RECEIVED

Apr 17 2026

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

---

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

J. Derham Cole, Circuit Court Judge
Trial Court Case No. 2022-CP-42-01677

---

Appellate Case No. 2023-001360

---

Taylor Chasey Robertson,

Petitioner,

v.

South Carolina Department of Public Safety, South Carolina Highway Patrol, and Trooper Patrick J. Goshorn,

Respondents.

---

# PETITION FOR WRIT OF CERTIORARI

---

Nicolas J. Baughman, Esq.
S.C. Bar No. 102186
Nicolas J. Baughman, Attorney at Law, LLC
600 North McDuffie Street
Post Office Box 2501
Anderson, South Carolina 29621 (29622)
Phone: (864) 332-9276
Fax: (864) 392-8276
Email: nick@baughmanlawsc.com
*Attorney for Petitioner*

INDEX

Table of Authorities ..... iii

Petition

I. CERTIFICATE OF COUNSEL. ..... 1

II. QUESTIONS PRESENTED. ..... 1

III. STATEMENT OF FACTS AND THE CASE ..... 2

Conclusion ..... 22

TABLE OF AUTHORITIES

CASES

*Abdulla v. S. Bank*, 439 S.C. 391, 887 S.E.2d 138 (Ct. App. 2023) ..... 20

*Bage, LLC v. Southeastern Roofing*, 646 S.E.2d 153, 373 S.C. 457 (S.C. App. 2007) ..... 8

Cf *Light v. Wolf*, 816 F.2d 746, 750 (D.C. Cir. 1987) ..... 18

*Collins Music Co., Inc. v. Lord*, 346 S.E.2d 724, 289 S.C. 458 (S.C. 1986) ..... 6

*Erickson v. Jones St. Publishers, LLC*, 368 S.C. 444, 476, 629 S.E.2d 653, 670 (2006) ..... 21

*Foster v. Crawford* (57 S.C. 551, 36 S.E. 5, (1900) ..... 8

*Graham Law Firm, P.A. v. Makawi*, 396 S.C. 290, 294-95, 721 S.E.2d 430, 432 (2012) ..... 21

*Griffin v. Capital Cash*, 310 S.C. 288, 292, 423 S.E.2d 143, 146 (Ct. App. 1992) ..... 8

*Jensen v. Doe*, 292 S.C. 592, 358 S.E.2d 148 (S.C.Ct.App.1987) ..... 5, 6, 7, 11, 12

*Limehouse v. Hulsey*, 404 S.C. 93, 104, 744 S.E.2d 566, 572 (2013) ..... 19

*Maybank v. BB&T Corp.*, 416 S.C. 541, 566, 787 S.E.2d 498, 511 (2016) ..... 19, 20

*Maybin v. Northside Correctional Center,* 891 F.2d 72, 73-4 (4th Cir. 1989) ..... 5, 7, 11, 12

*McCall v. IKON*, 363 S.C. 646, 655, 611 S.E.2d 315, 319 (Ct. App. 2005). ..... 8, 10, 12

*McClurg v. Deaton*, 380 S.C. 563, 579, 671 S.E.2d 87, 96 (Ct. App. 2008) ..... 10, 11

*Mims Amusement Co. v. S.C. L. Enf't Div*., 366 S.C. 141, 145, 621 S.E.2d 344, 346 (2005) ..... 5

*Moore v. Simpson*, 322 S.C. 518, 523, 473 S.E.2d 64, 66 (Ct. App. 1996) ..... 8, 10

*Morrissey v. Mayorkas*, 17 F.4th 1150, 1156 (D.C. Cir. 2021) ..... 18

*Richardson v. P.V., Inc*., 682 S.E.2d 263, 383 S.C. 610 (S.C. 2009) ..... 8

*Roche v. Young Bros., Inc. of Florence,* 318 S.C. 207, 209-10, 456 S.E.2d 897 (1995) ..... 7, 8, 11, 16

*Saunders v. Bobo* (2 Bailey 492 (1831) ..... 8

*Smalls v. Weed*, 291 S.C. 258, 353 S.E.2d 154 (Ct. App. 1987) .....19, 21

*Sundown Operating Co. v. Intedge Indus., Inc*., 383 S.C. 601, 607, 681 S.E.2d 885, 888 (2009).....21

*Yarborough and Co. v. Schoolfield Furniture Industries, Inc*., 275 S.C. 151, 268 S.E.2d 42 (1980).....20

STATUTES and RULES

24 S.C. Jur. Rules of Civil Procedure § 4.2 ..... 4

Rule 1, SCRCP..... 7

Rule 4(d), SCRCP.....11, 13, 14, 19

Rule 4(d)(1), SCRCP .....6, 13, 16

Rule 4(d)(3), SCRCP ..... 1, 4, 13-16

Rule 4(d)(4), SCRCP .....13

Rule 4(d)(5), SCRCP ..... 1, 4-7, 9-10, 13-18

Rule 4(d)(6), SCRCP .....13

Rule 5(b)(1), SCRCP .....16

Rule 12(b), SCRCP..... 3

S.C. Code § 1-7-50.....17

S.C. Code § 1-7-160.....17

S.C. Code § 1-7-170.....17

S.C. Code § 1-7-350.....17

S.C. Code § 15-9-520..... 6

S.C. Code § 56-5-2930..... 2

## CERTIFICATE OF COUNSEL

Counsel submits that he has preserved the issues discussed herein for appeal and that he timely filed a petition for rehearing after the Court of Appeals issued an opinion in this case. The Court of Appeals filed its decision on February 4, 2026, and the Petitioners petitioned for rehearing on February 19, 2026. March 18, 2026, the Court of Appeals filed an Order denying the Petition for Rehearing. This Petition follows.

