



**South
Carolina
Bar**

House of Delegates



January 2023

Dear Member of the House:

I hope you enjoyed the holidays and are feeling refreshed as we begin January. The House of Delegates of the South Carolina Bar will convene on Thursday, January 19, 2023, at the Columbia Metropolitan Convention Center, Columbia, South Carolina. The meeting will begin at 10:00 a.m., and a box lunch will be provided. When you arrive, please be certain to sign in so that the minutes will reflect your attendance.

The proposed agenda precedes the first tab of the attached packet. If you wish to remove for discussion any item from the Consent Agenda, you must do so before the agenda is adopted at the start of the meeting. In your review of these materials, please remember the restrictions on positions which may be supported by a mandatory bar association such as ours. There is a brief description of these restrictions behind the agenda.

You are encouraged to participate in thorough debate on agenda items, but please respect your fellow House members by making your remarks succinct and pertinent to the agenda items being debated.

Please arrive early to review any additional materials which may be distributed at the meeting. Available materials have been sent to you to allow you an opportunity to consult your constituency concerning the matters on the agenda. Please read the materials and obtain input from your peers.

I look forward to our first House of Delegates meeting of 2023 and to seeing and spending some time with each of you in Columbia. If I can assist you in any way prior to the meeting, please do not hesitate to contact me.

Sincerely yours,

A handwritten signature in blue ink that reads "Lindsay A. Joyner".

Lindsay A. Joyner
Chair



January 2023

Dear House of Delegates:

As many of you have heard me say, **I am proud to be a South Carolina lawyer.** I am proud to serve with people like you. Your gift of your time and talents through your service to our Bar helps make the South Carolina Bar great. And your service as a member of the House of Delegates, setting the policies of the Bar, is crucial to our ongoing success.

Please review your materials and discuss them with the Bar members you represent for their perspective. As always, your attention to and input regarding these matters is very much appreciated.

Justice John Kittredge will make a State of the Judiciary presentation during our meeting and I will make brief remarks and provide a summary of mid-year highlights.

If you have not already, be sure to meet **Emma Dean**, the new Executive Director for the South Carolina Bar. She is already working hard for our members. And be sure to thank **Rob Wilcox** for his valuable service as Interim Executive Director.

I look forward to visiting with you and other members of our Bar as we attend the Convention and take advantage of what it has to offer this year in Columbia. Thanks again for your service!

Sincerely,

A handwritten signature in grey ink, appearing to read "J. Hagood Tighe".

J. Hagood Tighe
President

AGENDA
SOUTH CAROLINA BAR HOUSE OF DELEGATES
January 19, 2023 @ 10:00 a.m.

CALL TO ORDER
SET THE AGENDA

Lindsay A. Joyner
Chair

- | | |
|--|--|
| 1. Approval of Consent Agenda
a. Approval of Minutes of Meeting Held on May 12, 2022
b. Request from Senior Lawyers Division to Amend Division Bylaws
c. Receipt of November Financial Statements | Lindsay A. Joyner
Chair |
| 2. Presentation of Senior Lawyers Division Pro Bono Award | Pamela Robinson
Pro Bono Program, USCL |
| 3. Presentation of Law Day Essay Contest Award | Hon. J. Mark Hayes, II
Circuit Court Judge |
| 4. State of the Judiciary Presentation | Hon. John. W. Kittredge
Supreme Court Justice |
| 5. Report of the President | J. Hagood Tighe
President |
| 6. Report from South Carolina Bar Foundation, Inc. | Lisa Long Cotten
Foundation President |
| 7. Presentation on SC Supreme Court Historical Society | Dean Robert M. Wilcox
Historical Society President |
| 8. Request from Family Law Section to Amend §20-4-70(B) in re
Orders of Protection | Mary Fran Quindlen
Section Chair-Elect |
| 9. Request from the Diversity Committee to Amend the
Standards of Professionalism | Betsy B. Tanner
Committee Member |
| 10. Request from Practice and Procedure Committee to Amend Rule 26,
SCRCP, in re Confidentiality in Discussions with Experts | Guy J. Vitetta
Committee Chair

Mark C. Tanenbaum
Subcommittee Chair |
| 11. Request from Practice and Procedure Committee to Approve
A Donor Statute | Guy J. Vitetta
Committee Chair

James F. Thompson
Subcommittee Chair |

12. Request from the Professional Responsibility Committee to Amend Rule 7.1 of the Rules of Professional Conduct

Michael J. Virzi
Committee Member

Melissa G. Mosier
Committee Member

Keller v. State Bar of California, 496 U.S. 1 (1990)

“Here the compelled association and integrated bar are justified by the State’s interest in regulating the legal profession and improving the quality of legal services. The State Bar may therefore constitutionally fund activities germane to those goals out of the mandatory dues of all members. It may not, however, in such manner fund activities of an ideological nature which fall outside of those areas of activity.” 496 U.S. at 13-14.

“Precisely where the line falls between those State Bar activities in which the officials and members of the Bar are acting essentially as professional advisors to those ultimately charged with the regulation of the legal profession, on the one hand, and those activities having political or ideological coloration which are not reasonably related to the advancement of such goals, on the other, will not always be easy to discern.” 496 U.S. at 15.

Minutes
House of Delegates
May 12, 2022

The House met this date at Central Energy in Columbia. Participating were Shedricka Taccara Anderson; Margaret Elise Baker; J. Leeds Barroll, IV; Cherie T. Barton; Samuel Robert Bass, II; Elizabeth A. Battle, Shaheena Bennett; Mark S. Berglind; Joseph Pawel Bias; Matthew M. Billingsley; Maryann Elizabeth Blake; Clifford Lewis Bourke, Jr.; James Edward Bradley; Kristine Jay Braswell-Amin; Melody Edelman Breeden; Melody Jane Brown; Beverly A. Carroll; George B. Cauthen; Amie L. Clifford; M. Dawes Cooke, Jr.; Leslie A. Cotter, Jr.; A. Sandy Cruickshanks, IV; Elnora Jones Dean; Steven David Dluzneski; Walter George Dusky; John D. Elliott; Scott A. Elliott; Ashley R. Forbes; Warren V. Ganjehsani; Michael Frederick Gillen; Harry L. Goldberg; Daryl G. Hawkins; Amy L.B. Hill; William C. Hubbard; Lindsay A. Joyner; D. Michael Kelly; Catherine H. Kennedy; Charles A. Kinney, Jr.; Christopher R. Koon; Lanneau Wm. Lambert, Jr.; Roy Free Laney; Perry MacLennan; Carolyn Cason Matthews; John Lucius McCants; John O. McDougall; Elizabeth Holland McFarland; E. Scott Moise; Meredith Brooks Moss; Randall K. Mullins; Adam Christopher Ness; I. Ryan Neville; Elizabeth Foy Nicholson; Vincent Charles Northcutt; M. Paige Ornduff; Ross Buchanan Plyler; S. Venus Poe; Ashlin Blanchard Potterfield; Michelle Duncan Powers; Frederick Elliott Quinn, IV; Pamela Jane Roberts; John Edward Roxon; Nancy Doherty Sadler; Carmelo Barone Sammataro; Stephen T. Savitz; Mary Elizabeth Sharp; Cheryl D. Shoun; Jasmine Denise Smith; Krystal Watson Smith; Lisa Lee Smith; Hal M. Strange; Robert Ernest Sumner, IV; Jeanmarie Tankersley; David L. Tedder; William R. Thomas; John Hagood Tighe; Robert E. Tyson, Jr.; Johanna Valenzuela; Stephanie Millenbine van der Horst; Michael J. Virzi; Mitchell Willoughby; William Marvin Wilson, III; William K. Witherspoon; and Nicole Nichols Workman.

Guests present were Judge J. Michelle Childs, Judge John M. Rucker and Guy J. Vitetta.

Representing the Bar staff were Cindy A. Coker, Mary-Kathryn Craft, Nichole Davis, Jeremy Frazier, Charmy Medlin, David M. Ross, Kimberly Snipes, and Jason Stokes.

Chair Chris Koon called the meeting to order. A quorum was declared present.

Mr. McDougall moved to allow privileges of the floor to nonmembers. The motion was seconded, and it was approved.

The agenda was adopted by acclamation. A motion was made to approve the Consent Agenda - approval of the minutes of the January 20, 2022, meeting, receipt of March Financial Statements, request from Trial and Appellate Advocacy Section to amend Bylaws and request from Solo and Small Firm Section to amend Bylaws. The motion was seconded, and it was approved.

Next, President Sharp recognized the graduates of the 2021-22 Leadership Academy: Margaret (Meggie) Baker, Joel (Jay) A. Berly IV, Joseph Bias, Lamar Fyall, Nicole M. Hair, Lee Health, Scott MacLatchie, Henry D. McMaster Jr., Jane H. Merrill, DeShawn Mitchell, Michelle Powers, Joseph Spate, Megan White and Cheryl A. Wright.

Judge Rucker recognized the 2022 Law Related Education Lawyer of the Year, Margaret Fox.

Mr. Laney recognized the 2022 Pro Bono Law Firm of the Year, Robinson Gray Stepp & Laffitte, LLC.

Ms. Ornduff and Ms. Tankersley reported on the YLD Feeding Frenzy Project and encouraged House members to participate.

Next, Ms. Poe provided an update on the activities of the SC Bar Foundation. She reviewed the mission of the Bar Foundation and provided statistics on donations and grantees. In closing, she encouraged members of the House to become donors and provided information on methods of donation.

Under Report of the President, Ms. Sharp provided an update on the Strategic Plan, the Pro Bono Program, the recent Legal Needs Assessment, and Lawyer Health and Wellness programs including Lawyers Helping Lawyers. She spoke on the Diversity Survey and Bar leadership's commitment to diversity, equity, and inclusion. In closing, she noted unfair and inaccurate stories and commentary regarding the profession and the legal system and the Bar's increased efforts to share the good work that lawyers do for the community and their clients.

Mr. Vitetta presented a request from the Practice and Procedure Committee to amend Rule 3, SCRCP. He stated that the Committee found that the rules for determining the indigence in applications for *in forma pauperis* in a civil action were not clear and did not provide proper guidance to the courts when ruling on such applications. The proposed rule amendment would create a presumption of indigence if the plaintiff's net family income was less than or equal to the Poverty Guidelines established and revised annually by the United States Department of Health and Human Services. The rule revision tracked similar language used for determining indigency in Rule 602, SCACR, and Rule 608, SCACR. A motion was made to adopt the proposal. The motion was seconded. Discussion ensued. Ms. Kennedy suggested changing "required deductions" to "allowed deductions" and "family income" to "household income." Mr. Vitetta accepted the changes. Mr. Barroll spoke in favor of the proposal. Ms. Poe expressed concern about how the amendment would apply to prisoners. She moved to add "rebuttable" in front of the word presumption. The motion was seconded and approved. The main motion as amended was approved.

Next, Mr. Vitetta presented a request from the Practice and Procedure Committee to amend Rule 71.2, SCRCP, to create uniform standards for the continued use of remote technology upon expiration of the current emergency order. The procedures would be voluntary and used only with the consent of all parties and the court. He noted a change in language from with "sufficient or adequate justification" to "good cause shown." A motion was made to approve the proposal. The motion was seconded. Discussion ensued. Mr. Elliott spoke against the proposal.

At this time the House adjourned to convene the Assembly.

Following the Assembly, the House reconvened.

Discussion resumed on the proposal to amend Rule 72.1, SCRPC. Mr. Ness spoke in favor of the proposal. Ms. Powers expressed concern about how to prevent parties from recording virtual hearings and the ability for judges to allow virtual testimony without the party's consent. The main motion was approved.

Next, Mr. Virzi presented a request from the Professional Responsibility Committee to amend Rule 5.5 of the Rules of Professional Conduct. He stated that the proposal was a comment to the Rule clarifying that cross border remote work was permitted as long as the lawyer did not advertise for clients in the state where they were not licensed or hold themselves out as being licensed to practice in the state where they were not licensed. A motion was made to approve the proposal. The motion was seconded, and it was approved.

The following members were elected to the Nominating Committee: Allen Fretwell of Greenville (Region 1), Leslie McIntosh of Anderson (Region 1) and Ryan Neville of Charleston (Region 4).

Ms. Bennett presented Bar and CLE Division budgets for 2022-23 and moved approval. The motion was seconded, and it was approved.

Mr. Tighe recognized outgoing Bar President Sharp with a commemorative plaque and gift.

There being no further business, the meeting was adjourned.

MEMORANDUM

TO: Members of the House of Delegates of the South Carolina Bar

FROM: Senior Lawyers Division
Catherine H. Kennedy, Secretary

DATE: November 2, 2022

SUBJECT: By-laws Changes for Senior Lawyers Division

The Senior Lawyers Division proposes that its By-Laws be amended to resolve discrepancies and to conform to present practice.

The major changes are:

- To provide for consistent two-year terms for all representatives on the Executive Council.
- To clarify that there are two at-large representatives, each appointed by the President-Elect before becoming President.
- To specify how the representatives to the Board of Governors are chosen.
- To clean up the nominations process.
- To set out the number for a quorum.
- To require that the Executive Council approve expenditures.

We request that these be approved by the House of Delegates for immediate implementation.

**BYLAWS OF THE SENIOR LAWYERS DIVISION
OF THE SOUTH CAROLINA BAR**

Article I

Name and Purposes

Section 1. Name. The Division shall be known as the Senior Lawyers Division of the South Carolina Bar.

Section 2. Purposes. The purposes of this Division shall be the purposes of the South Carolina Bar as stated in its Constitution, namely to uphold the honor of the profession of law, to apply the knowledge and experience of the profession to the promotion of the public good, to encourage collegiality among the members of the South Carolina Bar, to correlate and promote the activities of local senior lawyer organizations in the state, and to maintain relationships with the American Bar Association and such other national groups as are approved by the Executive Council.

-To pursue those purposes, the programs and activities of the Division shall serve the particular interests of senior lawyers and promote the welfare of seniors generally. In serving the interests of senior lawyers the Division will plan and present programs and activities, produce publications of interest to senior lawyers, and coordinate activities for senior lawyers by, for, and with state and national bar associations. To promote the welfare of seniors generally, the Division will study issues of concern to seniors, prepare and present programs and publications designed to explore and develop such issues, advocate appropriately on behalf of such issues, and coordinate and cooperate with other entities interested in such matters.

Article II

Membership

Section 1. Membership. Membership within the Division shall consist of all members of the Bar who are at least sixty (60) years of age. Membership in the Division shall terminate automatically upon such person ceasing to be a member in good standing of the South Carolina Bar.

Article III

Officers

Section 1. The officers of the Division shall be a President, a President-Elect, and a Secretary. The officers shall be nominated and elected, in manner hereinafter provided to hold office for one year beginning July 1st and ending June 30th and until their successors shall have been elected and qualified.

Section 2. At the end of his or her term the President-Elect shall automatically assume the office of President, and thereupon the immediately retiring President shall become and remain a member of the Executive Council for the ensuing year.

Article IV

Duties of Officers

Section 1. President. The President shall be the Chief Executive Officer of the Division during his or her term of office and, in carrying out of his or her administrative duties, shall make all such appointments for the general committees and be possessed of such authority as is customarily associated with such office.

Section 2. President-Elect. Upon the death, resignation, or during the disability of the President, or upon his or her refusal to act, the President-Elect shall perform the duties of the President for the remainder of the President's term, except in case of the President's disability and only during so much of the term as the disability continues.

Section 3. Secretary. The Secretary shall consult with and assist all the officers of the Division in the work of the Division in the manner and to the extent requested. The Secretary shall keep a true record of the proceedings of all meetings of the Division and the Executive Council. The Secretary, in conjunction with the President, as authorized by the Executive Council, shall attend generally to the business of the Division, and he or she shall review the record of all monies appropriated to and expended for the use of the Division. If the Secretary is absent from a meeting, the President shall appoint a member of the Executive Council to perform the duties of the Secretary at that meeting.

Section 4. Administrative Committee. The President, President-Elect, and Secretary constitute the Administrative Committee. If any matter arises which needs to be decided between the next regularly-scheduled meeting of the Executive Council of the Senior Lawyers Division, the Administrative Committee may meet by conference call or in person and take the necessary actions. Any actions taken by the Administrative Committee must be on the Agenda at the next regularly-scheduled meeting of the Executive Council and ratified by the Executive Council.

Article V

Executive Council

Section 1. Functions. The Executive Council shall have the general supervision and control of the affairs of the, subject to provisions of the Constitution and Bylaws of the South Carolina Bar and of the Division.

Section 2. Composition. The Executive Council shall be composed of the President, President-Elect, Secretary, Immediate Past President, two representatives from each of the four judicial regions in the state, ~~two~~ one at large representatives, an out-of-state representative, a representative from the University of South Carolina School of Law and a representative from the Charleston School of Law, and the American Bar Association Senior Lawyers Division Representative when he or she is a member of the South Carolina Bar. The Division's representatives who serve on the Board of Governors shall also serve on the Executive Council if they are not otherwise members.

Section 3. Regional Representative; Residence, Term. There shall be two representatives to the Division Executive Council from each of the four judicial regions, each of whom is hereby designated as a Regional Representative. Each Regional Representative shall be a member in good standing of the Division and shall maintain his or her principal office within the judicial region from which he or she is elected. Each Regional Representative shall serve for a term beginning the first of July in the year in which he or she is elected and ending June 30th two years thereafter. In each odd-numbered year, two Regional Representatives shall be elected from each of the odd-numbered regions; in each even-numbered year, two Regional Representatives shall be elected from each of the even-numbered regions. A Regional Representative shall be limited to two full consecutive terms, except any Regional Representative in office on the date the amended Bylaws are adopted is eligible for one additional term. Any Representative who fails to attend two scheduled Executive Council meetings during any one term of office without obtaining prior approval of the President shall be replaced on the Council as provided in Article VII, Section 6.

