: FOIA Request
December 2, 2014

ROA 00610

Page 3 of 3

11. Any and all electronic messages sent to or received by tabraham@newberrycounty.net from 2005 to the present.
12. Agenda or minutes reflecting agenda or items discussed (or to be discussed) for all meetings of executive session of county council from 2004 to the present.
13. All agenda for Newberry County Public Safety and Courts committee from 2004 to the present.
14. All minutes for Newberry County Public Safety and Courts committee from 2004 to the present.
15. Voting records for any action taken in executive session whether during county council meetings or otherwise for any time since 2004 to the present.
16. Any and all documents evidencing or reflecting directives from Chief Magistrate Jayroe regarding the allocation of use of the supplemental full-time magistrate's pay approved by resolution or other action of Newberry County Council in or about September, 2005.

To the extent the requested materials are stored or held by the custodian by electronic means, we will provide at your request electronic media storage device(s) to assist with reproduction for purposes of responding to this request. Any materials stored electronically are requested to be produced in electronic format that is capable of being read by generally-available and identifiable software which we may use to access the produced materials.

We look forward to hearing from you.

Sincerely yours,


Desa Ballard
desab@desaballard.com

ROA 00610

ROA 00611

TAB 2

ROA 00611

Jay Tothacer

ROA 00612

From: Jay Tothacer <jtothacer@newberrycounty.net>
Sent: Thursday, December 04, 2014 9:34 AM
To: Arthur Jayroe; Laurie Renwick; Wayne Adams ; Debbie Cromer ; Dylan Snyder (dsnyder@newberrycounty.net)
Subject: Response to attached FOI request
Attachments: Desa Ballard FOI request 2014.pdf

Please review the attached FOI request. There are 15 requests (1 is a duplicate). I will have to respond to the request before our Christmas holidays break (December 23rd or 24th). Please review all the requests and provide a response with the following information:

- Availability of requested information (format, location)
- Anticipated time to gather the information
- Expected number of pages of copies
- Any other pertinent information

In my opinion it seems that the following items may be within the control of the following persons. If that is not the case please advise and let me know who you believe may have the information.

Chief Magistrate Jayroe --- Items 1, 2, 5, 8, 9 and 16
Clerk to Council --- Items 3, 4, 5, 8, 10, 12 and 16
Finance Director --- Items 4, 5, 10 and 16
County Administrator --- Item 7
Dylan Snyder --- Items 7 and 11

I will be reviewing my files for all items.

Please realize that I plan to respond with a plan for how we will provide the information and what the approximate cost will be and request a deposit towards those fees based on your responses as well as the timeframe we can provide the requested information.

Thanks for your assistance in this request.

Jay

A.J. Tothacer, Jr.
Newberry County Attorney
P.O. Box 156
Newberry, S.C. 29108
Office - (803) 321-1415
Fax - (803) 321-2102

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ROA 00612

ROA 00613

TAB 3

ROA 00613



ROA 00614

COUNTY OF NEWBERRY

OFFICE OF THE COUNTY COUNCIL
POST OFFICE BOX 156
NEWBERRY, SOUTH CAROLINA 29108

(803)321-2100
FAX: (803)321-2102

COUNCILMEN:

HENRY H. LIVINGSTON, III, CHAIRMAN
KIRKSEY KOON, VICE-CHAIRMAN
JOHN E. CALDWELL
WILLIAM D. WALDROP
LESLIE HIPP
STEVE STOCKMAN
SCOTT CAIN

WAYNE ADAMS
COUNTY ADMINISTRATOR
A. J. TOTHACER, JR.
COUNTY ATTORNEY
LAURIE N. RENWICK
CLERK TO COUNCIL

December 22, 2014

Desa Ballard, Esquire
P.O. Box 6338
West Columbia, SC 29171

Dear Ms. Ballard:

Your FOI request dated December 2, 2014 to Wayne Adams has been referred to me for this response. Thanks you for your time last week allowing me to address certain concerns with the breadth of the request and our ability to respond. We are more than happy to provide you with the information requested (if we have it). I would like to follow up with our earlier conversation by referring to each item requested and commenting on the items.

1. The records management program for the Newberry County Magistrate's Court would be within the purview of Chief Magistrate Art Jayroe. As of the date of this letter I have not received a response from him to my request to assist with your request.
2. Information from State Archives with regards to the Magistrate's Court would also be within the purview of Chief Magistrate Art Jayroe – again with no response thus far.
3. I have received copies responsive to this request from the Finance Director and Human Resources Director and there are a total of 263 items with a total time of one hour spent. These items do not include information that may be in other files that have not yet been reviewed and I would expect there will be more items (from the Administrator, Clerk to Council and my files).
4. I have received copies responsive to this request from the Finance Director and Human Resources Director and there are a total of 263 items with a total time of one hour spent. These items do not include information that may be in other files that have not yet been

ROA 00614

reviewed and I would expect there will be more items (from the Administrator, Clerk to Council and my files). **ROA 00615**

5. Some of this information may be contained in the responses to numbers 3 and 4 but will also require additional efforts from the Clerk to Council. No response received from Chief Magistrate Art Jayroe.
6. I doubt that there is much that was not a part of the file but any response will require a review of our files along with the information in the public Court files.
7. Mr. Adams' computer suffered a crash in March of 2014 and he is limited to whatever is on his system since then. As we discussed, we do not have archiving capabilities of email of any documents stored on personal computers beyond what is still available on that personal computer. We believe that it may take Mr. Adams almost a day to review his computer for this response. We do not anticipate that it will result in more than 100-200 copies. The Clerk to Council may also have some materials covered by this response in the narrow reading of Administrator and Clerk to Council as 'agent' of County Council as we discussed.
8. Mainly this item would be in the files of the Magistrates and thus far we've had no response from Chief Magistrate Art Jayroe. The Clerk to Council and I may also have some files but it would be helpful if some date limitations could be provided.
9. No assistance from the Chief Magistrate on any files that may be in the Magistrate's offices. Perhaps the Clerk to Council and I may have some information in our files. Again, it would be beneficial if some date limitations could be provided.
10. Most of these documents were included in the Abraham case unless the Chief Magistrate has some that we are not aware of. We will search and provide copies even if already in the Abraham file as it is more efficient to do so.
11. When Judge Abraham left the employ of Newberry County in February of 2012 the email account was deleted and our system does not have archiving or backup ability.
12. This will require a review of each agenda since 2004 and will require several hours of research and review – likely by the Clerk to Council.
13. The Public Safety and Courts committee was only established in January 2008. This will require a review of each agenda since 2004 and will require several hours of research and review – likely by the Clerk to Council.
14. Same response as in number 13 above.
15. This will require a review of each agenda since 2004 and will require several hours of research and review – likely by the Clerk to Council. There are no votes taken in Executive Session and only votes afterward if Council chooses to act based on matters discussed in Executive Session.
16. No response from Chief Magistrate Art Jayroe although there may be copies contained in those copies from the Finance and Human Resources Directors as well as from the Clerk to Council.

You may wish to review the Newberry County website at www.newberrycounty.net and the 'County Council' tab which will provide links to agendas and minutes from County Council

ROA 00615

meetings as far back as February 2002 and as far back as March 2011 for agendas and minutes for the Public Safety and Courts Committee. This would be the same resource we will use to search for many of the requested items. For years prior to those listed and available on the website it will require the Clerk to Council to locate and review the hard copies located in binders from the respective years.

Based on the request as presented, we anticipate that the bulk of time will be spent by the Clerk to Council and may approach 15 hours (her hourly rate is \$26/hour. The HR director has expended an hour (likely more) in the copies she has provided and her hourly rate is \$29/hour. Due to the sensitive nature of Mr. Adam's materials he is the only one who can review his files and his hourly rate is \$60/hour. The copy charge of 30¢/page has been approved by County Council and is in effect for each copy provided. It is anticipated that the Clerk to Council copies may number around 500 and Mr. Adams around 100-200.

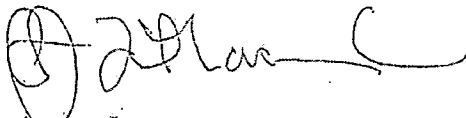
As you are aware, I do not charge for my review of the files but will need to do so since the copies already provided to me contain some personal items such as Social Security Numbers which must be redacted before release. Based on our current staffing it is doubtful that we will provide any copies before the New Year. Beyond the initial copies provided by the Finance and HR directors any further research and copying will occur on a basis as time permits. At this point, I cannot offer a good estimate of when your request will be completely filled. As we discussed, any limiting by subject matter or time will assist in the completion of the request.

In order to begin the work associated with the request we estimate that costs may be in the \$1,000 range and would like a deposit of 25% of those anticipated costs or \$250. We do not have the easy capability of providing these items in an electronic form and will be providing you with hard copies of each item.

I will be providing a copy of this response to Chief Magistrate Art Jayroe with hopes that he will provide his estimate of time, copies and costs. It may be that you will have to forward a request directly to him since we cannot force him to respond.

If you desire further information please do not hesitate to contact me.

Sincerely,



A. J. Tothacer, Jr.
County Attorney

ROA 00617

TAB 4

ROA 00617

Jay Tothacer

ROA 00618

From: Desa Ballard <desab@desaballard.com>
Sent: Tuesday, December 30, 2014 2:29 PM
To: Austin Tothacer, Jr. (jtothacer@newberrycounty.net)
Cc: Beth Cogan; Beth Cogan; Mara Ballard
Subject: Revisions to FOIA request

Jay:

Thanks for speaking with me and for your letter dated December 22, 2014. I don't recall what date you said you were returning after the holiday.

This email shall modify the paragraphs numbered in the December 2, 2014 FOIA request.

1. Not modified.
2. Not modified.
5. Not modified.
6. Not modified.
7. Delete "any of their agents" for purposes of this request, and change to "or members of your or their staffs" - at least at this time.
8. Modify to include time period from 2012 to present. The crash of Mr. Adams' computer should not prevent production of these materials. Please note this request also includes texts and private email addresses.
9. Not modified.
10. Not modified.
12. Not modified.
13. Not modified, except as to date Committee was created.
15. Modified to reflect votes taken after executive session or during "pre executive session" meetings.
16. Not modified. You indicated you had these documents.

As to the information you have gathered to date, as referenced in your 12-22 letter:

3. Please send copies of the 263 items received to date.
4. Are these the same 263 items that are responsive to Paragraph 3? If not, please also send these.
11. Please provide documents evidencing the destruction of Judge Abraham's email archives and affidavits or statements of person(s) involved in the destruction of those records.

I am not sure that I understand why information on Mr. Adams' computer would be "sensitive" or why you or your staff cannot review his email. Nonetheless, I will send a check for \$500 as a retainer and will expect an accounting of time spent.

Please provide your initial responses, as identified in your letter of December 22, 2014 and as modified above, by January 9, 2015.

db

ROA 00618

Desa Ballard
Ballard & Watson
Attorneys at Law
Telephone 803.796.9299
Facsimile 803.796.1056

E-mail: desab@desaballard.com, copy to marab@desaballard.com

ROA 00619

4

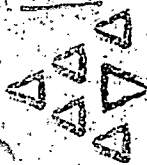
2

ROA 00619

ROA 00620

TAB 5

ROA 00620



Ballard & Watson
Attorneys at Law
PERSISTENT. UNWAVERING.

ROA 00621 Desa Ballard
Harvey M. Watson III

December 30, 2014

Post Office Box 6338 | West Columbia, SC 29171
226 State Street | West Columbia, SC 29169
ph 803.796.9299 | fx 803.796.1066 | desaballard.com

Via U.S. Mail

A.J. Tothacer, County Attorney
County of Newberry
Post Office Box 156
Newberry, South Carolina 29108

Re: Outstanding FOIA request to Wayne Adams

Dear Jay:

In accordance with our telephone conversation, your letter of December 22, 2014, and my email of December 30, 2014, I am enclosing my check in the amount of \$500 payable to Newberry County as an advance for the costs of producing the materials requested in the outstanding FOIA request. I will require an accounting of these funds, identifying whose time is being paid for and what service.

I would also ask you to reconsider your position that the only way the County can response to this request is by paper production. It might be wise to have your IT person both assist you with the search for the requested information and reproduce in an electronic format. I believe it would involve significantly less staff time and would produce a product that is more cohesive for me and for you.

Lastly, I am not convinced that the "crash" of Mr. Adams' computer prevents production of his emails. I believe there is an obligation to retrieve documents that involve county business and that simply saying a "crash" occurred is not sufficient. I believe the County's IT person needs to get involved, not just for purposes of my FOIA request (and therefore not at my expense) but also for the County's own records.

I will look forward to receiving the first documents per our email of December 30, 2014 at your earliest opportunity, but before January 9, 2015.

With warm regards, I am,

Sincerely yours,

Desa Ballard
desab@desaballard.com

ROA 00621

ROA 00622

TAB 6

ROA 00622

Jay Tothacer

ROA 00623

From: Desa Ballard <desab@desaballard.com>
Sent: Monday, January 05, 2015 7:32 PM
To: jtothacer@newberrycounty.net
Cc: Beth Cogan; Beth Cogan; Mara Ballard
Subject: FOIA

Jay:

In reviewing my FOIA request, I'll withdraw Item 8 entirely. I look forward to your response on Friday.

db

Desa Ballard
Ballard & Watson
Attorneys at Law
Telephone 803.796.9299
Facsimile 803.796.1066
E-mail: desab@desaballard.com, copy to marab@desaballard.com

ROA 00623

ROA 00624

TAB 7

ROA 00624

Jay Tothacer

ROA 00625

From: Desa Ballard <desab@desaballard.com>
Sent: Tuesday, January 06, 2015 12:22 PM
To: Jay Tothacer
Cc: Beth Cogan; Mara Ballard
Subject: RE: FOIA

I inquired in my letter enclosing the check that I did not understand why the materials on Mr. Adams' computer were sensitive or why he had to personally do the search and you did not respond to that. Frankly, it concerns me that the public information on his computer would be searched and produced only by him. I don't know Mr. Adams, but as an attorney I would be reluctant to entrust a FOIA response to the person whose correspondence is being requested. It seems to me that you are the better person to search and retrieve the materials from his computer to insure a complete and accurate response.

As to the emails prior to the computer crash, his emails will exist in the email boxes of the recipients to whom he sent the emails, i.e., the members of county council. So despite the crash of his computer, the emails are in the possession of the county and are retrievable. If the council members use Outlook, it's a very simple search feature that anyone can do. Let me remind you that the search would be of their official and personal email addresses, to the extent they relate to the subject matter of the request, as well as from Mr. Adams' personal email address and office email.

It appears you will need to obtain Mr. Adams email and text records from Verizon. Again, it seems to me that you should be the one that would determine whether the content of his emails or texts fall within the scope of Item 7, as amended by my email dated 12-30-2014.

As to Items 12-15, please provide the responses that are not yet on the website at this time. As to the ones that ARE on the website, just provide me with earlier drafts of the documents that later became final and were posted. This would primarily relate to the minutes, since a draft would be provided to counsel for voting, and may be amended if not approved as presented. However, if there are earlier drafts of the agendas, please provide those as well. If I have any difficulty with the materials online, I will coordinate with you.

Again, it is purely happenstance that my request fell on the holidays, but hopefully the generous extension will allow a complete response by Friday.

db

From: Jay Tothacer [mailto:jtothacer@newberrycountv.net]
Sent: Tuesday, January 06, 2015 11:45 AM
To: Desa Ballard
Subject: RE: FOIA

Desa,

I have received your deposit check of \$500 and it should be processed today. I am reviewing the materials provided thus far from the Finance Director and HR Director in response to items 4, 5, 10 and 16. I have noticed there are several items that are duplicated and the total copies will be less given the overlap. I was out of the office most of last week and not in yesterday due to being sick. At this juncture I am working solely on your request as time permits.

Thank you for withdrawing item 8. I had not found any items in my files.

ROA 00625

Here is the response I received from our IT person with regard to Mr. Adam's computer crash and his ability to retrieve documents.

ROA 00626

Item 7:

Our current email system does not include an email archiving feature or a backup feature. Wayne Adam's hard drive crashed in March of 2014. I can provide email messages from March 10, 2014 and beyond. This information can be obtained digitally or each email message can be printed. All text messages and cell phone activity logs would have to be provided by the wireless provider, Verizon.

Item 11:

Our current email system does not include an email archiving feature or a backup feature. Tom Abrahams' email account was deleted prior to me taking on the role of I.T Director for the County of Newberry.

*Dylan Snyder
Director of Information Technology*

In order to better direct the Clerk to Council on items 12 – 15, inclusive, do you want us to search the online records (as outlined in my response dated December 22nd) or just for the requested dates not available online?

Jay

From: Desa Ballard [<mailto:desab@desaballard.com>]

Sent: Monday, January 05, 2015 7:32 PM

To: jtothacer@newberrycounty.net

Cc: Beth Cogan; Beth Cogan; Mara Ballard

Subject: FOIA

Jay:

In reviewing my FOIA request, I'll withdraw Item 8 entirely. I look forward to your response on Friday.

db

Desa Ballard
Ballard & Watson
Attorneys at Law
Telephone 803.796.9299
Facsimile 803.796.1066
E-mail: desab@desaballard.com, copy to mara@desaballard.com

ROA 00626

ROA 00627

TAB 8

ROA 00627



ROA 00628

COUNTY OF NEWBERRY

OFFICE OF THE COUNTY COUNCIL
POST OFFICE BOX 156
NEWBERRY, SOUTH CAROLINA 29108

(803)321-2100
FAX: (803)321-2102

COUNCILMEN:
HENRY H. LIVINGSTON, III, CHAIRMAN
KIRKSEY KOON, VICE-CHAIRMAN
WILLIAM D. WALDROP
LESLIE HIPP
STEVE STOCKMAN
SCOTT CAIN
TRAVIS REEDER

WAYNE ADAMS
COUNTY ADMINISTRATOR
A. J. TOTHACER, JR.
COUNTY ATTORNEY
LAURIE N. RENWICK
CLERK TO COUNCIL

January 13, 2015

Desa Ballard, Esquire
P.O. Box 6338
West Columbia, SC 29171

Dear Ms. Ballard:

Enclosed is the next group of documents provided in response to your December 2, 2014 FOIA request. These are from the files and email of Chief Magistrate Art Jayroe in response to the requested materials in items 1, 5 and 16. I have also included a recap sheet of costs thus far and recognition of your initial \$500 deposit.

During my review of these items I noticed that the Chief Magistrate had 'Bates' number stamped each page and ~~although there were several duplicated matters I am hesitant to delete any from those he submitted. When I~~ asked him about his time spent researching and providing these items he would not provide me with any estimate of his time spent. I must rely upon his choice for the County to not be reimbursed for his time – therefore there will be no time costs associated with this installment of responses – only copying charges.

The County Administrator and Clerk to Council have begun their search in response to your request and I anticipate another instalment being mailed next week. As soon as I receive and review those and I will forward them to you.

If you desire further information please do not hesitate to contact me.

Sincerely,

A. J. Tothacer, Jr.
County Attorney

ROA 00628

Ballard FOIA (December 2, 2014) request **ROA 00629**

Costs incurred

January 6, 2015 – Deposit of Ballard advance check (#3162) \$500.00

January 8, 2015 HR and Finance copies @ 30¢ per page (259) \$ 77.70

January 8, 2015 HR time 1.75 hours at \$29/hour \$ 50.75

January 8, 2015 Finance time 1 hour @ .37/hour \$ 37.00

Balance \$334.55

January 13, 2015 Chief Magistrate copies @ 30¢/page (427) \$128.10

Balance \$206.45

ROA 00629

ROA 00630

TAB 9

ROA 00630



ROA 00631

COUNTY OF NEWBERRY

OFFICE OF THE COUNTY COUNCIL
POST OFFICE BOX 156
NEWBERRY, SOUTH CAROLINA 29108

(803)321-2100
FAX: (803)321-2102

COUNCILMEN:
HENRY H. LIVINGSTON, III, CHAIRMAN
KIRKSEY KOON, VICE-CHAIRMAN
WILLIAM D. WALDROP
LESLIE HIPP
STEVE STOCKMAN
SCOTT CAIN
TRAVIS REEDER

WAYNE ADAMS
COUNTY ADMINISTRATOR
A. J. TOTHACER, JR.
COUNTY ATTORNEY
LAURIE N. RENWICK
CLERK TO COUNCIL

January 26, 2015

Desa Ballard, Esquire
P.O. Box 6338
West Columbia, SC 29171

Dear Ms. Ballard:

Enclosed is the next group of documents provided in response to your December 2, 2014 FOIA request. These are from the files of Administrator Wayne Adams in response to the requested materials in item 5. I have also included a recap sheet of costs thus far and recognition of your initial \$500 deposit.

As I indicated in emails to you earlier today the County Administrator and is searching his emails and the Clerk to Council hopes to have her response by this coming Wednesday. It is quite likely that I may have his emails to include with the Clerk to Council's response. As soon as I receive and review those and I will forward them to you.

Including the responses provided today you will have a balance of \$64.25 remaining from your initial deposit. If we exceed this amount with the next installment it will be necessary for you to deposit additional amounts to cover the costs associated before the County can provide any materials in excess of this balance on deposit.

If you desire further information please do not hesitate to contact me.

Sincerely,

A. J. Tothacer, Jr.
County Attorney

ROA 00631

Ballard FOIA (December 2, 2014) request

Costs incurred

January 6, 2015 – Deposit of Ballard advance check (#3162)	\$500.00
January 8, 2015 HR and Finance copies @ 30¢ per page (259)	\$ 77.70
January 8, 2015 HR time 1.75 hours at \$29/hour	\$ 50.75
January 8, 2015 Finance time 1 hour @ 37/hour	\$ 37.00
Balance	<u>\$334.55</u>
January 13, 2015 Chief Magistrate copies @ 30¢/page (427)	\$128.10
Balance	<u>\$206.45</u>
January 26, 2015 Administrator copies @ 30¢/page (74)	\$ 22.20
January 26, 2015 Administrator 2 hours at \$60/hour	120.00
Balance	<u>\$ 64.25</u>

ROA 00633

TAB 10

ROA 00633

Jay Tothacer

ROA 00634

From: Desa Ballard <desab@desaballard.com>
Sent: Monday, January 26, 2015 10:28 AM
To: Austin Tothacer, Jr. (jtothacer@newberrycounty.net)
Cc: Beth Cogan; Beth Cogan; Mara Ballard
Subject: FOIA request

Good morning.

Please advise on the status of the FOIA response, particularly the minutes, agenda, and emails from Mr. Adams' personal and business accounts (as well as texts). I received the additional materials that were provided by Judge Jayroe.

db

Desa Ballard
Ballard & Watson
Attorneys at Law
Telephone 803.796.9299
Facsimile 803.796.1066
E-mail: desab@desaballard.com, copy to mara@desaballard.com

ROA 00634

ROA 00635

TAB 11

ROA 00635

Jay Tothacer

ROA 00636

From: Desa Ballard <desab@desaballard.com>
Sent: Tuesday, January 27, 2015 1:46 PM
To: Jay Tothacer
Cc: Beth Cogan; Mara Ballard
Subject: RE: FOIA request

#7 can be modified to the operating or staffing of the magistrate's courts, including the number of full-time and part-time magistrates.

From: Jay Tothacer [mailto:jtothacer@newberrycounty.net]
Sent: Monday, January 26, 2015 12:16 PM
To: Desa Ballard
Subject: RE: FOIA request

I am reviewing and will be mailing to you this afternoon Mr. Adam's response to Item #5. The Clerk to Council has informed me that her portion pertaining to the minutes and agendas will be ready on Wednesday. I hope to speak with Verizon about getting copies of texts and will advise if I am successful in a different response from the requirement of a subpoena. Mr. Adams has begun review of his emails and wondered if you would like those sent as he groups them by years – it may expedite getting them to you.

Once again, I would like further direction from you on Item #7, as modified, as to whether or not your request includes emails to and from me, for example, as a member of his staff. I have found 357 emails thus far since there is no limitation other than since 2010. That number would likely decrease if there were subject matter limitations.

Thanks

Jay

From: Desa Ballard [mailto:desab@desaballard.com]
Sent: Monday, January 26, 2015 10:28 AM
To: Austin Tothacer, Jr. (jtothacer@newberrycounty.net)
Cc: Beth Cogan; Beth Cogan; Mara Ballard
Subject: FOIA request

Good morning.

Please advise on the status of the FOIA response, particularly the minutes, agenda, and emails from Mr. Adams' personal and business accounts (as well as texts). I received the additional materials that were provided by Judge Jayroe.

db

Desa Ballard
Ballard & Watson
Attorneys at Law

ROA 00636

Telephone 803.796.9299

Facsimile 803.796.1066

E-mail: desab@desaballard.com, copy to maria@desaballard.com

ROA 00637

ROA 00637

ROA 00638

TAB 12

ROA 00638

Jay Tothacer

ROA 00639

From: Desa Ballard <desab@desaballard.com>
Sent: Tuesday, January 27, 2015 1:53 PM
To: Jay Tothacer
Cc: Mara Ballard; Beth Cogan; Mara Ballard
Subject: RE: FOIA request

Sounds like the county needs to request them. If Mr. Adams used his personal cell phone for county business, the county will have to request them.

Certainly you can redact anything personal to Mr. Adams, but to the extent he used his text messages to confer on county business, I am entitled to receive them. How you get them is not my problem, but if we need to file an action to get a court order, we can do that.

db

From: Jay Tothacer [mailto:jtothacer@newberrycounty.net]
Sent: Monday, January 26, 2015 2:50 PM
To: Desa Ballard
Subject: RE: FOIA request

I just spoke with a representative of Verizon who assured me that the only way they will provide a copy of any texts would be through the provisions of 18 USC 2702. I used the hypothetical that I was a Verizon personal customer wanting a copy of my own records (since 2703 refers to a request by a governmental entity) and she said the only way was by court order, subpoena or emergency request by law enforcement (kidnapping, etc.).

Based on conversations with Mr. Adams I'm not sure that there would be anything significant contained in the texts since generally he would not use them for anything substantive but probably to check on attendance at a meeting or something like that.

Jay

From: Desa Ballard [mailto:desab@desaballard.com]
Sent: Monday, January 26, 2015 10:28 AM
To: Austin Tothacer, Jr. (jtothacer@newberrycounty.net)
Cc: Beth Cogan; Beth Cogan; Mara Ballard
Subject: FOIA request

Good morning.

Please advise on the status of the FOIA response, particularly the minutes, agenda, and emails from Mr. Adams' personal and business accounts (as well as texts). I received the additional materials that were provided by Judge Jayroe.

db

Desa Ballard
Ballard & Watson
Attorneys at Law

ROA 00639

Telephone 803.796.9299

Facsimile 803.796.1066

E-mail: desab@desaballard.com, copy to maral@desaballard.com

ROA 00640

ROA 00640

ROA 00641

TAB 13

ROA 00641

From: Desa Ballard <desab@desaballard.com>
Sent: Tuesday, January 27, 2015 2:17 PM
To: Jay Tothacer
Cc: Wayne Adams; Beth Cogan; Mara Ballard
Subject: RE: FOIA request

It includes them as well as the Elected or Appointed officials.

From: Jay Tothacer [mailto:jtothacer@newberrycounty.net]
Sent: Tuesday, January 27, 2015 2:14 PM
To: Desa Ballard
Cc: Wayne Adams
Subject: RE: FOIA request

Thank you for this modification.

Just to be clear though – you are expecting any emails that I, or other members of Mr. Adams' staff would have for magistrate's staffing back to 2012. Does your "staff" definition include anyone for whom Mr. Adams is their ultimate supervisor (every County employee except those employees of Elected or Appointed Officials) such as our receptionist?

From: Desa Ballard [mailto:desab@desaballard.com]
Sent: Tuesday, January 27, 2015 1:46 PM
To: Jay Tothacer
Cc: Beth Cogan; Mara Ballard
Subject: RE: FOIA request

#7 can be modified to the operating or staffing of the magistrate's courts, including the number of full-time and part-time magistrates.

From: Jay Tothacer [mailto:jtothacer@newberrycounty.net]
Sent: Monday, January 26, 2015 12:16 PM
To: Desa Ballard
Subject: RE: FOIA request

I am reviewing and will be mailing to you this afternoon Mr. Adam's response to Item #5. The Clerk to Council has informed me that her portion pertaining to the minutes and agendas will be ready on Wednesday. I hope to speak with Verizon about getting copies of texts and will advise if I am successful in a different response from the requirement of a subpoena. Mr. Adams has begun review of his emails and wondered if you would like those sent as he groups them by years – it may expedite getting them to you.

Once again, I would like further direction from you on Item #7, as modified, as to whether or not your request includes emails to and from me, for example, as a member of his staff. I have found 357 emails thus far since there is no limitation other than since 2010. That number would likely decrease if there were subject matter limitations.

Thanks

ROA 00643

Jay

From: Desa Ballard [<mailto:desab@desaballard.com>]
Sent: Monday, January 26, 2015 10:28 AM
To: Austin Tothacer, Jr. (jtothacer@newberrycountv.net)
Cc: Beth Cogan; Beth Cogan; Mara Ballard
Subject: FOIA request

Good morning.

Please advise on the status of the FOIA response, particularly the minutes, agenda, and emails from Mr. Adams' personal and business accounts (as well as texts). I received the additional materials that were provided by Judge Jayroe.

db

Desa Ballard
Ballard & Watson
Attorneys at Law
Telephone 803.796.9299
Facsimile 803.796.1066
E-mail: desab@desaballard.com, copy to marab@desaballard.com

ROA 00643

ROA 00644

TAB 14

ROA 00644

Jay Tothacer

ROA 00645

From: Desa Ballard <desab@desaballard.com>
Sent: Tuesday, January 27, 2015 2:58 PM
To: Austin Tothacer, Jr. (jtothacer@newberrycounty.net)
Cc: Beth Cogan; Beth Cogan; Mara Ballard; Beth Cogan; Mara Ballard
Subject: RE: FOIA request

When am I going to get the minutes and agenda?

From: Desa Ballard
Sent: Monday, January 26, 2015 10:28 AM
To: Austin Tothacer, Jr. (jtothacer@newberrycountv.net)
Cc: Beth Cogan; Beth Cogan; Mara Ballard
Subject: FOIA request

Good morning.

Please advise on the status of the FOIA response, particularly the minutes, agenda, and emails from Mr. Adams' personal and business accounts (as well as texts). I received the additional materials that were provided by Judge Jayroe.

db

Desa Ballard
Ballard & Watson
Attorneys at Law
Telephone 803.796.9299
Facsimile 803.796.1066
E-mail: desab@desaballard.com, copy to mara@desaballard.com

ROA 00645

ROA 00646

TAB 15

ROA 00646

Jay Tothacer

ROA 00647

From: Desa Ballard <desab@desaballard.com>
Sent: Tuesday, January 27, 2015 4:00 PM
To: Austin Tothacer, Jr. (jtothacer@newberrycounty.net)
Cc: Beth Cogan; Beth Cogan; Mara Ballard
Subject: Attached federal statutes
Attachments: Statutes cited by Tothacer as prohibiting us from getting Adams texts.docx

I don't pretend to have any familiarity with the federal statutes you cited, but Section (b) of 18 USC 2701 seems to permit the owner of a cell phone account to request his cell phone records (texts and/or emails and/or cell records). Under subsection (3), Mr. Adams would be the "originator or an . . . intended recipient of such communication. . ."

I would not be inclined to take the word of whoever answers the phone at Verizon that Mr. Adams cannot request his own records. The statute you cited seems to suggest otherwise.

Jay, I need to have a date by which you expect to have all the remaining things to me. This request is almost two (2) months old. Even with the holidays, the response has been lackadaisical at best. I don't have a single email from Mr. Adams, a single agenda or minutes, or anything related to Item (4); probably more, that's just off the top of my head.

db

Desa Ballard
Ballard & Watson
Attorneys at Law
Telephone 803.796.9299
Facsimile 803.796.1066
E-mail: desab@desaballard.com, copy to marab@desaballard.com

ROA 00647

ROA 00648

TAB 16

ROA 00648

Jay Tothacer

ROA 00649

From: Desa Ballard <desab@desaballard.com>
Sent: Wednesday, January 28, 2015 10:49 AM
To: Jay Tothacer
Cc: Beth Cogan; Beth Cogan; Mara Ballard
Subject: Verizon

Jay:

I'm sorry I was on the phone when you called; I am trying to get some proposed orders done today and will likely not have time to participate in a call with Verizon. I will not be here at 11:30 due to a prior obligation (which Beth did not know about).

Additionally, I am not sure it would be appropriate for me to participate in a phone call with Verizon. You cited a statute to me that Verizon was apparently relying on in support of their position that they could not produce Mr. Adams' text and email records. I simply read the statute you referenced and asked why certain provisions of the statute did not allow Mr. Adams to simply request the records since he is the account holder. As I stated earlier, if the county permitted Mr. Adams to use his personal cell phone for carrying out county business, it's the county's obligation to obtain those records.

I have requested the records pursuant to FOIA. If you cannot provide them, we will address that in the eventual litigation that will result from inadequate responses to the FOIA request. I had hoped this would not become adversarial, and I still hope that. Even as I do, however, we are two months in and you have produced practically nothing. I have absolutely nothing from Mr. Adams' emails and several other categories remain untouched.

Please advise.

From: Jay Tothacer [mailto:jtothacer@newberrycounty.net]
Sent: Wednesday, January 28, 2015 10:00 AM
To: Desa Ballard
Subject: FW: Thank You

While I had this individual on the phone I called to try and conference you in on a conversation and she was going to conference us in to her legal team to answer questions we may have about their policy. I have a meeting at 10 AM that should last no more than 30 minutes and Beth blocked off time on your calendar at 11:30 for us to try again. Ciarra has asked that I reply to her email and she will call me and I will conference you in and she will have conference in their legal staff. If you would like to call any time after 10:30 I'm happy to try earlier than the 11:30 time.

Jay

From: Jones, Ciarra [mailto:Ciarra.Jones@VerizonWireless.com]
Sent: Wednesday, January 28, 2015 9:55 AM
To: 'KBREHMER@NEWBERRYCOUNTY.NET'
Cc: 'JTOTHACER@NEWBERRYCOUNTY.NET'
Subject: Thank You

ROA 00649

Karen,

ROA 00650

VZW requires a valid state or federal search warrant. 18 U.S.C. 2703(a) requires that disclosure of the content of communications can be made only pursuant to a validly issued state or federal search warrant.

