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SC Court of Appeals

IN THE SOUTH CAROLINA COURT OF APPEALS

In The Court Of Appeals

APPEAL FROM BEAUFORT COUNTY

Court of Common Pleas

The Honorable Carmen T. Mullen/Circuit Court Judge

Case No: 2025-CP-07-00718

Appellate Case No: 2025-002399

Geraldine White, Appellant

v.

John R.C. Bowen and Kori Brett McKeithan, Respondents

**INITIAL REPLY BRIEF OF APPELLANT
TO INITIAL BRIEF OF RESPONDENT
KORI BRETT MCKEITHAN**

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PRELIMINARY STATEMENT

This reply brief is directed only to Respondent Kori Brett McKeithan and the circuit court order granting McKeithan's Rule 12(b)(6) motion to dismiss. It does not seek to reply to any separate order or separate respondent except as necessary to explain why McKeithan's dismissal was erroneous. Appellant uses "McKeithan order" to mean the Order Granting Defendant Kori Brett McKeithan's Motion to Dismiss, electronically filed November 24, 2025. (R. pp. ___ - ___).

The McKeithan order should be reversed because it is internally inconsistent. It expressly recognizes that Appellant pled equitable relief involving a real estate sale, co-ownership, sale proceeds, an alleged judgment debt, an alleged judgment lien, and an alleged fraudulent use of that lien. (R. pp. ___ - ___). Yet it then dismisses the case as though Appellant pled only a disciplinary grievance under Rule 8.3 of the Rules of Professional Conduct. (R. pp. ___ - ___). That is not the complaint Appellant filed, and it is not a proper Rule 12(b)(6) analysis.

McKeithan's response, as understood by Appellant, attempts to preserve the dismissal by arguing there is no private cause of action under Rule 8.3, that Appellant failed to plead a duty, and that the circuit court properly dismissed the claim at the pleading stage. Those arguments fail because Appellant's claims do not depend solely on Rule 8.3. The complaint sought equitable relief, restitutionary protection, and judicial intervention concerning the disbursement of real-estate proceeds where the alleged lien had not been shown to be recorded, indexed, perfected, or enforceable against Appellant's interest. (R. pp. ___ - ___).

The narrow question in this reply is therefore not whether Rule 8.3 independently creates a private damages action. The narrow question is whether the complaint, liberally construed, alleged any set of facts supporting equitable relief or other relief against McKeithan based on her alleged role in a transaction affecting Appellant's proceeds. Under South Carolina "pleading law

(CORE RULES), the answer is yes. Rule 8(a), SCRPC- “Short and Plain Statement” a short and plain statement of facts showing that the pleader is entitled to relief. Rule 8(f), SCRPC - Liberal Construction “All pleadings shall be so construed as to do substantial justice”. Stokes-Craven Holding Corp. v. Robinson “The court must 1) accept all allegations as true; 2) view facts in light most favorable to plaintiff 416 S.C.517,525-26. Gentry v, Yonce “A complaint survives if: the plaintiff can prove any set of facts in support of his claim.” 337 S.C. 1,6.

The order should be reversed.

REPLY ISSUES PRESENTED

1. Did the circuit court commit reversible error by acknowledging that Appellant pled equitable property claims involving real-estate proceeds and an alleged judgment lien, but then dismissing the action as though it stemmed solely from Rule 8.3?

2. Did the circuit court misapply Rule 12(b)(6), SCRPC by failing to construe the complaint as a whole and by failing to accept all allegations and reasonable inferences in Appellant’s favor?

3. Did the circuit court err by failing to address the dispositive issue of whether any perfected judgment lien lawfully attached to Appellant’s real-estate proceeds?

4. Did the circuit court err by dismissing the claims against McKeithan with prejudice before discovery or amendment, despite the undeveloped facts concerning McKeithan’s communications, knowledge, role, and participation in the disputed disbursement process?

REPLY ARGUMENT

I. The McKeithan order must be reversed because it admits equitable property allegations and then dismisses the case as if only a Rule 8.3 grievance was pleaded.

