

**PETITION FOR REHEARING OF JULY 28, 2017 ORDER
OF DISMISSAL**

**THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT**

**APPEAL FROM OCONEE COUNTY
COURT OF COMMON PLEAS
R. SCOTT SPROUSE, CIRCUIT COURT JUDGE**

**APPELLATE CASE NO. 2017-001419
LOWER COURT CASE NO. 2014-CP-37-00718**

GEORGE CLEVELAND, III..... PETITIONER,

v.

STATE OF SOUTH CAROLINA..... RESPONDENT.

PETITION FOR REHEARING

**LINDSEY ANN McCALLISTER,
OFFICE OF THE ATTORNEY GENERAL
P.C.R. DIVISION
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
ATTORNEY FOR THE RESPONDENT**

**GEORGE CLEVELAND, III
400 HUNTER STREET
SENECA, S.C. 29678
CELL no.864-784-7223
EMAIL: gcleveland7475@gmail.com
Prose Petitioner**

1

PETITION FOR REHEARING

MAY IT PLEASE THE COURT: George Cleveland, III, the Petitioner proceeding Prose respectfully submits this Petition for Rehearing on the Order of Dismissal dated July 28, 2017 (R.pp.4-5) on the following grounds:

Chief Justice Beatty overlooked the actual received date on my Notice of Appeals in this P.C.R. case.

2

ARGUMENT

**RULE 203 (b) (1) S.C.A.C.R. CONTROLS THE
JURISDICTION OF THIS COURT**

FOR THE ORDER DATED APRIL 28, 2017, AND MAY 30, 2017

The Chief Justice failed to provide the specific dates of my Rule 59 (e) S.C.R.C.P. Motions. R.pp.2-3.

Rule 203 (b) (1) S.C.A.C.R. controls the Jurisdiction of this Court. Rule 203 (b) (1), *id*, requires that my Notice of Appeal be filed within "30" days of "receipt" of judgment "granting or denying such motion." R.p.1. I submit my Notice of Appeal for the April 28, 2017, and for the May 30, 2017 Judgment are timely because I received the April 28, 2017 Judgment on May 26, 2017. R.p.2. And the May 30, 2017 Judgment on June 22, 2017. R.p.3. And I filed my Notice of Appeal in this Court on

1

June 23, 2017. R.pp.2-3; accordingly, the Chief Justice overlooked "until receipt" controlling language under Rule 203 (b) (1) S.C.A.C.R. R.pp.4-5.

3

JURISIDCTION CANNONT BE WAIVED OR LOST

UNDER UNITED STATES v. COTTON

The United States Supreme Court reasoned under *United States v. Cotton* 535 U.S. 625, 122 S.Ct., 1781, 152 L.Ed. 2d 860 (2002) (hereinafter *Cotton*) that Jurisdiction cannot be waived. More specifically, the Chief Justice was barred by *Cotton* from dismissing my P.C.R. Appeal (s) because both Appeals were filed timely, i.e. JUNE 23, 2017, see. R.pp.2-3 under Rule 203 (b) (1) "A notice of appeal shall be served on all respondents within thirty (30) days after receipt of written order or judgement. When a timely motion for judgment.... motion to alter or amend the judgment.... the time for appeal for all parties shall be stayed..."; consequently, the *Cotton* court barred dismissal of my Appeal (s) under Rule 203 (b) (1) S.C.A.C.R. because this Court never lost Jurisdiction over my P.C.R. appeal (s).R.p.1.

4

CONCLUSION

4-1 **WHEREFORE; GRANT** my Petition for Rehearing on the **July 28, 2017** order of Dismissal.

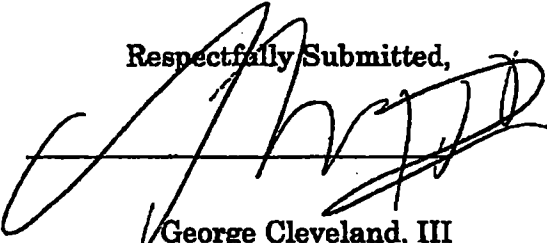
4-2 **ORDER** additional Briefing if it pleases the Court.

2

4-3 ORDER the Clerk of this Court to put this Case back on the active Docket Roster.

4-4. Any other relief this Court deems just, proper, and/or impartial.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'George Cleveland, III', written over a horizontal line.

George Cleveland, III

400 Hunter Street

Seneca, S.C. 29678

Cell no. 864-784-7223

Email: gcleveland7475@gmail.com

Dated: August 03, 2017

**PETITIONER'S APPENDIX IN SUPPORT OF PETITION FOR
REHEARING OF THE JULY 28, 2017 JUDGMENT**

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM OCONEE COUNTY
COURT OF COMMON PLEAS

R. SCOTT SPROUSE, CIRCUIT COURT JUDGE

APPELLATE CASE NO. 2017-001419

LOWER COURT CASE NO. 2014-CP-37-00718

GEORGE CLEVELAND, III..... PETITIONER,

v.

STATE OF SOUTH CAROLINA..... RESPONDENT

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APPELLATE PRACTICE

Rule 203

the appeal shall proceed to conclusion under the Supreme Court Rules. Where the time to serve a notice of intent to appeal under Supreme Court Rules 2, § 1A, or 50 has expired before these Rules take effect, these Rules shall not revive the right to appeal or to petition for a writ of certiorari in a post-conviction relief case.

(b) Repealer. The Supreme Court Rules and the Miscellaneous Rules shall be repealed when these Rules become effective.

[Adopted effective September 1, 1990.]

II. RULES OF APPELLATE PRACTICE

A. Appeals

RULE 201. RIGHT TO APPEAL

(a) **Judgments, Orders and Decisions Subject to Appeal.** Appeal may be taken, as provided by law, from any final judgment, appealable order or decision. The procedure for petitioning for a writ of certiorari in review final judgments in post-conviction relief cases is provided by Rule 227. Further, the review of decisions of the State Board of Canvassers in election cases shall be by petition for a writ of certiorari under S.C. Code Ann. §§ 7-17-250 and 7-17-270.

