

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

ORIGINAL JURISDICTION

South Carolina Republican Party,..... Petitioner

v.

South Carolina Election Commission,
The Honorable Jeannette W. McBride,
in her official capacity as Richland County
Clerk of Court; South Carolina Democratic Party;
Richland County Election Commission,..... Respondents.

**RETURN OF RESPONDENT THE HONORABLE JEANNETTE W. MCBRIDE,
RICHLAND COUNTY CLERK OF COURT**

Pursuant to Rules 240 and 245, SCACR, the Respondent Jeannette W. McBride, in her official capacity as Richland County Clerk of Court, files the following Return to the Petition in this matter. The Court should dismiss this Petition for failure to abide by the requirements of Rule 245(c), SCACR. Furthermore, the Court should dismiss this Respondent for the reasons stated below.

THE PETITION SHOULD BE DISMISSED

Rule 245(c), SCACR provides:

(c) Actions. A party seeking to have the Supreme Court entertain an action in its original jurisdiction (petitioner) shall serve on all other parties (respondents) a petition for original jurisdiction, a complaint setting forth the claim for relief in the manner specified by Rule 8, SCRCF, and a notice advising each respondent he has twenty (20) days from the date of service to serve and file a return to the petition. Service shall be in the same manner as required for summons and complaints in Rule 4, SCRCF. The petitioner shall file an original and six (6)

copies of the petition, notice and complaint with the Clerk of the Supreme Court, along with proof of service on each respondent. Any party opposing the petition shall have twenty (20) days from the date of service to file an original and six (6) copies of his return with the Clerk of the Supreme Court and serve on all parties a copy of the return. Failure of a party to timely file a return may be deemed a consent by that party to the matter being heard in the original jurisdiction. Unless otherwise ordered by the Supreme Court, the petition shall be decided without oral argument. If the petition is granted, the respondent shall have thirty (30) days to serve and file an answer to the complaint. The Supreme Court may provide for discovery, fact finding and/or a briefing schedule as necessary.

(Emphasis added). In this matter, the Petitioner purported to file this Petition for Writs of Prohibition and Injunction in this Court's original jurisdiction. However, Petitioner failed to attach a complaint that complies with Rule 8, nor did the Petitioner attach the required notice regarding the return. There is no compliance with the direct and clear mandates of Rule 245 (c).

Rule 260, SCACR, provides:

(a) Involuntary Dismissal and Reinstatement. Whenever it appears that ... a petitioner has failed to comply with the requirements of these Rules, the clerk shall issue an order of dismissal, which shall have the same force and effect as an order of the appellate court.

(Emphasis added).

As this Court has announced with regard to its rules of procedure, the Appellate Court Rules are not mere technicalities but provide the parties and this Court with an orderly mechanism through which to guide matters in this State. It is incumbent upon counsel to provide material that complies with the Rules and facilitates appellate review. *Henning v. Kaye*, 307 S.C. 436, 415 S.E.2d 794 (1992) (discussing application of the rules in an appeal).

Petitioner does not explain to this Court or to the parties why it failed to comply with Rule 245, or why compliance with the Rule was not possible. Without the complaint and the notice required by the Rule, the petition seeking this Court's original jurisdiction is defective.

Furthermore, without compliance with Rule 245, which directs compliance with the pleading requirements of Rule 8, SCRPC, and the service requirements of Rule 4, SCRPC, together with appropriate notice, this Court lacks personal jurisdiction over any of the parties with regard to these matters.

Accordingly, this Court should dismiss the Petition pursuant to Rule 260(a) for Petitioner's failure to comply with Rule 245.

RESPONDENT McBRIDE SHOULD BE DISMISSED

If this Court declines to dismiss this Petition for Petitioner's failure to abide by the mandates of Rule 245, then the Respondent McBride respectfully requests that the Court dismiss her as a party-Respondent.

Respondent McBride is the Richland County Clerk of Court. The Petitioner named her as a party-Respondent but failed to state any substantive allegations in its Petition directed to Respondent either in her official capacity as Clerk or in her individual capacity. In fact, the only allegation directed to her appears in the prayer for relief, styled the "Conclusion" :

Accordingly, the Petitioner respectfully submits that the Court should grant this Petition and issue (1) a Writ of Prohibition to the Richland County Clerk of Court prohibiting the circuit court from continuing to exercise subject matter jurisdiction over an election protest involving a legislative seat...