Section 4. At Large Representative. There shall be two at large representatives to the Division Executive Council who shall be members in good standing of the Division and shall maintain his or her principal office and/or residency within South Carolina. At Large Representative shall serve a two-year term. Before assuming the office of President, each the President-Elect shall appoint an At Large Representative, whose term will begin on July 1st.

Section 5. Out-of-State Representative. Residence and Term. There shall be an out of state representative to the Division Executive Council who shall be is a member in good standing of the Division and who maintains his or her principal office and/or residency outside of South Carolina. The Out-of-State Representative shall be elected in even-numbered years, to serve a term of two years.

~~In addition to those duties assigned to them by the President, or his or her designated representative, the Out-of-State Representative shall participate at all regularly scheduled meetings/conference calls of the Executive Council, unless excused by the President.~~

Section 6. Law School Representatives. Residence and Term. There shall be a representative to the Division Executive Council from the University of South Carolina School of Law and a representative from the Charleston School of Law, who shall be are members in good standing of the Division and who shall maintain his or her their principal office at the law school that he or she represents. either law school, shall serve on the Division Executive Council. The Law School Representatives shall be elected in odd-numbered years, to serve a term of two years.

~~In addition to those duties assigned to them by the President, or his or her designated representative, the Law School Representatives shall participate at all regularly scheduled meetings/conference calls of the Executive Council, unless excused by the President.~~

Section 7. Duties of Representatives. In addition to those duties assigned to them by the President, Representatives shall participate at all regularly scheduled meetings/conference calls of the Executive Council, unless excused by the President.

Section 8. Term and Removal of Representatives. All Representatives shall serve a two-year term beginning the first of July in the year in which he or she is elected or appointed and ending June 30th two years thereafter. Each Representative shall be limited to two full consecutive terms. All Representatives

must maintain their principal offices in the region they represent for their entire terms. Any Representative who fails to attend two scheduled Executive Council meetings during any one term of office without obtaining prior approval of the President shall be replaced on the Executive Council as provided in Article VII, Section 6. Any Representative who fails to maintain the required qualifications shall be replaced on the Executive Council as provided in Article VII, Section 6.

Article VI

Representation on the Board of Governors and the House of Delegates

Section 1. Representation on the Board of Governors. The Division is entitled to two representatives to serve on the Board of Governors as authorized by the ~~Bar~~ Constitution of the Bar. The President shall serve a two-year term as the Division's representative, beginning the year of assuming the office of President and continuing during his term as Immediate Past President. If there is a vacancy, the replacement and shall be elected to serve the remainder of the representative's term by a vote of two-thirds or more of the Division's Executive Council. The e representatives shall make reports to the Executive Council as requested by the President.

Section 2. Representation on the House of Delegates. The President and Immediate Past President of the Division shall serve on the House of Delegates of the Bar as authorized by the Constitution of the Bar.

Article VII

Election of Officers, Regional Representatives, Out-of-State Representative, and Law School Representatives

Section 1. Notice of Election. ~~Subsequent to the Annual Meeting of the Bar, By September 15,~~ the Secretary shall cause a notice to be published in the publication of the Division or in a general publication of the Bar, or otherwise mailed or communicated to the membership through U.S. mail, email, posting to the Bar Website generally accessible to the membership, or any other method permissible under the South Carolina Bar rules and policies stating that the positions of President-Elect, Secretary, appropriate Regional Representatives, the Out-of-State Representative (if applicable), and the Law School Representatives (if applicable), shall become vacant on June 30th of the following year. This notice shall state that any nominations shall be presented by November 15 to the Chair of the Nominating Committee or to the Division's liaison with the South Carolina Bar.

Section 2. Eligibility. A nominee for any position on the Executive Council Officer must be a member of the Division beginning July 1st next following his or her election. A nominee for Regional Representative must maintain his or her principal office in the judicial region to be represented. A nominee for the Out-of-State Representative must maintain his or her principal office and/or residency outside of South Carolina for his or her entire term. The Law School Representatives must maintain their principal office at ~~either law school~~ the law school that he or she represents for their entire term.

Section 3. Nominating Committee. The Nominating Committee shall be comprised of the President, President-Elect, Immediate Past President, who shall be the Chair, and those Regional Representatives whose Executive Council terms ~~shall~~ expire on June 30th of the following year and who are not eligible for another term or who have advised the President that they will not seek another term. On or before

November 15th of each year, but in any event subsequent to the publication of the notices required by these Bylaws, the Nominating Committee shall meet at a time and place designated by the Chair and shall promptly make nominations by a majority vote for the offices of President-Elect, Secretary, and the appropriate Regional Representatives, and appropriate Out-of-State Representative, and Law School Representatives.

Section 4. Nominating Election Procedure. By December 15, During the month of December or January, the Executive Council shall cause the name of each nominee selected by the Nominating Committee to be published in the publication of the Division or a general publication of the Bar, or otherwise mailed or communicated to the membership through U.S. mail, email, posting to the Bar Website generally accessible to the membership, or any other method permissible under the South Carolina Bar rules and policies. On or before the following January 15February 1st, any ten or more members of the Division in good standing may file with the Executive Council a signed petition nominating a candidate or candidates for any or all offices to be filled. On January 15February 2nd, the nominations shall be closed.

Section 5. Elections.

A. If there is only one nominee for Officers, Regional Representatives, Out-of-State Representative or Law School Representatives, such nominee shall be considered elected automatically at the time the nominations are closed.

B. If more than one person is nominated for any such office or position, by February 1, ballots containing the names of all nominees for each contested position shall be distributed either by mail or electronically to all members who are eligible to vote. All members of the Division are eligible to vote for the offices of President-Elect and Secretary and for the Law School Representatives. Only those members of the Division residing in each Judicial Region are eligible to vote for the persons nominated for the position of Regional Representative from that region. Only those members residing outside of South Carolina are eligible to vote for the Out-of-State Representative. Ballots shall be returned by February 28 to be included in the tally. The nominees who receive the greatest number of votes for each office or position shall be declared elected.

C. The Executive Council shall supervise all such elections and shall determine, announce and publish the results of each election.

Section 6. Vacancies. If any office or position other than that of the President shall become vacant during the period between meetings of the Assembly, the office or position shall be filled by the Executive Council for the portion of the term remaining. If the office of President shall become vacant, the President-Elect shall thereupon become President and shall continue to hold the office of President for a term ending at the same time his or her term as President would have ended had he or she succeeded automatically upon the normal expiration of the preceding President's term.

Article VIII **Committees**

Section 1. Committees. The President shall designate the committees, including their duties and their size, deemed necessary to carry out the purposes of the Division. The Executive Council may each

designate additional committees to carry out specified duties. The committee chairs shall report to the Executive Council at such times as requested by the President.

Section 2. Appointments; Terms. All committee chairs and committee members shall be appointed by the President for term coincident with the term of the President.

Article IX

Meetings

Section 1. Meetings of the Executive Council. The Executive Council shall meet quarterly or as called by the President with at least fourteen days' notice, unless notice is waived by all members of the Executive Council. In addition to its regular meetings, the Executive Council may also transact business and vote by telephone, email, etc.

Section 2. Quorum. Ten members of A majority of the Executive Council shall constitute a quorum for the transaction of all business at any meeting of the Executive Council. Any action may be taken by the Executive Council by majority vote of those present and voting after a quorum has been determined.

Section 3. Rules of Proceeding. The latest edition of Roberts Rules of Order shall govern all meetings of the Assembly and Executive Council.

Article X

Financial Matters

Expenditures shall be in conformity with the budget approved by the Bar and shall be approved by the Executive Council. No individual officer, Regional Representative or member of the Division shall have authority to incur any liability in the name of the Bar or the Division.

Article XI

Reports to the Bar

~~Any action of the Division shall be approved by the Bar before it becomes effective as the action of the Bar.~~ Any resolutions adopted or action taken by the Executive Council may be reported by the President to the Bar for action thereon according to the Constitution and Bylaws of the Bar. Any action of the Division shall be approved according to the Constitution and Bylaws of the Bar by the Bar before it becomes effective as the action of the Bar.

Article XII

Amendments

~~The Division Bylaws may be amended at any meeting of the Executive Council by a vote of two-thirds of the members present and voting, provided any amendments so adopted shall become effective only as provided in the Constitution and Bylaws of the Bar.~~

Article XIII

Gender

Section 1. President, President-Elect and Others. Except where clearly inappropriate, the word "President" as used in the Division Bylaws shall be deemed to include the masculine and feminine genders, and compatible reading shall be given to the words "President-Elect," "Secretary," and "Regional Representative" and all similar terms.

Amended May 2019

Amended July 2021 – (1) Additional representative on the BOG

Amended ?? 2022



South Carolina Bar Balance Sheet - By Entity As of November 30, 2022

	CLE Year To Date 11/30/2022 Current Year Balance	LFCP Year To Date 11/30/2022 Current Year Balance	SC Bar Year To Date 11/30/2022 Current Year Balance	All Programs Year To Date 11/30/2022 Current Year Balance
Assets				
Current Assets				
Cash and Cash Equivalents	2,154,484	2,671,589	5,666,674	10,492,747
Accounts Receivable, Net	12,926	0	(5,652)	7,273
Short Term Investments	0	0	314,547	314,547
Other Current Assets	124,698	117	167,824	292,640
Total Current Assets	2,292,108	2,671,706	6,143,393	11,107,207
Long-term Assets				
Property & Equipment				
Office equipment	0	0	2,458,222	2,458,221
Building	0	0	9,782,615	9,782,616
Land	0	0	1,842,570	1,842,570
Accumulated Depreciation	0	0	(7,620,398)	(7,620,398)
Total Property & Equipment	0	0	6,463,009	6,463,009
Total Long-term Assets	0	0	6,463,009	6,463,009
Total Assets	2,292,108	2,671,706	12,606,402	17,570,216
Liabilities and Net Assets				
Liabilities				
Short-term Liabilities	711,063	16,305	1,539,845	2,267,213
Total Liabilities	711,063	16,305	1,539,845	2,267,213
Net Assets				
Net Assets	1,656,885	2,738,547	12,868,429	17,263,860
Change In Net Assets	(75,840)	(83,146)	(1,801,872)	(1,960,857)
Total Net Assets	1,581,045	2,655,401	11,066,557	15,303,003
Total Liabilities and Net Assets	2,292,108	2,671,706	12,606,402	17,570,216

South Carolina Bar
Statement of Revenues and Expenditures by Entity
As of November 30, 2022

	CLE Year To Date 11/30/2022 <u>Actual</u>	LFCP Year To Date 11/30/2022 <u>Actual</u>	SC Bar Year To Date 11/30/2022 <u>Actual</u>	All Programs Year To Date 11/30/2022 <u>Actual</u>
Revenues over Expenditures				
Revenues				
Contributions	0	0	70	70
Grant Revenues	0	0	88,540	88,540
Program Service Revenue	731,363	0	375,723	1,107,085
Membership Dues	0	0	60,377	60,378
Investment Income	415	1,930	(48,450)	(46,105)
Other Revenue	10,525	39,705	67,634	117,865
Total Revenues	<u>742,303</u>	<u>41,635</u>	<u>543,894</u>	<u>1,327,833</u>
Expenditures				
Direct	22,187	124,781	6,585	153,554
Personnel	428,863	0	1,341,625	1,770,487
Occupancy	51,411	0	242,354	293,767
Professional Fees	7,500	0	102,434	109,933
General and Administrative Expenses	307,003	0	574,117	881,119
Member Benefit Expense	1,179	0	78,651	79,831
Total Expenditures	<u>818,143</u>	<u>124,781</u>	<u>2,345,766</u>	<u>3,288,691</u>
Total Revenues over Expenditures	<u>(75,840)</u>	<u>(83,146)</u>	<u>(1,801,872)</u>	<u>(1,960,858)</u>

South Carolina Bar

SC Bar Revenues and Expenditures - Annual Budget vs Actual

As of November 30, 2022

	Month To Date 11/30/2022	Year To Date 11/30/2022	Year Ending 06/30/2023	
	MTD Actual	YTD Actual	ANNUAL BUDGET	% YTD to Budget
Revenues over Expenditures				
Revenues				
Contributions	0	70	0	0 %
Grant Revenues	17,708	88,540	0	0 %
Program Service Revenue	94,726	375,723	631,500	59 %
Membership Dues				
License fees	70	24,202	4,345,000	1 %
License fees - penalties, NSF, etc.	0	420	0	0 %
Section dues	21,805	35,755	0	0 %
Total Membership Dues	21,875	60,377	4,345,000	1 %
Investment Income				
Interest income	876	9,089	21,000	43 %
Unrealized (gain)/loss	20,571	(57,539)	0	0 %
Total Investment Income all	21,447	(48,450)	21,000	(231) %
Other Revenue				
Rental income	8,844	44,220	107,600	41 %
Royalties	1,087	20,813	21,000	99 %
Section staff support	0	0	74,000	0 %
Other income	976	2,601	5,000	52 %
Total Other Revenue	10,907	67,634	207,600	33 %
Total Revenues	166,663	543,894	5,205,100	10 %
Expenditures				
Direct				
Awards	0	3,490	0	0 %
Scholarships & Awards	0	3,095	0	0 %
Total Direct	0	6,585	0	0 %
Personnel	301,554	1,341,625	3,076,000	44 %
Occupancy				
Equipment & Furniture	5,798	4,929	0	0 %
Repairs & maintenance	4,981	25,932	125,100	21 %
Utilities	8,880	54,968	112,800	49 %
Storage	0	1,466	7,000	21 %
Bond/Insurance	2,902	19,208	28,300	68 %
Depreciation	27,170	135,851	0	0 %
Total Occupancy	49,731	242,354	273,200	89 %
Professional Fees				
Consulting expenses	300	300	0	0 %
Professional Fees	8,143	79,718	166,500	48 %
Legal Fees	0	21,022	0	0 %
Investment fees	273	1,394	0	0 %
Total Professional Fees	8,716	102,434	166,500	62 %
General and Administrative Expenses	139,444	574,117	1,680,501	34 %
Member Benefit Expense				
Formatting	0	3,679	3,500	105 %
Illustrations	300	600	2,400	25 %
Photography	3,981	13,663	25,900	53 %
Publication expense-SC Lawyer	0	27,669	164,800	17 %
Membership benefits	0	33,040	99,000	33 %
Total Member Benefit Expense	4,281	78,651	295,600	27 %
Total Expenditures	503,726	2,345,766	5,491,801	43 %
Total Revenues over Expenditures	(337,063)	(1,801,872)	(286,701)	628 %

South Carolina Bar

CLE Revenues and Expenditures - Annual Budget vs Actual

As of November 30, 2022

	Month To Date 11/30/2022	Year To Date 11/30/2022	Year Ending 06/30/2023	
	MTD Actual	YTD Actual	ANNUAL BUDGET	% YTD to Budget
Revenues over Expenditures				
Revenues				
Program Service Revenue	105,015	731,363	2,664,900	27 %
Investment Income				
Interest income	122	415	0	0 %
Total Investment Income all	122	415	0	0 %
Other Revenue				
Rental income	750	1,150	7,000	16 %
Royalties	0	8,875	105,000	8 %
Other income	0	500	0	0 %
Total Other Revenue	750	10,525	112,000	9 %
Total Revenues	105,887	742,303	2,776,900	27 %
Expenditures				
Direct				
COGS-Printing	7,751	22,187	142,200	16 %
Total Direct	7,751	22,187	142,200	16 %
Personnel	71,088	428,863	1,327,500	32 %
Occupancy				
Equipment & Furniture	156	14,059	0	0 %
Rent/Mortgage	5,300	26,500	63,600	42 %
Repairs & maintenance	3,630	9,405	19,200	49 %
Bond/Insurance	0	1,447	6,700	22 %
Total Occupancy	9,086	51,411	89,500	57 %
Professional Fees				
Professional Fees	0	7,500	15,300	49 %
Total Professional Fees	0	7,500	15,300	49 %
General and Administrative Expenses	42,851	307,003	1,020,900	30 %
Member Benefit Expense				
Formatting	218	217	0	0 %
Photography	0	438	0	0 %
Publication expense-SC Lawyer	191	524	0	0 %
Total Member Benefit Expense	409	1,179	0	0 %
Total Expenditures	131,185	818,143	2,595,400	32 %
Total Revenues over Expenditures	(25,298)	(75,840)	181,500	(42) %

South Carolina Bar
Grants & Other Fund Balances
As of November 30, 2022

	BEGINNING FUND BALANCE 7/1/2022	REVENUE Fiscal YTD	EXPENSES Fiscal YTD	FUND BALANCE 11/30/2022
All Grants				
Ask a Lawyer	53,489	6,250	9,662	50,078
Cy Pres award	165,761	0	0	165,761
Bank of America grant/IOLTA/SC Bar Foundation	0	5,832	5,832	0
Indigent Service fee	50,243	0	0	50,243
Lt. Governors Award	3,799	0	0	3,799
Lawyers Helping Lawyers	5,111	50	0	5,161
LRE	0	75,000	75,000	0
Paralegal Certification	20,576	0	0	20,575
Pro bono	0	1,458	0	1,458
Total All Grants	298,979	88,590	90,494	297,075

South Carolina Bar
Discipline Fund Net Asset Roll Forward
As of November 30, 2022

	BEGINNING FUND BALANCE 7/1/2022	REVENUE Fiscal YTD	FUND BALANCE 11/30/2022
Restricted Programs			
Discipline Fund	9,355	182,180	191,535
Total Restricted Programs	9,355	182,180	191,535

South Carolina Bar
LFCP Restricted Net Asset Roll
As of November 30, 2022

	BEGINNING FUND BALANCE 7/1/2022	REVENUE Fiscal YTD	EXPENSES Fiscal YTD	FUND BALANCE 11/30/2022
LFCP	2,738,547	41,635	124,781	2,655,401
LFCP	2,738,547	41,635	124,781	2,655,401
Total LFCP	2,738,547	41,635	124,781	2,655,401

