



# **South Carolina Bar**

**2017 South Carolina Bar Convention**

**Senior Lawyers Division Seminar**

**Saturday, January 21, 2017**

*presented by*

**The South Carolina Bar  
Continuing Legal Education Division**

*SC Supreme Court Commission on CLE Course No. 170450*



**South  
Carolina  
Bar**

**Discovering Your Memory Power  
(For the Young and Mature)**

Matthew Goerke  
Hackettstown, NJ

# **Great Memories**

Memory Switch

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**Discovering Your Memory Power**

**Name:**

\_\_\_\_\_

**Focus of today's Meeting:**

\_\_\_\_\_

**Two tips from Dale Carnegie's book "How to Win Friends and Influence People"**

1. \_\_\_\_\_

2. \_\_\_\_\_

**Two tips for remembering names:**

1. \_\_\_\_\_

2. \_\_\_\_\_

## **Can You Remember?**

1. \_\_\_\_\_ 6. \_\_\_\_\_ 11. \_\_\_\_\_

2. \_\_\_\_\_ 7. \_\_\_\_\_ 12. \_\_\_\_\_

3. \_\_\_\_\_ 8. \_\_\_\_\_ 13. \_\_\_\_\_

4. \_\_\_\_\_ 9. \_\_\_\_\_ 14. \_\_\_\_\_

5. \_\_\_\_\_ 10. \_\_\_\_\_ 15. \_\_\_\_\_

**Notes:**





**South  
Carolina  
Bar**

**“Who is Your Client”:  
Ethical Concerns in Elder Law**

Lesley M. “Lee” Coggiola  
Columbia, SC

**2016 Ethics and Discipline Update**  
**Barbara M. Seymour**  
**Jaclyn Nichols**  
**Office of Disciplinary Counsel**

- I. Opinion Summaries**
  - II. Recent Rule Revisions & Proposals**
  - III. 2014-2015 Annual Report on Lawyer Discipline**
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**I. Opinion Summaries**

**Criminal Conduct**

- (1) Matter of Breibart. Lawyer pled guilty to mail fraud in connection with a scheme to steal money from clients by falsely stating that they were subject to ongoing criminal investigations and inducing them into liquidating their assets and depositing their money with him. Lawyer was sentenced to 63 months in federal prison, three years of supervised release, and restitution of \$2.4 million dollars. Lawyer also bilked 33 clients of hundreds of thousands of dollars by accepting retainers, failing to do the work, then spending the money. The Lawyers' Fund for Client Protection received more than \$5.6 million in claims. The Fund paid its cap of a total of \$200,000.00. Disbarred, plus restitution, by agreement. (Op.#27592, November 25, 2015)
- (2) Matter of Hammer. A process server was attempting to serve documents on Lawyer in connection with Lawyer's personal domestic case. Lawyer struck the process server's vehicle, twice, while backing out of a parking space. Lawyer's two sons were in his vehicle. Lawyer was charged with first degree assault and battery, malicious injury to property, hit and run/leaving the scene, and unlawful conduct towards a child. Lawyer pled guilty to leaving the scene with property damage and was sentenced to 364 days in prison, suspended on six months' probation. Definite suspension for one year, plus costs, and LEAPP Ethics School, by agreement. (Op.#27618, March 30, 2016)
- (3) Matter of Viers. Lawyer pled guilty to Harassment 2nd degree involving his conduct and interactions with his ex-girlfriend. Lawyer was sentenced to 60 days in jail (to be served on weekends), one year of probation, required mental health counseling, fees/fines in the amount of \$133.90. Lawyer also pled guilty to engaging in a monetary transaction in property derived from unlawful activity, which had some effect on interstate or foreign commerce, that Lawyer knew were proceeds of mail fraud. Lawyer was sentenced to 37 months in prison, three years' probation, and restitution of \$875,000. Disbarred, by agreement. (Op.#27651, July 20, 2016)
- (4) Matter of Chaplin. While under federal investigation for money laundering for criminal defense clients, Lawyer gave false statements regarding his receipt of cash payments in excess of \$10,000 and failing to file required forms. Lawyer was sentenced to three years of probation after pleading guilty to willfully making a material false statement to the federal government. In two client matters, Lawyer included language in his fee agreement providing that he could garnish the clients' wages or tax refunds if the fee was not paid. Lawyer had no legal authority to garnish wages or tax refunds. Definite suspension for one year (retroactive) plus costs, LEAPP Ethics School, Trust Account School, and Law Office Management School, by agreement. (Op.#27658, August 24, 2016)

