



**South
Carolina
Bar**

House of Delegates



January 2020

Dear Member of the House:

Happy New Year everyone! Welcome to the 2020 House of Delegates.

The House of Delegates of the South Carolina Bar will convene promptly at 11:00 a.m. on Thursday, January 23, 2020, in Ballroom A at the Columbia Metropolitan Convention Center 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 is part of this package. 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 2020 and to seeing and spending some time with all of you in Columbia. If I can assist you in any way prior to the meeting, please do not hesitate to contact me.

Sincerely yours,

Rusty Infinger
Chair



January 2020

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 excited to visit with you and other members of our Bar as we attend the Convention and take advantage of what it has to offer this year in Columbia.

I look forward to seeing you there!

Sincerely,

A handwritten signature in blue ink that reads "Beverly A. Carroll". The signature is fluid and cursive.

Beverly A. Carroll
President

REVISED AGENDA
SOUTH CAROLINA BAR HOUSE OF DELEGATES
JANUARY 23, 2020 @ 11:00 A.M.

CALL TO ORDER
SET THE AGENDA

Russell T. Infinger
Chair

- | | |
|---|--|
| 1. Approval of Consent Agenda
a. Approval of Minutes of Meeting Held on May 16, 2019
b. Receipt of November Financial Statements
c. Request from Workers' Compensation Section to Amend Bylaws
d. Request from Pro Bono Board to Amend Bylaws | Russell T. Infinger
Chair |
| 2. Recognition of Service on Pro Bono Board | Beverly A. Carroll
President |
| 3. Recognition of Contributions to SC Bar and Lawyers Helping
Lawyers Program | Capers G. Barr, III
Bar Member |
| 4. Report of the President | Beverly A. Carroll
President |
| 5. Report from South Carolina Bar Foundation, Inc. | Megan Sweeney Seiner
Executive Director |
| 6. Request from the Professional Responsibility Committee to Amend
Rule 1.10 of the Rules of Professional Conduct | Michael J. Virzi
Committee Chair |
| 7. Request from the Professional Responsibility Committee to Amend
the Rules of Professional Conduct Related to Lawyer Advertising
and Solicitation | Barbara M. Seymour
Committee Member |
| 8. Request to Support the Initiative to Seek an Advisory Opinion from
the SC Supreme Court Confirming and Supporting the Renewed
Use of Rule 53, SCRCP | Adam C. Ness
2 nd Circuit Delegate |

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 16, 2019

The House met on May 16, 2019, at Winthrop University in Rock Hill. Present were: Brook Bowers Andrews; Grady Baldwin Anthony; Kenneth C. Anthony; J. Leeds Barroll, IV; Samuel Robert Bass, II; Mark S. Berglind; Susan B. Berkowitz; Matthew M. Billingsley; Maryann E. Blake; Margaret Miles Bluestein; J. Steedley Bogan; Sherri Marie Carr; Beverly A. Carroll; George B. Cauthen; Amie L. Clifford; M. Dawes Cooke, Jr.; Lee Deer Cope; Darra W. Cothran; Leslie A. Cotter, Jr.; Stephen M. Cox; Elise Freeman Crosby; Carole Marie Dennison; Robert Scott Dover; Walter G. Dusky; Darek Joseph Enderlin; Eric K. Englehardt; Frank L. Eppes; F. Cordes Ford, IV; Allen O. Fretwell; Marilyn Elaine Ligon Gartley; Kenneth S. Generette; Bernadette Shawan Gillians; Harry L. Goldberg; Elizabeth Van Doren Gray; Jack W. Hammack; Doward Keith Harvin; Daryl G. Hawkins; Amy L.B. Hill; Sean Joseph Hinton; John Croom Colvin Hunter; Russell Thomas Infinger; Susan P. Ingles; Lindsay Anne Joyner; Justin S. Kahn; D. Michael Kelly; Catherine H. Kennedy; Charles A. Kinney, Jr.; Wes A. Kissinger; Christopher R. Koon; Lanneau Wm. Lambert, Jr.; Roy Free Laney; Jonathan W. Lounsberry; Garry Donald Malphrus; Karla Cecilia Martinez Lainez; John Lucius McCants; J. Edwin McDonnell; Steven T. Moon; Meredith Brooks Moss; Catherine Elizabeth Mubarak; Randall K. Mullins; Elizabeth Foy Nicholson; Sheally Venus Poe; Benjamin R. Pogue, III; Tommy D. Preston, Jr.; Jacob Howell Raehn; Robert Lawrence Reibold; John Edward Roxon; Nancy Doherty Sadler; Carmelo Barone Sammataro; Stephen T. Savitz; Mary Elizabeth Sharp; Reid T. Sherard; Cheryl D. Shoun; Mary Amanda Harrelson Shuler; Lana H. Sims, Jr.; Jasmine Denise Smith; Lisa Lee Smith; Michael Benjamin Smith; Henry D. Smythe; Christian Giresi Spradley; Megan Finch Stevens; Randell Croft Stoney, III; Fred W. Suggs, Jr.; William R. Thomas; John Hagood Tighe; Stephanie Millenbine van der Horst; Robert Bruce Wallace; Elizabeth H. Warner; J. Calhoun Watson; David Wesley Whittington; Robert M. Wilcox; Donald B. Wildman; Mitchell Willoughby; Ashleigh Rayanna Wilson; William M. Wilson, III; Carrington S. Wingard; William K. Witherspoon; and Clinton Joseph Yarborough.

Guests present were: The Honorable John P. Gettys, Jr.; Dr. Daniel F. Mahoney; Megan S. Seiner; and Michael J. Virzi. Wilson, III.

Representing the Bar staff were: Monica Briscoe; Cindy A. Coker; Mary-Kathryn Craft; Nichole Davis; Jeremy Frazier; Betsy Goodale; Charmy Medlin; David M. Ross; and Jason Stokes.

Chair Rusty Infinger called the meeting to order. A quorum was declared present.

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

Mr. Suggs moved to adopt the agenda. The motion was seconded, and it was approved.

Mr. Cooke moved to approve the Consent Agenda - approval of the minutes of the January 17, 2019, meeting; request from the Trial and Appellate Advocacy Section to amend Section bylaws, receipt of March Financial Statements and a request from the Senior Lawyers Division to amend Section bylaws. The motion was seconded, and it was approved

Dr. Daniel F. Mahoney welcomed House members to Winthrop University.

Mayor John P. Gettys, Jr., extended a welcome to the city of Rock Hill.

Mr. Suggs recognized the 2019 Pro Bono Law Firm of the Year, Nexsen Pruet.

Ms. Wilson recognized the 2019 Young Lawyers of the Year, Joseph Bias and Tommy Preston, Jr.

Mr. Dusky recognized the 2019 Law Related Education Lawyer of the Year, Sabrina Owen.

President Cooke recognized the 2019 Mentors of the Year, David Koysza, Jane Merrill and Stephanie Nye.

Next, President Cooke recognized the graduates of the 2018-19 Leadership Academy: Annie Andrews; Tyler Bailey; Brett Bayne; Emma Bennett-Williams; Aleksandra Chauhan; Amber Fulmer; Jerrod Fussnecker; Taylor Gilliam; Karla Martinez; Cashida Okeke; Chelsea Rikard; Mallary Scheer; Leslie Simpson; Donna Tillis; and Mary Vosburgh.

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 and sharing statistics on trends in giving. She encouraged House members to contribute to the Foundation.

Under report of the President, Mr. Cooke provided updates Lawyers Helping Lawyers and Lawyer Wellness efforts, the Pro Bono Program, Diversity, Law Related Education, and the anticipated use of Delegates as ambassadors. In closing, he thanked House members for their support.

At this time the House adjourned to convene the Assembly.

Following the Assembly, the House reconvened.

Mr. Malphrus presented a resolution to support online CLE requirement reporting and to request an update from the Commission on CLE and Specialization on progress and a timeline for when it expects to implement online reporting. He moved approval of the resolution. The motion was seconded, and it was approved.

Next, Mr. Malphrus presented a resolution to encourage the South Carolina Supreme Court through the Commission on CLE and Specialization to expand the number of states with which out-of-state Bar members can meet the CLE requirements for South Carolina by meeting the CLE requirements for the states where they reside and practice law. He moved approval of the resolution. The motion was seconded, and it was approved.

Ms. Coker presented a request from the Lawyers' Fund for Client Protection Committee to amend Rule 411, SCACR, to stagger terms for Committee members. A motion was made and seconded to approve the request. The motion was approved.

Next, Mr. Lounsberry presented a request from the Practice and Procedure Committee to amend Rule 45 (b)(1), SCRCR, to address the vagueness of "prior notice" in regard to subpoenas when compared to the clarity of Rule 45 (a)(4), Federal Rules of Civil Procedure. He moved approval of the request. The motion was seconded, and it was approved.

Mr. Lounsberry presented a proposal from the Practice and Procedure Committee to amend three rules in the South Carolina Rules of Civil Procedure to be consistent with comparable changes made to the Federal Rules of Civil Procedure in 2016. The proposed changes to Rule 1, Rule 26(f) and Rule 34(b) were intended to make civil litigation more efficient by developing earlier discovery plans and revamping the impact of preserving electronically stored information. He noted that proposed changes to Rule 26(b) had been withdrawn. Following discussion, proposals to amend Rule 1, 26(f) 34(b) and 37(f) were approved.

Next, Mr. Virzi presented a request from the Professional Responsibility Committee to amend Rule 3.8 of the Rules of Professional Conduct relating to the special responsibilities of a prosecutor. The proposed amendments would impose a duty on prosecutors when evidence was discovered post-conviction that indicated that the person who was convicted was innocent. Mr. Virzi noted that the proposal was presented to the House in January and was sent back to the Committee with instruction

to consider the issues raised. He reviewed the revised proposal. Ms. Carr moved approval of the proposal. The motion was seconded. Ms. Carr spoke in favor of the proposal. Ms. Clifford spoke in opposition to the proposal. Discussion ensued on the investigation procedure and the responsibility placed on prosecutors. Following discussion, Mr. Fretwell moved to table the proposal. The motion was seconded. The motion failed. Discussion resumed. Issues discussed included funding and financial resources and the origin of new evidence. Upon taking a vote, the original motion to approve the proposal was approved.

The following members were elected to the Nominating Committee: Scott Dover and Venus Pope (Region 1) and Cheryl Shoun (Region 4).

Mr. Laney presented Bar and CLE Division budgets for 2019-20 and moved approval. The motion was seconded, and it was approved.

Ms. Carroll recognized outgoing Bar President Cooke with a commemorative plaque and gift.

There being no further business, the meeting was adjourned.

Minutes
South Carolina Bar Assembly
May 16, 2019

President Cooke convened a meeting of the Assembly and declared a quorum was present.

President Cooke recognized and 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 Donald Beatty presented brief remarks and installed Beverly Carroll as President of the South Carolina Bar. Ms. Carroll was recognized to make remarks.

Upon conclusion of the business for which it had convened, the Assembly was adjourned.

TO: House of Delegates

FM: Mary Sharp, Treasurer

DT: January 2020

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 \$1,051,016. 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 2020 license renewal and fees towards, the Conference Center building will appear in the January statements.

Section funds increased \$13,705; which reflected dues collection for 2020; see page 6. Monies held in grants and other funds increased \$101,811; see page 7.

Through November the net effect on general operating funds was a decrease of \$1,166,532, a figure found at the end of the third numerical column on page 2. (The decrease last year at the end of November was \$1,264,319.) The fourth column on that same page indicates the expected loss was \$1,230,400. Thus, the general operating funds are about \$63,868 ahead of budget.

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

Lawyer Referral Service Percentage Fees: Increase in number of settlements reported during this period, due to a delay in remittance caused by a change in case management software.

Lawyer Referral subscription fees: Renewal notices were delayed due to a change in case management software.

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

FICA and Employee Benefits: Benefits attributed to unfilled positions.

Equipment & Software: Higher Logic mentoring - nested communities.

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

Membership Services: Bar membership event.

SC Lawyer: Increase in production costs.

Lawyer Desk Book: Lower cost incurred in publishing the Desk Book.

Contribution: Board approved - Judicial Observation and Experience Program.

Bar Conference Center loan balance at the end of November was \$306,253; with a maturity date of 10/05/2021.

Parking Lot loan balance at the end of November was \$695,265.09.

Page 10 reflects that the CLE Division's net loss was \$154,096. The budgeted loss was \$160,000, resulting in a favorable position against budget of \$5,904.

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

Seminar Income: The surplus is principally from higher than anticipated registrations.

Publication Income: The surplus is from better than anticipated sales on new and existing titles.

SC Jurisprudence/Royalty Income: The deficit is principally from lower sales on the existing series.

Interest Income: The surplus is from interest on two matured CDs.

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

Salaries: Positions were unfilled during the fiscal year.

Seminar Direct: Higher expenses due to increased registrations, paid speakers and location costs.

E-CLE: Lower rate for web charges.

SOUTH CAROLINA BAR
BALANCE SHEET
For the Five Months Ending Saturday, November 30, 2019

	<u>YTD</u>
CURRENT ASSETS	
CHECKING ACCOUNT	\$174,943.38
MONEY MARKET	1,560,126.04
DISCIPLINE ASSESSMENT	1,055.78
INVESTMENTS	1,661,314.52
ACCOUNT RECEIVABLES	(3,239.50)
PREPAID EXPENSES	148,674.54
CONTRA ACCOUNTS DUE	5,544.74
TOTAL CURRENT ASSETS	\$3,548,419.50
PLANT	
OFFICE EQUIPMENT	326,040.79
BUILDING & LAND	1,041,233.96
BUILDING # 2	6,115,290.69
DUE FROM CLE FIXED ASSETS	0.00
TOTAL PLANT FUND	\$7,482,565.44
TOTAL ASSETS	\$11,030,984.94
CURRENT LIABILITIES	
ACCOUNTS PAYABLE	125,617.29
PREPAID RENT	0.00
PERSONNEL PAYABLES	182,955.79
DUE:BF & COUNTY BAR	78,406.80
DEFERRED REVENUE	667,671.52
DEFERRED CONTRIBUTION TO USC	0.00
NOTES PAYABLE-CURRENT	1,113,255.44
RETAINAGE FOR NEW BUILDING	0.00
LEASE PAYABLE - CURRENT	0.00
SC SALES TAX REVENUE	0.00
TOTAL CURRENT LIABILITIES	\$2,167,906.84
LONG TERM LIABILITIES	
NOTES PAYABLE-LONG TERM	0.00
LEASE PAYABLE - LONG TERM	0.00
TOTAL LONG TERM LIABILITIES	\$0.00
TOTAL LIABILITIES	\$2,167,906.84
BEGINNING OF YEAR GENERAL FUND BALANCE	8,649,507.38
BEGINNING OF YEAR LAWYER REFERRAL FUND	686,705.27
BEGINNING OF YEAR GRANT FUND BALANCE	327,051.45
BEGINNING OF YEAR SECTION FUND BALANCE	250,829.53
TOTAL BEGINNING OF YEAR FUND BALANCE	9,914,093.63
YTD REVENUE	782,666.53
YTD EXPENSES	1,833,682.06
NET CHANGE	(1,051,015.53)
FUND BALANCE	\$8,863,078.10
TOTAL LIABILITIES AND FUND BALANCE	\$11,030,984.94

SOUTH CAROLINA BAR
INCOME STATEMENT
For the Five Months Ending Saturday, November 30, 2019

	MONTHLY ACTUAL	MONTHLY BUDGET	YTD ACTUAL	YTD BUDGET	ANNUAL BUDGET
REVENUE					
LICENSE FEES	\$485.00	\$0.00	\$18,892.50	\$17,000.00	\$3,641,200.00
FEES TOWARDS BUILDING	0.00	0.00	2,550.00	2,600.00	479,775.00
INTEREST	1,096.22	1,000.00	11,684.93	7,000.00	34,400.00
LRS PERCENTAGE FEE	67,074.42	17,300.00	205,085.93	147,200.00	350,000.00
LRS SUBSCRIPTION FEE	650.00	0.00	59,451.23	65,000.00	65,000.00
MARKETING FEES	1,030.82	1,300.00	17,963.95	15,900.00	32,500.00
SC LAWYER	13,169.00	14,500.00	43,173.50	43,500.00	84,200.00
LAWYERS DESK BOOK	128.80	0.00	54,770.80	50,000.00	50,000.00
STAFF SUPPORT	0.00	0.00	0.00	0.00	55,000.00
RENTS RECEIVED	3,669.00	3,700.00	18,345.00	18,500.00	44,000.00
ADR CERTIFICATION	23,200.00	13,600.00	32,800.00	33,300.00	88,000.00
DUES COLLECTION FEES	2,455.70	1,700.00	2,455.70	1,700.00	16,500.00
MISCELLANEOUS	105.00	100.00	2,848.73	500.00	1,200.00
LAW STUDENT AFFILIATES	0.00	0.00	75.00	0.00	900.00
SALES TAX	11.20	0.00	4,729.20	4,100.00	4,100.00
TOTAL REVENUES	\$113,075.16	\$53,200.00	\$474,826.47	\$406,300.00	\$4,946,775.00
EXPENSES					
SALARIES	132,494.14	132,400.00	655,495.07	657,000.00	1,831,145.00
FICA & EMPLOYEE BENEFITS	24,461.19	25,400.00	163,632.15	171,700.00	533,600.00
BUILDINGS	20,414.62	20,100.00	73,541.41	72,500.00	212,000.00
EQUIPMENT & SOFTWARE	412.54	100.00	8,417.34	9,100.00	20,500.00
EQUIP. MAINTENANCE & LICENSES	8,717.11	8,800.00	72,634.50	64,400.00	177,200.00
OFFICE SUPPLIES	6,724.62	6,700.00	14,308.34	14,100.00	25,500.00
POSTAGE	6,536.95	6,900.00	5,899.02	7,900.00	12,000.00
TELEPHONE	2,216.84	1,500.00	8,243.59	7,500.00	18,500.00
PROFESSIONAL FEES	4,468.75	0.00	19,145.19	15,000.00	26,000.00
BOND/INSURANCE	988.04	1,000.00	4,940.20	5,000.00	12,500.00
STAFF EXPENSE	2,386.93	5,000.00	7,599.57	17,000.00	32,500.00
DUES/SUBSCRIPTIONS/BOOKS	0.00	200.00	1,400.00	2,900.00	4,800.00
CASUAL LABOR/HIRING	0.00	0.00	150.00	200.00	2,400.00
DELEGATE EXPENSE	1,418.67	0.00	46,574.93	41,700.00	85,000.00
OFFICERS' EXPENSE	0.00	0.00	30.53	0.00	4,200.00
MEMBERSHIP SERV. COMMITTEES	2,380.36	1,000.00	17,134.17	6,000.00	106,000.00
LEADERSHIP ACADEMY	391.69	0.00	758.77	0.00	10,000.00
DIVERSITY & INCLUSIVENESS	576.27	200.00	2,575.33	1,200.00	10,000.00
PRACTICE MANAGEMENT ASST.	1,357.12	1,100.00	4,255.52	7,500.00	17,600.00
RISK MANAGEMENT	0.00	0.00	501.61	700.00	13,000.00
MENTORING	988.15	1,000.00	5,536.76	4,300.00	18,000.00
LAWYERS HELPING LAWYERS	1,175.16	1,700.00	22,402.75	22,700.00	61,300.00
MEMBERSHIP BENEFITS	10,318.60	9,600.00	39,877.79	38,400.00	118,500.00
YOUNG LAWYERS	9,842.65	9,100.00	53,118.39	49,300.00	194,700.00
SENIOR LAWYERS	0.00	0.00	12,372.54	12,500.00	48,000.00
GOVERNMENT RELATIONS	0.00	0.00	1,579.83	900.00	57,200.00
JUDICIAL EVALUATION	0.00	0.00	2,996.47	3,100.00	9,500.00
PUBLIC SERVICE COMMITTEE	393.12	100.00	3,275.80	1,900.00	10,500.00
PRO BONO	1,847.19	2,000.00	9,177.76	10,200.00	62,600.00
ASK-A-LAWYER	4,088.68	4,100.00	13,986.46	13,800.00	44,400.00
CLIENT ASSISTANCE PROGRAM	64.42	100.00	367.31	400.00	1,000.00
ADR CERTIFICATION	81.44	0.00	777.72	1,000.00	8,000.00
REFERRAL SERV. MARKETING	14,607.39	14,500.00	35,054.11	36,100.00	123,000.00
LAW RELATED EDUCATION	13,880.82	14,100.00	36,663.48	37,000.00	226,200.00
PUBLIC RELATIONS	168.99	1,000.00	917.47	3,000.00	10,500.00
SC LAWYER	38,951.78	36,400.00	114,623.77	109,400.00	220,200.00
LAWYERS DESK BOOK	0.00	0.00	34,637.19	50,000.00	54,500.00
CONTRIBUTIONS	0.00	0.00	5,000.00	0.00	6,500.00
CREDIT CARD FEES	6,953.62	7,000.00	8,527.54	9,100.00	74,000.00
MISCELLANEOUS	173.53	0.00	1,227.99	200.00	1,500.00
SHORT TERM PROJECTS	0.00	0.00	0.00	0.00	5,000.00
LAW STUDENT AFFILIATES	0.00	0.00	0.00	0.00	4,500.00
SALES TAX	0.00	0.00	0.00	0.00	4,100.00
BUILDING AND LAND DEBT	26,400.00	26,400.00	132,000.00	132,000.00	316,800.00
TOTAL EXPENSES	\$345,881.38	\$337,500.00	\$1,641,358.37	\$1,636,700.00	\$4,834,945.00
NET CHANGE	(\$232,806.22)	(\$284,300.00)	(\$1,166,531.90)	(\$1,230,400.00)	\$111,830.00

SOUTH CAROLINA BAR
Government Relations
Statement of Revenue and Expenses
For the Five Months Ending Saturday, November 30, 2019

	<u>MONTHLY ACTUAL</u>	<u>MONTHLY BUDGET</u>	<u>YTD ACTUAL</u>	<u>YTD BUDGET</u>	<u>ANNUAL BUDGET</u>
REVENUE					
	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
EXPENSES					
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	1,000.00	1,000.00
EQUIPMENT & MAINTENANCE	0.00	0.00	0.00	0.00	8,400.00
OFFICE SUPPLIES	0.00	0.00	0.00	0.00	1,200.00
POSTAGE	0.00	0.00	0.00	0.00	300.00
TELEPHONE	0.00	0.00	0.00	0.00	900.00
PROFESSIONAL FEES	0.00	0.00	0.00	0.00	900.00
STAFF EXPENSE	1,675.18	0.00	1,675.18	0.00	1,400.00
GOVERNMENT RELATIONS	0.00	0.00	1,579.83	900.00	57,200.00
TOTAL EXPENSES	<u>\$1,675.18</u>	<u>\$0.00</u>	<u>\$3,255.01</u>	<u>\$1,900.00</u>	<u>\$71,300.00</u>
NET BALANCE	<u>(\$1,675.18)</u>	<u>\$0.00</u>	<u>(\$3,255.01)</u>	<u>(\$1,900.00)</u>	<u>(\$71,300.00)</u>

