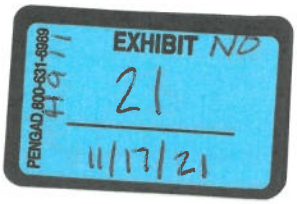


**JUDICIAL MERIT SELECTION COMMISSION** )
)

In the Matter of: Daniel D. Hall )
Candidate for Circuit Judge, seat 2, 16th Circuit )
) **WITNESS AFFIDAVIT**
) **FORM**
)

I will appear to testify concerning the qualifications of the above-named candidate and will produce all documents in my possession, if any, which will further develop or corroborate my testimony.

I understand that this written statement and all supporting documentation, if any, must be completed and the hard copies of all such documents shall be returned to the Judicial Merit Selection Commission by the deadline for complaints in order for the Commission to hear my testimony, and that the deadline for complaints is **12:00 Noon, Monday, November 1, 2021.** I understand I must be available to testify at the Public Hearing, and **failure to appear will result in a dismissal of my complaint.**

In regard to my intended testimony, I will offer information as to the following:

(1) Set forth your full name, age, address, and both home and work telephone numbers.

*Kevin Brackett, age 56*

*1675-1A York Hwy, York, SC 29745*
*803-628-3020 (w) 803-517-4444 (cell)*

(2) Set forth the names, addresses, and telephone numbers (if known) of other persons who have knowledge of the facts concerning your testimony.

*See the attached 9 page document. All the persons named therein as assistant solicitor's are still employed at my office (803-628-3020). My staff will cooperate fully and give testimony if required on the matters they have knowledge of. Sheriff Kevin Tolson can be reached at 803-628-3059. The assistant public defenders referenced can be contacted at 803-628-3031 with the exception of Monier Abusafi, who is now in private practice in Spartanburg, 864-606-8941 per the SC Bar directory. Craig Pisarik is in private practice in York, 803-415-2733.*

(3) State the nature of your testimony regarding the qualifications of the above-named judicial candidate, including:

*See the attached 9 page document and attachments*

(a) specific facts relating to the candidate's character, competency, or ethics, including any and all allegations of wrongdoing or misconduct on the part of the candidate;

(b) specific dates, places, and times at which or during which such allegations took place;

(c) names of any persons present during such alleged actions or possessing evidence of such alleged actions; and

(d) how this information relates to the qualifications of the judicial candidate.

(4) Set forth a list of and provide a copy of any and all documents to be produced at the hearing which relate to your testimony regarding the qualifications of the judicial candidate.

*See attached 9 page document and attachments*

(5) State any other facts you feel are pertinent to the screening of this judicial candidate.

*See attached 9 page document and attachments*

I understand that the information I have provided herein is confidential and is not to be disclosed to anyone except the Judicial Merit Selection Commission, the candidate, and counsel.

## WAIVER

I further understand that my testimony before the Judicial Merit Selection Commission may require the disclosure of information that would otherwise be protected by the attorney-client privilege. Therefore, in order that my complaint may be fully investigated by the Commission,

I hereby waive any right that I may have to raise the attorney-client privilege as that privilege may relate to the subject of my complaint. I further understand that by waiving the attorney-client privilege for this matter, I am authorizing the Commission to question other parties, including my attorney, concerning the facts and issues of my case.

Signature

Sworn to me this 1 day of November, 2021

L.S.

Notary Public of South Carolina

My commission expires: March 19, 2022

I am the Solicitor for the 16th Judicial Circuit. I have been a prosecutor for almost 30 years, all of it in the same office. I have been the Solicitor since November 2006. I am filing this complaint on behalf of my office and my staff of attorneys who work regularly with Judge Hall. I have known Judge Hall almost the entire time I have been a prosecutor. I have interacted with him when he was in private practice, during the 12 years that he worked in my office under my supervision, and finally, during the period immediately prior to his election to the bench when he was employed as an assistant public defender. As an individual, Dan Hall is a fundamentally decent and good man. As an attorney, I believe that Dan Hall was serving his highest and best purpose when he practiced criminal defense law. As a judge, I am convinced that he is incapable of divorcing himself from the role he played as an advocate.

I did not make this decision lightly. I have never weighed in on the candidacy of any judicial candidate with the Judicial Merit Selection Commission. In my many years with the Solicitor's Office I have practiced in front of countless judges from across South Carolina. Most have conducted themselves in a manner that was a credit to the bench. A few have had temperament issues and I have been on the receiving end of my fair share of harsh comments and criticism in open court. Sometimes I deserved it, and sometimes I was treated poorly for little or no reason. Every judge who treated me this way had one thing in common though: they behaved the same way towards everyone regardless of which side of the courtroom they sat on. They could be equally hard on my colleagues in the criminal defense bar as they were on me, so I never thought them biased on account of it. They were impartial in their crankiness.

