

October 27, 2017

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OCT 31 2017

South Carolina Supreme Court
Daniel E. Shearouse, Clerk of Court
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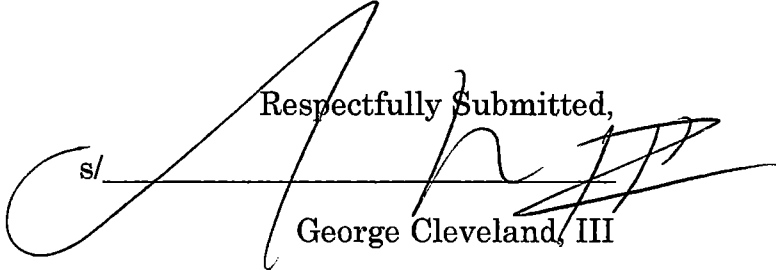
S.C. SUPREME COURT

**Re: Notice of Removal to Federal Court in George Cleveland, III v. State,
Appellate Case no. 2017-001419.**

Dear Mr. Shearouse,

Attached to this letter is my Notice of removal of this case, *id* to federal court; therefore, *28 U.S.C. §§ 1443, 1446 prohibits this Court from proceeding further in this case. IBID.*

Respectfully Submitted,

s/ 

George Cleveland, III

400 Hunter Street

Seneca, S.C. 29678

Cell no. 864-784-7223

Email: gcleland7475@gmail.com

cc: file

Lindsey A. McCallister, *Esquire*

Daniel E> Shearouse, *Esquire*

RECEIVED

OCT 31 2017

THE UNITED STATES DISTRICT COURT S.C. SUPREME COURT
FOR THE DISTRICT OF SOUTH CAROLINA

ANDERSON/GREENWOOD DIVISION

GEORGE CLEVELAND, III)
APPLICANT/ DEFENDANT)
v.)
STATE OF SOUTH CAROLINA,)
RESPONDENT/PLAINTIFF.)

c/a no. *Appellate case*
no. 2017-001419
NOTICE OF REMOVAL OF
CIVIL ACTION FROM
STATE COURT

1. **IF YOU WILL PLEASE TAKE NOTICE:** George Cleveland, III, proceeding *prose* in the above captioned case respectfully submits this **Notice of Removal** of my Civil Case from State Court to the United States District Court for the District of South Carolina under 28 U.S. Code §1446 (a) (3), and 28 U.S. Code § 1443 (1), (2) on the following grounds:

Attorney General Alan M. Wilson, and Assistant Attorney General Lindsey C. Mc Callister both with the South Carolina Office of the Attorney General; Clerk of Court Daniel E. Shearouse, and Case-Manager Ashley Thompson both with the Supreme Court of South Carolina have colluded together by intercepting my Legal Documents, failing to put my Legal Documents on that Court's Docket by exploiting software flaws, and instead forging the Electronic Signature of Chief Justice Donald W. Beatty to procedurally bar me from the Justices of the Supreme Court, *id.*, properly deciding my case in violation of my Equal Rights, and my Due Process

(Procedural and Substantive Interest) Rights under the Fourteenth (14th)
Amendment of the United States Constitution.

Respectfully Submitted,

s/

George Cleveland, III

400 Hunter Street

Seneca, S.C. 29678

Cell no. 864-784-7223

Email: gcleveland7475@gmail.com

Dated; October 24, 2017

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

George Cleveland, III,)	<u>c/a no. 4:17cv-02138-RBH</u>
Applicant/ Defendant)	
vs.)	
State of South Carolina,)	APPLICANT'S CERTIFICATE OF
Respondent/Plaintiff.)	SERVICE
<hr/>		

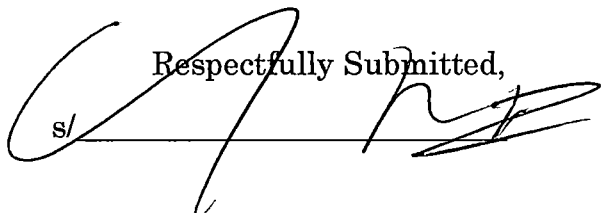
1. I, George Cleveland, III, proceeding pro se, certifies that on the Date below, properly addressed, and with proper prepaid postage, served on the parties below my Motion to the Chief Administrative Judge to Assign anew Magistrate Judge, and District Court Judge to my P.C.R. case from State Court of Federal Court, and supporting documents related thereto.