Lawyer Referral Service
Statement of Revenue and Expenses

REVENUE					
LRS PARTICIPATION FEES	\$67,074.42	\$17,300.00	\$205,085.93	\$147,200.00	\$350,000.00
LRS SUBSCRIPTION FEES	650.00	0.00	59,451.23	65,000.00	65,000.00
TOTAL REVENUES	<u>\$67,724.42</u>	<u>\$17,300.00</u>	<u>\$264,537.16</u>	<u>\$212,200.00</u>	<u>\$415,000.00</u>
EXPENSES					
SALARIES	8,050.01	8,100.00	41,322.85	40,500.00	97,200.00
FICA & EMPLOYEE BENEFITS	2,648.97	2,800.00	14,971.44	16,100.00	41,300.00
BUILDING	800.00	800.00	3,200.00	4,000.00	9,700.00
EQUIPMENT & FURNITURE	0.00	0.00	0.00	0.00	1,000.00
EQUIPMENT & MAINTENANCE	500.00	500.00	1,900.00	2,400.00	9,200.00
OFFICE SUPPLIES	100.00	100.00	629.47	500.00	2,100.00
POSTAGE	0.90	100.00	302.25	500.00	1,100.00
TELEPHONE	137.06	0.00	477.95	0.00	1,000.00
PROFESSIONAL FEES	0.00	0.00	0.00	0.00	3,700.00
STAFF EXPENSE	0.00	0.00	0.00	2,500.00	4,000.00
BOND / INSURANCE	0.00	0.00	0.00	0.00	600.00
DUES /SUBSCRIPTIONS	0.00	0.00	0.00	0.00	300.00
CASUAL LABOR	0.00	0.00	0.00	0.00	0.00
ADVERTISING	14,178.12	14,200.00	32,383.52	34,300.00	119,000.00
GENERAL EXPENSES	429.27	300.00	2,670.59	1,800.00	4,000.00
TOTAL EXPENSES	<u>\$26,844.33</u>	<u>\$26,900.00</u>	<u>\$97,858.07</u>	<u>\$102,600.00</u>	<u>\$294,200.00</u>
NET BALANCE	<u>\$40,880.09</u>	<u>(\$9,600.00)</u>	<u>\$166,679.09</u>	<u>\$109,600.00</u>	<u>\$120,800.00</u>

SOUTH CAROLINA BAR
Statement of Revenue and Expense
Young Lawyers Division
For the Five Months Ending Saturday, November 30, 2019

	MONTHLY ACTUAL	MONTHLY BUDGET	YTD ACTUAL	YTD BUDGET	ANNUAL BUDGET
REVENUE	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
EXPENSES					
ANNUAL CONVENTION	95.29	0.00	95.29	0.00	39,500.00
SERVICE TO THE PUBLIC	2,063.35	2,200.00	11,143.69	11,600.00	34,900.00
SERVICE TO THE BAR	6,234.79	6,600.00	14,119.45	14,500.00	47,400.00
STRATEGIC PLANNING	0.00	0.00	286.96	0.00	19,000.00
DELEGATE EXPENSE	250.00	0.00	13,503.29	16,500.00	33,700.00
ADMINISTRATIVE	859.02	300.00	1,287.76	1,500.00	3,500.00
PUBLICATIONS/SCYL	340.20	0.00	12,681.95	5,200.00	14,200.00
PROJECT COMPLETION	0.00	0.00	0.00	0.00	2,500.00
TOTAL EXPENSES	\$9,842.65	\$9,100.00	\$53,118.39	\$49,300.00	\$194,700.00
NET BALANCE	(\$9,842.65)	(\$9,100.00)	(\$53,118.39)	(\$49,300.00)	(\$194,700.00)

SOUTH CAROLINA BAR
SECTIONS FUND BALANCES
For the Five Months Ending Saturday, November 30, 2019

	<u>YTD</u>
CONSTRUCTION LAW SECTION	
BEGINNING FY FUND BALANCE	\$22,428.06
YTD REVENUE	1,209.00
YTD EXPENSES	2,451.36
FUND BALANCE	<u>\$21,185.70</u>
CONSUMER LAW SECTION	
BEGINNING FY FUND BALANCE	3,982.37
YTD REVENUE	280.00
YTD EXPENSES	0.00
FUND BALANCE	<u>\$4,262.37</u>
CORPORATE, BANKING & SECURITIES SECTION	
BEGINNING FY FUND BALANCE	24,804.88
YTD REVENUE	675.00
YTD EXPENSES	50.00
FUND BALANCE	<u>\$25,429.88</u>
CRIMINAL LAW SECTION	
BEGINNING FY FUND BALANCE	18,527.10
YTD REVENUE	790.00
YTD EXPENSES	399.42
FUND BALANCE	<u>\$18,917.68</u>
DISPUTE RESOLUTION SECTION	
BEGINNING FY FUND BALANCE	5,225.62
YTD REVENUE	930.00
YTD EXPENSES	80.67
FUND BALANCE	<u>\$6,074.95</u>
EMPLOYMENT AND LABOR LAW SECTION	
BEGINNING FY FUND BALANCE	167.19
YTD REVENUE	951.55
YTD EXPENSES	1,303.88
FUND BALANCE	<u>(\$185.14)</u>
ENVIRONMENTAL & NATURAL RESOURCES SECTION	
BEGINNING FY FUND BALANCE	10,139.60
YTD REVENUE	650.00
YTD EXPENSES	0.00
FUND BALANCE	<u>\$10,789.60</u>
FAMILY LAW SECTION	
BEGINNING FY FUND BALANCE	16,296.74
YTD REVENUE	2,897.97
YTD EXPENSES	95.17
FUND BALANCE	<u>\$19,099.54</u>
GOVERNMENT LAW SECTION	
BEGINNING FY FUND BALANCE	2,934.09
YTD REVENUE	630.00
YTD EXPENSES	0.00
FUND BALANCE	<u>\$3,564.09</u>
HEALTH CARE LAW SECTION	
BEGINNING FY FUND BALANCE	7,623.78
YTD REVENUE	775.00
YTD EXPENSES	0.00
FUND BALANCE	<u>\$8,398.78</u>

SOUTH CAROLINA BAR
SECTIONS FUND BALANCES
For the Five Months Ending Saturday, November 30, 2019

	<u>YTD</u>
MILITARY LAW SECTION	
BEGINNING FY FUND BALANCE	0.26
YTD REVENUE	495.00
YTD EXPENSES	100.00
FUND BALANCE	<u>\$395.26</u>
PROBATE, ESTATE PLANNING AND TRUST	
BEGINNING FY FUND BALANCE	6,863.27
YTD REVENUE	2,055.00
YTD EXPENSES	0.00
FUND BALANCE	<u>\$8,918.27</u>
REAL ESTATE PRACTICE SECTION	
BEGINNING FY FUND BALANCE	27,547.18
YTD REVENUE	2,820.00
YTD EXPENSES	337.01
FUND BALANCE	<u>\$30,030.17</u>
SOLO AND SMALL FIRM PRACTITIONERS	
BEGINNING FY FUND BALANCE	26,177.11
YTD REVENUE	5,050.00
YTD EXPENSES	1,474.25
FUND BALANCE	<u>\$29,752.86</u>
TAX LAW SECTION	
BEGINNING FY FUND BALANCE	4,643.97
YTD REVENUE	760.00
YTD EXPENSES	2,382.28
FUND BALANCE	<u>\$3,021.69</u>
TORTS AND INSURANCE PRACTICE SECTION	
BEGINNING FY FUND BALANCE	47,648.80
YTD REVENUE	1,410.00
YTD EXPENSES	0.00
FUND BALANCE	<u>\$49,058.80</u>
TRIAL AND APPELLATE ADVOCACY SECTION	
BEGINNING FY FUND BALANCE	20,483.42
YTD REVENUE	1,340.00
YTD EXPENSES	2,360.80
FUND BALANCE	<u>\$19,462.62</u>
WORKERS' COMPENSATION SECTION	
BEGINNING FY FUND BALANCE	5,336.09
YTD REVENUE	1,730.00
YTD EXPENSES	708.51
FUND BALANCE	<u>\$6,357.58</u>
BEGINNING OF YEAR FUND BALANCE	250,829.53
YTD REVENUE	25,448.52
YTD EXPENSES	11,743.35
ENDING FUND BALANCE	<u><u>\$264,534.70</u></u>

GRANTS & OTHER
FUND BALANCES
For the Five Months Ending Saturday, November 30, 2019

	YTD
ASK-A-LAWYER 19/20	
YTD REVENUE	\$12,500.00
YTD EXPENSES	13,203.47
FUND BALANCE	(\$703.47)
LRE GRANT FUND 19/20	
YTD REVENUE	74,581.00
YTD EXPENSES	95,866.19
FUND BALANCE	(\$21,285.19)
LRE SALES AND REGISTRATIONS	
BEGINNING OF YEAR FUND BALANCE	70,061.42
YTD REVENUE	14,928.54
YTD EXPENSES	0.00
FUND BALANCE	\$84,989.96
PRO BONO OTHER	
BEGINNING OF YEAR FUND	6,684.51
YTD REVENUE	500.00
YTD EXPENSES	0.00
FUND BALANCE	\$7,184.51
ABA DIASTER RELIEF FUND	
BEGINNING OF YEAR FUND	2,881.22
YTD REVENUE	0.00
YTD EXPENSES	2,800.00
FUND BALANCE	\$81.22
PB INDIGENT SERVICE FEE	
BEGINNING OF YEAR FUND	122,125.45
YTD REVENUE	18,531.00
YTD EXPENSES	54,624.53
FUND BALANCE	\$86,031.92
DISCIPLINARY FUND 19/20	
BEGINNING OF YEAR FUND	1,285.78
YTD REVENUE	143,050.00
YTD EXPENSES	0.00
FUND BALANCE	\$144,335.78
DISPUTED FEES	
BEGINNING OF YEAR FUND	24,641.11
YTD REVENUE	0.00
YTD EXPENSES	0.00
FUND BALANCE	\$24,641.11
LAWYER REFERRAL SERVICE	
BEGINNING OF YEAR FUND	686,705.27
YTD REVENUE	0.00
YTD EXPENSES	0.00
FUND BALANCE	\$686,705.27

GRANTS & OTHER
FUND BALANCES
For the Five Months Ending Saturday, November 30, 2019

	<u>YTD</u>
LGOA GRANT - PRO BONO	
BEGINNING OF YEAR FUND BALANCE	7,640.66
YTD REVENUE	0.00
YTD EXPENSES	<u>3,289.09</u>
FUND BALANCE	<u>\$4,351.57</u>
 PARALEGAL CERTIFICATION	
BEGINNING OF YEAR FUND BALANCE	5,451.57
YTD REVENUE	5,050.00
YTD EXPENSES	<u>53.97</u>
FUND BALANCE	<u>\$10,447.60</u>
 BANK OF AMERICA GRANT	
BEGINNING OF YEAR FUND BALANCE	81,018.40
YTD REVENUE	13,251.00
YTD EXPENSES	<u>10,743.09</u>
FUND BALANCE	<u>\$83,526.31</u>
 LAWYERS HELPING LAWYERS	
BEGINNING OF YEAR FUND BALANCE	5,261.33
YTD REVENUE	0.00
YTD EXPENSES	<u>0.00</u>
FUND BALANCE	<u>\$5,261.33</u>
 BEGINNING OF YEAR FUND BALANCE	 1,013,756.72
YTD REVENUE	282,391.54
YTD EXPENSES	<u>180,580.34</u>
ENDING FUND BALANCE	<u>\$1,115,567.92</u>

LAWYERS' FUND
STATEMENT OF REVENUE AND EXPENSES
WITH BALANCE SHEET
For the Five Months Ending Saturday, November 30, 2019

	November	YTD
REVENUES		
CONTRIBUTIONS	\$23,020.43	\$130,437.96
INTEREST	864.89	25,037.09
TOTAL REVENUES	\$23,885.32	\$155,475.05
EXPENSES		
AWARDS	3,650.00	65,512.79
GENERAL EXPENSES	0.00	87.84
TOTAL EXPENSES	\$3,650.00	\$65,600.63
NET CHANGE	\$20,235.32	\$89,874.42

BALANCE SHEET

ASSETS	
LFCP CHECKING	95,245.01
LFCP MONEY MARKET	367,978.09
INVESTMENTS	1,894,371.10
TOTAL ASSETS	\$2,357,594.20
LIABILITIES	
ACCOUNT PAYABLES - CSF	9,567.25
TOTAL LIABILITIES	\$9,567.25
FUND BALANCE	
BEGINNING OF YEAR FUND BALANCE	2,258,152.53
YTD REVENUE	155,475.05
YTD EXPENSES	65,600.63
NET CHANGE	89,874.42
FUND BALANCE	\$2,348,026.95
TOTAL LIABILITIES AND FUND BALANCE	\$2,357,594.20

SOUTH CAROLINA BAR CLE - DIVISION
BALANCE SHEET
For the Five Months Ending Saturday, November 30, 2019

CURRENT ASSETS

SCBT CHECKING	\$186,971.72
MONEY MARKET/INVESTMENTS	776,759.06
PETTY CASH	150.00
ACCOUNT RECEIVABLES	5,123.14
PRE-PAID EXPENSE	79,508.01
GENERAL INVENTORY	117,989.55
TOTAL CURRENT ASSETS	\$1,166,501.48

CAPITAL ASSETS	25,142.35
TOTAL ASSETS	\$1,191,643.83

CURRENT LIABILITIES

ACCOUNTS PAYABLE	20,604.90
DUE:COMPANY 1	1,769.04
REFUNDS PAYABLE	0.00
CLE VACATION PAYABLE	107,313.92
FACILITIES PAYABLE	0.00
SEMINAR DEFERRED REVENUE	190,931.10
CASH HOLDING ACCOUNT	0.00
CONVENTION CASH HOLDING	54,216.67
SALES TAX RECEIVED	0.00
TOTAL CURRENT LIABILITIES	\$374,835.63

BEGINNING OF YEAR FUND BALANCE	970,904.59
YTD REVENUE	892,923.68
YTD EXPENSE	1,047,020.07
NET CHANGE	(154,096.39)

FUND BALANCE	\$816,808.20
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TOTAL LIABILITIES AND FUND BALANCE	\$1,191,643.83
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SOUTH CAROLINA BAR CLE - DIVISION
INCOME STATEMENT
For the Five Months Ending Saturday, November 30, 2019

	MONTHLY ACTUAL	MONTHLY BUDGET	YTD ACTUAL	YTD BUDGET	ANNUAL BUDGET
REVENUE					
SEMINAR INCOME	\$77,540.00	\$77,200.00	\$580,710.00	\$573,800.00	\$1,209,800.00
E-CLE ACCESS	27,031.00	21,300.00	74,522.14	73,100.00	475,000.00
PUBLICATION INCOME	32,443.23	30,000.00	170,738.15	165,200.00	340,000.00
SCJ ROYALTY INCOME	0.00	0.00	43,303.99	50,000.00	100,000.00
CONVENTION	0.00	0.00	0.00	0.00	390,500.00
INTEREST INCOME	4,510.07	200.00	10,104.79	1,000.00	2,400.00
BUILDING RENTAL	0.00	0.00	800.00	1,700.00	5,000.00
SHIPPING REVENUE	2,744.63	2,000.00	12,744.61	11,000.00	24,400.00
TOTAL REVENUE	\$144,268.93	\$130,700.00	\$892,923.68	\$875,800.00	\$2,547,100.00
EXPENSE					
CLE SALARIES	69,742.08	74,100.00	358,153.17	370,500.00	893,600.00
BENEFITS	16,318.28	16,100.00	109,759.83	109,200.00	298,700.00
BUILDING ACCOUNT	5,300.00	5,300.00	26,500.00	26,500.00	63,600.00
EQUIPMENT & FURNITURE	0.00	0.00	7,741.01	8,700.00	16,400.00
EQUIPMENT MAINTENANCE	19,526.63	21,600.00	42,656.76	42,000.00	84,700.00
OFFICE SUPPLY EXPENSE	1,460.77	600.00	4,121.84	2,800.00	6,800.00
POSTAGE EXPENSE	0.00	100.00	163.51	400.00	1,000.00
SHIPPING EXPENSE	1,441.70	2,100.00	11,514.92	13,300.00	25,000.00
TELEPHONE EXPENSE	1,361.33	800.00	6,264.32	4,000.00	9,800.00
STAFF EXPENSE	846.15	800.00	3,958.00	3,500.00	9,100.00
STAFF EDUCATION	0.00	0.00	3,385.78	3,500.00	8,500.00
CLE COMMITTEE EXPENSE	0.00	0.00	428.20	0.00	500.00
BOND & INSURANCE	988.04	900.00	4,940.22	4,300.00	10,600.00
PROFESSIONAL FEES	2,500.00	2,000.00	7,500.00	7,000.00	7,000.00
CASUAL LABOR	0.00	0.00	0.00	0.00	500.00
SEMINAR DIRECT	15,577.77	11,000.00	295,903.02	265,700.00	356,900.00
E-CLE ACCESS	7,501.16	9,100.00	37,461.99	45,600.00	111,600.00
PUBLICATION DIRECT	7,319.70	11,400.00	58,047.22	62,700.00	129,200.00
PUBLICATION ROYALTIES	0.00	0.00	(9.75)	0.00	80,000.00
CONVENTION	0.00	0.00	0.00	0.00	310,100.00
MEDIA SERVICES DIRECT	86.39	0.00	986.77	800.00	5,000.00
BANKCARD CHARGES	4,415.66	3,100.00	18,008.41	16,300.00	55,000.00
MARKETING	14,328.42	14,300.00	49,534.85	49,000.00	60,000.00
TOTAL EXPENSE	\$168,714.08	\$173,300.00	\$1,047,020.07	\$1,035,800.00	\$2,543,600.00
NET CHANGE	(\$24,445.15)	(\$42,600.00)	(\$154,096.39)	(\$160,000.00)	\$3,500.00

MEMORANDUM

TO: House of Delegates
FROM: Vince Northcutt, Workers' Compensation Section, Chair
DATE: January 23, 2020
RE: Amendments to Section Bylaws to Increase Section Dues

The Section has 473 members and would like to continue to expand and provide quality programs and services to Section members. The Section requests that the House of Delegates approve an increase in Section dues from \$15.00 annually to \$20.00 annually for co-sponsoring CLEs, marketing and member outreach.

ARTICLE II

Membership and Privileges

Section 1. Any member of the South Carolina Bar may join the Section. Yearly dues are ~~\$15.00~~ \$20.00, payable in advance to the South Carolina Bar by January 1. Dues are not prorated. However, new members joining after November 1 and paying ~~\$20.00-\$15.00~~ \$20.00 will be credited as paid through December 31 of the following year.

We appreciate your consideration and continued support of the Workers' Compensation Section.

TO: House of Delegates
FROM: Jeff Tibbals
DATE: January 7, 2020

RE: Request for Approval of Pro Bono Board Bylaws

Several years ago, the South Carolina Bar, South Carolina Legal Services, the South Carolina Bar Foundation, and the SC Access to Justice Commission created a new South Carolina Bar Pro Bono Board, which restructured and replaced the former South Carolina Bar Pro Bono Committee. During the course of that process, formal Bylaws were not created for the Pro Bono Board. On January 7, 2020, a majority of the membership of the Pro Bono Board voted to adopt the attached Bylaws. Many of the provisions in the Bylaws mirror those found in the bylaws of the Bar's sections and divisions, with others being unique to the purpose and composition of the Pro Bono Board. The Pro Bono Board requests that the House of Delegates approve the Bylaws of the Pro Bono Board.

BYLAWS OF THE PRO BONO BOARD OF THE SOUTH CAROLINA BAR

ARTICLE I

Name and Purpose

Section 1. This Board shall be known as the Pro Bono Board of the South Carolina Bar.

Section 2. The purpose of the Pro Bono Board shall be to support pro bono legal services in each judicial circuit to low-income individuals and qualified non-profit organizations through training, technology, recognition, recruitment and mentoring.

ARTICLE II

Membership and Privileges

Section 1. This Board shall be comprised of one attorney representative from each judicial circuit in the state. A judicial circuit may have two representatives at the discretion of the Chair. The representative(s) shall live or practice in the judicial circuit being represented. The Board shall also include an Immediate Past-Chair; two at-large members, who may be non-lawyers; one circuit court judge; one family court judge; one bankruptcy court judge; the Director of South Carolina Court Administration or their designee; a representative of the Young Lawyers Division; and a representative of the Senior Lawyers Division. All attorney members shall be members in good standing of the Bar.

The Chair, with input from members of the Board, shall, no later than April 1, recommend names of potential Board members to the President of the South Carolina Bar for consideration for appointment in accordance with Article VIII, Section 8.1 of the Bylaws of the South Carolina Bar. All members shall serve two-year terms and may serve one consecutive term at the invitation of the Chair and with approval and appointment by the President of the South Carolina Bar pursuant to Article VIII, Section 8.1.

Section 2. The Board shall be staffed by the Director of the South Carolina Bar Pro Bono Program and the Pro Bono Program Paralegal, who shall assist the

officers and members of the Board in the work of the Board in the manner and to the extent requested. The Pro Bono Program Director shall keep a true record of the proceedings of all meetings of the Board and, in conjunction with the Chair, shall attend generally to the business of the Board. The Pro Bono Program Director shall review the record of all monies appropriated to and expended for the use of the Board. If the Pro Bono Program Director is absent from a meeting, the Public Services Director or Executive Director shall perform the duties of the Director at the meeting.

ARTICLE III

Officers

Section 1. The officers of the Pro Bono Board shall be a Chair and a Chair-Elect. The Chair shall be appointed by the President of the South Carolina Bar in accordance with Article VIII, Section 8.1 of the Bylaws of the South Carolina Bar and shall serve a one-year term beginning July 1 and ending June 30. The Chair-Elect shall be appointed by the President of the Bar from the Circuit Representatives on the Board and shall serve a one-year term beginning July 1 and ending June 30. At the end of his or her term, the Chair-Elect shall, upon appointment by the President of the Bar as set forth above, assume the office of Chair. The immediately retiring Chair shall remain a member of the Board, as Immediate Past-Chair, for the ensuing year.