(b) **Who May Appeal.** Only a party aggrieved by an order, judgment, sentence or decision may appeal. [Adopted effective September 1, 1990. Emergency amendment by Order dated August 15, 2006, to conform to 2006 Act No. 387 providing for appeals from the decisions of the administrative law court and certain agencies to the Supreme Court or the Court of Appeals. Amended effective May 3, 2007.]

RULE 202. DESIGNATION OF PARTIES AND DEFINITIONS

(a) **Designation of Parties.** The party appealing shall be known as the appellant and the adverse party as the respondent.

(b) **Definitions.** For the purpose of Part II of the South Carolina Appellate Court Rules, the following definitions shall apply:

(1) **Lower Court:** the circuit court (including masters-in-equity), family court or probate court from which the appeal is taken.

(2) **Administrative Tribunal:** the administrative law court or agency from which the appeal is taken. [Adopted effective September 1, 1990. Emergency amendment by Order dated August 15, 2006, to conform to 2006 Act No. 387 providing for appeals from the decisions of the administrative law court and certain agencies to the Supreme Court or the Court of Appeals. Amended effective May 3, 2007.]

RULE 203. NOTICE OF APPEAL

(a) **Notice.** A party intending to appeal must serve and file a notice of appeal and otherwise comply with these Rules. Service and filing are defined by Rule 293.

(b) **Time for Service.**

(1) **Appeals From the Court of Common Pleas.** A notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment. When a timely motion for judgment n.o.v. (Rule 50, SCRCP), motion to alter or amend the judgment (Rules 52 and 59, SCRCP), or a motion for a new trial (Rule 59, SCRCP) has been made, the time for appeal for all parties shall be stayed and shall run from receipt of written notice of entry of the order granting or denying such motion. When a form or other short order or judgment indicates that a more full and complete order or judgment is to follow, a party need not appeal until receipt of written notice of entry of the more complete order or judgment.

(2) **Appeals From the Court of General Sessions.** After a plea or trial resulting in conviction or a proceeding resulting in revocation of probation, a notice of appeal shall be served on all respondents within ten (10) days after the sentence is imposed. In all other cases, a notice of appeal shall be served on all respondents within ten (10) days after receipt of written notice of entry of the order or judgment. When a timely post-trial motion is made under Rule 29(a), SCRCP, the time to appeal shall be stayed and shall begin to run from receipt of written notice of entry of an order granting or denying such motion. In those cases in which the State is allowed to appeal a pre-trial order or ruling, the notice of appeal must be served within ten (10) days of receiving actual notice of the ruling or order; provided, however, that the notice of appeal must be served before the jury is sworn or, if tried without a jury, before the State begins the presentation of its case in chief.

(3) **Appeals From the Family Court.** A notice of appeal in a domestic relations action shall be served in the same manner provided by Rule 203(b)(1). A notice of appeal in a juvenile action shall be served in the same manner as provided by Rule 203(b)(2).

(4) **Appeals From Masters and Special Referees.** The notice of appeal from an order or judgment issued by a master or special referee shall be served in the same manner as provided by Rule 203(b)(1).

(5) **Appeals From Probate Court.** When a direct appeal is authorized by S. C. Code Ann. § 62-1-308 (g), the notice of appeal shall be served in the same manner as provided by Rule 203(b)(1).

(6) **Appeals From Administrative Tribunals.** When a statute allows a decision of the administrative law court or agency (administrative tribunal) to be appealed directly to the Supreme Court or the Court of

R.P. 2

NOTICE OF APPEAL IN A CIVIL CASE

**THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT**

RECEIVED

JUN 27 2017

**APPEAL FROM OCONEE COUNTY
COURT OF COMMON PLEAS**

S.C. SUPREME COURT

R. SCOTT SPROUSE, CIRCUIT COURT JUDGE

LOWER COURT CASE No. 2014-CP-37-00718

GEORGE CLEVELAND, III, APPELLATE,

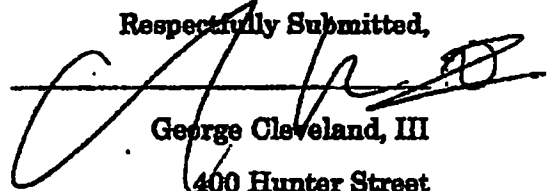
v.

STATE OF SOUTH CAROLINA, RESPONDENT.

NOTICE OF APPEAL

George Cleveland, III, proceeding prose, appeals the Judgment of the Honorable R. Scott Sprouse filed on April 28, 2017, see attached copy hereto. I received a copy of the Judgment by United Stated Mail on May 28, 2017.

Respectfully Submitted,



George Cleveland, III

400 Hunter Street

Seneca, S.C. 29678

Cell no. 864-784-7229

Email: gcleveland7475@gmail.com

Dated: June 28, 2017

Rp3

NOTICE OF APPEAL IN A CIVIL CASE

**THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT**

RECEIVED

JUN 27 2017

APPEAL FROM OCONEE COUNTY

COURT OF COMMON PLEAS

S.C. SUPREME COURT

R. SCOTT SPROUSE, CIRCUIT COURT JUDGE

LOWER COURT CASE No. 2014-CP-37-00718

GEORGE CLEVELAND, III, APPELLATE,

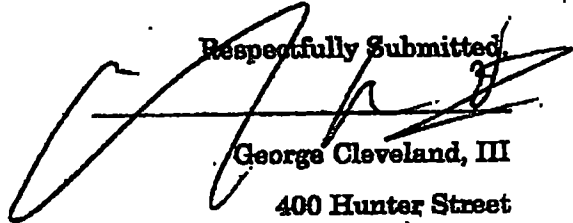
v.

STATE OF SOUTH CAROLINA, RESPONDENT.

