

JUDICIAL MERIT SELECTION COMMISSION
PERSONAL DATA QUESTIONNAIRE

Court, Position, and Seat # for which you are applying: Circuit Court Judge at Large, Seat 3

1. NAME: Mr. Clifton Newman
BUSINESS ADDRESS: 128 West Main Street
Kingstree, SC 29556
E-MAIL ADDRESS: CNewmanJ@SCCourts.org
BUSINESS NUMBER: (843) 355-9321, Ext. 137

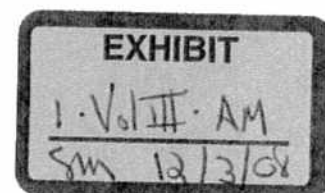
2. Date of Birth: 1951
Place of Birth: Greeleyville, South Carolina
3. Are you a citizen of South Carolina? Yes.
Have you been a resident of this state for at least the immediate past five years? Yes.
5. Family Status: Married on May 28, 1977, to Patricia Lynette Blanton Newman. Never divorced. Four children.
6. Have you served in the military? No.
7. List each college and law school you attended, including the dates of your attendance, the degrees you received, and if you left an institution without receiving a degree, the reason for your departure.
 - (a) Cleveland State University, 1969-1973, Bachelor of Arts;
 - (b) Cleveland Marshall College of Law, 1973-1976, Juris Doctor.
8. List the states in which you have been admitted to practice law and the year of each admission. Also list any states in which you took the bar exam but were never admitted to the practice of law. If you took the bar exam more than once in any of the states listed, please indicate the number of times you took the exam in each state.
 - (a) Ohio, 1976;
 - (b) South Carolina, 1981.
9. List the significant activities in which you took part during your attendance at college, graduate, and law school. Give the dates you were involved in these activities and list any leadership positions you held.
 - (a) Cleveland State University President of Student Government (1972);
 - (b) Cleveland State University Kappa Alpha Psi Fraternity-Polemarch (1971);
 - (c) Cleveland Marshall College of Law Chief Justice, University Judiciary (1973).
10. Describe your continuing legal or judicial education during the past five years. Include only the title and date of any continuing legal or judicial education course completed.

Date

(a) July 14-24, 2003

Conference/ CLE Name

General Jurisdiction;



- (b) March 26-27 Science for Judges;
- (c) September 13-16, 2004 Creating an Active Learning Environment;
- (d) February 2004 Economic Institutes for Judges;
- (e) April 28-29, 2005 Critical Issues in Toxic Torts Litigation;
- (f) January 10-13, 2005 Planning and Presenting Effective Presentations;
- (g) January 27-28, 2005 Critical Issues in Construction Defects Litigation;
- (h) October 4-8, 2004 Economic Institutes for Judges;
- (i) March 30-31, 2004 Critical Issues in Construction Defects Litigation;
- (j) June 10-15, 2006 Handling Capitol Cases;
- (k) September 20-22, 2006 Insurance and Risk Allocation in America;
- (l) March 7-9, 2007 Critical Issues in Construction Defects Litigation;
- (m) June 20-24, 2007 Scientific Evidence in the Courts;
- (n) March 2-4, 2008 Critical Issues in Construction Defects Litigation;
- (o) March 27-28, 2008 Mentoring the Future of the Profession;
- (p) May 6-7, 2008 Emerging Issues in Neuroscience.

11. Have you taught law-related courses or lectured at bar association conferences, educational institutions, or continuing legal or judicial education programs? If so, briefly describe each course or lecture. Do NOT attach a separate list.

- (a) Association of Trial Lawyers of America, Boston, Massachusetts-July 1996;
Presentation on the prosecution of DUI cases;
- (b) South Carolina Solicitor's Conference – October 2000
Presentation and panel discussion regarding developments in the law of search and seizure;
- (c) South Carolina New Judges School – 2002, 2003, 2004, 2006, 2007, 2008
Presentation to new judges on criminal law;
- (d) Chief Administrative Judge Seminar – 2004
Presentation on *Ex Parte* communications;
- (e) ABA Superior Direct and Cross Examination-April 4, 2008
Presentation on direct and cross examination;
- (f) National Business Institute Seminar – September 19, 2008
Presentation on what civil court judges want you to know;
- (g) Richardson Plowden Monthly Attorney Luncheon – September 24, 2008
Presentation on construction defects litigation.

12. List all published books and articles you have written and give citations and the dates of publication for each. None.
13. List all courts in which you have been admitted to practice and list the dates of your admission. Give the same information for administrative bodies that require a special admission to practice.
- | | |
|---------------------------------------|-------|
| Ohio Bar | 1976; |
| U.S. District Court of Ohio | 1977; |
| South Carolina Bar | 1981; |
| U.S. District Court of South Carolina | 1983. |
14. Describe chronologically your legal experience since graduation from law school and include a list of all law firms with which you have been associated. Describe the general character of your practice and divide it into periods with dates if its character has changed over the years.
- (a) 1976-1977
Associate Attorney
Law Office of Elliott Ray Kelley
Cleveland, Ohio
(General law practice concentrating on the representation of plaintiffs in civil matters and defendants in criminal matters);
- (b) 1977-1982
Partner
Belcher and Newman
Cleveland, Ohio
(General law practice; civil and criminal);
- (c) 1982-1994
Law Office of Clifton Newman
Kingstree and Columbia, South Carolina
(General law practice; civil and real estate);
- (d) 1994-2000
Managing Attorney
Newman and Sabb, P.A.
Kingstree, Lake City and Columbia, South Carolina
(General law practice; civil and real estate);
- (e) 1983-2000
Assistant Solicitor
Third Judicial Circuit
(Criminal Prosecution);
- (f) 2000-Present
Circuit Court at Large Seat 3;
15. What is your rating in Martindale-Hubbell?
22. Have you ever held judicial office?
Yes. Circuit Court at Large Seat 3. Elected June 2000-Present.

23. If the answer to question 22 is yes, describe or list five of your most significant orders or opinions and give the citations if they were reported. Also list citations to any appellate review of these orders or opinions.
- (a) State v. Gary James Long, Jr.,
Review by Supreme Court Opinion No. 25955;
 - (b) Rudolph Barnes, as Personal Representative of the Estate of Doris Ann Barnes v. Cohen Dry Wall, et al.,
Review by Supreme Court Opinion No. 26036;
 - (c) Franklin Lucas v. Rawl Family Limited Partnership et al.,
Review by Supreme Court Opinion No. 25817;
 - (d) The Beach Company v. Twillman, Ltd., d/b/a The Washington Pen Company,
Review by Court of Appeals Opinion No. 3532;
 - (e) State v. Mikal Deen Mahdi
Death Penalty Order
Automatic Review by Supreme Court.
24. Have you ever held public office other than judicial office? If so, list the periods of your service, the office or offices involved, and whether you were elected or appointed. Also, state whether or not you have timely filed your report with the State Ethics Commission during the period you held public office. If not, were you ever subject to a penalty? If so, give details, including dates. No.
25. List all employment you had while serving as a judge (whether full-time or part-time, contractual or at will, consulting or otherwise) other than elected judicial office. Specify your dates of employment, employer, major job responsibilities, and supervisor. None.
26. Have you ever been an unsuccessful candidate for elective, judicial, or other public office? No.
27. Have you ever been engaged in any occupation, business, or profession other than the practice of law, teaching of law, or holding judicial or other public office. No.
28. Are you now an officer or director or involved in the management of any business enterprise? Explain the nature of the business, your duties, and the term of your service.
I am a general partner in Harbison Hall Partners which operates an Assisted Living Facility.
29. A complete, current financial net worth statement was provided to the Commission.
30. Describe any financial arrangements or business relationships that you have, or have had in the past, that could constitute or result in a possible conflict of interest in the position you seek. Explain how you would resolve any potential conflict of interest. None.
31. Have you ever been arrested, charged, or held by federal, state, or other law enforcement authorities for violation or for suspicion of violation of any federal

law or regulation, state law or regulation, or county or municipal law, regulation, or ordinance, or any other law, including another country's law? No.

32. Have you, to your knowledge, ever been under federal, state, or local investigation for possible violation of a criminal statute? No.
33. Has a tax lien or other collection procedure ever been instituted against you by federal, state, or local authorities? Have you ever defaulted on a student loan? Have you ever filed for bankruptcy? No.
34. Have you ever been sued, either personally or professionally? Yes.
- (a) Alexander Lipsey, Richland County Court of Common Pleas, 1987
This was a lawsuit filed by the seller in a real estate transaction against the real estate broker and me as closing attorney. The basis of the dispute was whether a deed should have been recorded and other alleged misrepresentations made during the closing. The case was settled for a nominal amount and dismissed.
- (b) Tanakya Bell, 1990
This was a premises liability lawsuit filed against me as owner of a business at which the plaintiff was injured during an altercation. The lawsuit, which alleged inadequate security, was settled with the insurance carrier immediately after being filed and was never served.
- (c) Larry Scott v. State of South Carolina et al., 1997
I was sued in my capacity as Assistant Solicitor by this inmate who was convicted and sentenced to prison on felony drug charges. The suit sought the recovery of money confiscated during his arrest which the state contended should be forfeited as drug proceeds. I was dismissed as a party.
- (d) Charlie L. Jones v. Attorney Jonathan W, Bryan et al., 2006
I was sued in my judicial capacity along with the Clerk of Court and other Sumter County officials by this distraught litigant after I ruled against him in a civil dispute. The lawsuit was never properly served, and I was dismissed as a party.
36. Are you now or have you ever been employed as a "lobbyist," as defined by S.C. Code § 2-17-10(13), or have you acted in the capacity of a "lobbyist's principal," as defined by S.C. Code § 2-17-10(14). No.
37. Since filing with the Commission your letter of intent to run for judicial office, have you accepted lodging, transportation, entertainment, food, meals, beverages, money, or any other thing of value as defined by S.C. Code § 2-17-10(1) from a lobbyist or lobbyist's principal? No.
38. S.C. Code § 8-13-700 provides, in part, that "[n]o public official, public member, or public employee may knowingly use his official office, membership, or employment to obtain an economic interest for himself, a member of his immediate family, an individual with whom he is associated, or a business with which he is associated." Please detail any knowledge you

- have of any formal charges or informal allegations against you or any other candidate for violations of these provisions. None.
39. S.C. Code § 8-13-765 provides, in part, that "[n]o person may use government personnel, equipment, materials, or an office building in an election campaign." Please detail any knowledge you have of any formal charges or informal allegations against you or any other candidate for violations of these provisions. None.
40. Itemize (by amount, type, and date) all expenditures, other than those for travel and room and board, made by you, or on your behalf, in furtherance of your candidacy for the position you seek. None.
41. List the amount and recipient of all contributions made by you or on your behalf to members of the General Assembly since the announcement of your intent to seek election to a judgeship. None.
42. Have you directly or indirectly requested the pledge of any member of the General Assembly as to your election for the position for which you are being screened? Have you received the assurance of any public official or public employee that they will seek the pledge of any member of the General Assembly as to your election for the position for which you are being screened? No.
43. Have you requested a friend or colleague to contact members of the General Assembly on your behalf? Are you aware of any friends or colleagues contacting members of the General Assembly on your behalf? No.
44. Have you or has anyone acting on your behalf solicited or collected funds to aid in the promotion of your candidacy? No.
45. Have you or has anyone acting on your behalf contacted members of the Judicial Merit Selection Commission about your candidacy or intention to become a candidate? No.
46. List all bar associations and professional organizations of which you are a member and give the titles and dates of any offices you have held in such groups.
- (a) South Carolina Bar Association;
 - (b) Ohio Bar Association (inactive);
 - (c) John Belton O'Neal Inns of Court;
 - (d) American College of Business Court Judges.
47. List all civic, charitable, educational, social, and fraternal organizations of which you are or have been a member during the past five years and include any offices held in such a group, any professional honors, awards, or other forms of recognition received and not listed elsewhere.
- (a) I. DeQuincey Newman United Methodist Church,
Member, Board of Trustees and Administrative Council;
 - (b) Kappa Alpha Psi Fraternity.
48. Provide any other information which may reflect positively or negatively on your candidacy, or which you believe should be disclosed in connection with consideration of you for nomination for the position you seek. This information

may include how your life experiences have affected or influenced the kind or type of judge you have been or plan to be. None.