Section 2. The Chair shall be the Chief Executive Officer of the Board during his or her term of office, and in carrying out the administrative duties of the position shall make all recommendations to the President of the Bar for appointment of members and be possessed of such authority as is customarily associated with the office.

Section 3. In addition to presiding in the absence of the Chair, the Chair-Elect shall, upon the death, resignation, or disability of the Chair, or upon the Chair's refusal to act, shall perform the duties of the Chair for the remainder of the Chair's term, except in the case of the Chair's disability and only during so much of the Chair's term as the disability continues.

ARTICLE IV

Circuit Representatives

Section 1. Each circuit representative shall serve a two-year term to begin July 1 in the year in which the representative is appointed and end June 30 of the second year of service. A circuit representative is eligible to serve one consecutive term at the discretion of the Chair and upon appointment by the President of the South Carolina Bar.

Terms shall be staggered so that terms of representatives of odd-numbered circuits end in odd-numbered years and terms of representatives of even-numbered circuits end in even-numbered years.

Section 2. Each circuit representative shall maintain an office or residency in the judicial circuit to be represented during the term of service as a circuit representative.

Section 3. Circuit representatives should provide information about pro bono opportunities to bar members in their circuit and encourage pro bono service by those members. Circuit representatives should also communicate pro bono needs in their circuit to the Director of the South Carolina Bar Pro Bono Program and work with the director to coordinate outreach efforts, such as clinics, to meet those needs. Circuit representatives may also be called upon to provide assistance to the director in locating an attorney in their circuit who may be willing to assist an applicant of the Pro Bono Program with a legal matter.

Section 4. Circuit representatives should also develop and maintain a relationship with a resident circuit court judge and resident family court judge in their circuit to provide additional support for and encouragement of pro bono service. These judges should be willing to advise and assist the circuit representative in implementing pro bono initiatives in their circuit.

ARTICLE V

Judicial Members

Section 1. The judicial members of the Board shall serve two-year terms to begin July 1 of the year of appointment and end June 30 of the second year of service and may serve one consecutive term at the invitation of the Chair and with approval and appointment by the President of the South Carolina Bar.

ARTICLE VI

Division Members

Section 1. The Young Lawyers Division and Senior Lawyers Division shall each recommend to the Chair, for appointment by the President of the South Carolina Bar, a representative from their division to serve on the Board. The representatives shall serve two-year terms to begin July 1 of the year of appointment and end June 30 of the second year of service and may serve one consecutive term at the invitation of the Chair and with the approval of their Division, and with approval and appointment by the President of the South Carolina Bar.

ARTICLE VII

At-Large Members

Section 1. At-large members may be non-lawyer members who represent entities other than law firms that provide pro bono services to the public.

Section 2. At-large members shall serve a two-year term to begin July 1 of the year of appointment and end June 30 of the second year of service may serve one consecutive term at the invitation of the Chair and with approval and appointment by the President of the South Carolina Bar.

ARTICLE VIII

Committees

Section 1. The Chair may designate committees, including their duties and size, deemed necessary to carry out the purposes of the Board.

Section 2. All committee chairs and committee members shall be appointed by the Chair for terms coincident with the term of the Chair.

ARTICLE IX

Meetings

Section 1. The Board shall meet at least two times per year on a date determined by the Chair, with such program and order of business as determined by the Chair and the Director of the South Carolina Bar Pro Bono Program.

Section 2. Special meetings of the Board may be called by the Chair at such time and place as the Chair may determine. A member may request a special meeting in writing to the Chair and the Director of the South Carolina Bar Pro Bono Program.

Section 3. A majority of the Board shall constitute a quorum for the transaction of all business at any meeting of the Board. Any action may be taken by the Board by majority vote of those present and voting after a quorum has been determined.

Section 4. The latest edition of Robert's Rules of Order shall govern all meetings of the Board.

ARTICLE X

Amendments

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

ARTICLE XI

Effective Date

These Bylaws shall become effective July 1, 2020, with the terms of current Board members serving in positions outlined in Article II, Section 1 being calculated as having begun on that date. The terms of the current Chair and Vice-Chair, who will become the Chair-Elect upon the effective date of these Bylaws, shall also be calculated as having begun on that date.

There are no written materials for this item.

There are no written materials for this item.

Report of the President

January 23, 2019

Beverly A. Carroll

South Carolina Bar Programs and Services

Communications

SC Lawyer magazine published its first-ever themed issue in November focused on attorney wellness. A companion digital campaign launched to feature members' wellness stories with the goal of breaking down stigma of asking for help and inspiring others. The video interview featuring Justice John Kittredge garnered more than 3,000 impressions on Twitter and was November's highest performing post on the platform.

The Communications team also worked with Pro Bono Program Director Betsy Goodale to deploy a multi-media **Celebrate Pro Bono campaign** in late October and early November featuring South Carolina attorneys who volunteer to assist survivors of sexual assault and domestic violence.

The Communications team continues to deploy a **digital communications strategy** throughout social media and online platforms to showcase member stories, various career successes and contributions to the community.

E-Blast—the SC Bar's email newsletter for members that features important news items, advance sheet summaries, court news, job openings, tech tips, and firm announcements—will receive an updated look in 2020. Content will remain the same, but it is being tweaked for ease of reading on both mobile devices and desktops. The E-Blast is distributed twice a week, on Tuesdays and Thursdays, from Labor Day until Memorial Day. The newsletter hits inboxes on Thursdays during the summer.

Currently, the Bar's Twitter (@SCBar) has 4,969 followers with an average of 70,000 impressions per month; Facebook has 3,985 likes and with an average reach of 20,000. The team is focusing on placing member-specific content on the LinkedIn page, and this approach has netted increased engagement averaging 13,000 impressions in November 2019. The YLD Instagram account has 1,188 followers.

A printed edition of the **2019-2020 Lawyers Desk Book** was offered to members and delivered in September 2019. The information is also available online at www.scbar.org/deskbook. A printed edition of the **2020-21 Lawyers Desk Book** can be ordered when license fees are paid. Cost is \$35 per copy.

The Communications team was honored with several awards by the S.C. Society of Association Executives including Best in Business Awards for the magazine, 2019 Convention marketing, and Cinderella Project campaign. The team also received a Palmetto Award for the top non-profit campaign for the Cinderella Project from the International Association of Business Communicators-SC Chapter.

Continuing Legal Education

The CLE Division continues to offer a variety of program options featuring a wide range of content, as well as pricing options, formats and locations around the state in order to give members the best value, variety and flexibility possible. Available formats include live seminars and hands-on interactive workshops, audio webcasts, teleseminars (via telephone), and live and on-demand audio/video webcasts.

Seminars

The CLE Division sponsored 36 seminars from July 2019 to January 2020. Topics included family law, mediation training, equity, probate, real estate, social security, trial practice, construction law, employment law, children's law, military, workers' compensation, ethics, civil procedure, health care fraud, and law office technology.

Alternatively Delivered Programming

The CLE Division offers more than 450 on-demand programs in more than 50 substantive and practical skills categories and ranging in length from 30 minutes to 6 hours. Members can watch live webcasts of seminars in real time, or pause, rewind and review archived online programs for up to 30 days. The Division has released 81 new online, on-demand programs, held 23 live webcasts, and hosted 139 teleseminars since July.

The CLE Division has also partnered with the Media Services and Communications Division to create a Big Ticket marketing campaign that features Bar members who have purchased the Big Ticket. The Division has also begun working with the Executive Director, the Communications Division and the Media Services Division to create and launch a new CLE website designed to provide a more user-friendly and customized platform for members to access all CLE content, including live seminars, online programs, books and software.

Convention

The 2020 SC Bar Convention in Columbia features:

- 24 seminars with 130+ speakers, including Senior Lawyers Division Symposium
- 30 Exhibitors; 28 Sponsors (corporate and law firm)
- Events: Welcome Reception at Pastides Alumni Center, the Plenary Luncheon, Tours of SC Supreme Court and Court of Appeals, Judicial and Legislative Receptions, Craft Axe Throwing, State House and History of Columbia tours, and a Celebration of 100 Years of the 19th Amendment, co-sponsored with SC Women Lawyers Association.

REMINDER: The 2021 Convention will be held January 21-24, 2021 at Belmond Charleston Place.

Publications

Titles that have been published since July 2019 include:

- *Pocket Prelims*
- *Labor and Employment Law for SC Lawyers: Fifth Edition (Volumes I and II)*
- *SC Evidence Handbook Annotated, Fourteenth Edition*
- *SC Rules Annotated 2019*
- *Deeds of Conveyance*
- *The Law of Workers' Compensation Insurance in SC, Seventh Edition*
- *SC Community Association Law: Condominiums and Homeowners Associations*
- *Health Care Fraud and Collateral Consequences, Third Edition*
- *Social Security Disability Cases in SC, Fourth Edition*

The team also released and is promoting publications T-shirts. A contract was executed with FastCase for electronic delivery of selected CLE publications.

Government Affairs Division

The Government Affairs Division maintains a presence at the State House to monitor and advise on a variety of issues important to the legal community and to serve as a resource for South Carolina's lawyer legislators. Some highlights of the 2019 Legislative Session include a judicial salary increase and passage of the following bills, which were supported by the Bar and its various committees and sections: H.4004, Physician Orders for Scope of Treatment (POST) Act; H.3602, Health care decisions for unable to consent persons; and H.3243, Filing and recording fees. 2020 is the second year of a two-year session and the Division will continue to monitor and advise on interests of our sections and committees including family law issues, e-notary/remote notary and general session docketing. The annual Legislative Reception was held January 22, 2019 at the Capitol Center. The **Lawyer Legislator Committee** is planning a January meeting and a reception to be held at the University of South Carolina School of Law.

The Government Affairs Division also continues to work with the Vulnerable Adult Task Force and on GAL issues. The Probate and Family Law sections and the Elder Law Committee continue to be consistently engaged in legislative activity.

Lawyers Helping Lawyers

Over 80 lawyers have been trained in Mental Health First Aid, which was offered to all members free in spring and fall 2019 thanks to support from the Board of Governors. The article about Mental Health First Aid in the November issue of *SC Lawyer* magazine sparked more interest and will help fill another training in early 2020.

Lawyers Helping Lawyers Co-Director Beth Padgett recently served as conference co-chair for the 2019 National Conference for Lawyer Assistance Programs in Austin, Texas. This year's event titled "From Surviving to Thriving: LAPs Lead the Way," offered attorneys, judges and Bar leaders an opportunity to learn about issues that directly impact on the legal community's well-being, and how lawyer assistance programs operate.

Roy Laney, Robert Turnbull, and Ryan Pasquini also represented the SC Bar at the conference.

Beth Padgett continued to provide counseling services for students at both law schools. She also taught a mindfulness stress management series at both law schools in the fall.

Ryan Pasquini has served as an intern with LHL since June. He graduated from USC School of Law in December and is preparing to take the Bar exam in February. He is completing a data base/case management system for improved client care and reporting purposes.

Wellness videos and a mock Corp-Care call have been completed, posted on the website and the videos were shared on social media. The Communications staff developed a palm card with information about the five free counseling sessions to help promote this resource. The business-sized cards have been very popular with more than 1,500 distributed since July. LHL continues to get new clients on a weekly basis.

Law Related Education

The SC Bar's Law Related Education (LRE) is a service arm of the Bar that, since the mid-1980s, has provided teachers, school resource officers, juvenile justice personnel, and lawyers with resources, materials and technical assistance to teach law and citizenship education. Director Cynthia Cothran along with Manager Donald Lanier and Coordinator Marian Kirk carry out the statewide programs and since July have organized the following programs:

Middle School Mock Trial: Buist Academy for Advanced Studies won its first State Middle School Mock Trial Championship in December at the Richland County Central Court at Decker Center. Socastee Middle was named the first runner-up, and Chapin Middle School was awarded their second State Professionalism and Civility Award. A total of 41 Middle Schools competed in five regional competitions with 12 teams advancing to the state competition. The regional and state competitions were possible thanks to more than 175 volunteers, who served as coaches, judges, and coordinators.

High School Mock Trial: LRE released the 2020 High School Mock Trial case on October 31, 2019. A total of 53 teams registered to compete. Plans are underway for the High School teams to compete in five regional competitions on February 22nd in Columbia, Conway, Georgetown, Greenville and Lexington with a culminating state competition March 13 and 14, 2020, in Columbia.

We the People: The Citizen and the Constitution: The 2019 State We the People Competition for middle school and high schools was held December 13, 2019 at River Bluff High School in Lexington. LRE looks forward to announcing the State High School Champion that will represent SC at the national competition this spring. In addition, South Carolina received a wild card team slot for the national competition. This means LRE will be able to send the first-runner up to the national competition if they would like to advance as well.

Trainings: The Division hosted webinar trainings for Mock Trial and Law for Teachers. Trainings were held statewide to prepare teachers for implementation of LRE programs.

Membership Services

Candidates have been selected and the 2020 Leadership Academy begins February 7, 2020. This highly selective program is designed to train the next generation of Bar members and community leaders.

Staff also prepared materials for and worked with 306 new lawyer admittees as a part of the November 19, 2019 swearing-in ceremony.

Practice Management Assistance Program (PMAP)

PMAP Director Courtney Troutman conducted over 70 phone consultations with law firms on practice management related issues, including questions about retirement, opening a law firm, choosing technology, trust account issues, trust account check forgery, and cybersecurity. The PMAP Division also assisted the widow of a Bar member practicing out of state; updated PMAP pages, checklists, and other content on Bar website; and answered numerous email inquiries from members.

PMAP also assumed oversight and management of the member benefits discounts program. The team worked to organize over 65 vendors, including: analyzing and organizing contracts; reviewing marketing and accounting; reviewing vendor websites and enforcing trademarks; making numerous contacts with vendor representatives; and responding to numerous requests from current and prospective vendors. A Member Benefits Task Force was established and met in December. Its work is continuing.

The PMAP team responded to member requests for assistance with Fastcase, which is provided to all Bar members for free. In addition, PMAP worked with Fastcase employees on updates, member training, beta testing version 7, and a CLE at the Bar Convention. The Communications Division assisted with updating Fastcase web pages.

In addition, the PMAP team coordinated large law book donations from seven contributors through the Bar Book Exchange; drafted and shared regular tips for e-Blast and Twitter; assisted members with the Lending Library and added new publications; assisted with research into mentoring software; and posted

64 free practice management or technology webinars available at www.scbar.org/pmap. The PMAP Director attended the Fellows meeting and Futures Conference of the College of Law Practice Management in Nashville in October and presented on technology best practices at CLEs in August, September and October.

Pro Bono Program

The Pro Bono Team has been working to get the information in Legal Server updated and on expanding the use of Legal Server to better match pro bono applicants with volunteer attorneys. We continue to need volunteer attorneys. The need is especially great for family law volunteers, particularly in Richland County. A request has been made to the Richland County Bar Association to send out a call for members to volunteer. In addition, Olivia Jones and Brett Stevens, the Fifth Circuit Representatives on the Pro Bono Board, have proposed a new family court initiative, which Pro Bono Program Director Betsy Goodale has sent to the Chief Justice with a request that he lend his support to the project. If it is successful in Richland County, it could be used in other counties. February is the proposed start date. The first South Carolina Supreme Court Pro Bono Honor Roll will be published in February and will include the names of attorneys who have reported with their license fee statements that they performed 50 or more hours of pro bono service in 2019.

Public Services Division

The Bar offers a variety of free, public programs designed to connect volunteer attorneys with their communities. Cindy Coker leads this division, which includes the Pro Bono Program, clinics, and the statewide Lawyer Referral Service. From July through December 2019, 221 lawyers provided public information through legal clinics, Law School for Non-Lawyers and the Ask A Lawyer phone banks. More than 1,850 people were served through these programs.

The following programs continue to be available to the public:

Law School for Non-Lawyers

Fall courses were held at Tri-County Technical College Spartanburg Community College and Midlands Technical College. Spring sessions are scheduled for Florence Darlington Technical College (Florence), Horry Georgetown Technical College (Conway) and Trident Technical College (Charleston).

Free Legal Clinics

More than 50 clinics were held statewide from July to December 2019. The clinics will begin again in January with at least 50 already scheduled.

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. Events were held at WLTX in Columbia, WSPA in Spartanburg and two at WCSC in Charleston. In 2019, 859 individuals were able to speak to or chat with a lawyer during an AAL session. Sessions will be scheduled for the spring.

Lawyers' Fund for Client Protection

The Lawyers' Fund for Client Protection reimburses clients for money or property mishandled by Bar members. Changes to Rule 411 were approved by the Court to shorten the terms and allow a member of the Lawyers' Fund for Client Protection Committee to succeed themselves. New members were appointed to the Committee, and the Committee is working on changes to the procedural rules. Currently 46 claims

are pending. The Committee published the FY18-19 annual report in September and it is available on the SC Bar website.

Fee Disputes Committee

There are currently 72 open cases. Chairs for the Third and Seventh Circuits will be replaced. Regional CLEs for volunteers will begin in February.

Lawyer Referral Service

The new Community Lawyer platform software implemented in summer 2019 is working well and is user-friendly for lawyers and clients seeking online referrals.

Free Legal Answers

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. The platform has been promoted in SC Lawyer magazine and via social media. Since January 2019, 1,350 questions were answered for 1,288 clients.

Risk Management and Mentoring

Risk Management Director Nichole Davis oversees implementation of the Lawyer Mentoring Program, serves as a faculty member for ethics CLE programs, provides diversity training, and administers the Ethics Hotline, and coordinates the activities of the following committees: Ethics Advisory, Professional Responsibility, and Professional Liability.

Mentoring Program

The Bar administers the mandatory Lawyer Mentoring Program, which includes recruiting new mentors, providing mentor training, and fostering mentor/mentee relationships.

On October 1, 2019, the New Lawyer Mentoring Program portal (<https://connect.scbars.org/mentoring>) was launched. The portal has a self-matching feature which enables participants to find their own mentors or mentees to ensure mutually beneficial mentoring relationships.

The nomination period for the G. Dewey Oxner Jr. Mentor of the Year Award began on November 22.

Ethics Hotline

Nichole Davis is available to answer members’ ethics questions, provide analysis of the Rules of Professional Conduct as applied to certain facts, and make recommendations regarding risk management, while leaving final decisions to the inquiring Bar member. All conversations are confidential and protected by Rule 8.3(f) of the S.C. Rules of Professional Conduct. Members can call (803) 799-6653, ext. 178 or send an email to ndavis@scbar.org.

Committees, Divisions and Sections

The Alternative Dispute Resolution (ADR) Commission has proposed changes to ADR Rule 9 and several ADR forms, which are currently pending before the Court. The Commission is continuing to evaluate rules, training programs and issues related to technology and dispute resolution.

The **Animal Law Committee** continues to add topics to its Animal Resource Guide. The guide will assist in

researching issues in animal law, animal rights and animal welfare.

The **Dispute Resolution Section** is working on offering advanced mediation courses for specific practice areas as well as looking at proposing changes to existing statutes dealing with arbitration in auto accident cases.

The **Elder Law Committee** published a training manual for Probate Courts to use when training their Guardians ad Litem.

The **Judicial Qualifications Committee** completed the annual screening in September, screening 54 incumbents and candidates. This screening cycle included eight contested seats.

The **International Law Committee** is coordinating with the University of South Carolina Law School on the VIS Moot Competition, an annual international arbitration competition held in Vienna, Austria.

Senior Lawyers Division

Members who were admitted to practice in 1969 were honored at the Nifty Fifty luncheon on October 18 in Columbia.

The Division hosted an Ireland excursion, Oct. 20 – Nov. 2.

The SLD Lawyer Assistance Program (LAP) is making plans to facilitate a two-hour cognitive engagement training for volunteers.

The **Solo and Small Firm Section** planned and coordinated a successful technology CLE on December 13; oversaw elections of a new council and nominations for and the selection of the Solo & Small Firm Section Lawyer of the Year award. The Section also worked with Communications on press release announcing award recipient, Tiffany Provence. The Bar staff liaison Courtney Troutman oversaw the completion of a marketing piece for the license fee statements, updated Section web pages; contacted new Bar admittees to offer free Section membership; and managed all aspects of member email list participation.

The **Technology Committee** organized the technology CLE at the 2020 Bar Convention; took over the Drone Taskforce and merged it with the Technology Committee; wrote original content for publication; and assisted with various research projects.

The **Intellectual Property and Innovation Committee** was re-launched this year. Courtney Troutman worked with chair and other members to facilitate regular conference calls and design a survey for committee use.

The **Wellness Committee** hosted a #WalkWithUsChallenge in which Bar members used the Strava app to “travel” from Charleston to Los Angeles. The group walked a total of 2,595 miles in six weeks.

Young Lawyers Division

The YLD hosted the following events:

- Color of Justice Roadshow at The University of South Carolina
- Professional Development event at Top Golf
- Special Olympics lunch and learns in Greenville and Columbia
- Special Olympics bowling buddies events in Greenville and Charleston

- A nonprofit professional development session in conjunction with the young leaders from the United Way
- New member receptions in Myrtle Beach, Columbia, Lexington and Greenville

The **Voices Against Violence Committee** collected essential supplies to benefit shelters across the state during the fall. The group participated in the 13th Annual Mayor's Walk Against Domestic Violence in Columbia.

The iCivics project under the direction of the **Community Law Week Committee** participated in Constitution Day, on September 17, 2019, and 31 attorney volunteers served 1,450 students in eight counties.

There are no written materials for this item.

TO: SC Bar House of Delegates
From: Michael Virzi, SC Bar Professional Responsibility Committee
RE: Proposed Amendments to Rule 1.10, SC Rules of Professional Conduct

This proposal, voted upon favorably by the Professional Responsibility Committee, was originally presented to the House in January, 2018. While the House vote was favorable, the South Carolina Supreme Court, in a letter to the Bar's Executive Director, expressed a concern that the history of the ABA's adoption of the Rule provided to the House prior to vote was incomplete. The Court therefore declined to consider the rule, noting that return of the petition, "should not be construed as an indication the Court opposes the proposed amendments. Rather, the request has been made because the Court is concerned that the Professional Responsibility Committee and the House of Delegates may not have been provided with complete information and background with respect to the proposed amendments".

