

UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY

QUESTIONNAIRE FOR JUDICIAL NOMINEES

PUBLIC

1. **Name**: State full name (include any former names used).

Jacquelyn Denise Austin (married name)  
Jacquelyn Denise Graham (maiden name)

2. **Position**: State the position for which you have been nominated.

United States District Judge for the District of South Carolina

3. **Address**: List current office address. If city and state of residence differs from your place of employment, please list the city and state where you currently reside.

Office:  
Carroll A. Campbell Federal Courthouse  
250 East North Street, Suite 3140  
Greenville, South Carolina 29601

Residence:  
Simpsonville, South Carolina

4. **Birthplace**: State year and place of birth.

1966; Sumter, South Carolina

5. **Education**: List in reverse chronological order each college, law school, or any other institution of higher education attended and indicate for each the dates of attendance, whether a degree was received, and the date each degree was received.

1993 – 1996, University of South Carolina School of Law; J.D., 1996

1984 – 1989, University of South Carolina School of Engineering; B.S. Electrical Engineering, 1989

6. **Employment Record**: List in reverse chronological order all governmental agencies, business or professional corporations, companies, firms, or other enterprises, partnerships, institutions or organizations, non-profit or otherwise, with which you have been affiliated as an officer, director, partner, proprietor, or employee since graduation from college, whether or not you received payment for your services. Include the name and address of the employer and job title or description.

2011 – present  
United States District Court for the District of South Carolina  
250 East North Street  
Greenville, South Carolina 29601  
United States Magistrate Judge

1999 – 2011  
Womble Carlyle Sandridge and Rice, PLLC (now known as Womble Bond Dickinson)  
550 South Main Street #400  
Greenville, South Carolina 29601  
Partner, Business Litigation (2006 – 2011)  
Associate, Business Litigation (1999 – 2006)

1997 – 1999  
Hardaway Law Firm (merged with Nexsen Pruet Jacobs and Pollard Law Firm)  
104 South Main Street #900  
Greenville, South Carolina 29601  
Associate Attorney, Patent Law

1996 – 1997  
The Honorable Matthew J. Perry, Jr.  
United States District Court for the District of South Carolina  
Columbia, South Carolina  
Term Law Clerk

1995 – 1996  
McNair Law Firm (later merged with Burr & Forman)  
1301 Gervais Street  
Columbia, South Carolina 29201  
Law Clerk (Intern)

1989 – 1993  
South Carolina Electric and Gas Company  
V.C. Summer Nuclear Station  
Jenkinsville, South Carolina  
Engineer, Regulatory Division

7. **Military Service and Draft Status:** Identify any service in the U.S. Military, including dates of service, branch of service, rank or rate, serial number (if different from social security number) and type of discharge received, and whether you have registered for selective service.

I did not serve in the military. I was not required to register for the selective service.

8. **Honors and Awards:** List any scholarships, fellowships, honorary degrees, academic or

professional honors, honorary society memberships, military awards, and any other special recognition for outstanding service or achievement.

Diversity Leaders Initiative, The Riley Institute at Furman University (SC) (2003)

Thurgood Marshall College Fund Founder's Volunteer Award (2003)

University of South Carolina School of Law

Student Compleat Lawyer Award (1996)

John Belton O'Neall Inn of Court (1996)

National Moot Court Team (1995 – 1996)

Environmental Law Journal, Student Notes Editor (1994 – 1996)

9. **Bar Associations:** List all bar associations or legal or judicial-related committees, selection panels or conferences of which you are or have been a member, and give the titles and dates of any offices which you have held in such groups.

American Bar Association

American Intellectual Property Law Association

Black Entertainment and Sports Lawyers Association

Carolina Patent Trademark Copyright Law Association  
President (2004 – 2005)

Defense Research Institute

Federal Magistrate Judges Association

Greenville County Bar Association  
Previous Editor

International Trademark Association

Judicial Qualifications Committee of the South Carolina Bar  
Committee Member (2004 – 2006)

National Bar Association

South Carolina Bar Association

Trial and Appellate Advocacy Board

United Way Women Attorneys Committee

10. **Bar and Court Admission:**

- a. List the date(s) you were admitted to the bar of any state and any lapses in membership. Please explain the reason for any lapse in membership.

South Carolina, 1996

There have been no lapses in membership.

- b. List all courts in which you have been admitted to practice, including dates of admission and any lapses in membership. Please explain the reason for any lapse in membership. Give the same information for administrative bodies that require special admission to practice.

United States Court of Appeals for the Fourth Circuit, 1997

United States District Court for the District of South Carolina, 1997

United States Patent Bar, 1999

There have been no lapses in membership.

11. **Memberships:**

- a. List all professional, business, fraternal, scholarly, civic, charitable, or other organizations, other than those listed in response to Questions 9 or 10 to which you belong, or to which you have belonged, since graduation from law school. Provide dates of membership or participation, and indicate any office you held. Include clubs, working groups, advisory or editorial boards, panels, committees, conferences, or publications.

Delta Sigma Theta Sorority, Inc. (1999 – present)  
Internal Audit Committee Chair (2022 – 2023)  
Scholarship Committee (2021 – present)  
Delta Academy Committee (2019 – 2020)

International Ballet Academy (2015 – present)  
Diversity Committee Member (2020 – present)  
Volunteer (2015 – 2020)

Jack and Jill of America, Inc. (2014 – 2022)  
Audit Committee (2019 – 2020)  
Teen Committee (2017 – 2019, 2020 – 2022)

LEAD Academy Charter School (2012 – 2013)  
Board Member (2012 – 2013)

The Children's Museum of the Upstate (2015 – 2016)

Board Member (2015 – 2016)

- b. The American Bar Association's Commentary to its Code of Judicial Conduct states that it is inappropriate for a judge to hold membership in any organization that invidiously discriminates on the basis of race, sex, or religion, or national origin. Indicate whether any of these organizations listed in response to 11a above currently discriminate or formerly discriminated on the basis of race, sex, religion or national origin either through formal membership requirements or the practical implementation of membership policies. If so, describe any action you have taken to change these policies and practices.

Delta Sigma Theta Sorority, Inc., restricts membership to women. Additionally, Jack and Jill of America, Inc., restricts membership to mothers but has a father's auxiliary. To the best of my knowledge, none of the other organizations listed in response to Question 11a discriminates on the basis of race, sex, religion, or national origin.

12. **Published Writings and Public Statements:**

- a. List the titles, publishers, and dates of books, articles, reports, letters to the editor, editorial pieces, or other published material you have written or edited, including material published only on the Internet. Supply four (4) copies of all published material to the Committee.

None.

- b. Supply four (4) copies of any reports, memoranda or policy statements you prepared or contributed in the preparation of on behalf of any bar association, committee, conference, or organization of which you were or are a member. If you do not have a copy of a report, memorandum or policy statement, give the name and address of the organization that issued it, the date of the document, and a summary of its subject matter.

None.

- c. Supply four (4) copies of any testimony, official statements or other communications relating, in whole or in part, to matters of public policy or legal interpretation, that you have issued or provided or that others presented on your behalf to public bodies or public officials.

None.

- d. Supply four (4) copies, transcripts or recordings of all speeches or talks delivered by you including commencement speeches, remarks, lectures, panel discussions, conferences, political speeches, and question-and-answer sessions. Include the date and place where they were delivered, and readily available press reports

about the speech or talk. If you do not have a copy of the speech or a transcript or recording of your remarks, give the name and address of the group before whom the speech was given, the date of the speech, and a summary of its subject matter. If you did not speak from a prepared text, furnish a copy of any outline or notes from which you spoke.

I have searched my records and the Internet in an effort to identify all events responsive to this question. I have located the events listed below, but it is possible that there are additional events that I do not recall and have not identified.

July 12, 2023: Judge, Summer Law Internship Program Mock Trial, Atlanta Bar Association and the Federal Magistrate Judges Association, Atlanta, Georgia. I helped judge a mock trial for high school students interested in law and justice. The address for the Atlanta Bar Association is P.O. Box 13424, Atlanta, Georgia, 30324. The address for the Federal Magistrate Judges Association is P.O. Box 249, Stanardsville, Virginia 22973.

May 17, 2023: Speaker, "Introduction to Federal Practice," South Carolina Chapter of the Federal Bar Association, Greenville, South Carolina. I gave the program welcome to attending law clerks and interns. I have no notes, transcript, or recording. The address for the Federal Bar Association is 4075 Wilson Boulevard, 8th Floor, Arlington, Virginia 22203.

May 5, 2023: Judge, Trial Academy, South Carolina Defense Trial Attorneys' Association, Greenville, South Carolina. I served as a judge in this trial academy for young lawyers. I have no notes, transcript, or recording. The address for the South Carolina Defense Trial Attorneys' Association is 1 Windsor Cove, Suite 305, Columbia, South Carolina 29223.

April 3, 2023: Panelist, "Roadways to the Bench," University of South Carolina School of Law, Columbia, South Carolina. I participated in round-table discussions with students on how I became a judge. I have no notes, transcript, or recording. The address for the University of South Carolina School of Law is 1525 Senate Street, Columbia, South Carolina 29208.

February 28, 2023: Speaker, "Lawyers as Leaders," University of South Carolina School of Law, Columbia, South Carolina. Presentation supplied.

November 4, 2022: Panelist, "Hot Button Evidentiary Issues in South Carolina's Courts: A Panel Discussion," South Carolina Defense Trial Attorneys' Association, Amelia Island, Florida. I served on a panel regarding updates on evidence law and tips for handling tough evidentiary issues. I have no notes, transcript, or recording. The address for the South Carolina Defense Trial Attorneys' Association is 1 Windsor Cove, Suite 305, Columbia, South Carolina 29223.

November 19, 2021: Panelist, "I Never Met a Magistrate Judge I Didn't Like," South Carolina Bar CLE Division and the South Carolina Chapter of the Federal Bar Association, Columbia, South Carolina. I spoke on a panel with other magistrate judges from the United States District Court for the District of South Carolina. I have no notes, transcript, or recording. The address for the South Carolina Bar is 950 Taylor Street, Columbia, South Carolina 29201. The address for the Federal Bar Association is 4075 Wilson Boulevard, 8th Floor, Arlington, Virginia 22203.

February 5, 2021: Panelist, "Federal Judges Panel Discussion," Greenville County Bar Association, virtual event. I served on a panel of federal judges. I have no notes, transcript, or recording. The address for the Greenville County Bar Association is P.O. Box 10145, Greenville, South Carolina 29603.

September 24, 2020: Speaker, "The POWER Act's Call to Action," United States District Court for the District of South Carolina and the 13th Judicial Circuit Community Domestic Violence Coordinating Council, virtual event. Script supplied.

February 2, 2018: Panelist, "Social Security: Practice Tips and 4th Circuit Update," Greenville County Bar Association, Greenville, South Carolina. I served on a panel on updates and tips on Social Security appeals practice in the District of South Carolina. I have no notes, transcript, or recording. The address for the Greenville County Bar Association is P.O. Box 10145, Greenville, South Carolina 29603.

September 22, 2017: Panelist, "Perspectives from the Bench," South Carolina Defense Trial Attorneys' Association, Greenville, South Carolina. I served on a panel of judges discussing effective motions practice. I have no notes, transcript, or recording, but press coverage is supplied. The address for the South Carolina Defense Trial Attorneys' Association is 1 Windsor Cove, Suite 305, Columbia, South Carolina 29223.

April 26, 2016: Panelist, Schoolhouse to Courthouse Event, South Carolina Chapter of the Federal Bar Association, Greenville, South Carolina. I served on a panel of judges during a question-and-answer session of this program for high-school students to learn about paths to becoming judges. I have no notes, transcript, or recording. The address for the Federal Bar Association is 4075 Wilson Boulevard, 8th Floor, Arlington, Virginia 22203.

March 21, 2014: Speaker, Greenville Luncheon, South Carolina Women Lawyer Association, Greenville, South Carolina. I have no notes, transcript, or recording. The address for the South Carolina Women Lawyers Association is P.O. Box 11910, Columbia, South Carolina 29211.

August 17, 2011: Speaker, "Judicial Ethics for Lawyers," United Way Women Attorneys Committee, Greenville, South Carolina. I spoke about relationships between lawyers and judges, addressing the South Carolina Rules of Professional Conduct that apply to lawyers' ethical obligations and the Canons in the Code of Judicial Conduct that apply to judges' ethical obligations. I have no notes, transcript, or recording. The address for the United Way of Greenville County is 105 Edinburgh Court, Greenville, South Carolina 29607.

- e. List all interviews you have given to newspapers, magazines or other publications, or radio or television stations, providing the dates of these interviews and four (4) copies of the clips or transcripts of these interviews where they are available to you.

*Motions Practice Seminar*, DEFENSE LINE (Fall 2017). Copy supplied.

*Judicial Profile: The Honorable Jacquelyn D. Austin, United States Magistrate Judge*, DEFENSE LINE (Summer 2012). Copy supplied.

John Monk, *U.S. Magistrate Judge Has Nuclear Background*, The State (Columbia) (Nov. 29, 2010). Copy supplied.

Clif LeBlanc, *'I'm Disappointed in Myself'*, Columbia State (Mar. 18, 2001). Copy supplied.

13. **Judicial Office:** State (chronologically) any judicial offices you have held, including positions as an administrative law judge, whether such position was elected or appointed, and a description of the jurisdiction of each such court.

In February 2011, I was appointed to an eight-year term as a United States magistrate judge for the United States District Court for the District of South Carolina. I was reappointed to a second eight-year term that began in February 2019.

My authority as a magistrate judge is defined by 28 U.S.C. § 636. In criminal matters, I preside over misdemeanor and petty offenses, including trial and sentencing. I also preside over preliminary felony criminal matters, including but not limited to, initial appearances, arraignments, bail determinations, pleas, search warrants, and arrest warrants.

In civil matters in which the parties consent to have a magistrate judge conduct all proceedings, I have virtually the same jurisdiction as an Article III district judge. In those matters, I preside over a variety of civil cases from initial review of complaints through resolution of dispositive motions or trial. In matters in which the parties do not consent to magistrate judge jurisdiction, pursuant to 28 U.S.C. § 636, I determine pretrial matters and prepare reports and recommendations for consideration by a district judge on motions for injunctive relief, for judgment on the pleadings, for summary judgment, to dismiss or quash an indictment or information made by the defendant, to suppress

evidence in a criminal case, to dismiss or to permit maintenance of a class action, to dismiss for failure to state a claim upon which relief can be granted, and to involuntarily dismiss an action. Pursuant to Local Civil Rule 73.02 of the District of South Carolina, the following civil matters are automatically referred to magistrate judges upon filing: motions for remand, dismissal, or judgment on the pleadings in actions filed under 42 U.S.C. § 405(g) for review of an administrative determination regarding entitlement to benefits under the Social Security Act and related statutes; motions for leave to proceed in forma pauperis; pretrial proceedings in applications for post-conviction review under the provisions of 28 U.S.C. § 2241, 28 U.S.C. § 2254, and mandamus relief as well as for relief sought by persons challenging any form of custody under other federal jurisdictional statutes; pretrial proceedings in civil rights cases challenging prison conditions or conditions of confinement; pretrial proceedings involving litigation by individuals proceeding pro se; pretrial proceedings in civil rights cases arising out of the criminal process; and pretrial proceedings involving litigation arising out of employment discrimination cases invoking federal statutes that proscribe unfair discrimination in employment.

According to statistical reports from the District of South Carolina's electronic document filing system, I have issued 2,968 reports and recommendations and 25,529 orders during my tenure as a United States magistrate judge.

- a. Approximately how many cases have you presided over that have gone to verdict or judgment?

I have presided over two trials.

- i. Of these cases, approximately what percent were:

jury trials:	0%
bench trials:	100%

- ii. Of these cases, approximately what percent were:

civil proceedings:	100%
criminal proceedings:	0%

- b. Provide citations for all opinions you have written, including concurrences and dissents.

See attached list of citations.

- c. For each of the 10 most significant cases over which you presided, provide: (1) a capsule summary of the nature of the case; (2) the outcome of the case; (3) the name and contact information for counsel who had a significant role in the trial of the case; and (4) the citation of the case (if reported) or the docket number and a copy of the opinion or judgment (if not reported).

1. *ARCPoint Franchise Group, LLC v. Sadhwani*, No. 6:22-cv-00212-DCC (D.S.C.)

