

Amendments to the South Carolina Appellate Court Rules

**Admission Pro Hac Vice and Appearances by Non-South Carolina Lawyers in Arbitration,
Mediation or Other Alternative Dispute Resolution Proceedings in South Carolina**

South Carolina Appellate Court Rule 404

By Order dated December 9, 2013, SCACR 404(b) was amended, effective immediately, to read as follows:

(b) Prohibitions on Admission Pro Hac Vice. An attorney may not appear pro hac vice if the attorney is regularly employed in South Carolina, or is regularly engaged in the practice of law or in substantial business or professional activities in South Carolina, unless the attorney has filed an application for admission under Rule 402, SCACR. Notwithstanding any other provision herein, an attorney who files more than six applications for admission pro hac vice in a calendar year, including applications for purposes of Rule 404(h), is considered regularly engaged in the practice of law in South Carolina.

Rules for Lawyer Disciplinary Enforcement

South Carolina Appellate Court Rule 413

By Order dated October 9, 2013, SCACR 413 was amended, effective immediately, to read as follows:

Rule 4(g), RLDE, Rule 413, SCACR:

(g) Powers and Duties of Hearing Panel. A hearing panel shall have the duty and authority to:

- (1) designate a member of the panel to serve as the chair of the panel to address administrative matters related to formal proceedings and rule on pre-hearing motions;
- (2) conduct hearings on formal charges and make findings, conclusions, and recommendations to the Supreme Court for the disposition of the case, pursuant to Rule 26; and
- (3) recommend that a matter be closed, but not dismissed, after the filing of formal charges.

Rule 6(b), RLDE, Rule 413, SCACR:

(b) Powers and Duties. The Commission may delegate functions to the Commission counsel, including but not limited to the duty and authority to:

- (1) advise the hearing panel during its deliberations and draft decisions, orders, reports, and other documents on behalf of the hearing panel;
- (2) maintain Commission files to monitor the compliance by lawyers with conditions of deferred discipline, discipline, admission, reinstatement, and readmission;
- (3) supervise the receiver and any attorneys appointed pursuant to Rule 31;
- (4) supervise other staff necessary to the performance of the Commission's duties; and
- (5) perform other duties at the direction of the Commission.

Rule 10, RLDE, Rule 413, SCACR:

RULE 10 RIGHT TO COUNSEL

The lawyer shall be entitled to retain counsel and to have the assistance of counsel at every stage of these proceedings. The Commission may appoint counsel to represent the lawyer in incapacity proceedings. *See* Rule 28(b)(3). After appearing as counsel for a lawyer in a matter under these rules, counsel for the lawyer may only withdraw upon leave of the chair or the vice chair of the Commission or the chair of the hearing panel after 10 days notice to disciplinary counsel and the lawyer or, prior to formal charges having been filed, upon stipulation of the lawyer, the withdrawing counsel, and disciplinary counsel. Provided, after a matter has been forwarded to the Supreme Court for action, counsel can only withdraw from representation upon leave of the Supreme Court after due notice to the client and disciplinary counsel.

Rule 12(b), RLDE, Rule 413, SCACR:

(b) When Misconduct Proceedings Become Public. When formal charges are filed regarding allegations of misconduct, the formal charges, any answer, and all other documents related to the proceedings that were filed with or issued by the Commission following the filing of the formal charges shall become public 30 days after the filing of the answer or, if no answer is filed, 30 days after the expiration of the time to answer under Rule 23. Thereafter, except as otherwise provided by these rules or the Supreme Court, all subsequent records and proceedings relating to the misconduct allegations shall be open to the public inclusive of a letter of caution or admonition issued after the filing of formal charges. If allegations of incapacity are raised during the misconduct proceedings, all records, information, and proceedings relating to these allegations shall be held confidential.

Rule 12(e), RLDE, Rule 413, SCACR:

(e) Protective Orders. In order to protect the interests of a complainant, witness, third party, or respondent, the chair of the hearing panel may, upon application of any person and for good cause shown, issue a protective order prohibiting the disclosure of specific information otherwise privileged or confidential and direct that the proceedings be conducted in a manner to preserve the confidentiality of the information that is the subject of the application.