Judge Dan Hall is partisan in his hostility. The employees of my office are the only recipients of his hostile and demeaning behavior. No judge should be rude or uncivil to a lawyer appearing before them but when it is so obvious that the hostility is directed at only one side it is not just about temperament, it becomes about bias. The behavior described in the examples below is not seen or felt by the attorneys on the other side of the courtroom.

I will start with overall observations about why I believe Judge Hall is unfit to remain on the circuit bench and then I will give examples that support those observations. The nature of my job is such that I am not in court to witness everything that takes place there. However, the attorneys who serve as assistants in my office are in court every day and interact with Judge Hall frequently. Their complaints to me over the past years during his tenure on the bench have been loud and frequent. Most of the examples I am providing come from them. I will provide the names of the attorneys and as much information as possible for the staff of the committee to investigate these matters as they deem necessary. I and my staff are available at any time to assist in this and will provide any other information you may need.

My complaints and concerns about Judge Hall focus on two issues: bias and temperament. It is my opinion that Judge Hall never ceased being an advocate after his election to the bench. He has continued to advocate in the cases that come before him rather than serve as a neutral and detached judge. He is inherently biased against the state and our position in court. I also believe that he is biased against law-enforcement in general. He has deeply held beliefs on many issues related to criminal justice and allows these beliefs to influence his decision making even if the beliefs are at odds with the law or concern a policy decision that is entirely within our

discretion. Further, should you disagree with his beliefs and advocate contrary to those beliefs, he is liable to treat you harshly. He openly criticizes, berates, and belittles members of my staff who advocate for positions he does not agree with. This is particularly troublesome for younger attorneys who do not know how, or are too afraid, to respond.

The practical effect of his behavior has been to chill their willingness to advocate for what I feel are reasonable outcomes in the cases they prosecute. For the attorneys for whom he has a particular dislike, going to court has become a stressful and painful experience resulting in a loss of job satisfaction and overall unhappiness. For the victims in the community we serve, the consequence has been less vigorous advocacy and a decline in the quality of justice they are entitled to expect. It is clear to me and to my staff that he neither likes us nor respects the work we do. As you will see from the examples below, his conduct towards certain attorneys and in certain types of cases is particularly egregious.

In addition to this, Judge Hall will make decisions based on what he thinks the law should be rather than what the law is. If he disagrees with the law or how it applies in a particular case, he is not afraid to ignore the letter of the law and do whatever he feels is best. Again, this always inures to the detriment of the state, never the detriment of the defendant.

The overall picture is one of a man who is inherently biased and hostile to the positions of the State and the victims we represent in court. He attempts to supersede the legitimate, discretionary decisions of the State's representatives and bully and intimidate the prosecution to chill their advocacy on behalf of the people. He is biased and expresses that bias in open court through sarcastic, critical, and condescending comments that belie a temperament incompatible with the authority granted him by his office.

**Specific Examples**

Judge Hall has been seen coming and going from the Public Defender's office on numerous occasions by members of my staff. I have personally witnessed this, by chance, on two occasions, and on a third occasion I saw him outside the building laughing and making faces at (what I believe was) the deputy public defender through the exterior window of the Public Defender's office. I normally do not take exception to members of the judiciary being social and friendly with other attorneys. I trust them and the attorneys to avoid discussing matters *ex parte* and generally believe that this does not happen. In Judge Hall's case though, given his hostile treatment and lack of respect for my staff, it has heightened our sense of mistrust and uneasiness.

We have had a handful of trial docketing meetings scheduled by Judge Hall in the past 2 years. These are attended by the York private bar, public defenders, and solicitors. During one of these meetings prior to Covid, Judge Hall stated that he was going to schedule a trial for a particular court week. The assistant solicitor assigned to that case, Marina Hamilton, could not

attend the meeting that day but other prosecutors in the meeting responded that she had another trial scheduled that week and it would be difficult to try two cases in one week. It was requested he move the second trial to another court week. He responded, with a condescending tone, that she could try two cases in one court week, and he would not move the second trial. Shortly after this exchange, he brought up another case that was up to be scheduled for trial. The public defender assigned to that case responded that she had another trial scheduled that same court week and asked if he would move the 2nd trial to another court week. He responded that yes, he would move it, as he did not want her to have to try two cases in one week.

In court, he berates assistant solicitor's so much that it makes others uncomfortable. The older attorneys are better able to handle remarks made to them, but the younger attorneys are very intimidated by the behavior he demonstrates. On October 12, 2021, Judge Hall called out Senior Solicitor Erin Joyner in court and was rude and condescending to the point that a public defender saw Ms. Joyner in the hallway later and said he was sorry that this had happened to her. It wasn't so much what Judge Hall was asking her as it was how he was asking it and the insinuation that she was doing something underhanded. His bias causes him to assume the worst without any evidence to justify his suspicions.

