

STATE OF SOUTH CAROLINA
IN THE
COURT OF APPEALS

CHERYL CARTER

Appellant,

vs.

MCELVEEN BUICK-GMC, INC

Respondent.

APPELLANT CASE NO: 2026-000201

RECEIVED

MAR 06 2026

SC Court of Appeals

APPELLANT'S RETURN TO RESPONDENT'S MOTION TO DISMISS

MOTION FOR LEAVE TO FILE OUT OF TIME

Pursuant to **Rule 263, SCACR**, the Appellant respectfully moves this Court for leave to file the attached Response in Opposition to Respondent's Motion to Dismiss. The Respondent's Motion was served via U.S. Mail on February 17, 2026, but was not received by the Appellant until Saturday, February 21, 2026.

As a *pro se* litigant without access to the electronic filing system (e-Flex), the Appellant must rely on physical mail service during standard business hours. The Appellant has recently returned to full-time employment following a six-week surgical recovery period (**Exhibit D**). Due to the constraints of a standard work schedule and the 5:00 PM closure of the United States Post Office, the Appellant was unable to physically deposit the Response for mailing prior to the expiration of the 15-day window on March 4.

The Appellant has acted with all due diligence to "cure" this minor delay, which amounts to a single business day. This brief delay constitutes **excusable neglect** given the

TABLE OF AUTHORITIES

South Carolina Cases

- *Freeman v. J.L.H. Investments, LP*, 414 S.C. 362, 778 S.E.2d 902 (2015).....Page 4
- *McClurg v. Deaton*, 395 S.C. 85, 716 S.E.2d 887 (2011).....Page 6
- *Wells Fargo Bank, N.A. v. Fallon Props. S.C., LLC*, 422 S.C. 342, 811 S.E.2d 708 (2018).....Page 2

Federal Cases

- *Sierra Club, Lone Star Chap. v. Cedar Point Oil*, 73 F.3d 546 (5th Cir. 1996).....Page 2

South Carolina Statutes

- S.C. Code Ann. § 37-2-307 (Closing Fee justification).....Page 4
- S.C. Code Ann. § 56-15-110 (Dealers Act - Liability and Damages).....Page 6

South Carolina Appellate Court Rules (SCACR)

- Rule 203(b)(1) (Timing for Notice of Appeal).....Page 2
- Rule 240 (Motions in the Appellate Court).....Header
- Rule 262(b) (Service by Mail).....Page 1
- Rule 263 (Computation of Time and Extensions).....Page 1

South Carolina Rules of Civil Procedure (SCRCP)

- Rule 1 (Just, speedy, and inexpensive determination).....Page 6
- Rule 5 (Service and Filing).....Page 3
- Rule 77(d) (Notice of Orders or Judgments).....Page 2

intersection of the Appellant's return to the workforce and the procedural requirements of physical filing. The Respondent suffers no prejudice from this 24-hour delay, and South Carolina appellate policy strongly favors the resolution of appeals on their merits. Therefore, Appellant respectfully requests this Court accept the filing of this Response.

RESPONSE

Appellant Cheryl Carter, *pro se*, submits this Return to Respondent's Motion to Dismiss and respectfully requests that the Court deny the motion in its entirety. Dismissal—the harshest sanction—is unwarranted here because the record reflects (1) Respondent's and the clerk's service and notice failures affecting a non-authorized e-filer under Rule 77(d), SCRCPP; (2) a remote-hearing platform failure that muted Appellant and deprived her of the opportunity to be heard; and (3) Appellant's documented medical recovery followed by prompt and diligent efforts to perfect the appeal, including expediting the transcript at personal expense. A just determination on the merits is favored under Rule 1, SCRCPP.

I. Respondent's Procedural Failures and Administrative Error in the Court of Common Pleas

Respondent's Counsel moves for dismissal alleging a "pattern of neglect." However, the record confirms that the only verifiable neglect was committed by the Respondent and the administrative system:

1. **The Jurisdictional Clock Commences Only Upon Actual Receipt** Respondent incorrectly moves for dismissal based on the electronic filing date of November 10, 2025. However, under Rule 203(b)(1), SCACR, a notice of appeal must be served within thirty (30) days after "receipt of written notice of entry of the order." As a *pro se* litigant and non-authorized e-filer, Appellant is legally distinct from counsel regarding how "receipt" is defined:
 - **Mandatory Traditional Service:** Under S.C. E-Filing Rule 6(c)-(d) and Rule 77(d), SCRCPP, parties not proceeding in the E-Filing System "must be served by

Traditional Service." An automated Notice of Electronic Filing (NEF) does not constitute notice for a non-authorized filer.

- **The "Receipt" Trigger:** The South Carolina Supreme Court has affirmed that the appeal clock is triggered by the party's actual receipt of written notice, not the mere docket entry. *Wells Fargo Bank, N.A. v. Fallon Props. S.C., LLC*, 422 S.C. 342, 811 S.E.2d 708 (2018).
 - **Absence of Notice:** Because the Clerk failed to provide the mandated first-class mail notice under Rule 77(d), the 30-day jurisdictional period remained stayed. As noted in *Sierra Club, Lone Star Chap. v. Cedar Point Oil*, 73 F.3d 546 (5th Cir. 1996), Appellant was not required to remind the Clerk of an obligation that already existed by law.
2. **Diligence vs. Neglect** The first qualifying "receipt" under Rule 203(b)(1) occurred on December 31, 2025, when Appellant manually obtained a written copy of the order from the Clerk's office. Measuring 30 days from this actual receipt, the Notice of Appeal served on January 9, 2026, and even the "amended" notice Respondent argues, were undeniably timely. To characterize Appellant's reliance on the mandatory notice rules as a "pattern of neglect" is a misstatement of the law.
 3. **Violation of Rule 5, SCRPC (Initial Service Failure):** Respondent's Counsel has demonstrated a "pattern of neglect" from the inception of this litigation. Specifically, Counsel failed to serve the Defendant's Answer to the Appellant's address of record, a direct violation of **Rule 5, SCRPC**. Appellant only discovered the filing on Day 31, while physically present at the Clerk's office to submit a Motion for Default. It is a gross irony for Counsel to now lecture the Court on "timeliness" when her own failure to follow basic service rules nearly resulted in a default judgment against her own client.