This resubmission for your consideration does not amend the rule previously receiving a favorable vote, but instead serves to more thoroughly document the history of the similar Model Rule's adoption by the ABA's House of Delegates, and to distinguish the SC proposed Rule from the ABA Model Rule, where appropriate, so that you may consider accurately that history in casting your vote. The report is different, the proposed Rule language is not.

In 2009, the American Bar Association's Standing Committee on Ethics and Professional Responsibility submitted Proposal 109, to amend Model Rule 1.10, to the ABA's House of Delegates for consideration. The Committee provided an accompanying report, which provided background on screening.

The proposal was the subject of 90 minutes of spirited debate on the House floor, and the final vote was 219-183 in favor of the measure. Subsequently, the Standing Committee proposed a clarifying amendment 6 months later, which was approved.

According to the ABA's 2015 tally, "33 states have adopted rules permitting lateral screening with various conditions (AZ, CO, CT, DE, DC, HI, ID, IL, IN, IA, KY, MD, MA, MI, MN, MT, NV, NH, NM, NC, ND, NJ, OH, OR, PA, RI, SC, TN, UT, WA, WV, WI, and WY); out of those, 30 states have rules substantially similar to the revised ABA Model Rule 1.10 (CO, CT, DE, DC, HI, ID, IL, IN, IA, KY, MD, MA, MI, MT, NM, NV, NH, NJ, NC, OH, OR, PA, RI, SC, UT, WA, WV, WI, and WY)". Members will note that SC is already included in the list. The adoption of the proposed amendments will remove some of the current screening prohibitions

still found in the SC version of the Rule (the chart and limited summary may be found [here](#).)

The Committee's proposal creates a limited exception to the imputation rule, most commonly where a lawyer makes a lateral move from one private firm to another, and the lawyer becomes adverse to his or her own former client. The Rule requires that certain specific notifications still be given to the former client, but it does not require consent of the former client.

This limited proposal does not permit lawyers within a law firm to use the screening permissions to simultaneously represent and be adverse to the same client of the firm in either unrelated matters or other consentable conflicts except with client consent as provided in Rule 1.10(c). In other words, the screening procedure prevents imputing only those conflicts that arise under Rule 1.9 as to the former clients of a lawyer moving between firms and does not limit concurrent conflicts that arise under Rule 1.7 in any way.

While some might argue that the proposed lateral screen would allow "side-switching", the Committee reminds the membership that the provisions of Rule 1.9 (a) would still prohibit a lateral from being adverse to a client of the former firm. The intention is to rebut the imputation of a conflict that would affect all other members of the lateral's new firm. Additionally, this amendment will provide parity between private lawyers making a lateral transition and the express screening provision already in Rule 1.11 permitting former government lawyers to move into private practice.

The Committee believes this is a meaningful amendment that imposes practical lateral screening for protection of clients and will simultaneously allow for mobility of lawyers.

Based upon the actions of the ABA and the other states that have adopted similar rules, the Professional Responsibility Committee respectfully requests adoption of the proposed amendments to Rule 1.10, SCRPC.

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(l) 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.

**PROFESSIONAL RESPONSIBILITY COMMITTEE PROPOSAL
TO REVISE THE RULES OF PROFESSIONAL CONDUCT
RELATED TO LAWYER ADVERTISING AND SOLICITATION
(August 1, 2019)**

PART 1: INTRODUCTION

The Regulation of Lawyer Advertising Committee of the Association of Professional Responsibility Lawyers (APRL) conducted a three-year study of the rules and regulations for law firm advertising and solicitation across the country. In September 2016, APRL requested that the ABA Standing Committee on Ethics and Professional Regulation (SCEPR) review the reports prepared by the Regulation of Lawyer Advertising Committee and consider amending relevant provisions of the Model Rules of Professional Conduct. SCEPR studied APRL's proposals and other materials, disseminated information about their analysis and conclusions, and considered comments from the public and various interested groups. SCEPR determined that "the current advertising rules are outdated, may be overly restrictive of commercial speech, and could hamper the ability of lawyers to adapt to the changes in technology that affect the practice of law, and influence how consumers learn about available legal services."¹

SCEPR identified several objectives to be met by revising the advertising and solicitation provisions of the ABA Model Rules:

1. uniformity among the states;
2. simplification of the rules;
3. continuation of the prohibition on false or misleading communications;
4. accommodation of developments in the legal profession, technology, and competition; and,
5. interest in "free[ing] regulators from the onerous and complicated provisions now in place, and focus attention on harmful conduct."

In July 2018, SCEPR released a revised draft of proposed Resolution and Report 101, which was adopted in August 2018 by the ABA House of Delegates.

On August 17, 2018, the South Carolina Bar Professional Responsibility Committee formed an Advertising Subcommittee to review the revised Model Rules, to consider additional proposed changes from various sources, and to study the current version of the South Carolina Rules of Professional Conduct in order to make recommendations to the Committee. The Advertising Subcommittee included lawyers from a variety of practice areas, including general practice, plaintiff's personal injury, insurance defense, criminal defense, trusts and estates, alternative dispute resolution, legal malpractice, and

¹ See, Memorandum in Support of Working Draft of Proposed Amendments to ABA Model Rules of Professional Conduct on Lawyer Advertising, SCEPR, Barbara S. Gillers, Chair (12/21/17).

ethics.² On April 26, 2019, the Advertising Subcommittee submitted its report and recommendations to the Professional Responsibility Committee, which voted to approve the proposal on June 21, 2019.

The work of the Advertising Subcommittee was informed by three primary considerations:

1. Trust in the legal profession is built on the assurance that lawyers will be regulated in a manner that protects the public. Although the public is somewhat desensitized to advertising generally, there remains a fundamental necessity to prohibit false, deceptive, and coercive advertising by lawyers. While attention must be paid to the constitutional right of free speech for lawyers, such must be balanced with the unique position of influence they hold in society and in the marketplace.
2. With the remarkable advances in technology in recent decades, the world is getting smaller. The advent of multi-jurisdictional practice and the expansion of regional, national, and global law firms are putting pressure on traditional geography-based regulation of the practice of law. This gives rise to the need for more simplicity and uniformity among the states with regard to the regulation of lawyer advertising.
3. While uniformity has its advantages, the South Carolina version of the Rules of Professional Conduct reflect our state's values. Provisions in our Rules that differ from the ABA Model Rules have come from thoughtful study and experience. In particular, the South Carolina Rules of Professional Conduct contain a number of specific requirements and prohibitions related to lawyer advertising and solicitation that afford South Carolina lawyers specific guidance on what is considered "false, deceptive, and misleading." This is an advantage for practitioners in our state because we are not left to guess at what is and is not in violation of rules written in broad strokes. In fact, South Carolina's specific requirements and prohibitions are not all that different from that of other jurisdictions. The difference in other states is that they are found in case law and formal advisory opinions; a potential pitfall for new or out-of-state lawyers.

With these basic considerations in mind, the Advertising Subcommittee began with the premise that on the whole, South Carolina's rules should be as close to the ABA Model Rules as possible while still maintaining particular provisions that both reflect our values and provide practitioners with useful guidance, rather than regulation for the sake of regulation. The Advertising Subcommittee then examined each new amendment to the ABA Model Rules and either recommended the change, recommended the change with modification, or rejected the change. In addition, the Advertising Subcommittee considered several proposals to revise the South Carolina version of the Rules that were

² The Advertising Subcommittee members were Barbara M. Seymour (chair), Leeds Barroll, Sherri Marie Carr, Stephen Groves, David J. Miller, Melissa Mosier, Thomas Pendarvis, and Margaret Up De Graff.

not found in the ABA Model Rules. Finally, the Advertising Subcommittee took this opportunity to discuss some general revisions and corrections to enhance the consistency and clarity of language in the relevant Rules.

Attached is a redlined version of the proposal that includes both the adoption of some of the Model Rule revisions and changes to existing South Carolina provisions that are not contained in either the prior or current Model Rules. (**Attachment 1**) New language is underlined and deleted language is ~~stricken~~. Also attached is a chart setting out the substantive differences in the South Carolina Rules and the newly-revised Model Rules. The chart very generally summarizes the PR Committee's proposals. (**Attachment 2**) Finally, we have attached a clean copy of the proposed revised Rules. (**Attachment 3**)

The Professional Responsibility Committee recommends that the Supreme Court publish this petition for public comment prior to making its final determination.

PART 2: PROPOSED GENERAL REVISIONS

The proposed amendments contain three general, nonsubstantive revisions. First, in the current version of the SC Rules, references to "this rule" and "these rules" vacillate between capitalized (Rule) and lower case (rule) for no apparent reason. The PR Committee recommends taking this opportunity for consistency and agreed that such references should use the capital.

Second, the PR Committee recommends moving from the use of the word 'advertising' to the broader 'marketing'. Traditional advertising remains only a small part of modern law firm marketing. Reducing or eliminating the word 'advertising' ends the debate about whether use of a particular medium (such as a website) is considered to be 'advertising' regulated by the Rules. Throughout the proposal, we are recommending changing the word "advertising" to "communications subject to this Rule" or "marketing" to emphasize the scope.

Third, throughout Rule 7.3, the potential client is referred to in a number of different ways ('person solicited', 'intended recipient', 'target of the solicitation', etc.) The PR Committee recommends making these references consistent throughout. The term 'target of the solicitation' seems to be the most accurate.

PART 3: PROPOSED REVISIONS TO RULE 7.1 **Communications Concerning a Lawyer's Services**

Rule 7.1 governs all communications regarding the services of a lawyer or law firm. It stands for the basic premise that such communications may not be false or misleading. Over time, the ABA Model Rules and (to a greater extent) the South Carolina Rules have been revised with the addition of subsections and commentary that provide specific prohibitions. The revised ABA Model Rules generally relegate these examples of communications that are *per se* misleading to the Comments. The PR Committee carefully considered this approach and, for the most part, rejected it. By adopting the list of *per se* misleading communications in the current version of our Rule, the Supreme Court provided lawyers with specific conduct that it considered misleading. This is good

for lawyers. A general prohibition on ‘misleading’ advertising (even with guidance in Comments) creates a level of unpredictability that can ensnare lawyers who are trying to conduct themselves ethically, but who do not accurately anticipate what the Office of Disciplinary Counsel, the Commission on Lawyer Conduct, or the Supreme Court might find to be misleading in hindsight. The PR Committee recommends retaining the subsections in Rule 7.1 that limit use of statements that created unjustified expectations (Rule 7.1(b)), comparative statements that cannot be factually substantiated (Rule 7.1(c)), and testimonials without certain disclosures (Rule 7.1(c)).

Use of Nicknames

On October 1, 2005, the Supreme Court adopted comprehensive changes to the South Carolina Rules of Professional Conduct following the ABA’s Ethics 2000 revisions to the Model Rules. One such change was the adoption of Rule 7.1(e) and Comment [4], a provision unique to our state at the time, which restricted the use of nicknames. There is no such specific restriction in the current or prior Model Rules. The PR Committee recommends moving the Rule 7.1(e) prohibition on the use of misleading nicknames and monikers to Rule 7.5 (Law Firm Names and Letterhead). This revision would retain the limitation on the use of nicknames, including the explanatory Comment. However, that limitation would be moved to a more logical place, Rule 7.5, which contains the other requirements and restrictions on law firm names and trade names.

Use of Accolades and Awards

The last couple of decades have seen the proliferation of organizations awarding accolades and quality-based designations, such as Super Lawyers, Best Lawyers, and Top Lawyers. Law firm websites, online legal directories, and client review platforms have made such accolades and designations ubiquitous. Some organizations use bona fide, objective criteria and award designations based on merit rather than fees. Other organizations sell badges and listings to tie awards to the purchase of advertisements or subscriptions. In 2017, the question of the propriety of participating with these organizations and using their accolades in lawyer advertising was put to the SC Bar Ethics Advisory Committee. The Ethics Advisory Committee found that the Rules of Professional Conduct did not prohibit participation, *per se*. However, it advised that lawyers who do so must limit that participation in order to avoid misleading the public. The PR Committee recommends adopting the guidance provided by the Ethics Advisory Committee in SC EAO 17-02 for the use of awards and accolades. This proposal includes detailed commentary. This is not a Model Rule provision.

Comment [2] – Additional Guidance

The PR Committee recommends adopting the additional language in Comment [2] from the new ABA Model Rules. This language states that it is misleading to make a statement that would cause reasonable people think that they are required to take action when they are not. For example, a law firm’s television commercial that says “If you have suffered a heart attack after taking Drug X, you must call this number in the next thirty days or risk losing your right to seek compensation!” would violate Rule 7.1 if such action is not necessary or required.

PART 4: PROPOSED REVISIONS TO RULE 7.2

Communications Concerning a Lawyer's Services: Specific Rules

Rule 7.2 provides specific provisions regarding the substance, format, and delivery of communications regarding legal services. The South Carolina version is different from the Model Rules in a number of significant ways. For the most part, the PR Committee recommends retaining South Carolina's version, with some improvements. However, some of the new Model Rule provisions are recommended.

Caption and Scope

The PR Committee recommends adoption of the ABA Model Rule change that would replace the caption to Rule 7.2 ("Advertising") with the more descriptive "Communication Regarding a Lawyer's Services: Specific Rules." The recommended change puts in place a heading that more accurately describes the purpose and content of Rule 7.2. It also standardizes the captions throughout the Rules somewhat (see, e.g., the captions for Rules 1.7 and 1.8).

The PR Committee also recommends adoption of the ABA Model Rule language that states that a lawyer may advertise legal services through "any media," replacing the current "written, recorded or electronic communication, including public media." This broad, general scope eliminates the need to amend this rule as new avenues of advertising and solicitation are created. In addition to promoting uniformity, this change makes it clear that, regardless of the medium, lawyers must comply with the Rules of Professional Conduct.

Rule 7.2(c) – Payment for Referrals

The PR Committee recommends adoption of several Model Rule changes to Rule 7.2(c), which generally prohibits payments in exchange for client referrals. (NOTE that this subsection is numbered 7.2(b) in the ABA Model Rules.) First, the revised rule would add a prohibition making promises of gifts or payment for referrals. This change is more than semantic. In addition to prohibiting the actual payment for referrals, it also prohibits promises of payment – regardless of whether or not payment ever eventuates.

Second, the PR Committee recommends adoption of a new exception in the ABA Model Rules for a "nominal" gift to a referral source, so long as it is a mere token and is not an incentive to make future referrals. The proposed new Comment [9] incorporates the ABA Model Rules guidance on giving nominal gifts. This change is in line with the South Carolina Bar's position on such gifts. (See, SC EAO 15-02)

Third, the PR Committee recommends the adoption of an additional exception currently found in the ABA Model rules that permits non-exclusive, mutual referral relationships between lawyers and between a lawyer and a nonlawyer professional, so long as the client is informed of the agreement. This change is in line with the South Carolina Bar's position on referrals to nonlawyer professionals. (See, SC EAO 18-02)

Rule 7.2(c) – Lawyer Referral Services

South Carolina Rule 7.2(c) permits a lawyer to pay “the usual charges of a legal service plan or a not-for-profit lawyer referral services, which is not itself acting in violation of any Rule of Professional Conduct.” The ABA version of this Rule has been revised to permit paying “the usual charges of a legal service plan or a not-for-profit or qualified lawyer referral services” without the requirement that the plan or service comply with the Rules. The PR Committee recommends retaining the current South Carolina version.

The ABA also revised the commentary to explain what a qualified lawyer referral service is and set up an approval process. The PR Committee agrees that it is important to clarify the meaning of ‘not-for-profit lawyer referral service,’ but suggests an approach that is more in line with the prior version of the Model Rule comments and better serves the spirit of the Rule. The current version of the South Carolina rule is problematic as it defines a lawyer referral service as “any organization that holds itself out to the public as a lawyer referral service.” This is unhelpful. For-profit firms signing up lawyers for the purpose of referrals are just putting on their websites “We are not a lawyer referral service” in order to circumvent the Rule. The PR Committee did not view the Model Rule changes as an improvement. Therefore, we recommend adopting more comprehensive criteria for participation with a lawyer referral service and to put it in the Rule, rather than the Comment. The recommendation also includes further clarification in the new Comment [10]. This ensures that such operations truly are nonprofit and reduces the opportunity for for-profit matching services to mask themselves as objective marketing companies.

Proposal to Combine Rule 7.2(d) and (h)

Currently, subsection (d) of the South Carolina Rule requires all communications subject to Rule 7.2 to include the name and office address of at least one lawyer responsible for its content. Additionally, subsection (h) requires the disclosure of the geographic location of the office where the lawyer who will perform the services principally practices law. The information required by subsection (h) might or might not be included in the office address required by subsection (d). In addition to creating some confusion, these two subsections are commonly violated, resulting in disciplinary action. Combining the two subsections streamlines the Rule in a way that will likely reduce inadvertent failure to comply. This proposal would also amend Comment [10] (which due to other proposed revisions would now be Comment [12]). The new Comment would permit the use of a post office box as a qualifying address to facilitate the efficiencies and economies of virtual law practices, while retaining accountability and avoiding deception. (See, SC EAO 17-01.)

The PR Committee did consider, and recommends rejecting, the ABA revision that would allow the use of an email address or website address to satisfy the ‘office address’ disclosure requirement. The PR Committee has determined that email and website addresses are too impermanent and lack the essential qualities of an ‘office address’ to meet the purposes of this Rule.

PART 5: PROPOSED REVISIONS TO RULE 7.3

Solicitation of Clients

The ABA has significantly revised Model Rule 7.3 by eliminating some provisions and moving others to the commentary under Model Rule 7.1. While the revised Model Rules afford significant improvements to clarity, the PR Committee recommends retaining

significant portions of the South Carolina version of Rule 7.3, with some modifications that will provide additional guidance to Bar members who use direct contact to solicit legal business. Comments have also been revised to account for renumbering, to make grammatical corrections, to conform more closely to the Commentary in the ABA Model Rules, and to conform language related to Rule 7.1(a) that was revised in August 2016 (eliminating “unfair” communication language).

Defining Solicitation and Determining Scope

The PR Committee recommends modifying the definition of “solicitation” to conform to the new ABA Model Rule and moving it from Comment [1] to the rule itself (proposed new subsection (a)). While the substance of the rule does not change, this new structure clarifies the difference between communications that are solicitations and communications that are advertisements. The recommended revisions would also substitute a more general “live person-to-person” description of personal contact with prospective clients for the existing “in-person, live telephone or real time electronic” description. This alleviates the need to further revise this rule as new technologies emerge. The PR Committee has included revisions to the Commentary to reflect this new language.

The PR Committee recommends expanding the list of permissible in-person contacts found in the new Model Rules to include prospective clients who routinely use legal services for business purposes. (See, proposed Rule 7.3(b)(3).) The general prohibitions on in-person contact are designed to protect people from overreaching and coercion by lawyers. Routine business consumers of legal services are not vulnerable to such conduct and permitting lawyers to reach out to them in person should be permissible. The PR Committee has included revisions to the commentary to incorporate this change.

The Committee recommends eliminating the prohibition on direct solicitation in cases of personal injury and wrongful death within the first thirty days. The rule is designed to protect people who are injured or grieving from “intrusion on the personal privacy and tranquility of citizens” and to “forestall the outrage and irritation with the legal profession engendered by crass commercial intrusion by attorneys upon a citizen's personal grief in a time of trauma.” (See current Comment [6].) The idea is that a thirty-day waiting period will protect “the target of the solicitation to direct persuasion that may overwhelm their judgment.” (Id.) While these are laudable goals, compliance with existing general prohibitions on “coercion, duress, harassment, fraud, overreaching, intimidation or undue influence” already protect victims of accidents and their families. Hindering lawyers who routinely represent such people from writing to them immediately following an accident can expose them to the influence of nonlawyer advisors, uninformed family members, unlicensed lawyers unaware of South Carolina’s non-Model Rule provision, and insurance companies and at-fault parties who do not have their best interests in mind.

PART 6: PROPOSED REVISIONS TO RULE 7.4

Communication of Fields of Practice and Specialization

In its 2018 revisions to the Model Rules, the ABA eliminated Model Rule 7.4, moving much of its substantive content to new commentary under Rule 7.1. The PR Committee

recommends retaining the current version of Rule 7.4 in South Carolina with one exception. The PR Committee recommends removing subsection (c) regarding patent, trademark, and admiralty attorney designations and moving it to Comment [3]. The PR Committee believes that this is helpful guidance for a small group of Bar members but not of such significance that it needs to be retained as a rule.

PART 8: PROPOSED REVISIONS TO RULE 7.5

Law Firm Names and Professional Designations

As it did with Rule 7.4, the ABA has eliminated Model Rule 7.5, moving much of its substantive content to new commentary under Rule 7.1. The PR Committee recommends retaining the South Carolina version of Rule 7.5, with some revisions.

In addition to relocating the nickname limitation from Rule 7.1(e) and its Comment (referenced in PART 3, above), the PR Committee proposes two additional improvements to Rule 7.5. First, the PR Committee recommends changing the caption of this rule from “Lawyer Firm Names and Letterhead” to “Law Firm Names and Professional Designations.” The latter more accurately encompasses the scope of the Rule. Second, the PR Committee recommends additions to the Comments providing further guidance to lawyers on the use of the names of deceased members in law firm names, in accordance with the Supreme Court’s holding in *Gignilliat v. Gignilliat, Savitz & Bettis, L.L.P.*, 385 S.C. 452 (2009).

ATTACHMENT 1 PROPOSED REVISIONS

RULE 7.1: COMMUNICATIONS CONCERNING A LAWYER'S SERVICES

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

- (a) contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading;
- (b) is likely to create an unjustified expectation about results the lawyer can achieve, or states or implies that the lawyer can achieve results by means that violate the Rules of Professional Conduct or other law;
- (c) compares the lawyer's services with other lawyers' services, unless the comparison can be factually substantiated;
- (d) contains a testimonial about, or endorsement of, the lawyer
 - (1) without identifying the fact that it is a testimonial or endorsement;
 - (2) for which payment has been made, without disclosing that fact;
 - (3) which is not made by an actual client, without identifying that fact; and
 - (4) which does not clearly and conspicuously state that any result the endorsed lawyer or law firm may achieve on behalf of one client in one matter does not necessarily indicate similar results can be obtained for other clients.