Over the years there have been multiple occasions where Judge Hall would make assistant solicitors explain how they came up with an offer that was pleading in front of him. When they would then explain to him how they came up with an offer he would proceed to make comments publicly and in front of their colleagues about how he does not agree with the offers we make. Again, this is an example of Judge Hall improperly expressing an opinion on a matter that is not his concern. Tellingly, he never questions the defense why they *accepted* the offer.

A recent example of this occurred on February 26, 2021, during a plea being held over WebEx. A case was called (State v. Joana Payne) and the assistant solicitor, Marina Hamilton, proceeded to explain the State's position and why she was asking for a particular sentence. Judge Hall cut her off on numerous occasions and would not let her give the State's position and essentially would not allow her to finish. He went against the State's recommendation on that case without hearing from her as to why she felt that sentence would have been appropriate. She was also prevented from correcting the record when the Defense attorney misstated something. As she was attempting to correct this on the record, she was cut off and prevented from finishing her presentation. After that plea, coworkers, and a reporter, who just happened to be on WebEx to observe another plea, commented to her that "Judge Hall was awful to you" and a coworker who said, "he is extremely biased against you." Another coworker describes it as "Judge Hall was beating up on you." The reporter added, "you held your tongue admirably even when it was clear that he hates you." She has never lost her composure and has always been respectful to Judge Hall, yet time and time again she is spoken down to by a Judge whose job it is to be impartial and have a proper courtroom demeanor. I do not know if the WebEx hearing was recorded or if a copy could be obtained from Court Administration.

Judge Hall routinely tries to facilitate plea resolutions to cases by in chambers hearings. These usually involve an attempt to get a solicitor to drop a mandatory minimum under the guise of a status conference. While I have no issue with the use of in chambers conference or status

conferences in general, Judge Hall ignores ABA rules as adopted by State of South Carolina in Harden v. State, 276 S.C. 249. The ABA and our courts allow judges to be included in plea negotiations subject to restrictions. First, all parties must consent. Secondly, our Supreme Court has a strong preference for these negotiations to be in open court and on the record unless good cause is present to require that they be held in chambers with the record sealed. By choosing to interject the court into plea negotiations as cited above, how Judge Hall chooses to facilitate a plea bargain violates what the S.C. Supreme Court and the ABA says is the appropriate scope and procedure for a judge to be involved in the plea process. ABA Standard 14-3.3. Harden v State, 276 SC 249. The fact that Judge Hall is unaware of the case law governing his involvement or his willful refusal to comply with the law is problematic.

Judge Hall also has little patience for the State being allowed to make a record in a case. While this again can be subjective, the State is often in the position of routinely limiting its presentation of the facts and evidence to avoid drawing the ire of the court. This practice has manifested specifically in a particular case before Judge Hall where Senior Solicitor Jennifer Colton was prosecuting a defendant represented by Assistant Public Defender Monier Abusaft. (State v. Mark Anthony Hall, approximately March 27, 2017.) Assistant Solicitor Austin Smith was co-counsel. There was a scheduling hearing to discuss preliminary matters in chambers with Judge Hall. After the in chambers discussion, the then deputy public defender accused Austin Smith and Jennifer Colton of misrepresenting something to Judge Hall during the in chambers hearing (notably the deputy public defender was *not present for this in chambers discussion, he relied on hearsay from Mr. Abusaft*). Because the accusation involved an in chambers hearing and they had been accused of egregious unethical conduct, Senior Solicitor Colton wanted to put this and all the matters discussed in chambers on the record to ensure it was clear about what was said to Judge Hall in chambers in case the deputy public defender wanted to report Ms. Colton and Ms. Smith to the bar (which he did not). The Court allowed a portion of the conversation to be placed on the record, such as trial date, etc. However, before the State could put on the record what they had told the judge (and more importantly clarify that no ethical violation had occurred), they were cut off by Judge Hall who stated that this matter is over and "that's it, I am not going to hear another word." They attempted again to make a record and again were admonished by Judge Hall who refused to hear anything further from the state. They have no idea why this occurred and felt they risked violating the rules of professional conduct and were put in position where they could not continue to argue with the court for many reasons, from risking contempt of court to potential ethics violation for arguing with the court after it issued a final order. Regardless, Judge Hall is seemingly unaware that the record of the court does not exist for his benefit but rather the benefit of the reviewing court. He may not prevent an attorney from placing all things they believe necessary to support their position on review. Again, I wonder what the reaction would be if a defense attorney was told they could not place a matter on the record they felt was needed to protect their clients' legal rights. Is the State any less entitled to a fair opportunity to make a record?