NOTICE OF APPEAL

George Cleveland, III, proceeding pro se, appeals the Judgment of the Honorable R. Scott Sprouse filed on May 30, 2017, see attached copy hereto. I received a copy of the Judgment by printing the order off the South Carolina Courts Website's E-filing system on June 22, 2017.

Respectfully Submitted,



George Cleveland, III

400 Hunter Street

Seneca, S.C. 29678

Cell no. 864-784-7223

Email: gcleveland7475@gmail.com

Dated: June 23, 2017

R.P. 4

The Supreme Court of South Carolina

George Cleveland, III, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2017-001419

Lower Court Case No.

ORDER

By order dated April 5, 2017, the circuit court denied the application for post-conviction relief. Subsequently, by a form order dated April 28, 2017, the circuit court denied a motion filed under Rule 59 of the South Carolina Rules of Civil Procedure (SCRCP). This order did not make any alternation to the order of April 5, 2017.

Petitioner then filed a second motion under Rule 59, SCRCP. By order filed on May 30, 2017, the circuit court denied this motion finding the second motion was an improper successive Rule 59 motion.

Petitioner has now filed notices of appeal from the orders denying the Rule 59 motions. These notices of appeal were served on June 23, 2017.

In *Elam v. South Carolina Dept. of Transp.*, 361 S.C. 9, 602 S.E.2d 772 (2004), this Court held "[a]n appeal may be barred due to untimely service of the notice of appeal when a party - instead of serving a notice of appeal - files a successive Rule 59(e) motion, where the trial judge's ruling on the first Rule 59(e) motion does not result in a substantial alteration of the original judgment."

In this case, the order denying the first Rule 59 motion did not alter the order of April 5, 2017. Therefore, the second Rule 59 motion did not stay the time to serve the notice of appeal from the order denying the first Rule 59 motion.

7-28

R.P. 5

Based on the failure of petitioner to timely serve a notice of appeal from the order denying first Rule 59 motion, the notices of appeal filed in this case are dismissed, and the remittitur will be sent as provided by Rule 221, SCACR.



FOR THE COURT C.J.

Columbia, South Carolina
July 28, 2017

cc: Lindsey Ann McCallister, Esquire
Mr. George Cleveland, III

PETITIONER's PROOF OF SERVICE

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM OCONEE COUNTY
COURT OF COMMON PLEAS

R. SCOTT SPROUSE, CIRCUIT COURT JUDGE

APPELLATE CASE NO. 2017-001419
LOWER COURT CASE NO. 2014-CP-37-00718

GEORGE CLEVELAND, III..... PETITIONER,

v.

STATE OF SOUTH CAROLINA..... RESPONDENT

PETITIONER's PROOF OF SERVICE

LINDSEY ANN McCALLISTER,
OFFICE OF THE ATTORNEY GENERAL
P.C.R. DIVISION
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
ATTORNEY FOR THE RESPONDENT

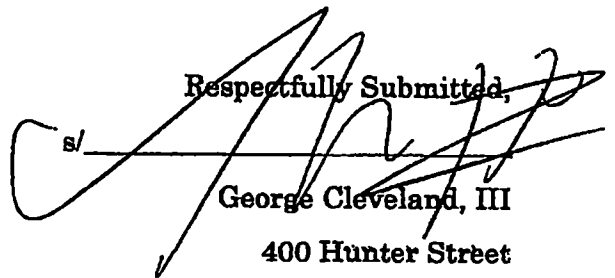
GEORGE CLEVELAND, III
400 HUNTER STREET
SENECA, S.C. 29678
CELL no.864-784-7223
EMAIL: gcleveland7475@gmail.com
Prose Petitioner

PROOF OF SERVICE

I, George Cleveland, III, certifies that on the date below, properly addressed, and with prepaid United States Postage, served on the Respondent's Counsel of Record by United States Mail, my **Petition for Rehearing, and supporting Appendix** to the following:

LINDSEY ANN McCALLISTER,
OFFICE OF THE ATTORNEY GENERAL
P.C.R. DIVISION
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
ATTORNEY FOR THE RESPONDENT

Respectfully Submitted,


s/ _____

George Cleveland, III

400 Hunter Street

Seneca, S.C. 29678

Dated: August 03, 2017

October 27, 2017

RECEIVED
USDC. CLERK GREENVILLE, S.C.

2017 OCT 27 PM 4: 22

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

**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*

George Cleveland, III

400 Hunter Street

Seneca, S.C. 29678

Cell no. 864-784-7223

Email: gcleveland7475@gmail.com

Dated: October 27, 2017

Exhibit - 1

RECEIVED

AUG 11 2017

**THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA: GREENVILLE, S.C.
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

Exhibit - 2

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 6

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
OPEN ACCESS TO LAW SINCE 1992

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

Exhibit 7

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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Exhibit 8

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

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

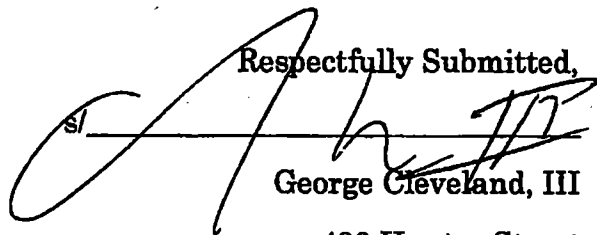
GEORGE CLEVELAND, III) c/a no. _____
APPLICANT/ DEFENDANT)
v.) NOTICE OF REMOVAL OF
STATE OF SOUTH CAROLINA,) CIVIL ACTION FROM
RESPONDENT/PLAINTIFF.) STATE COURT
_____)

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

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

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "George Cleveland, III", written over a horizontal line. The signature is stylized and cursive.

George Cleveland, III

400 Hunter Street

Seneca, S.C. 29678

Cell no. 864-784-7223

Email: gcleland7475@gmail.com

Dated; October 24, 2017

Handwritten initials or mark.