49. References:

- (a) Michael L. Belcher
75 Public Square Ste. 910
Cleveland, Ohio 44113
(216) 696-5887
- (b) Pandora Jones-Glover
110 Brookside Drive
Orangeburg, SC 29115
(803) 268-0265
- (c) Robert Jonte
Bank of Greeleyville
P.O. Box 278
Greeleyville, SC 29056
(843) 426-2161
- (d) Josephine McRant
1425 Friendly Woods Road
Blythewood, SC 29016
(803) 730-1613
- (e) Sylvia Morris
Nelson, Mullins, Riley & Scarborough
HR Department
P.O. Box 11070
Columbia, SC 29211-1070
(803) 312-4199
- (f) Carolyn Williams, Clerk of Court
125 West Main Street
Kingstree, SC 29556
(843) 355-9321, ext. 552

YOUR SIGNATURE WILL BE HELD TO CONSTITUTE A WAIVER OF THE CONFIDENTIALITY OF ANY PROCEEDING BEFORE A GRIEVANCE COMMITTEE OR ANY INFORMATION CONCERNING YOUR CREDIT.

I HEREBY CERTIFY THAT MY ANSWERS ARE TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

s/Clifton Newman

Date: 09/18/08

JUDICIAL MERIT SELECTION COMMISSION
Sworn Statement to be included in Transcript of Public Hearings

Circuit Court
(Incumbent)

Full Name: Clifton Bernard Newman
Business Address: 128 West Main Street
Kingstree, SC 29556
Business Telephone: (843) 355-9321, Ext. 137

1. Why do you want to serve another term as a Circuit Court Judge?
I have served as a circuit court judge for over eight years. I have been blessed to experience enormous growth and development as a judge, and I am humbled and honored to have the opportunity to continue to serve. I am committed to providing quality judicial service. I am fully prepared to continue rendering efficient service and uphold the high standards of the office to which I have been elected.
2. Do you plan to serve your full term if re-elected?
Yes.
3. Do you have any plans to return to private practice one day?
I have no immediate plans to return to private practice.
4. Have you met the Constitutional requirements for this position regarding age, residence, and years of practice?
Yes.
5. What is your philosophy regarding *ex parte* communications? Are there circumstances under which you could envision *ex parte* communications being tolerated?
My philosophy and practice is to refrain from engaging in *ex parte* communications except where necessary for administrative purposes. *Ex parte* communications are tolerated where essentially administratively, to facilitate scheduling, to accommodate emergencies and as expressly authorized by the canons of ethics.
6. What is your philosophy on recusal, especially in situations in which lawyer-legislators, former associates, or law partners are to appear before you?
My philosophy on recusals is that prior relationships or the appearance of lawyer-legislators should not affect my judicial performance. I do not believe that recusal is necessary absent some prejudice or inability to perform my duties impartially. A judge is obligated to dispose of all matters presented and recusals should not be ordered unless warranted by special circumstances.
7. If you disclosed something that had the appearance of bias, but you believed it would not actually prejudice your impartiality, what

deference would you give a party that requested your recusal? Would you grant such a motion?

I would generally give great deference to a party requesting my recusal where there is an appearance of bias. I would likely grant such a motion to foster confidence in the judicial system and to avoid the appearance of impropriety. It is important however to discern circumstances where recusals cause needless delay and there is no actual prejudice.

8. How would you handle the appearance of impropriety because of the financial or social involvement of your spouse or a close relative?

I would recuse myself from hearing any matter where there exists the appearance of impropriety due to the social and financial involvement of a spouse or relative. This is essential in promoting public confidence in the integrity and impartiality in the judiciary.

9. What standards have you set for yourself regarding the acceptance of gifts or social hospitality?

I have elected not to accept gifts or partake in social hospitality other than bar related activities and from family and close personal friends under circumstances that could not reasonably be perceived as intending to influence me in the performance of my duties.

10. How would you handle a situation in which you became aware of misconduct of a lawyer or of a fellow judge?

I would be obligated to report the misconduct to the appropriate disciplinary authority.

11. Are you affiliated with any political parties, boards or commissions that, if you were re-elected, would need to be re-evaluated?

No.

12. Do you have any business activities that you would envision remaining involved with if reelected to the bench?

I have an ownership interest in an Assisted Living Facility. I envision remaining involved in the ownership but not active management of the assisted living facility.

13. How do you handle the drafting of orders?

I either draft orders personally or have proposed orders submitted by counsel with notice to the opposing party. Proposed orders are generally emailed to me for editing or modification. I ensure that orders issued are my orders and contain only my findings and conclusions.

14. What methods do you use to ensure that you and your staff meet deadlines?

Deadlines are entered manually on office calendars and also computerized on Microsoft Outlook Calendar system.

15. What is your philosophy on "judicial activism," and what effect should judges have in setting or promoting public policy?

My philosophy on judicial activism is that while a judge has the responsibility as a private citizen to contribute to the public good, particularly related to the administration of justice, a judge should not engage in any activity that may cast doubt on the judge's ability to act impartially as to legal matters that may come before the judge.

16. Canon 4 allows a judge to engage in activities to improve the law, legal system, and administration of justice. What activities do you plan to undertake to further this improvement of the legal system?

I plan to assist in the improvement of the legal system by maximizing continuing judicial education opportunities and making myself available to the general public and the legal community to provide information that will create a greater understanding and appreciation of our legal system. I have also served as a volunteer for mock trial, the judicial observation program, and I currently serve on five important Supreme Court committee assignments.

17. Do you feel that the pressure of serving as a judge strains personal relationships (i.e. spouse, children, friends, or relatives)? How do you address this?

The pressure of serving as a judge strains personal relationships with friends and relatives primarily as a result of being limited in giving legal advice and engaging in discussing certain matters. I address this problem delicately by explaining my limitations of involvement due to my judicial position. It also strains family relationships absent a focused attempt to separate family life from life on the bench.

18. The following list contains five categories of offenders that would perhaps regularly appear in your court. Discuss your philosophy on sentencing for these classes of offenders.

a. Repeat offenders:

Repeat offenders are generally sentenced harsher since it generally indicates the failure of lesser alternatives. An exception is made where alternative treatment or diversion methods are available such as drug courts, etc.

b. Juveniles (that have been waived to the circuit court):

The court must always be mindful of the needs of the defendant(s) as balanced against that of the victim(s) and the public. This is particularly true with juvenile defendants where the court must evaluate the goal of achieving rehabilitation of the juvenile while recognizing the paramount importance of public safety.

c. White collar criminals:

White collar defendants must be held accountable for their deeds. In many instances these defendants may be held to a higher degree than other defendants whose criminal activities may be aggravated by socio economic factors. In sentencing white collar defendants, I believe that

the sentence should seek to achieve general and specific deterrence as well as public confidence in the fairness of the criminal justice system.

d. Defendants with a socially and/or economically disadvantaged background:

The sentencing of these defendants presents a challenge of insuring that excessive monetary fines do not prevent successful completion of the sentence. The defendant's background, however, must not be used to condone criminal activity and traditional sentencing rationales of deterrence, incarceration, retribution, and rehabilitation should nevertheless be employed.

e. Elderly defendants or those with some infirmity:

Practical consideration of limited resources and physical limitations must be given in sentencing elderly defendants and those with some infirmity. Alternatives to incarceration should be thoroughly explored in the sentencing of these individuals unless incarceration is essential to the protection of society.

19. Are you involved in any active investments from which you derive additional income that might impair your appearance of impartiality?

No.

20. Would you hear a case where you or a member of your family held a *de minimis* financial interest in a party involved?

Yes, but only after full disclosure and under circumstances where my impartiality will not reasonably be questioned.

21. Do you belong to any organizations that discriminate based on race, religion, or gender?

No.

22. Have you met the mandatory minimum hours requirement for continuing legal education courses?

Yes.

23. What do you feel is the appropriate demeanor for a judge?

The appropriate demeanor for a judge is to exude fairness, respect, integrity, and impartiality to all litigants, the jurors, court personnel, and the general public.

24. Do the rules that you expressed in your previous answer apply only while you are on the bench or in chambers, or do these rules apply seven days a week, twenty-four hours a day?

These rules apply at all times. A judge must be cognizant at all times that his or her conduct must not demean the judicial office, affect the judge's ability to perform his duties, or negatively impact the public's perception of the judicial system.

25. Do you feel that it is ever appropriate to be angry with a member of the public, especially with a criminal defendant? Is anger ever appropriate in dealing with attorneys or a pro se litigant?

It is never appropriate for a judge to demonstrate anger in dealing with a criminal defendant, attorney, or pro se litigant. Rather, it is essential for a judge to be courteous, patient, and dignified in the performance of judicial duties. An angry judge demeans the judiciary and negatively impacts courtroom decorum.

26. How much money have you spent on your campaign? If it is over \$100, has that amount been reported to the House and Senate Ethics Committees?

None.

27. While campaigning for this office, have you used judicial letterhead or the services of your staff for your campaign?

No.

28. Have you sought or received the pledge of any legislator prior to this date?

No.

29. Have you sought or been offered a conditional pledge of support by any legislator pending the outcome of your screening?

No.

30. Have you asked any third parties to contact members of the General Assembly on your behalf before the final and formal screening report has been released? Are you aware of any friends or colleagues contacting members of the General Assembly on your behalf?

No.

31. Have you contacted any members of the Judicial Merit Selection Commission?

No.

32. Are you familiar with the 48-hour rule, which prohibits a candidate from seeking pledges for 48 hours after the draft report has been submitted?

Yes.

I HEREBY CERTIFY THAT THE ANSWERS TO THE ABOVE QUESTIONS ARE TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE.

s/Clifton Bernard Newman

Sworn to before me this 18th day of September, 2008.

Notary Public for South Carolina

My commission expires: 1/11/2011



State of South Carolina
The Circuit Court of the Third Judicial Circuit

Clifton Newman
Judge

Post Office Box 516
Kingstree, SC 29556-0516
Phone: (843) 355-9321 ext. 137
Fax: (843) 355-9301
cnewmanj@sccourts.org

November 19, 2008

Jane O. Shuler, Chief Counsel
Judicial Merit Selection Commission
Post Office Box 142
Columbia, South Carolina 29302

Re: Complaint by Marion Driggers

Dear Ms. Shuler:

I am pleased to have the opportunity to respond to the complaint filed by Marion Driggers.

The only contact that I recall having with Mr. Driggers occurred in 2003 when I held him in civil contempt of court for violating a Permanent Injunction Order issued by then Judge Henry McKellar. Judge McKellar's Order enjoined Mr. Driggers from, among other things, discharging any guns on a lot that Mr. Driggers subleased.

This sublease was subject to other litigation which resulted in Mr. Driggers filing judicial qualification complaints against other judges.

Mr. Driggers disagrees with my interpretation of Judge McKellar's Order and my requiring him to answer questions under oath regarding whether he violated the Order.

He appeared before me *pro se* having discharged his lawyer, now Judge Michael Nettles. He examined then Attorney Nettles under oath, seeking to question the integrity of his representation in the signing of the Consent Order which was now before me for enforcement by the Plaintiff.

Mr. Driggers testified at the hearing but sought to invoke his 5th amendment privilege against self incrimination and not answer any questions concerning whether he discharged a gun on the subject property. I ordered him to answer the question posed since the response did not subject Mr. Driggers to self incrimination. It did however subject him to possible civil contempt.

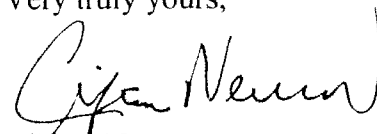
Our courts have held that the trial judge must determine the appropriateness of claims of 5th amendment privilege, particularly in civil court settings. This was a civil matter with no criminal consequences, and the 5th amendment privilege did not apply.

I found Mr. Driggers in contempt of the previous court's order and ordered him to pay the costs incurred by the Plaintiff in the sum of six hundred sixty-five dollars in prosecuting the motion. Mr. Driggers failed to timely comply with my Order.

