



**South  
Carolina  
Bar**

**House of Delegates**



January, 2018

Dear Member of the House:

Happy New Year everyone! Welcome to the 2018 House of Delegates.

The House of Delegates of the South Carolina Bar will convene promptly at 11:00 a.m. on Thursday, January 18, 2018, in the Terrace Ballroom at The Sanctuary at Kiawah during the Bar Convention. When you arrive, please be certain to sign in so that the minutes will reflect your attendance. Lunch will be served at the start of the meeting. We will begin the business portion of the meeting as soon as practicable thereafter.

The proposed agenda precedes the first tab of the attached book. You may remove for discussion any item from the Consent Agenda before the agenda is adopted at the start of the meeting. Please remember the restrictions on positions which may be supported by a mandatory bar association. 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 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 2018 and to seeing and spending some time with all of you in Kiawah. 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 black ink, appearing to read "J. Hagood Tighe", is positioned below the closing salutation.

J. Hagood Tighe  
Chair



January, 2018

Dear House of Delegates:

Thank you for your service to our Bar through your membership in the House of Delegates. The House sets the policies of the Bar and speaks for all our members. I look forward to discussing with you the matters on our agenda.

During the course of the meeting, a portion of our agenda is allotted for me to address the House with brief remarks and a summary of mid-year highlights. I am excited about sharing a few of those activities with you.

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.

I am looking 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 Kiawah.

I look forward to seeing you there!

Sincerely,

A handwritten signature in black ink, appearing to read "Elizabeth H. Warner".

Elizabeth H. Warner  
President

**AGENDA**  
**SOUTH CAROLINA BAR HOUSE OF DELEGATES**  
**JANUARY 18, 2018 @ 11:00 A.M.**

CALL TO ORDER  
SET THE AGENDA

J. Hagood Tighe  
Chair

1. Approval of Consent Agenda  
a. Approval of Minutes of Meeting Held on May 18, 2017  
b. Receipt of November Financial Statements  
c. Request from Solo and Small Firm Section to Amend Bylaws  
J. Hagood Tighe  
Chair
2. Recognition of Law Day Essay Contest Winner  
Hon. J. Mark Hayes, II  
Circuit Court Judge
3. Report of the President  
Elizabeth H. Warner  
President
4. Report from South Carolina Bar Foundation, Inc.  
J. René Josey  
Foundation President
5. Request from Professional Responsibility Committee to Amend Rule 1.10 of the Rules of Professional Conduct  
Kirsten E. Small  
Committee Chair
6. Request from Professional Responsibility Committee to Amend Rules 1.0, 1.1 and 1.6 of the Rules of Professional Conduct  
Kirsten E. Small  
Committee Chair
7. Request from Professional Responsibility Committee to Amend Rule 1.6 of the Rules of Professional Conduct  
Michael J. Virzi  
Committee Member
8. Request from Practice and Procedure Committee to Amend Rule 33, SCRPC  
Jonathan W. Lounsberry  
Committee Chair
9. Request from Practice and Procedure Committee to Amend Rule 5(b)(1), SCRPC  
Jonathan W. Lounsberry  
Committee Chair
10. Consideration of Proposal to Increase License Fees  
Beverly A. Carroll  
Treasurer
11. Nomination of Members of Commission on Continuing Legal Education and Specialization  
Roy F. Laney  
Secretary
12. Request from Lawyers Helping Lawyers Commission and Wellness Committee to Amend Rule 408, SCACR  
Lindsay A. Joyner  
Committee Chair
13. Request from Trial and Appellate Advocacy Section to Support Funding for Courtroom Improvements  
Amanda A. Bailey  
Section Chair
14. Request from Probate, Estate Planning and Trust Section, Elder Law Committee and Children's Law Committee to Adopt Uniform Transfer to Minors Act  
David H. Kunes  
Section Council 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 18, 2017

The House met on May 18, 2017, at Somerset Point in Pinopolis. Present were: Samuel K. Allen; J. Leeds Barroll, IV; Samuel Robert Bass, II; Sara Pendarvis Bazemore; Mark S. Berglund; Susan B. Berkowitz; Robin A. Braithwaite; Melody J. E. Breeden; Wendell Lawrence Brown; Christopher W. Burrows; George P. Callison, Jr.; Beverly A. Carroll; Michael S. Cashman; George B. Cauthen; Mark Dale Chappell; Randall L. Charpia; Nicholas J. Clekis; Amie L. Clifford; M. Dawes Cooke, Jr.; Lee Deer Cope; Leslie A. Cotter, Jr.; Stephen M. Cox; William Carey Crantford; Charles Harmon Crawford, III; Elise Freeman Crosby; Andrew Scott Culbreath; Martin S. Driggers, Jr.; Rhett C. Dunaway; John D. Elliott; Kevin Ray Etheridge; Stinson Woodward Ferguson; Allen O. Fretwell; Rosalyn Woodson Frierson; Debra J. Gammons; Kenneth S. Generette; C. Allen Gibson, Jr.; Bernadette Shawan Gillians; Robert Fredrick Goings; Harry L. Goldberg; Daryl G. Hawkins; Sean Joseph Hinton; Russell Thomas Infinger; Jacob H. Jennings; Lindsay Anne Joyner; Justin S. Kahn; D. Michael Kelly; Catherine H. Kennedy; Trent M. Kernodle; Francis B. B. Knowlton; Christopher R. Koon; Lanneau Wm. Lambert, Jr.; Roy Free Laney; Jonathan W. Lounsberry; Angus H. Macaulay; Garry Donald Malphrus; John Lucius McCants; Kathleen McColl McDaniel; J. Edwin McDonnell; John O. McDougall; Joseph S. Mendelsohn; David B. Miller; Randall K. Mullins; Ivory L. Narcisse; Adam Christopher Ness; C. Tyson Nettles; Irish Ryan Neville; William M. O'Bryan, Jr.; Cynthia Hall Ouzts; Alice F. Paylor; Jason P. Peavy; Sheally Venus Poe; Benjamin R. Pogue, III; A. Marvin Quattlebaum, Jr.; Marie-Louise Ramsdale; John Edward Robinson; Pamela DeFanti Robinson; John Edward Roxon; Martha Kent Runey; Dowse Bradwell Rustin, IV; Nancy Doherty Sadler; Carmelo Barone Sammataro; Mary Elizabeth Sharp; Cheryl D. Shoun; Lana H. Sims, Jr.; Michael Benjamin Smith; Megan Finch Stevens; Randell Croft Stoney, III; Hal M. Strange; Fred W. Suggs, Jr.; Jason F. Taylor; David L. Tedder; William R. Thomas; John Hagood Tighe; Samuel Barton Tooker; Matthew N. Tyler; Robert Bruce Wallace; Elizabeth H. Warner; Dean Robert M. Wilcox; Donald B. Wildman; Charlie H. Williams, III; Mitchell Willoughby; William M. Wilson, III; William K. Witherspoon; David Whitten Wolf; Patrick Coleman Wooten; and Clinton Joseph Yarborough.

Guests present were Hon. R. Markley Dennis, Jr., John S. Nichols and Megan S. Seiner.

Representing the Bar staff were: Cindy A. Coker; Nichole Davis; Warren Holland; Leah G. Johnson; Charmy Medlin; Jill C. Rothstein; Jason Stokes; Leigh G. Thomas, Robin Wheeler; and Robert S. Wells.

Chair Hagood Tighe called the meeting to order. A quorum was declared present.

The House observed a moment of silence for recently deceased former members Watson Dorn and Bill Pressley.

Minutes, House of Delegates  
May 18, 2017  
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Mr. Quattlebaum moved to allow privileges of the floor to nonmembers. The motion was seconded, and it was approved.

Mr. Tighe stated that Agenda Item #11, Request from the Elder Law Committee to Oppose H.4013, had been withdrawn. Mr. McDougall moved to adopt the agenda as amended. The motion was seconded, and it was approved.

A motion was made to approve the Consent Agenda - approval of the minutes of the January 19, 2017, meeting; receipt of March Financial Statements; a request from the Solo and Small Firm Section to Amend Section bylaws and a request from the Dispute Resolution Section to amend Section bylaws. The motion was seconded, and it was approved.

Mr. Suggs recognized the 2017 Pro Bono Lawyer of the Year, Scott Bischoff.

Ms. Frierson recognized the 2017 Legal Services Lawyer of the Year, Adam Protheroe.

Mr. Neville recognized the 2017 Young Lawyer of the Year, Julie Moore.

Mr. Cox recognized the 2017 Law Related Education Lawyer of the Year, Joseph Bias.

Ms. Seiner provided a report on the activities of the SC Bar Foundation identifying some of the entities that had been served by SC Bar Foundation grants. She encouraged House members to contribute to the Foundation.

Mr. Witherspoon recognized the 2017 Mentor of the Year, Kirby D. Shealy, III.

Under report of the President, Mr. Witherspoon noted the completion of year two of the strategic plan, adding that the SC Bar website had received an Award of Distinction. He provided updates on the Vulnerable Adult Task Force, local bar meetings, new CLE opportunities, the Mentoring Program and the Pro Bono Program. In closing he noted that the YLD and the Wellness Committee had been given awards for their efforts.

Mr. Barroll presented a request from the Professional Responsibility Committee to enable Court regulation of forms used for self-completion for legal matters and moved approval of a revised version presented onsite. The motion was seconded. Discussion ensued on the definition of legal form. Mr. Cauthen opined that the language was vague. Ms. Poe suggested that Section H be amended to add local government agencies. Mr. Barroll agreed to amend his motion to reflect the following change.

Minutes, House of Delegates  
May 18, 2017  
Page three

*H. The requirements of this Rule shall not apply to any form created by a state statute, ~~a state~~ an agency (federal, state or local), non-profit agency, or by or for a court (state or federal).*

Mr. Fretwell suggested additional language to Section F:

*...any legal form and any other penalty the Court deems appropriate, including but not limited to (1) nullification of offending waivers and disclaimers of liability, (2) fines, (3) contempt action, etc.*

Mr. Barroll agreed to add the additional language. Discussion ensued on the issue of non-profit agencies. Following discussion, the amended motion was approved.

As set by special order, the Assembly was convened. The Assembly was adjourned at the conclusion of its business.

Mr. Lounsberry presented a request from the Practice and Procedure Committee to amend Rule 13(a), SCRCrimP, to allow attorneys to sign subpoenas in criminal cases. He moved approval of the request. The motion was seconded, and it was approved.

Next, Mr. Nichols presented an amended proposal to the Supreme Court regarding limited scope attorney/client relationships. He reviewed the history of the proposal, noting that the House had previously approved the concept and that the re-crafted proposal was in response to concerns raised by the Court. Mr. Elliott moved approval of the proposal. The motion was seconded, and it was approved.

The following members were elected to the Nominating Committee: John L. McCants (Region 2), Melody J. Breeden (Region 3) and Nancy D. Sadler (Region 4).

Mr. Cooke presented Bar and CLE Division budgets for 2017-18 and moved approval. The motion was seconded, and it was approved.

Ms. Warner recognized outgoing Bar President Witherspoon with a plaque and gift.

There being no further business, the meeting was adjourned.

Minutes  
South Carolina Bar Assembly  
May 18, 2017

President Witherspoon convened a meeting of the Assembly as required under the Constitution and declared a quorum was present.

President Witherspoon thanked outgoing Board members and called incoming Bar officers and Board members forward for installation.

Following the installation of officers and Board members, the Honorable R. Markley Dennis, Jr., presented brief remarks and installed Elizabeth H. Warner as President of the South Carolina Bar. Ms. Warner was recognized to make remarks.

The Assembly was adjourned.

TO: House of Delegates

FM: Bev Carroll, Treasurer

DT: January 2018

RE: Financial Reports

The financial reports through November follow. Page 1 is the balance sheet for general, grant and section funds. Page 9 has the balance sheet for the Lawyers' Fund for Client Protection. Page 10 is the CLE Division balance sheet.

As reflected on page 1, since July 1 the general, grant and section funds have decreased by a total of \$1,181,852. The license fees are collected at the beginning of the calendar year and used throughout those twelve months while the Bar's fiscal year began on July 1. Hence, a deficit in net revenues is expected until January. Under accrual based accounting, license fees received for the 2018 license renewal will appear in the January statements.

Section funds increased \$6,779; see page 6. Monies held in grants and other funds increased \$68,401; see page 8.

Through November the net effect on general operating funds was a decrease of \$1,257,029, a figure found at the end of the third numerical column on page 2. (The decrease last year at the end of November was \$1,323,329.) The fourth column on that same page indicates the expected loss was \$1,321,600. Thus, the general operating funds are about \$64,571 ahead of budget.

The deviations of \$5,000 or more in year-to-date general revenues are:

Lawyer Referral Service Percentage Fees: Chiefly a settlement in an insurance residential property case.

The deviations in general expenses of \$5,000 or more are:

Salaries: Positions were unfilled during the fiscal year.

FICA and Employee Benefits: Savings attributed to unfilled positions and some reduced medical insurance and workers' compensation premium costs.

Buildings: Replaced water heater in Conference Center.

Staff Expense: Staff did not go to association software event.

South Carolina Lawyer: Budget anticipated increased production costs which did not occur.

Page 11 reflects that the CLE Division's net loss was \$185,303. (The decrease last year at the end of November was \$88,647.) The budgeted loss was \$158,100, resulting in an unfavorable position against budget of \$27,103.

The deviations in CLE revenues of \$5,000 or more are:

Seminar Income: The deficit is principally from cancellation of seminars and a mediation training.

The deviations in CLE expenses of \$5,000 or more are:

Salaries: Positions were unfilled during the fiscal year.

FICA and Employee Benefits: Savings attributed to unfilled positions and some reduced medical insurance and workers' compensation premium costs.

Equipment Maintenance & Licenses: Software license renewals were less than expected.

Seminar Direct: There were expenses without revenues for cancelled programs, and the expense budget was set deliberately low this fiscal year.

Publication Direct: There were product development costs for HotDocs forms and e-books.

SOUTH CAROLINA BAR  
BALANCE SHEET  
For the Five Months Ending Thursday, November 30, 2017

	<b>YTD</b>
<b>CURRENT ASSETS</b>	
CHECKING ACCOUNT	\$94,657.82
MONEY MARKET	978,160.64
DISCIPLINE ASSESSMENT	9,306.57
INVESTMENTS	1,208,462.20
ACCOUNT RECEIVABLES	208.63
PREPAID EXPENSES	133,777.98
CONTRA ACCOUNTS DUE	2,466.05
<b>TOTAL CURRENT ASSETS</b>	<b>\$2,427,039.89</b>
<b>PLANT</b>	
OFFICE EQUIPMENT	540,974.21
BUILDING & LAND	935,724.63
BUILDING # 2	6,115,290.69
DUE FROM CLE FIXED ASSETS	0.00
<b>TOTAL PLANT FUND</b>	<b>\$7,591,989.53</b>
<b>TOTAL ASSETS</b>	<b>\$10,019,029.42</b>
<b>CURRENT LIABILITIES</b>	
ACCOUNTS PAYABLE	34,406.14
PREPAID RENT	125.00
PERSONNEL PAYABLES	245,963.37
DUE:BF & COUNTY BAR	53,597.00
DEFERRED REVENUE	488,844.52
DEFERRED CONTRIBUTION TO USC	0.00
NOTES PAYABLE-CURRENT	1,052,749.75
RETAINAGE FOR NEW BUILDING	0.00
LEASE PAYABLE - CURRENT	0.00
SC SALES TAX REVENUE	0.00
<b>TOTAL CURRENT LIABILITIES</b>	<b>\$1,875,685.78</b>
<b>LONG TERM LIABILITIES</b>	
NOTES PAYABLE-LONG TERM	0.00
LEASE PAYABLE - LONG TERM	0.00
<b>TOTAL LONG TERM LIABILITIES</b>	<b>\$0.00</b>
<b>TOTAL LIABILITIES</b>	<b>\$1,875,685.78</b>
BEGINNING OF YEAR GENERAL FUND BALANCE	8,352,118.95
BEGINNING OF YEAR LAWYER REFERRAL FUND	491,109.46
BEGINNING OF YEAR GRANT FUND BALANCE	222,412.55
BEGINNING OF YEAR SECTION FUND BALANCE	259,554.24
<b>TOTAL BEGINNING OF YEAR FUND BALANCE</b>	<b>9,325,195.20</b>
YTD REVENUE	603,092.84
YTD EXPENSES	1,784,944.40
NET CHANGE	(1,181,851.56)
<b>FUND BALANCE</b>	<b>\$8,143,343.64</b>
<b>TOTAL LIABILITIES AND FUND BALANCE</b>	<b>\$10,019,029.42</b>

SOUTH CAROLINA BAR  
INCOME STATEMENT  
For the Five Months Ending Thursday, November 30, 2017

	<b>MONTHLY ACTUAL</b>	<b>MONTHLY BUDGET</b>	<b>YTD ACTUAL</b>	<b>YTD BUDGET</b>	<b>ANNUAL BUDGET</b>
<b>REVENUE</b>					
LICENSE FEES	\$417.50	\$0.00	\$16,864.55	\$12,000.00	\$3,278,900.00
FEES TOWARDS BUILDING	0.00	0.00	2,580.00	1,000.00	452,800.00
INTEREST	338.25	500.00	2,655.71	2,600.00	12,300.00
LRS PERCENTAGE FEE	32,032.65	31,000.00	115,791.87	110,000.00	300,000.00
LRS SUBSCRIPTION FEE	700.00	500.00	64,800.00	64,500.00	65,000.00
MARKETING FEES	2,512.33	2,000.00	19,070.77	16,300.00	35,300.00
SC LAWYER	16,657.75	15,000.00	46,514.75	45,000.00	90,000.00
STAFF SUPPORT	0.00	0.00	0.00	0.00	50,700.00
RENTS RECEIVED	3,669.00	3,700.00	18,345.00	18,300.00	44,000.00
ADR CERTIFICATION	16,250.00	16,700.00	34,300.00	34,600.00	98,000.00
DUES COLLECTION FEES	1,917.34	1,500.00	1,917.34	1,500.00	14,100.00
MISCELLANEOUS	75.00	0.00	495.50	100.00	1,200.00
LAW STUDENT AFFILIATES	280.00	0.00	1,120.00	0.00	1,500.00
SALES TAX	0.00	0.00	0.00	0.00	200.00
<b>TOTAL REVENUES</b>	<b>\$74,849.82</b>	<b>\$70,900.00</b>	<b>\$324,455.49</b>	<b>\$305,900.00</b>	<b>\$4,444,000.00</b>
<b>EXPENSES</b>					
SALARIES	143,811.04	142,700.00	696,749.42	713,300.00	1,738,800.00
FICA & EMPLOYEE BENEFITS	20,709.46	26,300.00	167,653.98	183,800.00	549,700.00
BUILDINGS	18,501.09	17,600.00	92,452.93	85,200.00	197,500.00
EQUIPMENT & SOFTWARE	0.00	0.00	24,008.82	24,100.00	28,500.00
EQUIP. MAINTENANCE & LICENSES	13,376.76	13,800.00	69,096.14	70,000.00	168,300.00
OFFICE SUPPLIES	3,596.88	3,000.00	10,770.95	11,900.00	40,600.00
POSTAGE	6,934.11	8,000.00	7,890.72	9,500.00	12,800.00
TELEPHONE	1,184.73	1,000.00	4,666.68	5,000.00	16,900.00
PROFESSIONAL FEES	2,857.80	1,100.00	7,682.80	5,100.00	9,500.00
BOND/INSURANCE	879.96	800.00	4,876.27	4,700.00	9,700.00
STAFF EXPENSE	1,089.76	7,700.00	7,258.87	14,100.00	37,500.00
DUES/SUBSCRIPTIONS/BOOKS	945.00	200.00	3,095.96	3,200.00	4,100.00
CASUAL LABOR/HIRING	145.00	0.00	2,530.50	2,400.00	2,400.00
DELEGATE EXPENSE	1,895.55	1,900.00	36,761.61	37,600.00	72,700.00
OFFICERS' EXPENSE	0.00	0.00	0.00	0.00	4,200.00
MEMBERSHIP SERV. COMMITTEES	4,970.49	4,200.00	11,947.43	9,300.00	99,300.00
PRACTICE MANAGEMENT ASST.	898.43	2,600.00	4,954.24	7,200.00	17,900.00
RISK MANAGEMENT	119.88	0.00	305.29	0.00	7,000.00
MENTORING	1,189.20	1,000.00	3,897.10	4,900.00	13,000.00
LAWYERS HELPING LAWYERS	3,664.61	3,200.00	17,321.54	21,100.00	48,400.00
MEMBERSHIP BENEFITS	7,201.51	7,300.00	38,927.45	34,100.00	104,100.00
YOUNG LAWYERS	3,827.15	4,000.00	33,966.63	33,100.00	194,300.00
SENIOR LAWYERS	90.15	0.00	11,483.43	11,400.00	43,200.00
GOVERNMENT RELATIONS	(2,832.79)	300.00	1,920.00	4,000.00	33,000.00
JUDICIAL EVALUATION	3,165.24	3,000.00	3,165.24	3,000.00	5,000.00
PUBLIC SERVICE COMMITTEE	564.14	1,000.00	2,632.76	3,600.00	24,500.00
PRO BONO	624.15	600.00	1,283.16	600.00	58,900.00
ASK-A-LAWYER	75.17	0.00	749.54	300.00	14,800.00
CLIENT ASSISTANCE PROGRAM	70.98	100.00	387.04	500.00	1,000.00
ADR CERTIFICATION	(268.71)	0.00	8,757.66	5,800.00	9,000.00
REFERRAL SERV. MARKETING	18,454.22	18,800.00	26,631.37	28,400.00	117,900.00
LAW RELATED EDUCATION	3,567.28	3,200.00	24,463.70	25,100.00	124,500.00
PUBLIC RELATIONS	1,696.56	1,000.00	7,676.39	7,000.00	29,700.00
SC LAWYER	35,291.49	37,200.00	100,045.04	112,800.00	226,100.00
LAWYERS DESK BOOK	0.00	0.00	3,919.33	4,000.00	4,000.00
CONTRIBUTIONS	0.00	0.00	0.00	0.00	8,000.00
CREDIT CARD FEES	1,159.94	1,200.00	2,887.46	2,500.00	55,800.00
MISCELLANEOUS	84.65	200.00	413.83	1,000.00	2,800.00
SHORT TERM PROJECTS	0.00	0.00	0.00	0.00	5,000.00
LAW STUDENT AFFILIATES	0.00	0.00	6,253.01	5,900.00	8,500.00
SALES TAX	0.00	0.00	0.00	0.00	200.00
NEW BUILDING DEBT	26,400.00	26,400.00	132,000.00	132,000.00	316,800.00
<b>TOTAL EXPENSES</b>	<b>\$325,940.88</b>	<b>\$339,400.00</b>	<b>\$1,581,484.29</b>	<b>\$1,627,500.00</b>	<b>\$4,465,900.00</b>
<b>NET CHANGE</b>	<b>(\$251,091.06)</b>	<b>(\$268,500.00)</b>	<b>(\$1,257,028.80)</b>	<b>(\$1,321,600.00)</b>	<b>(\$21,900.00)</b>

**SOUTH CAROLINA BAR**  
**Government Relations**  
**Statement of Revenue and Expenses**  
For the Five Months Ending Thursday, November 30, 2017

	<u>MONTHLY ACTUAL</u>	<u>MONTHLY BUDGET</u>	<u>YTD ACTUAL</u>	<u>YTD BUDGET</u>	<u>ANNUAL BUDGET</u>
<b>REVENUE</b>					
	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
<b>EXPENSES</b>					
SALARIES	0.00	0.00	0.00	0.00	0.00
FICA & EMPLOYEE BENEFITS	0.00	0.00	0.00	0.00	0.00
EQUIPMENT & FURNITURE	0.00	0.00	0.00	0.00	0.00
EQUIPMENT & MAINTENANCE	0.00	0.00	0.00	0.00	0.00
OFFICE SUPPLIES	0.00	0.00	0.00	0.00	0.00
POSTAGE	0.00	0.00	0.00	0.00	0.00
TELEPHONE	0.00	0.00	0.00	0.00	0.00
PROFESSIONAL FEES	0.00	0.00	0.00	0.00	0.00
STAFF EXPENSE	0.00	0.00	0.00	0.00	0.00
GOVERNMENT RELATIONS	(2,832.79)	300.00	1,920.00	4,000.00	33,000.00
<b>TOTAL EXPENSES</b>	<u><b>(\$2,832.79)</b></u>	<u><b>\$300.00</b></u>	<u><b>\$1,920.00</b></u>	<u><b>\$4,000.00</b></u>	<u><b>\$33,000.00</b></u>
<b>NET BALANCE</b>	<u><b>\$2,832.79</b></u>	<u><b>(\$300.00)</b></u>	<u><b>(\$1,920.00)</b></u>	<u><b>(\$4,000.00)</b></u>	<u><b>(\$33,000.00)</b></u>

**Lawyer Referral Service**  
**Statement of Revenue and Expenses**

<b>REVENUE</b>					
LRS PARTICIPATION FEES	\$32,032.65	\$31,000.00	\$115,791.87	\$110,000.00	\$300,000.00
LRS SUBSCRIPTION FEES	700.00	500.00	64,800.00	64,500.00	65,000.00
<b>TOTAL REVENUES</b>	<u><b>\$32,732.65</b></u>	<u><b>\$31,500.00</b></u>	<u><b>\$180,591.87</b></u>	<u><b>\$174,500.00</b></u>	<u><b>\$365,000.00</b></u>
<b>EXPENSES</b>					
SALARIES	7,150.50	7,200.00	35,519.00	35,800.00	85,900.00
FICA & EMPLOYEE BENEFITS	1,668.93	1,700.00	10,917.83	11,300.00	30,300.00
BUILDING	700.00	700.00	3,700.00	3,700.00	8,700.00
EQUIPMENT & FURNITURE	0.00	0.00	2,422.59	0.00	1,500.00
EQUIPMENT & MAINTENANCE	800.00	800.00	3,346.76	3,900.00	12,800.00
OFFICE SUPPLIES	3.15	0.00	3.15	0.00	1,500.00
POSTAGE	12.15	0.00	92.25	0.00	1,000.00
TELEPHONE	62.14	0.00	354.67	0.00	1,200.00
PROFESSIONAL FEES	300.00	300.00	300.00	300.00	2,800.00
STAFF EXPENSE	0.00	0.00	0.00	0.00	0.00
BOND / INSURANCE	0.00	0.00	0.00	0.00	600.00
DUES /SUBSCRIPTIONS	0.00	0.00	0.00	0.00	0.00
CASUAL LABOR	0.00	0.00	0.00	0.00	0.00
ADVERTISING	18,292.35	18,500.00	25,135.17	26,700.00	114,700.00
GENERAL EXPENSES	161.87	300.00	1,496.20	1,700.00	3,200.00
<b>TOTAL EXPENSES</b>	<u><b>\$29,151.09</b></u>	<u><b>\$29,500.00</b></u>	<u><b>\$83,287.62</b></u>	<u><b>\$83,400.00</b></u>	<u><b>\$264,200.00</b></u>
<b>NET BALANCE</b>	<u><b>\$3,581.56</b></u>	<u><b>\$2,000.00</b></u>	<u><b>\$97,304.25</b></u>	<u><b>\$91,100.00</b></u>	<u><b>\$100,800.00</b></u>

SOUTH CAROLINA BAR  
Statement of Revenue and Expense  
Young Lawyers Division  
For the Five Months Ending Thursday, November 30, 2017

	<u>MONTHLY ACTUAL</u>	<u>MONTHLY BUDGET</u>	<u>YTD ACTUAL</u>	<u>YTD BUDGET</u>	<u>ANNUAL BUDGET</u>
<b>REVENUE</b>	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
<b>EXPENSES</b>					
ANNUAL CONVENTION	0.00	0.00	0.00	0.00	39,500.00
SERVICE TO THE PUBLIC	1,499.85	1,400.00	4,718.79	3,800.00	43,700.00
SERVICE TO THE BAR	1,833.69	2,400.00	7,167.73	8,100.00	37,500.00
STRATEGIC PLANNING	0.00	0.00	0.00	0.00	19,000.00
DELEGATE EXPENSE	0.00	0.00	16,341.38	16,500.00	34,000.00
ADMINISTRATIVE	200.49	200.00	2,063.03	1,900.00	3,500.00
PUBLICATIONS/SCYL	36.72	0.00	3,118.33	2,800.00	14,600.00
PROJECT COMPLETION	256.40	0.00	557.37	0.00	2,500.00
<b>TOTAL EXPENSES</b>	<u><b>\$3,827.15</b></u>	<u><b>\$4,000.00</b></u>	<u><b>\$33,966.63</b></u>	<u><b>\$33,100.00</b></u>	<u><b>\$194,300.00</b></u>
<b>NET BALANCE</b>	<u><b>(\$3,827.15)</b></u>	<u><b>(\$4,000.00)</b></u>	<u><b>(\$33,966.63)</b></u>	<u><b>(\$33,100.00)</b></u>	<u><b>(\$194,300.00)</b></u>

SOUTH CAROLINA BAR  
SECTIONS FUND BALANCES  
For the Five Months Ending Thursday, November 30, 2017

	YTD
CONSTRUCTION LAW SECTION	
BEGINNING FY FUND BALANCE	\$19,318.33
YTD REVENUE	863.06
YTD EXPENSES	0.00
FUND BALANCE	\$20,181.39
CONSUMER LAW SECTION	
BEGINNING FY FUND BALANCE	4,266.16
YTD REVENUE	420.00
YTD EXPENSES	0.00
FUND BALANCE	\$4,686.16
CORPORATE, BANKING & SECURITIES SECTION	
BEGINNING FY FUND BALANCE	23,825.32
YTD REVENUE	510.00
YTD EXPENSES	0.00
FUND BALANCE	\$24,335.32
CRIMINAL LAW SECTION	
BEGINNING FY FUND BALANCE	21,951.48
YTD REVENUE	760.00
YTD EXPENSES	0.00
FUND BALANCE	\$22,711.48
DISPUTE RESOLUTION SECTION	
BEGINNING FY FUND BALANCE	6,625.08
YTD REVENUE	780.00
YTD EXPENSES	25.00
FUND BALANCE	\$7,380.08
EMPLOYMENT AND LABOR LAW SECTION	
BEGINNING FY FUND BALANCE	3,798.92
YTD REVENUE	619.80
YTD EXPENSES	2,957.08
FUND BALANCE	\$1,461.64
ENVIRONMENTAL & NATURAL RESOURCES SECTION	
BEGINNING FY FUND BALANCE	10,049.01
YTD REVENUE	525.00
YTD EXPENSES	0.00
FUND BALANCE	\$10,574.01
FAMILY LAW SECTION	
BEGINNING FY FUND BALANCE	16,360.38
YTD REVENUE	3,410.56
YTD EXPENSES	19.10
FUND BALANCE	\$19,751.84
GOVERNMENT LAW SECTION	
BEGINNING FY FUND BALANCE	2,595.04
YTD REVENUE	450.00
YTD EXPENSES	782.33
FUND BALANCE	\$2,262.71
HEALTH CARE LAW SECTION	
BEGINNING FY FUND BALANCE	4,663.06
YTD REVENUE	720.00
YTD EXPENSES	0.00
FUND BALANCE	\$5,383.06