This case was referred to me by the district judge and with consent of the parties for mediation. This case involved a dispute between a franchisor, ARCPoint, and its franchisees, Ms. Sadhwani and Mr. Hingorani, operating as SSSD LLC (collectively, “Defendants”). The complaint alleged the following causes of action and remedies against Defendants: (1) breach of the franchise agreement; (2) breach of the owner’s agreement; (3) federal service mark infringement; (4) federal unfair competition and false designation of origin; (5) common law unfair competition; (6) violation of the South Carolina Unfair Trade Practices Act; (7) preliminary and permanent injunction; and (8) attorneys’ fees. Defendants failed to respond to the complaint and, thus, the district judge found Defendants in default and entered judgment against them, including a permanent injunction and order. Defendants moved to alter or amend judgment, to set aside final judgment, and to vacate default, and the plaintiffs moved for contempt and for sanctions. The district judge denied the motion to vacate the default, held in abeyance the motion to alter, amend, or set aside the judgment, and held in abeyance the motion for contempt. The case was then referred to me for mediation. During the mediation, I was able to assist the parties in reaching an agreement, and they withdrew the pending motions, fully resolving the dispute.

Counsel for Plaintiffs:

Anne P. Caiola  
Caiola and Rose LLC  
125 Clairemont Avenue  
Suite 240  
Decatur, GA 30030  
(407) 300-1020

Counsel for Defendants:

Robert Morton Ward  
BMWipLAW, LLC  
621 Brixton Circle  
Simpsonville, SC 29681  
(404) 606-6480

2. *Sanchez v. Kelly*, No. 6:22-cv-02021-JDA (D.S.C.)

This case was referred to me by the district judge and with consent of the parties for a bench trial. This case involved an emergency petition filed in accordance with the Convention on the Civil Aspects of International Child Abduction, done at The Hague on October 25, 1980 (the “Hague Convention”), and the International Child Abduction Remedies Act, 22 U.S.C. §§ 9001 et seq. The petitioner claimed that, on or about April 18, 2022, the respondent kidnapped the

minor children and absconded with them from Guatemala to the United States. At the time the respondent allegedly kidnapped the minor children, she did not have the petitioner's consent as required under Guatemalan law. And at the time of the wrongful removal, the petitioner had rights of custody under Guatemalan law and was exercising those rights within the meaning of Articles 3 and 5 of the Hague Convention. Just before trial was to begin, the parties advised me that they had reached a private settlement, which required the legal action in Guatemala to be terminated and the case to continue in family court in Greenville, South Carolina. I retained jurisdiction over the matter until the terms of the settlement agreement were met.

Counsel for Petitioner:  
Jonathan William Lounsberry  
KD Trial Lawyers  
P.O. Box 3547  
178 West Main Street (29306)  
Spartanburg, SC 29304  
(864) 585-5100

Counsel for Respondent:  
Brandi Batson Hinton  
Sloan Price Ellis  
Ellis Hinton Law  
416 East North Street  
Second Floor  
Greenville, SC 29601  
(864) 775-5775

3. *Paul v. Wingard*, No. 4:20-cv-02071-SAL (D.S.C.)

This case was referred to me for mediation by the district judge. The plaintiff brought this action pursuant to 42 U.S.C. § 1983, alleging that he was sexually assaulted by a corrections officer while he was housed at the Broad River Correctional Institute. I initially attempted to mediate the matter, but the plaintiff was not represented by counsel, and the parties failed to reach a resolution. Afterward, the district judge appointed counsel for the plaintiff. I held a second mediation and was able to assist the parties in reaching a resolution of this matter to include both monetary payment and individual mental health counseling.

Counsel for Plaintiff:  
Derek Alan Shoemake  
Connell Law Firm  
20 Townlee Lane  
Suite A  
P.O. Box 522  
Lugoff, SC 29078

(803) 408-8500

John LaFitte Warren, III  
Law Office of Bill Nettles  
2008 Lincoln Street  
Columbia, SC 29201  
(803) 592-9097

Counsel for Defendant:  
Anthony Martin Ibarra  
Janet Brooks Holmes  
Daniel Settana, Jr.  
Brian Craven  
The McKay Firm  
P.O. Box 7217  
Columbia, SC 29202  
(803) 256-4645

4. *Robert Bosch Tool Corp. v. Delta Power Equip. Corp.*, No. 7:21-cv-02107-JDA, 2022 WL 19406811 (D.S.C. Sept. 27, 2022)

This is a patent infringement matter that was referred to me by the district judge and with consent of the parties. Robert Bosch Tool Corporation (“Bosch”) filed this case alleging infringement of its saw design. The matter was before me on two motions: a motion for partial summary judgment of non-infringement as to its Generation 3 saw design filed by Defendant/Counter Claimant Delta Power Equipment Corporation (“Delta”) and a motion for partial summary judgment of infringement as to Delta’s Generation 1 and Generation 2 saw designs filed by Plaintiff/Counter Defendant Bosch. I resolved the disputed legal issues concerning claim construction, denied Delta’s motion for partial summary judgment of non-infringement, and granted Bosch’s motion for partial summary judgment of infringement. After entry of this order, the parties mediated the case and ultimately resolved the remaining claim regarding the Generation 3 saw design and entered a stipulation of dismissal.

Counsel for Bosch:  
John Philip Rondini  
Marc Lorelli  
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1000 Town Center  
22nd Floor  
Southfield, MI 48075  
(248) 358-4400

Sarah Sloan Batson  
Maynard Nexsen

104 South Main Street  
Suite 900  
Greenville, SC 29601  
(864) 370-2211

Counsel for Delta:  
Timothy David St. Clair  
Tasneem Dharamsi  
Parker Poe Adams & Bernstein  
110 East Court Street  
Suite 200  
Greenville, SC 29601  
(864) 577-6370

5. *Marshall v. Georgetown Mem. Hosp.*, No. 2:21-cv-02733-RMG-JDA, 2022 WL 5434226 (D.S.C. July 7, 2022), *R. & R. adopted by* 2022 WL 4078024 (D.S.C. Sept. 6, 2022)

In this case, the plaintiff alleged that the defendant discriminated against her during the employment application process by unlawfully using the results of a post-employment medical examination to rescind her employment offer. She claimed that she had been subjected to discrimination in violation of the Americans with Disabilities Act, Title VII of the Civil Rights Act of 1964, the Rehabilitation Act of 1973, and § 510 of the Employee Retirement Income Security Act of 1974, and wrongfully discharged in violation of public policy. I issued a report and recommendation recommending that the defendant's motion to stay litigation and compel arbitration or, alternatively, to dismiss be denied. Following objections, the district judge recommitted the motion to me to allow the parties to provide additional briefing based on new information the defendant provided in its objections.

One arbitration agreement at issue in the case was embedded at the bottom of a 2020 employment application and was accompanied by a pre-selected check box from the plaintiff's previous 2016 employment application. That the box was pre-selected suggested that the plaintiff did not have to take any affirmative act, such as checking a box or clicking a button, to assent to the arbitration agreement. I recommended that the motion to stay litigation and compel arbitration or, alternatively, to dismiss be denied because I concluded that the defendant had not met its burden of showing the existence of a binding contract to arbitrate because the defendant had not established that the plaintiff manifested her assent to the 2020 arbitration agreement. The district judge adopted the report and recommendation without modification and denied the motion.

Counsel for Plaintiff:  
David Alan Nauheim  
Joshua Thomas Mangan

Nauheim Law Office, LLC  
101 Sycamore Avenue  
Charleston, SC 29407  
(843) 534-5084

Counsel for Defendant:  
Thomas Allen Bright  
Ogletree Deakins Nash Smoak and Stewart  
300 North Main Street  
Suite 500  
P.O. Box 2757  
Greenville, SC 29602  
(864) 271-1300

6. *Floyd v. City of Spartanburg*, No. 7:20-cv-01305-TMC, 2022 WL 1057191 (D.S.C. Jan. 31, 2022), *R. & R. adopted by* 2022 WL 796819 (D.S.C. Mar. 16, 2022)

This case was initially before me on referral by the district judge of the parties' cross-motions for summary judgment. The City of Spartanburg ("the City") and Spartanburg County entered into an Intergovernmental Agreement for the purpose of developing an incentive program to stimulate commercial redevelopment of vacant, physically declining, or underperforming commercial properties within the City. Under the incentive program, approved property owners received annual fee-in-lieu-of-ad-valorem-tax rebates for redeveloping or renovating a property. They received these rebates either for 15 years or until the sum of the rebates for a particular property reached a cap amount.

Plaintiffs Mr. Floyd and Gordon Farms owned a shopping center that was approved for inclusion in the incentive program, entitling them to receive annual rebate payments for tax years 2000 through 2014 or until rebates equaled the cap amount of \$3,046,101. After the shopping center was included in the incentive program, one of the shopping center's anchor tenants closed permanently because of corporate bankruptcy proceedings. Mr. Floyd requested that the anchor tenant parcel be removed from the shopping center's inclusion in the incentive program and that a new 15-year rebate period be allowed for the anchor tenant parcel once redevelopment was completed. The City agreed. In 2017, the City notified the plaintiffs that they had been overpaid and requested that the overpayment be returned. Ultimately, the City withheld further rebate payments on the anchor tenant parcel to offset the overpayment. However, the plaintiffs maintained that the parties had entered into a new agreement to extend the rebate period for the entire shopping center, not just the anchor tenant parcel, and thus the City owed the plaintiffs additional rebates.

The complaint asserted claims against the City for (1) breach of contract – Intergovernmental Agreement (as a third-party beneficiary), (2) breach of

contract, (3) breach of contract – implied covenant of good faith and fair dealing, (4) breach of contract accompanied by a fraudulent act, (5) unjust enrichment/quantum meruit, and (6) promissory estoppel. The City asserted counterclaims against the plaintiffs for (1) unjust enrichment and (2) breach of contract – implied covenant of good faith and fair dealing. In its motion for summary judgment, the City argued that it was entitled to summary judgment on at least the plaintiffs’ first five claims—and possibly on all six claims—based on the Statute of Frauds and that it was entitled to summary judgment on the plaintiff’s claims for quantum meruit/unjust enrichment and for promissory estoppel for other reasons. In their motion for summary judgment, the plaintiffs argued they were entitled to summary judgment on both of the City’s counterclaims. I issued a report and recommendation recommending that the City’s motion for summary judgment be granted as to the plaintiffs’ claims for unjust enrichment and promissory estoppel but that the motion otherwise be denied and that the plaintiffs’ motion for summary judgment be granted as to the City’s counterclaim for breach of contract but that the motion otherwise be denied. I concluded that the Statute of Frauds does not apply because there was no evidence that the terms of the agreement itself preclude performance within a year. The district judge adopted the report and recommendation without modification. Subsequently, the parties consented to referral of the case to a United States magistrate judge for trial, and the district judge referred the case to me. The parties stipulated to dismissal of certain claims, and a bench trial was held September 5 – 8, 2023, on the plaintiffs’ breach of contract claim and the City’s unjust enrichment counterclaim. At the conclusion of the bench trial, I granted the plaintiffs’ oral motion for judgment on partial findings as to the City’s unjust enrichment counterclaim based on the applicable statute of limitations. On September 30, 2023, I issued an order finding in favor of the plaintiffs and against the City on the plaintiffs’ breach of contract claim and awarded Gordon Farms \$801,509 in actual damages. On October 16, 2023, I issued an order granting the plaintiffs’ motion for prejudgment interest in the amount of \$267,823. On October 30, 2023, the City filed a post-trial motion to alter or amend, which is not yet ripe for review.

Counsel for Plaintiffs:  
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Giles M. Schanen, Jr.  
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Samuel W. Outten  
Nelson Mullins Riley & Scarborough, LLP  
Greenville One, Suite 400  
2 West Washington Street

Greenville, SC 29601  
(864) 373-2299

Counsel for Defendant:  
Joseph Owen Smith  
Joshua Jennings Hudson  
Smith Hudson Law LLC  
200 North Main Street  
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Greenville, SC 29601  
(864) 908-3912

Robert P. Coler  
City of Spartanburg  
P.O. Box 1749  
Spartanburg, SC 29304  
(864) 596-2722

7. *Moats Constr., Inc. v. New Beach Constr. Partners, Inc.*, No. 8:17-cv-02009-JDA, 2020 WL 7979018 (D.S.C. Nov. 30, 2020), *aff'd*, No. 21-1017, 2022 WL 4548802 (4th Cir. Sept. 29, 2022).

This case was referred to me by the district judge and with consent of the parties for a bench trial. New Beach Construction Partners, Inc. (“New Beach”), which is owned by Ms. Cavassa, bid for and was awarded a contract by Anderson County for a demolition project of the Bailes and Woolworth buildings located at 107 and 111 South Main Street in Anderson, South Carolina (“the Project”). Travelers Casualty and Surety Company of America issued a payment bond on the Project. New Beach subsequently entered into a subcontract with Moats Construction, Inc. (“Moats Construction”), which is owned by Mr. Moats (“Moats”), under which Moats Construction would demolish the buildings and dispose of the debris. Moats alleged that it fulfilled its obligations to New Beach under the subcontract, but that New Beach refused to pay an outstanding balance. Moats Construction asserted the following causes of action stemming from the alleged breach of the subcontractor agreement: breach of contract against New Beach; breach of contract as third-party beneficiary against New Beach; breach of contract with fraudulent act against New Beach; negligence against New Beach and Cavassa; fraud and misrepresentation against New Beach and Cavassa; defamation against New Beach and Cavassa; suit on payment bond against Travelers; S.C. Code Ann. § 27-1-15 against New Beach and Travelers; conversion against New Beach and Cavassa; and South Carolina Unfair Trade Practices Act against New Beach and Cavassa. New Beach asserted the following counterclaims: breach of contract against Moats Construction; breach of contract with fraudulent act against Moats Construction; contractual indemnification against Moats Construction; negligence against Moats Construction and Moats; defamation against Moats Construction and Moats; fraud and misrepresentation

against Moats Construction and Moats; and trespass against Moats Construction and Moats.

Prior to trial, the parties stipulated to the dismissal of Moats Construction's claims for breach of contract with fraudulent act, fraud and misrepresentation, defamation, and South Carolina Unfair Trade Practices Act, and New Beach dismissed its claims for breach of contract with fraudulent act, contractual indemnification, defamation, and fraud and misrepresentation. On the first day of trial, the parties agreed to the dismissal of Moats Construction's claims for conversion and breach of contract as third-party beneficiary. The parties proceeded to trial on (a) Moats Construction's claims for breach of contract against New Beach, negligence against New Beach and Cavassa, suit on payment bond against Travelers, and S.C. Code Ann. § 27-1-15 against New Beach and Travelers and (b) New Beach's claims for breach of contract against Moats Construction, negligence against Moats Construction and Moats, and trespass against Moats Construction and Moats. At the conclusion of the trial, I entered an order finding in favor of New Beach and against Moats Construction on Moats Construction's breach of contract claim; in favor of Travelers and against Moats Construction on Moats Construction's suit on payment bond claim; in favor of New Beach and against Moats Construction on New Beach's breach of contract claim, and awarded New Beach \$26,919 in actual damages; in favor of Moats and Moats Construction and against New Beach on New Beach's negligence claim; and in favor of New Beach and against Moats and Moats Construction on New Beach's trespass claim, awarding New Beach \$1,680 in actual damages and \$8,404 in punitive damages. Moats and Moats Construction appealed my order granting judgment, and the Fourth Circuit Court of Appeals affirmed.

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8. *Sigmon v. Stirling*, No. 8-13-cv-01399-RBH-JDA, 2018 WL 6113017 (D.S.C. July 9, 2018), *R. & R. adopted by* 2018 WL 4691197 (D.S.C. Sept. 30, 2018), *aff'd*, 956 F.3d 183 (4th Cir. 2020), *cert. denied*, 141 S. Ct. 1094 (2021)

This was a death penalty case on a petition under 28 U.S.C. § 2254. The petitioner alleged in his post-conviction relief (“PCR”) application in state court that his trial counsel were ineffective in, among other things, failing to object to improper prison conditions evidence, failing to object to improper closing arguments, and making various errors related to the court’s instructions on mitigation. The PCR court denied and dismissed the petitioner’s PCR application. The petitioner sought review by the Supreme Court of South Carolina, which considered three of the petitioner’s claims but ultimately affirmed the PCR court’s dismissal. Thereafter, the petitioner sought relief in federal district court, asserting six grounds for relief, all of which had been presented to the South Carolina courts.