The McKeithan order begins by summarizing the complaint in a way that proves Appellant pled more than a professional-discipline grievance. The court stated that Appellant alleged she was “entitled to equitable relief regarding a sale of real estate in which she was a co-owner.” (R. pp. ___ - ___). The court further stated that Appellant alleged a “judgment debt and resulting judgment lien against such sale’s proceeds was obtained fraudulently by Defendant John Bowen.” (R. pp. ___ - ___). The court also recognized that Appellant sought relief directing McKeithan to proceed with disbursement from the sale of real estate without interference by Bowen. (R. pp. ___ - ___).

Those allegations are property allegations. They are equitable allegations. They are lien allegations. They are disbursement allegations. They are not merely disciplinary allegations. The order therefore contains the admission that matters most: the complaint raised a dispute over real-estate proceeds and whether McKeithan’s role in the transaction affected Appellant’s property rights. (R. pp. ___ - ___).

Despite that admission, the order then states that Appellant’s cause of action against McKeithan “appears to stem solely” from McKeithan’s alleged failure to report Bowen under Rule 8.3. (R. p. ___). That conclusion contradicts the court’s own summary. If the complaint sought equitable relief concerning real estate proceeds, a claimed judgment lien, and disbursement without interference, then the complaint did not “stem solely” from Rule 8.3. The order dismissed a narrowed version of the case that the court created, not the broader claim that Appellant actually pleaded. (R. pp. ___ - ___).

This internal inconsistency requires reversal. A Rule 12(b)(6) order cannot acknowledge viable factual allegations on one page and then disregard them on the next. The court was required to analyze whether those allegations, taken as true, could support any theory of relief.

Instead, the court isolated one paragraph referencing Rule 8.3 and treated that paragraph as the entire case. (R. pp. ___ - ___).

Rule 8(f), SCRPC provides that pleadings shall be construed to do substantial justice. Appellant's complaint, especially as a pro se pleading, had to be read as a whole. The complaint's reference to Rule 8.3 did not erase its equitable-relief request, its lien challenge, or its allegations concerning disbursement of property proceeds. (R. pp. ___ - ___).

The Court of Appeals should reject McKeithan's attempt to defend the order by confining Appellant to a single disciplinary-rule paragraph. The question on appeal is not whether that one paragraph alone states a claim. The question is whether the complaint as a whole alleges any set of facts supporting relief. South Carolina law requires that it be read in that manner.

II. The circuit court misapplied Rule 12(b)(6) and failed to construe the complaint in Appellant's favor.

Rule 12(b)(6), SCRPC tests the legal sufficiency of the complaint. South Carolina courts repeatedly hold that a trial court deciding a motion to dismiss must base its ruling solely on the allegations set forth in the complaint. *Spence v. Spence*, 368 S.C. 106, 116, 628 S.E.2d 869, 874 (2006); *Doe v. Marion*, 373 S.C. 390, 395, 645 S.E.2d 245, 247 (2007). The McKeithan order cites this standard but does not apply it correctly. (R. pp. ___ - ___).

The proper Rule 12(b)(6) inquiry asks whether the facts alleged and the reasonable inferences from those facts, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory. *Stokes-Craven Holding Corp. v. Robinson*, 416 S.C. 517, 525-26, 787 S.E.2d 485, 489-90 (2016). A complaint should not be dismissed if the facts alleged and inferences reasonably deducible therefrom would support relief. See *FOC Lawshe Ltd. P'ship v. Int'l Paper Co.*, 352 S.C. 408, 412, 574 S.E.2d 228, 230 (Ct. App. 2002).

South Carolina's standard is especially important here because Appellant did not plead a single-label claim. She pleaded a transaction involving real property proceeds, an alleged lien, a demand or interference by Bowen, and McKeithan's alleged role in refusing or failing to facilitate disbursement free from Bowen's interference. (R. pp. ___ - ___). Those allegations must be treated as true at the dismissal stage.

The court did the opposite. It did not draw inferences in Appellant's favor. It drew the inference that McKeithan had no role except a non-actionable reporting role. (R. pp. ___ - ___). That was not an inference required by the complaint. It was an inference against Appellant, and it resolved disputed factual matters before discovery.

Dismissal is improper unless it appears beyond doubt that the plaintiff can prove no set of facts in support of the claim that would entitle the plaintiff to relief. *Gentry v. Yonce*, 337 S.C. 1, 6, 522 S.E.2d 137, 140 (1999). Further, when reviewing a Rule 12(b)(6) dismissal, every doubt must be resolved in favor of the plaintiff. *Plyler v. Burns*, 373 S.C. 637, 645, 647 S.E.2d 188, 193 (2007).

