

23-6352

Charles Gary Singletary, III
#367755

KIRKLAND CORRECTIONAL INSTITUTION
4344 Broad River Road
Columbia, SC 29210-0000

UNPUBLISHED**UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT**

No. 23-6352

CHARLES GARY SINGLETARY, III,

Plaintiff - Appellant,

v.

WARDEN JACKSON, Warden,

Defendant - Appellee.

Appeal from the United States District Court for the District of South Carolina, at Beaufort.
Henry M. Herlong, Jr., Senior District Judge. (9:22-cv-04362-HMH)

Submitted: June 15, 2023

Decided: June 21, 2023

Before DIAZ, RICHARDSON, and HEYTENS, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Charles Gary Singletary, III, Appellant Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Charles Gary Singletary, III, appeals the district court's order adopting the recommendation of the magistrate judge and dismissing his 42 U.S.C. § 1983 civil action. We have reviewed the record and find no reversible error. Accordingly, we affirm the district court's order. *Singletary v. Warden Jackson*, No. 9:22-cv-04362-HMH (D.S.C. Mar. 28, 2023). We deny Singletary's motion to appoint counsel and dispense with oral argument because the facts and legal contentions are adequately presented in the materials before this court and argument would not aid the decisional process.

AFFIRMED

FILED: June 21, 2023

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 23-6352
(9:22-cv-04362-HMH)

CHARLES GARY SINGLETARY, III

Plaintiff - Appellant

v.

WARDEN JACKSON, Warden

Defendant - Appellee

JUDGMENT

In accordance with the decision of this court, the judgment of the district court is affirmed.

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

FILED: June 21, 2023

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUITNo. 23-6352, Charles Singletary, III v. Warden Jackson
9:22-cv-04362-HMH

NOTICE OF JUDGMENT

Judgment was entered on this date in accordance with Fed. R. App. P. 36. Please be advised of the following time periods:

PETITION FOR WRIT OF CERTIORARI: The time to file a petition for writ of certiorari runs from the date of entry of the judgment sought to be reviewed, and not from the date of issuance of the mandate. If a petition for rehearing is timely filed in the court of appeals, the time to file the petition for writ of certiorari for all parties runs from the date of the denial of the petition for rehearing or, if the petition for rehearing is granted, the subsequent entry of judgment. See Rule 13 of the Rules of the Supreme Court of the United States; www.supremecourt.gov.

VOUCHERS FOR PAYMENT OF APPOINTED OR ASSIGNED COUNSEL:

Vouchers must be submitted within 60 days of entry of judgment or denial of rehearing, whichever is later. If counsel files a petition for certiorari, the 60-day period runs from filing the certiorari petition. (Loc. R. 46(d)). If payment is being made from CJA funds, counsel should submit the CJA 20 or CJA 30 Voucher through the CJA eVoucher system. In cases not covered by the Criminal Justice Act, counsel should submit the Assigned Counsel Voucher to the clerk's office for payment from the Attorney Admission Fund. An Assigned Counsel Voucher will be sent to counsel shortly after entry of judgment. Forms and instructions are also available on the court's web site, www.ca4.uscourts.gov, or from the clerk's office.

BILL OF COSTS: A party to whom costs are allowable, who desires taxation of costs, shall file a Bill of Costs within 14 calendar days of entry of judgment. (FRAP 39, Loc. R. 39(b)).

PETITION FOR REHEARING AND PETITION FOR REHEARING EN BANC:

A petition for rehearing must be filed within 14 calendar days after entry of judgment, except that in civil cases in which the United States or its officer or agency is a party, the petition must be filed within 45 days after entry of judgment. A petition for rehearing en banc must be filed within the same time limits and in the same document as the petition for rehearing and must be clearly identified in the title. The only grounds for an extension of time to file a petition for rehearing are the death or serious illness of counsel or a family member (or of a party or family member in pro se cases) or an extraordinary circumstance wholly beyond the control of counsel or a party proceeding without counsel.