I sympathize with Mr. Driggers' frustration considering the protracted lot lease dispute that has apparently consumed him for years. I disagree, however, with his view that my ruling in this matter should negatively impact my qualifications for reelection.

Should you desire further information, please advise.

Very truly yours,



Clifton Newman

- (3) State the nature of your testimony regarding the qualifications of the above-named judicial candidate, including:
- (a) specific facts relating to the candidate's character, competency, or ethics, including any and all allegations of wrongdoing or misconduct on the part of the candidate;

ABUSE OF POWER, DENYING COMPAINANT OF CIVIL RIGHTS

- (b) specific dates, places, and times at which or during which such allegations took place;

SEPTEMBER 11, 2003 AT WILLIAMSBURG COUNTY COURTHOUSE,
KINGSTREE, SC

- (c) names of any persons present during such alleged actions or possessing evidence of such alleged actions; and

JEFF LIFRAGE
KENNETH MCCLARY
TOM RUBILLO
WILSON SHELDON
SANDRA MCCLARY

- (d) how this information relates to the qualifications of the judicial candidate.

SHOWS CORRUPTNESS OF CANDIDATE

- (4) Set forth a list of and provide a copy of any and all documents to be produced at the hearing which relate to your testimony regarding the qualifications of the judicial candidate.

- (1) TRIAL TRANSCRIPT AT HEARING SEPTEMBER 11, 2003
 - (2) Motion to reconsider
 - (3) Temporary Restraining order
 - (4) Consent order
 - (5) Letter from Aubrey Judy
- (5) State any other facts you feel are pertinent to the screening of this judicial candidate.

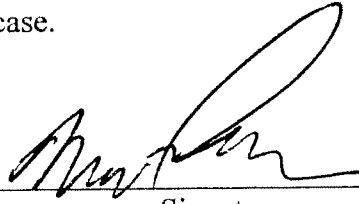
NEEDS TO BE REPLACED

I understand that the information I have provided herein is confidential and is not to be disclosed to anyone except the Judicial Merit Selection Commission, the candidate and counsel.

WAIVER

I further understand that my testimony before the Judicial Merit Selection Commission may require the disclosure of information that would otherwise be protected by the attorney-client privilege. Therefore, in order that my complaint may be fully investigated by the commission,

I hereby waive any right that I may have to raise the attorney-client privilege as that privilege may relate to the subject of my complaint. I further understand that by waiving the attorney-client privilege for this matter, I am authorizing the commission to question other parties, including my attorney, concerning the facts and issues of my case.



Signature

Sworn to me this 22nd day of October, 2008

Hail M. Driggers L.S.
Notary Public of South Carolina

My commission expires: 4/12/12



FARMERS TELEPHONE COOPERATIVE, INC.

AUBREY E. JUDY
EXECUTIVE VICE PRESIDENT

P. O. BOX 588
KINGSTREE, S. C. 29556
(803) 382-2333

July 20, 1993

Mr. J. D. O'Bryan, Jr.
P. O. Box 1105
Kingstree, South Carolina 29556

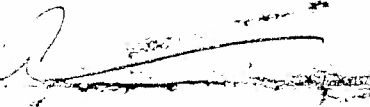
Dear Dessie,

I have two friends that I want to give a free fifty-year lease on two river lots. They are Larry Poston and Kenneth McClary. I want them to have all rights of ownership except I'll be paying the taxes. There is no survey that I know of, so maybe we can use the tax maps.

Please let me know when it will be convenient for me to stop by and discuss this with you.

Thank you.

Yours truly,



Aubrey E. Judy
Executive Vice President

STATE OF SOUTH CAROLINA)
)
COUNTY OF WILLIAMSBURG)

IN THE COURT OF COMMONPLEAS
THIRD JUDICIAL CIRCUIT
FILE NO. 2000 CP 45-448

DAVID NEXSEN,)
)
Plaintiff,)
)
vs)
)
DRIGGERS AND LIFRAGE)
)
)
Defendants.)
_____)

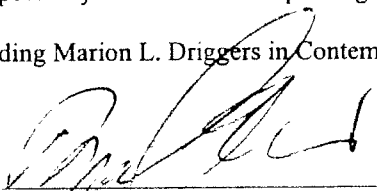
NOTICE OF MOTION AND
MOTION FOR RECONSIDERATION

TO: JEFFREY L PAYNE, ATTORNEY FOR THE PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE: that Marion L. Driggers, Defendant Pro Se, does make motion to the Honorable Clifton Newman to reconsider his decision to Grant Plaintiff Contempt of Court for the following reasons:

1. I relied on my Attorney's, Michael Nettles, advise that discharging firearms was not forbidden. I have witnesses to this fact.
2. The temporary retraining order was flawed because only things that are irreparable should have been included. See Rule 65b.
3. The Consent Order that replaced the Temporary Order did not list discharging firearms. **Rule 65D requires that all items be listed, shall be specific in terms, shall describe in reasonable detail and not by reference to the complaint or other document, the items to be restrained.**
4. The footnote on Rule 65 makes it clear that the various remedial writs are not causes of action but remedies of relief.

On these grounds, the Defendant respectfully makes motion requesting that the Honorable Clifton Newman reconsider his decision holding Marion L. Driggers in Contempt of Court



Marion L. Driggers, Pro-Se
3497 Hebron Road
Lake City, SC 29560

December 15, 2003

Lake City, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF WILLIAMSBURG)

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT
CASE NUMBER: 00-CP-45-448

David Nexsen,

Plaintiff,

vs.

Richard B. Haddock, Aubrey E. Judy,
James G. Lifrage, Marion Driggers, Larry
Poston, Kenneth E. McClary, Jerry L.
Weaver, Billy D. Weaver, Glen Weaver,
and Gerald Weaver,

Defendants.

CONSENT ORDER

Laura
Catherine Richardson
8-4-03

On June 14, 2001, the Court entered into a Temporary Restraining Order which enjoined the Defendants, James G. Lifrage and Marion Driggers, from digging and removing dirt on the property which is the subject of this lawsuit, cutting or harming trees on the property.

Now, therefore, upon the consent of the parties, it is hereby,

ORDERED that the Temporary Restraining Order is hereby extended indefinitely and until further Order of the Court. This Consent Order will not prejudice either party as to the merits of the original Complaint or any future injunctive relief.

AND IT IS SO ORDERED.

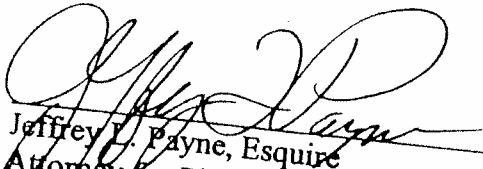
L. Henry McKellar
L. Henry McKellar
Judge, Third Judicial Circuit

Cola, South Carolina
June 21, 2001

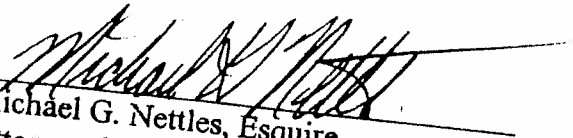
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CLERK OF COURT
KINGSTREE, S.C.

ONSENT:


Jeffrey L. Payne, Esquire
Attorney for Plaintiff, David Nexsen

6-19-01


Michael G. Nettles, Esquire
Attorney for Defendants, James G. Lifrage and
Marion Driggers

UN

STATE OF SOUTH CAROLINA)
)
COUNTY OF WILLIAMSBURG)

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT
CASE NUMBER: 00-CP-45-448

David Nexsen,)
)
Plaintiff,)

**MOTION FOR TEMPORARY
RESTRAINING ORDER AND
PRELIMINARY INJUNCTION**

vs.)

Richard B. Haddock, Aubrey E. Judy,)
James G. Lifrage, Marion Driggers,)
Larry Poston, Kenneth E. McClary,)
Jerry L. Weaver, Billy D. Weaver,)
Glen Weaver and Gerald Weaver,)
)
Defendants.)

Pursuant to Rule 65 of the South Carolina Rules of Civil Procedure, the plaintiff, by and through his attorneys, hereby moves the court as follows:

1. To grant immediately to the plaintiff a temporary restraining order and preliminary injunction, restraining and enjoining the defendants, James G. Lifrage ("Lifrage") and Marion Driggers ("Driggers"), as follows:

- A. Enjoining the defendants, Lifrage and Driggers, from digging and removing any soil on the property that is subject to this dispute ("Property");
- B. Enjoining the defendants, Lifrage and Driggers, from cutting or harming any trees located on the Property;
- C. Enjoining the defendants, Lifrage and Driggers, from discharging any firearms on the Property.

2. A temporary restraining order is necessary and appropriate to prevent the

irreparable harm that the plaintiff would suffer should these defendants continue to dig and remove the large amounts of dirt as they have previously removed. The plaintiff would also suffer irreparable harm should these defendants remove any more trees on the Property. Such continued digging would forever transform the scenic nature of the Property. The plaintiff is likely to prevail on the merits of this action in which he challenges the underlying lease to these defendants since South Carolina statutory law expressly prohibits the sublease at issue to these defendants without the written consent of the plaintiff.

3. Furthermore, the defendants will suffer no harm if the temporary restraining order is issued. Moreover, public policy favors in allowing the owner of property to protect his property from any further damage by the alleged tenants, Lifrage and Driggers.

This Motion is based upon the exhibits attached to the Complaint, the Affidavit of the plaintiff filed herewith, and such other and further materials as may be filed before any subsequent hearing. This Motion is made in furtherance of justice and is not intended for delay.

Florence, South Carolina

June 14, 2001

TURNER, PADGET, GRAHAM & LANEY, P.A.

By: 

Jeffrey L. Payne, Esquire

1831 West Evans Street, Suite 400

Post Office Box 5478

Florence, South Carolina 29502-5478

(843) 662-9008

ATTORNEY FOR PLAINTIFF

1 STATE OF SOUTH CAROLINA

COUNTY OF WILLIAMSBURG

2

3

4

DAVID NEXSEN,
PLAINTIFF

V.

5

6

RICHARD B. HADDOCK, ET AL.,
DEFENDANTS

MOTIONS HEARING NONJURY
2000-CP-45-448

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8

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SEPTEMBER 11, 2003
KINGSTREE, S.C.

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11

12

BEFORE THE HONORABLE CLIFTON NEWMAN, JUDGE.

13

14

15

16

A P P E A R A N C E S:
WILSON S. SHELDON,
ATTORNEY FOR PLAINTIFF

17

18

MR. THOMAS J. RUBILLO,
ATTORNEY FOR LIFRAGE

19

20

MARGARET T. SULLIVAN,
COURT REPORTER

21

22

23

24

25

COPY

	<u>WITNESSES</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>REXCROSS</u>
1					
2	MICHAEL NETTLES				
3	BY MR. DRIGGERS	11			
4	BY MR. RUBILLO		15		
5					
6	DAVID NEXSEN				
7	BY MR. DRIGGERS	22			
8	BY MR. SHELDON		29		
9					
10	MARION DRIGGERS				
11	BY MR. SHELDON	30			
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1 THE COURT: MR. SHELDON.

2 MR. SHELDON: THANK YOU, JUDGE. THIS IS IN DAVID
3 NEXSEN VS. HADDOCK.

4 THE COURT: NEXSEN VS. HADDOCK. AND IS THE MATTER THAT
5 Y'ALL ARE ALSO HERE ON?

6 MR. RUBILLO: YES, YOUR HONOR. I REPRESENT
7 MR. LIFRAGE. AND WE'RE HERE ON AS FAR AS I CAN TELL, TWO OF
8 THREE MATTERS BEFORE THE COURT. BUT I PROBABLY NEED TO BE
9 HEARD ON ALL THREE OF THEM.

10 THE COURT: LET ME LOCATE THAT FILE. NEXSEN V.
11 HADDOCK.

12 MR. MCCOLLOUGH: YOUR HONOR, I AM REPRESENTING KEN
13 MCCLARY.

14 MR. DRIGGERS: YOUR HONOR, I REPRESENT MYSELF. MARION
15 L. DRIGGERS.

16 THE COURT: NEXSEN V. HADDOCK, IS THAT RIGHT? NEXSEN
17 V. HADDOCK THAT I HAVE BEFORE ME. IT'S A MOTION FOR A
18 TEMPORARY INJUNCTION.