After the Fourth Circuit’s decision in *Juniper v. Davis*, 737 F.3d 288 (4th Cir. 2013), I appointed a new attorney—one who had not represented the petitioner before the PCR court—to review the case for claims available under *Martinez v. Ryan*, 566 U.S. 1 (2012). The attorney identified five additional grounds for relief. The petitioner amended his petition to include all 11 grounds. Federal proceedings were stayed while the petitioner pursued a second PCR action in state court, in which the state court determined the five new claims were procedurally defaulted under South Carolina law. When federal proceedings resumed, the state moved for summary judgment on the petitioner’s 11 claims. The petitioner withdrew one defaulted claim before I issued a report and recommendation, leaving four procedurally defaulted *Martinez* claims. Applying the deferential standard of review found in 28 U.S.C. § 2254(d), I recommended denying relief on all six of the petitioner’s preserved claims. As for the four *Martinez* claims, I considered affidavits offered by the petitioner in support of these claims and nonetheless concluded none were substantial. The district judge adopted my report and recommendation, and the Fourth Circuit Court of Appeals affirmed.

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9. *Cap. Inv. Funding, LLC v. Field*, Nos. 6:12-3401-BHH, 6:13-2326-BHH, 2015 WL 247720 (D.S.C. Jan. 20, 2015)

The plaintiff in these related cases alleged 21 causes of action in the 2012 case and 14 causes of action in the 2013 cases, including civil Racketeer Influenced and Corrupt Organizations Act ("RICO") claims and numerous state law claims to recover moneys loaned by South Carolina noteholders who collectively invested \$40 million without knowledge of the fraudulent schemes created by and perpetuated by the defendants. The 183-page second amended complaint contained specific details of the alleged racketeering activity; however, the plaintiff generally alleged the defendants unlawfully diverted funds from the plaintiff, leaving the plaintiff insolvent and unable to honor its obligations with its noteholders. The plaintiff alleged the defendants engaged in mail fraud, wire fraud, and transportation of stolen goods, including money obtained by fraud, and that the defendants' activities constituted Ponzi and money laundering schemes.

The overarching issue in the matter pertained to whether the Private Securities Litigation Reform Act ("PSLRA") barred the plaintiff's RICO claims and/or whether the applicable statute of limitations barred the plaintiff's RICO claims. The PSLRA, passed in 1995, amended § 1964(c) of the RICO statute and, in relevant part, provided that securities fraud could not be a predicate offense for a civil RICO claim. I recommended dismissing both cases because I concluded that the sale of securities was integral to the continuation of the Ponzi schemes at issue

in that the schemes could not have continued without additional monies raised from the sale of the unsecured promissory notes. I concluded that, because the alleged fraud arose in connection with the sale of securities, the noteholders were barred by the PSLRA from bringing RICO claims themselves and that allowing the plaintiff to bring the action to recover money it ultimately owed the noteholders would merely circumvent the PSLRA. The district judge adopted the report and recommendation without modification.

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10. *Palmetto Pharms., LLC v. AstraZeneca Pharms. LP*, No. 2:11-cv-00807-SB-JDA, 2012 WL 484907 (D.S.C. Jan. 4, 2012), *R. & R. adopted by* 2012 WL 484848 (D.S.C. Feb. 14, 2012)

This case was before me on the district judge's referral for pretrial management and consideration of pretrial motions. The case involved a complaint against AstraZeneca alleging infringement of U.S. Patent No. 6,465,516 (the "516 Patent"), entitled "Method of Stimulating Nitric Oxide Synthase." The plaintiff

was the owner of the '516 Patent, which claims a method of treating non-hyperlipidemic subjects, i.e., people who do not have hyperlipidemia, who would likewise benefit from increased nitric oxide ("NO") production. In 2003, AstraZeneca began marketing a statin, rosuvastatin calcium, under the trademark CRESTOR®, and began enrolling patients in a clinical trial, known as the JUPITER Trial, to evaluate whether people who did not have hyperlipidemia but who did have cardiovascular risk factors, could benefit from taking CRESTOR®. Upon approval by the FDA, AstraZeneca began including CRESTOR® package inserts instructing doctors, other medical professionals, users, and potential users of CRESTOR® that using CRESTOR® for the primary prevention of cardiovascular disease benefits non-hyperlipidemic individuals. On these facts, the plaintiff alleged the use of CRESTOR® for the purpose of treating a non-hyperlipidemic individual who would benefit from increased NO production infringed at least claims 1, 4, 7, and 15 through 20 of the '516 Patent.

In analyzing the claim of direct infringement, I had to resolve the issue of whether AstraZeneca exercised the requisite direction and control over third parties (doctors and medical providers) to be liable for direct infringement. Applying Federal Circuit case law, I found that the plaintiff failed to plead facts sufficient to raise a right to relief for direct infringement by AstraZeneca above a speculative level. With respect to the issue of induced infringement, I followed law in the Federal Circuit that held that "[i]f the label/package insert instructs doctors and/or users to perform the patented method, the label/package insert may provide evidence of AstraZeneca's affirmative intent to induce infringement." Measuring the allegations in the complaint against the elements of active inducement, I found that the plaintiff's claims of induced infringement and willful infringement survived AstraZeneca's motion to dismiss. The district judge adopted the report and recommendation without modification. I subsequently issued two additional reports and recommendations—recommending that the plaintiff's motion to dismiss AstraZeneca's invalidity counterclaim and to strike its invalidity affirmative defense be denied, and that AstraZeneca's motion for summary judgment of no induced infringement be denied—that the district judge adopted. The district judge then appointed a Rule 53 master to assist with claims construction. The special master issued a report and recommendation construing the claims, which the district judge adopted. Based on that claim construction, the parties stipulated that AstraZeneca was entitled to judgment that it does not induce or contribute to inducement of the '516 Patent. Both parties appealed, and the Federal Circuit affirmed.

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- d. For each of the 10 most significant opinions you have written, provide: (1) citations for those decisions that were published; (2) a copy of those decisions that were not published; and (3) the names and contact information for the attorneys who played a significant role in the case.

1. *Marshall v. Georgetown Mem. Hosp.*, No. 2:21-cv-02733-RMG-JDA, 2022 WL 5434226 (D.S.C. July 7, 2022), *R. & R. adopted by* 2022 WL 4078024 (D.S.C. Sept. 6, 2022)

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2. *Floyd v. City of Spartanburg*, No. 7:20-cv-01305-TMC, 2022 WL 1057191 (D.S.C. Jan. 31, 2022), *R. & R. adopted by* 2022 WL 796819 (D.S.C. Mar. 16, 2022)

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3. *Sigmon v. Stirling*, No. 8-13-cv-01399-RBH-JDA, 2018 WL 6113017 (D.S.C. July 9, 2018), *R. & R. adopted by* 2018 WL 4691197 (D.S.C. Sept. 30, 2018), *aff'd*, 956 F.3d 183 (4th Cir. 2020), *cert. denied*, 141 S. Ct. 1094 (2021)

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4. *Stevenson v. Myers*, No. 8:17-cv-00005-HMH-JDA, 2018 WL 3133436 (D.S.C. Mar. 16, 2018), *R. & R. adopted by* 2018 WL 1602678 (D.S.C. Apr. 3, 2018)

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5. *Heath v. Coll. of Charleston*, No. 2:17-cv-01792-PMD-JDA, 2017 WL 9250351 (D.S.C. Aug. 30, 2017), *R. & R. adopted by* 2017 WL 5382064 (D.S.C. Nov. 14, 2017), *aff'd*, 734 F. App'x 206 (4th Cir. 2018)

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6. *Johnson v. Quattlebaum*, No. 8:14-cv-3751-MGL, 2015 WL 5554612 (D.S.C. Sept. 21, 2015), *aff'd*, 664 F. App'x 290 (4th Cir. 2016)

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7. *U.S. Commodity Futures Trading Comm'n v. Harrison*, 255 F. Supp. 3d 645 (D.S.C. 2015)

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8. *Am. Humanist Ass'n v. South Carolina Dep't of Educ.*, No. 6:13-cv-02471-BHH, 2015 WL 1268036 (D.S.C. Feb. 18, 2015), *R. & R. adopted by* 2015 WL 1268157 (D.S.C. Mar. 19, 2015)

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9. *Cap. Inv. Funding, LLC v. Field*, Nos. 6:12-3401-BHH, 6:13-2326-BHH, 2015 WL 247720 (D.S.C. Jan. 20, 2015)

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10. *Z-Man Fishing Prods., Inc. v. Renosky*, 790 F. Supp. 2d 418 (D.S.C. 2011)

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e. Provide a list of all cases in which certiorari was requested or granted.

*Hardaway v. Myers*, No. 8:20-cv-00149-RMG-JDA, 2021 WL 4699091 (D.S.C. Aug. 27, 2021), *R. & R. adopted by* 2021 WL 4307099 (D.S.C. Sept. 22, 2021), *aff'd*, 2022 WL 2114557 (4th Cir. June 13, 2022), *cert. denied*, 143 S. Ct. 796 (2023).

*Lancaster v. Warden*, No. 8:21-cv-03591-TMC-JDA, 2022 U.S. Dist. LEXIS 87028 (D.S.C. Apr. 14, 2022), *R. & R. adopted by* 2022 U.S. Dist. LEXIS 86923 (D.S.C. May 13, 2022), *appeal dismissed*, 2022 U.S. App. LEXIS 32843 (4th Cir. Nov. 29, 2022), *cert. denied*, 143 S. Ct. 2593 (2023)

*Dizzley v. Garrett*, No. 2:19-cv-00530-RBH-JDA, 2021 U.S. Dist. LEXIS 94221 (D.S.C. Mar. 16, 2021), *R. & R. adopted by* 2021 U.S. Dist. LEXIS 94743 (D.S.C. May 17, 2021), *aff'd*, 2022 U.S. App. LEXIS 3043 (4th Cir. Feb. 2, 2022), *cert. denied*, 143 S. Ct. 430 (2022)

*Utsey v. Warden of Kirkland Corr. Inst.*, No. 8:19-cv-3218-JMC-JDA, 2019 U.S. Dist. LEXIS 233963 (D.S.C. Dec. 12, 2019), *R. & R. adopted by* 2020 U.S. Dist. LEXIS 190351 (D.S.C. Oct. 13, 2020), *appeal dismissed*, 845 F. App'x 244 (4th Cir.), *cert. denied*, 142 S. Ct. 289 (2021)

*Sigmon v. Stirling*, No. 8-13-cv-01399-RBH-JDA, 2018 WL 6113017 (D.S.C. July 9, 2018), *R. & R. adopted by* 2018 WL 4691197 (D.S.C. Sept. 30, 2018), *aff'd*, 956 F.3d 183 (4th Cir. 2020), *cert. denied*, 141 S. Ct. 1094 (2021)

*Kifayatuthelezi v. S.C. Dep't of Corr.*, No. 8:17-cv-03139-TLW-JDA, 2019 U.S. Dist. LEXIS 164504 (D.S.C. Mar. 4, 2019), *R. & R. adopted by* 2019 U.S. Dist. LEXIS 163910 (D.S.C. Sept. 24, 2019), *aff'd*, 805 F. App'x 229 (4th Cir. 2020), *cert. denied*, 141 S. Ct. 1062 (2021)

*Staton v. Superintendent Lee Corr. Inst.*, No. 8:19-cv-01805-TMC-JDA, 2019 U.S. Dist. LEXIS 166985 (D.S.C. Aug. 1, 2019), *R. & R. adopted as modified by* 2019 U.S. Dist. LEXIS 165346 (D.S.C. Sept. 26, 2019), *appeal dismissed sub nom. Staton v. Lee Corr. Inst.*, 795 F. App'x 204 (4th Cir.), *cert. denied*, 141 S. Ct. 94 (2020)

*Hunsberger v. Duran*, No. 8:18-cv-01813-TMC-JDA, 2019 U.S. Dist. LEXIS 124970 (D.S.C. Feb. 22, 2019), *R. & R. adopted by* 2019 U.S. Dist. LEXIS 122170 (D.S.C. July 23, 2019), *aff'd*, 785 F. App'x 155 (4th Cir. 2019), *cert. denied*, 140 S. Ct. 2781 (2020)

*Massaquoi v. Am. Credit Acceptance*, No. 7:16-cv-02220-DCC-JDA, 2018 U.S. Dist. LEXIS 149622 (D.S.C. Feb. 9, 2018), *R. & R. adopted by* 2018 U.S. Dist. LEXIS 149066 (D.S.C. Aug. 31, 2018), *aff'd*, 759 F. App'x 183 (4th Cir.), *cert. denied*, 140 S. Ct. 288 (2019)

*Sheftall v. Joyner*, No. 8:17-cv-01955-TMC-JDA, 2018 U.S. Dist. LEXIS 138888 (D.S.C. May 17, 2018), *R. & R. adopted by* 2018 U.S. Dist. LEXIS 138594 (D.S.C. Aug. 16, 2018), *appeal dismissed*, 754 F. App'x 212 (4th Cir.), *cert. denied*, 140 S. Ct. 144 (2019)

*Lancaster v. Ruane*, No. 7:17-cv-02302, 2018 U.S. Dist. LEXIS 102258 (D.S.C. Apr. 9, 2018), *R. & R. adopted by* 2018 U.S. Dist. LEXIS 101422 (D.S.C. June 18, 2018), *aff'd*, 740 F. App'x 372 (4th Cir. 2018), *cert. denied*, 139 S. Ct. 1561 (2019)

*Gaddy v. United States Dist. Ct. Columbia*, No. 0:18-1445-JFA-JDA, 2018 U.S. Dist. LEXIS 114303 (D.S.C. June 19, 2018), *R. & R. adopted by* 2018 U.S. Dist. LEXIS 113371 (D.S.C. July 9, 2018), *aff'd*, 745 F. App'x 507 (4th Cir. 2018), *cert. denied*, 139 S. Ct. 2710 (2019)

*Anderson v. Greenville Health Sys.*, No. 6:16-1051-MGL-JDA, 2016 U.S. Dist. LEXIS 150580 (D.S.C. Oct. 14, 2016), *R. & R. adopted by* 2016 U.S. Dist. LEXIS 150181 (D.S.C. Oct. 31, 2016), *aff'd*, 687 F. App'x 281 (4th Cir.), *cert. denied*, 138 S. Ct. 1443 (2018)

*Moultrie v. McFadden*, No. 8:15-cv-03661-HMH-JDA, 2016 U.S. Dist. LEXIS 110149 (D.S.C. July 13, 2016), *R. & R. adopted by* 2016 U.S. Dist. LEXIS 122004 (D.S.C. Sept. 9, 2016), *appeal dismissed*, 697 F. App'x 248 (4th Cir. 2017), *cert. denied*, 138 S. Ct. 1289 (2018)

*Cilwa v. Fort*, No. 7:16-cv-01301-TMC-JDA, 2016 U.S. Dist. LEXIS 177538 (D.S.C. Nov. 21, 2016), *R. & R. adopted by* 2016 U.S. Dist. LEXIS 177120 (D.S.C. Dec. 22, 2016), *aff'd*, 687 F. App'x 280 (4th Cir.), *cert. denied*, 138 S. Ct. 430 (2017)

*Gunnells v. Cartledge*, No. 8:15-cv-01142-MGL-JDA, 2016 U.S. Dist. LEXIS 21241 (D.S.C. Jan. 13, 2016), *R. & R. adopted by* 2016 U.S. Dist. LEXIS 20132 (D.S.C. Feb. 19, 2016), *appeal dismissed*, 669 F. App'x 165 (4th Cir. 2016), *cert. denied*, 138 S. Ct. 174 (2017)

*Rivera v. Stirling*, No. 8:15-3650-JMC-JDA, 2015 U.S. Dist. LEXIS 178672 (D.S.C. Nov. 4, 2015), *R. & R. adopted by* 2016 U.S. Dist. LEXIS 78478 (D.S.C. June 16, 2016), *aff'd*, 671 F. App'x 57 (2016), *cert. denied*, 138 S. Ct. 118 (2017)

*Rivera v. Stirling*, No. 8:15-cv-04482-JMC-JDA, 2016 U.S. Dist. LEXIS 98082 (D.S.C. June 24, 2016), *R. & R. adopted as modified by* 2016 U.S. Dist. LEXIS 97947 (D.S.C. July 27, 2016), *aff'd*, 672 F. App'x 264 (4th Cir. 2016), *cert. denied*, 138 S. Ct. 113 (2017)

*Chapman v. Enter. Rent-A-Car Co.*, No. 7:15-cv-0041-TMC-JDA, 2016 U.S. Dist. LEXIS 21240 (D.S.C. Jan. 7, 2016), *R. & R. adopted by* 2016 U.S. Dist.

