



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.

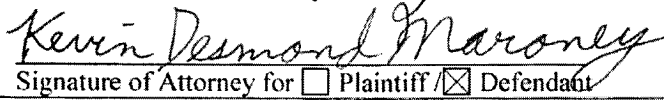
State of South Carolina et alia

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: _____
<input checked="" type="checkbox"/> MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) <input type="checkbox"/> FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) <input type="checkbox"/> 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: <input checked="" type="checkbox"/> YES / <input type="checkbox"/> NO	
SECTION II: Motion/Order Type <input checked="" type="checkbox"/> Written motion attached <input type="checkbox"/> Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order. <div style="text-align: center;"> Signature of Attorney for <input type="checkbox"/> Plaintiff / <input checked="" type="checkbox"/> Defendant Date submitted: July 11, 2016</div>	
SECTION III: Motion Fee <input checked="" type="checkbox"/> PAID - AMOUNT: \$ <u>25.00</u> <input type="checkbox"/> EXEMPT: (check reason) <div style="display: flex; justify-content: space-between;"><div><input type="checkbox"/> Rule to Show Cause in Child or Spousal Support <input type="checkbox"/> Domestic Abuse or Abuse and Neglect <input type="checkbox"/> Indigent Status <input type="checkbox"/> Sexually Violent Predator Act <input type="checkbox"/> Motion for Stay in Bankruptcy <input type="checkbox"/> Motion for Publication <input type="checkbox"/> 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: _____ <input type="checkbox"/> Other: _____</div><div><input type="checkbox"/> State Agency v. Indigent Party <input type="checkbox"/> Post-Conviction Relief <input type="checkbox"/> Motion for Execution (Rule 69, SCRPC)</div></div>	
JUDGE'S SECTION <input type="checkbox"/> Motion Fee to be paid upon filing of the attached order. <input type="checkbox"/> Other: _____	JUDGE CODE _____ Date: _____
CLERK'S VERIFICATION Collected by: _____ Date Filed: _____ <input type="checkbox"/> MOTION FEE COLLECTED: \$ _____ <input type="checkbox"/> 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.)	MOTION TO DISMISS
)	
)	
State of South Carolina et alia,)	
)	
Defendant.)	
)	

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), SCRCP.

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.¹ Notwithstanding, Rule 4(d) (8) lists what types of defendants may be served a summons and complaint by registered or certified mail.² 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.³ Thus, service upon the State cannot be

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

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

³ 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), SCRCP.

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), SCRCP.

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.

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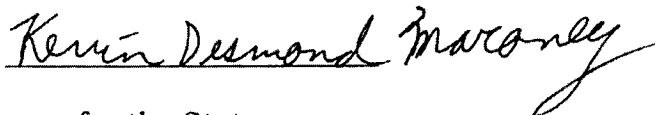
Respectfully Submitted,

ALAN WILSON
Attorney General

EMORY SMITH
Deputy Solicitor General

HARLEY KIRKLAND
Assistant Attorney General

KEVIN MARONEY
Assistant Attorney General
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Columbia, SC 29211
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kmaroney@scag.gov
S.C. Bar No. 102545

BY: 
Attorney for the State

July 11, 2016

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

George Cleveland,

Plaintiff,

vs.

The State of South Carolina et alia,

Defendant.

) IN THE COURT OF COMMON PLEAS
) IN THE FIFTH JUDICIAL
) CIRCUIT

) Civil Action No. 2014-CP-40-08059

) **CERTIFICATE OF SERVICE**

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:

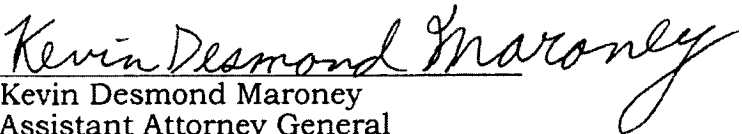
George Cleveland, III #0357770
Tuberville Correctional Institution
Post Office Box 252
Tuberville, SC 29162

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
Assistant Attorney General
Office of the Attorney General
State of South Carolina
Post Office Box 11549
Columbia, South Carolina 29211-1549