SOUTH CAROLINA BAR  
 SECTIONS FUND BALANCES  
 For the Five Months Ending Thursday, November 30, 2017

	YTD
<b>MILITARY LAW SECTION</b>	
BEGINNING FY FUND BALANCE	2,458.06
YTD REVENUE	420.00
YTD EXPENSES	1,881.37
FUND BALANCE	\$996.69
<b>PROBATE, ESTATE PLANNING AND TRUST</b>	
BEGINNING FY FUND BALANCE	5,055.64
YTD REVENUE	1,410.00
YTD EXPENSES	59.87
FUND BALANCE	\$6,405.77
<b>REAL ESTATE PRACTICE SECTION</b>	
BEGINNING FY FUND BALANCE	36,154.54
YTD REVENUE	1,905.00
YTD EXPENSES	1,500.45
FUND BALANCE	\$36,559.09
<b>SOLO AND SMALL FIRM PRACTITIONERS</b>	
BEGINNING FY FUND BALANCE	16,001.62
YTD REVENUE	2,820.00
YTD EXPENSES	5,071.98
FUND BALANCE	\$13,749.64
<b>TAX LAW SECTION</b>	
BEGINNING FY FUND BALANCE	6,869.48
YTD REVENUE	540.00
YTD EXPENSES	0.00
FUND BALANCE	\$7,409.48
<b>TORTS AND INSURANCE PRACTICE SECTION</b>	
BEGINNING FY FUND BALANCE	49,613.88
YTD REVENUE	1,310.00
YTD EXPENSES	0.00
FUND BALANCE	\$50,923.88
<b>TRIAL AND APPELLATE ADVOCACY SECTION</b>	
BEGINNING FY FUND BALANCE	24,202.41
YTD REVENUE	530.00
YTD EXPENSES	0.00
FUND BALANCE	\$24,732.41
<b>WORKERS' COMPENSATION SECTION</b>	
BEGINNING FY FUND BALANCE	5,745.83
YTD REVENUE	1,080.00
YTD EXPENSES	0.00
FUND BALANCE	\$6,825.83
BEGINNING OF YEAR FUND BALANCE	259,554.24
YTD REVENUE	19,073.42
YTD EXPENSES	12,297.18
ENDING FUND BALANCE	\$266,330.48

GRANTS & OTHER  
FUND BALANCES  
For the Five Months Ending Thursday, November 30, 2017

	YTD
ASK-A-LAWYER 17/18	
YTD REVENUE	\$17,272.00
YTD EXPENSES	16,758.56
FUND BALANCE	\$513.44
 LRE GRANT FUND 17/18	
YTD REVENUE	96,250.00
YTD EXPENSES	87,641.24
FUND BALANCE	\$8,608.76
 LRE SALES AND REGISTRATIONS	
BEGINNING OF YEAR FUND BALANCE	45,803.71
YTD REVENUE	14,765.00
YTD EXPENSES	0.00
FUND BALANCE	\$60,568.71
 JMLP (LRE) GRANT	
BEGINNING OF YEAR FUND BALANCE	16,702.21
YTD REVENUE	(12,737.07)
YTD EXPENSES	17,731.43
FUND BALANCE	(\$13,766.29)
 PRO BONO OTHER	
BEGINNING OF YEAR FUND	0.00
YTD REVENUE	1,425.00
YTD EXPENSES	0.00
FUND BALANCE	\$1,425.00
 SC ACCESS TO JUSTICE COMMISSION (IOLTA) 17/18	
YTD REVENUE	0.00
YTD EXPENSES	0.00
FUND BALANCE	\$0.00
 PB INDIGENT SERVICE FEE	
BEGINNING OF YEAR FUND	127,023.87
YTD REVENUE	15,530.00
YTD EXPENSES	57,421.00
FUND BALANCE	\$85,132.87
 DISCIPLINARY FUND 17/18	
BEGINNING OF YEAR FUND	621.57
YTD REVENUE	110,775.00
YTD EXPENSES	0.00
FUND BALANCE	\$111,396.57
 DISPUTED FEES	
BEGINNING OF YEAR FUND	19,641.11
YTD REVENUE	0.00
YTD EXPENSES	0.00
FUND BALANCE	\$19,641.11
 LAWYER REFERRAL SERVICE	
BEGINNING OF YEAR FUND	491,109.46
YTD REVENUE	0.00
YTD EXPENSES	0.00
FUND BALANCE	\$491,109.46

GRANTS & OTHER  
 FUND BALANCES  
 For the Five Months Ending Thursday, November 30, 2017

	<u>YTD</u>
LGOA GRANT - PRO BONO	
BEGINNING OF YEAR FUND BALANCE	10,331.66
YTD REVENUE	0.00
YTD EXPENSES	1,017.57
FUND BALANCE	<u>\$9,314.09</u>
PARALEGAL CERTIFICATION	
BEGINNING OF YEAR FUND BALANCE	2,288.42
YTD REVENUE	2,950.00
YTD EXPENSES	524.13
FUND BALANCE	<u>\$4,714.29</u>
BANK OF AMERICA GRANT	
YTD REVENUE	13,334.00
YTD EXPENSES	10,069.00
FUND BAANCE	<u>\$3,265.00</u>
BEGINNING OF YEAR FUND BALANCE	713,522.01
YTD REVENUE	259,563.93
YTD EXPENSES	191,162.93
ENDING FUND BALANCE	<u>\$781,923.01</u>

LAWYERS' FUND  
STATEMENT OF REVENUE AND EXPENSES  
WITH BALANCE SHEET  
For the Five Months Ending Thursday, November 30, 2017

	November	YTD
<b>REVENUES</b>		
CONTRIBUTIONS	\$59,156.86	\$97,666.52
INTEREST	461.48	2,542.83
<b>TOTAL REVENUES</b>	<b>\$59,618.34</b>	<b>\$100,209.35</b>
<b>EXPENSES</b>		
AWARDS	2,950.00	45,550.00
RULE 413/33	0.00	3,476.52
<b>TOTAL EXPENSES</b>	<b>\$2,950.00</b>	<b>\$49,026.52</b>
<b>NET CHANGE</b>	<b>\$56,668.34</b>	<b>\$51,182.83</b>

**BALANCE SHEET**

<b>ASSETS</b>	
LFCP CHECKING	44,865.47
LFCP MONEY MARKET INVESTMENTS	751,839.18
<b>TOTAL ASSETS</b>	<b>\$1,648,162.44</b>
<b>LIABILITIES</b>	
ACCOUNT PAYABLES - CSF	10,582.89
DEFERRED REVENUE - BECK FUND	647.71
<b>TOTAL LIABILITIES</b>	<b>\$11,230.60</b>
<b>FUND BALANCE</b>	
BEGINNING OF YEAR FUND BALANCE	1,585,749.01
YTD REVENUE	100,209.35
YTD EXPENSES	49,026.52
NET CHANGE	51,182.83
<b>FUND BALANCE</b>	<b>\$1,636,931.84</b>
<b>TOTAL LIABILITIES AND FUND BALANCE</b>	<b>\$1,648,162.44</b>

**SOUTH CAROLINA BAR CLE - DIVISION**  
**BALANCE SHEET**  
For the Five Months Ending Thursday, November 30, 2017

**CURRENT ASSETS**

SCBT CHECKING	\$345,689.07
MONEY MARKET/INVESTMENTS	512,448.50
PETTY CASH	150.00
ACCOUNT RECEIVABLES	17,018.86
PRE-PAID EXPENSE	72,533.69
GENERAL INVENTORY	95,831.33
<b>TOTAL CURRENT ASSETS</b>	<u><b>\$1,043,671.45</b></u>

CAPITAL ASSETS	150,339.00
<b>TOTAL ASSETS</b>	<u><u><b>\$1,194,010.45</b></u></u>

**CURRENT LIABILITIES**

ACCOUNTS PAYABLE	20,602.18
DUE:COMPANY 1	843.84
REFUNDS PAYABLE	10.00
CLE VACATION PAYABLE	90,110.76
FACILITIES PAYABLE	0.00
SEMINAR DEFERRED REVENUE	206,112.00
CASH HOLDING ACCOUNT	0.00
CONVENTION CASH HOLDING	72,035.00
SALES TAX RECEIVED	0.00
<b>TOTAL CURRENT LIABILITIES</b>	<u><b>\$389,713.78</b></u>

BEGINNING OF YEAR FUND BALANCE	989,599.47
YTD REVENUE	728,210.46
YTD EXPENSE	913,513.26
<b>NET CHANGE</b>	<u><b>(185,302.80)</b></u>

FUND BALANCE	<u>\$804,296.67</u>
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<b>TOTAL LIABILITIES AND FUND BALANCE</b>	<u><u><b>\$1,194,010.45</b></u></u>
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**SOUTH CAROLINA BAR CLE - DIVISION**  
**INCOME STATEMENT**  
For the Five Months Ending Thursday, November 30, 2017

	<u>MONTHLY ACTUAL</u>	<u>MONTHLY BUDGET</u>	<u>YTD ACTUAL</u>	<u>YTD BUDGET</u>	<u>ANNUAL BUDGET</u>
<b>REVENUE</b>					
SEMINAR INCOME	\$36,905.00	\$69,800.00	\$483,825.00	\$533,100.00	\$1,250,000.00
E-CLE ACCESS	19,630.00	15,500.00	61,401.96	59,400.00	500,000.00
PUBLICATION INCOME	19,395.41	20,000.00	130,637.47	133,500.00	340,000.00
SCJ ROYALTY INCOME	0.00	0.00	39,973.52	40,000.00	90,000.00
CONVENTION	0.00	0.00	0.00	0.00	383,600.00
SPECIAL SEMINARS	0.00	0.00	0.00	0.00	0.00
MEDIA SERVICES/AV/HOM	0.00	0.00	0.00	0.00	3,000.00
INTEREST INCOME	56.12	0.00	286.11	0.00	500.00
BUILDING RENTAL	2,600.00	500.00	4,100.00	3,300.00	9,000.00
SHIPPING REVENUE	1,548.56	2,200.00	7,986.40	11,000.00	26,400.00
<b>TOTAL REVENUE</b>	<b>\$80,135.09</b>	<b>\$108,000.00</b>	<b>\$728,210.46</b>	<b>\$780,300.00</b>	<b>\$2,602,500.00</b>
<b>EXPENSE</b>					
CLE SALARIES	69,103.25	74,000.00	358,957.53	370,000.00	901,500.00
BENEFITS	14,911.83	18,100.00	108,640.91	122,500.00	327,500.00
BUILDING ACCOUNT	5,300.00	5,300.00	26,500.00	26,500.00	64,000.00
EQUIPMENT & FURNITURE	74.46	0.00	7,635.76	8,200.00	8,200.00
EQUIPMENT MAINTENANCE	19,339.79	22,400.00	38,078.27	43,800.00	107,300.00
OFFICE SUPPLY EXPENSE	624.37	500.00	5,579.56	3,300.00	6,800.00
INTERNET DEVELOPMENT	0.00	0.00	0.00	0.00	0.00
POSTAGE EXPENSE	66.41	100.00	1,403.96	1,500.00	3,400.00
TELEPHONE EXPENSE	856.81	800.00	4,468.46	3,900.00	9,500.00
STAFF EXPENSE	457.82	800.00	3,865.68	3,500.00	9,100.00
STAFF EDUCATION	0.00	0.00	2,343.36	1,000.00	1,000.00
CLE COMMITTEE EXPENSE	0.00	0.00	316.51	0.00	500.00
BOND & INSURANCE	879.91	800.00	4,875.63	4,000.00	10,200.00
MEMBERSHIP/SUBSCRIPTIONS	0.00	0.00	0.00	0.00	0.00
PROFESSIONAL FEES	1,357.79	2,200.00	5,357.79	6,200.00	6,200.00
CASUAL LABOR	0.00	0.00	0.00	0.00	500.00
SEMINAR DIRECT	8,393.87	23,200.00	214,651.86	204,900.00	334,100.00
E-CLE ACCESS	8,782.13	8,500.00	41,863.89	42,500.00	102,500.00
PUBLICATION DIRECT	13,549.51	8,600.00	50,588.41	57,300.00	145,500.00
PUBLICATION ROYALTIES	0.00	0.00	0.00	0.00	89,000.00
CONVENTION	0.00	0.00	0.00	0.00	389,400.00
SPECIAL SEMINARS	0.00	0.00	0.00	0.00	0.00
MEDIA SERVICES DIRECT	1,097.27	700.00	2,628.94	3,500.00	8,700.00
BANKCARD CHARGES	4,019.96	3,400.00	15,707.17	16,800.00	58,300.00
MARKETING	6,646.91	6,400.00	20,049.57	19,100.00	105,000.00
<b>TOTAL EXPENSE</b>	<b>\$155,462.09</b>	<b>\$175,800.00</b>	<b>\$913,513.26</b>	<b>\$938,500.00</b>	<b>\$2,688,200.00</b>
<b>NET CHANGE</b>	<b><u>(\$75,327.00)</u></b>	<b><u>(\$67,800.00)</u></b>	<b><u>(\$185,302.80)</u></b>	<b><u>(\$158,200.00)</u></b>	<b><u>(\$85,700.00)</u></b>

## MEMORANDUM

**TO:** House of Delegates  
**FROM:** Courtney Kennaday, Liaison, Solo & Small Firm Section  
**DATE:** January 4, 2018  
**RE:** Amendments to Bylaws and Fee Increase

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The Council of the Solo & Small Firm Section has requested the following:

1. Increase the dues amount to \$25.00 from \$20.00 effective on license fees for 2019.
2. Amend the Bylaws to
  - a. eliminate language redundant in other Bylaw Sections
  - b. clarify procedures for council member or officer departures prior to the end of his or her term
  - c. change “shall” to “may” in Article IV, Section 4.

### **Article III Council**

**Section 3. - Terms.** Except for an appointment necessary to fill an unexpired term, the terms of all Section Council members shall begin and end with the new calendar year. ~~If any Section Council member shall resign or otherwise become unavailable for service during his or her term, the Section Chairperson may appoint a member of the Section to fill the balance of such unexpired term.~~ No Section Council member shall serve for a period of time in excess of seven (7) successive years regardless of the nature of the elected term.

**Section 5. - Appointment of Council Member.** If any Section Council member shall resign or otherwise become unavailable for service during his or her term, the Section Chairperson may appoint a member of the Section at large to fill the balance of such unexpired term. If the vacancy occurs within three months preceding the regular nominations for election, the position shall be held vacant until filled by regular election means.

### **Article IV Officers**

**Section 3. - Terms.** Except for an appointment necessary to fill an unexpired term, the terms of all officers shall begin and end on the same date(s) as applicable to the new calendar year. ~~In the event that any officer shall resign or otherwise become unavailable for service during his or her term, the Section Chairperson may appoint a Section Council member or other individual if the number of available members of the Section Council is insufficient for that purpose, to fill the balance of such unexpired term.~~

**Section 4. - Appointment of Council Officer.** In the event that any officer shall resign or otherwise become unavailable for service during his or her term, the Section Chairperson ~~shall~~ may appoint a Section Council member or other individual Section member if no Council member will serve to fill the balance of such unexpired term. If

the vacancy occurs with three months preceding the regular nominations for election, the position shall be held vacant until filled by regular election means. If the person resigning is the Chair of the Section, the Chair-Elect will assume the remainder of the exiting Chair's term, and afterward serve their own regularly elected term.





The Senior Lawyers Division Statewide Law Day Essay Contest is open to all 9th, 10th, 11th and 12th grade students. All students, whether in public school, private school or homeschooled are welcomed and encouraged to participate.

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

***Why is the Fourteenth Amendment important to America's aspirational ideal that all citizens are entitled to life, liberty and the pursuit of happiness?***



**REPORT OF THE PRESIDENT  
JANUARY 18, 2018  
ELIZABETH H. WARNER**

**MEMBERSHIP SERVICES**

**Bar Website Award**

The Bar website received the Palmetto Award of Excellence for Digital Communication and was named the Star of the Show by the South Carolina chapter of the International Association of Business Communicators. It was also given an Award of Distinction from the Communicator Awards, an international awards program recognizing efforts in marketing and communications.

**Diversity Committee**

The Diversity Committee launched a Diversity Spotlight Series to recognize members of the legal community at the forefront in efforts to increase diversity within the profession. The first honoree, Sidney Evering, was recognized in November at the committee's kick-off event, where Chief Justice Beatty delivered remarks and more than 100 attorneys attended to learn about and support the committee's work. The committee is also producing a video series designed to emphasize the importance of diversity to the profession.

**NextGen Group**

A "NextGen" group has been formed to study national and state innovations in the legal profession. A core group of members has been identified with additional members being sought. Group members are being consulted on ideas and projects, with plans to communicate initial findings to Bar members this winter.

**Wellness Committee**

The Wellness Committee continues to study factors impacting the well-being of attorneys and educates members about resources that will improve their mental and physical wellness. Its work is widely recognized as the model for lawyer wellness programs around the country. The committee recently launched a redesigned website at [www.livingabovethebar.org](http://www.livingabovethebar.org).

**Paralegal Certification**

Last year the Bar was charged with administering the Court-created Paralegal Certification Program. To date, 57 paralegals have been certified. A comprehensive web page was built, and management software put in place. The Court approved the board's proposal to carry over up to 10 CPE hours annually. Creation of an online directory of contract lawyers and paralegals for use by Bar members is underway.

**Mentoring Program**

The Bar administers the Mandatory Lawyer Mentoring Program, including recruitment of new mentors and ongoing support of mentees. The program is working to match nearly 280 new attorneys sworn in this past fall, recently developed a Mentor of the Year Award selection committee, and is planning the spring Mentoring Luncheon & CLE programs. The nomination period for the G. Dewey Oxner Jr. Mentor of the Year Award is underway.

**Meetings in the Counties**

The Board of Governors will resume the hosting of meetings with members at the county level to identify issues important to them. Such meetings have led to Bar initiatives.

### **Practice Management Assistance Program (PMAP)**

PMAP provides technology advice by telephone, through the “Bar Bytes” column, through the Solo and Small Firm blog at [www.scsmallfirm.com](http://www.scsmallfirm.com), and through technology tips published through E-Blast and Twitter. PMAP is also the point of contact for Fastcase, the Bar’s free online legal research benefit for members. Eleven videos have been produced this year for PMAP’s video series on law office management topics, available at [www.scbare.org/pmap](http://www.scbare.org/pmap). The PMAP Director was recently featured in national blog *Attorney at Work* regarding artificial intelligence in law practice. A new logo and ad campaign launched in *SC Lawyer* this past fall.

### **Lawyers Helping Lawyers**

The Lawyers Helping Lawyers program continues to assist lawyers affected by depression and/or substance abuse, providing referral services, peer support and monitoring services. The LHL staff maintains a periodic on-site presence at the USC School of Law and Charleston School of Law. Call LHL at (866) 545-9590 for free and confidential assistance, advice or referral. Members may also call CorpCare, which provides up to five free hours of anonymous intervention counseling, at (855) 321-4384 to be referred to a counselor 24 hours a day. The LHL Commission, alongside the Wellness Committee, has proposed increasing the SAMH requirement in light of continued notification of suicides and Bar members in distress.

### **Legislation**

The Bar continues to monitor and advocate for legislation pertaining to the interests of Bar members. Members benefit from these monitoring services through *The Legislative Update*, a summary of all significant legislation passed; Weekly Legislative Reports on the Bar website during legislative session; and an online legislative tracking system. The Bar encourages members to help inform state legislators of the issues and concerns of lawyers.

### **2018 Leadership Academy**

The ninth installment of the Bar’s Leadership Academy will launch in February. This highly selective program is designed to equip members to face challenges in the legal community and community at large, maximize networking and relationship building opportunities, nurture principled leadership and increased awareness regarding ethical, professional and community service issues, as well as to develop other skills necessary to give back to the profession and position themselves as valuable leaders in the community. Graduates will be recognized during a special celebration in June.

### **Member Benefits**

The Bar offers discounts on a number of products and services, such as wellness providers, travel services and office products. An insert outlining these benefits appeared in the November issue of *SC Lawyer*. New benefits include discounts on Personal Creations, Shari's Berries, Gifts.com and ProFlowers. For more information, visit [www.scbare.org/benefits](http://www.scbare.org/benefits).

### **Judicial Qualifications Reports**

The Judicial Qualifications Committee released reports on judicial candidates in October. The end goal of a competent and respected judiciary continues to be of the utmost importance.

### **Senior Lawyers Division Essay Contest**

The Senior Lawyers Division, under the leadership of Judge Mark Hayes, sponsored its annual statewide Law Day Essay Contest. Students were invited to write an essay of 1,000 words or less on “The 14th Amendment: Transforming American Democracy.” The 2017 overall winner will be recognized during the Bar Convention.

## **Member Communications**

- E-Blast is delivered to members' inboxes each week and features advance sheet summaries, CLE information, court news, summaries on pending legislation, tech tips and other legal information. A new feature called the Weekly Zoom explores resources available on the Bar website.
- *SC Lawyer* is published in January, March, May, July, September and November. Members may opt to only receive the digital edition; visit [www.sbar.org/sclawyer](http://www.sbar.org/sclawyer) for more information. Past articles can be found at the link above (including subject and author indices) and through Fastcase.
- The Bar communicates daily with members and the public on social media, including photos from events, public programs, CLE programs and other important news. Currently, Facebook has more than 2,800 likes with a weekly reach of 18,100. Twitter has more than 4,200 followers with an average 900 impressions per day.
- The online *Lawyers Desk Book* was updated at [www.sbar.org/deskbook](http://www.sbar.org/deskbook). The table of contents links users to listings for Bar contacts, the state and federal judiciary, Commission on CLE and other statewide contents. An alphabetical and geographical listing of all Bar members is available in PDF format, and members may also use a searchable directory for the most up to date information.

## **PUBLIC SERVICES**

### **Guardian *ad Litem* Task Force**

This task force has been studying the state's guardian *ad litem* system in order to propose changes to the current statute. The task force has reviewed information of GALs from all 50 states and proposed changes to the current system, which would create a commission and rules. The proposal has been forwarded to the Court and to the House of Delegates.

### **Vulnerable Adult Task Force**

The Vulnerable Adult Task Force was formed to study how South Carolina can better care for its citizens who are considered vulnerable. Subcommittees have looked at legal, service, education and funding aspects and are seeking input outside the task force from those who have experience with the current vulnerable adult system. Recommendations from the subcommittees are under review. Once approved, the General Assembly is expected to use the Bar's report as source material for joint legislative committee review.

### **Pro Bono Program**

Last year the Pro Bono Program was restructured, including appointment of the pro bono board and local committees to develop local projects. The program received from the SC Bar Foundation a Bank of America grant award, which will be used for additional pro bono staffing. A letter from Chief Justice Beatty encouraging pro bono work appeared in the November *SC Lawyer*.

### **Free Legal Answers**

[SC.FreeLegalAnswers.org](http://SC.FreeLegalAnswers.org) allows individuals who meet certain qualifications to post legal questions to volunteer attorneys. It is accessible 24 hours a day, seven days a week, allowing both the attorney and client to use the resource at their convenience. Questions are sorted based on topic, including benefits, consumer law issues, health care, family, work related issues and more. The identity of the attorney is not made known to the inquirer. Questions to the site are often answered during "Friday Blitzes," which provide an opportunity for law students to see real world questions and interact with local lawyers.

### **Free Legal Clinics**

The Public Services Division, through volunteer Bar members, continues to host free legal clinics around the state to educate the public on such issues as bankruptcy, divorce, wills and other legal

matters. More than 40 clinics were held during the fall. The Division also partnered with the Central Midlands Area Agency on Aging and USC School of Law Pro Bono Program to sponsor monthly “My Will” clinics to offer qualified citizens assistance with creating a simple will.

### **Ask-A-Lawyer**

The Bar continues to sponsor periodic, regional Ask-A-Lawyer programs, which consist of televised phone banks and web chats, in an effort to assist the public with legal questions. This program emphasizes the positive role lawyers play in their communities.

### **Lawyer Referral Service**

The Lawyer Referral Service currently has 342 Bar members participating. The service is promoted through radio and online advertising and a Google AdWords campaign. 8,844 referrals were made from July through December.

### **Law School for Non-Lawyers**

Installments of the Law School for Non-Lawyers were held during the fall in Anderson, Columbia and Spartanburg. The courses covered an overview of the court system, living wills, family law, landlord/tenant issues, employment law, workers’ compensation and a variety of other topics.

### **Fee Disputes/Lawyers’ Fund**

The Resolution of Fee Disputes Board has closed 65 cases since July 1. The Fee Disputes Board resolves fee, cost and disbursement disputes between clients and Bar members. The Lawyers’ Fund for Client Protection, which reimburses clients for money or property mishandled by Bar members, received 9 new applications, resolved 19 pending applications, paid \$140,910.51 to former clients since July 1 and issued its annual report.

*Ask-A-Lawyer, Law School for Non-Lawyers and free legal clinics are funded by an IOLTA grant from the S.C. Bar Foundation, Inc. and by Bar funds.*

## **LAW RELATED EDUCATION**

### **Middle School Mock Trial**

Fort Mill Middle School won its first Middle School Mock Trial State Championship in December at the Richland County Central Court at Decker Center. Forestbrook Middle School was named the first runner-up, and Buist Academy was awarded the Professionalism and Civility Award. A record-setting 47 teams from across the state competed in the regional competitions in November.

### **S.C. Supreme Court Institute**

The LRE Division co-hosted the S.C. Supreme Court Institute, a program aimed at middle and high school Social Studies and U.S. Government/History teachers, in June. The institute featured presentations by members of the S.C. Supreme Court and Bar members; tours of the Supreme Court building; hands on activities with iCivics; and several lesson building opportunities.

### **James Madison Legacy Project Grant**

In 2016 the Division received a three-year James Madison Legacy Project grant to work with *We the People* teachers in recruitment, mentorship and professional development. Year two of the grant concluded September 30 with 71 teachers trained, who also participated in follow-up professional development. Year three grant documentation and budget were prepared and submitted. Year three’s award was in the amount of \$112,500. Plans are underway for a 2018 Summer Institute.

## **SRO Manual**

In collaboration with the Young Lawyers Division, the LRE Division completed development of a manual for school resource officers used in trainings at the SC Criminal Justice Academy. The manual includes 24 lesson plans and supplemental materials.

## **Teacher Newsletter**

The LRE Division continues to distribute an electronic newsletter to educate teachers about law related programs and communicate relevant news and upcoming events. The newsletter is distributed three times each year. The Division also keeps students and teachers up to date through social media.

## **Trainings**

The Division hosted webinar trainings for mock trial and Law for Teachers. Trainings were held at individual schools and statewide to prepare teachers for implementation of LRE programs.

*The LRE programs noted above are funded by an IOLTA grant from the S.C. Bar Foundation, Inc. and by Bar funds. Competitions are made possible through the efforts of members of the legal community who volunteer to serve as attorney coaches, district coordinators, scoring judges and presiding judges.*

## **CONTINUING LEGAL EDUCATION**

### **New Programming Options**

The CLE Division continues to offer a number of programs in various formats and locations around the state to give members the best value, variety and flexibility in CLE programming. Available formats include live seminars, teleseminars (via phone), online seminars and live webcasts. This past fall, the Division introduced Webcast Wednesdays, live one-hour programs held during the lunch hour, and the CLE Big Ticket, which allows members to pay one price for unlimited CLEs for one year. Please visit [www.sbar.org/cle](http://www.sbar.org/cle) to learn more about your options.

### **Free Course Materials**

Bar members have free online access to past seminar materials. Thirty-one sets of materials are currently available, and loading of additional program materials continues.

### **ACLEA Award of Excellence**

In August the Division received an “ACLEA’s Best” Award for CLE programming for its February 2017 program, “Against the Wind: A Legal History of Civil Rights in South Carolina through Cases and Testimony over the Last Century.” Thanks to course planners Nekki Shutt and Hon. Joe Strickland and the seminar faculty for their hard work and contributions in planning and executing this program. ACLEA, the Association for Continuing Legal Education, is an international organization dedicated to improving the performance of CLE professionals.

### **Live Seminars**

Since July 1, the CLE Division has hosted 34 live seminars with a total attendance of 2,550. The Division continues to develop a wide variety of challenging programs including basic and advanced level workshops, section member-only programs and mediation training. Recent programs have included 2017 Probate Bench/Bar, Hot Tips from the Coolest Domestic Law Practitioners, Masters-in-Equity Bench Bar, Latest Trends and Developments in Consumer Law, Criminal Trial Demonstration, Family Court Bench Bar, Current Issues in Legal Malpractice, and “Essentials” programs on a variety of topics.

## **LPM-TECH Conference**

The 2017 Law Practice Management & Technology Conference (LPM-TECH), sponsored in part by the Solo & Small Firm Section, took place September 15 in Columbia. LPM-TECH provided attendees with a CLE, conference and section meeting in one, with a full day of exhibits, educational sessions, networking and prize drawings.

## **Alternatively-Delivered Programming**

The CLE Division offers convenient access to on-demand seminars, live webcasts and live teleseminars. The Division continues to expand the catalog of programs, providing new topics and keeping the material in each topic area fresh and relevant. Currently, 392 on-demand seminars are available 24/7. Members can watch live webcasts of seminars in real time, or pause, rewind and review archived webcasts and online programs for up to 30 days. The Division has released 41 new online seminars and 23 live webcasts and has offered 113 teleseminars since July 1, with more than 6,978 individual total sales during the period.