19 MR. SHELDON: YOUR HONOR.

20 THE COURT: YES, SIR.

21 MR. SHELDON: WE CAN TAKE UP THE FIRST MOTION IS A
22 MOTION FOR CONTEMPT OF COURT.

23 THE COURT: WE'LL GET TO THAT.

24 MR. SHELDON: YES, SIR.

25 THE COURT: I ALSO HAVE A NOTICE OF MOTION AND MOTION

1 FOR CONTEMPT OF COURT. WHAT OTHER MOTIONS ARE THERE?

2 MR. SHELDON: AND THEN THE OTHER MOTION WAS A MOTION TO
3 AMEND THE COMPLAINT.

4 THE COURT: IS THAT A MOTION THAT WAS FILED?

5 MR. SHELDON: YES, SIR. THAT'S BEEN PENDING SINCE
6 FEBRUARY OF 2003, AND I THOUGHT YOU MIGHT HEAR THAT TODAY
7 SINCE IT'S GOTTEN SO OLD. BUT IT JUST HAS TO DO WITH
8 ADDING A CAUSE OF ACTION NOT TO ADD A NEW PARTY.

9 MR. RUBILLO: YOUR HONOR, I DON'T KNOW IF THAT MOTION
10 IS PROPERLY BEFORE THE COURT, BECAUSE THERE'S NO COPY OF
11 THE PROPOSED AMENDMENT THAT HAS BEEN FILED OR SUBMITTED AND
12 SERVED ON THE PARTIES INDICATING WHAT THE PROPOSED AMENDMENT
13 IS. AND IT'S MY UNDERSTANDING THAT THE RULE REQUIRES THAT,
14 AND HAVE TO SET FORTH OF COURSE WHATEVER THEY CONSIDER TO BE
15 TORTIOUS CONDUCT. BUT IT ALSO WOULD HAVE TO SAY WHAT THE
16 DATES ARE AND SO FORTH. AND THAT WOULD RAISE ALL SORTS OF
17 QUESTIONS REGARDING STATUTES OF LIMITATIONS. AND THEN THERE
18 ARE SOME DISCOVERY ISSUES THAT WOULD HAVE TO BE ADDRESSED AT
19 THE SAME TIME.

20 SO I AM NOT IN A POSITION ON BEHALF OF MY CLIENT TO
21 CONSENT TO THAT MOTION TODAY, BECAUSE I DON'T KNOW THAT
22 WE'VE GOT WHAT IT IS THAT THEY HAVE. AND I DON'T WANT TO
23 WAIVE ANY DEFENSES OF ANY KIND AT THIS POINT.

24 MR. SHELDON: WELL OF COURSE HIS DEFENSES WOULD COME IN
25 AN ANSWER OR A REPLY TO THE AMENDED COMPLAINT. BUT I AM

1 NOT FAMILIAR WITH ANY REQUIREMENT THAT THE ACTUAL AMENDED
2 COMPLAINT HAS TO BE ATTACHED. I THINK IN THE BODY OF THE
3 MOTION IS SELF EXPLANATORY; THAT THE ONLY ADDITION TO THE
4 COMPLAINT WOULD JUST ADD THE DAMAGES CAUSE OF ACTION AGAINST
5 TWO DEFENDANTS FOR DESTRUCTION OF THE PROPERTY. BUT THAT
6 WAS THE LIMIT OF. BUT I'LL BE GLAD FOR THE COURT SUGGEST
7 TO NOT WITHDRAW THE MOTION, BUT TO HAVE IT HEARD AT THE
8 NEXT TERM. IN THE INTERIM, WE WILL DRAFT THE AMENDED, THE
9 PROPOSED AMENDED COMPLAINT AND ATTACH THAT TO THE MOTION.

10 THE COURT: FOR SAKE OF TIME CONSIDERING THE PASSAGE,
11 THE FLEETING NATURE OF THE MINUTES IN THIS DAY, WE WILL
12 DEFER THAT MOTION TO ANOTHER TERM.

13 MR. SHELDON: YES, SIR.

14 THE COURT: AND YOU DON'T -- YOU HAVE NO ARGUMENT
15 AGAINST THAT DO YOU, SIR?

16 MR. RUBILLO: NO, NO.

17 THE COURT: WE'LL DEFER THAT HEARING OF THAT MOTION TO
18 ANOTHER DAY.

19 MR. SHELDON: AND WE'LL DO AN AMENDED COMPLAINT SO
20 THAT HE CAN, I DON'T KNOW WHY IT WOULD MATTER. BUT I'LL
21 BE GLAD TO DO THAT. IF WE COULD, YOUR HONOR, IF THE COURT
22 WILL ALLOW ME TO ADDRESS THE MOTION FOR CONTEMPT OF COURT.
23 MR. NELLIS IS HERE AND HE'S BEEN SUBPOENAED BY THE OTHER
24 SIDE AS A WITNESS, IF WE CAN GET THIS ONE HEARD.

25 THE COURT: PROCEED WITH THE NOTION OF MOTION AND

1 MOTION FOR CONTEMPT OF COURT.

2 MR. SHELDON: YES, SIR. YOUR HONOR, IF IT PLEASE THE
3 COURT, MY NAME IS WILSON SHELDON. I'M FILLING IN FOR JEFF
4 PAYNE WHO IS LISTED AS COUNSEL FOR MR. DAVID NEXSEN.
5 MR. NEXSEN JUST BRIEFLY THE FACTS OF THIS CASE, IT INVOLVES
6 PROPERTY ON BLACK RIVER. THE ORIGINAL -- ORIGINALLY THE
7 PROPERTY WAS ALL IN ONE PERSON'S NAME. IT WAS MR. AUBREY
8 JODY. MR. JODY THEN SUBLEASED THREE LOTS ON THIS PROPERTY.
9 AND EACH LOT IS A APPROXIMATELY 3/4TH'S OF AN ACRE THAT'S
10 ADJACENT TO BLACK RIVER. THE THREE LOTS THAT HE SUBLEASED
11 OR DID SUBLEASES TO WERE FOR A TERM OF 50 YEARS,
12 CONSIDERATION OF ONE DOLLAR. ONE WAS TO A LARRY POSTON, A
13 KENNETH MCCLARY AND A RICHARD HADDOCK. RICHARD HADDOCK.
14 SO IT WENT FROM JODY TO THOSE THREE, THE THREE LOTS DID.
15 WELL LOT NO. 2, KENNETH MCCLARY, HE THEN ATTEMPTED TO
16 SUBLEASE THAT LOT TO JAMES LIFRAGE AND MARY ANN DRIGGERS,
17 WHO ARE HERE TODAY. IN THE INTERIM, BEFORE THAT SUBLEASE
18 WAS DONE, MR. NEXSEN HAD PURCHASED THE PROPERTY. OR MR.
19 NEXSEN, I'M SORRY, TOOK OVER THE PURCHASE OF THE PROPERTY
20 FROM KINGSTREE FOREST. IT WAS THEN SOLD TO KINGSTREE
21 FOREST. AND THEN IT CAME IN POSSESSION OF MR. NEXSEN
22 SUBJECT TO THE THREE ORIGINAL LEASES TO THE THREE FOLKS
23 I MENTIONED EARLIER.

24 WELL THE DISPUTE IN THIS CASE AROSE THAT THERE COULD BE
25 A SUBLEASE TO LIFRAGE OR MR. DRIGGERS WITHOUT THE CONSENT OF

1 THE PROPERTY OWNER, BECAUSE MR. NEXSEN TOOK OVER AS LESSOR
2 OF THE PROPERTY WHEN HE TOOK OVER AND BOUGHT THE PROPERTY
3 SUBJECT TO THE LEASES. THEY DISPUTED THAT. THEY ARGUED
4 THAT THE LEASE AGREEMENT FROM MR. AUBREY JUDY ALLOWED THEM
5 TO SUBLEASE. JUDGE COOPER IN AN ORDER SAID NO, IT DOES NOT.
6 YOU'RE NOT ALLOWED TO SUBLEASE. THE STATUTE PREVENTS YOU
7 FROM DOING THAT WITHOUT THE CONSENT OF THE PROPERTY OWNER
8 MR. NEXSEN. THEN THEY SUBSEQUENTLY APPEALED THAT DECISION
9 TO THE COURT OF APPEALS. THE COURT OF APPEALS UPHELD JUDGE
10 COOPER'S DECISION AND SAID NO, YOU CAN NOT SUBLEASE THE
11 PROPERTY DOWN TO THE NEXT LEVEL WITHOUT THE CONSENT OF MR.
12 NEXSEN.

13 SO IN ORDER TO GET AROUND THIS, THEY HAVE NOW FORMED A
14 HUNTING CLUB, I BELIEVE. AND HAVE INTEREST IN A HUNTING
15 CLUB THAT GIVES THEM ACCESS TO THIS ONE LOT, LOT NO. 2,
16 TO WHICH IS A 3/4THS OF AN ACRE; TO WHICH THEY'RE GIVING OUT
17 KEYS AND EVERYTHING, TO ALL KINDS OF FOLKS COMING AND USING
18 THAT ONE LOT. ALTHOUGH THEY'RE NOT IN ANY LEGAL POSSESSION
19 OF THE PROPERTY. IT'S STILL IN POSSESSION OF MR. NEXSEN AND
20 IT'S SUBLEASED OR IT'S LEASED TO MR. MCCLARY. THE CONTEMPT
21 MOTION WHEN YOU GET TO THAT, YOUR HONOR, THIS WAS FILED
22 PURSUANT TO AN ORDER. THAT WAS ISSUED BY JUDGE MCKELLAR.
23 INITIALLY WHEN THE CASE WAS FILED, THERE WAS A TEMPORARY
24 RESTRAINING ORDER ALSO FILED ASKING FOR THESE FOLKS NOT TO
25 DESTROY THE PROPERTY ANY FURTHER. THEY WERE DIGGING HOLES.

1 THERE WERE PHOTOGRAPHS THAT WERE SUBMITTED; HOLES, CUTTING
2 TREES, AND SHOOTING FIREARMS ON THE PROPERTY ON A SMALL
3 LOT.

4 JUDGE MCKELLAR ISSUED THE TEMPORARY RESTRAINING ORDER.
5 SET THE MATTER FOR THE HEARING WITHIN 10 DAYS, TO WHICH THE
6 PARTIES THEN ENTERED INTO A CONSENT ORDER PERMANENTLY
7 EXTENDING THE TEMPORARY RESTRAINING ORDER. WELL, SINCE THAT
8 TIME, MR. DRIGGERS HAS SHOT A WEAPON NUMEROUS TIMES ON THE
9 PROPERTY. MR. NEXSEN WITNESSED ONE OF THESE OCCASIONS AND
10 WE SUBMITTED AN AFFIDAVIT ALONG WITH A CONTEMPT ORDER. SO
11 WE'RE HERE TODAY ON THAT TO ENFORCE JUDGE MCKELLAR'S ORDER
12 THAT WEAPONS NOT BE FIRED ON THE PROPERTY UNTIL THE
13 CONCLUSION OF THIS LAWSUIT PURSUANT TO THE TERMS OF THE
14 JUDGE'S ORDER. AND THAT'S REALLY THE GIST OF THAT MOTION.
15 WE'VE ASKED FOR COSTS TO BE ASSOCIATED WITH HAVING TO COME
16 ENFORCE AN ORDER THAT THE PARTIES ARE WELL AWARE OF.

