



A REPORT TO MEMBERS OF  
THE SOUTH CAROLINA BAR  
YOUNG LAWYERS DIVISION

## A Quick Guide to the South Carolina Uniform Power of Attorney Act

Molly McDonald Campolongo

While power of attorney may seem to fall exclusively within the domain of probate attorneys, it arises in a surprising number of contexts. From real estate transactions to financing to military service to medical decisions, power of attorney issues arise at unexpected moments, and a prepared attorney should be ready to advise clients on the law governing powers of attorney in South Carolina.

Though this may be old news to some, South Carolina overhauled its power of attorney statutes in 2016. Effective January 1, 2017, South Carolina adopted large portions of the Uniform Power of Attorney Act via South Carolina Code sections 62-8-101 through 62-8-401. Recognizing that you may not be dying<sup>1</sup> to review the power of attorney statutes in South Carolina, below is an overview of the new power of attorney provisions.

The South Carolina Uniform Power of Attorney Act (the Act) contains three of the four articles of the Uniform Power of Attorney Act but retains, within the articles, certain provisions that are unique to South Carolina power of attorney law. S.C. Code Ann. § 62-8-101 (Supp. 2017) (Reporter's Comment). The first article contains general provisions such as definitions, duties of the person granted power of attorney, and third-party acceptance of the power of attorney. *Id.*

The second article has provisions detailing the authority granted to the person given power of attorney. *Id.* The final article adopted in South Carolina—the fourth



article of the Uniform Power of Attorney Act<sup>2</sup>—contains provisions detailing the relationship of the act to other statutes and to prior South Carolina power of attorney law. *Id.*

This article will detail changes in definitions, durability, authority, and unchanged provisions under the new statutes.

### Definitions

Though this may seem small, much of the key terminology relating to power of attorney has changed under the new law. The person receiving the power of attorney was known as the “attorney in fact” under previous South Carolina law. *See* S.C. Code Ann. § 62-5-501 (Supp. 2016). Now, that person is the “Agent” of the principal. S.C. Code Ann. § 62-8-102 (Supp. 2017) (Reporter's Comment). Further, “Incapacity” replaces the terms disability and incompetence. *Id.*

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# Judicial Spotlight: Hon. Steven H. John, Resident Circuit Judge of the Fifteenth Judicial Circuit

**Born:** North Augusta, South Carolina to parents Joseph and Stephanie John. He grew up and graduated from high school here.

**Education:** The Citadel, B.A. (Political Science); University of South Carolina School of Law, J.D.



**Career:** After graduation from law school, Judge John served as law clerk to the Honorable Sidney T. Floyd, Resident Circuit Judge of the Fifteenth Judicial Circuit. Thereafter he joined a litigation firm and in 1986 he opened a solo practice in North Myrtle Beach, having an active trial practice in Civil Court, Criminal Court and Family Court.

**Family:** Judge John is married to Susan Watts John, the executive director of Horry County Disabilities and Special Needs Agency. Together they have one son, Blake John, who is a student at Creighton University.

## What is the best advice you were given as a young lawyer?

I was pleasantly surprised that many of the experienced lawyers in South Carolina were happy to share information as well as their experiences in dealing with perplexing issues that were new for me. They were very open and happy to help, which I appreciated. I wish someone had told me to get involved in South Carolina Bar activities early on in my career, or other groups such as the South Carolina Association for Justice (SCAJ) or the South Carolina Defense Trial Attorneys' Association (SCDTAA). Additionally, I wish at some point in time someone had explored with me the possibility of running for local office. I encourage other experienced lawyers to reach out to young lawyers and offer help early on in their careers.

## What is the most rewarding aspect of being a Judge?

I've thoroughly enjoyed meeting

people across the state at courthouses or elsewhere that I would never have otherwise had the opportunity to meet. Being a judge has vastly expanded my knowledge of South Carolina by providing the opportunity to see there are really wonderful people all across our state.