Rule 15(e), RLDE, Rule 413, SCACR:

(e) Quashing Subpoenas. Any attack on the validity of a subpoena shall be heard and determined by the investigative panel or chair of the hearing panel before which the matter is pending. Any resulting order shall not be subject to an interlocutory appeal; instead these decisions must be challenged by filing objections or a brief pursuant to Rule 27(a).

Rule 17(c), RLDE, Rule 413, SCACR:

(c) Failure to Respond to Notice of Investigation, Subpoena, or Notice of Appearance. Upon receipt of sufficient evidence demonstrating that a lawyer has failed to fully respond to a notice of investigation, has failed to fully comply with a proper subpoena issued in connection with an investigation or formal charges, has failed to appear at and fully respond to inquiries at an appearance required pursuant to Rule 19(c)(3), or has failed to respond to inquiries or directives of the Commission or the Supreme Court, including failing to appear at a hearing in formal proceedings pursuant to Rule 24(b), the Supreme Court may place that lawyer on interim suspension.

Rule 24, RLDE, Rule 413, SCACR:

RULE 24

FAILURE TO ANSWER; FAILURE TO APPEAR

(a) Failure to Answer. Failure to answer the formal charges shall constitute an admission of the allegations. On motion of disciplinary counsel, the administrative chair may issue a default order setting a hearing to determine the appropriate sanction to recommend to the Supreme Court. The

Commission shall notify the parties of the date and time of the hearing and shall permit them to submit evidence regarding aggravation and mitigation of sanction. A respondent held in default shall not be permitted to offer evidence to challenge the allegations contained in the formal charges deemed admitted by this rule.

(b) Failure to Appear. If the respondent should fail to appear when specifically so ordered by the hearing panel or the Supreme Court, the respondent shall be deemed to have admitted the factual allegations which were to be the subject of such appearance and to have conceded the merits of any motion or recommendations to be considered at such appearance. Absent good cause, the hearing panel or Supreme Court shall not continue or delay proceedings because of the respondent's failure to appear. If the hearing panel determines that the respondent's failure to appear was willful, it shall immediately notify the Supreme Court, which may issue an order of interim suspension pursuant to Rule 17(c). A willful failure to appear before a hearing panel or the Supreme Court may be punished as a contempt of the Supreme Court and may result in an order of interim suspension.

Rule 25(a), (h) and (i) RLDE, Rule 413, SCACR:

(a) Initial Disclosure. Within 20 days of the filing of an answer, disciplinary counsel and respondent shall exchange:

- (1) the names and addresses of all persons known to have knowledge of the relevant facts;
- (2) non-privileged evidence relevant to the formal charges;
- (3) the names of expert witnesses expected to testify at the hearing and affidavits setting forth their opinions and the bases therefor; and,
- (4) other material only upon good cause shown to the chair of the hearing panel.

Disciplinary counsel or the respondent may withhold such information only with permission of the chair of the hearing panel or the chair's designee, who shall authorize withholding of the information only for good cause shown, taking into consideration the materiality of the information possessed by the witness and the position the witness occupies in relation to the lawyer. The chair's review of the withholding request is to be in camera, but the party making the request must advise the opposing party of the request without disclosing the subject of the request.

(h) Resolution of Disputes. Disputes concerning discovery shall be determined by the chair of the hearing panel. Review of these decisions shall not be subject to review by the hearing panel or to an interlocutory appeal; instead these decisions must be challenged by filing objections or a brief pursuant to Rule 27(a).

(i) Pre-Hearing Conferences. The chair of the hearing panel may require the respondent and disciplinary counsel to participate in a pre-hearing conference in person or by telephone. Either party may request a pre-hearing conference. Scheduling of a pre-hearing conference is at the sole discretion of the chair of the hearing panel.

Rule 26(a), (e), and (f), RLDE, Rule 413, SCACR:

(a) Scheduling. Upon receipt of the respondent's answer or upon expiration of the time to answer, the chair of the hearing panel of the Commission shall schedule a public hearing and notify disciplinary counsel and respondent of the date, time, and place of the hearing.

(e) Combining Cases for Hearing. Upon motion of either party after 10 days notice to the opposing party, the chair of the hearing panel may combine for hearing two or more formal charges pending against a lawyer which have not been heard or may reconvene to hear additional formal charges against a lawyer filed prior to the hearing panel issuing a panel report concerning formal charges against the lawyer already heard by that panel.