**Neglect of Client Matters**

- (5) Matter of Fitzharris. Lawyer represented client in negligence action and failed to reach a settlement agreement with the insurance carrier. Lawyer misrepresented to the client that

- the case had settled and delivered an advanced check from the operating account. Lawyer neglected the file and later learned there was no settlement check or signed statement, the Medicare lien was outstanding, and that the case had been dismissed because the statute of limitations had expired. The Court considered Lawyer's issues related to physical disabilities and depression. Definite suspension for three months, LEAPP Ethics School, Trust Account School, and Law Office Management School, by agreement. (Op.#27604, February 17, 2016)
- (6) Matter of Sample. Lawyer neglected five separate client matters by failing to respond to communications, failing to keep clients reasonably informed, and failing take further steps to protect clients' interests. Lawyer's misconduct also included: misrepresentations to clients that a meeting had been rescheduled when the meeting had never been scheduled; failure to timely refund unused retainer; failure to timely file briefs for an appeal resulting in dismissal; failure to keep funds separate until disputes over claimed interests had been resolved by disbursing an estate settlement to pay attorney's fees and personal representative's expenses; and, failure to pay three awards of the Resolution of Fee Disputes Board resulting in certificates of noncompliance. Lawyer failed to cooperate with the disciplinary investigation. Definite suspension for nine months, plus costs, LEAPP, and two years of medical treatment monitoring, by agreement. (Op.#27605, February 17, 2016)
- (7) Matter Of Davis. From December 2011 to May 2013, Lawyer was retained to represent ten different clients for whom she failed to timely file the appropriate motions, appeals, and pleadings; failed to communicate or keep clients reasonably informed; failed to withdraw from representation when her physical and/or mental condition materially impaired her ability to represent them; failed to refund or retain unearned fees in her trust account; and, failed to pay fee dispute awards. Lawyer failed to file respond to disciplinary inquiries. Definite suspension for two years, plus costs, restitution, and LEAPP Ethics School, by agreement. (Op.#27611, March 9, 2016)
- (8) Matter of Houston. Lawyer failed to timely file the initial brief and designation in a client's appeal, resulting dismissal. The client's appeal was reinstated twice, but dismissed a third time after the court granted all possible extensions. In unrelated cases, Lawyer failed to pay a videographer and a court reporting service for two years. Lawyer failed to cooperate with disciplinary investigations. Lawyer had extensive disciplinary history. Definite suspension for nine months, plus costs, LEAPP Ethics School and Law Office Management School. (Op.#27616, March 30, 2016)
- (9) Matter of Stockholm. Lawyer neglected client matters in three separate matters by failing to timely serve pleadings resulting in dismissal because the statute of limitations expired. Lawyer then misled those clients about settlements by fabricating documents. In two other cases, Lawyer failed to meet the deadlines for restoring cases to the docket. Disbarred, plus costs, by agreement. If seeking readmission, LEAPP Ethics School, Trust Account School, Law Office Management School, and law office management monitoring for two years. (Op.#27624, April 20, 2016)
- (10) Matter of Herlong. Lawyer was arrested on four separate occasions for shoplifting, possession of cocaine and multiple driving offenses, open container, and public disorderly conduct. Lawyer was also indicted for possession with intent to distribute crack cocaine, possession of cocaine, and contributing to the delinquency of a minor. Lawyer was incarcerated for 120 days for failure to pay court-ordered spousal support. Upon his release, the felony charges were resolved with a sentence of time served. Lawyer failed to notify Commission on Lawyer Conduct of his felony indictment. Lawyer also represented a client in court while on administrative suspension and he misrepresented to the judge that his Bar status was inactive (rather than suspended) and that he was in the process of

