

7. The Affidavit of Service was executed by Brady N. Herman, an associate attorney working in the office of the Brough Law Firm, PLLC, Plaintiffs' counsel of record;

8. The Affidavit of Service states:

a. Brady N. Herman is not a party to this action;

b. Brady N. Herman is over the age of 21;

c. Brady N. Herman resides in Raleigh, North Carolina;

d. Brady N. Herman is not related to the parties in this action by way of blood, adoption, marriage or employment;

e. Brady N. Herman, on August 20, 2018, pursuant to N.C. Gen. Stat. § 1-526, left a true copy of the Complaint and Summons in this action at the Defendant's residence in Waxhaw, North Carolina;

9. This action in the nature of *quo warranto* was also sent to and received on August 21, 2018, by the Union County Sheriff's Office for service on Defendant;

10. The Return of Service reflects that Defendant was personally served with the Summons and Complaint in this action on August 30, 2018, by the Union County Sheriff's Office;

11. There exists a total of 91 days between May 31, 2018, and August 30, 2018;

12. An action in the nature of *quo warranto* is a particular proceeding with a specialized procedure similar to N.C. Gen. Stat. § 105-258 and as described by the Supreme Court of North Carolina in its decision in *In re Ernst & Young, LLP*, 363 N.C. 612 (2009);

13. Article 41 of Chapter 1 of the N.C. General Statutes provides rules of procedure for an action in the nature of *quo warranto*;

14. Article 41 provides for action by the Attorney General or a private party, N.C. Gen. Stat. § 1-515;

15. Article 41 provides for leave of the Attorney General before an action in the nature of *quo warranto* is filed by a private citizen, N.C. Gen. Stat. § 1-516;

16. Article 41 requires a private citizen to post a bond to protect and indemnify the State against costs and expenses, N.C. Gen. Stat. § 1-517;

17. Article 41 expedites trials of actions in the nature of *quo warranto*, giving such cases precedence over all other pending criminal or civil actions, N.C. Gen. Stat. § 1-521;

18. Article 41 provides for the timing in which an action in the nature of *quo warranto* must be filed, requiring that the Summons and Complaint in such action be filed and served within 90 days of the date that the defendant took office, N.C. Gen. Stat. § 1-522;

19. Article 41 requires a defendant to post a bond before filing an answer to the complaint, N.C. Gen. Stat. § 1-523;

20. Article 41 provides that service of the Summons and Complaint may be made by leaving a copy at the last residence or business office of the defendant, N.C. Gen. Stat. § 1-526;

21. N.C. Gen. Stat. § 105-258(c) specifically authorizes employees of the Department of Revenue to serve summons and other legal documents;

22. Unlike N.C. Gen. Stat. § 105-258(c), who is authorized to serve the Complaint and Summons in an action in the nature of *quo warranto* is not addressed in N.C. Gen. Stat. § 1-526 or any other statute within Article 41;

23. N.C. Gen. Stat. § 1-514 provides that “[t]o the extent that rules of procedure are not provided for in this Article, the Rules of Civil Procedure shall apply”;

Based on the foregoing Findings of Fact the Court makes the following

CONCLUSIONS OF LAW

1. This Court has personal as well as subject matter jurisdiction to determine the issues presented.

2. An action in the nature of *quo warranto* is a particular proceeding with a specialized procedure as provided for in Article 41 of the North Carolina General Statutes.

3. Because Article 41 does not address who is authorized to serve the Complaint and Summons, pursuant to N.C. Gen. Stat. § 1-514 the Rules of Civil Procedure apply.

4. Rule 4 of the N.C. Rules of Civil Procedure did not permit Mr. Herman to serve the Summons and Complaint in this action, as he was not a “proper person” within the meaning of Rule 4(a) and no exception to the requirement that service be made by a “proper person” applied;

5. Mr. Herman’s attempt to serve Defendant on August 20, 2018, was, therefore, defective and void;

6. No proper person served Defendant with the Summons and Complaint in this action until the Union County Sheriff’s Office served Defendant on August 30, 2018, 91 days after Defendant took office; and

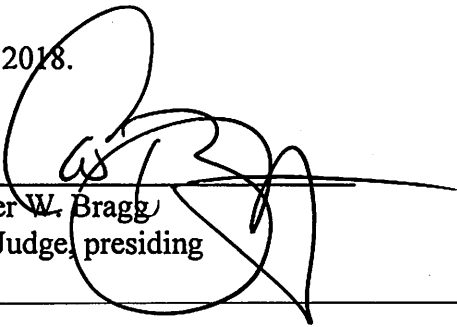
7. Pursuant to N.C. Gen. Stat. § 1-522 the Court must, therefore, dismiss this action at Plaintiffs' cost.

Based on the foregoing Findings of Fact and Conclusions of Law this Court

ADJUDGES, DECREES AND ORDERS

1. The Defendant's Motion is granted.
2. That this action and the Complaint filed herein are DISMISSED with prejudice.
3. The costs of this action are taxed against Plaintiffs.

SO ORDERED, this 5 day of October, 2018.



Hon. Christopher W. Bragg
Superior Court Judge, presiding