During a trial docket meeting held by Judge Hall on September 24, 2020, Senior Solicitor Marina Hamilton could not attend because she did not have childcare that day (due to Covid). However, she provided all her trial information to those who could make the meeting so they

could answer questions concerning her cases up for trial, and she was available via phone or video conference if needed. Senior Solicitor Misti Shelton had all the trial information and was able to speak for anyone not able to make the meeting. Judge Hall wanted to know where Ms. Hamilton was and when he was told she couldn't attend because she had no childcare, he said "you guys will have to figure out a way to be here and get your work done." He said, "I don't run your office, but I know you all need to be in this building." This was both an unfair comment on my office (who handled the lion's share of all court scheduling and planning during the first year of Covid) but also indicative of his bias against my office. No defense attorney was ever chastised for failing to attend a docket hearing. Some defense attorneys have completely failed to attend court, and nothing is said of it. He routinely criticizes my staff for carrying out policies set by me that he disagrees with but never calls me about them. I had asked him twice in person prior to this day not to criticize my staff over my office policies as they do not set policy. After the incident on September 24th, I wrote him a general letter (attached as Exhibit A) concerning docket management and mentioned it again at the conclusion. He has yet to ever raise any of these concerns with me but continues to harass my staff.

Assistant Solicitor Hannah Grove was assigned a case that was 30 years old. (State v. Cecilia Cunningham, plea, July 14, 2021). It involved a woman who, 30 years ago stabbed 3 people, putting one of the victims in ICU for nearly a week with a stab wound to the neck. She failed to come to court, and a bench warrant was issued. Due to a clerical error the bench warrant was incorrectly entered in the system and though she was arrested in the intervening years for other offenses the bench warrant was never served. She was eventually arrested in North Carolina earlier this year on the bench warrant. The case was evaluated, and the most seriously injured victim was located. He was her ex-husband and despite nearly having died from the wound, he was quite reasonable in his request for how to proceed. He did not want her to go to prison, he just wanted her to acknowledge she was guilty and if she did, he asked she be given probation. The defense and prosecution agreed to a negotiated sentence of probation and agreed to let the Judge set the terms of the probation. The case went in front of Judge Hall who asked the assistant solicitor: Who authorized her to prosecute this charge? Why were we doing this? What were we doing with a case so old? He was angry, bullying and trying to make her feel like she was doing something wrong. She explained the facts to him, including the feelings of the victim. Judge Hall told the solicitor she was "letting a victim decide what to do" and he refused to take a negotiated plea to probation as a sentence. The assistant solicitor felt like it was fair (and required by law) to take the victim's thoughts into consideration, despite the age of the case. The fact that so much time had passed was not the victim's fault and he, in fact, agreed with the negotiation of probation. Judge Hall would not accept the plea and insisted the attorneys plead the case as a recommendation instead of as negotiated. The Assistant Solicitor still asked for probation, but Judge Hall sentenced her to time served. Not a critical word was uttered to the assistant public defender who represented the defendant and agreed to the original plea. The fault was ours for making the offer, not his for accepting it as reasonable. No other judge I have ever practiced in front of would have taken exception to this very reasonable outcome or challenged our integrity for prosecuting the case.

On July 20, 2020, the defendant, Breana Ferrell, pled guilty to a DV 3d and was sentenced by Judge William McKinnon to 90 days suspended upon Batterer's Counseling completion. This is a program that my office developed to allow DV defendants an opportunity to avoid a conviction if they complete a counseling program. All the parties agree as part of the plea that if they fail to complete Batterer's Counseling, the agreed upon sentence should be imposed. On January 29, 2021, she was arrested again for a DV 3d against the same victim. She did not complete her batterer's counseling (she was terminated because of the second arrest) and therefore, she was looking at having the 90-day sentenced imposed. On October 15, 2021, at what should have been a routine hearing to have the 90-day sentence imposed, Judge Hall declined to impose the sentence Judge McKinnon sentenced the defendant to and delayed sentencing until October 25th. In an in chambers conference on October 21st, he said imposing a suspended sentence was not as simple as Senior Solicitor Leslie Robinson was making it sound, that he must sign his name on the page, and that his signature means that he agrees it is an appropriate outcome. Despite everyone, including the defendant, having agreed a year earlier that this would be the outcome he did not want to hold her accountable. It is difficult to justify programs such as this, which most often function to benefit defendants, if the courts will not hold the defendants accountable when they fail to comply. In the end, he declined to hear the matter and referred the case to Judge McKinnon to have him impose the sentence, which Judge McKinnon did.