## **Publications**

The robust publications department of the CLE Division continues to publish a number of new books, supplements and software programs across various practice areas. Titles published since July include:

*Estate Planning in South Carolina, Second Edition, Volume I: Wills and Trusts*

*Legal Malpractice in South Carolina*

*SC Damages 2017 Supplement*

*SC Evidence Annotated, Twelfth Edition*

*SC Family Lawyer's Tool Kit 2017 Edition*

*SC Rules Annotated 2017*

A complete list of CLE publications, as well as a list of recent releases, are available for browsing in the CLE Store.

## **HotDocs**

The CLE Division has partnered with HotDocs to develop cloud-based forms systems. Subscriptions to the forms libraries will be available for purchase by Bar members in the future.

## **Marketing**

The Division continues to promote its programs to members through seminar brochures, e-brochures, E-Blast, signage, social media and Bar publications. In an effort to distribute fewer but more comprehensive emails, the Division launched weekly CLE email digests in July. Look for CLE offerings in any of these resources or visit [www.scbare.org/shop-cle](http://www.scbare.org/shop-cle). Members can opt in to targeted contact lists by logging in to their member profile on the Bar website.

## **YOUNG LAWYERS DIVISION**

### **ABA Awards of Achievement**

The Young Lawyers Division won four first place Awards of Achievement during the ABA Annual Meeting in August. The Division was recognized in the categories of Comprehensive Programming, Newsletter, Diversity and Service to the Bar.

### **Hurricane Harvey Relief**

Having responded to natural disasters in South Carolina in recent years by providing volunteer legal assistance, the Division lent a hand to victims of Hurricane Harvey in Texas this past fall. Young

lawyers organized a collection drive for victims of the storm, collecting and distributing non-perishable food items as well as diapers, baby wipes, bottled water, first aid kits, cleaning supplies and monetary donations.

### **Diversity Committee**

The YLD Diversity Committee held an event entitled Coffee and Conversations that focused on the meaning of diversity and inclusion and what they look like in the legal profession. Bar members discussed inclusion efforts and concerns about insufficient inclusion efforts. The committee also hosted a Town Hall on the “Legacy of the Confederacy” at the new USC School of Law, where panelists discussed the past, present and future and the impact of confederate relics in South Carolina. In December, the committee held a “Parenthood and the Practice of Law” event to expose members to the complexities experienced by parent-practitioners and offer ways to maintain a healthy work-life balance.

### **Constitution Day**

The iCivics Committee recognized Constitution Day on September 18 by making classroom presentations on Constitution-related topics and distributing pocket Constitutions to encourage reading and activism as leaders in our democracy.

### **Color of Justice**

The Color of Justice Committee sponsors programs for middle and high school students designed to expose students from diverse backgrounds to careers in the legal field. In November, the committee hosted a mock trial demonstration for a group of 82 students, who served as the jury. After the demonstration, attorney volunteers led students through their verdict and reasoning. The ABA Standing Committee on Bar Activities and Services awarded Color of Justice a Partnership Award for its example as a pipeline program connecting students with law schools and offering opportunities for collaboration within the legal and educational communities.

### **Backpack Drive**

In August the Division collected supplies for donation to schools and students in Charleston, Columbia and Greenville during its annual Back-to-School Backpack and School Supply Drive.

### **Special Olympics**

YLD continued its support of Special Olympics South Carolina by providing sponsorships and volunteers to serve the needs of South Carolinians with intellectual disabilities. Members of this committee recruit and coordinate volunteers and encourage participation at Special Olympics events throughout the state. The Division hosted its annual Bowling Buddies event in Charleston, where attorneys were paired with athletes for a night of bowling, burgers and fun.

### **Wills Clinics**

The Wills Clinics Committee continued its efforts to provide wills and health care documents to first responders and Habitat for Humanity homeowners. The committee hosted a clinic for the Sea Island Habitat for Humanity affiliate on Johns Island to serve homeowners who may be vulnerable to the circumstances that would arise if they were to pass away without a will. Volunteer young lawyers drafted and executed wills and health documents for 24 homeowners. Training is provided to all volunteers prior to the clinics.

### **Protecting Our Youth**

The Protecting Our Youth Committee hosted a panel discussion in front of approximately 100 students at James F. Byrnes High in Spartanburg. The panel discussed the laws, rules and scenarios that are

bringing students into contact with the criminal justice system and advised them about common pitfalls to which teens are vulnerable.

### **Veterans' Affairs CLE**

The Military Support Committee partnered with the Military & Veterans' Law Section of the Bar to host a seven-hour CLE dealing with veterans' affairs issues. This committee seeks to offer education to young lawyers on issues that service members and veterans face.

### **Professional Development**

The Professional Development Committee hosts programs to pair young lawyers with other young professional organizations for networking and learning opportunities. In August, the Fifth Circuit hosted a joint event with the Young Bankers Division of the SC Bankers Association with guest speaker USC Men's Basketball Head Coach Frank Martin. Coach Martin shared his thoughts on memorable moments from the Gamecocks' 2016-17 season, as well as advice on team building, encouragement of others and involvement in the community. The committee also held other events across the state, including: a "Brews and News" young professional event in Columbia; monthly federal court mentoring lunches in Columbia and Greenville; monthly Bridging Broad Street federal court mentoring lunches in Charleston; a free, one-hour mental health and wellness CLE in Charleston; and a happy hour event in conjunction with GVL Connect to help small businesses connect with each other.

### **New Admittee Events**

The Division welcomed new lawyers to the Division by hosting events in various judicial circuits.



**There are no written materials for this item.**



Memorandum

To: House of Delegates

From: Kirsten Small, Chairperson, Professional Responsibility Committee

RE: Proposed Amendment to Rule 1.10.

The proposal was presented to the committee by ethics counsel for a firm and a committee member. The proposed amendments track the provisions of ABA Model Rule 1.10(a)(2) and its corresponding comments as proposed by the ABA's Ethics 2000 report and adopted by the ABA House of Delegates in 2002. The only variation is in proposed Comment [7] where the cross-reference to the definition of "screened" and the comments regarding that definition have been conformed to current Rule 1.0, SCRPC and its comments.

The proposal creates a limited exception to the imputation rule stated in Rule 1.10(a) where a lawyer leaves one firm and discontinues representation of a client such that the client becomes a former client as to that lawyer and the departing lawyer joins another firm which, through other lawyers, is adverse to the joining lawyer's former client. Application of the exception requires that the lawyer joining his or her new firm be screened from participation in matters adverse to his or her former client and that certain notifications be given to the former client, but does not require consent of the former client as provided under Rule 1.10(c).

This limited proposal does not permit lawyers within a law firm to use screening to simultaneously represent and be adverse to a client of the firm in unrelated matters or other consentable conflict situations except with client consent as provided by Rule 1.10(c).

Attachment

## PROPOSAL

To add the underlined language to Rule 1.10, SCRPC and as Comments [7] -[10] to Rule 1.10, SCRPC:

(a) While lawyers are associated in a firm, none of them shall knowingly represent a client when any one of them practicing alone would be prohibited from doing so by Rules 1.7, 1.8(c), or 1.9, unless:

(1) the prohibition is based on a personal interest of the prohibited lawyer and does not present a significant risk of materially limiting the representation of the client by the remaining lawyers in the firm; or

(2) the prohibition is based upon Rule 1.9(a) or (b) and arises out of the disqualified lawyer's association with a prior firm, and

(i) the disqualified lawyer is timely screened from any participation in the matter and is apportioned no part of the fee therefrom; and

(ii) written notice is promptly given to any affected former client to enable the former client to ascertain compliance with the provisions of this Rule, which shall include a description of the screening procedures employed; a statement of the firm's and the screened lawyer's compliance with these Rules; a statement that review may be available before a tribunal; and an agreement by the firm to respond promptly to any written inquiries or objections by the former client about the screening procedures; and

(iii) certifications of compliance with these Rules and with the screening procedures are provided to the former client by the screened lawyer and by a partner of the firm, at reasonable intervals upon the former client's written request and upon termination of the screening procedures.

(b) When a lawyer has terminated an association with a firm, the firm is not prohibited from thereafter representing a person with interests materially adverse to those of a client represented by the formerly associated lawyer and not currently represented by the firm, unless:

(1) the matter is the same or substantially related to that in which the formerly associated lawyer represented the client; and

(2) any lawyer remaining in the firm has information protected by Rules 1.6 and 1.9(c) that is material to the matter.

(c) A disqualification prescribed by this rule may be waived by the affected client under the conditions stated in Rule 1.7.

(d) The disqualification of lawyers associated in a firm with former or current government lawyers is governed by Rule 1.11.

(e) A lawyer representing a client of a public defender office, legal services association, or similar program serving indigent clients shall not be disqualified under this Rule because of the program's representation of another client in the same or a substantially related matter if:

(1) the lawyer is screened in a timely manner from access to confidential information relating to and from any participation in the representation of the other client; and

(2) the lawyer retains authority over the objectives of the representation pursuant to Rule 5.4(c).

## Comment

### *Definition of "Firm"*

[1] For purposes of the Rules of Professional Conduct, the term "firm" denotes lawyers in a law partnership, professional corporation, sole proprietorship or other association authorized to practice law; or lawyers employed in a legal services organization or the legal department of a corporation or other organization. See Rule 1.0(e). Whether two or more lawyers constitute a firm within this definition can depend on the specific facts. See Rule 1.0, Comments [2] - [4]. For purposes of imputing disqualification under this Rule, however, paragraph (e) treats legal services organizations differently from other law firms by permitting screening.

### *Principles of Imputed Disqualification*

[2] The rule of imputed disqualification stated in paragraph (a) gives effect to the principle of loyalty to the client as it applies to lawyers who practice in a law firm. Such situations can be considered from the premise that a firm of lawyers is essentially one lawyer for purposes of the rules governing loyalty to the client, or from the premise that each lawyer is vicariously bound by the obligation of loyalty owed by each lawyer with whom the lawyer is associated. Paragraph (a) operates only among the lawyers currently associated in a firm. When a lawyer moves from

one firm to another, the situation is governed by Rules 1.9(b) and 1.10(a)(2) and 1.10(b).

[3] The rule in paragraph (a) does not prohibit representation where neither questions of client loyalty nor protection of confidential information are presented. Where one lawyer in a firm could not effectively represent a given client because of strong political beliefs, for example, but that lawyer will do no work on the case and the personal beliefs of the lawyer will not materially limit the representation by others in the firm, the firm should not be disqualified. On the other hand, if an opposing party in a case were owned by a lawyer in the law firm, and others in the firm would be materially limited in pursuing the matter because of loyalty to that lawyer, the personal disqualification of the lawyer would be imputed to all others in the firm.

[4] The rule in paragraph (a) also does not prohibit representation by others in the law firm where the person prohibited from involvement in a matter is a nonlawyer, such as a paralegal or legal secretary. Nor does paragraph (a) prohibit representation if the lawyer is prohibited from acting because of events before the person became a lawyer, for example, work that the person did while a law student. Such persons, however, ordinarily must be screened from any personal participation in the matter to avoid communication to others in the firm of confidential information that both the nonlawyers and the firm have a legal duty to protect. See Rules 1.0(1) and 5.3.

[5] Rule 1.10(b) operates to permit a law firm, under certain circumstances, to represent a person with interests directly adverse to those of a client represented by a lawyer who formerly was associated with the firm. The Rule applies regardless of when the formerly associated lawyer represented the client. However, the law firm may not represent a person with interests adverse to those of a present client of the firm, which would violate Rule 1.7. Moreover, the firm may not represent the person where the matter is the same or substantially related to that in which the formerly associated lawyer represented the client and any other lawyer currently in the firm has material information protected by Rules 1.6 and 1.9(c).

[6] Rule 1.10(c) removes imputation with the informed consent of the affected client or former client under the conditions stated in Rule 1.7. The conditions stated in Rule 1.7 require the lawyer to determine that the representation is not prohibited by Rule 1.7(b) and that each affected client or former client has given informed consent to the representation, confirmed in writing. In some cases, the risk may be so severe that the conflict may not be cured by client consent. For a discussion of the effectiveness of client waivers of conflicts that might arise in the

future, see Rule 1.7, Comment [20]. For a definition of informed consent, see Rule 1.0(g).

[7] Rule 1.10(a)(2) similarly removes the imputation otherwise required by Rule 1.10(a), but unlike paragraph (c), it does so without requiring that there be informed consent by the former client. Instead, it requires that the procedures laid out in sections (a)(2)(i)-(iii) be followed. A description of effective screening mechanisms appears in Rule 1.0(n) and Comments [8]-[10]. Lawyers should be aware, however, that even where screening mechanisms have been adopted, tribunals may consider additional factors in ruling upon motions to disqualify a lawyer from pending litigation.

[8] Paragraph (a)(2)(i) does not prohibit the screened lawyer from receiving a salary or partnership share established by prior independent agreement, but that lawyer may not receive compensation directly related to the matter in which the lawyer is disqualified.

[9] The notice required by paragraph (a)(2)(ii) generally should include a description of the screened lawyer's prior representation and be given as soon as practicable after the need for screening becomes apparent. It should also include a statement by the screened lawyer and the firm that the client's material confidential information has not been disclosed or used in violation of the Rules. The notice is intended to enable the former client to evaluate and comment on the effectiveness of the screening procedures.

[10] The certifications required by paragraph (a)(2)(iii) give the former client assurance that the client's material confidential information has not been disclosed or used inappropriately, either prior to timely implementation of a screen or thereafter. If compliance cannot be certified, the certificate must describe the failure to comply.

[11] Where a lawyer has joined a private firm after having represented the government, imputation is governed by Rule 1.11(b) and (c), not this Rule. Under Rule 1.11(d), where a lawyer represents the government after having served clients in private practice, nongovernmental employment or in another government agency, former-client conflicts are not imputed to government lawyers associated with the individually disqualified lawyer. Judicial law clerks are governed by Rule 1.12.

[12] A conflict arising under Rule 1.8(c) is specifically imputed to other lawyers within the firm under this Rule. Otherwise, where a lawyer is prohibited from engaging in certain transactions under Rule 1.8, paragraph (j) of that Rule, and not

this Rule, determines whether that prohibition also applies to other lawyers associated in a firm with the personally prohibited lawyer.

[13] Rule 1.10(e) allows programs providing legal services to indigents to avoid imputed disqualification by screening lawyers from conflicting matters within the office. See Rule 1.0(n) for screening procedures. The authorization of screening is intended to increase the number of persons to whom each program can provide legal services, while at the same time protecting the clients from prejudice. Paragraph (e) applies only to programs of the type delineated and does not authorize screening by private law firms to avoid imputed disqualification.



# Memorandum

To: House of Delegates  
From: Kirsten E. Small, Chairman  
Professional Responsibility Committee  
Re: Proposed amendments to Rule 1.6

The Professional Responsibility Committee has submitted two separate amendments to Rule 1.6 of the South Carolina Rules of Professional Conduct. They both include a new, but different, section (c) to the Rule. They are not alternative choices, but entirely separate proposals, which, if both passed, would result in a new subsection (c) and a new subsection (d) (with the accompanying changes to the Comments).

Memorandum

To: House of Delegates

From: Kirsten Small, Chairperson, Professional Responsibility Committee

Re: Proposed Amendments to SCRPC 1.0, 1.1, and 1.6

This proposal is made in an attempt to bring the South Carolina Rules of Professional Conduct up to date to reflect the role that technology plays in the legal industry. The advance of technology is a necessary fact in our world, and it is important for lawyers to consider how technology might impact both their practice and their interaction with clients. The proposal of the Professional Responsibility Committee is an attempt to consider the protection of the public and to help lawyers tailor their practice to accommodate the ever changing world of technology.

In 2012, the American Bar Association's House of Delegates adopted proposed changes to Comment 8 to Model Rule 1.1, which pertains to lawyer competence. The change included the requirement that in order to maintain the requisite knowledge and skill to meet competency requirements, lawyer "should keep abreast of...the benefits and risks associated with relevant technology..." This change, while in the comments and not in the rule, acknowledged the fact that technology is a vital part of the legal industry. Certainly there are attorneys and law firms that have managed to minimize the impact of technology and maintain past ways of conducting their practice of law. However, the ABA comment is a wake-up call to attorneys trying to make them aware that they cannot simply ignore technological advances. The comment specifically does not set forth what it means to keep abreast of the benefits and risks, but rather just puts an attorney on notice that he or she must make some effort to stay aware of the costs or benefits of technology.

Also in 2012, as a part of the overall revision to the Model Rules, the ABA adopted Rule 1.6(c) and a revised comment requiring lawyers to make "reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client." Further, the Model Rules included a comment [18] to Rule 1.6 noting that a lawyer has satisfied the requirement of 1.6(c) if the lawyer has made reasonable efforts to prevent the access or disclosure of the client's information. Comment 18 went on to describe elements that must be considered in order to determine whether reasonable efforts have been made.

On May 23, 2017, the ABA issued revised Formal Ethics Opinion 477 directly addressing a lawyer's duties to maintain confidentiality and the question of whether Model Rule 1.6 changed the requirements of lawyers to maintain confidentiality of their client's information. Opinion 477 noted that many lawyers primarily use electronic means to communicate and exchange documents with clients and other lawyers, including desktop computers, laptops, smartphones, tablets, cloud storage services. Opinion 477 concluded that a lawyer must, on a case-by-case basis, constantly analyze how they communicate electronically about client matter, applying the factors set forth in Comment [18] to determine what efforts are reasonable to prevent inadvertent or unauthorized disclosure of, or unauthorized access to, client information.

Considering the changes to the Model Rules noted above as well as ABA Revised Formal Opinion 477, the Professional Responsibility Committee created a technology subcommittee to review South Carolina Rules of Professional Conduct and make a recommendation to the Committee as to whether or not the South Carolina rules need to be revised in order to reflect the importance and the prevalence of technology in our industry. The attached is the result of the subcommittee's review and proposal, which was accepted by the Professional Responsibility Committee and is now proposed to you for review and comment. The proposal does not propose to adopt the ABA Model Rules in total. Rather the proposal includes revisions that are unique to South Carolina and attempt to consider the best way to protect the public and maintain reasonable standards for South Carolina lawyers. For instance, the proposal contemplates that the competency requirement may be met by retaining the services of an outside third party to assist the attorney in maintaining technology standards. The hope is that this proposal will protect the public by making South Carolina lawyers aware of the advantages and pitfalls that the technology of our modern society provides while at the same time giving South Carolina lawyers ways to meet the competency standards that exist.

Attachment

**EXISTING RULE 1.0(r), RULE 1.1 and Comment [6], RULE 1.6 and Comments [19] and [20]**

**RULE 1.0 TERMINOLOGY**

(r) “Writing” or “written” denotes a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, photostating, photography, audio or videorecording and e-mail. A “signed” writing includes an electronic sound, symbol or process attached to or logically associated with a writing and executed or adopted by a person with the intent to sign the writing.

**RULE 1.1: COMPETENCE**

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

**Comments**

**Maintaining Competence**

[6] To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, engage in continuing study and education and comply with all continuing legal education requirements to which the lawyer is subject.

**RULE 1.6: CONFIDENTIALITY OF INFORMATION**

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

(b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

...

**Comments**

**Acting Competently to Preserve Confidentiality**

[19] A lawyer must act competently to safeguard information relating to the representation of a client against inadvertent or unauthorized disclosure by the lawyer or other persons who are participating in the representation of the client or who are subject to the lawyer's supervision. See Rules 1.1, 5.1 and 5.3.

[20] When transmitting a communication that includes information relating to the representation of a client, the lawyer must take reasonable precautions to prevent the information from coming into the hands of unintended recipients. This duty, however, does not require that the lawyer use special security measures if the method of communication affords a reasonable expectation of privacy. Special circumstances, however, may warrant special precautions. Factors to be considered in determining the reasonableness of the lawyer's expectation of confidentiality include the sensitivity of the information and the extent to which the privacy of the communication is protected by law or by a confidentiality agreement. A client may require the lawyer to implement special security measures not required by this Rule or may give informed consent to the use of a means of communication that would otherwise be prohibited by this Rule.

## PROPOSED REVISIONS AND ADDITIONS

### EXISTING RULE 1.0(r), RULE 1.1 and Comment [6], RULE 1.6 and Comments [19] and [20]

#### **RULE 1.0 TERMINOLOGY**

(r) “Writing” or “written” denotes a tangible or electronic record of a communication or representation, including handwriting, typewriting, printing, photostating, photography, audio or videorecording and ~~e-mail~~ **electronic communication**. A “signed” writing includes an electronic sound, symbol or process attached to or logically associated with a writing and executed or adopted by a person with the intent to sign the writing.

#### **RULE 1.1: COMPETENCE**

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. **Competent representation also includes having a reasonable understanding of the benefits and risks associated with relevant technology, including a reasonable understanding of how to safeguard confidential information relating to the representation, including, but not limited to, electronic transmissions and communications.**

#### Comments

##### Maintaining Competence

[6] To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, **including a reasonable understanding of the benefits and risks associated with technology the lawyer uses to provide services to clients or to store or transmit information related to the representation of a client**, engage in continuing study and education, and comply with all continuing legal education requirements to which the lawyer is subject.

[7] **As part of having a reasonable understanding of the benefits and risks associated with relevant technology, a lawyer has the discretion to associate or retain the services of a non-lawyer advisor of established technological competence in the field in question. For instance, a lawyer may retain the services of a technology professional or service that may assist the lawyer in safeguarding confidential client information. While this area involves highly technical skill and knowledge, lawyers should have a reasonable understanding of the risks and can retain a third party to assist in understanding the risks and the ability to safeguard against those risks. This Rule does not require lawyers to retain the services of a technology professional or service.**

## **RULE 1.6: CONFIDENTIALITY OF INFORMATION**

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

(b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

...

**(c) A lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.**

### Comments

#### **Acting Competently to Preserve Confidentiality**

[19] A lawyer must act competently to safeguard information relating to the representation of a client against **unauthorized access by third parties and against** inadvertent or unauthorized disclosure by the lawyer or other persons who are participating in the representation of the client or who are subject to the lawyer's supervision. See Rules 1.1, 5.1 and 5.3.

[20] ~~When transmitting a communication that includes information relating to the representation of a client, the lawyer must take reasonable precautions to prevent the information from coming into the hands of unintended recipients. This duty, however, does not require that the lawyer use special security measures if the method of communication affords a reasonable expectation of privacy.~~ **The unauthorized access to, or the inadvertent or unauthorized disclosure of, information relating to the representation of a client does not constitute a violation of paragraph (c) if the lawyer has made reasonable efforts to prevent the access or disclosure.** Special circumstances, however, may warrant special precautions. Factors to be considered in determining the reasonableness of the lawyer's expectation of confidentiality include the sensitivity of the information, ~~and~~ the extent to which the privacy of the communication is protected by law or by a confidentiality agreement, **the likelihood of disclosure if additional safeguards are not employed, the cost of employing additional safeguards, the difficulty of implementing the safeguards, and the extent to which the safeguards adversely affect the lawyer's ability to represent clients (e.g., by making a device or important piece of software excessively difficult to use).** A client may require the lawyer to implement special security measures not required by this Rule or may give informed consent to the use of a means of communication that would otherwise be prohibited by this Rule.



Memorandum

To: House of Delegates

From: Kirsten Small, Chairperson, Professional Responsibility Committee

Re: Proposed Amendment to SCRPC, Rule 1.6

Attached please find a two-part proposal regarding Rule 1.6: first, a comment to clarify the scope of the rule in accordance with a prior decision of the South Carolina Supreme Court, and second, a change to the rule to create a narrow exception for disclosure of published case citations. This item came to the committee's attention pursuant to a request made by an ethics defense lawyer and committee member concerned that members of the Bar are not aware of the court's prior decision not to allow either of two broader exceptions to Rule 1.6. The comment is intended to correct a common misconception that either or both of those exceptions do exist, and the rule change is intended to allow a much narrower exception that the Committee believes would not harm or prejudice clients in any way.

The prior decision of the Supreme Court on the broader exceptions to Rule 1.6 came in 2013 after a request from House of Delegates based on recommendations from the Professional Responsibility Committee. The Committee had considered whether to propose an exception to the confidentiality requirement of Rule 1.6 for generally known information or information contained in public records, or both, or whether to propose a comment to Rule 1.6 clarifying that no such exceptions exist. The Committee was divided on the question, with many members believing that one or the other exception is inherent in the rule and many others believing that neither exception is allowed.

The former group's reasoning was essentially that Rule 1.6 prohibits "revealing" information, and that a lawyer does not reveal information by communicating it to others if it is already contained in the public record or otherwise generally known, and that obtaining client consent to disclosing information is not always practical or even possible for former clients (to whom the prohibition extends by virtue of Rule 1.9(c)(2)) as some can no longer be reached for permission. The latter group's reasoning was essentially that the change from the former Code of Professional Responsibility's "confidences and secrets" standard to the current "all information related to the representation" standard did away with the distinction between information that has and has not yet been revealed, requiring lawyers to obtain client consent before discussing their legal matters even if the information to be discussed is contained in a public record or has otherwise become known.

The Committee researched other states' approaches to the problem. 9 states created one or the other exception either by rule, comment, judicial decision, advisory opinion, or by retaining the old Code language limiting the prohibition to "confidences and secrets." 16 states had affirmative acknowledged by rule, comment, judicial decision, or advisory opinion that neither exception exists and that client consent is required unless one of the other exceptions in the rule applies.

Ultimately, the Committee could not reach a consensus on what the rule should be but agreed that a decision from the Supreme Court was necessary to clarify for the bar what the rule is or what it will be going forward. Therefore the Committee proposed to the House three alternatives:

1. a change to the rule language to create a “public records” exception
2. a change to the rule language to create a “generally known information” exception
3. a comment clarifying that neither such exception exists

The HOD in 2013 was also divided on the issue and largely accepted the Committee’s recommendation, but the HOD stripped option 3 of the clarifying language, so that option 3 was offered to the Supreme Court as simply declining to create either exception. Further complicating matters, the 2013 proposal was paired with an unrelated proposed change to Rule 1.6, based on a change to the Model Rules allowing disclosure of client information, without consent, for the limited purpose of resolving conflicts when lawyers move between firms. Thus the 3 alternative exceptions HOD forwarded to the court became

1. a “public records” exception and a conflict-checking exception
2. a “generally known information” exception and a conflict-checking exception
3. a conflict-checking exception only

The Court chose option 3 later that same year. However, because it came with no clarifying comment, the Bar remained generally unaware that the Court had made any decision on the matter of the two broader exceptions. Therefore, the Committee now proposes, by unanimous vote, to create a comment to Rule 1.6 clarifying that there is no public records or generally known exception to Rule 1.6, alerting lawyers to the requirement that they obtain client consent before disclosing any such information unless one of the other exceptions to Rule 1.6 applies.

The Committee also now proposes to create a far narrower exception than either of the ones previously rejected by the court. This exception will allow lawyers to reveal only the citation to a published opinion from a case in which the lawyer was involved, without first obtaining client consent. This exception would not allow lawyers to reveal any information from such a case without consent but would allow lawyers to disclose for various purposes only citation information for representative cases from their practice.

Attachment

## Rule 1.6 Confidentiality of Information

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b) or (c).

(b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

(1) ...

(c) A lawyer may reveal citations to published opinions from cases in which the lawyer was involved.

Comment

...

[3] The principle of client-lawyer confidentiality is given effect by related bodies of law: the attorney-client privilege, the work product doctrine and the rule of confidentiality established in professional ethics. The attorney-client privilege and work-product doctrine apply in judicial and other proceedings in which a lawyer may be called as a witness or otherwise required to produce evidence concerning a client. The rule of client-lawyer confidentiality applies in situations other than those where evidence is sought from the lawyer through compulsion of law. The confidentiality rule, for example, applies not only to matters communicated in confidence by the client but also to all information relating to the representation, whatever its source. A lawyer may not disclose such information except as authorized or required by the Rules of Professional Conduct or other law. See also Scope. This rule has no exception for publicly available information such as is contained in court filings, nor any exception for information that has become generally known. A lawyer may disclose such information only as expressly provided in this rule.

...

[17] Paragraph (b) permits disclosure only to the extent the lawyer reasonably believes the disclosure is necessary to accomplish one of the purposes specified. Where practicable, the lawyer should first seek to persuade the client to take suitable action to obviate the need for disclosure. In any case, a disclosure adverse to the client's interest should be no greater than the lawyer reasonably believes necessary to accomplish the purpose. If the disclosure will be made in connection with a judicial proceeding, the disclosure should be made in a manner that

limits access to the information to the tribunal or other persons having a need to know it and appropriate protective orders or other arrangements should be sought by the lawyer to the fullest extent practicable. Pursuant to subsection (c), a lawyer need not obtain client consent to disclose a citation to a published opinion from a case in which the lawyer was involved.



**TO:** House of Delegates  
**FROM:** Practice and Procedure Committee  
**DATE:** January 5, 2018  
**RE:** Rule 33(b)(9), SCRCP

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The Practice and Procedure Committee has studied Rule 33(b)(9), SCRCP, and it has approved an amendment to that rule to allow for parties to a Family Court action to serve interrogatories in addition the standard interrogatories and now presents it to the House of Delegates.

Rule 33(b)(9), SCRCP, governs the service of interrogatories:

(b) Standard Interrogatories. In all cases the following standard interrogatories may be served by one party upon another unless otherwise ordered by the court for good cause shown. The interrogatories 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 to interrogatories have been submitted, shall be promptly transmitted to the other party.

(9) Limitations. In addition to the standard interrogatories authorized by this paragraph, the court may order additional interrogatories for good cause shown in any case. In all actions in which the amount in controversy is not less than \$25,000, and in all actions for declaratory or injunctive relief, a party may serve additional interrogatories including more than one set of interrogatories upon any other party; but the total number of general interrogatories to any one party shall not exceed fifty questions including subparts, except by leave of court upon good cause shown.

With the amendment of Rule 25, SCRFC, it is necessary to amend Rule 33(b)(9) to allow Family Court litigants to serve more than the standard interrogatories.

Rule 25, SCRFC, was amended by Administrative Order on January 30, 2017. The amended version became effective on May 1, 2017, and states:

Recognizing the unique nature of the court's jurisdiction and the need for a speedy determination thereof, the prompt voluntary exchange of information and documents by parties prior to trial is encouraged. **However, the parties shall be allowed to engage in formal depositions and discovery according to the South Carolina Rules of Civil Procedure.**

With the amendment of Rule 25, SCRFC, Family Court litigants are now allowed to engage in formal discovery pursuant to the South Carolina Rules of Civil Procedure.