Each case number to which the petition applies must be listed on the petition and included in the docket entry to identify the cases to which the petition applies. A timely filed petition for rehearing or petition for rehearing en banc stays the mandate and tolls the running of time for filing a petition for writ of certiorari. In consolidated criminal appeals, the filing of a petition for rehearing does not stay the mandate as to co-defendants not joining in the petition for rehearing. In consolidated civil appeals arising from the same civil action, the court's mandate will issue at the same time in all appeals.

A petition for rehearing must contain an introduction stating that, in counsel's judgment, one or more of the following situations exist: (1) a material factual or legal matter was overlooked; (2) a change in the law occurred after submission of the case and was overlooked; (3) the opinion conflicts with a decision of the U.S. Supreme Court, this court, or another court of appeals, and the conflict was not addressed; or (4) the case involves one or more questions of exceptional importance. A petition for rehearing, with or without a petition for rehearing en banc, may not exceed 3900 words if prepared by computer and may not exceed 15 pages if handwritten or prepared on a typewriter. Copies are not required unless requested by the court. (FRAP 35 & 40, Loc. R. 40(c)).

MANDATE: In original proceedings before this court, there is no mandate. Unless the court shortens or extends the time, in all other cases, the mandate issues 7 days after the expiration of the time for filing a petition for rehearing. A timely petition for rehearing, petition for rehearing en banc, or motion to stay the mandate will stay issuance of the mandate. If the petition or motion is denied, the mandate will issue 7 days later. A motion to stay the mandate will ordinarily be denied, unless the motion presents a substantial question or otherwise sets forth good or probable cause for a stay. (FRAP 41, Loc. R. 41).

U.S. COURT OF APPEAL FOR THE FOURTH CIRCUIT BILL OF COSTS FORM
(Civil Cases)

Directions: Under FRAP 39(a), the costs of appeal in a civil action are generally taxed against appellant if a judgment is affirmed or the appeal is dismissed. Costs are generally taxed against appellee if a judgment is reversed. If a judgment is affirmed in part, reversed in part, modified, or vacated, costs are taxed as the court orders. A party who wants costs taxed must, within 14 days after entry of judgment, file an itemized and verified bill of costs, as follows:

- Itemize any fee paid for docketing the appeal. The fee for docketing a case in the court of appeals is \$500 (effective 12/1/2013). The \$5 fee for filing a notice of appeal is recoverable as a cost in the district court.
- Itemize the costs (not to exceed \$.15 per page) for copying the necessary number of formal briefs and appendices. (Effective 10/1/2015, the court requires 1 copy when filed; 3 more copies when tentatively calendared; 0 copies for service unless brief/appendix is sealed.). The court bases the cost award on the page count of the electronic brief/appendix. Costs for briefs filed under an informal briefing order are not recoverable.
- Cite the statutory authority for an award of costs if costs are sought for or against the United States. See 28 U.S.C. § 2412 (limiting costs to civil actions); 28 U.S.C. § 1915(f)(1) (prohibiting award of costs against the United States in cases proceeding without prepayment of fees).

Any objections to the bill of costs must be filed within 14 days of service of the bill of costs. Costs are paid directly to the prevailing party or counsel, not to the clerk's office.

Case Number & Caption: _____

Prevailing Party Requesting Taxation of Costs: _____

Appellate Docketing Fee (prevailing appellants):		Amount Requested: _____		Amount Allowed: _____	
Document	No. of Pages	No. of Copies		Page Cost (<\$.15)	Total Cost
	Requested	Allowed (court use only)	Requested	Allowed (court use only)	Requested
TOTAL BILL OF COSTS:				\$0.00	\$0.00

1. If copying was done commercially, I have attached itemized bills. If copying was done in-house, I certify that my standard billing amount is not less than \$.15 per copy or, if less, I have reduced the amount charged to the lesser rate.
2. If costs are sought for or against the United States, I further certify that 28 U.S.C. § 2412 permits an award of costs.
3. I declare under penalty of perjury that these costs are true and correct and were necessarily incurred in this action.

