

IN THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

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APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

J. Ernest Kinard, Jr., Circuit Court Judge

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Case No. 2007-CP-07-02373

Court of Appeals Tracking No. 2010167969

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**RECEIVED**

AUG 07 2014

**SC Court of Appeals**

73143

Matthew S. McAlhaney, ..... Respondent,

v.

Richard K. McElveen a/k/a Richard K.  
McElveen, Sr., Individually and d/b/a  
Battery Creek Marina, The Great  
Pumpkin, LLC, Linda McElveen, Richard  
K. McElveen, Jr., and Billy Joe Byrd, ..... Defendants,

Of whom Richard K. McElveen, Sr., is the ..... Appellant.

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**NOTICE OF MOTION AND MOTION TO  
EXTEND TIME AND MEMORANDUM**

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The Respondent, Matthew S. McAlhaney, by and through his undersigned attorney, pursuant to Rule 240, SCACR, moves the Court of Appeals for an order extending the time for Respondent to file and serve his Initial Brief and Designation of Matter through and including Monday, September 8, 2014.

As appears from the affidavit of Respondent's counsel, which is attached to this motion, counsel was out of his office for hip replacement surgery on March 14, 2014, as well as for the ensuing physical therapy, leading, upon his return, to a deluge of work.

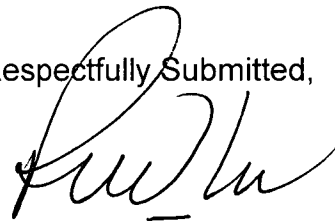
In addition, on May 18, 2014, Respondent's counsel was in a serious traffic accident in Sullivan County, Tennessee, which resulted in multiple injuries and legal machinations that prevented counsel's return to his office for ten days, thereby undermining counsel's ability to complete the brief.

Respondent's counsel continued to experience debilitating pain from his accident injuries until shortly after June 24, 2014, and he has not regained his faculties to the extent necessary to complete the brief as of this writing.

Seven previous extensions have been sought by the Respondent.

Upon information and belief, the attorney for the Appellant will consent to this motion.

Respectfully Submitted,



By: \_\_\_\_\_

Robert V. Mathison, Jr.  
Attorney for the Respondent  
Matthew S. McAlhaney

MATHISON & MATHISON  
Post Office Box 5271  
Hilton Head Island  
South Carolina 29938-5271  
Telephone: (843) 785-6503  
Facsimile: (843) 785-6170  
Email: [rmathlaw@aol.com](mailto:rmathlaw@aol.com)

August 7, 2014

Hilton Head Island, South Carolina.

MEMORANDUM

The relief requested in the motion set forth above is authorized by Rule 240, SCACR.

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Of whom Richard K. McElveen, Sr., is the ..... Appellant.

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**AFFIDAVIT**  
**(Robert V. Mathison, Jr.)**

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PERSONALLY appeared before me Robert V. Mathison, Jr. (herein sometimes "the Affiant"), who, first being duly sworn, says under oath the following:

1. My name is Robert V. Mathison, Jr., and I am an attorney licensed to practice law by the state of South Carolina.

2. I am the attorney for the Respondent, Matthew S. McAlhaney, and I reside at 21 Bateau Road at Hilton Head Island, in Beaufort County South Carolina.

3. I am 67 years of age, of sound mind, and I make this Affidavit of my own personal knowledge.

4. The Affiant's work generally, and, particularly his work on the Respondent's Initial Brief, has been significantly impaired by a chronic hip condition that recently became acute.

5. As a consequence, the Affiant underwent surgery (total hip arthroplasty) by Dr. James Karegeannes at Memorial Mission Hospital in Asheville, North Carolina, on Friday, March 14, 2014, after which the Affiant undertook to convalesce and to undergo physical therapy.

6. The Affiant was cleared to drive and to return to work during the week commencing on April 7, 2014.

7. During the nearly four weeks that ensued thereafter, the Affiant was required to confront a backlog of cascading obligations in multiple cases, and the Affiant's opponent, as well as the Court of Appeals, proved to be accommodating.

8. On Sunday, May 18, 2014, at shortly before 3:00 p.m., while driving South on Interstate 81 near Mile Marker 63 in Sullivan County, Tennessee, the Respondent's counsel ("the Affiant") was involved in an accident that resulted in the total loss of his truck, a 2007 GMC Yukon XL.

9. The truck hit an abutment and then an adjoining guardrail, so that no other vehicle was directly involved, and the Affiant, who was alone in his truck, was the only person who was injured.

10. The Affiant was treated at the emergency room at Holton Valley Medical Center in Kingsport, Tennessee, for multiple injuries, including the compound fracture of his left arm and lacerations to his head, which required more than 20 staples to close.

11. After the Affiant was admitted to the hospital, a team of physicians led by Tiffany M. Laskey, D.O., and Melissa M. Lawrence, D.O., performed surgery on the Affiant's arm, inserting what the Affiant is informed and believes is a plate and nine screws into the injured area of the arm, with the surgery concluding after midnight on Monday, May 19, 2014.

12. The Affiant was discharged from the hospital on the afternoon of the following day, but was required to remain in the area for possible treatment, as well as to recover certain personal property, such as his wallet, computer and legal papers, all of which appeared to have gone missing at the accident scene.

13. As a consequence of the accident, due to his injuries, as well as the pain and fatigue resulting therefrom, the Affiant was not cleared to drive and was unable to return to work until May 29, 2014.