This means that Family Court litigants no longer have to seek an Order from the Court before engaging in formal discovery; nonetheless, it also means that Family Court litigants are subject to the limitations set forth in said Rules, unless an Order is sought to remove the same. As set forth above, for the litigant to have the ability to serve additional interrogatories, Rule 33, SCRCP, requires that either there be an amount of controversy of not less than \$25,000 or that the Court issues an Order allowing the litigant to do so. Given the nature of many Family Court matters, it is unlikely that the majority of cases would be able to send additional interrogatories without first seeking a Court Order, as there would not likely be an amount in controversy of not less than \$25,000.

Therefore, the Practice and Procedure Committee recommends the following amendment for approval by the House of Delegates. The proposed revisions to Rule 33(b)(9) are in bold. The only substantive change is allowing for Family Court litigants to serve interrogatories beyond the standard interrogatories without having to seek a Court Order to do so:

(b) Standard Interrogatories. In all cases the following standard interrogatories may be served by one party upon another unless otherwise ordered by the court for good cause shown. The interrogatories 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 to interrogatories have been submitted, shall be promptly transmitted to the other party.

(9) Limitations. In addition to the standard interrogatories authorized by this paragraph, the court may order additional interrogatories for good cause shown in any case. In all actions in which the amount in controversy is not less than \$25,000, and in all actions for

declaratory or injunctive relief, **or actions before the Family Court**, a party may serve additional interrogatories including more than one set of interrogatories upon any other party; but the total number of general interrogatories to any one party shall not exceed fifty questions including subparts, except by leave of court upon good cause shown.



**TO:** House of Delegates  
**FROM:** Practice and Procedure Committee  
**DATE:** December 28, 2017  
**RE:** Rule 5(b)(1), SCRCP

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The Practice and Procedure Committee has studied Rule 5(b)(1), SCRCP, and it has approved an amendment to that rule to allow for parties to consent to electronic service of documents and now presents it to the House of Delegates.

Rule 5(b)(1) governs how documents are served in cases governed by the Rules of Civil Procedure. Part of the original version of the South Carolina Rules of Civil Procedure that were adopted in 1985, Rule 5(b)(1) has not been amended in the past thirty-two years. Now as then, it provides three methods of service: (1) delivering a copy of the document to a party's attorney; (2) mailing a copy of the document to a party's attorney; or (3) if no address is known, leaving a copy of the document with the clerk of court. The South Carolina Rules of Civil Procedure currently include no provision allowing for parties to consent to electronic service.

Since Rule 5(b)(1) was adopted, e-mail has become ubiquitous in the practice of law. In fact, every member of the South Carolina Bar is now required to provide an email address via the Attorney Information System. See Rule 410(f), (g), SCACR.

The frequent use of email has led other jurisdictions to allow (or in some cases, even require) service by electronic means. For example, in 2001, Rule 5(b)(2)(E) of the Federal Rules of Civil Procedure—on which South Carolina's Rule 5 was modeled—was amended to allow parties to consent to electronic service of documents. Other states have also adopted similar rules regarding electronic service. These states include Alaska (Rule 5(b)), Arkansas (Rule 5(b)(2)), Colorado (Rule 5(b)(2)(D)), Florida (Rule 2.516(b)), Indiana (Rule 5(b)), Iowa (Rule 1.442(2)), Kentucky (Rule 5.02(2)), Louisiana (Art. 1313), Michigan (Rule 2.017(C)(4)), Minnesota (Rule 5.02(b)), Mississippi (Rule 5(b)(1)), Nevada (Rule 5(b)(2)(D)), New York (Rule 2103(b)(7)), North Dakota (Rule 5(b)(1)), Ohio (Rule 5(b)(f)), Oregon (Rule 9(B)(8)), South Dakota (Rule 5(j)), Tennessee (Rule 5(b)(2)), and Washington (Rule 5(b)(7)).

The Practice and Procedure Committee has determined that amending Rule 5(b)(1) is warranted for multiple reasons. *First*, this proposed amendment brings the South Carolina Rules of Civil Procedure further into the twenty-first century. E-mail is now commonplace in the practice of law, and given the types of documents that are already transmitted via e-mail, no reason exists that court pleadings and other documents cannot be served this same way.

*Second*, by adopting language similar Federal Rule 5(b)(2)(E), this amendment brings into state court a rule already familiar to South Carolina lawyers. This should minimize any confusion or concern about the new rule. The only substantive difference in the proposed rule and in Federal Rule 5(b)(2)(E) is the requirement that counsel designate an e-mail address in the written consent. This additional requirement in the proposed amendment to Rule 5(b)(1) is so that there is no confusion about to whom electronic service should be made.

*Third*, the new rule is not mandatory; even if most lawyers will consent to electronic service, they will not be required to. Moreover, by keeping in the requirement of *written* consent, there should be few, if any, disputes about whether parties consented to electronic service. If someone does not consent to electronic service, parties would then serve documents under the other three options provided by Rule 5(b)(1).

*Fourth*, amending Rule 5(b)(1) should lead to greater efficiency and lower costs for clients. Serving documents electronically means less time making copies and stuffing envelopes and less money spent on postage. This aligns with the ultimate goal of the South Carolina Rules of Civil Procedure. *See* Rule 1, SCRCP (explaining that the goal of Rules of Civil Procedure is “to secure the just, speedy, and inexpensive determination of every action”).

*Fifth*, South Carolina will soon have electronic filing in every county. That means that service of documents filed with a court will be served electronically (and without having to get written consent from other lawyers) without any change to Rule 5. *See In re S.C. Elec. Filing Policies & Guidelines*, 415 S.C. 1, 8, 780 S.E.2d 600, 603 (2015) (“The act of E-Filing the pleading, motion or other paper is the equivalent of depositing it in the United States Mail under Rule 5(b)(1), SCRCP.”). Amending Rule 5 will simply allow lawyers to serve other documents, such as discovery requests and responses, electronically as well.

Therefore, the Practice and Procedure Committee recommends the following amendment for approval by the House of Delegates. The proposed revisions to Rule 5(b)(1) are in bold. The only substantive change is allowing for electronic service; the other changes are stylistic only and designed to make the rule read more smoothly in light of the substantive revision.

Whenever under these rules service is required or permitted to be made upon a party represented by an attorney the service shall be made upon the attorney unless service upon the party himself is ordered by the court. Service upon the attorney or upon a party shall be made **(1) by delivering a copy to him, (2) by sending it by electronic mail if the person consented in a writing designating the electronic-mail address(es)**

for purposes of service (in which event service is complete upon transmission, but is not effective if the serving party learns that it did not reach the person to be served), or (3) by mailing it to him at his last known address (in which event service is complete upon mailing of all pleadings and papers subsequent to service of the original summons and complaint) or, (4) if no address is known, by leaving it with the clerk of court. Delivery of a copy within this rule means: handing it to the attorney or to the party; or leaving it at his office with his clerk or other person in charge thereof; or, if there be no one in charge, leaving it in a conspicuous place therein; or, if the office is closed or the person to be served has no office, leaving a copy at his dwelling place or usual place of abode with some person of suitable age and discretion then residing therein. ~~Service by mail is complete upon mailing of all pleadings and papers subsequent to service of the original summons and complaint.~~





TO: House of Delegates

FM: Board of Governors

DT: January 2018

RE: Proposal to Increase License Fees

License fees are set by the Supreme Court in Rule 410, SCACR. In order for the South Carolina Bar to seek an increase in license fees by the Court, the Board of Governors first requests that the House of Delegates support an increase. As evidenced by the explanation below, the Board asks the House to support a \$15 increase in license fees for all categories of membership, effective in 2019. Depending upon the classification, the license fee would be \$275, \$205 or \$190. If the House approves, the Board would then request the Court to increase the fees. The Court may set the fees for each category of membership.

The Board recommends this increase based upon a new five year fiscal plan, detailed below, which projects diminished revenue growth due to the retirement and death of Baby Boomers not being offset at the same rate as in the past by newly admitted lawyers. There is also an expectation of increased expenses mostly governed by inflation. The Bar has remained conservative in its spending, including in some instances not retaining staff and deferring equipment replacement. The Board also will be considering how to address the loss of leased parking for its conference center. The Board believes it best to address these projections now rather than to sustain losses.

#### History of Fee Increases over the Last 10 Years

In May of 2007, upon request of the Board, the House adopted a proposed license fee increase which allocated \$25 towards operational expenses and \$30 toward the payment of debt incurred for the building of the Bar Conference Center. The Board's request came as a result of a five year fiscal plan by Board of Governors. The Supreme Court approved that increase by order of July 19, 2007. The Conference Center ultimately was built, and the \$30 has gone toward the debt on it. The other increase has gone to operational expenses.

Based on a new five year fiscal plan, which covered the time period from July 2013 to June 2018, the Board requested that the House adopt a proposed license fee increase which allocated \$15 towards operational expenses, with no increase for members of three years or less. The House adopted the proposed increase with the license fees increase to begin in January 2015. The Supreme Court approved that increase by order of May 28, 2014.

Demographics and Assumptions re Net Bar Growth

The average growth in Regular members of the Bar across the period June 2014 through June 2017 was 196 per year. The number of Regular members age 70 or older is 938.

The membership numbers as of December 18 were:

Regular	12,560
Inactive	2,157
Judicial	282
Judicial Staff	164
Military	84
Other	131
Retired	961

At least two mandatory state bars (Oklahoma, Virginia) are projecting no growth or a loss of members. They anticipate a Baby Boomer effect as more members than in recent past years exit the practice of law. The Bar net growth projected below is 87 Regular members each year.

National Data

Attached are charts from the 2017 State and Local Bar Benchmarks Survey as compiled by the Division for Bar Services of the American Bar Association. The unified state bars with 10,000 to 19,999 members are Alabama, Kentucky, Mississippi, Oklahoma, Oregon, South Carolina and Utah. Please also note that the District of Columbia, North Carolina, Virginia and West Virginia have both unified and voluntary bars, while South Carolina performs many of the functions of both such bars.

Present Request

A new five year fiscal plan has been prepared for the July 2018 through June 2023 time frame. That five year plan (in thousands of dollars) is attached. Without an increase in license fees, the Bar is projected to lose \$1,040,000 over this time frame. The Board has analyzed the projections based on a \$15 increase, beginning either in 2019 or in 2020. At the end of the 2018-2023 five year plan attached, the effects of a \$15 increase for 2019 and the same amount of increase but beginning in 2020 are shown. If the increase goes into effect in 2019, the Bar would see a projected gain of \$134,000 over five years. If the increase went into effect in 2020, the Bar is projected to lose \$96,000 over these five years.

The five year plans, including the present one, are based on the Board's projections on the revenues and expenses over the time frame. An explanation of the basis of those projections follows below.

The Board recommends that the Court be asked to make the increase effective for the 2019 license fee year.

### Projections on Revenues

License Fees: It is believed that there will be very modest growth in Bar membership compared to prior years as the Baby Boomer generation exits the profession and the number of new lawyers is not as high as past years.

Fees Toward Building: Because of the modest membership growth, there will be little additional money to apply to the debt over the current debt service.

Interest: Reserves are expected to stay constant and will likely have to be applied to purchase or lease of new parking as the current parking lease with a third party will expire.

LRS Percentage Fees: These fees are expected to remain constant although more clients may find lawyers online.

### Projections on Expenses

Salaries: Unlike past fiscal plan projections, there is no plan for an increase in staff, other than the possibility of one change. The Pro Bono Counsel position is presently funded by a grant that ends in June 2020; the fiscal plan assumes the Bar would cover that cost at that stage if a grant cannot be secured.

Buildings: The Conference Center supplemental parking agreement with a third party ends in May 2018; although the rental expense is removed here, the costs of a parking lot purchase or lease is projected in another line item.

Equipment & Software: Equipment replacement and software replacement are expected to increase each year.

Law Related Education: The numbers assume grants will eventually increase and registration fees will be used; large increases in competition numbers may warrant larger budgets.

Debt Service: The debt on the Conference Center will have to be refinanced by November 1, 2018. The numbers contemplate the same interest rate, but the entire payment would remain the same as more would be paid toward principal.

Debt Service Parking: The new budget line item assumes a parking lot is secured and the debt service is equivalent to what was paid for the leased parking.

2018/19 2019/20 2020/21 2021/22 2022/23 5 YEAR

REVENUES

1. LICENSE FEES	3300	3320	3340	3360	3380
2. FEES TOWARD BUILDING	455	458	461	464	466
3. INTEREST	15	15	15	15	15
4. LRS PERCENTAGE FEES	300	300	300	300	300
5. LRS SUBSCRIPTION FEES	65	65	65	65	65
6. MARKETING FEES	33	33	33	33	33
7. SOUTH CAROLINA LAWYER	90	90	90	90	90
8. STAFF SUPPORT	51	51	51	51	51
9. RENTS RECEIVED	44	44	45	45	45
10. ADR CERTIFICATION	95	95	95	95	95
11. DUES COLLECTION FEES	14	14	14	14	14
12. MISCELLANEOUS	3	3	3	3	3
13. LAW STUDENT AFFILIATES	2	2	2	2	2

**TOTAL REVENUES**

4467	4490	4514	4537	4559
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EXPENSES

1. SALARIES	1778	1831	1949	2007	2067
2. FICA & BENEFITS	516	531	565	582	599
3. BUILDINGS	170	173	177	180	184
4. EQUIPMENT & SOFTWARE	40	42	44	46	48
5. EQUIP. MAINT. & LICENSES	177	184	191	199	206
6. OFFICE SUPPLIES	32	32	36	32	32
7. POSTAGE	14	14	14	15	15
8. TELEPHONE	17	17	18	18	18
9. PROFESSIONAL FEES	10	11	12	13	14
10. BOND/INSURANCE	10	10	11	11	11
11. STAFF EXPENSE	31	31	31	33	33
12. DUES/SUBSCRIPTIONS/BOOKS	5	5	5	5	5
13. CASUAL LABOR/HIRING	2	2	2	2	2
14. DELEGATE EXPENSE	71	71	66	71	66
15. OFFICERS' EXPENSE	4	4	4	4	4
16. MEMBERSHIP SERV. COMM.	110	110	110	110	110
17. PRACTICE MANAGEMENT ASSIST.	18	20	20	22	22
18. RISK MANAGEMENT	7	7	7	7	7
19. MENTORING	13	13	14	14	15
20. LAWYERS HELPING LAWYERS	48	42	42	42	42
21. MEMBERSHIP BENEFITS	106	108	111	113	116
22. YOUNG LAWYERS	200	196	202	208	214
23. SENIOR LAWYERS	43	43	43	43	43

24. GOVT. RELATIONS DIRECT	33	33	33	33	33	
25. JUDICIAL EVALUATION	5	5	5	5	5	
26. PUBLIC SERV. COMMITTEE	25	25	25	25	25	
27. PRO BONO	54	54	56	56	58	
28. ASK A LAWYER	8	8	8	8	8	
29. CLIENT ASSISTANCE PROGRAM	1	1	1	1	1	
30. ADR COMMISSION	4	4	4	4	4	
31. LYR REF'L SERV. MARKETING	118	118	120	120	122	
32. LAW RELATED EDUCATION	124	124	124	124	124	
33. PUBLIC RELATIONS	30	30	30	30	30	
34. SC LAWYER	216	220	224	228	232	
35. LAWYERS DESK BOOK	4	4	4	4	4	
36. CONTRIBUTIONS	8	10	8	8	8	
37. CREDIT CARD FEES	63	65	67	69	71	
38. MISCELLANEOUS	3	3	3	3	3	
39. SHORT TERM PROJECTS	10	10	10	10	10	
40. LAW STUDENT AFFILIATES	5	5	5	5	6	
41. DEBT SERVICE	316	316	316	316	316	
42. DEBT SERVICE PARKING	30	30	30	30	30	
<b>TOTAL EXPENSES</b>	<b>4479</b>	<b>4562</b>	<b>4747</b>	<b>4856</b>	<b>4963</b>	
<b>NET GAIN (LOSS)</b>	<b>-12</b>	<b>-72</b>	<b>-233</b>	<b>-319</b>	<b>-404</b>	<b>-1040</b>
Increased fee revenue at \$15	230	232	235	237	240	
Net effect	218	160	2	-82	-164	134
Increased fee revenue at \$15, delayed	0	232	235	237	240	
Net effect	-12	160	2	-82	-164	-96

# **2017 State and Local Bar Benchmarks Survey: Membership, Programming and the Legal Profession**

**American Bar Association  
Division for Bar Services**

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**Editor: Joanne O'Reilly  
November 2017**

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## II. MEMBERSHIP DUES AND FEES

### Ila. Total cost to practice in each state<sup>1</sup> – unified states<sup>2</sup>

The question below asks you to provide the total cost to practice in your state. Please provide figures for all MANDATORY fees that attorneys must pay, either to the bar or to the licensing agency in your state.

Please provide the total cost to practice in your state. Include all MANDATORY FEES to practice. Please report the fee levels separately in each applicable category. If the breakdown is unknown please report the cost to members in your state in the first category below. If a fee is payable over a number of years, please report the figure per year. The total box should equal the total cost to practice in your state.

- \$\_\_\_ Total fees if not broken down by category (some unified state bars may refer to these mandatory fees as dues)
- \$\_\_\_ Client security fee
- \$\_\_\_ Licensing/registration fee
- \$\_\_\_ Discipline
- \$\_\_\_ Professional responsibility fee
- \$\_\_\_ Building fund
- \$\_\_\_ Occupational tax
- \$\_\_\_ Mandatory CLE fee
- \$\_\_\_ Attorney assistance program
- \$\_\_\_ Legal services/legal aid
- \$\_\_\_ Mandatory professional liability insurance

#### UNIFIED STATE BARS THAT PERFORM REGULATORY FUNCTIONS

UNIFIED STATE BARS THAT PERFORM REGULATORY FUNCTIONS	TOTAL COST TO PRACTICE IN STATE	TOTAL FEES IF NOT BROKEN DOWN BY CATEGORY	CSF	LIC./REG. FEE	DISC.	PROF. RESP. FEE	BLDG. FUND	OCC. TAX	MAND. CLE FEE	ATTY. ASST. PROG.	LEGAL SERV.	MAND. PROF. LIAB. INS.	OTHER
Alabama	\$350		\$25	\$325									
Alaska	\$660		\$10	\$650									
Arizona <sup>3</sup>	\$505	\$495	\$10										
California	\$372		\$40	\$297	\$25					\$10	\$40 <sup>4</sup>		
District of Columbia	\$310	\$310											
Florida	\$265	\$265											
Georgia	\$325	\$250	\$25				\$50						
Idaho	\$445		\$20	\$425									

<sup>1</sup> Total cost to practice in each state includes all the mandatory dues and fees required for an attorney to practice law in that state. In unified states, the attorney must belong to the bar to practice law in that state. Voluntary state bars collect dues only – this dues amount is not included in the total cost to practice in voluntary states as it is not mandatory. We have included the mandatory fees that attorneys must pay to the licensing agencies in those states. If a member is able to opt-out of a fee, that fee is not included in the total cost to practice figure.

<sup>2</sup> Some state bars collect one dues amount from members and allocate those dollars among expenses (discipline, client security fund, etc.) as necessary. Others collect specific fees for various activities. Therefore, some bars may not list a dues level, but list specific amounts of fees collected.

<sup>3</sup> Arizona - Fees scheduled to increase in 2019 to \$520.

<sup>4</sup> California – The \$40 legal services fee is legislatively mandated, but members may opt out (not included in total cost to practice figure in chart).

UNIFIED STATE BARS THAT PERFORM REGULATORY FUNCTIONS (cont.)

UNIFIED STATE BARS THAT PERFORM REGULATORY FUNCTIONS (cont.)	TOTAL COST TO PRACTICE IN STATE	TOTAL FEES IF NOT BROKEN DOWN BY CATEGORY	CSF	LIC./ REG. FEE	DISC.	PROF. RESP. FEE	BLDG. FUND	OCC. TAX	MAND. CLE FEE	ATTY. ASST. PROG.	LEGAL SERV.	MAND. PROF. LIAB. INS.	OTHER
Kentucky	\$310	\$233	\$7				\$20		\$48		\$2		
Louisiana	\$435	\$200			\$235								
Michigan	\$285 <sup>5</sup>	\$180	\$15		\$90								
Mississippi	\$335	\$335											
Montana	\$395	\$200	\$20	\$25	\$125				\$25				
Nevada	\$490	\$450							\$40				
North Carolina	\$386	\$300	\$50						\$36				
Oklahoma <sup>6</sup>	\$275			\$275									
Oregon	\$557	\$497	\$15									\$3,500 <sup>7</sup>	\$45 <sup>8</sup>
South Carolina	\$410		\$30	\$260	\$70				\$50 <sup>9</sup>		\$30 <sup>10</sup>		
South Dakota	\$415			\$315					\$100				
Texas	\$300	\$235									\$65		
Utah	\$435	\$425	\$10										
Virginia	\$275	\$250	\$25										
Virgin Islands	\$550	\$300		\$50									\$200 <sup>11</sup>
Washington	\$415 <sup>12</sup>		\$30	\$385									
West Virginia	\$250	\$250											
Wyoming	\$355	\$350							\$5				

<sup>5</sup> Michigan – These fees are in effect for the bar year beginning October 1, 2016 through September 30, 2017.

<sup>6</sup> Oklahoma – Provide client security funding and do discipline all out of general budget dollars as part of the \$275.

<sup>7</sup> Oregon – All private practice attorneys in Oregon must pay \$3,500 to the OSB Professional Liability Fund (not included in total cost to practice figure in chart).

<sup>8</sup> Oregon - \$45 diversity and inclusion assessment.

<sup>9</sup> South Carolina - \$50 MCLE fee is collected by another entity.

<sup>10</sup> South Carolina – \$30 legal aid fee is optional (not included in total cost to practice figure in chart).

<sup>11</sup> Virgin Islands - \$200 allocated to the Judicial Imprest Fund which covers the expenses of law libraries, the Committee on Ethics and Grievances and the Legal Education and Admission to the Bar Committee.

<sup>12</sup> Washington - WSBA fees were \$450 in 2012, were reduced by a member referendum to \$325, raised to \$385 in 2016, and will increase to \$449 in 2018. A 30% late penalty is assessed if paid after February 1.

UNIFIED STATE BARS THAT DO NOT PERFORM REGULATORY FUNCTIONS

UNIFIED STATE BARS THAT DO NOT PERFORM REGULATORY FUNCTIONS	TOTAL COST TO PRACTICE IN STATE	TOTAL FEES IF NOT BROKEN DOWN BY CATEGORY	CSF	LIC./ REG. FEE	DISC.	PROF. RESP. FEE	BLDG. FUND	OCC. TAX	MAND. CLE FEE	ATTY. ASST. PROG.	LEGAL SERV.	MAND. PROF. LIAB. INS.	OTHER
Hawaii	\$559	\$210	\$50		\$250					\$34			\$15 <sup>13</sup>
Missouri	\$410	\$259			\$101						\$50		
Nebraska <sup>14</sup>	\$98			\$25	\$60								\$13 <sup>15</sup>
New Hampshire	\$545			\$310	\$205				\$10	\$20			
New Mexico	\$410		\$15	\$245	\$150								
North Dakota <sup>16</sup>	\$380	\$228	\$16		\$75								\$61 <sup>17</sup>
Rhode Island	\$450	\$225	\$25	\$200 <sup>18</sup>									
Wisconsin	\$494	\$258	\$20		\$155				\$11		\$50		

<sup>13</sup> Hawaii - \$15 processing fee.

<sup>14</sup> Nebraska – A Nebraska Supreme Court ruling in December 2013 mandated that dues (referred to as “mandatory membership assessment”) be reduced to a level only covering regulatory aspects of bar operations. A voluntary membership is also available for \$240.

<sup>15</sup> Nebraska - \$13 for UPL.

<sup>16</sup> North Dakota - \$380 is collected each year by the Board of Law Examiners. \$75 comes off the top to help pay for discipline. 20% of the balance is retained by the Board of Law Examiners, \$244 comes to the bar, \$16 of which is dedicated to the Client Security Fund. The remaining \$228 goes to bar general fund.

<sup>17</sup> North Dakota - \$61 for Board of Law Examiners.

<sup>18</sup> Rhode Island - \$200 licensing/registration fee also funds the discipline system; not billed by bar.



TO: Members, House of Delegates      FM: Board of Governors

DT: January 2018

RE: Nominations for Commission on Continuing Legal Education and Specialization

Rule 408(b)(1), SCACR, requires the House of Delegates to present to the Supreme Court up to two nominees for every vacancy on the Commission on Continuing Legal Education and Specialization. The terms of two commissioners expire on June 30, 2018.

Ellen S. Cheek of Spartanburg has completed an unexpired term and Zandra L. Johnson of Greenville has served one term. The Commission recommends that they each serve an additional term. Both are willing to serve.

James D. Myrick of Charleston has served two consecutive terms and may not be reappointed. His replacement must be from Judicial Region 4 (Circuits 1, 2, 9, 14). The Board of Governors received the following names to be placed in nomination from the Commission.

Giampietro P. "G.P." Diminich	Charleston
B. Shawan Gillians	Moncks Corner

Nominations for any of the seats may be made from the floor.

The Commission members are:

Ellen S. Cheek	Spartanburg	Region 1
Debbie Whittle Durban	Columbia	Region 2
Hon. George C. James, Jr.	Sumter	
W. Steven Johnson	Columbia	Region 2
Zandra L. Johnson	Greenville	Region 1
J. René Josey	Florence	Region 3
Robert A. Kerr, Jr.	Charleston	Region 4
Hon. Alex Kinlaw, Jr.	Greenville	
Rebecca Laffitte	Columbia	Region 2
James D. Myrick	Charleston	Region 4
Hon. William H. Seals, Jr.	Marion	
Stuart W. Snow, Sr.	Florence	Region 3



**The Supreme Court of South Carolina**  
COMMISSION ON CONTINUING LEGAL EDUCATION AND SPECIALIZATION

**MEMORANDUM**

**TO:** Elizabeth H. Warner, President, South Carolina Bar  
Robert S. Wells, Executive Director, South Carolina Bar

**FROM:** Mary A. Germack, Executive Director *MAG*

**DATE:** January 4, 2018

**RE:** Nomination for Commission Vacancy

**CC:** James D. Myrick, Chair

**I. Reappointments to Commission Seats**

The terms of Commission members Ellen S. Cheek of Spartanburg (Judicial Region I) and Zandra L. Johnson of Greenville (Judicial Region I) will expire on July 1, 2018. Ms. Cheek and Ms. Johnson have served one (1) term on the Commission on CLE and Specialization (Commission) and pursuant to Rule 408(b)(1), SCACR, they are eligible for reappointment by the Supreme Court for a second three (3) year term.

The Commission seeks to have Ms. Cheek and Ms. Johnson reappointed for a second term, to expire July 1, 2021. The Commission contacted Ms. Cheek and Ms. Johnson and they have agreed to serve another term if reappointed by the Supreme Court. Both Commissioners are outstanding Bar members who have provided excellent service to the Commission during their first terms; therefore, the Commission requests that the Bar forward these re-nominations to its House of Delegates (House) for consideration at its upcoming meeting scheduled on January 18, 2018. Mr. Wells has previously advised the Commission that eligible Commissioners, who are willing to serve second terms, will go forward to the House without additional nominees.

**II. Commission Vacancy: Judicial Region IV**

The term of Commission member James D. Myrick of Charleston will expire on July 1, 2018. Mr. Myrick has served two (2) consecutive terms on the Commission; therefore, he is not eligible for reappointment by the Supreme Court.

As you are aware, Rule 408(b)(1), SCACR, provides that the South Carolina Bar's House of Delegates is required to present to the Supreme Court up to two (2) nominees for each vacancy on

the Commission. While the Court expects that the House will actively determine the nominees, it has been the Commission's practice to respectfully submit to the South Carolina Bar the names of attorney nominees whom it believes would be outstanding members of the Commission.

To fill the vacancy created by Mr. Myrick's expired term, the Commission nominates Giampiero P. "GP" Diminich and B. Shawan Gillians.

#### **A. Giampietro P. "GP" Diminich**

Mr. Diminich is a partner in Smith Moore Leatherwood, LLP in the firm's Charleston office. He has the distinction of being one of only twenty South Carolina attorneys to be currently certified by the Supreme Court of South Carolina as a dual specialist in both Taxation Law and Estate Planning and Probate Law. Mr. Diminich is a Fellow of the prestigious American College of Trust and Estate Counsel (ACTEC), and a Fellow of the American College of Tax Counsel (ACTC). He is also a Certified Financial Planner and a Certified South Carolina Circuit Court Mediator.

Mr. Diminich was a member of the Commission on CLE & Specialization's Estate Planning and Probate (EPP) Law Specialization Advisory Board for six years (2011-2016), and served as its Chair for two years (2015-2016), during which time he demonstrated superb leadership in dealing with many complex specialization issues. Mr. Diminich's familiarity with South Carolina's areas of certified legal specialization, and his personal experience in these matters, would be an invaluable asset to the Commission, especially with respect to the Commission's essential specialization certification responsibilities.

Mr. Diminich joined Smith Moore Leatherwood in February 2012, where he crafts estate plans, drafts wills and trusts, advises on various gifting strategies, and assists personal representatives with estate administration, including preparation of estate tax returns. He also provides corporate and individual income tax advice, opinion letters, and structured litigation settlements to minimize taxes. Mr. Diminich counsels clients on asset protection issues, wealth preservation, business succession planning, as well as business entity selection and formation, business sales, mergers and acquisitions, corporate reorganizations, and commercial real estate transactions. He has advised clients on general corporate, partnership, limited liability company, and agency law, and has engaged in business, probate, and tax controversy litigation. Mr. Diminich is admitted to practice in the United States District Court for the District of South Carolina, and the United States Tax Court. Before joining Smith Moore Leatherwood, Mr. Diminich was a member, and taxation practice head, of Clawson & Staubes, LLC in Charleston (2005-2012), an associate at Thomas & Fisher, P.A. in Greenville (January 2005-July 2005), an associate at Buist Moore Smyth & McGee, P.A. (now Womble Bond (US) LLP) in Charleston (May 2002-January 2005), and a senior tax consultant at KPMG, LLP in its State and Local Tax/Business Incentives Group in Greenville (September 2000-August 2001).

Mr. Diminich graduated with honors from Davidson College in May 1995, and received his Juris Doctor degree from the University of South Carolina School of Law, in May 1998. He earned a Certificate in Italian/European Business from S.D.A. Bocconi in Milan, Italy, in July 1999. Mr. Diminich received a Master of Business Administration degree in International Business at the Moore School of Business of the University of South Carolina, in May 2000, and a Master of Law in Taxation degree from New York University School of Law, in May 2002.