- reactivating (which was not true). Public reprimand, 2 year monitoring contract with Lawyers Helping Lawyers, by agreement. (Op.#27634, May 11, 2016)
- (11) Matter of Moak. Lawyer neglected several client matters. In a divorce case, Lawyer filed a complaint for the client, but failed to seek to have a hearing scheduled. He failed to respond to the client's requests for information or notify the client that the case was dismissed for failure to proceed. In a visitation case, Lawyer failed to take any action on the client's behalf after being paid his retainer in full. Lawyer did not place unearned fees into a trust account. After the grievance was filed, Lawyer refunded the retainer. In a PCR case, Lawyer failed to communicate with his client; appeared at the hearing notifying his client or securing his attendance; and, failed to present evidence in support of the client's primary complaint. Public reprimand, plus costs, and LEAPP Ethics School, Trust Account School, and Law Office Management School, by agreement. (Op.#27649, July 20, 2016)

### **Misappropriation and Other Trust Account Violations**

- (12) Matter of Carter. Lawyer received \$250,000.00 to hold in escrow as an earnest money deposit for a business transaction between his client and another party. Lawyer properly disbursed \$150,000.00 to the client. He then misappropriated the remaining funds over the next nine months. A dispute arose between the parties and litigation ensued. Lawyer was ordered to deliver the escrowed funds to the clerk of court. Lawyer did not comply and was held in contempt of court. Lawyer had been the subject of a previous disciplinary investigation in which he neglected litigation in a civil case. That matter resulted in a deferred discipline agreement in which Lawyer consented to attending Ethics School and Law Office Management School, seeking psychological treatment, and entering into a Lawyers Helping Lawyers. Lawyer did not comply and the DDA was revoked. Lawyer also self-reported failing to act with diligence and competence in two other litigation matters. Disbarred, plus costs, restitution, and LEAPP, by agreement. (Op.#27589, November 12, 2015)
- (13) Matter of Breckenridge. Lawyer was hired by a nonlawyer closing company to conduct a residential real estate refinance transaction in 2012. The closing company was contracted by a title company, which prepared the documents and processed the funds. The title company disbursed the loan proceeds prior to deposit of funds for that purpose, resulting in an overdraft that was reported to the Commission on Lawyer Conduct. The ensuing ODC investigation revealed that Lawyer failed to disclose to the clients the disbursement of their loan proceeds including his sharing of legal fees with the nonlawyer closing company. Further, Lawyer failed to properly supervise the disbursement of funds and ensure that the HUD-1 settlement statement matched the actual disbursements of loan proceeds. Lawyer also failed to maintain proper records of the transaction. The majority held that a closing attorney's duty to oversee the disbursement of loan proceeds requires that he has control over the disbursement or, if a third party disburses the proceeds, the attorney receives detailed verification that the disbursement was done correctly. Public reprimand, plus costs, LEAPP Ethics School and Trust Account School. (Op.#27625, April 20, 2016) (motion for reconsideration denied)
- (14) Matter of Moses. Lawyer was employed by a law firm. Lawyer billed a client directly and sought the payment for himself rather than the firm. When the firm found out, Lawyer agreed to repay the money. The firm's ensuing investigation revealed that, from August 2009 through September 2011, Lawyer misappropriated approximately \$77,000 by invoicing clients directly. Ultimately, Lawyer admitted to the theft and repaid the firm the amount of improper invoices and the cost of the computer forensics expert hired by the firm to conduct the investigation. Disbarred, plus costs. (Op.#27626, April 20, 2016)