CLE

South Carolina Bar
CLE Board Restricted Net Asset Roll
As of November 30, 2022

	BEGINNING FUND BALANCE 7/1/2022	REVENUE Fiscal YTD	EXPENSES Fiscal YTD	FUND BALANCE 11/30/2022
CLE	<u>1,656,885</u>	<u>742,303</u>	<u>818,143</u>	<u>1,581,045</u>

South Carolina Bar
LRS Board Restricted Net Asset Roll
As of November 30, 2022

	BEGINNING FUND BALANCE 7/1/2022	REVENUE Fiscal YTD	EXPENSES Fiscal YTD	FUND BALANCE 11/30/2022
LRS	<u>274,378</u>	<u>244,432</u>	<u>74,800</u>	<u>444,010</u>

South Carolina Bar
Sections Fund Balances
As of November 30, 2022

	BEGINNING FUND BALANCE 7/1/2022	REVENUE Fiscal YTD	EXPENSES Fiscal YTD	FUND BALANCE 11/30/2022
Sections				
DISPUTE RESOLUTION	9,222	1,350	187	10,385
CONSTRUCTION LAW	31,818	1,609	500	32,927
CONSUMER LAW	4,555	560	0	5,115
CORP B&S	29,046	1,050	1,296	28,800
CRIMINAL LAW	20,951	1,160	507	21,604
EMPL L/L	6,492	2,052	0	8,544
FAMILY LAW	34,279	4,246	0	38,525
SOLO PRACTITIONERS	57,423	5,050	5,096	57,377
GOV'T L	8,296	1,230	1,000	8,526
HEALTH CARE LAW	14,110	960	847	14,223
MILITARY L	188	1,040	644	584
ENVIRONMENT & NAT'L RESOURCE	12,662	450	0	13,113
REAL ESTATE	48,081	4,020	0	52,100
PROBATE ESTATE	13,571	2,625	1,467	14,728
TAX L	5,271	1,240	0	6,511
TORTS	59,796	2,550	5,527	56,820
TRIAL AA	25,527	3,020	523	28,024
WORKERS' COMP	13,273	2,360	0	15,634
CIVIL RIGHTS	43	700	0	742
Total Sections	394,604	37,272	17,594	414,282

South Carolina Bar
Senior Lawyers Div. Revenues and Expenditures - Budget vs Actual
As of November 30, 2022

	Month Ending 11/30/2022			Year To Date 11/30/2022			
	MTD Actual	MTD BUDGET	MTD Budget Diff	YTD Actual	YTD Budget	YTD Budget Diff	Budget % Var
Revenues over Expenditures							
Expenditures							
Direct							
Scholarships & Awards	0	0	0	2,500	0	(2,500)	(100) %
Total Direct	0	0	0	2,500	0	(2,500)	(100) %
General and Administrative Expenses	(219)	5,192	5,411	13,587	25,958	12,371	48 %
Member Benefit Expense							
Photography	0	0	0	400	0	(400)	(100) %
Total Member Benefit Expense	0	0	0	400	0	(400)	(100) %
Total Expenditures	(219)	5,192	5,411	16,487	25,958	9,471	36 %
Total Revenues over Expenditures	219	(5,192)	5,411	(16,487)	(25,958)	9,471	36 %

South Carolina Bar

Young Lawyers Division Revenues and Expenditures - Budget vs Actual

As of November 30, 2022

	Month Ending 11/30/2022			Year To Date 11/30/2022			
	MTD Actual	MTD BUDGET	MTD Budget Diff	YTD Actual	YTD Budget	YTD Budget Diff	Budget % Var
Revenues over Expenditures							
Revenues							
Investment Income							
Interest income	0	0	0	27	0	27	(100) %
Total Investment Income all	0	0	0	27	0	27	(100) %
Total Revenues	0	0	0	27	0	27	(100) %
Expenditures							
Direct							
Scholarships & Awards	0	0	0	444	0	(444)	(100) %
Total Direct	0	0	0	444	0	(444)	(100) %
Occupancy							
Equipment & Furniture	0	0	0	359	0	(359)	(100) %
Storage	0	583	583	1,466	2,917	1,451	50 %
Total Occupancy	0	583	583	1,825	2,917	1,092	37 %
General and Administrative Expenses	3,711	15,638	11,926	23,113	78,187	55,074	70 %
Member Benefit Expense							
Photography	0	0	0	299	0	(299)	(100) %
Total Member Benefit Expense	0	0	0	299	0	(299)	(100) %
Total Expenditures	3,711	16,221	12,509	25,681	81,104	55,423	68 %
Total Revenues over Expenditures	(3,711)	(16,221)	12,509	(25,654)	(81,104)	55,450	68 %

**South Carolina Bar
Senior Lawyers Division Pro Bono Award**

AWARD: The purpose of this award is to recognize outstanding pro bono contributions of members of the SC Bar Senior Lawyers Division. The recognition focusses on the improvement of the civil legal system and the legal profession through *pro bono publico* service to those unable to afford the services of an attorney. There will be one award per judicial region. The awards are presented annually by the Division at a suitable event.

AWARD CRITERIA: The nominee must be a member in good standing with the SC Bar, be eligible for membership in the Senior Lawyers Division (Bar members 60 years of age and older) and have excelled in one or more of the following ways:

1. Been instrumental and dedicated to the delivery of civil legal services to the poor through direct service or representation.
2. Been instrumental and dedicated to the delivery of civil legal services to the poor through development of a pro bono project for a bar association or a community organization.
3. Contributed significant work through the SC Bar Pro Bono Program or a similarly situated organization. This is not necessarily tied to any specific number of hours.
4. Performed a most significant civil pro bono activity which resulted in satisfying unmet needs or extended services to underserved persons or resulted in smooth, effective and a more efficient delivery of services.
5. Successfully litigated pro bono cases that favorably affected the provision of quality legal services to the unrepresented or poor.

THE AMERICAN BAR ASSOCIATION'S LAW DAY 2022 THEME

The Law Day 2022 theme is Toward a More Perfect Union:
The Constitution in Times of Change

Open to all 9th, 10th, 11th and 12th Grade Public, Private and Homeschooled Students

The Constitution is a dynamic document, as it not only outlines a blueprint for government, but also delegates power, articulates rights, and offers mechanisms for change. It is neither perfect, nor exhaustive, as our nation's history makes clear. Legislation, court rulings, amendments, lawyers, and "we the people" have built upon those original words across generations to attempt to make the "More Perfect Union" a reality. That effort continues today, as contemporary leaders and everyday citizens raise their voices as loud as ever to fulfill the promise of the Constitution. Defining and refining those words of the Constitution might be our oldest national tradition, and how each of us works—together—toward a more perfect Union.

Each student participant must write an essay of 1,000 words or less on this topic:

Discuss the role of the Constitution in achieving the goal or outcome of producing a "more perfect union" as expressed in the Preamble.

There are no written materials for this item.

Report of the President

January 19, 2023

J. Hagood Tighe

SC Bar Programs and Services

Communications

The Communications Division in partnership with SC Bar divisions, sections, committees, and leadership continues to highlight across digital and print channels, ways lawyers positively impact South Carolina through the “Raising the Bar” campaign. Since January 2022, there have been 72 posts to social media channels and 19 news releases. Visit rtb.scbar.org to see stories and nominate a colleague.

The SC Bar’s Instagram account launched in January has grown to 950 followers. Top recent posts include Adoption Day, congratulations to Judge Michelle Childs, and spotlight on Justice Kaye Hearn.

Other highlights include the Solo Small Firm September feature, Celebrate Palmetto Pro Bono in October, Salute to Veterans in November and Convention spotlights on LinkedIn.

The Bar’s **LinkedIn page** has grown to 2,682 followers with a focus on member spotlights, professional development and CLE information in an engaging way including book author videos.

Other key projects include rebranding the Lawyers Helping Lawyers free counseling sessions to Take 5 for Wellness, working with the YLD to activate the disaster legal services hotline, supporting leadership in executive director search messaging and communications needs.

Continuing Legal Education

The CLE Division continues to offer Bar members multiple opportunities to attend high quality and affordable live and live webcast programs, as well as hundreds of on-demand and telephone-based seminars. While most programs originate at the SC Bar Conference Center in Columbia, many programs are also broadcast to satellite locations around the state, giving local attorneys the opportunity to obtain live, in-person credits. In addition, the Division either has or soon will hold live seminars in Charleston, Spartanburg, and Myrtle Beach.

During the May-December 2022 period, the Division has offered 36 live and live webcast seminars on a variety of substantive and skills-based topics and featuring more than 350 speakers. The Division added 33 on-demand programs to its catalog of more than 680 total offerings.

The Division also continued its strategic partnerships with Bar Sections, Committees and Divisions, as well as with legal organizations such as the American Board of Trial Advocates, the SC Association of Criminal Defense Lawyers, the American Academy of Matrimonial Lawyers, the American College of Trial Lawyers, and the Federal Bar Association.

The CLE Big Ticket continues to grow in popularity among members, allowing them to save hundreds of dollars each year with an all-inclusive subscription to Division-sponsored live and on-demand programs. Currently, there are more than 950 subscribers, up from 685 this time last year.

CLE Publications

The following titles were published from May – December 2022:

- *The Briefcase Lawyer; Essential Information for Every Practitioner, Second Edition*
- *How to Try A Simple Auto Wreck Case: The Basics from Start to Finish*
- *Insurance Bad Faith: A Primer on the Law in South Carolina*
- *South Carolina Construction Law Desk Book, Second Edition*
- *South Carolina Crimes: Elements and Defenses, Second Edition*
- *South Carolina Equity: A Practitioner's Guide, Second Edition*
- *South Carolina Rules Annotated 2022*

Two titles are currently at the printer, and three active formatting and editing projects are underway.

Book sales from events and vendor opportunities:

Sales from the 2022 After-Thanksgiving Book Sale grossed approximately \$22,800

Convention

- The 2023 Convention includes 29 CLE seminar offerings.
 - New to Convention this year: Keynote Speaker Adam Liptak, US Supreme Court Correspondent for The New York Times - session Thursday afternoon
 - New to the Convention this year: Seminar on Running for Judge and Political Office on Thursday 1-5 pm.
- Social/ticketed events:
 - Friday's Plenary Lunch will include updates from President Hagood Tighe, welcome of new Bar Executive Director, Emma Dean, along with presentations from the Bar Foundation.
 - The SC Supreme Court and Court of Appeals will host tours for attendees on Friday afternoon.
 - The Bar's Civil Rights Section is sponsoring a walking tour of downtown Columbia (Main Street Civil Rights Tour) on Saturday afternoon.
 - Saturday night will feature a wine tasting and dinner with well-known wine expert Jean-Pierre Chambas at Market on Main (thanks to Mitch Willoughby).
- Convention registration numbers as of December 20 were: 476 attorneys, 164 speakers, 152 judges, 83 guests, and 66 sponsors and exhibitors.

Government Affairs

The Government Affairs Division continues to be active in State House matters, monitoring and advising on a variety of issues important to the legal community. It also serves as a resource for South Carolina's lawyer legislators.

Lawyers Helping Lawyers

Education and Outreach Coordinator Michael Abro has presented 20 CLE seminars since May. More than 700 members of the SC Bar have participated in these seminars. On December 2, Michael, Beth Padgett,

and a panel of lawyers presented a CLE on Burnout and Recovery at MUSC's 39th Annual Judges and Attorneys Substance Abuse and Ethics Seminar.

Michael has coordinated Mental Health First Aid (MHFA) trainings at three locations across the state since May. There is a MHFA training scheduled for February in Aiken.

Michael and Beth, with the assistance of Law Student Intern William Koontz and Clinical Mental Health Counseling Intern for Lawyers Helping Lawyers Briana Suhr, have implemented a Stress and Burnout Engagement Group curriculum for students at both the University of South Carolina School of Law and the Charleston School of Law.

Michael, along with William Koontz and Briana Suhr, participated in a well-being resource information session at the University of South Carolina School of Law.

Michael provided a presentation related to professional identity development and well-being for students at the Charleston School of Law.

Beth and Michael presented a lecture on law school stress and the Character and Fitness process during a professionalism series session at the Charleston School of Law. Beth and Michael also presented a lecture on the Law School Survey and the Character and Fitness process for Professor Michelle Condon's Externship Class at the Charleston School of Law.

Beth and Michael developed a Lawyers Helping Lawyers/Law Student Liaison Initiative and have been working to implement this initiative at both the University of South Carolina School of Law and the Charleston School of Law.

Beth completed another Mindful Stress Management series at CSOL in October. This is the 10th year this series has been offered at CSOL.

Beth kept regular office hours at USC Law and CSOL again this semester, monitoring students with Character and Fitness issues and assisting with stress and referrals for mental health or substance use issues.

The 5 Free Counseling Sessions has been rebranded as Take 5 for Wellness. New cards with the toll-free number and staff contacts are available.

Brie Porter, LHL's first Administrative Coordinator, was hired in June. She has contributed greatly to our productivity and capacity to serve clients.

Briana Suhr joined us as an intern from the USC School of Counselor Education. She is working towards an Education Specialist Degree and will graduate in May. She will return for the Spring 2023 semester and continue her support of law students and other LHL programming.

William Koontz, our 3L intern from USC SOL, will continue working with LHL during the Spring 2023 semester.

Law Related Education Division

The SC Bar's Law Related Education (LRE) is a service arm of the Bar that, since the mid-1980s, has provided teachers, school resource officers, juvenile justice personnel, and lawyers with resources, materials, and technical assistance to teach law and citizenship education.

Middle School Mock Trial: Regional and state competitions moved to an in-person format for the 2022 season. The regional competitions were held in November with 26 teams competing across three regions to include Lexington, Columbia, and Georgetown. The state competition was held December 2 & 3 in Columbia. J.E.T. Middle School in Edgefield County won the state competition, and the first runner-up was Bob Jones Academy of Greenville. There were 99 volunteer judges and 42 attorney coaches.

High School Mock Trial: There are 45 High School Mock Trial teams registered to compete in person throughout the state. LRE is planning for three to four regional competitions February 25, 2023, and a two-day in-person state competition on March 11 and March 18, 2023.

We the People: The Citizen and the Constitution: Four schools competed in the first in-person competition since December 2019. River Bluff High School won its sixth State Championship title. However, the team elected not to participate in the National Finals in April 2023, due to conflicts with other school events. The first runner-up was Carolina Forest High School and will represent South Carolina at the National Finals. The Middle School State champion was Palmetto Academy of Learning and Success of Myrtle Beach for a third year in a row and the first runner-up was Southeast Middle School. There were 27 volunteer judges including 24 Bar members.

Trainings: The Division hosted webinar and in person trainings for Mock Trial. School Resource Officer trainings were conducted at the SC Criminal Justice Academy.

Other: After 20 years in Law Related Education, Director Cynthia H. Cothran is leaving the Bar to pursue other interests. Donald Lanier has been named interim LRE Director.

Media and IT Services

Media/IT:

- Taped/Broadcast/Streamed over 30 CLE programs including Tri-State Environment Law, Al Todd Intensive, Inn of Courts Mock Trial, and NC/SC Construction Update
- Edited promotional/hype video for (then) incoming Bar President Hagood Tighe. Video premiered at House of Delegates meeting, which we also provided A/V support
- Began working with CLE on A/V needs for 2023 Convention

Information Technology (IT):

- Aided in transition from former ED David Ross to current interim ED Rob Wilcox, including creating Bar profile, access to pertinent executive files, etc.
- Created a data port in lobby for new Security Guard station
- Setup three new computers to replace outdated workstations
- Switched to new spam/phishing monitoring system.

Membership Services

457 New Bar Members have been admitted since the May House meeting. The Young Lawyers Division hosted new admittee receptions in June and December.

License Fees – Half-year license fees were collected over the summer and 2023 license fees are currently being processed.

SC Certified Paralegal Program

There are currently 79 SC Certified Paralegals. Nine local associations have been approved as accredited sponsors for CPE.

The Board has developed a proposal for expanded roles for SC Certified Paralegals.

Practice Management Assistance Program

The Practice Management Assistance Program (PMAP) assisted lawyers with one-one consultations on a wide variety of practice management and technology related questions, including firm opening/closing. PMAP contributed Bar Bytes columns, responded to SSF listserv questions, and shared more than 1,020 tips for @SCBar_PMAP Twitter with 51,074 views recorded. PMAP manages the Bar Book Exchange which coordinated donations of 3,821 used law books. 42 practice management books were loaned from the Lending Library. PMAP posted 73 free vendor webinars and updated webpages. Member Benefits Taskforce work included consulting with two IP lawyers (volunteers from IPI Committee) about Bar IP and vendor contracts; also working with Communications Director exploring outside association vendor management providers for possible solutions. Enforced Bar contractual terms with vendors, notifying several of lapses or violations.

PMAP managed Fastcase and answered member questions, promoted Fastcase tips and training webinars, and coordinated with Fastcase on quality control and marketing.

Pro Bono Program

The Pro Bono Program is undergoing a reorganization and a review of the programs offered. Some programs may be sunset or the focus of them changed.

Palmetto Volunteer Lawyer Project

The Palmetto Volunteer Lawyer Project continues to be available for Bar members to review available pro bono cases online. Currently, the Pro Bono Program, Charleston Pro Bono Legal Services, Root & Rebound SC, South Carolina Coalition Against Domestic Violence and Sexual Assault (SCCADVASA) and the Midlands Fatherhood Coalition post cases on the site. By partnering with organizations around the state, the Palmetto Volunteer Lawyer Project brings attention to the organizations and their needs for pro bono attorneys and provides a wide selection of pro bono opportunities to Bar members.