## QUESTIONS PRESENTED

### First Impressions

**I. Is an analysis of "what" constitutes proper service under Rule 4(d)(5) a matter of First Impression for this Court?**

### Analysis Standards

**II. Should an analysis of whether or not service of process was proper under Rule 4(d)(5) be made under an "exacting compliance" standard or a "sufficient compliance" standard?**

**III. Did the Court of Appeals apply an "exacting compliance" standard or a "sufficient compliance" standard in its analysis of service in the present case?**

**IV. Did the Court of Appeals improperly conflate the "exacting compliance" standard and "sufficient compliance" standard in its analysis of service in the present case?**

**V. Did the Court of Appeals' analysis of whether or not service of process was proper ignore or contradict the manner in which South Carolina Courts have analyzed service of process cases over the last thirty-plus years?**

**VI. Did the Court of Appeals apply the correct standard for analyzing proper service?**

### SCRCP Rule 4(d)(5) Requirements

**VII. Did the Court of Appeals improperly ignore both the Trial Court's and Respondents' conflation of Rules 4(d)(3) and 4(d)(5)?**

**VIII. Did the Court of Appeals improperly fail to determine whether or not delivery occurred?**

**XI. Did the Court of Appeals incorrectly hold that the Circuit Court did not err in dismissing Robertson's claims against SCDPS and SCHP for failure to serve her complaint properly?**

**Personal Jurisdiction**

**X. Did the Court of Appeals err in not considering whether or not Respondents waived personal jurisdiction, thereby making the issue of proper service moot?**

**The Opinion**

**XI. Did the Court of Appeals incorrectly hold that the Circuit Court did not err in dismissing Robertson's claims against SCDPS and SCHP for failure to serve her complaint properly?**

## STATEMENT OF FACTS AND THE CASE

This case arises out of a stop and arrest which occurred at approximately 2:00 AM on May 9, 2020, in Spartanburg, South Carolina. Trooper Patrick Goshorn, an employee of Respondents SCDPS and SCHP, arrested Petitioner Robertson for driving under the influence. However, Ms. Robertson was not impaired, and breathalyzer analysis performed by the Datamaster machine demonstrated that Ms. Robertson had a 0.01 Blood Alcohol Content ("BAC"). Per SC Code 56-5-2930, an individual is conclusively presumed not under the influence of alcohol if they provide a sample of .05% or less. Ms. Robertson was then "un-arrested", released, and left to fend for herself without her car (which had been impounded), in the cold, shortly after 3:00 AM. (Sum. and Compl., R. p. 26).

On May 9, 2022, Taylor Chasey Robertson brought a suit alleging multiple causes of action against the South Carolina Department of Public Safety ("SCDPS"), and the South Carolina Highway Patrol ("SCHP") (collectively "SCDPS"). (Sum. and Compl., R. pp. 20-35).

On September 6, 2022, within 120 days of filing the lawsuit, a process server for Petitioner hand-delivered a copy of the Summons and Complaint to the South Carolina Attorney General's Office. (Aff. of Service on SC AG, R. p. 439) A process server also hand-delivered a copy of the Summons and Complaint to 10311 Wilson Boulevard in Blythewood, South Carolina (Aff. of Service on SCDPS, R. pp. 440-441.), which is the exact address provided by SCDPS on its

website. (Frontpage of SCDPS Website, R. pp. 430-433). Unbeknownst to the process server at the time, the person served at SCDPS' address was an employee of the South Carolina Department of Motor Vehicles ("SCDMV"), another state agency that apparently shared the address with the SCDPS.

Counsel for Respondents, Russell Harter, timely Answered the Summons and Complaint on October 6, 2022. (Answer, R. pp. 36-43). Hours before filing the Answer, Attorney Harter also filed a 12(b) Motion to Dismiss with exhibits (DEFs' Rule 12(b) Motion to Dismiss, R. pp. 44-50). The basis for the Motion was that Respondent SCDPS alleged that service upon the agency was not accomplished in a timely fashion. On November 17, 2022, while the Motions were still pending, Respondents' attorney mailed to Petitioner discovery requests that had been signed by Attorney Harter on the same date as he answered on behalf of the Respondents. (See Defendants' Discovery Requests to Plaintiff, R. pp. 444-458). On March 3, 2023, two weeks after the hearing for Defendants' Motion to Dismiss, Attorney Harter contacted Petitioner's counsel inquiring as to the status of the discovery responses. (See Email from Defendants Regarding Discovery Responses, R. p. 459).

Respondents' Motion was heard by the Honorable J. Derham Cole on February 23, 2023. On March 21, 2023, a Form 4 Order was filed by the Court granting Respondents' Motion, with a directive to the Respondents' attorney to prepare and submit a proposed formal order for the Court's consideration. (Form 4 Order granting DEFs' Motions to Dismiss, R. pp. 1-4). About two months later, on May 24, 2023—but still prior to Respondents submitting a proposed order per the trial court judge's directive—Petitioner preemptively filed a Motion for Reconsideration (PLT's Motion for Recon. of Form 4 Order, R. pp. 55-185). A few days later, Respondents filed a Proposed Order, which was signed by Judge Cole on June 27, 2023 and dismissed the entirety

of Petitioner's case. (Formal Order granting DEFs' Motions to Dismiss, R. pp. 5-13).

