

Exhibit

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William M. Windsor

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October 11, 2011

Mr. Al Clark
Office of the Clerk of the Court
Fulton County Superior Court
136 Pryor Street
Atlanta, GA 30303

Re: 2011cv206243

Dear Mr. Clark:

When you read these words, the enclosed documents are filed. Please docket these filings immediately in this order:

- Motion for Reconsideration or to set Aside Order or for New Trial
- Twenty-Second Affidavit of William M. Windsor
- Motion to Add Defendants
- Twenty-Fourth Affidavit of William M. Windsor
- Emergency Motion to Recuse Judge Jerry W. Baxter
- Twenty-Third Affidavit of William M. Windsor
- Motion to Disqualify All Fulton County Judges
- Twenty-Fifth Affidavit of William M. Windsor
- Motion for Evidentiary Hearing
- Twenty-Sixth Affidavit of William M. Windsor
- Motion for Contempt
- Twenty-Seventh Affidavit of William M. Windsor
- Affidavit of Service of Herbert J. Bridgewater
- Motion for leave of court to file second amendment to first amended verified complaint to add defendants
- Twenty-Eighth Affidavit of William M. Windsor

Enclosed is \$7. Thank you.

Delivery of documents to the Office of the Clerk of the Court constitutes filing. The Office of the Clerk has no legal right to block the docketing of anything that I properly deliver to the Clerk of the Court. In fact, please be advised that if you or anyone else interferes with the docketing of these now filed documents, I will consider that you have committed the crime of obstruction of justice and that you are part of the criminal racketeering operation in Fulton County, and I will seek to file civil charges against you, and I will attempt to get criminal charges against you with the District Attorney and the Grand Jury. Please read 2011CV206243. This will apply to any and all employees of the County who are involved in this illegal activity, so be sure to let everyone know. Legal counsel from someone other than a County attorney would be advisable, in my opinion.

Please return a receipt and file-stamped front pages to me.

Please review the enclosed case citations to understand your ministerial duty and the law regarding filing.

"The duties of the clerk relating to the filing of complaints are ministerial in nature . . ." *Orr v. Culpepper*, 161 Ga. App. 801, 804 (288 S.E.2d 898) (1982). **"It is the official duty of the clerk of a court to file all papers in a cause presented by the parties, and to mark them filed, with the date of filing. [Cits.]"** (*Brinson v. Georgia RR Bank &c. Co.*, 45 Ga. App. 459 at 460 (165 SE 321) (1932).) **[emphasis added.]**

The habeas **court clerk's duty to file a notice of appeal is ministerial in nature, and it was beyond her duty or power to concern herself with the legal viability of a notice presented to her for filing.** See *Orr v. Culpepper*, 161 Ga. App. 801, 804 (288 SE2d 898) (1982). By rejecting Hughes' timely notice of appeal, the clerk of the habeas court, in effect, determined its legal insufficiency and then undertook to dismiss the appeal. In so doing, she usurped this Court's authority to determine its own jurisdiction. (*Hughes v. Sikes*, 273 Ga. 804, 546 S.E.2d 518 (Ga. 05/07/2001).) **[emphasis added.]**

"The actual date of filing is the date upon which the paper is handed to the clerk to be filed. [Cits.]. So, where a motion for new trial has been delivered for filing to the clerk, it will be deemed filed even though that officer fails to make the proper entry of filing thereon." *Brinson v. Georgia RR Bank &c. Co.*, 45 Ga. App. 459, 461 (165 SE 321) (1932). **It is beyond the purview of the clerk to be concerned with the legal viability of a pleading presented to the clerk for filing.** See *Hughes v. Sikes*, 273 Ga. 804 (1) (546 SE2d 518) (2001) (where clerk

returned notice of appeal for supplementation); *Gibbs v. Spencer Industries*, 244 Ga. 450, 451 (260 SE2d 342) (1979). (*Hood v. State*, 651 S.E.2d 88, 282 Ga. 462 (Ga. 09/24/2007).) **[emphasis added.]**