17 MR. RUBILLO: YOUR HONOR, IF I MAY BE HEARD ON THAT, ON
18 BEHALF OF MR. LIFRAGE. BECAUSE IT CAN HAVE SOME BEARING ON
19 HIM IN THE FUTURE. THERE ARE SOME PROBLEMS HERE THAT ARE
20 FAIRLY SUBSTANTIAL. FIRST OF ALL, I'M NOT AWARE OF ANY
21 PROCEDURE TO GET THE ISSUE OF CONTEMPT BEFORE THE COURT
22 WITHOUT A RULE TO SHOW CAUSE, WHICH IS GIVEN WITH SUPPORTING
23 MATERIALS AND SO FORTH FOR THE JUDGE TO REVIEW. SO THAT
24 SOMETHING LIKE A PROBABLE CAUSE DETERMINATION CAN BE MADE
25 AND THE DOCUMENTS BE EXAMINED CAREFULLY. HERE THERE IS A

1 CONSENT ORDER THAT MAKES SPECIFIC, IT SAYS THAT IT WAS A
2 RESTRAINING ORDER THAT WAS ISSUED BACK ON JUNE THE 14TH. IF
3 YOU LOOK AT THE JUNE 21ST ORDER, WHICH IS THE ONE WE'RE
4 TALKING ABOUT CONTEMPT ON, AND IT MAKES REFERENCE TO THE
5 FACT THAT THE PARTIES WERE RESTRAINED FROM DIGGING OR
6 REMOVING DIRT FROM THE PROPERTY OR CUTTING OR FARMING ANY
7 TREES ON THE PROPERTY.

8 THAT'S WHAT IT SAYS. OKAY. AND THEN IT GOES ON TO SAY
9 THAT THE TEMPORARY RESTRAINING ORDERS ARE EXTENDED. BUT THE
10 ONLY THINGS THAT IT TALKS ABOUT ARE DIGGING AND REMOVING
11 DIRT, CUTTING AND FARMING TREES.

12 NOW IF I READ RULE 65 CORRECTLY, AND SPECIFICALLY RULE
13 65-D WHEN IT TALKS ABOUT THE FORM AND SCOPE OF INJUNCTIONS
14 OR RESTRAINING ORDERS, IT REQUIRES THEM TO BE VERY SPECIFIC.
15 AND IT SAYS THAT EVERY ORDER GRANTING AN INJUNCTION AND
16 EVERY RESTRAINING ORDER SHALL SET FORTH REASONS FOR ITS
17 ISSUANCE, SHALL BE SPECIFIC IN TERMS, RIGHT? BECAUSE
18 LIBERTY IS INVOLVED. SHALL DESCRIBE IN REASONABLE DETAIL
19 AND NOT BY REFERENCE TO THE COMPLAINT OR OTHER DOCUMENT THE
20 ACT OR ACTS SOUGHT TO BE RESTRAINED. THAT'S RULE 66-D.

21 THIS ONE IS SPECIFIC AS TO NOT DIGGING OR NOT REMOVING
22 DIRT FROM THE PROPERTY; NOT CUTTING OR HARMING TREES ON THE
23 PROPERTY. AND TO THE EXTENT THAT THERE IS SOME QUESTION
24 HERE NOW ABOUT THE FIRING -- DISCHARGE OF FIREARMS, WHICH
25 WAS THE SUBJECT OF THE TEMPORARY RESTRAINING ORDER. IT'S

1 NOT MENTIONED IN THE PERMANENT RESTRAINING ORDER. AND THAT
2 CAN HAVE A BEARING ON MY CLIENT AND WHETHER OR NOT HE'S
3 GOING TO BE DRAGGED IN HERE IN THE FUTURE. AND THEN
4 PROCEDURALLY HOW HE CAN BE DRAGGED IN. CAN HE BE DRAGGED IN
5 ON A MOTION, WHICH REQUIRES NO JUDICIAL, PRIOR JUDICIAL
6 REVIEW TO MAKE SURE THAT THERE'S SOME REASON TO BE BRINGING
7 THIS BACK AND PLACING HIS LIBERTY AT STAKE? OR CAN IT JUST
8 -- OR DOES IT HAVE TO COME IN THE ORDINARY COURSE OF EVENTS
9 THROUGH A RULE TO SHOW CAUSE WHICH IS PRESENTED TO THE COURT
10 SO THE COURT CAN LOOK AT THE DOCUMENTS, LOOK AT THE
11 UNDERLYING ORDER, LOOK AT WHAT'S COMPLAINED OF AND MAKE A
12 DETERMINATION OF WHETHER OR NOT SOMEBODY HAS BEEN DEFIANT
13 OF THE ORDER OF THE COURT?

14 AND SO TO THAT EXTENT, I WOULD JUST SAY THAT ON BEHALF
15 OF MY CLIENT, SO FAR AS HE IS AWARE, HE IS PERMANENTLY
16 RESTRAINED AND ENJOINED FROM DIGGING AND REMOVING DIRT ON
17 THE PROPERTY, CUTTING OR HARMING TREES ON THE PROPERTY.
18 AND SO FAR AS ANY TIME HE GOES ON TO THE PROPERTY, HE ONLY
19 GOES ON AS A GUEST OF MR. MCCLARY. AND SO HE'S NOT -- YOU
20 KNOW, HE'S REALLY HAS GOT NOTHING TO DO WITH IT AT ALL. AND
21 SO I WANT TO MAKE SURE THAT WE KNOW VERY CLEARLY WHEN WE
22 LEAVE HERE TODAY WHAT IT IS THAT MY CLIENT CAN AND CANNOT
23 DO. SO I WOULD JUST DRAW THE COURT'S ATTENTION TO THE
24 SPECIFIC WORDING OF THE JUNE 21ST ORDER AND TO THE
25 REQUIREMENTS OF RULE 65-D AS TO SPECIFICITY. AND THANK,

1 YOUR HONOR.

2 MR. SHELDON: I AM ASSUMING THAT'S THE ARGUMENT FOR
3 BOTH OF THOSE INDIVIDUALS, YOUR HONOR. IF YOU WOULD LIKE
4 ME TO RESPOND TO THAT?

5 THE COURT: NO, NO. Y'ALL ARE JUST KIND OF POPPING UP
6 AND ARGUING.

7 MR. SHELDON: I KNOW IT. AND THAT'S WHY -- I DON'T
8 KNOW IF YOU WANT ME TO GO NEXT IS WHAT I'M ASKING.

9 THE COURT: WELL, MR. DRIGGERS.

10 MR. DRIGGERS: YES, SIR.

11 THE COURT: MR. DRIGGERS, WHO REPRESENTS -- YOU
12 REPRESENT YOURSELF?

13 MR. DRIGGERS: I AM REPRESENTING MYSELF. BUT I WAS
14 REPRESENTED BY MR. NETTLES OVER THERE. I HAVE CALLED HIM
15 IN. AND I PLEAD NOT GUILTY TO ANY CONTEMPT OF COURT AND
16 BECAUSE I WAS TOLD BY MR. NETTLES THAT WE COULD SHOOT, BUT
17 WE COULD NOT DIG AND WE COULD NOT HARM TREES. AND THAT'S --
18 IF THERE IS ANY FURTHER GOING, I WOULD LIKE TO CALL MR.
19 NETTLES UP AND LET HIM TESTIFY AS TO WHAT HE TOLD US.

20 THE COURT: ANY OBJECTION TO MR. DRIGGERS CALLING MR.
21 NETTLES AS A WITNESS?

22 MR. SHELDON: NO, SIR.

23 THE COURT: MR. NETTLES.

24 MICHAEL NETTLES, BEING FIRST DULY
25 SWORN, TESTIFIED AS FOLLOWS:

1 DIRECT EXAMINATION BY MR. DRIGGERS:

2 Q. MR. NETTLES, WAS YOU REPRESENTING MR.
3 LIFRAGE AND I WHEN THIS RESTRAINING ORDER CAME IN?

4 A. I WAS.

5 Q. WHAT DO YOU RECALL ABOUT THE RESTRAINING ORDER?

6 A. WELL IT TOOK PLACE A GOOD WHILE AGO. AND WHEN YOU
7 CAME TO MY OFFICE, I HAD ALREADY HAD THIS FILE STORED AWAY
8 IN THE WAREHOUSE. I WENT AND GOT THE FILE. AND I RECALL A
9 TEMPORARY RESTRAINING ORDER, BUT THERE IS NOT A COPY OF IT
10 IN MY FILE. BUT SINCE THEN I HAVE REVIEWED IT. AND THE
11 TEMPORARY RESTRAINING ORDER THAT WAS SERVED, DID ADDRESS
12 SHOOTING AND CUTTING, TIMBER AND REMOVAL OF DIRT IS WHAT WAS
13 IN THE TEMPORARY RESTRAINING ORDER. AND THEREAFTER, WE HAD
14 A HEARING BEFORE' -- THERE WAS A HEARING THAT WAS SCHEDULED
15 BEFORE JUDGE MCKELLAR AND WE ENTERED INTO A CONSENT ORDER.

16 Q. PRIOR TO THAT, EXCUSE ME, PRIOR TO THAT, WHAT DID
17 WE DISCUSS? AND DID WE DISCUSS ANYTHING ABOUT? AND DID
18 MR. LIFRAGE OR I SAY WE'LL JUST GO ALONG WITH THE WHOLE
19 RESTRAINING ORDER?

20 A. WELL YOU AND I HAVE HAD A DISCUSSION ABOUT THAT.
21 AND YOU HAD INDICATED TO ME THAT WE HAD A DISCUSSION ABOUT
22 PUTTING OUT DEER CORN AND SHOOTING. AND I DON'T -- I'VE
23 SEARCHED THROUGH THE FILE. I HAVE NO RECORDS. NO
24 HANDWRITTEN NOTES TO INDICATE WHETHER I DID OR DID NOT. YOU
25 TELL ME YOU DID, AND I CAN'T SAY THAT IS NOT CORRECT.

1 Q. WELL WHY IF WE CONSENTED TO ALL THE THREE ITEMS
2 THAT'S LISTED, WHY DIDN'T Y'ALL HAVE THE HEARING? WHY
3 DIDN'T YOU SIGN THE CONSENT AND SEND IT ON TO JUDGE
4 MCKELLAR?

5 A. THAT DOES SEEM TO HAVE A RING OF LOGIC ABOUT IT.

6 Q. I MEAN, THAT WOULD MAKE SENSE TO ME. AND I'M
7 PREPARED TO GO UNDER OATH IF NECESSARY, AND STATE THAT YOU
8 CAME BACK AND TOLD ME THAT WE COULD SHOOT AND PUT OUT CORN.
9 BUT WE COULD NOT DIG AND WE COULD NOT CUT. AND WE DID
10 NEITHER.

11 A. RIGHT. I AM NOT ARGUING WITH YOU ABOUT THAT.

12 Q. OKAY. WHEN YOU AND MR. PAYNE MET TO DO THE CONSENT
13 ORDER, WERE YOU IN COURT?

14 A. YES.

15 Q. WAS THERE A COURT TRANSCRIPT MADE OF IT?

16 A. NO, I DON'T THINK IT ACTUALLY WENT TO A HEARING.
17 I THINK WE STOOD RIGHT IN FRONT OF THAT DOOR RIGHT
18 THERE AND DISCUSSED THE CONSENT ORDER.

19 Q. SO Y'ALL DID DECIDE IT OUT OF COURT.

20 A. WELL IT WAS THE COURTROOM, IT WAS NOT ON THE
21 RECORD.

22 Q. BUT YOU DON'T REMEMBER -- YOU CAME BACK AND TOLD ME
23 -- WHAT DID YOU TELL ME WHEN YOU COME BACK?

24 A. WELL---

25 Q. YOU HAD TO GIVE ME SOME KIND OF INFORMATION.

1 A. SAY THAT AGAIN NOW.

2 Q. WHAT DID YOU TELL ME WHEN YOU CAME BACK?

3 A. I THINK I READ VERBATIM THE CONSENT ORDER.

4 Q. I'VE NEVER SEEN THE CONSENT ORDER. I'VE NEVER --

5 I MEAN, I'VE SEEN IT. I GOT IT AFTERWARDS, BUT I NEVER

6 SEEN THE CONSENT ORDER AT ALL; DIDN'T KNOW ANYTHING ABOUT IT

7 UNTIL I GOT THE CONTEMPT OF COURT ORDER.

8 A. OKAY. YOUR QUESTION?

9 Q. WELL I TOTALLY RELIED ON YOU TO TELL ME WHAT -- DID
10 YOU READ THE CONSENT ORDER?

11 A. YES, I DID.

12 Q. WHAT DID IT---

13 A. I SIGNED IT.

14 Q. ---SAY?

15 A. IT SAYS THAT YOU ARE NOT TO CUT TIMBER, NOT TO
16 REMOVE DIRT, AND IT DOESN'T ADDRESS THE ISSUES OF SHOOTING.

17 Q. WELL DOESN'T A CONSENT ORDER TAKE THE PLACE OF THE
18 A TEMPORARY RESTRAINING ORDER?

19 A. THAT'S REALLY A QUESTION FOR THE COURT TO DECIDE.
20 BUT IT DOES NOT MENTION ANYTHING ABOUT SHOOTING IN THE
21 CONSENT ORDER.