Applying those rules, dismissal was improper. Discovery could reveal that McKeithan had actual knowledge of the alleged lien defect, participated in communications concerning the proceeds, relied upon Bowen's demand, held or influenced disbursement, or declined to disburse funds based on an unperfected lien claim. (R. pp. ___ - ___). Those facts would matter. They cannot be excluded at the pleading stage merely because Appellant also referenced Rule 8.3.

The order should be reversed because it failed to apply South Carolina's liberal Rule 12(b)(6) standard and failed to consider the complaint as a whole.

III. McKeithan's "no private duty under Rule 8.3" argument does not defeat the independent equitable and property-based claims.

McKeithan's principal defense, and the basis of the order, is that Rule 8.3 of the Rules of Professional Conduct does not create a duty owed by McKeithan to Appellant. (R. pp. ___ - ___). Even if that statement is accepted for purposes of argument, it does not dispose of this appeal. Appellant does not rely on Rule 8.3 as the only source of relief.

The court's error was turning a partial point into a complete dismissal. A complaint may reference a professional-conduct rule as evidence of knowledge, notice, professional context, or the seriousness of misconduct without depending on that rule as the sole private cause of action. (R. pp. ___ - ___). Appellant cited Rule 8.3 in connection with documented notice to McKeithan and the request that McKeithan address misconduct before disbursement occurred. That does not eliminate the separate allegations concerning Appellant's property proceeds.

The complaint alleged that McKeithan was involved in a real estate transaction in which Appellant's proceeds were affected. (R. pp. ___ - ___). It alleged that Bowen's claim to the proceeds was fraudulent or unsupported by a perfected lien. (R. pp. ___ - ___). It alleged that Appellant sought equitable relief directing disbursement without Bowen's interference. (R. pp. ___ - ___). Those allegations survive even if Rule 8.3 itself does not create a private damages claim.

The Court may therefore assume, without deciding, that Rule 8.3 does not by itself create a civil cause of action. That assumption still does not support dismissal with prejudice. The correct question is whether Appellant alleged any independent basis for relief. She did: equitable intervention, restitutionary protection, prevention of wrongful interference with proceeds, and discovery into McKeithan's role in the transaction. (R. pp. ___ - ___).

The order's reliance on Rule 8.3 was therefore legally incomplete. It answered only a question Appellant did not need to win: whether Rule 8.3 alone created a duty. It did not answer

the question the complaint presented: whether McKeithan's alleged role in the disbursement dispute and the response to Bowen's claim could subject her to equitable relief or other relief. (R. pp. ___ - ___).

A court may affirm dismissal only if every viable theory is defeated. Here, the order defeated only a disciplinary-rule theory and ignored the equitable-property theory. That is a reversible error.

IV. The order failed to address the dispositive lien question: whether any perfected judgment lien attached to Appellant's real-estate proceeds.

The controlling factual and legal issue is not whether some judgment existed. The controlling issue is whether a perfected judgment lien attached to Appellant's real estate proceeds. The order identifies a "judgment debt" and a "resulting judgment lien," but it never analyzes whether that lien was legally perfected. (R. pp. ___ - ___).

South Carolina Code Ann. § 15-35-810 provides that final judgments constitute a lien upon real estate only in the county in which the judgment or transcript is entered upon the book of abstracts of judgments and duly indexed. The statute states that the lien begins from the time of such entry on the book of abstracts and indices and continues for ten years from the date of final judgment. Thus, under the statute, entry and indexing are not technical details; they are the mechanism by which the lien arises against real estate.

Bowers v. Bank of Greeleyville, 244 S.C. 492, 495-96, 137 S.E.2d 264, 265-66 (1964), confirms that judgment lien rights depend on statutory compliance. The existence of a money judgment is not the same as a perfected lien attached to real property. If the judgment was not entered and indexed as required, or if the property or proceeds did not belong to the judgment

debtor in the required manner, then the alleged lien could not justify interference with Appellant's proceeds. (R. pp. ___ - ___).