The basis for the finding was the Trial Court stating "Rule 4(d) provides that when a state agency is a defendant that service is made by delivering the Summons and Complaint to the officer or agency in keeping with Rule (d)(3), which provides that the Summons and Complaint be served to an officer, a managing or general agent, or an agent authorized by appointment of law to receive service of process." (Formal Order granting DEFs' Motions to Dismiss, R. pp. 8). It is important to note that there is no caselaw, statute, rule, or otherwise to support this statement.

On June 30, 2023, Petitioner filed an Amended Motion to Reconsider of the June 27, 2023, Order. (PLT's Amended Motion for Recon., R. pp. 186-374). This Motion contained the same arguments Petitioner has continued to make. This Motion was heard on August 14, 2023 and the Motion was denied on August 16, 2023. (Form 4 Order denying PLT's Motion for Recon., R. pp. 14-17). Petitioner appealed. The Court of Appeals filed its decision on February 4, 2026, and the Petitioner petitioned for rehearing on February 19, 2026. On March 18, 2026, the Court of Appeals filed an Order denying the Petition for Rehearing.

## ARGUMENTS

### First Impressions

**I. Is an analysis of "what" constitutes proper service under Rule 4(d)(5) a matter of First Impression for this Court?**

While the rules on service of process have been analyzed by the Court extensively over the years, there is no appellate case law in South Carolina outlining the contours of the agency service requirements under 4(d)(5). *See also* 24 S.C. Jur. Rules of Civil Procedure § 4.2 (" [T]here are no South Carolina cases directly addressing Rule 4(d)(5), which concerns service of process upon a state officer or agency."). Accordingly, an analysis of what constitutes proper service

under Rule 4(d)(5) **is a matter of first impression**. In this vein,

> [T]he Court is free to decide the question with no particular deference to the lower court. The Court must decide the question based on its assessment of which answer and reasoning best comport with the law and public policies of this state and the Court's sense of law, justice, and right.
>
> *Mims Amusement Co. v. S.C. L. Enf't Div*., 366 S.C. 141, 145, 621 S.E.2d 344, 346 (2005).

Despite the lack of Rule 4(d)(5) precedence established by South Carolina appellate courts, there have been disputes involving the Rule. A case often used to support the same findings as the Trial Court in the present case is the federal court case *Maybin v. Northside Correctional Center,* 891 F.2d 72, 73-4 (4th Cir. 1989). However, *Maybin* is of dubious value. In *Maybin*, Plaintiff sued her employer, a state agency, for discrimination. She served the attorney general of SC by mail pursuant to Rule 4(d)(5). As to the requirement that plaintiff deliver a copy of the summons and complaint to the agency, the opinion reports that the plaintiff served a particular "caseworker" at the facility. The case does not say how the caseworker was served and the Fourth Circuit's sole treatment of this issue in its opinion declared that Plaintiff's attempted service upon the caseworker was not effective service upon the agency. "Service to an agency is not legally obtained unless such service is made upon a person of suitable position and discretion within the agency," the Fourth Circuit said. *Maybin* cited state court case *Jensen v. Doe*, 292 S.C. 592, 358 S.E.2d 148 (S.C.Ct.App.1987), in support of that statement.

It bears noting at the outset that *Jensen* doesn't even say what *Maybin* said it says. In fact, whereas the issue in *Maybin* was whether service on the individual employee was effective service on the agency, the issue in *Jensen* was the reverse – whether service on the agency employer was sufficient substitute service on the individual employees who worked there. In *Jensen*, the plaintiff sued certain Doe defendants under the fictitious name statute in their individual capacities. Those defendants were employees of a state agency (DSS). The Sheriff attempted to effect service on the

individual defendants by leaving the papers with an employee at the agency. The trial court "found [that the agency] was a proper agent to receive service of process for these [individual] defendants, because it was the defendants' employer at the time of the decedent's death." The Fourth Circuit disagreed, however, because "[t]he record … contain[ed] no evidence showing that [the agency] was the employer of the defendants at the time of the attempted service."

The *Jensen* Court did state in the very next sentence that:

> "[w]ithout evidence that the defendants were served by delivery of the papers to a person of discretion employed at their present place of business, … there is nothing in the record to show these [individual] defendants were served with process."

However, that statement was based on the now repealed Section 15-9-520, which was a statute providing for substitute service *on individuals*, not state agencies. *See, e,.g., Collins Music Co., Inc. v. Lord*, 346 S.E.2d 724, 289 S.C. 458 (S.C. 1986) ("Under § 15-9-520 substitute service of process may be effected by personally serving a person of discretion at a defendant's residence or place of business."). When South Carolina adopted its Rules of Civil Procedure, the Notes to Rule 4 said (and still say) that "Rule 4(d)(1)," regarding service on individuals, "preserves the requirements of Code § 15-9-520." That statement further underscores that *Jensen* (which was premised on § 15-9-520) was a case about an attempted substitute service on individuals, not entities or state agencies. The Notes to Rule 4(d)(5), by contrast, do not declare any intention to preserve any aspect of any prior statutes, but rather expressly declare the intent of that subsection to "conform to the Federal Rules and clarify State practice concerning service on the State, its officers or agencies, and on political subdivisions."

In short, *Jensen* was a pre-Rules of Civil Procedure case that relied on now-repealed statutes related to substitute service on individuals and certainly had nothing to say about the conditions under which a party might properly "deliver" a copy of a summons and complaint to

an agency for Rule 4(d)(5) purposes. And for whatever reason, the *Maybin* Court decided that *Jensen* said just that.