22 Q. WELL ON THE RULE 65 SUBSECTION B, IT SAYS THAT A
23 TEMPORARY RESTRAINING ORDER CAN BE ISSUED FOR 10 DAYS. IT
24 CAN BE RENEWED UP TO 10 DAYS, IS THAT CORRECT?

25 A. I GUESS.

1 Q. THAT'S THE WAY I'M READING IT HERE. AND IT SAYS,
2 YOU KNOW, THE ONLY WAY IT CAN BE EXTENDED IF SOMEBODY LIKE
3 YOU OR ME JOIN IN AND DO IT. SO EVIDENTLY WHEN THE CONSENT
4 ORDER WAS DONE THEN THE TEMPORARY RESTRAINING ORDER IS OUT
5 THE WINDOW, RIGHT? IS THAT THE WAY YOU UNDERSTAND IT?

6 A. I THINK THE CONSENT ORDER IS THE LAW OF THE DAY,
7 AND IT'S SUBJECT TO THE JUDGE'S INTERPRETATION.

8 Q. SO IF I WAS TO WALK IN AND SAY, IF I DIDN'T KNOW
9 AND YOU HADN'T TOLD ME ANYTHING, IF I WAS TO WALK IN THE
10 CLERK OF COURT'S OFFICE WHICH I DID, AND I PULLED THIS,
11 LAURA WAS RIGHT THERE, SHE HELPED ME. AND IT SHOWED 2
12 THINGS ON THERE: REMOVING DIRT AND HARMING TREES. I HAVE
13 NOT REMOVED ANY DIRT; I HAVE NOT HARMED ANY TREES.

14 A. I AGREE.

15 MR. DRIGGERS: OKAY. THAT'S ALL I HAVE.

16 THE COURT: ANY QUESTIONS BY ANY OTHER PARTIES?

17 MR. RUBILLO: IF I COULD JUST ASK ONE, YOUR HONOR. OR
18 PERHAPS TWO.

19 CROSS EXAMINATION BY MR. RUBILLO:

20 Q. DO YOU RECALL WHO PREPARED THE ORDER?

21 A. JEFFREY PAYNE.

22 Q. JEFFREY PAYNE.

23 A. RIGHT.

24 Q. SO HE CHOSE THE LANGUAGE THAT APPEARS ON THIS
25 ORDER?

1 A. THAT'S CORRECT.

2 Q. AND SO PRESUMABLY IF FIREARMS, DISCHARGED FIREARMS
3 WEREN'T SUPPOSED TO BE ON THERE, HE DIDN'T PUT THEM ON
4 THERE, IS THAT RIGHT?

5 A. THAT'S CORRECT. AND REALLY THE QUESTION IS, THE
6 QUESTION THAT IS PRESENTED IS THAT IN THE LANGUAGE WHERE IT
7 SAYS IT IS ORDERED, IT SAYS THE TERMS OF THE TEMPORARY
8 RESTRAINING ORDER ARE CONTINUED INDEFINITELY. AND THAT'S
9 THE ISSUE THAT THE JUDGE I THINK NEEDS TO ADDRESS IS WHETHER
10 OR NOT IT INCORPORATES WHAT WAS IN THE ORIGINAL TEMPORARY
11 ORDER. WHETHER IT ADDRESSES WHAT'S ACTUALLY IN THE CONSENT
12 ORDER.

13 Q. SURE. AND IF THE RULES SAY THAT YOU CAN'T DO THAT
14 BY REFERENCE THAT YOU HAVE TO BE SPECIFIC, THEN IT WILL BE
15 LISTED IN THE ORDER.

16 A. WELL THAT WOULD SEEM TO ME TO BE A LEGAL QUESTION
17 FOR THE JUDGE.

18 Q. WELL AND YOU WERE THE ATTORNEY WHO WAS WORKING ON
19 IT AT THE TIME, IS THAT CORRECT?

20 A. THAT'S CORRECT.

21 Q. AND LET ME SHOW, JUST A COPY OF RULE 65-D.

22 A. YEAH. I HEARD YOU READ IT, AND I'M READING IT
23 HERE.

24 Q. YOU CAN'T MAKE REFERENCE TO SOMETHING ELSE. YOU
25 HAVE TO SAY VERY SPECIFICALLY BECAUSE PEOPLE'S LIBERTY IS AT

1 STAKE, IS THAT RIGHT?

2 A. THAT'S MAKES PILES OF SENSE.

3 Q. SURE, IT'S -- IT WOULD TO BE A DUE PROCESS QUESTION
4 NOTICE OF WHAT YOU CAN AND CAN NOT DO.

5 A. THAT'S CORRECT.

6 MR. RUBILLO: THANK YOU.

7 THE COURT: YOU MAY STEP DOWN.

8 MR. NETTLES: MIGHT I BE EXCUSED?

9 THE COURT: YES, SIR. ANY OBJECTION TO HIM BEING
10 EXCUSED?

11 MR. SHELDON: NONE, YOUR HONOR.

12 THE COURT: ANYTHING FURTHER ON THIS ISSUE?

13 MR. SHELDON: JUST TO ADDRESS THIS MENTIONING OF THE
14 RULE 65, YOUR HONOR. IT'S FAIRLY SPECIFIC THAT WHAT THE
15 ORDER, THE ORIGINAL ORDER ENJOINS, AND IT'S SET FORTH IN
16 3 POINTS. THE THIRD STATING DEFENDANT'S JAMES LIFRAGE AND
17 MARY DRIGGERS ARE ENJOINED FROM DISCHARGING ANY GUNS ON THE
18 PROPERTY. THAT'S ABOUT AS SPECIFIC AS IT COULD, I WOULD
19 THINK TO SATISFY COUNSEL. AND THEN THE CONSENT ORDER SAYS
20 THAT IN THE ORDER---

21 THE COURT: WHAT IS THE DATE OF THE CONSENT ORDER?

22 MR. SHELDON: JUDGE, THE DATE IS JUNE 21ST 2001. AND
23 IF I COULD -- I CAN HAND THESE UP. THIS WAS THE TEMPORARY
24 RESTRAINING ORDER THAT I HAND UP FIRST. AND THE CONSENT
25 ORDER STATES, AND THE ORDERED PART, THE PART THAT ACTUALLY

1 IS THE COURT ORDERING; THAT THE TEMPORARY RESTRAINING ORDER
2 IS HEREBY EXTENDED INDEFINITELY, UNTIL FURTHER ORDER OF THE
3 COURT. THE CONSENT ORDER WILL NOT PREJUDICE EITHER PARTY
4 AS TO THE MERITS OF THE ORIGINAL COMPLAINT OR FUTURE
5 INJUNCTIVE RELIEF. SO THIS IS A CONSENT ORDER ISSUED BY ALL
6 PARTIES CONSENTING TO THE SPECIFICS OF THE RESTRAINING
7 ORDER, WHICH HE NOW OBJECTS TO, YET IT WAS ALL CONSENTED TO.

8 SO IF HE THINKS HE HAS GOT A DUE PROCESS PROBLEM, WHY
9 DID HE CONSENT TO AN ORDER THAT INCORPORATES BY REFERENCING
10 A SPECIFIC TEMPORARY INJUNCTION? HE DOESN'T HAVE A DUE
11 PROCESS ARGUMENT. AS A MATTER OF FACT, HIS CLIENT AND MR.
12 DRIGGERS WERE WELL AWARE OF THE COURT'S ORDER OF THE
13 PROHIBITION OF FIRING -- DISCHARGING FIREARMS ON THE 3/4THS
14 ACRE OF PROPERTY. BECAUSE WHEN MR. NEXSEN REMINDED MR.
15 DRIGGERS OF THE ORDER, MR. DRIGGERS REPLIED. IT'S IN MR.
16 NEXSEN'S AFFIDAVIT WAS, THE ORDER MEANS NOTHING TO ME. THAT
17 WAS HIS REPLY TO THIS MAN.

18 SO THEY ARE WELL AWARE OF THIS. THIS ISN'T A DUE
19 PROCESS ARGUMENT OR HE HASN'T HAD DUE PROCESS. HE WAS
20 CONSENTING TO THE ORDER THAT EXTENDED INDEFINITELY THE
21 TEMPORARY RESTRAINING ORDER. SOME I JUST FIND THAT ARGUMENT
22 WITHOUT MERIT. AND THERE'S AN ORDER OF THE COURT THAT
23 PROHIBITS THESE FOLKS FROM DISCHARGING FIREARMS. AND WE'RE
24 HERE TODAY TO ASK THAT THAT BE UPHELD.

25 MR. RUBILLO: YOUR HONOR, ON BEHALF OF MY CLIENT

1 BECAUSE THE ORDER AT THIS POINT CERTAINLY IS THE ORDER OF
2 THE COURT. WHAT WE HAVE IS KIND OF, THERE'S NOT -- WELL
3 THERE IS TO THE EXTENT THAT IT HAS THE POTENTIAL OF
4 RESTRICTING HIM IN THE EXERCISE OF HIS LIBERTY BOTH IN WHAT
5 IT IS HE CAN DO AND ALSO MORE IMPORTANTLY IN WHAT IT IS HE
6 CAN'T DO. AND WHAT WOULD BE CONTEMPTUOUS CONDUCT. BUT
7 JUST CONTRACTUALLY, IN THE SEAMLESS WEB OF THE LAW
8 CONTRACTUALLY, WHEN YOU HAVE AMBIGUITIES AS TO THE MEANING
9 OF SOMETHING AND IN THE END OF IT ALL IT CAN'T BE RESOLVED,
10 IT'S RESOLVED AGAINST THE DIRECTOR BECAUSE THE DIRECTOR HAS
11 THE OPPORTUNITY TO AVOID IT IN THE FIRST PLACE.

12 AND IT WAS MR. PAYNE WHO WAS THE ATTORNEY FOR
13 MR. NEXSEN WHO DRAFTED THE ORDER. AND IF HE MEANT ALL THREE
14 THINGS, HE COULD HAVE JUST AS EASILY PUT THEM IN THERE. AT
15 THE SAME TIME, HE WOULD HAVE NOTICE OF, AS WE ALL DO, NOTICE
16 OF THE CONTENT OF THE RULES. AND THAT THE RULES DON'T ALLOW
17 MAKING REFERENCE TO SOME OTHER DOCUMENT AND WHAT IS IN FACT

18 A RESTRAINING ORDER. AND IF THIS IS A RESTRAINING ORDER, IF
19 IT'S IN FACT A RESTRAINING ORDER, THE ORDER OF THE COURT
20 WHETHER BY CONSENT OR OTHERWISE, IF IT'S A PERMANENT
21 INJUNCTION WHICH CAN BE ENFORCED BY THE CONTEMPT POWER THEN
22 IT'S KIND OF LIKE A CRIMINAL STATUTE. IT HAS TO BE
23 CONSTRUED IN FAVOR OF THE LIBERTY OF THE DEFENDANT. AND
24 THAT'S A REQUIREMENT OF DUE -- THAT'S A DUE PROCESS
25 REQUIREMENT.

1 AND SO WE WOULD SUBMIT, YOUR HONOR, THAT UNLESS AND
2 UNTIL THERE'S A VERY SPECIFIC ORDER ISSUED BY THE COURT THAT
3 LISTS THE CONDUCT THAT THEY'RE SAYING IS CONTEMPTUOUS AT
4 THIS POINT, UNLESS AND UNTIL AN ORDER IS ISSUED LIKE THAT,
5 NO ONE CAN BE DEPRIVED OF THEIR LIBERTY. AND I AM
6 CONCERNED ABOUT MY CLIENT AND WHAT HE CAN AND CANNOT DO IN
7 THE FUTURE. WE WOULD RESPECTFULLY SUBMIT, YOUR HONOR, THAT
8 WE HAVE A PROBLEM HERE. THE PROBLEM IS THE CREATION OF THE
9 DRAFTER, AND NOT THE CREATION OF MY CLIENT. AND CERTAINLY
10 NOT MR. DRIGGERS FOR THAT MATTER; NOR MR. DRIGGER'S COUNSEL.