While in Common Pleas, the Clerk failed to provide mandatory notice of orders, a failure confirmed as a 'judicial error' by Judge Goodstein (**See Exhibit A**), which was convened upon the Appellant's Motion for Relief from Judgment. This motion was necessary because the Clerk failed to provide mandatory notice. Under Rule 77(d), SCRC, the Clerk is mandated to serve notice of an entry of an order upon every party who is not in default.

As a '**non-authorized e-filer,**' Appellant is required to be served via mail at her address of record. The Respondent is now accusing the Appellant of a 'pattern of neglect' based on timelines triggered by documents that were never legally served under the Rules of Civil Procedure. Therefore, the Respondent's accusations are nothing less than bad faith and a lack of integrity with the Court, as Counsel is well aware that the delay was caused by a systemic administrative failure, not the Appellant.

4. **Evidence of a Procedural Double Standard: Equitable Estoppel and Professional Courtesy**

"The Respondent's Motion for dismissal is a profound contradiction to the history of this litigation. On or around August 11, 2025, Respondent's Counsel failed to appear for a scheduled hearing. While Counsel cited a family emergency as the cause, she failed to properly serve a Notice of Leave upon the Appellant pursuant to the **South Carolina Rules of Civil Procedure (SCRC)**.

Respondent's Counsel relied solely on 'e-Filing' the Notice (**See Exhibit B**). Because the Appellant is a 'non-authorized e-filer,' she does not receive automated **Notices of Electronic Filing (NEF)**. Consequently, the Appellant was never served and only learned of the cancellation after taking time off work and appeared at the hearing .

Despite this clear procedural default and the lack of formal service, the Appellant—acting in good faith and with professional courtesy—raised no objections and did not seek sanctions.

Furthermore, while Respondent’s Counsel continues to lecture the Court on the Appellant’s alleged ‘pattern of neglect,’ Counsel’s own filings contain significant inaccuracies that undermine the reliability of her Motion. Specifically, Counsel improperly labeled the Respondent’s Motion and Opposition as an ‘**Appeal From Charleston County,**’ when the matter is, and has always been, an **Appeal from Berkeley County**. This failure to accurately identify the court of origin—a fundamental requirement of appellate practice—further demonstrates a lack of care and a procedural double standard. If the Court is to weigh ‘neglect,’ it must consider that the Appellant’s minor timing delay was due to documented medical and logistical necessity, whereas Counsel’s errors are a matter of professional inattention to the record.

It is inequitable for Counsel to now seek the harshest possible sanction (dismissal) against a pro se litigant for a medically-documented delay, when the Appellant previously afforded Counsel compassion for an unserved and unverified default. The court should not reward this procedural double standard.

II. Systemic Denial of Due Process and Substantive Deception

“Muted” hearing prevented participation and presentation of key evidence. During the remote hearing before Judge McFaddin, Appellant could hear the Court and counsel but could not be heard due to a platform failure. As a result, she was unable to present critical evidence, including an email from Respondent’s General Manager admitting uniform, flat-rate “Closing Fees” across all transactions (**Exhibit C**). Proceeding to rule without hearing Appellant’s testimony or reviewing this evidence was not attributable to Appellant’s neglect.

In the aforementioned email, the General Manager claims authorization for these fees based on the "approval" of the South Carolina Department of Consumer Affairs. This is a gross misinterpretation of the Department's role and authority. Because the Appellant was muted during the lower court hearing, she was denied the opportunity to expose this substantive deception.

This technical lockout was at no fault of the Appellant, yet the Court proceeded to rule without hearing her testimony or reviewing her evidence. To characterize a technical denial of Due Process as a "pattern of neglect" constitutes bad faith and a lack of candor toward the tribunal.

Omission and Misrepresentation of Legal Authority: During that same hearing, Attorney Kurtz represented to Judge McFaddin that the landmark case, *Freeman v. JLH Investments*, which I cited in my Complaint, was "outdated and overturned." It is telling that while Counsel Kurtz relied heavily on the assertion that the *Freeman* case was 'overturned' during the oral hearing to secure a dismissal in Common Pleas Court, she has **conspicuously failed to mention this argument** in her written Motion to this Court. This is because *Freeman* remains binding authority. Counsel's reliance on a legal falsehood during a hearing where she knew the Appellant was muted, followed by her omission of that same argument when facing the scrutiny of the Appellate Court, demonstrates a calculated effort to secure a dismissal through deception rather than the merit of the law.

Class Action Exposure and Good-Faith Settlement Efforts: In June 2025, Appellant extended a formal and amicable offer to settle this matter to avoid the costs of protracted litigation. Attorney Kurtz failed to decline, accept, or counter this offer. Under **Rule 1.4, SCRPC**, Counsel has a duty to keep her client informed; her failure to respond suggests a "pattern of neglect" regarding her own client's interests. Since that time, Appellant has been informed that the General Manager's written admission regarding uniform, flat-fee practices across all transactions provides grounds for **Class Action certification**.

Counsel's refusal to negotiate—and her failure to address this risk—is exposing her client

to massive, class-wide liability under the **Dealers Act**. Appellant's attempt to resolve this matter early in its litigation stage was an act of "good faith," not neglect.