(f) Recommending Closed, but not Dismissed. If the hearing panel finds that the matter should not be dismissed, but it is either impossible or impractical to proceed with the matter because it appears that the respondent is deceased, disappeared, incarcerated, physically or mentally incapacitated, disbarred, or suspended from the practice of law, or for other good cause, the panel may dispense with the hearing and recommend to the Supreme Court that the matter be closed, but not dismissed. If the respondent files a written objection with the Supreme Court and serves a copy of that objection on disciplinary counsel within 10 days of service of the recommendation that the matter be closed, but not dismissed, the matter shall be remanded to the Commission and the panel will proceed with the hearing. Any objection need not contain any grounds for objecting. If no objection is filed and properly served in accordance with this rule, the Supreme Court shall issue its order declaring the matter closed, but not dismissed, and granting the investigative panel of the Commission the authority to re-open the matter on motion of disciplinary counsel pursuant to the provisions of Rule 19(d)(4)(C).

Rule 30(g), RLDE, Rule 413, SCACR:

(g) Affidavit to Be Filed. Within 15 days after the effective date of the disbarment or suspension, the respondent shall file and serve an affidavit with the Supreme Court, disciplinary counsel, and the Commission on Lawyer Conduct showing:

- (1) Compliance with the provisions of the order of disbarment or suspension and this rule;
- (2) All other state, federal, and administrative jurisdictions to which the lawyer is admitted to practice; and
- (3) Residence or other addresses where communications may thereafter be directed.

Rule 32, RLDE, Rule 413, SCACR:

**RULE 32
REINSTATEMENT FOLLOWING A DEFINITE SUSPENSION
OF LESS THAN NINE MONTHS**

Unless otherwise provided for in the Supreme Court's suspension order, a lawyer who has been suspended for a definite period of less than 9 months shall be reinstated to the practice of law at the end of the period of suspension by filing with the Supreme Court, and serving upon disciplinary counsel and the Commission on Lawyer Conduct, an affidavit stating that the lawyer:

- (1) is currently in good standing with the Commission on Continuing Legal Education and Specialization and the South Carolina Bar,
- (2) has fully complied with the requirements of the suspension order,
- (3) has completed the Legal Ethics and Practice Program Ethics School within the preceding year, and

(4) has paid any required fees and costs, including payment of necessary expenses and compensation approved by the Supreme Court to the receiver or the attorney appointed to assist the receiver pursuant to Rule 31, RLDE, to protect the interests of the lawyer's clients for necessary expenses, or to the Lawyers' Fund for Client Protection if the Fund has paid the attorney appointed to assist the receiver under Rule 31(g), RLDE.

If suspended for conduct resulting in a criminal conviction and sentence, the lawyer must also successfully complete all conditions of the sentence, including, but not limited to, any period of probation or parole. In such a case, the lawyer must attach to the affidavit documentation demonstrating compliance with this provision. The affidavit filed with the Supreme Court shall be accompanied by proof of service showing service on disciplinary counsel and the Commission on Lawyer Conduct, and a filing fee of \$200.

The lawyer must also provide a statement from the Commission on Lawyer Conduct stating whether any disciplinary investigations are currently pending against the lawyer. If a disciplinary investigation is currently pending against the lawyer, the Supreme Court shall give disciplinary counsel an opportunity to oppose the lawyer's reinstatement pending the conclusion of that investigation. For the purposes of meeting this requirement, a lawyer who files a petition for reinstatement under this rule waives the confidentiality provisions of Rule 12 concerning any pending investigations. When all preconditions set out in this rule are met, the Court shall issue an order of reinstatement. The order shall be public.

Rule 33(f)(9), RLDE, Rule 413, SCACR:

(9) If suspended for a definite period of 9 months or more, the lawyer has, during the period of suspension, completed and reported continuing legal education and legal ethics/professional responsibility credits equal to those required of regular members of the South Carolina Bar and is currently in good standing with the Commission on Continuing Legal Education and Specialization. The lawyer must also complete the Legal Ethics and Practice Program Ethics School within the year prior to filing the petition for reinstatement. The lawyer shall attach to the petition for reinstatement a statement from the Commission on Continuing Legal Education and Specialization confirming compliance with this requirement.