- VZW is only able to capture the last 3-5 days worth of content (never more than 10).
- Due to system limitations, terminating content is the only available option. Additionally, system outages and upgrades may result in VZW not capturing content.

VZW has a charge for the preservation of text message content. It is billed per number at \$50 per 5-day increments at a minimum \$50 for each request.

Thank you for allowing me to assist you today. If there are any additional questions and/or concerns today regarding your account, please feel free to reach out to me, via e-mail (ciarra.jones@verizonwireless.com) please include your contact information in your response or you may visit us online at VerizonWireless.com/gov. I am available today until 4:30 p.m.

Thank you and have a nice day

Ciarra Jones
Government Tech Coordinator
Huntsville AL

ROA 00650

ROA 00651

TAB 17

ROA 00651

Jay Tothacer

ROA 00652

From: Jay Tothacer <jtothacer@newberrycounty.net>
Sent: Wednesday, January 28, 2015 4:43 PM
To: 'Desa Ballard'
Subject: RE: Verizon

Desa:

I am hopeful that your request will not become adversarial either.

To that end I have tried to get the information from Verizon and provided their response to me in the hope that you would appreciate that we CANNOT simply request and receive the text messages. The statute you refer to was provided in response to my attempts to get the requested text (SMS) messages. In your emails to me I have the distinct feeling that you do not believe the responses that I have received – so I was trying to coordinate a conference call with their attorneys. I also just found out with the email from their representative today that they can only provide text message from no longer than 10 days ago. Since Mr. Adams does not text much anyway I seriously doubt that there would even be any texts to recover. According to my understanding of FOIA we do not have an obligation to produce records that we do not have or for which we cannot gain access to.

I'm sorry that you feel my response has been lackadaisical. I can assure you that we have been working on your request since we received it. Your own client did not provide his materials until January 8th.

According to my records we have provided responses to the following listed items from your December 2nd request:

Items 1, 2, 3, 4, 5, 6, 7, 8 (omitted with your agreement), 9 (I am not aware of any AG opinion sought by the County), 10, 11 (not available per IT), 15 (no votes taken in an Executive Session) and 16.

Just to be clear; Judge Jayroe provided the response to items 1, 2 and portions of 3, 4, 5 and 16.

My first response to you with materials from the Finance Director and Human Resources Director includes responses to Items 3, 4, 5, 7, 10 and 16.

On Monday I sent you a package containing Mr. Adam's response to Items 4 and 5.

By the end of this week I will be sending the Clerk to Council's responses to Items 12, 13 and 14 that are not available on our website (as previously agreed to).

Now that you have modified your request in Item 7 to a time and subject matter restriction I had our IT person to send a global email to all newberrycounty.net email addressees asking everyone to provide me with a forwarded email or paper copy of any email containing "*...operating or staffing of the magistrate's courts, including the number of full-time and part-time magistrates...*" Since January 1, 2010. I will forward those to you as soon as I receive them. I will set a deadline on that request to respond by February 6th and provide all emails I receive to you the following Monday.

ROA 00652

Mr. Adams was in the process of printing all emails from his computer yesterday and probably would have completed that task today but he left the office early yesterday not feeling well and did not come in today.

ROA 00653

I'm sorry that you do not feel that we have been responsive to your request. We have, within our ability to continue the functions of the County, earnestly tried to provide the information as time permits. Every responder has significant other duties that cannot be put on hold to respond solely to your request. I do not think the FOIA requires us to cease the work of the County to respond to any FOI request and certainly not one as broad based and extensive as yours.

Once Mr. Adams returns to the office I should be able to send his emails. As to the response from the global email outlined above to get those emails from anyone else I will send you what have on February 9th.

I believe that will represent our complete response.

Jay

From: Desa Ballard [<mailto:desab@desaballard.com>]
Sent: Wednesday, January 28, 2015 10:49 AM
To: Jay Tothacer
Cc: Beth Cogan; Beth Cogan; Mara Ballard
Subject: Verizon

Jay:

I'm sorry I was on the phone when you called; I am trying to get some proposed orders done today and will likely not have time to participate in a call with Verizon. I will not be here at 11:30 due to a prior obligation (which Beth did not know about).

Additionally, I am not sure it would be appropriate for me to participate in a phone call with Verizon. You cited a statute to me that Verizon was apparently relying on in support of their position that they could not produce Mr. Adams' text and email records. I simply read the statute you referenced and asked why certain provisions of the statute did not allow Mr. Adams to simply request the records since he is the account holder. As I stated earlier, if the county permitted Mr. Adams to use his personal cell phone for carrying out county business, it's the county's obligation to obtain those records.

I have requested the records pursuant to FOIA. If you cannot provide them, we will address that in the eventual litigation that will result from inadequate responses to the FOIA request. I had hoped this would not become adversarial, and I still hope that. Even as I do, however, we are two months in and you have produced practically nothing. I have absolutely nothing from Mr. Adams' emails and several other categories remain untouched.

Please advise.

From: Jay Tothacer [<mailto:jtothacer@newberrycounty.net>]
Sent: Wednesday, January 28, 2015 10:00 AM
To: Desa Ballard
Subject: FW: Thank You

ROA 00653

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ROA 00654

Jay

From: Jones, Ciarra [mailto:Ciarra.Jones@VerizonWireless.com]
Sent: Wednesday, January 28, 2015 9:55 AM
To: 'KBREHMER@NEWBERRYCOUNTY.NET'
Cc: 'JTOTHACER@NEWBERRYCOUNTY.NET'
Subject: Thank You

Karen,

VZW requires a valid state or federal search warrant. 18 U.S.C. 2703(a) requires that disclosure of the content of communications can be made only pursuant to a validly issued state or federal search warrant.

- *VZW is only able to capture the last 3-5 days worth of content (never more than 10).*
- *Due to system limitations, terminating content is the only available option. Additionally, system outages and upgrades may result in VZW not capturing content.*

VZW has a charge for the preservation of text message content. It is billed per number at \$50 per 5-day increments at a minimum \$50 for each request.

Thank you for allowing me to assist you today. If there are any additional questions and/or concerns today regarding your account, please feel free to reach out to me, via e-mail (ciarra.jones@verizonwireless.com) please include your contact information in your response or you may visit us online at VerizonWireless.com/gov. I am available today until 4:30 p.m.

Thank you and have a nice day

Ciarra Jones
Government Tech Coordinator
Huntsville AL

ROA 00655

TAB 18

ROA 00655



ROA 00656

COUNTY OF NEWBERRY

OFFICE OF THE COUNTY COUNCIL

POST OFFICE BOX 156

NEWBERRY, SOUTH CAROLINA 29108

(803)321-2100
FAX: (803)321-2102

COUNCILMEN:

HENRY H. LIVINGSTON, III, CHAIRMAN
KIRKSEY KOON, VICE-CHAIRMAN
WILLIAM D. WALDROP
LESLIE HIPP
STEVE STOCKMAN
SCOTT CAIN
TRAVIS REEDER

WAYNE ADAMS
COUNTY ADMINISTRATOR
A. J. TOTHACER, JR.
COUNTY ATTORNEY
LAURIE N. RENWICK
CLERK TO COUNCIL

January 29, 2015

Desa Ballard, Esquire
P.O. Box 6338
West Columbia, SC 29171

Dear Ms. Ballard:

Enclosed is the next group of documents provided in response to your December 2, 2014 FOIA request. These are emails of Administrator Wayne Adams in response to the requested materials in item 7. As you may recall, due to a computer crash he is only able to provide emails on his computer since March 2014 (when the crash occurred). Mr. Adams spent in excess of 5 hours searching and providing these (and prior copies) but I am only charging you for 3 hours as we previously discussed. I have sent a global email requesting anyone having an email containing any information about *the operating or staffing of the magistrate's courts, including the number of full-time and part-time magistrates* to send me a copy or forwarded email since 2010 and will send those responses to you February 9, 2015.

Also included in this shipment are most of the documents from the Clerk to Council covered by Items 12, 13 and 14 from meetings (agendas and minutes) not available for research on our website. Ms. Renwick was unable to complete her review due to family matters and job constraints but I did want to send you what she has completed. I anticipate that the balance of her work will be forwarded early next week.

I have also included a recap sheet of costs thus far and recognition of your initial \$500 deposit. Including the responses provided today you have a negative balance of (\$391.25) remaining from your initial deposit. It will be necessary for you to deposit additional amounts to cover these costs associated before the County can provide any additional time or materials.

If you desire further information please do not hesitate to contact me.

Sincerely,

A. J. Tothacer, Jr.
County Attorney

ROA 00656

Ballard FOIA (December 2, 2014) request

Costs incurred

January 6, 2015 – Deposit of Ballard advance check (#3162)	\$500.00
January 8, 2015 HR and Finance copies @ 30¢ per page (259)	\$ 77.70
January 8, 2015 HR time 1.75 hours at \$29/hour	\$ 50.75
January 8, 2015 Finance time 1 hour @ 37/hour	\$ 37.00
Balance	<u>\$334.55</u>
January 13, 2015 Chief Magistrate copies @ 30¢/page (427)	\$128.10
Balance	<u>\$206.45</u>
January 26, 2015 Administrator copies @ 30¢/page (74)	\$ 22.20
January 26, 2015 Administrator 2 hours at \$60/hour	\$ 120.00
Balance	<u>\$ 64.25</u>
January 29, 2015 Administrator copies @ 30¢/page (116)	\$ 34.80
January 29, 2015 Administrator 1 hour @ \$60/hour	\$ 60.00
January 29, 2015 Clerk to Council copies @ 30¢/page (769)	\$ 230.70
January 29, 2015 Clerk to Council 5 hours @ \$26/hour	\$ 130.00
Balance	<u>\$(391.25)</u>

ROA 00658

TAB 19

ROA 00658



Ballard & Watson
Attorneys at Law
PERSISTENT. UNWAVERING.

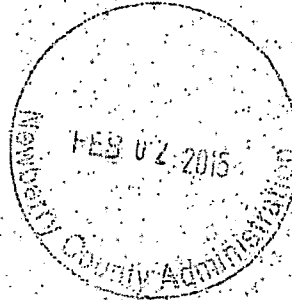
ROA 00659
Desa Ballard
Harvey H. Watson III

January 29, 2015

Post Office Box 6338 | West Columbia, SC 29171
226 State Street | West Columbia, SC 29169
ph 803.796.9299 | fx 803.796.1066 | desaballard.com

Via U.S. Mail

A.J. Toihacer, County Attorney
County of Newberry
Post Office Box 156
Newberry, South Carolina 29108



Re: *December 2, 2014 FOIA request, as modified*

Dear Jay:

I am in receipt of your letter dated January 26, 2015 in which you enclosed 73 pages of documents from Wayne Adams in response to Item No. 5. Please advise if this is a complete response to Number 5, or if any additional documents will be provided.

Enclosed is a check for \$100 which should be more than sufficient to cover the remaining costs associated with the FOIA request. I received your email of January 28, 2015 and I am hopeful we are making more progress than it appeared earlier that day. I look forward to receiving additional production.

With warm regards, I am,

Sincerely yours,

Desa Ballard/ek

Desa Ballard
desab@desaballard.com

Enclosure

ROA 00659

ROA 00660

TAB 20

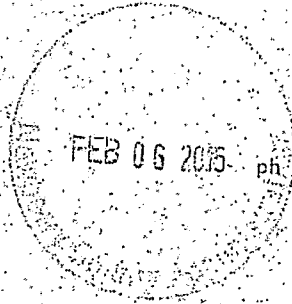
ROA 00660



Ballard & Watson
Attorneys at Law
PERSISTENT. UNWAVERING.

ROA 00661
Desa Ballard
Attorney at Law

February 4, 2015



Post Office Box 633B | West Columbia, SC 29171
226 State Street | West Columbia, SC 29169
ph: 803.796.9299 | fx: 803.795.1065 | desaballard.com

Via U.S. Mail
A.J. Tothacer, County Attorney
County of Newberry
Post Office Box 156
Newberry, South Carolina 29108

Re: *FOIA request to Newberry County*

Dear Jay:

In accordance with your email of February 2, 2015 at 4:43 pm, enclosed is a check in the amount of \$400 payable for what you believe will be the balance of the FOIA materials. I understand you will refund any difference after you produce the final materials on February 9, 2015. Thank you for your assistance.

With warm regards, I am,

Sincerely yours,

Desa Ballard / etc

Desa Ballard
desab@desaballard.com

Enclosure

ROA 00661

ROA 00662

TAB 21

ROA 00662



ROA 00663

COUNTY OF NEWBERRY

OFFICE OF THE COUNTY COUNCIL
POST OFFICE BOX 156
NEWBERRY, SOUTH CAROLINA 29108

(803)321-2100
FAX: (803)321-2102

COUNCILMEN:

HENRY H. LIVINGSTON, III, CHAIRMAN
KIRKSEY KOON, VICE-CHAIRMAN
WILLIAM D. WALDROP
LESLIE HIPP
STEVE STOCKMAN
SCOTT CAIN
TRAVIS REEDER

WAYNE ADAMS
COUNTY ADMINISTRATOR
A. J. TOHACER, JR.
COUNTY ATTORNEY
LAURIE N. RENWICK
CLERK TO COUNCIL

February 9, 2015

Desa Ballard, Esquire
P.O. Box 6338
West Columbia, SC 29171

Dear Ms. Ballard:

Enclosed is the final group of documents provided in response to your December 2, 2014 FOIA request. These represent emails from two (2) councilmembers (Cain and Koon), a fiscal accounting specialist (Brehmer), the HR Director (Hill) and my copies of emails and a few items in follow up to the Clerk to Council's prior response.

I have also included a recap sheet of costs thus far and recognition of your initial \$500 deposit and additional deposits of \$100 and \$400. Including the 178 copies in the responses provided today there is a balance of \$55.35 remaining and we have enclosed a check made payable to you in that amount.

With this final instalment of materials I now consider that we have responded completely to your FOI request dated December 2, 2014.

Sincerely,

A. J. Tohacer, Jr.
County Attorney

ROA 00663

Ballard FOIA (December 2, 2014) request

ROA 00664

Costs incurred

January 6, 2015 – Deposit of Ballard advance check (#3162)	\$500.00
January 8, 2015 HR and Finance copies @ 30¢ per page (259)	\$ 77.70
January 8, 2015 HR time 1.75 hours at \$29/hour	\$ 50.75
January 8, 2015 Finance time 1 hour @ 37/hour	\$ 37.00
Balance	\$ <u>334.55</u>
January 13, 2015 Chief Magistrate copies @ 30¢/page (427)	\$ 128.10
Balance	\$ <u>206.45</u>
January 26, 2015 Administrator copies @ 30¢/page (74)	\$ 22.20
January 26, 2015 Administrator 2 hours at \$60/hour	\$ 120.00
Balance	\$ <u>64.25</u>
January 29, 2015 Administrator copies @ 30¢/page (116)	\$ 34.80
January 29, 2015 Administrator 1 hour @ \$60/hour	\$ 60.00
January 29, 2015 Clerk to Council copies @ 30¢/page (769)	\$ 230.70
January 29, 2015 Clerk to Council 5 hours @ \$26/hour	\$ 130.00
Balance	\$(391.25)
Additional deposits February 2 nd and 9 th	\$ 500.00
February 9, 2015 final response copies @30¢/page (178)	\$ 53.40
Balance (Check enclosed)	\$ 55.35

ROA 00664

ROA 00665

047901

NEWBERRY COUNTY GENERAL FUND
2741 BALLARD WATSON WEISSENSTEIN

REMITTANCE ADVICE

47901

INVOICE DATE	INVOICE NUMBER	GROSS AMOUNT	DISCOUNT	NET AMOUNT
02/09/2015	INV# 71340 REIMBURSE BALANCE OF Cost of 010-004-00040-00498 55.35	55.35	.00	55.35
		55.35	.00	55.35

NEWBERRY COUNTY SOUTH CAROLINA
OFFICE OF COUNTY COUNCIL
NEWBERRY, SC

Wells Fargo Bank NA
Newberry, SC

DATE FEBRUARY 9 2015

FIFTY-FIVE AND 35/100

PAY TO THE ORDER OF BALLARD WATSON WEISSENSTEIN
OPERATING ACCOUNT

PAY THIS AMOUNT
\$55.35

W. Wayne Adams
COUNTY CLERK

D. D. Cronin
FINANCE DIRECTOR

SECURITY FEATURES INCLUDED. DETAILS ON BACK.

"047901"

ROA 00665

ROA 00666

TAB 22

ROA 00666

Jay Tothacer

ROA 00667

From: Desa Ballard <desab@desaballard.com>
Sent: Saturday, February 14, 2015 3:17 PM
To: Austin Tothacer, Jr. (jtothacer@newberrycounty.net)
Cc: Beth Cogan; Beth Cogan; Mara Ballard
Subject: Incomplete FOIA response

Follow Up Flag: Follow up
Flag Status: Flagged

I have received your letter of February 9, 2015 in which you suggest that you have completed the required FOIA production. I do not think the production is complete.

While I have not had the opportunity to review what you have produced in detail, and because of the inadequate labeling of the items you have produced, identifying missing items is difficult.

I would appreciate you itemizing to me what production of materials (I received letters from you dated January 8, 13, 26, 29, 2015 and February 9, 2015 with enclosures) are responsive to what item number of the original request, as amended by our subsequent communication.

As to the Public Safety and courts Committee, I am missing both minutes and agenda of items not on the website. Specifically, *inter alia*, I have no minutes for the Public Safety and Courts Committee for the meetings on August 11, 2014 or October 20, 2014 (which are not yet posted to the website). The last response I have from you regarding agenda and minutes that are not on the website was contained in your letter dated January 29, 2015, in which you indicated that Ms. Renwick was unable to complete her review and you expected to send me what was missing from her responses "early next week" as it related to Item Nos. 12, 13, and 14. The following letter dated February 9, 2015 does not include any additional materials from Ms. Renwick addressing Items 12, 13 and 14.

I still have no texts from Mr. Adams to council members or their agents. I will attempt shortly to give you a comprehensive list of everything I believe to be missing, but would appreciate you sending the above items at your earliest convenience.

db

Desa Ballard
Ballard & Watson
Attorneys at Law
Telephone 803.796.9299
Facsimile 803.796.1065
E-mail: desab@desaballard.com, copy to marab@desaballard.com

ROA 00667

ROA 00668

TAB 23

ROA 00668

Jay Tothacer

ROA 00669

From: Desa Ballard <desab@desaballard.com>
Sent: Thursday, February 26, 2015 2:23 PM
To: Jay Tothacer
Cc: Beth Cogan; Beth Cogan; Mara Ballard
Subject: RE: Incomplete FOIA response

Thank you.

From: Jay Tothacer [mailto:jtthacer@newberrycounty.net]
Sent: Thursday, February 26, 2015 2:03 PM
To: Desa Ballard
Subject: RE: Incomplete FOIA response

I will review my files and speak with Mr. Aydlette as to #6.

We have provided all of Mr. Adam's emails that we have and of the few texts available – there are none germane to your request – so that is my final response.

Jay

From: Desa Ballard [mailto:desab@desaballard.com]
Sent: Thursday, February 26, 2015 1:49 PM
To: Jay Tothacer
Cc: Laurie Renwick; Beth Cogan; Beth Cogan; Mara Ballard
Subject: RE: Incomplete FOIA response

I will compare this with the information I have.

The county or its attorneys (Aydlette – and therefore within the control of the county) will have a great deal of information on Item 6 that is not privileged, such as correspondence, roster notices, emails with the court and clerk for scheduling, you know what's privileged and what's not. As to anything that you are claiming privilege on, I will need a privilege log. In the interim, please send me all non-privileged documents and begin a privilege log.

Is this your final word on Mr. Adams' personal emails and texts?

db

From: Jay Tothacer [mailto:jtthacer@newberrycounty.net]
Sent: Thursday, February 19, 2015 3:18 PM
To: Desa Ballard
Cc: Laurie Renwick
Subject: RE: Incomplete FOIA response

Attached to this email is a recap of the items we have sent to you along with reference to the letters (by date) that they were mailed.

In the last mailing (dated February 9th) there were a few items from the Clerk to Council – the bulk of her copies had been sent earlier.

ROA 00669

I have asked her about the missing Public Safety and Courts committee meetings (August 11, 2014 and October 20, 2014). Once those have been posted on the website we will contact you via email. **ROA 00670**

After you have reviewed the attached recap please feel free to contact me if you have additional questions or concerns.

I do not believe we have any additional information to provide beyond the minutes from the two Public Safety and Courts Committee meetings.

Jay

From: Desa Ballard [<mailto:desab@desaballard.com>]
Sent: Saturday, February 14, 2015 3:17 PM
To: Austin Tothacer, Jr. (jtothacer@newberrycounty.net)
Cc: Beth Cogan; Beth Cogan; Mara Ballard
Subject: Incomplete FOIA response

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I still have no texts from Mr. Adams to council members or their agents. I will attempt shortly to give you a comprehensive list of everything I believe to be missing, but would appreciate you sending the above items at your earliest convenience.

db

Desa Ballard
Ballard & Watson
Attorneys at Law
Telephone 803.796.9299
Facsimile 803.796.1066
E-mail: desab@desaballard.com, copy to mara@desaballard.com

ROA 00671

TAB 24

ROA 00671

Recap of FOI responses

All item references to your letter dated December 2, 2014

- Item 1 – From Judge Jayroe – enclosed with letter dated 1/13/2015.
- Item 2 – From Judge Jayroe – enclosed with letter dated 1/13/2015.
- Item 3 – From HR and Finance – enclosed with letter dated 1/8/2015. From Judge Jayroe – enclosed with letter dated 1/13/2015.
- Item 4 – From HR and Finance – enclosed with letter dated 1/8/2015. From Judge Jayroe – enclosed with letter dated 1/13/2015. From Wayne Adams – enclosed in letter dated 1/26/2015.
- Item 5 – From HR and Finance – enclosed with letter dated 1/8/2015. From Judge Jayroe – enclosed with letter dated 1/13/2015. From Wayne Adams – enclosed in letter dated 1/26/2015.
- Item 6 – Any documents not in the public case files would be attorney-client privileged.
- Item 7 – From HR and Finance – enclosed with letter dated 1/8/2015. Modified by you in an email dated 1/27/2015 limiting to only *operating or staffing of magistrate courts*. From Wayne Adams – enclosed with letter dated 1/29/15. From others to Wayne Adams – enclosed with letter dated 2/9/15.
- Item 8 – Withdrawn by you in an email dated 1/5/15.
- Item 10 – From HR and Finance – enclosed with letter dated 1/8/15.
- Item 11 – Not available per IT.
- Item 12 – From Clerk to Council -- enclosed with letter dated 1/29/15.
- Item 13 – From Clerk to Council -- enclosed with letter dated 1/29/15.
- Item 14 – From Clerk to Council -- enclosed with letter dated 1/29/15.
- Item 15 – From Clerk to Council -- enclosed with letter dated 1/29/15.
- Item 16 – From HR and Finance -- enclosed with letter dated 1/8/2015. From Judge Jayroe – enclosed with letter dated 1/13/2015.
- Enclosed with letter dated 2/9/15 were a few items that the Clerk to Council included but the bulk of her responses were with the letter dated 1/29/15.
- Since we cannot get any printout of text messages from Verizon I personally reviewed Mr. Adams cell phone today (2/18/15) and there were no text messages dealing with any matter regarding magistrates. His phone contains very few texts and the oldest was in the December 2014 timeframe. During my last conversation with a Verizon representative she indicated that it would be doubtful that they could recapture any texts beyond ten (10) days.

ROA 00673

EXHIBIT 4

WAYNE ADAMS' E-MAILS

ROA 00673

001^2. Adams email to Cromer
5-12-2010.pdf

Debbie Cromer

ROA 00675

From: Wayne Adams <wadams@newberrycounty.net>
Sent: Wednesday, May 12, 2010 11:28 AM
To: 'Debbie Cromer'
Subject: RE: Another Issue with Pay Raises

Please forward this on to the Sheriff. Thanks for the information.

Wayne

From: Debbie Cromer [mailto:dcromer@newberrycounty.net]
Sent: Wednesday, May 12, 2010 11:23 AM
To: 'Wayne Adams'
Subject: RE: Another Issue with Pay Raises

*Debbie
1/29*

Wayne

I have researched the judicial officers and submit to you the following information.

FY08-09 – All elected officials and appointed officials received a 2% increase effective July 1, 2008.
FY 09-10 – There were 2 magistrates that received an increase due to the completion their 4th year. This was effective on the date of hire and based on the information received from the court administration.
FY10-11 – We do not expect the state to do anything regarding the judicial officers at this time.

Wayne if you approve I will forward to the Sheriff. Thanks Deb

From: Wayne Adams [mailto:wadams@newberrycounty.net]
Sent: Tuesday, May 11, 2010 9:04 AM
To: 'Sheriff Lee Foster'
Cc: 'Debbie Cromer'
Subject: RE: Another Issue with Pay Raises

Sheriff,

I am copying Debbie so that she may answer your question regarding pay adjustments for judicial officials last year. (Note that we have to be careful in what we consider "last year." Sometimes in the budgeting world, now is last year and next year is this year. Debbie can give you the figures for 08-09 and 09-10, as well as budgeted figures for 10-11.)

On your other question, yes, if the County is required by the state to give raises to judicial officers, they get those raises even if no other (non-judicial) employees get raises. Debbie can give you numbers comparing non-judicial and judicial employees by percentage increase over the same three fiscal years.

I hope this helps.

Wayne

From: Sheriff Lee Foster [mailto:lfoster@newberrycounty.net]
Sent: Tuesday, May 11, 2010 8:11 AM
To: 'Wayne Adams'
Subject: Another Issue with Pay Raises

ROA 00675

Debbie Cromer

ROA 00676

From: Wayne Adams <wadams@newberrycounty.net>
Sent: Wednesday, May 12, 2010 11:28 AM
To: 'Debbie Cromer'
Subject: RE: Another Issue with Pay Raises

Please forward this on to the Sheriff. Thanks for the information.

Wayne

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I hope this helps.

Wayne

From: Sheriff Lee Foster [mailto:lfoster@newberrycounty.net]
Sent: Tuesday, May 11, 2010 8:11 AM
To: 'Wayne Adams'
Subject: Another Issue with Pay Raises

This came to light in discussions. Since we technically employ the SRO's but they are reimbursed by the School District, how would they be handled? Since the school does not have money, it is doubtful they would fund any increase in their salary. This would pose a problem for us. If they don't get the same raise as the rest of the LEO's, then we may have a problem keeping them in the school business. I don't know if there is a mechanical way that we could provide them with the raise and not get that reimbursement.

Unfortunately, this issue has turned into a conundrum.

If you would be so kind as to answer a couple of questions. Due to the legal mandates on pay raises for judges, did any of them from the Probate Judge to the magistrates receive any pay adjustments last year? If those outside of the merit pay system are not to get raises, would any of those same judicial appointees get pay increases. Debbie says she did not think they would qualify. Can you determine if this is the case in the past year and for the upcoming year.

Thank you for your efforts.

Lee

002^68. Adams email to Hill 5-
16-2011.pdf

Wanda Hill

ROA 00679

From: wadams@newberrycounty.net
Sent: Monday, May 16, 2011 10:59 AM
To: Wanda Hill
Subject: Fw: Newberry County Central Traffic Court

Sent from my Verizon Wireless BlackBerry

From: "thomas abraham" <tabraham@newberrycounty.net>
Date: Mon, 16 May 2011 10:45:40 -0400
To: <wadams@newberrycounty.net>; <whill@newberrycounty.net>; 'Debbie Cromer' <dcromer@newberrycounty.net>
Cc: <RMcCurdy@sccourts.org>; <CROMER@scsenate.org>; 'art jayroe' <ajayroe@newberrycounty.net>; <gjohnson@newberrycounty.net>; <rhalfacre@newberrycounty.net>; <jsanders@newberrycounty.net>
Subject: Newberry County Central Traffic Court

Dear Wayne:

As of Friday, May 13, 2011, it came to my attention that your office has not been officially notified of the following subject:

On March 21, 2011, Senator Cromer made an impromptu visit to Central Court and met with Judge Halfacre and myself individually. He informed both of us that I would not be reappointed as full time magistrate at Central Court do to political reasons. My last full day at Central Court will be June 1st. Do to the fact that there are a few cases only I can rule on, I will complete the full working day of June 1st.. Gordon Johnson will be my replacement. In turn, per the Senator, I will be the part time magistrate in Whitmire on Wednesdays and will work one day per week at Central Court until Dec. 31st. As per the Senator, no reappointments for magistrates will be made until that date. Please adjust my salary appropriately and have the full amount direct deposited.

It has been a pleasure to serve Newberry County as a full time magistrate for the last 6 years. Judge Halfacre and I have made a lot of progressive changes for the betterment of Newberry County Central Traffic Court. I wish him continued success. I apologize to you for my having to be the person to inform you of this matter. It seems inappropriate for me to do such, but I felt that your office should be notified promptly.

Sincerely,
Tom Abraham
Newberry County Magistrate
Newberry County Central Traffic Court

Wanda Hill

ROA 00680

From: Debbie Cromer <dcromer@newberrycounty.net>
Sent: Monday, May 16, 2011 10:52 AM
To: whill@newberrycounty.net; 'Acct Pay Karen Brehmer'
Subject: FW: Newberry County Central Traffic Court

From: thomas abraham [mailto:tabraham@newberrycounty.net]
Sent: Monday, May 16, 2011 10:46 AM
To: wadams@newberrycounty.net; whill@newberrycounty.net; 'Debbie Cromer'
Cc: RMcCurdy@sccourts.org; CROMER@scsenate.org; 'art jayroe'; gjohnson@newberrycounty.net; rhalfacre@newberrycounty.net; jsanders@newberrycounty.net
Subject: Newberry County Central Traffic Court

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Sincerely,
Tom Abraham
Newberry County Magistrate
Newberry County Central Traffic Court

Wanda Hill

ROA 00681

From: thomas abraham <tabraham@newberrycounty.net>
Sent: Monday, May 16, 2011 10:46 AM
To: wadams@newberrycounty.net; whill@newberrycounty.net; 'Debbie Cromer'
Cc: RMcCurdy@sccourts.org; CROMER@scsenate.org; 'art jayroe';
gjohnson@newberrycounty.net; rhalfacre@newberrycounty.net;
jsanders@newberrycounty.net
Subject: Newberry County Central Traffic Court

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Sincerely,
Tom Abraham
Newberry County Magistrate
Newberry County Central Traffic Court

ROA 00681

003^1. Adams email to Aydlette
2-16-2012.pdf

Jay Tothacer

ROA 00683

From: Wayne Adams <wadams@newberrycounty.net>
Sent: Thursday, February 16, 2012 4:58 PM
To: Dirk Aydlette
Cc: Jay Tothacer
Subject: Abraham lawsuit
Attachments: Notice to Tom Abraham.pdf; ATT00197.txt

Follow Up Flag: Follow up
Flag Status: Flagged

Dirk,

The attached confirms Tom Abraham's "non-reappointment" as a magistrate.

Wayne



ROA 00683



ROA 00684

South Carolina Court Administration
South Carolina Supreme Court
Columbia, South Carolina

ROSALYN W. FRIERSON
DIRECTOR

1015 BUNTER STREET, SUITE 200
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE (803) 734-1800
FAX (803) 734-1356
E-MAIL: rfrieron@scjud.state.sc.us

February 13, 2012

Via U.S. Mail and E-Mail

Mr. Thomas B. Abraham
46 Buzhardt Road
Pomaria, SC 29126

Dear Mr. Abraham:

I have received written notification from the S.C. Senate that you will no longer be serving as Magistrate of Newberry County. Pursuant to S.C. Code Ann. §22-1-30(B), the Governor, by and with the advice and consent of the Senate, has vacated your Office effective February 9, 2012. Accordingly, you no longer hold the Office of Magistrate, effective on that date and you should immediately cease all magisterial functions. I regret that the magisterial system has lost a fine judge and wish you the best of luck in your future endeavors.

Judge Abraham, please immediately turn over to Judge Art Jayroe your official bank account and financial records, any arrest warrants, any receipts, civil, criminal and traffic dockets, Acts and Joint Resolutions, the South Carolina Code, and any other court records.

If you have any questions concerning this request, or if I can be of any assistance to you in closing your judicial affairs, please do not hesitate to contact me.

With best wishes and kindest regards, I am

Sincerely,

Walter T. Leverette
Summary Courts Representative

WTL/mhb

cc: The Honorable Art Jayroe
Newberry County Chief Magistrate

ROA 00684

ROA 00685

STATE OF SOUTH CAROLINA

JEFFREY S. GOSSETT
CLERK OF THE SENATE
DIRECTOR OF RESEARCH

KENNETH M. MOFFITT
COUNSEL TO THE CLERK



TEL: (803) 212-6200
FAX: (803) 212-6299

THE SENATE
P. O. BOX 142
COLUMBIA, SOUTH CAROLINA 29202-0142

February 13, 2012

The Honorable Dan Shearhouse
Clerk of the Supreme Court
Post Office Box 11330
Columbia, South Carolina 29201

Dear Mr. Clerk:

The Senate acted to ratify the message below on Thursday, February 9, 2012, evidence of which is published in the Journal of the Senate for that day.

LOCAL APPOINTMENT

Pursuant to §22-1-30(B), I, Nikki R. Haley, Governor of South Carolina, have not reappointed the following:

Newberry County Magistrate

The Honorable Thomas B. Abraham
465 Buzhardt Road
Pomaria, South Carolina 29126
Term Expiration: 4/30/2011

Please contact my office if you should have any questions or desire additional information.

Sincerely,

A handwritten signature of Jeffrey S. Gossett in dark ink.