III. Appellant's Superior Diligence: Overcoming Hardship and Curing Procedural Defects

The Respondent's Motion to Dismiss relies on a strict, formalistic interpretation of the Rules of Appellate Procedure that ignores the Appellant's demonstrated diligence.

Despite significant physical hardship, the Appellant has acted in good faith to move this case forward.

1. **Excusable Neglect Due to Medical Necessity:** The Appellant underwent surgery on January 5, 2026, requiring a six-week recovery period (**Exhibit D**). While recovering, and upon receiving notice on December 31, 2025, the Appellant prioritized the timely filing of the Notice of Appeal to preserve her rights. Any initial procedural non-compliance was a result of the Appellant's focus on meeting the jurisdictional deadline while under medical duress. Upon discovery that the initial Notice of Appeal not meeting the Appellate Rules, Appellant provided the Respondent and lower court her Amended Notice of Appeal in a timely manner and while recovering.
2. **Proactive Correction of the Record:** Upon discovering that the transcripts had not been formally ordered, the Appellant did not wait for a court order or a motion from the Respondent. Instead, she proactively moved for an extension of time.
3. **Expedited Cure (Exhibit E):** More importantly, while the motion for an extension was still pending, the Appellant took the extraordinary step of ordering and paying for expedited transcripts. This action "cured" the procedural defect before the Court even ruled on the extension.
4. **Lack of Prejudice to Respondent:** The Respondent has suffered no "substantial prejudice" by this brief delay. The transcripts have been secured, the appeal is

moving forward, and the Respondent's ability to defend the case remains fully intact. South Carolina appellate policy favors the resolution of cases on their merits rather than on technical procedural defaults, particularly when those defaults are cured with the diligence demonstrated here.

IV. The Policy Of The Law Favors Deciding Cases On The Merits

Under Rule 1, SCRCP, the rules of procedure "shall be construed to secure the just, speedy, and inexpensive determination of every action." The Respondent's Motion to Dismiss seeks to prioritize a technicality over a just resolution. However, as Justice Hearn stated in *McClurg v. Deaton*, 395 S.C. 85, 716 S.E.2d 887 (2011):

"[T]he maxim that a lawyer's word is his bond is not only a time-honored tradition; it is included as a guiding principle in the South Carolina Bar's Standards of Professionalism."

In this case, Appellant has acted with total transparency, providing medical documentation of her surgery and proactively paying to expedite the transcripts. In contrast, Respondent's Counsel has engaged in misleading tactics, including characterizing a confirmed judicial error and a technical lockout (the "Muted" Hearing) as a "pattern of neglect." Such recharacterizations do not meet the "time-honored tradition" of professionalism required by this Court. A just determination on the merits is required.

Dismissal is the most 'harsh sanction' available to this Court. It should be reserved only for cases of willful disobedience or gross indifference. In contrast, Appellant has demonstrated extreme diligence. To dismiss this appeal now would be to allow a technicality to 'trap' a diligent *pro se* litigant and shield the Respondent from facing the merits of their documented violations of the **Dealers Act** and the **South Carolina Consumer Protection Code**—matters of significant **public interest** that the legislature specifically intended to protect through these statutes.

V. CONCLUSION

For the reasons stated above, the Appellant's brief delay constitutes excusable neglect, while the Respondent's motion relies on a 'pattern of neglect' narrative that is contradicted by the record and Counsel's own procedural errors—including misidentifying the county of origin. Dismissal is a harsh sanction that would serve only to shield the Respondent from the merits of their documented violations. Justice requires that this case be heard.

VI. REQUESTED RELIEF

Appellant respectfully requests that the Court:

1. **DENY** Respondent's Motion to Dismiss;
2. **GRANT** Appellant's Motion for Permission to Order Transcript Out of Time (as the transcript has already been expedited and paid for); and
3. Grant such further relief as the Court deems just and proper to ensure a determination on the merits.

Respectfully submitted,



Cheryl Carter

355 Bradley Bend Dr.
Moncks Corner, SC 29461
(843) 535-9560
CMC6751@gmail.com

Date: March 5 , 2026

EXHIBIT A

Cheryl Carter
PLAINTIFF(S)

McElveen Buick GMC, Inc.
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled);
 Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy;
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
 Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded;
 Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

Plaintiff's Motion for Relief of Judgment was set to come before the Court on July 14, 2025. The Court informed the parties that a judicial conflict exists and this matter is continued to the next available term of court in that basis.

ORDER INFORMATION

This order ends does not end the case. See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 07/24/2025 .

Cheryl Carter for Cheryl Carter
Cheryl Carter for Cheryl Carter

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

EXHIBIT B

Complaint

Todd Smith <todds@mcelveen.com>
To: Cheryl Carter <cmc6751@gmail.com>

Sun, Mar 2, 2025 at 9:57 AM

Closing fees are charged to everyone regardless whether you're paying cash or financing . If you go to Mcelveen.com it states that closing fees and taxes will be added to every price so I really don't understand your complaint ? We file with the state every year on our fees and the state approves them . From what I've seen you were not overcharged.

Todd Smith
General Manager

Phone: [843-871-6800](tel:843-871-6800)
Email: todds@mcelveen.com

[117 Farmington Road](#)
[Summerville, SC 29486](#)
www.mcelveen.com

On Mar 2, 2025, at 9:34 AM, Cheryl Carter <cmc6751@gmail.com> wrote:

[Quoted text hidden]

EXHIBIT C

| | | |
|--------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA |) | IN THE COURT OF COMMON PLEAS |
| |) | |
| COUNTY OF BERKELEY |) | NINTH JUDICIAL CIRCUIT |
| |) | |
| |) | |
| IN RE: VICTORIA W. KURTZ |) | ORDER OF PROTECTION |
| |) | |
| SC BAR NO. 103303 |) | |
| |) | |

IT APPEARING unto this Honorable Court that Victoria W. Kurtz, Esq. with the law firm of Johnston Law, LLC in Mount Pleasant, South Carolina, is seeking protection from trial and appearances in the above action for the following dates and for the following reasons:

- August 5, 2025 – September 5, 2025.