The Palmetto Volunteer Lawyer Project does not require registration, a username, or a password. Instead, available cases can be viewed by simply going to the Pro Bono Program page on the Bar website. In addition, available cases can be "embedded" on other websites. For instance, Greenville cases are currently embedded on the Greenville Bar website and Charleston Pro Bono Legal Services cases are embedded on their website. The Family Law Section and the Probate, Estate Planning and Trust Section will be entertaining requests by the Pro Bono Program to have available cases in those practice areas embedded on their section pages. This will increase opportunities for Bar members to view available cases.

Pro Bono Calls/Referrals

Since the previous report in May, the Program has received 3067 calls and referred 29 cases to volunteer attorneys. Going forward, the emphasis will move from direct placement to technical support of volunteers.

South Carolina Supreme Court Honor Roll

The Pro Bono Program is compiling the list of attorneys who have reported, or will report with their license fee payments, their pro bono hours. Those names will be forwarded to the S.C. Supreme Court for inclusion on the 2022 Honor Roll.

Wills Clinics

The Pro Bono Program continues to partner with the USC School of Law Pro Bono Program to provide wills and powers of attorney for indigent citizens around the state by way of the Palmetto Leader bus. Clinics have been held in Union and Bishopville. Not only has the bus allowed for further outreach to clients, but it has also allowed SC Bar members in these locations an opportunity to provide pro bono legal assistance. Clinics also resumed at local senior centers in the Midlands.

South Carolina Free Legal Answers

The SC Free Legal Answers website continued to see heavy traffic from South Carolinians seeking answers to civil legal questions. In the fall, the decision was made to put the website in a suspended status to allow time for the technical support at the ABA to make some changes to the site to address some technical issues and to allow time to try and clear the backlog of questions. This program will be reviewed to determine if it should be continued.

Public Services

The Bar offers a variety of free, public programs designed to connect volunteer attorneys with their communities. Cindy Coker leads this division, which in addition to the Pro Bono Program, includes Law Talk, the Law School for Non-Lawyers programs, the Client Assistance Program, the Resolution of Fee Disputes Board, the Lawyers' Fund for Client Protection Program, and the Lawyer Referral Service.

Law School for Non-Lawyers – Eight-week legal education course covering 16 common legal topics. The course is hosted at technical colleges and open to enrolled students. Tuition is subsidized through an IOLTA grant and includes a textbook. All classes are taught by SC licensed volunteer attorneys and judges.

- Fall 2022 – Five technical colleges hosted the LSFNL course. 10 counties were served. 83 students were enrolled.
- Spring 2023 – Eight technical colleges have committed to hosting LSFNL, which will serve 23 counties. Student enrollment is estimated at 120. The textbook is currently being revised for the 2023 academic year.

Law Talk – Free legal education events open to the public. Events are hosted at libraries, schools, churches, and community centers. Hosting venue requests the legal topic based on patron interests. All speakers are SC licensed volunteer attorneys and judges.

- Fall 2022 – 114 Law Talk sessions were scheduled across 14 counties, with total attendance of 742.
- Spring 2023 – 165 Law Talk sessions are planned across 19 counties.

The Resolution of Fee Disputes Board currently has 83 cases pending. Stephen Cox is the new chair for the 16th circuit. Sonny Barnes is retiring as the chair of the 12th circuit. Petition for rules changes is before

the Supreme Court.

Client Assistance Program

Received approximately 135 phone calls, emails, and letters per month from members of the public
Coordinated with USC Law students to answer letters from the prison population

Unauthorized Practice of Law

Reviewed 21 UPL claims and sent to appropriate enforcement agency if appropriate
A member of the Education Sub Committee spoke at a meeting of Beginnings SC (a special education advocacy group)
Developing plan to establish UPL office at Attorney General's Office
Developing writing and speaking projects

The Lawyer Referral Service

Between January 1 and December 18, 2022, the LRS has made 32,686 referrals. This is an increase of 36% over 2021. The largest number of referrals were made in Personal Injury/Property Damage (which includes Workers Comp) cases (7747 referrals), Family Law (5574 referrals) and Real Estate/Landlord Tenant (5153 referrals).

The Public Services Director continues to work with the Elder Law Committee on revisions to the Health Care Power of Attorney statute. In addition, the DR Section had worked on proposed changes to the S.C. Arbitration act which were approved by the Board of Governors, pre-COVID. Working with the Government Relations Director, the PSD and Section Council leadership will work to find a sponsor for the proposed changes.

Risk Management and Mentoring Program

Nichole Davis did a presentation on mentoring and ethics at the 37th ABA National Client Protection Forum in Baltimore on June 4. She has since been appointed to serve on the planning committee for the 2023 ABA National Conference on Professional Responsibility in New Orleans.

On July 8, Nichole hosted a mock trial at the Richland County Courthouse for children from the RAM Foundation. Judge Michelle Hurley presided over the mock trial. Judge Casey Manning gave each child a gold dollar and offered words of encouragement. Assistant Solicitor Osbelkis Perez spoke with the children about the importance of making wise choices.

In November, Nichole led an ethics presentation at the 2022 Virtual SC Local Government Attorneys' Institute.

Lawyer Mentoring Program

Nichole hosted two Lawyer Mentoring Workshops. One was held in July in Greenville at the Loft at Soby's. The other was held in August in Charleston at Nelson Mullins.

Nichole has been working with the new admittees from November to get them enrolled in the Lawyer Mentoring Program. She conducted a mentoring training on November 8 at Smith Robinson in Columbia.

Committees, Divisions and Sections

The Animal Law Committee hosted a pet supplies drive for local shelters.

The Ethics Advisory Committee is working on a few ethics advisory opinions.

The Judicial Independence and Impartiality Committee submitted a response that was published in *The State*, *The Island Packet* and *The Sun News* in August regarding the judicial system and the Murdaugh case.

In partnership with the Board of Governors' Public Relations Committee, the Committee wrote a [factsheet on judicial elections](#) that was published on the SC Bar website available via [a pdf for download](#).

The Intellectual Property and Innovation Law Committee met in September and October with guest speakers and an in-meeting CLE in November.

The International Law Committee has been working with teams for USCL and CSOL for training for the International Commercial Arbitration Moot Court Competition in Austria.

The Lawyers' Fund for Client Protection Committee received 63 claims; approved 52 claims for a total of \$196,870.78; denied 14 claims; have 66 pending claims Submitted a petition to the Supreme Court to increase the membership in Committee to 14 members Welcomed 7 new Committee members.

The Memory Hold the Door Committee selected members to be honored in May 2023.

The Practice and Procedure Committee has several proposed rule changes under review and will present at the January House meeting.

The Professional Responsibility Committee is working on several proposals. A proposal on keyword advertising will be presented at the HOD meeting in January.

The Technology Committee met in May, August, and November at which national technology experts were invited to speak by the PMAP Director.

The Civil Rights Section developed a CLE for the SC Bar Convention and sponsored a historical walking tour. It also has reached out to law student Civil Rights groups, coordinated with Judge Lydon to present "Civil Rights Litigation Law" CLE, will Sponsor a social hour after CLE, and is working on future CLE projects and other events.

The Construction Law Section hosted the joint NC/SC Construction Law Conference.

The Corporate Law Section hosted networking events with the law school.

The Employment Law Section co-sponsored a joint NC/SC conference.

The Environmental Law Section hosted a conference in Charleston.

The Health Care Law Section hosted a networking event.

The Military Law Section hosted a networking event in honor of Veterans Day with service members.

and the Veterans Law Society from USC Law.

The Solo and Small Firm Section worked with the Communications Division on "Solo & Small Firm September," which highlighted small firm lawyers in Bar social media in September. The Section CLE was held December, co-hosted by the Technology Committee. The 2022 SSF Section Award was given to the Law Office of Sean M. Wilson, LLC. Council elections were held in December with two new members added. Thomas Andrews was elected 2023 Chair.

The Tax Law Section co-sponsored a program in conjunction with the AI Todd Workshop.

The Senior Lawyers Division:

- Conducted Annual Law Day Essay Contest;
- Selected SLD Pro Bono Award Recipient;
- Hosted Nifty Fifty lunch recognizing the class of 1972 in September;
- Hosted a fall retreat; and
- Coordinated a cruise to Croatia for May 2023.

The Young Lawyers Division

- Activated a disaster legal services hotline with the ABA and SC Legal Services to help Hurricane Ian survivors in Horry, Georgetown and Charleston counties;
- Hosted the Feeding Frenzy, Voices Against Violence drive, backpack drive, toy drive for Original Six Foundation, necessities drive for domestic violence shelters and Grady Anthony Teddy Bear Drive;
- Held networking events in the 4th, 5th, 6th Circuits;
- Participated in iCivics Day, Constitution Day, Cocky's Reading Express and Lights at the Zoo; and
- Hosted Wills Clinics and a Family Law Bootcamp during Pro Bono Month.

There are no written materials for this item.

There are no written materials for this item.

TO: House of Delegates
FROM: Family Law Section
RE: Proposal to Amend Section 20-4-70(B)

Orders of Protection (OOP) are Orders issued by Family Court Judges and Magistrates that provide for restraining orders, but the OOP itself triggers criminal action if violated, like a condition of bond. Police will arrest a person found to be in violation of an OOP without first securing a bench warrant. This is not true of Motions for Temporary Relief issued in the Family Courts. Most Law Enforcement officials when called to address a violation of a Temporary Order, whether it is a restraining order being violated or not, refer the parties to Family Court. Police generally will not arrest on a Family Court Temporary Order without a bench warrant. OOP's are replaced by Temporary Orders as soon as a party files an action in Family Court and a Temporary Hearing is held. While Judges will frequently incorporate the OOP restraining orders into the new Temporary Order, it loses the criminal aspect of the violation. This may put victims of domestic violence at risk once again.

SECTION 20-4-70. Duration of order of protection; modification of terms.

(A) An order of protection issued under Section 20-4-60 must be for a fixed time not less than six months nor more than one year unless the parties have reconciled as evidenced by an order of dismissal and may be extended or terminated by order of the court upon motion by either party showing good cause with notice to the other party. A respondent has the right to a hearing on the extension of an order issued pursuant to this section within thirty days of the date upon which the order will expire. If the parties reconcile, the issuing court may grant an order of dismissal without a hearing if the petitioner receiving the order of protection to be dismissed appears personally at the offices of the issuing court, shows proper identification, and signs a written request to dismiss based on the reconciliation.

(B) Provisions included in an order of protection granting relief pursuant to Section 20-4-60(C) must be enforced until further order of the court following the issuance of the order unless, before the expiration of the period, the court has scheduled a hearing pursuant to the filing of an action for divorce or separate support and maintenance to determine the temporary rights and obligations of the parties with respect to support of a spouse or children, custody and visitation, or the distribution of personal property. If the hearing has been scheduled, relief granted under Section 20-4-60(C) remains in effect ~~despite the court issuing a written order resolving the temporary issues unless the Court specifically vacates the order of protection. At the hearing, should the Court vacate the order of protection, the court may specify that all or some of the provisions of the order of protection are incorporated and adopted in its order resolving the temporary issues.~~

Deleted: until an order pursuant to the hearing is issued by the court.

(C) The family court may modify the terms of any order issued under this section.

(D) An order of protection issued by a magistrate expires as provided under the terms of the order or upon the issuance of a subsequent order by the family court, whichever occurs first.

MEMO

TO: South Carolina Bar Board of Governors

FROM: South Carolina Bar Diversity Committee

RE: Proposed Amendment to the South Carolina Bar Standards of Professionalism

The South Carolina Bar promulgated the Standards of Professionalism (Standards) on June 3, 1993. The Standards are “guides and goals for lawyers in the conduct of their professional lives at the Bar. They are to always be construed and consistent with the duty to reasonably and effectively represent the client.” A violation of these standards **does not** give rise to a cause of action or a presumption that a legal duty has been breached. The Standards are only to provide guidance for how lawyers should conduct themselves, with professionalism and civility.

The current Standards (attached) do not do not contain any anti-bias or anti-prejudice principles or considerations. Lawyers have been given a high level of respect, privilege, status and responsibility. Thus, the public rightfully has high expectations of lawyer conduct and professionalism. The current Standards should be updated to reflect the diversity of our profession and the community and clients we serve and represent.

Further, As the Bar’s recent survey has revealed, a notable number of Bar members report having experienced bias based on race, sexual orientation, age, religion, and other factors while practicing law. More significantly, survey respondents report at least 5,155 instances of witnessing such treatment in the practice of law. Bigotry and mistreatment of others can only thrive when passively ignore it. Amending the Standards enables lawyers to no longer be bystanders to inappropriate conduct by colleagues and affirmatively states that the Bar supports lawyers in their efforts to address it.

The Committee believes amending the Standards is necessary to our overall goal of encouraging and empowering lawyers to acknowledge discrimination and bias in the legal community, when it occurs.

Topic: **Proposal to Amend the South Carolina Bar Standards of Professionalism**

Explanation:

1. **Proposal:** to amend the current South Carolina Bar Standards of Professionalism to include anti-bias and anti-prejudice considerations
2. **Background:**
 - a. The South Carolina Bar promulgated the Standards of Professionalism (Standards) on June 3, 1993, by a vote of the House of Delegates approving a proposal from the Professionalism Committee (predecessor of the current Professional Responsibility Committee).
 - b. The Standards are “**guides and goals for lawyers** in the conduct of their professional lives at the Bar. They are to always be construed and consistent with the duty to reasonably and effectively represent the client.”
 - c. A violation of these standards **does not** give rise to a cause of action or a presumption that a legal duty has been breached.
 - d. The Standards are only to provide guidance for how lawyers should conduct themselves, with professionalism and civility.
3. **Purpose:**
 - a. The current Standards do not contain any anti-bias or anti-prejudice principles or considerations.
 - b. Lawyers have been given a high level of respect, privilege, status and responsibility. Thus, the public rightfully has high expectations of lawyer conduct and professionalism.
 - c. The current Standards should be updated to reflect the diversity of our profession and the community and clients we serve and represent.
4. **Other Jurisdictions:** Several states have a variety of anti-bias and anti-prejudice language in their Standards or Guidelines of Professional Conduct.

5. **Proposed Amendment to the Standards:**

Principle 6: A lawyer should treat all persons with dignity and respect and avoid all rude, disruptive and abusive behavior and should, at all times, act with dignity, decency and courtesy consistent with any appropriate response to such conduct by others and a vigorous and aggressive assertion to appropriately protect the legitimate interests of a client.

6.1 A Lawyer should refrain from rude, disruptive, disrespectful and abusive behavior consistent with this principle.

6.2 A lawyer should encourage support personnel to refrain from all rude, disruptive, disrespectful and abusive behavior consistent with this principle.

6.3 A Lawyer should not engage in unjust or inappropriate prejudicial treatment of others based on race, gender identity, age, national origin, religion, sexual orientation, disability,

or other classifications protected by law while engaging in the practice of law; and Lawyers should work toward the elimination of unjust or inappropriate bias in all aspects of the justice system.

6.4 A lawyer should never attempt to take advantage of, harass or intimidate another lawyer on account of race, gender identity, age, national origin, religion, sexual orientation, disability, or other classifications protected by law.

6.5 A lawyer should address unjust or inappropriate bias or prejudice by another lawyer or by a judge and should take appropriate steps to discourage an occurrence of such behavior in the future.

6.6 A lawyer should refrain from using language or committing acts which have the effect of manifesting unjust or inappropriate bias or prejudice against an individual person including another lawyer, judicial officer, staff member, client, party, or member of the public on the basis of race, gender identity, age, national origin, religion, sexual orientation, disability or any other classifications protected by law.

6.7 A lawyer should seek out opportunities to use the lawyer's knowledge, skill, and influence to confront and change institutional and situational injustice based on a person's or group's race, gender identity, age, national origin, religion, sexual orientation, disability or and other classifications protected by law.

I am proposing a number of amendments to the proposed 6.3, 6.4, 6.5, 6.6, and 6.7 Standards of Professionalism.

Each of my proposed amendments is severable and should be considered individually.

I propose to amend Proposed Standard 6.3 as follows:

- Remove the phrase “unjust or inappropriate” before the words “prejudicial treatment.”

RATIONALE: All prejudicial treatment is unjust and inappropriate. If we carve out exceptions for pet social causes, others can claim the same for their own causes. This can lead to no end of the evisceration of this principle.

I propose to amend proposed Standard 6.3 as follows:

- Remove the phrase “unjust or inappropriate” before the words “in all aspects of the judicial system.”

RATIONALE: All prejudicial treatment is unjust and inappropriate. If we carve out exceptions for pet social causes, others can claim the same for their own causes. This can lead to no end of the evisceration of this principle.

I propose to amend Proposed Standard 6.3 as follows:

- Add the words “sex, caste, educational background, economic status” after the word “disability.”

RATIONALE: Sex is different from the subjective term “gender identity.” I am not seeking to remove gender identity. Caste discrimination is a serious problem. Poverty is often a more serious impediment to success than many of the other listed classifications.

I propose to amend Proposed Standard 6.5 as follows:

- Remove the phrase “unjust or inappropriate” before the words “by another lawyer.”

RATIONALE: All prejudicial treatment is unjust and inappropriate. If we carve out exceptions for pet social causes, others can claim the same for their own causes. This can lead to no end of the evisceration of this principle.

I propose to amend Proposed Standard 6.6 as follows:

- Change the word “effect” to “intent.”

RATIONALE: Proscribing language or conduct which has a supposed prejudicial effect, when there is not actual legal discrimination, is an impossible test to meet. There are too many people who are offended by everything and this amendment is aimed at preserving free discourse.

I propose to amend Proposed Standard 6.6 as follows:

- Eliminate the phrase “unjust or inappropriate.”

RATIONALE: All prejudicial treatment is unjust and inappropriate. If we carve out exceptions for pet social causes, others can claim the same for their own causes. This can lead to no end of the evisceration of this principle.