LEXIS 20809 (D.S.C. Feb. 22, 2016), *aff'd*, 668 F. App'x 40 (4th Cir. 2016), *cert. denied*, 581 U.S. 921 (2017)

*Ozorio v. Warden Perry Corr. Inst.*, No. 8:14-cv-03688-RMG-JDA, 2015 U.S. Dist. LEXIS 99555 (D.S.C. July 8, 2015), *R. & R. adopted by* 2015 U.S. Dist. LEXIS 99075 (D.S.C. July 28, 2015), *appeal dismissed*, 622 F. App'x 294 (4th Cir. 2015), *cert. denied*, 578 U.S. 928 (2016)

*Rayfield v. Eagleton*, No. 8:13-cv-03391, 2015 U.S. Dist. LEXIS 17598 (D.S.C. Jan. 8, 2015), *R. & R. adopted by* 2015 U.S. Dist. LEXIS 15634 (D.S.C. Feb. 10, 2015), *appeal dismissed*, 608 F. App'x 135 (4th Cir. 2015), *cert. denied*, 577 U.S. 1080 (2016)

*Feaster v. Fed. Express. Corp.*, No. 2:13-cv-02517-DCN-JDA, 2014 U.S. Dist. LEXIS 120419 (D.S.C. Aug. 8, 2014), *R. & R. adopted by* 2014 U.S. Dist. LEXIS 119894 (D.S.C. Aug. 28, 2014), *aff'd*, 599 F. App'x 63 (4th Cir. 2015), *cert. denied*, 577 U.S. 1064 (2016)

*Riley v. Cartledge*, No. 8:14-cv-01655, 2015 U.S. Dist. LEXIS 13289 (D.S.C. Jan. 16, 2015), *R. & R. adopted by* 2015 U.S. Dist. LEXIS 12439 (D.S.C. Feb. 3, 2015), *appeal dismissed*, 607 F. App'x 308 (4th Cir.), *cert. denied*, 577 U.S. 990 (2015)

*Nash v. Cartledge*, No. 8:13-cv-02019-RMG-JDA, 2014 U.S. Dist. LEXIS 121161 (D.S.C. July 22, 2014), *R. & R. adopted by*, 2014 U.S. Dist. LEXIS 120629 (D.S.C. Aug. 29, 2014), *appeal dismissed*, 597 F. App'x 200 (4th Cir.), *cert. denied*, 577 U.S. 904 (2015)

*Robinson v. Jarrell*, No. 8:13-cv-02321-RBH-JDA, 2014 U.S. Dist. LEXIS 116032 (D.S.C. July 16, 2014), *R. & R. adopted by* 2014 U.S. Dist. LEXIS 115593 (D.S.C. Aug. 20, 2014), *aff'd*, 589 F. App'x 212 (4th Cir.), *cert. denied*, 575 U.S. 1030 (2015)

*Ford v. McCall*, No. 8:12-cv-02266-GRA-JDA, 2013 U.S. Dist. LEXIS 114874 (D.S.C. Apr. 23, 2013), *R. & R. adopted by* 2013 U.S. Dist. LEXIS 114517 (D.S.C. Aug. 14, 2013), *appeal dismissed*, 560 F. App'x 179 (4th Cir.), *cert. denied*, 574 U.S. 899 (2014)

*Ray v. State*, No. 8:11-2774-MGL-JDA, 2012 U.S. Dist. LEXIS 184945 (D.S.C. July 12, 2012), *R. & R. adopted by* 2013 U.S. Dist. LEXIS 8248 (D.S.C. Jan. 22, 2013), *appeal dismissed sub nom. Ray v. Warden of Stevenson Corr. Inst.*, 538 F. App'x 322 (4th Cir. 2013), *cert. denied*, 571 U.S. 1244 (2014)

*Johnson v. Cartledge*, No. 8:12-cv-01536-GRA-JDA, 2013 U.S. Dist. LEXIS 75942 (D.S.C. Apr. 30, 2013), *R. & R. adopted by* 2013 U.S. Dist. LEXIS 75228, *appeal dismissed*, 540 F. App'x 190 (4th Cir. 2013), *cert. denied*, 571 U.S. 1240

(2014)

*Wright v. South Carolina*, No. 8:11-cv-2716-MGL-JDA, 2012 U.S. Dist. LEXIS 184915 (D.S.C. July 20, 2012), *R. & R. adopted by* 2013 U.S. Dist. LEXIS 7579 (D.S.C. Jan. 18, 2013), *appeal dismissed*, 521 F. App'x 224 (4th Cir. 2013), *cert. denied*, 571 U.S. 1178 (2014)

*Batchelor v. South Carolina*, No. 8:12-1471-MGL-JDA, 2012 U.S. Dist. LEXIS 184584 (D.S.C. Dec. 5, 2012), *R. & R. adopted by* 2013 U.S. Dist. LEXIS 5653 (D.S.C. Jan. 15, 2013), *appeal dismissed*, 520 F. App'x 194 (4th Cir.), *cert. denied*, 571 U.S. 927 (2013)

*Robinson v. Wilson*, No. 8:11-cv-02285-RBH-JDA, 2012 U.S. Dist. LEXIS 112137 (D.S.C. July 9, 2012), *R. & R. adopted as modified by* 2012 U.S. Dist. LEXIS 111626 (D.S.C. Aug. 8, 2012), *aff'd*, 500 F. App'x 231 (4th Cir. 2012), *cert. denied* 569 U.S. 1019 (2013)

*Staton v. Warden, Kershaw Corr. Inst.*, No. 8:11-745-TMC-JDA, 2011 U.S. Dist. LEXIS 150962 (D.S.C. Nov. 18, 2011), *R. & R. adopted by* 2012 U.S. Dist. LEXIS 1638, *appeal dismissed*, 474 F. App'x 129 (4th Cir.), *cert. denied*, 568 U.S. 1002 (2012)

*Fox v. Drew*, No. 8:11-1470-HFF-JDA, 2011 U.S. Dist. LEXIS 131408 (D.S.C. Aug. 9, 2011), *R. & R. adopted by* 2011 U.S. Dist. LEXIS 129548 (D.S.C. Nov. 8, 2011), *aff'd*, 470 F. App'x (4th Cir.), *cert. denied*, 568 U.S. 900 (2012)

*Eggs v. Knowlin*, No. 8:10-cv-1774-TLW-JDA, 2011 U.S. Dist. LEXIS 75757 (D.S.C. Apr. 2011), *R. & R. adopted by* 2011 U.S. Dist. LEXIS 75877 (D.S.C. July 12, 2011), *aff'd*, 466 F. App'x 260 (4th Cir.), *cert. denied*, 568 U.S. 890 (2012)

*Maldonado v. McMaster*, No. 8:11-1372-TLW-JDA, 2011 U.S. Dist. LEXIS 140793 (D.S.C. Sept. 27, 2011), *R. & R. adopted by* 2011 U.S. Dist. LEXIS (D.S.C. Dec. 2, 2011), *appeal dismissed*, 470 F. App'x 171 (4th Cir.), *cert. denied*, 568 U.S. 867 (2012)

- f. Provide a brief summary of and citations for all of your opinions where your decisions were reversed by a reviewing court or where your judgment was affirmed with significant criticism of your substantive or procedural rulings. If any of the opinions listed were not officially reported, provide copies of the opinions.

I have searched electronic databases in an effort to identify all items responsive to this question. During my tenure as a magistrate judge, I have issued 2,945 reports and recommendations and 25,259 orders (ranging from non-substantive orders such as rulings on motions for extensions of time to substantive orders such as

rulings on discovery motions and motions for summary judgment), which is a total of 28,204 reviewable decisions. The following orders were reversed by a district judge or the Fourth Circuit Court of Appeals:

*EEOC v. BMW Mfg. Co., LLC*, No. 7:13-cv-01583-HMH-JDA, 2015 WL 7180285 (D.S.C. May 26, 2015), *rev'd*, 2015 WL 5449086 (D.S.C. July 30, 2015). In this employment discrimination action, I denied a motion to compel filed by the EEOC on the basis that the interrogatory at issue was comprised of at least 724 separate inquiries, exceeding the 25-interrogatory limitation in Rule 33(a) of the Federal Rules of Civil Procedure. The district judge reversed, finding that the interrogatory was only a single interrogatory that did not exceed Rule 33(a)'s limit.

*Butler v. Drive Auto. Indus. of Am., Inc.*, No. 6:12-cv-03608-JDA, 2014 WL 11511732 (D.S.C. Apr. 10, 2014), *rev'd and remanded*, 793 F.3d 404 (4th Cir. 2015), *on remand*, 2015 WL 12978671 (D.S.C. Oct. 30, 2015). In this employment discrimination action, I granted the defendant's motion for summary judgment, concluding that plaintiff's employer was a temporary employment agency, and not the defendant, which was a manufacturer with which the agency had placed plaintiff. The Fourth Circuit agreed that the joint employment doctrine applies in the Title VII context but, on de novo review, established a test for courts in the Fourth Circuit to apply when assessing whether an individual is jointly employed by multiple entities. Applying these new factors, the Fourth Circuit concluded that the defendant was a joint employer of plaintiff and, therefore, reversed and remanded the case. On remand, I denied a renewed summary judgment motion by the defendant.

Every report and recommendation is reviewed by a district judge. I have not included in the following lists cases in which a report and recommendation was not adopted due to intervening changes in circumstances; in which the district judge allowed for new evidence or argument that had not been before me, for another opportunity to file late paperwork, or for filing fees to be paid; or where the district judge declined to adopt by report and recommendation but the Fourth Circuit Court of Appeals subsequently reversed the district judge and agreed with my recommendation.

The following are reports and recommendations where the district judge declined to adopt my findings, conclusions, and/or recommendations:

*Gomez v. Easlan Mgmt.*, No. 6:20-cv-2156-TMC-JDA, 2023 WL 2838318 (D.S.C. Feb. 1, 2023), *R. & R. rejected by* 2023 WL 2706240 (D.S.C. Mar. 30, 2023). I recommended granting a motion for summary judgment filed by the employer in an employment discrimination case on the basis that the plaintiff had not forecasted sufficient evidence to create a genuine dispute of material fact regarding whether the employer's articulated reason for terminating the plaintiff was a pretext for race or national origin discrimination under Title VII or 42

U.S.C. §1981. The district judge declined to adopt the recommendation, concluding that the plaintiff's forecasted evidence was sufficient to create a genuine dispute of material fact on the question of pretext.

*Rouse v. Nessel*, No. 8:20-cv-00954-DCC-JDA, 2020 WL 3549205 (D.S.C. Mar. 20, 2020), *R. & R. rejected by* 2020 WL 3548815 (D.S.C. June 30, 2020). I recommended summary dismissal of this action arising from the plaintiff's claim that he was arrested pursuant to a warrant based on a Michigan state criminal statute for failure to pay child support. The district judge declined to adopt the report and recommendation, finding that the plaintiff had alleged sufficient facts to conclude that he may have had standing to pursue the claim.

*Shiflet v. BASF Corp.*, No. 8:18-cv-03260-TMC-JDA, 2019 WL 5856267 (D.S.C. Aug. 21, 2019), *R. & R. rejected by* 2021 WL 457536 (D.S.C. Feb. 9, 2021). In this action challenging the defendant's pension plan's decision to deny benefits, I recommended granting judgment for the defendant and dismissing the plaintiff's complaint for relief. The district judge declined to adopt the recommendation that the pension plan's denial of benefits was supported by substantial evidence and recommended the matter to me for a determination regarding the proper calculation of benefits.

*Wilkerson v. Warden Williamsburg Fed. Corr. Inst.*, No. 8:18-cv-00715-TMC-JDA, 2018 WL 6031312 (D.S.C. Sept. 24, 2018), *R. & R. rejected by* 2018 WL 6018879 (D.S.C. Nov. 16, 2018). In this habeas action, I recommended granting the respondent's motion to dismiss or, in the alternative, for summary judgment. The district judge declined to adopt the report and recommendation and transferred the case to another district, concluding that the court lacked jurisdiction over the petitioner's custodian because the petitioner was no longer in custody in South Carolina.

*Stowers v. Berryhill*, No. 8:17-cv-01629-MGL-JDA, 2018 WL 7825804 (D.S.C. Sept. 10, 2018), *R. & R. rejected by* 2019 WL 1365391 (D.S.C. Mar. 25, 2019). I recommended that the decision of the Commissioner of Social Security denying disability income benefits and supplemental security benefits be affirmed. The district judge rejected the report and recommendation, concluding that the Appeals Council had erred by failing to properly consider new evidence.

*Davenport v. Berryhill*, No. 8:17-cv-02288-TMC-JDA, 2018 WL 6113008 (D.S.C. July 31, 2018), *R. & R. rejected by* 2018 WL 5306931 (D.S.C. Oct. 25, 2018). In this action challenging the Commissioner of Social Security's denial of claims for disability insurance and supplemental security income benefits, I recommended that the decision of the Commissioner be reversed and remanded for further administrative action for the ALJ to make a proper RFC determination. The district judge declined to adopt the report and recommendation and affirmed the decision, concluding that the ALJ's decision was supported by substantial evidence.

*Plaskett v. Cruz*, No. 8:14-cv-00773-MGL-JDA, 2017 WL 10505257 (D.S.C. July 13, 2017), *R. & R. rejected by* 282 F. Supp. 3d 912 (D.S.C. Oct. 23, 2017). Regarding the subject petition brought pursuant to 28 U.S.C. § 2241, I recommended that the respondent's motion to dismiss the petition be granted, that the petition be denied, and that the respondent's motion to transfer be denied. The district judge rejected the recommendation, concluding that because the petitioner was under supervised release in the Third Circuit, the petition was required to be transferred so that it could be presented to his immediate custodian in the Virgin Islands.

*Bruton v. Berryhill*, No. 8:16-cv-01006-RMG-JDA, 2017 WL 9292269 (D.S.C. Apr. 5, 2017), *R. & R. adopted in part and rejected in part by* 2017 WL 1130055 (D.S.C. Mar. 27, 2017), *appeal dismissed*, 692 F. App'x 700 (4th Cir. 2017). I recommended that the decision of the Commissioner of Social Security denying disability insurance benefits be affirmed. The district judge declined to adopt the recommendation and reversed and remanded the matter for further administrative proceedings.

*Vowels v. Colvin*, No. 8:14-cv-01138-DCN-JDA, 2015 WL 5546657 (D.S.C. July 30, 2015), *R. & R. rejected by* 2015 WL 5546701 (D.S.C. Sept. 18, 2015). I recommended affirming the decision of the Commissioner of Social Security denying the plaintiff's claim for disability insurance benefits. The district judge rejected the report and recommendation, remanding on the basis that the court could not conclude whether substantial evidence supported the ALJ's decision to afford little weight to the treating physician's opinion.

*Bryant v. Colvin*, No. 8:14-cv-02087-TLW-JDA, 2015 WL 5797753 (D.S.C. July 27, 2015), *R. & R. rejected by* 2015 WL 5783813 (D.S.C. Sept. 28, 2015). I recommended reversing the decision of the Commissioner of Social Security denying disability insurance and supplemental security income benefits and remanding to the Commissioner on the basis that the ALJ failed to properly evaluate the opinion of the plaintiff's treating psychiatrist. The district judge declined to accept the report and recommendation, concluding that the ALJ's evaluation was appropriate.

*Rogers Norris v. Colvin*, No. 8:14-cv-01070-JMC-JDA, 2015 WL 5797752 (D.S.C. May 6, 2015), *R. & R. rejected by* 142 F. Supp. 3d 419 (D.S.C. 2015), *motion to amend denied*, 2016 WL 3257732 (D.S.C. June 14, 2016). I recommended affirming the Commissioner of Social Security's decision denying the plaintiff's claim for disability insurance and supplemental security income benefits. The report and recommendation concluded that the plaintiff did not show that the Appeals Council improperly failed to consider new and material evidence submitted by her treating physician. The district judge rejected the report and recommendation, holding that it was not evident that, in refusing to consider the additional evidence, the Appeals Council appropriately determined

whether the evidence was new, material, and related to the period on or before the date of the ALJ's hearing decision.