The reasons protection is sought for the above days, Victoria W. Kurtz, has recently experienced the profound personal losses of both her mother and her husband.

These tragic and deeply emotional events have understandably impacted counsel’s ability to fully and adequately prepare for the upcoming hearing and to represent her clients with the diligence and attention the matter requires.

IT FURTHER APPEARING THAT Victoria W. Kurtz is requesting, and should be granted for good cause shown, an Order protecting her from all court appearances in all court proceedings during the time periods referenced above. It is, therefore,

ORDERED that Victoria W. Kurtz be, and is hereby, granted protection from all court appearances in all courts during the time periods referenced above.

AND IT IS SO ORDERED.

Chief Administrative Judge

Mount Pleasant, South Carolina
August 5, 2025



Berkeley Common Pleas

Case Caption: Cheryl Carter VS McElveen Buick GMC, Inc.

Case Number: 2025CP0800615

Type: Order/Protection from Court Appearance

So Ordered

s/Jennifer B. McCoy #2764

Electronically signed on 2025-08-10 12:40:44 page 2 of 2

EXHIBIT D

Employee Name: CHERYL M CARTER Brian G. Widenhouse, M.D. EIN: 04455015
 Health Care Provider's name: (Print) 2683 Lake Park Dr.
 Health Care Provider's business address: Charleston, SC 29406
 Type of practice / Medical specialty: (843) 518-5000
 Telephone: () _____ Fax: () _____ NPI# 1265481543
 _____ DEA# BW5166904
 _____ (843) 614-8959 E-mail: _____

PART A: Medical Information

Limit your response to the medical condition(s) for which the employee is seeking FMLA leave. Your answers should be your best estimate based upon your medical knowledge, experience, and examination of the patient. After completing Part A, complete Part B to provide information about the amount of leave needed. Note: For FMLA purposes, "incapacity" means the inability to work, attend school, or perform regular daily activities due to the condition, treatment of the condition, or recovery from the condition. Do not provide information about genetic tests, as defined in 29 C.F.R. § 1635.3(f), genetic services, as defined in 29 C.F.R. § 1635.3(e), or the manifestation of disease or disorder in the employee's family members, 29 C.F.R. § 1635.3(b).

- (1) State the approximate date the condition started or will start: surgery on 1/9/26 (mm/dd/yyyy)
- (2) Provide your best estimate of how long the condition lasted or will last: 6 weeks of recovery needed
- (3) Check the box(es) for the questions below, as applicable. For all box(es) checked, the amount of leave needed must be provided in Part B.

Inpatient Care: The patient (has been / is expected to be) admitted for an overnight stay in a hospital, hospice, or residential medical care facility on the following date(s): _____

Incapacity plus Treatment: (e.g. outpatient surgery, strep throat)
 Due to the condition, the patient (has been / is expected to be) incapacitated for more than three consecutive, full calendar days from 1/5/26 (mm/dd/yyyy) to 2/15/26 (mm/dd/yyyy).

The patient (was / will be) seen on the following date(s): 1/5/26, 1/8/26, TAD RWC 2/16/26

The condition (has / has not) also resulted in a course of continuing treatment under the supervision of a health care provider (e.g. prescription medication (other than over-the-counter) or therapy requiring special equipment)

Pregnancy: The condition is pregnancy. List the expected delivery date: _____ (mm/dd/yyyy).

Chronic Conditions: (e.g. asthma, migraine headaches) Due to the condition, it is medically necessary for the patient to have treatment visits at least twice per year.

Permanent or Long Term Conditions: (e.g. Alzheimer's, terminal stages of cancer) Due to the condition, incapacity is permanent or long term and requires the continuing supervision of a health care provider (even if active treatment is not being provided):

Conditions requiring Multiple Treatments: (e.g. chemotherapy treatments, restorative surgery) Due to the condition, it is medically necessary for the patient to receive multiple treatments.

None of the above: If none of the above condition(s) were checked, (i.e., inpatient care, pregnancy) no additional information is needed. Go to page 4 to sign and date the form.

Employee Name: CHERYL M CARTER EIN: 04455015

- (4) If needed, briefly describe other appropriate medical facts related to the condition(s) for which the employee seeks FMLA leave. (e.g., use of nebulizer, dialysis) It having medically necessary surgery on 1/9/26. She requires 6 weeks of recovery

PART B: Amount of Leave Needed with restrictions

For the medical condition(s) checked in Part A, complete all that apply. Several questions seek a response as to the frequency or duration of a condition, treatment, etc. Your answer should be your **best estimate** based upon your medical knowledge, experience, and examination of the patient. Be as specific as you can; terms such as "lifetime," "unknown," or "indeterminate" may not be sufficient to determine FMLA coverage.

- (5) Due to the condition, the patient (had / will have) **planned medical treatment(s)** (scheduled medical visits) (e.g. psychotherapy, prenatal appointments) on the following date(s): surgery 1/9/26

- (6) Due to the condition, the patient (was / will be) **referred to other health care provider(s)** for evaluation or treatment(s).

State the nature of such treatments: (e.g. cardiologist, physical therapy) _____

Provide your **best estimate** of the beginning date _____ (mm/dd/yyyy) and end date _____ (mm/dd/yyyy) for the treatment(s).