"Causing a paper 'to be actually placed in the hands of the clerk of a trial court within the time prescribed by law for filing the same in [the clerk's] office is all that is, in this respect, required of a party." *Gibbs v. Spencer Industries*, 244 Ga. 450, 451 (260 SE2d 342) (1979). "The actual date of filing is the date upon which the paper is handed to the clerk to be filed. [Cits.]. So, where a motion for new trial has been delivered for filing to the clerk, it will be deemed filed even though that officer fails to make the proper entry of filing thereon." *Brinson v. Georgia RR Bank &c. Co.*, 45 Ga. App. 459, 461 (165 SE 321) (1932). It is beyond the purview of the clerk to be concerned with the legal viability of a pleading presented to the clerk for filing. See *Hughes v. Sikes*, 273 Ga. 804 (1) (546 SE2d 518) (2001); *Gibbs v. Spencer Industries*, supra, 244 Ga. 450. **[emphasis added.]**

If pleadings are delivered to the clerk for filing they will be deemed filed even though the proper entry of filing is not made thereon. See *Brinson v. Ga. R. Bank &c. Co.*, 45 Ga. App. 459, 461, supra; *Cooper v. Nisbet*, 119 Ga. 752 (1), 755 (47 S.E. 173). (05/12/78 *Boston Sea Party Atlanta v. Bryant*, 246 S.E.2d 350, 146 Ga. App. 294.) (See also *Lavan et al. v. Philips*, 362 S.E.2d 138, 184 Ga. App. 573 (10/19/87).) **[emphasis added.]**

"The actual date of filing is the date upon which the paper is handed to the clerk to be filed. [Cit.]" *Brinson v. Ga. R. Bank &c. Co.*, supra, p. 461. (*H. R. Lee Investment Corporation v. Groover*, 225 S.E.2d 742, 138 Ga. App. 231 (03/19/76).) **[emphasis added.]**

it is settled law that delivery of a pleading to a proper official is sufficient to constitute filing thereof. *United States v. Lombardo*, 241 U.S. 73, 36 S. Ct. 508, 60 L. Ed. 897 (1916); *Milton v. United States*, 105 F.2d 253, 255 (5th Cir. 1939). In *Greeson v. Sherman*, 265 F. Supp. 340 (D.C.Va.1967) it was held that a pleading delivered to a deputy clerk at his home at night was thereby "filed." (*FREEMAN v. GIACOMO COSTA FU ANDREA*, 282 F. Supp. 525 (E.D.Pa. 04/5/1968).)

FRCP Rule 5(d)(2): **"A paper is filed by delivering it: (A) to the clerk...."**
FRCP Rule 77 (a) "When Court Is Open. Every district court is considered always

open for filing any paper, issuing and returning process, making a motion, or entering an order.” **[emphasis added.]**

“The duty of the clerk is to make his record correctly represent the proceedings in the case....” (*WETMORE v. KARRICK*, 27 S. Ct. 434, 205 U.S. 141 (U.S. 03/11/1907).) **Failing to file documents presented and reflect the documents on the docket is a failure to perform the ministerial duties of the Clerk of the Court. [emphasis added.]**

“...his [Clerk of the Court] job is to file pleadings and other documents, maintain the court's files and inform litigants of the entry of court orders.” *Sanders v. Department of Corrections*, 815 F. Supp. 1148, H49(N.D. Ill. 1993). (*WILLIAMS v. PUCINSKI*, 01C5588 (N.D.Ill. 01/13/2004).)

The clerk of a court, like the Recorder is **required to accept documents filed**. It is not incumbent upon him to judicially determine the legal significance of the tendered documents. *In re Halladjian*, 174 F. 834 (C.C.Mass.1909); *United States, to Use of Kinney v. Bell*, 127 F. 1002 (C.C.E.D.Pa.1904); *State ex rel. Kaufman v. Sutton*, 231 So.2d 874 (Fla.App.1970); *Malinou v. McElroy*, 99 R.I. 277, 207 A.2d 44 (1965); *State ex rel. Wanamaker v. Miller*, 164 Ohio St. 176, 177, 128 N.E.2d 110 (1955.). (*Daniel K. Mayers Et Al., v. Peter S. Ridley Et Al.* No. 71-1418 (06/30/72, United States Court of Appeals for the DC Circuit.) **[emphasis added.]**

The specific allegation in Mr. Snyder's complaint is that Mr. Nolen, acting as the Circuit Court Clerk, refused to file or actually removed already filed papers from the court's docket. Under Illinois law, **the clerk simply has the ministerial duty to file papers** that conform to the technical rules of court. See *In re Estate of Davison*, 430 N.E.2d 222, 223 (Ill. App. Ct. 1981) ("Delivery alone has been held to constitute filing since the person filing has no control over the officer who receives documents. Subsequent ministerial tasks of the clerk evidence the filing of a document but are not essential to its perfection." (internal citation omitted)); *Roesch-Zeller, Inc. v. Hollebeak*, 124 N.E.2d 662, 664 (Ill. App. Ct. 1955) ("**The duty of the clerk to file the document on the date it was presented to him was a ministerial act**, the performance of which could be compelled by writ of mandamus."). (*Snyder v. Nolen*, 380 F.3d 279 (7th Circuit, 08/13/2004).) **[emphasis added.]**