Signature: _____ Date: _____

Certificate of Service

I certify that on this date I served this document as follows:

Signature: _____ Date: _____

FILED: June 21, 2023

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 23-6003
(9:21-cv-03055-HMH)

CHARLES GARY SINGLETARY, III

Petitioner - Appellant

v.

WARDEN JACKSON

Respondent - Appellee

O R D E R

The court denies the petition for rehearing.

Entered at the direction of the panel: Judge Niemeyer, Judge Richardson, and Judge Rushing.

For the Court

/s/ Patricia S. Connor, Clerk

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Charles Gary Singletary, III,) C/A No. 9:22-04362-HMH-MHC
)
)
Plaintiff,)
)
)
v.) **REPORT AND RECOMMENDATION**
)
)
Warden Jackson,)
)
)
Defendant.)
)

This a civil action filed by Charles Gary Singletary, III, a state prisoner. Under 28 U.S.C. § 636(b) and Local Civil Rule 73.02(B)(2) (D.S.C.), pretrial proceedings in this action have been referred to the assigned United States Magistrate Judge.

By Order dated January 9, 2023, Plaintiff was given an opportunity to provide the necessary information and paperwork to bring his case into proper form for evaluation and possible service of process. Plaintiff was also notified of pleading deficiencies and given the opportunity to amend his Complaint. *See* ECF No. 3. The time for Plaintiff to bring his case into proper form has passed, and Plaintiff has failed to bring his case into proper form and has not filed an amended complaint.

I. BACKGROUND

Plaintiff is an inmate at the Kirkland Correctional Institution of the South Carolina Department of Corrections (SCDC). Records from Sumter County and SCDC¹ indicate that

¹ This Court may take judicial notice of factual information located in postings on government websites. *See Tisdale v. South Carolina Highway Patrol*, No. 0:09-1009-HFF-PJG, 2009 WL 1491409, at *1 n. 1 (D.S.C. May 27, 2009), *aff'd*, 347 F. App'x 965 (4th Cir. 2009); *In re Katrina Canal Breaches Consol. Litig.*, No. 05-4182, 2008 WL 4185869, at * 2 (E.D. La. Sept. 8, 2008) (noting that courts may take judicial notice of governmental websites including other courts' records).

Plaintiff was sentenced to three concurrent sentences of forty years' imprisonment for murder (case number 2014A4310200627), thirty years' imprisonment for attempted murder (case number 2014A4310200628), and three years' imprisonment for assault and battery (case number 2014A4310200629). *See* Sumter County Third Judicial Circuit Public Index, [search listed case numbers]; SCDC Incarcerated Inmate Search, <http://public.doc.state.sc.us/scdc-public/> [Search Inmate "Charles Singletary"] (last visited Feb. 23, 2023).

Plaintiff asserts, pursuant to 42 U.S.C. § 1983, that Defendant Warden Jackson violated his Eighth Amendment rights because Plaintiff is "being housed & [he is] innocent." Complaint, ECF No. 1 at 4. Plaintiff asserts that in June 2014 he was arrested and charged for murder, attempted murder, second degree assault and possession of a weapon, and he was transported to the Lee Correctional Institution (LCI) of the SCDC in July 2016. *Id.* at 5.

As to the facts underlying his complaints, Plaintiff writes that he:

was at home with two alibi witnesses when [he] was arrested for a murder & charges[.] [Plaintiff's] witnesses wrote statement on [his] behalf they seen [Plaintiff] home past 3rd Interrogators. Suspect fled on foot mile from m/home...

ECF No. 1 at 5-6 (errors in original). Plaintiff requests a new trial and immediate release from prison. *Id.* at 6.