I propose to amend Proposed Standard 6.6 as follows:

- Add the words “sex, caste, educational background, economic status” after the word “disability.”

RATIONALE: Sex is different from the subjective term “gender identity.” I am not seeking to remove gender identity. Caste discrimination is a serious problem. Poverty is often a more serious impediment to success than many of the other listed classifications.

I propose to strike Proposed Standard 6.7 in its entirety.

RATIONALE: This states in effect that a lawyer is unprofessional if he or she has a conservative political orientation. This is repugnant. A lawyer has a right to oppose these causes, at least in part, and still be professional. What does “situational injustice” even mean?

J. Leeds Barroll
11th Circuit Delegate

STANDARDS OF PROFESSIONALISM

STATEMENT OF PRINCIPLES

- 1. Principle:** A lawyer should revere the law, the judicial system and the legal profession and should, at all times in the lawyer's professional and private lives, uphold the dignity and esteem of each, and exercise the right to improve it.
- 2. Principle:** A lawyer should further the legal profession's devotion to public service and to the public good.
- 3. Principle:** A lawyer should strictly adhere to the spirit as well as the letter of the Rules of Professional Conduct, to the extent that the law permits, and should, at all times, be guided by a fundamental sense of honor, integrity and fair play.
- 4. Principle:** A lawyer should not knowingly misstate or improperly distort any fact or opinion.
- 5. Principle:** A lawyer should conduct himself or herself to assure the just, prompt and economically efficient determination and resolution of every controversy consistent with thoroughness and professional preparation.
- 6. Principle:** A lawyer should avoid all rude, disruptive and abusive behavior and should, at all times, act with dignity, decency and courtesy consistent with any appropriate response to such conduct by others and a vigorous and aggressive assertion to appropriately protect the legitimate interests of a client.
- 7. Principle:** A lawyer should respect the time and commitments of others.
- 8. Principle:** A lawyer should be diligent and punctual in communicating with others and in fulfilling commitments.
- 9. Principle:** A lawyer should exercise independent judgment without compromise of a client and should not be governed by a client's ill will or deceit.
- 10. Principle:** A lawyer's word should be the lawyer's bond.

These standards of professionalism are guides and goals for lawyers in the conduct of their professional life at the Bar. They are to always be construed and consistent with the duty to reasonably and effectively represent the client.

Violation of a guideline, principle or standard should not give rise to a cause of action nor should it create any presumption that a legal duty has been breached. The civility guidelines are designed to provide guidance to lawyers and define a structure for helping lawyers deal in a responsible fashion and are not designed to be a basis for civil liability nor a basis for any disciplinary action since disciplinary action is governed by Rule 407 of the Rules of Professional Conduct.

SOUTH CAROLINA BAR STANDARDS OF PROFESSIONALISM

The South Carolina Bar adopts the following Standards of Professionalism for all of its members to the extent that these Standards are not in conflict with the constitutional rights of clients, existing law or court rules.

Reverence for the Law, the Legal System and the Legal Profession

1. Principle: A lawyer should revere the law, the judicial system and the legal profession and should, at all times in the lawyer's professional and private lives, uphold the dignity and esteem of each, and exercise the right to improve it.

Standards:

1.1 A lawyer should, at all times, defend the inherent nobility and worth of the law, the rule of law and the judicial system.

1.2 A lawyer should, at all times, defend the role of the legal profession in the judicial system and in our system of laws.

1.3 A lawyer should support proposals to improve the administration of justice.

1.4 A lawyer should support proposals to advance the science of jurisprudence.

1.5 A lawyer should encourage and support qualified candidates to seek judicial office and encourage and support qualified and competent judges personally and publicly.

1.6 A lawyer should decline to encourage or support for appointment or election to judicial positions persons who, by skill, knowledge, experience, integrity or temperament are not qualified to fill those positions.

1.7 When considering whether to advertise and what methods of advertising to employ, a lawyer should be guided by the benefit to society of promoting and protecting public confidence in the judicial system and public esteem of the legal profession.

1.8 A lawyer should not solicit, in person or otherwise, professional employment from a prospective client with whom the lawyer has no family or prior professional relation-

ship when the prospective client is, in connection with the subject matter of the potential representation, physically suffering or emotionally or mentally distressed or distraught if that condition of the client would not enable the client to exercise independent judgment in the employment of a lawyer.

1.9 A lawyer should not solicit by advertising or by employment of non-practicing lawyers to solicit legal business that the lawyer is not competent or willing to pursue for the purpose of thereafter brokering such business for an unreasonable portion of the fee.

1.10 A lawyer should not solicit business by advertising or otherwise, legal business which the lawyer cannot or does not intend to fulfill for the purpose of charging a fee and performing little or no legal contribution.

1.11 A lawyer should strive to maintain and enhance his or her competence and to keep abreast of all developments in the law that are relevant to his or her substantive areas of practice.

1.12 A lawyer should, at all times, be appropriately prepared for court appearances, meetings and conferences, not only for the benefit of the lawyer's client but also for the benefit of the court if a court appearance, and other persons involved, if a meeting or conference.

1.13 Upon being employed by a new client, a lawyer should discuss fee arrangements at the outset of the representation and, if practical, promptly confirm those arrangements in writing.

1.14 In any representation in which the fee arrangement is other than a contingent percentage-of-recovery fee or a fixed, flat sum fee or in which the representation is anticipated to be of more than brief duration, a lawyer should bill clients on a regular and frequent interim basis.

1.15 When a fee dispute arises, a lawyer should first attempt to resolve the matter with the client and then should refer the client to the appropriate fee arbitration panel which should endeavor to arbitrate or mediate such disputes.

1.16 A lawyer should treat the practice of law as a privilege conferred upon the lawyer by the public and should, at all times, be responsible to the public for his or her actions. The character test of the Character and Fitness Committee should not reject those with unpopular views and alternate lifestyles who are otherwise fit and competent.

1.17 A lawyer should, at all times in his or her professional life, act in a manner that will enhance or maintain the public's esteem for the law, the judicial system and the legal profession.

1.18 A lawyer should promote a strong commitment to the ideals and independence of the legal profession.

1.19 A lawyer should, at all times, avoid the appearance of impropriety provided that the espousal of unpopular causes, the aggressive representation of an unpopular client and unconventional lifestyles shall not be the measure of propriety.

1.20 A lawyer should counsel and encourage other lawyers to abide by these standards of professionalism.

1.21 A lawyer and the Bar should educate the schools of law, students and lawyers entering the profession and encourage lawyers as to these principles, their practicality and their fairness.

Devotion to Public Service and the Public Good

2. Principle: A lawyer should further the legal profession's devotion to public service and to the public good.

Standards:

2.1 A lawyer should contribute the skill, knowledge and influence gained as a lawyer to the furtherance of civic responsibility and the public good.

2.2 A lawyer should provide or assist and defend efforts to provide all persons with just causes, regardless of their means or the popularity of their cause, to full and fair access to the law and to the judicial system.

2.3 A lawyer should defend the importance to society of serving the fundamental rights of individuals notwithstanding any contrary popular opinion of the day.

Adherence to a Fundamental Sense of Honor, Integrity and Fair Play

3. Principle: A lawyer should strictly adhere to the spirit as well as the letter of the Rules of Professional Conduct, to the extent that the law permits and should, at all times, be guided by a fundamental sense of honor, integrity and fair play.

Standards:

3.1 A lawyer should never attempt to inappropriately humiliate or intimidate any person or party for the purpose of obtaining unfair advantage consistent with the adversarial system and protection of the client's legitimate interest.

3.2 A lawyer should not oppose matters on mere form or style when such dispute creates an undue burden on the judicial system or the parties involved.

3.3 A lawyer should not impose arbitrary or unreasonable deadlines for action by others and should freely grant requests for reasonable time extensions.

3.4 In drafting a proposed agreement, a lawyer should not insert unnecessary terms and provisions which are unfair or for the purposes of inappropriate deception.

3.5 In drafting a proposed letter of intent, the memorialization of an oral agreement or a written contract reflecting an agreement reached in concept, a lawyer should draft a doc-

ument that fairly reflects the agreement of the parties.

3.6 A lawyer should not unreasonably oppose an adversary's application for an order or an adversary's request to insert a term or provision in a document.

3.7 A lawyer should stipulate all facts and principles of law that are not in dispute when it is fair to do so.

3.8 A lawyer should promptly respond to requests for stipulations of fact or law.

3.9 A lawyer should voluntarily withdraw claims or defenses when it becomes apparent that they are without merit or are superfluous or merely cumulative.

3.10 A lawyer should promptly comply with requests to prepare proposed orders unless there are compelling or unusual personal and professional reasons for delay.

3.11 A lawyer should never permit nonlawyer support personnel to communicate with a judge or judicial officer on any matters pending before the judge or officer or with other court personnel except on scheduling and other ministerial matters when it is inappropriate to do so.

3.12 A lawyer should notify opposing counsel of all communications with the court or other tribunal, except those involving only scheduling matters not related to the choice of judges, and should simultaneously provide opposing counsel with copies of any written communication with the court by the same or substantially the same means by which they were provided to the court.

3.13 A lawyer should not make scheduling decisions with the motive of limiting opposing counsel's opportunity to prepare or respond.

3.14 When scheduling hearings and other adjudicative proceedings, a lawyer should request an amount of time that is truly calculated to permit full and fair presentation of the matter to be adjudicated and to permit equal response by the lawyer's adversary.

3.15 A lawyer should immediately notify all counsel of any hearing time that the lawyer has reserved with the court or tribunal.

3.16 A lawyer should bring to the attention of the court or other tribunal all controlling legal authority, whether or not favorable to the client's position and whether or not disclosed by opposing counsel when it is known to the lawyer.

3.17 A lawyer should appear at a hearing before a court or other tribunal appropriately prepared to submit the matter at issue to the court or tribunal for adjudication when the matter is not subject to reasonable grounds for postponement or dismissal and when the case is called for trial with reasonable notice and under appropriate circumstances by the court.

3.18 A lawyer should not use the post-hearing submission of

proposed orders as a guise to argue or reargue the merits of the matter to be determined consistent with the right to further the formation of the grounds for appeal.

3.19 A lawyer should not request rescheduling, cancellations, extensions and postponements without legitimate reasons and never solely for the purpose of delay or obtaining unfair advantage.

3.20 When there has been pretrial disclosure of trial witnesses, a lawyer should make a reasonable, good-faith effort to identify those witnesses whom the lawyer believes are reasonably likely to be called to testify.

3.21 When there has been pretrial disclosure of trial exhibits, a lawyer should make a reasonable good-faith effort to identify those exhibits that the lawyer believes will be proffered into evidence.

3.22 During trials and evidentiary hearings, a lawyer should disclose the identities requested in discovery and estimated duration of witnesses anticipated to be called that day and the following day, including depositions to be read, and should cooperate in sharing with opposing counsel visual aid equipment and demonstrative exhibits, charts, graphs and diagrams which have been jointly prepared or which have been previously placed into evidence consistent with the preparation and protection of the trial strategy.

3.23 A lawyer should not mark or alter exhibits, charts, graphs and diagrams without opposing counsel's permission or leave of court except when prepared by counsel for that purpose.

3.24 A lawyer should abstain from conduct calculated to detract or divert the fact-finder's attention from the relevant facts or otherwise cause it to reach a decision on an impermissible basis.

3.25 A lawyer should not enter into an agreement to withhold information from a client to serve the lawyer's own interest or convenience inconsistent with the promotion of a just and fair resolution in the client's best interest.

Honesty and Candor

4. Principle: A lawyer should not knowingly misstate or improperly distort any fact or opinion.

Standards:

4.1 A lawyer should not knowingly misstate, distort or improperly exaggerate any fact or opinion in a deceitful or deceptive manner for an improper purpose.

4.2 A lawyer should not improperly permit the lawyer's silence or inaction to mislead anyone deceitfully and deceptively for a wrongful purpose.

4.3 In drafting documents, a lawyer should point out to opposing counsel all changes that the lawyer makes or causes to be made from one draft to another.

4.4 A lawyer should not knowingly draft a document or through silence permit a document to be drafted in a manner that permits the lawyer, the lawyer's client or a third party to take advantage of a term or provision or of the absence of a term or provision to the disadvantage of the adversary in such a manner as the lawyer knows or believes that the adversary neither anticipates nor contemplates.

Fair and Efficient Administration of Justice

5. Principle: A lawyer should conduct himself or herself to assure the just and economically efficient determination and resolution of every controversy consistent with thoroughness and professional preparation.

Standards:

5.1 A lawyer should accede to reasonable requests for waivers of procedural formalities when the client's legitimate interests are not adversely affected.

5.2 A lawyer should not invoke a rule for the sole purpose of creating undue delay or obtaining unfair advantage.

5.3 A lawyer should never use discovery for the primary purpose of harassing or burdening an adversary or causing the adversary to incur unnecessary expense.

5.4 A lawyer should frame reasonable discovery requests tailored to the matter at hand.

5.5 A lawyer should assure that responses to proper requests for discovery are timely and complete and are consistent with the obvious intent of the request.

5.6 A lawyer should seek a resolution of disputes on the merits of the case in preference to procedural formalities when the lawyer can fairly do so without detriment to the client's legitimate interest.

Courtesy

6. Principle: A lawyer should abstain from all rude, disruptive, disrespectful and abusive behavior and should, at all times, act with dignity, decency and courtesy when such conduct is reciprocal or not necessary to protect the client from such similar behavior by others.

Standards:

6.1 A lawyer should refrain from rude, disruptive, disrespectful and abusive behavior consistent with this principle.

6.2 A lawyer should encourage support personnel to refrain from all rude, disruptive, disrespectful and abusive behavior consistent with this principle.

Respect for the Time and Commitments of Others

7. Principle: A lawyer should respect the time and commitments of others.

Standards:

7.1 Before scheduling a hearing on any motion or discovery objection, a lawyer should endeavor to resolve or narrow the issue at hand.

7.2 In scheduling depositions upon oral examination, a lawyer should allow enough time to permit the conclusion of the deposition, including examination by all parties, without adjournment.

7.3 Unless circumstances compel more expedited scheduling, a lawyer should endeavor to provide litigants, witnesses and other affected persons or parties with ample advance notice of hearings, depositions, meetings and other proceedings.

7.4 Whenever practical, a lawyer should schedule hearings, depositions, meetings and other proceedings at times that are convenient to all interested persons.

7.5 A lawyer should accede to all reasonable requests for scheduling, rescheduling, cancellations, extensions and postponements that do not prejudice the client's opportunity for full and fair consideration and adjudication of the client's claim or defense.

7.6 Upon receiving an inquiry concerning a proposed time for a hearing, deposition, meeting or other proceeding, a lawyer should promptly agree to the proposal or offer a reasonable counter-suggestion.

7.7 A lawyer should call potential scheduling conflicts or problems to the attention of those affected, including the court or tribunal, as soon as they become apparent to the lawyer.

7.8 A lawyer should avoid last-minute cancellations of hearings, depositions, meetings and other proceedings.

7.9 A lawyer should promptly notify the court or tribunal of any resolution by the parties that renders a scheduled court appearance unnecessary.

Diligence and Punctuality

8. Principle: A lawyer should be diligent and punctual in communicating with others and in fulfilling commitments.

Standards:

8.1 A lawyer should endeavor to achieve the client's reasonable and lawful objectives as economically and expeditiously as possible.

8.2 A lawyer should counsel the client concerning the benefits and detriments of mediation, arbitration and other alternative methods of resolving disputes.

8.3 A lawyer should counsel the client to consider and explore settlement in good faith.

8.4 A lawyer should be punctual in attending all court appearances, depositions, meetings, conferences and other proceedings.

8.5 A lawyer should respond promptly to inquiries and communications from clients and others when appropriate and consistent with reasonable case management.

Independence of Judgment

9. Principle: A lawyer should exercise independent judgment and should not be governed by a client's ill will or deceit.

Standards:

9.1 A lawyer should, at all times, provide the client with objective evaluation and advice without purposefully understating or overstating achievable results or otherwise creating unrealistic expectations.

9.2 A lawyer should counsel the client to act with fundamental honesty, candor and fairness.

9.3 A lawyer should not permit the client's ill will toward an adversary, witness or tribunal to become that of the lawyer.

9.4 A lawyer should counsel the client against the use of tactics designed to hinder or delay the process involved.

9.5 A lawyer should counsel the client against the use of tactics designed to embarrass, harass, intimidate, burden or oppress an adversary or any other person or party when appropriate to do so.

9.6 A lawyer should counsel the client that it may be in the client's best interest to refrain from all rude, disruptive, disrespectful and abusive behavior, even when confronted with such behavior.

9.7 A lawyer should counsel the client or prospective client, even with respect to a meritorious claim or defense, concerning the burdens of pursuing the claim as compared with the benefits to be achieved.

9.8 A lawyer should counsel the client about the propriety of withdrawing a claim or defense if it becomes apparent that it is without merit or is superfluous.

9.9 In contractual and business negotiations, a lawyer should counsel the client concerning what is reasonable under the circumstances.

9.10 A lawyer should counsel with a client about the disadvantages of rancor and the advantages of settlement when those settlements are of potential benefit to the client.

9.11 A lawyer should not persist in pursuing a case of questionable merit or value when compared with the negative and expensive aspects of litigation.

9.12 A lawyer should pursue cases of a novel and imaginative import when the case or cause might legitimately advance a cause of public or private benefit previously unrecognized. It is the lawyer's duty to espouse novel, but reasonable causes.

9.13 A lawyer, when necessary, should acquaint the client with these principles, their practicality and fairness when requested by the client to violate them.