Despite the federal court's (inaccurate) analysis of service under Rule 4(d)(5) and South Carolina state law, there remains no definitive guiding authority as to how to best analyze service of process on state agencies. What we are left with is the text itself and the manner in which other service of process issues have been generally analyzed by South Carolina appellate courts. For these reasons, the issues in this case are a matter of first impression for this Court.

## Standards of Analysis

**II. Should an analysis of whether or not service of process was proper under Rule 4(d)(5) be made under an "exacting compliance" standard or a "sufficient compliance" standard?**

There's nothing just about taking an overly technical view of the service requirements of Rule 4, especially where the purported technical default caused no prejudice to the Defendant and the purposes of service were otherwise satisfied. SCRCP Rule 1 states that the Rules "shall be construed to secure the just, speedy, and inexpensive determination of every action." And in fact, South Carolina appellate court opinions have actually taken precisely that approach to issues related to service of process, eschewing technical "gotcha" gamesmanship in favor of focusing on the policies and purposes underlying the service requirements.

Perhaps the case most articulate on this point is the *Roche* case, decided in 1995. In that case, the Court stated,

> [South Carolina has] never required exacting compliance with the rules to effect service of process. Rather, we inquire whether the plaintiff has sufficiently complied with the rules such that the court has personal jurisdiction of the defendant and the defendant has notice of the proceedings.

*Roche v. Young Bros., Inc. of Florence,* 318 S.C. 207, 209-10, 456 S.E.2d 897 (1995).

The *Roche* court was referring to this state's long history of not taking a narrow view of service of process rules, citing *Foster v. Crawford* (57 S.C. 551, 36 S.E. 5, (1900) (when officer's return defective as to time and place of service, it can be amended to state facts)) and *Saunders v. Bobo* (2 Bailey 492 (1831) (sheriff's incomplete return that was not sworn to may be amended)) as examples.

The statement that "[e]xacting compliance with the rules is not required to effect service of process" has been quoted repeatedly in numerous appellate cases in South Carolina since *Roche*. See, e.g., *Richardson v. P.V., Inc*., 682 S.E.2d 263, 383 S.C. 610 (S.C. 2009); *Bage, LLC v. Southeastern Roofing*, 646 S.E.2d 153, 373 S.C. 457 (S.C. App. 2007) (quoting the principles from *Roche* and stating that "the efficacy and rationale behind the requirement for service of process—that the defendant has notice of the proceedings—has luculently been met in this case."); *Moore*, 322 S.C. at 523, 473 S.E.2d at 66 ("Rather, inquiry must only be made as to whether the plaintiff has sufficiently complied with the rules such that the court has personal jurisdiction of the defendant, and the defendant has notice of the proceedings.").

The purpose behind requiring service is a simple one. The requirements of service do "not arise from an arcane or highly technical application of the rules. Rather, [the service requirements] serve[] an essential function—ensuring that notice is properly received by all entitled to it." *McCall v. IKON*, 363 S.C. 646, 655, 611 S.E.2d 315, 319 (Ct. App. 2005). "A suit at law is not a children's game, but a serious effort on the part of adult human beings to administer justice; and the purpose of process is to bring parties into court." *Id*. at 652, 611 S.E.2d at 318 (quoting *Griffin v. Capital Cash*, 310 S.C. 288, 292, 423 S.E.2d 143, 146 (Ct. App. 1992)).

If every single issue regarding service of process—regardless of type of individual or entity

to be served—had been determined based on a strict interpretation of the pertinent rule, i.e., exacting compliance, then there would be no point in this Petition or the preceding appeal. However, given Rule 4(d)(5)'s lack of precedential authority, the Court has a responsibility to decide the question based on its assessment of which answer and reasoning best comport with the law and public policies of this state and the Court's sense of law, justice, and right. Coupling that responsibility with the Court's established history of inquiring into whether sufficient compliance with the service of process rules has occurred, it is clear that Rule 4(d)(5) should be analyzed under a "sufficient compliance" standard.

## III. Did the Court of Appeals apply an "exacting compliance" standard or a "sufficient compliance" standard in its analysis of service in the present case?

Petitioner respectfully suggests that the Court of Appeals did not apply a "sufficient compliance" standard when analyzing this case—despite acknowledging Petitioner's appeal was based on whether or not she did exactly that. Petitioner believes that the Court of Appeals oversimplified the case and analyzed it under a strict reading of the statute, i.e., under an "exacting compliance" standard. As the Court of Appeals stated in its Opinion, Petitioner "argues the circuit court erred in [] dismissing her claims against SCDPS and SCHP for improper service of process because she **sufficiently complied** with the rules on service when she served the complaint on an agency sharing an address with SCDPS[.]" (emphasis added).

To be clear, Petitioner acknowledges that there was not "exacting compliance" with the statute. Petitioner agrees that she did not serve the Attorney General by certified or registered mail; rather, she had the office personally served. Further, her process server served the summons and complaint on an individual that, unbeknownst at the time to both Petitioner and the process server, worked for a different state agency—the SCDMV— and who was situated at an unmarked desk in

the lobby area in the building located at the address of the SCDPS, in a location of the lobby closest to the SCDPS entrance. The fact that an employee of the SCDMV was served directly with the papers is not in dispute. However, whether or not an employee of the SCDPS was directly served with service of process is not the issue. Rather the real issue is whether or not Petitioner substantially complied with the statute requiring that the Summons and Complaint be delivered to the agency.