II. STANDARD OF REVIEW

A *pro se* Complaint is reviewed pursuant to the procedural provisions of 28 U.S.C. § 1915, the Prison Litigation Reform Act, Pub. L. No. 104-134, 110 Stat. 1321 (1996), and in light of the following precedents: *Denton v. Hernandez*, 504 U.S. 25 (1992), *Neitzke v. Williams*, 490 U.S. 319 (1989), *Haines v. Kerner*, 404 U.S. 519 (1972), and *Todd v. Baskerville*, 712 F.2d 70 (4th Cir. 1983). *Pro se* complaints are held to a less stringent standard than those drafted by attorneys, and a court is charged with liberally construing a complaint filed by a *pro se* litigant to allow the

development of a potentially meritorious case. *See Erickson v. Pardus*, 551 U.S. 89, 94 (2007); *King v. Rubenstein*, 825 F.3d 206, 214 (4th Cir. 2016). However, the requirement of liberal construction does not mean that this Court can ignore a clear failure in the pleading to allege facts which set forth a claim currently cognizable in a federal district court. *See Weller v. Dep't of Soc. Servs.*, 901 F.2d 387 (4th Cir. 1990); *see also Ashcroft v. Iqbal*, 556 U.S. 662, 684 (2009) (outlining pleading requirements under Rule 8 of the Federal Rules of Civil Procedure for “all civil actions”).

III. DISCUSSION

A. Failure to State a Claim/Frivolous Action

This action is subject to summary dismissal because Plaintiff fails to state a cognizable claim against Defendant. Defendant appears to have been the Warden of LCI when Plaintiff was housed there. However, the Complaint is fairly characterized as being composed of what some courts have described as “buzz words” or “legalistic gibberish.” *See, e.g., Rochester v. McKie*, No. 8:11-CV-0797-JMC-JDA, 2011 WL 2671306 (D.S.C. Apr. 13, 2011), *report and recommendation adopted*, 2011 WL 2671228 (D.S.C. July 8, 2011). As such, a substantial portion of Plaintiff’s allegations are so generally incomprehensible or filled with what could only be considered by a reasonable person as unconnected, conclusory, and unsupported comments or “gibberish,” that it is unclear what is to be made of them. *See Hagans v. Lavine*, 415 U.S. 528, 536-537 (1974) (noting that federal courts lack power to entertain claims that are “so attenuated and unsubstantial as to be absolutely devoid of merit”); *see also Livingston v. Adirondack Beverage Co.*, 141 F.3d 434 (2nd Cir. 1998); *Adams v. Rice*, 40 F.3d 72 (4th Cir. 1994) (affirming dismissal of prisoner’s suit as frivolous where allegations were conclusory and nonsensical on their face).

Although Plaintiff lists Defendant’s name in the caption of his Complaint, his pleadings fail to provide any specific facts to support a claim that Defendant violated his federal

constitutional or statutory rights. *See Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (requiring, in order to avoid dismissal, “a short and plain statement of the claim showing that the pleader is entitled to relief,’ in order to ‘give the defendant fair notice of what the ... claim is and the grounds upon which it rests’” (quoting Fed. R. Civ. P. 8(a)(2))). Although the “liberal pleading requirements” of Rule 8(a) only require a “short and plain” statement of the claim, a plaintiff must “offer more detail ... than the bald statement that he has a valid claim of some type against the defendant.” *Trulock v. Freeh*, 275 F.3d 391, 405 (4th Cir. 2001) (internal citations omitted); *see also White v. White*, 886 F.2d 721, 723 (4th Cir. 1989) (district court did not abuse discretion by dismissing plaintiff’s complaint which “failed to contain any factual allegations tending to support his bare assertion”). Plaintiff appears to complain about his arrest and the prosecution of his criminal cases, but he fails to allege any facts to indicate that Defendant was involved in those incidents.