## What is the hardest part about being a Judge?

As judges, we are all faced with certain cases that give us pause. For me, those cases are often felony DUI cases. You invariably have an upstanding citizen as the defendant, and this is essentially the only thing that they have done wrong in their life. Of course, it is a very horrible thing, but it's often the only one in their life. Half of the courtroom tells you that despite this one terrible accident, they are a wonderful person; then the victims or the relatives of the victim want you to put that person under the jail. Cases like that call upon all of your experience to look at both sides and try and come up with a fair and just result. That's a hard day. Other days, you listen to some of the victim's stories detailing how they have been harmed by a particular instance. In issuing a sentence and trying to meet out justice that will try to show that the system can respond appropriately when the case is brought before you can be a difficult part of being a judge.

## What experience best prepared you for the bench?

Two things helped prepare me best. First, actually trying cases. It really didn't matter the courtroom setting. It could have been in Magistrates Court, Circuit Court or Federal Court. Secondly, I had the opportunity to be appointed as a Special Referee in a fairly substantial number of cases by Judge Sidney Floyd and Judge David Maring.

## If you could choose one legal scholar to have dinner with, who would it be and why?

I would select Dean Erwin Chemerinsky. He is extremely bright, and every time there is an issue that hits the front page involving law and politics, he is usually a sought-after interview. He has published several books and articles and, not to say I agree with all of his stances, but he really gives you a lot to think about.

## What do you see as the biggest challenge facing the SC legal system?

Making sure that everyone has an equal opportunity to address their issues, if needed, in the court system, notwithstanding their financial standing or ability to present a matter before the court. Equal access to the legal system for all. Depending on the case, things can get extraordinarily expensive. Unfortunately, government funding either for the public defender's office or legal aid is not usually a top priority.

## What practices did you implement early in your career that have been the most beneficial to you?

As a young lawyer, I really tried as best I could to know all there was to know about my case. This includes the good and bad facts, so that when that unexpected event happens in trial, you at least have a foundation to fall back on and try and address the issues. Being prepared is the key.

## What is the number one thing you look for when hiring a law clerk?

Besides the obvious as far as understanding legal issues and competency in the law, being able to communicate with people, not only in writing but also in person. It is important to be able to talk to everyone, not just lawyers.

## What differentiates a good lawyer from a great lawyer?

Being able to narrow down your case to the issue that will resonate with the judge or the jury, and doing so in a brief, concise manner. I always tell people I am a proponent of the Zorro school of law: get in, make your "Z", and get out.



# What's Been Happening



## Adopt-A-Shelter

The VAV Committee completed a three-day Adopt-A-Shelter project to support Sistercare. As you know, Sistercare's mission is to provide services and to advocate for domestic violence survivors and their children, and to promote prevention of domestic violence through community awareness and training.

Prior to our event, we collected donations via a donation drive. The donations included the following which were requested by the organization: multiple large packs of tissue; boxes of 24-pack paper towels; paper plates; garbage bags; several sets of twin and full sheets, bath towels, hand towels and wash cloths; several packs of pillows; large refill bottles of liquid hand soap; children's toys; and toiletries (soap, shampoo, toothbrushes, etc.) for women, including combs and hair brushes for all hair textures.

On the first night of the event, we provided workshops to include re-

source presenters and attorneys to answer legal questions at each of the two shelters. During the presentations, we provided tote bags for 50 women. Each tote bag included deodorant, toothpaste, a toothbrush, soap, books/journals, and feminine products. The bags were for the women currently housed in the shelters and future residents. We also provided dinner for the women and children during the presentations. The speakers were Heather Blake of Heather's Holistic Health Coaching, attorney La'Jessica Stringfellow, Monique Flowers of Classy Closets, and attorney Katie Buckner.

On the second day of the event, we held an appreciation luncheon for the staff at Sistercare. We provided door prizes and small gifts, which included gift cards and custom cookies.

On the third day of the event, we conducted a shelter refurbishment. The project included repainting a wrap-around porch in desperate need of repair.

## East Cooper Habitat for Humanity Wills Clinic



## Uniform Power of Attorney Act (continued from Front Cover)

For simplicity, I will use the new definitions for the rest of this article.

### Durability

Durable, in the context of power of attorney, means that the power continues after the principal becomes incapacitated or disabled. Under the old South Carolina law, power of attorney was presumed to not be "durable" unless the power of attorney agreement specifically provided for durability. S.C. Code Ann. § 62-5-501 (Supp. 2016).