Fulfilling Promises

10. Principle: A lawyer's word should be the lawyer's bond.

Standards:

10.1 A lawyer should strive to fulfill all promises and other commitments.

SCRCP Rule 26, like most of the original SCRCP, was patterned on the Federal Rules of Civil Procedure, and specifically FRCP 26. As time has gone on the federal rules have been amended, and it was left to this committee to seek to adapt the SCRCP to meet more “modern” times when it was appropriate and consistent with state law.

All of us who deal with experts often send them via email or regular mail articles we’ve located on our own, or ideas that we think of during the day, knowing that a spontaneous unscheduled phone call will likely go unanswered or interrupt other workflow. We all also know that scheduling a call at a mutually convenient time is a tedious task and it can take a week or longer before the schedules coincide with a mutually convenient time. Having such communications be discoverable impedes effective communication between a party’s attorney and an expert witness.

The proposed amendments to SCRCP Rule 26 still will not require expert witnesses to provide a written report or impose any additional requirements on them. The proposed amendments instead protect communications, except the three narrow classes of communications, between a party’s attorney and any witness designated as an expert.

Specifically, the proposed amendments to SCRCP Rule 26(b)(4) new provision (D) make the state rule the same as the recent changes to the parallel FRCP 26(b)(4)(C) governing the discovery of communications between a party’s attorney and expert witnesses.

The new subdivision (D) to be added would now read as follows:

(D) Trial-Preparation Protection for Communications Between a Party’s Attorney and Expert Witnesses. Rule 26(b)(3) and Rule 26(b)(4)(A) protect communications between the party’s attorney and any witness designated as an expert, regardless of the form of the communications, including draft reports, except to the extent that the communications:

- (i) relate to compensation for the expert’s study or testimony;
- (ii) identify facts or data that the party’s attorney provided, and that the expert considered in forming the opinions to be expressed; or,
- (iii) identify assumptions that the party’s attorney provided and that the expert relied on in forming the opinions to be expressed.

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This document reflects changes received through October 1, 2021

SC - South Carolina State & Federal Court Rules > SOUTH CAROLINA RULES OF CIVIL PROCEDURE > V. DEPOSITIONS AND DISCOVERY

RULE 26 GENERAL PROVISIONS GOVERNING DISCOVERY

(a) Discovery Methods.

Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admissions. The frequency or intent of use of discovery methods set forth in subdivision (a) shall be limited by the court if it determines that: (i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii) the discovery is unreasonably burdensome or expensive taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation. The court may act upon its own initiative after reasonable notice or pursuant to a motion under subdivision (c) of this Rule.

(b) Scope of Discovery.

Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(1) In General.

—Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

(2) Insurance Agreements.

A party may obtain discovery of the existence and contents of any insurance agreement under which any person carrying on an insurance business may be liable to satisfy part or all of a judgment which may be entered in the action or to indemnify or reimburse for payments made to satisfy the judgment. Information concerning the insurance agreement is not by reason of disclosure admissible in evidence at trial. For purposes of this paragraph, an application for insurance shall not be treated as part of an insurance agreement.

(3) Trial Preparation: Materials.

Subject to the provisions of subdivision (b)(4) of this rule, a party may obtain discovery of documents and tangible things otherwise discoverable under subdivision (b)(1) of this rule and

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prepared in anticipation of litigation or for the trial by or for another party or by or for that other party's representative (including his attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of his case and that he is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the court shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

(4)

(A) Trial Preparation: Experts. Discovery of facts known and opinions held by experts, otherwise discoverable under the provisions of subdivision (b)(1) of this rule and acquired or developed in anticipation of litigation or for trial in the Circuit Court, may be obtained by any discovery method subject to subdivisions (b)(4)(B) and (C) of this rule, concerning fees and expenses, and subdivision (b)(4)(D).

(B) A party may discover facts known or opinions held by an expert who has been retained or specially employed by another party in anticipation of litigation or preparation for trial and who is not expected to be called as a witness at trial, only as provided in Rule 35(b) or upon a showing of exceptional circumstances under which it is impracticable for the party seeking discovery to obtain facts or opinions on the same subject by other means. A party is not required to disclose nor produce an expert who was only consulted informally, or consulted and not retained or specially employed.

(C) Upon the request of the party seeking discovery, unless the court determines otherwise for good cause shown, or the parties agree otherwise, a party retaining an expert who is subject to deposition shall produce such expert in this state for the purpose of taking his deposition, and the party seeking discovery shall pay the expert a reasonable fee for time and expenses spent in travel and in responding to discovery and upon motion the court may require the party seeking discovery to pay the other party a fair portion of the fees and expenses reasonably incurred by the latter party in obtaining facts and opinions from the expert.

(D) Trial-Preparation Protection for Communications Between a Party's Attorney and Expert Witnesses. Rule 26(b)(3) and Rule 26(b)(4)(A) protect communications between the party's attorney and any witness designated as an expert, regardless of the form of the communications, including draft reports, except to the extent that the communications:

(i) relate to compensation for the expert's study or testimony;

(ii) identify facts or data that the party's attorney provided, and that the expert considered in forming the opinions to be expressed; or,

(iii) identify assumptions that the party's attorney provided and that the expert relied on in forming the opinions to be expressed.

(5) Claims of Privilege or Protection of Trial Preparation Materials- .

(A) Information Withheld

When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing the information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.

(B) Information Produced. If information produced in discovery is subject to a claim of privilege or of protection as trial preparation material, the party making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly

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return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the court under seal for a determination of the claim. If the receiving party disclosed the information before being notified, the receiving party must take reasonable steps to retrieve the information. The producing party must preserve the information until the claim is resolved.

(A) A party need not provide discovery of electronically stored information from sources that the party identifies to the requesting party as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(6)(B). The court may specify conditions for the discovery, including allocation of expenses associated with discovery of the electronically stored information.

(B) On motion or on its own motion, the court shall limit the frequency or extent of discovery otherwise allowed by these rules if the court determines that:

- (i)** the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive;
- (ii)** the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or
- (iii)** the burden or expense of the proposed discovery outweighs its likely benefit, taking into account the needs of the case, the amount in controversy, the parties' resources, the importance of the issues at stake in the litigation, and the importance of the proposed discovery in resolving the issues. The court may act upon its own initiative after reasonable notice or pursuant to a motion under Rule 26(c).

(c) Protective Orders

Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending or alternatively, on matters relating to a deposition, the court in the circuit where the deposition is to be taken may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden by expense, including one or more of the following: (1) that the discovery not be had; (2) that the discovery may be had only on specified terms and conditions, including a designation of the time or place; (3) that the discovery may be had only by a method of discovery other than selected by the party seeking discovery; (4) that certain matters not be inquired into or that the scope of the discovery be limited to certain matters; (5) that discovery be conducted with no one present except persons designated by the court; (6) that a deposition after being sealed be opened only by order of the court; (7) that a trade secret or other confidential research, development, or commercial information not be disclosed or be disclosed only in a designated way; (8) that the parties simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court.

—If the motion for a protective order is denied in whole or in part, the court may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion.

(d) Sequence and Timing of Discovery

. Unless the court upon motion, for the convenience of parties and witnesses and in the interests of justice, orders otherwise, methods of discovery may be used in any sequence and the fact that a party is conducting discovery, whether by deposition or otherwise, shall not operate to delay any other party's discovery.

(e) Supplementation of Responses

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- . A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement his response to include information thereafter acquired, except that requests for discovery under Rules 31, 33, 34, and 36 shall be deemed to continue from the time of service until the time of trial of the action so that information sought, which comes to the knowledge of a party, or his representative or attorney, after original answers have been submitted, shall be promptly transmitted to the other party.

In addition, a party is under a duty seasonably to supplement his response with respect to any question directly addressed to (1) the identity and location of persons having knowledge of discoverable matters, and (2) the identity of each person expected to be called as an expert witness at trial, the subject matter on which he is expected to testify, and the substance of his testimony.

(f) Discovery Conference

- . At any time after commencement of an action the court may direct the attorneys for the parties to appear before it for a conference on the subject of discovery. The court shall do so upon motion by the attorneys for any party if the motion includes:

- (1) A statement of the issues as they then appear;
- (2) A proposed plan and schedule of discovery;
- (3) Any limitations proposed to be placed on discovery;
- (4) Any other proposed orders with respect to discovery;
- (5) A statement of any issues relating to discovery of electronically stored information, including the form or forms in which it should be produced;
- (6) A statement of any issues relating to claims of privilege or of protection as trial preparation material, including -- if the parties agree on a procedure to assert such claims after production -- whether the parties wish to have the court include their agreement in an order; and
- (7) A statement showing that the attorney making the motion has made a reasonable effort to reach agreement with opposing attorneys on the matters set forth in the motion. Each party and his attorney are under a duty to participate in good faith in the framing of a discovery plan if a plan is proposed by the attorney for any party. Notice of the motion shall be served on all parties. Objections or additions to matters set forth in the motion shall be served not later than 10 days after service of the motion.

Following the discovery conference, the court shall enter an order tentatively identifying the issues for discovery purposes, establishing a plan and schedule for discovery, setting limitations on discovery, if any; and determining such other matters, including the allocation of expenses, as are necessary for the proper management of discovery in the action. An order may be altered or amended whenever justice so requires. Subject to the right of a party who properly moves for a discovery conference to prompt convening of the conference, the court may combine the discovery conference with a pretrial hearing authorized by Rule 16.

(g) Signing of Discovery Requests, Responses, and Objections

- . Every request for discovery or response or objection thereto made by a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address shall be stated. A party who is not represented by an attorney shall sign the request, response, or objection and state his address. The signature of the attorney or party constitutes a certification in accordance with Rule 11.

(1) Filing, Service and Custody

- . Except as provided in Rule 30(h), the party requesting discovery shall serve the request on other counsel or parties, but not file the notice or materials or matters discovered. The requesting party shall retain the originals and shall file the originals with the clerk of court when the same are to be used at a hearing or at trial.

(2) Destruction

- . One year after the final termination of an action in which discovery other than depositions has been taken, the party taking the other discovery or the clerk of court, as the case may be, may destroy or otherwise dispose of the original discovery requests and responses.

Annotations

Commentary

COMMENT

Note:

This is the language of Federal Rule 26(a) as amended August 1, 1983. The second part was added to address the problem of duplicative, redundant, and excessive discovery by encouraging judges to identify instances of needless discovery and to limit the uses of the various discovery devices accordingly. This rule changes State procedure by permitting discovery by deposition upon written questions and also mental and physical examinations.

Note:

This is the language of Federal Rule 26(b). It is substantially equivalent to the language of Circuit Court Rule 87B with minor editorial changes. In particular it has the same scope of discovery--"relevant to the subject matter."

Note:

This is the language of the Federal Rule 26(b)(2) and authorizes discovery of insurance agreements by any discovery method. Circuit Court Rule 90(e) presently authorizes an interrogatory to discover the names and addresses of all insurance companies which have liability insurance relating to the claim and the numbers and amounts of the policies. Thus, this language does not produce any significant change in existing State practice.

Note:

This is the language of Federal Rule 26(b)(3). There is no equivalent Circuit Court Rule on this subject although there is existing common law providing similar protection. This provision is added to clarify and standardize the law on the issue.

A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for a court order. The provisions of Rule 37(a)(4) apply to the award of expenses incurred in relation to the motion. For purposes of this paragraph, a statement previously made is (A) a written statement signed or otherwise adopted or approved by the person making it, or (B) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

Note:

This is a continuation of paragraph (b)(3), of the Federal Rule and provides for the discovery of statements by parties and witnesses. This is comparable to Circuit Court Rule 90(e)(1) which provides for the discovery of the existence of statements taken from witnesses.

Note:

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Rule 26(b)(4) is based upon the comparable Federal Rule. The language is changed to permit discovery of an expert expected to testify at trial by any means and without any special showing of need. There is also a requirement that the party is not required to disclose an expert casually or informally consulted or one consulted but not specially employed. This is similar to the result reached under the federal rules and its Advisory Notes to 26(b)(4)(B). 26(b)(4)(C) is changed to require a party producing an expert for deposition to do so in this state. The discovering party is specifically made responsible for reasonable fees and expenses incurred in traveling to this state, as well as the time spent in responding to the discovery.

Note to 1986 Admendment:

This amendment to Rule 26(b)(4)(C) replaces the "manifest injustice" standard with that of "good cause shown" to conform to similar references to the standard for controlling discovery practice in other Rules.

Note to 1996 Amendment:

Rule 26 is amended to add paragraph (b)(5) requiring a party to notify the other parties that it is withholding information otherwise discoverable on grounds of privilege or work product. The party must also provide sufficient information to enable other parties to evaluate the applicability of the claimed privilege or protection. The rule does not specify 7/12/2021 <https://www.sccourts.org/courtReg/printSection.cfm> <https://www.sccourts.org/courtReg/printSection.cfm> 4/33 the detail required which will depend upon the facts of each case. The rule applies to material otherwise discoverable, and does not require disclosure of information that is privileged. A motion challenging the claim of privilege or work product normally is decided by the court after an in camera inspection of the materials. Non-parties have a similar obligation when responding to a subpoena under Rule 45(d)(2), SCRCP, and there is similar language in the comparable federal rules.

Note to 2011 Amendment:

The amendments to Rules 16, 26, 33, 34, 37 and 45 of the South Carolina Rules of Civil Procedure concerning electronic discovery are substantially similar to the corresponding provisions in the Federal Rules of Civil Procedure. The rules concerning electronic discovery are intended to provide a practical, efficient and cost-effective method to assure reasonable discovery. Pursuit of electronic discovery must relate to the claims and defenses asserted in the pleadings and should serve as a means for facilitating a just and cost-effective resolution of disputes.

(6)Electronically Stored Information.**Note to 2011 Amendment:**

The amendments to Rules 16, 26, 33, 34, 37 and 45 of the South Carolina Rules of Civil Procedure concerning electronic discovery are substantially similar to the corresponding provisions in the Federal Rules of Civil Procedure. The rules concerning electronic discovery are intended to provide a practical, efficient and cost-effective method to assure reasonable discovery. Pursuit of electronic discovery must relate to the claims and defenses asserted in the pleadings and should serve as a means for facilitating a just and cost-effective resolution of disputes.

Note:

This is the language of Federal Rule 26(c). Exactly the same language was recently adopted as Circuit Court Rule 96.

Note:

This is the language of Federal Rule 26(d). There is no equivalent in the Circuit Court Rules. The purpose of the paragraph is to prevent the idea of "priority" in the taking of discovery, resulting in delay. The court however retains power to set the order of discovery if necessary.

Note:

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This Rule 26(e) is the language of Federal Rule 26(e). A like duty to supplement the special interrogatories permitted under present Circuit Court Rule 90 is imposed by that rule and is substantially the same as the Federal Rule. In these discovery Rules the Federal language is adopted for all discovery except Rule 33(b) standard interrogatories. The Circuit Court Rule 90 provision is retained as to answers to those special interrogatories because the interrogatories are limited in number, the continuing duty to update them is not burdensome, and it preserves the existing State practice.

Note to 1996 Amendment:

Rule 26(e) is amended to make applicable the language of Rule 33(b) on the duty to supplement the standard interrogatories to discovery requests under Rule 31 Depositions Upon Written Questions, Rule 33 Interrogatories to Parties, Rule 34 Production of Documents and Tangible Things, and Rule 36 Request for Admission. Discovery requests under these rules are deemed to be continuing and the responding party must update the answers promptly when new information comes to the attention of the party, a representative of the party or counsel. This duty to supplement does not apply to discovery under Rule 30 Depositions Upon Oral Examination. However, there is an additional duty to provide supplemental information on expert witnesses and witnesses with knowledge of the facts of the case regardless of the form of the discovery request. The obligation to supplement prior discovery responses includes the duty to amend or supplement answers which are found to be incorrect or misleading so former subparagraph (e)(2) has been deleted, as has former subparagraph (e)(3) which is now redundant.

Note:

This is the language of Federal Rule 26(f). Its purpose is to prevent discovery abuse by encouraging the court to intervene when abuse occurs, or when an attorney has failed to obtain the cooperation of opposing counsel and should have the assistance of the court. Routine matters should be resolved by Rule 26(c) Motions for protective orders or Rule 37 Motions to compel. The discovery conference is discretionary with the court, and may be combined with a pretrial hearing.

Note to 2011 Amendment:

The amendments to Rules 16, 26, 33, 34, 37 and 45 of the South Carolina Rules of Civil Procedure concerning electronic discovery are substantially similar to the corresponding provisions in the Federal Rules of Civil Procedure. The rules concerning electronic discovery are intended to provide a practical, efficient and cost-effective method to assure reasonable discovery. Pursuit of electronic discovery must relate to the claims and defenses asserted in the pleadings and should serve as a means for facilitating a just and cost-effective resolution of disputes.

Note:

This language is drawn from the first three sentences of Federal Rule 26(g) and has been slightly modified to incorporate reference to Rule 11. The more strict standard of the Federal Rules contained in Rules 11, 16 and 26 has not been adopted.

Note:

This paragraph conforms to Circuit Court Rule 97 and provides that, except for videotaped depositions under Rule 30(h), the requesting party retains the original discovery request and response until it is needed for a motion or trial, then it is filed with the court.

Note to 2022 Amendment

The amendment to add Rule 26(b)(4)(D) is intended to make the rule similar to the 2010 changes to the FRCP 26 which give more protection to communications between lawyers and the expert witnesses retained to testify. While the amendment will still not require a testifying expert to produce a report, it will allow a freer exchange of information with an expert in the process of developing her thoughts and opinions and allow the consideration of the mental impressions of a lawyer without having to disclose those. Thus, the additional language in subdivision (ii)

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that the expert "... considered **and relied upon** the information in forming the opinions to be expressed" to make it clear that it is data and facts the expert relies upon that must be disclosed.