B. Requested Relief Not Available

As noted above, Plaintiff requests a new trial and release from prison. However, such relief is not available in this § 1983 action. The notion that Plaintiff may seek, through a civil suit, the vacation or alteration of his criminal convictions and sentences, “is legally frivolous under *Heck v. Humphrey*, 512 U.S. 477 (1994), and related cases.” *Payne v. Virginia*, No. 3:07CV337, 2008 WL 1766665, at *2 (E.D. Va. Apr. 17, 2008). To the extent that Plaintiff may also be attempting to request release from incarceration, that is not a remedy that is available in a § 1983 action. *See Heck v. Humphrey*, 512 U.S. at 481 (stating that “habeas corpus is the exclusive remedy for a state prisoner who challenges the fact or duration of his confinement and seeks immediate or speedier release, even though such a claim may come within the literal terms of § 1983”); *Preiser v.*

Rodriguez, 411 U.S. 475, 487–88 (1973) (attacking the length of duration of confinement is within the core of habeas corpus).

C. Statute of Limitations

Plaintiff's claims are also barred by the applicable statute of limitations. To the extent that Plaintiff may be attempting to assert that Defendant violated his rights at the time Plaintiff was received at LCI to begin his period of incarceration, this incident was more than three years before the filing of this action. State law concerning limitation of actions applies in claims brought under § 1983. *See Wilson v. Garcia*, 471 U.S. 261, 266 (1985), partially superseded by statute as stated in *Jones v. R.R. Donnelly & Sons, Co.*, 541 U.S. 369, 377-380 (2004). In South Carolina, the applicable statute of limitations is generally three years. *See* S.C. Code Ann. § 15-3-530. Conversely, federal law governs the question of when a cause of action accrues. *See Wallace v. Kato*, 549 U.S. 384, 387 (2007). Under federal law, the running of the statute of limitations begins when a plaintiff knows or has reason to know of his injury. *Id.* Plaintiff states that he was transferred to LCI (and SCDC) in July 2016, more than three years before he filed this action.²

D. Failure to Bring Case into Proper Form

Additionally, Plaintiff has failed to bring this case into proper form as outlined in the Court's January 2022 Order by paying the filing fee or completing and signing an Application to Proceed Without Prepayment of Fees and Affidavit (Form AO-240), submitting (if a Form AO-

² While the statute of limitations is an affirmative defense that is subject to waiver if not timely raised in a responsive pleading (see Fed. R. Civ. P. 8(c)), the court is authorized to anticipate clearly apparent affirmative defenses available to defendants in determining whether, under § 1915, process should be issued. *Todd v. Baskerville*, 712 F.2d at 74; *see also Duncan v. West Virginia*, 597 F. Supp. 1195, 1196 (S.D.W. Va. 1984) (“Although some of the matters discussed constitute defenses, where the complaint on its face raises obvious and complete affirmative defenses, the Court may consider these defenses in ruling under 28 U.S.C. § 1915(d) [that a] complaint [is] frivolous.”) (citation omitted).

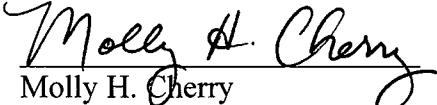
240 is submitted) a completed and signed Financial Certificate, completing a summons form that lists every Defendant, and completing and signing (if a Form AO-240 is submitted) a Form USM-285 for each Defendant. *See* ECF No. 3. Plaintiff was warned that failure to provide the necessary information within the timetable set forth in the Order would subject the case to dismissal. *See id.*

The time to bring this case into proper form has now lapsed, and Plaintiff has failed to provide the required items to bring his case into proper form. Thus, in the alternative, it is recommended that this action be dismissed in accordance with Fed. R. Civ. P. 41(b). *See Link v. Wabash R.R. Co.*, 370 U.S. 626 (1962); *Ballard v. Carlson*, 882 F.2d 93, 95-96 (4th Cir. 1989) (holding that district court's dismissal following an explicit and reasonable warning was not an abuse of discretion).