Under the new South Carolina law, the opposite is true. Power of attorney is durable unless the agreement expressly provides that it is terminated by the incapacity of the principal. S.C. Code Ann. § 62-8-104 (Supp. 2017). This change represents the assumption on the part of the drafters that most principals prefer durability to lessen the chance of a conservator or guardian being appointed. *Id.* (Reporter's Comment).

Further, if a conservator or guardian is appointed by a court, the agent retains its powers not related to the scope of the appointment. S.C. Code Ann. § 62-8-108(b) (Supp. 2017). Even then, if the power of attorney agreement provides that the agent retains all of its powers despite the appointment, the agent will retain them unless the court orders otherwise. *Id.*

### Authority

Previously under South Carolina law, the authority of the agent had to be specifically set forth in the agreement. S.C. Code Ann. § 62-5-501(A). Under the new law, agents' authority may be indicated in the agreement simply by referencing the South Carolina Code section or sections detailing those powers. S.C. Code Ann. § 62-8-202 (Supp. 2017). Of course, power of attorney agreements may still be tailored for specific powers, but these new provisions create default definitions of an agent's authority.

Sections 62-8-204 through 62-8-217 provide general authority provisions for real property; tangible personal property; stocks and bonds; commodities and options; banks and other financial institutions; operation of

entities or businesses; insurance and annuities; estates, trusts, and other beneficiaries; claims and litigation; personal and family maintenance; benefits from government programs; retirement plans; taxes; and gifts.

Again, these provisions may be incorporated into a power of attorney agreement simply by referencing the statute describing such authority. Additionally, section 62-8-203 lists general authorized powers of the agent if one or more of these statutes is cited in the agreement.

In contrast, section 62-8-201 defines powers an agent may obtain only upon an express grant of authority. These powers include the power to create or alter a trust, make a gift, change rights of survivorship, change beneficiary designations, delegate authority granted, disclaim property, and access a safe deposit box or vault leased by the principal. S.C. Code Ann. § 62-8-201(a) (Supp. 2017).

If the principal wishes to create these powers—and the others listed in the statute—in the agent, the agreement must specifically provide so. Further, despite what the agreement provides, only a relative of the principal may, as agent, give herself or a creditor an interest in the principal's property. S.C. Code Ann. § 62-8-201(b) (Supp. 2017).

Related to these authority provisions, the new statutes provide steps for proving an agent's authority to third parties. S.C. Code Ann. § 62-8-119 (Supp. 2017). A third party may accept an acknowledged power of attorney without any further evidence. *Id.* Like under prior South Carolina law, a person who relies in good faith on a certification of power of attorney may rely on the power of attorney of the agent. *Id.* (Reporter's Comment). Additionally, instead of solely relying on the acknowledged power of attorney, a third party may request a certification, English translation, or opinion of counsel as to the validity of the power of attorney. *Id.* The third party may be liable for refusing to accept a power of attorney after the agent takes the steps detailed above. S.C. Code Ann. § 62-8-120 (Supp. 2017).

Finally, the new law provides one or more agents may be appointed as co-agents who can have either indepen-

dent powers or share the same powers. S.C. Code Ann. § 62-8-111 (Supp. 2017).

### Unchanged Provisions

Despite the changes detailed above, many of the prior power of attorney provisions remain unchanged. Though this section is not comprehensive, the unchanged provisions include the following:

Power of attorney agreements entered into prior to the change in the law are still effective if they complied with the law at the time they were executed. S.C. Code Ann. § 62-8-106(b).

Health care powers of attorney have not changed and are governed by South Carolina Code sections 62-5-501 through 62-5-518, which is simply a renumbered version of the former section 62-5-504. S.C. Code Ann. § 62-8-103 (Supp. 2017) (Reporter's Comment).

Additionally, as before, the other power of attorney statutes and judicial interpretations of them apply to health care powers of attorney to the extent they are not inconsistent with sections 62-5-501 through 62-5-518. S.C. Code Ann. § 62-5-502 (Supp. 2017). Under the new default rule, an agent must cooperate with a person holding health care power of attorney. S.C. Code Ann. § 62-8-114(b)(5) (Supp. 2017).