Provide your **best estimate** of the duration of the treatment(s), including any period(s) of recovery (e.g. 3 days/week) _____

- (7) Due to the condition, it is medically necessary for the employee to work a **reduced schedule**. Provide your **best estimate** of the reduced schedule the employee is able to work. From _____ (mm/dd/yyyy) to _____ (mm/dd/yyyy) the employee is able to work: (e.g., 5 hours/day, up to 25 hours a week)

- (8) Due to the condition, the patient (was / will be) **incapacitated for a continuous period of time**, including any time for treatment(s) and/or recovery.

Provide your **best estimate** of the beginning date 1/9/26 (mm/dd/yyyy) and end date 2/19/26 (mm/dd/yyyy) for the period of incapacity.

FTW 2/16/26

- (9) Due to the condition, it (was / is / will be) medically necessary for the employee to be absent from work on an **intermittent basis** (periodically), including for any episodes of incapacity i.e., episodic flare-ups. Provide your **best estimate** of how often (frequency) and how long (duration) the episodes of incapacity will likely last.

Over the next 6 months, episodes of incapacity are estimated to occur _____ times per (day / week / month) and are likely to last approximately _____ (hours / days) per episode.



Employee Name: CHERYL M CARTER

EIN: 04455015

PART C: Essential Job Functions

If provided, the information in Section I question #4 may be used to answer this question. If the employer fails to provide a statement of the employee's essential functions or a job description, answer these questions based upon the employee's own description of the essential job functions. An employee who must be absent from work to receive medical treatment(s), such as scheduled medical visits, for a serious health condition is considered to be *not able* to perform the essential job functions of the position during the absence for treatment(s).

(10) Due to the condition, the employee (was not able / is not able / will not be able) to perform *one or more* of the essential job function(s). Identify at least one essential job function the employee is not able to perform:

During her recovery period is unable to lift or carry 75 pounds, unable to raise arms above shoulder level.

Signature of Health Care Provider *B. House*

Date *12/19/25* (mm/dd/yyyy)

| |
|--|
| Definitions of a Serious Health Condition (See 29 C.F.R. §§ 825.113-.115) |
| Inpatient Care |
| <ul style="list-style-type: none"> • An overnight stay in a hospital, hospice, or residential medical care facility. • Inpatient care includes any period of incapacity or any subsequent treatment in connection with the overnight stay. |
| Continuing Treatment by a Health Care Provider (any one or more of the following) |
| <p><u>Incapacity Plus Treatment:</u> A period of incapacity of more than three consecutive, full calendar days, and any subsequent treatment or period of incapacity relating to the same condition, that also involves either:</p> <ul style="list-style-type: none"> ○ Two or more in-person visits to a health care provider for treatment within 30 days of the first day of incapacity unless extenuating circumstances exist. The first visit must be within seven days of the first day of incapacity; or, ○ At least one in-person visit to a health care provider for treatment within seven days of the first day of incapacity, which results in a regimen of continuing treatment under the supervision of the health care provider. For example, the health provider might prescribe a course of prescription medication or therapy requiring special equipment. |
| <p><u>Pregnancy:</u> Any period of incapacity due to pregnancy or for prenatal care.</p> |
| <p><u>Chronic Conditions:</u> Any period of incapacity due to or treatment for a chronic serious health condition, such as diabetes, asthma, migraine headaches. A chronic serious health condition is one which requires visits to a health care provider (or nurse supervised by the provider) at least twice a year and recurs over an extended period of time. A chronic condition may cause episodic rather than a continuing period of incapacity.</p> |
| <p><u>Permanent or Long-term Conditions:</u> A period of incapacity which is permanent or long-term due to a condition for which treatment may not be effective, but which requires the continuing supervision of a health care provider, such as Alzheimer's disease or the terminal stages of cancer.</p> |
| <p><u>Conditions Requiring Multiple Treatments:</u> Restorative surgery after an accident or other injury; or, a condition that would likely result in a period of incapacity of more than three consecutive, full calendar days if the patient did not receive the treatment.</p> |

PAPERWORK REDUCTION ACT NOTICE AND PUBLIC BURDEN STATEMENT

If submitted, it is mandatory for employers to retain a copy of this disclosure in their records for three years. 29 U.S.C. § 2616; 29 C.F.R. § 825.500. Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. The Department of Labor estimates that it will take an average of 15 minutes for respondents to complete this collection of information, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. If you have any comments regarding this burden estimate or any other aspect of this collection information, including suggestions for reducing this burden, send them to the Administrator, Wage and Hour Division, U.S. Department of Labor, Room S-3502, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

DO NOT SEND COMPLETED FORM TO THE DEPARTMENT OF LABOR. RETURN TO THE PATIENT.

Trident Surgery Center

Agreement for Patient Financial Responsibility and Assignment of Benefits

Financial Responsibility:

In consideration of the services and items to be rendered to the Patient of this Surgery Center, the undersigned (as patient or parent, spouse, guarantor, guardian or agency of patient) individually promises to pay the patient's account at the rates stated in the Surgery Center's price list (known as the "Charge Master") effective on the date of service, which rates are hereby expressly incorporated by reference as the price term of this Agreement to pay the patient's account. Some special items will be priced separately if there is no price listed on the Charge Master, or the price is listed as zero. In the event the Surgery Center has to engage a collection agency or attorney to collect any unpaid balances that arise from the treatment consented to herein, the undersigned agrees to the attorney's fees and collection expenses incurred by the Surgery Center.

The undersigned agrees to pay for services that are not covered and covered charges not paid in full by the undersigned's insurance plan including, but not limited to coinsurance, deductibles, non-covered benefits due to policy limits or exclusions, or failure to comply with insurance plan requirements.