Jeffrey S. Gossett

cc: Ms. Patricia Hamby, Secretary of State's Office
Mr. Bob McCurdy, SC Court Administration
Mr. Terry Leverette, SC Court Administration
Ms. Madison Walker, Governor's Office

ROA 00685

004^2. Adams email to Tothacer
3-1-2012.pdf

Jay Tothacer

~~ROA 00687~~

From: Wayne Adams <wadams@newberrycounty.net>
Sent: Thursday, March 01, 2012 11:01 AM
To: Jay Tothacer
Cc: Laurie Renwick
Subject: Re: Draft contracts

Follow Up Flag: Follow up
Flag Status: Flagged

Jay,

I have not had a chance to look at these yet, but have you completed the agreement between Council and Senator Cromer regarding the Magistrate's Court services?

Wayne

On Feb 23, 2012, at 2:40 PM, Jay Tothacer wrote:

Wayne,

Attached is my first draft at contracts for the Clerk to Council, Economic Developer and Planning Director, and County Attorney.

I modeled them after your contract. Please advise as to any changes you would like to make – or enlargement of terms within.

Jay

A.J. Tothacer, Jr.
Newberry County Attorney
P.O. Box 156
Newberry, S.C. 29108
Office - (803) 321-1415
Fax - (803) 321-2102

CONFIDENTIAL - COMMUNICATION: The information contained in this message contains legally privileged and confidential information intended only for the use of the individuals and entities named above. If the reader of this message is not the intended recipient, you are hereby notified that any dissemination, distribution or duplication of this transmission is strictly prohibited. If you have received this communication in error, please notify me by telephone or email immediately and return the original message to me and destroy any printed and electronic copies. Nothing in this transmission is intended to be an electronic signature nor to constitute an agreement of any kind under applicable law unless otherwise expressly indicated. Intentional interception or dissemination of electronic mail not belonging to you may violate federal or state law.

<2012 Clerk to Council contract.doc><2012 County Attorney contract.doc><2012 County
Economic Developer and Director of Planning contract.doc>

ROA 00688

Wayne Adams
Newberry County Administrator
wadams@newberrycounty.net

005^4. Adams email to
Livingston 3-2-2012.pdf

Jay Tothacer

ROA 00690

From: Wayne Adams <wadams@newberrycounty.net>
Sent: Friday, March 02, 2012 10:04 AM
To: Buddy Livingston
Subject: Re: Proposed Magistrates Agreement

Follow Up Flag: Follow up
Flag Status: Flagged

Chairman,

You obviously may meet with the magistrates, either individually or along with full Council. Indeed, as Chairman you certainly have the authority to call such a meeting. That would give you the first-hand input you desire, and it would give them their say, though I doubt that you will hear anything new.

I would advise against the precedent of having magistrates sign off on what they believe is the best arrangement for delivering the services of Summary Court. It is doubtful that magistrates, being of human nature, would ever recommend an arrangement better than the one that benefits them most. Moreover, they can easily disagree among themselves about what that arrangement should be, meaning that a final determination about Summary Court staffing and coverage could be bogged down forever.

Regarding the locations of service delivery, I would suggest nailing that down in the agreement. Otherwise, you might have a Chief Magistrate down the road who believes that he or she can dictate the County's spending by prescribing satellite offices, staffing levels, etc. Also, if this is left to the magistrates and the Senator, it is likely to remain in continual and dysfunctional flux. That's pretty much the way it is now.

I don't believe that anything Council does will limit the ability of the Chief Justice to determine which magistrate will be Chief Magistrate.

For what my opinion's worth, the most important thing is to have three full-timers. In SC Counties, the countryside is littered with "health insurance" and "police retirement" magistrates who are largely unaccountable. Centralizing them to a common location enhances their accountability -- to one another -- significantly. It also puts remedies for any dissatisfaction about workload, on-call, etc. squarely on the magistrates themselves. They could scarcely appeal to Council for any relief from their problems with each other.

I'm sure my perspective is somewhat jaded from having dealt with part-time magistrates, so you should probably take that into account.

Wayne

On Mar 2, 2012, at 9:19 AM, Buddy Livingston wrote:

> I personally feel we are overstepping our boundaries by specifying anything beyond numbers. If we want three fulltime then we specify that but then specifying location I question. The senator along with the chief justice should appoint chief magistrate and location? Should we not meet with current magistrates simultaneously and gather facts from them on what they feel would best serve or at least get them to sign a letter drafted and signed by all? Our input from them has all been second handed. My opinion only.

> Buddy Livingston

>

> From: Wayne Adams [wadams@newberrycounty.net]

> Sent: Thursday, March 01, 2012 4:54 PM

ROA 00691

> To: Kirksey Koon; John Caldwell; Steve Stockman; Bill Waldrop; Edgar Baker; Laurie Renwick; Les Hipp; Buddy Livingston

> Cc: Jay Tothacer

> Subject: Proposed Magistrates Agreement

>

> Gentlemen,

>

> Attached is a draft of the proposed agreement with Senator Cromer concerning the appointment of magistrates. The agreement specifies three full-time magistrates but could be changed if Council should decide differently. You will recall that Council and Senator Cromer decided to take this matter up as an executive session item next Wednesday.

>

> Wayne

Wayne Adams

Newberry County Administrator

wadams@newberrycounty.net

006^5. Adams email to
Livingston 4-30-2012.pdf

Jay Tothacer

ROA 00693

From: Wayne Adams <wadams@newberrycounty.net>
Sent: Monday, April 30, 2012 12:41 PM
To: Buddy Livingston; John Caldwell; Steve Stockman; Bill Waldrop; Edgar Baker; Laurie Renwick; Kirksey Koon; Les Hipp
Cc: Jay Tothacer; Kelly Nobles; Jackie Bowers; gordon johnson; rhalfacre@newberrycounty.net; Veterans Affairs Officer David Parnell; Donna Lominack; karen lindler; Brenda Rogers; Lee Foster
Subject: Proposed Change to Classification and Compensation Draft
Attachments: Comp and Class with Opt Out.doc; Untitled attachment 00102.htm
Follow Up Flag: Follow up
Flag Status: Flagged

1. ***** Classification and Compensation of County Personnel ***** **ROA 00694**

Red font refers to proposed language concerning Work Performance and Merit Pay Distribution for Appointed and "Other Elected" officials

A. Funding, Fiscal Compliance, and Accountability

County Council appropriates funding for the wage/salary and related personnel expenses of each department of Newberry County Government. Funding levels are provided for in department-specific line items each fiscal year (July 1 - June 30) as part of the County's Operating Budget Ordinance. Expenditure amounts from these line items may not exceed total amounts appropriated for these purposes for the current fiscal year. Additionally, outstanding annualized commitments to wage/salary and related personnel expenses, including funding needed for the annualized expenses associated with any vacant positions, may not exceed the total amounts appropriated for these purposes at any time during the fiscal year.

The Human Resources and/or Finance Department may independently verify compliance with departmental expenditure levels at any time; likewise, these two departments will consult with department heads on an as-requested basis concerning the availability of funding for meeting wage/salary and related personnel expenditure commitments. However, department heads bear primary responsibility for ensuring that all wage/salary and related personnel expenditures, including all future commitments of such expenditures, remain equal to or less than the funding appropriated specifically for these purposes in the current fiscal year. Funding may not be transferred between or among line items for wage/salary expenses and line items intended for other purposes, including overtime.

B. Establishment and Maintenance of Positions within Pay Structure and Fiscal Restrictions

Within the limits of funding appropriated to each department for wage/salary and related personnel expenses, department heads will assign to each employee/position (including vacant positions) one of seven (7) Pay Bands, as well as a specific annualized wage/salary within the Pay Range for that Pay Band. (See Subsection 1C, immediately below.) The assignment of Pay Bands must correspond to job-related duties and responsibilities, and to employee qualifications and credentials, as reflected in an up-to-date job description. All personnel actions concerning wages/salaries and related personnel expenses, including the assignment of specific wages/salaries, and the assignment Pay Bands/Pay Band Ranges, must be reviewed and approved by the Human Resources Director and the County Administrator in advance of implementation.

C. Compensation Flexibility within Limits of the Pay Structure

The Pay Structure below is intended to provide department heads with flexibility in compensating, assigning, and promoting employees, and to permit the compensatory recognition of functions and qualifications (job requirements, duties, credentials, etc.) based on department-level priorities, as determined by each department head. This Pay Structure is *not* intended to increase overall departmental budgets for wages/salaries and related personnel expenses, but to apportion existing appropriations for these purposes based on qualifications, work requirements, and responsibilities. Priorities concerning the compensation, assignment, and promotion of employees must be expressed within budgetary limits, and with a long-term perspective on each department's needs. Appropriations will not simply increase to meet new compensatory commitments.

When assigning or adjusting employees' wages/salaries, department heads must be mindful that departmental budgets for these purposes will not grow, except as provided for in Section 2, below. Accordingly, department heads must determine any given job's worth to the department within the context of these resource limits. Pay Band/Pay Band Range assignment, as well as the placement of employees within Pay Bands, must be managed within the departmental budget authorized by County Council. An employee's progression to the maximum pay value for his or her Pay Band/Pay Band Range is not guaranteed, and in any case does not by itself warrant an employee's promotion to a higher Pay Band.

In its sole discretion, County Council may adjust the minimum and maximum values (Pay Ranges) for Pay Bands in order to preserve a competitive pay structure. Increases to the minimum and maximum values of Pay Ranges shall not affect individual wages/salaries unless an employee is coincidentally being paid at the minimum value for his or her Pay Band. Provided that, upon initial enactment of this policy, only wages/salaries below the minimum compensation level for the Service Delivery 1 (SD-1) Pay Band/Pay Range may be so raised. The Pay Structure below represents the baselines for absolute minimum and maximum wages/salaries (Pay Ranges) in effect for the various Pay Bands at the time of this policy's enactment.

Newberry County Pay Structure

Pay Bands		Designations	Pay Ranges
Service Delivery	1	SD-1	From \$20,623 to \$32,889
Service Delivery	2	SD-2	From \$24,927 to \$38,916
Service Delivery	3	SD-3	From \$29,232 to \$46,950
Service Delivery	4	SD-4	From \$34,972 to \$50,970
Professional	1	P-1	From \$34,972 to \$50,970
Professional	2	P-2	From \$37,842 to \$56,997
Professional	3	P-3	From \$55,741 to \$83,115

D. Pay Bands and their Associated Characteristics

(1) Service Delivery Pay Bands

Positions corresponding to Service Delivery Pay Bands 1 through 4 (SD-1 through SD-4) are characterized by limited though progressively greater discretionary and budgetary duties and responsibilities, with higher Service Delivery Pay Band positions assuming more of these responsibilities. Duties commonly associated with Service Delivery Pay Bands include, but are not necessarily limited to, clerical/financial, law enforcement, customer service, technical, operational support, and maintenance-related activities. Employees assigned to Service Delivery Pay Bands do not unilaterally formulate or administer budgets, nor do they have the authority to make non-routine expenditure decisions or to formulate policies, though they may assist in these areas as specifically requested/designated by their department heads. Work volume, work completeness/execution, fidelity to supervisory instructions, technical ability, and knowledge of legal and regulatory constraints, including County and departmental procedures, are key areas of emphasis for performance in Service Delivery-designated positions. Exercising initiative within the bounds of authority and suggesting practical workplace process improvements to department heads are valued contributions from Service Delivery Pay Band positions. Certifications, licensure, and/or other forms of advanced learning may be required for some Service Delivery Pay Band positions.

(2) Professional Pay Bands

Professional Pay Bands 1 through 3 are characterized by advanced emphases on budgetary, supervisory, and discretionary authority, as well as on policy implementation, professional initiative, policy-making suggestions, creativity, planning, structural efficiency, and departmental direction. Duties range from broader supervisory authority to more narrowly defined technical specialties. A mixture of advanced education, professional certification, and higher levels of practical experience are highly desirable in filling these positions. Baccalaureate and graduate degrees may be common expectations for placement into, and promotion within, Professional Pay Bands. Employees assigned to Professional Pay Bands are predominantly, though not

exclusively, considered exempt from overtime provisions of the Fair Labor Standards Act.

(3) Employee Placement within Pay Structure

The placement of employees within the Pay Structure is a function of each position's importance relative strictly to the total resources allocated for *that department's* wages/salaries. The placement of employees within the Pay Structure is subordinate to the departmental wage/salary resources appropriated by County Council for *that department*; the reverse is not true.

2. Increases in the Compensation of County Personnel and Officials

**A. Pay Increases within Budgetary Limits, General Restrictions
(Applicable to all subsections below)**

Department heads have limited latitude to pay employees greater wages/salaries within the departmental Pay Structure, as further described in the following subsections of this section (Section "2. Increases in the Compensation of County Personnel and Officials"), provided that all of the following conditions are met: 1) the total of all recurring wage/salary increases for an individual employee must not exceed 15% on an annualized basis in any given fiscal year, except for the purpose of promoting the employee to a higher Pay Band/Pay Range; 2) annualized (recurring) salary increases of any kind or for any employee may not cause the employee's wages/salaries to exceed the maximum value of the Pay Range for their Pay Band in any given fiscal year (excludes one-time merit bonuses provided for in this policy; 3) that portion of the Work Performance and Merit increase to any employee's wages/salary that exceeds the maximum value for his or her Pay Band/Pay Band Range must be distributed on a one-time basis only; 4) Outstanding annualized commitments to wage/salary and related personnel expenses, including funding needed to meet the annualized expenses associated with any vacant position(s), may not exceed the total departmental amounts appropriated for these purposes in the current fiscal year; 5) all personnel actions pertaining to Pay Structure and the assignment of wages/salaries must be reviewed and approved by the Human Resources Director and the County Administrator in advance of implementation.

B. Departmental Wage/Salary Adjustments

From time to time, as necessary in the judgment of County Council, non-merit increases in the wages/salaries of County employees may be implemented in order to remedy wage/salary inequities within a department [or *among departments*, where multiple departments involved report to a single authority, e.g., County

Administrator, Sheriff, Clerk of Court, etc.]. Department heads may use these funds to adjust salaries for purposes of 1) reflecting the distribution of responsibilities within the department, and/or 2) keeping identified wages and salaries competitive. Alternatively, up to 100% of unspent appropriations made for this purpose may be used within the department for one-time merit bonuses based on the review year. The selection criteria for awarding such bonuses must be decided jointly by the department head and the Human Resources Director. One-time bonuses, as provided for here, may not exceed 5% of the wages/salaries paid to the employee during the review year.

Appropriations made pursuant to this subsection will be determined as a percentage increase in departmental appropriations for wages/salaries and related personnel appropriations over those for the prior year, as adjusted for changes in staffing and/or other factors that may be shown to equalize year-to-year expenditure comparisons.

C. Work Performance and Merit Pay

Annually, County Council may appropriate Work Performance and Merit Pay for the purpose of rewarding individual employee work performance. Such compensation increases will be appropriated as a percentage increase in gross payroll-related appropriations over those for the prior year, as adjusted for changes in staffing and/or other factors that may be shown to equalize year-to-year expenditure comparisons. This total will be divided among Inter-Departmental Peer Groups (described below) based on the proportion of each to the total payroll for the new fiscal year.

Recurring Work Performance and Merit Pay will be distributed annually in twenty-six (26) equal payments and in conjunction with the County's normal pay cycle. One-time-only Work Performance and Merit Pay will be distributed in a single check, apart from the normal pay cycle. Unless otherwise specified by Council, all Work Performance and Merit Pay shall be administered as a recurring increase in employees' wages/salaries.

(1) Competitive Performance Evaluation System and Inter-Departmental Peer Groups

All departments will utilize the same evaluation form (see Attachment 1), with criteria being weighted separately for each Pay Band. The maximum raw score possible for each Pay Band is 100 points, with total points being distributed among five areas of emphasis.* The total points for each employee will be divided by twenty (20), creating a numerical evaluation score from 1.00 to 5.00 (hundredths-place notation/scoring required). Evaluation scores for individual employees will then be rank ordered within one of three applicable Inter-Departmental Peer Groups: (Group A) Law

Enforcement and Detention Center Employees; (Group B) Administration Employees;** and (Group C) Employees of Elected Officials (other than the Sheriff) and Appointed Officials (appointed by authority other than the County Administrator)***.

*Upon review and approval by the Human Resources Director, point awards may be varied from set point distributions for Pay Bands in order to reflect more accurately the nature and expectations of specified job types.

**See Subsection 2C(6), below, for provisions applying separately to department heads and contract employees who report to the County Administrator.

***See Subsection 2C(7), below, for provisions applying separately to Appointed and "Other Elected" Officials Inter-Departmental Peer Group.

(2) Work Performance and Merit Pay Distribution

The three data sets resulting from Subsection 2C(1), above, as arrayed in descending order, will each be divided into five discrete Performance Groups; with the upper limits of each being those scores corresponding to the 20th, 40th, 60th, 80th, and 100th percentiles.** Employees whose scores fall within Performance Groups with upper limits equal to the 60th, 80th, and 100th percentiles will receive 75%, 90%, and 100%, respectively, of the maximum performance-related increase, which will be expressed as a universal percentage increase level determined by County Council.

**Computed by "PERCENTILE.INC." function found in Microsoft Excel spreadsheet statistics package, unless otherwise specified by the Human Resources Director or County Administrator

(a) Work Performance and Merit Pay Above Maximums of Pay Ranges

When an employee's Work Performance and Merit Pay Distribution causes his or her annual wage/salary to exceed the maximum limit established for their assigned Pay Range, that portion of the Work Performance and Merit Pay Distribution exceeding the maximum will be distributed on a one-time basis, as described above in Subsection 2A, above.

(3) Minimum Sufficient Score and Performance Counseling

It is universally established within the County that an evaluation score of 3.00 is the Minimum Sufficient Score necessary to maintain employment in good standing with the County, as regards work

performance. Scores below 3.00 must be accompanied by written performance-counseling statements. Each such statement should include a performance improvement plan, which should be discussed between, and jointly signed by, the employee and his or her department head.

(4) **Work Performance and Merit Pay Not Guaranteed**

Employees are not guaranteed Work Performance and Merit Pay; in fact, the above-described methodology makes it certain that approximately 40% of all employees will not receive Work Performance and Merit Pay. Work Performance and Merit Pay is tied to an employee's work performance relative to that of other employees in his or her Inter-departmental Peer Group, as described above in Subsections 2C (1-2), not on tenure, job responsibilities, or other factors.

(5) **Work Performance and Merit Pay not Applicable to Elected Officials and Officials *not* Appointed by the County Administrator**

Elected officials and officials not appointed by the County Administrator may not receive Work Performance and Merit Pay increases, as they are not subject to performance reviews by either County Council or the County Administrator. There is no scale to gauge the relative performance of these officials to one another, and there is no authority to apply such a scale.

(6) **Work Performance and Merit Pay for Department Heads and Others Reporting Directly to the County Administrator**

Those County employees serving as department heads and reporting to the County Administrator will be treated collectively as a separate inter-departmental peer group for purposes of performance evaluations and determining the distribution of Work Performance and Merit Pay.

(7) **Work Performance and Merit Pay Distribution Opt Out for Appointed and "Other Elected" Officials Inter-Departmental Peer Group**

In the event that a majority of the department heads comprising the Appointed and "Other Elected" Officials Inter-Departmental Peer Group [as described in Subsection 2C(1), above] decides, for any given year, not to distribute Work Performance and Merit Pay Distribution in the manner described in Subsection 2C(2),

above, each such department may distribute its proportional share of funding allocated for this purpose in the manner it deems appropriate, based upon Work Performance and Merit Scores for employees of their departments.

D. Cost of Living Adjustments

Annually, County Council may appropriate Cost of Living Adjustments for the purpose of maintaining the purchasing power of county employees. Such compensation increases will be appropriated as a percentage increase in the gross regular (excludes overtime) wage/salary paid to each employee in the prior fiscal year. Whether to fund Cost of Living Adjustments is a budgetary matter solely within the discretion of County Council. Cost of Living Adjustments are independent of any Council action to preserve a competitive pay structure, as described above in Subsection 1C; moreover, Cost of Living Adjustments may not cause an employee's wages/salaries to exceed the maximum value of the Pay Range for their Pay Band in any given fiscal year, and one-time payments for amounts exceeding maximum Pay Range values do not apply to Cost of Living Adjustments.

E. Requests to Increase Wages/Salaries Based on Increased Job Duties and Responsibilities

Neither County Council nor the County Administrator will entertain requests to increase the pay of any specifically identified employee(s)/position(s) on the basis of increased job duties and responsibilities. Increases in overall departmental budgets for wage/salary and related personnel expenses may be requested for these purposes based only on one or both of the following circumstances: 1) increases in departmental workload, as sufficiently justified through the provision of information requested by the Human Resources Director; 2) factors that are demonstrated to increase departmental labor costs, as with legislative or regulatory changes in licensing, certification, education level, etc.; 3) cost-neutral transfers of existing functions between or among departments.

F. Redistribution of Savings from Reductions in Number of Personnel

Upon review and approval by the Human Resources Director and the County Administrator, department heads may eliminate positions (in whole or in part) within/among the department(s) under their authority, and may utilize up to 80% of the resulting savings to increase wages/salaries and related personnel expenses for other positions within their purview (includes multiple departments where applicable). A five-year moratorium on staffing increases above the newly configured staffing baseline will be imposed upon the department. The County Administrator may waive the five-year moratorium in the event that changing circumstances legitimately warrant doing so. Reduced wage/salary and related

personnel expenses may not be redistributed where the reduction or elimination of a position results from declining revenues, expenditure reductions initiated by Council, the technological replacement of all or part of any position, or initiative apart from that of the department head.

G. Pay Increases for Elected Officials and Officials Appointed by Authority other than the County Administrator

(1) County Council

In order to increase its salaries, County Council must comply with those statutory restrictions contained in §4-9-100 of the *South Carolina Code of Laws 1976, as amended*.

(2) Other Elected Officials and Officials Appointed by Authority other than the County Administrator

In any given year, all other elected officials and officials appointed by authority other than the County Administrator will receive either a Cost of Living Adjustment determined by County Council or that which may be granted them by the State of South Carolina, whichever is greater. However, no portion of any elected or appointed official's salary will be increased by more than one Cost of Living Adjustment (either in number or kind) in the course of a given fiscal year.

Elected officials and officials appointed by authority other than the County Administrator may at any time petition directly to County Council for increases in their annual wages/salaries, based on whatever factors they deem relevant.

H. Compensation for Employees Designated as Contract Employees

The County Administrator, Clerk to Council, County Attorney, and Economic Development Director are designated as Contract Employees. Compensation levels and other employment terms for the County Administrator and the Clerk to Council are negotiated individually between each and County Council. In order to be valid, these contracts must be approved by Council, duly assembled. Compensation Levels for the County Attorney and the Economic Development Director are negotiated between the County Administrator and the individuals serving in those positions, subject to County Council's budget authorization, and may be executed by the County Administrator.

I. Appeals of Administrative Decisions by the Human Resources Director

Any department head or elected official may appeal the Human Resources Director's administrative decisions regarding wage/salary issues to the County Administrator.

J. Job Descriptions, Duties and Responsibilities

Accurate and up-to-date job descriptions provide the functional basis on which departmental wage/salary resources are distributed, and should reflect the relative importance of each position *strictly within the department*. Each department of Newberry County Government is required to maintain and make available for review by County Council, the County Administrator, and the General Public a list of all positions currently funded through the appropriations of County Council, along with comprehensive descriptions of job-related duties, responsibilities, and qualifications corresponding to each position. Language contained in these documents must focus on position-relevant knowledge, skills, and abilities, and is subject to review and approval by the Human Resources Director. The Human Resources Director will assist department heads, either directly or through specialized contracted assistance, in complying with this subsection. Department heads are ultimately responsible for keeping job descriptions current as assignments, responsibilities, workload distribution, qualification levels, physical requirements, and other relevant factors change.

2/3/15

FINAL DRAFT

See "UNIVERSALIZED EMPLOYEE EVALUATION FORM," included below as **ROA 00704**
ATTACHMENT 1

ATTACHMENT 1

UNIVERSALIZED EMPLOYEE EVALUATION FORM

Newberry County Employee Evaluation Form

Instructions: For each specific Pay Band, employees may receive a maximum score of 100 total points (perfect employee), based on maximum points pre-assigned to each of the five rating factors defined below. The proportion of points assigned to any given factor, relative to the 100-point maximum total, indicates that factor's "weighted" importance to the job performance being evaluated. To the greatest degree possible, score employees according to a mutually understood interpretation of the criteria.

Employee Name: _____
Department: _____
Pay Band: _____
Position Held: _____
Review Period: _____
Evaluating Supervisor: _____
Evaluation Date: _____

Factor 1. **KNOW HOW** - Combination of technical skills/experience/ qualifications directly beneficial to job performance; consistent competence on the job; assimilation of work-related training into work product or service delivery; current certification and education levels specifically or closely related to job

performance (if applicable); understanding of job's role in the larger organizational picture.

ROA 00705

Job-Specific Expectations and Emphases for this Factor

- A. Applied understanding of technical requirements pertaining to immediate job duties as well as critical outside/peripheral factors
- B. Knowledge of applicable policies/laws/regulations/best practices
- C. Completeness and accuracy in performing both routine tasks and special assignments
- D. Professional growth, as seen in work improvement, completion of education opportunities and unique assignments
- E. Minimization of unintended negative consequences that might result from work-related actions

Employee-Specific Notes and Discussion Points for this Factor

(Record any additional comments or discussion points here; attach additional paper if needed.) <INSERT PAPER>

Maximum poss. points	Evaluation points = _____
SD1 25	
SD2 25	
SD3 25	
SD4 25	
P1 25	
P2 25	
P3 25	

- Factor 2. PRODUCTION** - Quality and quantity of work relative to job requirements; timeliness and dependability in meeting deadlines/fulfilling work assignments; independence vs. need for intense supervision and oversight; completeness of work; economical use of resources, e.g., time, funding, other

employees; proper attention to immediate factors that affect production.

Job-Specific Expectations and Emphases for this Factor

- A. Quality, timeliness, volume, and thoroughness of work output
- B. Integration of work efforts into departmental efforts
- C. Faithfulness to standards and specific instructions
- D. Process improvements that increase output and/or work quality
- E. Clarity of focus and proper prioritization of work effort

Employee-Specific Notes and Discussion Points for this Factor

(Record any additional comments or discussion points here; attach additional paper if needed.) <INSERT PAPER>

Maximum poss. points	Evaluation points = _____
SD1 35	
SD2 35	
SD3 20	
SD4 20	
P1 10	
P2 10	
P3 10	

Factor 3. PROBLEM SOLVING - analytical/comprehensive approach to job duties and departmental goals; allocation of work resources in response to both routine and unexpected factors

that impact scheduling, production, work quality, etc.; forward-
looking suggestions and actions pertaining departmental goals. **ROA 00707**

Job-Specific Expectations and Emphases for this Factor

- A. Alertness in monitoring and responding to the production/service delivery environment
- B. Demonstrated technical aptitude, especially in adapting to adverse circumstances
- C. Indications of foresight with respect to job duties and responsibilities
- D. Quality and sufficiency of work-related decisions/actions/planning
- E. Practical and appropriate situational application of prescribed procedures

Employee-Specific Notes and Discussion Points for this Factor

(Record any additional comments or discussion points here; attach additional paper if needed.) <INSERT PAPER>

Maximum poss. points	Evaluation points = _____
SD1 10	
SD2 10	
SD3 15	
SD4 15	
P1 20	
P2 20	
P3 20	

- Factor 4. **ACCOUNTABILITY**- Dependable availability and responses to problems; sense of ownership and pride in the department's purposes; timeliness and thoroughness in both routine and non-routine responses and actions; understanding of the department's present and future obligations, as demonstrated through foresight; timely communication of departmental

conditions and important issues; appropriate acceptance of responsibility for actions of self and/or subordinates; improvement through recognition of past mistakes.

Job-Specific Expectations and Emphases for this Factor

- A. Observance and/or authorship of well-documented planning processes for major projects, and standard operating procedures for routine activities of the department
- B. Timely reporting through chain of command on issues requiring departmental/administrative attention
- C. Maintenance of/adherence to requirements for departmental preparedness, regulatory inspections and reports
- D. Regular and appropriate communications within work place structure regarding plans/objectives and outcomes
- E. Understanding and sense of responsibility for routine departmental operations and projects, as well as for departmental structure and efficiency

Employee-Specific Notes and Discussion Points for this Factor

(Record any additional comments or discussion points here; attach additional paper if needed.) <INSERT PAPER>

Maximum poss. points	Evaluation points = _____
SD1 15	
SD2 15	
SD3 25	
SD4 25	
P1 30	
P2 20	
P3 30	

Factor 5. HUMAN RELATIONS – Respectful and functional interactions with fellow employees of all levels; personal investment in a team effort; recognition and proper treatment of departmental stakeholders, including fellow employees, citizens, and officials; participation in workplace environment that can be characterized as inclusive; support for/recognition of workplace diversity; appropriate sensitivity regarding race, gender, color, age, ethnicity, religion, creed, and to social issues in general

Job-Specific Expectations and Emphases for this Factor

- A. Part of a departmental environment conducive to teamwork and mutual respect
- B. Timely, respectful, and clear communication of departmental goals, objectives, and values to stakeholders
- C. Tolerance and respect for appropriately expressed ideas and suggestions of others
- D. Recognition of others' work accomplishments
- E. Leadership through example for employees at all levels

Employee-Specific Notes and Discussion Points for this Factor
(Record any additional comments or discussion points here; attach additional paper if needed.) <INSERT PAPER>

Maximum poss. points	Evaluation points = _____
SD1 15	
SD2 15	
SD3 15	
SD4 15	
P1 15	
P2 15	
P3 15	

2/3/15

FINAL DRAFT

Evaluation Points Earned for All Factors, One through Five = _____
(Maximum Total Points = 100.)

ROA 00710

Acknowledgement of Employee: _____

(SIGNATURE)

Evaluating Supervisor: _____

(SIGNATURE)

007^6. Adams email to Tothacer
6-12-2012.pdf

Jay Tothacer

ROA 00712

From: Wayne Adams <wadams@newberrycounty.net>
Sent: Tuesday, June 12, 2012 3:31 PM
To: Jay Tothacer
Cc: Mike Pisano; Leslie Jenkins
Subject: Fwd: Horses Running at Large

Follow Up Flag: Follow up
Flag Status: Flagged

FYI

Begin forwarded message:

From: "Gordon Johnson" <gjohnson@newberrycounty.net>
Date: June 12, 2012 3:28:31 PM EDT
To: <wadams@newberrycounty.net>
Cc: "Ron Halfacre" <rhalfacre@newberrycounty.net>
Subject: FW: Horses Running at Large

I hope this helps

Gordon B. Johnson
Newberry County Magistrate
803-321-2144
gjohnson@newberrycounty.net

From: Arthur Jayroe [<mailto:AJayroe@JayroeCPA.com>]
Sent: Tuesday, June 12, 2012 2:56 PM
To: Gordon Johnson; Judge Ron Halfacre
Cc: wadams@newberrycounty.net
Subject: Horses Running at Large

Gordon,

After reviewing Wayne's e-mail I believe that 47-7-110 is the better statute. 47-7-140 generally provides for a civil type remedy but 47-7-110 provides for a criminal penalty.

If a citizen provides probable cause and wishes to secure a charge, the courtesy summons is appropriate.

If a law enforcement agency (Animal Control) seeks the charge, the statute does not allow for a courtesy summons to be issued. In that case either a uniform traffic ticket or a custodial arrest warrant must be used. If the officer witnesses the infraction (the infraction occurs in the officer's presence) the uniform traffic ticket can be used without a custodial arrest. It should be noted that a uniform traffic ticket can no longer be used if the offense is "freshly" committed. If the officer does not witness the offense but wishes to prosecute, then the officer must seek an arrest warrant and institute a custodial arrest where the defendant is committed to jail pending bond.

ROA 00712

Best wishes,

Art Jayroe

ROA 00713

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IRS CIRCULAR 230 NOTICE: Internal Revenue Service regulations generally provide that, for the purpose of avoiding federal tax penalties, a taxpayer may rely only on formal written advice meeting specific requirements. Any tax advice in this message, or in any attachment to this message, does not meet those requirements. Accordingly, any such tax advice was not intended or written to be used, and it cannot be used, for the purpose of avoiding federal tax penalties that may be imposed on you or for the purpose of promoting, marketing or recommending to another party any tax-related matters.

Wayne Adams
Newberry County Administrator
wadams@newberrycounty.net

ROA 00713

008^51. Adams email to Hill 8-2
-2012.pdf

Wanda Hill

ROA 00715

From: wadams@newberrycounty.net
Sent: Thursday, August 02, 2012 2:55 PM
To: Wanda Hill
Subject: Re: Compensation - Whitmire Magistrate

Ok

Sent from my Verizon Wireless BlackBerry

From: "Wanda Hill Newberry County HR/Risk Mgr" <whill@newberrycounty.net>
Date: Thu, 2 Aug 2012 14:03:06 -0400
To: 'Debbie Cromer' <dcromer@newberrycounty.net>; 'Wayne Adams' <wadams@newberrycounty.net>
Subject: FW: Compensation - Whitmire Magistrate

For your info. Wanda

From: Ronnie Cromer [<mailto:ronnlecromer@bellsouth.net>]
Sent: Thursday, August 02, 2012 1:43 PM
To: whill@newberrycounty.net
Subject: Fwd: Compensation - Whitmire Magistrate

Ms. Hill

You have my okay to add the Whitmire hours to Judge Jayroe's salary while he is covering that office for us.

Thanks,
Ronnie Cromer

Sent from my iPad

Begin forwarded message:

From: "Arthur Jayroe" <AJayroe@JayroeCPA.com>
Date: 1 August, 2012 1:39:22 PM EDT
To: <dcromer@newberrycounty.net>
Cc: <ronnlecromer@bellsouth.net>, <whill@newberrycounty.net>
Subject: Compensation - Whitmire Magistrate

Dear Debbie,

Please start my compensation for the Whitmire Magistrate. The compensation should be based on 8 hours per week or 16 hours each pay period. If possible please start this effective 07/01/2012. Should you have questions regarding deferred plans, retirement, etc., please call.