IV. RECOMMENDATION

Based on the foregoing, it is recommended that the Court dismiss this action, without prejudice, without leave to amend,³ and without issuance and service of process.

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



Molly H. Cherry
United States Magistrate Judge

February 24, 2023
Charleston, South Carolina

³ *See Britt v. DeJoy*, 45 F.4th 790 (4th Cir. 2022) (noting that “[w]hen a district court dismisses a complaint or all claims without granting leave to amend, its order is final and appealable”).

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 835
Charleston, South Carolina 29402

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).

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
BEAUFORT DIVISION

Charles Gary Singletary, III,)
Plaintiff,) C.A. No. 9:22-04362-HMH-MHC
vs.)
Warden Jackson,)
Defendant.)

OPINION & ORDER

This matter is before the court for review of the Report and Recommendation of United States Magistrate Judge Molly H. Cherry made in accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02 for the District of South Carolina.¹ Charles Gary Singletary, III (“Singletary”) is a pro se state prisoner asserting, pursuant to 42 U.S.C. § 1983, that the Defendant violated his Eighth Amendment rights. In her Report and Recommendation filed on February 24, 2023, Magistrate Judge Cherry recommends dismissing this action without prejudice, without leave to amend, and without issuance and service of process. (R&R, generally, ECF No. 6.)

Singletary filed undated and unsigned objections to the Report and Recommendation. (Objs., ECF No. 8.) Singletary alleges that he did not receive the Report and Recommendation

¹ The recommendation has no presumptive weight, and the responsibility for making a final determination remains with the United States District Court. See Mathews v. Weber, 423 U.S. 261, 270 (1976). The court is charged with making a de novo determination of those portions of the Report and Recommendation to which specific objection is made. The court may accept, reject, or modify, in whole or in part, the recommendation made by the magistrate judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

until March 14, 2023. Therefore, the court will construe Singletary's objections as timely. Objections to the Report and Recommendation must be specific. Failure to file specific objections constitutes a waiver of a party's right to further judicial review, including appellate review, if the recommendation is accepted by the district judge. See United States v. Schronce, 727 F.2d 91, 94 & n.4 (4th Cir. 1984). In the absence of specific objections to the Report and Recommendation of the magistrate judge, this court is not required to give any explanation for adopting the recommendation. See Camby v. Davis, 718 F.2d 198, 199 (4th Cir. 1983).

Upon review, the court finds that Singletary's objections are non-specific, unrelated to the dispositive portions of the magistrate judge's Report and Recommendation, or merely restate his claims. The magistrate judge recommends dismissal because Singletary fails to state a claim for relief, the requested relief of new trial and release from prison is unavailable in a § 1983 action, and the claims are barred by the applicable statute of limitations. (R&R, generally, ECF No. 6.) In the alternative, the magistrate judge recommends dismissing this case for failure to bring this action into proper form. (Id. 5-6, ECF No. 6.) In his objections, Singletary alleges that he was unaware that he needed to respond and attaches evidence of his appeal in a separate case, C.A. No. 9:21-3055. (Objs. 4, ECF No. 8.) The appeal in 9:21-3055 is wholly unrelated to the instant case. After a thorough review of the magistrate judge's Report and the record in this case, the court adopts Magistrate Judge Cherry's Report and Recommendation and incorporates it herein.

It is therefore

ORDERED that this action is dismissed without prejudice, without leave to amend, and without issuance and service of process.

IT IS SO ORDERED.

s/Henry M. Herlong, Jr.
Senior United States District Judge

Greenville, South Carolina

March 28, 2023

NOTICE OF RIGHT TO APPEAL

The Petitioner is hereby notified that he has the right to appeal this order within thirty (30) days from the date hereof, pursuant to Rules 3 and 4 of the Federal Rules of Appellate Procedure.

**Additional material
from this filing is
available in the
Clerk's Office.**