South Carolina Court Rules

End of Document

The Need For a Donor Statute in South Carolina

1. Assisted Reproductive Technologies: The Early Days

Assisted reproductive technology (ART) is defined as “any technology that is employed to conceive a child by means other than sexual intercourse.”¹ Some of these technologies and procedures have been around for hundreds of years.² Others have come into common practice only in recent decades, with technologies and procedures continuing to change and improve at a rapid pace.

At the center of ART practice is in vitro fertilization (IVF). IVF is defined as “[a] process in which an egg and sperm are combined in a laboratory dish to facilitate fertilization. If fertilized, the resulting embryo is transferred to the uterus, where it may implant.”³ Additional embryos, not necessary for the procedure, may be cryopreserved (frozen) for future use.⁴ IVF may be used to treat women with blocked, damaged, or absent fallopian tubes, male factor infertility, or a category of infertility known to many

¹ Maureen McBrien & Bruce Hale, *Assisted Reproductive Technology: A Lawyer’s Guide to Emerging Law and Science* 382 (3rd ed. 2018); The American Society for Reproductive Medicine (ASRM) defines ART more narrowly, as “[a]ll treatments which include the handling of eggs and/or embryos.”; see Am. Soc’y for Reprod. Med., *Assisted Reproductive Technology: A Guide for Patients* 24 (2018) [hereinafter *ASRM ART Guide*].

² The first reported donor insemination case was an 1884, when a French doctor inseminated a woman without her knowledge, but with the knowledge and consent of her husband. See Susan Golombok, *Modern Families* 91 (2015) [hereinafter *Modern Families*].

³ *ASRM ART Guide*, *supra* note 1, at 4.

⁴ *Id.*

patients—unexplained infertility.⁵ The first IVF birth was Louise Brown, on July 25, 1978 in the United Kingdom. The scientist responsible for IVF received the Nobel prize thirty-two years later.⁶

2. The Growing Prevalence of ART

There have been more than 8 million IVF babies born worldwide.⁷ In 2018, the most recent year for which we have data,⁸ there were 499 fertility clinics in the United States, performing over 160,000 embryo transfer procedures, accounting for over 81,000 infant births.⁹ In 2018, there were 1510 embryo transfer procedures reported in South Carolina and 809 infant births. How do these ART numbers compare to the number of infants born nationally and in South Carolina? IVF-conceived infants represent approximately 2% of infants born in the United States and 1.2% of infants born in South

⁵ One in eight couples experience infertility. *See Underlying Causes*, Resolve: The Nat'l Infertility Ass'n, <https://resolve.org/learn/infertility-101/underlying-causes/> (last visited Apr. 2022). Thirty percent of infertility cases are attributed to male factors. *Id.* One in five couples will be diagnosed with unexplained infertility, even after a complete fertility work up. *Id.*

⁶ Nicolas Wade, *Pioneer of In Vitro Fertilization Wins Nobel Prize*, N.Y. Times (Oct. 4, 2010), <https://www.nytimes.com/2010/10/05/health/research/05nobel.html>. (describing the path to the Nobel prize taken by Robert G Edwards, an English biologist who along with a physician colleague, Dr. Patrick Steptoe, developed the in vitro fertilization procedure for treating human infertility).

⁷ Susan Scutti, *At Least 8 Million IVF Babies Born in 40 Years Since Historic First*, CNN (July 3, 2018), <https://www.cnn.com/2018/07/03/health/worldwide-ivf-babies-born-study/index.html>.

⁸ Congress passed The Fertility Clinic Success Rate and Certification Act (Pub. L. 102-493) in 1992, requiring U.S. fertility clinics performing ART procedures to report data to the Center for Disease Control. The most recent report is from 2018. *See* Saswati Sunderam et al., *Assisted Reproductive Technology Surveillance—United States, 2018*, 71 Morbidity & Mortality Wkly. Rep. Surveillance Summary 1 (2018) [hereinafter CDC Surveillance Summary]

⁹ *Id.* at 4, 6.

Carolina.¹⁰ One recent report predicts that by the year 2100, three percent of the world's population—400 million people—will result from assisted reproduction technologies.¹¹

3. Third-Party Reproduction

In vitro fertilization may involve the use of gametes (sperm or egg cells) from the intended parents (the individual or couple that plans to raise the child). IVF and other ART-related procedures can also involve “third-party reproduction,” where someone other than the intended parents is involved in the reproduction process, by donating eggs, sperm, or embryos, or through surrogacy, where the pregnancy is carried by someone other than the intended parent.¹² Donor eggs are used in a large number of in vitro cycles.¹³ In fact, among patients older than age 48, sixty-eight percent of all IVF cycles used donor eggs.¹⁴ We can only speculate as to the number of donor sperm cases, as this data is not compiled by the federal government.¹⁵

¹⁰ *Id.* at 9.

¹¹ Susan Golombok, *We are Family* 249 (2020) (reporting a figure that includes those persons conceived through assisted reproduction and their descendants).

¹² See Am. Soc’y for Reprod. Med., *Third-Party Reproduction: A Guide for Patients* 3 (2018) [hereinafter *ASRM Third-Party Reproduction Guide*], https://www.reproductivefacts.org/globalassets/rf/news-and-publications/bookletsfact-sheets/english-fact-sheets-and-info-booklets/third-party_reproduction_booklet_web.pdf/.

¹³ See Ctrs. for Disease Control & Prevention, *2016 Assisted Reproductive Technology National Summary Report* 46 (2018) [hereinafter *CDC 2016 ART Summary Report*], <https://www.cdc.gov/art/pdf/2016-report/ART-2016-National-Summary-Report.pdf> (reporting that there were 24,300 ART cycles performed in 2016 where donor eggs were used).

¹⁴ *Id.* at 46.

¹⁵ *Id.* at 3 (noting that sperm may be from a female patient’s partner or a sperm donor, and that these reports are classified only according to the source of the egg); see also Ashley Fetters, *The*

4. A Legal Framework, Cobbled-Together

So, legally speaking, how does ART coexist with South Carolina's present statutory and common law? Consider the following examples:

Scenario 1: A married couple *use their own eggs and sperm* to conceive a child through IVF and the child is born to the wife. The legal import of this scenario is fairly straightforward: The wife is the mother (by gestation and genetics); and the husband is the father (by genetics and the presumption of legitimacy.)¹⁶

Scenario 2: But what if, like so many South Carolina families, the couple needs to *use donated sperm or eggs* to achieve their pregnancy? If the couple divorces and a custody action ensues, does the genetic parent have a stronger custody case than the nongenetic parent? Can the nongenetic parent avoid child support obligations? What if the sperm donor or egg donor is known to the couple, and wishes visitation or custody of the child?

Scenario 3: Now consider the facts of either scenario above, but this time, because the intended mother is unable to carry a child to term, a gestational surrogate carries the child with the intent of releasing the child to the intended parents after birth. How will the intended parents secure legal rights to the resulting child? How will the gestational surrogate and her husband be relieved of those responsibilities?

So far, ART practitioners and family court judges have cobbled-together a legal framework to guide their work; they look to the law of custody, paternity, and termination of parental rights for guidance. And in absence of clear legislation for assisted reproduction, practitioners and judges have also relied upon the adoption statutes for

Overlooked Emotions of Sperm Donation, The Atlantic (July 9, 2018), <https://www.theatlantic.com/family/archive/2018/07/sperm-donations-emotional-consequences/564587/> (estimating that between 30,000 and 60,000 babies are born in the United States each year conceived through sperm donation).

¹⁶ *Chandler v. Merrell*, 291 S.C. 224, 226, 353 S.E.2d 133, 134 (1987) (defining the marital presumption as “every child born in wedlock is presumed to be legitimate”).

guidance. No doubt, when enacted, most of the statutes did not envision ART. With the exception of two appellate cases,¹⁷ and one statute,¹⁸ ART has not been tested in the appellate courts of our state or addressed by the legislature.

5. A Donor Statute: Resolves Legal Ambiguity for Children

Most states have some form of a donor statute; statutes that direct that when an individual donates their sperm or eggs for the purposes of assisting an intended parent in conceiving a child through the use of ART, the intended parents shall be treated at law as the legal parent of the resulting child. These donor statutes also direct that the donor is treated at law as if the donor was not the parent of the child thereby conceived. The statutes typically require that the donation of genetic material be provided to a licensed physician or licensed sperm or ova bank. South Carolina has no such donor statute.

The South Carolina presumption of legitimacy (sometimes referred to as the marital presumption), does not resolve this “donor” issue. The marital presumption holds that every child born in wedlock is presumed to be legitimate.¹⁹ And yet, a 1994 statute

¹⁷ See *In Re Baby Doe*, 291 S.C. 389, 353 S.E.2d 877 (1987) (holding that when a husband consents to the artificial insemination of his wife, he is the legal parent of the child and cannot avoid responsibility even though he is not the genetic parent.); *Mid-South Insurance Co. v. John Doe, Jane Doe, Frank Roe, Mary Roe & Celtic Insurance Co.*, 274 F.Supp.2d 757, 762 (D.S.C. 2003) (noting that the Gestational Carrier Agreement entered into between the parties determined the parties’ intent).

¹⁸ The Responsible Father Registry, which was enacted in 2010, addresses notice to fathers of children born by intercourse *and* artificial insemination. See S.C. Code Section 63-9-820(L) (2010).

¹⁹ *Chandler v. Merrell*, 291 S.C. at 226, 353 S.E.2d at 134 (defining the marital presumption as “every child born in wedlock is presumed to be legitimate”).

mandates that DNA test result which show a statistical probability of paternity of 95% or higher creates a rebuttable presumption of the putative father's paternity.²⁰ Hence, South Carolina recognizes two potentially contradictory legal presumptions.

In the 2010 case of *Fisher v. Tucker*,²¹ the marital presumption faced off against this statutory genetic presumption. Ending 210 years of uninterrupted deference to the common law marital presumption, the South Carolina Supreme Court came down on the side of the genetic presumption, declaring that “common law rules must yield to statutes enacted by the General Assembly.”²² In short, the South Carolina marital presumption has given way to the primacy of DNA, inviting any sperm “donor” to contest the parental rights of an intended father, and perhaps for an egg donor to contest parental rights of the intended mother.²³

²⁰ S.C. Code Ann. § 63-17-60(A)(3) (2008).

²¹ 388 S.C. 388, 697 S.E.2d 548 (2010).

²² *Id.* at 393, 697 S.E.2d at 550.

²³ *Fisher v. Tucker* provides a basis for an equal protection argument that an egg donor may similarly have a legal claim to parentage based on DNA. By way of example, The Uniform Parentage Act § 107 (2017) (which has not been enacted in South Carolina), directs that provisions addressing paternity be applied equally to determine maternity. The UPA states “to the extent practicable, a provision of this [act] applicable to a father-child relationship applies to a mother-child relationship and a provision of this act applicable to a mother-child relationship applies to a father-child relationship.” The UPA’s “mandate of gender neutrality” has been relied upon to conclude that provisions addressing paternity must be applied equally to women. The United States Supreme Court has recently declared, “laws treating fathers and mothers differently ‘may not constitutionally be applied . . . where the mother and father are in fact similarly situated with regard to the relationship with the child.’” *Sessions v. Morales-Santana*, 137 S.Ct. 1678, 1693 n.12 (2017) (quoting *Lehr v. Robertson*, 463 U.S. 248, 267 (1983)).

Not only is our state law devoid of a donor statute that many other states have had since the mid-1960s, but in this way our law makes ART families uniquely vulnerable. For these reasons, legislation is needed to protect South Carolina families from intrusion, to establish rights and responsibilities for parents, and most importantly, to address this legal ambiguity for children born of assisted reproductive technologies. The following statutory amendments are proposed to address this legal ambiguity.

SECTION 63-3-530. Jurisdiction in domestic matters.

(A) The family court has exclusive jurisdiction:

(1) to hear and determine matters which come within the provisions of the Uniform Interstate Family Support Act;

(2) to hear and determine actions for divorce a vinculo matrimonii, separate support and maintenance, legal separation, and in other marital litigation between the parties, and for settlement of all legal and equitable rights of the parties in the actions in and to the real and personal property of the marriage and attorney's fees, if requested by either party in the pleadings;

(3) to hear and determine actions for and related to the adoption of children and adults;

(4) to hear and determine actions for termination of parental rights, whether such action is in connection with an action for adoption or apart therefrom;

(5) ~~(Reserved)~~ to hear and determine actions for the establishment of parental rights, whether such action is in connection with an adoption or apart therefrom, including determinations of parental rights in connection with assisted reproduction;

(6) to hear and determine actions for the annulment of marriage;

(7) (Reserved)

(8) to hear and determine actions for changing names, whether in connection with a divorce or a separate support and maintenance action or apart therefrom;

(9) to hear and determine actions for the correction of birth records;

(10) to consent to the enlistment of a minor in the military service or the employment of a minor, if a minor has no one standing in loco parentis to do so;

(11) to hear and determine proceedings within the county to compel the support of a spouse or child, whether legitimate or illegitimate;

(12) for the protection, guardianship and disposition of neglected or dependent minors in proceedings properly brought before it for the support of a spouse or child;

(13) in all cases or proceedings within the county against persons charged with failure to obey an order of the court made pursuant to authority conferred by law;

(14) to order support of a spouse or child, or both, irrespective of whether they are likely to become a public charge;

(15) to include in the requirements of an order for support the providing of necessary shelter, food, clothing, care, medical attention, expenses of confinement, both before and after the birth, the expense of educating his or her child and other proper and reasonable expenses;

(16) to require of persons legally chargeable with the support of a spouse or child, who are possessed of sufficient means or who are able to earn such means, the payment weekly, or at other fixed periods, of a fair and reasonable sum for such support, or as a contribution toward such support, according to the means of the persons so chargeable;

(17) To make all orders for support run until further order of the court, except that orders for child support run until the child turns eighteen years of age or until the child is married or becomes self-supporting, as determined by the court, whichever occurs first, or past the age of eighteen years if the child is enrolled and still attending high school, not to exceed high school graduation or the end of the school year after the child reaches nineteen years of age, whichever is later; or in accordance with a preexisting agreement or order to provide for child support past the age of eighteen years; or in the discretion of the court, to provide for child support past age eighteen when there are physical or mental disabilities of the child or other exceptional circumstances that warrant the continuation of child support beyond age eighteen for as long as the physical or mental disabilities or exceptional circumstances continue. When child support is terminated due to the child turning eighteen years of age, graduating from high school, or reaching the end of the school year when the child is nineteen, no arrearage may be incurred as to that child after the date of the child's eighteenth birthday, the date of the child's graduation from high school, or the last day of the school year when the child is nineteen, whichever date terminated the child support obligation.

(18) to make an order for support of a husband or wife and children by his or her spouse, even though he or she may have left the home, in cases where the spouse's conduct or condition or his or her cruel or inhuman behavior made it unsafe or improper for the deserting spouse to continue to live with him or her.

Such orders may require either spouse or any other party to the proceeding:

- (a) to stay away from the home or from the other or either spouse or children;
- (b) to permit either spouse to visit the children at stated periods;
- (c) to abstain from offensive conduct against the other spouse or either of them, or against the children;
- (d) to give proper attention to the care of the home;
- (e) to refrain from acts of commission or omission that tend to make the home not a proper place for the other, or either spouse, or the children;

(19) in furtherance of the complete disposition of cases in the jurisdiction of the court, to bring in and make parties to any proceedings pending in the court any person or persons charged with or alleged to be interfering with the marital relationship between a husband and wife, in violation of the law or of the rights of either party to the marriage, or whose presence to the proceedings may be found necessary to a complete determination of the issues therein, or the relief to which the parties thereto, or any of them, may be entitled; and shall have the power to enjoin and restrain such interference and to punish for contempt of court violations of such injunctions or restraining orders;

(20) to award the custody of the children, during the term of any order of protection, to either spouse, or to any other proper person or institution;

(21) to determine the manner in which sums ordered paid for support shall be paid and applied, either to a person through the court, through the clerk of court, or through a centralized wage withholding system if required by federal statute or regulation;

(22) to require a person ordered to support another to give security by a written undertaking that he will pay the sums ordered by the court for such support and, upon the failure of any person to give such security by a written undertaking when required by order of the court, to punish such person for contempt and, when appropriate, to discharge such undertaking;

(23) in lieu of requiring an undertaking, to suspend sentence and place on probation a person who has failed to support another as required by law, and to determine the conditions of such probation and require them to be observed; to revoke such suspension of sentence and probation, where circumstances warrant it; and to discharge a respondent from probation;

(24) to release on probation prior to the expiration of the full term a person committed to jail for failure to obey an order of the court, where the court is satisfied that the best interest of the family and the community will be served thereby;

(25) to modify or vacate any order issued by the court;

(26) to order either before, during or after a hearing a mental, physical and psychiatric examination as circumstances warrant;

(27) to exclude the public from the courtroom in a proper case;

(28) to send processes or any other mandates in any matter in which it has jurisdiction into any county of the State for service or execution in like manner and with the same force and effect as similar processes or mandates of the circuit courts, as provided by law;

(29) to compel the attendance of witnesses;

(30) to make any order necessary to carry out and enforce the provisions of this title, and to hear and determine any questions of support, custody, separation, or any other matter over which the court has jurisdiction, without the intervention of a jury; however, the court may not issue an order which prohibits a custodial parent from moving his residence to a location within the State unless the court finds a compelling reason or unless the parties have agreed to such a prohibition;

(31) to require spouse to furnish support or to be liable for nonsupport, as provided above, if, at the time of the filing of the petition for supports:

(a) he is residing or domiciled in the county or when such area is the matrimonial domicile of the parties; or

(b) he is not residing or domiciled in the area referred to in subsection (A), but is found therein at such time, provided the petitioner is so residing or domiciled at such time; or

(c) he is neither residing or domiciled nor found in such area but, prior to such time and while so residing or domiciled, he shall have failed to furnish such support, or shall have abandoned his spouse or child and thereafter shall have failed to furnish such support, provided that the petitioner is so residing or domiciled at that time;

(32) the petitioner need not continue to reside or be domiciled in such area where the cause of action arose, as provided in subitems (a) and (b) of item (31) of this section, if the conduct of the respondent has been such as to make it unsafe or improper for her to so reside or be domiciled, and the petitioner may bring action in the court of the jurisdiction wherein she is residing or has become domiciled;

(33) to order visitation for the grandparent of a minor child where either or both parents of the minor child is or are deceased, or are divorced, or are living separate and apart in different habitats, if the court finds that:

(1) the child's parents or guardians are unreasonably depriving the grandparent of the opportunity to visit with the child, including denying visitation of the minor child to the grandparent for a period exceeding ninety days; and

(2) awarding grandparent visitation would not interfere with the parent-child relationship; and:

(a) the court finds by clear and convincing evidence that the child's parents or guardians are unfit; or

(b) the court finds by clear and convincing evidence that there are compelling circumstances to overcome the presumption that the parental decision is in the child's best interest.