~~(e) contains a nickname, moniker, or trade name that implies an ability to obtain results in a matter.~~

(e) contains an accolade, unless:

- (1) the accolade is awarded pursuant to strict, objective standards that are verifiable and would be recognized by a reasonable lawyer as establishing a legitimate basis for determining whether the recipient has the knowledge, skill, or experience indicated by the accolade;
- (2) the standards for inclusion are, or information on how to obtain the standards is, disclosed in the communication;
- (3) the date of the accolade is included in the communication;
- (4) the communication makes it clear that the accolade is made by a specific organization or publication through use of distinctive typeface;
- (5) no payment of any kind for any purpose is a prerequisite for the accolade or is otherwise required of the lawyer, or the lawyer's firm, for receiving the accolade;
- (6) any payment by the lawyer to the organization or publication is limited to the reasonable cost of advertising to the extent it not only confers the accolade but also provides a medium for promoting or advertising the accolade to the public; and,
- (7) the communication does not otherwise violate Rules 7.4 or 7.5.

Comment

[1] This Rule governs all communications about a lawyer's services, including advertising permitted by Rule 7.2. Whatever means are used to make known a lawyer's services, statements about them must be truthful.

[2] ~~Truthful statements that are misleading~~ Misleading truthful statements are also prohibited by this Rule. A truthful statement is misleading if it omits a fact necessary to make the lawyer's communication considered as a whole not materially misleading. A truthful statement is ~~also~~ misleading if ~~there is~~ a substantial likelihood exists that it will lead a reasonable person to formulate a specific conclusion about the lawyer or the lawyer's services for which there is no reasonable factual foundation. A truthful statement is also misleading if presented in a way that creates a substantial likelihood that a reasonable person would believe the lawyer's communication requires that person to take further action when, in fact, no action is required.

[3] ~~An advertisement~~ A communication that truthfully reports a lawyer's achievements on behalf of clients or former clients may be misleading if presented so as to lead a reasonable person to form an unjustified expectation that the same results could be obtained for other clients in similar matters without reference to the specific factual and legal circumstances of each client's case. Similarly, an unsubstantiated claim about a lawyer's or law firm's services or fees or an unsubstantiated comparison of the lawyer's or law firm's services or fees with ~~the services or fees~~ those of other lawyers or law firms may be misleading if presented with such specificity as would lead a reasonable person to conclude that the comparison or claim can be substantiated. The inclusion of an appropriate disclaimer or qualifying language may preclude a finding that a statement is likely to create unjustified expectations or otherwise mislead the public.

For instance, the prohibition in paragraph (b) on statements likely to create "unjustified expectations" may preclude, and the limitations in paragraph (d) on testimonials and endorsements does preclude, advertisements about results obtained on behalf of a client, such as the amount of a damage award or the lawyer's record in obtaining favorable verdicts, unless they state clearly and conspicuously that any result the lawyer or law firm may have achieved on behalf of clients in other matters does not necessarily indicate similar results can be obtained for other clients. Such information may create the unjustified expectation that similar results can be obtained for others without reference to the specific factual and legal circumstances.

~~[4] Paragraph (e) precludes the use of nicknames, such as the "Heavy Hitter" or "The Strong Arm," that suggest the lawyer or law firm has an ability to obtain favorable results for a client in any matter. A significant possibility exists that such nicknames will be used to mislead the public as to the results that can be obtained or create an unsubstantiated comparison with the services provided by other lawyers. See also Rule 8.4(f)(prohibition against stating or implying an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law).~~

[4] It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation. Rule 8.4(d). See also, Rule 8.4(f) for the prohibition against stating or implying an ability to improperly influence a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law.

[5] “Accolade” includes any recognition, award, listing, rating, or ranking from an organization, entity, or publication regarding the quality of a lawyer’s services for purposes of promoting or advertising those services. Subsection (e) permits a lawyer to accept and use accolades from organizations and publications (including making use of proprietary “badges,” symbols, or other marks) in communications concerning the lawyer’s services, subject to certain conditions designed to insure that such use is not false or misleading. Permissible use is limited to accolades from bona fide organizations with objectively clear standards, which have inquired into the lawyer’s fitness for certification and which do not issue the accolades indiscriminately for a price. The lawyer should be able to demonstrate that the accolade is available to all lawyers who meet objective and consistently applied standards relevant to practice in a particular area of the law. A communication subject to this Rule must make it clear that the accolade is made by a specific publication or organization through use of distinctive typeface or italics to avoid misleading the public or making an unsubstantiated comparison prohibited by this Rule. If the accolade is redone annually, the communication should include the specific year in which the lawyer was so included or recognized in order to prevent misleading the public that the accolade is perpetual. Likewise, if the accolade is based on a geographic region or particular practice area, that must also be disclosed. A lawyer is permitted to purchase an advertisement in a publication disseminated by the organization so long as such purchase is made at the going advertising rate and payment for an advertisement is not a prerequisite to participation or inclusion in the evaluation and listing process.

RULE 7.2: ADVERTISING COMMUNICATIONS CONCERNING A LAWYER'S SERVICES: SPECIFIC RULES

(a) ~~Subject to the requirements of this Rule and Rules 7.1 and 7.3, a~~ A lawyer may ~~advertise~~ communicate information regarding the lawyer's services through ~~written, recorded or electronic communication, including public~~ any media. All advertisements shall be predominately informational such that, in both quantity and quality, the communication of factual information rationally related to the need for and selection of a lawyer predominates and the communication includes only a minimal amount of content designed to attract attention to and create interest in the communication.

(b) A lawyer is responsible for the content of any ~~advertisement or solicitation communication concerning the lawyer's services~~ that is placed or disseminated by the lawyer and has a duty to review the ~~advertisement or solicitation communication~~ prior to its dissemination to reasonably ensure its compliance with the Rules of Professional Conduct. The lawyer shall keep a copy or recording of every ~~advertisement or~~ communication subject to this Rule for two years after its last dissemination along with a record of when and where it was disseminated.

(c) A lawyer shall not compensate, give or promise anything of value to a person for recommending the lawyer's services except that a lawyer may

(1) pay the reasonable costs of advertisements or communications permitted by this Rule;

(2) pay the usual charges of a legal service plan, ~~or a not-for-profit lawyer referral service~~ which is itself not acting in violation of any Rule of Professional Conduct; ~~and~~

(3) pay the usual charges of a not-for-profit lawyer referral service that:

(i) permits the participation of all lawyers who are licensed and eligible to practice in the jurisdiction and who meet reasonable, objective eligibility requirements as may be established by the referral service for the protection of the public;

(ii) acts reasonably to assess client satisfaction and address client complaints; and,

(iii) does not make referrals to lawyers or law firms that own, operate or are employed by the referral service;

~~(3)~~(4) pay for a law practice in accordance with Rule 1.17₁;

(5) give a nominal gift as an expression of appreciation that is neither intended nor reasonably expected to be a form of compensation for recommending the lawyer's services; and,

(6) refer a client to another lawyer or a nonlawyer professional pursuant to an agreement not otherwise prohibited under these Rules that provides for the other person to refer clients or customers to the lawyer, if:

(i) the reciprocal referral arrangement is not exclusive;

(ii) the client is informed of the existence and nature of the agreement; and,

(iii) the referral is in the best interests of the client.

(d) Any communication ~~made pursuant subject~~ to this Rule ~~shall~~ must include the name and office address of at least one lawyer responsible for its content. In addition, all communications subject to this Rule must disclose the geographic location, by city or town, of the office in which the lawyer or lawyers who will actually perform the services advertised principally practice law. If the office location is outside a city or town, the county in which the office is located must be disclosed. A lawyer referral service must disclose the geographic area in which the lawyer practices when a referral is made.

(e) No lawyer shall, directly or indirectly, pay all or a part of the cost of ~~an advertisement marketing~~ by a lawyer not in the same firm unless the ~~advertisement communication~~ discloses the name and address of the nonadvertising lawyer, the relationship between the advertising lawyer and the nonadvertising lawyer, and whether the advertising lawyer may refer any case received through the ~~advertisement communication~~ to the nonadvertising lawyer.

(f) Every ~~advertisement communication subject to this Rule~~ that contains information about the lawyer's fee shall disclose whether the client will be liable for any expenses in addition to the fee and, if the fee will be a percentage of the recovery, whether the percentage will be computed before deducting the expenses.

(g) A lawyer who advertises a specific fee or range of fees for a particular service shall honor the advertised fee or fee range for at least ninety (90) days following dissemination of the ~~advertisement communication~~, unless the ~~advertisement communication~~ specifies a shorter period; provided that a fee advertised in a publication which is issued not more than annually, shall be honored for one (1) year following publication.

~~(h) All advertisements shall disclose the geographic location, by city or town, of the office in which the lawyer or lawyers who will actually perform the services advertised principally practice law. If the office location is outside a city or town, the county in which the office is located must be disclosed. A lawyer referral service shall disclose the geographic area in which the lawyer practices when a referral is made.~~

(h) In addition to any specific requirements under these rules Rules, any disclosures or disclaimers required by these rules Rules to appear in an advertisement or unsolicited written a communication concerning a lawyer's services must be of sufficient size to be clearly legible and prominently placed so as to be conspicuous to the viewer. If the disclosure or disclaimer is televised or broadcast in an electronic or video medium, it shall be displayed for a sufficient time to enable the viewer to see and read the disclosure or disclaimer. If the disclosure or disclaimer is spoken aloud, it shall be plainly audible to the listener. If the statement is made on a website, online profile, Internet advertisement, or other electronic communication, the required words or statements disclosure or disclaimer shall appear on the same page as the statement requiring the disclosure or disclaimer.

Comment

[1] To assist the public in learning about and obtaining legal services, lawyers should be allowed to make known their services not only through reputation but also through organized information campaigns in the form of advertising marketing. Advertising Law firm marketing involves an active quest for clients, contrary to the tradition that a lawyer should not seek clientele. However, the public's need to know about legal services can be fulfilled in part through advertising marketing. This need is particularly acute in the case of persons of moderate means who have not made extensive use of legal services.

The interest in expanding public information about legal services ought to prevail over considerations of tradition. Nevertheless, advertising marketing by lawyers entails the risk of practices that are misleading or overreaching.

[2] This Rule permits public dissemination of information concerning a lawyer's or law firm's name ~~or firm name~~, address, email address, website, and telephone number; the kinds of services the lawyer will undertake; the basis on which the lawyer's fees are determined, including prices for specific services and payment and credit arrangements; a lawyer's foreign language ability; names of references and, with their consent, names of clients regularly represented; and, other information that might invite the attention of those seeking legal assistance.

[3] Questions of effectiveness and taste in advertising are matters of speculation and subjective judgment. Some jurisdictions have had extensive prohibitions against television and other forms of advertising, against advertising going beyond specified facts about a lawyer, or against "undignified" advertising. Television, the Internet, and other forms of electronic communication are now among the most powerful media for getting information to the public, particularly persons of low and moderate income; prohibiting television, Internet, and other forms of electronic advertising, therefore, would impede the flow of information about legal services to many sectors of the public. Limiting the information that may be advertised has a similar effect and assumes that the bar can accurately forecast the kind of information that the public would regard as relevant. But see Rule 7.3(a) for the prohibition against a solicitation through a real time electronic exchange initiated by the lawyer.

[4] Regardless of medium, a lawyer's advertising marketing should provide only useful, factual information presented in an objective and understandable fashion so as to facilitate a person's ability to make an informed choice about legal representation. A lawyer should strive to communicate such information without the use of techniques intended solely to gain attention and which demonstrate a clear and intentional lack of relevance to the selection of counsel, as such techniques hinder rather than facilitate intelligent selection of counsel. A lawyer's advertising marketing should reflect the serious purpose of legal services and our judicial system. The state has a significant interest in protecting against a public loss of confidence in the legal system, including its participants, and in protecting specifically against harm to the jury system that might be caused by lawyer advertising. The effectiveness of the legal system depends upon the public's trust that the legal system will operate with fairness and justice. Public trust is likely to be diminished if the public believes that some participants are able to obtain results through inappropriate methods. Public confidence also is likely to be diminished if the public perceives that the personality of their advocate, rather than the legal merit of their claim, is a key factor in determining the outcome of their matter. It is necessary to ensure that lawyer advertisements do not have these detrimental impacts. This ~~rule~~ Rule is intended to preserve the public's access to information relevant to the selection of counsel, while limiting those advertising marketing methods that are most likely to have a harmful impact on public confidence in the legal system and which are of little or no benefit to the potential client.

[5] Neither this Rule nor Rule 7.3 prohibits communications authorized by law, such as notice to members of a class in class action litigation.

Record of Advertising Communications Concerning a Lawyer's Services

[6] Paragraph (b) imposes upon the lawyer who disseminates an advertisement marketing material or causes its dissemination the responsibility for reviewing each advertisement communication prior to dissemination to ensure its compliance with the Rules of Professional Conduct. It also requires that a record of the content and use of advertising marketing materials be kept in order to facilitate enforcement of this Rule.

Paying Others to Recommend a Lawyer

[7] Except as permitted under paragraphs (c)(1)-(c)(3)(6), lawyers are a lawyer is not permitted to pay others for recommending the lawyer's services or for channeling professional work in a manner that violates Rule 7.3. A communication contains a recommendation if it endorses or vouches for a lawyer's credentials, abilities, competence, character, or other professional qualities.

[8] Paragraph (c)(1), ~~however~~, allows a lawyer to pay for ~~advertising and~~ communications permitted by this Rule, including the cost of print directory listings, on-line directory listings, newspaper ads, television and radio airtime, domain-name registrations, sponsorship fees, Internet-based advertisements, and group advertising. A lawyer may compensate employees, agents and vendors who are engaged to provide marketing or client-development services, such as publicists, public relations personnel, business development staff and website designers. Moreover, a lawyer may pay others for generating client leads, such as Internet-based client leads, as long as the lead generator does not recommend the lawyer, any payment to the lead generator is consistent with Rules 1.5(e) (division of fees) and 5.4 (professional independence of the lawyer), and the lead generator's communications are consistent with Rule 7.1 (communications concerning a lawyer's services). To comply with Rule 7.1, a lawyer must not pay a lead generator that states, implies, or creates a reasonable impression that it is recommending the lawyer, is making the referral without payment from the lawyer, or has analyzed a person's legal problems when determining which lawyer should receive the referral. See also Rule 5.3 (duties of lawyers and law firms with respect to the conduct of nonlawyers who prepare marketing materials for them); Rule 8.4(a) (duty to avoid violating the Rules through the acts of another).

[9] Paragraph (c)(5) permits a lawyer to give a nominal gift as an expression of appreciation to a person for recommending the lawyer's services or referring a prospective client. The gift may not be more than a token item as might be given for holidays or other ordinary social hospitality. A gift is prohibited if offered or given in consideration of any promise, agreement or understanding that such a gift would be forthcoming or that referrals would be made or encouraged in the future.

~~[8]~~[10] A lawyer may pay the usual charges of a legal service plan or a not-for-profit lawyer referral service, which is itself not acting in violation of the Rules of Professional Conduct. A legal service plan is a prepaid or group legal service plan or a similar delivery system that assists people who seek to secure legal representation. A lawyer referral service, on the other hand, is any organization that ~~holds itself out to the public as a lawyer referral service provides or offers to provide a consumer in need of legal services with a referral to or contact with a participating lawyer or law firm based on an evaluation or analysis of the consumer's circumstances~~. Such referral services are understood by the public to be consumer-oriented organizations that provide unbiased referrals to lawyers with appropriate experience in the subject matter of the representation and afford other client protections, such as complaint procedures or malpractice insurance requirements.

Consequently, this Rule ~~only~~ permits a lawyer to pay the usual charges of a not-for-profit lawyer referral service only. The "usual charges" may include a portion of legal fees collected by a lawyer from clients referred by the service when that portion of fees is collected to support the expenses projected for the referral service. Lawyers may not participate in for-profit lawyer matching or referral services.

~~[9]~~[11] A lawyer who accepts assignments or referrals from a legal service plan or referrals from a lawyer referral service must act reasonably to assure that the activities of the plan or service are compatible with the lawyer's professional obligations. See Rule 5.3. Legal service plans and lawyer referral services may communicate with the public, but such communication must be in conformity with these Rules. Thus, advertising must not be false or misleading, as would be the case if the communications of a group advertising program or a group legal services plan would mislead the public to think that it was a lawyer referral service sponsored by a state agency or bar association. See also Rule 7.3(b).

~~[10]~~[12] Paragraph (d) is intended to work in conjunction with paragraph (b) to provide accountability for the content of lawyer advertising. It applies only to communications that contain substantive advertising or soliciting statements and inferences beyond a lawyer or law firm's mere name, design logo, and ordinary contact information. Thus lawyers may advertise through promotional items, such as pens, clothing, coffee mugs, and signage without the need for the name and address of an individual lawyer responsible for the materials, provided that such items or signage contain nothing other than the firm name, logo, and contact information; that any logo is merely a design shape and not a depiction; and that any included contact information does not contain a tagline or slogan. Any depiction (such as an animal, hammer, or other recognizable thing) within a logo triggers the requirement of paragraph (d), as does any slogan, tagline, or logo whether used as a part of contact information (e.g., www.sclawyer.com or 1-800-SC-LAWYER) or otherwise. The address of the responsible lawyer may be a post office address if the lawyer does not have a traditional law office in a physical location and if that post office address is listed as the lawyer's primary address in the Attorney Information System. However, if the post office address is in a different town or county from the town or county where the lawyer or lawyers who are offering the service advertised principally practice law, the latter must also be disclosed.

RULE 7.3: SOLICITATION OF CLIENTS

(a) "Solicitation" or "solicit" denotes a communication initiated by or on behalf of a lawyer or law firm that is directed to a specific person the lawyer knows or reasonably should know needs legal services and that offers to provide, or can reasonably be understood as offering to provide, legal services. All solicitations must comply with Rule 7.1. All written, recorded, or electronic solicitations must also comply with Rule 7.2.

(b) A lawyer shall not solicit professional employment by live person-to-person contact , ~~by in person, live telephone or real time electronic contact~~ solicit professional employment when a significant motive for the lawyer's doing so is the lawyer's or law firm's pecuniary gain, unless the ~~person contacted~~ is with:

(1) ~~is~~ a lawyer; ~~or~~

(2) a person who has a family, close personal, or prior business or professional relationship with the lawyer or law firm; or:-

(3) a person who routinely uses for business purposes the type of legal services offered by the lawyer.

~~(b)(c)~~ A lawyer shall not solicit professional employment ~~by direct written, recorded or electronic communication or by in person, telephone, telegraph, facsimile or real time electronic contact~~ even when not otherwise prohibited by paragraph ~~(b)(a)~~, if:

(1) the target of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer;

(2) the solicitation involves coercion, duress, harassment, fraud, overreaching, intimidation or undue influence; or,

~~(3) the solicitation concerns an action for personal injury or wrongful death or otherwise relates to an accident or disaster involving the or a relative of that person unless the accident or disaster occurred more than thirty (30) days prior to the solicitation;~~

~~(4)~~ the solicitation concerns a specific matter and the lawyer knows, or reasonably should know, that the ~~person solicited~~ target of the solicitation is represented by a lawyer in the matter; ~~or~~

~~(5) the lawyer knows, or reasonably should know, that the physical, emotional, or mental state of the person makes it unlikely that the person would exercise reasonable judgment in employing a lawyer.~~

~~(c)(d)~~ Any A lawyer who uses written, recorded, or electronic solicitation shall maintain a file for two years showing the following:

(1) the basis by which the lawyer knows the person solicited needs legal services; and

(2) the factual basis for any statements made in the written, recorded, or electronic communication.

~~(d)(e)~~ Every written, recorded or electronic communication from a lawyer soliciting professional employment from anyone known to be in need of legal services in a particular matter, and with whom the lawyer has no family, close personal or prior business or professional relationship, ~~shall conform to Rules 7.1 and 7.2 and, in addition,~~ must conform to the following provisions:

(1) The words "ADVERTISING MATERIAL," printed in capital letters and in prominent type, shall appear on the front of the outside envelope and on the front of each page of the material. Every such recorded or electronic communication shall clearly state both at the beginning and at the end that the communication is an advertisement. If the solicitation is made by computer, including, but not limited to, electronic mail, the words "ADVERTISING MATERIAL," printed in capital letters and in prominent type, shall appear in any subject line of the message and at the beginning and end of the communication.

(2) Each solicitation must include the following statements:

(A) "You may wish to consult your lawyer or another lawyer instead of me (us). You may obtain information about other lawyers by consulting directories, seeking the advice of others, or calling the South Carolina Bar Lawyer Referral Service at 799-7100 in Columbia or toll free at 1-800-868-2284. If you have already engaged a lawyer in connection with the legal matter referred to in this communication, you should direct any questions you have to that lawyer" and

(B) "The exact nature of your legal situation will depend on many facts not known to me (us) at this time. You should understand that the advice and information in this communication is general and that your own situation may vary."

Where the solicitation is written, the above statements must be in a type no smaller than that used in the body of the communication.

(3) Each solicitation must include the following statement: "ANY COMPLAINTS ABOUT THIS COMMUNICATION OR THE REPRESENTATIONS OF ANY LAWYER MAY BE DIRECTED TO THE COMMISSION ON LAWYER CONDUCT, 1220 SENATE STREET, SUITE 111, COLUMBIA, SOUTH CAROLINA 29201 – TELEPHONE NUMBER 803-734-2037." Where the solicitation is written, this statement must be printed in capital letters and in a size no smaller than that used in the body of the communication.

~~(e)~~(f) Written communications mailed to the target of the solicitation shall be sent only by regular U.S. mail, not by registered mail or other forms of restricted or certified delivery.

~~(f)~~(g) Written communications mailed to the target of the solicitation shall not be made to resemble legal pleadings or other legal documents.

~~(g)~~(h) Any written communication prompted by a specific occurrence involving or affecting ~~the intended recipient of the communication~~ the target of the solicitation or a family member shall disclose how the lawyer obtained the information prompting the communication.

~~(h)~~(i) A written communication seeking employment by the target of the solicitation in a specific matter shall not reveal on the envelope, or on the outside of a self mailing brochure or pamphlet, the nature of the client's legal problem.

~~(i)~~(j) If a lawyer reasonably believes that a lawyer other than the lawyer whose name or signature appears on the communication will likely be the lawyer who primarily handles the case or matter, or that the case or matter will be referred to another lawyer or law firm,

any written communication concerning a specific matter shall include a statement so advising the potential client.

~~(j)(k)~~ Notwithstanding the prohibitions in ~~paragraph (a) this Rule~~, a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses ~~in-person or telephone~~ live person-to-person contact to ~~solicit-enroll~~ members ~~hips~~ or sell subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan. A lawyer may participate with a prepaid or group legal service plan only if the plan is established in compliance with all statutory and regulatory requirements imposed upon such plans under South Carolina law. Lawyers who participate in a legal service plan must make reasonable efforts to assure that the plan sponsors are in compliance with Rules 7.1, 7.2 and 7.3 ~~(b)(c)~~.