In addition to Mr. Diminich's service on the Commission's EPP Law Specialization Advisory Board, throughout his career, Mr. Diminich has held numerous leadership positions in the legal community. He is a member of the South Carolina Bar's Sections of Taxation Law; Probate, Estate Planning & Trust Law; and Corporate, Banking & Securities Law. He served as member of the Bar's Taxation Law Section Council (2013), and is currently a member of the Charleston Tax Council (2002-Present; President 2008-2009), the Charleston Estate Planning Council (2006-Present), and the Charleston Tax Roundtable (2009-Present). He is member of the American Bar Association (2000-Present) and its Sections on Taxation Law; Real Property, Probate and Trust Law; and Business Law. He was recognized by *South Carolina Lawyers Weekly* with a Leadership in Law Award and was named one of *Charleston Regional Business Journal's* "40 under 40," in 2013.

Mr. Diminich has also served in many community and charitable organizations. He was Member of the Class of 2009 of Leadership Charleston. He is currently a member of Rotary International and his local Rotary Club (2006-Present), the Charleston Metro Exchange Club (2012-Present), Reading Partners (present Board Member), Trident Tech University Foundation (present Board Member), Social Venture Partners (present Board Member), Charleston Metro Chamber of Commerce (present Board Member), Charleston Stage Company (Board Member, 2007-2010), and Trident United Way, Community Investment Review Team (Member, 2012-Present).

Mr. Diminich has been a frequent lecturer and author for local, state, and national CLE, CPE, and CE providers at courses sponsored by the South Carolina Bar, the National Business Institute, Lorman Education Services, BB&T Wealth, and First Federal Bank Continuing Legal Education. Mr. Diminich has made presentations at the annual NC/SC Bars' Taxation Law Sections' Workshops, the South Carolina Bar CLE Division's annual Probate Bench/Bar and has participated as a planner, presenter, or panelist in more than two dozen other CLE courses. His recent publications include "Bottling Lightning: Utilizing the Intentionally Defective Grantor Trust to Turbocharge Estate Tax Planning and Protect Assets from Creditors," *South Carolina Lawyer Magazine* (September 2012), and "Examining the Key Issues in a Successful Family and Business Succession Plan," *INSIDE THE MINDS: FAMILY AND BUSINESS SUCCESSION PLANNING*, Aspatore (2013).

Mr. Diminich has consented to his name being placed in nomination and has agreed to serve faithfully if appointed by the Supreme Court.

#### **B. B. Shawan Gillians**

Ms. Gillians is the Associate General Counsel and Interim Treasurer of the South Carolina Public Service Authority (Santee Cooper). Prior to her appointment as Associate General Counsel in October 2015, Ms. Gillians acted as an Attorney II (June 2011-March 2013) and Senior Attorney (March 2013-October 2015) for Santee Cooper. She has also been the Interim Treasurer since March 2017. In addition to her work with the utility company, from January 2012 to December 2014, Ms. Gillians served as an Adjunct Instructor at the Miller-Motte Technical College at its Charleston campus. Shawan Gillians began her accomplished legal career as an Associate with Buist Moore Smythe McGee, P.A., in Charleston where she practiced from September 2007 through June 2011. Ms. Gillians was with the firm when it merged with its successor firm, Womble Carlyle Sandridge & Rice, PLLC in May 2011.

Ms. Gillians graduated magna cum laude with a Bachelor of Arts degree in Economics and Religion from Wofford College. She went on to earn her Juris Doctor degree from the College of William and Mary School of Law in May 2007 and was admitted to the South Carolina Bar in the same year. In December 2016, Ms. Gillians completed her Master of Business Administration degree at the Moore School of Business of the University of South Carolina.

Throughout her career, Ms. Gillians has been active in the legal community and with civic organizations, and she has held significant leadership positions. She has been a member of the South Carolina Bar's House of Delegates since 2016. She is a member of the American Bar Association (2007-Present) and has served as Co-Chair of the Products Liability Committee, Young Lawyers Subcommittee (2010-2012). Ms. Gillians was a member of the South Carolina Bankruptcy Law Association (2008-2011) and participated in its 20<sup>th</sup> Annual Seminar Committee (2010). She was a member of the Charleston County Bar Association (2007-2011) and, in 2011, became a member of the Berkeley County Bar Association, where she had the distinction of sitting on its Board of Directors (2014-2017).

Regarding community involvement, Ms. Gillians has extensively volunteered her time to several worthwhile organizations. She is a Liberty Fellowship, Class of 2018 Fellow, and was a participant in the Fall 2016 Diversity Leadership Initiative of the Riley Institute at Furman University. Ms. Gillians has been a member of the Board of the Coastal Community Foundation since 2016. She serves on the Berkeley Chamber of Commerce and is a member of its Emerging Leaders Network (2008-Present). Ms. Gillians sits on the Board of Directors for Securing Assets for Education (SAFE) (2012-Present) and, since 2013, she has acted as its Chairman. Ms. Gillians is a member of St. Mark's Episcopal Church and has served on its vestry since 2016. She served as a Board Member of the Women's Resource Project (2008-2011), a coach for the Berkeley High School Mock Trial Team (2011-2015), a member of the Charleston Library Society (2008-2011), and a member of the Berkeley High School Centennial Celebration Committee (2013).

Ms. Gillins is a lecturer at CLE seminars and has authored several articles published in conjunction with her presentations. Among her CLE presentations, Ms. Gillians was a panel Co-Moderator for the ABA Women in Products Liability Annual Seminar (October 2009). She moderated the segment on the topic of *The Ethics of Managing Your Litigation in Tough Economic Times* and published "Temporary/Contract Lawyers and Legal Outsourcing Services"; "Attorney Secondment to Clients"; and "Litigation Management and Billing Guidelines," in conjunction with this course. Ms. Gillians also participated as a panel member in the *Products Liability Year in Review, Joint CLE Annual Seminar* (January 2011) sponsored by the ABA Environmental, Mass Torts and Products Liability Sections. She participated as a speaker in the South Carolina Bar's 31<sup>st</sup> Annual North Carolina/South Carolina Labor & Employment Law Conference (October 2015) and authored, "The Impending Baby Boomer Bust: Challenges and Strategies for the Aging Workforce" in conjunction with her presentation.

Ms. Gillians has consented to her name being placed in nomination and has agreed to serve faithfully if appointed by the Supreme Court.

### **III. Summary**

The Commission thanks the South Carolina Bar for the opportunity to submit nominations to the House of Delegates for the upcoming attorney vacant seats on the Commission. The Commission

submits that it has provided an excellent slate of diverse and accomplished attorneys who would provide exceptional service to the Supreme Court. Attached for the House of Delegates' review are the resumes of the two new candidates for appointment to the Commission, to fill the vacancy in Judicial Region IV. If the Bar has questions, or would like to discuss this matter further, please do not hesitate to contact us.

The Commission's recommendations for re-appointments for current attorney seats in Judicial Region I are as follows:

Ellen S. Cheek and Zandra L. Johnson

The Commission's recommendations for the nominations for the new attorney seat in Judicial Region IV are as follows:

Giampietro P. "GP" Diminich and B. Shawan Gillians

Attachments



**G.P. DIMINICH, ESQ.**

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Mt. Pleasant, SC 29464  
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SMITH MOORE LEATHERWOOD LLP  
25 Calhoun Street, Suite 250  
Charleston, SC 29401  
Tel. (843) 300-6638  
Fax: (843) 300-6738  
Email: [gp.diminich@smithmoorelaw.com](mailto:gp.diminich@smithmoorelaw.com)

**EDUCATION**

**NEW YORK UNIVERSITY SCHOOL OF LAW**, New York, N.Y.  
Master of Law in Taxation (May 2002)

**UNIVERSITY OF SOUTH CAROLINA MOORE SCHOOL OF BUSINESS**, Columbia, S.C.  
Master of Business Administration in International Business (May 2000)  
Concentration in Finance and Italian language and business culture.

**S.D.A. BOCCONI**, Milan, Italy  
Certificate in Italian/European Business (July 1999)

**UNIVERSITY OF SOUTH CAROLINA SCHOOL OF LAW**, Columbia, S.C.  
Juris Doctor (May 1998)

**DAVIDSON COLLEGE**, Davidson, N.C.  
Bachelor of Arts, *with honors* (May 1995)

**SPECIALIZATIONS**

**Certified Specialist in Taxation Law**  
• **Council Member, S.C. Bar Association, Tax Law Section Council (2013).**  
**Certified Specialist in Estate Planning & Probate Law**  
• **Member, S.C. Supreme Court, Estate Planning & Probate Law Specialization Board (2011-2016).**  
**Certified Circuit Court Mediator**  
**CERTIFIED FINANCIAL PLANNER™**

**FELLOWSHIPS**

**American College of Trust and Estate Counsel (ACTEC)**, Fellow  
**American College of Tax Counsel (ACTC)**, Fellow

**EXPERIENCE**

**SMITH MOORE LEATHERWOOD**, Charleston, S.C.  
**Partner** (February 2012-present)  
Attorney/Partner. Crafted estate plans (utilizing various techniques to reduce potential estate and gift tax liability), drafted wills and trusts (QTIP, Marital, Credit Shelter, ILIT, SLAT, Delaware Dynasty, and IDGT Trusts), advised on various gifting strategies to utilize \$5.49/\$10.49 million lifetime gift tax exemption (including the use of seed gifts, discounted gifts, recapitalizations,

and gifts of FLP/FLLC interests), and assisted personal representatives with estate administration, including estate tax return (Form 706) preparation. Provided corporate and individual income tax advice on passive activity loss, at-risk loss limitation rules, and discharge of indebtedness income, including the drafting of a Reliance Opinion Letter. Structured litigation settlements to minimize taxes. Counseled clients on asset protection issues as well as wealth preservation, and published articles on Family Business Succession Planning and IDGTs. Provided counsel to clients regarding business succession planning, as well as business entity selection and formation (e.g., drafting operating agreements, shareholder agreements, and employment agreements), business sales, mergers and acquisitions (including one sale in excess of \$100 million), corporate reorganizations, and commercial real estate transactions. Advised clients on general corporate, partnership, limited liability company, and agency law. Engaged in business litigation, probate litigation, and tax controversy.

**CLAWSON & STAUBES, LLC, Charleston, S.C.**

**Member, Estate Planning & Administration and Taxation Practice Head (2005-2012)**  
Attorney/Partner heading the estate planning and administration and taxation departments. Crafted estate plans (utilizing various techniques to reduce potential estate and gift tax liability), drafted wills and trusts (QTIP, Marital, Credit Shelter, ILIT, and IDGT Trusts), and assisted personal representatives with estate administration, including estate tax return (Form 706) preparation. Advised clients on asset protection issues as well as wealth preservation. Provided counsel to clients regarding business succession planning, as well as business entity selection and formation (e.g., drafting operating agreements, shareholder agreements, and employment agreements), business sales, mergers and acquisitions, corporate reorganizations, and commercial real estate transactions. Advised clients on general corporate, partnership, limited liability company, and agency law. Engaged in business litigation, probate litigation, and tax controversy.

**THOMAS & FISHER, P.A., Greenville, S.C.**

**Associate (January 2005- July 2005)**  
Designed estate plans, drafted wills and trusts (QTIP, Marital, Credit Shelter, and QPRT Trusts), assisted personal representatives with estate administration, including estate tax return (Form 706) preparation, and trustees with trust administration. Advised clients on family limited partnerships (FLPs). Provided counsel to clients regarding business succession, asset protection, and wealth preservation, as well as business sales, mergers and acquisitions, and corporate reorganizations.

**BUIST MOORE SMYTHE McGEE P.A. (now Womble), Charleston, S.C.**

**Associate (May 2002- January 2005)**  
Practiced with Taxation, Trusts and Estates, and Business and Banking groups. Designed estate plans, drafted wills and trusts (QTIP, Marital, Credit Shelter, Special Needs and QPRT Trusts), assisted personal representatives with estate administration, including estate tax return (Form 706) preparation, and trustees with trust administration. Assisted conservators with conservatorships. Advised clients on family limited partnerships (FLPs) and Family Limited Liability Companies (LLCs). Provided counsel to clients regarding business succession, asset protection, and wealth preservation, as well as business sales, mergers and acquisitions, corporate reorganizations, and commercial real estate transactions.

**KPMG, L.L.P., State and Local Tax/Business Incentives Group, Greenville, S.C.**  
Senior Tax Consultant (September 2000 - August 2001)

Advised Fortune 500 clients on minimizing overall state and local tax liabilities, utilizing various tax-advantaged strategies as well as applying various income tax credits and other tax incentives offered by southern states, including South Carolina. Prepared various tax forms.

## **CLERKSHIPS**

**NEXSEN PRUET JACOBS & POLLARD, L.L.P.** Columbia, S.C.

**Law Clerk.** (January - June 2000)

Worked with Economic Development (Tax), Finance, and Corporate groups. Assigned to Burnet R. Maybank, III, current and past Director, South Carolina Department of Revenue. Researched and drafted memoranda concerning corporate law and tax law issues, assisted with drafting of corporate documents, and prepared various federal and state tax forms. Co-authored articles for publication and/or presentation at symposia, including issues related to 501(c)(3) entities.

**MERCK & CO.** Rome, Italy.

**Tax Intern.** (July 1999 - January 2000)

Advised with development of tax planning strategies, including classification of deferred taxes. Supported financial reporting activities, including U.S. GAAP reconciliation.

**THE ELECTRIC COOPERATIVES OF SOUTH CAROLINA, INC.** Columbia, S.C.

**Law Clerk to Head Counsel** (January 1998 - May 1998; August 1998 - May 1999)

Authored internal memoranda encompassing various areas, including federal and state tax, regulatory law, and corporate law. Drafted motions and briefs in support of litigation before both state courts and administrative agencies.

## **LEGAL HONORS**

**SOUTHEASTERN ENVIRONMENTAL LAW JOURNAL**

Author, Administrative Law Note. Summer 1997 issue.

**LEGAL WRITING INSTRUCTOR**

· University of South Carolina School of Law, 1997-1998.

· Taught legal research and writing skills to 1L (i.e., first-year) students.

**RESEARCH ASSISTANT**

· Professor F. Patrick Hubbard, University of South Carolina School of Law, 1996-1998.

**ORDER OF THE WIG & ROBE**

**DEAN'S LIST.** Fall 1997 and Spring 1998 semesters.

**CALI AWARD.** Highest Grade, Mass Tort Litigation.

## **PROFESSIONAL ACTIVITIES**

Charleston Tax Council, 2002-present. President, 2008-09.

Charleston Estate Planning Council, 2006-present.

Charleston Tax Roundtable, 2009-present.

Financial Planning Association, 2009-present.

American Bar Association, 2000-present

· Section on Taxation

· Section on Real Property, Probate and Trust Law

· Section on Business Law

South Carolina Bar, 2000-present

· Tax Law Section

· Probate, Estate Planning and Trust Section

· Corporate, Banking, and Securities Law Section

Lecturer, S.C. Bar Association, NBI, Lorman, OneCLE, BB&T Wealth, and

First Federal Bank Continuing Legal Education, Continuing Professional

Education, and Continuing Education (CLE, CPE and CE) seminars.

Drafted materials and lectured over a couple dozen times on taxes,

estate planning, trusts, estate administration, taxation, corporations,

limited liabilities companies, and partnerships, mergers and

acquisitions, and litigating business and shareholder disputes, both to SC and national audiences.

United States District Court, District of South Carolina, admitted 2006

United States Tax Court, admitted 2007.

**COMMUNITY  
ACTIVITIES**

Leadership Charleston, Class of 2009, Charleston Metro Chamber of Commerce  
Rotary International. Rotary Club, 2006-present  
Charleston Metro Exchange Club, 2012-present  
Reading Partners, Board Member, present  
Trident Tech University Foundation, Board Member, present  
Social Venture Partners, Board Member, present  
Charleston Metro Chamber of Commerce, Board Member, present  
*S.C. Lawyers Weekly*, Leadership in Law  
*Charleston Regional Business Journal 40 under 40*, 2013.  
Charleston Stage Company. Board Member. 2007-2010  
Trident United Way, Community Investment Review Team, Member (2012-present)

**CLE/CPE SPEAKER  
AND/OR  
PLANNER**

Annual N.C./S.C. Bar Tax Sections Workshops  
South Carolina Annual Probate Bench Bar  
The Probate Process from Start to Finish  
Estate Administration Procedure: Why Each Step is Important  
Drafting Effective Wills and Trusts  
Top 10 Estate Planning Techniques  
Advanced Estate Planning  
Trusts 201  
Estate Planning Essentials  
Fundamentals of Trust Administration  
S.C. Estate Planning & Probate Law Update  
S.C. Tax Update  
Accounting for Lawyers  
Business Contracts: A to Z  
Litigating Business and Shareholder Disputes  
Helping Your Client Buy or Sell a Small to Medium Sized Business  
Parent-Subsidiary and Related Business Entity Law  
LLCs: From Formation to Special Uses  
LLC or Inc.? Entity Selection for Small to Medium Sized Businesses  
Structuring LLC Operating Agreements: Best Practices  
Helping Your Client Select the Best Entity Option  
S.C. Corporate Law Update  
LLCs, LLPs, and Partnerships: Organization and Operation  
LLCs: From Formation to Special Uses

**PUBLICATIONS**

"Bottling Lightning: Utilizing the Intentionally Defective Grantor Trust to Turbocharge Estate Tax Planning and Protect Assets from Creditors," S.C. LAWYER (September 2012)  
"Examining the Key Issues in a Successful Family and Business Succession Plan," INSIDE THE MINDS: FAMILY AND BUSINESS SUCCESSION PLANNING, Aspatore (2013)



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**EMPLOYMENT**

Interim Treasurer, South Carolina Public Service Authority (Santee Cooper), March 2017 - Present  
Associate General Counsel – Corporate Affairs, South Carolina Public Service Authority (Santee Cooper), October 2015 – Present  
Senior Attorney, South Carolina Public Service Authority (Santee Cooper), March 2013 - October 2015  
Adjunct Instructor, Miller-Motte Technical College, January 2012 - December 2014  
Attorney II, South Carolina Public Service Authority (Santee Cooper), June 2011 – March 2013  
Associate, Buist Moore Smythe McGee P.A., September 2007 – June 2011  
(As of 5/1/2011 Womble Carlyle Sandridge Rice, PLLC successor firm by merger)

**EDUCATION**

*Moore School of Business, University of South Carolina, Columbia, South Carolina*  
Master of Business Administration, December 2016

Honors: Golden Key International Honour Society

*The College of William and Mary School of Law, Williamsburg, Virginia*  
Juris Doctor, May 2007

Honors: Graduate Research Fellow (merit –based fellowship and research assistantship)  
I'Anson-Hoffman Inn of Court

Activities: National Trial Team  
Moot Court Team

*Wofford College, Spartanburg, South Carolina*  
Bachelor of Arts, Economics and Religion, *magna cum laude*, May 2004

Honors: Wofford Scholar (Palmetto Girls State Scholar)  
Boyd Hipp Scholar  
Blue Key National Honor Society  
Charles F. Nesbit Award (honor graduate of religion department)  
Presidential Seminar Participant

Activities: Chair, Wofford College Judicial Commission  
President, Lion's Club International  
Executive Cabinet, Twin Towers Service Organization

**BAR ADMISSIONS**

South Carolina, 2007  
United States District Court, District of South Carolina, 2007  
United States Court of Appeals, Fourth Circuit, 2008

## **PROFESSIONAL ASSOCIATIONS**

### **South Carolina Bar Association, Member (2007 – Present)**

- House of Delegates (2016 – Present)
- American Bar Association, Member (2007 – Present)
  - Products Liability Committee, Young Lawyers Subcommittee Co-Chair (2010-2012)
- Charleston County Bar Association, Member (2007-2011)
- Berkeley County Bar Association, Member (2011- Present)
  - Board of Directors (2014 - 2017)
- Association of Corporate Counsel, Member (2013 – Present)

## **COMMUNITY INVOLVEMENT**

- Berkeley Chamber of Commerce
  - Leadership Berkeley, Class of 2008
  - Emerging Leaders Network Member (2008 – 2017)
- St. Mark's Episcopal Church, Member
  - Vestry (2016 - Present)
- Berkeley High School Mock Trial Team, Coach (2011 – 2015)
- Securing Assets for Education (SAFE) Board of Directors (2012 – Present)
  - Chairperson (2013 – Present)
- Coastal Community Foundation
  - Giving Back to Berkeley Grants Committee (2015)
  - Unity Fund Mini-Grants Committee (2016 – Present)
  - Board Member (2016 – Present)
- The Riley Institute at Furman University, Diversity Leadership Initiative, Fall 2016
- Liberty Fellowship, Class of 2018 Fellow

## **PUBLICATIONS AND SEMINARS**

- “The Ethics of Managing Your Litigation in Tough Economic Times: Temporary/Contract Lawyers and Legal Outsourcing Services” ABA Women in Products Liability Annual Seminar, 2009
- “The Ethics of Managing Your Litigation in Tough Economic Times: Attorney Secondment to Clients” ABA Women in Products Liability Annual Seminar, 2009
- “The Ethics of Managing Your Litigation in Tough Economic Times: Litigation Management and Billing Guidelines” ABA Women in Products Liability Annual Seminar, 2009
- The Ethics of Managing Your Litigation in Tough Economic Times, Panel Co-Moderator, ABA Women in Products Liability Annual Seminar, October 2009
- 2010 Bankruptcy Paralegal and Staff Support Seminar, Panel Member, November 2010
- Products Liability Year in Review, Panel Member, ABA Environmental, Mass Torts and Products Liability Joint CLE Annual Seminar, January 2011
- “Commercial Fraud Primer: Bust-Outs and Bleed-Outs” ABA Tort Trial and Insurance Practice Section, Business Litigation Committee Newsletter, Summer 2011
- Bankruptcy Year in Review, Panel Member, South Carolina Bankruptcy Law Association Annual Seminar, May 2011
- “The Impending Baby Boomer Bust: Challenges and Strategies for the Aging Workforce” 31st Annual North Carolina/South Carolina Labor & Employment Law Conference, 2015
- Speaker, 31st Annual North Carolina/South Carolina Labor & Employment Law Conference, October 2015



## MEMORANDUM

TO: House of Delegates  
South Carolina Bar

FROM: Wellness Committee  
Lawyers Helping Lawyers Committee

DATE: January 18, 2018

RE: Request to change Rule 408(a)(2), Continuing Legal Education Requirements for Members of the South Carolina Bar, to require one (1) hour of SA/MH instruction every two (2) reporting years rather than every three (3) reporting years

ATTACHMENT A: The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys (Abstract)

ATTACHMENT B: New York Times: The Lawyer, the Addict (July 15, 2017)  
A high-powered Silicon Valley attorney dies. His ex-wife investigates, and finds a web of drug abuse in his profession.

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Both Committees respectfully request that the House of Delegates support the following changes to Rule 408(a)(2) to require SA/MH instruction every two (2) reporting years rather than every three (3) reporting years.

**(2) Continuing Legal Education Requirements for Members of the South Carolina Bar.** Except as provided below, all members of the South Carolina Bar shall be required to attend at least fourteen (14) hours of approved CLE courses each reporting year. At least two (2) of the fourteen (14) hours required annually shall be devoted to legal ethics/professional responsibility (LEPR). At least once every two (2) ~~three (3)~~ reporting years, the member must complete one (1) hour of LEPR devoted exclusively to instruction in substance abuse, mental health issues or stress management and the legal profession. The following members of the South Carolina Bar shall be exempt from these requirements:

**(A)** specialists certified pursuant to this Rule who satisfy the CLE requirements of their specialty; provided, however, that at least two (2) hours of the CLE credits completed by certified specialists shall be devoted to LEPR. At least once every two (2) ~~three (3)~~ reporting years, the member must complete one (1) hour of LEPR devoted exclusively to instruction in substance abuse, mental health issues or stress management and the legal profession.

In 2016, the ABA and Hazelden Betty Ford Foundation released the first national study on attorney substance use and mental health concerns. The study analyzed the responses of 12,825 licensed, practicing attorneys across 19 states and found that 21 percent lawyers qualify as problem drinkers, 28 percent struggle with some level of depression and 19 percent demonstrate symptoms of anxiety. The study also found that younger attorneys in the first 10 years of practice exhibit the highest incidence of these problems.

As a result of the report's concerning statistics and the continued incidents of suicide across the state, both groups believe that a change to the SA/MH requirements would create additional opportunities to educate attorneys on the importance of their overall well-being. In addition, the proposed change would demonstrate that the South Carolina Bar is focusing and working towards preventative efforts, along with decreasing the stigma surrounding mental health and substance abuse.

We appreciate your consideration and continued support of the Lawyers Helping Lawyers Committee and the Wellness Committee.

# **ATTACHMENT A**

# The Prevalence of Substance Use and Other Mental Health Concerns Among American Attorneys

Krill, Patrick R. JD, LLM; Johnson, Ryan MA; Albert, Linda MSSW

Journal of Addiction Medicine: [February 2016 - Volume 10 - Issue 1 - p 46–52](#)

doi: 10.1097/ADM.0000000000000182

Original Research

**Objectives:** Rates of substance use and other mental health concerns among attorneys are relatively unknown, despite the potential for harm that attorney impairment poses to the struggling individuals themselves, and to our communities, government, economy, and society. This study measured the prevalence of these concerns among licensed attorneys, their utilization of treatment services, and what barriers existed between them and the services they may need.

**Methods:** A sample of 12,825 licensed, employed attorneys completed surveys, assessing alcohol use, drug use, and symptoms of depression, anxiety, and stress.

**Results:** Substantial rates of behavioral health problems were found, with 20.6% screening positive for hazardous, harmful, and potentially alcohol-dependent drinking. Men had a higher proportion of positive screens, and also younger participants and those working in the field for a shorter duration ( $P < 0.001$ ). Age group predicted Alcohol Use Disorders Identification Test scores; respondents 30 years of age or younger were more likely to have a higher score than their older peers ( $P < 0.001$ ). Levels of depression, anxiety, and stress among attorneys were significant, with 28%, 19%, and 23% experiencing symptoms of depression, anxiety, and stress, respectively.

**Conclusions:** Attorneys experience problematic drinking that is hazardous, harmful, or otherwise consistent with alcohol use disorders at a higher rate than other professional populations. Mental health distress is also significant. These data underscore the need for greater resources for lawyer assistance programs, and also the expansion of available attorney-specific prevention and treatment interventions.

Little is known about the current behavioral health climate in the legal profession. Despite a widespread belief that attorneys experience substance use disorders and other mental health concerns at a high rate, few studies have been undertaken to validate these beliefs empirically or statistically. Although previous research had indicated that those in the legal profession struggle with problematic alcohol use, depression, and anxiety more so than the general population, the issues have largely gone unexamined for decades ([Benjamin et al., 1990](#); [Eaton et al., 1990](#); [Beck et al., 1995](#)). The most recent and also the most widely cited research on these issues comes from a 1990 study involving approximately 1200 attorneys in Washington State ([Benjamin et al., 1990](#)). Researchers found 18% of attorneys were problem drinkers, which they stated was almost twice the 10% estimated prevalence of alcohol abuse and dependence among American adults at that time. They further found that 19% of the Washington lawyers suffered from statistically significant elevated levels of depression, which they contrasted with the then-current depression estimates of 3% to 9% of individuals in Western industrialized countries.

While the authors of the 1990 study called for additional research about the prevalence of alcoholism and depression among practicing US attorneys, a quarter century has passed with no

such data emerging. In contrast, behavioral health issues have been regularly studied among physicians, providing a firmer understanding of the needs of that population ([Oreskovich et al., 2012](#)). Although physicians experience substance use disorders at a rate similar to the general population, the public health and safety issues associated with physician impairment have led to intense public and professional interest in the matter ([DuPont et al., 2009](#)).

Although the consequences of attorney impairment may seem less direct or urgent than the threat posed by impaired physicians, they are nonetheless profound and far-reaching. As a licensed profession that influences all aspects of society, economy, and government, levels of impairment among attorneys are of great importance and should therefore be closely evaluated ([Rothstein, 2008](#)). A scarcity of data on the current rates of substance use and mental health concerns among lawyers, therefore, has substantial implications and must be addressed. Although many in the profession have long understood the need for greater resources and support for attorneys struggling with addiction or other mental health concerns, the formulation of cohesive and informed strategies for addressing those issues has been handicapped by the outdated and poorly defined scope of the problem ([Association of American Law Schools, 1994](#)).

Recognizing this need, we set out to measure the prevalence of substance use and mental health concerns among licensed attorneys, their awareness and utilization of treatment services, and what, if any, barriers exist between them and the services they may need. We report those findings here.

## METHODS

### Procedures

Before recruiting participants to the study, approval was granted by an institutional review board. To obtain a representative sample of attorneys within the United States, recruitment was coordinated through 19 states. Among them, 15 state bar associations and the 2 largest counties of 1 additional state e-mailed the survey to their members. Those bar associations were instructed to send 3 recruitment e-mails over a 1-month period to all members who were currently licensed attorneys. Three additional states posted the recruitment announcement to their bar association web sites. The recruitment announcements provided a brief synopsis of the study and past research in this area, described the goals of the study, and provided a URL directing people to the consent form and electronic survey. Participants completed measures assessing alcohol use, drug use, and mental health symptoms. Participants were not asked for identifying information, thus allowing them to complete the survey anonymously. Because of concerns regarding potential identification of individual bar members, IP addresses and geo-location data were not tracked.

### Participants

A total of 14,895 individuals completed the survey. Participants were included in the analyses if they were currently employed, and employed in the legal profession, resulting in a final sample of 12,825. Due to the nature of recruitment (eg, e-mail blasts, web postings), and that recruitment mailing lists were controlled by the participating bar associations, it is not possible to calculate a

participation rate among the entire population. Demographic characteristics are presented in [Table 1](#). Fairly equal numbers of men (53.4%) and women (46.5%) participated in the study. Age was measured in 6 categories from 30 years or younger, and increasing in 10-year increments to 71 years or older; the most commonly reported age group was 31 to 40 years old. The majority of the participants were identified as Caucasian/White (91.3%).

As shown in [Table 2](#), the most commonly reported legal professional career length was 10 years or less (34.8%), followed by 11 to 20 years (22.7%) and 21 to 30 years (20.5%). The most common work environment reported was in private firms (40.9%), among whom the most common positions were Senior Partner (25.0%), Junior Associate (20.5%), and Senior Associate (20.3%). Over two-thirds (67.2%) of the sample reported working 41 hours or more per week.