*Terry v. Drive Auto. Indus.*, No. 6:13-cv-02824-BHH-JDA, 2015 U.S. Dist. LEXIS 33952 (D.S.C. Jan. 26, 2015), *R. & R. rejected by* 2015 U.S. Dist. LEXIS 32516 (D.S.C. Mar. 17, 2015). In this Title VII case, I recommended granting the defendant's motion for summary judgment. The district judge declined to adopt the report and recommendation, concluding that a genuine issue of fact existed as to whether the plaintiff was terminated in retaliation for making a complaint to the employee hotline.

*Glenn v. Colvin*, No. 8:13-cv-02099-BHH-JDA, 2014 WL 7876302 (D.S.C. Dec. 23, 2014), *R. & R. rejected by* 2015 WL 628518 (D.S.C. Feb. 12, 2015). I recommended that the decision of the Commissioner of Social Security denying the plaintiff's claims for disability insurance and supplemental security income benefits be reversed and remanded for further administrative action on the basis that the court could not find that the ALJ's listing analysis was supported by substantial evidence. The district judge declined to adopt the recommendation, concluding that the listing analysis was supported by substantial evidence, addressing the plaintiff's remaining allegations of error, and affirming the Commissioner's decision.

*Oglesby v. Stevenson*, 8:13-cv-03378-TMC-JDA, 2014 WL 4793705 (D.S.C. July 11, 2014), *R. & R. rejected by* 2014 WL 4840766 (D.S.C. Sept. 25, 2014). I recommended granting the motion for summary judgment of several defendants concerning the prisoner plaintiff's claims of deliberate indifference to his serious medical needs, concluding that the plaintiff received regular treatment and that no evidence indicated that any defendant acted with deliberate indifference to his medical needs. The district judge declined to adopt the report and recommendation, concluding with regard to claims against several defendants that plaintiff had forecasted sufficient evidence to create material factual issues.

*Collins v. Colvin*, No. 8:13-cv-00076-RBH-JDA, 2014 WL 4536713 (D.S.C. May 19, 2014), *R. & R. rejected by* 2014 WL 4536727 (D.S.C. May 19, 2014). I recommended that the decision of the Commissioner of Social Security denying disability insurance benefits be reversed and remanded for further administrative action on the basis that the ALJ improperly evaluated opinion evidence. The district judge declined to adopt the Report and recommendation, concluding that substantial evidence supported the ALJ's evaluation. Nonetheless, the district judge reversed and remanded for further administrative action on a different basis.

*Addy v. Colvin*, No. 8:13-cv-00027-JMC-JDA, 2014 WL 1314381 (D.S.C. Feb. 5, 2014), *R. & R. rejected by* 2014 WL 1389831 (D.S.C. Apr. 9, 2014). I recommended that the decision of the Commissioner of Social Security denying the plaintiff's claim for disability insurance benefits be affirmed. The district judge rejected the report and recommendation, reversed the Commissioner's

decision, and remanded the matter for further administrative proceedings.

*Lockwood v. Colvin*, No. 8:12-cv-2930-DCN-JDA, 2014 WL 994944 (D.S.C. Jan. 31, 2014), *R. & R. rejected* by 2014 WL 995072 (D.S.C. Mar. 13, 2014). I recommended that the decision of the Commissioner of Social Security denying disability insurance benefits be reversed and remanded for further administrative action on the basis that the ALJ failed to adequately consider the combined effects of the plaintiff's multiple impairments. The district judge rejected the report and recommendation, concluding that the ALJ's error was harmless. Nonetheless, the district judge concluded that the ALJ failed to properly analyze the plaintiff's ability to perform his past relevant work, reversed the Commissioner's decision on that basis, and remanded the matter for further administrative proceedings.

*Cromedy v. Colvin*, No. 8:12-cv-02522-DCN-JDA, 2014 WL 1094402 (D.S.C. Jan. 31, 2014), *R. & R. rejected* by 2014 WL 1093101 (D.S.C. Mar. 17, 2014). I recommended that the decision of the Commissioner of Social Security denying disability income and supplemental security income be affirmed. The district judge rejected the report and recommendation, concluding that the ALJ's listing analysis was not supported by substantial evidence, reversed the Commissioner's decision, and remanded the matter for further administrative proceedings.

*Jordan v. Colvin*, No. 8:12-cv-01676-DCN-JDA, 2013 WL 5317015 (D.S.C. July 31, 2013), *R. & R. rejected* by 2013 WL 5317334 (D.S.C. Sept. 20, 2013). I recommended affirming the decision of the Commissioner of Social Security denying the plaintiff's claim for disability insurance benefits. The district judge declined to adopt the report and recommendation and remanded on the basis that the ALJ erred in assessing the opinion of an examining physician.

*Rivera v. Byars*, No. 8:13-cv-1234-JMC-JDA, 2013 WL 5914413 (D.S.C. May 10, 2013), *R. & R. rejected* by 2013 WL 6018616 (D.S.C. Oct. 31, 2013). I recommended summary dismissal of this action arising out of the prisoner plaintiff's dissatisfaction with the delays and errors with respect to his request for a vegetarian diet. The district judge rejected the report and recommendation to the extent it did not recognize that the plaintiff stated a claim under the First Amendment.

*Skelton v. Quinn*, No. 3:10-cv-01958-MBS-JDA, 2012 WL 3716936 (D.S.C. June 15, 2012), *R. & R. adopted in part and rejected in part* by 2012 WL 3716861 (D.S.C. Aug. 28, 2012). I recommended denying the plaintiff's motion to direct the Navy's Physical Examination Board to grant disability benefits and granting the defendant's motion to dismiss, concluding that the action was time barred. The district judge determined that the plaintiff's claim accrued when the plaintiff was informed that he did not qualify for retirement benefits and not when he was discharged; thus, the action was not time barred. Nonetheless, the district judge denied the plaintiff's motion to direct the Navy's Physical Examination Board to grant disability benefits and granted the defendant's motion to dismiss.

*Tedder v. Johnson*, No. 8:09-cv-3067-JMC-JDA, 2012 WL 931990 (D.S.C. Feb. 23, 2012), *R. & R. adopted by* 2012 WL 931979 (D.S.C. Mar. 19, 2012), *rev'd*, 527 F. App'x 269 (4th Cir. 2013). I recommended granting summary judgment against the plaintiff based on his failure to exhaust his administrative remedies in his action pursuant to 42 U.S.C. § 1983 alleging that he was subjected to excessive force in violation of his Eighth Amendment rights. The district judge adopted the report and recommendation in part and rejected it in part, concluding that there existed a genuine issue of fact concerning whether the plaintiff had failed to exhaust but granting summary judgment because the plaintiff failed to forecast sufficient evidence of a constitutional violation. On appeal, the Fourth Circuit reversed the grant of summary judgment and remanded for further proceedings, holding that issues of fact remained regarding both whether the plaintiff's constitutional rights had been violated and whether he had failed to exhaust available administrative remedies.

*Plumb v. Astrue*, No. 8:10-cv-03090-RBH-JDA, 2012 U.S. Dist. LEXIS 30385 (D.S.C. Feb. 2, 2012), *R. & R. rejected by* 2012 U.S. Dist. LEXIS 30233 (D.S.C. Mar. 7, 2012). I recommended affirming the decision of the Commissioner of Social Security denying the plaintiff's claim for disability insurance benefits and denying the plaintiff's motion to admit additional evidence. The district court declined to adopt the report and recommendation, reversing the Commissioner's decision and remanding the case to the Commissioner for further proceedings on the basis that the ALJ did not properly analyze the treating physician's opinion.

*Huggins v. Astrue*, No. 8:10-cv-02680, 2012 WL 527620 (D.S.C. Jan. 6, 2012), *R. & R. rejected by* 2012 WL 527616 (D.S.C. Feb. 15, 2012). I recommended reversing the decision of the Commissioner of Social Security denying the plaintiff's claims for disability insurance and supplemental security income benefits, concluding that the ALJ erred by failing to indicate and explain the weight he gave to the disability examiner's vocational report. The district judge declined to adopt the report and recommendation and affirmed the Commissioner's decision.

The following reports and recommendation were adopted only in part:

*Sutherland v. R.J. Reynolds Tobacco Co., Inc.*, No. 6:21-cv-00671-TMC-JDA, 2021 WL 7286748 (D.S.C. Oct. 13, 2021), *R. & R. adopted in part and rejected in part by* 2022 WL 391578 (D.S.C. Feb. 9, 2022), *appeal filed*, No. 22-1173 (4th Cir. Feb. 23, 2022). In this action arising out of the defendants' alleged fraudulent and misleading statements concerning the advertising and sale of cigarettes, I recommended that the motion to dismiss be granted in part and denied in part. The district judge adopted a portion of the report and recommendation but declined to adopt the finding that the plaintiff's claims were not time-barred and, therefore, granted the motion to dismiss in full.

*Rivera v. S.C. Dep't of Corr.*, No. 8:21-cv-1690-SAL-JDA, 2021 WL 9772763 (D.S.C. June 10, 2021), *R. & R. adopted in part and rejected in part* by 2022 WL 16947816 (D.S.C. Nov. 15, 2022), *referred to*, 2022 WL 17585792 (D.S.C. Nov. 17, 2022), *adopted by* 2022 WL 17555643 (D.S.C. Dec. 9, 2022), *appeal filed*, No. 22-7446 (4th Cir. Dec. 19, 2022). In this action brought by a prisoner plaintiff alleging denial of medical care in violation of the Eighth Amendment, I recommended that the case be remanded to the state court following removal. The district judge rejected the recommendation on the jurisdictional grounds but noted the likely merit to summary dismissal I identified in a footnote, adopted that portion of the report and recommendation, and referred the matter back to me for further screening to determine the appropriateness of summary dismissal for failing to name a person amenable to suit under § 1983. I subsequently recommended that the plaintiff's federal claims under § 1983 be dismissed for failure to state a claim, that the district judge decline to exercise supplemental jurisdiction over the plaintiff's state law claims, and that the case be remanded to state court. The district judge adopted my report and recommendation.

*Hardaway v. Myers*, No. 8:20-cv-00149-RMG-JDA, 2020 WL 4679046 (D.S.C. Mar. 11, 2020), *R. & R. adopted in part by* 2020 WL 2832668 (D.S.C. June 1, 2020), *referred to*, 2021 WL 4699091 (D.S.C. Aug. 27, 2021), *adopted by* 2021 WL 4307099 (D.S.C. Sept. 22, 2021), *aff'd*, 2022 WL 2114557 (4th Cir. June 13, 2022), *cert. denied*, 143 S. Ct. 796 (2023). I recommended summary dismissal of the action alleging various constitutional violations arising out of the plaintiff's work conditions in prison. The district judge adopted the report and recommendation except the conclusion that the plaintiff had failed to state a First Amendment retaliation claim. I subsequently recommended that summary judgment be granted to the defendant, and the district judge adopted my report and recommendation.

*Glenn v. Saul*, No. 8:18-cv-02678-MGL-JDA, 2019 WL 7284996 (D.S.C. July 31, 2019), *R. & R. adopted in part and rejected in part by* 2019 WL 6207775 (D.S.C. Nov. 21, 2019). I recommended that the decision of the Commissioner of Social Security denying the plaintiff's claims for disability insurance benefits and supplemental security income be reversed and remanded for further administrative action on the basis that the court could not find that the ALJ's residual functional capacity determination was supported by substantial evidence. The district judge sustained the Commissioner's objection and, therefore, declined to adopt the reasoning of the report and recommendation; however, the district judge reversed and remanded the decision on another basis.

*Reynolds v. Carolina Health Ctrs., Inc.*, No. 8:18-cv-00177-TMC-JDA, 2019 WL 6170488 (D.S.C. Jan. 31, 2019), *R. & R. adopted in part and rejected in part by* 2019 WL 3927446 (D.S.C. Aug. 20, 2019). I recommended granting the defendant's motion for summary judgment in this employment discrimination action. The district judge declined to adopt the recommendation that summary judgment be granted as to the plaintiff's Title VII disparate treatment and

retaliation claims, concluding that the plaintiff had adduced sufficient evidence to permit a trier of fact to find the defendant's explanation regarding the plaintiff's job classification and pay rate to be pretextual, but the district judge otherwise adopted the report and recommendation.

*Matthews v. Berryhill*, No. 8:17-cv-00870-PMD-JDA, 2018 WL 4523226 (D.S.C. July 10, 2018), *R. & R. adopted in part and rejected in part* by 2018 WL 4042606 (D.S.C. Aug. 24, 2018). I recommended affirming the decision of the Commissioner of Social Security denying the plaintiff's claims for disability insurance benefits and supplemental security income. The district judge agreed that the ALJ's summary of the plaintiff's testimony and the ALJ's credibility determination were supported by substantial evidence but rejected the report and recommendation in part, ordering a remand to the Commissioner based on the district judge's determination that the ALJ erred in failing to include the consultative examiners' purported limitations in the ALJ's residual functional capacity determination.

*Coulter v. Berryhill*, No. 8:16-cv-00430-PMD-JDA, 2017 WL 9289408 (D.S.C. Feb. 17, 2017), *R. & R. adopted in part and rejected in part* by 2017 WL 1352343 (D.S.C. Apr. 13, 2017). I recommended that the decision of the Commissioner of Social Security denying disability insurance benefits be affirmed and addressed two specific allegations of error. The district judge adopted the recommendation with respect to one allegation of error but rejected the recommendation with respect to the other allegation of error and, therefore, reversed the decision and remanded for further administrative proceedings.

*Green v. Capers*, No. 8:16-cv-00126-DCN-JDA, 2017 WL 9289407 (D.S.C. Jan. 19, 2017), *R. & R. adopted in part and rejected in part* by 2017 WL 1130055 (D.S.C. Mar. 27, 2017), *appeal dismissed*, 692 F. App'x 700 (2017). In this action alleging constitutional violations relating to injuries the plaintiff suffered in prison, I recommended granting the defendants' motion for summary judgment. The district judge adopted in part and rejected in part the report and recommendation. The district judge agreed that the defendants were not entitled to summary judgment based on the plaintiff's failure to exhaust administrative remedies and that the defendants were not entitled to summary judgment on the plaintiff's intentional discrimination claim, but the district judge denied summary judgment on a failure to protect claim against two defendants and concluded that there was a genuine issue of fact as to whether they acted with deliberate indifference.

*Crawford v. Hunt*, No. 8:15-cv-01362-MGL-JDA, 2016 WL 11423514 (D.S.C. June 2, 2016), *R. & R. adopted in part and rejected in part* by 2016 WL 4232885 (D.S.C. Aug. 11, 2016). In this § 1983 action brought by a prisoner plaintiff alleging Eighth and Fourteenth Amendment violations, I recommended granting a motion for summary judgment filed by one defendant and granting in part and denying in part a motion for summary judgment filed by four defendants. The

district judge adopted in part and declined to adopt in part the recommendation, granted the motion for summary judgment filed by one defendant, and denied the motion for summary judgment filed by four defendants.

*Moore v. Easley City Police Dep't*, No. 8:16-525-MBS-JDA, 2016 WL 11423527 (D.S.C. Mar. 9, 2016), *R. & R. adopted in part and rejected in part* by 2016 WL 1444414 (D.S.C. Apr. 13, 2016). I recommended summary dismissal of the plaintiff's case alleging constitutional violations arising out of a police officer who was transporting the plaintiff after arrest without a seatbelt at a speed in excess of 100 miles per hour. I concluded that neither the police department nor its staff were persons who could be sued under 42 U.S.C. §1983, that the plaintiff failed to state a claim against the city when the plaintiff did not identify a policy or custom that caused his injury, that the facts alleged did not rise to the level of shocking the conscience, and that the plaintiff did not sufficiently allege injury. The district judge adopted the recommendation in part but rejected it in part based on the court's view that the facts alleged were sufficient to plausibly allege that the officer acted with deliberate indifference.