Lindsey A. McCallister, Asst. Atty. Gen.
Office of the Attorney General
P.C.R. Division
Post Office Box 11549
Columbia, S.C. 29211

RECEIVED
OCT 31 2017

S.C. SUPREME COURT

South Carolina Supreme Court
Daniel E. Shearouse, Clerk of Court
Post Office Box 11330
Columbia, S.C. 29211

Respectfully Submitted,

s/ _____

George Cleveland, III

400 Hunter Street

Seneca, S.C. 29678

Cell no. 864-784-7223

Email: gcleland7475@gmail.com

Dated: October 27, 2017

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

George Cleveland, III,)	c/a no. 17-02138-BE
Applicant/ Defendant)	
vs.)	APPLICANT'S MOTION TO ASSIGN
State of South Carolina,)	ANEW DISTRICT AND MAGISTRATE
Respondent/Plaintiff.)	JUDGE TO MY ATTACHED STATE
_____)	CASE TO FEDERAL COURT

To: Chief United States District Judge the Honorable Terry L. Wooten

1. **MAY IT PLEASE THE COURT:** George Cleveland, III, proceeding pro se, respectfully moves this Court to assign another District, and Magistrate Judge¹ on the grounds that they both have grossly poor judicial temperament, and by violating my Civil Rights in my *collateral post-conviction case* in South Carolina State Court.

Procedural Case-History

2. On August 11, 2017, I filed my Notice of Removal of my Post Conviction Relief case from State Court to Federal Court under *28 U.S.C. §§ 1443 (1), (2); 1446 (a), (3)* on the grounds that the Attorney General of South Carolina Alan M. Wilson, and Assistant Attorney General Lindsey C. Mc Callister, South Carolina Supreme Court Clerk Daniel E. Shearouse, and the Case Manager Ashley Thompson are colluding together by intercepting my legal documents, failing to put my legal documents on

¹ My case was assigned to District Judge R. Bryan Harwell, and Magistrate Judge Thomas E. Rogers, III.

the Court's docket by exploiting software flaws, and instead forging the Justices' Electronic signatures violating my Equal, and Due Process rights under the 14th Amendment of the United States Constitution, see attached Petitioner's Exhibit 1 (hearinafter P.E.).

3. On August 15, 2017, Magistrate Rogers, recommended that my case be dismissed without prejudice on the grounds that the Court lacked Jurisdiction over my case, P.E. 2-3, and District Judge Harwell adopted his recommendation on September 13, 2017. P.E. 4-6.

4. This Motion to assign anew Magistrate, and District Judge in this new Notice of removal filing follows:

Argument

Magistrate Judge Rogers, and District Judge Harwell have poor judicial temperament

5. Magistrate Judge Rogers has *poor judicial temperament* because he deliberately changed the Federal Statutes I filed my case under to Federal Statutes of his choosing which changed the conclusion of my case, and depriving the Court of Jurisdiction.

6. In Magistrate Rogers' Report and Recommendation, he cited *28 U.S.C. §1446*, and the 30 day rule without explaining how it applied to my case, he also changed my case caption from "*Applicant/ Defendant*" (P.E. 1) to "*Plaintiff*", see P.E.2., and inserted an irrelevant Federal Statute *28 U.S.C. §1257* which correlate with a *Petition for a Writ of Certiorari*, not with my initial case filing under *28 U.S.C. § 1443* ("*Any of the following civil actions or criminal prosecution commenced in a*

State court may be removed by the defendant to the district court”) (1): (“Against any person who is denied or cannot enforce in the courts of such State a right under the equal civil rights...” (2): (For any act under the color of authority from any law providing equal rights, or for refusing to do any act on the ground that it would be inconsistent with such law.”), see P.E. 7., and § 1446 (“Procedure for removal of civil actions”). Magistrate Judge Rogers spent more time arguing away why my case must not be removed to federal court, inserting irrelevant statutes which changed the conclusion of my case which amounts to grossly *poor judicial temperament*²; accordingly, this Court must transfer my attached Notice of Removal Case to another Magistrate Judge, and District Court Judge, under 28 U.S.C. §137 (“The chief judge of the district court shall be responsible for the observance of such rules, and orders, and shall divide the business and assign the cases [to any other Magistrate or District Judge].”), see also P.E. 8-10 (*Deskbook for Chief Judge of U.S. Courts; II. The Chief District Judge as Leader*).