In its Opinion, the Court of Appeals did not address any aspect of whether Petitioner sufficiently complied (again, other than it being the primary issue posed by the Petitioner) and effectively ignored every argument made by the Petitioner as to the same. Further, there is nothing in the Court of Appeals' Opinion to suggest that it inquired into whether the Petitioner *sufficiently* complied with the rules of service, i.e., whether the Court had personal jurisdiction of the Respondents and if the Respondents had notice of the proceedings. Accordingly, it appears that the Court of Appeals applied an "exacting compliance" standard and not a "substantial compliance" standard.

## IV. Did the Court of Appeals improperly conflate the "exacting compliance" standard and "sufficient compliance" standard in its analysis of service in the present case?

While it is apparent that the Court of Appeals construed SCRCP Rule 4(d)(5) narrowly and strictly, as though "exacting compliance" is the standard, the common law it cited seems to contradict its methodology. In its Opinion, the Court of Appeals cited *McClurg*, stating "[I]n order to establish that service has been properly effected, the plaintiff need only show **compliance** with the civil rules on service of process." *McClurg v. Deaton*, 380 S.C. 563, 579, 671 S.E.2d 87, 96 (Ct. App. 2008) (emphasis added). In making that statement, the *McClurg* Court cited *McCall v. IKON* and *Moore v. Simpson* as its authoritative basis. However, both *McCall* and *Moore* refer

back to *Roche*'s ubiquitous statement on substantial compliance, that is:

> Exacting compliance with the rules is not required to effect service of process. Rather, inquiry must be made as to whether the plaintiff has sufficiently complied with the rules such that the court has personal jurisdiction of the defendant and the defendant has notice of the proceedings.
>
> *Moore v. Simpson*, 322 S.C. 518, 523, 473 S.E.2d 64, 66 (Ct. App. 1996); *McCall v. IKON*, 363 S.C. 646, 651, 611 S.E.2d 315, 317 (Ct. App. 2005).

*McClurg* goes on to next say that "[w]hen these rules are followed, there is a presumption of proper service," citing the aforementioned *Roche* case. *McClurg* at 579. It is clear that the "compliance" contemplated by *McClurg* is not to be interpreted as "exacting", but rather "substantial."

When considering the Court of Appeals acknowledgement that the Petitioner argued she had substantially complied with the Rule, its citations of caselaw supporting a "substantial compliance" analysis, its disregard of virtually every argument made by Petitioner, and its factual discussion demonstrating an "exacting compliance" analysis, it appears as though the Court of Appeals improperly conflated the two standards of analysis.

## V. Did the Court of Appeals' analysis of whether or not service of process was proper ignore or contradict the manner in which South Carolina Courts have analyzed service of process cases over the last thirty-plus years?

While exacting compliance may be proper for some rules (depending on the rule itself and corresponding caselaw), interpreting a subsection of Rule 4(d) in this manner is wholly inconsistent with service of process jurisprudence in this state over the last thirty-plus years.

Going back to the *Jensen* case (and thus *Maybin* by extension), such is also diametrically at odds with the manner in which the South Carolina appellate courts have addressed service of process challenges under the Rules of Civil Procedure. As noted above, in the aftermath of *Roche's*

exposition of the principles embodied in Rule 4 and the implications for any legal analysis regarding the sufficiency of service, the resounding chorus and theme of the appellate cases (since 1994 – eight years after *Jensen* and five years after *Maybin*) has been that "exacting compliance" with the Rules is not required; rather, the South Carolina courts look to a more functional approach that centers on good faith, actual notice, and sufficient compliance for a court to acquire personal jurisdiction – in other words the purposes that animate Rule 4, rather than "strict technicalities" and "murky legal abstractions." *See McCall* at 317. By stark contrast, *Jensen* kicks off the conclusion of its analysis with the statement that "[c]ompliance with the service of process requirements must be strict, and approximations will not be effective." *Id*. at 595. That statement certainly does not reflect the post-*Roche* case law in the State, and neither *Jensen* nor *Maybin* should be understood to have any enduring value at this point.

Based on the Court of Appeals failure to analyze the facts through the lens of the substantial compliance standard (as previously discussed herein), its analysis both contradicted and ignored the manner in which service of process cases have been analyzed in this state since at least 1995 with the *Roche* case.

## VI. Did the Court of Appeals apply the correct standard for analyzing proper service?

As the last three questions for this Court have discussed, it is clear that both the Trial Court and the Court of Appeals looked no deeper than the person served in making its decision; that is, the person employed by the SCDMV, which is located at SCDPS' address, sitting at an unmarked desk in the lobby, and who indicated she could accept service on behalf of the SCDPS. There was no consideration or address of Petitioner's several arguments as to substantial compliance. As previously discussed, this is very much an application of the "exacting compliance" standard. And,

for reasons already discussed in the preceding questions, this was the incorrect standard to apply.

## SCRCP Rule 4(d)(5) Requirements

**VII. Did the Court of Appeals improperly ignore both the Trial Court's and Respondents' conflation of Rules 4(d)(3) and 4(d)(5)?**

Rule 4(d) and its subparts, when viewed together and compared to one another, provide some level of clarity more by what is not written, rather than what is written. Specifically, there are multiple subdivisions of Rule 4(d) (including 4(d)(3)) that do indicate who may accept service on behalf of the respective persons and/or entities:

- Rule 4(d)(1) allows service to be made upon an **individual** by leaving copies "at his dwelling house or usual place of abode with some person of suitable age and discretion then residing therein, or ***by delivering a copy to an agent authorized by appointment or by law to receive service of process***." (emphasis added).

