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## **NOTE ON THE SOUTH CAROLINA RULES OF PROFESSIONAL CONDUCT**

In 1983, the American Bar Association introduced the Model Rules of Professional Conduct as a major overhaul both in format and content of the prior Model Code of Professional Responsibility. Over the next two decades, most states, including South Carolina, revised their disciplinary rules to base them on the 1983 Model Rules. South Carolina adopted a version of the Rules of Professional Conduct that became effective September 1, 1990. The ABA adopted major revisions to the Model Rules in 2002 (often referred to as “Ethics 2000”). The South Carolina Rules of Professional Conduct largely follow the ABA Model Rules. To the extent that South Carolina has modified either the rules or the comments, those changes are noted in the Model Rule Comparison following each rule.

South Carolina has not adopted ABA Model Rule 7.6 (the so-called “Pay-to-Play” Rule), which regulates political contributions to obtain government legal engagements or appointments by judges. As of December 2009, South Carolina had not adopted the ABA revision to Rule 1.10 adopted by the ABA in February 2009, allowing screening of a disqualified lawyer who moves from one firm to another. The revised South Carolina rules retain a prohibition on threatening criminal prosecution, Rule 4.5, not found in the Model Rules.

In addition to the South Carolina Rules of Professional Conduct, other rules impact the professional obligations of lawyers. This volume includes the Lawyer’s Oath, SCACR 402(k); Admission Pro Hac Vice and Appearances by Out-of-state Lawyers in ADR Proceedings, SCACR 404; the Rules for Lawyer Disciplinary Enforcement, SCACR 413; Financial Record Keeping, SCACR 417; Advertising and Solicitation by Unlicensed Lawyers, SCACR 418; Conduct During Depositions, SCRCR 30(j); Sealing Documents and Settlement Agreements, SCRCR 41.1. Other rules are available at the Web site of the South Carolina judicial department, <http://www.judicial.state.sc.us/courtReg/index.cfm>.

The Scope section of the Rules ¶8 states that the “Comments are intended as guides to interpretation, but the text of each Rule is authoritative.” The South Carolina Ethics Advisory Committee issues opinions interpreting the Rules. The opinions of the committee are available at [http://www.scbare.org/member\\_resources/ethics\\_advisory\\_opinions/](http://www.scbare.org/member_resources/ethics_advisory_opinions/). The opinions reflect the advice of the committee and are not legally binding, but may have persuasive authority.

The Rules have been updated through December 1, 2009.

## **RESEARCH TOOLS ON LEGAL ETHICS AND PROFESSIONAL RESPONSIBILITY**

Rules and opinions of the South Carolina Supreme Court are available at <http://www.judicial.state.sc.us/>.

Opinions of the South Carolina Ethics Advisory Committee are located at [http://www.scbar.org/member\\_resources/ethics\\_advisory\\_opinions/](http://www.scbar.org/member_resources/ethics_advisory_opinions/).

For material on legal ethics and professional responsibility outside of South Carolina, the following books and services are available:

- ABA, *Annotated Model Rules of Professional Conduct* (6<sup>th</sup> ed. 2007)
- ABA Center for Professional Responsibility, <http://www.abanet.org/cpr/home.html>, a comprehensive Web site with the official text of the ABA Model Rules and reports on various issues facing the profession
- *Lawyers' Manual on Professional Conduct* (ABA/BNA), a comprehensive research service covering reported decisions, ethics opinions, and current developments
- American Law Institute, *Restatement (Third) of the Law Governing Lawyers*
- William H. Fortune, Richard H. Underwood, Edward J. Imwinkelried, *Modern Litigation and Professional Responsibility Handbook: The Limits of Zealous Advocacy* (2d ed. 2000)
- Monroe H. Freedman & Abbe Smith, *Understanding Lawyers' Ethics* (3d ed. 2004), a critical view of the Model Rules, particularly in the context of criminal defense and prosecution
- Geoffrey C. Hazard & W. William Hodes, *The Law of Lawyering* (3<sup>rd</sup> ed. 2001), textual discussion with illustrations of the Model Rules containing citations to significant decisions and scholarship
- Ronald E. Mallen & Jeffrey M. Smith, *Legal Malpractice* (7<sup>th</sup> ed.), the leading treatise on legal malpractice
- Ronald D. Rotunda & John S. Dzienkowski, *Legal Ethics: The Lawyers' Deskbook on Professional Responsibility* (available on Westlaw)

## **NOTE ON AUTHORITIES CITED IN ANNOTATIONS, CURRENTNESS OF ANNOTATIONS, AND UPDATES**

This book contains selected significant developments in professional conduct in South Carolina. Use of this book does not substitute for a full search into applicable authorities. The authors have omitted cases and bar opinions that in their opinion do not establish new law, such as routine disciplinary cases based on failure to communicate or misappropriation of client funds.

When more recent cases or opinions reaffirm principles established in earlier authorities, the authors have often substituted the most recent for the older authority unless the discussion in the older authority was more extensive. Newer authorities typically cite older authorities that established basic principles.

Some cases and opinions deal with multiple points of professional conduct. If multiple points are significant, we have attempted to reference the authority under different annotations. Sometimes we only cite an authority once even though it dealt with multiple issues if we did not consider the secondary issues to be of sufficient importance or if they were duplicative.

On rare occasion an authority may be discussed under a rule not cited by the court or committee if the facts of the opinion clearly call for the application of a rule that was not discussed or emphasized.

Decisions of the South Carolina Supreme Court and the South Carolina Court of Appeals are current through Shearhouse Advance Sheet #48, dated December 29, 2008. For more current opinions see <http://www.judicial.state.sc.us/>.

South Carolina Ethics Advisory Opinions are current through Opinion #08-14. For more current opinions see [http://www.scbar.org/member\\_resources/ethics\\_advisory\\_opinions/](http://www.scbar.org/member_resources/ethics_advisory_opinions/).

ABA Formal Ethics Opinions are current through Opinion #08-453. For more current opinions see [http://www.abanet.org/cpr/pubs/issue\\_index.html](http://www.abanet.org/cpr/pubs/issue_index.html).

South Carolina Lawyer articles are current through December 2008.

The authors provide updates to the book periodically at their Web site, <http://www.scbar/annotatedscrpc>.