The word "filed" the Act uses, is, as applied to court proceedings, a word of art, having a long established and well understood meaning, deriving from the practice

of filing papers on a string or wire. It **requires of one filing a suit, merely the depositing of the instrument with the custodian for the purpose of being filed.** Except where some specific statute otherwise provides, and none such is present here, it charges him with no further duty, subjects him to no untoward consequences as a result of the failure of the custodian to do his duty, by placing the instrument on the file, or as in modern practice placing his file mark on the instrument. Collected in vol. 3 *Words and Phrases*, First Series, pp. 2764-2770, inclusive; vol. 2 *Words and Phrases*, Second Series, pp. 531, 534, may be found cases from many jurisdictions, all to the same effect, that **the filing of a paper is the delivery of it to the officer at his office**, to be kept by him as a paper on file, and that the file mark of the officer is evidence of the filing, but it is not the essential element of the act. A paper may be filed without being marked or endorsed by the clerk, *In re Conant's Estate*, 43 Or. 530, 73 P. 1018; *Holman v. Chevallier*, 14 Tex. 337; *Eureka Stone Co. v. Knight*, 82 Ark. 164, 100 S.W. 878; *Darnell v. Flynn*, 69 W.Va. 146, 71 S.E. 16. Perhaps the best statement of the meaning and consequences of filing is to be found in the *Chevallier* case, supra. "Though the ancient mode of filing papers has gone into disuse, the phraseology of the ancient practice is retained, in the common expressions 'to file,' 'to put on file,' 'to take off the file,' &c., from 'filum' the thread, string, or wire used in ancient practice, for connecting the papers together. The term 'file' is also used to denote the paper placed with the Clerk, and assigned by the law to his official keeping. A file is a record of the Court.(1 Litt., 112; Burr. L.D. tit. File.) It is the duty of the Clerk, when a paper is thus placed in his custody or 'filed' with him, to endorse upon it the date of its reception, and retain it in his office, subject to inspection by whomsoever it may concern; and that is what is meant by his 'filing' the paper. But **where the law requires or authorizes a party to file it, it simply means that he shall place it in the official custody of the Clerk.** That is all that is required of him; and if the officer omits the duty of endorsing upon it the date of the filing, that should not prejudice the rights of the party. And hence it is the common practice, where that has been omitted, for the officer, with the sanction of the Court, to make the endorsement now for then; the doing of the act now, that is, at the time when it is actually done, being allowed to operate as a substitute and equivalent for doing it then, or when it should have been done. And acts thus allowed to be done by the Clerk of the Court, with the sanction of the Court, have the same effect as if they had been done at the proper time. (1 Stra. 639; 2 Tidd's Pr. 932.) It was the filing of the affidavit and certificate by the party, under the statute, and not the endorsement of the date of their reception, or the filing by the Clerk, which was a condition precedent to the issuing of the execution in this case. The object of the motion to obtain the authority of the Court for the filing of the clerk now for then was that the Court might receive evidence of the time of the

actual filing by the party, in order that the filing by the Clerk might relate back, and take effect from that period, as though it had been done then, when it should have been done. (*Milton v. United States*, 105 F.2d 253 (5th Cir. 07/06/1939).) *JOHANSSON v. TOWSON*, 177 F. Supp. 729 (M.D.Ga. 02/17/1959). [**emphasis added.**]

The tracing of our word 'file' to the Latin word 'filum' and its reference to the ancient practice of placing papers on a thread or wire for safekeeping and later reference is done in many cases, notably in *United States v. Lombardo*, 1916, 241 U.S. 73, 36 S. Ct. 508, 60 L. Ed. 897 and more recently in *Milton v. United States*, 5 Cir., 1939, 105 F.2d 253, 255. The latter case points out that **all that is required on the part of a person filing a paper with an official is 'merely the depositing of the instrument with the custodian for the purpose of being filed'**. (See *Palcar Real Estate Co. v. Commissioner of Internal Revenue*, 8 Cir., 1942, 131 F.2d 210; *Schultz v. United States*, Ct.Cl.1955, 132 F.Supp. 953, 955; *McCord v. Commissioner of Internal Revenue*, 1941, 74 App.D.C. 369, 123 F.2d 164, 165; *Central Paper Co. v. Commissioner of Internal Revenue*, 6 Cir., 1952, 199 F.2d 902, 904. (*JOHANSSON v. TOWSON*, 177 F. Supp. 729 (M.D.Ga. 02/17/1959).) [**emphasis added.**]