- Rule 4(d)(3) allows service to be made upon a **corporation or partnership** by delivering a copy of the summons and complaint "to an officer, a managing or general agent, or ***to any other agent authorized by appointment or by law to receive service of process*** . . ." (emphasis added).

- Rule 4(d)(4) allows service to be made upon **the State of South Carolina** by delivering a copy of the summons and complaint "to the Attorney General, or ***when another official is designated to be served by the statute permitting such action by delivering a copy of the summons and complaint to that official*** . . ." (emphasis added).

- Rule 4(d)(6) allows service to be made upon a **Governmental Subdivision (e.g., municipal corporation, county, etc.)** by delivering a copy of the summons and complaint "***to the chief executive officer or clerk thereof***, or by serving the summons and complaint in the manner prescribed by statute for the service of summons and complaint or any like process upon any such defendant . . ." (emphasis added).

To contrast, the full text of Rule 4(d)(5) is as follows:

SCRCP 4(d)(5) State Officer or Agency: [Service shall be made] upon an officer or agency of the State by delivering a copy of the summons and complaint to such officer or agency and by sending a copy of the summons and complaint by registered or certified mail to the

> Attorney General at Columbia. If the agency is a corporation the copy shall be delivered as provided in paragraph (3) of this subdivision of this rule.

The Order by the trial court was specific in its analysis of the rules of service as they pertain to service on state agencies. The Order states:

> Rule 4(d) provides that when a state agency is a defendant that service is made by delivering the Summons and Complaint to the officer or agency in keeping with Rule (d)(3), which provides that the Summons and Complaint be served to an officer, a managing or general agent, or an agent authorized by appointment of law to receive service of process.
>
> Record on Appeal p. 8

Further, Respondents argue in their Final Brief before the Court of Appeals:

> To personally serve SCDPS, Plaintiff was required to demonstrate that she delivered the Summons and Complaint to an employee of SCDPS who was authorized to accept such service on behalf of SCDPS.
>
> Final Brief of Respondents, p. 12

The factually incorrect legal assertions as contained in the Trial Court's Order were ignored by the Court of Appeals. Contrary to the trial court's decision, there is nothing about Rule 4(d)(5) or its "plain language" that indicates how a state agency may be served (but the subdivisions listed above do indicate as much)—nor does it discuss merging it with another subpart. It also doesn't say what types of delivery are sufficient (or alternatively insufficient) to effectuate service. Further, interpreting Rule 4(d)(5) as a limitation that requires service on an agency to be made upon "designated employees who are authorized to accept service of process on (the department's) behalf" is inconsistent with the other subdivisions of Rule 4(d). In other words, the drafters in the state legislature would have included with specificity the manner(s) in which service could be made. At least in regard to Rule 4(d)(5), if only one manner of service were acceptable (i.e., *upon designated employees who are authorized to accept service of process on (the agency's) behalf*),

the legislature would have said so, just as they did in above subdivisions? To be clear, Petitioner is not arguing that the manner(s) by which to obtain proper service is limited only to those specific manners propounded by the germane Rule 4 sections. Rather, that those Rule 4 sections which do not specify the manners by which to effect service may not be limited.

In other words, and as for the trial court Order, the only way 4(d)(3) would have any bearing on a State Agency would be if said agency was a corporation. This is even directly addressed in the text of Rule 4(d)(5) itself. Additionally, Respondents confirmed in their brief that SCDPS is not a corporation (Final Brief of Respondents, p. 11)—then bafflingly argue on the next page that the manner in which a corporation is served is the manner in which the SCDPS must be served. Thus, if the legislature intended Rule 4(d)(3)'s requirements to apply to non-corporation state agencies, it would have said so.

Further, in regard to a corporation, a person can go to the SC Secretary of State's website and determine who the Registered Agent is—thus providing some clarity as to the identity of the person the Plaintiff should seek out for service. With a state agency, there is no way for a Plaintiff to identify a specific person that "can accept" service. Of course, as noted multiple times, the Rule doesn't specify any particular person or type of person to serve when serving a state agency—it simply says "delivered" to the agency (which will also be addressed herein). Further, and as previously noted in the Petitioner's brief, it is important to reiterate that multiple subsections of 4(d) list specific qualifiers as to who specifically may accept service, while the legislature did not add such language for Rule 4(d)(5).

For these reasons, it is arguable that the Court of Appeals' silence on these legal inaccuracies is tantamount to agreement. Accordingly, the Court of Appeals improperly ignored the conflation of these Rules.

## VIII. Did the Court of Appeals improperly fail to determine whether or not delivery occurred?

How should "delivered" be defined in the context of Rule 4(d)(5)? Should it be defined the way Respondents argue, that is, by pretending the SCDPS is a corporation and demonstrating that she delivered the lawsuit to an employee of SCDPS who was authorized to accept such service on behalf of SCDPS per Rule 4(d)(3)—even though the SCDPS is not a corporation? How about pretending the SCDPS is an individual and consider the SCDMV as a roommate a la Rule 4(d)(1)? Why can't delivery simply be delivering the summons and complaint to the address listed publicly by the agency? There is no legal authority for any of these arguments, so why is one argument given priority over the other? The only correct answer here is that it should not. The closest Rule in South Carolina addressing what constitutes delivery comes from Rule 5(b)(1), which says:

> Delivery of a copy within this rule means: handing it to the attorney or to the party; or leaving it at his office with his clerk or other person in charge thereof; or, if there be no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving a copy at his dwelling place or usual place of abode with some person of suitable age and discretion then residing therein.