*Swinton v. Cannon*, No. 8:15-cv-04148-PMD-JDA, 2015 WL 13227634 (D.S.C. Oct. 30, 2015), *R. & R. adopted in part and rejected in part* by 2015 WL 8780542 (D.S.C. Dec. 15, 2015), *referred to*, 2016 WL 7477609 (D.S.C. Nov. 21, 2016), *adopted by* 2016 WL 7451219 (D.S.C. Dec. 28, 2016). In this case alleging claims arising out of his extradition from South Carolina to Arizona, I recommended summary dismissal of the action. The district judge adopted the recommendation in part but sustained the plaintiff's objection regarding summary dismissal of his claim against the John Doe defendants for violation of the plaintiff's extradition rights and returned the case for further analysis of whether the complaint stated a plausible claim against the John Doe defendants. After the matter was recommitted to me, the plaintiff learned the identity of the John Doe defendants, and I eventually recommended that the plaintiff's claims against one defendant be dismissed for failure to prosecute and that a motion to transfer venue to the District of Arizona by the other defendants be granted. The district judge adopted my report and recommendation.

*Strang v. Colvin*, No. 8:13-cv-02834-JMC-JDA, 2015 WL 1519682 (D.S.C. Feb. 11, 2015), *R. & R. adopted in part and rejected in part* by 2015 WL 1519694 (D.S.C. Mar. 31, 2015). I recommended affirmance of the decision of the Commissioner of Social Security denying the plaintiff's claim for disability insurance benefits. The district judge accepted in part and rejected in part the report and recommendation, concluding that a more detailed and complete analysis of the weight given by the ALJ to medical source opinions was necessary, and reversing and remanding the matter for further administrative proceedings.

*Smith v. Colvin*, No. 8:13-cv-02657-JMC-JDA, 2015 WL 1400500 (D.S.C. Feb. 3, 2015), *R. & R. adopted in part and rejected in part* by 2015 WL 1400507

(D.S.C. Mar. 25, 2015). I recommended that the decision of the Commissioner of Social Security denying the plaintiff's claim for supplemental security income benefits be affirmed. The district judge accepted in part and rejected in part the report and recommendation, declining to adopt it regarding the ALJ's weighing of medical evidence, and reversed and remanded the matter for further administrative proceedings.

*Holcomb v. Colvin*, No. 8:13-cv-02066-JMC-JDA, 2015 WL 1423338 (D.S.C. Feb. 2, 2015), *R. & R. adopted in part and rejected in part by* 2015 WL 1423349 (D.S.C. Mar. 27, 2015). I recommended that the decision of the Commissioner of Social Security denying disability insurance and supplemental security income benefits be affirmed. The district judge accepted in part and rejected in part the report and recommendation, declining to adopt it regarding the ALJ's weighing of the plaintiff's treating physician's opinion, and reversing and remanding the matter for further administrative proceedings.

*Oglesby v. Stevenson*, No. 8:13-cv-03378-TMC-JDA, 2014 WL 7409673 (D.S.C. Sept. 9, 2014), *R. & R. rejected by* 2014 WL 4840766 (D.S.C. Dec. 31, 2014). I recommended granting summary judgment to four defendants on the prisoner plaintiff's claims of deliberate indifference to his serious medical needs, concluding that the plaintiff failed to forecast evidence that the defendants acted with a sufficiently culpable state of mind. The district judge adopted the report and recommendation in part and rejected it in part, granting summary judgment to one defendant but denying summary judgment to the other three.

*Williams v. Colvin*, No. 8:13-cv-01563-JMC-JDA, 2014 WL 8382937 (D.S.C. Sept. 3, 2014), *R. & R. adopted in part and rejected in part by* 2015 WL 1423323 (D.S.C. Mar. 27, 2015). I recommended affirming the decision of the Commissioner of Social Security denying the plaintiff's disability insurance benefits claim. The district judge adopted the report and recommendation in part and rejected it in part, remanding on the basis of a potential conflict between the vocational expert's testimony and the U.S. Department of Labor Dictionary of Occupational Titles.

*Crosby v. United Parcel Serv. Inc.*, No. 8:12-cv-00681-JMC-JDA, 2014 WL 1278612 (D.S.C. Feb. 14, 2014), *R. & R. adopted in part and rejected in part by* 2014 WL 1278009 (D.S.C. Mar. 27, 2014). I recommended granting in part and denying in part the defendant's motion for summary judgment in an action generally alleging race discrimination, retaliation, and hostile work environment claims. The district judge accepted in part and rejected in part the report and recommendation and granted in part and denied in part the motion for summary judgment.

*Weber v. Hankins*, No. 8:12-cv-03349-TMC-JDA, 2014 WL 1268679 (D.S.C. Jan. 31, 2014), *R. & R. adopted in part and rejected in part by* 2014 WL 1268661 (D.S.C. Mar. 26, 2014). In this action arising out of the prisoner plaintiff's

conditions of confinement and the alleged use of physical force on the plaintiff, I recommended granting in part and denying in part the defendants' motion for summary judgment. The district judge predominately adopted the report and recommendation but rejected the recommendation to deny summary judgment on a § 1983 failure-to-protect claim and a state law negligence claim and rejected the recommendation to appoint counsel if the case were to proceed to trial.

*Weber v. Jones*, No. 8:12-cv-02922-TMC-JDA, 2014 U.S. Dist. LEXIS 44349 (D.S.C. Jan. 27, 2014), *R. & R. adopted in part and rejected in part by* 2014 U.S. Dist. LEXIS 39785 (D.S.C. Mar. 26, 2014). In this action alleging deprivation of the prisoner plaintiff's due process rights based on his conditions of confinement, I recommended granting the defendants' motion for summary judgment. The district judge predominately adopted the report and recommendation but concluded that there was a genuine issue of material fact as whether the plaintiff was placed on lockdown and afforded proper due process and, therefore, denied summary judgment on that claim.

*Stawaisz v. Colvin*, No. 8:11-cv-3519-JMC-JDA, 2013 WL 5140164 (D.S.C. Aug. 16, 2013), *R. & R. adopted in part and rejected in part by* 2013 WL 5139599 (D.S.C. Sept. 12, 2013). I recommended reversing the decision of the Commissioner of Social Security denying the plaintiff's application for disability insurance benefits and remanding to the Commissioner. The district judge adopted in part and rejected in part the report and recommendation, disagreeing with the basis for remand provided in the report and recommendation but remanding on an alternative basis.

*Isgett v. Boone*, No. 8:11-02783-CMC-JDA, 2013 WL 773072 (D.S.C. Feb. 1, 2013), *R. & R. adopted in part and rejected in part by* 2013 WL 773070 (D.S.C. Feb. 28, 2013). I recommended that summary judgment be granted to all defendants on the plaintiff pretrial detainee's claim that he was subjected to excessive force. The district judge adopted the recommendation in part but denied it in part, denying summary judgment as to one defendant but granting summary judgment to the others.

*Geer v. MacGregor*, No. 8:10-cv-2219-HMH-JDA, 2013 U.S. Dist. LEXIS 29489 (D.S.C. Jan. 10, 2013), *R. & R. adopted in part and rejected in part by* 2013 U.S. Dist. LEXIS 29490 (D.S.C. Mar. 5, 2013). In this action I recommended granting summary judgment against the plaintiff on his breach of contract claim and denying summary judgment against him on his FLSA and South Carolina Payment of Wages Act claims. The district judge adopted the report and recommendation in part and rejected it in part. Specifically, the district court judge granted summary judgment against the plaintiff on both his FLSA claim and his contract claim and declined to exercise supplemental jurisdiction regarding the Payment of Wages Act claim.

*Ethox Chem., LLC v. Coca-Cola Co.*, No. 6:12-cv-01682, 2012 WL 6761527

(D.S.C. Nov. 20, 2012), *R. & R. adopted in part and rejected in part* by 2013 WL 41001 (D.S.C. Jan. 3, 2013). I recommended that the defendant's motion to dismiss be granted as to the plaintiffs' claims for violation of the South Carolina Unfair Trade Practices Act ("SCUTPA"), fraud, negligent misrepresentation, and misappropriation of trade secrets and denied as to the plaintiffs' misappropriation claim. The district judge adopted the report and recommendation in part and rejected it in part, dismissing the SCUTPA and misappropriation claims with prejudice and dismissing the fraud, negligent misrepresentation, and misappropriation of trade secrets claims without prejudice.

*Reddic v. Wilson*, No. 8:12-cv-232-MGL-JDA, 2012 WL 7688170 (D.S.C. Aug. 13, 2012), *R. & R. adopted in part and rejected in part sub nom. by Reddic v. Cartledge*, 2013 WL 1010327 (D.S.C. Mar. 14, 2013). I recommended granting summary judgment to the respondent and denying a habeas petition under 28 U.S.C. § 2254. The district judge adopted the report and recommendation in part and rejected it in part, granting summary judgment on all of the petitioner's grounds but one. As to that one ground, the district court disagreed with the conclusion that it was time barred and, thus, returned the case for further consideration of that ground. On remand, I recommended granted summary judgment on the remaining ground and denying the petition. The district judge adopted my report and recommendation.

*Leap v. Astrue*, No. 8:10-cv-02995-MBS-JDA, 2012 WL 1067675 (D.S.C. Feb. 15, 2012), *R. & R. adopted in part and rejected in part* by 2012 WL 1067667 (D.S.C. Mar. 29, 2012), *referred to*, 2014 WL 463270 (D.S.C. Feb. 4, 2014). I recommended reversing the decision of the Commissioner of Social Security denying the plaintiff's claim for disability insurance benefits. The report identified three errors by the ALJ justifying remand. The district judge adopted the report and recommendation in part and declined to adopt it in part, agreeing that one of the identified errors warranted remand but disagreeing as to the other two bases.

*Gary v. S.C. Dep't of Corr.*, No. 8:10-cv-02037-MBS-JDA, 2011 WL 2838113 (D.S.C. June 3, 2011), *R. & R. adopted as modified* by 2011 WL 2746307 (D.S.C. July 14, 2011), *referred to*, 2012 WL 1825232 (D.S.C. Apr. 24, 2012), *adopted by* 2012 WL 1825224 (D.S.C. May 18, 2012). In this action arising out of a use of force against the prisoner plaintiff, I recommended that the defendants' motion to dismiss, which raised only a statute of limitations argument, be granted in part and denied in part. The district judge adopted the report and recommendation with the modification that two additional causes of action were timely. On remand, I eventually recommended that the case be dismissed for failure to prosecute and the district judge adopted my recommendation.

As a magistrate judge I am often called upon to make recommendations on issues that are largely discretionary, such as whether to request more briefing before ruling on an issue, whether to dismiss a claim with or without prejudice, whether

to exercise supplemental jurisdiction over state law claims, or what remedy to award after finding error in a Social Security case. My recommendations on such issues are often considered de novo and are not entitled to any deference, which increases the number of partial rejections of my reports and recommendations. In the following cases my reports and recommendations were largely adopted but the district judge disagreed with me on such a discretionary issue or on a relatively minor or nonmaterial point.

*Hendrix v. State Entities/Corp.*, No. 6:22-cv-3573-DCC-JDA, 2022 WL 20056300 (D.S.C. Dec. 9, 2022), *R. & R. adopted in part and rejected in part sub nom. by Zikomo v. State Entities/Corp.*, 2023 WL 3865712 (D.S.C. June 7, 2023).

*Norris v. Williams*, No. 8:21-cv-3353-MGL-JDA, 2021 WL 9353161 (D.S.C. Oct. 18, 2021), *R. & R. adopted in part and rejected in part by* 2022 WL 3908694 (D.S.C. Aug. 30, 2022).

*Simmons-Agnew v. HB Emp. Servs., LLC*, No. 2:20-cv-04402-MBS-JDA, 2021 WL 2228586 (D.S.C. Feb. 16, 2021), *R. & R. adopted as modified by* 2021 WL 1783135 (D.S.C. May 5, 2021).

*Rivera v. S.C. Dep't of Corr.*, No. 8:20-cv-03356-SAL-JDA, 2020 U.S. Dist. LEXIS 256589 (D.S.C. Nov. 12, 2020), *R. & R. adopted in part and rejected in part by* 2021 U.S. Dist. LEXIS 120015 (D.S.C. June 28, 2021).

*Sales v. Res-Care Inc.*, No. 3:18-cv-03591-JFA-JDA, 2020 WL 9211149 (D.S.C. Oct. 19, 2020), *R. & R. adopted in part and rejected in part by* 2021 WL 1186553 (D.S.C. Mar. 30, 2021).

*Garner v. Soc'y Fashion Wk. LLC*, No. 6:19-cv-00588-DCC-JDA, 2020 WL 8483821 (D.S.C. Sept. 17, 2020), *R. & R. adopted as modified by* 2020 WL 8483822 (D.S.C. Dec. 2, 2020).

*Dizzley v. Hixson*, No. 2:20-cv-02613-SAL-JDA, 2020 WL 9211156 (D.S.C. Aug. 7, 2020), *R. & R. adopted as modified by* 2021 WL 1115914 (D.S.C. Mar. 24, 2021), *aff'd*, 2021 WL 4936254 (4th Cir. Oct. 22, 2021).

*Dickerson v. Stirling*, Nos. 8:19-cv-1158-RBH-JDA, 8:19-cv-01316-RBH-JDA, 2019 WL 8918754 (D.S.C. Dec. 5, 2019), *R. & R. adopted as modified by* 2020 WL 1329577 (D.S.C. Mar. 23, 2020).

*Staton v. Superintendent Lee Corr. Inst.*, No. 8:19-cv-01805-TMC-JDA, 2019 WL 6221449 (D.S.C. Aug. 1, 2019), *R. & R. adopted as modified by* 2019 WL 4686435 (D.S.C. Sept. 26, 2019), *appeal dismissed*, 795 F. App'x 204 (4th Cir.), *cert. denied*, 141 S. Ct. 94 (2020).

*Curtis v. Nix*, No. 8:19-cv-00509-TMC-JDA, 2019 WL 1995109 (D.S.C. Apr. 5,

2019), *R. & R. adopted as modified by* 2019 WL 1995344 (D.S.C. May 6, 2019), *referred to,* 2019 WL 5332378 (D.S.C. Sept. 25, 2019), *adopted by* 2019 WL 5326969 (D.S.C. Oct. 21, 2019).

*Michelin Ret. Plan v. Chicago Transit Auth. Retiree Health Care Tr.*, No. 6:16-cv-03604-DCC-JDA, 2019 WL 487565 (D.S.C. Jan. 28, 2019), *R. & R. adopted as modified by* 2019 WL 2098843 (D.S.C. May 13, 2019).

*Addison v. S.C. Dep't of Corr.*, No. 8:18-cv-2782-TMC-JDA, 2018 WL 6623653 (D.S.C. Nov. 2, 2018), *R. & R. adopted as modified by* 2018 WL 6620105 (D.S.C. Dec. 18, 2018).

*Keith v. Berryhill*, No. 8:17-cv-02554-JMC-JDA, 2018 WL 8300525 (D.S.C. Oct. 22, 2018), *R. & R. adopted in part and rejected in part by* 2019 WL 1416884 (D.S.C. Mar. 29, 2019).

*Barnes v. Bragg*, No. 8:18-cv-01414-HMH-JDA, 2018 WL 6067242 (D.S.C. Oct. 3, 2018), *declined to adopt by* 2018 WL 6065284 (D.S.C. Nov. 20, 2018), *referred to,* 2019 WL 6170566 (D.S.C. July 16, 2019), *adopted by* 2019 WL 3561878 (D.S.C. Aug. 6, 2019), *appeal dismissed,* 2020 WL 1696120 (D.S.C. Jan. 6, 2020).

*Gilliard v. Berryhill*, No. 8:17-cv-01435-RMG-JDA, 2018 WL 4573099 (D.S.C. Aug. 13, 2018), *R. & R. adopted in part and rejected in part by* 2018 WL 4092069 (D.S.C. Aug. 28, 2018).

*Sallis v. Jones*, No. 6:17-3465-TMC-JDA, 2018 WL 3750613 (D.S.C. May 3, 2018), *R. & R. adopted as modified by* 2018 WL 3745076 (D.S.C. Aug. 7, 2018), *aff'd*, 746 F. App'x 228 (4th Cir. 2019).

*Charles v. Johnson*, No. 8:18-cv-00854-AMQ-JDA, 2018 WL 4473385 (D.S.C. Apr. 11, 2018), *R. & R. adopted in part and rejected in part by* 2018 WL 4926457 (D.S.C. Sept. 18, 2018).