(Petition, p. 7, final paragraph). The Respondent McBride contends this prayer for relief is improper and she is not a proper party.

To begin with, as noted above Respondent McBride is the Richland County Clerk of Court. As such, she is not part of the uniform judicial branch of government but, rather, is an

elected official of the executive branch of the County's government. *See* S.C. Const. art. VI, § 8 (empowering the governor to suspend officers of the state or any of its subdivisions); S.C. Code Ann. § 7-13-20 (1976 & Cum. Supp.) (including clerks of court among elected county officers); S.C. Code Ann. § 14-17-10 (1976 & Cum. Supp.) (providing for election of the clerk of the court of common pleas); S.C. Code Ann. § 14-17-20 (1976 & Cum. Supp.) (providing clerk of common pleas is *ex officio* clerk of general sessions, family court, and any other court of record in the county unless otherwise provided by law). A vacancy in the office of the clerk is filled by the governor or by election. S.C. Code Ann. § 14-23-60 (1976 & Cum. Supp.). Because Respondent McBride is a county officer in the executive branch of government a writ of prohibition directed at her is inappropriate.

A writ of prohibition “will only lie to prevent an encroachment, excess, usurpation, or improper assumption of jurisdiction on the part of an inferior court or tribunal, or to prevent some great outrage upon the settled principles of law and procedure....” *New South Life Ins. Co. v. Lindsay*, 258 S.C. 198, 199-200, 187 S.E.2d 794, 796 (1972). *See also Berry v. Lindsay*, 256 S.C. 282, 289, 182 S.E.2d 78, 82 (1971) (writ of prohibition will not lie to prohibit respondent from performing a particular function unless it is a judicial or quasi-judicial function).

Accordingly, even if this Court does not dismiss this Petition for failing to comply with Rule 245, the Court should declare that a writ of prohibition does not lie when sought against the Clerk of Court, whose office is not a part of the judiciary but is an office of the executive branch of government.

Furthermore, even if a writ of prohibition was appropriate, the precise relief sought by the Petition is not appropriate. There is no authority for a Clerk of Court to “prohibit a Circuit

Court” from doing anything, must less exercising jurisdiction over a dispute. The Clerk of Court has no authority over the judges of the circuit court – instead, the circuit court judges are part of the uniform judicial system in South Carolina and they answer to the Chief Justice of the Supreme Court, who is the administrative head of the judiciary. S.C. Const. art. V, § 4 (“The Chief Justice of the Supreme Court shall be the administrative head of the unified judicial system.”); S.C. Code Ann. § 14-1-90 (1976 & Cum. Supp.) (same).

Finally, even though Petitioner did not seek an order directing Respondent McBride to do anything with regard to the election itself, Respondent McBride has no authority anyway under Title 7 of the South Carolina Code of Laws, which governs elections. Although the clerk is charged with keeping certain records related to elections (S.C. Code Ann. § 7-5-410 (1976) (voter registration records) and S.C. Code Ann. § 14-17-330 1976) (all persons elected to office) or designations of voting precincts (Title 7, Chapter 7), the South Carolina Code imposes no duty upon the Clerk of Court in the actual administration of an election. While the Clerk administers the oath of office to the managers of the election, those managers are selected by the commissioners of election and the Clerk has no other duties in that regard. S.C. Code Ann. § 7-13-72 (1976 & Cum. Supp.).

In sum, because Respondent McBride has no authority to direct the circuit court to do anything, and has no duties with respect to the administration of elections in South Carolina, she is not a proper party to this action and should be dismissed.

CONCLUSION

This Court should dismiss this Petition seeking original jurisdiction for failure to abide by Rule 245(c), SCACR as required by Rule 260(a), SCACR. Furthermore, the Court should dismiss the Respondent McBride because (1) the relief sought (a writ of prohibition) is not appropriate when directed to a clerk of the court, and (2) Respondent McBride is not a proper party to the matter.

Respectfully submitted,

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