Prior to working in my office as an assistant solicitor, Thomas Bowen was an assistant public defender. Back then he handled a case where his client had agreed to take a plea offer with the understanding that he would waive learning the identity of the confidential informant and receiving a copy of the video of the actual buy. We are concerned about the safety of informants as we have had informants murdered in my jurisdiction in the past. The solicitor had provided still photographs from the distribution video as well as Brady material on the case. Mr. Bowen had explained all of this to his client and advised him that if they demanded the confidential informant's name and the full video of the buy, it would be provided; however, the offer would be pulled and his client would either have to go to trial or plead straight up, without an offer, as charged. His client believed his best option was to take the offer and agree to the waivers. He agreed with his client's decision. During the plea, Judge Hall became very disrespectful to the assistant solicitor over the waiver issue, even though Mr. Bowen's client had agreed to it. Judge Hall's tirade over this well-established legal principle was far from professional and showed a complete lack of understanding about what the defense can legally waive during plea negotiations. He expressed the opinion that this could not be waived. He is familiar with this issue as he raised this same issue as an Assistant Public Defender in front of Judge John C. Hayes and his motion was denied. This issue did not end in court that day. After the plea was completed, Judge Hall called Mr. Bowen and Senior Solicitor Jennifer Colton into chambers where he again attacked Senior Solicitor Colton over the waiver issue. Senior Solicitor Colton recited case law to him that permitted plea bargains that waived this right. He went so far as to order her to write a legal memorandum to him on how this waiver is legal, which she did. It is attached as Exhibit B. This was not the first time she has had to make this argument in front of Judge Hall, and he continues to criticize my attorneys over this issue to this day. If Judge Hall does not agree with the law, he will belittle a prosecutor who asserts their

right under the law to intimidate them from advocating a lawful position. Imagine a judge berating a defense attorney for making a suppression motion on behalf of their client. There would, quite rightly, be outrage.

When a case reaches a point that a trial appears to be a distinct possibility, our practice is to bring the parties together for a hearing, on the record, to ensure that the defendant is officially rejecting the offer made by the State. Too many times we have been in trial or about to start a trial when the defense attorney or defendant claims the offer was never relayed to the defendant or that the attorney misunderstood the offer, and it was not relayed correctly to the defendant. The US Supreme Court has advised us to do offer rejections in the cases Lafler v. Cooper and Missouri v. Frye. However, when attempting to hold hearings of this kind, Judge Hall regularly asks the Assistant Solicitors why they are doing these rejections on the record. In two recent attempts by Senior Solicitor Marina Hamilton to hold an offer rejection hearing, the defense attorney criticized her, saying that she was "wasting the courts' time doing this on the record", to which Judge Hall responded, "Yeah, I agree with him." (State v. Haley Hubner with defense attorney Craig Pisarik, August 12, 2021) When trying to do these hearings he asked, in a critical fashion, "what are you doing this for" (State v. Aaron Davis with Assistant Public Defender Cassity Brewer, October 13, 2021). This kind of constant criticism for doing something so simple and important to the case is detrimental to the State and to the system at large. The reason we do offer rejection hearings should be obvious and it has been explained to Judge Hall that it is in the interest of both the prosecution and the defense to protect the record against a future PCR. Judge Hall has even been given examples of cases that were called for trial where the defendant or the defense attorney claimed an offer was not conveyed; however, he persists in openly criticizing my staff for simply doing what the law requires. Lafler-Frye hearings are now a fixture of the criminal justice system across the country and are no more a waste of time than the judge asking a defendant during a plea colloquy if they are satisfied with their attorney, has the attorney done all they asked and answered all their questions. It is an important part of the process, not "a waste of time".

The examples above show a culture of bias and incivility that Judge Hall has created and the perception of bias against the lawyers representing the state. In General Sessions, every criminal case has a prosecutor that represents the State. Judge Hall's actions and rulings create an environment where the lawyers (prosecutors) that are involved in every single general session case, are fearful of the court and reluctant to do their jobs to the best of their ability before Judge Hall. The court should be unbiased and the bar, the bench and the community in general should always have faith that they will be treated equally. It is a fundamental requirement of a judge and our courts to treat all who appear before the court with dignity, respect, and civility. The judicial ethical cannons demand of our judges that they avoid the appearance of impropriety and bias, which is precisely why lady justice is blind. While understandably, most of these incidents taken in isolation might be explained/mitigated, the general reputation of Judge Hall based on his actions is that he is no longer ethically or professionally fit to serve. His conduct with the State is biased. It is clear to witnesses, victims, the defense attorneys who routinely apologize to us when witnessing said conduct, law enforcement, and the public. This conduct undermines the credibility of the judiciary in general.

The final example I would use to illustrate the issues I have with Judge Hall occurred in April of 2020 and involve a domestic violence homicide case.

On April 8, 2020, Paul Johnson. Sr. shot and killed his wife Sharekia and his son Paul Johnson, Jr. Johnson, Sr. had been released on bond the previous December by the magistrate after being arrested for Aggravated Domestic Violence. Upon release he was immediately caught on camera violating the restraining order imposed by the magistrate who then revoked the bond and ordered his rearrest upon motion of an assistant solicitor from my office. Judge Chisa Putman's order revoking the bond made it clear that he had been told in writing and orally not to go to the marital home. On January 8th, 2020, at a hearing in circuit court, Judge Hall reinstated the bond and Mr. Johnson was released again. Three months later the murders occurred and the history of his arrest and release was detailed in the newspaper. Sheriff Kevin Tolson and I were quoted in the article (neither of us initiated the press coverage or contacted the media but did respond to their calls and questions) and the next day we were contacted by Judge Hall and instructed to appear in his courtroom on Monday.