- (15) Matter of Cox. Lawyer failed to make reasonable efforts to ensure that nonlawyer employee conduct was compatible with professional obligations of a lawyer when a paralegal under his supervision was found misappropriating \$349,227.34 through issuing and negotiating checks. Also, Lawyer failed to pay a court reporter after five invoices were received for the same service and paid only after a complaint was filed. In an estate representation and a custody representation, Lawyer failed to keep his clients informed of the status of their matters. In the custody case, Lawyer failed to establish the scope of representation or pursue the goals of the client to secure visitation with the client's children. Lawyer represented another client seeking custody and failed to seek a court order for temporary or permanent change of custody after the relative with custody agreed to allow the child to live with the client. Public Reprimand, plus costs, LEAPP Ethics School, Trust Account School, and Law Office Management School, by agreement. (Op.#27642, June 22, 2016)
- (16) Matter of Warren. Lawyer misappropriated over \$171,392.00 from three trust funds while serving as trustee. In another case, Lawyer was paid \$40,000.00 in fees for a client, but failed to perform work or reimburse unearned fees. In a third matter, Lawyer mismanaged and failed to perform work after accepting \$20,000.00 in fees for estate planning and corporate work, resulting in the client incurring \$1,700.00 in penalties and \$13,000.00 in attorney's fees for new counsel to reinstate his corporate charter and correct the estate plan. After his interim suspension, the court-appointed receiver reported three additional client matters in which Lawyer converted \$18,000.00 of client funds that were to be held in trust and failed to file numerous original documents, mostly deeds, after collecting fees. Lawyer failed to respond to disciplinary investigation. Disbarred, by default, plus costs and restitution. (Op.#27643, June 29, 2016)
- (17) Matter of Kerestes. Lawyer commingled funds by leaving earned fees in his trust account. Upon receipt of a notice of an overdraft on his trust account, Lawyer discovered that an employee had misappropriated in excess of \$23,000 by transferring funds to a personal account over a two-year period. Lawyer failed to discover the theft because he was not conducting required monthly reconciliations. Public Reprimand, by agreement. (Op.#27656, August 24, 2016)
- (18) Matter of Lester. Lawyer was disbarred in North Carolina for misappropriation of client funds. The Supreme Court of South Carolina imposed reciprocal discipline, uncontested by Lawyer. Disbarment. (Op.#27661, August 24, 2016)

### **Litigation Misconduct**

- (19) Matter of Schmidt. Lawyer represented clients in claims against Norfolk Southern following the deadly derailment in January 2005. More than one hundred of his client had signed releases in exchange for payment from the railroad prior to his representation. Lawyer opted his clients out of the class settlement and filed individual lawsuits. The railroad moved for summary judgment based on the releases. Upon learning of the existence of the releases from the answers and discovery, Lawyer failed to advise the clients that tender of the funds was required until after the summary judgment hearing. In a letter to the clients, Lawyer gave them five days to deliver the funds received from the railroad years earlier. The letter falsely stated that by returning the funds the clients would be able to negotiate higher settlements. A client sent a copy of the letter to the media. Lawyer gave an interview to a television station and addressed the merits of the case, stating that the releases had been signed under duress. He also falsely asserted that the railroad had asked for the return of the money. The judge had previously admonished Lawyer for speaking to the press and Lawyer had agreed to refrain. As a result of the media interview about the releases, Lawyer was ordered to pay the railroad's fees and costs

and to refrain from future public comments. Public reprimand, by agreement. (Op. # 27582, October 14, 2015).

- (20) Matter of Owen. Lawyer was sanctioned and assessed a fine of \$5,000 as a result of conduct in a Bankruptcy Court hearing in which he improperly raised an argument that had been presented and was pending in binding arbitration proceedings. As a result of Lawyer's improper filing, the Court and the opposing party had to deal with groundless and unnecessary proceedings. Lawyer misrepresented to the Court that he was proceeding at the direction of the Bankruptcy Trustee, when Lawyer was actually responsible for the argument. Lawyer later wrote a letter to the Court calling attention to his misstatement and apologized to all concerned. Public reprimand, plus costs, and LEAPP Ethics School, by agreement. (Op.#27650, July 20, 2016)

### **Dishonesty and False Swearing**

- (21) Matter of Samaha. Lawyer signed as witness and notary to a false signature on an assignment of a mortgage. The signature was purportedly that of Lawyer's client's wife, who had been dead for seven years. In another case, Lawyer prepared, witnessed, and notarized a revocation of a power of attorney for a cognitively impaired client. Additionally, Lawyer's staff forged and altered insured closing protection letters, title insurance binders, and title insurance policies and provided them to lenders in connection with Lawyer's real estate closings. Prior to being suspended in an unrelated disciplinary investigation, Lawyer failed to payoff prior mortgages in four closings. His trust account was approximately \$239,000 short. Disbarment, plus costs, by agreement, (Op.#27660, August 24, 2016)
- (22) Matter of Fosmire. Lawyer represented the insured in a car wreck case. He neglected the matter for about a year and failed to communicate with the insurance company. He settled the claim for \$200,000 without the insurance company's knowledge or consent. When no settlement check was produced, Lawyer gave false information to opposing counsel to cover for the fact that he had no authority to make the offer. The insurance company did not learn about the settlement until they were served with pleadings in a lawsuit filed by opposing counsel to enforce it. Public Reprimand, plus LEAPP Ethics School, by agreement. (Op.#27657, August 24, 2016)