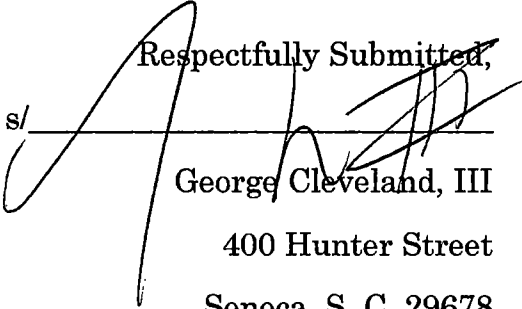
Relief Requested

² District Judge Harwell ruled he reviewed the entire record and found no “clear error [s]” in Magistrate Judge Rogers’ Report and Recommendation, *id* under *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4 Cir. 2005). because he never reviewed the record in this case, there are jarring conflicts with my Notice of Removal filing, and Magistrate Rogers’ report, *id*. The changing of the Federal Statutes by Magistrate Rogers to turn the conclusion of my Notice of removal case into an Jurisdictional case when in fact, it was Congress that told the Court that they did have Jurisdiction under §§ 1443, 1446, *et, seq.* which amounts to District Judge Harwell having gross poor *Judicial temperament*.

7. **WHEREFORE:** Grant this instant Motion to assign anew Magistrate, and District Court Judge to my attached Notice of Removal of my State P.C.R. case to Federal Court.

8. **ORDER** the Clerk of the Court to assign my attached Notice of Removal, id to another Magistrate, and District Court judge by random assignment with the *exception of Magistrate Judge Rogers, and District Judge Harwell, or assign specific Judges, id* that pleases this Court.

9. Any other relief this Court deems *just, proper, and/or impartial.*

Respectfully Submitted,
s/ 
George Cleveland, III
400 Hunter Street
Seneca, S. C. 29678
Cell no. 864-784-7223
Email: gcleveland7475@gmail.com

Dated: October 24, 2017

Exhibit - 1

THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ANDERSON/GREENWOOD DIVISION

GEORGE CLEVELAND, III) c/a no. _____
APPLICANT/ DEFENDANT)
v.) NOTICE OF REMOVAL OF
STATE OF SOUTH CAROLINA,) CIVIL ACTION FROM
RESPONDENT/PLAINTIFF.) STATE COURT
_____)

1. **IF YOU WILL PLEASE TAKE NOTICE:** George Cleveland, III, proceeding *prose* in the above captioned case respectfully submits this **Notice of Removal** of my Civil Case from State Court to the United States District Court for the District of South Carolina under 28 U.S. Code §1446 (a) (3), and 28 U.S. Code § 1443 (1), (2) on the following grounds:

Attorney General Alan M. Wilson, and Assistant Attorney General Lindsey C. Mc Callister both with the South Carolina Office of the Attorney General; Clerk of Court Daniel E. Shearouse, and Case-Manager Ashley Thompson both with the Supreme Court of South Carolina have colluded together by intercepting my Legal Documents, failing to put my Legal Documents on that Court's Docket by exploiting software flaws, and instead forging the Electronic Signature of Chief Justice Donald W. Beatty to procedurally bar me from the Justices of the Supreme Court, *id.*, properly deciding my case in violation of my Equal Rights, and my Due Process

which is not to be expanded by judicial decree. *Willy v. Coastal Corp.*, 503 U.S. 131, 136–37 (1992); *Bender v. Williamsport Area Sch. Dist.*, 475 U.S. 534, 541 (1986); see *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994); *American Fire & Casualty Co. v. Finn*, 341 U.S. 6 (1951). It is to be presumed that a cause lies outside this limited jurisdiction, and the burden of establishing the contrary rests upon the party asserting jurisdiction. *McNutt v. Gen. Motors Acceptance Corp.*, 298 U.S. 178, 182–83 (1936).