In the private meeting in the courtroom attended by me, the sheriff, Judge Hall, his law clerk and his secretary we were criticized and accused of smearing him in the media. We both told him that we did not directly or indirectly initiate contact with the media. When called and offered the chance, neither of us took the opportunity to criticize Judge Hall. When I was ultimately asked by a reporter if there was anything that my office could have done to prevent these two people from being murdered, I answered that my staff did all they could to protect them, which is true. We told him that we did not write the article and were not responsible for its tone or content.

During the meeting with the Sheriff and myself, Judge Hall was hostile and defensive, at one-point yelling at me, "you be quiet", when I was trying to answer his question and explain my position. The meeting was abbreviated when both the sheriff and I walked out. As I left the room, he made a comment (I cannot remember exactly what he said) and I stopped and explained to him the impact his behavior was having on my assistants. I shared that many on my staff, especially the younger attorneys disliked going into his courtroom. I told him that his dismissive and hostile treatment was not fair and that they were just trying to do a job. I cited to him the example of a hearing a couple weeks before (the bond hearing for Augustus Invictus on March 27, 2020) where he was uncivil to Senior Solicitor Jenny Desch in my presence, cutting her off and treating her presentation dismissively. We have all been the subject of judicial criticism at some point in our careers but, I told him, it being a regular feature in his courtroom was causing my staff to fear and dislike him. I hoped that would appeal to the essential decency that is at his core and might cause him to reflect. It was not the first time I had shared that concern.

To his credit, Judge Hall reached out to both the sheriff and I a few days later and apologized for his treatment of us. He told me that he never wanted to be the kind of judge that my staff perceived him to be, and that he wanted his courtroom to be cordial and collegial. I believe that he does want this, I just don't think he can turn off the advocate that lives inside him. He disagrees on some issues so intensely (even when the law is clear) that he simply cannot help

himself. To further emphasize this, I would point out that most of the examples I have provided in this statement occurred after this conversation.

I sincerely wish that I did not have to file this complaint. I like Dan Hall personally and I always have. But I just cannot sit quietly by and allow my staff to be subjected to abuse by Judge Hall for another five or six years without registering this objection and doing all I can to try and make sure they can practice law in an environment where they are respected and treated fairly. More importantly, I cannot adequately protect the citizens of the 16th Circuit unless my staff is free to advocate passionately for the justice that they feel is appropriate, without fear they will be ridiculed and humiliated in open court.

Exhibit A

SIXTEENTH CIRCUIT SOLICITOR
STATE OF SOUTH CAROLINA

KEVIN S. BRACKETT
SOLICITOR

October 6, 2020

Judge Hall:

I am writing again to address to you my concerns about the management of the docket. In the wake of the September 24th docket meeting it seems there are clearly some issues that need to be addressed. What follows is my effort to first provide some historical context followed by my perception of the problems and suggestions going forward.

In July of last year, the Chief Justice issued an order directing that all CJAP's manage the docket going forward. Your idea at the time was for my office to continue to do what we had been doing and you to be involved only as needed to resolve disputes. You, Harry Dest and I met, and I said I did not want to continue to manage the docket. The docket cannot be managed by committee and the judiciary was the appropriate and best agency to oversee it.

Trial docket scheduling meetings began in York, nothing changed in Union. The bulk of the administrative oversight of the caseload in York continued to be managed by my office. Pleas were organized and scheduled by my staff, defendants were docketed to appear in court by my attorneys and day to day scheduling remained our responsibility. Then the pandemic ensued, and the business of the courts changed radically. The focus turned to controlling the jail population and addressing pressing matters related to defendants out on bond. Eventually, with the courts approval, we began to try to organize the recently bonded defendants using the call-in system organized by my office.

I have every limited docket generated by my attorneys since the pandemic started. We have worked very hard to keep cases flowing as best as circumstances allow. In short, we have not only been doing our job over the last months, we have been successfully managing the plea docket and have used nearly all the court time allotted to us.

The Public Defender and a select few private attorneys have generally worked hard. Some have not. Too often, plea offers have gone unanswered and it is difficult to near impossible to get some attorneys to respond. Without the ability to docket cases or schedule them for trial we have no tools to address a large body of the existing caseload.

There is no way that the docket is going to succeed going forward without a significant amount of hands-on involvement from the bench. Based on your comments I think you believe that we can just

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continue to operate the way we have, and everything should be fine. This will not work in the near term or the long term.