The order never identifies a recorded abstract, an index entry, a transcript of judgment, or a record page showing perfection. (R. pp. ___ - ___). It never finds a lien attached to Appellant's interest. (R. pp. ___ - ___). It never explains how a judgment order became a lien against one party's debt could lawfully reach Appellant's proceeds from a real estate sale in which she was a co-owner. (R. pp. ___ - ___).

The failure to address perfection is fatal because the entire alleged justification for withholding or diverting proceeds depends on lien validity. If no perfected lien existed, then Respondents had no lawful basis to interfere with Appellant's proceeds. If the lien issue was unresolved, dismissal was premature. If the lien issue required evidence, then the case required discovery and an evidentiary determination, not dismissal with prejudice. (R. pp. ___ - ___).

This Court should make clear that an attorney or closing participant cannot defeat an equitable property claim simply by invoking the word "judgment." A judgment may give rise to rights only in the manner the law allows. Section 15-35-810 requires entry and indexing for real-estate lien effect. The McKeithan order's silence on that statutory requirement is reversible error.

The lien issue also explains why this case is not merely disciplinary. Appellant sought to stop or remedy the use of an alleged lien to affect sale proceeds. (R. pp. ___ - ___). That is exactly the type of dispute equity may review. The circuit court's failure to decide lien perfection left the central issue unresolved.

V. The order improperly relies on federal plausibility language rather than South Carolina notice pleading and liberal construction.

The McKeithan order cites *Ashcroft v. Iqbal* and states that the complaint must assert a plausible claim with sufficient factual allegations. (R. p. ____). That citation is problematic because the case was pending in South Carolina state court under the South Carolina Rules of Civil Procedure, not federal court under the Federal Rules of Civil Procedure.

South Carolina remains a notice-pleading jurisdiction. Rule 8, SCRCP requires only a short and plain statement of the facts showing entitlement to relief and a demand for judgment. Rule 8(f), SCRCP requires pleadings to be construed to do substantial justice. The controlling South Carolina inquiry is whether the facts alleged and reasonable inferences, viewed in Appellant's favor, could entitle Appellant to relief. *Stokes-Craven*, 416 S.C. at 525-26, 787 S.E.2d at 489-90; *Gentry*, 337 S.C. at 6, 522 S.E.2d at 140.

By relying on *Iqbal*'s federal plausibility language, the court heightened Appellant's burden and narrowed the complaint instead of construing it liberally. (R. pp. ____-____). That matters because Appellant was not required to prove McKeithan's precise role in the transaction before discovery. Appellant needed only to plead facts sufficient to put McKeithan on notice of the claim and the requested relief. The appellant did so. (R. pp. ____-____).

The complaint put McKeithan on notice that Appellant challenged the handling, withholding, diversion, or interference with real-estate sale proceeds based on an allegedly fraudulent or unperfected lien claim. (R. pp. ____-____). It put McKeithan on notice that Appellant alleged she received documentation and a formal request regarding misconduct and return or facilitation of funds. (R. pp. ____-____). It put McKeithan on notice that Appellant sought relief tied to disbursement of proceeds. (R. pp. ____-____). That is enough to survive dismissal under South Carolina pleading rules.

The Court should not permit a state-court order to use federal plausibility doctrine to extinguish a pro se litigant's equitable property claim where South Carolina law required a more generous reading.

VI. The dismissal improperly resolved factual issues about McKeithan's role, knowledge, communications, and participation before discovery.

The order dismisses McKeithan as though her only alleged involvement was failure to report Bowen. (R. pp. ___ - ___). But the order itself recognizes Appellant requested that McKeithan proceed with disbursement without Bowen's interference. (R. pp. ___ - ___). That request necessarily raises factual questions about McKeithan's role in the transaction and her relationship to the disbursement of proceeds.

At the pleading stage, the court could not determine that McKeithan had no role, no knowledge, no participation, no control, and no duty. Those are factual matters. The complaint and attachments placed McKeithan's knowledge and response at issue. (R. pp. ___ - ___).

Discovery was necessary to determine:

- whether McKeithan received notice of the lien defect or alleged fraud;
- whether McKeithan communicated with Bowen regarding the proceeds;
- whether McKeithan relied on Bowen's demand;
- whether McKeithan had authority, influence, or involvement in disbursement;
- whether McKeithan's response caused delay, diversion, or refusal to protect Appellant's proceeds; and
- whether Appellant's funds were withheld or redirected without a perfected lien.