An estimate of the anticipated charges for services and items to be provided to the patient is available upon request from the Surgery Center. **Estimates may vary significantly from the final charges based on a variety of factors, including but limited to the course of treatment, intensity of care, physician practices, and the necessity of providing additional goods and services.** You may receive separate bills from your Physician as well as providers of anesthesiology, pathology and radiology if such services are rendered to you.

Assignment of Benefits:

The undersigned agrees to assign all rights and benefits under existing policies of insurance providing coverage and payment for any and all expenses incurred as a result of services and items received from Surgery Center and authorizes direct payment to the Surgery Center of any insurance benefits for the services and items received.

Consent to Telephone Calls for Care-Related Matters and Financial Communications:

With regards to the services and items rendered and/or my related financial obligations, I expressly agree and consent that the Surgery Center and any associated affiliate/vendor providing quality improvement, customer service, billing or collection services may contact me by any method of contact (such as a telephone call utilizing an automated dialing device, dialing services, prerecorded message or texting) to any telephonic number, including mobile telephone numbers, that I have provided to the Surgery Center, or has been obtained by the Surgery Center or any of its associated affiliates/vendors, or at a number forwarded or transferred from that number.

Patient Signature: Cheryl Carter
(or Parent / Legally Designated Representative)

Date: 01/05/2026



CARTER, CHERYL M
ID: 176752 DOS: 1/5/2026
DOB: 5/21/1993 AGE: 32 SEX: F
DR: WIDENHOUSE, BRIAN G

**TRIDENT AMBULATORY SURGERY CENTER
PATIENT CONSENT TO RESUSCITATIVE MEASURES**

NOT A REVOCATION OF ADVANCE DIRECTIVES OR MEDICAL POWERS OF ATTORNEY

ALL PATIENTS HAVE THE RIGHT TO PARTICIPATE IN THEIR OWN HEALTH CARE DECISIONS AND TO MAKE ADVANCE DIRECTIVES OR TO EXECUTE POWERS OF ATTORNEY THAT AUTHORIZE OTHERS TO MAKE DECISIONS ON THEIR BEHALF BASED ON THE PATIENT'S EXPRESSED WISHES WHEN THE PATIENT IS UNABLE TO MAKE DECISIONS OR UNABLE TO COMMUNICATE DECISIONS. THIS SURGERY CENTER RESPECTS AND UPHOLDS THOSE RIGHTS.

HOWEVER, UNLIKE IN AN ACUTE CARE HOSPITAL SETTING, THE SURGERY CENTER DOES NOT ROUTINELY PERFORM "HIGH RISK" PROCEDURES. MOST PROCEDURES PERFORMED IN THIS FACILITY ARE CONSIDERED TO BE OF MINIMAL RISK. OF COURSE, NO SURGERY IS WITHOUT RISK. YOU WILL DISCUSS THE SPECIFICS OF YOUR PROCEDURE WITH YOUR PHYSICIAN WHO CAN ANSWER YOUR QUESTIONS AS TO ITS RISKS, YOUR EXPECTED RECOVERY AND CARE AFTER YOUR SURGERY.

THEREFORE, IT IS OUR POLICY, AS A MATTER OF CONSCIENCE AND AS PERMITTED BY SOUTH CAROLINA STATE STATUTE CODE 44 OF CHAPTER 77, REGARDLESS OF THE CONTENTS OF ANY ADVANCE DIRECTIVE OR INSTRUCTIONS FROM A HEALTH CARE SURROGATE OR ATTORNEY IN FACT, THAT IF AN ADVERSE EVENT OR UNEXPECTED DETERIORATION OCCURS DURING YOUR TREATMENT AT THIS FACILITY WE WILL INITIATE RESUSCITATIVE OR OTHER STABILIZING MEASURES AND TRANSFER YOU TO AN ACUTE CARE HOSPITAL FOR FURTHER EVALUATION. AT THE ACUTE CARE HOSPITAL FURTHER TREATMENT OR WITHDRAWAL OF TREATMENT MEASURES ALREADY BEGUN WILL BE ORDERED IN ACCORDANCE WITH YOUR WISHES, ADVANCE DIRECTIVE OR HEALTH CARE POWER OF ATTORNEY. YOUR AGREEMENT WITH THIS POLICY BY YOUR SIGNATURE BELOW DOES NOT REVOKE OR INVALIDATE ANY CURRENT HEALTH CARE DIRECTIVE OR HEALTH CARE POWER OF ATTORNEY.

IF YOU DO NOT AGREE TO THIS POLICY, WE ARE PLEASED TO ASSIST YOU TO RESCHEDULE THE PROCEDURE.

PLEASE CHECK THE APPROPRIATE BOX IN ANSWER TO THESE QUESTIONS. HAVE YOU EXECUTED AN ADVANCE HEALTH CARE DIRECTIVE, A LIVING WILL, A POWER OF ATTORNEY THAT AUTHORIZES SOMEONE TO MAKE HEALTH CARE DECISIONS FOR YOU?

- YES, I HAVE AN ADVANCE DIRECTIVE, LIVING WILL OR HEALTH CARE POWER OF ATTORNEY.
- NO, I DO NOT HAVE AN ADVANCE DIRECTIVE, LIVING WILL OR HEALTH CARE POWER OF ATTORNEY.*
- I WOULD LIKE TO HAVE INFORMATION ON ADVANCE DIRECTIVES.

IF YOU CHECKED THE FIRST BOX "YES" TO THE QUESTION ABOVE, PLEASE PROVIDE US A COPY OF THAT DOCUMENT SO THAT IT MAY BE MADE A PART OF YOUR MEDICAL RECORD.