If Rule 5(b)(1) did in fact control what delivery is, Petitioner would arguably have been better off leaving the Summons and Complaint taped to the door of the lobby.

The alleged improper service should have been analyzed under 4(d)(5), in conjunction with the spirit of 4(d) generally, pursuant to South Carolina common law. *To wit*, as post-*Roche* caselaw has shown us, service in this case should be evaluated under a substantial compliance standard and not a standard that requires exacting compliance. The summons and complaint was delivered to the address listed publicly by the SCDPS, it was received by the SCDPS, the SCDPS was not prejudiced, and the Attorney General's office was also timely served with a copy of the summons and complaint. Accordingly, personal jurisdiction was conferred to SCDPS and the agency had

notice of the pleadings—and the Court of Appeals did not even consider this aspect of the case.

## IX. Did the Court of Appeals improperly fail to consider the importance of serving the Attorney General's office?

Rule 4(d)(5) requires service be made upon not just the state agency being sued, but also the SC Attorney General. Petitioner indisputably served the Attorney General's office. The Attorney General is the State's Chief Legal Officer and the individual in state government who is responsible for guiding and arranging for the defense of State agencies facing litigation. Despite the specific method indicated by the Rule as being by certified mail, service was accomplished by personal service as the time remaining to serve the Summons and Complaint was nearly expired. In the interest of ensuring service would definitively arrive at its intended destination on time, and rather than rely on the postal service to deliver something AND ensure the certified mail process is correctly handled, Petitioner chose to serve the Attorney General's office in a manner most likely to be successful—and at a significantly greater burden and higher cost than certified mail. Curiously, it does not appear that Respondent has refuted that the Attorney General's office was properly and timely served.

Petitioner suggests that serving the Attorney General's office is more important than serving the state agency itself. The trial court's analysis and interpretation of the service of process rules turns the relationship between the Attorney General and state agencies upside down. South Carolina law charges the Attorney General with the duty to defend public officers and employees in civil actions (S.C. Code § 1-7-50) and coordinate with Solicitors to provide for the representation of State institutions, and agencies with respect to civil proceedings (S.C. Code § 1-7-350). The agencies themselves cannot even hire counsel to represent the agency or as an employee without the Attorney General's approval. S.C. Code § 1-7-160, 170. (emphasis added).

Read in light of this reality, it is evident that the drafters of the Rule wanted to make sure that the State's Chief Legal Officer (the one with the power, authority, and responsibility to actually do something in response to the Summons and Complaint) received notice of any lawsuits against state agencies, thus the requirement that a plaintiff be able to verify service on the attorney general by certified mail.

But as to the agency itself, it can be argued that Rule 4(d)(5) says, in effect, to make sure the Attorney General is definitively served—and be sure to provide a courtesy copy to the state agency too. This is supported by the DC Circuit case, *Morrissey v. Mayorkas*, which discusses the federal rule that South Carolina's Rule 4(d)(5) was patterned after. The case states:

> Because federal agencies are generally represented by the Department of Justice in litigation, the specific requirements for service on the United States provide notice to the officials who will be litigating the claims. (Cf *Light v. Wolf*, 816 F.2d 746, 750 (D.C. Cir. 1987). Rule 4's requirement to serve the Attorney General, the head of the Department of Justice, as well as the relevant U.S. Attorney, the local component of the Department, ensures the Department has notice and is able to provide a defense consistent with the broader goals of the government.").
>
> 17 F.4th 1150, 1156 (D.C. Cir. 2021).

While plaintiffs certainly are not free to ignore the agency "delivery" requirement of Rule 4(d)(5)—which Petitioner here did not do—the most important component of Rule 4(d)(5) service is easily the requirement of service on the Attorney General. Accordingly, and as the Rule reads, the agency "delivery" requirement is nearly an afterthought. And understandably so, given the legal structure of the rights and responsibilities of the relationship.

The Court of Appeals failed to acknowledge and contemplate the importance of serving the Attorney General, which was not proper.

## Personal Jurisdiction

**X. Did the Court of Appeals err in not considering whether or not Respondents waived personal jurisdiction, thereby making the issue of proper service moot?**

Personal jurisdiction is a court's authority to rule and enforce a decision over the parties of a lawsuit. *Limehouse v. Hulsey*, 404 S.C. 93, 104, 744 S.E.2d 566, 572 (2013). Pursuant to Rule 4(d) of the South Carolina Rules of Civil Procedure, "[v]oluntary appearance by defendant is equivalent to personal service." South Carolina courts have held that where a defendant appeared and asserted claims which went to the merits, in addition to his jurisdictional objection, the defendant had waived personal jurisdiction. *Smalls v. Weed*, 291 S.C. 258, 353 S.E.2d 154 (Ct. App. 1987). No South Carolina case has squarely addressed whether personal jurisdiction is waived if a party continues to participate in litigation after challenging personal jurisdiction in their initial responsive pleading to a court.