## **Materials**

### **Alcohol Use Disorders Identification Test**

The Alcohol Use Disorders Identification Test (AUDIT) ([Babor et al., 2001](#)) is a 10-item self-report instrument developed by the World Health Organization (WHO) to screen for hazardous use, harmful use, and the potential for alcohol dependence. The AUDIT generates scores ranging from 0 to 40. Scores of 8 or higher indicate hazardous or harmful alcohol intake, and also possible dependence ([Babor et al., 2001](#)). Scores are categorized into zones to reflect increasing severity with zone II reflective of hazardous use, zone III indicative of harmful use, and zone IV warranting full diagnostic evaluation for alcohol use disorder. For the purposes of this study, we use the phrase “problematic use” to capture all 3 of the zones related to a positive AUDIT screen.

The AUDIT is a widely used instrument, with well established validity and reliability across a multitude of populations ([Meneses-Gaya et al., 2009](#)). To compare current rates of problem drinking with those found in other populations, AUDIT-C scores were also calculated. The AUDIT-C is a subscale comprised of the first 3 questions of the AUDIT focused on the quantity and frequency of use, yielding a range of scores from 0 to 12. The results were analyzed using a cut-off score of 5 for men and 4 for women, which have been interpreted as a positive screen for alcohol abuse or possible alcohol dependence ([Bradley et al., 1998; Bush et al., 1998](#)). Two other subscales focus on dependence symptoms (eg, impaired control, morning drinking) and harmful use (eg, blackouts, alcohol-related injuries).

### **Depression Anxiety Stress Scales-21 item version**

The Depression Anxiety Stress Scales-21 (DASS-21) is a self-report instrument consisting of three 7-item subscales assessing symptoms of depression, anxiety, and stress. Individual items are scored on a 4-point scale (0–3), allowing for subscale scores ranging from 0 to 21 ([Lovibond and Lovibond, 1995](#)). Past studies have shown adequate construct validity and high internal consistency reliability ([Antony et al., 1998; Clara et al., 2001; Crawford and Henry, 2003; Henry and Crawford, 2005](#)).

### **Drug Abuse Screening Test-10 item version**

The short-form Drug Abuse Screening Test-10 (DAST) is a 10-item, self-report instrument designed to screen and quantify consequences of drug use in both a clinical and research setting. The DAST scores range from 0 to 10 and are categorized into low, intermediate, substantial, and severe-concern categories. The DAST-10 correlates highly with both 20-item and full 28-item versions, and has demonstrated reliability and validity ([Yudko et al., 2007](#)).

## RESULTS

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Descriptive statistics were used to outline personal and professional characteristics of the sample. Relationships between variables were measured through  $\chi^2$  tests for independence, and comparisons between groups were tested using Mann-Whitney  $U$  tests and Kruskal-Wallis tests.

### Alcohol Use

Of the 12,825 participants included in the analysis, 11,278 completed all 10 questions on the AUDIT, with 20.6% of those participants scoring at a level consistent with problematic drinking. The relationships between demographic and professional characteristics and problematic drinking are summarized in [Table 3](#). Men had a significantly higher proportion of positive screens for problematic use compared with women ( $\chi^2 [1, N = 11,229] = 154.57, P < 0.001$ ); younger participants had a significantly higher proportion compared with the older age groups ( $\chi^2 [6, N = 11,213] = 232.15, P < 0.001$ ); and those working in the field for a shorter duration had a significantly higher proportion compared with those who had worked in the field for longer ( $\chi^2 [4, N = 11,252] = 230.01, P < 0.001$ ). Relative to work environment and position, attorneys working in private firms or for the bar association had higher proportions than those in other environments ( $\chi^2 [8, N = 11,244] = 43.75, P < 0.001$ ), and higher proportions were also found for those at the junior or senior associate level compared with other positions ( $\chi^2 [6, N = 4671] = 61.70, P < 0.001$ ).

Of the 12,825 participants, 11,489 completed the first 3 AUDIT questions, allowing an AUDIT-C score to be calculated. Among these participants, 36.4% had an AUDIT-C score consistent with hazardous drinking or possible alcohol abuse or dependence. A significantly higher proportion of women (39.5%) had AUDIT-C scores consistent with problematic use compared with men (33.7%) ( $\chi^2 [1, N = 11,440] = 41.93, P < 0.001$ ).

A total of 2901 participants (22.6%) reported that they have felt their use of alcohol or other substances was problematic at some point in their lives; of those that felt their use has been a problem, 27.6% reported problematic use manifested before law school, 14.2% during law school, 43.7% within 15 years of completing law school, and 14.6% more than 15 years after completing law school.

An ordinal regression was used to determine the predictive validity of age, position, and number of years in the legal field on problematic drinking behaviors, as measured by the AUDIT. Initial analyses included all 3 factors in a model to predict whether or not respondents would have a clinically significant total AUDIT score of 8 or higher. Age group predicted clinically significant AUDIT scores; respondents 30 years of age or younger were significantly more likely to have a

higher score than their older peers ( $\beta = 0.52$ , Wald [ $df = 1$ ] = 4.12,  $P < 0.001$ ). Number of years in the field approached significance, with higher AUDIT scores predicted for those just starting out in the legal profession (0–10 yrs of experience) ( $\beta = 0.46$ , Wald [ $df = 1$ ] = 3.808,  $P = 0.051$ ). Model-based calculated probabilities for respondents aged 30 or younger indicated that they had a mean probability of 0.35 (standard deviation [SD] = 0.01), or a 35% chance for scoring an 8 or higher on the AUDIT; in comparison, those respondents who were 61 or older had a mean probability of 0.17 (SD = 0.01), or a 17% chance of scoring an 8 or higher.

Each of the 3 subscales of the AUDIT was also investigated. For the AUDIT-C, which measures frequency and quantity of alcohol consumed, age was a strong predictor of subscore, with younger respondents demonstrating significantly higher AUDIT-C scores. Respondents who were 30 years old or younger, 31 to 40 years old, and 41 to 50 years old all had significantly higher AUDIT-C scores than their older peers, respectively ( $\beta = 1.16$ , Wald [ $df = 1$ ] = 24.56,  $P < 0.001$ ;  $\beta = 0.86$ , Wald [ $df = 1$ ] = 16.08,  $P < 0.001$ ; and  $\beta = 0.48$ , Wald [ $df = 1$ ] = 6.237,  $P = 0.013$ ), indicating that younger age predicted higher frequencies of drinking and quantity of alcohol consumed. No other factors were significant predictors of AUDIT-C scores. Neither the predictive model for the dependence subscale nor the harmful use subscale indicated significant predictive ability for the 3 included factors.

## Drug Use

Participants were questioned regarding their use of various classes of both licit and illicit substances to provide a basis for further study. Participant use of substances is displayed in [Table 1](#). Of participants who endorsed use of a specific substance class in the past 12 months, those using stimulants had the highest rate of weekly usage (74.1%), followed by sedatives (51.3%), tobacco (46.8%), marijuana (31.0%), and opioids (21.6%). Among the entire sample, 26.7% ( $n = 3419$ ) completed the DAST, with a mean score of 1.97 (SD = 1.36). Rates of low, intermediate, substantial, and severe concern were 76.0%, 20.9%, 3.0%, and 0.1%, respectively. Data collected from the DAST were found to not meet the assumptions for more advanced statistical procedures. As a result, no inferences about these data could be made.

## Mental Health

Among the sample, 11,516 participants (89.8%) completed all questions on the DASS-21. Relationships between demographic and professional characteristics and depression, anxiety, and stress subscale scores are summarized in [Table 4](#). While men had significantly higher levels of depression ( $P < 0.05$ ) on the DASS-21, women had higher levels of anxiety ( $P < 0.001$ ) and stress ( $P < 0.001$ ). DASS-21 anxiety, depression, and stress scores decreased as participants' age or years worked in the field increased ( $P < 0.001$ ). When comparing positions within private firms, more senior positions were generally associated with lower DASS-21 subscale scores ( $P < 0.001$ ). Participants classified as nonproblematic drinkers on the AUDIT had lower levels of depression, anxiety, and stress ( $P < 0.001$ ), as measured by the DASS-21. Comparisons of DASS-21 scores by AUDIT drinking classification are outlined in [Table 5](#).

Participants were questioned regarding any past mental health concerns over the course of their legal career, and provided self-report endorsement of any specific mental health concerns they

had experienced. The most common mental health conditions reported were anxiety (61.1%), followed by depression (45.7%), social anxiety (16.1%), attention deficit hyperactivity disorder (12.5%), panic disorder (8.0%), and bipolar disorder (2.4%). In addition, 11.5% of the participants reported suicidal thoughts at some point during their career, 2.9% reported self-injurious behaviors, and 0.7% reported at least 1 prior suicide attempt.

## Treatment Utilization and Barriers to Treatment

Of the 6.8% of the participants who reported past treatment for alcohol or drug use ( $n = 807$ ), 21.8% ( $n = 174$ ) reported utilizing treatment programs specifically tailored to legal professionals. Participants who had reported prior treatment tailored to legal professionals had significantly lower mean AUDIT scores ( $M = 5.84$ ,  $SD = 6.39$ ) than participants who attended a treatment program not tailored to legal professionals ( $M = 7.80$ ,  $SD = 7.09$ ,  $P < 0.001$ ).

Participants who reported prior treatment for substance use were questioned regarding barriers that impacted their ability to obtain treatment services. Those reporting no prior treatment were questioned regarding hypothetical barriers in the event they were to need future treatment or services. The 2 most common barriers were the same for both groups: not wanting others to find out they needed help (50.6% and 25.7% for the treatment and nontreatment groups, respectively), and concerns regarding privacy or confidentiality (44.2% and 23.4% for the groups, respectively).

## DISCUSSION

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Our research reveals a concerning amount of behavioral health problems among attorneys in the United States. Our most significant findings are the rates of hazardous, harmful, and potentially alcohol dependent drinking and high rates of depression and anxiety symptoms. We found positive AUDIT screens for 20.6% of our sample; in comparison, 11.8% of a broad, highly educated workforce screened positive on the same measure ([Matano et al., 2003](#)). Among physicians and surgeons, [Oreskovich et al. \(2012\)](#) found that 15% screened positive on the AUDIT-C subscale focused on the quantity and frequency of use, whereas 36.4% of our sample screened positive on the same subscale. While rates of problematic drinking in our sample are generally consistent with those reported by [Benjamin et al. \(1990\)](#) in their study of attorneys (18%), we found considerably higher rates of mental health distress.

We also found interesting differences among attorneys at different stages of their careers. Previous research had demonstrated a positive association between the increased prevalence of problematic drinking and an increased amount of years spent in the profession ([Benjamin et al. 1990](#)). Our findings represent a direct reversal of that association, with attorneys in the first 10 years of their practice now experiencing the highest rates of problematic use (28.9%), followed by attorneys practicing for 11 to 20 years (20.6%), and continuing to decrease slightly from 21 years or more. These percentages correspond with our findings regarding position within a law firm, with junior associates having the highest rates of problematic use, followed by senior associates, junior partners, and senior partners. This trend is further reinforced by the fact that of the respondents who stated that they believe their alcohol use has been a problem (23%), the majority (44%)

indicated that the problem began within the first 15 years of practice, as opposed to those who indicated the problem started before law school (26.7%) or after more than 15 years in the profession (14.5%). Taken together, it is reasonable to surmise from these findings that being in the early stages of one's legal career is strongly correlated with a high risk of developing an alcohol use disorder. Working from the assumption that a majority of new attorneys will be under the age of 40, that conclusion is further supported by the fact that the highest rates of problematic drinking were present among attorneys under the age of 30 (32.3%), followed by attorneys aged 31 to 40 (26.1%), with declining rates reported thereafter.

Levels of depression, anxiety, and stress among attorneys reported here are significant, with 28%, 19%, and 23% experiencing mild or higher levels of depression, anxiety, and stress, respectively. In terms of career prevalence, 61% reported concerns with anxiety at some point in their career and 46% reported concerns with depression. Mental health concerns often co-occur with alcohol use disorders ([Gianoli and Petrakis, 2013](#)), and our study reveals significantly higher levels of depression, anxiety, and stress among those screening positive for problematic alcohol use. Furthermore, these mental health concerns manifested on a similar trajectory to alcohol use disorders, in that they generally decreased as both age and years in the field increased. At the same time, those with depression, anxiety, and stress scores within the normal range endorsed significantly fewer behaviors associated with problematic alcohol use.

While some individuals may drink to cope with their psychological or emotional problems, others may experience those same problems as a result of their drinking. It is not clear which scenario is more prevalent or likely in this population, though the ubiquity of alcohol in the legal professional culture certainly demonstrates both its ready availability and social acceptability, should one choose to cope with their mental health problems in that manner. Attorneys working in private firms experience some of the highest levels of problematic alcohol use compared with other work environments, which may underscore a relationship between professional culture and drinking. Irrespective of causation, we know that co-occurring disorders are more likely to remit when addressed concurrently ([Gianoli and Petrakis, 2013](#)). Targeted interventions and strategies to simultaneously address both the alcohol use and mental health of newer attorneys warrant serious consideration and development if we hope to increase overall well being, longevity, and career satisfaction.

Encouragingly, many of the same attorneys who seem to be at risk for alcohol use disorders are also those who should theoretically have the greatest access to, and resources for, therapy, treatment, and other support. Whether through employer-provided health plans or increased personal financial means, attorneys in private firms could have more options for care at their disposal. However, in light of the pervasive fears surrounding their reputation that many identify as a barrier to treatment, it is not at all clear that these individuals would avail themselves of the resources at their disposal while working in the competitive, high-stakes environment found in many private firms.

Compared with other populations, we find the significantly higher prevalence of problematic alcohol use among attorneys to be compelling and suggestive of the need for tailored, profession-informed services. Specialized treatment services and profession-specific guidelines for recovery management have demonstrated efficacy in the physician population, amounting to a level of

care that is quantitatively and qualitatively different and more effective than that available to the general public ([DuPont et al., 2009](#)).

Our study is subject to limitations. The participants represent a convenience sample recruited through e-mails and news postings to state bar mailing lists and web sites. Because the participants were not randomly selected, there may be a voluntary response bias, over-representing individuals that have a strong opinion on the issue. Additionally, some of those that may be currently struggling with mental health or substance use issues may have not noticed or declined the invitation to participate. Because the questions in the survey asked about intimate issues, including issues that could jeopardize participants' legal careers if asked in other contexts (eg, illicit drug use), the participants may have withheld information or responded in a way that made them seem more favorable. Participating bar associations voiced a concern over individual members being identified based on responses to questions; therefore no IP addresses or geo-location data were gathered. However, this also raises the possibility that a participant took the survey more than once, although there was no evidence in the data of duplicate responses. Finally, and most importantly, it must be emphasized that estimations of problematic use are not meant to imply that all participants in this study deemed to demonstrate symptoms of alcohol use or other mental health disorders would individually meet diagnostic criteria for such disorders in the context of a structured clinical assessment.

## CONCLUSIONS

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Attorneys experience problematic drinking that is hazardous, harmful, or otherwise generally consistent with alcohol use disorders at a rate much higher than other populations. These levels of problematic drinking have a strong association with both personal and professional characteristics, most notably sex, age, years in practice, position within firm, and work environment. Depression, anxiety, and stress are also significant problems for this population and most notably associated with the same personal and professional characteristics. The data reported here contribute to the fund of knowledge related to behavioral health concerns among practicing attorneys and serve to inform investments in lawyer assistance programs and an increase in the availability of attorney-specific treatment. Greater education aimed at prevention is also indicated, along with public awareness campaigns within the profession designed to overcome the pervasive stigma surrounding substance use disorders and mental health concerns. The confidential nature of lawyer-assistance programs should be more widely publicized in an effort to overcome the privacy concerns that may create barriers between struggling attorneys and the help they need.

# **ATTACHMENT B**

**The New York Times**<https://nyti.ms/2voimyC>

# The Lawyer, the Addict

A high-powered Silicon Valley attorney dies. His ex-wife investigates, and finds a web of drug abuse in his profession.

By EILENE ZIMMERMAN Photographs by DAVID BRANDON GEETING

JULY 15, 2017

In July 2015, something was very wrong with my ex-husband, Peter. His behavior over the preceding 18 months had been erratic and odd. He could be angry and threatening one minute, remorseful and generous the next. His voice mail messages and texts had become meandering soliloquies that didn't make sense, veering from his work travails, to car repairs, to his pet mouse, Snowball.

I thought maybe the stress of his job as a lawyer had finally gotten to him, or that he was bipolar. He had been working more than 60 hours a week for 20 years, ever since he started law school and worked his way into a partnership in the intellectual property practice of Wilson Sonsini Goodrich & Rosati, a prominent law firm based in Silicon Valley.

Then, for two days, Peter couldn't be reached. So I drove the 20 minutes or so to his house, to look in on him. Although we were divorced, we had known each other by then for nearly 30 years. We were family.

I parked in Peter's driveway, used my key to open the front door and walked up to the living room, a loftlike space with bamboo floors bathed in sunlight.

"Peter?" I called out.

Silence. A few candy wrappers littered a counter. Peter worked so much that he rarely cooked anymore, sustaining himself largely on fast food, snacks, coffee, ibuprofen and antacids. I headed toward the bedroom, calling his name.

The door was ajar. A few crumpled and bloodied tissues were scattered on the bedsheets. And then I turned the corner and saw him, lying on the floor between the bathroom and the bedroom. His head rested on a flattened cardboard box.

In my shock, I didn't see the half-filled syringes on the bathroom sink, or the spoon, lighter and crushed pills. I didn't see the bag of white powder, or the tourniquet, or the other lighter next to the bed. The police report from that day noted several safes around the bedroom, all of them open and spilling out translucent orange pill bottles.

Peter, one of the most successful people I have ever known, died a drug addict, felled by a systemic bacterial infection common to intravenous users.

Of all the heartbreaking details of his story, the one that continues to haunt me is this: The history on his cellphone shows the last call he ever made was for work. Peter, vomiting, unable to sit up, slipping in and out of consciousness, had managed, somehow, to dial into a conference call.

## The Map of Peter's Descent

None of this made sense. Not only was Peter one of the smartest people in my life, he had also been a chemist before becoming a lawyer and most likely understood how the drugs he was taking would affect his neurochemistry.

In my attempt to fathom what happened to him and how I — and everyone else in his world — missed it, I set out to create a map of Peter's life the year before he died. (To protect the privacy of our children and Peter's extended family, I'm not using his surname.)

I studied his texts to drug dealers, and I compared the timing of those with dates and times of A.T.M. withdrawals he made. I needed to see the signs I hadn't known were signs. The nonsensical conversations. The crazy hours he kept. The nights he told our children he was running out to get a soda, only to disappear.

Human beings are physically and emotionally complex, so there is no simple answer as to why Peter began abusing drugs. But as a picture of his struggle took shape before my eyes, so did another one: The further I probed, the more apparent it became that drug abuse among America's lawyers is on the rise and deeply hidden.

One of the first things I learned is that there is little research on lawyers and drug abuse. Nor is there much data on drug use among lawyers compared with the general population or white-collar workers specifically.

One of the most comprehensive studies of lawyers and substance abuse was released just seven months after Peter died. That **2016** report, from the Hazelden Betty Ford Foundation and the American Bar Association, analyzed the responses of 12,825 licensed, practicing attorneys across 19 states.

Over all, the results showed that about 21 percent of lawyers qualify as problem drinkers, while 28 percent struggle with mild or more serious depression and 19 percent struggle with anxiety. Only 3,419 lawyers answered questions about drug use, and that itself is telling, said Patrick Krill, the study's lead author and also a lawyer. "It's left to speculation what motivated 75 percent of attorneys to skip over the section on drug use as if it wasn't there."

In Mr. Krill's opinion, they were afraid to answer.

Of the lawyers that did answer those questions, 5.6 percent used cocaine, crack and stimulants; 5.6 percent used opioids; 10.2 percent used marijuana and hash; and nearly 16 percent used sedatives. Eighty-five percent of all the lawyers surveyed had used alcohol in the previous year. (For comparison sake, about 65 percent of the general population drinks alcohol.)

Nearly 21 percent of the lawyers that said they had used drugs in the previous year reported "intermediate" concern about their drug use. Three percent had "severe" concerns.

The results can be interpreted two ways, said Mr. Krill, who is also a licensed drug and alcohol counselor and whose consulting firm, Krill Strategies, works with law firms on drug abuse and mental health issues. "One is that a significantly smaller percentage of attorneys in the study are using drugs as compared to alcohol. We don't think that's true."

"Alcohol is legal," Mr. Krill said, not to mention socially acceptable. "So admitting you drink too much is not directly at odds with your role as a licensed attorney."

Illicit drug use, however, is illegal. "I think the incidence of drug use and abuse is significantly underreported," he said.

In the government's most recent National Survey on Drug Use and Health report on substance abuse by industry, professional services (which include the legal profession) ranked ninth out of 19 industries in terms of illicit drug use. The entertainment industry ranked higher on the list; finance and real estate ranked lower.

The A.B.A.'s Commission on Lawyer Assistance Programs' most recent national report identified alcohol as the No. 1 substance-abuse problem for lawyers. The second most commonly abused substance was prescription drugs.

"We see two major trends in the legal profession," said Warren Zysman, the clinical director of the EARS Recovery Program in Smithtown, N.Y., a medically supervised chemical dependency program, and the former chief executive of Addiction Care Interventions, a rehabilitation center in Manhattan for professionals, including lawyers. "One is the opioid addiction, and the other is use of benzodiazepines like Xanax."

In recent years, he said, "we're seeing a significant rate of increase specifically among attorneys using prescription medications that become a gateway to street drugs." It used to be mostly alcohol, he said, "but now almost every attorney that comes in for treatment, even if they drink, they are using drugs, too — Xanax, Adderall, opiates, cocaine and crack."

Opioids and stimulants often go hand in hand with alcohol. In fact, drugs are sometimes used to combat the symptoms of alcohol withdrawal.

Brian Cuban, a lawyer in recovery for alcohol and drug addiction and the author of the memoir "The Addicted Lawyer: Tales of the Bar, Booze, Blow and Redemption," would regularly show up for work drunk and do a few lines of cocaine to be able to perform. "I was doing coke in

the bathroom in the morning to recover from hangovers,” he said. “Cocaine got me back on focus.”

In addition to having a private practice at the time, Mr. Cuban was working for his well-known brother, the businessman Mark Cuban, who threatened to fire Brian if he didn’t get sober. “I kept thinking: ‘I’m not going to rehab. I’m a lawyer, lawyers don’t go to rehab, they aren’t in 12-step programs,’” he said. “Of course, half the people I know in my 12-step program are lawyers.”

Lisa Smith, a lawyer and recovering alcoholic and drug addict, said the only way she was able to perform in her marketing job at the firm Pillsbury Winthrop in the early 2000s was by using cocaine to deal with alcohol withdrawal symptoms. “I was drinking during the day and at night,” said Ms. Smith, now deputy executive director of the law firm Patterson Belknap Webb & Tyler in New York and author of the memoir “Girl Walks Out of a Bar.” “I did coke because it would allow me to straighten up enough to show up to work in the afternoon.”

Professional stress also plays a role, said Dr. Daniel Angres, an associate professor of psychiatry at Northwestern University Feinberg School of Medicine. “Law firms have a culture of keeping things underground, a conspiracy of silence,” he said. “There is a desire not to embarrass people, and as long as they are performing, it’s easier to just avoid it. And there’s a lack of understanding that addiction is a disease.”

That stress became particularly acute as the economy sank after the 2008 financial crisis. Jobs became more scarce. The pressure grew to not take time off from work.

At Peter’s memorial service in 2015 — held in a place he loved, with sweeping views of the Pacific — a young associate from his firm stood up to speak of their friendship and of the bands they sometimes went to

see together, only to break down in tears. Quite a few of the lawyers attending the service were bent over their phones, reading and tapping out emails.

Their friend and colleague was dead, and yet they couldn't stop working long enough to listen to what was being said about him.

Peter himself lived in a state of heavy stress. He obsessed about the competition, about his compensation, about the clients, their demands and his fear of losing them. He loved the intellectual challenge of his work but hated the combative nature of the profession, because it was at odds with his own nature.

Long before law school, when Peter was still in his early 20s and wearing his hair in a long ponytail, his passions were science, philosophy and music. One of his idols was the astronomer Carl Sagan. Another was Jimi Hendrix. He gave me books like "Siddhartha" and "Letters to a Young Poet" and played bass guitar in bands from college onward, even while a lawyer.

When he was a graduate student in chemistry, we spent whole weekends lying on the floor playing records for each other, talking about why we loved them and what memories a particular song snatched from the recesses of our minds.

After graduation, Peter worked for two small pharmaceutical companies but found the profession tedious and low paying. Having grown up in a low-income family, he didn't want to worry about paying the bills again. So he decided to use his chemistry background to become a patent lawyer.

When he graduated from law school, the starting salary of his first job in law was five times what he had earned as a chemist. But our lives

were not suddenly easy. Although we had enough money, Peter's work schedule gave him little time to enjoy the fruits of his labor.

One Christmas Day early in his career, Peter's boss phoned from a ski lift in Aspen, Colo., to make sure Peter was going to finish a brief by that evening. He did, skipping dinner.

"I can't do this forever," Peter often told me. "I can't keep going like this for the next 20 years."

## 'Rewarded for Being Hostile'

According to some reports, lawyers also have the highest rate of depression of any occupational group in the country. A 1990 study of more than 100 professions indicated that lawyers are 3.6 times as likely to be depressed as people with other jobs. The Hazelden study found that 28 percent of lawyers suffer depression.

"Yes, there are other stressful professions," said Wil Miller, who practices family law in the offices of Molly B. Kenny in Bellevue, Wash. He spent 10 years as a sex crimes prosecutor, the last six months of which he was addicted to methamphetamines. "Being a surgeon is stressful, for instance — but not in the same way. It would be like having another surgeon across the table from you trying to undo your operation. In law, you are financially rewarded for being hostile."

Peter battled his own brand of melancholy, something I found attractive in a tragically poetic, still-waters-run-deep kind of way. He used to tell me he wasn't someone who ever really felt happy. He had moments of being "not unhappy," he said, but his emotional range was narrow.

When something great happened, he didn't jump for joy. When something sad happened, he didn't break down and cry. The only times I ever saw tears in his eyes were in the hospital, right after each of our children was born.

Yet for almost a decade as an associate at various law firms, Peter displayed no photos of his children or me in his office. When I asked him why — particularly when other lawyers seemed to have photos in theirs — Peter told me he didn't want the partners to see him as “distracted by my family.”

In many ways, Peter's personality and abilities read like a wish list of qualities for a lawyer. Trained as a scientist, he approached problems in a deliberative, logical way. He was intelligent, ambitious and most of all hard-working, perhaps because his decision to go to law school was such an enormous commitment — financially, logistically and emotionally — that he could justify it only by being the very best.

And he was. In law school he was editor of the law review and No. 1 in his class. He gave the speech at graduation.

He also had a single-minded focus that could border on obsessive. I remember when he became consumed with Bach's harpsichord concertos, assembling a library of every one he could find. He read about them, listened to lectures about them and even found a mathematical representation of a particular piece on YouTube, which he had us all watch. That level of focus was well suited for deep dives into the new drug formulations, medical devices and technologies with which he had to constantly and quickly familiarize himself.

## The Law School Effect

Some research shows that before they start law school, law students are actually healthier than the general population, both physically and mentally. “There’s good data showing that,” said **Andy Benjamin**, a psychologist and lawyer who teaches law and psychology at the University of Washington. “They drink less than other young people, use less substances, have less depression and are less hostile.”

In addition, he said, law students generally start school with their sense of self and their values intact. But, in his research, he said, he has found that the formal structure of law school starts to change that.

Rather than hew to their internal self, students begin to focus on external values, he said, like status, comparative worth and competition. “We have seven very strong studies that show this twists people’s psyches and they come out of law school significantly impaired, with depression, anxiety and hostility,” he said.

Academics often study law students because students are considered a bellwether for the profession. “They are the canaries in the coal mine,” Dr. Benjamin said.

Wil Miller, the lawyer and former methamphetamine addict, said that in his experience, law school encouraged students to take emotion out of their decisions. “When you start reinforcing that with grades and money, you aren’t just suppressing your emotions,” he said. “You’re fundamentally changing who you are.”

Research studying lawyers’ happiness supports this notion. “The psychological factors seen to erode during law school are the very factors most important for the well-being of lawyers,” Lawrence Krieger, a professor at Florida State University College of Law, and Kennon Sheldon, a professor of psychology at the University of Missouri, wrote in their 2015 paper “What Makes Lawyers Happy?” Conversely, they wrote, “the factors most emphasized in law schools —

grades, honors and potential career income — have nil to modest bearing on lawyer well-being.”

After students began law school they experienced “a marked increase in depression, negative mood and physical symptoms, with corresponding decreases in positive affect and life satisfaction,” the professors wrote.

Students also shed some of their idealism. Within the first year of law school, students’ motivation for studying law and becoming lawyers shifted from “helping and community-oriented values to extrinsic, rewards-based values.”

Young lawyers in treatment at the Center for Network Therapy, an ambulatory detox facility in Middlesex, N.J., frequently tell Dr. Indra Cidambi, the medical director, that the reality of working as a lawyer does not match what they had pictured while in law school. She has found that law students often drink and use drugs until they start their first job. After that, Dr. Cidambi said, “it’s mostly alcohol, until they are established as senior associates or partners and they move back to opiates.”

“These aren’t the majority of lawyers,” she added. “But there are quite a number abusing drugs, and once they get to heroin, it’s very hard to break it.”

## ‘That’s Impossible’

For the last two years of his life, every time Peter and I were together — whether it was back-to-school night, our son’s cross country meets or our daughter’s high school graduation — people would ask me

if he was O.K. They asked if he had cancer, an eating disorder, a metabolic disorder, AIDS. But they never asked about drugs.

Drugs didn't cross my mind, either. Not even the day I found his body, surrounded by drug paraphernalia, and called 911.

That day in Peter's house, the emergency medical workers told me right away that it was probably a drug overdose. I remember saying, "That's impossible." After all, I said, he was a partner at a law firm. He had an Ivy League education.

"How could that be?" I asked one of them. "He was so smart."

ID around her neck and clipboard on her lap, she nodded at me with a look of understanding. "We see a lot of this now," she said, meaning wealthy, accomplished men and women who start out with pain pills and graduate to amphetamines or heroin.