### **Advertising and Solicitation**

- (23) Matter of Naert. Lawyer represented clients in lawsuits against a timeshare company. In the firm's Internet marketing campaign, Lawyer bid on keywords including the name of the timeshare company and the names of the company's attorneys. This resulted in Lawyer's firm's advertisement appearing prominently in search results generated by those names. Lawyer's ads associated with searches of those names included language such as "Timeshare Attorney in SC - Ripped Off? Lied to? Scammed?" Further, the ad included a link to the law firm website, but did not contain the firm's name or the name of a lawyer responsible for the advertisement's content. Public reprimand, by agreement, plus costs, Advertising School. (Op. # 27574, September 30, 2015).

### **Unauthorized Practice of Law**

- (24) Matter of Allocco. About seven years ago, Lawyer received a letter of caution from the North Carolina State Bar for practicing law in that state without a license. She received reciprocal discipline in South Carolina in the form of a confidential admonition. In 2014, Lawyer conducted a real estate loan closing in North Carolina. During the course of that representation, Lawyer held herself out as licensed in North Carolina. The client filed grievances in both states when Lawyer failed to obtain title insurance as required. Lawyer

did not respond to the ensuing investigation by the North Carolina State Bar. Definite suspension of nine months, by agreement, plus costs and LEAPP Law Office Management School, by agreement. (Op.#27659, August 24, 2016)

## **II. Recent Rule Revisions & Proposals**

### **1. Duty of Partners, Managers, and Judges to Take Action on Suspicion of Impairment of a Colleague - Rule 5.1, RPC; Canon 3, CJC; and Rule 428, SCACR (8/24/15)**

The Supreme Court has amended RPC Rule 5.1 to include additional duties of partners and managers in law firms to take action when impairment of a lawyer in the firm is suspected. CJC Canon 3 has also been amended to impose a similar duty on a judge who believes that a lawyer or another judge is impaired. The duty to take action is mandatory, but not specified. One option is to seek assistance of the South Carolina Bar through a new process set forth in Rule 428, SCACR. That process requires the Bar to appoint an Attorney to Intervene when a lawyer or judge elects to report the cognitive impairment of another lawyer. This rule is designed to create a system similar to Lawyers Helping Lawyers in order protect an impaired lawyer or judge from the disciplinary process in cases where misconduct has not occurred.

### **3. Expansion of permissible use of "certified" in advertising - Rule 7.4, RPC (10/28/15)**

The Supreme Court has amended RPC Rule 7.4 to expand circumstances under which lawyers can refer to themselves as "certified" "specialist" "expert" or "authority." Previously, only lawyers certified by the Commission on CLE and Specialization could use such designations. Under the new version of the Rule, lawyers certified by an independent certifying organization (ICO) that is approved by the Commission may also use those designations, as long as the ICO is clearly identified. The new version of the Rule also permits a lawyer who is certified by the SC Supreme Court Board of Arbitrator and Mediator Certification to designate himself as a "certified arbitrator" or "certified mediator." For more information about certified specialties in South Carolina or for a list of approved ICO's, go to [www.commcle.org](http://www.commcle.org) or call the Commission at (803) 799-5578.

### **4. Certification of Paralegals - NEW Rule 429, SCACR (11/12/15)**

The Supreme Court has adopted a recommendation from the Commission on the Profession to create a program for the voluntary certification of paralegals who meet minimum standards and qualifications. The paralegal certification program will be governed by the newly created Board of Paralegal Certification and administered with the assistance of staff at the South Carolina Bar. Paralegals may still work in South Carolina without certification. The work of paralegals remains restricted to that which is directly supervised by a licensed attorney.