Those facts could not be resolved under Rule 12(b)(6). If the court considered facts beyond the complaint or weighed McKeithan's role based on outside submissions, the motion

should have been converted under Rule 12(b), SCRPC. *Baird v. Charleston County*, 333 S.C. 519, 526-27, 511 S.E.2d 69, 72-73 (Ct. App. 1999). If the court did not consider outside facts, then it had no basis to conclude that McKeithan's role was limited solely to Rule 8.3 reporting. Either way, dismissal was improper.

The same principle applies under Rule 56(c), SCRPC. Summary judgment requires no genuine issue of material fact. *Hancock v. Mid-South Mgmt. Co.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). Summary judgment is improper where reasonable minds could differ. *Argoe v. Three Rivers Behavioral Health, LLC*, 388 S.C. 394, 404-05, 697 S.E.2d 551, 556 (2010). If Rule 12 was effectively converted, these unresolved factual issues precluded judgment as a matter of law.

The record contains no finding resolving McKeithan's communications, her knowledge, her degree of control, or the legal status of the alleged lien. (R. pp. ___ - ___). The dismissal therefore rests on assumptions, not adjudicated facts.

VII. Any attorney-immunity or “no duty” defense cannot be decided on this record where the complaint alleged participation in wrongful diversion of funds.

To the extent McKeithan argues that her status as an attorney shields her from liability, that argument is not a basis for dismissal on this record. Attorney status does not provide blanket immunity for participation in fraud, conversion, or wrongful interference with another person's property. *Stiles v. Onorato*, 318 S.C. 297, 301-02, 457 S.E.2d 601, 603-04 (1995).

The point is not that McKeithan must be liable merely because she is an attorney. The point is that she cannot be dismissed solely because she is an attorney if the complaint alleges participation in a transaction affecting property proceeds. (R. pp. ___ - ___). Attorneys may

advocate, but they may not use or assist the use of legal process or claimed legal authority to obtain or withhold property without lawful entitlement.

Future Group, II v. NationsBank, 324 S.C. 89, 97, 478 S.E.2d 45, 49 (1996), supports the broader principle that liability may arise from knowing participation in wrongful conduct. That principle matters here because Appellant alleged McKeithan received documentation, was put on notice, and was asked to facilitate return or disbursement of funds free from Bowen's interference. (R. pp. ___ - ___).

Fraud upon the court and misuse of judicial process are also matters of equity and judicial integrity. See Hazel-Atlas Glass Co. v. Hartford-Empire Co., 322 U.S. 238, 245-46 (1944); United States v. Beggerly, 524 U.S. 38, 46-47 (1998); Great Coastal Express, Inc. v. International Brotherhood of Teamsters, 675 F.2d 1349, 1356-57 (4th Cir. 1982). Appellant does not seek discipline alone; she seeks relief from the use of an alleged judgment lien to affect property proceeds. (R. pp. ___ - ___).

McKeithan's "no duty" argument cannot be accepted without first determining what role she played in the transaction. If her role was merely passive, discovery may show that. If her role was active, discovery may show that too. But dismissal with prejudice before discovery improperly accepted McKeithan's factual characterization over Appellant's allegations. (R. pp. ___ - ___).

VIII. Dismissal with prejudice was improper at the pleading stage, especially where amendment and discovery could clarify McKeithan's role.

The order dismissed Appellant's claims against McKeithan with prejudice. (R. p. ___). That was an excessive remedy for a pleading-stage dismissal, especially where the court's ruling rested on its conclusion that Appellant failed to state a claim based on Rule 8.3. If the court

believed the complaint needed clearer allegations regarding McKeithan's role, the proper remedy was leave to amend or dismissal without prejudice, not permanent dismissal.

Rule 15(a), SCRPC provides that leave to amend shall be freely given when justice so requires. South Carolina policy favors resolving cases on their merits rather than procedural technicalities. Here, Appellant could amend to clarify that the claim against McKeithan is not limited to Rule 8.3 but includes equitable relief, participation in the disbursement process, notice of lien defects, and refusal or failure to facilitate proper return of proceeds. (R. pp. ___ - ___).