Thank you,

Art Jayroe

CONFIDENTIALITY NOTICE: This e-mail and any files transmitted with it are confidential and may contain information which is legally privileged or otherwise exempt from disclosure. They are intended solely for the use of the individual or entity to whom this e-mail is addressed. If you are not one of the named recipients or otherwise have reason to believe that you have received this message in error, please immediately notify the sender and delete this message immediately from your computer. Any other use, retention, dissemination, forwarding, printing, or copying of this e-mail is strictly prohibited. ROA 00716

IRS CIRCULAR 230 NOTICE: Internal Revenue Service regulations generally provide that, for the purpose of avoiding federal tax penalties, a taxpayer may rely only on formal written advice meeting specific requirements. Any tax advice in this message, or in any attachment to this message, does not meet those requirements. Accordingly, any such tax advice was not intended or written to be used, and it cannot be used, for the purpose of avoiding federal tax penalties that may be imposed on you or for the purpose of promoting, marketing or recommending to another party any tax-related matters.

009^42. Jayroe email to Adams
6-3-2013.pdf

Wanda Hill

ROA 00718

From: Arthur Jayroe <AJayroe@jayroecpa.com>
Sent: Monday, June 03, 2013 8:55 PM
To: 'Wayne Adams'
Cc: 'rcromer@bellsouth.net'; 'Wanda Hill Newberry County HR/Risk Mgr'; 'Debbie Cromer'; 'Barry Koon'
Subject: Magistrate Barry Koon Assignment
Attachments: KOON ASSIGN.pdf

ROA 00718

010^7. Adams email to Renwick
6-19-2013.pdf

Jay Tothacer

ROA 00720

From: Wayne Adams <wadams@newberrycounty.net>
Sent: Wednesday, June 19, 2013 10:40 AM
To: Laurie Renwick; Jay Tothacer; Teresa Powers; Crystal Waldrop; Debbie Cromer
Subject: Please review annotated agenda for tonight
Attachments: June 19, 2013 annotated agenda.doc

Follow Up Flag: Follow up
Flag Status: Flagged

Wayne Adams
Newberry County Administrator
wadams@newberrycounty.net

ROA 00720

NEWBERRY COUNTY COUNCIL
AGENDA
JUNE 19, 2013
7:00 P.M.

Call to order: Henry H. Livingston, III, Chairman
Invocation and Pledge of Allegiance: Bill Waldrop, Councilman

1. **Presentation of Newberry County Service Awards**

- *Jay Tothacer, County Attorney – 5 Years*
- *Anne Peters, Zoning Administrator – 10 Years*
- *Pete Johnson, Sheriff's Office – 20 Years*

2. **Ordinance #06-12-13:** An Ordinance acting on a request to amend the Official Zoning Map established pursuant to Zoning Ordinance No. 12-24-01, codified in Chapter 153 of the Newberry County Code of Ordinances, so as to rezone a three (3.0) acres portion of a real estate parcel totaling fifteen (15.0) acres designated as TMS No. 695-44 from Single Family Residential (RS-1) to Rural (R2).
- a. Second Reading

The Ordinance would rezone 3 acres of a 15-acre tract on Hwy. 202 near I-26 (Little Mountain area) from RS-1 Residential to R-2 Rural. The purpose is to extend to the 3-acre portion of the parcel those uses already in place on the rest of the parcel. Planning staff recommends approval; the Planning Commission concurs.

3. **Ordinance #06-13-13:** An Ordinance acting on a request to amend the Official Zoning Map established pursuant to Zoning Ordinance No. 12-24-01, codified in Chapter 153 of the Newberry County Code of Ordinances, so as to rezone a four and five tenths (4.5) acres portion of a real estate parcel totaling six and one tenth (6.1) acres designated as TMS No. 695-27 from Single Family Residential (RS-1) to Rural (R2).
- a. Second Reading

The Ordinance would rezone 4.5 acres of a 6.1-acre parcel located near Hwy. 202 and I-26 (Little Mountain area), from RS-1 Residential to R-2 Rural. The purpose is to extend to the 4.5-acre portion of the parcel those uses already in place on the rest of the parcel. Planning staff recommends approval; the Planning Commission concurs.

4. **Ordinance #06-14-13:** An Ordinance acting on a request to amend the Official Zoning Map established pursuant to Zoning Ordinance No. 12-24-01, codified in Chapter 153 of the Newberry County Code of Ordinances, so as to rezone a thirty-eight and forty-three hundredths (38.43) acres portion of a real estate parcel totaling forty and forty-eight hundredths (40.48) acres designated as TMS Parcel No. 633-3 from Rural (R2) to Single Family Residential (RS-1).

a. Second Reading

The Ordinance would rezone 38.43 acres of a 40.48-acre tract near the intersection of Hwy. 773 and Wicker Road from R-2 Rural to RS-1 Residential. The rezoning is required for the purpose of residential development. Planning staff recommends approval; the Planning Commission concurs.

5. **Ordinance #06-15-13:** An Ordinance acting on a request to amend the Official Zoning Map established pursuant to Zoning Ordinance No. 12-24-01, codified in Chapter 153 of the Newberry County Code of Ordinances, so as to rezone a two and six hundredths (2.06) acres portion (Lot 7) of a real estate parcel totaling forty and forty-eight hundredths (40.48) acres designated as TMS Parcel No. 633-3 from Rural (R2) to Limited Commercial (LC).

a. Second Reading

The Ordinance would rezone the remaining portion (2.05 acres) of the 40.48-acre parcel that is the subject of agenda item four (above) from R-2 Rural to LC Limited Commercial. Planning staff recommends approval; the Planning Commission concurs.

6. **Ordinance #04-07-13:** An Ordinance to provide appropriations for the Fiscal Year beginning July 1, 2013, and ending June 30, 2014, for the Newberry County budget for county ordinary purposes and for other county purposes for which the county may levy a tax and receive revenues; to provide for the levy of taxes on all taxable personal and real property in Newberry County for all county purposes, including sufficient tax to pay the principal and interest on outstanding indebtedness of Newberry County payable during said fiscal year; to provide for matters relating to Newberry County; and to provide for the expenditure of said taxes and other revenues received by the county during said fiscal year, and to provide for borrowing in anticipation of tax collections by the issuance of one or more tax anticipation notes, if necessary.

a. Third Reading

See proposed amendments – next page.

PROPOSED AMENDMENTS

- Increase Miscellaneous Operating Insurance by 86,000 (from \$68,831 to \$154,831). Line Item Number: 010-005-02200-01130. Amendment will also increase Property Taxes by \$86,000 (Line Item Number: 010-004-00040-00413 Property Taxes).

State-required health insurance cost increase.

- Insert \$5,000 in funding for Newberry Free Medical Clinic \$5,000 (Expenditure Line Item Number: 010-005-12400-02020). Increase Property Taxes by \$5,000 (Line Item Number: 010-004-00040-00413).

Provides funding to this organization for the first time.

- Increase Coroner's personnel and fringe budgets by \$4,000 (from \$ 53,707 to \$57,707. Expenditure line item numbers listed below:

010-005-05600-01010 (Personnel) from \$43,883 to 46,883

010-005-05600-01110 (Social Security) from \$3,892 to \$4,277

010-005-05600-01120 (Retirement) from \$2,439 to \$2,669

010-005-05600-01200 Workers' Comp from \$1,494 to \$2,157

This amendment would increase Property Taxes by \$4,000 (Line Item Number: 010-004-00040-00413).

Raises the Coroner's salary by \$3,000 and addresses associated payroll costs.

- Increase Newberry Soil and Water Conservation allocation by \$17,000 (from \$28,000 to \$45,000). Expenditure Line Item Number: 010-005-11400-02020. This amendment will increase Property Taxes by \$17,000 (Line Item Number: 010-004-00040-00413).

This amendment increases the annual appropriation for NCSWC by \$17,000.

- Increase Central Magistrates Court jury fees by \$6,000 (from \$19,000 to \$25,000) Line Item Number: 010-005-05700-01040 Jury Fees. This amendment will increase Property Taxes by \$6,000 (Line Item Number: 010-004-00040-00413).

Current-year jury fee expenditures are annualizing \$6,000 above budget. This amendment adjusts upward the line item for this purpose accordingly.

- Increase Council Contingency by \$150,000 (from \$89,552 to \$239,552) Line Item Number: 010-005-15000-02011. This amendment will increase Net Balance Brought Forward by \$150,000 (from \$321,503 to \$471,503). (Line Item Number: 010-004-00040-00700).

This amendment would enable Council sufficient latitude during the budget year to purchase the Market Basket property, if it so desires. Funding would come from fund balance, not an increase in the millage.

7. **Ordinance #04-08-13:** An Ordinance to provide appropriations for the Fiscal Year beginning July 1, 2013, and ending June 30, 2014, for the Newberry County Library, Piedmont Technical College and the Newberry Agency for the Disabilities and Special Needs; to provide for the levy of taxes on all taxable personal and real estate properties in Newberry County for said purposes; to provide for the expenditure of said taxes and other revenues received by the county during said fiscal year for said purposes.
 - a. Third Reading

See proposed amendments – next page.

PROPOSED AMENDMENTS

- Increase Newberry Library insurance by \$13,490 (from \$23,480 to \$36,970). Line Item Number: 020-005-10100-01130. Amendment will increase Property Taxes by \$13,490 (Line Item Number: 010-004-00040-00413).

This is a state-required health insurance cost increase.

- Increase Newberry Library allocation by \$22,500 (from \$342,821 to \$365,321). Line Item Number: 020-005-10100-02020. Amendment will increase Property Taxes by \$22,500 (Line Item Number: 010-004-00040-00413).

This amendment provides for a general increase of \$22,500 in the Library's annual appropriation.

- Increase Piedmont Technical College by \$513,850 (from -0- to \$513,850). Line Item Number: 020-005-14800-.04160 – One-Time Capital Purchases. Funding for this increase in the amount of \$500,000 will be from the escrow funds from the sale of the Nursing Home. The remaining \$13,850 will be added to property taxes (Line Item Number: 010-004-00040-00413).

This amendment uses \$500,000 from nursing home sale escrow and \$13,850 in current-year (FY 13-14) property tax revenues to purchase "mechatronics" equipment for student training at Piedmont Technical College. In the fall of 2014, PTC will begin offering a two-year degree in this field at the Newberry campus.

8. **Resolution #06-13:** A Resolution to ratify and approve Mutual Aid Agreements and/or other Inter-Jurisdictional Agreements entered into by the Newberry County Sheriff's Office.

Law enforcement mutual aid agreements require County Council's approval.

9. **Consideration to approve bid for paving of Twin Springs Road (Bid Opening on June 18, 2013) – Crystal Waldrop, Purchasing Director**

The State is funding the cost of this project, which will serve the new Kiswire plant on Hwy. 76 (CR Koon Hwy.) The grant was for \$300,000. The low bid was \$157,328, and has been reviewed by Alliance Engineering.

10. **Consideration to approve Multi-Party Agreement for SC Highway 773 intersection realignment of Market Place Avenue at Market Place Business Park– Mike Pisano, Public Works Director**

Jay had initially been wary of this agreement but is now satisfied, due to the fact that the additional property SC DOT wants the County to maintain will be transferred to the County fee simple (not just an easement).

11. **Consideration to cancel County Council meeting on August 7, 2013 (SCAC Annual Meeting)**

Several, if not all, Council members will be at the SC Association of Counties' annual conference.

12. **Appointments**

13. **Public Comments (by those who signed up at the meeting)**

14. **Executive Session (if needed)**

a. §30-4-70(a) (1) SC Code of Laws: Discussion of employment, appointment, compensation, promotion, demotion, discipline, or release of an employee, a student, or a person regulated by a public body or the appointment of a person to a public body; however, if an adversary hearing involving the employee or client is held, the employee or client has the right to demand that the hearing be conducted publicly. Nothing contained in this item shall prevent the public body, in its discretion, from deleting the names of the other employees or clients whose records are submitted for use at the hearing.

Evaluations of Clerk to Council and County Administrator

15. Comments from County Administrator

16. Comments/Request from Council Members

17. Future Meetings

- a. Economic Development Committee – 6/24/13 @ 6:00 p.m.
- b. County Council – 7/3/13 @ 7:00 p.m.
- c. Finance Committee – 7/8/13 @ 6:00 p.m.
- d. County Council – 7/17/13 @ 7:00 p.m.

18. Adjournment

011^21. Jayroe email to Adams
1-27-2014.pdf

Wanda Hill

ROA 00729

From: Arthur Jayroe <AJayroe@jayroecpa.com>
Sent: Monday, January 27, 2014 5:21 PM
To: wadams@newberrycounty.net
Cc: Wanda Hill
Subject: FW: ** 2014 01 27 Inclement Weather Closings.doc **
Attachments: 2014 01 27 Inclement Weather Closings.doc

From: Lipson, Renee A. [<mailto:rlipson@sccourts.org>]
Sent: Monday, January 27, 2014 4:33 PM
To: Lipson, Renee A.
Subject: ** 2014 01 27 Inclement Weather Closings.doc **

Renee Lipson
SCCA Staff Attorney
(803) 734-1800

ROA 00729



ROA 00730

The Supreme Court of South Carolina

JEAN HOEFER TOAL
CHIEF JUSTICE

1231 GERVAIS STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1584
FAX: (803) 734-1167

MEMORANDUM

TO: Supreme Court
Court of Appeals
Clerks of Court
Circuit Court
Masters-In-Equity
Family Court
Probate Court
Magistrates
Municipal Judges
SCJD Staff

FROM: Chief Justice Jean Hoefer Toal

RE: Judicial Closings Due to Inclement Weather

DATE: January 27, 2014

Due to the forecasted snow accumulation accompanied by ice throughout most of South Carolina, I am directing that the following counties (and municipalities contained therein) close court operations on Tuesday, January 28, 2014:

Aiken, Allendale, Bamberg, Barnwell, Berkeley, Calhoun, Chesterfield, Clarendon, Darlington, Dillon, Dorchester, Edgefield, Fairfield, Florence, Greenwood, Hampton, Horry, Jasper, Kershaw, Lancaster, Laurens, Lee, Lexington, Marion, Marlboro, McCormick, Newberry, Orangeburg, Richland, Saluda, Sumter, Union, Williamsburg.

The following counties (and the municipalities contained therein) shall follow the same winter weather hazard decisions made by the county government officials on Tuesday, January 28, 2014 where the Judicial Department Offices are located.

Beaufort, Charleston, Colleton, Georgetown.

ROA 00730

ROA 00731

The following counties (and municipalities contained therein) shall be open Tuesday, January 28, 2014, during normal business hours unless winter weather hazard decisions are made by county government officials where the Judicial Department Offices are located:

Abbeville, Anderson, Cherokee, Chester, Greenville, Oconee, Pickens, Spartanburg, York.

Unless I issue a new directive by 1:00 p.m. tomorrow, Tuesday, January 28, 2014, I ask that you follow the same schedules for court closure and open courts on Wednesday, January 29, 2014, as outlined above. Directives will be issued by e-mail and posted on our website at www.sccourts.org. If hazardous weather conditions continue beyond Wednesday, January 29, 2014, consult the Court website.

In regards to bond hearings, in those counties that are to be closed Tuesday, January 28, 2014 and Wednesday, January 29, 2014 (if determined), a minimum of one bond hearing daily should be conducted if at all possible. In those counties following local officials' determinations, if at all possible, at least one bond hearing should be conducted. In the remaining counties, you should adhere to your normal bonding schedule. In all three cases, assistance from law enforcement would prove immensely helpful. I would ask that you distribute this document to your local law enforcement officials.

JHT/mhb

Cc: Media outlets
SC Bar Association
Department of Public Safety

ROA 00731

012^8. Adams email to Tothacer
2-25-2014.pdf

Jay Tothacer

ROA 00733

From: Wayne Adams <wadams@newberrycounty.net>
Sent: Tuesday, February 25, 2014 9:29 AM
To: Jay Tothacer
Subject: Change to 3 FT Magistrates
Attachments: Three Full-Time Magistrates Request.doc; Untitled attachment 00014.txt

Follow Up Flag: Follow up
Flag Status: Flagged

Would this work for our purposes?

ROA 00733

May 5, 2014

Senator Ronnie Cromer
SC Senate District 18
311 Gressette Building
Columbia, SC 29201

Re: Compensation, hours and location of magistrates [SC Code Section 22-1-10 (A)]

Dear Senator Cromer:

In accordance with Code Section 22-1-10 (A), Newberry County Council is requesting changes in the "number of full-time and part-time magistrate positions available in the county, the number of work hours required by each position, the compensation for each position, and the area of the county to which each position is assigned."

The County requests that its complement of magistrates be changed to include only full-time magistrates, beginning on the soonest date allowable under state statute. The payment of salaries for these magistrates would be as required under Code Section 22-8-40, et seq., and their location assignments would be as determined by the magistrate thereafter designated as chief magistrate.

This letter is written more than 90 days prior to the commencement of magistrates' terms, as required under Code Section 22-1-10 (A), and we request that you act upon it according to the appropriate timing.

Thank you for your kind attention to this request.

With best regards,

ROA 00735

Wayne Adams, Newberry County Administrator

Cc: Newberry County Council
Newberry County Magistrates

DRAFT

ROA 00735

013^3. Adams email to Tothacer
3-1-2014.pdf

Jay Tothacer

ROA 00737

From: Wayne Adams <wadams@newberrycounty.net>
Sent: Thursday, March 01, 2012 4:54 PM
To: Kirksey Koon; John Caldwell; Steve Stockman; Bill Waldrop; Edgar Baker; Laurie Renwick; Les Hipp; Buddy Livingston
Cc: Jay Tothacer
Subject: Proposed Magistrates Agreement
Attachments: Magistrates Agreement .pdf; ATT00004.txt
Follow Up Flag: Follow up
Flag Status: Flagged

Gentlemen,

Attached is a draft of the proposed agreement with Senator Cromer concerning the appointment of magistrates. The agreement specifies three full-time magistrates but could be changed if Council should decide differently. You will recall that Council and Senator Cromer decided to take this matter up as an executive session item next Wednesday.

Wayne

STATE OF SOUTH CAROLINA)
)
 COUNTY OF NEWBERRY)

MEMORANDUM OF UNDERSTANDING

THIS AGREEMENT, made and entered into this ____ day of March, 2012, by and between the COUNTY OF NEWBERRY, SOUTH CAROLINA, a body politic and corporate and a political subdivision of the State of South Carolina, hereinafter called "COUNTY", and Ronnie W. Cromer, hereinafter called "SENATOR," both of which agree and understand as follows:

WITNESSETH:

WHEREAS, the COUNTY, pursuant to § 22-2-35 (C), of the Code of South Carolina, 1976, as amended, to recommend to the SENATOR that Newberry County hereafter desires to be served by three (3) full time magistrates (the entire complement as required by the statutory formula contained in § 22-8-40 (C) of the Code of South Carolina, 1976; and

WHEREAS, COUNTY and SENATOR shall work cooperatively to coordinate Countywide coverage through efficient scheduling at a centralized location designated and provided by the County:

NOW THEREFORE, in consideration of the mutual covenants and promises herein contained herein, the sufficiency of which is acknowledged, the parties hereto agree as follows:

- COUNTY agrees to provide adequate facilities and funding for staff and necessary materials to create a centralized Summary Court location.
 - The SENATOR will appoint no more than three (3) qualified candidates for as full-time magistrates to serve the citizens of the County and will ensure that the selected Chief Magistrate will schedule the efforts of all magistrates and staff to ensure that the Citizens will have the required access to judicial services.
- This agreement shall take effect as soon as practicable within the recommendation and appointment power of the SENATOR.
- A copy of this Executed Memorandum of Understanding shall be transmitted to South Carolina Court Administration in compliance with the statutory requirements.

THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

IN WITNESS WHEREOF, the parties hereto have caused this Memorandum of Understanding to be signed and executed on their behalf in duplicate the day and year first written above.

COUNTY OF NEW HERRY

BY: _____
Wayne Adams, County Administrator

ATTEST:

BY: _____
Laurie C. Renwick, Clerk to Council

BY: _____
Bonnie W. Cromer, State Senator

DRAFT

014^45. Halfacre email to
Adams 4-16-2014 (2).pdf

From: Judge Ron Halfacre RHalfacre@Newberrycounty.net
Subject: RE: ** Attorney General Opinion **
Date: April 16, 2014 at 9:53 AM
To: Wayne Adams wadams@newberrycounty.net

ROA 00741

I did forward this opinion to Chief Deputy Todd Johnson

ROA 00741

015^45. Halfacre email to
Adams 4-16-2014.pdf

From: Judge Ron Halfacre RHalfacre@Newberrycounty.net
Subject: RE: ** Attorney General Opinion **
Date: April 16, 2014 at 9:53 AM
To: Wayne Adams wadams@newberrycounty.net

ROA 00743

I did forward this opinion to Chief Deputy Todd Johnson

ROA 00743

016^46. Adams email to
Halfacre 4-16-2014 (2).pdf

From: Wayne Adams wadams@newberrycounty.net
Subject: Re: ** Attorney General Opinion **
Date: April 16, 2014 at 9:04 AM
To: Judge Ron Halfacre RHalfacre@Newberrycounty.net

ROA 00745

Thanks for this info. Have you shared it with Sheriff Foster?

ROA 00745

017^46. Adams email to
Halfacre 4-16-2014.pdf

From: Wayne Adams wadams@newberrycounty.net
Subject: Re: " Attorney General Opinion "
Date: April 16, 2014 at 9:04 AM
To: Judge Ron Halfacre RHalfacre@Newberrycounty.net

ROA 00747

Thanks for this info. Have you shared it with Sheriff Foster?

ROA 00747

018^3. Adams email to Renwick
7-14-2014 (2).pdf

From: Wayne Adams wadams@newberrycounty.net
Subject: as discussed
Date: July 14, 2014 at 4:52 PM
To: Laurie Renwick lrenwick@newberrycounty.net

ROA 00749



ROA 00749

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY

IN THE COURT OF COMMON PLEAS
ROA 00750

C.A. No. 2011-CP-36-464

Thomas Abraham,

Plaintiff,

v.

Newberry County,

Defendant.

ORDER

This matter is before the Court for a decision on stipulated facts, as set out below. The parties have asked the court to resolve four issues arising under the Magistrate's Pay Act. Those issues are: (1) whether the plaintiff here is entitled to call pay as a full-time magistrate; (2) whether the plaintiff is entitled to call pay for the entire call period or only for the times when he is actually out on call; (3) whether the plaintiff may be reclassified from a full-time magistrate to a part-time magistrate during his term of office and, if not, the measure of his damages; (4) whether the plaintiff is entitled to a portion of the supplemental full-time magistrate's pay the County voluntarily provided by resolution to the Newberry County Magistrate's Court; and (5) whether the plaintiff is entitled to a portion of the Section 22-8-40(G) statutory supplement for chief magistrates.

STIPULATED FACTS

1. Plaintiff, Thomas Abraham, is a former magistrate who served in the Newberry County Magistrate's Office. He was appointed by Governor Jim Hodges to be a part-time magistrate on April 4, 2002, on the advice and consent of Sen. Andre Bauer.

2. In November 2005, Plaintiff was first by Governor Mark Sanford as a full-time magistrate on the advice and consent of Sen. Ronnie Cromer. In March 2011, he was advised by Sen. Cromer that he would not be reappointed as a full-time magistrate when his appointment

AM

ROA 00750

expired and that he would serve as a part time magistrate beginning June 3, 2011. On June 3, 2011, ROA 00751
Abraham was advised by Chief Magistrate Arthur Jayro that he was being reclassified as a
part-time magistrate working 12 hours per week. He served in that capacity until his term expired
on February 9, 2012, when he was told by Court Administration that he had not been reappointed.

3. Newberry County ("the County") had no appointment or removal authority over Plaintiff in his capacity as a magistrate. However, the County must fund the salaries of County magistrates pursuant to the Magistrate's Pay Act ("the Act"), S.C. Code Ann. §§ 22-8-10, et. seq.

4. The County's magistrates worked a rotating schedule of call duty to handle weekend and holiday bond court and emergency issues. The "call period" lasts from the end of the last regular business day until the start of the next regular business day, meaning that on weekends, for example, the call period is 5 p.m. Friday until 8:30 a.m. Monday. Weekend bond court is typically held at 10 a.m. and 4 p.m. on both Saturday and Sunday. Sporadically, Plaintiff would also have to respond to after-hours requests for warrants and the like. Plaintiff worked call duty every fifth week.

5. While on call, Plaintiff was required to stay within the County's borders in case of an emergency unless he notified someone that he was leaving the County. He slept at home and was able to travel anywhere within the County for personal business and without the County if he provided notice. Plaintiff lived approximately 16 miles from Central Court.

6. The parties stipulate solely for purposes of this litigation that Plaintiff had call duty for a total of 2,400 hours, 1,920 hours of which were while he was a full-time magistrate and 480 hours of which were while he was a part-time magistrate. The parties further stipulate solely for purposes of this litigation that Plaintiff was actually performing duties while on call for a total of 612 hours, 489 hours of which were while he was a full-time magistrate and 84 hours of which

were while he was a part-time magistrate.

7. For purposes of calculating damages and by way of stipulation, Plaintiff's hourly rate at all times relevant was \$22.25. ROA 00752

8. Throughout the time that Plaintiff served as a full-time magistrate, the County voluntarily agreed by resolution to provide a supplement to the magistrate's court in the amount of \$4,500 ("the voluntary supplement"). The voluntary supplement was not mandated by law, but was intended as additional compensation for full-time magistrate judges. In December 2005, Chief Magistrate Arthur Jayroe began paying the entire supplement to himself. Prior to this time, the two full-time magistrates who performed the administrative duties of the magistrate court had agreed to divide the supplement equally between them. At no time was Plaintiff ever paid the voluntary supplement.

9. Every six months, the South Carolina Supreme Court issues an administrative order designating the chief magistrates for the next six-month period. Pursuant to Section 22-8-40(G) of the Act, the County must provide a supplement of \$1,500.00 to a "part-time chief magistrate" or a supplement of \$3,000.00 to a "full-time chief magistrate" as those terms are defined by the Act. In December 2005, Chief Magistrate Arthur Jayroe began keeping the entire supplement.

10. At no time while he served as a magistrate was Plaintiff ever appointed by the South Carolina Supreme Court as the Chief Magistrate.

11. Plaintiff, along with another magistrate judge, performed most of the administrative duties during his time as a full-time magistrate judge, including:

a) The majority of warrant review and signing for law enforcement after regular business hours;

b) Holiday and weekend on-call/bond court work as previously described

above;

ROA 00753

- c) From 2005 until June 10, 2011, Plaintiff held the title of chief administrator of Newberry Central Court and was responsible for the Central Court's finances;
- d) Reviewing and approval of timesheets;
- e) Performing staff evaluations;
- f) Signing requisitions for supplies and materials for Central Court;
- g) Attending all County department head meetings on behalf of the magistrate court;
- h) Preparing rosters of jury trials;
- i) Overseeing installation of modern recording and HVAC systems in Central Court courtrooms;
- j) Calling a County Council meeting to discuss security at Central Court;
- k) Hiring bailiffs for the County;
- l) Requesting the expansion of the Central Court parking lot;
- m) Implementing a computerized bonding system; and
- n) Helping implement the Newberry and Laurens Counties Worthless Check Program and setting up the Criminal Domestic Violence Court in Newberry County.

INTRODUCTION

1. The Case

The Plaintiff was appointed by Governor Mark Sanford to be a full-time magistrate in Newberry County in 2005. (Stipulated Facts ¶ 2). Plaintiff was "reassigned" to the position of part-time magistrate on June 3, 2011 by his local Senator, and served as Part-Time Magistrate until February, 2012. (*Id.*) As a full-time magistrate, Plaintiff performed, along with another

ROA 00753

full-time Magistrate, the majority of the administrative duties for the county court systems.

(Stipulated Facts ¶ 11). Plaintiff contends he is entitled to the following: call pay for time

ROA 00754

scheduled to be spent on-call during his tenure as a full-time and later part-time magistrate, damages resulting from being inappropriately reclassified to the position of part-time magistrate, a one-half share of an excess supplement provided by the County (see Stipulated Facts ¶ 8), and a one-half share of the of the § 22-8-40(G) statutory supplement for chief magistrates.

2. The Statute.

Pursuant to Article 5, Section 1, of the South Carolina Constitution, South Carolina has a unified judicial system and the General Assembly, not the counties, has the authority to set the base pay for magistrates. S.C. Const. Art. V § 1; *see also*, S.C. Const. Art. VIII § 14 *Douglas v. McCleod*, 277 S.C. 76, 282 S.E.2d 604 (1981). By way of §22-8-10 *et. seq.* of the South Carolina Code of Laws, collectively referred to as the Magistrates Pay Act (hereinafter, "the Act"), the General Assembly has set the base magistrates must, but not the maximum magistrates may, be paid. §22-8-40(B, and K-L). Section 22-8-10(2) of the Act defines a "full-time magistrate" as "a magistrate who regularly works forty hours a week performing official duties required of a magistrate as a judicial officer." Under the act a "part-time magistrate" is one who regularly works less than 40 hours, and the "chief magistrate" is designated by the Chief Justice of the South Carolina Supreme Court as the chief magistrate for administrative purposes for the county in which he serves. S.C. Code Ann. § 22-8-10(1) and (3).

Section 22-8-40 is the operative statute governing pay to magistrates. Subsection (B) of § 22-8-40 sets full-time magistrate pay as a proportional fraction of the pay for circuit judges in a subject county; time of service and the population of a county also effect the pay. S.C. Code Ann. § 22-8-40(B)(1-2). Part-time magistrate pay is computed as a proportion of full-time magistrate

pay calculated by dividing the part-time magistrate's average weekly hours, including time scheduled to be spent on-call, by forty (40) hours. S.C. Code Ann. § 22-8-40 (F). The Act does not make a distinction between time actually working on-call and time "scheduled to be spent on-call". *Id.* A full-time chief magistrate is entitled to a yearly supplement of \$3,000 and reimbursement for travel expenses, a part-time chief magistrate is entitled to a supplement of \$1,500 and reimbursement for travel expenses. S.C. Code Ann. § 22-8-40 (G). A magistrate receiving a greater salary than is provided for in the Act may not have his salary reduced during his tenure in office. § 22-8-40(J).

3. The Case Law

The case law interpreting the Act is sparse. The Court has held that the act sets the base for magistrate pay, and that where full-time magistrates are paid more than their allotted amounts, part-time magistrates are likewise entitled to a proportionate increase. *Cox v. County of Florence*, 337 S.C. 340, 523 S.E. 2d 7776 (1999). Regarding on-call time and classification, the Court has held that part-time magistrates "were entitled to compensation for time 'scheduled to be spent on call,'" and that where Ramsey, a part-time chief magistrate, "was, in substance, performing the duties of [a] full-time Chief Magistrate . . . she was entitled to compensation" as a full-time chief magistrate. *Ramsey v. County of McCormick*, 306 S.C. 393, 397-398, 412 S.E. 2d 408, 411 (1991). In *Davis v. County of Greenville*, Greenville County informed several county magistrates, appointed by the Governor, that their positions were to be eliminated. 322 S.C. 73, 470 S.E.2d 94, (1996). The Court, in *Davis*, concluded that Greenville County did not have the authority to prematurely end the magistrates' tenures as the appointment of magistrates was within the purview of the Governor, and the number of magistrates to be funded was set by the Act.¹ *Id.*

¹ However the Court held, in *Graves v. County of Marion*, that a magistrate's pay could be decreased where the magistrate's salary had been increased due to a contract with the Town of

at 75 fn. 1 and 78. The Court's analysis and holdings in *Cox*, *Ramsey*, and *Davis* are most implicated in this matter.²

ROA 00756

To the extent that issues implicated here are novel, the principles of statutory interpretation should resolve the inquiries. See, *Ramsey*, 306 S.C. at 396-397. The cardinal rule of statutory interpretation is to ascertain the intent of the legislature. *State v. Scott*, 351 S.C. 584, 588, 571 S.E.2d 700, 702 (2002); see also *Olson v. Faculty House of Carolina, Inc.*, 344 S.C. 194, 205, 544 S.E.2d 38, 44 (Ct. App. 2001) ("The quintessence of statutory construction is legislative intent."). "Where the words of a statute are clear and unambiguous its terms must be given their literal meaning." *Ramey*, 306 S.C. at 396; citing, *Duke Power Co. v. S. C. Tax Commission*, 292 S.C. 64, 354 S.E.2d 902 (1987). On the other hand, even when a statute is clear and unambiguous the Court should not read it in a way to foster an absurd result. See, *Stackhouse v. County Bd. of Comm'rs for Dillon County*, 86 S.C. 419, 68 S.E. 561 (S.C. 1910).

However plain the ordinary meaning of the words used in a statute may be, the Courts will reject that meaning, when to accept it would lead to a result so plainly absurd that it could not possibly have been intended by the legislature, or would defeat the plain legislative intention; and if possible will construe the statute so as to escape the absurdity and carry the intention into effect.

Id at 422.

It follows from a clear reading of the Act that the intent of the legislature in passing the Act was to ensure that magistrates were compensated for their service in a uniform and fair manner. See *Scott*, 351 S.C. at 588. "Courts should consider not merely the language of the particular clause being construed, but the word and its meaning in conjunction with the purpose of the whole

Mullins, and that contract was ended. 346 S.C. 742, 552 S.E.2d 709 (2001).

² Prior to the Act, the Court determined that the counties did not have the authority to set the pay for magistrates. *Douglas*, 322 S.C. 73. The Attorney General's office has issued two opinions on the act, concerning the calculation of pay and value of part-time magistrate positions, and magistrates' entitlement to health and other employment benefits. Atty. Gen. Op. 2001 S.C. AG LEXIS 129; and, Atty. Gen. Op. 2001 S.C. 135.

statute and the policy of the law." *Georgia-Carolina Bail Bonds, Inc.* at 24, 579 S.E.2d at 337 (citing *Whitner v. State*, 328 S.C. 1, 492 S.E.2d 777 (1997)).

ROA 00757

The governing law and the language of the magistrate's pay act, when effectuated in accord with the intent of the Act, demonstrate that (1) the Plaintiff is not entitled to on-call pay for time scheduled to be on-call as a full-time, (2) the Plaintiff is not entitled to on-call pay for time scheduled to be on-call as a part-time magistrate, (3) the Plaintiff should not have been reclassified as a part-time magistrate mid-term, (4) the Plaintiff is not entitled to a proportion of the voluntary supplement, and (5) the Plaintiff is not entitled to a proportion of the § 22-8-40(G) statutory supplement.