### **5. Adoption of the Uniform Bar Examination (UBE) (01/21/16)**

The Supreme Court will replace the South Carolina Bar Examination with the Uniform Bar Examination (UBE) as of February 2017. Information about the UBE can be found at the National Conference of Bar Examiners website at [www.ncbex.org](http://www.ncbex.org).

## ANNUAL REPORT OF LAWYER DISCIPLINE IN SOUTH CAROLINA 2015- 2016

### COMPLAINTS PENDING & RECEIVED:

Complaints Pending June 30, 2015	1019	
Complaints Received July 1, 2015 - June 30, 2016	<u>1542</u>	
<b>Total Complaints Pending and Received</b>		<b><u>2561</u></b>

### DISPOSITION OF COMPLAINTS:

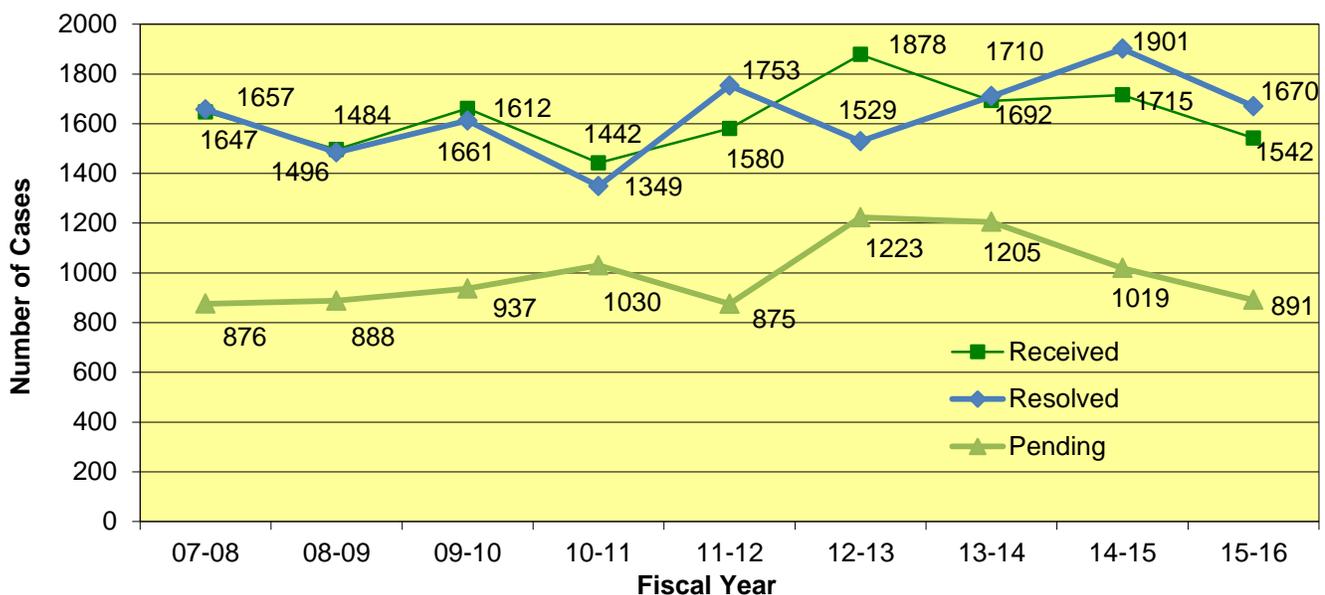
#### Dismissed:

By Disciplinary Counsel after initial review	413	
By Disciplinary Counsel after investigation	918	
By Investigative Panel	43	
By Supreme Court	<u>1</u>	
<b>Total Dismissed</b>		<b><u>1375</u></b>

#### Not Dismissed:

Referred to Other Agency	8	
Closed But Not Dismissed	3	
Closed Due to Death of Lawyer	18	
Deferred Discipline Agreement	0	
Letter of Caution	151	
Admonition	15	
Public Reprimand	10	
Suspension	33	
Disbarment	55	
Bar to Future Admission (out-of-state lawyer)	0	
Permanent Resignation in Lieu of Discipline	<u>2</u>	
<b>Total Not Dismissed</b>		<b><u>295</u></b>