The prejudice is obvious. The dismissal prevents Appellant from obtaining discovery into the exact facts that would clarify McKeithan's role: emails, closing communications, title or settlement documents, communications with Bowen, communications with other attorneys, and documents showing why proceeds were withheld or diverted. (R. pp. ___ - ___).

A with-prejudice dismissal is especially inappropriate where the order itself demonstrates confusion about the nature of the complaint. The court acknowledged equitable claims but dismissed as though only Rule 8.3 was pleaded. (R. pp. ___ - ___). That is exactly the kind of situation where amendment or remand is necessary.

The Court should reverse the with-prejudice dismissal and remand for further proceedings. At minimum, the dismissal should be vacated and the case remanded with leave to amend and to conduct discovery on McKeithan's role in the disputed disbursement process.

IX. Surgical strike summary: the order's specific findings and legal conclusions do not support dismissal.

The McKeithan order can be reversed by analyzing it line by line.

First, the order states that Appellant alleged equitable relief regarding a sale of real estate in which Appellant was a co-owner. (R. pp. ___ - ___). That sentence supports Appellant, not dismissal. It confirms that the complaint involved equitable property relief.

Second, the order states that Appellant alleged a judgment debt and “resulting judgment lien” against sale proceeds was obtained fraudulently by Bowen. (R. pp. ___ - ___). That sentence identifies the dispositive issue: whether the alleged lien lawfully attached to Appellant’s proceeds. The order then fails to decide that issue.

Third, the order states that Appellant alleged McKeithan failed to report Bowen and should be directed to proceed with disbursement without Bowen’s interference. (R. pp. ___ - ___). That sentence again shows that the complaint included more than reporting. It included disbursement relief.

Fourth, the order quotes Rule 12(b)(6) standards but does not apply the plaintiff-friendly inference rule. (R. pp. ___ - ___). Instead, it draws the inference that McKeithan’s role was limited solely to Rule 8.3 reporting. That inference favors McKeithan and is improper at the dismissal stage.

Fifth, the order cites Iqbal and federal plausibility language. (R. p. ___). That was an improper lens for a South Carolina state-court pleading governed by South Carolina notice-pleading principles.

Sixth, the order states the claim “appears to stem solely” from Rule 8.3. (R. p. ___). That is the order’s central error. It directly conflicts with the order’s earlier description of the complaint’s equitable and property-based allegations.

Seventh, the order concludes Rule 8.3 does not create a duty and therefore Appellant has not stated a claim. (R. pp. ___ - ___). Even if Rule 8.3 does not create a private duty, that

conclusion does not defeat the independent property, equitable, restitutionary, and participation-based claims.

Eighth, the order dismisses with prejudice. (R. p. ____). That final step was improper because the alleged defect, if any, could have been cured by amendment and because discovery was needed to determine McKeithan's role. The dismissal order improperly resolved disputed facts. This conflicts with Chewing because it did not accept Appellant's allegations as true. Appellant alleged that Respondent wrongfully participated in or facilitated the transfer of proceeds based on an email from John R. C. Bowen and an order of judgment that was not properly recorded, indexed, or perfected as a lien against the property.

Appellant also alleged misrepresentation, lack of lawful authority, and improper deprivation of proceeds. Those allegations had to be accepted as true at the Rule 12(b)(6) stage. The lower court instead credited Respondent's position and resolved disputed factual issues against Appellant. That was improper.

Thus, every critical step in the order either supports Appellant or fails to answer the real issue. The order should be reversed.

CONCLUSION

For the foregoing reasons, Appellant Geraldine White respectfully requests that this Court reverse the Order Granting Defendant Kori Brett McKeithan's Motion to Dismiss, vacate the dismissal with prejudice, and remand this matter to the circuit court for further proceedings, including discovery, leave to amend if necessary, and an evidentiary determination of whether any perfected judgment lien lawfully attached to Appellant's real-estate proceeds.

Appellant further requests such other and further relief as this Court deems just and proper.

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PROOF OF SERVICE

I certify that on May 1, 2026, I served a copy of this Reply Brief and Designation of Matter of Appellant Geraldine White upon counsel for Respondent Kori Brett McKeithan and all counsel/parties of record by the method permitted by the South Carolina Appellate Court Rules, including U.S. Mail, electronic service, or other authorized method, addressed as follows:

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