ANALYSIS

I. Plaintiff is not entitled to call pay during the time he served as a full-time magistrate.

Plaintiff asserts that the Act requires that he receive call pay during the time he served as a full-time magistrate. The court disagrees.

"The cardinal rule of statutory construction is a court must ascertain and give effect to the intent of the legislature." *State v. Scott*, 351 S.C. 584, 588, 571 S.E.2d 700, 702 (2002) (citing *Charleston Cnty. Sch. Dist. v. State Budget & Control Bd.*, 313 S.C. 1, 437 S.E.2d 6 (1993)); *Florence Cnty. Democratic Party v. Florence Cnty. Republican Party*, 398 S.C. 124, 128, 727 S.E.2d 418, 420 (2012). "What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will." *Scott, supra* (quoting Norman J. Singer, *Sutherland Statutory Construction* § 46.03 at 94 (5th ed. 1992)). Therefore, "[i]f a statute's language is plain, unambiguous, and conveys a clear meaning 'the rules of statutory interpretation are not needed and the court has no right to impose another meaning.' " *Id.* (quoting *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000)); see also *State v. Pittman*, 373 S.C. 527, 561, 647 S.E.2d 144, 161

(2007) ("All rules of statutory construction are subservient to the maxim that legislative intent must prevail if it can be reasonably discovered in the language used.").

ROA 00758

Here, the Act refers to call pay in only one paragraph. Section 22-8-40(F) states:

Part-time magistrates are entitled to a proportionate percentage of the salary provided for full-time magistrates. This percentage is computed by dividing by forty the number of hours a week the part-time magistrate spends in the performance of his duties. The number of hours a week that a part-time magistrate spends in the exercise of the judicial function, *and scheduled to be spent on call*, must be the average number of hours worked and is fixed by the county governing body upon the recommendation of the chief magistrate. However, a part-time magistrate must not work more than forty hours a week, unless directed to do so on a limited and intermittent basis by the chief magistrate.

Id. (emphasis added). The South Carolina Supreme Court interpreted that provision in *Ramsey v. County of McCormick*, 306 S.C. 393, 412 S.E.2d 408 (1991). The Court noted that § 22-8-40(F)³ "deals specifically with *part-time* magistrates' compensation." *Id.*, 306 S.C. at 397, 412 S.E.2d at 410 (emphasis added). The Court then held that "the Circuit Court correctly held that *part-time* magistrates are entitled to compensation for time 'scheduled to be spent on call.'" *Id.*, 412 S.E.2d at 411 (emphasis added).

The legislative intent of § 22-8-40(F) is obvious. Per the holding in *Ramsay*, to fix a part-time magistrate's pay based on a limited number of hours, and then require him to serve call duty without pay when those hours were exceeded, would be inherently inequitable. Conversely, a full-time magistrate is paid a full salary regardless of the number of hours worked. Had the legislature intended to require the payment of call pay for full-time magistrates, it could have done so. Nowhere else in the Act is there any reference to "call." "[W]hat a legislature says in the text of a statute is considered the best evidence of the legislative intent or will." *Scott, supra*. Clearly, the legislature did not intend for full-time magistrates to be entitled to additional call pay.

³ Formerly 22-8-40(D).

ROA 00758

Accordingly, Plaintiff is due no call pay for the period of time that he served as a full-time magistrate.

ROA 00759

II. The Plaintiff is not entitled to call pay for all times scheduled to be on call as a part time magistrate.

The Plaintiff asserts that he is entitled to pay for all time scheduled to be on call both as a part-time and full-time magistrate. It is uncontested that, had Plaintiff been officially appointed a part-time magistrate, Plaintiff would have been entitled to call pay for time spent on call. The Defendant successfully contests Plaintiff's entitlement to call pay as a full-time magistrate. (see part I, supra). Normally, Plaintiff would be entitled to call pay for all times scheduled to be on call as a part-time magistrate. However, as discussed in section III below, the court finds Plaintiff was incorrectly reclassified from a full-time magistrate to a part-time magistrate, and damages are being awarded to compensate Plaintiff for this improper reclassification. As explained previously, a full-time magistrate is not entitled to call pay. Therefore, to avoid double compensation, Plaintiff will not be compensated for times scheduled to be on call as a part time magistrate for the period between June, 2011 and February 9, 2012.

Additionally, the court is uncertain whether the full rate of \$22.25 would be appropriate payment for merely being on call. Certainly, some compensation for the inconvenience of being unable to leave the county or begin unable to make definite plans would be warranted. However, as previously stipulated, a magistrate who was on call did not have to remain at his office the entire time. He was free to enjoy other pursuits, and he only had to come in periodically for bond court or to sign warrants when requested by law enforcement. Accordingly, even had this court found that Plaintiff was entitled to call pay, the court would not have set call pay at Plaintiff's full hourly rate.

III. The Plaintiff should not have been reclassified from a full-time magistrate to a part-time magistrate during his term of office and is entitled to damages.

ROA 00760

The Plaintiff was appointed to the position of full-time magistrate by Governor Mark Sanford, with the advice and consent of Senator Ronnie Cromer. In June, 2011, before the expiration of his term on February 9, 2012, Plaintiff was "reassigned" to be a part-time magistrate through oral instructions of the Senator and a letter from Newberry County Part-Time Chief Magistrate Arthur Jayroe. (Stipulated Facts ¶12). Article Five, Section 26 of the South Carolina Constitution provides:

The Governor, by and with the advice and consent of the Senate, shall appoint a number of magistrates for each county as provided by law. The General Assembly shall provide for their terms of office and their civil and criminal jurisdiction. The terms of office must be uniform throughout the State.

Pursuant to the South Carolina Constitution, Plaintiff could not be "reassigned" by the Senator or Magistrate Jayroe to the position of part-time magistrate, a separate position also subject to gubernatorial appointment. (See, Stipulated Facts ¶ 1). Furthermore, § 22-8-40(J) prohibited the reduction of Plaintiff's salary mid-tenure; Plaintiff's salary was reduced by the unauthorized reassignment, and the Defendant is liable for the same. *See, Atty. Gen. Op. 2001 S.C. 135; see also, S.C. Code Ann. 22-8-40(H)*. This Court holds, consistent with the Supreme Court's holdings in *Davis* and *Douglas*, that the Plaintiff's transfer was inappropriate, and consequently, he is entitled to damages for the same.⁴ *Davis*, 322 S.C. 73; and, *Douglas*, 277 S.C. 76 (prior to the Act).

The Plaintiff is entitled to an award of \$21,805 for lost income caused by his unauthorized reassignment to the position of part-time magistrate (calculated by multiplying his stipulated

⁴ This case is distinct from *Graves*, where the subject magistrate's salary was increased due to a contract with the Town of Mullins and decreased upon the lawful conclusion of that contract. 342 S.C. 472).

ROA 00760

hourly wage by 40 hours by 35 weeks (June 3, 2011 to February 9, 2012) and subtracting from the product the wages Plaintiff received as a part-time magistrate for the subject period). (See, Stipulated Facts ¶¶ 2 and 7). ROA 00761

IV. Plaintiff is not entitled to a portion of the supplemental full-time magistrate's pay the County voluntarily provided by resolution to the Newberry County Magistrate's Court.

Plaintiff contends that he is entitled to a portion of the \$4,500 in supplemental pay the County voluntarily agreed by resolution to provide to the magistrate's court. Plaintiff complains that Chief Magistrate Arthur Jayroe began keeping the entire supplement for himself in December 2005. Prior to this time, the two full-time magistrates who performed the administrative duties of the magistrate court had agreed to divide the supplement equally between them.

The Act does not mandate the supplement at issue. Thus, the County had no legal duty to provide it. Once paid into the magistrate's court, the County lost control over it. *See Sheppard v. Richland County General Sessions*, 2013 WL 1686278, at *2 (D.S.C. Mar. 27, 2013) ("Horry County Magistrate Court [is] within the State of South Carolina's unified judicial system.") (citing Article V, Section 1 of the Constitution of the State of South Carolina) ("The judicial power shall be vested in a unified judicial system, which shall include a Supreme Court, a Court of Appeals, a Circuit Court, and such other courts of uniform jurisdiction as may be provided for by general law.")). As the court stated in *Dunbar v. Metts*, 2011 WL 1480279, at *5 (D.S.C. Mar. 31, 2011) (emphasis added; footnote omitted):

Moreover, the City of Lexington or the Lexington City Council cannot be held responsible for actions taken by the Municipal Court for the City of Lexington, the Magistrate's Court for Lexington County, and the Court of General Sessions (Circuit Court) for Lexington County. It can be judicially noticed that, in South Carolina, a county's authority over courts within its boundaries was abolished when Article V of the Constitution of the State of South Carolina was ratified in 1973. See Act No. 58, 1973 S.C. Acts 161; Article V, Section 1 of the Constitution of the State of South

Carolina; and State ex rel. McLeod v. Civil and Criminal Court of Horry County, 265 S.C. 114, 217 S.E.2d 23, 24 (1975). Under the current version of Article V, Section 1, *the Supreme Court of South Carolina, not the City of Lexington or Lexington County, retains the sole authority to supervise magistrates' courts in Lexington County, municipal courts in Lexington County, and the Circuit Court for Lexington County.*

ROA 00762

The parties stipulate that the "[t]he voluntary supplement was not mandated by law." Once the County relinquished control of the voluntary supplement, it lost the right and responsibility to dictate its allocation. Thus, the County is not liable for the actions of Judge Jayroe when he chose to allocate that supplement to himself.

Accordingly, the County is not liable to Plaintiff for any portion of the voluntary supplement it provided to the magistrate's court.⁵

V. Plaintiff is not entitled to a portion of the Section 22-8-40(G) statutory supplement required by the Act.

The Act provides:

A full-time *chief magistrate* must be paid a yearly supplement of three thousand dollars and reimbursed for travel expenses as provided by law while in the actual performance of his duties. A part-time *chief magistrate* must be paid a yearly supplement of fifteen hundred dollars and reimbursed for travel expenses as provided by law while in the actual performance of his duties.

S.C. Code § 22-8-40(G) (emphasis added). "Chief magistrate" is defined by the Act as "the magistrate in each county who is designated by the Chief Justice of the South Carolina Supreme Court as the chief magistrate for administrative purposes for the county which he serves." *Id.* § 22-8-10(1).

Plaintiff misreads *Ramsey*. There, the issue was whether a properly designated chief magistrate was entitled to the full-time or lesser part-time supplement for chief magistrates. Here,

⁵ To the extent Plaintiff has a claim against anyone for these funds, it would appear to be more correctly directed at Chief Magistrate Arthur Jayroe, not the County. In fact, Plaintiff initially named Judge Jayroe in this action but voluntarily dismissed him as a defendant.

ROA 00762

the parties stipulate that "[a]t no time while he served as a magistrate was [Plaintiff] ever appointed by the South Carolina Supreme Court as the Chief Magistrate." Under the plain language of the Act, this claim fails. ROA 00763

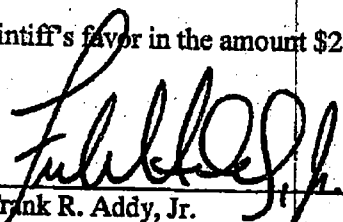
CONCLUSION

Based on the above, the court hereby orders the following:

- A. Plaintiff is not entitled to call pay during the time he served as a full-time magistrate;
- B. Because of the findings in Section III, Plaintiff is not entitled to call pay for the times he was scheduled to be on call between June 3, 2011 and February, 2012;
- C. Plaintiff is entitled to \$21,805 for reduced compensation caused by the unauthorized reassignment of Plaintiff to a part-time position mid-tenure;
- D. The County is not liable to Plaintiff for any portion of the voluntary supplement it provided to the magistrate's court; and,
- E. Plaintiff is not entitled to the statutory supplement required by Section 22-8-40(G) of the Act because he was never appointed by the South Carolina Supreme Court as Newberry County Chief Magistrate.

Accordingly, judgment shall be entered in Plaintiff's favor in the amount \$21,805.00.

IT IS SO ORDERED.


Frank R. Addy, Jr.
Eighth Judicial Circuit

July 3, 2014
Greenwood, South Carolina

019^3. Adams email to Renwick
7-14-2014.pdf

From: Wayne Adams wadams@newberrycounty.net
Subject: as discussed
Date: July 14, 2014 at 4:52 PM
To: Laurie Renwick lrenwick@newberrycounty.net

ROA 00765



ROA 00765

STATE OF SOUTH CAROLINA
COUNTY OF NEWBERRY

Thomas Abraham,

Plaintiff,

v.

Newberry County,

Defendant.

IN THE COURT OF COMMON PLEAS
ROA 00766

C.A. No. 2011-CP-36-464

ORDER

This matter is before the Court for a decision on stipulated facts, as set out below. The parties have asked the court to resolve four issues arising under the Magistrate's Pay Act. Those issues are: (1) whether the plaintiff here is entitled to call pay as a full-time magistrate; (2) whether the plaintiff is entitled to call pay for the entire call period or only for the times when he is actually out on call; (3) whether the plaintiff may be reclassified from a full-time magistrate to a part-time magistrate during his term of office and, if not, the measure of his damages; (4) whether the plaintiff is entitled to a portion of the supplemental full-time magistrate's pay the County voluntarily provided by resolution to the Newberry County Magistrate's Court; and (5) whether the plaintiff is entitled to a portion of the Section 22-8-40(G) statutory supplement for chief magistrates.

STIPULATED FACTS

1. Plaintiff, Thomas Abraham, is a former magistrate who served in the Newberry County Magistrate's Office. He was appointed by Governor Jim Hodges to be a part-time magistrate on April 4, 2002, on the advice and consent of Sen. Andre Bauer.
2. In November 2005, Plaintiff was first by Governor Mark Sanford as a full-time magistrate on the advice and consent of Sen. Ronnie Cromer. In March 2011, he was advised by Sen. Cromer that he would not be reappointed as a full-time magistrate when his appointment

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ROA 00766

expired and that he would serve as a part time magistrate beginning June 3, 2011. On June 3, 2011, ROA 00767
Abraham was advised by Chief Magistrate Arthur Jayro that he was being reclassified as a
part-time magistrate working 12 hours per week. He served in that capacity until his term expired
on February 9, 2012, when he was told by Court Administration that he had not been reappointed.

3. Newberry County ("the County") had no appointment or removal authority over Plaintiff in his capacity as a magistrate. However, the County must fund the salaries of County magistrates pursuant to the Magistrate's Pay Act ("the Act"), S.C. Code Ann. §§ 22-8-10, et. seq.

4. The County's magistrates worked a rotating schedule of call duty to handle weekend and holiday bond court and emergency issues. The "call period" lasts from the end of the last regular business day until the start of the next regular business day, meaning that on weekends, for example, the call period is 5 p.m. Friday until 8:30 a.m. Monday. Weekend bond court is typically held at 10 a.m. and 4 p.m. on both Saturday and Sunday. Sporadically, Plaintiff would also have to respond to after-hours requests for warrants and the like. Plaintiff worked call duty every fifth week.

5. While on call, Plaintiff was required to stay within the County's borders in case of an emergency unless he notified someone that he was leaving the County. He slept at home and was able to travel anywhere within the County for personal business and without the County if he provided notice. Plaintiff lived approximately 16 miles from Central Court.

6. The parties stipulate solely for purposes of this litigation that Plaintiff had call duty for a total of 2,400 hours, 1,920 hours of which were while he was a full-time magistrate and 480 hours of which were while he was a part-time magistrate. The parties further stipulate solely for purposes of this litigation that Plaintiff was actually performing duties while on call for a total of 612 hours, 489 hours of which were while he was a full-time magistrate and 84 hours of which

were while he was a part-time magistrate.

ROA 00768

7. For purposes of calculating damages and by way of stipulation, Plaintiff's hourly rate at all times relevant was \$22.25.

8. Throughout the time that Plaintiff served as a full-time magistrate, the County voluntarily agreed by resolution to provide a supplement to the magistrate's court in the amount of \$4,500 ("the voluntary supplement"). The voluntary supplement was not mandated by law, but was intended as additional compensation for full-time magistrate judges. In December 2005, Chief Magistrate Arthur Jayroe began paying the entire supplement to himself. Prior to this time, the two full-time magistrates who performed the administrative duties of the magistrate court had agreed to divide the supplement equally between them. At no time was Plaintiff ever paid the voluntary supplement.

9. Every six months, the South Carolina Supreme Court issues an administrative order designating the chief magistrates for the next six-month period. Pursuant to Section 22-8-40(G) of the Act, the County must provide a supplement of \$1,500.00 to a "part-time chief magistrate" or a supplement of \$3,000.00 to a "full-time chief magistrate" as those terms are defined by the Act. In December 2005, Chief Magistrate Arthur Jayroe began keeping the entire supplement.

10. At no time while he served as a magistrate was Plaintiff ever appointed by the South Carolina Supreme Court as the Chief Magistrate.

11. Plaintiff, along with another magistrate judge, performed most of the administrative duties during his time as a full-time magistrate judge, including:

a) The majority of warrant review and signing for law enforcement after regular business hours;

b) Holiday and weekend on-call/bond court work as previously described

ROA 00768

above;

ROA 00769

- c) From 2005 until June 10, 2011, Plaintiff held the title of chief administrator of Newberry Central Court and was responsible for the Central Court's finances;
- d) Reviewing and approval of timesheets;
- e) Performing staff evaluations;
- f) Signing requisitions for supplies and materials for Central Court;
- g) Attending all County department head meetings on behalf of the magistrate court;
- h) Preparing rosters of jury trials;
- i) Overseeing installation of modern recording and HVAC systems in Central Court courtrooms;
- j) Calling a County Council meeting to discuss security at Central Court;
- k) Hiring bailiffs for the County;
- l) Requesting the expansion of the Central Court parking lot;
- m) Implementing a computerized bonding system; and
- n) Helping implement the Newberry and Laurens Counties' Worthless Check Program and setting up the Criminal Domestic Violence Court in Newberry County.

INTRODUCTION

1. The Case

The Plaintiff was appointed by Governor Mark Sanford to be a full-time magistrate in Newberry County in 2005. (Stipulated Facts ¶ 2). Plaintiff was "reassigned" to the position of part-time magistrate on June 3, 2011 by his local Senator, and served as Part-Time Magistrate until February, 2012. (*Id.*) As a full-time magistrate, Plaintiff performed, along with another

ROA 00769

full-time Magistrate, the majority of the administrative duties for the county court systems. ROA 00770
(Stipulated Facts ¶ 11). Plaintiff contends he is entitled to the following: call pay for time scheduled to be spent on-call during his tenure as a full-time and later part-time magistrate, damages resulting from being inappropriately reclassified to the position of part-time magistrate, a one-half share of an excess supplement provided by the County (see Stipulated Facts ¶ 8), and a one-half share of the of the § 22-8-40(G) statutory supplement for chief magistrates.

2. The Statute.

Pursuant to Article 5, Section 1, of the South Carolina Constitution, South Carolina has a unified judicial system and the General Assembly, not the counties, has the authority to set the base pay for magistrates. S.C. Const. Art. V § 1; *see also*, S.C. Const. Art. VIII § 14 *Douglas v. McCleod*, 277 S.C. 76, 282 S.E.2d 604 (1981). By way of §22-8-10 *et. seq.* of the South Carolina Code of Laws, collectively referred to as the Magistrates Pay Act (hereinafter, "the Act"), the General Assembly has set the base magistrates must, but not the maximum magistrates may, be paid. §22-8-40(B, and K-L). Section 22-8-10(2) of the Act defines a "full-time magistrate" as "a magistrate who regularly works forty hours a week performing official duties required of a magistrate as a judicial officer." Under the act a "part-time magistrate" is one who regularly works less than 40 hours, and the "chief magistrate" is designated by the Chief Justice of the South Carolina Supreme Court as the chief magistrate for administrative purposes for the county in which he serves. S.C. Code Ann. § 22-8-10(1) and (3).

Section 22-8-40 is the operative statute governing pay to magistrates. Subsection (B) of § 22-8-40 sets full-time magistrate pay as a proportional fraction of the pay for circuit judges in a subject county; time of service and the population of a county also effect the pay. S.C. Code Ann. § 22-8-40(B)(1-2). Part-time magistrate pay is computed as a proportion of full-time magistrate

pay calculated by dividing the part-time magistrate's average weekly hours, including time scheduled to be spent on-call, by forty (40) hours. S.C. Code Ann. § 22-8-40 (F). ROA 00771 The Act does not make a distinction between time actually working on-call and time "scheduled to be spent on-call". *Id.* A full-time chief magistrate is entitled to a yearly supplement of \$3,000 and reimbursement for travel expenses, a part-time chief magistrate is entitled to a supplement of \$1,500 and reimbursement for travel expenses. S.C. Code Ann. § 22-8-40 (G). A magistrate receiving a greater salary than is provided for in the Act may not have his salary reduced during his tenure in office. § 22-8-40(J).

3. The Case Law

The case law interpreting the Act is sparse. The Court has held that the act sets the base for magistrate pay, and that where full-time magistrates are paid more than their allotted amounts, part-time magistrates are likewise entitled to a proportionate increase. *Cox v. County of Florence*, 337 S.C. 340, 523 S.E. 2d 7776 (1999). Regarding on-call time and classification, the Court has held that part-time magistrates "were entitled to compensation for time 'scheduled to be spent on call,'" and that where Ramsey, a part-time chief magistrate, "was, in substance, performing the duties of [a] full-time Chief Magistrate . . . she was entitled to compensation" as a full-time chief magistrate. *Ramsey v. County of McCormick*, 306 S.C. 393, 397-398, 412 S.E. 2d 408, 411 (1991). In *Davis v. County of Greenville*, Greenville County informed several county magistrates, appointed by the Governor, that their positions were to be eliminated. 322 S.C. 73, 470 S.E.2d 94, (1996). The Court, in *Davis*, concluded that Greenville County did not have the authority to prematurely end the magistrates' tenures as the appointment of magistrates was within the purview of the Governor, and the number of magistrates to be funded was set by the Act.¹ *Id.*

¹ However the Court held, in *Graves v. County of Marion*, that a magistrate's pay could be decreased where the magistrate's salary had been increased due to a contract with the Town of

at 75 fn. 1 and 78. The Court's analysis and holdings in *Cox*, *Ramsey*, and *Davis* are most implicated in this matter.²

ROA 00772

To the extent that issues implicated here are novel, the principles of statutory interpretation should resolve the inquiries. See, *Ramsey*, 306 S.C. at 396-397. The cardinal rule of statutory interpretation is to ascertain the intent of the legislature. *State v. Scott*, 351 S.C. 584, 588, 571 S.E.2d 700, 702 (2002); see also *Olson v. Faculty House of Carolina, Inc.*, 344 S.C. 194, 205, 544 S.E.2d 38, 44 (Ct. App. 2001) ("The quintessence of statutory construction is legislative intent."). "Where the words of a statute are clear and unambiguous its terms must be given their literal meaning." *Ramey*, 306 S.C. at 396; citing, *Duke Power Co. v. S. C. Tax Commission*, 292 S.C. 64, 354 S.E.2d 902 (1987). On the other hand, even when a statute is clear and unambiguous the Court should not read it in a way to foster an absurd result. See, *Stackhouse v. County Bd. of Comm'rs for Dillon County*, 86 S.C. 419, 68 S.E. 561 (S.C. 1910).

However plain the ordinary meaning of the words used in a statute may be, the Courts will reject that meaning, when to accept it would lead to a result so plainly absurd that it could not possibly have been intended by the legislature, or would defeat the plain legislative intention; and if possible will construe the statute so as to escape the absurdity and carry the intention into effect.

Id at 422.

It follows from a clear reading of the Act that the intent of the legislature in passing the Act was to ensure that magistrates were compensated for their service in a uniform and fair manner. See *Scott*, 351 S.C. at 588. "Courts should consider not merely the language of the particular clause being construed, but the word and its meaning in conjunction with the purpose of the whole

Mullins, and that contract was ended. 346 S.C. 742, 552 S.E.2d 709 (2001).

² Prior to the Act, the Court determined that the counties did not have the authority to set the pay for magistrates. *Douglas*, 322 S.C. 73. The Attorney General's office has issued two opinions on the act, concerning the calculation of pay and value of part-time magistrate positions, and magistrates' entitlement to health and other employment benefits. *Atty. Gen. Op. 2001 S.C. AG LEXIS 129*; and, *Atty. Gen. Op. 2001 S.C. 135*.

ROA 00772

statute and the policy of the law." *Georgia-Carolina Bail Bonds, Inc.* at 24, 579 S.E.2d at 337 (citing *Whitner v. State*, 328 S.C. 1, 492 S.E.2d 777 (1997)).

ROA 00773

The governing law and the language of the magistrate's pay act, when effectuated in accord with the intent of the Act, demonstrate that (1) the Plaintiff is not entitled to on-call pay for time scheduled to be on-call as a full-time, (2) the Plaintiff is not entitled to on-call pay for time scheduled to be on-call as a part-time magistrate, (3) the Plaintiff should not have been reclassified as a part-time magistrate mid-term, (4) the Plaintiff is not entitled to a proportion of the voluntary supplement, and (5) the Plaintiff is not entitled to a proportion of the § 22-8-40(G) statutory supplement.

ANALYSIS

I. Plaintiff is not entitled to call pay during the time he served as a full-time magistrate.

Plaintiff asserts that the Act requires that he receive call pay during the time he served as a full-time magistrate. The court disagrees.

"The cardinal rule of statutory construction is a court must ascertain and give effect to the intent of the legislature." *State v. Scott*, 351 S.C. 584, 588, 571 S.E.2d 700, 702 (2002) (citing *Charleston Cnty. Sch. Dist. v. State Budget & Control Bd.*, 313 S.C. 1, 437 S.E.2d 6 (1993)); *Florence Cnty. Democratic Party v. Florence Cnty. Republican Party*, 398 S.C. 124, 128, 727 S.E.2d 418, 420 (2012). "What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will." *Scott, supra* (quoting Norman J. Singer, Sutherland Statutory Construction § 46.03 at 94 (5th ed.1992)). Therefore, "[i]f a statute's language is plain, unambiguous, and conveys a clear meaning 'the rules of statutory interpretation are not needed and the court has no right to impose another meaning.' " *Id.* (quoting *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000)); see also *State v. Pittman*, 373 S.C. 527, 561, 647 S.E.2d 144, 161

(2007) ("All rules of statutory construction are subservient to the maxim that legislative intent must prevail if it can be reasonably discovered in the language used.").

ROA 00774

Here, the Act refers to call pay in only one paragraph. Section 22-8-40(F) states:

Part-time magistrates are entitled to a proportionate percentage of the salary provided for full-time magistrates. This percentage is computed by dividing by forty the number of hours a week the part-time magistrate spends in the performance of his duties. The number of hours a week that a part-time magistrate spends in the exercise of the judicial function, *and scheduled to be spent on call*, must be the average number of hours worked and is fixed by the county governing body upon the recommendation of the chief magistrate. However, a part-time magistrate must not work more than forty hours a week, unless directed to do so on a limited and intermittent basis by the chief magistrate.

Id. (emphasis added). The South Carolina Supreme Court interpreted that provision in *Ramsey v. County of McCormick*, 306 S.C. 393, 412 S.E.2d 408 (1991). The Court noted that § 22-8-40(F)³ "deals specifically with *part-time* magistrates' compensation." *Id.*, 306 S.C. at 397, 412 S.E.2d at 410 (emphasis added). The Court then held that "the Circuit Court correctly held that *part-time* magistrates are entitled to compensation for time 'scheduled to be spent on call.'" *Id.*, 412 S.E.2d at 411 (emphasis added).

The legislative intent of § 22-8-40(F) is obvious. Per the holding in *Ramsay*, to fix a part-time magistrate's pay based on a limited number of hours, and then require him to serve call duty without pay when those hours were exceeded, would be inherently inequitable. Conversely, a full-time magistrate is paid a full salary regardless of the number of hours worked. Had the legislature intended to require the payment of call pay for full-time magistrates, it could have done so. Nowhere else in the Act is there any reference to "call." "[W]hat a legislature says in the text of a statute is considered the best evidence of the legislative intent or will." *Scott, supra*. Clearly, the legislature did not intend for full-time magistrates to be entitled to additional call pay.

³ Formerly 22-8-40(D).

Accordingly, Plaintiff is due no call pay for the period of time that he served as a full-time magistrate.

ROA 00775

II. The Plaintiff is not entitled to call pay for all times scheduled to be on call as a part time magistrate.

The Plaintiff asserts that he is entitled to pay for all time scheduled to be on call both as a part-time and full-time magistrate. It is uncontested that, had Plaintiff been officially appointed a part-time magistrate, Plaintiff would have been entitled to call pay for time spent on call. The Defendant successfully contests Plaintiff's entitlement to call pay as a full-time magistrate. (see part I, supra). Normally, Plaintiff would be entitled to call pay for all times scheduled to be on call as a part-time magistrate. However, as discussed in section III below, the court finds Plaintiff was incorrectly reclassified from a full-time magistrate to a part-time magistrate, and damages are being awarded to compensate Plaintiff for this improper reclassification. As explained previously, a full-time magistrate is not entitled to call pay. Therefore, to avoid double compensation, Plaintiff will not be compensated for times scheduled to be on call as a part time magistrate for the period between June, 2011 and February 9, 2012.

Additionally, the court is uncertain whether the full rate of \$22.25 would be appropriate payment for merely being on call. Certainly, some compensation for the inconvenience of being unable to leave the county or begin unable to make definite plans would be warranted. However, as previously stipulated, a magistrate who was on call did not have to remain at his office the entire time. He was free to enjoy other pursuits, and he only had to come in periodically for bond court or to sign warrants when requested by law enforcement. Accordingly, even had this court found that Plaintiff was entitled to call pay, the court would not have set call pay at Plaintiff's full hourly rate.

III. The Plaintiff should not have been reclassified from a full-time magistrate to a part-time magistrate during his term of office and is entitled to damages.

ROA 00776

The Plaintiff was appointed to the position of full-time magistrate by Governor Mark Sanford, with the advice and consent of Senator Ronnie Cromer In June, 2011, before the expiration of his term on February 9, 2012, Plaintiff was "reassigned" to be a part-time magistrate through oral instructions of the Senator and a letter from Newberry County Part-Time Chief Magistrate Arthur Jayroe. (Stipulated Facts ¶2). Article Five, Section 26 of the South Carolina Constitution provides:

The Governor, by and with the advice and consent of the Senate, shall appoint a number of magistrates for each county as provided by law. The General Assembly shall provide for their terms of office and their civil and criminal jurisdiction. The terms of office must be uniform throughout the State.

Pursuant to the South Carolina Constitution, Plaintiff could not be "reassigned" by the Senator or Magistrate Jayroe to the position of part-time magistrate, a separate position also subject to gubernatorial appointment. (See, Stipulated Facts ¶ 1). Furthermore, § 22-8-40(J) prohibited the reduction of Plaintiff's salary mid-tenure; Plaintiff's salary was reduced by the unauthorized reassignment, and the Defendant is liable for the same. See, Atty. Gen. Op. 2001 S.C. 135; see also, S.C. Code Ann. 22-8-40(H). This Court holds, consistent with the Supreme Court's holdings in *Davis* and *Douglas*, that the Plaintiff's transfer was inappropriate, and consequently, he is entitled to damages for the same.⁴ *Davis*, 322 S.C. 73; and, *Douglas*, 277 S.C. 76 (prior to the Act).

The Plaintiff is entitled to an award of \$21,805 for lost income caused by his unauthorized reassignment to the position of part-time magistrate (calculated by multiplying his stipulated

⁴ This case is distinct from *Graves*, where the subject magistrate's salary was increased due to a contract with the Town of Mullins and decreased upon the lawful conclusion of that contract. 342 S.C. 472).

ROA 00776

hourly wage by 40 hours by 35 weeks (June 3, 2011 to February 9, 2012) and subtracting from the product the wages Plaintiff received as a part-time magistrate for the subject period). (See, **ROA 00777** Stipulated Facts ¶¶ 2 and 7).

IV. Plaintiff is not entitled to a portion of the supplemental full-time magistrate's pay the County voluntarily provided by resolution to the Newberry County Magistrate's Court.

Plaintiff contends that he is entitled to a portion of the \$4,500 in supplemental pay the County voluntarily agreed by resolution to provide to the magistrate's court. Plaintiff complains that Chief Magistrate Arthur Jayroe began keeping the entire supplement for himself in December 2005. Prior to this time, the two full-time magistrates who performed the administrative duties of the magistrate court had agreed to divide the supplement equally between them.

The Act does not mandate the supplement at issue. Thus, the County had no legal duty to provide it. Once paid into the magistrate's court, the County lost control over it. See *Sheppard v. Richland County General Sessions*, 2013 WL 1686278, at *2 (D.S.C. Mar. 27, 2013) ("Horry County Magistrate Court [is] within the State of South Carolina's unified judicial system.") (citing Article V, Section 1 of the Constitution of the State of South Carolina) ("The judicial power shall be vested in a unified judicial system, which shall include a Supreme Court, a Court of Appeals, a Circuit Court, and such other courts of uniform jurisdiction as may be provided for by general law.")). As the court stated in *Dunbar v. Metts*, 2011 WL 1480279, at *5 (D.S.C. Mar. 31, 2011) (emphasis added; footnote omitted):

Moreover, the City of Lexington or the Lexington City Council cannot be held responsible for actions taken by the Municipal Court for the City of Lexington, the Magistrate's Court for Lexington County, and the Court of General Sessions (Circuit Court) for Lexington County. It can be judicially noticed that, in South Carolina, a county's authority over courts within its boundaries was abolished when Article V of the Constitution of the State of South Carolina was ratified in 1973. See Act No. 58, 1973 S.C. Acts 161; Article V, Section 1 of the Constitution of the State of South

Carolina; and State ex rel. McLeod v. Civil and Criminal Court of Horry County, 265 S.C. 114, 217 S.E.2d 23, 24 (1975). Under the current version of Article V, Section 1, *the Supreme Court of South Carolina, not the City of Lexington or Lexington County, retains the sole authority to supervise magistrates' courts in Lexington County, municipal courts in Lexington County, and the Circuit Court for Lexington County.*

ROA 00778

The parties stipulate that the "[t]he voluntary supplement was not mandated by law." Once the County relinquished control of the voluntary supplement, it lost the right and responsibility to dictate its allocation. Thus, the County is not liable for the actions of Judge Jayroe when he chose to allocate that supplement to himself.