14. Although the Affiant had not theretofore been aware of it, when the hard cast was initially removed from his arm on June 11, 2014, he discovered that, in addition to the items described in paragraph 11 above, a metal pin had been placed in his arm to secure the fragment of the Radius between the two fractures, which pin ran past the Affiant's Ulna and out through a weep hole in the skin at the base of his wrist.

15. The metal pin had been the cause of considerable pain to the Affiant, who, having been advised to work through the pain or to medicate with hydrocodon (thereby

presenting a choice between working while burdened with pain or while stupefied), chose the former course, except at bed time.

16. Advised that the metal pin had been inserted to prevent the Affiant from pronating his wrist until the bone had knitted, upon the recommendation of his local physician, the Affiant agreed to the pin remaining in his arm under a partial cast for two more weeks, that is, until Tuesday, June 24, 2014.

17. Not until a day or two after the removal of the metal pin on that date was the Affiant able to work free of pain, and his typical efficiency was compromised until then.

18. In June and July, the Affiant attempted to employ someone to assist him in completing the brief, but he was unable to interest the persons that he approached.

19. Despite the overriding need to work, and to work hard, the Affiant at present is unable to function at anything near full strength, and the acuity of his faculties remains diminished.

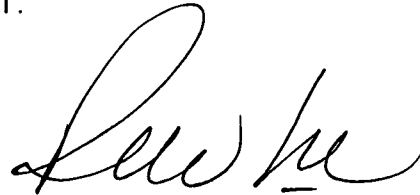
20. Although ordinarily attentive and able to concentrate at length, the Affiant has not fully regained either ability, as has been demonstrated by his transposing numbers and confusing dates.

21. Confronted with the need to catch up in numerous cases, the resulting stress and anxiety have compounded the Affiant's difficulties.

22. The Affiant will require assistance to complete the brief, and he has now identified a capable person willing to help.

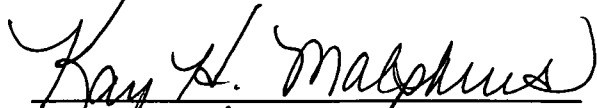
23. The Affiant is requesting extension through Monday, September 8, 2014, and he is seeking the consent to this Motion to Extend Time by the Appellant's counsel.

FURTHER THE AFFIANT SAYETH NOT.



Robert V. Mathison, Jr.

SWORN to before me this  
7<sup>th</sup> day of August, 2014.



Kay H. Mathison  
Notary Public for South Carolina

My Commission Expires: 1/26/2019



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Battery Creek Marina, The Great  
Pumpkin, LLC, Linda McElveen, Richard  
K. McElveen, Jr., and Billy Joe Byrd, ..... Defendants,

Of whom Richard K. McElveen, Sr., is the ..... Appellant.

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**PROOF OF SERVICE**

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I, Robert V. Mathison, Jr., hereby certify that on August 7, 2014, I filed and served the originals and copies of the Notice of Motion and Motion to Extend Time and Memorandum and the Affidavit of Robert V. Mathison, Jr., dated August 7, 2014, by delivering same to the South Carolina Court of Appeals and to counsel for the Appellant at the following addresses:

The Honorable Jenny Abbott Kitchings  
Clerk of the South Carolina Court  
of Appeals  
1015 Sumter Street  
Columbia, SC 29201

**RECEIVED**  
AUG 07 2014  
**SC Court of Appeals**

Blake A. Hewitt, Esquire  
Bluestein Nichols Thompson &  
Delgado  
1614 Taylor Street  
Columbia, SC 29202

A handwritten signature in black ink, appearing to read "R. Mathison, Jr.", written over a horizontal line.

Robert V. Mathison, Jr.  
Attorney for the Respondent

LAW OFFICES  
**MATHISON & MATHISON**  
POST OFFICE BOX 5271  
HILTON HEAD ISLAND, S.C. 29938-5271  
TELEPHONE: (843) 785-6503  
FACSIMILE: (843) 785-6170  
EMAIL: rmathlaw@aol.com

ROBERT V. MATHISON, JR.

KERRY F. MATHISON

August 7, 2014  
HAND DELIVERED

The Honorable Jenny Abbott Kitchings  
Clerk of the South Carolina Court  
Of Appeals  
1015 Sumter Street  
Columbia, SC 29201

Re: Matthew S. McAlhaney v. Richard K. McElveen, Sr., et al.  
Case No. 2007-CP-07-02373  
Tracking No. 2010167969

Dear Ms. Kitchings:

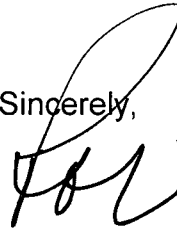
Enclosed for filing please find the originals and six copies each of the following documents:

1. Respondent's Notice of Motion and Motion to Extend Time to file the Respondent's Initial Brief and Memorandum dated August 7, 2014.
2. The Affidavit of Robert V. Mathison, Jr., dated August 7, 2014.

Also enclosed are the original Proof of Service and our check in the amount of \$25.00 to pay the filing fee.

With kind regards, I am

Sincerely,



Robert V. Mathison, Jr.

RVM:bh  
Enclosures  
cc: Blake A. Hewitt, Esquire  
Mr. Matthew S. McAlhaney.

**RECEIVED**

AUG 07 2014

**SC Court of Appeals**