The statute governing the procedure for removal of civil actions, 28 U.S.C. § 1446, provides for the ability of a **Defendant** to file a notice of removal. The Notice must contain a short and plain statement of the grounds for removal, together with a copy of all process, pleadings, and orders served upon **Defendant**. 28 U.S.C. § 1446; see also *Ex parte Bopst*, 95 F.2d 828, 829 (4th Cir. 1938)(“in removal proceedings the provisions of the removal statute must be strictly followed, and that procedural matters thus become jurisdictional”). Only defendants can file notices of removal. Plaintiff is not the Defendant. The court has no jurisdiction here. Furthermore, the time for removal by a **defendant** is within 30 days of receipt of the **initial** pleading. 28 U.S.C. § 1446. Plaintiff also cites 28 U.S.C. § 1443, which also provides for removal by a **defendant**.

Moreover, Plaintiff cannot appeal any decision by the South Carolina Supreme Court to this federal district court. The United States Supreme Court is the only federal court with general statutory jurisdiction to review state court judgments. See 28 U.S.C. § 1257 (U.S. Supreme Court review is discretionary by way of a writ of certiorari and is not an appeal of right); *District of Columbia Ct. of Appeals v. Feldman*, 460 U.S. 462, 476–82 (1983). In civil, criminal, and other cases heard in the courts of the State of South Carolina, appeals of state court decisions are within the jurisdiction of the South Carolina Court of Appeals and/or the South Carolina Supreme Court.

Exhibit - 3

See Plyler v. Moore, 129 F.3d 728, 731 (4th Cir. 1997). As to any challenges Plaintiff may be making to final judgments in prior state court proceedings, the Rooker–Feldman Doctrine bars them. *See Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923); *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462 (1983). To the extent Plaintiff claims any injury caused by allegedly erroneous state court proceedings, any such state court ruling cannot be reviewed or set aside and such relief cannot be granted by the United States District Court for the District of South Carolina. *See Rooker*, 263 U.S. 413; *Feldman*, 460 U.S. 462. This prohibition on review of state court proceedings by federal district courts is implicated when a ruling in the plaintiff’s favor on his claims in connection with state court proceedings would, necessarily, require the federal court to overrule (or otherwise find invalid) various orders and rulings made in the state court. Such a result is prohibited under the *Rooker–Feldman* Doctrine. *See Exxon Mobile Corp. v. Saudi Basic Indus. Corp.*, 544 U.S. 280, 293–94 (2005); *Davani v. Va. Dep’t of Transport.*, 434 F.3d 712, 719–20 (4th Cir.2006).

RECOMMENDATION

Accordingly, it is recommended that the District Court dismiss the Notice of Removal in this case *without prejudice and without issuance and service of process*.

s/ Thomas E. Rogers, III
Thomas E. Rogers, III
United States Magistrate Judge

August 15, 2017
Florence, South Carolina

Plaintiff’s attention is directed to the important notice on the next page.

Exhibit 4

to a specific error in the [M]agistrate [Judge]’s proposed findings and recommendations.” *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir. 1982). In the absence of timely filed specific objections to the R & R, the Court reviews only for clear error, *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005), and the Court need not give any explanation for adopting the Magistrate Judge’s recommendation. *Camby v. Davis*, 718 F.2d 198, 199-200 (4th Cir. 1983). Failure to file timely objections constitutes a waiver of de novo review and a party’s right to appeal this Court’s order. 28 U.S.C. § 636(b)(1); *see Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir. 1989); *Carr v. Hutto*, 737 F.2d 433, 434 (4th Cir. 1984); *Chestnut v. Thompson*, 585 F. App’x 284, 285 (4th Cir. 2014).

Objections to an R & R must be filed within fourteen days of the date of service. *See* 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(2). When service of the R & R is made by mail (as in this case), the objecting party has three additional days to file objections. *See* Fed. R. Civ. P. 6(d). A paper is filed when it is delivered to the Clerk (or a judge), not when it is mailed.² *See* Fed. R. Civ. P. 5(d)(2).

Discussion

The Magistrate Judge entered the R & R on August 15, 2017, and the Clerk mailed Plaintiff a copy of the R & R that same day. *See* ECF Nos. 7 & 8. Plaintiff’s objections were therefore due by September 1, 2017.³ *Id.* Plaintiff did not file objections. He did, however, file a motion for an extension of time to file objections, but the motion was untimely because the Clerk did not receive it

² The prison mailbox rule recognized in *Houston v. Lack*, 487 U.S. 266 (1988), does not apply in this case because Plaintiff is not a prisoner. *See* 487 U.S. at 271.