**Total Complaints Resolved (1670)**  
**Total Complaints Pending as of June 30, 2016 891**



### Practice Type

Law firm	48.19%	<b>Less than 1%:</b>
Solo practice	23.52%	Corporate/general counsel
Public defender	19.48%	Guardian <i>ad litem</i>
Prosecutor	5.54%	Mediator/arbitrator/commissioner
Other government	2.05%	Not practicing

### Sources of Complaints

Client	58.92%	<b>Less than 1%:</b>
Opposing Party	18.58%	Public Official/Agency/Law Enforcement
Bank	4.87%	Fee Disputes Board
Attorney	4.81%	Litigation Witness/Victim/Ward
Family/Friend of Client	3.00%	Family/Friend of Witness/Victim/Ward
Court Rptr./Med.Prov./3d Party Payee	1.62%	Disciplinary Counsel
Citizen	1.32%	Anonymous
Judge	1.20%	Family/Friend of Opposing Party
Self-Report	1.02%	Family/Friend/Business Assoc. of Lawyer
		Employee of Lawyer

### Case Type

Criminal	39.93%	<b>Less than 1%:</b>
Domestic	14.32%	Professional Malpractice
Real Estate	7.49%	Corporate/Commercial/Business
Personal Injury	6.23%	Immigration
Probate	5.87%	Homeowners' Assn Dispute
General Civil	5.40%	Landlord/Tenant
Post-Conviction Relief	3.90%	Regulatory/Zoning/Licensing
Debt Collection/Foreclosure	3.42%	Tax
Not Client Related	3.18%	Intellectual Property
Workers Compensation	2.16%	Social Security/Federal Benefits
Bankruptcy	2.04%	
Employment	1.14%	
Property/Contract Dispute	1.02%	

### Alleged Misconduct

Neglect/Lack of Diligence	27.31%	<b>Less than 1%:</b>
Dishonesty/Deceit/Misrepresentation	25.57%	Scope of Representation
Inadequate Communication	14.44%	Inadequate Nonlawyer Supervision
Trust Account Misconduct	7.88%	Failure to Pay Fee Dispute
Conflict of Interest	3.31%	Personal Conduct (not client-related):
Improper Fees	3.00%	Real Estate Misconduct
Lack of Competence	2.88%	
Failure to Deliver Client File	2.82%	
Discovery Abuse/Litigation	1.81%	
Misconduct		
Incivility	1.62%	Probate Misconduct
Failure to Pay Third Party	1.62%	Business Transaction Misconduct
Advertising Misconduct	1.38%	Bar Admissions/Disciplinary Matter
Unauthorized Practice	1.26%	
Criminal Conduct (personal)	1.08%	
Declining/Terminating Representation	1.08%	

### **SUBSTANCE ABUSE/MENTAL HEALTH:**

In the 2015-2016 fiscal year, ODC concluded 81 complaints in which substance abuse or mental health issues were brought to the attention of ODC. This represents a 311.54% increase from the previous year. However, those complaints represented a total of 18 lawyers (compared to 16 in 2014-2015). Of the complaints concluded that involved substance abuse or mental health issues, 87.5% resulted in some form of discipline against the lawyer. This is compared to an overall discipline rate of 15.93%. Issues included:

Depression:	13 lawyers
Alcohol Addiction:	3 lawyers
Aging/Dementia:	1 lawyer
Illegal Drug Addiction:	1 lawyer

### **YEARS IN PRACTICE\*:**

In the 2015-2016 fiscal year, complaints were filed against 1066 lawyers. Of those lawyers, 15.48% were in their first six years of practice. A total of 32.27% of lawyers complained about were in their first twelve years of practice.

<b><u>Years in Practice</u></b>	<b><u>Number of Lawyers</u></b>
up to 6:	165
7 - 12:	179
13 - 18:	168
19 - 24:	155
25 - 30:	137
31 - 36:	107
37 - 42:	97
43 - 48:	37
49 - 54:	15
55 - 60:	4
61 and up:	2

\*The statistical significance of this data is dependent on the number of lawyers in active practice in each category. Information about the demographics of practicing lawyers can be obtained from the South Carolina Bar.