PETITION FOR REHEARING OF JULY 28, 2017 ORDER

OF DISMISSAL

**THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT**

**APPEAL FROM OCONEE COUNTY
COURT OF COMMON PLEAS**

R. SCOTT SPROUSE, CIRCUIT COURT JUDGE

APPELLATE CASE NO. 2017-001419

LOWER COURT CASE NO. 2014-CP-37-00718

GEORGE CLEVELAND, III..... PETITIONER,

v.

STATE OF SOUTH CAROLINA..... RESPONDENT.

PETITION FOR REHEARING

**LINDSEY ANN McCALLISTER,
OFFICE OF THE ATTORNEY GENERAL
P.C.R. DIVISION
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
ATTORNEY FOR THE RESPONDENT**

**GEORGE CLEVELAND, III
400 HUNTER STREET
SENECA, S.C. 29678
CELL no.864-784-7223**

EMAIL: gcleland7475@gmail.com

Prose Petitioner

1

PETITION FOR REHEARING

MAY IT PLEASE THE COURT: George Cleveland, III, the Petitioner proceeding Prose respectfully submits this Petition for Rehearing on the Order of Dismissal dated July 28, 2017 (R.pp.4-5) on the following grounds:

Chief Justice Beatty overlooked the actual received date on my Notice of Appeals in this P.C.R. case.

2

ARGUMENT

RULE 203 (b) (1) S.C.A.C.R. CONTROLS THE

JURISDICTION OF THIS COURT

FOR THE ORDER DATED APRIL 28, 2017, AND MAY 30, 2017

The Chief Justice failed to provide the specific dates of my Rule 59 (e) S.C.R.C.P. Motions. R.pp.2-3.

Rule 203 (b) (1) S.C.A.C.R. controls the Jurisdiction of this Court. Rule 203 (b) (1), *id*, requires that my Notice of Appeal be filed within "30" days of "receipt" of judgment "granting or denying such motion." R.p.1. I submit my Notice of Appeal for the April 28, 2017, and for the May 30, 2017 Judgment are timely because I received the April 28, 2017 Judgment on May 26, 2017. R.p.2. And the May 30, 2017 Judgment on June 22, 2017. R.p.3. And I filed my Notice of Appeal in this Court on

1

June 23, 2017. R.pp.2-3; accordingly, the Chief Justice overlooked “until receipt” controlling language under Rule 203 (b) (1) S.C.A.C.R. R.pp.4-5.

3

JURISIDCTION CANNONT BE WAIVED OR LOST

UNDER UNITED STATES v. COTTON

The United States Supreme Court reasoned under *United States v. Cotton* 535 U.S. 625, 122 S.Ct., 1781, 152 L.Ed. 2d 860 (2002) (hereinafter *Cotton*) that Jurisdiction cannot be waived. More specifically, the Chief Justice was barred by *Cotton* from dismissing my P.C.R. Appeal (s) because both Appeals were filed timely, i.e. JUNE 23, 2017, see. R.pp.2-3 under Rule 203 (b) (1) “A notice of appeal shall be served on all respondents within thirty (30) days after receipt of written order or judgement. When a timely motion for judgment.... motion to alter or amend the judgment.... the time for appeal for all parties shall be stayed...”; consequently, the *Cotton* court barred dismissal of my Appeal (s) under Rule 203 (b) (1) S.C.A.C.R. because this Court never lost Jurisdiction over my P.C.R. appeal (s).R.p.1.

4

CONCLUSION

4-1 WHEREFORE; GRANT my Petition for Rehearing on the July 28, 2017 order of Dismissal.

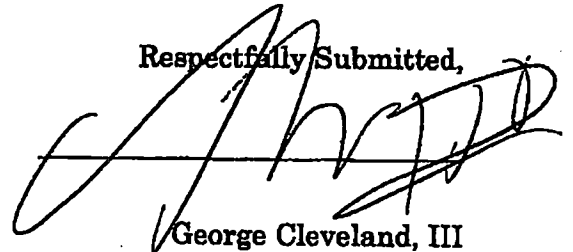
4-2 ORDER additional Briefing if it pleases the Court.

2

4-3 ORDER the Clerk of this Court to put this Case back on the active Docket Roster.

4-4. Any other relief this Court deems just, proper, and/or impartial.

Respectfully Submitted,



George Cleveland, III

400 Hunter Street

Seneca, S.C. 29678

Cell no. 864-784-7223

Email: gcleland7475@gmail.com

Dated: August 03, 2017

**PETITIONER'S APPENDIX IN SUPPORT OF PETITION FOR
REHEARING OF THE JULY 28, 2017 JUDGMENT**

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM OCONEE COUNTY
COURT OF COMMON PLEAS
R. SCOTT SPROUSE, CIRCUIT COURT JUDGE

APPELLATE CASE NO. 2017-001419
LOWER COURT CASE NO. 2014-CP-37-00718

GEORGE CLEVELAND, III..... PETITIONER,
v.
STATE OF SOUTH CAROLINA..... RESPONDENT

INDEX TO THE APPENDIX

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| RULE 203 (b) (1) S.C.A.C.R..... | 1 |
| NOTICE OF APPEAL OF APRIL 28, 2017 JUDGMENT..... | 2 |
| NOTICE OF APPEAL OF MAY 30, 2017 JUDGMENT..... | 3 |
| SOUTH CAROLINA SUPREME COURT ORDER OF DISMISSAL DATED JULY 28, 2017..... | 4-5 |

APPELLATE PRACTICE

Rule 203

the appeal shall proceed to conclusion under the Supreme Court Rules. Where the time to serve a notice of intent to appeal under Supreme Court Rules 1, § 1A, or 50 has expired before these Rules take effect, these Rules shall not revive the right to appeal or to petition for a writ of certiorari in a post-conviction relief case.

(b) Repealer. The Supreme Court Rules and the Miscellaneous Rules shall be repealed when these Rules become effective.

[Adopted effective September 1, 1990.]