The judge presiding over this matter may award attorney's fees and costs to the prevailing party.

For purposes of this item, "grandparent" means the natural or adoptive parent of a natural or adoptive parent of a minor child.

(34) to order custody with all rights of guardianship as described in Section 21-21-55;

(35) to hear and determine actions for protection from domestic abuse;

(36) to issue orders compelling public officials and officers to perform official acts under Title 63, the Children's Code, Protection from Domestic Abuse Act, and Chapter 35, Title 43, Omnibus Adult Protection Act;

(37) to appoint guardians ad litem in actions pertaining to custody or visitation pursuant to Section 63-3-810;

(38) to hear and determine an action where either party in his or her complaint, answer, counterclaim, or motion for pendente lite relief prays for the allowance of suit money pendente lite and permanently. In this action the court shall allow a reasonable sum for the claim if it appears well-founded. Suit money, including attorney's fees, may be assessed for or against a party to an action brought in or subject to the jurisdiction of the family court. An award of temporary attorney's fees or suit costs must not be stayed by an appeal of the award;

(39) to require the parties to engage in court-mandated mediation pursuant to Family Court Mediation Rules or to issue consent orders authorizing parties to engage in any form of alternate dispute resolution which does not violate the rules of the court or the laws of South Carolina; provided however, the parties in consensual mediation must designate any arbiter or mediator by unanimous consent subject to the approval of the court;

(40) to require the parent of a child brought before the court for adjudication of a delinquency matter and agencies providing services to the family to cooperate and participate in a plan adopted by the court to meet the needs and best interests of the child and to hold a parent or agency in contempt for failing to cooperate and participate in the plan adopted by the court. In imposing its contempt powers the Family Court must take into consideration mitigating circumstances including the parent's or legal custodian's participation in the treatment plan, the level of services being offered by the lead and participating

agencies, and the level of cooperation by the lead and participating agencies as the court may deem appropriate;

(41) to order a person required to pay support under a court order being enforced under Title IV-D of the Social Security Act who is unemployed or underemployed and who is the parent of a child receiving Temporary Assistance to Needy Families benefits to participate in an employment training program or public service employment pursuant to regulations promulgated by the department. The Division of Child Support Enforcement of the State Department of Social Services also has jurisdiction under this item in cases under Title IV-D of the Social Security Act brought pursuant to Article 5, Chapter 17, Title 63 of the 1976 Code;

(42) to order joint or divided custody where the court finds it is in the best interests of the child;

(43) to enforce an administrative subpoena or subpoena duces tecum issued by the Department of Social Services pursuant to Section 63-17-850 and to enforce fines assessed by the department pursuant to Sections 63-17-850, 63-17-2310(C), and 43-5-598(G);

(44) to order sibling visitation where the court finds it is in the best interest of the children;

(45) to hear and determine actions concerning control of the person of a minor, including guardianship of the minor;

(46) to order custody of a minor child to the de facto custodian under the circumstances specified in Section 63-15-60.

(B) Notwithstanding another provision of law, the family court and the probate court have concurrent jurisdiction to hear and determine matters relating to paternity, common-law marriage, and interpretation of marital agreements; except that the concurrent jurisdiction of the probate court extends only to matters dealing with the estate, trust, and guardianship and conservatorship actions before the probate court.

HISTORY: 2008 Act No. 361, Section 2; 2008 Act No. 332, Section 7; 2010 Act No. 267, Section 1, eff June 24, 2010; 2012 Act No. 273, Section 1, eff June 26, 2012; 2014 Act No. 270 (H.4348), Section 1, eff June 9, 2014.

Effect of Amendment

The 2010 amendment rewrote paragraph (A)(33).

The 2012 amendment rewrote subsection (A)(17).

2014 Act No. 270, Section 1, in subsection (A)(33), deleted former paragraph (2), relating to the grandparent maintaining a parent-child relationship with the minor child; in paragraph (2), deleted "that" before "awarding"; and in the last paragraph, substituted "a natural or adoptive parent of" for "any parent to".

CHAPTER 17
Paternity and Child Support

ARTICLE 1
Paternity

SECTION 63-17-10. Purpose; definitions.

(A) The purpose of this article is to establish a procedure to aid in the determination of the paternity of an individual.

(B) As used in this article, "child" includes, but is not limited to, a person under the age of eighteen years.

(C) An action to establish the paternity of an individual may be brought by:

(1) a child;

(2) the natural mother of a child;

(3) any person in whose care a child has been placed;

(4) an authorized agency, including, but not limited to, the Department of Social Services, pursuant to the provisions of Chapter 5 of Title 43, and any other person or agency pursuant to the provisions of Sections 63-3-550 and 63-17-340; or

(5) a person who claims to be the father of a child.

~~(D) If an action is brought under this article prior to the birth of a child, all proceedings must be stayed until after the birth of the child except the service of a summons and the taking of depositions or other discovery procedures.~~ An action under this article may be brought and an order may be entered before the birth of the child, provided the enforcement of that order shall be stayed until the birth of the child.

(E) Whenever an action threatens to make a child illegitimate, the presumed legal father and the putative natural father must be made parties respondents to the action. A child under the age of eighteen years must be represented by a guardian ad litem appointed by the court. Neither the mother nor the presumed or putative father of the child may represent him as guardian ad litem.

(F) As used in this article, a "donor" is an individual who donates their sperm or ova, for the purpose of assisting an intended parent, who is not their spouse, in conceiving a child through the use of assisted reproduction. Said donation of genetic material must have been provided to a licensed physician or a licensed sperm or ova bank. The term "assisted reproduction" means conception by any means other than sexual intercourse pursuant to a written assisted reproduction agreement or consent form. An "intended parent" is an individual who manifests the written intent to be legally bound as the parent of a child conceived through the use of assisted reproduction.

HISTORY: 2008 Act No. 361, Section 2.

SECTION 63-17-20. Jurisdiction.

(A) Any person who has sexual intercourse in this State, or causes conception through the use of assisted reproduction with the intent to become a legal parent in this State, or who enters into a written assisted reproduction agreement in this state, thereby submits to the jurisdiction of the courts of this State as to an action brought under this article with respect to a child who may have been conceived by that act of intercourse or assisted reproduction. In addition to any other method provided by law, personal jurisdiction may be acquired by service of process outside this State in the manner authorized by the provisions of Section 36-2-806.

(B) Unless the court orders otherwise, the custody of an illegitimate child is solely in the natural mother unless the mother has relinquished her rights to the child. If paternity has been acknowledged or adjudicated, the father may petition the court for rights of visitation or custody in a proceeding before the court apart from an action to establish paternity.

(C) All actions commenced under this article must be dealt with as separate proceedings before the court without a jury. The general public is to be excluded from these proceedings and only those persons whom

the judge finds to have a direct interest in the proceeding or in assisting the court in its work are to be permitted to attend.

(D) Any proceeding commenced under this article is a civil action. The natural mother of the child and the alleged father are competent to testify and may be compelled by the court to appear and give testimony.

(E) If a child is conceived pursuant to an assisted reproduction agreement, the courts of this State shall have jurisdiction over a proceeding to determine parentage of the child if any of the following conditions is satisfied:

(1) One or more of the parties to the assisted reproduction agreement resides in this State, or resided in this State at the time the assisted reproduction agreement was executed.

(2) The medical procedures leading to conception were carried out in this State.

(3) The child is born in this State.

HISTORY: 2008 Act No. 361, Section 2.

SECTION 63-17-40. Settlement and voluntary agreements.

(A) The court must encourage settlements and voluntary agreements and must examine and approve them whenever they are warranted. Upon a finding of fairness the court shall approve, without a hearing, settlements and voluntary agreements which are reduced to writing, signed by the parties, and properly verified. The agreement must be accompanied by financial declarations and affidavits from the custodial and noncustodial parents stating that they have read, or have had read to them, and understand the agreement and that they have voluntarily executed the agreement or consent order. The parties may submit themselves to the jurisdiction of the court by a settlement or voluntary agreement which must be filed with the summons and complaint. A defendant's affidavit must state that the defendant is capable of fulfilling any financial requirements of the agreement or consent order applicable to the defendant. Upon the court's approval, the settlement or voluntary agreement becomes an order of the court.

(B) In actions commenced by the Department of Social Services or any other authorized agency, an employee of the department or the agency who is familiar with the action may make, on behalf of the custodial parent, the required affidavit accompanying a settlement, voluntary agreement, or consent order. In cases where the child is the recipient of public assistance, the affidavit must state that the employee has reviewed the case and that the child involved is receiving public assistance due in part to inadequate support from the noncustodial parent.

(C) The donor of sperm or ova provided to a licensed physician or to a licensed sperm or ova bank for use in assisted reproduction by an intended parent other than the donor's spouse is treated in law as if the donor was not the natural parent of a child thereby conceived, unless otherwise agreed to in writing, signed by sperm or ova provider and the intended parent prior to the conception of the child.

(D) An intended parent who conceives a child through assisted reproduction shall be treated in law as the legal and natural parent of the resulting child, even if donated sperm or ova is used for conception. If married, the intended parent's spouse shall be treated in law as the child's legal and natural parent if both spouses consented in writing to the conception through assisted reproduction.

HISTORY: 2008 Act No. 361, Section 2.

SECTION 63-17-50. Verified voluntary acknowledgments.

(A) A verified voluntary acknowledgment of paternity creates a legal finding of paternity, subject to the right of any signatory to rescind the acknowledgment within the earlier of:

(1) sixty days; or

(2) the date of an administrative or judicial proceeding relating to the child including a proceeding to establish a support order in which the signatory is a party.

(B) Upon the expiration of the sixty-day period provided for in subsection (A), a verified voluntary acknowledgment of paternity may be challenged in court only on the basis of fraud, duress, or material mistake of fact, with the burden of proof upon the challenger.

(C) In the event of a challenge, legal responsibilities including child support obligations of any signatory arising from the acknowledgment may not be suspended during the challenge except for good cause shown.

(D) Judicial or administrative proceedings are not required or permitted to ratify an unchallenged acknowledgment of paternity.

HISTORY: 2008 Act No. 361, Section 2.

PR COMMITTEE PROPOSAL

The Committee proposes to add the following subsection (f) to Rule 7.1 and a corresponding comment:

Proposed Changes (redlined)

RULE 7.1: COMMUNICATIONS CONCERNING A LAWYER'S SERVICES

A lawyer shall not make false, misleading, or deceptive communications about the lawyer or the lawyer's services. A communication violates this rule if it:

...

(f) contains a statement or implication that another lawyer or law firm is part of, is associated with, or affiliated with the lawyer when that is not the case, including contact or other information presented in a way that has the effect of misleading a person searching for information regarding a particular lawyer or law firm, to unknowingly contact a different lawyer or law firm.

Comment

...

[5] A lawyer may not state or imply an association or affiliation with another lawyer or law firm if the statement or implication is untrue or misleading. It is impermissible for a lawyer to include the name of a non-affiliated or non-associated lawyer or law firm in an internet advertisement or sponsored link that is displayed when the non-affiliated lawyer or law firm's name is used as a search term when the advertisement does not clearly indicate that the non-affiliated lawyer or law firm is not a part of the advertising lawyer's firm. A lawyer's use or purchase of the name or trade name of another lawyer or law firm as an internet search term that results in the display of the lawyer's advertisement without a disclaimer that the advertisement is for the lawyer and not the other lawyer or law firm would also violate Rule 7.1(f). Additionally, an advertisement that is displayed in internet search results must include the name and address of the lawyer responsible for the advertisement and the principal geographic location of the lawyer who will handle matters advertised for, as required by Rule 7.2(d) and (h).

Rationale

Lawyer advertising continues to evolve in the digital marketplace. One practice that has grown from changes in online advertising technology is the use of "competitive keyword advertising," in

which keywords are used in two forms of advertising: Search Engine Optimization (“SEO”) and Search Engine Marketing (“SEM”).

SEO involves the placement of a website link and description *within* the search results from a web search engine, whereas SEM entails the placement of an advertisement *alongside* those results. When a user searches in Google, Bing, DuckDuckGo, or another search engine, two kinds of results are typically returned: “native” or “organic” search results in the form of a list of websites that the search engine has determined are responsive to the user’s search terms, and paid advertisements for companies offering products or services that in some way relate to or are similar to the search terms. SEO involves the former; SEM involves the latter.

For example, if a user searches using the keywords “Advance Auto Parts store Camden,” the native search results will likely include a list of websites and social media profiles for that company in and around Camden. Alongside those native search results may be advertisements for Advance Auto Parts, NAPA, AutoZone, or other auto parts stores, and links to the websites of those other stores may also appear *within* the list of native search results. The likelihood of such competitors’ ads or web links appearing may be enhanced by the competitors’ use of “Advance Auto” as SEM or SEO keywords, but the use of the keywords is not necessary for that result.

The SEO process for causing a company’s website to be listed within the native search results—and as close as possible to the top of the list—can include, among many other factors, the use of metadata hashtags. A metadata hashtag is a word or phrase, like “auto,” “batteries,” “parts,” etc., that is embedded in the website documents in a way that does not appear on the website when viewed with a browser but is shown, behind the scenes, to the search engine to determine what kind of information is found at that website.

The SEM process for causing a company’s advertisement to appear alongside the native search results often includes payment for the ad to be associated with certain keywords. Any marketing keyword (“batteries,” “parts,” etc.) may be used either in metadata hashtags to invoke native search results or in keyword bidding or purchasing to generate ads, or both.

“Competitive keyword advertising” involves the use by one business of its competitor’s name either in SEM or SEO (e.g., NAPA purchasing the words “batteries,” “parts,” and “Advance” or including them in metadata hashtags). Members of the South Carolina Bar have been divided in the recent debate over whether it is, or should be, ethically permissible for lawyers to engage in competitive keyword advertising.

It is worth noting, as suggested in the auto parts example above, that seeing Lawyer A’s name in the results of a search for Lawyer B does not necessarily mean that Lawyer A has used Lawyer B’s name as a metadata hashtag or purchased it as an ad keyword. Search engine algorithms are

complex and ever-evolving and often result in one business' website or advertisement appearing as a result of a search of a different business' name without any use of competitive keywords by the former. Online marketing experts report that some businesses go to great lengths to keep their own company *out of* the search results of their competitors, but such efforts are fruitless because search engine algorithms may associate related businesses based on other data and are virtually impossible to manipulate so thoroughly or precisely.

The South Carolina Bar's Ethics Advisory Committee opined in 2020 that the Rules of Professional Conduct do not prohibit competitive keyword advertising by lawyers, either as a part of a firm's SEM or its SEO, provided the results returned to the user (either in an ad or in native search results) are not themselves misleading. See Eth. Adv. Op. 20-01 (2020).

The PR Committee then undertook to determine whether the Rules should be amended to regulate or prohibit competitive keyword advertising by lawyers. The Committee concluded, as the Ethics Advisory Committee had in EAO 20-01, that the primary concern about users being misled is in the circumstance where the advertising lawyer's ad or search result misleads the user into believing that the advertising lawyer is affiliated with the lawyer or firm whose name was used as an SEM or SEO keyword. For example, a lawyer not named Smith or Jones might use the names "Smith" and "Jones" as SEM keywords, causing the lawyer's ad to appear alongside the list of native search results when a user searches for Smith and Jones. Both Bar committees agree this is not misleading, even if the lawyer is not affiliated with Smith & Jones, as long as the ad accurately identifies the advertising lawyer. However, if the lawyer's ad says something like "Smith & Jones Law Firm" but hyperlinks to the lawyer's own website, then the ad would be deemed misleading under this proposed rule. The Ethics Advisory Committee referred to this practice as "rerouting" the user by deceiving them into thinking the link is to Smith and Jones when it instead takes them to the advertising lawyer's website. The proposed rule more broadly prohibits any statement or implication that the advertising lawyer is affiliated with the lawyer whose name is used as a keyword if no such affiliation exists.

The proposed comment 5 clarifies that all lawyer advertisements must include the name and address of a lawyer responsible for the content, and in the case of an ad or search result promoted by the use of competitive keyword advertising, that identifying information must be presented in a way that effectively disclaims any association with the lawyer or firm whose name was used as an SEM or SEO keyword.

This approach is consistent with the majority of the few other jurisdictions that have addressed competitive keyword advertising either through rule changes or ethics advisory opinions. All but North Carolina either allow the practice without limitation or allow it subject to the prohibition on deceptive "rerouting." The common wisdom in those opinions is that computer users searching for "Burger King" can generally expect to see ads or even native search results for McDonalds and

are not misled by either. The sentiment against permitting competitive keyword advertising largely centers on the belief that the use of another's name, even behind the scenes without its display to the public in any way, infringes on a proprietary right of the name owner. The Committee believes, as the Ethics Advisory Committee did, that those concerns may be addressed by property law or tort law, but not ethics except in the case of deception.