



ALAN WILSON  
ATTORNEY GENERAL

July 11, 2016

**VIA U.S. MAIL**

The Honorable Jeanette W. McBride  
Richland County Clerk of Court  
Post Office Box 2766  
Columbia, South Carolina 29202

Re: *George Cleveland v. State of South Carolina et alia*  
Case No: 2014-CP-40-08059

Dear Ms. McBride:

Enclosed for filing please find the originals and one copy of the Defendant's **Motion to Dismiss**, and one copy of the corresponding **Certificate of Service** in the above-referenced case. I would very much appreciate your filing the original, and returning a clocked copy to our office in the enclosed self-addresses and stamped envelope.

I am also serving the Plaintiff and co-Defendants with copies of the enclosures. If you have any questions or need any additional information, please do not hesitate to contact me.

Kind regards,

Kevin Desmond Maroney  
Assistant Attorney General

Enclosures

cc: George Cleveland #00357770 (via U.S. mail with enclosures)  
Rebecca Schimsa (via U.S. mail and enclosures)  
Niki Haley (via U.S. mail and enclosures)

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF RICHLAND )  
 )  
 )  
 )  
George Cleveland )  
 )  
 ) Plaintiff, )  
 )  
 ) vs. )  
 )  
 )  
State of South Carolina et alia )  
 )  
 ) Defendant. )

IN THE COURT OF COMMON PLEAS  
 FIFTH JUDICIAL CIRCUIT  
 CASE NO.: 2014-CP-40-08059

**MOTION AND ORDER INFORMATION  
 FORM AND COVERSHEET**

Plaintiff's Attorney: Pro Se, Bar No. _____ Address: _____ Phone: _____ Fax _____ E-mail: _____ Other: _____	Defendant's Attorney: Kevin Desmond Maroney, Bar No. 102545 Address: P.O. Box 11549 Phone: 803.734.3177 Fax _____ E-mail: kmaroney@scag.gov Other: _____
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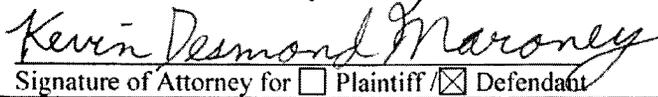
**MOTION HEARING REQUESTED** (attach written motion and complete SECTIONS I and III)  
 **FORM MOTION, NO HEARING REQUESTED** (complete SECTIONS II and III)  
 **PROPOSED ORDER/CONSENT ORDER** (complete SECTIONS II and III)

**SECTION I: Hearing Information**

Nature of Motion: Motion to Dismiss  
 Estimated Time Needed: 15 minutes Court Reporter Needed:  YES/  NO

**SECTION II: Motion/Order Type**

Written motion attached  
 Form Motion/Order  
 I hereby move for relief or action by the court as set forth in the attached proposed order.

  
 Signature of Attorney for  Plaintiff /  Defendant

July 11, 2016  
 Date submitted

**SECTION III: Motion Fee**

PAID - AMOUNT: \$ 25.00  
 EXEMPT: (check reason)

Rule to Show Cause in Child or Spousal Support  
 Domestic Abuse or Abuse and Neglect  
 Indigent Status  State Agency v. Indigent Party  
 Sexually Violent Predator Act  Post-Conviction Relief  
 Motion for Stay in Bankruptcy  
 Motion for Publication  Motion for Execution (Rule 69, SCRPC)  
 Proposed order submitted at request of the court; or,  
 reduced to writing from motion made in open court per judge's instructions  
 Name of Court Reporter: \_\_\_\_\_  
 Other: \_\_\_\_\_

**JUDGE'S SECTION**

Motion Fee to be paid upon filing of the attached order.  
 Other: \_\_\_\_\_

JUDGE CODE \_\_\_\_\_  
 Date: \_\_\_\_\_

**CLERK'S VERIFICATION**

Collected by: \_\_\_\_\_ Date Filed: \_\_\_\_\_  
 MOTION FEE COLLECTED: \$ \_\_\_\_\_  
 CONTESTED - AMOUNT DUE: \$ \_\_\_\_\_

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	IN THE FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	
	)	
George Cleveland,	)	Civil Action No. 2014-CP-40-08059
	)	
Plaintiff,	)	
	)	
vs.	)	<b>MOTION TO DISMISS</b>
	)	
State of South Carolina et alia,	)	
	)	
Defendant.	)	

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The Defendant files this Motion to Dismiss without waiving any other form of defense available. The Defendant asks this court to dismiss the above action with prejudice pursuant to Rule 12(b) (5) and (6), SCRCF.