³ The R & R notified Plaintiff that “[s]pecific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation” and that “[f]ailure to timely file specific written objections to this Report and Recommendation will result in waiver of the right to appeal from a judgment of the District Court based upon such Recommendation.” R & R at 4. *See generally Green v. Reynolds*, 671 F. App’x 70–71 (4th Cir. 2016) (“The timely filing of specific objections to a magistrate judge’s recommendation is necessary to preserve appellate review of the substance of that recommendation when the parties have been warned of the consequences of noncompliance.”). Because Plaintiff was served by mail, he had three additional days to file objections. *See* Fed. R. Civ. P. 6(d).

Exhibit 5

until September 7, 2017—six days after objections were due.⁴ See ECF Nos. 10 & 10-1 (September 7, 2017 timestamps by the Clerk). The Court will deny Plaintiff's motion because (1) he did not file it within the time for filing objections, and (2) he has not demonstrated the good cause and excusable neglect required for an extension of time. See Fed. R. Civ. P. 6(b)(1) (“When an act may or must be done within a specified time, the court may, for good cause, extend the time: (A) with or without motion or notice if the court acts, or if a request is made, before the original time or its extension expires; or (B) on motion made after the time has expired if the party failed to act because of excusable neglect.”); *Carefirst of Maryland, Inc. v. Carefirst Pregnancy Centers, Inc.*, 334 F.3d 390, 396 (4th Cir. 2003) (indicating the district court has broad discretion in considering a Rule 6(b)(1) motion for extension of time).

“[I]n the absence of a *timely filed* objection, a district court need not conduct a de novo review, but instead must ‘only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.’” *Diamond*, 416 F.3d at 315 (emphasis added) (quoting Fed. R. Civ. P. 72 advisory committee’s note). The Court has reviewed Plaintiff’s Complaint/Notice of Removal and the Magistrate Judge’s R & R evaluating these documents. Having done so, the Court discerns no clear error and therefore will adopt and incorporate the R & R by reference.

Conclusion

For the foregoing reasons, the Court finds no clear error and therefore adopts and incorporates by reference the R & R [ECF No. 7] of the Magistrate Judge. Accordingly, the Court **DISMISSES** the

⁴ Curiously, Plaintiff dated this motion “August 04, 2017.” See ECF No. 10 at p. 2. The Court notes the Magistrate Judge did not issue the R & R until August 15, 2017—as Plaintiff himself recognized in his motion. See *id.* at p. 1. In any event, Plaintiff’s motion is untimely because, as explained above, he is not a prisoner and the motion was not delivered to the Clerk until September 7.

Exhibit G

Notice of Removal *without prejudice and without issuance and service of process*. The Court **DENIES**

Plaintiff's motion for an extension of time to file objections to the R & R [ECF No. 10].

IT IS SO ORDERED.

Florence, South Carolina
September 13, 2017

s/ R. Bryan Harwell
R. Bryan Harwell
United States District Judge

Cornell Law School

Legal Information Institute [LII]
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Exhibit 7

U.S. Code › Title 28 › Part IV › Chapter 89 › § 1443

28 U.S. Code § 1443 - Civil rights cases

Current through Pub. L. 114-38. (See Public Laws for the current Congress.)

Any of the following civil actions or criminal prosecutions, commenced in a State court may be removed by the defendant to the district court of the United States for the district and division embracing the place wherein it is pending:

(1) Against any person who is denied or cannot enforce in the courts of such State a right under any law providing for the equal civil rights of citizens of the United States, or of all persons within the jurisdiction thereof;

(2) For any act under color of authority derived from any law providing for equal rights, or for refusing to do any act on the ground that it would be inconsistent with such law.

(June 25, 1948, ch. 646, 62 Stat. 938.)

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[LII]

II. The Chief District Judge as Leader

This chapter provides an overview of the responsibilities that chief district judges generally exercise, the various constituencies with which they must deal, structures and practices of district court governance, and educational and staff assistance available to chief judges. It also summarizes some basic leadership and management techniques used by chief judges and by leaders in non-judicial public and private organizations. Chapter VI discusses many of the chief district judge's specific duties.

A. Elements of the Leadership Role of the Chief District Judge

1. Formal and Informal Sources of Authority

As a new chief judge, you may be surprised to learn that there is no single or simple statement of your authority and responsibility. (There is no equivalent to 28 U.S.C. § 154(b), which says, "The chief judge of the bankruptcy court shall insure that the rules of the bankruptcy court and of the district court are observed and that the business of the bankruptcy court is handled effectively and expeditiously.")