Taking a quasi-totality of the circumstances approach by considering a variety of factors, South Carolina courts have found that engaging in discovery, and specifically the act of requesting discovery for purposes non-related to issues of jurisdiction, constitutes a voluntary appearance under Rule 4(d). In *Maybank v. BB&T Corp.*, our supreme court determined a trial court acted within its discretion when it found an appellant, BB&T, a banking corporation, waived its personal jurisdiction defense. 416 S.C. 541, 566, 787 S.E.2d 498, 511 (2016). In its answer, BB&T reserved its objection to the exercise of personal jurisdiction and subsequently moved for removal to federal court. There, the parties engaged in litigation and discovery. *Id*. BB&T's participation in the usual course of discovery, i.e., both responding to and requesting discovery from Respondent was a significant factor in determining that BB&T had waived its personal jurisdiction defense. *Id.*

In another case recently decided (and after the Trial Court filed its Form 4 Order), the SC Court of Appeals affirmed the trial court's ruling that the Respondent did not waive its personal

jurisdiction defense under *Maybank*. *Abdulla v. S. Bank*, 439 S.C. 391, 887 S.E.2d 138 (Ct. App. 2023). Unlike BB&T in the *Maybank* case, "(Respondent) Southern Bank responded to Abdulla's discovery requests to expedite the case, depositions were conducted to determine the jurisdictional issue, and Southern Bank did not submit any discovery requests of its own." *Id*. (emphasis added) For these reasons, the Court of Appeals determined the personal jurisdiction defense was not waived. *Id.*

The common thread between these two cases is that even if a party asserted a personal jurisdiction defense in its responsive pleadings, the submission of discovery requests for non-jurisdictional purposes (i.e. on the merits) acted as a waiver of the party's right to contest personal jurisdiction.

Respondents argued that "the plaintiff has the burden to establish that the Court has personal jurisdiction over the defendant." (Respondents Initial Brief p. 11, citing *Yarborough and Co. v. Schoolfield Furniture Industries, Inc*., 275 S.C. 151, 268 S.E.2d 42 (1980)). Petitioner acknowledges that Respondents raised the personal jurisdiction defense in its initial pleadings on October 6, 2022. Further, Respondents did in fact make Petitioner aware of its intention to move to dismiss the case on those grounds. On November 17, 2022, while the Motions were still pending, Respondents' attorney mailed to Petitioner discovery requests that had been signed by Attorney Harter on the same date as he answered on behalf of the Respondents. (See Defendants' Discovery Requests to Plaintiff, R. pp. 444-458). On March 3, 2023 two weeks after the hearing for Defendants' Motion to Dismiss, Attorney Harter contacted Petitioner's counsel inquiring as to the status of the discovery responses. (See Email from Defendants Regarding Discovery Responses, R. p. 459). Unlike the Respondents in *Abdulla*, the Respondents in the present case submitted discovery requests to the Petitioner —requests that were not exclusively based on jurisdictional

issues—and later inquired as to when that discovery would be produced.

Additionally, these discovery requests seek information pertaining to the merits of the case, just as the *Smalls* court warned against. Further, the last line of each particular request (i.e., Interrogatories and Requests for Production) included the declarations that "These Interrogatories shall be deemed continuing so as to require supplemental responses up until and prior to trial" and "These Requests for Production of Documents shall be deemed to be continuing in nature and require supplemental response prior to trial". (Defendants' Discovery Requests to Plaintiff, R. pp. 451, 458). Petitioner did not submit discovery responses or requests to the Respondents prior to or since this Appeal, nor would doing so have influenced this analysis in any way. See *Erickson v. Jones St. Publishers, LLC*, 368 S.C. 444, 476, 629 S.E.2d 653, 670 (2006) ("[A] party may not complain on appeal of error ... which his own conduct has induced.").

Respondents' timely Answer, communications prior to filing the Answer, and voluntarily undertaking of discovery all indicate a waiver of personal jurisdiction, thereby making the issue of whether or not service was proper moot.

## The Opinion

**XI. Did the Court of Appeals incorrectly hold that the Circuit Court did not err in dismissing Robertson's claims against SCDPS and SCHP for failure to serve her complaint properly?**

"The trial court's findings of fact regarding validity of service of process are reviewed under an abuse of discretion standard." *Graham Law Firm, P.A. v. Makawi*, 396 S.C. 290, 294-95, 721 S.E.2d 430, 432 (2012). "An abuse of discretion occurs when the judge issuing the order was controlled by some error of law or when the order, based upon factual, as distinguished from legal conclusions, is without evidentiary support." *Sundown Operating Co. v. Intedge Indus., Inc*., 383

S.C. 601, 607, 681 S.E.2d 885, 888 (2009).

Failure to apply the correct rules to an analysis constitutes an error of law. In the present case, the trial court applied the wrong rules when analyzing whether or not service of process on the SCDPS/SCHP was proper. The Court of Appeals ignored over thirty years of service of process jurisprudence in this state, ignored the inaccurate legal arguments, and ignored the Respondents' waiver of personal service. Had the trial court applied the correct rules and supporting case law to its analysis, as discussed herein, then it would have likely found that service of process was proper and/or that the service of process sufficiently complied with the rules. Accordingly, the Trial Court's dismissal of this case should have been reversed by the Court of Appeals.

## CONCLUSION

The Petitioners respectfully request that this Court grant certiorari, review this case, and remand this case back to the Circuit Court for trial.

Respectfully submitted,

April 17, 2026

s/ Nicolas J. Baughman
Nicolas J. Baughman, Esq. (S.C. Bar No. 102186)
Nicolas J. Baughman, Attorney at Law, LLC
600 North McDuffie Street (Post Office Box 2501)
Anderson, South Carolina 29621 (29622)
Phone: (864) 332-9276
Fax: (864) 392-8276
Email: nick@baughmanlawsc.com
**Attorney for Petitioner**