**I. RULE 12(b) (5)**

Rule 4(d) (4) describes the method of service that a Plaintiff must follow when he is seeking to commence an action against the State of South Carolina: if the State is a party, service is complete by delivering a copy of the summons and complaint to the Attorney General.<sup>1</sup> Notwithstanding, Rule 4(d) (8) lists what types of defendants may be served a summons and complaint by registered or certified mail.<sup>2</sup> While that section of Rule 4 specifies that Plaintiffs may serve individual and corporate defendants in such a manner, the State is not listed alongside those defendants.<sup>3</sup> Thus, service upon the State cannot be

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<sup>1</sup> Justin S. Kahn, *South Carolina Rules Annotated*, Rule 4(d)(4), p. 9 (2015) (South Carolina Bar—C.L.E. Division).

<sup>2</sup> Justin S. Kahn, *South Carolina Rules Annotated*, Rule 4(d)(8), p. 9 (2015) (South Carolina Bar—C.L.E. Division).

<sup>3</sup> Justin S. Kahn, *South Carolina Rules Annotated*, Rule 4(d)(8), p. 9 (2015) (South Carolina Bar—C.L.E. Division).

properly completed by certified mail.

In this case, the Plaintiff attempted to initiate his action against the State of South Carolina by sending the summons and complaint via certified mail. As the Plaintiff utilized an improper form of service upon the State of South Carolina, the court should dismiss the Plaintiff's complaint against the State for insufficiency of process pursuant to Rule 12(b) (5), SCRPC.

**II. RULE 12(b) (6)**

The Plaintiff alleges he made a Freedom of Information Act (FOIA) request of the Governor's Office. Regardless of the status of that allegation, the State of South Carolina was not asked to retrieve any documents. Thus, there is no controversy between the Plaintiff and the State of South Carolina under FOIA, and the Plaintiff has failed to state facts sufficient to constitute a cause of action; the court should dismiss the Plaintiff's complaint against the State with prejudice pursuant to Rule 12(b) (6), SCRPC.

**III. CONCLUSION**

For the foregoing reasons, the Defendant respectfully requests that the Plaintiff's complaint against the State of South Carolina be dismissed with prejudice.

[The signature block is on the next page]

Respectfully Submitted,

ALAN WILSON  
Attorney General

EMORY SMITH  
Deputy Solicitor General

HARLEY KIRKLAND  
Assistant Attorney General

KEVIN MARONEY  
Assistant Attorney General  
P.O. Box 11549  
Columbia, SC 29211  
803.734.3680  
[kmaroney@scag.gov](mailto:kmaroney@scag.gov)  
S.C. Bar No. 102545

BY: BY: Kevin Desmond Maroney

Attorney for the State

July 11, 2016

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	IN THE FIFTH JUDICIAL
COUNTY OF RICHLAND	)	CIRCUIT
	)	
George Cleveland,	)	Civil Action No. 2014-CP-40-08059
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	<b>CERTIFICATE OF SERVICE</b>
The State of South Carolina et alia,	)	
	)	
Defendant.	)	
	)	

I hereby certify that I served the foregoing Motion to Dismiss in the above-referenced matter by placing a copy of said document in the United States mail, first class postage prepaid and addressed to:

**George Cleveland, III #0357770**  
Tuberville Correctional Institution  
Post Office Box 252  
Tuberville, SC 29162

**Niki Haley**  
Governor of South Carolina  
Office of the Governor  
1205 Pendleton Street  
Columbia, SC 29201

**Rebecca Schimsa**  
Deputy Legal Counsel  
Office of the Governor  
1205 Pendleton Street  
Columbia, SC 29201

Mailed July 11, 2016 from Columbia, South Carolina.

By: Kevin Desmond Maroney  
Kevin Desmond Maroney  
Assistant Attorney General  
Office of the Attorney General  
State of South Carolina  
Post Office Box 11549  
Columbia, South Carolina 29211-1549