BY SIGNING THIS DOCUMENT, I ACKNOWLEDGE THAT I HAVE READ AND UNDERSTAND ITS CONTENTS AND AGREE TO THE POLICY AS DESCRIBED. IF I HAVE INDICATED I WOULD LIKE ADDITIONAL INFORMATION, I ACKNOWLEDGE RECEIPT OF THAT INFORMATION.

BY: Cheryl Carter
(PATIENT'S SIGNATURE)

01/05/2026
DATE

If consent to the procedure is provided by anyone other than the Patient, this form must be signed by the person providing the consent or authorization.

I ACKNOWLEDGE THAT I HAVE READ AND UNDERSTAND ITS CONTENTS AND AGREE TO THE POLICY AS DESCRIBED.

BY: _____
(Signature)

(Print Name)

Date

Relationship to Patient

- PARENT
- HEALTH CARE SURROGATE
- COURT APPOINTED GUARDIAN
- OTHER _____
- ATTORNEY IN FACT

IF THE PATIENT ANSWERED YES TO HAVING AN ADVANCE DIRECTIVE, LIVING WILL, OR HEALTHCARE POWER OF ATTORNEY:

- A COPY WAS PROVIDED AND PLACED IN THE PATIENT'S MEDICAL RECORD
- A COPY WAS NOT PROVIDED

*NOT APPLICABLE (IF Patient answered NO)
Center Representative: Susan Wetherhoff



CARTER, CHERYL M
ID: 176752 DOS: 1/5/2026
DOB: 5/21/1993 AGE: 32 SEX: F
DR: WIDENHOUSE, BRIAN G

EXHIBIT E

Transcript Request for Docket Number 2025CP0800615

8 messages

<Transcripts@sccourts.org>
To: <CMC6751@gmail.com>

Tue, Mar 3 at 10:33 PM

Greetings,

Please accept this email and the **summarized Transcript Request shown below** as confirmation that the online transcript request that you submitted has been received by our office. You should receive communication from a transcriptionist within five (5) business days with an estimated cost for production.

If you need further assistance, please contact us at transcripts@sccourts.org.

Regards,

Court Administration

Summarized Transcript Request ID(s): **224463398**

Requester Information:

Name: Cheryl Carter**Entity:** Other Pro Se**Phone Number:** (843) 345-6751**Email:** CMC6751@gmail.com**Address:** 355 Bradley Bend Dr. Moncks Corner, SC 29461**Is the requester a party on the case?** Yes Cheryl Carter**Does the requester represent a party?** No

Transcript Information:

Docket Number: 2025CP0800615**Court Type:** Circuit**County:** Berkeley**Case Caption:** Carter, Cheryl vs McElveen Buick GMC, Inc.**Appeal Pending?** Court of Appeals**Death Penalty?** No**Start Date of Proceeding:** 2/20/2025**End Date of Proceeding:** 4/22/2025**Presiding Judge:** McFaddin, George M. Jr.**Court reporter daily assignments:****2/24/2025 (Monday):** WebEx, Circuit Court**2/25/2025 (Tuesday):** WebEx, Circuit Court**2/26/2025 (Wednesday):** WebEx, Circuit Court**2/27/2025 (Thursday):** WebEx, Circuit Court

2/28/2025 (Friday): WebEx, Circuit Court
4/14/2025 (Monday): WebEx, Circuit Court
4/15/2025 (Tuesday): WebEx, Circuit Court
4/16/2025 (Wednesday): WebEx, Circuit Court
4/17/2025 (Thursday): WebEx, Circuit Court
4/18/2025 (Friday): WebEx, Circuit Court

Opposing Counsel and/or other parties information:

(Attorney) Victoria Watson Kurtz
(email): VICTORIA@JOHNSTONLAWSC.COM
(Defendant) Inc. McElveen Buick GMC
(Plaintiff) Cheryl Carter
(email): CMC6751@GMAIL.COM
(Plaintiff Attorney) Cheryl Carter
(email): CMC6751@GMAIL.COM

Next hearing date: *Date not entered*

Portion of proceeding to be transcribed: Entire Hearing

Delivery Information:

Delivery Timeframe: Overnight Delivery

Delivery Method: PDF/Email

Delivery Timeframe: Private/Self

~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

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<Transcripts@sccourts.org>

Tue, Mar 3 at 10:33 PM

To: <VICTORIA@johnstonlawsc.com>, <CMC6751@gmail.com>

Greetings,

You are receiving this notice and the **summarized Transcript Request shown below** because you are associated with case **Carter, Cheryl vs McElveen Buick GMC, Inc..**

Pursuant to Rule 207(a)(1), SCACR, you are being notified that the transcript has been requested on **3/3/2026**. There is no action required.

If you need further assistance, please contact us at transcripts@sccourts.org.

Regards,

Court Administration

Summarized Transcript Request ID: **224463398**

## Requester Information:

---

**Name:** Cheryl Carter

**Entity:** Other Pro Se

**Email:** CMC6751@gmail.com

[Quoted text hidden]

<Transcripts@sccourts.org>  
To: <CMC6751@gmail.com>

Tue, Mar 3 at 11:00 PM

Greetings,

Please accept this email and the **summarized Transcript Request shown below** as confirmation that the online transcript request that you submitted has been received by our office. You should receive communication from a transcriptionist within five (5) business days with an estimated cost for production.

If you need further assistance, please contact us at transcripts@sccourts.org.