Accordingly, the County is not liable to Plaintiff for any portion of the voluntary supplement it provided to the magistrate's court.⁵

V. Plaintiff is not entitled to a portion of the Section 22-8-40(G) statutory supplement required by the Act.

The Act provides:

A full-time *chief magistrate* must be paid a yearly supplement of three thousand dollars and reimbursed for travel expenses as provided by law while in the actual performance of his duties. A part-time *chief magistrate* must be paid a yearly supplement of fifteen hundred dollars and reimbursed for travel expenses as provided by law while in the actual performance of his duties.

S.C. Code § 22-8-40(G) (emphasis added). "Chief magistrate" is defined by the Act as "the magistrate in each county who is designated by the Chief Justice of the South Carolina Supreme Court as the chief magistrate for administrative purposes for the county which he serves." *Id.* § 22-8-10(1).

Plaintiff misreads *Ramsey*. There, the issue was whether a properly designated chief magistrate was entitled to the full-time or lesser part-time supplement for chief magistrates. Here,

⁵ To the extent Plaintiff has a claim against anyone for these funds, it would appear to be more correctly directed at Chief Magistrate Arthur Jayroe, not the County. In fact, Plaintiff initially named Judge Jayroe in this action but voluntarily dismissed him as a defendant.

the parties stipulate that "[a]t no time while he served as a magistrate was [Plaintiff] ever appointed by the South Carolina Supreme Court as the Chief Magistrate." Under the plain language of the Act, this claim fails. **ROA 00779**

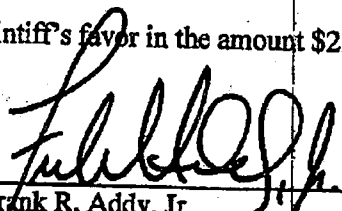
CONCLUSION

Based on the above, the court hereby orders the following:

- A. Plaintiff is not entitled to call pay during the time he served as a full-time magistrate;
- B. Because of the findings in Section III, Plaintiff is not entitled to call pay for the times he was scheduled to be on call between June 3, 2011 and February, 2012;
- C. Plaintiff is entitled to \$21,805 for reduced compensation caused by the unauthorized reassignment of Plaintiff to a part-time position mid-tenure;
- D. The County is not liable to Plaintiff for any portion of the voluntary supplement it provided to the magistrate's court; and,
- E. Plaintiff is not entitled to the statutory supplement required by Section 22-8-40(G) of the Act because he was never appointed by the South Carolina Supreme Court as Newberry County Chief Magistrate.

Accordingly, judgment shall be entered in Plaintiff's favor in the amount \$21,805.00.

IT IS SO ORDERED.



Frank R. Addy, Jr.
Eighth Judicial Circuit

July 3, 2014
Greenwood, South Carolina

020^44. Adams email to Cromer
8-1-2014 (2).pdf

From: Wayne Adams wadams@newberrycounty.net
Subject: Fwd: Abraham
Date: August 1, 2014 at 3:08 PM
To: Debbie Cromer dcromer@newberrycounty.net

ROA 00781

Please see below from Dirk.

Begin forwarded message:

From: Dirk Aydlette <daydlette@gsblaw.net>
Subject: FW: Abraham
Date: August 1, 2014 at 2:55:19 PM EDT
To: "Jay Tothacer" (jtothacer@newberrycounty.net) <jtothacer@newberrycounty.net>, "wadams@newberrycounty.net" <wadams@newberrycounty.net>

Gents, what the status on the checks? Be sure to send to me. Have a great weekend. Dirk
Derwood L. Aydlette III
900 Elmwood Avenue, Suite 100

See More

Gents, what the status on the checks? Be sure to send to me. Have a great weekend. Dirk
Derwood L. Aydlette III
900 Elmwood Avenue, Suite 100



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Circular 230 Notice: To ensure compliance with requirements imposed by the IRS, we inform you that any U.S. federal tax



ROA 00781

From: **AJ Tothacer Jr** [mailto:jtothacer@newberrycounty.net]
Subject: Fwd: Abraham
Date: July 25, 2014 at 8:17 AM
To: Debbie Cromer [mailto:dcromer@newberrycounty.net], Karen Brehmer [mailto:kbrehmer@newberrycounty.net], Wayne Adams [mailto:wadams@newberrycounty.net], Jay Tothacer [mailto:jtothacer@newberrycounty.net]

ROA 00782

Please issue a check in the amount of \$21,805 to Tom Abraham in the same name he used to be paid by (less withholding).

Issue another check in the amount of \$293.35 payable to Tom (same name form as other check) and Cromer and associates.

Send both checks to Dirk for dispersal.

Thanks

Sent from my Alltel Android

----- Original Message -----

Subject: RE: Abraham
From: Dirk Aydlette [mailto:daydlette@gsblaw.net]
To: jtothacer@newberrycounty.net
CC:

Yes.

Sent from my Android phone using TouchDown (www.nitrodesk.com)

-----Original Message-----

From: AJ Tothacer Jr [mailto:jtothacer@newberrycounty.net]
Received: Thursday, 24 Jul 2014, 5:19PM
To: Dirk Aydlette [mailto:daydlette@gsblaw.net]
Subject: Re: Abraham

Costs to Abraham and Cromer; bog check to Abraham alone?

Sent from my Alltel Android

Dirk Aydlette [mailto:daydlette@gsblaw.net] wrote:

Since one is running through payroll, make it to Abraham. Make the other to both Abraham and Cromer and Associates.

From: Jay Tothacer [mailto:jtothacer@newberrycounty.net]
Sent: Thursday, July 24, 2014 3:43 PM
To: Dirk Aydlette; wadams@newberrycounty.net
Subject: RE: Abraham

Dirk,

Who should the checks be made payable to?

Gignilliat or Babb's firm.

ROA 00782

ROA 00783

We will send them to you.

Jay

From: Dirk Aydlette [<mailto:daydlette@gsblaw.net>]
Sent: Thursday, July 24, 2014 2:30 PM
To: wadams@newberrycounty.net; 'Jay Tothacer' (jtothacer@newberrycounty.net)
Subject: FW: Abraham

Gents, please issue separate checks, with one from payroll for the underlying judgment of \$21,805 less withholdings and a separate check for \$293.35 for the costs. Send them to me. Thanks. Dirk

Derwood L. Aydlette III
900 Elmwood Avenue, Suite 100
Columbia SC 29201
☎ 803.799.9311 • 📠 803.254.6951
✉ daydlette@gsblaw.net

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From: Jay Babb [<mailto:JayB@jlewiscromerlaw.com>]
Sent: Thursday, July 24, 2014 2:24 PM
To: Dirk Aydlette
Subject: RE: Abraham

ROA 00783

021^44. Adams email to Cromer
8-1-2014.pdf

From: Wayne Adams wadams@newberrycounty.net
Subject: Fwd: Abraham
Date: August 1, 2014 at 3:08 PM
To: Debbie Cromer dcromer@newberrycounty.net

ROA 00785

Please see below from Dirk.

Begin forwarded message:

From: Dirk Aydlette <daydlette@gsblaw.net>
Subject: FW: Abraham
Date: August 1, 2014 at 2:55:19 PM EDT
To: "Jay Tothacer" (jtothacer@newberrycounty.net) <jtothacer@newberrycounty.net>, "wadams@newberrycounty.net" <wadams@newberrycounty.net>

Gents, what the status on the checks? Be sure to send to me. Have a great weekend. Dirk
Derwood L. Aydlette III
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See More

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ROA 00785

From: AJ Tothacer Jr [mailto:jtothacer@newberrycounty.net]
Subject: Fwd: Abraham

Date: July 25, 2014 at 8:17 AM

To: Debbie Cromer dcromer@newberrycounty.net, Karen Brehmer kbrehmer@newberrycounty.net, Wayne Adams wadams@newberrycounty.net, Jay Tothacer jtothacer@newberrycounty.net

ROA 00786

Please issue a check in the amount of \$21,805 to Tom Abraham in the same name he used to be paid by (less withholding).

Issue another check in the amount of \$293.35 payable to Tom (same name form as other check) and Cromer and associates.

Send both checks to Dirk for dispersal.

Thanks

Sent from my Alltel Android

----- Original Message -----

Subject: RE: Abraham

From: Dirk Aydlette <daydlette@gsblaw.net>

To: jtothacer@newberrycounty.net

CC:

Yes.

Sent from my Android phone using TouchDown (www.nitrodesk.com)

-----Original Message-----

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Received: Thursday, 24 Jul 2014, 5:19PM

To: Dirk Aydlette [daydlette@gsblaw.net]

Subject: Re: Abraham

Costs to Abraham and Cromer; bog check to Abraham alone?

Sent from my Alltel Android

Dirk Aydlette <daydlette@gsblaw.net> wrote:

Since one is running through payroll, make it to Abraham. Make the other to both Abraham and Cromer and Associates.

From: Jay Tothacer [mailto:jtothacer@newberrycounty.net]

Sent: Thursday, July 24, 2014 3:43 PM

To: Dirk Aydlette; wadams@newberrycounty.net

Subject: RE: Abraham

Dirk,

Who should the checks be made payable to?

Gignilliat or Babb's firm.

ROA 00786

ROA 00787

We will send them to you.

Jay

From: Dirk Aydlette [mailto:daydlette@gsblaw.net]
Sent: Thursday, July 24, 2014 2:30 PM
To: wadams@newberrycounty.net; 'Jay Tothacer' (jtothacer@newberrycounty.net)
Subject: FW: Abraham

Gents, please issue separate checks, with one from payroll for the underlying judgment of \$21,805 less withholdings and a separate check for \$293.35 for the costs. Send them to me. Thanks. Dirk

Derwood L. Aydlette III
900 Elmwood Avenue, Suite 100
Columbia SC 29201
☎ 803.799.9311 • 📠 803.254.6951
✉ daydlette@gsblaw.net

EmailSignatureLogo



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From: Jay Babb [mailto:JayB@jlewiscromerlaw.com]
Sent: Thursday, July 24, 2014 2:24 PM
To: Dirk Aydlette
Subject: RE: Abraham

ROA 00787

022^43. Cromer email to Adams
8-2-2014 (2).pdf

From: **Debbie Cromer** dcromer@newberrycounty.net
Subject: Re: Abraham
Date: August 2, 2014 at 10:04 AM
To: **Wayne Adams** wadams@newberrycounty.net

ROA 00



Wayne, I have need to resolve an issue with the retirement system . The check has been issued. Will send out on Monday went I talk to them.

Sent from my iPhone

ROA 00789

023^43. Cromer email to Adams
8-2-2014.pdf

From: **Debbie Cromer** dcromer@newberrycounty.net
Subject: Re: Abraham
Date: August 2, 2014 at 10:04 AM
To: Wayne Adams wadams@newberrycounty.net

ROA 00

Wayne, I have need to resolve an issue with the retirement system . The check has been issued. Will send out on Monday went I talk to them.

Sent from my iPhone

ROA 00791

024^41. Adams email to Cromer
8-6-2014 (2).pdf

From: **Wayne Adams** wadams@newberrycounty.net

Subject: back-pay for PT magistrates (on-call pay)

Date: August 6, 2014 at 3:22 PM

To: Debbie Cromer dcromer@newberrycounty.net, Karen Brehmer kbrehmer@newberrycounty.net, Wanda Hill
whill@newberrycounty.net, Jay Tothacer jtothacer@newberrycounty.net

Cc: Dirk Aydlette daydlette@gsblaw.net

ROA 00793



PT Magistrates On As discussed earlier today.
Call.xls

ROA 00793

1/29/15

Part-Time Magistrates**On-Call Compensation (3 years)**

Name	Date of Hire	Current Pay (bi-weekly)	Current Pay (annual)	Sched. Hours (bi-weekly)	Hourly Rate	Hours to be Compensated	On Call Compensation	Adjustment for Previous Compensation *	TOTAL
Rick Lail	4/22/02	479.72	12,472.72	16	29.98	600	17,989.50		17,989.50
Barry Koon	6/1/13	467.52	12,155.52	20	23.38	220	5,142.72		5,142.72
Art Jayroe	8/1/95	536.95	13,960.70	20	26.85	600	16,108.50	(13,500.00)	2,608.50
TOTAL							39,240.72		25,740.72

* On-call supplement paid
by County Council

Name	Total from Above	Retirement Contribution (County) 13.41%	Social Security Contribution (County) 7.65%	Total Cost to County
Rick Lail	17,989.50	2,412.39	1,376.20	21,778.09
Barry Koon	5,142.72	689.64	393.42	6,225.78
Art Jayroe	2,608.50	349.80	199.55	3,157.85
Totals	25,740.72	3,451.83	1,969.17	31,161.72

ROA 00794

025^41. Adams email to Cromer
8-6-2014.pdf

From: Wayne Adams wadams@newberrycounty.net

Subject: back-pay for PT magistrates (on-call pay)

Date: August 6, 2014 at 3:22 PM

To: Debbie Cromer dcromer@newberrycounty.net, Karen Brehmer kbrehmer@newberrycounty.net, Wanda Hill
whill@newberrycounty.net, Jay Tothacer jtothacer@newberrycounty.net

Cc: Dirk Aydlette daydlette@gsblaw.net

ROA 00796



PT Magistrates On As discussed earlier today.
Call.xls

ROA 00796

1/29/15

Part-Time Magistrates**On-Call Compensation (3 years)**

Name	Date of Hire	Current Pay (bi-weekly)	Current Pay (annual)	Sched. Hours (bi-weekly)	Hourly Rate	Hours to be Compensated	On Call Compensation	Adjustment for Previous Compensation *	TOTAL
Rick Lail	4/22/02	479.72	12,472.72	16	29.98	600	17,989.50		17,989.50
Barry Koon	6/1/13	467.52	12,155.52	20	23.38	220	5,142.72		5,142.72
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Barry Koon	5,142.72	689.64	393.42	6,225.78
Art Jayroe	2,608.50	349.80	199.55	3,157.85
Totals	25,740.72	3,451.83	1,969.17	31,161.72

ROA 00797

026^42. Tothacer email to
Adams 8-6-2014 (2).pdf

From: Jay Tothacer jtothacer@newberrycounty.net
Subject: RE: Part-time magistrates -- CONFIDENTIAL
Date: August 6, 2014 at 5:09 PM
To: Wayne Adams wadams@newberrycounty.net

ROA 00799

Would it be worthwhile to estimate the additional pay the part time magistrates would receive if we don't go with full-time?

-----Original Message-----

From: Wayne Adams [mailto:wadams@newberrycounty.net]
Sent: Wednesday, August 06, 2014 3:45 PM
To: Buddy Livingston; Kirksey Koon; Les Hipp; Scott Cain; Bill Waldrop;
Steve Stockman; John Caldwell

ROA 00799

027^42. Tothacer email to
Adams 8-6-2014.pdf

From: Jay Tothacer jtothacer@newberrycounty.net
Subject: RE: Part-time magistrates -- CONFIDENTIAL
Date: August 6, 2014 at 5:09 PM
To: Wayne Adams wadams@newberrycounty.net

ROA 00801

Would it be worthwhile to estimate the additional pay the part time magistrates would receive if we don't go with full-time?

---Original Message---

From: Wayne Adams [mailto:wadams@newberrycounty.net]
Sent: Wednesday, August 06, 2014 3:45 PM
To: Buddy Livingston; Kirksey Koon; Les Hipp; Scott Cain; Bill Waldrop; Steve Stockman; John Caldwell

ROA 00801

028^5. Adams email to Cain 8-6
-2014.pdf

ROA 00803

Subject: Part-time magistrates -- CONFIDENTIAL

Date: Wednesday, August 6, 2014 at 3:45:20 PM Eastern Daylight Time

From: Wayne Adams

To: Buddy Livingston, Kirksey Koon, Les Hipp, Scott Cain, Bill Waldrop, Steve Stockman, John Caldwell

CC: Jay Tothacer, Laurie Renwick

Category: County Council

Gentlemen,

For Monday night's meeting of the Public Safety and Courts Committee, I have asked for an executive session. The purpose is to request permission to negotiate with the part-time magistrates who have potential claims against the County for back-pay pertaining to on-call hours worked. The attached spreadsheet details the compensation we would offer to the affected parties in exchange for their full releases of the County from any future claims in these matters. The second document is a draft letter to Senator Cromer that I am asking Council to consider sending him. That letter asks the Senator to change from the current mix of full-time and part-time magistrates to all full-time magistrates. My intention, with the Committee's approval, is to proceed with the letter from Monday night's meeting to the next meeting of full County Council, which is Wednesday, August 20. The discussion with full Council would also be in executive session; however, Council, if it so desires, could vote after the executive session to proceed with the letter to Senator Cromer.

Please understand that these matters are confidential, for a number of reasons.

Let me know if you have questions.

Thanks.

Wayne

ROA 00803

1/28/15

**Part-Time Magistrates
On-Call Compensation (3 years)**

Name	Date of Hire	Current Pay (bi-weekly)	Current Pay (annual)	Sched. Hours (bi-weekly)	Hourly Rate	Hours to be Compensated	On Call Compensation	Adjustment for Previous Compensation *	Gross Pay for On-Call (3 years)
Rick Lail	4/22/02	479.72	12,472.72	16	29.98	600	17,989.50		17,989.50
Barry Koon	6/1/13	467.52	12,155.52	20	23.38	220	5,142.72		5,142.72
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TOTAL							39,240.72		25,740.72

* On-call supplement paid
by County Council

Name	Total from Above	Retirement Contribution (County) 13.41%	Social Security Contribution (County) 7.65%	Total Cost to County
Rick Lail	17,989.50	2,412.39	1,376.20	21,778.09
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Art Jayroe	2,608.50	349.80	199.55	3,157.85
Totals	25,740.72	3,451.83	1,969.17	31,161.72

ROA 00804

ROA 00804

ROA 00805

Thank you for your kind attention to this request.

With best regards,

Chairman of Newberry County Council

**Cc: Newberry County Council
Newberry County Magistrates**

ROA 00805

August 20, 2014

Senator Ronnie Cromer
SC Senate District 18
311 Gressette Building
Columbia, SC 29201

Re: Compensation, hours and location of magistrates [SC Code Section 22-1-10 (A)]

Dear Senator Cromer:

In accordance with Code Section 22-1-10 (A), Newberry County Council is requesting changes in the "number of full-time and part-time magistrate positions available in the county, the number of work hours required by each position, the compensation for each position, and the area of the county to which each position is assigned."

The County requests that its complement of magistrates be changed to include only full-time magistrates, beginning on the soonest date allowable under state statute. The payment of salaries for these magistrates would be as required under Code Section 22-8-40, et seq., and their location assignments would be as determined by the magistrate thereafter designated as chief magistrate.

This letter is written more than 90 days prior to the commencement of magistrates' terms, as required under Code Section 22-1-10 (A), and we request that you act upon it according to the appropriate timing.

029^5. Adams email to Cromer
8-6-2014.pdf

Debbie Cromer

ROA 00808

From: Wayne Adams <wadams@newberrycounty.net>
Sent: Wednesday, August 06, 2014 3:22 PM
To: Debbie Cromer; Karen Brehmer; Wanda Hill; Jay Tothacer
Cc: Dirk Aydlette
Subject: back-pay for PT magistrates (on-call pay)
Attachments: PT Magistrates On Call.xls

As discussed earlier today.

ROA 00808

1/29/2015

Part-Time Magistrates

On-Call Compensation (3 years)

Name	Date of Hire	Current Pay (bi-weekly)	Current Pay (annual)	Sched. Hours (bi-weekly)	Hourly Rate	Hours to be Compensated	On Call Compensation	Adjustment for Previous Compensation *	TOTAL
Rick Lail	4/22/2002	479.72	12,472.72	16	29.98	600	17,989.50		17,989.50
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TOTAL							39,240.72		25,740.72

* On-call supplement paid
by County Council

Name	Total from Above	Retirement Contribution (County) 13.41%	Social Security Contribution (County) 7.65%	Total Cost to County
Rick Lail	17,989.50	2,412.39	1,376.20	21,778.09
Barry Koon	5,142.72	689.64	393.42	6,225.78
Art Jayroe	2,608.50	349.80	199.55	3,157.85
Totals	25,740.72	3,451.83	1,969.17	31,161.72

ROA 00809

ROA 00809

030^8. Adams email to Hill 8-6-
2014.pdf

Wanda Hill

ROA 00811

From: Wayne Adams <wadams@newberrycounty.net>
Sent: Wednesday, August 06, 2014 3:22 PM
To: Debbie Cromer; Karen Brehmer; Wanda Hill; Jay Tothacer
Cc: Dirk Aydlette
Subject: back-pay for PT magistrates (on-call pay)
Attachments: PT Magistrates On Call.xls

As discussed earlier today.

ROA 00811

12/5/2014

Part-Time Magistrates**On-Call Compensation (3 years)**

ROA 00812

Name	Date of Hire	Current Pay (bi-weekly)	Current Pay (annual)	Sched. Hours (bi-weekly)	Hourly Rate	Hours to be Compensated	On Call Compensation	Adjustment for Previous Compensation *	TOTAL
Rick Lail	4/22/2002	479.72	12,472.72	16	29.98	600	17,989.50		17,989.50
Barry Koon	6/1/2013	467.52	12,155.52	20	23.38	220	5,142.72		5,142.72
Art Jayroe	8/1/1995	536.95	13,960.70	20	26.85	600	16,108.50	(13,500.00)	2,608.50
TOTAL							39,240.72		25,740.72

ROA 00812

* On-call supplement paid
by County Council

Name	Total from Above	Retirement Contribution (County) 13.41%	Social Security Contribution (County) 7.65%	Total Cost to County
Rick Lail	17,989.50	2,412.39	1,376.20	21,778.09
Barry Koon	5,142.72	689.64	393.42	6,225.78
Art Jayroe	2,608.50	349.80	199.55	3,157.85
Totals	25,740.72	3,451.83	1,969.17	31,161.72

031^9. Adams email to Aydlette
8-6-2014.pdf

Jay Tothacer

ROA 00814

From: Wayne Adams <wadams@newberrycounty.net>
Sent: Wednesday, August 06, 2014 3:22 PM
To: Debbie Cromer; Karen Brehmer; Wanda Hill; Jay Tothacer
Cc: Dirk Aydlette
Subject: back-pay for PT magistrates (on-call pay)
Attachments: PT Magistrates On Call.xls

Follow Up Flag: Follow up
Flag Status: Flagged

As discussed earlier today.

2/3/2015

Part-Time Magistrates

On-Call Compensation (3 years)

Name	Date of Hire	Current Pay (bi-weekly)	Current Pay (annual)	Sched. Hours (bi-weekly)	Hourly Rate	Hours to be Compensated	On Call Compensation	Adjustment for Previous Compensation *	TOTAL
Rick Lail	4/22/2002	479.72	12,472.72	16	29.98	600	17,989.50		17,989.50
Barry Koon	6/1/2013	467.52	12,155.52	20	23.38	220	5,142.72		5,142.72
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TOTAL							39,240.72		25,740.72

* On-call supplement paid
by County Council

Name	Total from Above	Retirement Contribution (County) 13.41%	Social Security Contribution (County) 7.65%	Total Cost to County
Rick Lail	17,989.50	2,412.39	1,376.20	21,778.09
Barry Koon	5,142.72	689.64	393.42	6,225.78
Art Jayroe	2,608.50	349.80	199.55	3,157.85
Totals	25,740.72	3,451.83	1,969.17	31,161.72

ROA 00815

ROA 00815

032^38. Aydlette email to
Adams 8-11-2014 (2).pdf

From: Dirk Aydlette [daydlette@gsblaw.net]
Subject: RE: Has Abraham signed the release?
Date: August 11, 2014 at 12:03 PM
To: wadams@newberrycounty.net

ROA 00817

I haven't received a signed copy yet. Got an email from his attorney to call and I did but he was out.

Sent from my Android phone using TouchDown

-----Original Message-----

From: Wayne Adams [wadams@newberrycounty.net]
Received: Monday, 11 Aug 2014, 9:21AM
To: Dirk Aydlette [daydlette@gsblaw.net]
Subject: Has Abraham signed the release?

ROA 00817

033^38. Aydlette email to
Adams 8-11-2014.pdf

From: Dirk Aydlette [daydlette@gsblaw.net]
Subject: RE: Has Abraham signed the release?
Date: August 11, 2014 at 12:03 PM
To: wadams@newberrycounty.net

ROA 00819

I haven't received a signed copy yet. Got an email from his attorney to call and I did but he was out.

Sent from my Android phone using TouchDown

-----Original Message-----

From: Wayne Adams [wadams@newberrycounty.net]
Received: Monday, 11 Aug 2014, 9:21AM
To: Dirk Aydlette [daydlette@gsblaw.net]
Subject: Has Abraham signed the release?

ROA 00819

034^39. Adams email to
Aydlette 8-11-2014 (2).pdf

From: Wayne Adams wadams@newberrycounty.net
Subject: Has Abraham signed the release?
Date: August 11, 2014 at 9:21 AM
To: Dirk Aydlette daydlette@gsblaw.net

ROA 00821

ROA 00821

035^39. Adams email to
Aydlette 8-11-2014.pdf

From: Wayne Adams wadams@newberrycounty.net
Subject: Has Abraham signed the release?
Date: August 11, 2014 at 9:21 AM
To: Dirk Aydlette daydlette@gsblaw.net

ROA 00823

ROA 00823

036^37. Adams email to
Renwick 8-15-2014 (2).pdf

From: **Wayne Adams** wadams@newberrycounty.net
Subject: annotated agenda for 8-20-14
Date: August 15, 2014 at 5:12 PM
To: **Laurie Renwick** lrenwick@newberrycounty.net

ROA 00825



ROA 00825



**NEWBERRY COUNTY COUNCIL
AGENDA
AUGUST 20, 2014
7:00 P.M.**

Call to order: Henry H. Livingston, III, Chairman
Invocation and Pledge of Allegiance: Wayne Adams, County Administrator

1. *Adoption of Consent Agenda*
2. *Additions, Deletions and Adoption of Agenda*
3. *Newberry County Service Award Presentations*

*David Parnell, Director of Veteran Affairs – 5 years
Charles Verner, Public Defender – 10 years
Janice Allen, Clerk of Court's Office – 15 years*

4. **Ordinance #07-11-14:** An Ordinance authorizing the execution of an Equipment Lease-Purchase Agreement in the amount not exceeding \$1,265,000 relating to the purchase of certain equipment by Newberry County, authorizing the execution of other necessary documents and papers, and other matters relating thereto.
- Public Hearing
 - Second Reading

This Ordinance authorizes the following new purchases: upgrades to the fire service radio system (simulcast repeater "voting" system), 24 self-contained breathing apparatuses for firefighters, 15 solid waste compactors (for use in "single-stream" recycling), and 2 modular ambulances. Lease purchases of this kind are funded by annual debt issuance each fall, with amortization costs being reflected in the debt service levy portion of property tax bills. The County has utilized this process over the past four years, primarily to purchase public safety-related rolling stock (fire trucks, ambulances, and rescue trucks). All purchases proposed in the Ordinance were approved during the annual budgeting process.

5. **Consideration of Bids for Creek Crossings at Lynches Woods Park** - Crystal Waldrop, Purchasing Director and Kyle Clampitt, Alliance Consulting Engineers

	<u>Base Bid</u>	<u>Alt #1</u>	<u>Alt #2</u>	<u>Total</u>
Capital Construction, LLC	\$76,300.00	\$42,000.00	\$42,000.00	\$160,300.00
Martin & Son Construction	\$94,400.00	\$47,040.00	\$47,040.00	\$188,480.00

The Lynches Woods Committee has reviewed and approved the materials to be used by the low bidder in constructing the veneer of the bridges. Specifically, real stone will be used, not synthetic stone. Staff recommends approval of the low bid. (The low bidder is currently performing renovation work at the Courthouse.)

6. **Consideration of Disbursement of FY13/14 Funding by recommendation of Accommodations Tax Committee**— Ernest Shealy, Accommodations Tax Committee Chairman

The Accommodations Tax Committee met on July 18th to distribute funding from this revenue source based on a combination of statutory criteria and approved requests. By statute, the first \$25,000 collected is allocated to the County; in turn, the County appropriates that funding for the Opera House. The County also retains 5% of everything collected thereafter – \$2,406 – which is appropriated as general revenue of the County.

Beyond this, the balance of the funding is divided into two categories: Tourism and Promotional. The former is distributed retroactively, the latter prospectively.

Tourism-related funding is distributed on a backward-looking basis, utilizing funds that have already been collected. Thus, the year of revenue generation for the tourism-related funding currently being distributed was FY 13-14. The total amount available for distribution is \$31,549; requests totaled \$63,890. The Committee recommends the following purposes and the indicated amounts: Newberry Opera House, \$9,250; Newberry County Law Enforcement, \$3,000; Prosperity's Hoppin', \$900; Newberry County Historical/Museum Society, \$1,899; Little Mountain Reunion, \$3,000; Newberry Visitor's Center, \$6,000; Party in the Pines, \$2,000; Newberry Community Players, \$500; Ag Treasure Tour, \$2,000; Palmetto Trail, \$1,000; Antique Car Show and Veterans Salute, \$2,000.

Promotional-related funding is distributed continuously throughout the year on a percentage basis, as it is received. In the prior year, \$14,438 was distributed for this purpose, with the Newberry County Chamber of Commerce (statutory "lead agency") receiving 40%, the Prosperity Business Association receiving 15%, and Capital City Lake Murray receiving 45%. The Committee recommends the same distribution formula for FY 14-15.

7. ***Appointments***

8. ***Committee Meetings***

- a. Public Safety and Courts Committee 8/11/14 – Tommy Long, Emergency Services Coordinator

9. ***Public Comments (by those who signed up at the meeting)***

10. ***Executive Session (if needed)***

- a. §30-4-70(a)(2) SC Code of Laws: Discussion of negotiations incident to proposed contractual arrangements and proposed sale or purchase of property, the receipt of legal advice where the legal advice relates to a pending, threatened, or potential claim or other matters covered by the attorney-client privilege, settlement of legal claims, or the position of the public agency in other adversary situations involving the assertion against the agency of a claim.

THIS PAGE AND A
PORTION OF THE
NEXT WERE REDACTED
AS IT RELATED TO
EXECUTIVE SESSION
MATTERS

11. *Comments/Request from Administrator*

12. *Comments/Request from Council Members*

13. *Future Meetings*

- a. Public Works and Planning Committee 8/25/14 @ 6:00 p.m.
- b. Council Work Session 8/27/14 @ 6:00 p.m.
- c. County Council 9/3/14 @ 7:00 p.m.

14. *Adjournment*

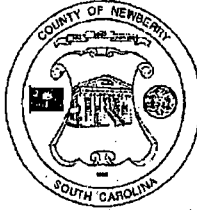
037^37. Adams email to
Renwick 8-15-2014.pdf

From: **Wayne Adams** wadams@newberrycounty.net
Subject: annotated agenda for 8-20-14
Date: August 15, 2014 at 5:12 PM
To: Laurie Renwick lrenwick@newberrycounty.net

ROA 00832



ROA 00832



**NEWBERRY COUNTY COUNCIL
AGENDA
AUGUST 20, 2014
7:00 P.M.**

Call to order: Henry H. Livingston, III, Chairman
Invocation and Pledge of Allegiance: Wayne Adams, County Administrator

1. *Adoption of Consent Agenda*
2. *Additions, Deletions and Adoption of Agenda*
3. *Newberry County Service Award Presentations*

*David Parnell, Director of Veteran Affairs – 5 years
Charles Verner, Public Defender – 10 years
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ROA 00835
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13. *Future Meetings*

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- b. Council Work Session 8/27/14 @ 6:00 p.m.
- c. County Council 9/3/14 @ 7:00 p.m.

14. *Adjournment*

038^1. Adams email to Renwick
8-21-2014 (2).pdf

From: Wayne Adams wadams@newberrycounty.net
Subject: as discussed
Date: August 21, 2014 at 12:20 PM
To: Laurie Renwick lrenwick@newberrycounty.net

ROA 00839



ROA 00839



ROA 00840

COUNTY OF NEWBERRY

OFFICE OF THE COUNTY COUNCIL
COURTHOUSE ANNEX, 1309 COLLEGE STREET
POST OFFICE BOX 156
NEWBERRY, SOUTH CAROLINA 29108

VOICE: (803) 321-2100
FAX: (803) 321-2102
WEB: www.newberrycounty.net

COUNCIL MEMBERS:

HENRY H. LIVINGSTON, III, CHAIRMAN
KIRKSEY KOON, VICE-CHAIRMAN
JOHN B. CALDWELL
WILLIAM D. WALDROP
LESLIE (LES) HIPP
STEVEN C. STOCKMAN
SCOTT CAIN

COUNTY ADMINISTRATOR:
WAYNE ADAMS

COUNTY ATTORNEY:
A.J. TOTHACER, JR.

CLERK TO COUNCIL:
LAURIE N. RENWICK

August 21, 2014

Senator Ronnie Cromer
SC Senate District 18
311 Gressette Building
Columbia, SC 29201

Re: Compensation, hours and location of magistrates [SC Code Section 22-1-10 (A)]

Dear Senator Cromer:

In accordance with Code Section 22-1-10 (A), Newberry County Council is requesting changes in the "number of full-time and part-time magistrate positions available in the county, the number of work hours required by each position, the compensation for each position, and the area of the county to which each position is assigned."

Within the parameters of this statute, County Council requests that its full complement of magistrates be changed to include only full-time magistrates, with their terms commencing on May 1, 2015, or at whatever soonest date may be in keeping with the statute. The County understands that the statutory formula currently provides for Newberry County to have three full-time magistrates. Council wishes to discontinue the use of any part-time magistrates. The payment of salaries for the three full-time magistrates would be as required under Code Section 22-8-40, et seq., and their location assignments would be as determined by the magistrate thereafter designated as chief magistrate.

ROA 00840

ROA 00841

This letter is written more than 90 days prior to the commencement of magistrates' terms, as required under Code Section 22-1-10 (A), and we request that you act upon it according to the appropriate timing.

Thank you for your kind attention to this request.