*Carroll v. UPS*, No. 1:17-cv-03108-DCC-JDA, 2018 U.S. Dist. LEXIS 149585 (D.S.C. Mar. 15, 2018), *R. & R. adopted in part by* 2018 U.S. Dist. LEXIS 146846 (D.S.C. Aug. 29, 2018).

*Coleman v. Pate*, No. 8:16-cv-00709-DCN-JDA, 2017 WL 9292266 (D.S.C. Jan. 31, 2017), *R. & R. adopted in part and rejected in part by* 2017 WL 1190877 (D.S.C. Mar. 31, 2017).

*Cooper v. Spartanburg Cnty. Sch. Dist. No. 7*, No. 7:13-cv-00991-JMC-JDA, 2016 U.S. Dist. LEXIS 87444 (D.S.C. June 15, 2016), *R. & R. adopted in part and rejected in part by* U.S. Dist. LEXIS 87228 (D.S.C. July 6, 2016).

*Gunnells v. Goodman*, No. 8:14-cv-01978-MGL-JDA, 2016 WL 11410934 (D.S.C. Jan. 11, 2016), *R. & R. adopted in part and rejected in part by* 2016 WL 768845 (D.S.C. Feb. 29, 2016).

*United States v. Walker*, No. 6:13-cv-0232-TMC-JDA, 2014 U.S. Dist. LEXIS 44688 (D.S.C. Mar. 5, 2014), *R. & R. adopted in part and rejected in part by* 2014 U.S. Dist. LEXIS 44172 (D.S.C. Apr. 1, 2014).

*Welch v. Lee*, No. 8:13-cv-00201-JFA-JDA, 2013 U.S. Dist. LEXIS 131240 (D.S.C. Aug. 9, 2013), *R. & R. adopted in part and rejected in part by* 2013 U.S. Dist. LEXIS 130446 (D.S.C. Sept. 12, 2013).

*In re Earth Structures, Inc.*, No. 7:12-1958-TMC-JDA, 2012 WL 6849876 (D.S.C. Nov. 15, 2012), *R. & R. rejected by* 2013 WL 145033 (D.S.C. Jan. 14, 2013).

*Simmons v. South Carolina*, No. 8:12-00951-GRA-JDA, 2012 WL 6103221 (D.S.C. Oct. 25, 2012), *R. & R. adopted in part and rejected in part by* 2012 WL 6103210 (D.S.C. Dec. 10, 2012).

*Robinson v. Wilson*, No. 8:11-cv-02285-RBH-JDA, 2012 WL 3294441 (D.S.C. July 9, 2012), *R. & R. adopted as modified by* 2012 WL 3264874, *aff'd*, 500 F. App'x 231 (4th Cir. 2012), *cert. denied*, 569 U.S. 1019 (2013).

*Ellison v. South Carolina*, No. 8:10-cv-1485-MBS-JDA, 2012 WL 4473075 (D.S.C. June 14, 2012), *R. & R. rejected by* 2012 WL 4473070 (D.S.C. Sept. 26, 2012).

*Grayton v. Byars*, No. 8:11-2576-CMC-JDA, 2012 WL 3096399 (D.S.C. May 30, 2012), *R. & R. adopted in part and rejected in part by* 2012 WL 3096288 (D.S.C. July 30, 2012), *appeal dismissed by* 502 F. App'x 254 (4th Cir. 2012).

*Simmons v. Stokes*, No. 8:11-cv-00703-RMG-JDA, 2011 WL 7415283 (D.S.C. Nov. 3, 2011), *R. & R. adopted in part and rejected in part by* 2012 WL 601878 (D.S.C. Feb. 22, 2012).

*Rivers v. Astrue*, No. 8:10-cv-314-RMG-JDA, 2011 U.S. Dist. LEXIS 70846 (D.S.C. May 25, 2011), *R. & R. adopted in part and remanded by* 2011 U.S. Dist. LEXIS 70314 (D.S.C. June 28, 2011).

- g. Provide a description of the number and percentage of your decisions in which you issued an unpublished opinion and the manner in which those unpublished opinions are filed and/or stored.

According to statistical reports from the District of South Carolina's electronic document filing system, during my tenure as a magistrate judge, I have issued

2,968 reports and recommendations and 25,529 orders (ranging from non-substantive orders such as rulings on motions for extensions of time to substantive orders such as rulings on discovery motions and motions for summary judgment). All of these reports and recommendations and orders are filed on the District of South Carolina's Electronic Case Filing System. 1,894 of my reports and recommendations and substantive orders are available on Westlaw; 2,263 of my reports and recommendations and substantive orders are available on Lexis; and 5 of my reports and recommendations and substantive orders have been selected for publication in official reporters.

- h. Provide citations for significant opinions on federal or state constitutional issues, together with the citation to appellate court rulings on such opinions. If any of the opinions listed were not officially reported, provide copies of the opinions.

Almost all prisoner cases that I have handled present constitutional issues that could be addressed through the straightforward application of existing precedent. I am including in the list below a representative sample of some of the more complex constitutional issues I have addressed.

*Howell v. Williams*, No. 8:21-cv-03328-TLW-JDA, 2022 WL 18956670 (D.S.C. Sept. 20, 2022), *R. & R. adopted by* 2023 WL 1794573 (D.S.C. Feb. 7, 2023)

*Hopkins v. Walters*, No. 6:21-cv-00553-JD-JDA, 2022 WL 17418218 (D.S.C. Aug. 23, 2022), *R. & R. adopted by* 2022 WL 16646561 (D.S.C. Nov. 3, 2022)

*Johnson v. Meyer*, No. 8:22-cv-00214-DCC-JDA, 2022 WL 5236209 (D.S.C. Apr. 25, 2022), *R. & R. adopted by* 2022 WL 3974208 (D.S.C. Sept. 1, 2022)

*Sweet v. Reese*, No. 6:21-cv-00046-HMH-JDA, 2021 WL 3934395 (D.S.C. July 2, 2021), *R. & R. adopted by* 2021 WL 3931893 (D.S.C. Sept. 2, 2021)

*Sigmon v. Stirling*, No. 8:13-cv-01399-RBH-JDA, 2018 WL 6113017 (D.S.C. July 9, 2018), *R. & R. adopted by* 2018 WL 4691197 (D.S.C. Sept. 30, 2018), *aff'd*, 956 F.3d 183 (4th Cir. 2020), *cert. denied*, 141 S. Ct. 1094 (2021)

*Stevenson v. Myers*, No. 8:17-cv-00005-HMH-JDA, 2018 WL 3133436 (D.S.C. Mar. 16, 2018), *R. & R. adopted by* 2018 WL 1602678 (D.S.C. Apr. 3, 2018)

*Heath v. Coll. of Charleston*, No. 2:17-cv-01792-PMD-JDA, 2017 WL 9250351 (D.S.C. Aug. 30, 2017), *R. & R. adopted by* 2017 WL 5382064 (D.S.C. Nov. 14, 2017), *aff'd*, 734 F. App'x 206 (4th Cir. 2018)

*Johnson v. Quattlebaum*, No. 8:14-cv-3751-MGL, 2015 WL 5554612 (D.S.C. Sept. 21, 2015), *aff'd*, 664 F. App'x 290 (4th Cir. 2016)

*Am. Humanist Assoc. v. South Carolina Dep't of Educ.*, No. 6:13-cv-02471-BHH, 2015 WL 1268036 (D.S.C. Feb. 18, 2015), *R. & R. adopted by* 2015 WL 1268157 (D.S.C. Mar. 19, 2015)

*Est. of Riopedre v. United States*, No. 8:12-2806-BHH, 2015 WL 505584 (D.S.C. Feb. 6, 2015).

- i. Provide citations to all cases in which you sat by designation on a federal court of appeals, including a brief summary of any opinions you authored, whether majority, dissenting, or concurring, and any dissenting opinions you joined.

I have not sat by designation on any federal court of appeals.

14. **Recusal:** If you are or have been a judge, identify the basis by which you have assessed the necessity or propriety of recusal (If your court employs an "automatic" recusal system by which you may be recused without your knowledge, please include a general description of that system.) Provide a list of any cases, motions or matters that have come before you in which a litigant or party has requested that you recuse yourself due to an asserted conflict of interest or in which you have recused yourself *sua sponte*. Identify each such case, and for each provide the following information:

- a. whether your recusal was requested by a motion or other suggestion by a litigant or a party to the proceeding or by any other person or interested party; or if you recused yourself *sua sponte*;
- b. a brief description of the asserted conflict of interest or other ground for recusal;
- c. the procedure you followed in determining whether or not to recuse yourself;
- d. your reason for recusing or declining to recuse yourself, including any action taken to remove the real, apparent or asserted conflict of interest or to cure any other ground for recusal.

The Clerk of Court for the District of South Carolina keeps a recusal list that is updated periodically. Judges are asked to review their self-identified recusal list on a regular basis. In addition to automatic recusals made based on this list, I have searched my records as well as the District of South Carolina's electronic docketing system and, to the best of my knowledge, the following is a complete list of recusal requests:

In *Zikomo v. State Entities/Corp.*, No. 6:22-cv-03573-DCC, 2023 WL 3865712 (D.S.C. June 7, 2023), in objections to a report and recommendation, the plaintiff sought to have me recused because I was "biased against him." The district judge found that the case

was subject to summary dismissal on a number of other grounds and declined to address the request.

In *Dizzley v. Chiles*, No. 8:20-cv-03613-JD-JDA, 2021 WL 3879071 (D.S.C. Aug. 30, 2021), in objections to a report and recommendation, the plaintiff objected to the case being assigned to me while he had an outstanding motion for me to recuse myself from his cases. The district judge noted that there was no motion for recusal pending in this case and declined to address the issue.

In *Hubbard v. Stirling*, No. 8:19-cv-1314-SAL, 2021 WL 2102917 (D.S.C. May 25, 2021), in objections to a report and recommendation, the plaintiff filed a motion seeking my recusal based on her criticisms of some of my past decisions. The district judge found the motion meritless and moot as the matter was no longer referred to me.

In *Gaddy v. U.S. District Court*, No. 8:19-cv-1700-JFA-JDA, 2019 WL 7285006 (D.S.C. July 9, 2019), I declined to recuse myself although I was named as a defendant because I was unaware of any basis upon which recusal or disqualification would be appropriate in this matter. The plaintiff was subject to the “three strikes” rule under 28 U.S.C. § 1915(g) and could not proceed with his claim because he could not show imminent danger and did not pay the filing fee.

In *Roudabush v. Warden FCI Edgefield*, No. 8:18-2070-BHH, 2019 WL 935238 (D.S.C. Feb. 26, 2019), the petitioner moved to have me recuse myself for deliberately delaying his case and for ruling against him in other § 1983 and habeas actions. I declined recusal in a report and recommendation because he provided no basis upon which recusal or disqualification would be appropriate. The Fourth Circuit has recognized that “there is as much obligation upon a judge not to recuse himself when there is no occasion as there is for him to do so when there is.” *Nakell v. Attorney Gen. of N.C.*, 15 F.3d 319, 325 (4th Cir. 1994). The district judge adopted the report and recommendation and denied the petitioner’s motion for recusal.

In *Roudabush v. Mosley*, No. 8:17-3417-BHH, 2018 WL 4052412 (D.S.C. Aug. 24, 2018), the petitioner filed a motion for recusal but provided no basis upon which recusal or disqualification would be appropriate. The Fourth Circuit has recognized that “there is as much obligation upon a judge not to recuse himself when there is no occasion as there is for him to do so when there is.” *Nakell v. Attorney Gen. of N.C.*, 15 F.3d 319, 325 (4th Cir. 1994).

In *Roudabush v. Graham*, No. 8:18-cv-01599-BHH, the plaintiff moved to have me and the district judge recused but failed to demonstrate any basis upon which recusal or disqualification would be appropriate. The Fourth Circuit has recognized that “there is as much obligation upon a judge not to recuse himself when there is no occasion as there is for him to do so when there is.” *Nakell v. Attorney Gen. of N.C.*, 15 F.3d 319, 325 (4th Cir. 1994).

In *United States v. Carpenter*, No. 6:18-cr-1114-BHH, I recused myself sua sponte

because the defendant was the son of my former pastor. I wanted to avoid the appearance of personal bias.

In *Muquit v. Judges Who Issue Order in Case 16-1953*, No. 8:16-cv-3194-RBH, 2017 WL 2821820 (D.S.C. June 30, 2017), the plaintiff filed a motion seeking my recusal prior to the issuance of my report and recommendation and renewed the motion during objections to the report and recommendation based upon a prior mandamus filing, as well as other miscellaneous filings by me in other cases. The district judge agreed with my denial of the prior recusal motion and also denied the renewed motion.

In *Cook v. Judges Who Issue Order in Case 16-1953*, No. 8:16-cv-3327-RBH, 2017 WL 2821821 (D.S.C. June 30, 2017), the plaintiff moved to have me and Judge Harwell recused from his case based on prior mandamus and other miscellaneous filings. In a report and recommendation on the merits of the action, I declined to recuse myself because I did not discern a basis upon which recusal or disqualification would be appropriate. The Fourth Circuit has recognized that “there is as much obligation upon a judge not to recuse himself when there is no occasion as there is for him to do so when there is.” *Nakell v. Attorney Gen. of N.C.*, 15 F.3d 319, 325 (4th Cir. 1994). Judge Harwell adopted the Report and Recommendation.

In *Crawford v. Judges Who Issue Order in Case 16-1953*, 2017 WL 2821822 (D.S.C. June 30, 2017), the plaintiff sought recusal of several judges on the district court, alleging a violation of due process rights, and sought my recusal based on prior rulings on a mandamus filing, as well as other miscellaneous filings. I declined to recuse myself because I was unaware of any basis upon which recusal or disqualification would be appropriate in this matter. The Fourth Circuit has recognized that “there is as much obligation upon a judge not to recuse himself when there is no occasion as there is for him to do so when there is.” *Nakell v. Attorney Gen. of N.C.*, 15 F.3d 319, 325 (4th Cir. 1994).

In *Guidetti v. Austin*, No. 6:12-cv-01769-GRA, I disqualified myself because the plaintiff named me as the defendant in what he deemed to be a “criminal complaint.”

In *Guidetti v. Donahue*, No. 6:11-cv-01249-HMH, I disqualified myself because the plaintiff filed what he deemed to be a “criminal complaint” against me as an exhibit to his summary judgment motion. I directed the Clerk to open a new matter with that complaint and disqualified myself from this matter and the new matter because I was named as the defendant.

In *United States v. Kennedy*, No. 7:11-cr-00106-GRA-1, I recused myself sua sponte because the defendant was my neighbor. I wanted to avoid the appearance of personal bias.

**15. Public Office, Political Activities and Affiliations:**

- a. List chronologically any public offices you have held, other than judicial offices,

including the terms of service and whether such positions were elected or appointed. If appointed, please include the name of the individual who appointed you. Also, state chronologically any unsuccessful candidacies you have had for elective office or unsuccessful nominations for appointed office.

None.

- b. List all memberships and offices held in and services rendered, whether compensated or not, to any political party or election committee. If you have ever held a position or played a role in a political campaign, identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

None.

16. **Legal Career:** Answer each part separately.

- a. Describe chronologically your law practice and legal experience after graduation from law school including:

- i. whether you served as clerk to a judge, and if so, the name of the judge, the court and the dates of the period you were a clerk;

I served as a law clerk to the Honorable Matthew J. Perry, United States District Judge for the District of South Carolina, from 1996 through 1997.

- ii. whether you practiced alone, and if so, the addresses and dates;

I have never practiced alone.

- iii. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been affiliated, and the nature of your affiliation with each;

1997 – 1999

Hardaway Law Firm (merged with Nexsen Pruet Jacobs and Pollard Law Firm)

104 South Main Street #900

Greenville, South Carolina 29601

Associate

1999 – 2011

Womble Carlyle Sandridge and Rice, PLLC (now Womble Bond Dickinson)

550 South Main Street #400

Greenville, South Carolina 29601

Partner (2006 – 2011)  
Associate (1999 – 2006)

- iv. whether you served as a mediator or arbitrator in alternative dispute resolution proceedings and, if so, a description of the 10 most significant matters with which you were involved in that capacity.

I never served as a mediator or arbitrator while in private practice. I do, however regularly mediate cases for district judges as a magistrate judge.

b. Describe:

- i. the general character of your law practice and indicate by date when its character has changed over the years.