### **PRIOR DISCIPLINE**

In the 2015-2016 fiscal year, 41.17% of concluded complaints involved lawyers who had some form of previous disciplinary caution or sanction. Of those complaints involving lawyers with prior discipline, 32.19% resulted in subsequent discipline.

### **UNLICENSED\* LAWYER COMPLAINTS**

In the 2015-2016 fiscal year, ODC concluded 18 complaints against unlicensed lawyers. This equivalent to the previous year. Of the complaints concluded involving unlicensed lawyers, 33.33% resulted in some form of discipline against the lawyer. This is compared to an overall discipline rate of 15.93%. Home jurisdictions of unlicensed lawyers included:

Georgia	4	Kentucky	1	Pennsylvania	1
Florida	3	Minnesota	1	Texas	1
North Carolina	2	Mississippi	1	Virginia	1
Arizona	1	New York	1	Washington	1

\*An unlicensed lawyer is a lawyer who is not licensed in South Carolina, but is admitted in another jurisdiction.

**OFFICE OF DISCIPLINARY COUNSEL**

ATTORNEY TO ASSIST ASSIGNMENTS:

Complaints Assigned to ATAs	8
Reports Filed by ATAs	3
Outstanding ATA Reports	2

**COMMISSION ON LAWYER CONDUCT**

COMMISSION PROCEEDINGS:

Meetings of Investigative Panels	6
Formal Charges Filed	10
Formal Charges Hearings	4
Incapacity Proceedings	0
Meetings of Full Commission	1

REQUESTS FOR DISMISSAL REVIEW:

Requests for Review by Complainant	89
Dismissal Affirmed by Panel	(83)
Letters of Caution Issued by Panel	(0)
Case Remanded for Further Investigation	<u>(1)</u>
Dismissal Review Pending	<u><u>5</u></u>

RECEIVER APPOINTMENTS:

Pending as of June 30, 2015	22
New Appointments	+ 15
Appointments Terminated	<u>(22)</u>
Pending as of June 30, 2016	<u>15</u>

ATTORNEYS TO PROTECT CLIENTS' INTERESTS:

Serving as of June 30, 2015	2
Appointed	+ 1
Discharged	<u>(2)</u>
Serving as of June 30, 2016	<u><u>1</u></u>

LAWYERS BEING MONITORED:

New Monitor Files Opened	45*
Lawyers Currently Monitored	113

\*includes 7 conditional admissions

**SUPREME COURT OF SOUTH CAROLINA**

DISCIPLINARY ORDERS\*:

Dismissal	1
Letter of Caution	3
Admonition	2
Public Reprimand	5
Definite Suspension	6
Disbarment	9
Bar to Future Admission	0
Transfer to Incapacity Inactive	4
Interim Suspension	10

\*These figures represent the number of orders issued by the Supreme Court, not the number of complaints. Some orders conclude multiple complaints.

COMPLAINTS REFERRED TO SUPREME COURT:

Complaints resolved	106
Pending as of June 30, 2016	19

2017 South Carolina Bar Convention

The Hyatt Regency

January 10-21, 2017

## WHO IS YOUR CLIENT: ETHICAL CONCERNS IN ELDER LAW

### **Identifying the Client**

Who will sign the documents?

Whose confidential information will be obtained?

What other parties are impacted by the decisions being made?

Who requested the meeting ?

Who came to the office?

Who is paying for the services?

Who can terminate the services?

### **Defining the roles of others in the representation**

Is this a joint representation?

Did someone become an accidental client?

How many people will be involved in the decision making?

Are there beneficiaries to the representation?

## **Handling Non-clients in your representation**

Are they part of the conversation?

Do I accept payment from them?

Do I consult with them?

Do I give them advice?

## **SOUTH CAROLINA RULES OF PROFESSIONAL CONDUCT**

Rule 1.1 Competence

Rule 1.3 Diligence

Rule 1.4 Communication

Rule 1.5 Fees

Rule 1.6 Confidentiality

Rule 1.7 Conflict of Interest: Current Clients

Rule 1.8 Conflict of Interest: Current Clients; specific rules

Rule 1.16 Declining or Terminating Representation

Rule 1.18 Duties to Prospective Client