II. RULES OF APPELLATE PRACTICE

A. Appeals

RULE 201. RIGHT TO APPEAL

(a) **Judgments, Orders and Decisions Subject to Appeal.** Appeal may be taken, as provided by law, from any final judgment, appealable order or decision. The procedure for petitioning for a writ of certiorari to review final judgments in post-conviction relief cases is provided by Rule 227. Further, the review of decisions of the State Board of Canvassers in election cases shall be by petition for a writ of certiorari under S.C. Code Ann. §§ 7-17-250 and 7-17-270.

(b) **Who May Appeal.** Only a party aggrieved by an order, judgment, sentence or decision may appeal. [Adopted effective September 1, 1990. Emergency amendment by Order dated August 15, 2006, to conform to 2006 Act No. 387 providing for appeals from the decisions of the administrative law court and certain agencies to the Supreme Court or the Court of Appeals. Amended effective May 3, 2007.]

RULE 202. DESIGNATION OF PARTIES AND DEFINITIONS

(a) **Designation of Parties.** The party appealing shall be known as the appellant and the adverse party as the respondent.

(b) **Definitions.** For the purpose of Part II of the South Carolina Appellate Court Rules, the following definitions shall apply:

(1) **Lower Court:** the circuit court (including masters-in-equity), family court or probate court from which the appeal is taken.

(2) **Administrative Tribunal:** the administrative law court or agency from which the appeal is taken. [Adopted effective September 1, 1990. Emergency amendment by Order dated August 15, 2006, to conform to 2006 Act No. 387 providing for appeals from the decisions of the administrative law court and certain agencies to the Supreme Court or the Court of Appeals. Amended effective May 3, 2007.]

RULE 203. NOTICE OF APPEAL

(a) **Notice.** A party intending to appeal must serve and file a notice of appeal and otherwise comply with these Rules. Service and filing are defined by Rule 233.

(b) **Time for Service.**

(1) **Appeals From the Court of Common Pleas.** A notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment. When a timely motion for judgment n.o.v. (Rule 50, SCRCP), motion to alter or amend the judgment (Rules 52 and 59, SCRCP), or a motion for a new trial (Rule 59, SCRCP) has been made, the time for appeal for all parties shall be stayed and shall run from receipt of written notice of entry of the order granting or denying such motion. When a form or other short order or judgment indicates that a more full and complete order or judgment is to follow, a party need not appeal until receipt of written notice of entry of the more complete order or judgment.

(2) **Appeals From the Court of General Sessions.** After a plea or trial resulting in conviction or a proceeding resulting in revocation of probation, a notice of appeal shall be served on all respondents within ten (10) days after the sentence is imposed. In all other cases, a notice of appeal shall be served on all respondents within ten (10) days after receipt of written notice of entry of the order or judgment. When a timely post-trial motion is made under Rule 29(a), SCRCP, the time to appeal shall be stayed and shall begin to run from receipt of written notice of entry of an order granting or denying such motion. In those cases in which the State is allowed to appeal a pre-trial order or ruling, the notice of appeal must be served within ten (10) days of receiving actual notice of the ruling or order; provided, however, that the notice of appeal must be served before the jury is sworn or, if tried without a jury, before the State begins the presentation of its case in chief.

(3) **Appeals From the Family Court.** A notice of appeal in a domestic relations action shall be served in the same manner provided by Rule 203(b)(1). A notice of appeal in a juvenile action shall be served in the same manner as provided by Rule 203(b)(2).

(4) **Appeals From Masters and Special Referees.** The notice of appeal from an order or judgment issued by a master or special referee shall be served in the same manner as provided by Rule 203(b)(1).

(5) **Appeals From Probate Court.** When a direct appeal is authorized by S. C. Code Ann. § 62-1-308 (g), the notice of appeal shall be served in the same manner as provided by Rule 203(b)(1).

(6) **Appeals From Administrative Tribunals.** When a statute allows a decision of the administrative law court or agency (administrative tribunal) to be appealed directly to the Supreme Court or the Court of

R.P. 2

NOTICE OF APPEAL IN A CIVIL CASE

**THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT**

RECEIVED

JUN 27 2017

**APPEAL FROM OCONEE COUNTY
COURT OF COMMON PLEAS**

S.C. SUPREME COURT

R. SCOTT SPROUSE, CIRCUIT COURT JUDGE

LOWER COURT CASE No. 2014-CP-37-00718

GEORGE CLEVELAND, III, APPELLATE,

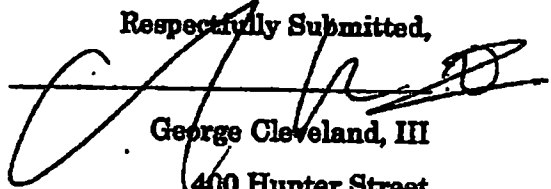
v.

STATE OF SOUTH CAROLINA, RESPONDENT.

NOTICE OF APPEAL

George Cleveland, III, proceeding pro se, appeals the Judgment of the Honorable R. Scott Sprouse filed on April 28, 2017, see attached copy hereto. I received a copy of the Judgment by United States Mail on May 26, 2017.

Respectfully Submitted,



George Cleveland, III

400 Hunter Street

Seneca, S.C. 29678

Cell no. 864-784-7223

Email: gcleveland7475@gmail.com

Dated: June 23, 2017

R.P. 3

NOTICE OF APPEAL IN A CIVIL CASE

**THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT**

RECEIVED

JUN 27 2017

APPEAL FROM OCONEE COUNTY

COURT OF COMMON PLEAS

S.C. SUPREME COURT

R. SCOTT SPROUSE, CIRCUIT COURT JUDGE

LOWER COURT CASE No. 2014-CP-37-00718

GEORGE CLEVELAND, III, APPELLATE,

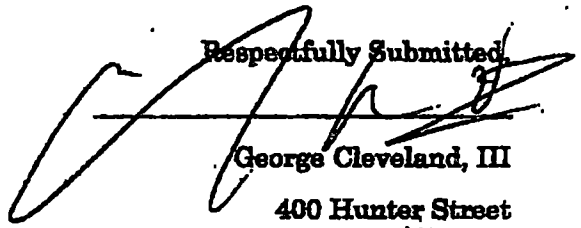
v.