11 MR. SHELDON: I CONSENT TO INDEFINITELY EXTEND THE
12 TEMPORARY RESTRAINING ORDER. THERE ARE THREE POINTS OF
13 THINGS I CAN'T DO. AND NOW THE LAWYER COMES IN TO COURT AND
14 SAYS THAT THAT DOESN'T MEAN WHAT WE CONSENTED TO WHEN WE
15 CONSENTED TO, BECAUSE IT WASN'T SPECIFIC. THOUGH IT
16 REFERENCED AND INCORPORATED THREE THINGS IN THE ORDER. I,
17 YOU KNOW, ...

18 THE COURT: MR. DRIGGERS, DO YOU ADMIT TO SHOOTING OR
19 DO YOU DENY THAT?

20 MR. DRIGGERS: NO, SIR. I HAVEN'T ADMITTED TO
21 ANYTHING. I JUST PLEAD NOT GUILTY TO THE CONTEMPT OF COURT.
22 AND ALMOST, YOUR HONOR, HE MAY BE A LAWYER AND HE MIGHT KNOW
23 MORE THAN I DO, BUT IF YOU'VE ONLY GOT TWO THINGS LISTED,
24 THE ORDINARY PERSON GOES IN THERE, YOU'RE TALKING ABOUT A
25 CRIME. I HAVE NEVER BEEN IN CONTEMPT OF COURT OR NEVER

1 WOULD KNOWINGLY BE IN CONTEMPT OF COURT. THIS IS A PRETTY
2 SERIOUS CHARGE HE'S MAKING FOR TWO THINGS LISTED. MR. PAYNE
3 SHOULD HAVE LISTED IT IN HERE IF HE DIDN'T WANT IT DONE.
4 THEY'RE WELL AWARE OF IT. AND ACCORDING TO THIS RULE THAT I
5 READ, AND I'M NOT A LAWYER AND I'M NOT AN ATTORNEY. BUT IT
6 SAYS THAT A TEMPORARY RESTRAINING ORDER IS WHAT IT IS,
7 TEMPORARY. THAT'S WHAT TEMPORARY MEANS UNTIL YOU GET A
8 CONSENT ORDER. AND IF YOU'VE GOT A CONSENT ORDER AND IT
9 LISTS TWO ITEMS, THEN THAT'S THE TWO ITEMS I FEEL LIKE I
10 SHOULD RESPOND TO.

11 THE COURT: I FIND THAT THE ORDER OF THE COURT OF JUDGE
12 MCKELLAR IS CLEAR AND UNAMBIGUOUS. THE ORDER CLEARLY STATES
13 THAT UNDER NO. 3, THAT THE DEFENDANT'S LIFRAGE AND DRIGGERS
14 ARE ENJOINED FROM DISCHARGING ANY GUNS ON THE PROPERTY;
15 THAT THE TEMPORARY RESTRAINING ORDER WAS EXTENDED
16 INDEFINITELY AND UNTIL FURTHER ORDER OF THE COURT. THAT
17 SHOULD BE AS CLEAR AS IT CAN BE TO ALL PARTIES INVOLVED IN
18 THIS MATTER; SPECIFICALLY, LIFRAGE AND DRIGGERS. LET'S MOVE
19 BEYOND THAT POINT. WHAT ELSE IS AT ISSUE?

20 MR. SHELDON: JUDGE, THAT'S THE ONLY ISSUE WITH RESPECT
21 TO THE MOTION FOR A CONTEMPT. AND I WOULD WITHDRAW ANY
22 REQUEST, ANY INCARCERATION REQUESTS. I WOULD LIKE COSTS,
23 BECAUSE I THINK IT WAS CLEAR TO THESE FOLKS. THEY'VE KNOWN
24 IT. AND MR. NEXSEN ADVISED HIM BEFORE WE EVEN HAD TO FILE
25 THE MOTION. SO I WOULD ASK THAT THE COURT TO CONSIDER

1 REIMBURSEMENT OF COSTS, BECAUSE I AGREE IT WAS JUST CLEAR.
2 AND IT WAS A REMINDER TO THESE FOLKS. THEY'RE JUST -- HE'S
3 GOING TO---

4 THE COURT: IT'S CLEAR AND UNAMBIGUOUS. THE QUESTION
5 IS WHETHER YOU HAVE ESTABLISHED THAT HE HAS VIOLATED IT.

6 MR. SHELDON: YES, SIR. AND THERE IS AN AFFIDAVIT, IF
7 YOUR HONOR, PLEASE, THAT WAS ATTACHED TO THE MOTION.
8 SPECIFICALLY STATING FROM MR. NEXSEN THAT HE WAS FIRING ARMS
9 -- FIRING A SHOTGUN REPEATEDLY ON THAT PROPERTY. AND THERE
10 IS CERTAINLY NOTHING CONTESTING THAT. AND THAT WAS THE
11 BASIS FOR THE MOTION. AND...

12 THE COURT: WELL MR. DRIGGERS IS CONTESTING IT. HE
13 DENIES IT.

14 MR. DRIGGERS; YES, SIR, I AM CONTESTING IT. I WOULD
15 LIKE TO CALL MR. NEXSEN UP AND ASK HIM A FEW QUESTIONS ON
16 THIS MATTER. HE HAS IN HIS AFFIDAVIT THAT HE SAW ME
17 SHOOTING A FIREARM. I WOULD LIKE TO CALL HIM UP AND ASK HIM
18 ABOUT IT.

19 THE COURT: MR. NEXSEN.

20 MR. NEXSEN: YES, SIR.

21 THE COURT: MR. DRIGGERS.

22 DAVID NEXSEN, BEING FIRST DULY
23 SWORN, TESTIFIED AS FOLLOWS:

24 DIRECT EXAMINATION BY MR. DRIGGERS:

25 Q. MR. NEXSEN, YOU SAY IN YOUR AFFIDAVIT YOU SAW ME

1 SHOOTING A GUN ON THAT PROPERTY?

2 A. I WAS DOWN THE RIVER FISHING COMING UP, AND A BURST
3 OF FIRE WENT THE FIRST TIME. I EASED ON UP AROUND THE BEND
4 AND YOU WAS IN FRONT OF THE HOUSE.

5 Q. YOU SAW ME.

6 A. YES, I SAW YOU DO THAT.

7 Q. YOU SAW ME THERE.

8 A. WHEN I CAME OUT OF THE RIVER WITH MY BOAT AND THE
9 TRUCK, YOU CAME UP THAT ROAD. AND I ASKED YOU I SAID, WHAT
10 WERE YOU FIRING THAT WEAPON FOR. YOU SAID I WAS FIRING MY
11 AUTOMATIC RIFLE. YOU TOLD ME THAT AT THE GATE. AND I TOLD
12 YOU THAT YOU HAD NO BUSINESS ON THAT PROPERTY. AND YOU SAID
13 WELL I HAVEN'T GONE YET, AND NOTHING -- THE JUDGE'S ORDER
14 DON'T MEAN ANYTHING TO ME.

15 Q. WHY WOULD I NOT HAVE ANY BUSINESS ON THAT PROPERTY?

16 A. BECAUSE THE COURT HAS ALREADY RULED.

17 Q. WHAT DO YOU THINK THE COURT RULED?

18 MR. SHELDON: I AM GOING TO OBJECT TO THE RELEVANCE,---

19 THE COURT: SUSTAINED.

20 MR. SHELDON: ---YOUR HONOR.

21 THE COURT: SUSTAINED. THE QUESTION IS WHETHER OR NOT
22 -- YOUR CROSS EXAMINATION IS LIMITED TO THE QUESTION OF
23 WHETHER OR NOT YOU FIRED THE GUN AND IF HE CAN PROVE IT.

24 MR. DRIGGERS: WELL I HAD PERMISSION FROM MR. MCCLARY
25 TO BE ON THE PROPERTY. HE DOES HAVE A LEASE ON IT.

1 Q. DO YOU KNOW FOR SURE WHAT KIND OF TRUCK IT WAS
2 THERE WHEN THE FIRING WAS GOING ON?

3 A. A WHITE GMC.

4 Q. YOU REALIZE MR. LIFRAGE'S FATHER-IN-LAW HAS A WHITE
5 TRUCK JUST LIKE MINE?

6 A. I DON'T BELIEVE I CAN MISS LOOKING AT YOU AND
7 SOMEBODY ELSE.

8 Q. WHEN YOU SAW ME, WHAT WAS I WEARING?

9 A. I DON'T RECALL WHAT YOU WERE WEARING.

10 Q. HOW FAR AWAY WERE YOU?

11 A. APPROXIMATELY 150 YARDS.

12 Q. 150 YARDS?

13 A. AROUND THE FIRST BEND.

14 Q. YOU WERE IN A BOAT.

15 A. I WAS IN A BOAT.

16 Q. AND WHERE WAS I STANDING?

17 A. RIGHT ON THE OTHER SIDE OF THE TRUCK.

18 Q. ON THE OTHER SIDE---

19 A. NO, A PERSON WAS STANDING ON THE OTHER SIDE.

20 Q. WHERE WAS THE TRUCK PARKED?

21 A. IN FRONT OF THE MOBILE HOME YOU HAVE THERE.

22 Q. AND YOU GOT A CLEAR VIEW FROM 150 YARDS DOWN THE
23 RIVER?

24 A. YES, I DID.

25 Q. AND YOU KNOW I KNEW YOU WERE THERE.

1 A. NO, I DIDN'T SAY THAT. YOU DID NOT KNOW I WAS
2 THERE, I DON'T BELIEVE.

3 Q. I DID NOT KNOW YOU WERE THERE.

4 A. I DON'T BELIEVE YOU DID.

5 Q. YOU SAID IN HERE I WAS TRYING TO INTIMIDATE YOU.

6 A. WELL WHAT DID YOU DO AT THE GATE?

7 Q. WELL I COME UP THERE AND I ASKED YOU A QUESTION.
8 HARRY MCKENZIE HAD TOLD ME THAT YOU WERE SCARED OF ME.

9 MR. SHELDON: YOUR HONOR, I'M GOING TO OBJECT TO ALL
10 THIS. THIS ISN'T RELEVANT TO THE ISSUE THAT THE COURT IS
11 ASKING.

12 THE COURT: OBJECTION IS SUSTAINED. HEARSAY IN
13 ADDITION TO ALL THAT.

14 A. AND I WAS TRYING TO DISCUSS IT WITH YOU.

15 MR. SHELDON: JUDGE, HE'S RULED, SIR.

16 THE COURT: ANY FURTHER QUESTION ON THE ISSUE OF
17 EVIDENCE REGARDING SHOOTING AND NOT SHOOTING?

18 Q. AND YOU SAW ME SHOOT THE GUN.

19 A. I SAW YOU AT THE TRUCK.

20 Q. YOU SAW ME SHOOT THE GUN.

21 A. NO, I DIDN'T SEE YOU SHOOT THE GUN. NOBODY WAS
22 THERE BUT ONE PERSON.

23 Q. AND YOU DON'T THINK I WAS AWARE OF YOU, RIGHT?

24 A. NO.

25 Q. WHAT MADE YOU THINK I WANTED TROUBLE?

1 MR. SHELDON: AGAIN, YOUR HONOR, IT'S NOT RELEVANT.

2 MR. DRIGGERS: I WOULD THINK IT WOULD BE.

3 THE COURT: YOU CAN ANSWER, SIR.

4 A. WHAT WAS THE QUESTION?

5 Q. WHY DO YOU THINK I WOULD WANT TROUBLE?

6 A. I HAVE NO IDEA.

7 Q. I WAS DOWN THERE JUST GOING IN THE CABIN. I HAD
8 PERMISSION TO BE THERE. I MEAN, I WASN'T TRYING TO CAUSE
9 ANY TROUBLE. HAVE YOU EVER HEARD ANY GUNFIRE ALONG THERE
10 BEFORE?