Comment

[1] ~~A solicitation is a targeted communication initiated by the lawyer that is directed to a specific persona and that offers to provide, or can reasonably be understood as offering to provide, legal services. In contrast, a Paragraph (b) prohibits a lawyer from soliciting professional employment by live person-to-person contact when a significant motive for doing so is pecuniary gain. A~~ lawyer's communication is not a solicitation if it is directed to the general public, such as through a billboard, an Internet banner advertisement, a website or a television commercial, or if it is in response to a request for information ~~or is automatically generated in response to Internet searches~~. For example, advertisements that are automatically generated in response to an Internet search are not solicitations. Because those advertisements are generated in response to ~~Internet-based~~ electronic research, they are more analogous to a lawyer's response to a request for information (which is not a solicitation) than an unsolicited and targeted letter to a person who is known to be in need of a particular legal service (which is a solicitation).

[2] ~~"Live person-to-person contact" means in-person, face-to-face, live telephone and other real-time visual or auditory communications where the targeted person is subject to a direct personal encounter without time for reflection. Such person-to-person contact does not include chat rooms, text messages or other written communications that recipients may easily disregard. There is a~~ A potential for ~~abuse overreaching exists~~ when a ~~lawyer seeking pecuniary gain solicitation involves direct in-person or live telephone to real time electronic contact by a lawyer with someone solicits a person known to be in need of legal services. These forms This form~~ of contact subjects a person to the private importuning of the trained advocate in a direct interpersonal encounter. The person, who may already feel overwhelmed by the circumstances giving rise to the need for legal services, may find it difficult to fully evaluate all available alternatives with reasoned judgment and appropriate self interest in the face of the lawyer's presence and insistence upon ~~being retained immediately~~ an immediate response. The situation is fraught with the possibility of undue influence, intimidation, and overreaching.

[3] ~~The use of general advertising and written, recorded or electronic communications to transmit information from lawyer to the public, rather than direct in-person, live telephone or real time electronic contact, will help to assure that the information flows cleanly as well as freely. The contents of advertisements and communications permitted under Rule 7.2 can be permanently recorded so that they cannot be disputed and may be shared with others who know the lawyer. This potential for informal review is itself likely to help guard~~

~~against statements and claims that might constitute false, misleading, deceptive, or unfair communications, in violation of Rule 7.1. The potential for overreaching inherent in live person-to-person contact justifies its prohibition in most circumstances, since lawyers have alternative means of conveying necessary information. In particular, communications can be mailed or transmitted by email or other electronic means that do not violate other laws. These forms of communications make it possible for the public to be informed about the need for legal services, and about the qualifications of available lawyers and law firms, without subjecting the public to live person-to-person persuasion that might overwhelm a person's judgment. The contents of direct in person, live telephone or real time electronic live person-to-person contact~~ can be disputed and may not be subject to third party scrutiny. Consequently, they are much more likely to approach, and occasionally cross, the dividing line between accurate representations and those that are false and misleading.

[4] There is far less likelihood that a lawyer would engage in ~~abusive practices overreaching~~ against a former client, or a person with whom the lawyer has a close personal, ~~or~~ family ~~or business or professional~~ relationship, or in situations in which the lawyer is motivated by considerations other than the lawyer's pecuniary gain. Nor is there a serious potential for ~~abuse overreaching~~ when the person contacted is a lawyer ~~or is known to routinely use the type of legal services involved for business purposes. Examples include persons who routinely hire outside counsel to represent an entity; entrepreneurs who regularly engage business, employment law or intellectual property lawyers; small business proprietors who routinely hire lawyers for lease or contract issues; and, other people who routinely retain lawyers for business transactions or formulations. Consequently, the general prohibition in Rule 7.3(a) and the requirements of Rule 7.3(d) are not applicable in those situations. Also, paragraph (a) Paragraph (b)~~ is not intended to prohibit a lawyer from participating in constitutionally protected activities of public or charitable legal service organizations or bona fide political, social, civic, fraternal, employee or trade organizations whose purposes include providing or recommending legal services to their members or beneficiaries.

[5] ~~But even permitted forms of solicitation can be abused. Thus, any A~~ solicitation ~~which that~~ contains ~~false, misleading or deceptive~~ information ~~which is false, misleading, deceptive or unfair~~ within the meaning of Rule 7.1; ~~which that~~ involves coercion, duress, harassment, fraud, overreaching, intimidation or undue influence within the meaning of Rule 7.3~~(b)(c)~~(2); ~~which that~~ involves contact with someone who has made known to the lawyer a desire not to be solicited by the lawyer within the meaning of Rule 7.3(c)(1); ~~which or that~~ involves contact with a person the lawyer reasonably should know is represented by another lawyer in the matter; ~~or is prohibited. Solicitation that which~~ involves contact with someone the lawyer reasonably should know is physically, emotionally or mentally incapable of exercising reasonable judgment in choosing a lawyer ~~under Rule 7.3(b)(5)~~ is prohibited. ~~Live person-to-person contact with individuals who may be especially vulnerable to coercion or duress is ordinarily not appropriate. Examples include the elderly, those whose first language is not English, and those with disabilities. Moreover, if after sending a letter or other communication as permitted by Rule 7.2 solicitation, the lawyer receives no response, it is ordinarily presumed that the target of the solicitation has made known the desire not to be solicited. Therefore, any further effort to communicate with the recipient of the communication may violate the provisions of Rule 7.3(b)(c).~~

[6] ~~The public views~~ Lawyers who elect to use direct solicitation in the immediate wake of an accident should consider whether such solicitation is as an intrusion on the personal privacy and tranquility of citizens. ~~The 30-day restriction in paragraph (b)(3) is meant to forestall the~~ and whether such solicitation is likely to cause outrage and irritation with the legal profession engendered by crass commercial intrusion by attorneys upon a citizen's personal grief in a time of trauma. ~~The rule is limited to a brief period, and lawyer advertising permitted under Rule 7.2 offers alternative means of~~ Direct solicitation of an accident victim or family should be limited to conveying necessary information about the need for legal services and the qualifications of available the lawyers ~~and or~~ law firms ~~to those who may be in need of legal services~~ without subjecting the target of the solicitation to direct persuasion that may overwhelm their judgment.

[7] This Rule is does not ~~intended to~~ prohibit a lawyer from contacting representatives of organizations or groups that may be interested in establishing a group or prepaid legal plan for their members, insureds, beneficiaries or other third parties for the purpose of informing such entities of the availability of and details concerning the plan or arrangement which the lawyer or lawyer's firm is willing to offer. This form of communication is not directed to a prospective client. Rather, it is usually addressed to an individual acting in a fiduciary capacity seeking a supplier of legal services for others who may, if they choose, become prospective clients of the lawyer. Under these circumstances, the activity which the lawyer undertakes in communicating with such representatives and the type of information transmitted to the individual are functionally similar to and serve the same purpose as advertising communications permitted under Rule 7.2.

[8] The requirement in Rule 7.3~~(d)~~(e) that certain communications be marked "Advertising Material" does not apply to communications sent in response to requests of potential clients or their spokespersons or sponsors. General announcements by lawyers, including changes in personnel or office location, do not constitute communications soliciting professional employment from a client known to be in need of legal services within the meaning of this Rule. Such communications are, however, subject to Rules 7.1, 7.2, 7.4, and 7.5.

[9] Requiring communications to be marked as advertisements sent only by regular U.S. mail and prohibiting communications from resembling legal documents is designed to allow the recipient to choose whether or not to read the solicitation without fear of legal repercussions. In addition, the lawyer or law firm ~~should~~ is required by paragraph (h) to reveal the source of information used to determine that the recipient has a potential legal problem. Disclosure of this information source will help the recipient understand the extent of knowledge the lawyer or law firm has regarding the recipient's particular situation and will avoid misleading the recipient into believing that the lawyer has particularized knowledge about the recipient's matter if the lawyer does not.

[10] Paragraph ~~(j)~~(k) of this Rule permits a lawyer to participate with an organization ~~which~~ that uses personal contact to solicit-enroll members for its group or prepaid legal service plan, provided that the personal contact is not undertaken by any lawyer who would be a provider of legal services through the plan. The organization referred to in paragraph ~~(j)~~(k) must not be owned by or directed, whether as manager or otherwise, by any lawyer or law firm that participates in the plan. For example, paragraph ~~(j)~~(k) would not permit a lawyer to create an organization controlled directly or indirectly by the lawyer and use the organization for the ~~in-person or telephone~~ person-to-person solicitation of legal

employment of the lawyer through memberships in the plan or otherwise. The communication permitted by these organizations ~~also~~ must not be directed to a person known to need legal services in a particular matter, but ~~is to~~ must be designed to inform potential plan members generally of another means of affordable legal services.

RULE 7.4: COMMUNICATION OF FIELDS OF PRACTICE AND SPECIALIZATION

(a) A lawyer who is certified under Rule 408, SCACR, as a specialist in a specialty field designated by the Supreme Court Commission on Continuing Legal Education and Specialization and approved by the Supreme Court, or a lawyer who has been issued a certificate of specialization by an independent certifying organization approved by the Supreme Court Commission on Continuing Legal Education and Specialization pursuant to the Regulations for Legal Specialization in South Carolina, Part IV, Appendix D, § VI, SCACR, is entitled to advertise or state publicly in any manner otherwise permitted by these ~~rules~~ Rules that the lawyer is certified as a specialist in South Carolina. The name of the certifying organization must be clearly identified in the communication.

(b) A lawyer who is not certified as a specialist but who concentrates in, limits his or her practice to, or wishes to announce a willingness to accept cases in a particular field may so advertise or publicly state in any manner otherwise permitted by these ~~rules~~ Rules. To avoid confusing or misleading the public and to protect the objectives of the South Carolina certified specialization program, any such advertisement or statements shall be strictly factual and shall not contain any form of the words "certified," "specialist," "expert," or "authority" except as permitted by Rule 7.4(c) ~~and (d)~~.

~~(c) A lawyer admitted to engage in patent practice before the United States Patent and Trademark Office may use the designation "Patent Attorney" or a substantially similar designation. A lawyer engaged in the trademark practice may use the designation "trademarks," "trademark attorney," or "trademark lawyer" or any combination of these terms.~~

~~(d) A lawyer engaged in admiralty practice may use the designation "admiralty," "proctor in admiralty" or a substantially similar designation.~~

~~(e)~~(c) A lawyer certified by the South Carolina Supreme Court Board of Arbitrator and Mediator Certification to be appointed as a mediator or arbitrator pursuant to Appendix G to Part IV of the South Carolina Appellate Court Rules or Rule 19 of the South Carolina Alternative Dispute Resolution Rules may use the designation "certified mediator" or "certified arbitrator" or any combination of those terms.

Comment

[1] Paragraph (a) permits a lawyer to state that the lawyer is certified as a specialist in a field of law if the lawyer has been certified under Rule 408, SCACR, as a specialist in a specialty field designated by the Supreme Court Commission on Continuing Legal Education and Specialization and approved by the Supreme Court or by an independent certifying organization approved by the Commission. Certification signifies that an objective entity has recognized an advanced degree of knowledge and experience in the specialty area greater than is suggested by general licensure to practice law. Certifying organizations may be expected to apply standards of experience, knowledge and proficiency to insure that a lawyer's recognition as a specialist is meaningful and reliable. In order to insure that consumers can obtain access to useful information about an organization granting certification, the name of the certifying organization must be included in any communication regarding the certification.

[2] Paragraph (b) of this Rule permits a lawyer to indicate areas of practice in communications about the lawyer's services, for example, in a telephone directory or

other advertising. If a lawyer practices only in certain fields, or will not accept matters except in such fields, the lawyer is permitted to so indicate.

[3] ~~Paragraph (c) recognizes~~ Recognizing the long-established policy of the Patent and Trademark Office ~~for the designation of lawyers practicing before the Office, a lawyer admitted to engage in patent practice before that Office may use the designation "Patent Attorney" or a substantially similar designation.~~ ~~Paragraph (d) recognizes that~~ Likewise, ~~the~~ designation of admiralty practice has a long historical tradition associated with maritime commerce and the federal courts. Therefore, a lawyer engaged in admiralty practice may use the designation "admiralty," "proctor in admiralty" or a substantially similar designation.

RULE 7.5: FIRM NAMES AND LETTERHEAD PROFESSIONAL DESIGNATIONS

(a) A lawyer shall not use a firm name, nickname, moniker, trade name, letterhead or other professional designation that ~~violates Rule 7.1:~~

(1) implies an ability to obtain results in a matter;

(2) ~~A trade name may be used by a lawyer in private practice if it does not imply~~ implies a connection with a government agency or with a public or charitable legal services organization; ~~or~~

(3) ~~and~~ is ~~not~~ otherwise in violation of Rule 7.1.

(b) A law firm with offices in more than one jurisdiction may use the same name or other professional designation in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.

(c) The name of a lawyer holding a public office shall not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm.

(d) Lawyers may state or imply that they practice in a partnership or other organization only when that is the fact.

Comment

[1] The use of nicknames, such as the "Heavy Hitter" or "The Strong Arm," that suggest the lawyer or law firm has an ability to obtain favorable results for a client in any matter are prohibited. A significant possibility exists that such nicknames will be used to mislead the public as to the results that can be obtained or create an unsubstantiated comparison with the services provided by other lawyers. See also Rule 8.4(f) (prohibition against stating or implying an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law).

[2] A firm may be designated by the names of all or some of its current, retired, or deceased members or partners, ~~by the names of deceased members where there has been a continuing succession in the firm's identity~~ or by a trade name such as the "ABC Legal Clinic." A lawyer or law firm may also be designated by a distinctive website address or comparable professional designation. Although the United States Supreme Court has held that legislation may prohibit the use of trade names in professional practice, use of such names in law practice is acceptable so long as it is not misleading. If a private firm uses a trade name that includes a geographical name such as "Springfield Legal Clinic," an express disclaimer that it is a public legal aid agency may be required to avoid a misleading implication.

[3] A firm may be designated by the names of deceased members or partners where there has been a continuing succession in the firm's identity. It may be observed that any firm name including the name of a deceased partner is, strictly speaking, a trade name. It has been the custom and practice in this state for law firms to continue to use the names of deceased members or partners in their firm names. The common law creates a rebuttable presumption that the deceased member or partner consented to the continued

use of his or her name in the law firm's name. See *Gignilliat v. Gignilliat, Savitz & Bettis, L.L.P.*, 385 S.C. 452, 684 S.E.2d 756 (2009). The use of such names to designate law firms has proven a useful means of identification. However, it is misleading to use the name of a nonlawyer or the name of a lawyer not associated with the firm or with a predecessor of the firm ~~or the name of a nonlawyer~~.

~~[2]~~ [4] With regard to paragraph (d), lawyers sharing office facilities, but who are not in fact associated with each other in a law firm, may not denominate themselves as, for example, "Smith and Jones," for that title suggests that they are practicing law together in a firm.

ATTACHMENT 2

SC ADVERTISING RULE/ ABA MODEL RULE COMPARISON

SOUTH CAROLINA RULE	ABA MODEL RULE	RECOMMENDATION
RULE 7.1: COMMUNICATIONS REGARDING A LAWYER'S SERVICES		
Rule 7.1 general prohibition: "false, misleading, or deceptive"	Rule 7.1 general prohibition: "false or misleading"	Adopt this change
Rule 7.1(b): Unjustified expectations provision in Rule and Comment	Rule 7.1: Unjustified expectation provision in Comment only	Reject changes
Rule 7.1(c): Comparative language limitation in Rule and Comment	Rule 7.1: Comparative language limitation in Comment only	
Rule 7.1(d): Testimonials and endorsements permitted with certain specific disclosures in Rule	Rule 7.1: No mention of testimonials or endorsements in Rule 7.1; however, Comment [3] to Rule 7.2 states that, except otherwise permitted a lawyer may not pay others for a recommendation, which is defined as a "communication [that] endorses or vouches for a lawyer's credentials, abilities, competence, character, or other professional qualities"	
Rule 7.1(e): Nickname limitation in Rule and Comment [4]	Rule 7.1: No provision regarding nicknames in Rule or Comment	Move nickname limitation and Comment [4] to Rule 7.5(a).
Rule 7.1 Comment [2]	Rule 7.1 Comment [2]: Essentially the same with some minor rewording. Also adds: "A truthful statement is also misleading if presented in a way that creates a substantial likelihood that a reasonable person would believe the lawyer's communication requires that person take further action when, in fact, no action is required."	Adopt this change
Rule 7.1 Comment [3]	Rule 7.1 Comment [2] First paragraph is the same. Second paragraph regarding unjustified expectations is removed.	Reject this change – leave paragraph in comment
RULE 7.2: ADVERTISING		
Rule 7.2: Advertising	Rule 7.2 heading is changed to "Communications	Adopt this change.

	Concerning a Lawyer's Services: Specific Rules	
Rule 7.2(a): "a lawyer may advertise services through written, recorded or electronic communication, including public media"	Rule 7.2(a): "a lawyer may communicate information regarding the lawyer's services through any media"	Adopt this change
Comments [1] and [3] regarding policy, judgment, goals, and philosophy about lawyer advertising	Model Rule Comments do not contain the equivalent of Comments [1] and [3]	Retain SC Comments
Rule 7.2(a) and Comment [4]: requirement that lawyer advertisements be "predominately informational" with restrictions on content "designed to attract attention"	Rule 7.2: No requirement that ads be "predominantly informational" and no restrictions on content in Rule or Comment	Retain SC version
Rule 7.2(b) and Comment [6]: affirmative duty of lawyer to review content before dissemination and maintain a record for two years	Rule 7.2: No affirmative duty to review or maintain a record	Retain SC version
Rule 7.2(c): "A lawyer shall not give anything of value to a person for recommending the lawyer's services"	Rule 7.2(b): "A lawyer shall not compensate, give or promise anything of value to a person for recommending the lawyer's services"	Adopt this change
Rule 7.2(c) has three exceptions: reasonable cost of advertising, legal service plans and non-profit lawyer referral services, and purchase of a law firm	Rule 7.2(b) retains those three exceptions and also permits non-exclusive mutual referral arrangements that are disclosed to the client and "nominal gifts as an expression of appreciation" not intended to be compensation for the referral. Comment [4] provides some guidance on what would be considered "nominal"	Adopt this change
Rule 7.2(c): permits paying "the usual charges of a legal service plan or a not-for-profit lawyer referral services, which is not itself acting in violation of any Rule of Professional Conduct"	Rule 7.2(b): permits paying "the usual charges of a legal service plan or a not-for-profit or qualified lawyer referral services"	Reject the change to the rule and clarify the meaning of "not-for-profit lawyer referral service."
Comment [8] explains what a not-for-profit lawyer referral service is.	Comment [8] is renumbered as Comment [6] explains what "not-for-profit" and "qualified" lawyer referral services are, sets up an approval or qualifying process.	

Comment [9] says that the legal service plan or referral service must comply with RPC.	Comment [9] is renumbered as Comment [7] – no substantive changes	
Rule 7.2(d): requires communication to include name and office address of at least one lawyer responsible for its content	Rule 7.2(d): requires communication to include name and contact information of at least one lawyer or law firm responsible for its content. Comment [12] says that “contact information” includes website address, telephone number, email address, or physical office location.	Reject the change. Combine subsections (d) and (h) for clarity.
Comment [10] provides an exception to subsection (d) for promotional items.	The promotional item exception is not contained in the Model Rules	
RULE 7.3: SOLICITATION OF CLIENTS		
Rule 7.3: definition of “solicitation” is in Comment [1]	Rule 7.3(a): moves the definition of “solicitation” from the Comment to the Rule. Retains more detailed guidance in Comment [1]	Adopt this change. Add clarifying language regarding the scope of Rules 7.1 and 7.2.
Rule 7.3(a) prohibits “in person, live telephone, or real time electronic contact” except for communications directed at lawyers, family members, close personal friends, and prior professional relationships.	Rule 7.3(b) prohibits “live person-to-person contact” except for communications directed at lawyers, family members, close personal friends, prior professional relationships, and “a person who routinely uses for business purposes the type of legal services offered by the lawyer.”	Adopt these changes.
Rule 7.3(a) limits such contacts if the motive is the “lawyer’s pecuniary gain”	Rule 7.3(b) limits such contacts if the motive is the “lawyer’s or law firm’s pecuniary gain”	Adopt this change
Rule 7.3(b) prohibits solicitation where the target has made known a desire not to be solicited	Retained, just renumbered as 7.3(c)(1)	NA
Rule 7.3(b) prohibits solicitation by “coercion, duress, harassment, fraud, overreaching, intimidation, or undue influence	Rule 7.3(c)(2) prohibits solicitation by coercion, duress, or harassment.	Reject this change
Comment [2], [3], [4], and [5] explain in detail risks associated with solicitation	Renumbered as [2] – [6]	NA
Rule 7.3(b)(3) and Comment [6] prohibit solicitation within 30 days of death or accident	No equivalent prohibition in Model Rule	Delete SC rule and provide guidance in Comment
Rule 7.3(b)(4) prohibits solicitation if the lawyer knows or reasonably	No equivalent prohibition in Model Rule	Retain SC rule

should know the target is represented by counsel		
Rule 7.3(b)(5) prohibits solicitation where the target's physical, mental, or emotional state impairs their judgment	No equivalent prohibition in Model Rule, but there is some vague reference to "individuals who may be especially vulnerable to coercion or duress"	Remove the SC version and adopt new MR comment
Rule 7.3(c): requires lawyer to maintain a record of solicitations for two years	No equivalent requirement in Model Rule	Retain SC rule
Rule 7.3(d) and Comment [8]: requires three specific disclosures/disclaimers in solicitations	No equivalent requirement in Model Rule	Retain the SC versions of these subsections.
Rule 7.3(e) and Comment [9]: prohibits direct mail by registered, certified, or restricted delivery	No equivalent prohibition in Model Rule, however, the extra sentence added to Comment [2] of Rule 7.1 seems to address this more generally: "A truthful statement is also misleading if presented in a way that creates a substantial likelihood that a reasonable person would believe the lawyer's communication requires that person take further action when, in fact, no action is required."	
Rule 7.3(f): prohibits solicitations that resemble legal documents		
Rule 7.3(g): requires that solicitations related to a specific occurrence identify the source of the information prompting the communication	No equivalent requirement in Model Rule	
Rule 7.3(f): prohibits disclosure of the nature of the legal problem on the envelope or outside of the mailing	No equivalent prohibition in Model Rule	
Rule 7.3(i): requires that the lawyer who will actually be handling the matter or the nature of any referral relationship be disclosed	No equivalent requirement in Model Rule	
Rule 7.3(j): permits participation in prepaid or group legal services plans. Requires lawyers to ensure plan complies with state regulations and statutes and with the relevant provisions of RPC	Rule 7.3(e): permits participation in prepaid or group legal services plans. No requirement that the lawyer ensure the group or plan complies with regulations or statutes. Comment [9] says	Retain SC version.