As I cleared out Peter's house after he died, I found receipts from medical-supply companies that had delivered things like bandages and tourniquets to his office address. Yet I don't think addiction crossed the mind of anyone he worked with, either.

Law firms are often reluctant to discuss substance abuse with their lawyers. The reason is not a malicious one, said Terry Harrell, a lawyer, substance abuse counselor and chairwoman of the A.B.A. Commission on Lawyers Assistance Programs. Law-firm leadership, she said, doesn't really know what signs to look for when it comes to addiction. And when it's happening, she said, they are so busy themselves, "they just don't see it."

When asked what the American Bar Association is doing to help combat mental health and substance abuse, Linda Klein, its president,

said the A.B.A.'s requirement for continuing professional development and education "recommends that lawyers be required to take one credit of programming every three years that focuses on mental health or substance abuse disorders." She added that "by requiring lawyers to attend such programs periodically, the hope is that these concerns will be reduced."

It's difficult, though, to imagine that one class every three years would have prevented Peter — or anyone else — from becoming an addict. Real change, experts and recovering addicts say, needs to happen at the law-firm level, but that is complicated by an entrenched culture of privacy combined with an allegiance to billable hours.

Ms. Smith, formerly of Pillsbury Winthrop, says she doesn't know what her previous firm knew or didn't know about her substance abuse. "They never said a thing to me," she said. "And during that entire time I was an addict, I didn't get a single negative performance review."

Edward Flanders, managing partner in Pillsbury's Manhattan office, said the firm was not aware of Ms. Smith's substance abuse issues when she was there. Ms. Smith spoke about her experience to the firm's New York City employees in March.

"Hearing about her experience was pretty eye-opening for the firm, and it's not something we want anyone else to have to go through alone," Mr. Flanders said.

## Recalling Missed Signals

I've spent the past two years marinating in this mess, trying my best to navigate things like the byzantine probate process and my children's broken hearts. I firmly believe that law-firm culture,

particularly at big firms, has to become more compassionate and more aware of the signs that one of their own is struggling.

Looking back, I can see the signs I missed.

There was the time our son broke his wrist playing soccer four years ago and was prescribed Vicodin; Peter rifled through my medicine cabinet looking for the leftovers. "I use them for my back," he said.

There was the holiday concert in which our son's band was performing where Peter showed up late and jittery, looking so thin that I noticed his head seemed too big for his neck. After the show I walked with him to his car, and he complained that he was getting pushback from his firm about working from home so much.

"I'm more productive at home, but they have to see me, physically, in the office," he said. "They don't think I'm working if I'm not there."

They were right.

And there was the time in early 2015 when my son told me Peter had received a shipment from Amazon that he had opened at the dining room table, pulling out boxes of syringes, bandages, cotton balls and wound cleanser. Peter explained it away as simply stocking up on medical supplies.

My son was puzzled by that. But by then his father's behavior had become so strange, this almost seemed normal. "I just put my headphones on," my son told me, "and said, 'I have to do homework.'"

Years ago, when Peter was still a relatively new associate, he would joke that the perfect drug for him would be the combination of an antidepressant, a pain reliever and a stimulant. When I cleaned out his house, I found the ingredients for it: Vicodin, Tramadol, Adderall,

cocaine, Xanax, crystal meth and a kaleidoscope of pills I couldn't identify, but not for lack of trying.

Yet even as addiction was taking over his life, Peter continued working. In the notebooks he used to keep track of injection times and dosages, he also made cryptic notes about client calls and meetings, lists of things needed to prepare documents, filing deadlines.

Being a patent lawyer is intellectually grueling work, and Peter was good at it — really good at it — for a long time. Perhaps the arrogance that grows from a profession in which your advice is worth \$600 an hour is what allowed him to believe he didn't need to ask for help, that he could kick this on his own. Just another item on his lengthy to-do list.

In fact, while cleaning out his house I found a list of New Year's resolutions Peter wrote in December 2014, tucked into the bottom of a dresser drawer. "Run three races, spend more time with kids," his note to himself read.

And in red marker, the word "quit."

***Correction: July 23, 2017***

An article last Sunday about lawyers and drug addiction misstated the period during which Wil Miller, a former sex crimes prosecutor, was addicted to methamphetamines. It was the last six months of his tenure, not the entire 10 years he was in the job. The article also misspelled Mr. Miller's given name as Will.

***Correction: July 24, 2017***

An earlier version of this article referred incompletely to Lisa Smith's association with the firm Pillsbury Winthrop. While Ms. Smith was a lawyer, she was working in the firm's marketing department, not as a lawyer, during the period she said she used cocaine to deal with alcohol withdrawal symptoms.

Produced by Antonio de Luca and Whitney Richardson.

A version of this list appears in print on July 16, 2017, on Page BU1 of the New York edition with the headline: The Lawyer, the Addict.

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**MEMORANDUM**

To: House of Delegates  
FROM: Trial & Appellate Advocacy Section  
RE: Resolution Regarding Courthouse Accessibility for Hearing Impaired  
MATERIALS: Drafted Resolution

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The Trial and Appellate Advocacy Section requests that the House of Delegates support a resolution requesting that the South Carolina Bar call upon the General Assembly and local governments to provide funds necessary to effect the installation of audio induction equipment in courthouses across this State.

We appreciate your consideration and continued support of the Trial & Appellate Advocacy Section.

## **RESOLUTION RE COURTHOUSE ACCESSIBILITY FOR HEARING IMPAIRED**

Whereas 48 million Americans suffer from significant hearing loss, with one-third of adults aged 61-70 being affected;

Whereas 13% of attorneys suffer from hearing loss and associated stigmas related to seeking help or disclosing the condition;

Whereas many South Carolina courthouses were constructed prior to 2012, when the Americans with Disabilities Act mandated that the issue be addressed with strict guidelines;

Whereas the debilitating condition of progressive hearing loss or impairment also afflicts judges, jurors, witnesses and other parties who daily transit the judicial system;

Whereas a judicial system which fails to accommodate hearing loss suffered by any parties fails to provide equal access to justice;

Whereas audio induction technology exists that would provide a wireless means of transmitting non-reverberating sound to hearing aids;

Whereas the Supreme Court of the United States addressed its own lack of access and installed an audio induction system in 2014; and

Whereas the Constitution of the South Carolina Bar provides among its purposes that it shall...“continually improve the administration of justice throughout the State...”;

**IT IS RESOLVED**, that the South Carolina Bar calls upon the General Assembly and local governments to provide funds necessary to effect the installation of audio induction equipment in courthouses across this State.



## MEMORANDUM

**To:** South Carolina Bar  
House of Delegates

**FROM:** Probate, Estate Planning and Trust Section Council  
Elder Law Committee  
Children's Law Committee

**DATE:** January 4, 2018

**RE:** Uniform Transfers to Minors Act (UTMA) proposal

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The Probate, Estate Planning and Trust Section Council, with the support of the Elder Law Committee and Children's Law Committee, requests the House of Delegates to approve the proposed draft to adopt the Uniform Transfers to Minors Act (UTMA). The proposal would replace SC Code §§ 63-5-500 et. seq., the Uniform Gifts to Minors Act (UGMA).

A working group composed of members of the Probate, Estate Planning and Trust Section Council, Elder Law Committee, Children's Law Committee, and Judge Amy McCulloch used the Uniform Law Commission model and made minor changes to provisions as deemed necessary. Judge McCulloch also received input from other probate judges which was incorporated into the draft.

South Carolina is the only state that has not adopted a version of this proposal. Because other states have enacted the UTMA over the years, an important goal of uniformity has been lost. Adopting the UTMA furthers the goal of uniformity and makes other improvements over the old UGMA.

Please see the summary below from the Uniform Law Commission.

Under the UTMA, any kind of property -- real or personal, tangible or intangible -- can be transferred to a custodian for the benefit of a minor. The UGMA permitted only gifts of cash or securities. The UTMA covers not only outright gifts, but other transfers, such as payment of debts owed by a third party to a minor, and transfers of property from trusts or estates.

### OTHER IMPROVEMENTS

**Protective Measures.** UTMA recognizes that increasing the kinds of property which can be transferred to a minor poses potentially greater liability problems for both minors and their custodians. To offset that possibility, UTMA insulates both custodian and minor from personal liability when a third party brings a claim against the custodial property -- provided neither was personally at fault, and the custodian is not found to have concealed his or her custodial role.

**Flexible Guidelines.** States will also find more flexibility in the transfer process outlined in UTMA. The act extends the range of persons who may be selected as successor custodians, and provides for nomination of a "future custodian" -- that is, someone to serve as custodian for a transfer not scheduled to occur until a later date, generally when the transferrer dies.

**The change-over will be simple.** The flexibility of the UTMA will help smooth a state's transition from the old act to the new. The UTMA validates transfers attempted under the UGMA of another state which would not permit a transfer of that kind, and recognizes transfers which mistakenly refer to the UGMA after the effective date of the new act. The UTMA also provides continuity by validating gifts made previously under the enacting state's UGMA.

Adoption of the UTMA also will eliminate the conflict-of-law problems that have been created by the non-uniformity of the UGMA among the states.

Overall, the Uniform Transfers to Minors Act offers an updated, more complete approach to the goals the UGMA was originally created to achieve.

## SECTION 1. DEFINITIONS.

In this article:

(1) "Adult" means an individual who has attained the age of 21 years.

(2) "Benefit plan" means an employer's plan for the benefit of an employee or partner or an individual retirement account.

(3) "Broker" means a person lawfully engaged in the business of effecting transactions in securities or commodities for the person's own account or for the account of others.

(4) "Conservator" means a person appointed or qualified by a court to act as general, limited, or temporary guardian of a minor's property or a person legally authorized to perform substantially the same functions.

(5) "Court" means the probate court where the minor resides, or if the minor is not a resident of this state, the probate court in the county where the custodian resides or has his principal place of business or where the custodial property is located.

(6) "Custodial property" means (i) any interest in property transferred to a custodian under this article and (ii) the income from and proceeds of that interest in property.

(7) "Custodian" means a person so designated under Section 9 or a successor or substitute custodian designated under Section 18.

(8) "Financial institution" means a bank, trust company, savings institution, or credit union, chartered and supervised under state or federal law.

(9) "Legal representative" means an individual's personal representative or conservator.

(10) "Member of the minor's family" means the minor's parent, stepparent, spouse, grandparent, brother, sister, uncle, or aunt, whether of the whole or half blood or by adoption.

(11) "Minor" means an individual who has not attained the age of 21 years.

(12) "Person" means an individual, corporation, organization, or other legal entity.

(13) "Personal representative" means an executor, administrator, successor personal representative, or special administrator of a decedent's estate or a person legally authorized to perform substantially the same functions.

(14) "State" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession subject to the legislative authority of the United States.

(15) "Transfer" means a transaction that creates custodial property under Section 9.

(16) "Transferor" means a person who makes a transfer under this article.

(17) "Trust company" means a financial institution, corporation, or other legal entity, authorized to exercise general trust powers.

#### COMMENT

To reflect the broader scope and the unlimited types of property to which the new Act will apply, a number of definitional changes have been made from the 1966 Act. In addition, several definitions specifically applicable to the limited types of property (cash, securities and insurance policies) subject to the 1966 Act have been eliminated as unnecessary. These include the definitions of "bank," "issuer," "life insurance policy or annuity contract," "security," and "transfer agent." No change in the meaning or construction of these terms as used in this Act is intended by such deletions.

The definitions of "domestic financial institution" and "insured financial institution" have been eliminated because few if any states limit deposits by custodians to local institutions, and the prudent person rule of SECTION 12(b) of this Act may dictate the use of insured institutions as depositories, without having the Act so specify.

The principal changes or additions to the remaining definitions are discussed below.

Paragraph (2). The definition of "benefit plan" is intentionally very broad and is meant to cover any contract, plan, system, account or trust such as a pension plan, retirement plan, death benefit plan, deferred compensation plan, employment agency arrangement or, stock bonus, option or profit sharing plan.

Paragraph (4). The term "conservator" rather than "guardian of the estate" has been employed in the Act to conform to Uniform Probate Code terminology. The term includes a guardian of the minor's property, whether general, limited or temporary, and includes a committee, tutor, or curator of the minor's property.

Paragraph (6). The definition of "custodial property" has been generalized and expanded to encompass every conceivable legal or equitable interest in property of any kind, including real estate and tangible or intangible personal property. The term is intended, for example, to include joint interests with right of survivorship, beneficial interests in land trusts, as well as all other intangible interests in property. Contingent or expectancy interests such as the designation as a beneficiary under insurance policies or benefit plans become "custodial property" only if the designation is irrevocable, or when it becomes so, but the Act specifically authorizes the "nomination" of a future custodian as beneficiary of such interests (see SECTION 3). Proceeds of custodial property, both immediate and remote, are themselves custodial property, as is the case under UGMA.

Custodial property is defined without reference to the physical location of the property, even if it has one. No useful purpose would be served by restricting the application of the Act to, for example, real estate "located in this state," since a conveyance recorded in the state of the property's location, if done with proper formalities, should be effective even if that state has not enacted this Act. The rights, duties and powers of the custodian should be determined by reference to the law of the state under which the custodianship is created, assuming there is sufficient nexus under SECTION 2 between that state and the transferor, the minor or the custodian.

Paragraph (11). This definition of "minor" retains the historical age of 21 as the age of majority, even though most states have lowered the age for most other purposes, as well as in their versions of the 1966 Act. Nevertheless, because the Internal Revenue Code continues to permit "minority trusts" under Section 2503(c), IRC, to continue in effect until age 21, and because it is believed that most donors creating minority trusts or custodianships prefer to retain the property under management for the benefit of the young person as long as possible, it is strongly suggested that the age of 21 be retained as the age of majority under this Act. For states that have reduced the age of majority in their versions of the 1966 Act, SECTION 22(c) of this Act provides that a change back to 21 will not affect custodianships that have already terminated at an earlier age.

Paragraph (13). The definition of the term "personal representative" is based upon that definition in Sec. 1-201(30) of the Uniform Probate Code.

Paragraph (15). The new definition of "transfer" is necessary to reflect the application of the Act not only to gifts, but also to distributions from trusts and estates, obligors of the minor, and transfers of the minor's own assets to a custodianship by the legal representative of a minor, all of which are now permitted by this Act.

Paragraph (16). The new definition of "transferor" is required because the term includes not only the maker of a gift, i.e., a donor in the usual sense, but also fiduciaries and obligors who control or own property that is the subject of the transfer. Nothing in this Act requires that a transferor be an "adult." If permitted under other law of the enacting state relating to emancipation or competence to make a will, gift, or other transfer, a minor may make an effective transfer of property to a custodian for his benefit or for the benefit of another minor.

Paragraph (17). Only entities authorized to exercise "general" trust powers qualify as "trust companies"; that is, the authority to exercise only limited fiduciary responsibilities, such as the authority to accept Individual Retirement Account deposits, is not sufficient.

## SECTION 2. SCOPE AND JURISDICTION.

(a) This article applies to a transfer that refers to "The South Carolina Uniform Transfers to Minors Act" in the designation under Section 9(a) by which the transfer is made if at the time of the transfer, the transferor, the minor, or the custodian is a resident of this State or the custodial property is located in this State. The custodianship so created remains subject to this article despite a subsequent change in residence of a transferor, the minor, or the custodian, or the removal of custodial property from this State.

(b) A person designated as custodian under this article is subject to personal jurisdiction in this State with respect to any matter relating to the custodianship.

(c) A transfer that purports to be made and which is valid under the Uniform Transfers to Minors Act, the Uniform Gifts to Minors Act, or a substantially similar act, of another

state is governed by the law of the designated state and may be executed and is enforceable in this State if at the time of the transfer, the transferor, the minor, or the custodian is a resident of the designated state or the custodial property is located in the designated state.

#### COMMENT

This section has no counterpart in the 1966 Act. It attempts to resolve uncertainties and conflicts-of-laws questions that have frequently arisen because of the present non-uniformity of UGMA in the various states and which may continue to arise during the transition from UGMA to this Act.

The creation of a custodianship must invoke the law of a particular state because of the form of the transfer required under SECTION 9(a). This section provides that a choice of the UTMA of the enacting state is appropriate and effective if any of the nexus factors specified in subsection (a) exists at the time of the transfer. This Act continues to govern, and subsection (b) makes the custodian accountable and subject to personal jurisdiction in the courts of the enacting state for the duration of the custodianship, despite subsequent relocation of the parties or the property.

Subsection (c) recognizes that residents of the enacting state may elect to have the law of another state apply to a transfer. That choice is valid if a nexus with the chosen state exists at the time of the transfer. If personal jurisdiction can be obtained in the enacting state under other law apart from this Act, the custodianship may be enforced in its courts, which are directed to apply the law of the state elected by the transferor.

If the choice of law under subsection (a) or (c) is ineffective because of the absence of the required nexus, the transfer may still be effective under the Act of another state with which a nexus does exist. See SECTION 21.

#### SECTION 3. NOMINATION OF CUSTODIAN.

(a) A person having the right to designate the recipient of property transferable upon the occurrence of a future event may revocably nominate a custodian to receive the property for a minor beneficiary upon the occurrence of the event by naming the custodian followed in substance by the words: "as custodian for \_\_\_\_\_ (name of minor) under the South Carolina Uniform Transfers to Minors Act." The nomination may name one or

more persons as substitute custodians to whom the property must be transferred, in the order named, if the first nominated custodian dies before the transfer or is unable, declines, or is ineligible to serve.

The nomination may be made in a will, a trust, a deed, an instrument exercising a power of appointment, or in a writing designating a beneficiary of contractual rights which is registered with or delivered to the payor, issuer, or other obligor of the contractual rights.

(b) A custodian nominated under this section must be a person to whom a transfer of property of that kind may be made under Section 9(a).

(c) The nomination of a custodian under this section does not create custodial property until the nominating instrument becomes irrevocable or a transfer to the nominated custodian is completed under Section 9. Unless the nomination of a custodian has been revoked, upon the occurrence of the future event the custodianship becomes effective and the custodian shall enforce a transfer of the custodial property pursuant to Section 9.

#### COMMENT

This section is new and permits a future custodian for a minor to be nominated to receive a distribution under a will or trust, or as a beneficiary of a power of appointment, or of contractual rights such as a life or endowment insurance policy, annuity contract, P.O.D. Account, benefit plan, or similar future payment right. Nomination of a future custodian does not constitute a "transfer" under this Act and does not create custodial property. If it did, the nomination and beneficiary designation would have to be permanent, since a "transfer" is irrevocable and indefeasibly vests ownership of the interest in the minor under SECTION 11(b).

Instead, this section permits a revocable beneficiary designation that takes effect only when the donor dies, or when a lifetime transfer to the custodian for the minor beneficiary occurs, such as a distribution under an inter vivos trust. However, an unrevoked nomination under this section is binding on a personal representative or trustee (see SECTION 5(b)) and on insurance companies and other obligors who contract to pay in the future (see SECTION 7(b)).

The person making the nomination may name contingent or successive future custodians to serve, in the order named, in the event that the person first nominated dies, or is unable, declines, or is ineligible to serve. Such a substitute future custodian is a custodian "nominated ... under

Section 3" to whom the transfer must be made under SECTIONS 5(b) and 7(b).

Any person nominated as future custodian may decline to serve before the transfer occurs and may resign at any time after the transfer. See SECTION 18.

#### SECTION 4. TRANSFER BY GIFT OR EXERCISE OF POWER OF APPOINTMENT.

A person may make a transfer by irrevocable gift to, or the irrevocable exercise of a power of appointment in favor of, a custodian for the benefit of a minor pursuant to Section 9.

#### COMMENT

To emphasize the different kinds of transfers that create presently effective custodianships under this Act, they are separately described in SECTIONS 4, 5, 6 and 7. This section in part corresponds to Section 2(a) of the 1966 Act and covers the traditional lifetime gift that was the only kind of transfer authorized by the 1966 Act. It also covers an irrevocable exercise of a power of appointment in favor of a custodian, as distinguished from the exercise of a power in a revocable instrument that results only in the nomination of a future custodian under SECTION 3.

#### SECTION 5. TRANSFER AUTHORIZED BY WILL OR TRUST.

(a) A personal representative or trustee may make an irrevocable transfer pursuant to Section 9 to a custodian for the benefit of a minor as authorized in the governing will or trust.

(b) If the testator or settlor has nominated a custodian under Section 3 to receive the custodial property, the transfer must be made to that person.

(c) If the testator or settlor has not nominated a custodian under Section 3, or all persons so nominated as custodian die before the transfer or are unable, decline, or are ineligible to serve, the personal representative or the trustee, as the case may be, shall designate the custodian, subject to the approval of the court from among those eligible to serve as custodian for property of that kind under Section 9(a).

#### COMMENT

This section is new and has no counterpart in the 1966 Act. It is based on nonuniform provisions adopted by Connecticut, Illinois, Wisconsin and other states to validate distributions from trusts and estates to a custodian for a minor beneficiary, when the use of a custodian is expressly authorized by the governing instrument. It also covers the designation of the custodian whenever the settlor or testator fails to make a nomination, or the future custodian nominated under SECTION 3 (and any alternate named) fails to qualify.

#### SECTION 6. OTHER TRANSFER BY FIDUCIARY.

(a) Subject to subsection (c), a personal representative or trustee may make an irrevocable transfer to another adult or trust company as custodian for the benefit of a minor pursuant to Section 9, in the absence of a will or under a will or trust that does not contain an authorization to do so.

(b) Subject to subsection (c), a conservator may make an irrevocable transfer to another adult or trust company as custodian for the benefit of the minor pursuant to Section 9.

(c) A transfer under subsection (a) or (b) may be made only if (i) the personal representative, trustee, or conservator considers the transfer to be in the best interest of the minor, (ii) the transfer is not prohibited by or inconsistent with provisions of the applicable will, trust agreement, or other governing instrument, (iii) the transfer is authorized by the court if it exceeds \$15,000 in value, and (iv) the custodian nominated by the personal representative, trustee or conservator, as the case may be, is approved by the court.

#### COMMENT

This section is new and has no counterpart in the 1966 Act. It covers a new concept, already authorized by the law of some states through nonuniform amendments to the 1966 Act, to permit custodianships to be used as guardianship or conservator substitutes, even though not specifically authorized by the person whose property is the subject of the transfer. It also permits the legal representative of the minor, such as a conservator or guardian, to transfer the minor's own property to a new or existing custodianship for the purposes of convenience or economies of administration.

A custodianship may be created under this section even though not specifically authorized by the transferor, the testator, or the settlor of the trust if three tests are satisfied. First, the fiduciary making the transfer must determine in good faith and in his fiduciary capacity that a custodianship will be in the best interests of the minor. Second, a custodianship may not be prohibited by, or inconsistent with, the terms of any governing instrument. Inconsistent terms would include, for example, a spendthrift clause in a governing trust, provisions terminating a governing trust for the minor's benefit at a time other than the time of the minor's age of majority, and provisions for mandatory distributions of income or principal at specific times or periodic intervals. Provisions for other outright distributions or bequests would not be inconsistent with the creation of a custodianship under this section. Third, the amount of property transferred (as measured by its value) must be of such relatively small amount that the lack of court supervision and the typically stricter investment standards that would apply to the conservator otherwise required will not be important. However, if the property is of significant size, transfer to a custodian may still be made if the court approves and if the other two tests are met.

The custodianship created under this section without express authority in the governing instrument will terminate upon the minor's attainment of the statutory age of majority of the enacting state apart from this Act, i.e., at the same age a conservatorship of the minor would end. See SECTION 20(b) and the Comment thereto.

#### SECTION 7. TRANSFER BY OBLIGOR.

(a) Subject to subsections (b) and (c), a person not subject to Section 5 or 6 who holds property of or owes a liquidated debt to a minor not having a conservator may make an irrevocable transfer to a custodian for the benefit of the minor pursuant to Section 9.

(b) If a person having the right to do so under Section 3 has nominated a custodian under that section to receive the custodial property, the transfer must be made to that person.

(c) If no custodian has been nominated under Section 3, or all persons so nominated as custodian die before the transfer or are unable, decline, or are ineligible to serve, a transfer under this section may be made to an adult member of the minor's family or to a trust company unless the property exceeds \$15,000 in value.

#### COMMENT

This section is new and, like SECTION 6, permits a custodianship to be established as a substitute for a conservator to receive payments due a minor from sources other than estates, trusts,

and existing guardianships covered by SECTIONS 5 and 6. For example, a tort judgment debtor of a minor, a bank holding a joint or P.O.D. account of which a minor is the surviving payee, or an insurance company holding life insurance policy or benefit plan proceeds payable to a minor may create a custodianship under this section.

Use of this section is mandatory when a future custodian has been nominated under SECTION 3 as a named beneficiary of an insurance policy, benefit plan, deposit account, or the like, because the original owner of the property specified a custodianship (and a future custodian) to receive the property. If that custodian (or any alternate named) is not available, if none was nominated, or none could have been nominated (as in the case of a tort judgment payable to the minor), this section is permissive and does not preclude the obligor from requiring the appointment of a conservator to receive payment. It allows the obligor to transfer to a custodian unless the property exceeds the stated value, in which case a conservator must be appointed to receive it.

#### SECTION 8. RECEIPT FOR CUSTODIAL PROPERTY.

A written acknowledgment of delivery by a custodian constitutes a sufficient receipt and discharge for custodial property transferred to the custodian pursuant to this article.

#### COMMENT

This section discharges transferors from further responsibility for custodial property delivered to and receipted for by the custodian. See also SECTION 16 which protects transferors and other third parties dealing with custodians. Because a discharge or release for a donative transfer is not necessary, this section had no counterpart in the 1966 Act.

This section does not authorize an existing custodian, or a custodian to whom an obligor makes a transfer under SECTION 7, to settle or release a claim of the minor against a third party. Only a conservator, guardian ad litem or other person authorized under other law to act for the minor may release such a claim.

#### SECTION 9. MANNER OF CREATING CUSTODIAL PROPERTY AND EFFECTING TRANSFER; DESIGNATION OF INITIAL CUSTODIAN; CONTROL.

(a) Custodial property is created and a transfer is made whenever:

(1) an uncertificated security or a certificated security in registered form is

either:

(i) registered in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for \_\_\_\_\_ (name of minor) under the South Carolina Uniform Transfers to Minors Act"; or

(ii) delivered if in certificated form, or any document necessary for the transfer of an uncertificated security is delivered, together with any necessary endorsement to an adult other than the transferor or to a trust company as custodian, accompanied by an instrument in substantially the form set forth in subsection (b);

(2) money is paid or delivered, or a security held in the name of a broker, financial institution, or its nominee is transferred, to a broker or financial institution for credit to an account in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for \_\_\_\_\_ (name of minor) under the South Carolina Uniform Transfers to Minors Act";

(3) the ownership of a life or endowment insurance policy or annuity contract is either:

(i) registered with the issuer in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for \_\_\_\_\_ (name of minor) under the South Carolina Uniform Transfers to Minors Act"; or

(ii) assigned in a writing delivered to an adult other than the

transferor or to a trust company whose name in the assignment is followed in substance by the words: "as custodian for \_\_\_\_\_ (name of minor) under the South Carolina Uniform Transfers to Minors Act";

(4) an irrevocable exercise of a power of appointment or an irrevocable present right to future payment under a contract is the subject of a written notification delivered to the payor, issuer, or other obligor that the right is transferred to the transferor, an adult other than the transferor, or a trust company, whose name in the notification is followed in substance by the words: "as custodian for \_\_\_\_\_ (name of minor) under the South Carolina Uniform Transfers to Minors Act";

(5) an interest in real property is recorded in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for \_\_\_\_\_ (name of minor) under the South Carolina Uniform Transfers to Minors Act";

(6) a certificate of title issued by a department or agency of a state or of the United States which evidences title to tangible personal property is either:

(i) issued in the name of the transferor, an adult other than the transferor, or a trust company, followed in substance by the words: "as custodian for \_\_\_\_\_ (name of minor) under the South Carolina Uniform Transfers to Minors Act"; or

(ii) delivered to an adult other than the transferor or to a trust company, endorsed to that person followed in substance by the words: "as custodian for

\_\_\_\_\_ (name of minor) under the South Carolina Uniform Transfers

to Minors Act"; or

(7) an interest in any property not described in paragraphs (1) through (6) is transferred to an adult other than the transferor or to a trust company by a written instrument in substantially the form set forth in subsection (b).

(b) An instrument in the following form satisfies the requirements of paragraphs (1)(ii) and (7) of subsection (a):

"TRANSFER UNDER THE SOUTH CAROLINA  
UNIFORM TRANSFERS TO MINORS ACT

I, \_\_\_\_\_ (name of transferor or name and representative capacity if a fiduciary) hereby transfer to \_\_\_\_\_ (name of custodian), as custodian for \_\_\_\_\_ (name of minor) under the South Carolina Uniform Transfers to Minors Act, the following: (insert a description of the custodial property sufficient to identify it).

Dated: \_\_\_\_\_

\_\_\_\_\_  
(Signature)

\_\_\_\_\_ (name of custodian) acknowledges receipt of the property described above as custodian for the minor named above under the South Carolina Uniform Transfers to Minors Act.

Dated: \_\_\_\_\_

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(Signature of Custodian)

(c) A transferor shall place the custodian in control of the custodial property as soon as practicable.

#### COMMENT

The 1966 Act contained optional bracketed language permitting an adopting state to limit the class of eligible initial custodians to an adult member of the minor's family or a guardian of the minor. This optional limitation has been deleted because it would preclude the use of an individual and uncompensated custodian if no qualified or willing family member is available.

Otherwise, with respect to transfers of securities, cash, and insurance or annuity contracts, this section tracks the cognate provisions of subsection 2(a) of the 1966 Act, with one exception. Under subsection (a)(1)(ii) of this section, a transfer of securities in registered form may be accomplished without registering the transfer in the name of the custodian so that transfers may be accomplished more expeditiously, and so that securities may be held by custodians in street name. In other words, subsection (a)(1)(i) is not the exclusive manner for making effective transfers of securities in registered form.

In addition, subsection (a) creates new procedures for handling the additional types of property now subject to the Act; specifically:

Paragraph (3) covers the irrevocable transfer of ownership of life and endowment insurance policies and annuity contracts.

Paragraph (4) covers the *irrevocable* exercise of a power of appointment and the *irrevocable* present assignment of future payment rights, such as royalties, interest and principal payments under a promissory note, or beneficial interests under life or endowment or annuity insurance contracts or benefit plans. The payor, issuer, or obligor may require additional formalities such as completion of a specific assignment form and an endorsement, but the transfer is effective upon delivery of the notification. See SECTION 3 and the Comment thereto for the procedure for revocably "nominating" a future custodian as a beneficiary of a power of appointment or such payment rights.

