

**RECEIVED**

AUG 25 2014

**SC Court of Appeals**

IN THE STATE OF SOUTH CAROLINA  
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

J. Ernest Kinard, Jr., Circuit Court Judge

Case No. 2007-CP-07-02373

Court of Appeals Tracking No. 2010167969

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.

**NOTICE OF MOTION AND MOTION TO  
RECONSIDER ORDER DATED AUGUST 15, 2014,  
AND/OR TO PERMIT LATE FILING AND SERVICE OF  
RESPONDENT'S BRIEF AND DESIGNATION OF MATTER**

The Respondent, Matthew S. McAlhaney, by and through his undersigned attorneys, moves the Court of Appeals for an order amending or modifying the Order dated August 15, 2014, or, in the alternative, to for a new order, in either event to authorize and permit the late filing and service of the Respondent's Initial Brief and Designation of Matter to be Included in the Record on Appeal, provided that such filing and service are accomplished on or before Monday, September 8, 2014.

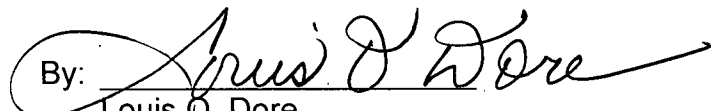
This motion is predicated on the grounds that allowing the late filing and service will promote the interests of justice by assuring that the decision of the Court, and thus the disposition of this case, is made on the merits.

As appears from the affidavit of Respondent's Co-Counsel, Robert V. Mathison, Jr., which is attached to this motion, counsel was out of his office for hip replacement surgery on March 14, 2014, followed by physical therapy, and, subsequently, as a consequence of injuries sustained in a serious traffic accident in Sullivan County, Tennessee, on May 18, 2014, which also resulted in surgery and a lengthy period of rehabilitation. Cascading court obligations and a slower than anticipated recovery impaired Counsel's ability to complete the Respondent's Brief.

Since the previous motion heard by this Court, the Respondent has retained Louis O. Dore, a capable and experienced attorney, to supervise the completion of the Respondent's Brief and Designation of Matter. He will be assisted by Co-Counsel, as well as by a recent law school graduate, Donald Michael Mathison.

Recognizing that the Court and opposing counsel have been extremely patient and accommodating, Respondent's Counsel request this further indulgence in the interests of justice.

Respectfully Submitted,

By:   
Louis O. Dore  
Attorney for the Respondent

DORE LAW FIRM, PA  
Post Office Box 2478  
Beaufort, SC 29901  
Telephone: (843) 522-9112  
Email: dorelaw@embarqmail.com



By:

Robert V. Mathison, Jr.  
Attorney for the Respondent

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

August 25, 2014

Hilton Head Island, South Carolina.

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In the Court of Appeals

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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. I hereby adopt and incorporate into this Affidavit by reference my Affidavit dated August 7, 2014, which was filed with the Court of Appeals on or about that date, and, by so doing, I mean to affirm as true and correct all statements that appear therein.

5. As is apparent from that affidavit, I had hip replacement surgery on March 14, 2014, and lost significant time from work as a consequence of the surgery and the physical therapy that followed. I also suffered injuries in a serious auto accident that occurred on May 18, 2014, which resulted in surgery and a lengthy period of rehabilitation. To this date, I have deficits resulting from the accident, though they are diminishing, all of which impaired the timely completion of the Respondent's Brief.

6. My client, Matthew S. McAlhaney, had capable trial counsel in this case, and he deserves the same on this appeal.

7. He has, therefore, retained Louis O. Dore of the Beaufort Bar to direct the preparation of the Respondent's Brief and the Designation of Matter to be Included in the Record on Appeal.

8. Mr. Dore and I have previously worked together on an appeal, and he can expedite the matter to make certain that we attain our stated deadline of September 8, 2014. See *Frazier v. Smallseed*, 384 S.C. 56, 682 S.E.2d 8 (Ct. App. 2009).

9. My son, Donald Michael Mathison, who recently graduated from law school and who sat for the bar examination last month, has also agreed to assist with completion of the brief.

10. I ask for the Court's indulgence, as well as for that of opposing counsel, so that this case can be heard fully and fairly on the merits.


11. I have not consulted with opposing counsel about this motion, but plan to do so before it is filed.

FURTHER THE AFFIANT SAYETH NOT.



Robert V. Mathison, Jr.

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

  
\_\_\_\_\_  
Notary Public for South Carolina  
My Commission Expires: 5-23-2020

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M 3345

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K. McElveen, Jr., and Billy Joe Byrd, ..... Defendants,

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

**PROOF OF SERVICE**

I, Robert V. Mathison, Jr., hereby certify that on August 25, 2014, I filed and served the original and copies of the Notice of Motion and Motion to Reconsider the Order dated August 15, 2014, and to Permit the Late Filing and Service of the Respondent's Brief and Designation of Matter, as well as the Affidavit of Robert V. Mathison, Jr., dated August 25, 2014, by delivering same to the South Carolina Court of Appeals and to counsel for the Appellant at the addresses set forth herein below on the following page.

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

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

A handwritten signature in cursive script, appearing to read "R. Mathison, Jr.", written in black ink. The signature is positioned above a horizontal line.

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

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 25, 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:

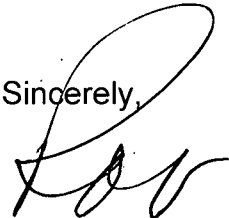
Enclosed for filing please find the originals and six copies each of the following documents:

1. Respondent's Notice of Motion and Motion to Reconsider the Order dated August 15, 2014, and to Permit the Late Filing and Service of the Respondent's Brief and Designation of Matter, which bears today's date, August 25, 2014.
2. The Affidavit of Robert V. Mathison, Jr., also dated August 25, 2014.

In addition, I have enclosed 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  
Louis O. Dore, Esquire  
Mr. Matthew S. McAlhaney.

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