In the Covid era you, as the CJAP, will have to involve yourself much more in the day to day management of the cases. In the docket meeting you were asking which cases were ready for trial and we had a number that we put forward as potential trials. When the defense attorney spoke up and said it was a plea you complained that we should only bring real trials to table. A number of those cases we tendered were only tendered as trials after the defense attorney completely ignored our plea offers and all efforts at communication and case resolution. Trial was the only tool we had left to attempt to move the case. Compelling defense participation is neither within our power or our responsibility.

I recommend we begin holding status conferences for all jail cases and all pending cases from 2019 back to begin the process of getting a handle on what is pending and where each case stands. Sometimes, the mere fact that a judge is asking can motivate people to seek resolution.

I have instructed my staff to request status conferences on all cases where we need assistance getting responses. It should not require a status conference to get a response from an attorney and I hope that as you see who we are having difficulty with, you will use your influence and authority to motivate them to diligently follow up on communications from my office. In future docket meetings I suggest you also inquire of the defense which of their cases are trials. We do not know what their client's intentions are, only they do.

I also request that future docket meetings should be on the record, and during Covid, accessible via Webex for any attorney who chooses to attend in that fashion.

For the long term, there needs to be a new plan to provide a framework for how cases will be managed by the court from beginning to end. Right now, there is a lot of confusion as to what the expectations are for the docket meetings. I know you expect everyone to "work together as professionals" and I share that hope, but I also know that not everyone will. Even if they all do though, we still need an established set of guidelines and rules that dictate how a case will be processed by the court from warrant to disposition. This new procedure needs to reflect the post-Langford reality that our new position in the administration of the criminal justice system is the same as the defense's position. The existing DCM order is, for all practical purposes, irrelevant at best and unconstitutional at worst.

I would urge you to consider my suggestion of several weeks ago to adopt a system that requires a defendant to appear in front of a circuit judge as needed to announce the progress of the case and that no person should ever leave court without having their next court date scheduled and expectations set as to what is to be accomplished in the meantime. If we can adopt a program that requires both parties to appear and relate the status of the case and how long they need to make decisions on pleas or prepare for trial we can then schedule next court appearances and the docket will create itself.

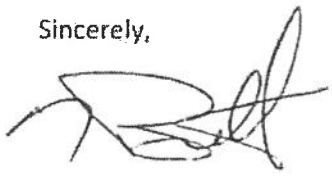
Whatever form the new rules take please understand that going forward my office will not be responsible for many of the tasks that we have historically undertaken and are no longer our responsibility. While we expect the same level of input afforded other parties in the system these matters no longer fall under our purview. These include:

1. Preliminary hearing scheduling and organizing. Whenever prelims start again, we are going to insist on strict adherence to Rule 2 and they must be organized and handled by the summary court.
2. Preparation and publication of dockets and oversight of roll call. If we adopt some version of my suggestion above this task should be simplified. All defendants scheduled under the procedure outlined should appear in court to advise the court on the latest status update and the next court date can be decided then. Should a defendant no-show, a bench warrant can be issued.
3. Preparation of bond returnable and IA schedules to be used by the magistrates in setting bond.

Finally, I understand you voiced some concerns over whether my staff should be working from the office or home. Our office is functioning the same as if we were all at the Moss each day. Although we always have some attorneys present in the office each day, our case management system has allowed for us to work from home with the virtually the same level of efficiency we would have were we in the office. All of our cases are digital and accessible from a cloud-based server. Each attorney has a laptop and computer monitors as well as cell phones. I have had NO complaints from any defense attorneys, victim's, or judges about their availability. In fact, they have been nothing but complimentary about the organization of the cases for court and our accessibility. When anyone on my staff is needed at the Moss they are there.

When I decide to return to normal operations it will be after careful consideration of the office's needs and the safety and welfare of my staff as well as court staff. Until then, we will continue to operate as we have. If you have any concerns about my policy's you would do better to address them directly to me as I am the one who sets them for the office.

Sincerely,



Kevin Brackett

Exhibit B

Judge Hall:

Attached please find the cases the State has researched regarding whether a guilty plea without disclosure of a confidential informant's identity is Constitutional.

In order to address the question accurately, it is necessary to distinguish Constitutional Rights at Trial vs. and Constitutional Rights during Plea Negotiations. Understanding the court's position that it isn't concerned with plea bargain negotiations on this issue, the Constitutional Waiver analysis of this issue is rooted in the State's and society's public policy need for (1) plea negotiations and (2) maintaining the confidentiality of informants. The question isn't what the State can withhold, the question is what Rights can a Defendant waive *and* what can the State and Defendant negotiate for in a plea bargain.

