Courts have been cautious in allowing depositions of high governmental officials who have little or no relevant information. Summarizing several circuit decisions, the Eleventh Circuit refused on the following grounds to allow the deposition of the Commissioner of the FDA:

> The D.C. Circuit relied on Morgan for its holding that "top executive department officials should not, absent extraordinary circumstances, be called to testify regarding their reasons for taking official actions." Simplex Time Recorder Co. v. Secretary of Labor, 766 F.2d 575, 586 (D.C.Cir.1985). The Fifth Circuit recently agreed with the holding in Simplex and cautioned a district court to "remain mindful of the fact that exceptional circumstances must exist before the involuntary depositions of high agency officials are permitted." In Re Office of Inspector General, 933 F.2d 276, 278 (5th Cir.1991). See also Sweeney v. Bond, 669 F.2d 542, 546 (8th Cir.), cert. denied, 459 U.S. 878, 103 S.Ct. 174, 74 L.Ed.2d 143 (1982) (governor not required to testify absent compelling need); United States v. Merhige, 487 F.2d 25, 29 (4th Cir.), cert. denied, 417 U.S. 918, 94 S.Ct. 2625, 41 L.Ed.2d 224 (1974) (members of Parole Board should be subject to deposition only under "exceptional circumstances"); Peoples v. United States Dep't of Agriculture, 427 F.2d 561, 567 (D.C. Cir.1970) (compelling testimony from a cabinet officer "is not normally countenanced").
>
> The reason for requiring exigency before allowing the testimony of high officials is obvious. High ranking government officials have greater duties and time constraints than other witnesses. In this case, the government notes that Commissioner Kessler is responsible for the regulation of all drugs, foods, cosmetics and medical devices as well as overseeing the enforcement of statutes and regulations governing the distribution and sales of these items. Thus, his time is very valuable. This concern about a high official's time constraints is particularly relevant to selective prosecution claims. If the Commissioner was asked to testify in every case which the FDA prosecuted, his time would be monopolized by preparing and testifying in such cases. In order to protect officials from the constant distraction of testifying in lawsuits, courts have required that defendants show a special need or situation compelling such testimony. See Sweeney, 669 F.2d at 546.

In re United States, 985 F.2d 510, 512 (11th Cir.) (per curiam), cert. denied, 510 U.S. 989, 114 S.Ct. 545, 126 L.Ed.2d 447 (1993). See also In re FDIC, 58 F.3d 1055, 1060-61 (5th Cir. 1995) (trial court abused discretion in denying motion to quash deposition notices for senior FDIC officials without first determining that "exceptional circumstances were present"). These concerns are especially significant in a case such as the instant one where a pro se Plaintiff seeks to depose a sitting judge.

For all these reasons, Plaintiff's Motion to depose Judge Staley should be denied. Not only has discovery in this case has already expired, but Mr. Chesshire testified that all the information in the relevant affidavit was correct and based on his own personal knowledge. Therefore, there is no need for Plaintiff to take Judge Staley's deposition, and the Judges Council respectfully requests that Plaintiff's motion be denied.

This 6th day of July, 2005.

Respectfully submitted,

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s/Bryan K. Webb