11 A. ABSOLUTELY. YOU'VE GOT THREE-QUARTERS OF AN ACRE
12 OF LAND. WHERE ARE THE PELLETS GOING? YOU'VE GOT 88 FEET
13 ONE---

14 Q. I'M ASKING YOU.

15 A. ---ONE WAY.

16 Q. HAVE YOU EVER HEARD ANY GUNFIRE THERE BEFORE?

17 A. YES.

18 Q. HAS IT ALWAYS BEEN ME?

19 A. I DON'T KNOW.

20 Q. DON'T DUCK HUNTERS USE THAT?

21 A. YOU'VE GOT A HUNTING CLUB DOWN THERE.

22 Q. DOES DUCK HUNTERS USE IT OTHER THAN ME? I'M
23 TALKING ABOUT PEOPLE RIDING IN BOATS.

24 A. WELL THEY'RE RIDING DOWN THE RIVER.

25 Q. THEY'LL SHOOT UP AND DOWN THE RIVER.

1 A. IN SEASON.

2 Q. IN SEASON. I MEAN, YOU DON'T SAY ANYTHING TO
3 THEM?

4 A. I HAVE NO CONTROL OVER THE RIVER. BUT YOU WAS ON
5 MY LAND.

6 Q. I DON'T THINK YOU HAVE ANY CONTROL OVER THAT LOT.
7 MR. MCCLARY IS IN POSSESSION OF THAT. AS A MATTER OF FACT,
8 I THINK YOU'VE BEEN ABUSING THE LEASE.

9 MR. SHELDON: OBJECTION, YOUR HONOR.

10 THE COURT: OBJECTION IS SUSTAINED. ANYTHING FURTHER?

11 Q. DOESN'T MR. COOK HUNT AROUND IN THAT AREA RIGHT
12 ALONG ADJOINING YOU? MR. RICHARD COOK? THE COOKS?

13 A. HE AND HIS GRANDCHILDREN HUNTED THERE, TO MY
14 KNOWLEDGE.

15 Q. THEY FIRE GUNS AROUND A LOT, DON'T THEY?

16 A. WELL WHEN YOU'VE GOT 300 ACRES I BELIEVE YOU CAN
17 FIRE A GUN.

18 Q. WELL I MEAN, DOES THAT RESTRICT YOU, THE AMOUNT OF
19 ACREAGE? ARE YOU SAYING SOMEONE WITH A HALF ACRE CAN'T
20 SHOOT A GUN AND SOMEBODY WITH 300 CAN?

21 MR. SHELDON: EXCUSE ME, YOUR HONOR. THE COURT ORDER
22 SAYS THIS MAN CAN'T. AND THE ISSUE -- WELL YOU KNOW THE
23 ISSUE.

24 THE COURT: OBJECTION IS SUSTAINED.

25 MR. SHELDON: THANK YOU.

1 Q. WAS YOUR TRUCK AT THE CABIN UP THERE RIGHT THERE
2 WHERE I WOULD SEE IT I MEAN?

3 A. NO, I PUT MY TRUCK IN BELOW THAT.

4 Q. SO I WOULD HAVE NO WAY OF KNOWING YOU WERE THERE.

5 A. ABSOLUTELY.

6 Q. YOU SAID I GIVE THE KEYS TO PEOPLE ON THE GATES AND
7 ALL.

8 A. YOU TOLD ME THAT YOU HAD GIVEN OUT KEYS. AND THAT
9 IF I SAID ANYTHING TO ANYONE THAT YOU HAD GIVEN A KEY TO IN
10 THE FUTURE, THAT I WOULD KNOW ABOUT IT.

11 Q. DID I SAY THAT, OR DID I SAY MR. COOK HAD GIVEN OUT
12 SOME KEYS?

13 A. NO, YOU DIDN'T SAY MR. COOK HAD GIVEN OUT KEYS.
14 THERE WERE SUPPOSED TO BE THREE KEYS.

15 Q. MR. COOK IS THE ONE THAT GAVE US -- HE'S THE ONE
16 THAT GAVE US A KEY. RICHARD COOK. ARE YOU AWARE THAT WE
17 HAVE A CLUB DOWN THERE? A HUNTING CLUB?

18 THE COURT: SIR, YOU DON'T HAVE TO ANSWER IT.
19 THAT'S IRRELEVANT AS TO WHETHER OR NOT HE SAW YOU SHOOTING
20 THAT DAY.

21 Q. WELL DID YOU FILE A COMPLAINT WITH THE SHERIFF'S
22 DEPARTMENT?

23 A. NO, WITH MY ATTORNEY.

24 Q. I MEAN COULDN'T YOU JUST RUN TO THE SHERIFF'S
25 DEPARTMENT AND FILE A COMPLAINT AND HAVE THEM COME LOCK ME

1 UP?

2 A. MY ATTORNEY HANDLES ALL MY BUSINESS.

3 Q. HAVE YOU EVER RUN ANY PEOPLE OFF OF THE PROPERTY?

4 A. I TOLD THE GENTLEMAN FROM LAKE CITY THAT HAD THE
5 KEY TO THE PROPERTY THAT YOU HAD NO RIGHT DOWN THERE. AND
6 YOU HAD NO RIGHT IN GIVING HIM A KEY. AND HE HAD NO
7 BUSINESS DOWN THERE EITHER.

8 Q. SO YOU'RE IN FULL CONTROL OF THAT PROPERTY.

9 A. WELL MR. COOK GAVE ME AND MR. WILLIAM CARTER THE
10 AUTHORITY TO---

11 MR. SHELDON: OBJECTION,---

12 A. ---LOOK AFTER HIS TOO.

13 MR. SHELDON: ---TO RELEVANCE, YOUR HONOR.

14 THE COURT: THAT'S IT. SIR, YOU CAN STEP DOWN.

15 MR. SHELDON: CAN I ASK HIM ONE QUESTION?

16 THE COURT: ONE QUESTION.

17 CROSS EXAMINATION BY MR. NEXSEN:

18 Q. MR. NEXSEN, YOU HAD MENTIONED EARLIER TO THE COURT,
19 YOU CONFRONTED MR. DRIGGERS ON THAT DAY AND ASKED HIM
20 SPECIFICALLY WHETHER OR NOT HE HAD FIRED A WEAPON ON THAT
21 LOT. WHAT DID HE TELL YOU?

22 A. YES.

23 MR. SHELDON: OKAY, THANK YOU.

24 THE COURT: YOU CAN STEP DOWN, SIR. ANY FURTHER
25 TESTIMONY ON THIS ISSUE?

1 MR. SHELDON: WELL IF YOUR HONOR WILL ALLOW ME TO JUST ASK A
2 COUPLE OF QUESTIONS OF MR. DRIGGERS UNDER OATH.

3 THE COURT: MR. DRIGGERS, COME FORWARD.

4 MARION DRIGGERS, BEING FIRST DULY
5 SWORN, TESTIFIED AS FOLLOWS:

6 Q. MR. DRIGGERS, UNDER OATH DO YOU ADMIT OR DENY
7 FIRING A WEAPON ON THAT PARTICULAR DAY?

8 A. I HAVE NOT ADMITTED OR DENIED.

9 Q. I'M ASKING YOU NOW UNDER OATH, DO YOU ADMIT OR
10 DENY?

11 A. I REFUSE TO ANSWER ON THE GROUNDS IT MIGHT
12 INCRIMINATE ME.

13 THE COURT: SIR, YOU MUST ANSWER THE QUESTION. *

14 A. I DID SHOOT A GUN ON THAT DAY.

15 MR. SHELDON: THANK YOU. THAT'S ALL THE QUESTIONS I
16 HAVE. OH, EXCUSE ME.

17 Q. WERE YOU ON THE PROPERTY WHEN YOU DID IT?

18 A. YES, I WAS ON LOT 2.

19 MR. SHELDON: THANK YOU. THAT'S ALL THE QUESTIONS I
20 HAVE. YOUR HONOR, NOTHING FURTHER ON THIS ISSUE, THANK YOU.
21 AGAIN, YOUR HONOR, WE'RE JUST ASKING FOR OUR COSTS TO BE
22 REIMBURSED NOT FOR WILFUL VIOLATION.

23 THE COURT: WHAT ARE YOUR COSTS?

24 MR. SHELDON: YES, SIR. PREPARING FOR THIS AND COMING
25 HERE TODAY IT, I WOULD THINK 4 HOURS WOULD BE REASONABLE FOR

ds
*
*

1 ALL OF IT, AT \$160 AN HOUR IS THE COST INVOLVED. AND \$25
2 FOR THE MOTION. THAT'S PROBABLY LESS THAN THE TIME I'VE
3 SPENT ON THIS. BECAUSE I PICKED IT UP FROM ANOTHER ATTORNEY
4 THAT WAS ON VACATION. I AM NOT ASKING FOR REIMBURSEMENT FOR
5 HAVING TO LEARN THE WHOLE FILE, BUT I THINK 4 HOURS IS
6 REASONABLE, COMING FROM FLORENCE GOING BACK -- I'M SORRY,
7 COMING FROM FLORENCE, GOING BACK TO FLORENCE. I WAS ALSO
8 HERE ON ANOTHER MOTION SO HALF OF THAT. SO THAT'S AN HOUR.
9 I'VE BEEN HERE AT LEAST 2 HOURS. OR 3. FOUR HOURS WOULD BE
10 FINE IF THE COURT WOULD CONSIDER THAT.

11 THE COURT: I FIND THE DEFENDANT IN CONTEMPT OF COURT,
12 THE DEFENDANT DRIGGERS, FOR VIOLATING THE COURT ORDER. AND
13 I ORDER HIM TO PAY COSTS IN THE SUM OF \$665. AND WARN HIM
14 THAT ANY FURTHER VIOLATION WOULD RESULT IN MORE STRINGENT
15 SANCTIONS BY THE COURT.

16 MR. SHELDON: THANK YOUR HONOR. COULD THERE BE ANY
17 PROVISION THAT THAT BE PAID WITHIN A REASONABLE AMOUNT OF
18 TIME? HE HAS STILL NOT PAID THE \$1,000 COURT FEES FROM THE
19 APPEAL. THE SUBLEASE ISSUE THAT'S STILL OUTSTANDING.

20 THE COURT: FEES MUST BE PAID WITHIN THE 30 DAYS.

21 MR. SHELDON: DO YOU WANT -- I KNOW YOU WANT TO GO TO
22 LUNCH SO CAN THIS OTHER MOTION BE CARRIED OVER? IT'S A
23 MOTION FOR TEMPORARY INJUNCTION REGARDING BASICALLY THESE
24 SAME ISSUES. HE'S GOT A MOBILE HOME ON THE PROPERTY THAT HE
25 HAS NO RIGHT TO HAVE.

1 THE COURT: I DON'T THINK WE HAVE TIME TO HEAR THAT
2 TODAY.

3 MR. SHELDON: WE DO NOT? THAT'S FINE, I JUST COULDN'T
4 HEAR WHAT YOU SAID.

5 MR. RUBILLO: THAT'S FINE WITH ME.

6 MR. SHELDON: THANK YOU, JUDGE. I APPRECIATE IT.

7 THE COURT: IF YOU WILL DO AN ORDER REGARDING THE
8 MATTERS WE HEARD.

9 MR. SHELDON: YES, SIR.

10 -----END OF REQUESTED TRANSCRIPT OF RECORD-----

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CERTIFICATE

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I, THE UNDERSIGNED, MARGARET T. SULLIVAN, OFFICIAL COURT REPORTER FOR THE THIRD JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN COMMON PLEAS NONJURY COURT ON SEPTEMBER 11, 2003 IN WILLIAMSBURG COUNTY, KINGSTREE S.C.

I, DO FURTHER CERTIFY THAT I AM NEITHER OF COUNSEL, KIN NOR INTEREST TO ANY PARTY HERETO.

June 27, 2004

(DATE)

Margaret T. Sullivan

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