As a law clerk to the Honorable Matthew J. Perry, Jr., from 1996 to 1997, my responsibilities included moving cases on Judge Perry's civil docket by drafting orders in cases on dispositive and non-dispositive motions; preparing and reviewing trial briefs in preparation for trial; communicating with counsel as needed; and scheduling hearings as needed.

While working for the Hardaway Law Firm and Nexsen Pruet from 1997 to 1999, I served as a patent attorney responsible for drafting and prosecuting patent applications with the United States Patent and Trademark Office.

While at Womble Carlyle from 1999 to 2011, I served in the Business Litigation Practice Group representing clients in intellectual property litigation matters including DNA sequencing, anti-counterfeiting technology, and software. I was also involved in several class action matters, engineering malpractices cases, health care fraud cases, ERISA matters, trademark and copyright litigation, and cases involving racial discrimination, the Fair Housing Act, engineering design, product liability, real estate matters, and other contract disputes.

- ii. your typical clients and the areas at each period of your legal career, if any, in which you have specialized.

When I practiced law, my typical clients included corporate entities as well as individuals. When I worked as a patent lawyer, my clients also included individual inventors as well as typical corporate entities.

- c. Describe the percentage of your practice that has been in litigation and whether you appeared in court frequently, occasionally, or not at all. If the frequency of your appearances in court varied, describe such variance, providing dates.

At Hardaway Law Firm and Nexsen Pruet, my practice was almost entirely before the United States Patent and Trademark Office. At Womble Carlyle, my practice was almost entirely litigation in state and federal courts.

- i. Indicate the percentage of your practice in:
  - 1. federal courts: 60%
  - 2. state courts of record: 30%
  - 3. other courts: 0%
  - 4. administrative agencies: 10% (USPTO)

- ii. Indicate the percentage of your practice in:
  - 1. civil proceedings: 100%
  - 2. criminal proceedings: 0%

- d. State the number of cases in courts of record, including cases before administrative law judges, you tried to verdict, judgment or final decision (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

I tried three cases to verdict, and I was associate counsel on all three cases.

- i. What percentage of these trials were:
  - 1. jury: 100%
  - 2. non-jury: 0%

- e. Describe your practice, if any, before the Supreme Court of the United States. Supply four (4) copies of any briefs, amicus or otherwise, and, if applicable, any oral argument transcripts before the Supreme Court in connection with your practice.

I did not practice before the Supreme Court of the United States.

17. **Litigation:** Describe the ten (10) most significant litigated matters which you personally handled, whether or not you were the attorney of record. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

- a. the date of representation;
- b. the name of the court and the name of the judge or judges before whom the case was litigated; and
- c. the individual name, addresses, and telephone numbers of co-counsel and of

principal counsel for each of the other parties.

1. *United States ex. rel. Drakeford v. Tuomey*, No. 3:05-cv-02858-MJP, 2010 WL 4000188 (D.S.C. July 13, 2010), *judgment vacated*, 675 F.3d 394 (4th Cir. 2012), *on remand*, 976 F. Supp. 2d 776 (D.S.C. 2013), *aff'd*, 792 F.3d 364 (4th Cir. 2015)

In this *qui tam* action brought against Tuomey Healthcare System, Inc. (“Tuomey”), I represented a whistleblower from 2005 through 2011. The matter was before United States District Judge Margaret B. Seymour. After the filing of this action, the United States intervened in Drakeford’s *qui tam* action as to the issue of whether Tuomey submitted false claims as a result of the contracts with the physicians. The United States filed its own complaint against Tuomey under the False Claims Act, alleging that providers with Tuomey entered compensation arrangements with certain physicians that violated the Stark Law. Following a jury trial, the district court entered judgment against Tuomey, but the judgment was reversed on appeal to the Fourth Circuit. After a second jury trial, a verdict was returned against Tuomey in the amount of \$39,313,065, and the Fourth Circuit affirmed on appeal. In this matter, I was responsible for drafting discovery responses, attending depositions and hearings, and drafting motions.

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Counsel for Defendant:  
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2. *Benbow v. Hartford Life and Accident Insurance Co.*, No. 3:09-2977-CMC-JRM, 2011 WL 810048 (D.S.C. Feb. 11, 2011)

In this case, I represented Hartford Life and Accident Insurance Company from 2009

through 2011 in a claim under the Employee Retirement Income Security Act of 1974, as amended, before United States District Judge Cameron McGowan Currie. The plaintiff claimed, pursuant to 29 U.S.C. § 1132(a)(1)(B), that Hartford abused its discretion by denying him short-term disability benefits. Hartford argued that it was entitled to summary judgment because the plaintiff was never covered under the policy and thus was not eligible for benefits under the policy. The judge agreed with our position and granted summary judgment in favor of Hartford. In this case, I was responsible for drafting and arguing motions.

Counsel for Plaintiff:  
Robert Edward Hoskins  
Deceased

Co-Counsel for Defendant:  
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Greer, SC 29651  
(864) 448-7211

3. *Bridgmon v. Aegon USA LLC*, 1:10-cv-01635-GRA

In this case, filed June 25, 2010, before United States District Judge G. Ross Anderson, I represented Aegon from 2010 through 2011. This action was brought by the personal representative of the estate of Ms. Rountree as the owner of a cancer insurance policy issued by Life Investors Insurance Company and administered by Aegon. Ms. Rountree sought coverage under her cancer treatment policy for her actual charge but received significantly less than what she claimed she was entitled to under the contract. Aegon argued that it was not a party to the policy assumed by Transamerica Life Insurance Company. The case ultimately settled and was dismissed with all parties bearing their own costs and fees. In this case, I was responsible for drafting discovery responses and engaging and participating in mediation and settlement conferences.

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4. *Albemarle Corp. v. Astrazeneca UK Ltd.*, No. 5:08-1085-MBS, 2009 WL 902348 (D.S.C. Mar. 31, 2009), *vacated on reconsideration*, 2009 WL 10690496 (Sept. 9, 2009), *reconsideration denied*, 2009 WL 10677298 (D.S.C. Dec. 16, 2009), *aff'd*, 628 F.3d 643 (4th Cir. 2010)

I represented AstraZeneca UK from 2008 through 2011 in a contract dispute hinging on the application of a forum selection clause. The contract at issue contained a forum selection clause providing that the contract was “subject to” the jurisdiction of the English High Court, and United States District Judge Margaret B. Seymour granted AstraZeneca’s motion to dismiss on the grounds that under English law, the clause was mandatory and exclusive. The Fourth Circuit affirmed, siding with AstraZeneca and holding that the clause required the litigation be pursued in the designated English court. In this case, I was responsible for drafting discovery responses, defending and taking depositions, arguing motions, and attending settlement conferences.

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United States Court of Appeals for the Fourth Circuit  
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5. *McKesson Information Solutions LLC v. Epic Systems Corp.*, No. 1:06-cv-2965-JTC, 2009 WL 2915778 (N.D. Ga. Sept. 8, 2009)

From 2007 through 2009, I was part of a large team that represented Plaintiff McKesson Information Solutions in an action alleging that healthcare information software products made by Epic infringed its patent. United States District Judge Jack T. Camp held that Epic's product did not infringe the patent, granting Epic's motion for summary judgment on the infringement issue. The court subsequently dismissed the parties' remaining claims and counterclaims without prejudice. 2010 U.S. Dist. LEXIS 150585 (N.D. Ga. 2010). In this case, I was responsible for drafting discovery responses, defending and taking depositions, arguing motions, and attending settlement conferences.

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Counsel for Defendant:  
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(336) 607-7300

6. *Eaddy v. Group Long Term Disability Plan for Employees of Waste Management*, No. 4:07-1719, 2008 WL 11462949 (D.S.C. Nov. 24, 2008)

From 2007 through 2008, I defended the defendant insurance company's decision to terminate an employee's long-term disability benefits on the grounds that his medical records had shown substantial improvement in his condition. The employee filed an action under ERISA claiming breach of contract, and the parties cross-moved for summary judgment. United States District Judge Terry Wooten sided with the insurance company, concluding that its determination that the employee's injury no longer prevented him from working was reasonable. In this case, I was responsible for drafting discovery responses, defending and taking depositions, arguing motions, and attending settlement conferences.

Counsel for Plaintiff:

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Co-Counsel for Defendants:

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7. *Wonder Works Inc. v. Cranium, Inc.*, 455 F. Supp. 2d 453 (D.S.C. 2006)

From 2006 through 2007, I represented Cranium, Inc. in a trademark dispute before United States District Judge Michael Duffy. Cranium filed a federal trademark application for the mark "WONDERWORKS®," which Wonder Works, a South Carolina-based toy company, argued would cause consumer confusion with its mark "WONDER WORKS®." The district court denied Wonder Works' motion for a preliminary injunction, agreeing with Cranium that Cranium was likely to suffer significant injuries and that Wonder Works had not made a clear showing of a likelihood of success. Ultimately, the parties settled this matter. In this case, I was responsible for drafting discovery responses, defending and taking depositions, arguing motions, and attending settlement conferences.

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8. *Thorn v. Jefferson-Pilot Life Insurance Co.*, No. 3:00-2782-22, 2004 WL 5745993 (D.S.C. Dec. 2, 2004), *aff'd and remanded*, 445 F.3d 311 (4th Cir. 2005)

From 2000 through 2006, I defended the defendant life insurance company against a class-action lawsuit brought on behalf of approximately 1.4 million African American policy holders alleging that the company's corporate predecessors had charged them higher premiums than white policyholders for similar policies. United States District Judge Cameron McGowen Currie denied class certification, finding that the court could not resolve the insurance company's statute-of-limitations defense on a class-wide basis and that the class's requested remedy was merely a predicate for monetary damages. The Fourth Circuit sided with the life insurance company, affirming on the basis that the lower court did not clearly err on either finding. Ultimately, the case was dismissed after the parties settled. In this case, I was responsible for drafting discovery responses, defending and taking depositions, arguing motions, and attending settlement conferences.

Counsel for Plaintiffs:  
T. English McCutchen, III  
Deceased

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9. *Alcoa Fujikura Ltd v. Mastec Inc.*, 7:03-cv-00777-HMH

From 2003 through 2007, I represented Mastec North America, Inc. in litigation before United States District Judge Henry M. Herlong in a breach of contract action related to the purchase and sale of fiber optic cable. Mastec, doing business as Wilde Construction, was an engineering, design, construction, and maintenance business with a special expertise in installing direct, buried, underground, and aerial fiber optic cable. We moved to have the action dismissed against Mastec under the South Carolina Door Closing Statute as there was no connection to South Carolina because Wilde Construction was located in Minnesota, and the other companies working with Wilde Construction were located in states other than South Carolina. Judge Herlong denied the motion, finding that the cause of action arose in South Carolina. The case was scheduled for trial but ultimately settled on the eve of trial. In this case, I was responsible for drafting discovery responses and defending and taking depositions.

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Taylors, SC 29687

(864) 312-4680

Thomas L. Stephenson  
Stephenson and Murphy  
207 Whitsett Street  
Greenville, SC 29601  
(864) 370-9400

10. *Abraham v. County of Greenville*, 237 F.3d 386 (4th Cir. 2001)

From 1998 through 2001, I defended the County of Greenville against a lawsuit brought by state-court judges alleging that the county illegally recorded the telephone conversations they made from their offices in the county detention center. United States District Judge G. Ross Anderson, Jr., rejected the county's argument that the wiretapping was permissible under the "law enforcement exception" to Title III, and a jury awarded the plaintiffs \$276,660 in damages. The Fourth Circuit affirmed, holding that the recording of the judges was not a legitimate surveillance activity because it did not occur in the ordinary course of the county's law enforcement duties. In this case, I was responsible for drafting discovery responses, defending and taking depositions, and arguing motions

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Co-Counsel for Defendants:

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18. **Legal Activities:** Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe fully the nature of your participation in these activities. List any client(s) or organization(s) for whom you performed lobbying activities and describe the lobbying activities you performed on behalf of such client(s) or organizations(s). (Note: As to any facts requested in this question, please omit any information protected by the attorney-client privilege.)

In my role as United States Magistrate Judge, I preside over our District's drug court, the BRIDGE Program, in Greenville. The program identifies criminal defendants whose presence in the prosecutorial system is principally a function of substance abuse or addiction as opposed to independently motivated criminal behavior. The drug court is an intensive rehabilitation process that relies on the existing probation infrastructure for drug screening and monitoring and the volunteerism of community businesses and organizations to provide substance abuse training and mentoring, vocational placement, and wellness education. The program is a substantial commitment by my chambers above and beyond my regular duties, on a weekly—even daily—basis. I preside over biweekly staffing meetings and in-court hearings with the program participants, who are required to account to me for their progress. Over its life, the program has saved court resources and taxpayer dollars and produced numerous successful graduates.

I have never been involved in lobbying activities or registered as a lobbyist.

19. **Teaching:** What courses have you taught? For each course, state the title, the institution at which you taught the course, the years in which you taught the course, and describe briefly the subject matter of the course and the major topics taught. If you have a syllabus of each course, provide four (4) copies to the committee.

I have not taught any courses.

20. **Deferred Income/ Future Benefits:** List the sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients or customers. Describe the arrangements you have made to be compensated in the future for any financial or business interest.

None.

21. **Outside Commitments During Court Service:** Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service with the court? If so, explain.

None.

22. **Sources of Income:** List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, licensing fees, honoraria, and other items exceeding \$500 or more (if you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here).

When my nomination is formally submitted to the Senate, I will file my Financial Disclosure Report and will supplement this Questionnaire with a copy of that Report.

23. **Statement of Net Worth:** Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached Net Worth Statement.

24. **Potential Conflicts of Interest:**

- a. Identify the family members or other persons, parties, categories of litigation, and financial arrangements that are likely to present potential conflicts-of-interest when you first assume the position to which you have been nominated. Explain how you would address any such conflict if it were to arise.

I do not have any family members, persons, parties, litigation, or financial arrangements that are likely to present potential conflicts of interest if I am confirmed. My husband owns his own business, and if he or his business ever became a party in a case before me, I would recuse myself if the case were not flagged by the court's conflict system. If any such conflict arose, I would address it in the manner instructed by the Code of Conduct for United States Judges, Canon 3.

- b. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern.

I will continue to handle any matters involving actual or potential conflicts of interest in conformity with the Code of Conduct for United States Judges and any other relevant statutes, ethical canons, and rules.

25. **Pro Bono Work:** An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

While at Womble Carlyle, our firm implemented a pro bono program where associates were assigned pro bono cases from both the family court and/or small state court matters. I was assigned several of these cases and estimate that I devoted about 20 hours per

quarter to the pro bono matters that were assigned to me.

As a United States Magistrate Judge, I am prohibited from the practice of law and ethically unable to personally accept any pro bono assignments. However, I stay active in community charitable concerns in other ways. I have also found pro bono legal representation for pro se litigants, presented to students about the legal profession and judiciary, and served as a judge for moot court and mock trial competitions.

26. **Selection Process:**

- a. Please describe your experience in the entire judicial selection process, from beginning to end (including the circumstances which led to your nomination and the interviews in which you participated). Is there a selection commission in your jurisdiction to recommend candidates for nomination to the federal courts? If so, please include that process in your description, as well as whether the commission recommended your nomination. List the dates of all interviews or communications you had with the White House staff or the Justice Department regarding this nomination. Do not include any contacts with Federal Bureau of Investigation personnel concerning your nomination.

On May 23, 2023, I was contacted by an attorney from the White House Counsel's Office indicating that I had been recommended as a potential candidate for a vacancy on the United States District Court for the District of South Carolina and requesting an interview. On May 25, 2023, I interviewed with attorneys from the White House Counsel's Office. On June 6, 2023, I was contacted by staff for Senator Lindsey O. Graham, and on June 8, 2023, I participated in a call with two of his staffers. On July 26, 2023, I received an email from the White House Counsel's Office advising me that I would be proceeding with the next steps in the vetting process. Since July 26, 2023, I have been in contact with officials from the Office of Legal Policy at the Department of Justice. On November 1, 2023, the President announced his intent to nominate me.

- b. Has anyone involved in the process of selecting you as a judicial nominee discussed with you any currently pending or specific case, legal issue or question in a manner that could reasonably be interpreted as seeking any express or implied assurances concerning your position on such case, issue, or question? If so, explain fully.

No.