STATE OF SOUTH CAROLINA,RESPONDENT.

NOTICE OF APPEAL

George Cleveland, III, proceeding pro se, appeals the Judgment of the Honorable R. Scott Sprouse filed on May 30, 2017, see attached copy hereto. I received a copy of the Judgment by printing the order off the South Carolina Courts Website's E-filing system on June 22, 2017

Respectfully Submitted



George Cleveland, III

400 Hunter Street

Seneca, S.C. 29678

Cell no. 864-784-7223

Email: gcleveland7475@gmail.com

Dated: June 23, 2017

R.P. 4

The Supreme Court of South Carolina

George Cleveland, III, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2017-001419

Lower Court Case No.

ORDER

By order dated April 5, 2017, the circuit court denied the application for post-conviction relief. Subsequently, by a form order dated April 28, 2017, the circuit court denied a motion filed under Rule 59 of the South Carolina Rules of Civil Procedure (SCRCP). This order did not make any alternation to the order of April 5, 2017.

Petitioner then filed a second motion under Rule 59, SCRCP. By order filed on May 30, 2017, the circuit court denied this motion finding the second motion was an improper successive Rule 59 motion.

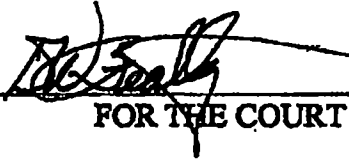
Petitioner has now filed notices of appeal from the orders denying the Rule 59 motions. These notices of appeal were served on June 23, 2017.

In *Elam v. South Carolina Dept. of Transp.*, 361 S.C. 9, 602 S.E.2d 772 (2004), this Court held "[a]n appeal may be barred due to untimely service of the notice of appeal when a party - instead of serving a notice of appeal - files a successive Rule 59(e) motion, where the trial judge's ruling on the first Rule 59(e) motion does not result in a substantial alteration of the original judgment."

In this case, the order denying the first Rule 59 motion did not alter the order of April 5, 2017. Therefore, the second Rule 59 motion did not stay the time to serve the notice of appeal from the order denying the first Rule 59 motion.

R.P. 5

Based on the failure of petitioner to timely serve a notice of appeal from the order denying first Rule 59 motion, the notices of appeal filed in this case are dismissed, and the remittitur will be sent as provided by Rule 221, SCACR.



C.J.

FOR THE COURT

Columbia, South Carolina
July 28, 2017

cc: Lindsey Ann McCallister, Esquire
Mr. George Cleveland, III

PETITIONER'S PROOF OF SERVICE

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM OCONEE COUNTY
COURT OF COMMON PLEAS

R. SCOTT SPROUSE, CIRCUIT COURT JUDGE

APPELLATE CASE NO. 2017-001419
LOWER COURT CASE NO. 2014-CP-37-00718

GEORGE CLEVELAND, III..... PETITIONER,

v.

STATE OF SOUTH CAROLINA..... RESPONDENT

PETITIONER'S PROOF OF SERVICE

LINDSEY ANN McCALLISTER,
OFFICE OF THE ATTORNEY GENERAL
P.C.R. DIVISION
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
ATTORNEY FOR THE RESPONDENT

GEORGE CLEVELAND, III
400 HUNTER STREET
SENECA, S.C. 29678
CELL no.864-784-7223

EMAIL: gcleland7475@gmail.com

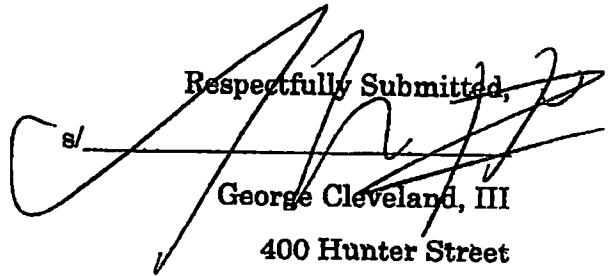
Prose Petitioner

PROOF OF SERVICE

I, George Cleveland, III, certifies that on the date below, properly addressed, and with prepaid United States Postage, served on the Respondent's Counsel of Record by United States Mail, my **Petition for Rehearing, and supporting Appendix** to the following:

LINDSEY ANN McCALLISTER,
OFFICE OF THE ATTORNEY GENERAL
P.C.R. DIVISION
POST OFFICE BOX 11549
COLUMBIA, S.C. 29211
ATTORNEY FOR THE RESPONDENT

Respectfully Submitted,

s/ 

George Cleveland, III

400 Hunter Street

Seneca, S.C. 29678

Dated: August 03, 2017

October 27, 2017

RECEIVED
USDC. CLERK GREENVILLE, SC.

2017 OCT 27 PM 4: 22

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

**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*

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JSDC, CLERK GREENVILLE, S.C.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA

2017 OCT 27 PM 4: 21

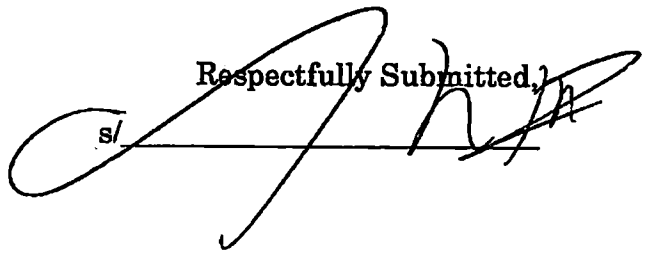
COLUMBIA DIVISION

| | | |
|--------------------------|---|------------------------------------|
| George Cleveland, III, |) | c/a no. 42-2017-00000-2 |
| Applicant/ Defendant |) | |
| vs. |) | |
| State of South Carolina, |) | APPLICANT'S CERTIFICATE OF |
| Respondent/Plaintiff. |) | SERVICE |
| _____ |) | |

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

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

Exhibit - 1

RECEIVED

AUG 11 2017

**THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA: GREENVILLE, S.C.
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

Exhibit - 2

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 6

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

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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. 648, 62 Stat. 938.)