Many responsibilities devolve on you as the result of disparate statutory provisions, Judicial Conference policies, and delegations from the director of the Administrative Office. The Administrative Office's *Compendium of Chief Judge Authorities* (Judges Information Series no. 8, October 2002), available from the AO's Article III Judges Division, is an extensive catalog of such provisions and policies. Congress and the Judicial Conference have assigned many responsibilities to the district court (or its active judges), to the chief judge specifically, or to a court officer appointed or approved by the entire court. Some tasks that fall to chief district judges have no specific statutory or administrative underpinnings.

Despite this lack of clear-cut formal authority, the predominant view is that the chief district judge is ultimately responsible for seeing that the court is administered effectively and efficiently and in compliance with statutes, Judicial Conference and circuit judicial

Exhibit 9

council policies, and Administrative Office regulations. Some courts emphasize that all the district's judges have a collective responsibility for these functions, and they downplay any special executive role for the chief judge. But even if judges as a group share considerable management responsibility—collectively or through an executive committee—someone must coordinate their doing so. One judge is better able to integrate the court's activities than a group would be. Much information does not regularly reach all the judges. One person, working alone or through committees, must ultimately ensure that the court keeps the big picture in sight. Ordinarily, that is the chief judge.

2. Responsibilities

Your official and unofficial responsibilities fall into several basic categories.

a. *Strategic leadership*

As chief district judge, you are uniquely situated to lead the district court in determining the administrative policies and actions the court should initiate, continue, or discontinue. Courts have adopted a variety of structures and procedures for making policy decisions. Whatever form these take, the chief judge ordinarily plays a pivotal role in the development of court policy.

b. *Court-management oversight*

The chief judge, primarily through oversight of court unit executives, ensures that the court operates effectively. This responsibility includes making sure that laws, regulations, and court policies are followed, that the needs of court employees are properly addressed, and that administrative tasks are carried out. Many of your management and administrative functions are described in Chapter VI of this deskbook.

Chief judges attend to some oversight tasks personally and delegate some to other judges or to supporting personnel. You cannot delegate ultimate responsibility for these tasks, however. Even when statutes or rules assign tasks directly to other personnel or the court as a whole, if problems arise, other judges, court employees, and the public will look to you for solutions. Your oversight and stewardship

Exhibit 10

roles have taken on added significance in light of the specific financial, procurement, and personnel management authorities that the Administrative Office has delegated to district courts. The Administrative Office's *Management Oversight and Stewardship Handbook* (2001) provides guidance on these authorities. The handbook can be found on the J-Net.

c. Case-management oversight

Statutes and national procedural rules provide you with limited authority over the court's assignment of cases and even less authority over how other judges manage their dockets. You are, however, well positioned to monitor caseloads and trends and to identify problems—either systemic ones or those of individual judges. Dealing with problems of individual judges is discussed in section B.9 of this chapter, and case management, in Chapter VII.

d. Plans and reports

Statutes and Judicial Conference policy call for district courts—only rarely for chief judges, specifically—to file numerous reports and plans with the circuit judicial council, the Administrative Office, or other entities. You should ensure that required reports are timely filed, and you may choose to review some reports in order to monitor court business.

e. Requests and appeals to the circuit judicial council

District courts need circuit council approval of some actions, and councils may have to resolve differences between district judges that they cannot resolve themselves. The chief district judge usually serves as the contact with the circuit judicial council. Section IV.A.3, *infra*, provides further discussion of circuit judicial councils.

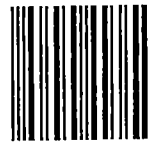
f. Sensitive issues of judicial performance

You may be the initial or only person consulted concerning the fact, or the allegation, of another judge's mental impairment, substance abuse, poor judicial temperament, or prejudicial or otherwise improper conduct. Circuit-level mechanisms exist for receiving and handling complaints, but not all issues of this sort need reach that level; you may be able to resolve some issues informally, perhaps working with the chief circuit judge. Sections II.B.9, IV.A.3.b, and

George Cleveland
400 Hunter Street
Seneca, SC 29678



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c/o Daniel E. SheArouse, clerk of c.
Post office Box 11330
Columbia, SC, 29211