The State understands and is in full agreement, that if a case is set for trial, the State is obligated to comply fully with Brady and Rule 5 of the South Carolina Rules of Criminal Procedure, and would be obligated to turn over any materials that fall under both obligations, including Confidential Informant information and recordings. This issue was addressed in Hyman v. State S.Ct. Opinion 27105 (2012). The distinguishing factor in Hyman is that the plea offer was rejected and the case was set for trial. Hyman argues that he would have taken the plea negotiation if he saw the video and that Counsel was ineffective for not obtaining it before the offer was revoked. The Court found Hyman's

agreement). Id. Ruiz refused to agree, the plea offer was withdrawn by the government, and ultimately Ruiz pled guilty without a plea offer (as is the case in Hyman). Id. At the sentencing, Ruiz asked for the same offer that she would have received had she accepted the 'fast track' agreement *(just as Hyman did in the South Carolina case)*. Ruiz appealed on three grounds (1) that criminal defendants are entitled to the same impeachment information prior to entering a plea agreement as they prior to trial, (2) the Constitution prohibits defendants from waiving their right to that information, and (3) the "fast track" plea agreement is unlawful because it insists upon a these waivers. Id. The Supreme Court held that the governments "fast track" plea offers are valid. Specifically the Court held that:

> The Federal Constitution--particularly in the Constitution's Fifth and Sixth Amendments--does not require the government to disclose material impeachment evidence prior to entering a plea agreement with a criminal defendant, for:
> (1) Impeachment information is special in relation to the fairness of a trial, not in respect to whether a plea is voluntary, as it is particularly difficult to characterize impeachment information as critical information of which the defendant must always be aware prior to pleading guilty given the random way in which such information may, or may not, help a particular defendant, where the degree of help that impeachment information can provide will depend upon the defendant's own independent knowledge of the prosecution's potential case.
>
> (2) The Constitution, in respect to a defendant's awareness of relevant circumstances, does not require complete knowledge of the relevant circumstances, but permits a court to accept a guilty plea, with its accompanying waiver of various constitutional rights, despite various forms of misapprehension under which a defendant might labor.
>
> (3) Due process considerations argue against requiring disclosure

> of impeachment information, where (a) the value of such information to a defendant is often limited, for it depends upon the defendant's independent awareness of the details of the government's case, (b) the government will provide any information establishing the factual innocence of the defendant in any case, and that fact, along with other guilty plea safeguards, diminishes the force of the concern that, absent impeachment information, innocent individuals will plead guilty to crimes, (c) a constitutional obligation to provide impeachment information during plea bargaining, prior to entry of a guilty plea, could seriously interfere with the government's interest in securing those guilty pleas that are factually justified, desired by defendants, and help to secure the efficient administration of justice, and (d) such an obligation could (i) ***force the government to abandon its general practice of not disclosing to a defendant pleading guilty information that would reveal the identities of cooperating informants, undercover investigators, or other prospective witnesses,*** (ii) require the government to devote substantially more resources to trial preparation prior to plea bargaining, thereby depriving the plea-bargaining process of its main resource-saving advantages, or (iii) lead the government instead to abandon its heavy reliance upon plea bargaining in a vast number of federal criminal cases. Id. (emphasis added).

Ruiz upholds the constitutionality of negotiating waivers of informant information. Ruiz even goes beyond that and permits the State to negotiate for waivers of impeachment evidence that has Brady implications and says even that is not a constitutional violation because it relates to fairness of trial (as an aside, the Sixteenth Circuit is not negotiating for such waivers). Ruiz recognized that waivers do not require complete knowledge of all relevant circumstances, even constitutional misconceptions, and certainly not factually based circumstances. The Constitution of the United States and South Carolina Supreme Court does not prohibit a Defendant from waiving his right to Informant information in order to get a plea bargain. In support of defining 'waiver' Ruiz cites Weatherford v. Bursey, 429 U.S. 545 (1977), that "there is no general constitutional right to

discovery in a criminal case. And that, the law ordinarily considers a waiver knowing, intelligent, and sufficiently aware if the defendant fully understands the nature of the right and how it would likely apply in general in the circumstances - even though the defendant may not know the specific detailed consequences of invoking it".

For the aforementioned reasons, the State maintains that Defendants have the right to waive disclosure of confidential informant information during plea negotiations and that this practice is consistent with Federal and State law. "Knowingly and Voluntarily Waiving" is not specifically knowing all relevant factually based circumstances the State has in its possession. Waiver of factual information does not trigger a Constitutional question during plea negotiations. Our Courts have consistently upheld and legitimized these practices for public policy reasons in order to secure the safety and confidentiality of informants. The Courts recognize that the State interest in informant protection has *merit* and needs to be considered in the balance against Defendant's rights. Therefore, this court has full authority to accept these type of plea negotiations, as they are consistent with Constitutional law, State law, public policy, and are beneficial Defendants wishing to negotiate plea bargains. We respectfully ask this court not to impede the ability of Defendants to waive their rights and to allow Defendants to freely negotiate with the State.