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Exhibit 8

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

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

| | |
|--|-----------------------------|
| George Cleveland, III, <i>f/k/a George Cleveland, III, #357770,</i> |) C/A No. 8:17-2922-RBH-TER |
| |) |
| |) |
| Plaintiff, |) Report and Recommendation |
| |) |
| vs. |) |
| |) |
| State of South Carolina, |) |
| |) |
| Defendant. |) |
| _____ |) |

This is a civil action filed by a *pro se* litigant. Pursuant to 28 U.S.C. § 636(b)(1) and District of South Carolina Local Civil Rule 73.02(B)(2)(e), the undersigned is authorized to review all pretrial matters in such *pro se* cases and to submit findings and recommendations to the district court.

This is Plaintiff's second attempt to remove a case from the South Carolina Supreme Court to this federal district court. *See also Cleveland v. South Carolina*, No. 4:17-2138-RBH-TER (Aug. 15, 2017). Plaintiff filed a "Notice of Removal of Civil Action from State Court." (ECF No. 1 at 1). Plaintiff stated he was removing his civil case from state court to the United States District Court. (ECF No. 1 at 1). Plaintiff attached the "Petition for Rehearing of July 28, 2017 Order of Dismissal" that was filed with the South Carolina Supreme Court on August 5, 2017, in appellate cause no. 2017-001419. (ECF No. 1-1 at 1). Plaintiff also attached the appendix filed in the state appellate case. (ECF No. 1-1 at 5). Plaintiff also attached a letter to the South Carolina Supreme Court, Clerk of Court, notifying it of the "Notice of Removal" filed. (ECF No. 1-1 at 13). Plaintiff also attached portions of the prior report and recommendation and the prior order by the district judge adopting the report and recommendation.

In order for this court to hear and decide a case, the court must have jurisdiction over the subject matter of the litigation. Federal courts have an “independent obligation” to investigate the limits of its subject-matter jurisdiction. *Arbaugh v. Y & H Corp.*, 546 U.S. 500, 514 (2006). The court’s obligation to examine its subject-matter jurisdiction is triggered whenever that jurisdiction is “fairly in doubt.” *Ashcroft v. Iqbal*, 556 U.S. 662, 671 (2009). It is well settled that federal courts are courts of limited jurisdiction and possess only powers authorized by the constitution and statute, 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**. By statute, removal to federal court cannot occur at the state appellate level. 28 U.S.C. § 1446.

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. *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

November 13, 2017
Florence, South Carolina

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

Notice of Right to File Objections to Report and Recommendation

The parties are advised that they may file specific written objections to this Report and Recommendation with the District Judge. Objections must specifically identify the portions of the Report and Recommendation to which objections are made and the basis for such objections. “[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 v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee’s note).

Specific written objections must be filed within fourteen (14) days of the date of service of this Report and Recommendation. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b); *see* Fed. R. Civ. P. 6(a), (d). Filing by mail pursuant to Federal Rule of Civil Procedure 5 may be accomplished by mailing objections to:

Robin L. Blume, Clerk
United States District Court
Post Office Box 2317
Florence, South Carolina 29503

Failure 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. 28 U.S.C. § 636(b)(1); *Thomas v. Arn*, 474 U.S. 140 (1985); *Wright v. Collins*, 766 F.2d 841 (4th Cir. 1985); *United States v. Schronce*, 727 F.2d 91 (4th Cir. 1984).

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

George Cleveland, III,)
)
Plaintiff,)
)
v.) **ORDER**
)
State of South Carolina,)
)
Defendant.)
_____)

This matter is before the Court for consideration of Plaintiff's objections to the Magistrate Judge's (1) order denying Plaintiff's motion to recuse and (2) Report and Recommendation ("R & R") recommending summary dismissal of this case.¹ See ECF Nos. 6, 7, 8, 11, & 14.

I. Objections to Order Denying Motion to Recuse

Plaintiff objects to the Magistrate Judge's order denying recusal of himself and the undersigned district judge. See ECF Nos. 6, 7, & 14. Plaintiff's motion to recuse is a nondispositive matter,² and therefore the Court must affirm the Magistrate Judge's order unless it is "clearly erroneous or contrary to law." See 28 U.S.C. § 636(b)(1)(A); Fed. R. Civ. P. 72(a); see, e.g., *Kiser v. Ferris*, 2009 WL 1770084, at *1 (S.D.W. Va. June 16, 2009) (recognizing a motion to recuse is a nondispositive matter). The Court agrees with the Magistrate Judge's conclusion that Plaintiff has not established extrajudicial bias warranting disqualification of the Magistrate Judge or the undersigned. See ECF No. 6 at p. 1 (citing 28 U.S.C. § 455, the judicial disqualification statute). Plaintiff's contentions all relate to judicial

¹ The Magistrate Judge issued the order and the R & R in accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02(B)(2) (D.S.C.).

² A party contesting a magistrate judge's ruling on a nondispositive matter must serve and file objections within fourteen days after being served with a copy of the order. See Fed. R. Civ. P. 72(a). Within the time for filing objections to the order denying recusal, Plaintiff filed a motion requesting an extension of time to file objections. See ECF No. 10. Thus, the Court will grant Plaintiff's motion and consider his objections as timely filed.

rulings made by the Magistrate Judge and the undersigned, which are not a basis for recusal. *See Liteky v. United States*, 510 U.S. 540, 555 (1994) (“[J]udicial rulings alone almost never constitute a valid basis for a bias or partiality motion.”); *In re Beard*, 811 F.2d 818, 827 (4th Cir. 1987) (“The nature of the judge’s bias must be personal and not judicial.”). Accordingly, the Court will affirm the Magistrate Judge’s order because it is neither clearly erroneous nor contrary to law.