The new statutes still require that power of attorney agreements be attested in the same way as a will and acknowledged. *Compare* S.C. Code Ann. § 62-5-501(C) (Supp. 2016), *with* S.C. Code Ann. § 62-8-105 (Supp. 2017). However, under the new statutes, the agreement only needs to be recorded if the agent wishes to exercise authority after the principal's incapacity. S.C. Code Ann. § 62-8-109(d) (Supp. 2017).

Whereas, previously, the agreement was required to be recorded unless the "authority of the attorney in fact relate[d] solely to the person of the principal." S.C. Code Ann. § 62-5-501(C) (Supp. 2016).

In conclusion, the changes to the law governing powers of attorney are expansive. However, with the adoption of the South Carolina Uniform Power of Attorney Act, South Carolina's power of attorney laws now track numerous other states that have adopted the Uniform Power of Attorney Act—either in whole or in part.

Additionally, the language of the

Act itself, including the reporter's comments, is much more comprehensive than the previous law. As provided in those comments, "there may be no perfect solution to meet the surrogate decision making needs of our aging society, but the [Act] balances the competing interests at stake with . . . protecting the principal, the agent, and those who deal with the agent." S.C. Code Ann. § 62-8-101 (Reporter's Comments).

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### Endnotes

<sup>1</sup> I apologize if anyone finds these age-related jokes in bad taste and promise they are now retired.

<sup>2</sup> The third article in the Uniform Power of Attorney Act provides an optional statutory form of a Power of Attorney. While South Carolina did not adopt this form, it did pull from the sample agent certification form provided in article 4 of the Uniform Power of Attorney Act for South Carolina Code subsection 62-8-119(f).



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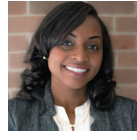
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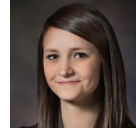
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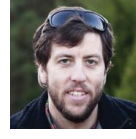
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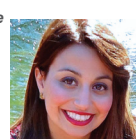
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## YLD Retreat, March 2018





# South Carolina Bar

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## Letter from the President



Dear Young Lawyers:

Happy New Year...Happy New BAR Year that is! July 1 marked the start of the 2018-2019 Bar Year. I am excited to serve as your YLD President this year, alongside Sheila Willis (President-Elect) and Perry MacLennan (Secretary-Treasurer). The YLD is cooking up a host of YLD programs and events that are certain to benefit you both personally and professionally.

Thus far, the YLD is already off to a great start. The Backpack Drive Committee just wrapped up another successful school supply drive. The

committee collected and stuffed over 200 backpacks to distribute to students in need across the state. Kudos to them!

The YLD Executive Council just returned from the ABA Annual Meeting in Chicago where the SC YLD was awarded **three** ABA YLD Awards of Achievement! The ABA Awards of Achievement recognize state and local bar programs that contribute significantly to the public and the betterment of the legal profession. The SC YLD's programming received awards in the following categories:

- Diversity for The Legacy of the Confederacy—A Town Hall Discussion,
- Newsletter for The Young Lawyer, and
- Comprehensive for overall best programming.

Special thanks to the YLD leaders who were responsible for the award-winning programming and to Sheila Willis for her diligence in preparing our award applications.

Speaking of the ABA, did you know the ABA YLD is coming to South Carolina? The ABA YLD will host its

Fall Meeting in conjunction with ABA GPSolo October 25-27 at the Francis Marion Hotel in Charleston. A few highlights of the meeting include reduced and affordable conference registration for South Carolina lawyers and law students, dine-a-rounds in the homes of Charleston's most prominent lawyers, and opportunities to network with young lawyers from around the country. Keep an eye out in the YLD Announcements for more information.

Lastly, if you haven't already, sign up for a YLD committee today! The work of our YLD committee leaders and members is what allows the YLD to provide its award-winning programs and benefits to its members.

Cheers to enjoying the last little bits of summer and the start of another wonderful bar year!

Onward,

Ashleigh R. Wilson  
YLD President