Paragraph (5) is the exclusive method for the transfer of real estate and includes a disposition effected by will. Under the law of those states in which a devise of real estate vests in the devisee without the need for a deed from the personal representative of the decedent, a document such as the will must still be "recorded" under this provision to make the transfer effective. For inter vivos transfers, of course, a conveyance in recordable form would be employed for dispositions of real estate to a custodian.

Paragraph (6) covers the transfer of personal property such as automobiles, aircraft, patent rights, and other property subject to registration of ownership with a state or federal agency. Either registration of the transfer in the name of the custodian or delivery of the endorsed certificate in registerable form makes the transfer effective.

Paragraph (7) is a residual classification, covering all property not otherwise covered in the preceding paragraphs. Examples would include nonregistered securities, partnership interests, and tangible personal property not subject to title certificates.

The form of transfer document recommended and set forth in subsection (b) contains an acceptance that must be executed by the custodian to make the disposition effective. While such a form of written acceptance is not specifically required in the case of registered securities under subsection (a)(1), money under (a)(2), insurance contracts or interests under (a)(3) or (4), real estate under (a)(5), or titled personal property under (a)(6), it is certainly the better and recommended practice to obtain the acknowledgment, consent, and acceptance of the designated custodian on the instrument of transfer, or otherwise.

A transferor may create a custodianship by naming himself as custodian, except for transfers of securities under subsection (a)(1)(ii), insurance and annuity contracts under (a)(3)(ii), and titled personalty under (a)(6)(ii), which are made without registering them in the name of the custodian, and transfers of the residual class of property covered by (a)(7). In all of these cases a transfer of possession and control to a third party is necessary to establish donative intent and consummation of the transfer, and designation of the transferor as custodian renders the transfer invalid under SECTION 11(a)(2).

Note, also, that the Internal Revenue Service takes the position that custodial property is includable in the gross estate of the donor if he appoints himself custodian and dies while serving in that capacity before the minor attains the age of 21. Rev. Rul. 57-366, C.B. 1957-2, 618; Rev. Rul. 59-357, C.B. 1959-2, 212; Rev. Rul. 70-348, C.B. 1970-2, 193; *Estate of Prudowsky v. Comm'r*, 55 T.C. 890 (1971), *affd. per curiam*, 465 F.2d 62 (7th Cir. 1972).

This Act has been drafted in an attempt to avoid income attribution to the parent or inclusion of custodial insurance policies on a custodian's life in the estate of the custodian through the changes made in the standards for expenditure of custodial property and the custodian's incidents of ownership in custodial property. See SECTIONS 13 and 14 and the Comments thereto. However, the much greater problem of inclusion of custodial property in the estate of the donor who serves as custodian

remains. Therefore, despite the fact that this section of the Act permits it in the case of registered securities, money, life insurance, real estate, and personal property subject to titling laws, it is generally still inadvisable for a donor to appoint himself custodian or for a parent of the minor to serve as custodian. See, generally Sections 2036 and 2038 I.R.C. and Rulings and cases cited above; with respect to gifts of closely held stock when a donor retains voting rights by serving as custodian, see Section 2036(b), I.R.C., overruling *U.S. v. Byrum*, 408 U.S. 125 (1972), rehearing denied 409 U.S. 898.

Subsection (c) tracks in substance Section 2(c) of the 1966 Act. However, it replaces the requirement that the transferor "promptly do all things within his power" to complete the transfer, with the requirement that such action must be taken "as soon as practicable." This change is intended only to reflect the fact that possession and control of property transferred from an estate can rarely be accomplished with the immediacy that the term "promptly" may have implied. In the case of inter vivos transfers, no relaxation of the former requirement is intended, since "prompt" transfer of dominion is usually practicable.

*Section 9(a)(2) amended in 1986.*

#### SECTION 10. SINGLE CUSTODIANSHIP.

A transfer may be made only for one minor, and only one person may be the custodian. All custodial property held under this article by the same custodian for the benefit of the same minor constitutes a single custodianship.

#### COMMENT

The first sentence follows Section 2(b) of the 1966 Act. The second sentence states what was implicit in the 1966 Act, that additional transfers at different times and from different sources may be made to an existing custodian for the minor and do not create multiple custodianships. This provision also permits an existing custodian to be named as successor custodian by another custodian for the same minor who resigns under SECTION 18 for the purpose of consolidating the assets in a single custodianship.

Note, however, that these results are limited to transfers made "under this Act." Gifts previously made under the enacting state's UGMA or under the UGMA or UTMA of another state must be treated as separate custodianships, even though the same custodian and minor are involved, because of possible differences in the age of distribution and custodian's powers under those other Acts.

Even when all transfers to a single custodian are made "under this Act" and a single custodianship results, custodial property transferred under SECTIONS 6 and 7 must be accounted for

separately from property transferred under SECTIONS 4 and 5 because the custodianship will terminate sooner with respect to the former property if the enacting state has a statutory age of majority lower than 21. See SECTION 20 and the Comment thereto.

#### SECTION 11. VALIDITY AND EFFECT OF TRANSFER.

(a) The validity of a transfer made in a manner prescribed in this article is not affected by:

(1) failure of the transferor to comply with Section 9(c) concerning possession and control;

(2) designation of an ineligible custodian, except designation of the transferor in the case of property for which the transferor is ineligible to serve as custodian under Section 9(a);  
or

(3) death or incapacity of a person nominated under Section 3 or designated under Section 9 as custodian or the disclaimer of the office by that person.

(b) A transfer made pursuant to Section 9 is irrevocable, and the custodial property is indefeasibly vested in the minor, but the custodian has all the rights, powers, duties, and authority provided in this article, and neither the minor nor the minor's legal representative has any right, power, duty, or authority with respect to the custodial property except as provided in this article.

(c) By making a transfer, the transferor incorporates in the disposition all the provisions of this article and grants to the custodian, and to any third person dealing with a person designated as custodian, the respective powers, rights, and immunities provided in this article.

#### COMMENT

Subsection (a) generally tracks Section 2(c) of the 1966 Act, except that the transferor's designation of himself as custodian of property for which he is not eligible to serve under

SECTION 9(a) makes the transfer ineffective. See Comment to SECTION 9.

The balance of this section generally tracks Section 3 of the 1966 Act with a number of necessary, and perhaps significant, changes required by the new kinds of property subject to custodianships. The 1966 Act provides that a transfer made in accordance with its terms "conveys to the minor indefeasibly vested legal title to the [custodial property]." Because equitable interests in property may be the subject of a transfer under this Act, the reference to "legal title" has been deleted, but no change concerning the effect or finality of the transfer is intended.

However, subsection (b) qualifies the rights of the minor in the property, by making them subject to "the rights, powers, duties and authority" of the custodian under this Act, a concept that may have been implicit and intended in the 1966 Act, but not expressed. The concept is important because of the kinds of property, particularly real estate, now subject to custodianship. If the minor is married, it would be possible for homestead, dower, or community property rights to attach to real estate (or other property) acquired after marriage by the minor through a transfer to a custodianship for his benefit. The quoted language qualifying the minor's interest in the property is intended to override these rights insofar as they may conflict with the custodian's ability and authority to manage, sell, or transfer such property while it is custodial property. Upon termination of the custodianship and transfer of the custodial property to the former minor, the custodial property would then become subject to such spousal rights for the first time.

For a list of the immunities enjoyed by third persons under subsection (c), see SECTION 16 and the Comment thereto.

Because a custodianship under this Act can extend beyond the age of majority in many states, or beyond emancipation of a minor through marriage or otherwise, the Drafting Committee considered the addition of a spendthrift clause to this section. The idea was rejected because neither the 1966 Act nor its predecessors had such a provision, because spendthrift protection would extend only until 21 in any event and judgments against the minor would then be enforceable, and because the spendthrift qualification on the interest of the minor in the property may be inconsistent with the theory of the Act to convey the property indefeasibly to the minor.

## SECTION 12. CARE OF CUSTODIAL PROPERTY.

(a) A custodian shall:

- (1) take control of custodial property;
- (2) register or record title to custodial property if appropriate; and
- (3) collect, hold, manage, invest, and reinvest custodial property.

(b) In dealing with custodial property, a custodian shall observe the standard of care that would be observed by a prudent person dealing with property of another and is not limited by any other statute restricting investments by fiduciaries. If a custodian has a special skill or expertise or is named custodian on the basis of representations of a special skill or expertise, the custodian shall use that skill or expertise. However, a custodian, in the custodian's discretion and without liability to the minor or the minor's estate, may retain any custodial property received from a transferor.

(c) A custodian may invest in or pay premiums on life insurance or endowment policies on (i) the life of the minor only if the minor or the minor's estate is the sole beneficiary, or (ii) the life of another person in whom the minor has an insurable interest only to the extent that the minor, the minor's estate, or the custodian in the capacity of custodian, is the irrevocable beneficiary.

(d) A custodian at all times shall keep custodial property separate and distinct from all other property in a manner sufficient to identify it clearly as custodial property of the minor. Custodial property consisting of an undivided interest is so identified if the minor's interest is held as a tenant in common and is fixed. Custodial property subject to recordation is so identified if it is recorded, and custodial property subject to registration is so identified if it is either registered, or held in an account designated, in the name of the custodian, followed in substance by the words:

"as a custodian for \_\_\_\_\_ (name of minor) under the South Carolina Uniform Transfers to Minors Act."

(e) A custodian shall keep records of all transactions with respect to custodial property, including information necessary for the preparation of the minor's tax returns, and shall

make them available for inspection at reasonable intervals by a parent or legal representative of the minor or by the minor if the minor has attained the age of 14 years.

#### COMMENT

Subsection (a) expands Section 4(a) of the 1966 Act to include the duties to take control and appropriately register or record custodial property in the name of the custodian.

Subsection (b) restates and makes somewhat stricter the prudent man fiduciary standard for the custodian, since it is now cast in terms of a prudent person "dealing with property *of another*" rather than one "who is seeking a reasonable income and the preservation of *his* capital," as under the 1966 Act. The rule also adds a slightly higher standard for professional fiduciaries. The rule parallels section 7-302 of the Uniform Probate Code in order to refer to the existing and growing body of law interpreting that standard. The 1966 Act permitted a custodian to retain any security or bank account received, without the obligation to diversify investment. This subsection extends that rule to any property received.

In order to eliminate any uncertainty that existed under the 1966 Act, subsection (c) grants specific authority to invest custodial property in life insurance on the minor's life, provided the minor's estate is the sole beneficiary, or on the life of another person in whom the minor has an insurable interest, provided the minor, the minor's estate, or the custodian in his custodial capacity is made the beneficiary of such policies.

Subsection (d) generally tracks Section 4(g) of the 1966 Act but adds the provision requiring that custodial property consisting of an undivided interest be held as a tenant in common. This provision permits the custodian to invest custodial property in common trust funds, mutual funds, or in a proportional interest in a "jumbo" certificate of deposit. Investment in property held in joint tenancy with right of survivorship is not permitted, but the Act does not preclude a transfer of such an interest to a custodian, and the custodian is authorized under subsection (b) to retain a joint tenancy interest so received.

Subsection (e) follows Section 4(h) of the 1966 Act, but adds the requirement that income tax information be maintained and made available for preparation of the minor's tax returns. Because the custodianship is not a separate legal entity or taxpayer, the minor's tax identification number should be used to identify all custodial property accounts.

#### SECTION 13. POWERS OF CUSTODIAN.

(a) A custodian, acting in a custodial capacity, has all the rights, powers, and authority over custodial property that unmarried adult owners have over their own property, but a

custodian may exercise those rights, powers, and authority in that capacity only.

(b) This section does not relieve a custodian from liability for breach of Section 12.

#### COMMENT

Subsection (a) replaces the specific list of custodian's powers in Section 4(f) of the 1966 Act which related only to securities, money, and insurance, then the only permitted kinds of custodial property. It was determined not to expand the list to try to deal with all forms of property now covered by the Act and to specify all powers that might be appropriate for each kind of property, or to refer to an existing body of state law, such as the Trustee's Powers Act, since such powers would not be uniform. Instead, this provision grants the custodian the very broad and general powers of an unmarried adult owner of the property, subject to the prudent person rule and to the duties of segregation and record keeping specified in SECTION 12. This approach permits the Act to be self-contained and more readily understandable by volunteer, non-professional fiduciaries, who most often serve as custodians. It is intended that the authority granted includes the powers most often suggested for custodians, such as the power to borrow, whether at interest or interest free, the power to invest in common trust funds, and the power to enter contracts that extend beyond the termination of the custodianship.

Subsection (a) further specifies that the custodian's powers or incidents of ownership in custodial property such as insurance policies may be exercised only in his capacity as custodian. This provision is intended to prevent the exercise of those powers for the direct or indirect benefit of the custodian, so as to avoid as nearly as possible the result that a custodian who dies while holding an insurance policy on his own life for the benefit of a minor will have the policy taxed in his estate. See, Section 2042, I.R.C.; but compare *Terriberry v. U.S.*, 517 F.2d 286 (5th Cir. 1975), and *Rose v. U.S.*, 511 F.2d 259 (5th Cir. 1975).

#### SECTION 14. USE OF CUSTODIAL PROPERTY.

(a) A custodian may deliver or pay to the minor or expend for the minor's benefit so much of the custodial property as the custodian considers advisable for the use and benefit of the minor, without court order and without regard to (i) the duty or ability of the custodian personally or of any other person to support the minor, or (ii) any other income or property of the minor which may be applicable or available for that purpose.

(b) On petition of an interested person or the minor if the minor has attained the

age of 14 years, the court may order the custodian to deliver or pay to the minor or expend for the minor's benefit so much of the custodial property as the court considers advisable for the use and benefit of the minor.

(c) A delivery, payment, or expenditure under this section is in addition to, not in substitution for, and does not affect any obligation of a person to support the minor.

#### COMMENT

Subsections (a) and (b) track subsections (b) and (c) of Section 4 of the 1966 Act, but with two significant changes. The standard for expenditure of custodial property has been amended to read "for the use and benefit of the minor," rather than "for the support, maintenance, education and benefit of the minor" as specified under the 1966 Act. This change is intended to avoid the implication that the custodial property can be used only for the required support of the minor.

The IRS has taken the position that the income from custodial property, to the extent it is used for the support of the minor-donee, is includable in the gross income of any person who is legally obligated to support the minor-donee, whether or not that person or parent is serving as the custodian. Rev. Rul. 56-484, C.B. 1956-2, 23; Rev. Rul. 59-357, C.B. 1959-2, 212. However, Reg. 1.662(a)-4 provides that the term "legal obligation" includes a legal obligation to support another person if, and only if, the obligation is not affected by the adequacy of the dependent's own resources. Thus, if under local law a parent may use the resources of a child for the child's support in lieu of supporting the child himself or herself, no obligation of support exists, whether or not income is actually used for support, at least if the child's resources are adequate. See, Bittker, *Federal Taxation of Income Estates and Gifts*, <sup>^</sup> 80.4.4 (1981).

For this reason, new subsection (c) has been added to specify that distributions or expenditures may be made for the minor without regard to the duty or ability of any other person to support the minor and that distributions or expenditures are not in substitution for, and shall not affect, the obligation of any person to support the minor. Other possible methods of avoiding the attribution of custodial property income to the person obligated to support the minor would be to prohibit the use of custodial property or its income for that purpose, or to provide that any such use gives rise to a cause of action by the minor against his parent to the extent that custodial property or income is so used. The first alternative was rejected as too restrictive, and the second as too cumbersome.

The "use and benefit" standard in subsections (a) and (b) is intended to include payment of the minor's legally enforceable obligations such as tax or child support obligations or tort claims. Custodial property could be reached by levy of a judgment creditor in any event, so there is no reason not to permit custodian or court-ordered expenditures for enforceable claims.

An "interested person" entitled to seek court ordered distributions under subsection (b) would include not only the parent or conservator or guardian of the minor and a transferor or a transferor's legal representative, but also a public agency or official with custody of the minor and a third party to whom the minor owes legally enforceable debts.

#### SECTION 15. CUSTODIAN'S EXPENSES, COMPENSATION, AND BOND.

(a) A custodian is entitled to reimbursement from custodial property for reasonable expenses incurred in the performance of the custodian's duties.

(b) Except for one who is a transferor under Section 4, a custodian has a non-cumulative election during each calendar year to charge reasonable compensation for services performed during that year.

(c) Except as provided in Section 18(f), a custodian need not give a bond.

#### COMMENT

This section parallels and restates Section 5 of the 1966 Act. It deletes the statement that a custodian may act without compensation for services, since that concept is implied in the retained provision that a custodian has an "election" to be compensated. However, to prevent abuse, the latter provision for permissive compensation is denied to a custodian who is also the donor of the custodial property.

The custodian's election to charge compensation must be exercised (although the compensation need not be actually paid) at least annually or it lapses and may not be exercised later. This provision is intended to avoid imputed income to the custodian who waives compensation, and also to avoid the accumulation of a large unanticipated claim for compensation exercisable at termination of the custodianship.

This section deletes as surplusage the bracketed optional standards contained in the 1966 Act for determining "reasonable compensation" which included, "in the order stated," a direction by the donor, statutes governing compensation of custodians or guardians, or court order. While compensation of custodians becomes a more likely occurrence and a more important issue under this Act because property requiring increased management may now be subject to custodianship, compensation can still be determined by agreement, by reference to a statute or by court order, without the need to so state in this Act.

## SECTION 16. EXEMPTION OF THIRD PERSON FROM LIABILITY.

A third person in good faith and without court order may act on the instructions of or otherwise deal with any person purporting to make a transfer or purporting to act in the capacity of a custodian and, in the absence of knowledge, is not responsible for determining:

(1) the validity of the purported custodian's designation;

(2) the propriety of, or the authority under this article for, any act of the purported custodian;

(3) the validity or propriety under this article of any instrument or instructions executed or given either by the person purporting to make a transfer or by the purported custodian; or

(4) the propriety of the application of any property of the minor delivered to the purported custodian.

### COMMENT

This section carries forward, but shortens and simplifies, Section 6 of the 1966 Act, with no substantive change intended. The 1966 revision permitted a 14-year old minor to appoint a successor custodian and specifically provided that third parties were entitled to rely on the appointment. Because this section refers to any custodian, and "custodian" is defined to include successor custodians (SECTION 1(7)), a successor custodian appointed by the minor is included among those upon whom third parties may rely.

Similarly, because this section protects any third "person," it is not necessary to specify here or in SECTION 11(c) that it extends to any "issuer, transfer agent, bank, life insurance company, broker, or other person or financial institution," as did the 1966 Act. See the definition of "person" in SECTION 1(12).

This section excludes from its protection persons with "knowledge" of the irregularity of a transaction, a concept not expressed but probably implied in Section 6 of the 1966 Act. See, *e.g.*, *State ex rel Paden v. Currel*, 597 S.W.2d 167 (Mo. App. 1980) disapproving the pledge of custodial property to secure a personal loan to the custodian.

Similarly, this section does not alter the requirements for bona fide purchaser or holder in due course status under other law for persons who acquire from a custodian custodial property subject to recordation or registration.

#### SECTION 17. LIABILITY TO THIRD PERSONS.

(a) A claim based on (i) a contract entered into by a custodian acting in a custodial capacity, (ii) an obligation arising from the ownership or control of custodial property, or (iii) a tort committed during the custodianship, may be asserted against the custodial property by proceeding against the custodian in the custodial capacity, whether or not the custodian or the minor is personally liable therefor.

(b) A custodian is not personally liable:

(1) on a contract properly entered into in the custodial capacity unless the custodian fails to reveal that capacity and to identify the custodianship in the contract; or

(2) for an obligation arising from control of custodial property or for a tort committed during the custodianship unless the custodian is personally at fault.

(c) A minor is not personally liable for an obligation arising from ownership of custodial property or for a tort committed during the custodianship unless the minor is personally at fault.

#### COMMENT

This section has no counterpart in the 1966 Act and is based upon Section 5-429 of the Uniform Probate Code, relating to limitations on the liability of conservators. Because some forms of custodial property now permitted under this Act can give rise to liabilities as well as benefits (*e.g.*, general partnership interests, interests in real estate or business proprietorships, automobiles, etc.) the Committee believes it is necessary to protect the minor and other assets he might have or acquire from such liabilities, since the minor is unable to disclaim a transfer to a custodian for his benefit. Similar protection for the custodian is necessary so as not to discourage nonprofessional or uncompensated persons from accepting the office. Therefore this section

generally limits the claims of third parties to recourse against the custodial property, as third parties dealing with a trust are generally limited to recourse against the trust corpus.

The custodian incurs personal liability only as provided in subsection (b) for actual fault or for failure to disclose his custodial capacity "in the contract" when contracting with third parties. In oral contracts, oral disclosure of the custodial capacity is sufficient. The minor, on the other hand, incurs personal liability under subsection (c) only for actual fault.

When custodial property is subjected to claims of third parties under this section, the minor or his legal representative, if not a party to the action by which the claim is successfully established, may seek to recover the loss from the custodian in a separate action. See SECTION 19 and the Comment thereto.

#### SECTION 18. RENUNCIATION, RESIGNATION, DEATH, OR REMOVAL OF CUSTODIAN; DESIGNATION OF SUCCESSOR CUSTODIAN.

(a) A person nominated under Section 3 or designated under Section 9 as custodian may decline to serve by delivering a written renunciation to the person who made the nomination or to the transferor or the transferor's legal representative. If the event giving rise to a transfer has not occurred and no substitute custodian able, willing, and eligible to serve was nominated under Section 3, the person who made the nomination may nominate a substitute custodian under Section 3; otherwise the transferor or the transferor's legal representative shall designate a substitute custodian at the time of the transfer, in either case from among the persons eligible to serve as custodian for that kind of property under Section 9(a). The custodian so designated has the rights of a successor custodian.

(b) A custodian at any time may designate a trust company or an adult other than a transferor under Section 4 as successor custodian by executing and dating an instrument of designation before a subscribing witness other than the successor. If the instrument of designation does not contain or is not accompanied by the resignation of the custodian, the designation of the

successor does not take effect until the custodian resigns, dies, becomes incapacitated, or is removed.

(c) A custodian may resign at any time by delivering written notice to the minor if the minor has attained the age of 14 years and to the successor custodian and by delivering the custodial property to the successor custodian.

(d) If a custodian is ineligible, dies, or becomes incapacitated without having effectively designated a successor and the minor has attained the age of 14 years, the minor may designate as successor custodian, in the manner prescribed in subsection (b), an adult member of the minor's family, a conservator of the minor, or a trust company. If the minor has not attained the age of 14 years or fails to act within 60 days after the ineligibility, death, or incapacity, the conservator of the minor becomes successor custodian. If the minor has no conservator or the conservator declines to act, the transferor, the legal representative of the transferor or of the custodian, an adult member of the minor's family, or any other interested person may petition the court to designate a successor custodian.

(e) A custodian who declines to serve under subsection (a) or resigns under subsection (c), or the legal representative of a deceased or incapacitated custodian, as soon as practicable, shall put the custodial property and records in the possession and control of the successor custodian. The successor custodian by action may enforce the obligation to deliver custodial property and records and becomes responsible for each item as received.

(f) A transferor, the legal representative of a transferor, an adult member of the minor's family, a guardian of the person of the minor, the conservator of the minor, or the minor if the

minor has attained the age of 14 years may petition the court to remove the custodian for cause and to designate a successor custodian other than a transferor under Section 4 or to require the custodian to give appropriate bond.

#### COMMENT

This section tracks but condenses Section 7 of the 1966 Act to provide that the custodian, or if the custodian does not do so, the minor if he is 14, may appoint the successor custodian, or failing that, that the conservator of the minor or a court appointee shall serve. It also covers disclaimer of the office by designated or successor custodians or by nominated future custodians who decline to serve.

This Act broadens the category of persons who may be designated by the initial custodian as successor custodian from an adult member of the minor's family, his conservator, or a trust company to any adult or trust company. However, the minor's designation remains limited to an adult member of his family (expanded to include a spouse and a stepparent, see SECTION 1(10)), his conservator, or a trust company.

#### SECTION 19. ACCOUNTING BY AND DETERMINATION OF LIABILITY OF CUSTODIAN.

(a) A minor who has attained the age of 14 years, the minor's guardian of the person or legal representative, an adult member of the minor's family, a transferor, or a transferor's legal representative may petition the court (i) for an accounting by the custodian or the custodian's legal representative; or (ii) for a determination of responsibility, as between the custodial property and the custodian personally, for claims against the custodial property unless the responsibility has been adjudicated in an action under Section 17 to which the minor or the minor's legal representative was a party.

(b) A successor custodian may petition the court for an accounting by the predecessor custodian.

(c) The court, in a proceeding under this article or in any other proceeding, may

require or permit the custodian or the custodian's legal representative to account.

(d) If a custodian is removed under Section 18(f), the court shall require an accounting and order delivery of the custodial property and records to the successor custodian and the execution of all instruments required for transfer of the custodial property.

#### COMMENT

This section carries forward Section 8 of the 1966 Act, but expands the class of parties who may require an accounting by the custodian to include any person who made a transfer to him (or any such person's legal representative), the minor's guardian of the person, and the successor custodian.

Subsection (b) authorizes but does not obligate a successor custodian to seek an accounting by the predecessor custodian. Since the minor and other persons mentioned in subsection (a) may also seek an accounting from the predecessor at any time, it is anticipated that the exercise of this right by the successor should be rare.

Subsection (a) also gives the same parties (other than a successor custodian) the right to seek recovery from the custodian for loss or diminution of custodial property resulting from successful claims by third persons under SECTION 17, unless that issue has already been adjudicated in an action under that section to which the minor was a party.

This section does not contain a separate statute of limitations precluding petitions for accounting after termination of the custodianship. Because custodianships can be created without the knowledge of the minor, a person might learn of a custodian's failure to turn over custodial property long after reaching majority, and should not be precluded from asserting his rights in the case of such fraud. In addition, the 1966 Act has no such preclusion and seems to have worked well. Other law, such as general statutes of limitation and the doctrine of laches, should serve adequately to protect former custodians from harassment.

#### SECTION 20. TERMINATION OF CUSTODIANSHIP.

The custodian shall transfer in an appropriate manner the custodial property to the minor or to the minor's estate upon the earlier of:

- (1) the minor's attainment of 21 years of age with respect to custodial property

transferred under Section 4 or 5;

(2) the minor's attainment of majority under the laws of this State other than this

article with respect to custodial property transferred under Section 6 or 7; or

(3) the minor's death.

#### COMMENT

This section tracks Section 4(d) of the 1966 Act, but provides that custodianships created by fiduciaries without express authority from the donor of the property under SECTION 6 and by obligors of the minor under SECTION 7 terminate upon the minor's attaining the age of majority under the general laws of the state, since these custodianships are substitutes for conservatorships that would otherwise terminate at that time. Because property in a single custodianship may be distributable at different times, separate accounting for custodial property by source may be required. See Comment to SECTION 10.

#### SECTION 21. APPLICABILITY.

This article applies to a transfer within the scope of Section 2 made after its effective date if:

(1) the transfer purports to have been made under the South Carolina Uniform Gifts to

Minors Act; or

(2) the instrument by which the transfer purports to have been made uses in substance

the designation "as custodian under the Uniform Gifts to Minors Act" or "as custodian under the

Uniform Transfers to Minors Act" of any other state, and the application of this article is necessary to

validate the transfer.

#### COMMENT

This section is new and has two purposes. First, it operates as a "savings clause" to validate transfers made after its effective date which mistakenly refer to the enacting state's UGMA rather than to this Act. Second, it validates transfers attempted under the UGMA of another state which would not permit transfers from that source or of property of that kind or under the UTMA of another state with no nexus to the transaction, provided in each case that the enacting state has a sufficient nexus to the transaction under SECTION 2.

## SECTION 22. EFFECT ON EXISTING CUSTODIANSHIPS.

(a) Any transfer of custodial property as now defined in this article made before the effective date of this article is validated notwithstanding that there was no specific authority in the South Carolina Uniform Gifts to Minors Act for the coverage of custodial property of that kind or for a transfer from that source at the time the transfer was made.

(b) This article applies to all transfers made before the effective date of this article in a manner and form prescribed in the South Carolina Uniform Gifts to Minors Act, except insofar as the application impairs constitutionally vested rights or extends the duration of custodianships in existence on the effective date of this article.

### COMMENT

Subsection (a) is new and is based on Section 45-109a of the Connecticut Act which validates gifts of real estate and partnership interests made prior to their inclusion as "custodial property" under that Act. However, this provision goes further and purports also to validate prior transfers of the kind now covered by the Act, i.e., transfers from estates, trusts, guardianships, and obligors.

All states have previously enacted some version of UGMA, and it will be more orderly to subject gifts or other transfers under the prior Act to the procedures of this Act, rather than to keep both Acts in force, presumably for 18 or 21 years until all custodianships created under prior law have terminated. Subsection (b) is intended to apply this Act to prior gifts and existing custodianships insofar as it is constitutionally permissible to do so. However, prior custodianships will continue to terminate at the age prescribed under the prior Act.

Optional subsection (c) is also new and is based upon Section 45-109b of the Connecticut Act. It is intended for adoption in those states that amended their Acts to reduce the age of majority to 18, but which adopt the recommended return to 21 as the age at which custodianships terminate. Its purpose is to avoid resurrecting custodianships for persons not yet 21 which terminated during the period that the age of 18 governed termination.

## SECTION 23. UNIFORMITY OF APPLICATION AND CONSTRUCTION.

This article shall be applied and construed to effectuate its general purpose to make uniform

the law with respect to the subject of this article among states enacting it.

SECTION 24. SHORT TITLE.

This article may be cited as the “South Carolina Uniform Transfers to Minors Act.”

SECTION 25. SEVERABILITY.

If any provisions of this article or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this article which can be given effect without the invalid provision or application, and to this end provisions of this article are severable.

SECTION 26. EFFECTIVE DATE.

This article takes effect \_\_\_\_\_ .

SECTION 27. REPEALS.

The former Article 5 of this chapter, known as the “South Carolina Uniform Gifts to Minors Act” is hereby repealed. To the extent that this article, by virtue of Section 22(b), does not apply to transfers made in a manner prescribed in South Carolina the Gifts to Minors Act or to the powers, duties, and immunities conferred by transfers in that manner upon custodians and persons dealing with custodians, the repeal of the South Carolina Gifts to Minors Act does not affect those transfers or those powers, duties, and immunities.