II. Objections to R & R

Plaintiff objects to the Magistrate Judge’s R & R recommending summarily dismissal of the Notice of Removal in this case. *See* ECF Nos. 8 & 11.

The Magistrate Judge makes only a recommendation to the Court. The Magistrate Judge’s recommendation has no presumptive weight, and the responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270–71 (1976). The Court must conduct a de novo review of those portions of the R & R to which specific objections are made, and it may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1); Fed. R. Civ. P. 72(b)(3).

The Court must engage in a de novo review of every portion of the Magistrate Judge’s report to which specific objections have been filed. *Id.* However, the Court need not conduct a de novo review when a party makes only “general and conclusory objections that do not direct the [C]ourt 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 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).

Here, Plaintiff purports to remove a case—his state post-conviction relief (“PCR”) appeal—from the South Carolina Supreme Court to this federal district Court. This is Plaintiff’s second attempt to do so, *see Cleveland v. State of South Carolina*, No. 4:17-cv-02138-RBH (D.S.C.) (Plaintiff’s first attempt), and the Magistrate Judge thoroughly and correctly explains why Plaintiff cannot proceed in this fashion.³ *See* R & R at pp. 1–3. The Court lacks jurisdiction over this case, and therefore must dismiss Plaintiff’s purported Notice of Removal.⁴

Conclusion

For the foregoing reasons, the Court **GRANTS** Plaintiff’s motion for an extension [ECF No. 10], **OVERRULES** Plaintiff’s objections, **AFFIRMS** the Magistrate Judge’s order [ECF Nos. 6 & 7] denying Plaintiff’s motion to recuse, **ADOPTS** the R & R [ECF No. 8], and **DISMISSES** the Notice of Removal in this case *without prejudice and without issuance and service of process*.

IT IS SO ORDERED.

Florence, South Carolina
December 19, 2017

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

³ The Court further notes that Plaintiff has filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 relating to his PCR matter, and that habeas action is currently pending before the Magistrate Judge. *See Cleveland v. Adger*, No. 4:17-cv-03269-RBH-TER (D.S.C.).

⁴ Plaintiff contends removal is proper under 28 U.S.C. § 1443 and the Supreme Court’s decisions in *City of Greenwood, Mississippi v. Peacock*, 384 U.S. 808(1966), and *State of Georgia v. Rachel*, 384 U.S. 780 (1966), but that statute and those cases apply to civil rights cases pending in state trial courts. Additionally, although Plaintiff suggests the Magistrate Judge did not make the “proposed findings of fact” required by Federal Rule of Civil Procedure 72(b)(1), the R & R contains three such pages of proposed findings. *See* R & R at pp. 1–3.

Full docket text for document 20:

TEXT ORDER denying [18] Motion for Reconsideration: Previously, the Magistrate Judge entered a Report and Recommendation ("R & R") recommending that the Court summarily dismiss this case. *See* ECF No. [10]. The Court adopted the R & R after considering Plaintiff's objections and dismissed the case without prejudice. *See* ECF No. [15]. Plaintiff has now filed a motion to alter or amend pursuant to Federal Rule of Civil Procedure 59(e). *See* ECF No. [18].

Federal Rule of Civil Procedure 59(e) provides for an "extraordinary remedy which should be used sparingly." *Pac. Ins. Co. v. Am. Nat. Fire Ins. Co.*, 148 F.3d 396, 403 (4th Cir. 1998) (citation omitted). "Rule 59(e) motions can be successful in only three situations: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice." *United States ex rel. Carter v. Halliburton Co.*, 866 F.3d 199, 210 (4th Cir. 2017). A party's mere disagreement with the Court's ruling does not support a Rule 59(e) motion, *Hutchinson v. Staton*, 994 F.2d 1076, 1082 (4th Cir. 1993), and a party may not exploit Rule 59(e) to "rehash the same arguments and facts previously presented." *Rouse v. Nielsen*, 851 F. Supp. 717, 734 (D.S.C. 1994) (internal quotation marks and citation omitted).

In his motion, Plaintiff asserts the Court "failed [to] conduct a de novo review of [his] specific objections" and did not consider two Supreme Court cases mentioned in his objections (*City of Greenwood, Mississippi v. Peacock*, 384 U.S. 808 (1966), and *State of Georgia v. Rachel*, 384 U.S. 780 (1966)). *See* ECF No. [18] at pp. 1-2. He further suggests the Court's order is lacking in analysis, *see id.* at pp. 3-4, and submits various attachments (including orders issued by the Court in other cases). *See* ECF No. 18-1. However, Plaintiff has not satisfied any of the conditions necessary for granting a Rule 59(e) motion. Furthermore, the Court notes it thoroughly reviewed Plaintiff's objections (including the cases he cited) and conducted the requisite de novo review in accordance with 28 U.S.C. § 636(b) and Fed. R. Civ. P. 72(b). *See* ECF No. [15] at pp. 2-3. Accordingly, the Court finds no basis to alter or amend its prior judgment, and therefore DENIES Plaintiff's motion.

Signed by the Honorable R. Bryan Harwell on 5/7/2018.(eney,)

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FILED: December 26, 2018

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-6691
(8:17-cv-02922-RBH)

GEORGE CLEVELAND, III

Petitioner - Appellant

v.

STATE OF SOUTH CAROLINA

Defendant - Appellee

M A N D A T E

The judgment of this court, entered December 4, 2018, takes effect today.

This constitutes the formal mandate of this court issued pursuant to Rule 41(a) of the Federal Rules of Appellate Procedure.

/s/Patricia S. Connor, Clerk

FILED: December 4, 2018

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 18-6691
(8:17-cv-02922-RBH)

GEORGE CLEVELAND, III

Petitioner - Appellant

v.

STATE OF SOUTH CAROLINA

Defendant - Appellee

J U D G M E N T

In accordance with the decision of this court, this appeal is dismissed.

This judgment shall take effect upon issuance of this court's mandate in accordance with Fed. R. App. P. 41.

/s/ PATRICIA S. CONNOR, CLERK