The filing of a paper takes place upon the delivery of it to the officer at his office. *Milton v. United States*, 5th Cir. 1939, 105 F.2d 253; *Poynor v. Commissioner*, 5th Cir. 1936, 81 F.2d 521. When the mails are utilized for the purpose of filing an instrument, the filing takes place upon delivery at the office of the official required to receive it. *Wampler v. Snyder*, 1933, 62 App. D.C. 215, 66 F.2d 195. (*Phinney v. Bank of Southwest National Association*, 335 F.2d 266 (5th Cir. 08/05/1964).) (See also *United States v. Missco Homestead Ass'n Inc.*, 185 F.2d 283 (8th Cir. 11/01/1950).) (*DIENSTAG v. ST. PAUL FIRE & MARINE INS. CO.*, 164 F. Supp. 603 (S.D.N.Y. 11/18/1957); *Thorndal v. Smith, Wild, Beebe & Cades*, 339 F.2d 676 (8th Cir. 01/04/1965); *LONE STAR PRODUCING CO. v. GULF OIL CORP.*, 208 F. Supp. 85 (E.D.Tex. 07/17/1962).) [**emphasis added.**]

Although *Lombardo* was decided before the Federal Rules of Civil Procedure were promulgated, courts have relied on it and *Federal Rules of Civil Procedure* 3, 5(e), and 77 for the same proposition. See, e.g., *Milton v. United States*, 105 F.2d 253, 255 (5th Cir. 1939) ("**The word 'filed' . . . requires of one filing a suit, merely the depositing of the instrument with the custodian for the purpose of being filed. Except where specific statute otherwise provides, and none such is present here, it charges him with no further duty, [and] subjects him to no**"),

untoward consequences."); *Greeson v. Sherman*, 265 F.Supp. 340, 342 (W.D. Va. 1967)("[I]f rule 3 is read in conjunction with Rule 5(e) . . . [a complaint is filed when] the complaint is delivered to an officer of the court who is authorized to receive it."); *Freeman v. Giacomo Costa Fu Andrea*, 282 F.Supp. 525, 527 (E.D.Pa. 1968)("[I]t is settled law that delivery of a pleading to a proper official is sufficient to constitute filing thereof.") In *Cintron v. Union Pacific R. Co.*, 813 F.2d 917, 920 (9th Cir. 1987), the court said: The consensus is that "[p]apers and pleadings including the original complaint are considered filed when they are placed in the possession of the clerk of the court." C. Wright & A. Miller, *Federal Practice and Procedure* § 1153 (1969). See *United States v. Dae Rim Fishery Co.*, 794 F.2d 1392, 1395 (9th Cir. 1986). The court then discussed earlier cases, including *Loya v. Desert Sands Unified School Dist.*, 721 F.2d 279 (9th Cir. 1983).... (*Stone Street Capital, Inc. v. McDonald's Corp.*, 300 F.Supp.2d 345 (D.Md. 11/06/2003).) [**emphasis added.**]

Filing is complete once the document is delivered to and received by the proper official. *United States v. Lombardo*, 241 U.S. 73, 76, 36 S.Ct. 508, 60 L.Ed. 897 (1916). *Freeman v. Giacomo Costa Fu Andrea*, 282 F. Supp. 525, 527 (E.D.Pa. 1968) ("[I]t is settled law that delivery of a pleading to a proper official is sufficient to constitute filing thereof."). (*CENTRAL STATES, SE & SW PENSION v. PARAMOUNT LIQUOR*, 34 F.Supp.2d 1092 (N.D.Ill. 02/09/1999).) [**emphasis added.**]

The docketing of filed documents is a ministerial act that the Office of the Clerk is obligated to perform. (See *RAY v. UNITED STATES*, 57 S. Ct. 700, 301 U.S. 158 (U.S. 04/26/1937).) [**emphasis added.**]

Sincerely,



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