Regards,

Court Administration

Summarized Transcript Request ID(s): **1442679208**

## Requester Information:

---

**Name:** Cheryl Carter  
**Entity:** Other Pro Se  
**Phone Number:** (843) 345-6751  
**Email:** CMC6751@GMAIL.COM  
**Address:** 355 BRADLEY BEND DR. MONCKS CORNER, SC 29461  
**Is the requester a party on the case?** Yes Cheryl Carter  
**Does the requester represent a party?** No

## Transcript Information:

---

**Docket Number:** 2025CP0800615  
**Court Type:** Circuit  
**County:** Berkeley  
**Case Caption:** Carter, Cheryl vs McElveen Buick GMC, Inc.  
**Appeal Pending?** Court of Appeals  
**Death Penalty?** No  
**Start Date of Proceeding:** 7/14/2025  
**End Date of Proceeding:** 7/14/2025  
**Presiding Judge:** Goodstein, Diane Schafer  
**Court reporter daily assignments:**  
**7/14/2025 (Monday):** WebEx, Circuit Court  
[Quoted text hidden]

<Transcripts@sccourts.org>  
To: <VICTORIA@johnstonlawsc.com>, <CMC6751@gmail.com>

Tue, Mar 3 at 11:00 PM

Greetings,

You are receiving this notice and the **summarized Transcript Request shown below** because you are associated with case **Carter, Cheryl vs McElveen Buick GMC, Inc..**  
Pursuant to Rule 207(a)(1), SCACR, you are being notified that the transcript has been requested on **3/3/2026**. There is no

action required.

If you need further assistance, please contact us at [transcripts@sccourts.org](mailto:transcripts@sccourts.org).

Regards,

Court Administration

Summarized Transcript Request ID: **1442679208**

## Requester Information:

---

**Name:** Cheryl Carter

**Entity:** Other Pro Se

**Email:** [CMC6751@GMAIL.COM](mailto:CMC6751@GMAIL.COM)

[Quoted text hidden]

---

<[Transcripts@sccourts.org](mailto:Transcripts@sccourts.org)>

To: <[CMC6751@gmail.com](mailto:CMC6751@gmail.com)>

Tue, Mar 3 at 11:05 PM

Greetings,

Please accept this email and the **summarized Transcript Request shown below** as confirmation that the online transcript request that you submitted has been received by our office. You should receive communication from a transcriptionist within five (5) business days with an estimated cost for production.

If you need further assistance, please contact us at [transcripts@sccourts.org](mailto:transcripts@sccourts.org).

Regards,

Court Administration

Summarized Transcript Request ID(s): **417095380**

## Requester Information:

---

**Name:** CHERYL CARTER

**Entity:** Other PRO SE

**Phone Number:** (843) 345-6751

**Email:** [CMC6751@GMAIL.COM](mailto:CMC6751@GMAIL.COM)

**Address:** 355 BRADLEY BEND DR. MONCKS CORNER, SC 29461

**Is the requester a party on the case?** Yes Cheryl Carter

**Does the requester represent a party?** No

## Transcript Information:

---

**Docket Number:** 2025CP0800615  
**Court Type:** Circuit  
**County:** Berkeley  
**Case Caption:** Carter, Cheryl vs McElveen Buick GMC, Inc.  
**Appeal Pending?** Court of Appeals  
**Death Penalty?** No  
**Start Date of Proceeding:** 9/15/2025  
**End Date of Proceeding:** 9/15/2025  
**Presiding Judge:** McCoy, Jennifer B.  
**Court reporter daily assignments:**  
    **9/15/2025 (Monday):** WebEx, Circuit Court  
[Quoted text hidden]

---

<Transcripts@sccourts.org>  
To: <VICTORIA@johnstonlawsc.com>, <CMC6751@gmail.com>

Tue, Mar 3 at 11:05 PM

Greetings,

You are receiving this notice and the **summarized Transcript Request shown below** because you are associated with case **Carter, Cheryl vs McElveen Buick GMC, Inc..**  
Pursuant to Rule 207(a)(1), SCACR, you are being notified that the transcript has been requested on **3/3/2026**. There is no action required.

If you need further assistance, please contact us at [transcripts@sccourts.org](mailto:transcripts@sccourts.org).

Regards,

Court Administration

Summarized Transcript Request ID: **417095380**

## Requester Information:

---

**Name:** CHERYL CARTER  
**Entity:** Other PRO SE  
**Email:** [CMC6751@GMAIL.COM](mailto:CMC6751@GMAIL.COM)  
[Quoted text hidden]

---

**Cheryl Carter** <[cmc6751@gmail.com](mailto:cmc6751@gmail.com)>  
To: Jermaine B <[creditfien@gmail.com](mailto:creditfien@gmail.com)>

Wed, Mar 4 at 9:11 AM

[Quoted text hidden]

---

**Cheryl Carter** <[cmc6751@gmail.com](mailto:cmc6751@gmail.com)>  
Draft To: Jermaine B <[creditfien@gmail.com](mailto:creditfien@gmail.com)>

Thu, Mar 5 at 6:03 AM

[Quoted text hidden]

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

RECEIVED

MAR 06 2026

APPEAL FROM BERKELEY COUNTY  
Court of Common Pleas

SC Court of Appeals

Jennifer B. McCoy, Circuit Court Judge

George M. McFaddin, Jr., Circuit Court Judge

Appellate Case No. 2026-000201

Cheryl Carter,

Appellant,

v.

McElveen Buick-GMC, Inc.,

Respondent.

PROOF OF SERVICE

I certify that on **March 5, 2026**, I have served a copy of the foregoing **Return to Respondent's Motion to Dismiss and Oppositions** by **USPS Certified Mail** to the following counsel of record:

Victoria W. Kurtz, Esq. (SC Bar: 103303)  
361 N. Shelmore Blvd.  
Mt. Pleasant, SC 29464  
Victoria@JohnstonLawSC.com  
843-535-9560  
Attorney for Respondent



Cheryl Carter  
355 Bradley Bend Dr.  
Moncks Corner, South Carolina  
29461  
(843) 345-6751  
Appellant