	that lawyer must ensure compliance with RPC.	
Comment [7] distinguished contact with groups or organizations for the purpose of establishing a legal plan and Comment [10] establishes limits on participating with such groups or organizations.	Essentially retained, just renumbered as Comment [7] and [9]	NA
No reference to solicitations authorized by law or ordered by a court.	Rule 7.3(d): "This Rule does not prohibit communications authorized by law or ordered by a court or other tribunal." Comment [8] says this includes notices in class actions.	The subcommittee did not see the need for this rule. It is already included in Comment [5] to Rule 7.2.
RULE 7.4: COMMUNICATIONS OF FIELDS OF PRACTICE AND SPECIALIZATION		
Rule 7.4(a) and Comment [1] permit lawyers certified by the Supreme Court or approved ICO to state they are certified as a specialist in SC as long as the name of the certifying organization is clearly identified	Rule is eliminated. Comment [1] with some variance is moved to Rule 7.1 and renumbered as Comment [11]: Permits a lawyer to advertise certification as a specialist granted by any jurisdiction or approved organization.	Retain the SC version.
Rule 7.4(b) and Comment [2] permit lawyers to advertise practice areas but prohibits the use of any form of "certified" "specialist" "expert" or "authority" by those not certified as stated in Rule 7.4(a)	Rule is eliminated. New Comment [9] to Rule 7.1 permits lawyer to advertise practice areas and use forms of "specialist" as long as it is not false or misleading.	Retain the SC version.
Rule 7.4(c) and Comment [3] permit patent lawyers to call themselves "Patent Attorney" and permits trademark lawyers to say they are trademark lawyers.	Rule is eliminated. Comment is moved to Rule 7.1 and renumbered as Comment [10].	The subcommittee agreed that there was no longer a need to retain these rules and that it was a good idea to relegate it to a Comment. However, it seems more suited for Rule 7.4 than 7.1.
Rule 7.4(d) and Comment [3] permit an admiralty lawyer to say he practices admiralty law	Rule is eliminated. Comment is moved to Rule 7.1 and renumbered as Comment [10].	
Rule 7.4(e) permits a lawyer who is a certified neutral through the Supreme Court certification process can use the designation "certified mediator" or "certified arbitrator"	No equivalent in the Model Rule, but would certainly be permitted under Comment [11] to Rule 7.1	Retain SC rule.
RULE 7.5: FIRM NAMES AND LETTERHEAD		
Rule 7.5(a) and Comment [1] prohibit firm names and designations that are false or misleading; permits trade names	Rule is eliminated. Comment is moved to Rule 7.1 with some variance and renamed Comment [5]	Retain SC rule, but move nickname restrictions and

as long as they don't imply affiliation with government, public or charitable organization.		commentary from 7.1 to this place.
Rule 7.5(b) permits multistate firms to use the same name or designation in each state. Requires disclosures of jurisdictional limitations of identified lawyers.	Rule is eliminated. New Comment [5] to Rule 7.1 contains the permission to use the same name in each jurisdiction, but does not require any disclosures of jurisdictional limitations of individual lawyers.	The Subcommittee agreed that we should retain these provisions in the rules rather than Comments.
Rule 7.5(c) prohibits use of the name of lawyer holding government office in firm name if lawyer does not actively or regularly practice law.	Rule is eliminated. New Comment [8] to Rule 7.1 contains identical prohibition.	
Rule 7.5(d) and Comment [2] prohibit lawyers from stating that they practice in a partnership if that is false or misleading.	Rule is eliminated. New Comment [7] to Rule 7.1 contains an equivalent prohibition.	

**ATTACHMENT 3
PROPOSED REVISED RULES**

RULE 7.1: COMMUNICATIONS CONCERNING A LAWYER'S SERVICES

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

(a) contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading;

(b) is likely to create an unjustified expectation about results the lawyer can achieve, or states or implies that the lawyer can achieve results by means that violate the Rules of Professional Conduct or other law;

(c) compares the lawyer's services with other lawyers' services, unless the comparison can be factually substantiated;

(d) contains a testimonial about, or endorsement of, the lawyer

(1) without identifying the fact that it is a testimonial or endorsement;

(2) for which payment has been made, without disclosing that fact;

(3) which is not made by an actual client, without identifying that fact; and

(4) which does not clearly and conspicuously state that any result the endorsed lawyer or law firm may achieve on behalf of one client in one matter does not necessarily indicate similar results can be obtained for other clients.

(e) contains an accolade, unless:

(1) the accolade is awarded pursuant to strict, objective standards that are verifiable and would be recognized by a reasonable lawyer as establishing a legitimate basis for determining whether the recipient has the knowledge, skill, or experience indicated by the accolade;

(2) the standards for inclusion are, or information on how to obtain the standards is, disclosed in the communication;

(3) the date of the accolade is included in the communication;

(4) the communication makes it clear that the accolade is made by a specific organization or publication through use of distinctive typeface;

(5) no payment of any kind for any purpose is a prerequisite for the accolade or is otherwise required of the lawyer, or the lawyer's firm, for receiving the accolade;

(6) any payment by the lawyer to the organization or publication is limited to the reasonable cost of advertising to the extent it not only confers the accolade but

also provides a medium for promoting or advertising the accolade to the public; and,

(7) the communication does not otherwise violate Rules 7.4 or 7.5.

Comment

[1] This Rule governs all communications about a lawyer's services, including advertising permitted by Rule 7.2. Whatever means are used to make known a lawyer's services, statements about them must be truthful.

[2] Misleading truthful statements are prohibited by this Rule. A truthful statement is misleading if it omits a fact necessary to make the lawyer's communication considered as a whole not materially misleading. A truthful statement is misleading if a substantial likelihood exists that it will lead a reasonable person to formulate a specific conclusion about the lawyer or the lawyer's services for which there is no reasonable factual foundation. A truthful statement is also misleading if presented in a way that creates a substantial likelihood that a reasonable person would believe the lawyer's communication requires that person to take further action when, in fact, no action is required.

[3] A communication that truthfully reports a lawyer's achievements on behalf of clients or former clients may be misleading if presented so as to lead a reasonable person to form an unjustified expectation that the same results could be obtained for other clients in similar matters without reference to the specific factual and legal circumstances of each client's case. Similarly, an unsubstantiated claim about a lawyer's or law firm's services or fees or an unsubstantiated comparison of the lawyer's or law firm's services or fees with those of other lawyers or law firms may be misleading if presented with such specificity as would lead a reasonable person to conclude that the comparison or claim can be substantiated. The inclusion of an appropriate disclaimer or qualifying language may preclude a finding that a statement is likely to create unjustified expectations or otherwise mislead the public.

For instance, the prohibition in paragraph (b) on statements likely to create "unjustified expectations" may preclude, and the limitations in paragraph (d) on testimonials and endorsements does preclude, advertisements about results obtained on behalf of a client, such as the amount of a damage award or the lawyer's record in obtaining favorable verdicts, unless they state clearly and conspicuously that any result the lawyer or law firm may have achieved on behalf of clients in other matters does not necessarily indicate similar results can be obtained for other clients. Such information may create the unjustified expectation that similar results can be obtained for others without reference to the specific factual and legal circumstances.

[4] It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation. Rule 8.4(d). See also, Rule 8.4(f) for the prohibition against stating or implying an ability to improperly influence a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law.

[5] “Accolade” includes any recognition, award, listing, rating, or ranking from an organization, entity, or publication regarding the quality of a lawyer’s services for purposes of promoting or advertising those services. Subsection (e) permits a lawyer to accept and use accolades from organizations and publications (including making use of proprietary “badges,” symbols, or other marks) in communications concerning the lawyer’s services, subject to certain conditions designed to insure that such use is not false or misleading. Permissible use is limited to accolades from bona fide organizations with objectively clear standards, which have inquired into the lawyer’s fitness for certification and which do not issue the accolades indiscriminately for a price. The lawyer should be able to demonstrate that the accolade is available to all lawyers who meet objective and consistently applied standards relevant to practice in a particular area of the law. A communication subject to this Rule must make it clear that the accolade is made by a specific publication or organization through use of distinctive typeface or italics to avoid misleading the public or making an unsubstantiated comparison prohibited by this Rule. If the accolade is redone annually, the communication should include the specific year in which the lawyer was so included or recognized in order to prevent misleading the public that the accolade is perpetual. Likewise, if the accolade is based on a geographic region or particular practice area, that must also be disclosed. A lawyer is permitted to purchase an advertisement in a publication disseminated by the organization so long as such purchase is made at the going advertising rate and payment for an advertisement is not a prerequisite to participation or inclusion in the evaluation and listing process.

RULE 7.2: COMMUNICATIONS CONCERNING A LAWYER'S SERVICES: SPECIFIC RULES

(a) A lawyer may communicate information regarding the lawyer's services through any media. All advertisements shall be predominately informational such that, in both quantity and quality, the communication of factual information rationally related to the need for and selection of a lawyer predominates and the communication includes only a minimal amount of content designed to attract attention to and create interest in the communication.

(b) A lawyer is responsible for the content of any communication concerning the lawyer's services that is placed or disseminated by the lawyer and has a duty to review the communication prior to its dissemination to reasonably ensure its compliance with the Rules of Professional Conduct. The lawyer shall keep a copy or recording of every communication subject to this Rule for two years after its last dissemination along with a record of when and where it was disseminated.

(c) A lawyer shall not compensate, give or promise anything of value to a person for recommending the lawyer's services except that a lawyer may

- (1) pay the reasonable costs of advertisements or communications permitted by this Rule;

- (2) pay the usual charges of a legal service plan, which is itself not acting in violation of any Rule of Professional Conduct;

- (3) pay the usual charges of a not-for-profit lawyer referral service that:

- (i) permits the participation of all lawyers who are licensed and eligible to practice in the jurisdiction and who meet reasonable, objective eligibility requirements as may be established by the referral service for the protection of the public;

- (ii) acts reasonably to assess client satisfaction and address client complaints; and,

- (iii) does not make referrals to lawyers or law firms that own, operate or are employed by the referral service;

- (4) pay for a law practice in accordance with Rule 1.17;

- (5) give a nominal gift as an expression of appreciation that is neither intended nor reasonably expected to be a form of compensation for recommending the lawyer's services; and,

- (6) refer a client to another lawyer or a nonlawyer professional pursuant to an agreement not otherwise prohibited under these Rules that provides for the other person to refer clients or customers to the lawyer, if:

- (i) the reciprocal referral arrangement is not exclusive;

- (ii) the client is informed of the existence and nature of the agreement; and,

- (iii) the referral is in the best interests of the client.

(d) Any communication subject to this Rule must include the name and office address of at least one lawyer responsible for its content. In addition, all communications subject to

this Rule must disclose the geographic location, by city or town, of the office in which the lawyer or lawyers who will actually perform the services advertised principally practice law. If the office location is outside a city or town, the county in which the office is located must be disclosed. A lawyer referral service must disclose the geographic area in which the lawyer practices when a referral is made.

(e) No lawyer shall, directly or indirectly, pay all or a part of the cost of marketing by a lawyer not in the same firm unless the communication discloses the name and address of the nonadvertising lawyer, the relationship between the advertising lawyer and the nonadvertising lawyer, and whether the advertising lawyer may refer any case received through the communication to the nonadvertising lawyer.

(f) Every communication subject to this Rule that contains information about the lawyer's fee shall disclose whether the client will be liable for any expenses in addition to the fee and, if the fee will be a percentage of the recovery, whether the percentage will be computed before deducting the expenses.

(g) A lawyer who advertises a specific fee or range of fees for a particular service shall honor the advertised fee or fee range for at least ninety (90) days following dissemination of the communication, unless the communication specifies a shorter period; provided that a fee advertised in a publication which is issued not more than annually, shall be honored for one (1) year following publication.

(h) In addition to any specific requirements under these Rules, any disclosures or disclaimers required by these Rules to appear in a communication concerning a lawyer's services must be of sufficient size to be clearly legible and prominently placed so as to be conspicuous to the viewer. If the disclosure or disclaimer is televised or broadcast in an electronic or video medium, it shall be displayed for a sufficient time to enable the viewer to see and read the disclosure or disclaimer. If the disclosure or disclaimer is spoken aloud, it shall be plainly audible to the listener. If the statement is made on a website, online profile, Internet advertisement, or other electronic communication, the required disclosure or disclaimer shall appear on the same page as the statement requiring the disclosure or disclaimer.

Comment

[1] To assist the public in learning about and obtaining legal services, lawyers should be allowed to make known their services not only through reputation but also through organized information campaigns in the form of marketing. Law firm marketing involves an active quest for clients, contrary to the tradition that a lawyer should not seek clientele. However, the public's need to know about legal services can be fulfilled in part through marketing. This need is particularly acute in the case of persons of moderate means who have not made extensive use of legal services. The interest in expanding public information about legal services ought to prevail over considerations of tradition. Nevertheless, marketing by lawyers entails the risk of practices that are misleading or overreaching.

[2] This Rule permits public dissemination of information concerning a lawyer's or law firm's name, address, email address, website, and telephone number; the kinds of services the lawyer will undertake; the basis on which the lawyer's fees are determined, including prices for specific services and payment and credit arrangements; a lawyer's foreign language ability; names of references and, with their consent, names of clients

regularly represented; and, other information that might invite the attention of those seeking legal assistance.

[3] Questions of effectiveness and taste in advertising are matters of speculation and subjective judgment. Some jurisdictions have had extensive prohibitions against television and other forms of advertising, against advertising going beyond specified facts about a lawyer, or against "undignified" advertising. Television, the Internet, and other forms of electronic communication are now among the most powerful media for getting information to the public, particularly persons of low and moderate income; prohibiting television, Internet, and other forms of electronic advertising, therefore, would impede the flow of information about legal services to many sectors of the public. Limiting the information that may be advertised has a similar effect and assumes that the bar can accurately forecast the kind of information that the public would regard as relevant. But see Rule 7.3(a) for the prohibition against a solicitation through a real time electronic exchange initiated by the lawyer.

[4] Regardless of medium, a lawyer's marketing should provide only useful, factual information presented in an objective and understandable fashion so as to facilitate a person's ability to make an informed choice about legal representation. A lawyer should strive to communicate such information without the use of techniques intended solely to gain attention and which demonstrate a clear and intentional lack of relevance to the selection of counsel, as such techniques hinder rather than facilitate intelligent selection of counsel. A lawyer's marketing should reflect the serious purpose of legal services and our judicial system. The state has a significant interest in protecting against a public loss of confidence in the legal system, including its participants, and in protecting specifically against harm to the jury system that might be caused by lawyer advertising. The effectiveness of the legal system depends upon the public's trust that the legal system will operate with fairness and justice. Public trust is likely to be diminished if the public believes that some participants are able to obtain results through inappropriate methods. Public confidence also is likely to be diminished if the public perceives that the personality of their advocate, rather than the legal merit of their claim, is a key factor in determining the outcome of their matter. It is necessary to ensure that lawyer advertisements do not have these detrimental impacts. This Rule is intended to preserve the public's access to information relevant to the selection of counsel, while limiting those marketing methods that are most likely to have a harmful impact on public confidence in the legal system and which are of little or no benefit to the potential client.

[5] Neither this Rule nor Rule 7.3 prohibits communications authorized by law, such as notice to members of a class in class action litigation.

Record of Communications Concerning a Lawyer's Services

[6] Paragraph (b) imposes upon the lawyer who disseminates marketing material or causes its dissemination the responsibility for reviewing each communication prior to dissemination to ensure its compliance with the Rules of Professional Conduct. It also requires that a record of the content and use of marketing materials be kept in order to facilitate enforcement of this Rule.

Paying Others to Recommend a Lawyer

[7] Except as permitted under paragraphs (c)(1)-(c)(6), a lawyer is not permitted to pay others for recommending the lawyer's services or for channeling professional work in a manner that violates Rule 7.3. A communication contains a recommendation if it endorses

or vouches for a lawyer's credentials, abilities, competence, character, or other professional qualities.

[8] Paragraph (c)(1) allows a lawyer to pay for communications permitted by this Rule, including the cost of print directory listings, on-line directory listings, newspaper ads, television and radio airtime, domain-name registrations, sponsorship fees, Internet-based advertisements, and group advertising. A lawyer may compensate employees, agents and vendors who are engaged to provide marketing or client-development services, such as publicists, public relations personnel, business development staff and website designers. Moreover, a lawyer may pay others for generating client leads, such as Internet-based client leads, as long as the lead generator does not recommend the lawyer, any payment to the lead generator is consistent with Rules 1.5(e) (division of fees) and 5.4 (professional independence of the lawyer), and the lead generator's communications are consistent with Rule 7.1 (communications concerning a lawyer's services). To comply with Rule 7.1, a lawyer must not pay a lead generator that states, implies, or creates a reasonable impression that it is recommending the lawyer, is making the referral without payment from the lawyer, or has analyzed a person's legal problems when determining which lawyer should receive the referral. See also Rule 5.3 (duties of lawyers and law firms with respect to the conduct of nonlawyers who prepare marketing materials for them); Rule 8.4(a) (duty to avoid violating the Rules through the acts of another).

[9] Paragraph (c)(5) permits a lawyer to give a nominal gift as an expression of appreciation to a person for recommending the lawyer's services or referring a prospective client. The gift may not be more than a token item as might be given for holidays or other ordinary social hospitality. A gift is prohibited if offered or given in consideration of any promise, agreement or understanding that such a gift would be forthcoming or that referrals would be made or encouraged in the future.

[10] A lawyer may pay the usual charges of a legal service plan or a not-for-profit lawyer referral service, which is itself not acting in violation of the Rules of Professional Conduct. A legal service plan is a prepaid or group legal service plan or a similar delivery system that assists people who seek to secure legal representation. A lawyer referral service, on the other hand, is any organization that provides or offers to provide a consumer in need of legal services with a referral to or contact with a participating lawyer or law firm based on an evaluation or analysis of the consumer's circumstances. Such referral services are understood by the public to be consumer-oriented organizations that provide unbiased referrals to lawyers with appropriate experience in the subject matter of the representation and afford other client protections, such as complaint procedures or malpractice insurance requirements. Consequently, this Rule permits a lawyer to pay the usual charges of a not-for-profit lawyer referral service only. The "usual charges" may include a portion of legal fees collected by a lawyer from clients referred by the service when that portion of fees is collected to support the expenses projected for the referral service. Lawyers may not participate in for-profit lawyer matching or referral services.

[11] A lawyer who accepts assignments or referrals from a legal service plan or referrals from a lawyer referral service must act reasonably to assure that the activities of the plan or service are compatible with the lawyer's professional obligations. See Rule 5.3. Legal service plans and lawyer referral services may communicate with the public, but such communication must be in conformity with these Rules. Thus, advertising must not be false or misleading, as would be the case if the communications of a group advertising

program or a group legal services plan would mislead the public to think that it was a lawyer referral service sponsored by a state agency or bar association. See also Rule 7.3(b).

[12] Paragraph (d) is intended to work in conjunction with paragraph (b) to provide accountability for the content of lawyer advertising. It applies only to communications that contain substantive advertising or soliciting statements and inferences beyond a lawyer or law firm's mere name, design logo, and ordinary contact information. Thus lawyers may advertise through promotional items, such as pens, clothing, coffee mugs, and signage without the need for the name and address of an individual lawyer responsible for the materials, provided that such items or signage contain nothing other than the firm name, logo, and contact information; that any logo is merely a design shape and not a depiction; and that any included contact information does not contain a tagline or slogan. Any depiction (such as an animal, hammer, or other recognizable thing) within a logo triggers the requirement of paragraph (d), as does any slogan, tagline, or logo whether used as a part of contact information (e.g., www.sclawyer.com or 1-800-SC-LAWYER) or otherwise. The address of the responsible lawyer may be a post office address if the lawyer does not have a traditional law office in a physical location and if that post office address is listed as the lawyer's primary address in the Attorney Information System. However, if the post office address is in a different town or county from the town or county where the lawyer or lawyers who are offering the service advertised principally practice law, the latter must also be disclosed.

RULE 7.3: SOLICITATION OF CLIENTS

(a) "Solicitation" or "solicit" denotes a communication initiated by or on behalf of a lawyer or law firm that is directed to a specific person the lawyer knows or reasonably should know needs legal services and that offers to provide, or can reasonably be understood as offering to provide, legal services. All solicitations must comply with Rule 7.1. All written, recorded, or electronic solicitations must also comply with Rule 7.2.

(b) A lawyer shall not solicit professional employment by live person-to-person contact when a significant motive for the lawyer's doing so is the lawyer's or law firm's pecuniary gain, unless the contact is with:

- (1) a lawyer;
- (2) a person who has a family, close personal, or prior business or professional relationship with the lawyer or law firm; or,
- (3) a person who routinely uses for business purposes the type of legal services offered by the lawyer.

(c) A lawyer shall not solicit professional employment even when not otherwise prohibited by paragraph (b), if:

- (1) the target of the solicitation has made known to the lawyer a desire not to be solicited by the lawyer;
- (2) the solicitation involves coercion, duress, harassment, fraud, overreaching, intimidation or undue influence; or,
- (3) the solicitation concerns a specific matter and the lawyer knows, or reasonably should know, that the target of the solicitation is represented by a lawyer in the matter.

(d) A lawyer who uses written, recorded, or electronic solicitation shall maintain a file for two years showing the following:

- (1) the basis by which the lawyer knows the person solicited needs legal services; and
- (2) the factual basis for any statements made in the written, recorded, or electronic communication.

(e) Every written, recorded or electronic communication from a lawyer soliciting professional employment from anyone known to be in need of legal services in a particular matter, and with whom the lawyer has no family, close personal or prior business or professional relationship, must conform to the following provisions:

- (1) The words "ADVERTISING MATERIAL," printed in capital letters and in prominent type, shall appear on the front of the outside envelope and on the front of each page of the material. Every such recorded or electronic communication shall clearly state both at the beginning and at the end that the communication is an advertisement. If the solicitation is made by computer, including, but not limited to, electronic mail, the words "ADVERTISING MATERIAL," printed in capital letters and in prominent type, shall appear in any subject line of the message and at the beginning and end of the communication.
- (2) Each solicitation must include the following statements:

(A) "You may wish to consult your lawyer or another lawyer instead of me (us). You may obtain information about other lawyers by consulting directories, seeking the advice of others, or calling the South Carolina Bar Lawyer Referral Service at 799-7100 in Columbia or toll free at 1-800-868-2284. If you have already engaged a lawyer in connection with the legal matter referred to in this communication, you should direct any questions you have to that lawyer" and

(B) "The exact nature of your legal situation will depend on many facts not known to me (us) at this time. You should understand that the advice and information in this communication is general and that your own situation may vary."