With best regards,

A handwritten signature in cursive script that reads "Wayne Adams".

Wayne Adams, Newberry County Administrator

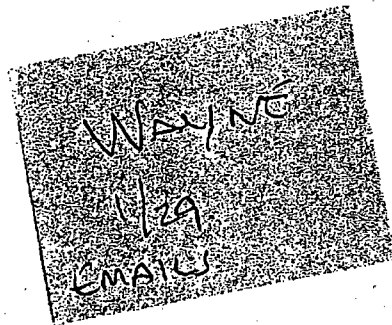
Cc: Newberry County Council
Newberry County Magistrates

ROA 00841

039^1. Adams email to Renwick
8-21-2014.pdf

From: Wayne Adams wadams@newberrycounty.net
Subject: as discussed
Date: August 21, 2014 at 12:20 PM
To: Laurie Renwick lrenwick@newberrycounty.net

ROA 00843



ROA 00843



ROA 00844

COUNTY OF NEWBERRY

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NEWBERRY, SOUTH CAROLINA 29108

VOICE: (803) 321-2100

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COUNTY ADMINISTRATOR:
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CLERK TO COUNCIL:
LAURIE N. RENWICK

August 21, 2014

Senator Ronnie Cromer
SC Senate District 18
311 Gressette Building
Columbia, SC 29201

Re: Compensation, hours and location of magistrates [SC Code Section 22-1-10 (A)]

Dear Senator Cromer:

In accordance with Code Section 22-1-10 (A), Newberry County Council is requesting changes in the "number of full-time and part-time magistrate positions available in the county, the number of work hours required by each position, the compensation for each position, and the area of the county to which each position is assigned."

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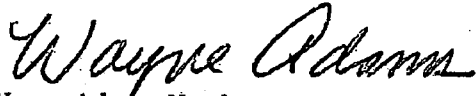
ROA 00844

ROA 00845

This letter is written more than 90 days prior to the commencement of magistrates' terms, as required under Code Section 22-1-10 (A), and we request that you act upon it according to the appropriate timing.

Thank you for your kind attention to this request.

With best regards,

A handwritten signature in cursive script that reads "Wayne Adams".

Wayne Adams, Newberry County Administrator

Cc: Newberry County Council
Newberry County Magistrates

ROA 00845

040^10. Adams email to Jayroe
8-21-2014.pdf

Jay Tothacer

ROA 00847

From: Wayne Adams <wadams@newberrycounty.net>
Sent: Thursday, August 21, 2014 11:39 AM
To: ajayroe@jayroecpa.com
Cc: Jay Tothacer; Laurie Renwick
Subject: Council request for full-time magistrates
Attachments: Full-Time Magistrates Request.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Judge Jayroe,
Please see the attached letter Council directed me last night to send to Senator Cromer.

Don't hesitate to let me know if you have questions.

Wayne



ROA 00848

COUNTY OF NEWBERRY

OFFICE OF THE COUNTY COUNCIL
COURTHOUSE ANNEX, 1309 COLLEGE STREET
POST OFFICE BOX 156
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CLERK TO COUNCIL:

LAURIE N. RENWICK

August 21, 2014

Senator Ronnie Cromer
SC Senate District 18
311 Gressette Building
Columbia, SC 29201

Re: Compensation, hours and location of magistrates [SC Code Section 22-1-10 (A)]

Dear Senator Cromer:

In accordance with Code Section 22-1-10 (A), Newberry County Council is requesting changes in the "number of full-time and part-time magistrate positions available in the county, the number of work hours required by each position, the compensation for each position, and the area of the county to which each position is assigned."

Within the parameters of this statute, County Council requests that its full complement of magistrates be changed to include only full-time magistrates, with their terms commencing on May 1, 2015, or at whatever soonest date may be in keeping with the statute. The County understands that the statutory formula currently provides for Newberry County to have three full-time magistrates. Council wishes to discontinue the use of any part-time magistrates. The payment of salaries for the three full-time magistrates would be as required under Code Section 22-8-40, et seq., and their location assignments would be as determined by the magistrate thereafter designated as chief magistrate.

ROA 00848

ROA 00849

This letter is written more than 90 days prior to the commencement of magistrates' terms, as required under Code Section 22-1-10 (A), and we request that you act upon it according to the appropriate timing.

Thank you for your kind attention to this request.

With best regards,

A handwritten signature in cursive script that reads "Wayne Adams".

Wayne Adams, Newberry County Administrator

Cc: Newberry County Council
Newberry County Magistrates

ROA 00849

041^2. Adams email to Renwick
8-21-2014 (2).pdf

From: **Wayne Adams** wadams@newberrycounty.net
Subject: as discussed
Date: August 21, 2014 at 9:44 AM
To: Laurie Renwick lrenwick@newberrycounty.net

ROA 00851



ROA 00851

August 21, 2014

Senator Ronnie Cromer
SC Senate District 18
311 Gressette Building
Columbia, SC 29201

Re: Compensation, hours and location of magistrates [SC Code Section 22-1-10 (A)]

Dear Senator Cromer:

In accordance with Code Section 22-1-10 (A), Newberry County Council is requesting changes in the "number of full-time and part-time magistrate positions available in the county, the number of work hours required by each position, the compensation for each position, and the area of the county to which each position is assigned."

Within the parameters of this statute, County Council requests that its full complement of magistrates be changed to include only full-time magistrates, with their terms commencing on May 1, 2015, or at whatever soonest date may be in keeping with the statute. The County understands that the statutory formula currently provides for Newberry County to have three full-time magistrates. Council wishes to discontinue the use of any part-time magistrates. The payment of salaries for the three full-time magistrates would be as required under Code Section 22-8-40, et seq., and their location assignments would be as determined by the magistrate thereafter designated as chief magistrate.

ROA 00853

This letter is written more than 90 days prior to the commencement of magistrates' terms, as required under Code Section 22-1-10 (A), and we request that you act upon it according to the appropriate timing.

Thank you for your kind attention to this request.

With best regards,

Wayne Adams, Newberry County Administrator

Cc: Newberry County Council
Newberry County Magistrates

ROA 00853

042^2. Adams email to Renwick
8-21-2014.pdf

From: Wayne Adams wadams@newberrycounty.net
Subject: as discussed
Date: August 21, 2014 at 9:44 AM
To: Laurie Renwick lrenwick@newberrycounty.net

ROA 00855



ROA 00855

August 21, 2014

Senator Ronnie Cromer
SC Senate District 18
311 Gressette Building
Columbia, SC 29201

Re: Compensation, hours and location of magistrates [SC Code Section 22-1-10 (A)]

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ROA 00857

This letter is written more than 90 days prior to the commencement of magistrates' terms, as required under Code Section 22-1-10 (A), and we request that you act upon it according to the appropriate timing.

Thank you for your kind attention to this request.

With best regards,

Wayne Adams, Newberry County Administrator

Cc: Newberry County Council
Newberry County Magistrates

ROA 00857

043^32. Koon email to Adams 8
-21-2014 (2).pdf

From: bkoon@backroads.net
Subject: Re: Council request for full-time magistrates only.
Date: August 21, 2014 at 4:35 PM
To: Wayne Adams wadams@newberrycounty.net

ROA 00859

Thankyou! Barry

—
Sent from my mobile via Mail.Ru

ROA 00859

044^32. Koon email to Adams 8.
-21-2014.pdf

From: bkoon@backroads.net 30
Subject: Re: Council request for full-time magistrates only.
Date: August 21, 2014 at 4:35 PM
To: Wayne Adams wadams@newberrycounty.net

ROA 00861

Thankyou! Barry

—
Sent from my mobile via Mail.Ru

ROA 00861

045^33. Adams email to Koon 8
-21-2014 (2).pdf

From: Wayne Adams wadams@newberrycounty.net
Subject: Council request for full-time magistrates only.
Date: August 21, 2014 at 2:09 PM
To: bkoon@backroads.net

ROA 00863



Full-Time Magistrates Judge Koon,
Request

Council directed me last night to send this letter to Senator Cromer.

Let me know if you have questions.

Best,

Wayne

ROA 00863



ROA 00864

COUNTY OF NEWBERRY

OFFICE OF THE COUNTY COUNCIL
COURTHOUSE ANNEX, 1309 COLLEGE STREET
POST OFFICE BOX 156
NEWBERRY, SOUTH CAROLINA 29108

VOICE: (803) 321-2100

FAX: (803) 321-2102

WEB: www.newberrycounty.net

COUNCIL MEMBERS:

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WAYNE ADAMS

COUNTY ATTORNEY:
A.J. TOTHACER, JR.

CLERK TO COUNCIL:
LAURIE N. RENWICK

August 21, 2014

Senator Ronnie Cromer
SC Senate District 18
311 Gressette Building
Columbia, SC 29201

Re: Compensation, hours and location of magistrates [SC Code Section 22-1-10 (A)]

Dear Senator Cromer:

In accordance with Code Section 22-1-10 (A), Newberry County Council is requesting changes in the "number of full-time and part-time magistrate positions available in the county, the number of work hours required by each position, the compensation for each position, and the area of the county to which each position is assigned."

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ROA 00864

ROA 00865

This letter is written more than 90 days prior to the commencement of magistrates' terms, as required under Code Section 22-1-10 (A), and we request that you act upon it according to the appropriate timing.

Thank you for your kind attention to this request.

With best regards,

A handwritten signature in cursive script that reads "Wayne Adams".

Wayne Adams, Newberry County Administrator

Cc: Newberry County Council
Newberry County Magistrates

ROA 00865

046^33. Adams email to Koon 8
-21-2014.pdf

From: Wayne Adams wadams@newberrycounty.net
Subject: Council request for full-time magistrates only.
Date: August 21, 2014 at 2:09 PM
To: bkoon@backroads.net

ROA 00867



Full-Time Magistrates Judge Koon,
Request

Council directed me last night to send this letter to Senator Cromer.

Let me know if you have questions.

Best,

Wayne

ROA 00867



ROA 00868

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August 21, 2014

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SC Senate District 18
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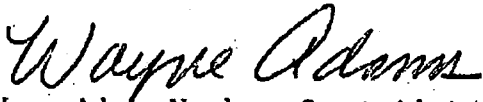
ROA 00868

ROA 00869

This letter is written more than 90 days prior to the commencement of magistrates' terms, as required under Code Section 22-1-10 (A), and we request that you act upon it according to the appropriate timing.

Thank you for your kind attention to this request.

With best regards,

A handwritten signature in cursive script that reads "Wayne Adams".

Wayne Adams, Newberry County Administrator

Cc: Newberry County Council
Newberry County Magistrates

ROA 00869

047^34. Adams email to Jayroe
8-21-2014 (2).pdf

From: Wayne Adams wadams@newberrycounty.net
Subject: Council request for full-time magistrates
Date: August 21, 2014 at 11:38 AM
To: ajayroe@jayroecpa.com
Cc: Jay Tothacer jtothacer@newberrycounty.net, Laurie Renwick lrenwick@newberrycounty.net

ROA 00871



Full-Time Magistrates Judge Jayroe,
Request

Please see the attached letter Council directed me last night to send to Senator Cromer.

Don't hesitate to let me know if you have questions.

Wayne

ROA 00871



ROA 00872

COUNTY OF NEWBERRY

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CLERK TO COUNCIL:

LAURIE N. RENWICK

August 21, 2014

Senator Ronnie Cromer
SC Senate District 18
311 Gressette Building
Columbia, SC 29201

Re: Compensation, hours and location of magistrates [SC Code Section 22-1-10 (A)]

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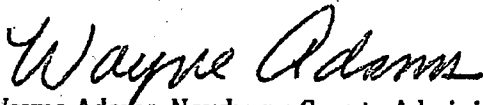
ROA 00872

ROA 00873

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Thank you for your kind attention to this request.

With best regards,

A handwritten signature in cursive script that reads "Wayne Adams".

Wayne Adams, Newberry County Administrator

Cc: Newberry County Council
Newberry County Magistrates

ROA 00873

048^34. Adams email to Jayroe
8-21-2014.pdf

From: Wayne Adams wadams@newberrycounty.net
Subject: Council request for full-time magistrates
Date: August 21, 2014 at 11:38 AM
To: ajayroe@jayroecpa.com
Cc: Jay Tothacer jtothacer@newberrycounty.net, Laurie Renwick lrenwick@newberrycounty.net

ROA 00875



Full-Time Magistrates Judge Jayroe,
Request

Please see the attached letter Council directed me last night to send to Senator Cromer.

Don't hesitate to let me know if you have questions.

Wayne

ROA 00875



ROA 00876

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August 21, 2014

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SC Senate District 18
311 Gressette Building
Columbia, SC 29201

Re: Compensation, hours and location of magistrates [SC Code Section 22-1-10 (A)]

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ROA 00876

ROA 00877

This letter is written more than 90 days prior to the commencement of magistrates' terms, as required under Code Section 22-1-10 (A), and we request that you act upon it according to the appropriate timing.

Thank you for your kind attention to this request.

With best regards,

A handwritten signature in cursive script that reads "Wayne Adams".

Wayne Adams, Newberry County Administrator

Cc: Newberry County Council
Newberry County Magistrates

ROA 00877

049^35. Adams email to
Halfacre 8-21-2014 (2).pdf

From: Wayne Adams wadams@newberrycounty.net 
Subject: As discussed.
Date: August 21, 2014 at 11:05 AM
To: Judge Ron Halfacre RHalfacre@Newberrycounty.net, gjohnson@newberrycounty.net

ROA 00879



ROA 00879



ROA 00880

COUNTY OF NEWBERRY

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CLERK TO COUNCIL:

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August 21, 2014

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SC Senate District 18
311 Gressette Building
Columbia, SC 29201

Re: Compensation, hours and location of magistrates [SC Code Section 22-1-10 (A)]

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ROA 00880

ROA 00881

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Thank you for your kind attention to this request.

With best regards,

A handwritten signature in cursive script that reads "Wayne Adams".

Wayne Adams, Newberry County Administrator

Cc: Newberry County Council
Newberry County Magistrates

ROA 00881

050^35. Adams email to
Halfacre 8-21-2014.pdf

From: **Wayne Adams** wadams@newberrycounty.net 
Subject: As discussed.
Date: August 21, 2014 at 11:05 AM
To: Judge Ron Halfacre RHalfacre@Newberrycounty.net, gjohnson@newberrycounty.net

ROA 00883



ROA 00883



ROA 00884

COUNTY OF NEWBERRY

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COUNTY ADMINISTRATOR:

WAYNE ADAMS

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CLERK TO COUNCIL:

LAURIEN RENWICK

August 21, 2014

Senator Ronnie Cromer
SC Senate District 18
311 Gressette Building
Columbia, SC 29201

Re: Compensation, hours and location of magistrates [SC Code Section 22-1-10 (A)]

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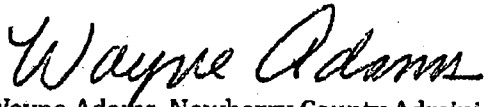
ROA 00884

ROA 00885

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With best regards,

A handwritten signature in cursive script that reads "Wayne Adams".

Wayne Adams, Newberry County Administrator

Cc: Newberry County Council
Newberry County Magistrates

ROA 00885

051^36. Adams email to Cromer
8-21-2014 (2).pdf

From: **Wayne Adams** wadams@newberrycounty.net 
Subject: As discussed
Date: August 21, 2014 at 10:17 AM
To: ronniecromer@bellsouth.net

ROA 00887



ROA 00887



ROA 00888

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August 21, 2014

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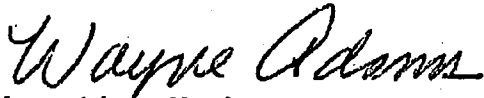
ROA 00888

ROA 00889

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With best regards,

A handwritten signature in cursive script that reads "Wayne Adams".

Wayne Adams, Newberry County Administrator

Cc: Newberry County Council
Newberry County Magistrates

ROA 00889

052^36. Adams email to Cromer
8-21-2014.pdf

From: **Wayne Adams** wadams@newberrycounty.net
Subject: As discussed
Date: August 21, 2014 at 10:17 AM
To: ronniecromer@bellsouth.net

ROA 00891



PDF

ROA 00891



ROA 00892

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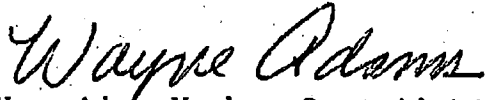
ROA 00892

ROA 00893

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Thank you for your kind attention to this request.

With best regards,

A handwritten signature in cursive script that reads "Wayne Adams".

Wayne Adams, Newberry County Administrator

Cc: Newberry County Council
Newberry County Magistrates

ROA 00893

053^11. Adams email to
Aydlette 8-26-2014.pdf

Jay Tothacer

ROA 00895

From: Wayne Adams <wadams@newberrycounty.net>
Sent: Tuesday, August 26, 2014 2:28 PM
To: Dirk Aydlette
Cc: Jay Tothacer
Subject: On-Call Pay for Part-Time Magistrates

Follow Up Flag: Follow up
Flag Status: Flagged

Dirk,

I am drafting a letter to the part-time magistrates concerning the reporting of hour worked.

Is it OK to include in that letter that we are discontinuing the "on-call" stipend that Council currently has in place?

Wayne

054^12. Adams email to
Tothacer 8-26-2014.pdf

Jay Tothacer

~~ROA 00897~~

From: Wayne Adams <wadams@newberrycounty.net>
Sent: Tuesday, August 26, 2014 3:50 PM
To: Jay Tothacer
Subject: Re: As discussed
Attachments: PT Magistrates On Call.xls; Untitled attachment 00287.htm

Follow Up Flag: Follow up
Flag Status: Flagged

ROA 00897

2/3/2015

Part-Time Magistrates

On-Call Compensation (3 years)

Name	Date of Hire	Current Pay (bi-weekly)	Current Pay (annual)	Sched. Hours (bi-weekly)	Hourly Rate	Hours to be Compensated	On Call Compensation	Adjustment for Previous Compensation *	Gross Pay for On-Call (3 years)
Rick Lail	4/22/2002	479.72	12,472.72	16	29.98	600	17,989.50		17,989.50
Barry Koon	6/1/2013	467.52	12,155.52	20	23.38	220	5,142.72		5,142.72
Art Jayroe	8/1/1995	536.95	13,960.70	20	26.85	600	16,108.50	(13,500.00)	2,608.50
TOTAL							39,240.72		25,740.72

* On-call supplement paid
by County Council

Name	Total from Above	Retirement Contribution (County) 13.41%	Social Security Contribution (County) 7.65%	Total Cost to County
Rick Lail	17,989.50	2,412.39	1,376.20	21,778.09
Barry Koon	5,142.72	689.64	393.42	6,225.78
Art Jayroe	2,608.50	349.80	199.55	3,157.85
Totals	25,740.72	3,451.83	1,969.17	31,161.72

ROA 00898

ROA 00898

055^24. Adams email to
Aydlette 8-26-2014 (2).pdf

From: Wayne Adams wadams@newberrycounty.net
Subject: Fwd: On-Call Pay for Part-Time Magistrates
Date: August 26, 2014 at 5:25 PM
To: Dirk Aydlette daydlette@gsblaw.net

ROA 00900

Please review Jay's draft and advise.

Thanks.

Wayne



ROA 00900



ROA 00901

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WALTER D. DAMS
COUNTY ADMINISTRATOR
A. J. TOTTEN, JR.
COUNTY ATTORNEY
LAURIE N. REYNOLDS
CLERK TO COUNCIL

August 28, 2001

Dear Judge:

The County recently determined that it may not have been fully compliant with the South Carolina Magistrate's Pay Act. Under the Act, part-time magistrates are entitled to call pay for hours worked over their set weekly hours. Unfortunately, no part-time magistrate has ever submitted an itemized request for call time payment or a time sheet showing any call hours worked. While it would be difficult, if not impossible, to determine with absolute accuracy what your total excess call hours are, the County has attempted to make a reasonable and fair determination based on your time in office and the County's understanding of the rotating call schedule over the last three years.

Based on our calculations, we intend to make a gross payment to you (Lail) of \$17,989.50, subject to the usual wage withholdings. The County will also make its Social Security and State Retirement System contributions. Because the amount owed is uncertain and speculative, the County will require a signed release from you prior to payment. If you agree to accept the above amount, please sign the enclosed release and return it to the County Administrator's office. Once we have received your signed release, a payroll check will be issued to you.

[FOR JAYROE: Based on our calculations, we intend to make a gross payment to you of \$2,608.50, subject to the usual wage withholdings. This amount is based on a gross figure of \$16,108.50, decreased by \$13,500 reflecting the \$4,500 annual stipend you received from the County which is not mandated by the Act.]

ROA 00901

Going forward, part-time magistrates must report all on-call hours worked using the attached form. Completed forms must be submitted to the County's Director of Human Resources no later than noon Monday of each week for which paychecks are disbursed to employees of the County.

Should you wish to discuss this matter in more detail, please contact Jay Tothacer, Newberry County Attorney at 321-1415

Sincerely,

Wayne Adams
County Administrator

cc: County Council

DRAFT

ROA 00902

056^24. Adams email to
Aydlette 8-26-2014.pdf

From: Wayne Adams wadams@newberrycounty.net
Subject: Fwd: On-Call Pay for Part-Time Magistrates
Date: August 26, 2014 at 5:25 PM
To: Dirk Aydlette daydlette@gsblaw.net

ROA 00904

Please review Jay's draft and advise.

Thanks.

Wayne



ROA 00904



ROA 00905

COUNTY OF NEWBERRY

OFFICE OF THE COUNTY COUNCIL

POST OFFICE BOX 156

NEWBERRY, SOUTH CAROLINA 29108

(803)321-2100

FAX: (803)321-2102

COUNCILMEN:

HENRY H. LIVINGSTON, III, CHAIRMAN
KIRKSEY KOON, VICE-CHAIRMAN
JOHN E. CALDWELL
WILLIAM D. WALDROP
LESLIE HIPP
STEVE STOCKMAN
SCOTT CAIN

WALTER ADAMS
COUNTY ADMINISTRATOR
A. J. TOTTER, JR.
COUNTY ATTORNEY
LAURIE N. REYNOLDS
CLERK TO COUNCIL

August 28, 2012

Dear Judge:

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ROA 00905

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Should you wish to discuss this matter in more detail, please contact Jay Tothacer, Newberry County Attorney at 321-1415

Sincerely,

Wayne Adams
County Administrator

cc: County Council

DRAFT

ROA 00906

057^25. Tothacer email to
Adams 8-26-2014 (2).pdf

From: Jay Tothacer jtothacer@newberrycounty.net
Subject: RE: On-Call Pay for Part-Time Magistrates
Date: August 26, 2014 at 4:26 PM
To: Wayne Adams wadams@newberrycounty.net

ROA 00908

Wayne,

See how this looks.



Jay

ROA 00908



ROA 00909

COUNTY OF NEWBERRY

OFFICE OF THE COUNTY COUNCIL
POST OFFICE BOX 156
NEWBERRY, SOUTH CAROLINA 29108

(803)321-2100
FAX: (803)321-2102

COUNCILMEN:

HENRY H. LIVINGSTON, III, CHAIRMAN
KIRKSEY KOON, VICE-CHAIRMAN
JOHN E. CALDWELL
WILLIAM D. WALDROP
LESLIE HIPPE
STEVE STOCKMAN
SCOTT CAIN

WANDA DAMS
COUNTY ADMINISTRATOR
A. J. TOTTER, JR.
COUNTY ATTORNEY
LAURIE N. REYNOLDS
CLERK TO COUNCIL

August 28, 2001

Dear Judge:

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ROA 00909

ROA 00910
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Should you wish to discuss this matter in more detail, please contact Jay Tothacer, Newberry County Attorney at 321-1415

Sincerely,

Wayne Adams
County Administrator

cc: County Council

DRAFT

ROA 00910

058^25. Tothacer email to
Adams 8-26-2014.pdf

From: Jay Tothacer [tothacer@newberrycounty.net] 
Subject: RE: On-Call Pay for Part-Time Magistrates
Date: August 26, 2014 at 4:26 PM
To: Wayne Adams wadams@newberrycounty.net

ROA 00912 

Wayne,

See how this looks.


Jay

ROA 00912



ROA 00913

COUNTY OF NEWBERRY

OFFICE OF THE COUNTY COUNCIL
POST OFFICE BOX 156
NEWBERRY, SOUTH CAROLINA 29108

(803)321-2100
FAX: (803)321-2102

COUNCILMEN:

HENRY H. LIVINGSTON, III, CHAIRMAN
KIRKSEY KOON, VICE-CHAIRMAN
JOHN B. CALDWELL
WILLIAM D. WALDROP
LESLIE HIPPI
STEVE STOCKMAN
SCOTT CAIN

WANDA DAMS
COUNTY ADMINISTRATOR
A. J. TOLSON, JR.
COUNTY ATTORNEY
LAURIE N. REYNOLDS
CLERK TO COUNCIL

August 28, 2001

Dear Judge:

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ROA 00913

Going forward, part-time magistrates must report all on-call hours worked using the attached form. Completed forms must be submitted to the County's Director of Human Resources no later than noon Monday of each week for which paychecks are disbursed to employees of the County.

Should you wish to discuss this matter in more detail, please contact Jay Tothacer, Newberry County Attorney at 321-1415

Sincerely,

Wayne Adams
County Administrator

cc: County Council

DRAFT

ROA 00914

059^26. Aydlette email to
Adams 8-26-2014 (2).pdf

From: **Dirk Aydlette** daydlette@gsblaw.net
Subject: RE: On-Call Pay for Part-Time Magistrates
Date: August 26, 2014 at 2:47 PM
To: wadams@newberrycounty.net

ROA 00916

My recollection is that stipend was paid by resolution. I don't see any reason why you can't discontinue it informally. I'll leave that to you and Jay. However, Jayroe may claim it violates the restriction on lowering pay during his appointment. We can deal with that if it happens.

Sent from my Android phone using TouchDown

ROA 00916

060^26. Aydlette email to
Adams 8-26-2014.pdf

From: **Dirk Aydlette** daydlette@gsblaw.net
Subject: RE: On-Call Pay for Part-Time Magistrates
Date: August 26, 2014 at 2:47 PM
To: wadams@newberrycounty.net

ROA 00918

My recollection is that stipend was paid by resolution. I don't see any reason why you can't discontinue it informally. I'll leave that to you and Jay. However, Jayroe may claim it violates the restriction on lowering pay during his appointment. We can deal with that if it happens.

Sent from my Android phone using TouchDown

ROA 00918

061^27. Adams email to
Aydlette 8-26-2014 (2).pdf

From: **Wayne Adams** wadams@newberrycounty.net
Subject: On-Call Pay for Part-Time Magistrates
Date: August 26, 2014 at 2:27 PM
To: Dirk Aydlette daydlette@gsblaw.net
Cc: Jay Tothacer jtothacer@newberrycounty.net

ROA 00920

Dirk,

I am drafting a letter to the part-time magistrates concerning the reporting of hour worked.

Is it OK to include in that letter that we are discontinuing the "on-call" stipend that Council currently has in place?

Wayne

ROA 00920

062^27. Adams email to
Aydlette 8-26-2014.pdf

From: Wayne Adams wadams@newberrycounty.net
Subject: On-Call Pay for Part-Time Magistrates
Date: August 26, 2014 at 2:27 PM
To: Dirk Aydlette daydlette@gsblaw.net
Cc: Jay Tothacer jtothacer@newberrycounty.net

ROA 00922

Dirk,

I am drafting a letter to the part-time magistrates concerning the reporting of hour worked.

Is it OK to include in that letter that we are discontinuing the "on-call" stipend that Council currently has in place?

Wayne

ROA 00922

063^28. Adams email to
Tothacer 8-26-2014 (2).pdf

From: Wayne Adams wadams@newberrycounty.net
Subject: Re: As discussed
Date: August 26, 2014 at 3:49 PM
To: Jay Tothacer jtothacer@newberrycounty.net

ROA 00924



ROA 00924

1/29/15

**Part-Time Magistrates
On-Call Compensation (3 years)**

Name	Date of Hire	Current Pay (bi-weekly)	Current Pay (annual)	Sched. Hours (bi-weekly)	Hourly Rate	Hours to be Compensated	On Call Compensation	Adjustment for Previous Compensation *	Gross Pay for On-Call (3 years)
Rick Lail	4/22/02	479.72	12,472.72	16	29.98	600	17,989.50		17,989.50
Barry Koon	6/1/13	467.52	12,155.52	20	23.38	220	5,142.72		5,142.72
Art Jayroe	8/1/95	536.95	13,960.70	20	26.85	600	16,108.50	(13,500.00)	2,608.50
TOTAL							39,240.72		25,740.72

ROA 00925

* On-call supplement paid
by County Council

Name	Total from Above	Retirement Contribution (County) 13.41%	Social Security Contribution (County) 7.65%	Total Cost to County
Rick Lail	17,989.50	2,412.39	1,376.20	21,778.09
Barry Koon	5,142.72	689.64	393.42	6,225.78
Art Jayroe	2,608.50	349.80	199.55	3,157.85
Totals	25,740.72	3,451.83	1,969.17	31,161.72

064^28. Adams email to
Tothacer 8-26-2014.pdf

From: **Wayne Adams** wadams@newberrycounty.net
Subject: Re: As discussed
Date: August 26, 2014 at 3:49 PM
To: **Jay Tothacer** jtothacer@newberrycounty.net

ROA 00927



ROA 00927

1/29/15

**Part-Time Magistrates
On-Call Compensation (3 years)**

Name	Date of Hire	Current Pay (bi-weekly)	Current Pay (annual)	Sched. Hours (bi-weekly)	Hourly Rate	Hours to be Compensated	On Call Compensation	Adjustment for Previous Compensation *	Gross Pay for On-Call (3 years)
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Barry Koon	5,142.72	689.64	393.42	6,225.78
Art Jayroe	2,608.50	349.80	199.55	3,157.85
Totals	25,740.72	3,451.83	1,969.17	31,161.72

ROA 00928

065^29. Tothacer email to
Adams 8-26-2014 (2).pdf

From: Jay Tothacer jtothacer@newberrycounty.net
Subject: FW: Time sheet
Date: August 26, 2014 at 3:47 PM
To: Wayne Adams wadams@newberrycounty.net

ROA 0030



ROA 00930

PART-TIME MAGISTRATE TIME SHEET INSTRUCTIONS

ROA 00931

The South Carolina Magistrate's Pay Act requires counties to pay part-time magistrates for their regular weekly hours plus any hours spent working call duty every week. Call duty is any time over and above your regular hours. In order for the County to properly compute your pay, it needs to know how many hours you work each week. Attached is a form for you to record your hours worked each week. In weeks in which you work your regularly scheduled hours or less, you need only write down the regular amount. (Example: If you are a 20-hour per week part-time magistrate who works only 18 hours that week, write down 20 hours total for that week and sign the form.) In weeks in which you work more than your regularly scheduled hours, write down the hours worked each day. (Example: If you are a 20-hour per week part-time magistrate who works 24 hours one week, write down the hours worked for each day and sign the form.) Signed forms should be turned into the county administrator weekly. Failure to properly record your hours could result in a delay or waiver of payment.

ROA 00931

PART-TIME MAGISTRATE WEEKLY TIME REPORT

NOTE: ALL HOURS WORKED MUST BE RECORDED WEEKLY AND ALL HOURS RECORDED MUST HAVE BEEN WORKED. FAILURE TO REPORT ANY ERRORS IN YOUR WORK HOURS REPORTED OR PAID WITHIN 14 CALENDAR DAYS OF RECEIVING YOUR PAYCHECK MAY RESULT IN FORFEITURE OF ANY ADDITIONAL PAY THAT MAY BE DUE.

Name: _____

For the calendar week of _____ through _____, 20____

Sun ____ / ____ Hours worked: _____

Mon ____ / ____ Hours worked: _____

Tue ____ / ____ Hours worked: _____

Wed ____ / ____ Hours worked: _____

Thur ____ / ____ Hours worked: _____

Fri ____ / ____ Hours worked: _____

Sat ____ / ____ Hours worked: _____

TOTAL HOURS WORKED: _____

Signature: _____ Date: _____

066^29. Tothacer email to
Adams 8-26-2014.pdf

From: **Jay Tothacer** jtothacer@newberrycounty.net 
Subject: FW: Time sheet
Date: August 26, 2014 at 3:47 PM
To: Wayne Adams wadams@newberrycounty.net

ROA 00934 



ROA 00934

ROA 00935

PART-TIME MAGISTRATE TIME SHEET INSTRUCTIONS

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PART-TIME MAGISTRATE WEEKLY TIME REPORT **ROA 00936**

NOTE: ALL HOURS WORKED MUST BE RECORDED WEEKLY AND ALL HOURS RECORDED MUST HAVE BEEN WORKED. FAILURE TO REPORT ANY ERRORS IN YOUR WORK HOURS REPORTED OR PAID WITHIN 14 CALENDAR DAYS OF RECEIVING YOUR PAYCHECK MAY RESULT IN FORFEITURE OF ANY ADDITIONAL PAY THAT MAY BE DUE.

Name: _____

For the calendar week of _____ through _____, 20____

Sun ____/____ Hours worked: _____

Mon ____/____ Hours worked: _____

Tue ____/____ Hours worked: _____

Wed ____/____ Hours worked: _____

Thur ____/____ Hours worked: _____

Fri ____/____ Hours worked: _____

Sat ____/____ Hours worked: _____

TOTAL HOURS WORKED: _____

Signature: _____ Date: _____

ROA 00936

067^13. Adams email to
Aydlette 8-27-2014.pdf

Jay Tothacer

ROA 00938

From: Wayne Adams <wadams@newberrycounty.net>
Sent: Wednesday, August 27, 2014 9:24 AM
To: Dirk Aydlette
Cc: Jay Tothacer
Subject: The final version of our letter to part-time magistrates
Attachments: Wayne PT magistrates 2014.doc

Follow Up Flag: Follow up
Flag Status: Flagged

Please review and comment.

Thanks.