Where the solicitation is written, the above statements must be in a type no smaller than that used in the body of the communication.

(3) Each solicitation must include the following statement: "ANY COMPLAINTS ABOUT THIS COMMUNICATION OR THE REPRESENTATIONS OF ANY LAWYER MAY BE DIRECTED TO THE COMMISSION ON LAWYER CONDUCT, 1220 SENATE STREET, SUITE 111, COLUMBIA, SOUTH CAROLINA 29201 – TELEPHONE NUMBER 803-734-2037." Where the solicitation is written, this statement must be printed in capital letters and in a size no smaller than that used in the body of the communication.

(f) Written communications mailed to the target of the solicitation shall be sent only by regular U.S. mail, not by registered mail or other forms of restricted or certified delivery.

(g) Written communications mailed to the target of the solicitation shall not be made to resemble legal pleadings or other legal documents.

(h) Any written communication prompted by a specific occurrence involving or affecting the target of the solicitation or a family member shall disclose how the lawyer obtained the information prompting the communication.

(i) A written communication seeking employment by the target of the solicitation in a specific matter shall not reveal on the envelope, or on the outside of a self-mailing brochure or pamphlet, the nature of the client's legal problem.

(j) If a lawyer reasonably believes that a lawyer other than the lawyer whose name or signature appears on the communication will likely be the lawyer who primarily handles the case or matter, or that the case or matter will be referred to another lawyer or law firm, any written communication concerning a specific matter shall include a statement so advising the potential client.

(k) Notwithstanding the prohibitions in this Rule, a lawyer may participate with a prepaid or group legal service plan operated by an organization not owned or directed by the lawyer that uses live person-to-person contact to enroll members or sell subscriptions for the plan from persons who are not known to need legal services in a particular matter covered by the plan. A lawyer may participate with a prepaid or group legal service plan only if the plan is established in compliance with all statutory and regulatory requirements imposed upon such plans under South Carolina law. Lawyers who participate in a legal service plan must make reasonable efforts to assure that the plan sponsors are in compliance with Rules 7.1, 7.2 and 7.3(c).

Comment

[1] Paragraph (b) prohibits a lawyer from soliciting professional employment by live person-to-person contact when a significant motive for doing so is pecuniary gain. A lawyer's communication is not a solicitation if it is directed to the general public, such as through a billboard, an Internet banner advertisement, a website or a television commercial, or if it is in response to a request for information. For example, advertisements that are automatically generated in response to an Internet search are not solicitations. Because those advertisements are generated in response to electronic research, they are more analogous to a lawyer's response to a request for information (which is not a solicitation) than an unsolicited and targeted letter to a person who is known to be in need of a particular legal service (which is a solicitation).

[2] "Live person-to-person contact" means in-person, face-to-face, live telephone and other real-time visual or auditory communications where the targeted person is subject to a direct personal encounter without time for reflection. Such person-to-person contact does not include chat rooms, text messages or other written communications that recipients may easily disregard. A potential for overreaching exists when a lawyer seeking pecuniary gain solicits a person known to be in need of legal services. This form of contact subjects a person to the private importuning of the trained advocate in a direct interpersonal encounter. The person, who may already feel overwhelmed by the circumstances giving rise to the need for legal services, may find it difficult to fully evaluate all available alternatives with reasoned judgment and appropriate self interest in the face of the lawyer's presence and insistence upon an immediate response. The situation is fraught with the possibility of undue influence, intimidation, and overreaching.

[3] The potential for overreaching inherent in live person-to-person contact justifies its prohibition in most circumstances, since lawyers have alternative means of conveying necessary information. In particular, communications can be mailed or transmitted by email or other electronic means that do not violate other laws. These forms of communications make it possible for the public to be informed about the need for legal services, and about the qualifications of available lawyers and law firms, without subjecting the public to live person-to-person persuasion that might overwhelm a person's judgment. The contents of live person-to-person contact can be disputed and may not be subject to third party scrutiny. Consequently, they are much more likely to approach, and occasionally cross, the dividing line between accurate representations and those that are false and misleading.

[4] There is far less likelihood that a lawyer would engage in overreaching against a former client, or a person with whom the lawyer has a close personal, family or business or professional relationship, or in situations in which the lawyer is motivated by considerations other than the lawyer's pecuniary gain. Nor is there a serious potential for overreaching when the person contacted is a lawyer or is known to routinely use the type of legal services involved for business purposes. Examples include persons who routinely hire outside counsel to represent an entity; entrepreneurs who regularly engage business, employment law or intellectual property lawyers; small business proprietors who routinely hire lawyers for lease or contract issues; and, other people who routinely retain lawyers for business transactions or formulations. Paragraph (b) is not intended to prohibit a lawyer from participating in constitutionally protected activities of public or charitable legal service organizations or bona fide political, social, civic, fraternal,

employee or trade organizations whose purposes include providing or recommending legal services to their members or beneficiaries.

[5] A solicitation that contains false, misleading or deceptive information within the meaning of Rule 7.1; that involves coercion, duress, harassment, fraud, overreaching, intimidation or undue influence within the meaning of Rule 7.3(c)(2); that involves contact with someone who has made known to the lawyer a desire not to be solicited by the lawyer within the meaning of Rule 7.3(c)(1); or that involves contact with a person the lawyer reasonably should know is represented by another lawyer in the matter is prohibited. Solicitation that involves contact with someone the lawyer reasonably should know is physically, emotionally or mentally incapable of exercising reasonable judgment in choosing a lawyer is prohibited. Live person-to-person contact with individuals who may be especially vulnerable to coercion or duress is ordinarily not appropriate. Examples include the elderly, those whose first language is not English, and those with disabilities. Moreover, if after sending solicitation, the lawyer receives no response, it is ordinarily presumed that the target of the solicitation has made known the desire not to be solicited. Therefore, any further effort to communicate with the recipient of the communication may violate the provisions of Rule 7.3(c).

[6] Lawyers who elect to use direct solicitation in the immediate wake of an accident should consider whether such solicitation is an intrusion on the personal privacy and tranquility of citizens and whether such solicitation is likely to cause outrage and irritation with the legal profession engendered by crass commercial intrusion by attorneys upon a citizen's personal grief in a time of trauma. Direct solicitation of an accident victim and or family should be limited to conveying necessary information about the need for legal services and the qualifications of the lawyer or law firm without subjecting the target of the solicitation to direct persuasion that may overwhelm their judgment.

[7] This Rule does not prohibit a lawyer from contacting representatives of organizations or groups that may be interested in establishing a group or prepaid legal plan for their members, insureds, beneficiaries or other third parties for the purpose of informing such entities of the availability of and details concerning the plan or arrangement which the lawyer or lawyer's firm is willing to offer. This form of communication is not directed to a prospective client. Rather, it is usually addressed to an individual acting in a fiduciary capacity seeking a supplier of legal services for others who may, if they choose, become prospective clients of the lawyer. Under these circumstances, the activity which the lawyer undertakes in communicating with such representatives and the type of information transmitted to the individual are functionally similar to and serve the same purpose as communications permitted under Rule 7.2.

[8] The requirement in Rule 7.3(e) that certain communications be marked "Advertising Material" does not apply to communications sent in response to requests of potential clients or their spokespersons or sponsors. General announcements by lawyers, including changes in personnel or office location, do not constitute communications soliciting professional employment from a client known to be in need of legal services within the meaning of this Rule. Such communications are, however, subject to Rules 7.1, 7.2, 7.4, and 7.5.

[9] Requiring communications to be marked as advertisements sent only by regular U.S. mail and prohibiting communications from resembling legal documents is designed to allow the recipient to choose whether or not to read the solicitation without fear of legal

repercussions. In addition, the lawyer or law firm is required by paragraph (h) to reveal the source of information used to determine that the recipient has a potential legal problem. Disclosure of this information source will help the recipient understand the extent of knowledge the lawyer or law firm has regarding the recipient's particular situation and will avoid misleading the recipient into believing that the lawyer has particularized knowledge about the recipient's matter if the lawyer does not.

[10] Paragraph (k) of this Rule permits a lawyer to participate with an organization that uses personal contact to enroll members for its group or prepaid legal service plan, provided that the personal contact is not undertaken by any lawyer who would be a provider of legal services through the plan. The organization referred to in paragraph (k) must not be owned by or directed, whether as manager or otherwise, by any lawyer or law firm that participates in the plan. For example, paragraph (k) would not permit a lawyer to create an organization controlled directly or indirectly by the lawyer and use the organization for the person-to-person solicitation of legal employment of the lawyer through memberships in the plan or otherwise. The communication permitted by these organizations must not be directed to a person known to need legal services in a particular matter, but must be designed to inform potential plan members generally of another means of affordable legal services.

RULE 7.4: COMMUNICATION OF FIELDS OF PRACTICE AND SPECIALIZATION

(a) A lawyer who is certified under Rule 408, SCACR, as a specialist in a specialty field designated by the Supreme Court Commission on Continuing Legal Education and Specialization and approved by the Supreme Court, or a lawyer who has been issued a certificate of specialization by an independent certifying organization approved by the Supreme Court Commission on Continuing Legal Education and Specialization pursuant to the Regulations for Legal Specialization in South Carolina, Part IV, Appendix D, § VI, SCACR, is entitled to advertise or state publicly in any manner otherwise permitted by these Rules that the lawyer is certified as a specialist in South Carolina. The name of the certifying organization must be clearly identified in the communication.

(b) A lawyer who is not certified as a specialist but who concentrates in, limits his or her practice to, or wishes to announce a willingness to accept cases in a particular field may so advertise or publicly state in any manner otherwise permitted by these Rules. To avoid confusing or misleading the public and to protect the objectives of the South Carolina certified specialization program, any such advertisement or statements shall be strictly factual and shall not contain any form of the words "certified," "specialist," "expert," or "authority" except as permitted by Rule 7.4(c).

(c) A lawyer certified by the South Carolina Supreme Court Board of Arbitrator and Mediator Certification to be appointed as a mediator or arbitrator pursuant to Appendix G to Part IV of the South Carolina Appellate Court Rules or Rule 19 of the South Carolina Alternative Dispute Resolution Rules may use the designation "certified mediator" or "certified arbitrator" or any combination of those terms.

Comment

[1] Paragraph (a) permits a lawyer to state that the lawyer is certified as a specialist in a field of law if the lawyer has been certified under Rule 408, SCACR, as a specialist in a specialty field designated by the Supreme Court Commission on Continuing Legal Education and Specialization and approved by the Supreme Court or by an independent certifying organization approved by the Commission. Certification signifies that an objective entity has recognized an advanced degree of knowledge and experience in the specialty area greater than is suggested by general licensure to practice law. Certifying organizations may be expected to apply standards of experience, knowledge and proficiency to insure that a lawyer's recognition as a specialist is meaningful and reliable. In order to insure that consumers can obtain access to useful information about an organization granting certification, the name of the certifying organization must be included in any communication regarding the certification.

[2] Paragraph (b) of this Rule permits a lawyer to indicate areas of practice in communications about the lawyer's services, for example, in a telephone directory or other advertising. If a lawyer practices only in certain fields, or will not accept matters except in such fields, the lawyer is permitted to so indicate.

[3] Recognizing the long-established policy of the Patent and Trademark Office, a lawyer admitted to engage in patent practice before that Office may use the designation "Patent Attorney" or a substantially similar designation. Likewise, the designation of admiralty practice has a long historical tradition associated with maritime commerce and the federal courts. Therefore, a lawyer engaged in admiralty practice may use the designation "admiralty," "proctor in admiralty" or a substantially similar designation.

RULE 7.5: FIRM NAMES AND PROFESSIONAL DESIGNATIONS

(a) A lawyer shall not use a firm name, nickname, moniker, trade name, letterhead or other professional designation that:

- (1) implies an ability to obtain results in a matter;
- (2) implies a connection with a government agency or with a public or charitable legal services organization; or
- (3) is otherwise in violation of Rule 7.1.

(b) A law firm with offices in more than one jurisdiction may use the same name or other professional designation in each jurisdiction, but identification of the lawyers in an office of the firm shall indicate the jurisdictional limitations on those not licensed to practice in the jurisdiction where the office is located.

(c) The name of a lawyer holding a public office shall not be used in the name of a law firm, or in communications on its behalf, during any substantial period in which the lawyer is not actively and regularly practicing with the firm.

(d) Lawyers may state or imply that they practice in a partnership or other organization only when that is the fact.

Comment

[1] The use of nicknames, such as the "Heavy Hitter" or "The Strong Arm," that suggest the lawyer or law firm has an ability to obtain favorable results for a client in any matter are prohibited. A significant possibility exists that such nicknames will be used to mislead the public as to the results that can be obtained or create an unsubstantiated comparison with the services provided by other lawyers. See also Rule 8.4(f) (prohibition against stating or implying an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law).

[2] A firm may be designated by the names of all or some of its current, retired, or deceased members or partners, or by a trade name such as the "ABC Legal Clinic." A lawyer or law firm may also be designated by a distinctive website address or comparable professional designation. Although the United States Supreme Court has held that legislation may prohibit the use of trade names in professional practice, use of such names in law practice is acceptable so long as it is not misleading. If a private firm uses a trade name that includes a geographical name such as "Springfield Legal Clinic," an express disclaimer that it is a public legal aid agency may be required to avoid a misleading implication.

[3] A firm may be designated by the names of deceased members or partners where there has been a continuing succession in the firm's identity. It has been the custom and practice in this state for law firms to continue to use the names of deceased members or partners in their firm names. The common law creates a rebuttable presumption that the deceased member or partner consented to the continued use of his or her name in the law firm's name. See *Gignilliat v. Gignilliat, Savitz & Bettis, L.L.P.*, 385 S.C. 452, 684 S.E.2d 756 (2009). The use of such names to designate law firms has proven a useful

means of identification. However, it is misleading to use the name of a nonlawyer or the name of a lawyer not associated with the firm or a predecessor of the firm.

[4] With regard to paragraph (d), lawyers sharing office facilities, but who are not in fact associated with each other in a law firm, may not denominate themselves as, for example, "Smith and Jones," for that title suggests that they are practicing law together in a firm.

Memorandum

From: Adam C. Ness
Date: May 25, 2019
Re: Special Referees and Masters in Equity;
Family Court.

History of Referees and Masters in South Carolina

Referring court cases to be heard by referees, masters, and—more recently—South Carolina’s own version, “special referees,” dating back to England before the writing of the United States Constitution. The United Kingdom, the Republic of Ireland, Australia, New Zealand, Hong Kong, several Canadian provinces, as well as many states of the United States utilize similar officers of the court. Special referees, or those with the same jurisdiction and powers, go by many names in many countries and jurisdictions, including but not limited to: special referee, special master, master in equity, registrar, deputy registrar, and prothonotary, to name a few.

The use of Masters and Referees dates back as far as American Jurisprudence itself. In the Revised Statutes of the State of South Carolina, dated 1873, Chapter 14, was entitled “Powers of Referees.” Section 436, Powers of Referees, provided, “Every referee appointed to this Code of Procedure shall have power to administer oaths in any proceedings before him, and shall have, generally, the powers now vested in a referee by law.

The General Statutes of the State of South Carolina, dated 1881, Title VI, Chapter XVI, Section 781 and 782 created the officer of master in lieu of the office of referee in certain counties. “The mode of trial, whether by the Judge, a referee or a jury, is discretionary with the Court. *See Lucken v. Wichman*, 5 SC 411 (1874). Article 7 of the Revised Statutes of the State of South Carolina, dated 1893, entitled “The Master”, essentially mirrors the 1881 statutes. The statutes from 1902, 1912, 1922, 1930, 1932, 1942, 1952, and subsequent years, also define Masters in a similar manner.

South Carolina - 1976 Act No. 690

On July 1, 1979, the General Assembly created the Family Court, which is essentially a spin off from the Circuit Court.

SECTION 20-3-90. Attempt at reconciliation.

In all cases **referred to a master or special referee**, such master or special referee shall, ~~except in default cases, summon the party or parties within the jurisdiction of the court before him and shall in all cases make an earnest effort to bring about a reconciliation between the parties if they appear before him.~~ No judgment of divorce shall be granted in such case unless **the master or special referee** to whom such cause may have been referred shall certify in his report or, if the cause has not been referred, unless the trial judge shall state in the decree that he has attempted to reconcile the parties to such action and that such efforts were unavailing.

This shows the legislature contemplated the use of Special Referees in Family Court cases. Moreover, to my knowledge, referrals are not being done in the 2nd circuit, or any of the other circuits in which I regularly practice.

SECTION 20-3-80. Required delays before reference and final decree; exceptions.

No **reference** shall be had before two months after the filing of the complaint in the office of the Clerk of Court, nor shall a final decree be granted before three months after such filing.

~~Provided, however, that when the plaintiff seeks a divorce on the grounds of desertion or separation for one year, the hearing may be held and the decree issued after the responsive pleadings have been filed or after the respondent has been adjudged to be in default whichever occurs sooner.~~

Rule 2(a), SCRFC, provides:

(a) Domestic Relations Actions. In addition to the rules set forth in Sections I, II and III of these Rules of Family Court, **the South Carolina Rules of Civil Procedure (SCRCP) shall be applicable in domestic relations actions** to the extent permitted by Rule 81, SCRCP. The following SCRCP, however, shall be inapplicable: 5(a) to the extent it does not require notice to a defendant of every hearing, 8(d) to the extent it provides that the failure to file a responsive pleading constitutes an admission, 12(b) to the extent it permits a 12(b)(6) motion to be converted to a summary judgment motion, 12(c), 13(j), 18, 23, 38, 39, 40(a & b), 42 to the extent it refers to trial by jury, 43(b)(1) to the extent it limits the use of leading questions to cross-examination, 43(i & j), 47, 48, 49, 50, 51, 54(c) to the extent it permits the court to grant relief not requested in the pleadings, 55, 56, 68, 69, 71, 72, 78, 79, and 84.

You will note, SCRCP, Rule 53, **is not excluded** and provides:

(b) References. In an action **where the parties consent, in a default case**, or an action for foreclosure, some or all of the causes of action in a case may be referred to a **master or special referee** by order of a circuit judge **or the clerk of court**. In all other actions, the circuit court may, upon application of any party or upon its own motion, direct a reference of some or all of the causes of action in a case. Any party may request a jury pursuant to Rule 38 on any or all issues triable of right by a jury and, upon the filing of a jury demand, the matter shall be returned to the circuit court. A case shall not be referred to a master or special referee for the purpose of making a report to the circuit court. The clerk shall promptly provide the master or special referee with a copy of the order of reference.

Above, Rule 2(a), SCFCR, also references Rule 81, SCRCP, as an additional limiting factor, and that Rule of Civil Procedure provides:

These rules, or any of them, shall apply to every trial court of civil jurisdiction within this state, within the limits of the jurisdiction and powers of the court provided by law, and the procedure therein shall conform to these rules insofar as practicable. **They shall apply insofar as practicable** in magistrate's courts, probate courts, **and family courts** to the extent they are not inconsistent with the statutes and rules governing those courts. In any case where no provision is made by statute or these Rules, the procedure shall be **according to the practice as it has heretofore existed in the courts of this State.**

To that point, there is precedent in South Carolina for divorces being referred to special referees. *See Neely v. Thomasson*, 618 S.E.2d 884, 365 S.C. 345 (2005)(The South Carolina Supreme Court held a special referee's divorce decree constituted a prior, final adjudication of paternity.)

Practical Matters

Decrease Wait Times

In small, rural counties such as Bamberg and Barnwell, Family Court time is precious. Litigants are often required to wait weeks or months before their case can be heard; or, as is more often the practice, hearings are scheduled in either Aiken or Barnwell counties to make up for the limited court time available. Family Court is already difficult enough without the unnecessarily lengthened waits for resolution.

Reduction in Expenses and Travel

Due to the almost-guaranteed 2.5 hour drive from Bamberg to Aiken and back, an additional \$500.00 must be added to each divorce, if not \$1,000.00, if one reasonably assumes 2 hearings will be needed. This barely accounts for the 90 mile round trip expense, which accounts for approximately \$50.00. The alternative is a \$200 (or less) special referee hearing.

Guided Pro Se Litigation

While a Master or Special Referee cannot act as an attorney for litigants, likewise as Family Court Judges cannot, imagine a husband and wife have been separated for 15 years. They have no property and no kids. Each has moved on in all but paper. One of them is ready to get married again, but neither can afford the \$3,000.00 retainer for an attorney. What do they do?

They file for divorce, pro se, as is their right. Now, who guides them through the process? The Clerk of Court and the Family Court judge sitting when the case comes up on the docket. Pro se cases are undesirable and time consuming because – as is often the case – the litigants are not ready for the hearing, and their case ends up being continued for one reason or another. This can happen more than once, and it often does. What if – instead – their case had been referred to a special referee or master in equity?

They file for divorce, pro se. The clerk gives them option of waiting maybe 6 months to a year to come up on the docket, or they can have the matter referred to a special referee or master, who will charge a small fee. They choose the small fee because they are ready to move on. Together, they pool together the \$200.00 fee, and they walk over to the Special Referee's office to discuss the situation. After a quick conflict check, their case is scheduled for the first available date, 91 days after filing. At that time, the referee's/master's staff makes sure they know what they need to bring to the hearing, and when they show up for their hearing, their case is heard on time, without delay, and an order is issued and filed within a few days at the latest. Efficiency will be the name of the game.

Next, Like a Barber Shop

A master or special referee can hear a case much faster than a Family Court judge, and despite the additional cost – in the end – special referees and masters would be more economical to litigants. Moreover, litigants – who live in a world of nearly instant gratification – would come away from the process without a feeling that the 15 minute hearing they needed to finalize their divorce was ultimately anticlimactic and unnecessarily delayed.

Conclusion

Utilization of masters and special referees in Family Court would serve to expedite consent and default cases all over South Carolina, while reducing costs and frustration for litigants.

Proposal

I propose we ask the South Carolina Supreme Court to issue an advisory opinion that referrals to Special Referees and Masters may have fallen out of practice but that it is still approved and encouraged in order to reduce burdens on court resources similar to their use in Circuit Court.