Wayne

ROA 00938



ROA 00939

COUNTY OF NEWBERRY

OFFICE OF THE COUNTY COUNCIL
POST OFFICE BOX 156
NEWBERRY, SOUTH CAROLINA 29108

(803)321-2100
FAX: (803)321-2102

COUNCILMEN:
HENRY H. LIVINGSTON, III, CHAIRMAN
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JOHN E. CALDWELL
WILLIAM D. WALDROP
LESLIE HIPPI
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SCOTT CAIN

WAYNE ADAMS
COUNTY ADMINISTRATOR
A. J. TOTHACER, JR.
COUNTY ATTORNEY
LAURIE N. RENWICK
CLERK TO COUNCIL

August 28, 2014

Dear Judge:

The County recently determined that it might not have been fully compliant with the South Carolina Magistrate's Pay Act. Under the Act, part-time magistrates are entitled to call pay for hours worked over their set weekly hours. Unfortunately, no part-time magistrate has ever submitted an itemized request for call time payment or a time sheet showing any call hours worked. While it would be difficult, if not impossible, to determine with absolute accuracy what your total excess call hours are, the County has attempted to make a reasonable and fair determination based on your time in office and the County's understanding of the rotating call schedule over the last three years.

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Importantly, if you have received any other form of compensation for call time over the past three years, the amount referenced in the above paragraph reflects a corresponding prior reduction. Moreover, as of the date of this memorandum, the County is discontinuing any such payments.

ROA 00939

Going forward, part-time magistrates must report all on-call hours worked using the attached form. Completed forms must be submitted to the County's Director of Human Resources no later than noon Monday of each week for which paychecks are disbursed to employees of the County. **ROA 00940**

Should you wish to discuss this matter in more detail, please contact Jay Tothacer, Newberry County Attorney at 321-1415

Sincerely,

Wayne Adams
County Administrator

cc: County Council

ROA 00940

068^14. Adams email to
Tothacer 8-27-2014.pdf

Jay Tothacer

ROA 00942

From: Wayne Adams <wadams@newberrycounty.net>
Sent: Wednesday, August 27, 2014 5:15 PM
To: Jay Tothacer
Cc: Wanda Hill
Subject: Letter to part-time magistrates
Attachments: Wayne PT magistrates 2014.doc

Follow Up Flag: Follow up
Flag Status: Flagged

ROA 00942



ROA 00943

COUNTY OF NEWBERRY

OFFICE OF THE COUNTY COUNCIL
POST OFFICE BOX 156
NEWBERRY, SOUTH CAROLINA 29108

(803)321-2100
FAX: (803)321-2102

COUNCILMEN:
HENRY H. LIVINGSTON, III, CHAIRMAN
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WAYNE ADAMS
COUNTY ADMINISTRATOR
A. J. TOHACER, JR.
COUNTY ATTORNEY
LAURIE N. RENWICK
CLERK TO COUNCIL

August 28, 2014

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ROA 00943

Going forward, part-time magistrates must report all on-call hours worked using the attached form. Completed forms must be submitted to the County's Director of Human Resources **ROA 00944** later than noon Monday of each week for which paychecks are disbursed to employees of the County. Failure to properly record your hours could result in a delay or waiver of payment.

Should you wish to discuss this matter in more detail, please contact Jay Tothacer, Newberry County Attorney at 321-1415

Sincerely,

Wayne Adams
County Administrator

cc: County Council

ROA 00944

069^21. Adams email to
Tothacer 8-27-2014 (2).pdf

From: **Wayne Adams** wadams@newberrycounty.net
Subject: Letter to part-time magistrates
Date: August 27, 2014 at 5:15 PM
To: Jay Tothacer jtothacer@newberrycounty.net
Cc: Wanda Hill whill@newberrycounty.net

ROA 00946



ROA 00946



ROA 00947

COUNTY OF NEWBERRY

OFFICE OF THE COUNTY COUNCIL
POST OFFICE BOX 156
NEWBERRY, SOUTH CAROLINA 29108

(803)321-2100
FAX: (803)321-2102

COUNCILMEN:
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WILLIAM D. WALDROP
LESLIE HIPP
STEVE STOCKMAN
SCOTT CAIN

WAYNE ADAMS
COUNTY ADMINISTRATOR
A. J. TOTHACER, JR.
COUNTY ATTORNEY
LAURIE N. RENWICK
CLERK TO COUNCIL

August 28, 2014

Dear Judge:

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Importantly, if you have received any other form of compensation for call time over the past three years, the amount referenced in the above paragraph reflects a corresponding prior reduction. Moreover, as of the date of this memorandum, the County is discontinuing any such payments.

ROA 00947

Going forward, part-time magistrates must report all on-call hours worked using the attached form. Completed forms must be submitted to the County's Director of Human Resources no later than noon Monday of each week for which paychecks are disbursed to employees of the County. Failure to properly record your hours could result in a delay or waiver of payment. ROA 00948

Should you wish to discuss this matter in more detail, please contact Jay Tothacer, Newberry County Attorney at 321-1415

Sincerely,

Wayne Adams
County Administrator

cc: County Council

ROA 00948

070^21. Adams email to
Tothacer 8-27-2014.pdf

From: Wayne Adams wadams@newberrycounty.net
Subject: Letter to part-time magistrates
Date: August 27, 2014 at 5:15 PM
To: Jay Tothacer jtothacer@newberrycounty.net
Cc: Wanda Hill whill@newberrycounty.net

ROA 00950



ROA 00950



ROA 00951

COUNTY OF NEWBERRY

OFFICE OF THE COUNTY COUNCIL
POST OFFICE BOX 156
NEWBERRY, SOUTH CAROLINA 29108

(803)321-2100
FAX: (803)321-2102

COUNCILMEN:

HENRY H. LIVINGSTON, III, CHAIRMAN
KIRKSEY KOON, VICE-CHAIRMAN
JOHN E. CALDWELL
WILLIAM D. WALDROP
LESLIE HIPPI
STEVE STOCKMAN
SCOTT CAIN

WAYNE ADAMS
COUNTY ADMINISTRATOR
A. J. TOTHACER, JR.
COUNTY ATTORNEY
LAURIE N. RENWICK
CLERK TO COUNCIL

August 28, 2014

Dear Judge:

The County recently determined that it might not have been fully compliant with the South Carolina Magistrate's Pay Act. Under the Act, part-time magistrates are entitled to call pay for hours worked over their set weekly hours. Unfortunately, no part-time magistrate has ever submitted an itemized request for call time payment or a time sheet showing any call hours worked. While it would be difficult, if not impossible, to determine with absolute accuracy what your total excess call hours are, the County has attempted to make a reasonable and fair determination based on your time in office and the County's understanding of the rotating call schedule over the last three years.

Based on our calculations, we intend to make a gross payment to you (Lail) of \$17,989.50, subject to the usual wage withholdings. The County will also make its Social Security and State Retirement System contributions. Because the amount owed is uncertain and speculative, the County will require a signed release from you prior to payment. If you agree to accept the above amount, please sign the enclosed release and return it to the County Administrator's office. Once we have received your signed release, a payroll check will be issued to you.

Importantly, if you have received any other form of compensation for call time over the past three years, the amount referenced in the above paragraph reflects a corresponding prior reduction. Moreover, as of the date of this memorandum, the County is discontinuing any such payments.

ROA 00951

Going forward, part-time magistrates must report all on-call hours worked using the attached form. Completed forms must be submitted to the County's Director of Human Resources no later than noon Monday of each week for which paychecks are disbursed to employees of the County. Failure to properly record your hours could result in a delay or waiver of payment.

Should you wish to discuss this matter in more detail, please contact Jay Tothacer, Newberry County Attorney at 321-1415

Sincerely,

Wayne Adams
County Administrator

cc: County Council

ROA 00952

071^22. Aydlette email to
Adams 8-27-2014 (2).pdf

From: **Dirk Aydlette** daydlette@gsblaw.net
Subject: RE: The final version of our letter to part-time magistrates
Date: August 27, 2014 at 4:23 PM
To: wadams@newberrycounty.net

ROA 00954

Looks good.

ROA 00954

072^22. Aydlette email to
Adams 8-27-2014.pdf

From: Dirk Aydlette daydlette@gsblaw.net
Subject: RE: The final version of our letter to part-time magistrates
Date: August 27, 2014 at 4:23 PM
To: wadams@newberrycounty.net

ROA 00956

Looks good.

ROA 00956

073^23. Adams email to
Aydlette 8-27-2014 (2).pdf

From: **Wayne Adams** wadams@newberrycounty.net 
Subject: The final version of our letter to part-time magistrates
Date: August 27, 2014 at 9:24 AM
To: Dirk Aydlette daydlette@gsblaw.net
Cc: Jay Tothacer jtothacer@newberryccunty.net

ROA 00958



Wayne PT magistrates Please review and comment.
2014.doc

Thanks.

Wayne

ROA 00958



ROA 00959

COUNTY OF NEWBERRY

OFFICE OF THE COUNTY COUNCIL
POST OFFICE BOX 156
NEWBERRY, SOUTH CAROLINA 29108

(803)321-2100
FAX: (803)321-2102

COUNCILMEN:
HENRY H. LIVINGSTON, III, CHAIRMAN
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STEVE STOCKMAN
SCOTT CAIN

WAYNE ADAMS
COUNTY ADMINISTRATOR
A. J. TOTHACER, JR.
COUNTY ATTORNEY
LAURIE N. RENWICK
CLERK TO COUNCIL

August 28, 2014

Dear Judge:

The County recently determined that it might not have been fully compliant with the South Carolina Magistrate's Pay Act. Under the Act, part-time magistrates are entitled to call pay for hours worked over their set weekly hours. Unfortunately, no part-time magistrate has ever submitted an itemized request for call time payment or a time sheet showing any call hours worked. While it would be difficult, if not impossible, to determine with absolute accuracy what your total excess call hours are, the County has attempted to make a reasonable and fair determination based on your time in office and the County's understanding of the rotating call schedule over the last three years.

Based on our calculations, we intend to make a gross payment to you (Lail) of \$17,989.50, subject to the usual wage withholdings. The County will also make its Social Security and State Retirement System contributions. Because the amount owed is uncertain and speculative, the County will require a signed release from you prior to payment. If you agree to accept the above amount, please sign the enclosed release and return it to the County Administrator's office. Once we have received your signed release, a payroll check will be issued to you.

Importantly, if you have received any other form of compensation for call time over the past three years, the amount referenced in the above paragraph reflects a corresponding prior reduction. Moreover, as of the date of this memorandum, the County is discontinuing any such payments.

ROA 00959

Going forward, part-time magistrates must report all on-call hours worked using the attached form. Completed forms must be submitted to the County's Director of Human Resources no later than noon Monday of each week for which paychecks are disbursed to employees of the County. **ROA 00960**

Should you wish to discuss this matter in more detail, please contact Jay Tothacer, Newberry County Attorney at 321-1415

Sincerely,

Wayne Adams
County Administrator

cc: County Council

ROA 00960

074^23. Adams email to
Aydlette 8-27-2014.pdf

From: **Wayne Adams** wadams@newberrycounty.net 
Subject: The final version of our letter to part-time magistrates
Date: August 27, 2014 at 9:24 AM
To: Dirk Aydlette daydlette@gsblaw.net
Cc: Jay Tothacer jtothacer@newberrycounty.net

ROA 00962



Wayne PT magistrates Please review and comment.
2014.doc

Thanks.

Wayne

ROA 00962



ROA 00963

COUNTY OF NEWBERRY

OFFICE OF THE COUNTY COUNCIL
POST OFFICE BOX 156
NEWBERRY, SOUTH CAROLINA 29108

(803)321-2100
FAX: (803)321-2102

COUNCILMEN:

HENRY H. LIVINGSTON, III, CHAIRMAN
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SCOTT CAIN

WAYNE ADAMS
COUNTY ADMINISTRATOR
A. J. TOTHACER, JR.
COUNTY ATTORNEY
LAURIE N. RENWICK
CLERK TO COUNCIL

August 28, 2014

Dear Judge:

The County recently determined that it might not have been fully compliant with the South Carolina Magistrate's Pay Act. Under the Act, part-time magistrates are entitled to call pay for hours worked over their set weekly hours. Unfortunately, no part-time magistrate has ever submitted an itemized request for call time payment or a time sheet showing any call hours worked. While it would be difficult, if not impossible, to determine with absolute accuracy what your total excess call hours are, the County has attempted to make a reasonable and fair determination based on your time in office and the County's understanding of the rotating call schedule over the last three years.

Based on our calculations, we intend to make a gross payment to you (Lail) of \$17,989.50, subject to the usual wage withholdings. The County will also make its Social Security and State Retirement System contributions. Because the amount owed is uncertain and speculative, the County will require a signed release from you prior to payment. If you agree to accept the above amount, please sign the enclosed release and return it to the County Administrator's office. Once we have received your signed release, a payroll check will be issued to you.

Importantly, if you have received any other form of compensation for call time over the past three years, the amount referenced in the above paragraph reflects a corresponding prior reduction. Moreover, as of the date of this memorandum, the County is discontinuing any such payments.

ROA 00963

ROA 00964
Going forward, part-time magistrates must report all on-call hours worked using the attached form. Completed forms must be submitted to the County's Director of Human Resources no later than noon Monday of each week for which paychecks are disbursed to employees of the County.

Should you wish to discuss this matter in more detail, please contact Jay Tothacer, Newberry County Attorney at 321-1415

Sincerely,

Wayne Adams
County Administrator

cc: County Council

ROA 00964

075^6. Adams email to Tothacer
8-27-2014.pdf

Wanda Hill

ROA 00966

From: Wayne Adams <wadams@newberrycounty.net>
Sent: Wednesday, August 27, 2014 5:15 PM
To: Jay Tothacer
Cc: Wanda Hill
Subject: Letter to part-time magistrates
Attachments: Wayne PT magistrates 2014.doc

ROA 00966



ROA 00967

COUNTY OF NEWBERRY

OFFICE OF THE COUNTY COUNCIL
POST OFFICE BOX 156
NEWBERRY, SOUTH CAROLINA 29108

(803)321-2100
FAX: (803)321-2102

COUNCILMEN:

HENRY H. LIVINGSTON, III, CHAIRMAN
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STEVE STOCKMAN
SCOTT CAIN

WAYNE ADAMS
COUNTY ADMINISTRATOR
A. J. TOTHACER, JR.
COUNTY ATTORNEY
LAURIE N. RENWICK
CLERK TO COUNCIL

August 28, 2014

Dear Judge:

The County recently determined that it might not have been fully compliant with the South Carolina Magistrate's Pay Act. Under the Act, part-time magistrates are entitled to call pay for hours worked over their set weekly hours. Unfortunately, no part-time magistrate has ever submitted an itemized request for call time payment or a time sheet showing any call hours worked. While it would be difficult, if not impossible, to determine with absolute accuracy what your total excess call hours are, the County has attempted to make a reasonable and fair determination based on your time in office and the County's understanding of the rotating call schedule over the last three years.

Based on our calculations, we intend to make a gross payment to you (Lail) of \$17,989.50, subject to the usual wage withholdings. The County will also make its Social Security and State Retirement System contributions. Because the amount owed is uncertain and speculative, the County will require a signed release from you prior to payment. If you agree to accept the above amount, please sign the enclosed release and return it to the County Administrator's office. Once we have received your signed release, a payroll check will be issued to you.

Importantly, if you have received any other form of compensation for call time over the past three years, the amount referenced in the above paragraph reflects a corresponding prior reduction. Moreover, as of the date of this memorandum, the County is discontinuing any such payments.

ROA 00967

ROA 00968
Going forward, part-time magistrates must report all on-call hours worked using the attached form. Completed forms must be submitted to the County's Director of Human Resources no later than noon Monday of each week for which paychecks are disbursed to employees of the County. Failure to properly record your hours could result in a delay or waiver of payment.

Should you wish to discuss this matter in more detail, please contact Jay Tothacer, Newberry County Attorney at 321-1415

Sincerely,

Wayne Adams
County Administrator

cc: County Council

ROA 00968

076^15. Adams email to Jayroe
8-28-2014.pdf

Jay Tothacer

ROA 00970

From: Wayne Adams <wadams@newberrycounty.net>
Sent: Thursday, August 28, 2014 12:11 PM
To: ajayroe@jayroecpa.com
Cc: Jay Tothacer; Buddy Livingston; Kirksey Koon; Les Hipp; Les Hipp; Scott Cain; Steve Stockman; Bill Waldrop; John Caldwell; Laurie Renwick; Debbie Cromer; Dirk Aydlette
Subject: back pay consideration and future reporting of work hours
Attachments: Judge Jayroe On-Call Pay.pdf

Follow Up Flag: Follow up
Flag Status: Flagged

Judge Jayroe:

Please find attached my letter concerning back pay consideration for part-time magistrates as well as future reporting requirements for hours worked.

Should you have any questions, don't hesitate to contact me or Jay.

Best,

Wayne Adams, Newberry County Administrator

ROA 00970



ROA 00971

COUNTY OF NEWBERRY

OFFICE OF THE COUNTY COUNCIL
POST OFFICE BOX 156
NEWBERRY, SOUTH CAROLINA 29108

(803)321-2100
FAX: (803)321-2102

COUNCILMEN:
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JOHN E. CALDWELL
WILLIAM D. WALDROP
LESLIE HIPP
STEVE STOCKMAN
SCOTT CAIN

WAYNE ADAMS
COUNTY ADMINISTRATOR
A. J. TOTHACER, JR.
COUNTY ATTORNEY
LAURIE N. RENWICK
CLERK TO COUNCIL

August 28, 2014

The Honorable Arthur L. Jayroe, Jr.
P.O. Box 95
Little Mountain, SC 29075

Sent by Email and US Mail

Dear Judge Jayroe:

The County recently determined that it might not have been fully compliant with the South Carolina Magistrate's Pay Act. Under the Act, part-time magistrates are entitled to call pay for hours worked over their set weekly hours. Unfortunately, no part-time magistrate has ever submitted an itemized request for call time payment or a time sheet showing any call hours worked. While it would be difficult, if not impossible, to determine with absolute accuracy what your total excess call hours are, the County has attempted to make a reasonable and fair determination based on your time in office and the County's understanding of the rotating call schedule over the last three years.

Based on our calculations, we intend to make a gross payment to you of \$2,608.50, subject to the usual wage withholdings. The County will also make its Social Security and State Retirement System contributions. Because the amount owed is uncertain and speculative, the County will require a signed release from you prior to payment. If you agree to accept the above amount, please sign the enclosed release and return it to the County Administrator's office. Once we have received your signed release, a payroll check will be issued to you.

Importantly, if you have received any other form of compensation for call time over the past three years, the amount referenced in the above paragraph reflects a corresponding prior

ROA 00971

reduction. Moreover, as of the date of this memorandum, the County is discontinuing **ROA 00972**
payments.

Going forward, part-time magistrates must report all on-call hours worked using the attached form. Completed forms must be submitted to the County's Director of Human Resources no later than noon Monday of each week following any call duty work pertaining to the prior week. Failure to properly record your hours could result in a delay or waiver of payment.

Should you wish to discuss this matter in more detail, please contact Jay Tothacer, Newberry County Attorney at 321-1415

Sincerely,



Wayne Adams
County Administrator

cc: County Council

ROA 00972

STATE OF SOUTH CAROLINA)
)
 NEWBERRY COUNTY)

GENERAL RELEASE

Arthur L. Jayroe, Jr. ("Mr. Jayroe") and Newberry County ("the County"), hereby agree as follows:

1. For and in consideration of the gross payment of wages to Mr. Jayroe in the amount of Two Thousand and Six Hundred and Eight and 50/100 Dollars (\$2,608.50), the net amount of which is One Thousand and Nine Hundred and Eighty-one and 63/100 Dollars (\$1,981.63), the undersigned Mr. Jayroe for himself, his heirs, executors, administrators, and assigns, intends to and does hereby release, acquit, forever discharge, and covenant not to sue the County, its present and past officials, employees, agents, and attorneys, from and/or with regard to any and all causes of action, claims, demands, costs, interest, attorney's fees, and all claims of any nature and kind whatsoever, known or unknown, from the beginning of time until the date hereof which Mr. Jayroe has or in the future may be entitled to have against the County, on account of or in any way arising out of or in connection with Mr. Jayroe's appointment and service as a Newberry County Magistrate. Mr. Jayroe agrees, as a further consideration and inducement for this Settlement Agreement and Release in Full (hereinafter "Release"), that it shall apply to unknown and unanticipated damages resulting from or in any way connected to his appointment and service as a Newberry County Magistrate to the date hereof as well as to those now disclosed.

2. This agreement is the compromise of doubtful and disputed claims and this Release is not to be construed as an admission of liability on the part of the County. The County expressly denies liability of any nature or kind whatsoever to Mr. Jayroe. Mr. Jayroe agrees that he will not assert or imply that the County has admitted any liability to him as a result of this agreement/and or payment made to him.

3. Mr. Jayroe hereby acknowledges that he has read and fully understands this Release, agrees that it incorporates all oral understandings and negotiations between him and the County, and that it is the entire agreement between them.

IN WITNESS WHEREOF, Mr. Jayroe has set his hand and seal below.

 Arthur L. Jayroe, Jr.

Date: _____

PART-TIME MAGISTRATE WEEKLY TIME REPORT

NOTE: ALL CALL DUTY HOURS WORKED MUST BE RECORDED WEEKLY AND ALL HOURS RECORDED MUST HAVE BEEN WORKED. FAILURE TO REPORT ANY ERRORS IN YOUR WORK HOURS REPORTED OR PAID WITHIN 14 CALENDAR DAYS OF RECEIVING YOUR PAYCHECK MAY RESULT IN FORFEITURE OF ANY ADDITIONAL PAY THAT MAY BE DUE.

Name: _____

For the calendar week of _____ through _____, 20____

Sun ____/____ Hours worked: _____

Mon ____/____ Hours worked: _____

Tue ____/____ Hours worked: _____

Wed ____/____ Hours worked: _____

Thur ____/____ Hours worked: _____

Fri ____/____ Hours worked: _____

Sat ____/____ Hours worked: _____

TOTAL HOURS WORKED: _____

Signature: _____ Date: _____

077^16. Adams email to Koon 8
-28-2014.pdf

Jay Tothacer

ROA 00976

From: Wayne Adams <wadams@newberrycounty.net>
Sent: Thursday, August 28, 2014 12:15 PM
To: bkoon@backroads.net
Cc: Jay Tothacer; Buddy Livingston; Kirksey Koon; Les Hipp; Les Hipp; Scott Cain; Steve Stockman; Bill Waldrop; John Caldwell; Laurie Renwick; Debbie Cromer; Dirk Aydlette
Subject: back pay consideration and future reporting requirements
Attachments: Judge koon On Call Pay.pdf
Follow Up Flag: Follow up
Flag Status: Flagged

Dear Judge Koon:

Please find attached my letter concerning back pay consideration for part-time magistrates as well as future reporting requirements for hours worked.

Should you have any questions, don't hesitate to contact me or Jay.

Best,

Wayne Adams, Newberry County Administrator

ROA 00976



ROA 00977

COUNTY OF NEWBERRY

OFFICE OF THE COUNTY COUNCIL
POST OFFICE BOX 156
NEWBERRY, SOUTH CAROLINA 29108

(803)321-2100
FAX: (803)321-2102

COUNCILMEN:
HENRY H. LIVINGSTON, III, CHAIRMAN
KIRKSEY KOON, VICE-CHAIRMAN
JOHN E. CALDWELL
WILLIAM D. WALDROP
LESLIE HIPP
STEVE STOCKMAN
SCOTT CAIN

WAYNE ADAMS
COUNTY ADMINISTRATOR
A. J. TOTHACER, JR.
COUNTY ATTORNEY
LAURIE N. RENWICK
CLERK TO COUNCIL

August 28, 2014

The Honorable Barry S. Koon
1419 CR Koon Highway
Newberry, SC 29108

Sent by Email and US Mail

Dear Judge Koon:

The County recently determined that it might not have been fully compliant with the South Carolina Magistrate's Pay Act. Under the Act, part-time magistrates are entitled to call pay for hours worked over their set weekly hours. Unfortunately, no part-time magistrate has ever submitted an itemized request for call time payment or a time sheet showing any call hours worked. While it would be difficult, if not impossible, to determine with absolute accuracy what your total excess call hours are, the County has attempted to make a reasonable and fair determination based on your time in office and the County's understanding of the rotating call schedule over the last three years.

Based on our calculations, we intend to make a gross payment to you of \$5,142.72, subject to the usual wage withholdings. The County will also make its Social Security and State Retirement System contributions. Because the amount owed is uncertain and speculative, the County will require a signed release from you prior to payment. If you agree to accept the above amount, please sign the enclosed release and return it to the County Administrator's office. Once we have received your signed release, a payroll check will be issued to you.

Importantly, if you have received any other form of compensation for call time over the past three years, the amount referenced in the above paragraph reflects a corresponding prior

ROA 00977

reduction. Moreover, as of the date of this memorandum, the County is discontinuing any such payments. ROA 00978

Going forward, part-time magistrates must report all on-call hours worked using the attached form. Completed forms must be submitted to the County's Director of Human Resources no later than noon Monday of each week following any call duty work pertaining to the prior week. Failure to properly record your hours could result in a delay or waiver of payment.

Should you wish to discuss this matter in more detail, please contact Jay Tothacer, Newberry County Attorney at 321-1415

Sincerely,


Wayne Adams
County Administrator

cc: County Council

ROA 00978

STATE OF SOUTH CAROLINA)
)
NEWBERRY COUNTY)

GENERAL RELEASE

Barry S. Koon ("Mr. Koon") and Newberry County ("the County"), hereby agree as follows:

1. For and in consideration of the gross payment of wages to Mr. Koon in the amount of Five Thousand and One Hundred and Forty-two and 72/100 Dollars (\$5,142.72), the net amount of which is Three Thousand and Four Hundred and Sixty-nine and 46/100 Dollars (\$3,469.46), the undersigned Mr. Koon for himself, his heirs, executors, administrators, and assigns, intends to and does hereby release, acquit, forever discharge, and covenant not to sue the County, its present and past officials, employees, agents, and attorneys, from and/or with regard to any and all causes of action, claims, demands, costs, interest, attorney's fees, and all claims of any nature and kind whatsoever, known or unknown, from the beginning of time until the date hereof which Mr. Koon has or in the future may be entitled to have against the County, on account of or in any way arising out of or in connection with Mr. Koon's appointment and service as a Newberry County Magistrate. Mr. Koon agrees, as a further consideration and inducement for this Settlement Agreement and Release in Full (hereinafter "Release"), that it shall apply to unknown and unanticipated damages resulting from or in any way connected to his appointment and service as a Newberry County Magistrate to the date hereof as well as to those now disclosed.

2. This agreement is the compromise of doubtful and disputed claims and this Release is not to be construed as an admission of liability on the part of the County. The County expressly denies liability of any nature or kind whatsoever to Mr. Koon. Mr. Koon agrees that he will not assert or imply that the County has admitted any liability to him as a result of this agreement/and or payment made to him.

3. Mr. Koon hereby acknowledges that he has read and fully understands this Release, agrees that it incorporates all oral understandings and negotiations between him and the County, and that it is the entire agreement between them.

IN WITNESS WHEREOF, Mr. Koon has set his hand and seal below.

Barry S. Koon

Date: _____

PART-TIME MAGISTRATE WEEKLY TIME REPORT

NOTE: ALL CALL DUTY HOURS WORKED MUST BE RECORDED WEEKLY AND ALL HOURS RECORDED MUST HAVE BEEN WORKED. FAILURE TO REPORT ANY ERRORS IN YOUR WORK HOURS REPORTED OR PAID WITHIN 14 CALENDAR DAYS OF RECEIVING YOUR PAYCHECK MAY RESULT IN FORFEITURE OF ANY ADDITIONAL PAY THAT MAY BE DUE.

Name: _____

For the calendar week of _____ through _____, 20____

Sun ____/____ Hours worked: _____

Mon ____/____ Hours worked: _____

Tue ____/____ Hours worked: _____

Wed ____/____ Hours worked: _____

Thur ____/____ Hours worked: _____

Fri ____/____ Hours worked: _____

Sat ____/____ Hours worked: _____

TOTAL HOURS WORKED: _____

Signature: _____ Date: _____

078^17. Adams email to Lail 8-
28-2014.pdf

Jay Tothacer

ROA 00982

From: Wayne Adams <wadams@newberrycounty.net>
Sent: Thursday, August 28, 2014 12:17 PM
To: rlail@newberrycounty.net
Cc: Jay Tothacer; Buddy Livingston; Kirksey Koon; Les Hipp; Les Hipp; Steve Stockman; Scott Cain; Bill Waldrop; John Caldwell; Laurie Renwick; Debbie Cromer; Dirk Aydlette
Subject: back pay consideration and future reporting of work hours
Attachments: Judge Lail On-Call pay.pdf
Follow Up Flag: Follow up
Flag Status: Flagged

Dear Judge Lail:

Please find attached my letter concerning back pay consideration for part-time magistrates as well as future reporting requirements for hours worked.

Should you have any questions, don't hesitate to contact me or Jay.

Best,

Wayne Adams, Newberry County Administrator

ROA 00982



ROA 00983

COUNTY OF NEWBERRY

OFFICE OF THE COUNTY COUNCIL
POST OFFICE BOX 156
NEWBERRY, SOUTH CAROLINA 29108

(803)321-2100
FAX: (803)321-2102

COUNCILMEN:
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JOHN E. CALDWELL
WILLIAM D. WALDROP
LESLIE HIPP
STEVE STOCKMAN
SCOTT CAIN

WAYNE ADAMS
COUNTY ADMINISTRATOR
A. J. TOHACER, JR.
COUNTY ATTORNEY
LAURIE N. RENWICK
CLERK TO COUNCIL

August 28, 2014

The Honorable Richard C. Lail
1723 Broad River Road
Pomaria, SC 29126

Sent by Email and US Mail

Dear Judge Lail:

The County recently determined that it might not have been fully compliant with the South Carolina Magistrate's Pay Act. Under the Act, part-time magistrates are entitled to call pay for hours worked over their set weekly hours. Unfortunately, no part-time magistrate has ever submitted an itemized request for call time payment or a time sheet showing any call hours worked. While it would be difficult, if not impossible, to determine with absolute accuracy what your total excess call hours are, the County has attempted to make a reasonable and fair determination based on your time in office and the County's understanding of the rotating call schedule over the last three years.

Based on our calculations, we intend to make a gross payment to you of \$17,989.50, subject to the usual wage withholdings. The County will also make its Social Security and State Retirement System contributions. Because the amount owed is uncertain and speculative, the County will require a signed release from you prior to payment. If you agree to accept the above amount, please sign the enclosed release and return it to the County Administrator's office. Once we have received your signed release, a payroll check will be issued to you.

Importantly, if you have received any other form of compensation for call time over the past three years, the amount referenced in the above paragraph reflects a corresponding prior

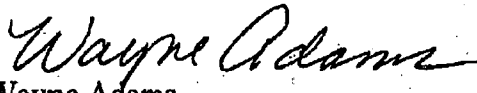
ROA 00983

reduction. Moreover, as of the date of this memorandum, the County is discontinuing any such payments. ROA 00984

Going forward, part-time magistrates must report all on-call hours worked using the attached form. Completed forms must be submitted to the County's Director of Human Resources no later than noon Monday of each week following any call duty work pertaining to the prior week. Failure to properly record your hours could result in a delay or waiver of payment.

Should you wish to discuss this matter in more detail, please contact Jay Tothacer, Newberry County Attorney at 321-1415

Sincerely,


Wayne Adams
County Administrator

cc: County Council

ROA 00984

STATE OF SOUTH CAROLINA)
)
NEWBERRY COUNTY)

GENERAL RELEASE

Richard C. Lail ("Mr. Lail") and Newberry County ("the County"), hereby agree as follows:

1. For and in consideration of the gross payment of wages to Mr. Lail in the amount of Seventeen Thousand and Nine Hundred and Eighty-nine and 50/100 Dollars (\$17,989.50), the net amount of which is Eleven Thousand and Six Hundred and Seventy-nine and 85/100 Dollars (\$11,679.85), the undersigned Mr. Lail for himself, his heirs, executors, administrators, and assigns, intends to and does hereby release, acquit, forever discharge, and covenant not to sue the County, its present and past officials, employees, agents, and attorneys, from and/or with regard to any and all causes of action, claims, demands, costs, interest, attorney's fees, and all claims of any nature and kind whatsoever, known or unknown, from the beginning of time until the date hereof which Mr. Lail has or in the future may be entitled to have against the County, on account of or in any way arising out of or in connection with Mr. Lail's appointment and service as a Newberry County Magistrate. Mr. Lail agrees, as a further consideration and inducement for this Settlement Agreement and Release in Full (hereinafter "Release"), that it shall apply to unknown and unanticipated damages resulting from or in any way connected to his appointment and service as a Newberry County Magistrate to the date hereof as well as to those now disclosed.

2. This agreement is the compromise of doubtful and disputed claims and this Release is not to be construed as an admission of liability on the part of the County. The County expressly denies liability of any nature or kind whatsoever to Mr. Lail. Mr. Lail agrees that he will not assert or imply that the County has admitted any liability to him as a result of this agreement/and or payment made to him.

3. Mr. Lail hereby acknowledges that he has read and fully understands this Release, agrees that it incorporates all oral understandings and negotiations between him and the County, and that it is the entire agreement between them.

IN WITNESS WHEREOF, Mr. Lail has set his hand and seal below.

Richard C. Lail

Date: _____

PART-TIME MAGISTRATE WEEKLY TIME REPORT

ROA 00986

NOTE: ALL CALL DUTY HOURS WORKED MUST BE RECORDED WEEKLY AND ALL HOURS RECORDED MUST HAVE BEEN WORKED. FAILURE TO REPORT ANY ERRORS IN YOUR WORK HOURS REPORTED OR PAID WITHIN 14 CALENDAR DAYS OF RECEIVING YOUR PAYCHECK MAY RESULT IN FORFEITURE OF ANY ADDITIONAL PAY THAT MAY BE DUE.

Name: _____

For the calendar week of _____ through _____, 20____

Sun ____/____ Hours worked: _____

Mon ____/____ Hours worked: _____

Tue ____/____ Hours worked: _____

Wed ____/____ Hours worked: _____

Thur ____/____ Hours worked: _____

Fri ____/____ Hours worked: _____

Sat ____/____ Hours worked: _____

TOTAL HOURS WORKED: _____

Signature: _____ Date: _____

ROA 00986